

Day 89 – April 29, 2013 – Prince Rupert – Vol 173

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Order of Appearances

Government of Canada Panel 2

Operations, Safety, Accident Prevention & Response, and Submarine Slope Failure and Tsunami Potential

Mr. George Armstrong	Dr. Andrée Blais-Stevens	Dr. Carl Brown
Mr. Kevin Carrigan	Dr. John Cassidy	Dr. Caroline Caza
Dr. Josef Cherniawsky	Mr. John Clarke	Mr. Kim Conway
Dr. Heather Dettman	Mr. Chris Doyle	Mr. Wayne Dutchak
Mr. Michael Dwyer	Mr. Michael Engelsjord	Mr. Charles Hansen
Mr. Grant Hogg	Dr. Bruce Hollebone	Dr. Ali Khelifa
Mr. Erik Kidd	Dr. Gwyn Lintern	Ms. Laura Maclean
Mr. François Marier	Mr. Phil Murdock	Capt. Glenn Ormiston
Mr. Donald Roussel	Mr. Paul Topping	Mr. Rob Turner
Mr. Shane Walters		

Examination by Mr. Bernie Roth for Northern Gateway Pipelines 25266

Examination by Mr. Andrew Hudson for the Joint Review Panel 25551

Examination by Member Hans Matthews of the Joint Review Panel 25652

Examination by Sheila Leggett, Chairperson of the Joint Review Panel 25687

Government of Canada Panel 3

Aboriginal Affairs & Northern Development Canada (AANDC) Emergency Management, Evidence and IRs

Mr. Eric Magnuson	Ms. Sheila Craig	Ms. Jean Gauld
Ms. Lise Hamonic	Mr. John Wilson	

Introduction by Mr. Brendan Friesen for Government of Canada 25726

Examination by Ms. Virginia Mathers for Gitxaala Nation 25743

Examination by Mr. Jesse McCormick for Haisla Nation 25803

Examination by Mr. Douglas Rae for Alexander First Nation 25856

Examination by Member Hans Matthews of the Joint Review Panel 26181

Government of Canada Panel 4

Aboriginal Engagement and Consultation Framework and Approach

Mr. Bruno Steinke	Mr. Dean Stinson O'Gorman	Mr. Terence Hubbard
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Introduction by Mr. Kirk Lambrecht for Government of Canada 26219
Examination by Mr. Douglas Rae for Alexander First Nation 26252
Examination by Mr. Jesse McCormick for Haisla Nation 26384

Examination by Mr. Bernie Roth for Northern Gateway Pipelines 25266

Note: This discussion is detailed and technical – one of the most technical of all the examinations of evidence in these hearings - and it does not lend itself to meaningful summarization. Hence, it is best read directly, in the transcript, from 25266-25525

Methods for weathering oil in the lab

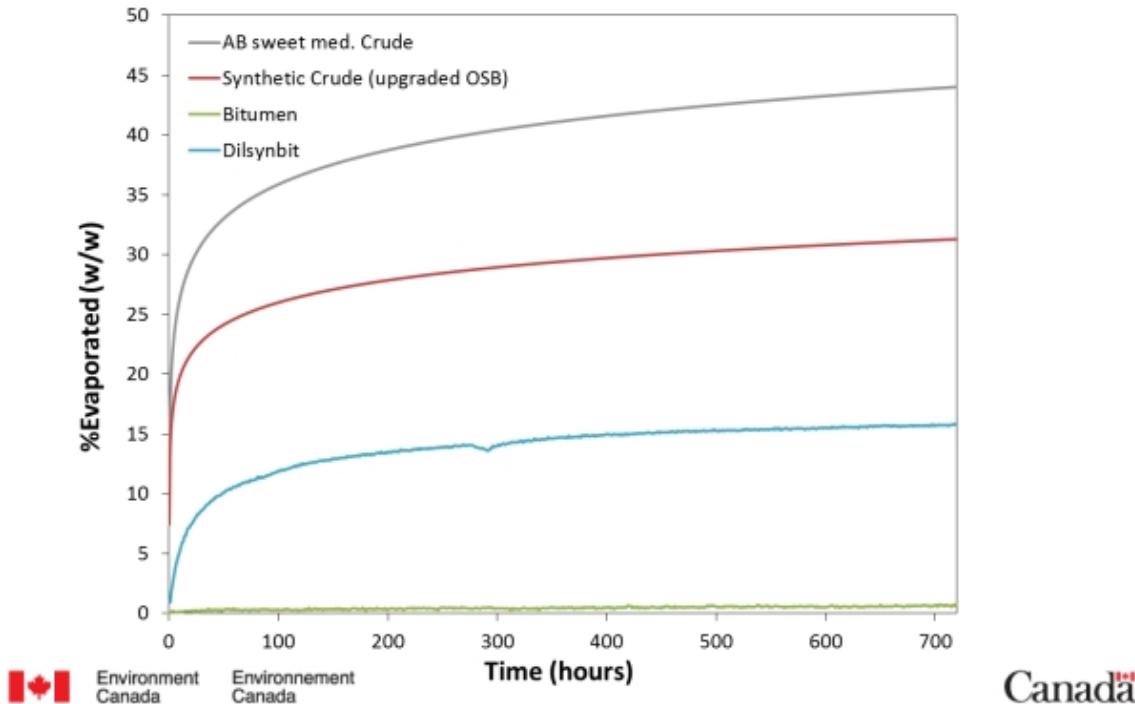
Mr. Roth recapped his discussion of the previous day about methods used at Environment Canada (EC) to weather oil. He summarized what he understood from Dr. Bruce Hollebone – that EC has two methodologies for artificially weathering oil. “One is to get you to the ultimate fate that we think it eventually gets to but we have another method for developing evaporation rates.” Dr. Hollebone said that they use pan evaporation, but “simulated distillation data” is equally important for evaporation rate modeling. 25266

Asked what that is, Dr. Hollebone explained that it is “a chromatographic technique to simulate the boiling point fraction in a refinery tower.” “It is a standard ASTM method ... and had been adopted by the spill modeling community as one of their inputs for evaporation modeling.”

