

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

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

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

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

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

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

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

PROCEEDINGS AT HEARING

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

1 kind of enjoy our culture here than it would be if
2 the Expansion went through, we would have to go a
3 lot further away, like further south or way further
4 north, who knows, but it would just cost more money
5 for gas and everything else to practice our Dene
6 rights.

7 Q. Thank you.

8 A. You're welcome.

9 Q. Mr. Jonathan Bruno, I would like to ask you a few
10 questions, please.

11 A. ELDER BRUNO: Yes.

12 Q. When did you first start going out on the land, do
13 you remember?

14 A. I've been using land ever since I was a very young
15 child, two months old. My mother and father
16 brought me out there.

17 Q. And I understand that you grew up using the areas
18 both north and south of Lake Athabasca?

19 A. Yes, that's correct.

20 Q. And depending on which side of the family you were
21 going out with would depend on what area you went
22 to?

23 A. Yes.

24 Q. Can you speak a little bit about when you were
25 growing up what you learned about hunting birds and

1 your experience in hunting for birds?

2 A. At a very young age, I was brought out on the land
3 by my grandfather, the Elder who spoke earlier,
4 Rene Bruno, along with my brother, we were brought
5 to the south side of Lake Athabasca, the delta. In
6 those days, when we were younger, there was
7 thousands and thousands of waterfowl, you could go
8 pretty much pick a spot anywhere and you could make
9 your harvest.

10 Q. And when you went out to hunt for birds, what kind
11 of success would you have, what kind of numbers of
12 birds were you able to catch or to hunt?

13 A. There was an unlimited amount. You could pretty
14 much get as much as you want, but we only take what
15 we need, which would be around 10 to 15 per day.
16 And you are there usually about a week, no more
17 than that.

18 Q. What are we talking, 20 years ago?

19 A. Fifteen, 20 years ago.

20 Q. And how long would it take you to catch 10 to 15
21 birds?

22 A. Three or four hours.

23 Q. The areas that you were able to get into to hunt
24 for birds, tell me about your ability to access
25 these areas, was it by boat?

1 A. Yes, it was.

2 Q. And was it easy to get into the various areas you
3 needed to go?

4 A. Oh, yeah, back in those days, 15 years ago you
5 could go pretty much anywhere you wanted.

6 Q. Can you compare that, then, with your experience
7 today hunting for birds?

8 A. Today, all those areas are all dried up. There's
9 no longer any water flowing there.

10 Q. I understand there's an area called or there's an
11 island called Goose Island, is that still an
12 island?

13 A. No, it's no longer an island. It's connected to
14 the land. That used to be an island what was two
15 or three kilometres away from the delta, in the
16 lake.

17 Q. And what about the numbers of birds, what kind of
18 numbers are you seeing?

19 A. Compared to 15, 20 years ago when we used to kill
20 close to 100 birds, every person, nowadays you
21 could stay out there for the same amount of time,
22 seven days, you're lucky to bring home seven.

23 Q. So in the time that you were able to catch 100
24 birds, you're now able to catch seven?

25 A. Yes.

1 Q. And is that just because of the numbers of birds or
2 is it because of not being able to get into areas
3 where you used to hunt, or is it both?

4 A. It's a combination of both.

5 Q. Do you go out on the water often?

6 A. Yes, I do.

7 Q. How often are you out in your boat?

8 A. In the summer months, on a boat, probably four days
9 a week.

10 Q. And are you accessing the Athabasca River when
11 you're doing that?

12 A. Yes, I do.

13 Q. And I take it you're also accessing the area and
14 the delta?

15 A. Yes.

16 Q. Can you speak a little bit about your ability to
17 get around by boat and whether you've noticed any
18 changes?

19 A. In the past 15 years, the changes are the water
20 level is declining every year and it is getting
21 more and more difficult to navigate the river. You
22 have to know what you're doing. You have to know
23 where you're going. You have to know the water
24 levels. Even for myself as a very experienced land
25 user, I have a very difficult time navigating those

1 waters. Sometimes you get stuck for hours and you
2 have to wait for the next boat to pass by to come
3 give you a hand.

