

**JOINT REVIEW PANEL FOR THE ENBRIDGE  
NORTHERN GATEWAY PROJECT  
COMMISSION D'EXAMEN CONJOINT DU PROJET  
ENBRIDGE NORTHERN GATEWAY**



**Hearing Order OH-4-2011  
Ordonnance d'audience OH-4-2011**

**Northern Gateway Pipelines Inc.  
Enbridge Northern Gateway Project  
Application of 27 May 2010**

**Demande de Northern Gateway Pipelines Inc.  
du 27 mai 2010 relative au projet  
Enbridge Northern Gateway**

**VOLUME 178**

**Hearing held at  
Audience tenue à**

**Best Western Plus Terrace Inn  
4553 Greig Avenue  
Terrace, British Columbia**

**June 19, 2013  
Le 19 juin 2013**

**International Reporting Inc.  
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as represented by the Minister of the Environment  
and the National Energy Board

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Imprimé au Canada

HEARING /AUDIENCE

OH-4-2011

IN THE MATTER OF an application filed by the Northern Gateway Pipelines Limited Partnership for a Certificate of Public Convenience and Necessity pursuant to section 52 of the *National Energy Board Act*, for authorization to construct and operate the Enbridge Northern Gateway Project.

**HEARING LOCATION/LIEU DE L'AUDIENCE**

Hearing held in Terrace (British Columbia), Wednesday, June 19, 2013  
Audience tenue à Terrace (Colombie-Britannique), mercredi, le 19 juin 2013

**JOINT REVIEW PANEL/LA COMMISSION D'EXAMEN CONJOINT**

S. Leggett	Chairperson/Présidente
K. Bateman	Member/Membre
H. Matthews	Member/Membre

## APPEARANCES/COMPARUTIONS

(i)

### APPLICANT/DEMANDEUR

Northern Gateway Pipelines Inc.

- Mr. Richard A. Neufeld, Q.C.
- Mr. Ken MacDonald
- Mr. Bernie Roth
- Ms. Laura Estep
- Ms. Kathleen Shannon
- Mr. Dennis Langen
- Mr. Douglas Crowther

### INTERVENORS/INTERVENANTS

Alexander First Nation

- Ms. Caroline O'Driscoll
- Chief Herb Arcand

Alberta Federation of Labour

- Ms. Leanne Chahley

BC Nature and Nature Canada

- Mr. Chris Tollefson
- Mr. Anthony Ho
- Ms. Natasha Gooch
- Ms. Rosemary Fox

Doug Beckett

Province of British Columbia

- Ms. Elizabeth Graff
- Mr. Christopher R. Jones

C.J. Peter Associates Engineering

- Mr. Chris Peter
- Dr. Hugh Kerr
- Mr. Brian Gunn

Canadian Association of Petroleum Producers (CAPP)

- Mr. Keith Bergner

Cenovus Energy Inc., INPEX Canada Ltd., Nexen Inc.,  
Suncor Energy Marketing Inc. and Total E&P Canada Ltd.

- Ms. Bernette Ho

Coastal First Nations - Great Bear Initiative

- Mr. Art Sterritt

Council of the Haida Nation

- Ms. Terri-Lynn Williams-Davidson
- Peter Lantin

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**(Continued/Suite)**

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Daiya-Mattess Keyoh

- Mr. Ken Sam
- Mr. Jim Munroe

Douglas Channel Watch

- Mr. Murray Minchin
- Ms. Cheryl Brown
- Mr. Dave Shannon

Driftpile Cree Nation

- Chief Rose Laboucan
- Dr. Ave Dersch
- Mr. Aryn Lalji

Edmonton Chamber of Commerce

- Mr. Ian Morrison
- Mr. James Cumming

Ermineskin Cree Nation and Samson Cree Nation

- Mr. Rangi Jeerakathil

ForestEthics Advocacy, Living Oceans Society  
and Raincoast Conservation Foundation - "The Coalition"

- Mr. Barry Robinson

District of Fort St. James

- Ms. Brenda Gouglas
- Mayor Rob MacDougall
- Mr. Dave Birdi
- Ms. Joan Burdeniuk
- Mr. Riley Willick
- Mr. Russ Gingrich

Fort St. James Sustainability Group

- Ms. Kandace Kerr
- Ms. Louise Evans-Salt
- Ms. Brenda Gouglas

Gitga'at First Nation

- Mr. Michael Reid

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

**(iii)**

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- Ms. Rosanne M. Kyle
- Mr. Robert Janes

Government of Alberta

- Mr. Ron Kruhlak, Q.C.

Government of Canada (Transport Canada,  
Natural Resources Canada and Environment Canada)

- Ms. Dayna Anderson

Haisla Nation

- Ms. Jennifer Griffith

Heiltsuk Economic Development Corporation

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Hereditary Chief

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Tribal Council

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Heiltsuk Youth Voice

- Ms. Carrie Humchitt
- Ms. Lisa Fong

Kitimat Valley Naturalists

- Mr. Walter Thorne
- Mr. Dennis Horwood

MEG Energy Corp.

- Mr. Loyola G. Keough

North Coast Cetacean Society

- Mr. Hermann Meuter
- Ms. Janie Wray

**APPEARANCES/COMPARUTIONS**  
**(Continued/Suite)**

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Northwest Institute of Bioregional Research  
and Friends of Morice-Bulkley  
- Mr. Richard Overstall

Office of the Wet'suwet'en  
- Mr. Jeff Huberman  
- Mr. Michael Ross

Sherwood Park Fish & Game Association  
- Mr. Andrew Boyd

United Fishermen and Allied Workers' Union  
- Ms. Joy Thorkelson

Dr. Josette Wier

World Trade Center Edmonton  
- Mr. Martin Salloum  
- Mr. Robin Bobocel

**National Energy Board/Office national de l'énergie**  
- Mr. Andrew Hudson

## ERRATA

(i)

### Monday, June 17, 2013 - Volume 176

#### Paragraph No.:

615:

“...more specifically, the Gitxaalas and the Gitsumkalum people...”

619:

“...your decisions has many implications...”

621:

“...the meaning of section 9124 of the ...”

624:

“...beyond the list of issues which...”

631:

“...to the list of issues and/or...”

645:

“...the revised list of issues failed...”

655:

“...to ensure that our treaty rights are...”

665:

“This is reiterated in his Final Written Submission at paragraph 115.”

672:

“From my community perspective,...”