Fate, Behavior & Modeling of Spilled Oil Sands Products

Mr. Roth examined the report, “Fate, Behavior & Modeling of Spilled Oil Sands Products (Freshwater & Marine Environments)” written by Dr. Hollebone [[Exhibit E9-70-2](#)]. In particular, he sought to understand better two of the graphs in the report: “Evaporation of Oil Sands Products” [Adobe 9] and “Temperature and Evaporation Sinking Effects” [Adobe 23].

Evaporation of Oil Sands Products



Environment Canada

Environnement Canada

Canada

The Short report

Mr. Roth also referred a number of times to “Short,” a report entitled “Susceptibility of Diluted Bitumen Products from the Alberta Tar Sands to Sinking in Water” by Jeffrey W. Short [[Exhibit D72-80-2](#)]

Evaporation rates: test vs reality

Mr. Roth asked questions related to whether or how the weathering of products in the lab would resemble weathering in the natural environment. He said, “the determination of the ultimate density and weathering [represented in these tests] is not really for emergency response purposes. ... It would be if this product would ever in the natural environment get to a 22.58 percent weathered state, ... [but] it would be months, if not years off.” Dr. Hollebone said “You’re over-interpreting what you’re seeing. ... These tests ... represent a sort of slowest possible evaporation rate. ... I don’t think you can draw the inference that you’re drawing there.” 25362

Wind and thickness questions

Mr. Roth asked, “How did you interrelate with the modellers as far as them being able to make assumptions as to how big of an impact wind speed has on evaporation or how big of an effect the thickness of the slick has on evaporation?” Dr. Hollebone made some introductory comments regarding how his evaporation data is used by modellers Then Dr. Ali Kehlifa put up the Proponent’s TERMPOL technical report, by SL Ross, that

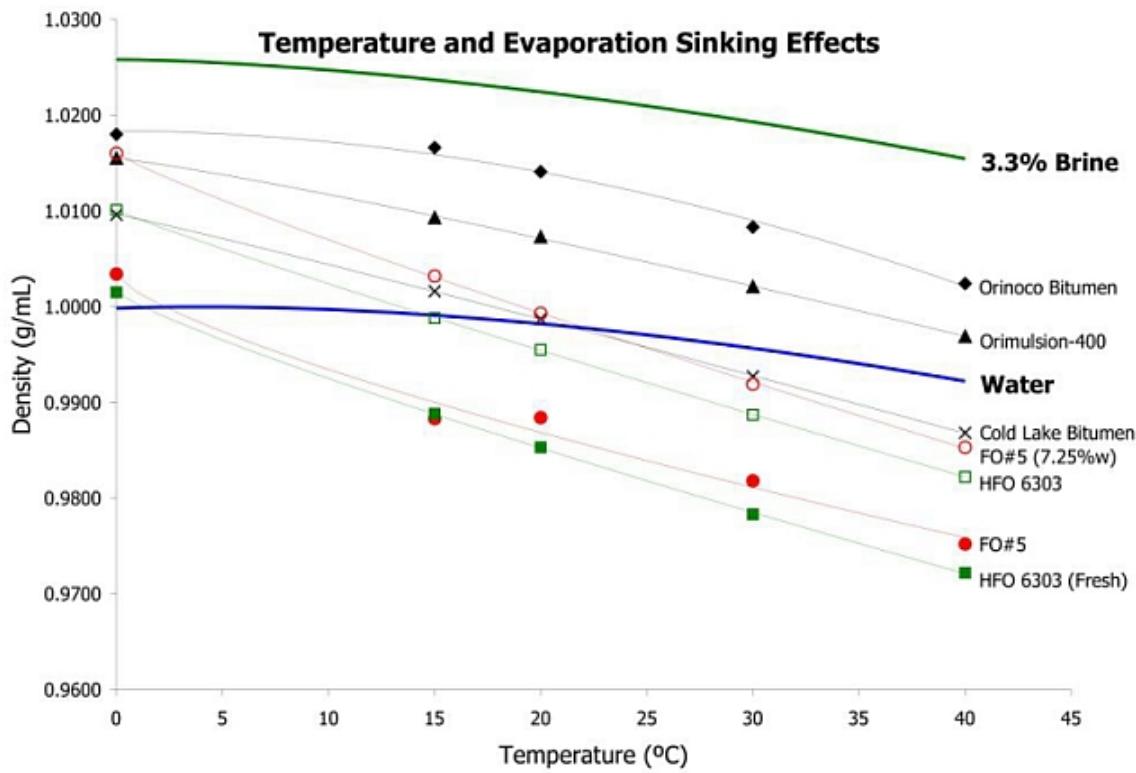
addresses the fate and behaviour questions from the modeling site and discussed the equations which factor in wind and thickness [[Exhibit B16-31](#), Adobe 14]. Please read in the transcript. 25374.