4 Q. Have you been stuck?

5 A. Yes, I have.

6 Q. When's the last time you got stuck in your boat?

7 A. Probably this fall.

8 Q. Do you consider yourself pretty knowledgeable about
9 the waterways?

10 A. Yes, I do.

11 Q. Nevertheless, you're still getting stuck?

12 A. Yes.

13 Q. So we've heard your grandfather talk about
14 Richardson Lake, which I guess he also called
15 Jackfish Lake, can you speak a bit about your
16 ability to get in there when you were younger and
17 the changes you've seen?

18 A. When I was younger growing up, we actually used to
19 have gatherings in that area. We used to go in the
20 area close to the Mable River. It's on the west
21 side of the Jackfish Lake. And those 15, 20 years
22 we were no longer able to access the lake at all.
23 The water level has dropped so much, you got maybe
24 six inches of water. You can never get through
25 there by boat, even canoe. It's all full of

1 sandbars and mud and weeds and everything.

2 Q. And you mentioned it was formerly a gathering area?

3 A. Yes.

4 Q. For Athabasca Chipewyan people?

5 A. Yes.

6 Q. Is there any other significance to that area, I
7 mean, did you use it for hunting, for fishing?

8 A. It's a prime area for waterfowl, geese, ducks, it's
9 also a prime area for moose in the fall, and
10 trapping and stuff like that. We use that area
11 year-round.

12 Q. So the water levels have affected your ability to
13 hunt, then?

14 A. Yes. It affects my ability to use the whole
15 Athabasca River right up to Fort McKay. It's
16 difficult. You have to know the water. Even for
17 us as experienced land users, we're having extreme
18 difficulty. And when I talk to other people from
19 Fort McMurray and Fort Chip that buy themselves a
20 brand new boat, I advise them to take an
21 experienced land user that knows the water to
22 navigate those waters for them because they're
23 going to run into extreme difficulty.

24 Q. And have you noticed any significant change in
25 recent years or is it just 15 years back, can you

1 say whether there's been any more significant
2 change in more recent years?

3 A. As long as I've known it, the water levels have
4 been dropping, the numbers of birds flying through
5 our territory is declining. And the muskrat, when
6 I was younger, I used to see muskrats swimming. I
7 used to trap them with my father. And 20 years
8 later, the muskrats have disappeared. On the
9 Reserve when we were younger, about 15 years ago,
10 we used to go out there and we used to be able to
11 harvest some muskrat, but now the same areas, I
12 look for muskrat, I go out there all year and I
13 never seen one.

14 Q. Do you have any children, Mr. Bruno?

15 A. Yes, I do, I have four.

16 Q. Do you take them out or try to take them out on the
17 land and the waters?

18 A. Yes, I do, as much as I can.

19 Q. And do you try to teach them about hunting and
20 fishing and trapping and gathering?

21 A. Yes, they are taught their traditional ways ever
22 since they were born. All four of my children were
23 pretty much babies when they first stepped foot on
24 the Reserve. They were a month old, two months
25 old. They've all had the -- I had the privilege to

1 harvest a moose with all four of my kids in a boat,
2 and my wife -- my girlfriend. That was last year.
3 At the time they were one-year-old, two-year-old,
4 three-year-old, and an eight-year-old.

5 Q. The difficulties you've described about getting
6 around in a boat, does this affect your ability to
7 take your kids out?

8 A. Yes, it is. It is affecting it. It is getting
9 more and more difficult for me to feel safe to
10 bring my family out on Reserve. But I still do
11 bring them out there.

12 Q. Do you have any concerns about whether your kids
13 will be able to carry on the traditions?

14 A. Yes, I do. By the time they have their children
15 and the way that we're going right now, the amount
16 of water, what I seen in 20, 25 years, what my
17 grandchildren are going to see, it's going to be --
18 maybe they won't even be able to use the Athabasca
19 River at the rate we're going.

20 Q. How much of your diet is wild food?

21 A. About 40 percent daily.

22 Q. And is that similar for other members of Athabasca
23 Chipewyan?

24 A. Probably not.

25 Q. Do you see --

1 A. In the past few years, the number is starting to
2 increase. There is members that is starting to use
3 the land more. That's pretty much what Chief in
4 Council, their programs that they started and they
5 are trying to bring back the culture and the
6 success rate is jumping.