679:

“What the silence does -- what the silence does demonstrate though is that the Crowns...”

681:

“...no regard for constitutionally protected...”

#### Should read:

“...more specifically, the Kitselas and the Kitsumkalum people...”

“...your decision has many implications...”

“...the meaning of section 91(24) of the...”

“...well beyond the ‘List of Issues’ which...”

“...to the ‘List of Issues’ and/or...”

“...the revised ‘List of Issues’ failed...”

“...to ensure that our rights are...”

“This is re-iterated in its final written submission at paragraph 115.”

“From my community’s perspective,...”

“What this silence does demonstrate though, is that the Crowns...”

“...no regard for our constitutionally protected...”



## ERRATA

(ii)

### Monday, June 17, 2013 - Volume 176

Paragraph No.:

Should read:

683:

“...their measures are supported to protect...”

“...their measures are supposed to protect...”

684:

“...and available industry relationships are prompting unhealthy rivalries...”

“...and available industry relationships is promoting unhealthy rivalries...”

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--- Upon commencing at 8:30 a.m./L'audience débute à 8h30

2355. **THE CHAIRPERSON:** Good morning, everyone.

2356. Are there any preliminary matters that parties wish to raise this morning?

2357. Good morning, Dr. Kerr.

2358. **DR. KERR:** Thanks. One small item, a wrong reference. On 11 -- line 1193, it says Enbridge actually filed an exhibit. The reference there is different. It should have read in the footnote the exhibit number was B as in Bob 64-8 rather than CSA Z662.

2359. **THE CHAIRPERSON:** And that's in the transcript of yesterday?

2360. **DR. KERR:** Yes. Sorry, yeah.

2361. **THE CHAIRPERSON:** Thank you, Dr. Kerr.

2362. **DR. KERR:** Thank you.

2363. **THE CHAIRPERSON:** We'll proceed with -- in the order that's been published for oral reply, and so we'll call Ermineskin Cree Nation and Samson Cree Nation.

2364. And Mr. Jeerakathil, I understand you're on the line now?

2365. **MR. JEERAKATHIL:** Yes, Madame Chair, I'm here. Can you hear me?

2366. **THE CHAIRPERSON:** We can hear you very clearly. Thank you very much. Please go ahead.

--- **ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. JEERAKATHIL**

2367. **MR. JEERAKATHIL:** Very good. Thank you.

2368. In reply, we will start with the written argument of Northern Gateway and then make some comments later about the oral component of their argument.

2369. At paragraphs 500 to 501 in their written argument, Northern Gateway suggests that the risk of a "major pipeline failure" is very low and makes comparison to the Trans Mountain pipeline, stating that it has not seen a full bore rupture, it has been in operation for over 50 years, and it passes similar physiogeographic region.
2370. It is noteworthy that Northern Gateway does not make comparisons to other Enbridge pipelines, which has been pointed out previously have had problems. This statement by Northern Gateway is not an argument in support of Enbridge's Northern Gateway pipeline. It is, in fact, an argument in favour of Kinder Morgan's Trans Mountain expansion.
2371. The projects are different, with different routes and different proponents. Had Enbridge provided actual spill data from this -- from Trans Mountain and other similar pipelines, that may have been more useful, but it did not, in our submission.
2372. At paragraphs 1085 to 1087 of its written argument, Northern Gateway states that while it has determined that Samson and Ermineskin are ineligible for equity participation that it has been active in making efforts to engage with Samson and Ermineskin to discuss ATK studies, hold technical meetings and hold meetings with Northern Gateways skills, training and development team.
2373. In its written argument, at paragraph 1086, Northern Gateway states that it has decided that Samson and Ermineskin cannot be eligible for the equity component, as the timeline for participation has now passed. It would be "unfair for those AOA signatories to now dilute their interests".
2374. Samson and Ermineskin take issue with this, and note that, as Northern Gateway stated at paragraph 1084 of its written argument, that the equity offer has not been finalized for Aboriginal groups in British Columbia and that Northern Gateway will still be seeking input from B.C. Aboriginal groups regarding re-engagement in relation to benefits and equity.
2375. Samson and Ermineskin submit that these two statements contradict each other and that Northern Gateway has not provided any legitimate reason as to why equity participation was not and cannot now be offered to Samson and Ermineskin if it will be offered in British Columbia.

2376. As Northern Gateway has indicated, it will limit Aboriginal equity participation to 10 percent. They say this at paragraph 115 of the written argument. The offering of any further equity participation to Aboriginal groups in British Columbia will also have the effect of "diluting" AOA signatories' interests.

2377. Further, at paragraph 1241, Northern Gateway states that Samson and Ermineskin did not receive an economic benefits package or an equity ownership stake but that, and I quote:

*"...other groups such as the Samson Cree, Ermineskin Cree, and the Michel First Nation would also benefit from the training, employment and contracting opportunities."*

2378. In reply, Samson and Ermineskin submit that, while Northern Gateway suggests this to be the case, it has been shown in the hearing that such employment and contracting opportunities would be minimal or temporary.

2379. As was admitted by the Northern Gateway Aboriginal Engagement Panel under questioning at Transcript Volume 152, lines 26968 to 26976, Northern Gateway's target for Aboriginal employment and participation only amounts to five full-time permanent jobs for Aboriginal peoples in Alberta.

2380. It is therefore highly unlikely, given how Samson and Ermineskin have been marginalized by Northern Gateway to this point, that they will:

*"...also benefit from the training, employment and contracting opportunities."*

2381. At paragraph 1199 of its written argument, Northern Gateway states that:

*"During the final hearings, Northern Gateway's Aboriginal engagement process received very little testing. None of the Aboriginal Intervenors questioned Northern Gateway's engagement records, suggested that they had not been provided Project information, or suggested that they did not know how to obtain additional information about the Project. Rather, most of the questioning focused on the use of ATK information and Northern Gateway's approach to the assessment of potential impacts on Aboriginal rights and*

*interests or eligibility for the equity offer."*

2382. We submit this is contrary to the record and contrary to the written argument of Samson and Ermineskin.

2383. Samson and Ermineskin did take direct issue with Northern Gateway's engagement process, and specifically with Northern Gateway's attempts to simply disregard Samson and Ermineskin and deny any opportunity for meaningful engagement to happen. Northern Gateway's final written argument is simply a continuation of this type of treatment.