Mr. Roth said this confirms that SL Ross did account for the effects of wind and slick thickness on their modelling, ... which they then used for their ecological and human health risk assessments. ... And it appears that Dr. Short may not have known that. Dr. Kehlifa said the Short report was not theirs, and he was not there to comment on it, but that "Jeff Short used exactly the same model. The same parameters that were proposed by the Proponent to predict the evaporation under different conditions." 25406

Coefficients of thermal expansion of water

Mr. Roth turned to Dr. Hollebone's temperature and evaporation graph [[Exhibit E9-70-2](#), Adobe 23] and surmised that the density of a liquid is not a direct linear function of temperature, as represented by the curved lines for various oils. Dr. Hollebone confirmed first of all that the two heavier lines are fresh water and 3.3% brine or sea water. He said that "water's a fairly unique fluid in many ways and so ... it has a very strange relationship between the fluid and the solid. ... particularly near its freezing point." 25432

Mr. Roth said that the graph shows "where the density of oil products intersects with the density of the water due to temperature changes ... there is submergence at those points of intersection between those lines; correct?" Dr. Hollebone replied, "That's one way of interpreting this graph." He advised that not too much should be read into the curves, however, or into differences between these results and Short's results. The curves are the software's attempt to join points, but the points may also be scattered outliers on a straight line. "We're trying to have arguments here over very tiny details that are potentially lost in the experimental noise. ... This whole issue highlights the idea that we don't know enough yet." Later, when Mr. Roth repeats his concern about differences between Short and Dr. Hollebone's report, Dr. Hollebone said, "There are many lines you could draw on that graph." 25446



Mr. Roth's questions elicited the information that the temperature and evaporation sinking graph was produced with regards to a spill in Edmonton a few years ago, ... for spill responders so that they could see ... ranges that we'd expect to see in some of these products." In [Exhibit E9-2-1](#), Adobe 117, Mr. Roth said that "if we plot this weathered data for the dilbit and the synthetics on the (temperature and evaporation) graph we don't come anywhere near intersecting the line for freshwater let alone for salt water (meaning that the oil remains less dense than the water) Dr. Hollebone said, "Evaporation is not the only thing going on during a spill. ... other factors, such as emulsification ... can also affect density." 25489

Enough information to certify a response organization

Mr. Roth asked if Transport Canada has enough information "to certify a response organization to respond to a release of these products." Mr. Donald Roussel replied that, "the main thing ... is the physical characteristics of the product. What we've been hearing for days ... is nothing new to us. ... We have treated dilbit, synbit, dilsynbit, the same ... as a dilute crude oil, a blended crude oil, that's how it's being treated." He said that Transport Canada's concern is "the first three days of a response with moving in the [response] asset so that you can start protecting the shore. It's been clear that on the shore side these products will ... aggregate and will sink to the bottom and they need to be recovered mechanically." 25526

He said that for the products or oils that are in the water and are on the surface, particle aggregation will take a significant amount of time. "The weathering take place through emulsifications, but in general the certifications is for the first 13 days. ... Deploying of the equipment, three days; and then full recovery of what is ... visible for 10 days. ... We

need a lot more information ... for us to better do with this." He said these products are moving already, and "we know they can recover it and they have demonstrated that." In addition, they may be moving "on the water side" as soon as this summer. 25538

"There's still a lot of research to be done. ... We need to have good peer review, remove uncertainty ... so that we don't end up with week-long debate on "Is this thing is sinking or not sinking and how it will behave in time". 25544

Examination by Mr. Andrew Hudson for the Joint Review Panel 25551

The role of the REET

Mr. Hudson set up his question by noting that "Northern Gateway makes numerous commitments regarding follow-up and monitoring of environmental resources in the event of a spill associated with marine shipping related to the project, even though NGP would not be the responsible party. NGP also makes reference to the Canadian Coast Guard as being the lead federal agency for all ship-source spills. On Feb 26, Mr. Milne said that unified command would be involved, and that the Regional Environmental Emergencies Team (REET) would have primary oversight of the follow up monitoring. [Volume 145] Dr. Owens said, that REET is "a permanent body within Environment Canada and Environment Canada acts as the chair of the REET." Mr. Hudson said, "Please comment. ... Does that make sense?" 25554

Mr. Grant Hogg said "The REET ... is really a response mechanism. It is not a permanent fixture in Environment Canada, it's a forum that's brought together at the time of a response when the lead agency needs consolidated identification of environmental protection priorities to then inform the best response actions that can be taken to reduce the consequences of the spill." The REET is a way to identify the environmental protection priorities so the Coast Guard can say to the response corporation, "Here are the areas that you need to protect".25559

Mr. Hogg said that in BC the REET is chaired by Environment Canada and the BC Ministry of Environment. The roles of the co-chairs will change as spill response turns into the recovery phase. He described some examples of these shifting engagements with REET. 25565

Follow-up and monitoring, NGP's commitments, federal departments

Mr. Hudson asked, "How do you see these commitments that Northern Gateway has made being incorporated into Canada's overall requirements for follow-up and monitoring activities?" Mr. Roussel said , "That's a fairly complicated question." His answer is best read in the transcript. 25573

Mr. Hudson next asked, "Do you see your federal departments ... being involved in this oversight of what NGP has committed to do?" Mr. Roussel replied: "Another fairly complex question that deals with governance and oversight between the different departments, DFO, Coast Guard, ourselves, Environment Canada, NRCan, and any of the conditions that potentially could be inside the permit." Again, the transcript contains his full reply, that of Dr. Caroline Caza for Environment Canada, Mr. Phil Murdock for the