7 Q. Thank you, Mr. Bruno.

8 Mrs. Marcel, I would like to ask you a few
9 questions now.

10 A. MRS. MARCEL: Okay.

11 Q. I understand that you're not a member of ACFN but
12 you're married to a member of ACFN?

13 A. No, I'm not a member of ACFN. I moved to Fort
14 Chipewyan in 1979 and have been with my husband for
15 the last 28 years. He is a member of the ACFN,
16 along with my two boys aged 20 and 15.

17 Q. And your family, are they traditional land users?

18 A. We are very active land users. As a matter of
19 fact, we go out on a regular basis all seasons.
20 We've spent a few freeze-ups out at the Reserve
21 which would be two to three months out there of not
22 being able to move anywhere but there.

23 Q. And what's the reason for that?

24 A. Well, we go out on the land to teach our children,
25 is one of the reasons. But another reason we go

1 much time spent on administrative matters.

2 A. Because we can't agree to things early on in the
3 process.

4 Q. And are you saying you can't agree to things like
5 when the process is going to happen, how it's going
6 to happen, the sort of mechanical things of getting
7 things done, is that what you're talking about
8 there?

9 A. I think both in terms of principles and mechanics.

10 Q. So principles in the sense of differences on not
11 just how you're going to do the work, but what work
12 is there to be done, is that what you're referring
13 to?

14 A. I think that would be fair.

15 Q. And finally, the last item you identified, you said
16 the approach to mitigation is flawed, there was no
17 transparency.

18 A. MS. KING: Mr. Perkins?

19 Q. Sure.

20 A. MS. NICHOLLS: Lisa just wants to add
21 something to the last bit.

22 A. MS. KING: When I directed technical
23 staff and my support workers to conduct work as
24 important as this consultation, I always direct
25 them to look after the best interests of the Nation

1 and always look at protecting ACFN. So it's a lot
2 of going back and forth; this might occur, if,
3 let's choose that option, let's try to work out
4 this process, but it always has to be in the
5 protection of the Nation.

6 Q. Okay. So the last item that the approach to
7 mitigation is flawed. And I can't remember who
8 said it, but someone said, there had to be a better
9 way, one that does not require First Nations to
10 give up their procedural rights. And I'm just
11 curious what the procedural rights are?

12 A. MS. NICHOLLS: The right to come forward
13 to the Panel and express their concerns about the
14 Project. The right later to express concerns to
15 the departments that are issuing conditions or
16 approvals on the Project.

17 Q. Okay, so you're talking about the Panel, you're
18 talking about the Panel in this proceeding? When
19 you say "the Panel," do you mean?

20 A. Regulatory, yes, like the ERCB or the Joint Review
21 Panel.

22 Q. So not specifically this Panel but any regulatory
23 Panel or decision-maker in that vein, is that the
24 reference?

25 A. I think if we're -- yes, I don't remember the

1 question or I don't get the question.

2 Q. Okay. Well, we were talking about that last aspect
3 of the systemic flaws and that was that there
4 wasn't transparency, that the approach to
5 mitigation is flawed.

6 A. What I was referring to is that the First Nation
7 has to enter into a negotiated agreement with a
8 Proponent in order to mitigate their concerns.
9 Generally they can't bring forward those concerns
10 to a regulatory body.

11 Q. And you don't like that approach or you don't think
12 it's appropriate?

13 A. I think one of the issues with that approach is
14 that it becomes difficult later on if the
15 mitigations don't seem to be working to address,
16 address them to come up with a new mitigation that
17 might work, to basically follow up on those
18 mitigations to determine if they are working and if
19 they are not working, to do something about it,
20 because it would basically require you to
21 renegotiate.

22 Q. Okay. So after all that, the conclusion I draw is
23 the framework I offered is a bust for this
24 analysis, but you did help me out better
25 understanding what you described to us as the four

1 flaws.