2384. At paragraphs 1280 to 1303 of its written argument, Northern Gateway attempts to make a great deal out of its incorporation of ATK information into its application and states, and I quote:

*"Northern Gateway's ATK program is an important component of the Aboriginal engagement program undertaken for the Project."*

2385. That's at paragraph 1280.

2386. At paragraph 1303, Northern Gateway states:

*"The JRP process has afforded all Aboriginal groups the opportunity to present evidence regarding asserted and established rights, and how they might be affected."*

2387. In our submission, this statement glosses over the serious issues such as the failure to properly study impacts to Samson and Ermineskin through a properly funded ATK study.

2388. With respect to the oral argument of Northern Gateway we'd like to make a few brief comments as well.

2389. At Transcript Volume 176, starting at paragraphs 161 to 167, Northern Gateway's counsel submitted to the Panel that despite any insufficiency in the evidentiary record, the Panel can rely on future processes to in effect "fill the evidentiary void" for this application.

2390. We submit that that is simply not the case. Rather, the only thing

- which the Panel can and should consider is the evidentiary record before it, and not some uncertain future proceedings, the content of which is unknown.
2391. At Volume 176, paragraphs 101, 102, 134, 136 and so on, Mr. Neufeld characterizes certain positions of the intervenors on important issues such as spills, emergency response, and environmental assessment methodology as mere criticism.
2392. We submit that this is not the case. The comments of the intervenors on these important issues represent legitimate concerns of an application which is deficient in these respects. Northern Gateway cannot simply dismiss legitimate positions by characterizing them as criticisms when they are in fact legitimate.
2393. It is for Northern Gateway to show that the criticisms are without merit in order for the Panel to dismiss them, and Northern Gateway has not done so. Rather, the record establishes that the concerns are in fact completely legitimate and should be taken into account.
2394. At Volume 176, paragraphs 108 to 112, counsel for Northern Gateway submits that this application is no different than other pipeline projects approved by the National Energy Board. And so the Panel should simply determine that the Project is not likely to cause significant adverse environmental effects like previous panels have done with respect to previous projects, and find that the Project is in the public interest.
2395. With respect, previous decisions are not relevant to the decision before the Panel in determining whether this Project is likely to cause significant adverse environmental effects or is in the public interest. Certain principles about environmental assessment methodology of course may be relevant.
2396. However, simply because previous pipelines have been approved does not mean that the Panel should approve this one. Firstly, the point of environmental assessments and public review is that they are done on a project by project basis. Why even have a process if the result is predetermined as Mr. Neufeld seems to suggest?
2397. Secondly, this is a different project with unique impacts and specific shortcomings and is proponent-specific. The Panel must take all of this into account when making a decision with respect to the significance and likelihood of adverse environmental effects and the public interest.

2398. Furthermore, distinguishing this proceeding from previous proceedings is that all of the previous review panel or joint panel decisions referred to involved decisions under the previous version of the *Canadian Environmental Assessment Act*.
2399. This decision must be made under the new CEAA 2012. There are no current review panel decisions under CEAA, 2012 issued. So the Panel's task is without precedent in this respect.
2400. The new Act is different, as we indicated in argument, with respect to the emphasis on "environmental effects" that are to be assessed. In particular, Aboriginal issues, aquatic species, and fish as described in section 5 of CEAA 2012, are specifically identified for consideration. These are all areas which have been the subject of the greatest contention in this hearing and on which Northern Gateway's application is specifically weak in relation to.
2401. So with respect, this application is in fact different than previous applications because the statutory regime is now altered and the considerations and emphasis of specific "environmental effects" is different.
2402. With respect to the arguments of other parties, Samson and Ermineskin are in agreement with and in favour the arguments put forward by the Province of British Columbia in relation to spills.
2403. In closing, the Project proposed by Northern Gateway is likely to have significant adverse environmental effects. As a result, Samson and Ermineskin urge the Panel to find that significant adverse environmental effects of the Project are likely to occur and that the Project is not in the public interest. Samson and Ermineskin urge the Panel to recommend denial of the Project on that basis.
2404. Thank you. Those are our submissions in reply.
2405. **THE CHAIRPERSON:** Thank you, Mr. Jeerakathil.
2406. Just give -- give me a minute, please.
2407. **MR. JEERAKATHIL:** Certainly.
2408. **THE CHAIRPERSON:** Thank you. I was just checking with Mr.



Bateman and Mr. Matthews and the Panel has no questions of you and thanks you for your submission.

2409. **MR. JEERAKATHIL:** Thank you.

2410. **THE CHAIRPERSON:** Thank you very much. Bye bye.

2411. **MR. JEERAKATHIL:** Bye bye.

2412. **THE CHAIRPERSON:** We'll go next to the District of Fort St. James.

2413. We'll have two minutes while we get them on the phone. Thank you.

--- (A short pause/Courte pause)

2414. **THE CHAIRPERSON:** Good morning, Ms. Gouglas, it's Sheila Leggett speaking.

2415. **MS. GOUGLAS:** And a pleasant good morning to you as well.

2416. **THE CHAIRPERSON:** Thank you very much. We get amazing weather reports from all sorts of places as we're doing the sound checks. Thanks very much for helping us make sure -- we can hear you very clearly, just so that you know.

2417. **MS. GOUGLAS:** That's great. Had we been on the line with you yesterday afternoon, it would have been the same situation as we had when we were speaking to you in Prince Rupert.

2418. **THE CHAIRPERSON:** Is that right? Well, we're glad ---

2419. **MS. GOUGLAS:** You bet.

2420. **THE CHAIRPERSON:** We're glad that you're on the line with us this morning.

2421. **MS. GOUGLAS:** And so are we.

**Oral argument  
Ms. Gouglas and Mayor MacDougall**

2422.           **THE CHAIRPERSON:** Thank you very much, Ms. Gouglas.
2423.           So I understand that it's the District of Fort St. James who will be presenting first; am I correct?
2424.           **MS. GOUGLAS:** That is correct. And Mayor MacDougall is on his way. Nothing is far in Fort St. James so he'll just be a couple of minutes.
2425.           **THE CHAIRPERSON:** And ---
2426.           **MS. GOUGLAS:** But I could likely start if you would like, unless you wanted to take a couple of minutes and wait for him?
2427.           **THE CHAIRPERSON:** It's up to you. Are you -- do you believe that you want to go ahead at this point or would you prefer to wait until the Mayor is there?
2428.           **MS. GOUGLAS:** No, I can certainly start and he can say hi when he gets here.
2429.           **THE CHAIRPERSON:** Okay, that sounds great. Let's go ahead on that basis then.
2430.           Thank you, Ms. Gouglas.
2431.           **MS. GOUGLAS:** Thank you.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. GOUGLAS AND MAYOR MacDOUGALL:**

2432.           **MS. GOUGLAS:** I bring greetings from Mayor and council. They asked that I thank you for the opportunity to present their oral argument today. Mayor MacDougall is with me -- or will be shortly -- and will be listening into the proceedings.
2433.           Before I begin I need to do a quick introduction of myself, followed by Mayor and council's message then argument. For those of you that don't know me, my name is Brenda Gouglas. I have lived in Fort St. James for 27 years and in the area for a total of 32. Our community is 207 years old and it's steeped in history.