Canadian Coast Guard, and Mr. John Clarke for NR Can, addressing the questions of oversight and the ways in which agencies would be involved in monitoring. 25578

Longer term monitoring activities

Mr. Hudson asked if longer term monitoring activities as committed to by Northern Gateway was typical with past spill events. Dr. Caza replied that it's case-by-case, depending on the specifics of a project. 25602

Mr. Hudson asked about "the risk-assessment of ship-source oil spills being conducted in response to the Commissioner of the Environment's audit." Mr. Roussel said the assessment encompasses all spills from all shipping traffic south of the 60th parallel, and the report should be tabled by the end of the year. "And we're committed to do ... north of 60 ... in 2014." He said that the methodologies used for these, and for Aleutian Islands and Cook Inlet assessments, are proposed by the bidders in the requests for proposal. "And inside the overall tanker safety regime there is also a review of the ... different types of risk methodology." 25607

Asked by Mr. Hudson how the risk assessment could contribute to safety of shipping and spill response, including with the NGP, Mr. Roussel said, "that's a crystal ball question," and noted that Minister of Transport won't be able to develop a response to the report until 2014. 25622

Process by which NGP's voluntary commitments become requirements

Mr. Hudson put up the TERMPOL Review Process Report [[Exhibit E11-3-2](#), Adobe 15] and noted the analysis is "*based on the assumption that, if the project should proceed, the proponent will implement all proposals, commitments, protocols, strategies, rules and its own requirements as described in its TERMPOL Review Process submissions.*" He also noted the statement, "*The review has not identified any regulatory issues or gaps or the need to consider any new regulatory requirements at this time. The existing international and Canadian marine laws and regulations, complemented by the enhanced safety measures the proponent is committed to implementing and monitoring will provide for safer shipping in support of the Northern Gateway Project.*" [Adobe 34] He asked, "[Given] that there are no provisions in Canadian marine shipping legislation in place to make NGP's voluntary risk reduction measures ... mandatory or enforceable, [how did the committee conclude] there was no need to consider any new regulatory requirements?" 25633

Mr. Roussel replied essentially that future regulations could emerge to resolve that question. "It's not within the TERMPOL process or me on the stand to make a decision regarding making regulations. Regulations has its own process, and we have underway ... the Tanker Safety Panel.... Out of those ... there can be regulatory regulations emerging from that. At the time of writing the TERMPOL [report] there [was] no commitment that we will make additional regulations. ... It doesn't mean we will not make regulation." 25638

Examination by Member Hans Matthews of the Joint Review Panel

25652

Public port and designated port

Mr. Matthews asked, “What’s the difference between a public port and a designated port?” Mr. François Marier replied that a port may be “designated” under the Canada Shipping Act related to concerns with spill response capability, whereas a public port is governed by the Canada Marine Act, falls under the purview of the Ministry of Transport, and has concerns with respect to vessel traffic controls with the port. A public port requires an “authority”, usually harbour master, appointed by the Minister. Mr. Marier added that in Kitimat, there are no significant federal lands, “so here we’re talking about the waters.” 25653

Acceptable recovery rate of spilled oil

Mr. Matthews asked, “In the confined channel area or in the open water area, from Transport Canada’s perspective what’s an acceptable recovery rate of spilled oil in a response? Mr. Erik Kidd replied, “Open water recovery rates … are world-known for between 10 and 15 percent.” He elaborated on the response regimes and recovery techniques. 25662

Mr. Matthews asked if there is anyone “doing ongoing research in recovery equipment or techniques or leading-edge processes.” Dr. Hollebone said, “U.S. Coast Guard has an active program, … completing a phase on detection of submerged oil and … starting up a … component on recovery of submerged oil.” 25676

Mr. Kidd added to his earlier reply: “When we’re talking about recovery percentages, we’re recovering 100 percent of the oil that we see. … 90% of that oil that hits the shoreline is recovered manually. 10% of that oil is reduced back into the water for skimmer systems and boom systems.” 25681

Examination by Sheila Leggett, Chairperson of the Joint Review Panel

25687

Recovery of dilbit

The Chairperson asked Mr. Roussel if he had said that “the regime currently being used has proven that it can recover dilbit product.” Mr. Roussel said, “Yes” and explained that with the information they were provided, that it is a blend oil like dilbit, dilsynbit and synbit and based on reports from crudemonitor.ca. “We know it can be recovered.” 5687

Transport Canada & Coast Guard experience with recovery of bitumen products

The Chairperson asked about the bitumen-based product “recovery operations that Trans Canada and Coast Guard had been involved with.” Mr. Murdock said that with the Burnaby spill, the NEB was the lead, because “this was a shore-based event, … a pipeline ruptured,” the Canadian Coast Guard was a resource agency and the actual spill recovery in the water was undertaken by the response organization (RO) Western Canada Marine Response Corp. (WCMRC). Mr. Kidd said the spilled product was dilsynbit, and the shoreline and water recovery was close to 80%. The Transportation Safety Board report [[P07H0040](#)] said that 210 m³ of 234 m³ were recovered (90%). Both Mr. Kidd and Mr.

Murdock agreed that the Burnaby spill is the only experience that Transport Canada and the Coast Guard have had with bitumen-based products. 25691

Introduction by Mr. Brendan Friesen for Government of Canada 25726

Government of Canada Panel 3 - Aboriginal Affairs & Northern Development Canada, Emergency Management, Evidence and IRs

Mr. Friesen introduced the witness panel members, their areas of expertise and evidence they are qualified to speak to. The witness list for Prince Rupert and their CVs are in [Exhibit E9-53-4](#), and the witness panels and statement of issues is in [Exhibit E9-64-2](#).