2 The last thing that I wanted to ask you about
3 were TRUMPs or a TRUMP. How long would it take to
4 create a TRUMP?

5 A. Our proposal had estimated two years. But we've
6 conducted some further research since then, so that
7 could shorten the time. I think it would also
8 depend how many resources are directed towards it
9 if we had sufficient capacity to undertake all of
10 that work at once rather than divvying it up based
11 on how funding came in. There's a lot of, you
12 know, variables.

13 Q. And the TRUMP you envision, would that be dedicated
14 or applicable just to the ACFN?

15 A. I think other First Nations could adopt that
16 approach if they wanted to. And I can't speak for
17 them.

18 Q. What about the exercise itself, could there be a
19 collaborative effort, say, between the ACFN and the
20 Mikisew Cree recognizing that you're moving in the
21 same areas, you have concerns about the same
22 projects?

23 A. I think from a technical standpoint, like I said
24 before, any First Nation could adopt that approach
25 and we're open to working with other nations, but I

1 can't speak for them here.

2 Q. No, and I understand there are issues of
3 confidentiality of information, that kind of thing.
4 Maybe some of those issues might be an impediment
5 to a collaborative approach to a single TRUMP; is
6 that fair to say?

7 A. We can develop one for ACFN.

8 Q. And let's say you had a TRUMP, I assume you would
9 do it on sort of a regional basis? Yes?

10 A. Yes.

11 Q. So TRUMP in hand, then, could you then apply that
12 to almost any project that were to be proposed in
13 that region, that is you wouldn't have to do it
14 over and over?

15 A. Right. So we saw the TRUMP as providing, you know,
16 a framework within which you could do assessments.
17 But as Doreen mentioned, the TRUMP would have to be
18 a living document, like any land use plan or
19 cumulative effects management framework, we would
20 have to revisit it to determine, you know, if it's
21 working, are there things that need to be changed,
22 et cetera.

23 Q. And do you think you have the ability, if you had a
24 TRUMP, do you think you have the ability to
25 maintain it in the way you want to maintain it?

1 A. I think that would be something that has to be
2 addressed through the implementation plan for a
3 TRUMP.

4 Q. Would you see that as a large task or a smaller
5 sort of maintenance kind of task? I'm just trying
6 to get an idea of the scope of maintaining a TRUMP
7 once you've got one in hand.

8 A. So, sorry, just repeat the question.

9 Q. I'm just trying to get an idea how much work you
10 believe it would be once you'd completed your TRUMP
11 to maintain it so that it was a living document, a
12 current document at any point in time?

13 A. MS. SOMERS: As our org review shows,
14 if we did have the TRUMP, it would alleviate a lot
15 of pressures on our workload from other areas, so
16 we would find with that document efficiencies in
17 terms of the, for example, winter work application,
18 so smaller applications that are eating up our time
19 right now, we'd be able to streamline that and we
20 could then put those resources that were being
21 eaten up by winter work into keeping that document
22 alive and up-to-date.

23 Q. Right, so if I give you an analogy, if I want to
24 build a house and live it in, it's a lot of work to
25 build the house, but once it's done, I'd like to

1 think I don't have to change the roof for 10 years,
2 things like that. Can you relate that to a TRUMP?
3 Is it as much work to maintain it as it is to
4 create it?

5 A. MS. NICHOLLS: I wouldn't think so.
6 But.

7 A. MS. SOMERS: On its face, it would be,
8 my point of view is that it would take more effort
9 at the front end, that's when most of the building
10 would happen. And then the ongoing information,
11 gathering it and updating it wouldn't, from my
12 point of view, and I could be wrong, but I don't
13 think it would take as much time to update it.

14 A. MS. KING: The other thing to keep
15 in mind is once you've mapped out and documented
16 where the traditional resources are that you need
17 to support your rights, you have to monitor the
18 health of those resources. And that takes a good
19 comprehensive monitoring program, making sure the
20 berries are healthy, the fish are healthy, the
21 water, the bison. I mean, even gathering samples
22 and analysing those samples and checking for
23 changes over time, you know, are the cumulative
24 effects in the region impacting those resources we
25 depend on? So that's a whole -- implementing TRUMP

1 as well.

2 MR. PERKINS: Okay, thank you, panel.

3 Those are all the questions I have for you. My
4 colleague, Mr. Birchall, has some questions. I
5 don't know if he'll get them off before the break
6 or not. I'll leave that to the Chairman, thanks.