2434. Fort St. James has been home for some of our residents for generations, as have the rural areas and neighbouring First Nations communities.
2435. Most of you may know me through this process for jointly representing the Fort St. James Sustainability Group with Kandace Kerr as we will be again later in this session. I'm wearing two hats today, at this time representing the District of Fort. St. James. I'm no stranger to our municipal government. I know the responsibility it holds for representing a community having served two terms as councillor, 2005 to 2011.
2436. It was while on council that I was first introduced to this proposed project by Northern Gateway, and following in close succession I learned of residents and landowners' concerns with it. In June 2011, I put the motion to council to become a government participant in the process, which we did July 7<sup>th</sup>, 2011.
2437. Shortly thereafter we filed an information request seeking more detail on a number of topics. Because of my involvement, Mayor MacDougall and councillors are comfortable having me speak in "I" and "we" terms while presenting their oral argument.
2438. Residents of the District of Fort St. James share their opinions with their elected through public opinion research conducted over the summer of 2012. This public opinion research is referenced in the District's letter of comment dated August 21<sup>st</sup>, 2012, and the reference is A2Z1C6 reading:
- "In Public Opinion Research conducted by the District of Fort St. James 198 respondents indicated a significant majority (86%) were in strong support of Council adopting a stance opposing the Northern Gateway project. The concerns expressed in the survey responses focused on the potential for negative environmental impacts in the community, region and province, coupled with a belief that the project would bring little long-term economic benefit to the community or region."*
2439. These comments clearly articulated that Enbridge does not have a social licence to operate with our community, regardless of any potential benefit from the Project to our community.

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**Ms. Gouglas and Mayor MacDougall**

2440. As demonstrated in D100-5-1, given the potential for a full bore rupture of the Pitka Creek crossing to see bitumen pumped into the lake where these good people live, we want to do everything in our power to have their concerns expressed. It is for this reason that we are opposing the Project.
2441. We would like to take a few minutes to speak about the costs and benefits our community has experienced through participating in this process.
2442. It is not an easy thing for an industry reliance community to speak up opposing a potential industry project, especially one which has achieved such national attention as the Gateway. It's not a decision we've made lightly, and our participation has attracted great media coverage, including articles in the Vancouver Sun and Prince George Citizen.
2443. We are the only community along the proposed pipeline route to formally oppose the Project. We know that our actions are being watched by other communities and other industries at this time. Despite potential negative responses from industry, we have continued to speak up in opposition to this Project.
2444. The town council and our staff have taken to educate themselves on this issue and on the process for participation is huge. It has taken time away from other projects and priorities we could have been focussing on in the meantime. It has cost us financially as we put staff time towards drafting our responses. It has meant long nights and discussion around council chambers and the dedication of numerous other resources towards keeping ourselves engaged.
2445. This is not an easy cost for us to bear as a community of 1,700 people. We continue to participate in this process knowing that we must lose a bit of today. We stand to lose hugely down the road if the worst case scenario of this Project should happen.
2446. Our participation has also not been without positive experiences for mayor and council. Through participation and through receiving delegations by both Enbridge and Fort St. James Sustainability Group, we have learned a great deal about the industry of crude bitumen transportation and extraction.
2447. One of our councillors participated in a tour of the Alberta oil sands, which was very informative for him, and he brought what he learned back to council.

**Oral argument**  
**Ms. Gouglas and Mayor MacDougall**

2448. Our involvement with the Enbridge Northern Gateway delegates, including Michele Perret, Kevin Brown, Catherine Pennington, and others, have been exceedingly pleasant. We always found Enbridge representatives to be courteous, timely in their communications, and positive in the way which they have related to us.
2449. Although we sit on opposite sides of the fence for this Project, we would like to commend them for doing a very difficult job in a very professional way.
2450. And finally, our participation in this process has brought us closer to our neighbours of Nak'azdli First Nation and Tl'azt'en First Nation. The solidarity we have built in opposition to this Project has been a step forward for us in building relationships and we are finding ever increasing opportunities to collaborate with our First Nations.
2451. We strive to always include the First Nations priorities and to commitments to the land base in our decision making. Opposing the Project has not only helped us to represent our own community members but also to honour the history that we have with our Nak'azdli and Tl'azt'en neighbours as they are the stewards of the land we reside on.
2452. Many municipal and rural landowners, some of them being both, and residents have voiced their concerns. Mayor and council have been able to support our community and our neighbours. Our individual and collective concerns with this Project have no boundaries.
2453. With those collective concerns in mind, we have disagreement with Northern Gateway's written argument primarily and will draw your attention to the respective sections through this oral argument.
2454. We now have Mayor MacDougall with us and I think he would just like to say good morning. Hold on a sec.
- (A short pause/Courte pause)
2455. **MAYOR MacDOUGALL:** This is Mayor MacDougall, District of Fort St. James. And I would just like to say good morning and I would also like to say thank you to the Joint Review Panel. I would like to say thank you to all

**Oral argument**  
**Ms. Gouglas and Mayor MacDougall**

the participants for being available and providing comment on this Project.

2456. It's been a long process and slowly winding down, and I know there's a ways to go, but from the residents of Fort St. James, we have spoken out in opposition of this Project and we will stand by our decision.

2457. So, with that, I will turn it back to Brenda.

2458. **THE CHAIRPERSON:** Good morning, Mayor MacDougall. It's Sheila Leggett. Thank you for being here. And Ms. Gouglas, we look forward to hearing your comments to the arguments that have been filed.

2459. **MS. GOUGLAS:** That's great, and that's where I'll head right now.