Readers wanting more detail are encouraged to read the transcript, beginning at paragraph 25725.

Examination by Ms. Virginia Mathers for Gitxaala Nation 25743

AANDC responsibility for emergency response management on reserve

Ms. Mathers asked for confirmation that AANDC (Aboriginal Affairs and Northern Development Canada) is responsible for ensuring that there's appropriate emergency response management in place on Reserve. Mr. Eric Magnuson agreed. 25744

As an aid to questioning (AQ), Ms. Mathers put up AANDC's National Emergency Management Plan [Adobe 5]. Mr. Magnuson said, "It speaks to the roles and responsibilities not only of Aboriginal Affairs but of our partners." "It's a general overarching plan for the Department and there's more specific plans specific to a hazard, specific to other partners like the Alberta Provincial Emergency Preparedness Program or the British Columbia Provincial Emergency Preparedness Program as well as other federal departments that play a lead or have a partnered role, including First Nations on Reserve." 25748

Gitxaala Emergency response plan

Ms. Mathers noted that "shipping accidents, including oil tanker spills, are recognized ... as the type of hazard that might ... affect First Nations communities." She said, "The Gitxaala Nation asked the Federal Government participants whether they intended to conduct an assessment of the capacity of First Nations communities to respond to emergencies that might affect their communities. ... AANDC said it had worked with the Gitxaala Nation to develop a plan in 2009." "Does this plan contain procedures for responding to an oil spill?" Mr. Magnuson said he doesn't have the plan in front of him, and can't comment, but said, "Our role is not to determine if their plan is appropriate or not. ... We have arrangements and contracts with other service providers to provide support for those types of things but we don't directly assess individual plans to see if they've planned for every particular hazard." Asked if there is a plan in place for Gitxaala to respond to an oil spill, Mr. Magnuson said, "No." 25756

Ms. Mathers said, "[It] is my understanding correct that the onus is on individual communities to ensure that they have a plan in place that is capable of responding to the type of emergency, say like an oil spill." Mr. Magnuson said that is correct. "The bulk of

the responsibility -- and this is general throughout the Canadian approach to emergency management -- lies on the local community, whether it's an unincorporated or a municipal or a First Nation." 25786

Asked if he was aware of any follow-up on the emergency response plan since 2009, Mr. Magnuson said he did not have that information. 25791

Examination by Mr. Jesse McCormick for Haisla Nation 25803

Canada declines to produce a consultation record

Mr. McCormick asked for the Government of Canada reply to an Information Request from the Haisla Nation [[Exhibit E9-21-12](#), Adobe 4] and went to Response 1.1d. The question was, ““Provide all correspondence and records of communication between Canada and Northern Gateway concerning consultation with the Haisla Nation”. Canada says, “*The Government of Canada is relying on the Joint Review Panel process as part of the broader consultation including efforts of Northern Gateway, to the extent possible, to assist the Crown in fulfilling the legal duty to consult,*” and then “*declines to produce a record at this time.*” Mr. McCormick asked, “Do you agree that in order for the Joint Review Panel to fulfil this assessment, it must have an access to a full record of information regarding potential or established Aboriginal and Treaty rights?” 25803

Ms. Dayna Anderson for the Government of Canada said this evidence belongs with the next witness panel. Mr. McCormick said he would bring the question back on the later panel. 25808

Canada says the pre-treaty comprehensive claims documentation is not relevant

Mr. McCormick turned to Response 1.12a [Adobe 26]. He said, “The Haisla Nation asked AANDC to verify the process by which comprehensive claims were validated prior to the current B.C. Treaty process and asked for copies of documentation relating to the Crown assessment of the Haisla Nation's comprehensive claim.” The response is, in part, that “*The information request is not related to evidence filed by the Government of Canada and is beyond the scope of the Joint Review Panel's Terms of Reference. Any questions the Haisla Nation has in respect of the treaty negotiations process can be directed to the Government of Canada's negotiator for the Haisla treaty table.*” 25814

Mr. McCormick’s questions related to this brought another objection from Ms. Anderson and a discussion with Ms. Jean Gauld about the context and meaning of the pre-treaty comprehensive claim record to the BC Treaty Commission process. At the end of it he asked, “Canada considers that information not to be relevant to these current proceedings; is that correct?” Ms. Gauld replied “That’s correct.” She adds that “Canada has not prepared a strength-of-claim for Haisla.” 25818

Examination by Mr. Douglas Rae for Alexander First Nation 25856

Concerns about jobs and compensation for Alexander FN

Mr. Rae asked referred to the pipeline oil spill response plan of NGP [[Exhibit B83-2](#), Adobe 6] and asked, “Have the Department of Indian and Northern Affairs Canada made efforts to ascertain whether the Proponent will make jobs available as part of that plan, available to members of the Alexander First Nation?” Ms. Lise Hamonic said, “Not to my knowledge.” 25856

Mr. Rae’s questions related to jobs and compensation for Alexander First Nation and its members. Little information was elicited from the witnesses. Ms. Anderson was frequently in the discussion. Mr. Rae asked, “Would Canada consider advising the Joint Review Panel that mandatory employment conditions be part of the conditions were this project to be approved?” To Ms. Anderson’s objection, Mr. Rae asked for a ruling. The Chairperson directed the witnesses to answer Mr. Rae’s question. Mr. Magnuson said that “this type of decision would have to go much higher than me,” but he restated that AANDC has a mandate to support First Nations “to maximize their benefits from economic development.” 25863-25908