7 THE CHAIRMAN: Do you know roughly how much
8 time you need?

9 MR. BIRCHALL: About 30 minutes, Mr. Chair.

10 THE CHAIRMAN: Why don't we take our break
11 now, then. I have 3:17. We'll be back in
12 20 minutes.

13

14 **(The Afternoon Adjournment)**

15

16 THE CHAIRMAN: Good afternoon.

17 Mr. Perkins?

18 MR. PERKINS: Mr. Chairman, we have
19 standing at the podium Ms. Donna Deranger. She's a
20 participant in this hearing as an interested party.
21 I realize we're in the part of the hearing where
22 we're hearing evidence from ACFN witnesses, but out
23 of fairness to her, she has a short statement that
24 she'd like to read into the record.

25 We thought, and I've discussed this with

1 Mr. Murphy, that probably the fairest thing to do
2 would be to have her go now, make her statement.
3 She's indicated to me in a discussion just before
4 the break, though, that her preference is not to
5 take any questions on her statement. And I realize
6 it's hard to ask other parties that might be
7 interested in what she has to say not to put
8 questions to her now, but that's the request that
9 she's made. I don't know if you have any comment
10 on that, sir.

11 THE CHAIRMAN: Hi, Ms. Deranger. I think
12 the comment I would have, Ms. Deranger, is that if
13 you're not prepared to answer questions about what
14 you have to say, then the likelihood is the Panel
15 won't be able to give your submission much, if any,
16 weight. So as long as you understand that.

17 MS. DERANGER: If I was to answer some of
18 these questions, it could take a few days. I don't
19 want to answer any questions.

20 THE CHAIRMAN: There may not be any
21 questions. Go ahead. But you'll need to pull that
22 microphone towards you.

23 MS. DERANGER: I don't want to answer any
24 questions because some of these questions could
25 take a lot of research and findings to affirm them.

1 THE CHAIRMAN: Yes, it's your choice.

2 Go ahead.

3

4 **PRESENTATION BY MRS. DONNA DERANGER:**

5 Good afternoon, everyone. My name is
6 Mrs. Donna Deranger. I am an ACFN Elder. I'm a
7 grandmother of 18 grandchildren. A recent
8 great-grandmother, that makes me a
9 great-great-grandmother of a granddaughter. I am
10 Christian and I have a fellowship worship at the
11 Nistawoyou Friendship Center every Sunday here in
12 Fort McMurray. I am a native cultural teacher, a
13 wilderness guide and outfitter. I raised my
14 children on the trapline.

15 I moved to this city for my post-secondary
16 education, so I have a few of them here, Bachelor
17 of Theology, Management of OH & SHR Management
18 Native Studies, native art, Bible studies, native
19 self-government, entrepreneur certificate.

20 So I'm just here to say that this is our home
21 and our land. Whereas a child, when I was a youth,
22 and when I lived off the land on my trapline, I
23 never had to take water in the bush with me. All I
24 needed was my teapot, matches, hatchet and some
25 stuff in my backpack, hunting tools and a bow and

1 permits substantial withdrawals, oil sands water
2 withdrawals at any flow regardless of how low it
3 might get.

4 The slide entitled "Importance of Lower
5 Athabasca Flows." The combined pressures threaten
6 the magnitude of Athabasca flows and thus threaten
7 water value and river functions. The magnitude of
8 the low flow is significant because it shapes the
9 navigability of waterways, particularly for small
10 vessels at downstream points and on the delta.
11 Typically the vessels that the ACFN community would
12 be using. And it affects the viability of fish
13 habitat during the low-flow season.

14 The magnitude of high flows influences the
15 river's ability to maintain channel structure,
16 while also being important in helping to recharge
17 certain deltaic environments.

18 So as you can see, there are important
19 characteristics of both the high-flow and the
20 low-flow periods in maintaining water values.

21 The slide entitled "Phase I Water Management
22 Framework." In order to examine the effects
23 assessment of the EIA on the flow regime of the
24 Athabasca River, we need to put the proposed JME
25 withdrawals in the context of the Water Management