2460. I will begin with Northern Gateway's written argument on landowner consultation. We were not able to submit this electronically so that you'd have the numbers. So I will be making my references to the exhibits as we go, okay. So Northern Gateway's written argument, that's B226-2, and it's paragraph 1125:

*"To construct, operate and maintain the pipelines, facilities and associated infrastructure for the Project, surface rights must be acquired from the Crown and private landowners in British Columbia and Alberta."*

2461. And it goes on further to say:

*"As such, an important part of Northern Gateway's public consultation program involves direct engagement with the Crown and with private landowners and occupants."*

*"According to evidence, Northern Gateway is also required to obtain private landowner consent for studies and surveys on landowners land."*

2462. And that's B83-26, Adobe page 37.

2463. Ms. Kerr of the Sustainability Group, having spoken with Mr. Paetz about two instances where Northern Gateway did not obtain consent from Fort St. James area landowners before entering their land, she posed a broad question on the lack of adherence to Northern Gateway's stated requirement of getting

**Oral argument**  
**Ms. Gouglas and Mayor MacDougall**

consent.

2464. She asked:

*“Do you have any knowledge of these kinds of incidents happening specifically with Northern Gateway?”*

2465. That’s from Volume 152, paragraph 26240. To which Mr. Paetz replied:

*“I do not have knowledge of the incident that you’re referring to.”*

2466. And that’s at paragraph 26241.

2467. From what we have read, Mr. Paetz did not answer the question posed. We believe his reply gives credence to the fact that not obtaining consent has happened specific to Northern Gateway, that in all likelihood, what was described by Ms. Kerr did happen, and in all likelihood it will continue to happen to Fort St. James area landowners.

2468. This is a concern for Fort St. James area landowners. They have rights over their land and those rights must be respected. Prior consultation is inherent in that respect. We recognize that the Fort St. James Sustainability Group has brought forward more concerns in regard to the lack of landowner consultation in their written argument. We support and adopt their written argument in this regard.

2469. Like Mayor and council through their survey, Northern Gateway heard, during oral statement presentations in Fort St. James, July 2012, a multitude of concerns expressed by Fort St. James and area residents and landowners. They spoke about impacts of the proposed Project on people and the environment. They expressed their concerns about the current proposed pipeline route and the potential impacts on Pitka Creek, Stuart Lake, Stuart and Nechako Rivers.

2470. Many of their concerns were in relation to the location of the Fort St. James pump station and that’s taken from Volume 63.

2471. Northern Gateway asserted in their written argument that they listened

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carefully to more than 1,100 oral statements, that's line 1326. And Ms. Holder said in sworn testimony:

*"I think it's fair to say that through the oral hearings, the oral statements, we use that information to inform us on what are the issues and what we believe we can address and who we need to talk to to address various things, and that's on the Aboriginal file as well as on public consultation."*

2472. And that's taken from Volume 151, paragraph 25120.

2473. Despite what we have -- despite what they have written in their argument and said in sworn testimony, there is no evidence that Northern Gateway did listen carefully to the concerns of those who gave oral statements nor is there evidence that their issues were addressed or considered for that matter. The most glaring proof of this is that the pipeline route remains unchanged.

2474. When you read Northern Gateway's reasons for keeping the pipeline in its current location, which I will state in a moment, it is clear that their financial interests were their greatest consideration, not their routing criteria for reducing environmental impact by avoiding parks, protected areas and sensitive areas and limiting effects on communities, landowners, land users and Aboriginal groups that they wrote about in their argument at B226-2, line 277.

2475. Their reasons for keeping the pump station where it is are, -- at line 363,

*"...the current location was selected since it addressed a number of the practical considerations within the design philosophy:*

*...The proposed Fort St. James pump station location is adjacent to year round road access which is important for this type of facility. It is also adjacent to a high voltage powerline [right of way] which is tentatively slated for an upgrade and is expected to accommodate the pump station power requirements... The ground conditions are favourable at this location [...] there do not appear to be any sensitive environmental areas at or adjacent to the site..."*



2476. We contend their last statement is contrary to other evidence in that:

*“Northern Gateway did identify Pitka Creek as a consequence area in its response to the JRP Request for Additional Information, March 2011. The definition of a consequence area, as described in the JRP response, includes those watercourses containing harvested fish species and/or species at risk. Either type of watercourse would be considered, environmentally sensitive.”*

2477. Taken from B47-6, Adobe page 3.

2478. We submit that the pipeline route through our area does not address the concerns of Fort St. James area residents and landowners. We recommend, should the pipeline be approved, a condition which is based on the Fort St. James Sustainability Group’s written argument recommended condition number 1.

2479. In their written argument, Northern Gateway presented their opinion on oral statements given through this process. They wrote, at line 1323:

*“Northern Gateway listened carefully to the more than 1,100 oral statements that were made to the Panel...”*

2480. Line 1325:

*“In Northern Gateway's submission, it is critical for the Panel to consider the substance of [...] the oral statements...”*

2481. At 1363:

*“It is incumbent on the JRP to determine the weight to be given to the oral statements that it heard [...] all of which were untested through questioning. Moreover, although given under oath or affirmation, the oral statements were nevertheless principally expressions of opinion. It is true that some of those opinions were offered by scientists, engineers and individuals experienced in various fields. But none of them was accepted by the Panel as qualified to provide opinion evidence.”*

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2482. They presented case law at line 1364 regarding lay opinion evidence provided in respect of scientific and technical issues or matters and commissioned dismissal of opinion evidence from witnesses who are not experts in that field and then they compared oral arguments given through these proceedings to that of case law by saying at line 1368:

*“In Northern Gateway's submission, similar consideration should be given to the oral statements and letters of comment received in this proceeding. The Panel must recognize the misconceptions, misunderstandings, myths and disinformation that were included in so many of the oral [arguments] and letters of comment and give appropriate weight to the statements and comments in the same way...”*

2483. We disagree wholeheartedly with Northern Gateway's comparison of the oral statements in these proceedings and, in particular, those given here in Fort St. James, to those of the case law.

2484. It's clear from the JRP website that those presenting oral statements were told to provide the Panel with their knowledge, views or concerns on the proposed Northern Gateway Project. They were told their statement should describe the nature of their interest in the application and provide any relevant information that explains or supports their statement. Nowhere was there reference to opinion evidence.

2485. We disagree wholeheartedly with Northern Gateway's submission that the oral statements included misconceptions, misunderstandings, myths and disinformation. We contend that is their opinion.