Jurisdiction over Crown land

Mr. Rae put up the AANDC submission to the JRP proceeding [[Exhibit E9-6-24](#), Adobe 5] and quoted a statement regarding the rights of Indian bands and First Nations in regard to reserve lands: *“The right of non-members to [the] use [not to use] and occupy reserve lands is subject to strict statutory provisions.”* He asked, “Does AANDC also have jurisdiction in regard to the taking up of additional unoccupied Crown lands within the Province of Alberta?”. He confirmed that he was talking about both provincial and federal Crown land. Mr. Magnuson said that AANDC would have no jurisdiction for it. It would be the responsibility of another provincial or federal department. His position was confirmed by Mr. John Wilson. 25910-25951

Mr. Rae’s asked about compensation in the context of this taking up of Crown land. Ms. Anderson said he was seeking a legal opinion. The discussion became largely concerned with whether Mr. Rae’s question was appropriate. Mr. Rae asked, “Were all waters within the Alexander reserve lands included in the reserves when they were set aside?” Mr. Wilson asked him to be specific about which waters. Mr. Rae said he could not. Mr. Wilson said, “I wouldn’t know then.” Mr. Rae asked, “Would you … undertake to ascertain the answer to my question?” Ms. Anderson asked if that would be of use to the JRP. The Chairperson said “The Panel would be interested in the undertaking to the extent that the Department is able to respond to the question.” 25952-26014

Section 28 Indian Act permit

Mr. Rae turned to Section 2.2, “Permits” [Adobe 6, para 17] and noted that a permit under Section 28(2) of the Indian Act is required for undesignated reserve lands. He asked if it is AANDC’s intention to issue a Section 28 permit if the Project were approved. Ms. Hamonic replied, “If the Chief and Council were to request that we issue a permit, yes, we would do so.” Mr. Rae asked what else would be required prior to the issuance of that permit. Ms. Hamonic named a number of requirements. Mr. Rae returned to the question of water bodies within the permit area. Ms. Hamonic said, “The Parcel Abstract Report [would] determine what is in the parcel of land.” 26015

Expropriation may be possible

Mr. Rae: "If these pre-requisites for the issuance of such a permit pursuant to the Indian Act were not met or could not be met, would the Proponent be able to obtain its right-of-way for the Project?" Mr. Magnuson said, "Under our current regime, it would be a requirement that our processes be followed and the obligations under the Act fulfilled prior to the issuance of a permit." Mr. Rae: "Is there alternative land tenure available to the Proponent for the right-of-way?" Mr. Magnuson said, "If the explicit requirements were there to proceed without all of the components of our process being met -- i.e. Chief and Council request and agreement -- there is also available under the Indian Act a process of expropriation." 26029

Mr. Rae asked, "The NEB Act, Section 78, requires the consent of the Governor-in-Council (GIC) for the Proponent to take possession or occupy reserve lands. Would that consent of the GIC be separate from the approval of the GIC for the overall project?" Mr. Magnuson said the witness panel doesn't know the answer; they'd have to see what the Order in Council (OIC) stipulates. 26041

Limit of AANDC responsibility and reliance on JRP process

Mr. Rae put up the government response to IR3 from Alexander First Nation [[Exhibit-E9-21-03](#), Adobe 3] and noted this statement: "*The process provides a meaningful mechanism, to the extent possible, by which the Government of Canada may be satisfied that specific Aboriginal concerns have been heard and, where appropriate, accommodated.*" He asked, "If an Aboriginal group ... does not raise a particular concern, is it the department's position that that concern is not relevant to the JRP's proceedings?" Mr. Magnuson said, "If we had some concerns that we were aware of we'd want to have a conversation with the First Nation." 26054

Mr. Rae asked in reply: "Would you wish to have a conversation with the Joint Review Panel?" Mr. Magnuson said that the majority of issues are being examined by other departments. "Our mandate is pretty specific and limited to Aboriginal affairs." Mr. Rae said that reserve lands are federal lands and the titles rest with the Crown and AANDC "looks after them." Mr. Magnuson replied, "We have a responsibility to exercise our jurisdiction and to protect against liability to the department, specifically to land that we hold in trust for First Nations. ... We ... have explained that process as best we can. ... Beyond that, we're relying significantly on the work of this Panel and this process to inform the department." 26062

Surveying the Alexander FN reserves

Mr. Rae's next set of questions were concerned with a survey of Alexander Indian Reserve No. 134 and 134A. Mr. Wilson said that 134 has been given theoretical legal descriptions, but has not been surveyed, and 134A was surveyed as a parcel. Mr. Rae said that the Government of Canada has decided that NR Can "would no longer be updating existing survey maps of Indian reserve lands." He asked, "Would AANDC be willing to consider conducting a section line survey" of the two reserves? Mr. Magnuson said that AANDC typically does not do surveys, but if there was an approval of NGP, surveys would be required, paid for by the Proponent. Mr. Rae determined that these would be right-of-way surveys only, not of the complete reserve. 26073

Land appraisal and compensation for impacts of Aboriginal and Treaty rights

Mr. Rae reviewed subparagraphs beginning on Adobe 3 which AANDC says the Alexander First Nation should note, particularly (f) and (g) which are concerned with land appraisal. Mr. Rae was concerned with the determination of fair market value and whether the “certified appraiser [is] professionally capable of ascertaining the value of loss of Treaty and Aboriginal rights.” To Ms. Anderson’s objection, Mr. Rae said that this goes to the question of compensation and “will fall under the jurisdiction of the NEB.” The Chairperson directs the witnesses to answer the question as best they can. Mr. Magnuson reiterates that the appraisal would be done by a qualified person. 26100

Mr. Rae said in reply, “I must make it clear that the Alexander First Nation is and will continue to be interested in the methods utilized for losses of its rights, both on Reserve and off-Reserve, and any losses in regard to its Aboriginal and Treaty rights.” 26127

Examination by Member Hans Matthews of the Joint Review Panel

26181

On-reserve emergency response

Mr. Matthews asked, “If there was a community which was impacted by a spill, what would be the role of the AANDC?” Mr. Magnuson said that AANDC enters into MOUs or Letter of Understanding or Agreements with the provinces and “partners” with other federal departments for the provision of response services. “We refund them costs associated with responses … Our agency is primarily a funding agency and a regulatory permitting kind of land registry.” “We’re also a member of the REET Committee … and we coordinate under the Government of Canada Emergency Response Plan.” Mr. Matthews said, “I like that answer.” 26181

Mr. Matthews asked for some information about the role of AANDC in the addition of land to a reserve. Mr. Magnuson provided a brief overview. 26196

Introduction by Mr. Kirk Lambrecht for Government of Canada 26219

Government of Canada Panel 4 - Aboriginal Engagement and Consultation Framework and Approach

Mr. Lambrecht introduced the witness panel members, their areas of expertise and evidence they are qualified to speak to. The witness list for Prince Rupert and their CVs are in [Exhibit E9-53-4](#) and [Exhibit E9-58-3](#), and the witness panels and statement of issues is in [Exhibit E9-64-2](#). Readers wanting more detail are encouraged to read the transcript, beginning at paragraph 26211.

Corrections to evidence as a result of legislative changes

In [Panel Ruling No. 157](#), the Panel invited Mr. Terence Hubbard to describe the administrative corrections required “to reflect the changes in the amended JRP Agreement which were required after the coming into force of the Jobs, Growth and Long-term Prosperity Act, 2012.” Mr. Hubbard explained that “there were several legislative changes made to the Canadian Environmental Assessment Act and the

National Energy Board Act.” An important change to the JRP Agreement is that the Governor in Council is the decision-maker, replacing the NEB. 26231

Examination by Mr. Douglas Rae for Alexander First Nation 26252

Referring to [Exhibit B83-2](#), Adobe 34, Mr. Rae pointed to NGP’s statement that the Project would contribute \$23.5 billion in net social benefit, “*equating to a social rate of return of almost 33%*”. He asked if the Government had calculated the portion of that percentage which will accrue to First Nations. Mr. O’Gorman indicated that such a calculation was not relevant to the evidence that the panel was speaking to and answered the same when Mr. Rae asked if the Government had attempted to understand the portion of losses in ecological goods and service that would take place on Alexander First Nation’s traditional lands. 26253

On impacts to treaty rights and economic rents

Calling up E9-21-03, page 7, which refers to treaty rights around Crown Lands, Mr. Rae asked if the Government intended to rely on the JRP’s assessments of NGP’s use of Crown Land. Mr. O’Gorman spoke about the Government’s engagement with the JRP process in an effort to understand impacts of the Project, as part of the decision-making process, noting that all information presented to the JRP will be considered. 26276

Mr. Rae asked if Canada was interested in the JRP’s views of impacts on Alexander’s land uses that are not protected by Treaty 6. Mr. O’Gorman again stated that the Government would evaluate “all the information that’s been brought forward by groups about potential impacts of the Project”. 26287

Mr. Rae followed up with further questions about Canada’s acceptance of the JRP findings in relation to the existence of First Nations rights. Mr. Lambrecht suggested that the question was more of an argument, and Mr. Rae was encouraged to move on. 26296

Mr. Rae again asked, “Does Canada intend to accept any findings of the [JRP] as to the existence of any rights, Aboriginal, Treaty or otherwise, of the Alexander First Nation?” Mr. Lambrecht noted that the treaty rights are not in dispute at the hearings and briefly explained his understanding of treaty rights in relation to Aboriginal title. Mr. Rae continued with questions on the subject. Mr. O’Gorman pointed out that it was too early to know whether the Government would accept any of the JRP’s findings and again welcomed the concerns of the Alexander First Nation. 26306-26316

Discussion continued on the subject with Mr. Rae questioning the appropriateness of the JRP to be setting conditions related to First Nation rights, and Mr. O’Gorman pointing out that the final phase of the consultation process will involve further discussions on the matter. 26317

Mr. Rae asked why the Canadian Government had not submitted evidence related to the need for bitumen upgrading in Alberta, noting Treaty 6 First Nations’ efforts to establish

an upgrading project. Mr. O’Gorman pointed out that the question was not related to the Government’s evidence, and Mr. Rae was asked to move on. 26332

Mr. Rae continued with questions around the Government’s reliance upon the JRP findings in regards to Aboriginal consultation. Similar discussion ensued at length. With Mr. Lambrecht questioning the relevance to the evidence in question. 26345

The Chairperson indicated that the Panel would like to hear a response to Mr. Rae’s question, about the Canadian Government’s position on consultation obligations of the Province of Alberta, for the portion of the Project running through Treaty Number 6 territory in Alberta. Mr. O’Gorman explained that the Government was committed to its legal obligations around consultation and that he couldn’t speak to the role or responsibilities of the Province. 26362