2486. In the Fort St. James oral statements, we heard passionate views on what is important to the people who stand to lose the most from this proposed Project. We heard them speak of their history in the area and that of their descendants and we heard them speak of the future of the generations to come. We heard of their connection to the land and the waters and how those needed to be protected.

2487. We ask the JRP to dismiss Northern Gateway's submission that similar consideration to that of case law be given to oral statements in these proceedings and we ask the JRP to weigh heavily the oral statements and written comments submitted in these proceedings as they reflect what is truly in the interest of

Canadians.

2488. Contrary to what Northern Gateway said in their written argument, we don't believe they will ensure safe and reliable operation of the pipeline. Here is what they presented in argument: pump station general design features, line 356:

*“Pump stations for the Project will be designed with numerous operational, safety and containment features. From an operational perspective, the pump station facilities, upon final detailed engineering, will be designed to meet or exceed the codes and standards.”*

2489. From B1-5, Adobe pages 59 through 64.

2490. In regard to electricity provisions, it stated:

*“The potential need for uninterruptible power supply (UPS) and backup generators will be evaluated during detailed engineering. [...] Where needed, the UPS system, including backup generators will be designed to maintain critical control in the event of [a] loss of primary electrical supply.”*

2491. The list of instrumentation and controls to be provided included:

*“...computer-based control system; ultrasonic flow metre for the material balance system [...]; V-cone meters on recirculation lines; pressure control valve/flow control valve; pressure recorder; pressure transmitters; temperature transmitters; leak detection; sump level transmitter (radar) and level switches; heated instrument enclosures; communications land line; backup satellite or radio communications, where required...”*

2492. We contend the words used in regard to backup power, potential need and where needed and the lack of inclusion of emergency shutdown push button in the instrumentation and controls list are not consistent with codes and standards as indicated in the NEB Order SOE 101-001-2013 under which Enbridge was recently cited.

2493. We contend that Northern Gateway, having referred back to their

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- application, shows either ignorance of or disregard for codes and standards and the NEB Order they have been cited for in this regard. We further contend that Northern Gateway may have challenges in interpreting codes and standards properly given the NEB Order and the fact that the codes and standards in this regard have been in effect for many years.
2494.           And I'm getting close to the end, actually. I'm speaking a little bit faster than I probably should.
2495.           For these reasons, we do not trust Northern Gateway will operate the pipeline safely. We recognize that other intervenors, Josette Wier and Fort St. James Sustainability Group, have brought forward more concerns in regard to pipeline safety in their written argument. We support and adopt their written arguments in this regard.
2496.           In closing, I would like to draw your attention to one of the other written arguments and that's of Sherwood Park Fish and Game Association's written argument; D188-6-2, Adobe page 2. And their summation of the old proverb: "Better the devil you know than the devil you don't".
2497.           The District of Fort St. James and our community disagree with their argument. We submit it is better to know no devil at all. And that's it.
2498.           **THE CHAIRPERSON:** Thank you very much, Ms. Gouglas.
2499.           I want to reassure you that we had no trouble following your argument. You weren't speaking too quickly at all and we appreciate your clear delivery of it.
2500.           **MS. GOUGLAS:** That's great. Shall I just see if Mayor MacDougall has any closing comments for you?
2501.           **THE CHAIRPERSON:** That would be great, Ms. Gouglas. As long as they're in reply to arguments that have been made before, that'd be terrific.
2502.           **MS. GOUGLAS:** You bet. Thank you.
2503.           **MAYOR MacDOUGALL:** Again, I would like to thank the Joint Review Panel. I'd like to thank all of the presenters. And from here we'll let the Panel do their work and at some point we'll see if all of the effort comes out in a

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positive way for our community. That is our hope.

2504. Thank you.

2505. **THE CHAIRPERSON:** Thank you, Mayor MacDougall.

2506. And so, Ms. Gouglas, I'm not sure, are you staying on the phone to represent Fort St. James Sustainability Group; is that correct?

2507. **MS. GOUGLAS:** Yes. Yes. Apparently, we'll have a break and Kandace will dial in and I will still be here.

2508. **THE CHAIRPERSON:** Okay. So we'll just take a bit of a stretch break here while the next call gets made.

2509. I'd just ask the people in the room, we'll just probably be breaking for two minutes or so, so stand up and stretch, but please don't go far away.

2510. Thanks Ms. Gouglas, for continuing to hold the line while we connect with Ms. Kerr.

2511. **MS. GOUGLAS:** Thank you.

--- (A short pause/Courte pause)

2512. **THE CHAIRPERSON:** Ms. Kerr, are you on the line?

2513. **MS. KERR:** Yes, I am. Thank you very much.

2514. **THE CHAIRPERSON:** Oh, terrific. Good morning, it's Sheila Leggett.

2515. **MS. KERR:** Oh, good morning.

2516. **THE CHAIRPERSON:** If we could ask everyone in the room to take their seats, we'll be ready to continue.

2517. And so next we have Fort St. James Sustainability Group. And I will let you know that we have a timer system in the room and if you get to within 15

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minutes of the hour completing, I'll just try to find an appropriate time to interrupt to let you know that so that you can judge your time accordingly with your delivery.

2518.           **MS. KERR:** That will be fine. I'm delivering the first portion of our reply argument and Brenda will be delivering the second portion. So it's Brenda you'll have to give the warning to so ---

2519.           **THE CHAIRPERSON:** Thank you very much. So please go ahead, Ms. Kerr.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. KERR AND MS. GOUGLAS:**

2520.           **MS. KERR:** Thank you very much, Madam Chair. Good morning to you. Good morning to the Panel Members. Good morning to Panel staff and good morning to everyone in the hearing room.

2521.           My name is Kandace Kerr and I'm a member of the Fort St. James Sustainability Group. I'm here today with Brenda Gouglas. And we appreciate the opportunity to be here today to present to you our final reply argument. I will speak first, as I mentioned, and then Brenda will deliver the second portion of our argument.

2522.           Before I get started, we'd like to echo what others have said and thank both the Panel and your staff for being so open and welcoming to us.

2523.           **THE CHAIRPERSON:** Ms. Kerr?

2524.           **MS. KERR:** The staff -- yes.

2525.           **THE CHAIRPERSON:** Sorry. Could you just slow down just a little bit, the court reporter's having trouble keeping up with you.

2526.           **MS. KERR:** And darn, I drank herbal tea this morning so I wouldn't be speedy. Okay.

--- (Laughter/Rires)

2527.           **MS. KERR:** I'm shocked.