Mr. Rae noted that the Government of Alberta had submitted evidence on the economic rents resulting from the project and pointed out that a large portion of those economic rents will accrue to the Canadian Government. He asked if the Government had considered what portion of the rents would accrue to First Nations “over whose land the proposed project travels”. Mr. O’Gorman again stated that the question wasn’t relevant to the panel’s evidence. 26370-26376

Examination by Mr. Jesse McCormick for Haisla Nation 26384

Government consultation with Haisla Nation

Calling up [Exhibit E9-06-6](#), page 20, Mr. McCormick noted aspects of the consultation process throughout the EA process, indicating the responsibility of DFO and Environment Canada to participate in Aboriginal consultation activities. He asked if the CEAA had coordinated any Aboriginal consultation activities with the Haisla Nation involving either of the previously mentioned government departments in the EA process. Mr. O’Gorman stated that he wouldn’t speak to individual meetings but explained that there were many meetings informing Aboriginal groups of the consultation and regulatory process for the project. He also spoke about the “whole of government approach” to consultation. 26386

Further discussion continued on the subject of Government’s approach to Aboriginal consultation related to NGP in general. Mr. O’Gorman stated, “it’s premature to say that we will meet with any one group or the other until we actually see the final report”.
26401-26419

Mr. McCormick asked for agreement that some government departments involved in the project, had not yet met with the Haisla Nation. Mr. O’Gorman again explained general aspects of the Government’s consultation process, again speaking to the importance of Phase 4 of the process following the JRP report. 26421

Mr. McCormick asked if the Government had received information about the concerns, rights and title of the Haisla Nation during meetings early on in the process. Mr. O’Gorman spoke about the information shared in the meetings in general. 26427

Mr. McCormick asked if the CEAA had advised Government departments not to meet directly with Haisla Nation in relation to the project in question. Mr. O’Gorman stated that he was not aware of departments being advised not to meet with the Haisla Nation. 26444

Referring to the aboriginal consultation and accommodation guidelines for federal officials in [Exhibit E9-6-7](#), page 1, Mr. McCormick asked if the government’s consultation process followed the guidelines, which Mr. Hubbard confirmed. 26452

Turning to page 26, Mr. McCormick noted a section, “*Identify potential or established Aboriginal or Treaty rights and related interests... Managers should be familiar with the nature and location of these rights and their respective regions*”. He asked if the managers responsible were familiar with the nature and location of the rights of the Haisla Nation. Mr. O’Gorman answered that the JRP process “has been designed to elicit exactly that information”, indicating that the Haisla Nation can bring forward information so that the Government can have a full understanding of potential impacts on their rights. 26465-26470

Mr. McCormick asked if the government had prior knowledge of the nature and location of Haisla Nation’s rights and Mr. Steinke indicated that the Government would have collected some of that information over the years while working with the Nation on the project. Mr. McCormick followed up asking if that information had been provided to the JRP as part of the Government’s evidence. Mr. O’Gorman stated that it was the role of First Nations to bring the information forward to the JRP on the record, and that the Government wouldn’t be tendering such evidence on their behalf. 26472

Mr. McCormick continued, asking if the Government understands its consultation responsibilities to permit it “not to file the information it has available relating to the rights of my client as part of these proceedings?” Mr. O’Gorman indicated that the Government has general information, but that they were seeking to understand Aboriginal perspectives on how the project may impact them, through the JRP. Similar discussion continued. 26477-26488

Discussion continued around consultation and accommodation through the process with Mr. McCormick noting that the Phase 4 consultations will occur after the JRP has given its recommendations about the project. He asked if those Phase 4 final dialogues with First Nations groups would include discussions around route changes or mitigation measures which could be retroactively applied to the project as approved by the JRP process. Mr. O’Gorman answered that Phase 4 would be informed by the JRP report, and would give Aboriginal groups an opportunity to voice concerns with the report or any other outstanding concerns about impacts from the project. He indicated that the phase would be “an important part of the process before making a final decision on the project” 26490-26501

Mr. Hubbard added, “the consultation process is an ongoing process. So in terms of outcomes of that Phase 4 consultation, the government will consider the adequacy of consultations up to that point in the process as part of the decision making process and will determine whether or not there are additional steps that need to be required”. 26502-26504

Mr. McCormick continued with questions about the Government’s engagement with Haisla Nation “on matters falling outside the scope of the mandate of the JRP” and on the “whole of government approach” to consultation. Discussion continued on the consultations necessary to understand Aboriginal title as it relates to the project. Mr. O’Gorman provided similar answers to those above, again indicating, “at the end, before decisions are made, we will be looking at all that and making sure we have appropriately mitigated or accommodated impacts where necessary of the Project”. 26506-26544

Mr. McCormick asked if the Government’s consultation process would necessarily proceed in the sequence indicated in the Exhibit. Mr. Steinke answered that it could be necessary to go back to previous steps to reaffirm and adjust information. Further discussion continued on the consultation process. 26555

Referring to Step 6 in the Exhibit, “Design of Form and Content of the Consultation Process”, Mr. McCormick asked if the form and content of the consultation process had been made publically available and Mr. O’Gorman indicated that it was included in the Government’s evidence in [Exhibit E9-6-10](#), which was related to [Exhibit E9-6-08](#). 26573

Mr. McCormick asked for the anticipated timeline of the pre-approval consultation process and Mr. O’Gorman spoke about the process in general terms, noting that the Government’s final decision on the project is expected for the end of June 2014. He added that the CEAA would be providing an opportunity for groups to apply to the Participant Funding Program for Phase 4 consultations, shortly. 26580