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2528.           **THE CHAIRPERSON:** Take a breath and we're not trying to hold you up at all but if you'd just slow down so that we can all make sure we can clearly hear the thoughts that you're expressing.
2529.           **MS. KERR:** Great. Thank you very much for that reminder.
2530.           As I mentioned, your staff has been a phenomenal resource for us, especially considering we have never participated in anything like this before. And we thank the Panel for your direction, for your patience -- excuse me -- as we did have quite a learning curve on this, and for reading all of our submissions. We hope that you all get a really nice long vacation once this winds up.
2531.           To echo Mr. Neufeld's comments -- and I'm sorry, I don't know if Brenda was able to send in our references so should I read them out?
2532.           **THE CHAIRPERSON:** Ms. Kerr, we have received them.
2533.           **MS. KERR:** You have. Great. Thank you very much for that.
2534.           To echo Mr. Neufeld's comments [*Transcript Vol. 176, Adobe p. 14, line 42*], we also commend the respect that parties have shown throughout this proceeding and we offer our comments today on the evidence filed and the arguments submitted. So Mr. Neufeld, when I refer to you specifically in my statements, please keep in mind that it's not personal, it's about the evidence.
2535.           I'd like to remind the Panel that the Fort St. James Sustainability Group has been an active participant almost from the beginning of the joint review process.
2536.           Our group came together specifically to be involved and active in the review of this application as we felt it was the best way we could have input on and get information about this Project. We have represented our group throughout almost all stages of this review process and have participated through information requests, cross-examination of several witness panels and submission of final written argument.
2537.           We remind the Panel that we also did not receive participant funding, have participated solely on a volunteer basis, have paid all of our expenses out of our own pockets, and we're not lawyers or pipeline experts, nor do we have legal or scientific assistance or representation.

2538. And we wish to respond to Northern Gateway's assertion that the majority of those opposed to the Project do so from a philosophical opposition to the oil sands. [*Exhibit B226, Adobe p. 390, line 1461*]

2539. Our opposition to this Project is rooted in the impact this Project will have on our community if it is approved, and a belief on our part that the risks outweigh any benefits the Proponent claims this Project has.

2540. In this reply argument I will address some of the arguments made by Northern Gateway, both written and oral, in the areas of emergency response planning, consultation with landowners, significance or the lack thereof, Fort St James-specific issues, and social licence.

2541. I am here today to speak to a common theme that kept coming up as I reviewed the evidence filed, and as I've been listening to the last few days of reply argument. I'm here today to talk about trust.

2542. The word "trust" comes up three times in Northern Gateway's final written argument submission. Once as a footnote reference to the Northern Development Trust, once in reference to a lack of public trust as a result of the Marshall Michigan spill [*Exhibit B226-Adobe p. 368, para. 1358*] and one more time [*Exhibit B226-Adobe p. 147, para. 496*].

2543. Northern Gateway tells us that the witnesses the Panel heard are the same knowledgeable, expert and committed individuals who would operate the Project, and that, quote:

*"They can be trusted to do so in a safe, reliable and responsible manner."*

2544. Panel Members, these are the same knowledgeable, expert and committed individuals that we have no trust in to operate this Project safely.

2545. Throughout this hearing process our trust in the Proponent has dwindled, based on their responses to our questions and on the evidence filed. And key to that has been the response to our questions from the Proponent that detailed emergency response planning will be done once the certificates have been granted. [*Exhibit B41-18, Adobe p. 18, 2-4*]



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2546. We found more “wills” than “haves” throughout the evidence, and as people living along the proposed pipeline corridor this makes us very nervous. Instead of easing our fears, the evidence presented has confirmed our resolve to recommend against approving this Project.
2547. We support the assertion by the Province of British Columbia in both their oral and written final argument that Northern Gateway should not be granted a certificate based on the promise to do more detailed planning once the Project is approved. *[Exhibit D167-24-2, Adobe page 2, line 5]*
2548. We support the province’s statement that, quote: *“Trust me is not good enough in this case” [Exhibit D167-24-2, Adobe page 2, line 5]* and we stated that in our second information request. *[Exhibit B47-6, Adobe page 1, Preamble]*
2549. We continue to assert that many of our questions and requests for more detailed emergency response planning at this stage, and those of other intervenors as well, have been brushed aside with the assurance that once the certificate is granted, the work will be done, and that to undertake that level of planning at this stage in the Project’s development is either unwarranted or counterproductive. *[Transcript Vol. 176, Adobe p. 30, line 153]*
2550. Those of us who have questioned why that level of emergency response planning isn’t part of the application, and therefore available for review, have been typified in the Proponent’s final written argument as, quote:
- “unfairly denigrating Northern Gateway’s commitments.*  
*[Exhibit B226, Adobe p. 150, line 507]*
2551. We disagree with this assertion.
2552. In the absence of trust, we have a tough time believing that commitments will be followed through on. Given Enbridge’s safety record, as brought forward during this review, combined with a promise from the Proponent that all the detailed emergency and spill response planning is yet to be done, we implore you not to consider approving this Project in the absence of that information.
2553. Mr. Neufeld referred to not undertaking detailed operational planning until the certificates have been granted as, quote:

*“not being a case of putting off until tomorrow what you can do today”. [Transcript Vol. 176, Adobe p. 30, line 155]*

2554. We disagree with this statement. We support several other intervenors including the Council of the Haida Nation [Transcript Vol. 177, Adobe p. 64, line 1529], the Province of British Columbia [Transcript Vol. 137, Adobe p. 133, line 1021] and Nature BC and Nature Canada [Transcript Vol. 176, Adobe p. 133, lines 990-996] in stating that no decision on this Project should be made until a full environmental review and full detailed emergency response planning is completed and submitted, reviewed by intervenors, and assessed as part of the application review.

2555. To us this speaks to the sufficiency of the information that BC Nature and Nature Canada referenced on Monday. [Transcript Vol. 176, Adobe p. 133, lines 990-996] We submit that the lack of detailed emergency and spill response planning is a deficiency in the application and as such, and with respect, we submit that the application is incomplete.

2556. I'd now like to turn to consultation, specifically consultation with landowners along the proposed pipeline corridor. And here I must commend Northern Gateway on doing just an excellent job of papering the record on consultation in their written argument.

2557. Northern Gateway contends in their final written argument that consultation with landowners has been adequate and met filing requirements. [Exhibit B226, Adobe p. 317, line 1128]

2558. Northern Gateway testified, and repeated in their final written argument, that they believe landowners received all of the information necessary and if they wanted more, they, quote:

*“had the opportunity to request that from the company”.*  
*[Exhibit B226, Adobe p. 317, line 1128]*

2559. We find the use of the word “necessary” interesting. Necessary to whom we ask. We submit that the information provided was necessary just enough to meet the filing manual requirements and not to meet the information needs of landowners.

2560. In our written argument we discussed the impact of not delivering sample section 87 notices and sample surface lease agreements to landowners during the consultation phase. And I won't repeat that here except to say that we believe that this has directly impacted landowner participation in the review process.
2561. Northern Gateway testified that they could think of only one landowner and one other person representing landowners who were Community Advisory Board participants. *[Transcript Vol. 152, Adobe p. 42, lines. 26501-26507]*
2562. In fact, when asked in Prince Rupert, witnesses on the Consultation Panel had difficulty identifying where the landowners were on a CAB stakeholders table that was included in the application. *[Transcript Vol. 152, Adobe p. 42, lines. 26501-26507]*
2563. We confirmed, during cross-examination, the contents of the information provided to landowners in the Fort St James area *[Transcript Volume 152, Adobe p. 26, Paragraph 26341 – 26344]*, which does meet the minimum standards as set out in the NEB filing manual. But we have to ask, how is meeting a minimum standard, or providing just adequate information, an example of good consultation?
2564. Northern Gateway said in their final written argument that they try to make sure that information is provided to landowners so that they don't have to come to the company looking for the information. *[Exhibit B226, Adobe p.317, line 1128, Transcript Vol. 151, Adobe p. 158, Paragraphs 26138 – 26139]*
2565. Northern Gateway also testified, and repeated in final argument, that sample Section 87 notices and sample surface rights leases were not provided to affected landowners during the consultation process, but that they were included in the application. *[Exhibit B226, Adobe p. 320, line 1142]*
2566. Northern Gateway's contention, in their final written argument, that if landowners wanted more information, they could look to the application to see a sample Section 87 notice directly contradicts Northern Gateway's assertion that they try to have the information available to landowners so they don't have to seek it out. *[Exhibit B226, Adobe p.317, line 1128, Transcript Vol. 151, Adobe p. 158, Paragraphs 26138 – 26139]*

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2567. The Proponent states, in final written argument, that an important part of their consultation program involves direct engagement with landowners. *[B226, Adobe p. 316, line 1125]*
2568. Northern Gateway testified, and their final written argument repeated, that Northern Gateway has personally met with landowners along the proposed pipeline corridor. *[Exhibit B226, line 1126].*
2569. We respectfully submit that this is not the case. Northern Gateway has not personally met with these landowners. The land owner who -- the land agent who came down my driveway told me he was contracted by Enbridge, and his business card did not say Northern Gateway.
2570. Land agents hired by Northern Gateway or Enbridge, and Enbridge crews or survey crews hired by Enbridge have been meeting with these landowners.
2571. The only engagement landowners have had with Northern Gateway employees is likely at a technical information sessions or a community presentation, and only if landowners attended those sessions. Once again, putting the onus on the landowner to seek out the information they wanted or needed.
2572. We agree with Dr. Josette Wier and with the Council of the Haida Nation that the Proponent has clearly confused engagement with consultation. *[Exhibit D217-64, Adobe p. 35, line 12, Transcript Vol. 177]* And we submit that this is plainly obvious in landowner consultation.
2573. In the February 2013 public consultation update, Northern Gateway uses the word “engage”, not “consult” with landowners. *[Exhibit B207-02, Adobe p. 25, 1st para]*
2574. Northern Gateway testified, and Northern Gateway’s final written argument repeated, as to the role of the land agent in meeting with landowners. *[Exhibit B226, Adobe p. 319, line 1140 Transcript reference para. 26482]*
2575. And here Northern Gateway once again, referred to it as “engagement” not “consultation”. *[Exhibit B226, line 1140, Transcript reference para. 26482]*
2576. Consultation implies a two-way conversation. Engagement, in this case, seems to mean “here’s a map and a project brochure, call me if you have any

questions”.

2577. Northern Gateway spoke to, and repeated again during final argument, the role of land agent in the landowner consultation process, saying that because many of the land agents were also farmers they were better able to talk with landowners. Creating what Northern Gateway termed, quote:

*“a strong consultation program.” [Exhibit B226, Adobe p. 319, para. 1140]*

2578. In oral evidence given in Edmonton, landowner and intervenor, Darlene Wong, stated that she had already been contacted by what she termed, quote: *“aggressive land agents representing pipeline companies”*. And that she had been contacted by a land agent representing Enbridge. *[Transcript Vol. 17, Adobe p. 70, lines 9900-9901]*

2579. In their 2012 consultation update to the Joint Review Panel the Proponent described their attempts to contact Ms. Wong. The Proponent stated that Ms. Wong had no interest in meeting with the Proponent in person and requested that all contact be made by registered mail. *[Exhibit B83-26, Attachment 16, Adobe p. 38, paras. 1-2]*

2580. This hardly supports the Proponent’s contention that the land agent-landowner relationship is one of shared sensibilities.

2581. We submit that landowners should not be considered in the same category as other stakeholders and interested members of the public, and that that there should have been a much more technical and much more detailed consultation program developed and delivered for landowners, especially in British Columbia, given our lack of experience with pipelines for those of us living along the proposed pipeline corridor.

2582. We agree with the final written argument submitted by Alberta Lands Ltd. that consultation with fee simple landowners should have been recognized as an issue by the Joint Review Panel. *[Exhibit D5-9-1, Adobe p. 1, para. 6, line 4]*

2583. And we submit that rather than the, quote: *“active two-way conversation”* that Northern Gateway describes in final written argument, *[Exhibit B226, Adobe p. 310, line 1091]* landowners have not been consulted fully with but were invited to take part in an information process that was minimal at

- best and designed solely to meet NEB filing requirements.
2584. I'll now move on to the Proponent's references to Fort St. James in their final written submission, specifically their reference to the proposed Fort St. James pump station location at Pitka Creek.
2585. In their final written argument, the Proponent discussed our concerns about the proposed Fort St. James pump station location. *[B226, Adobe pps. 116-117, lines 362-367]*
2586. Northern Gateway argues that the proposed location at Pitka Creek is the best location for the Fort St. James pump station. *[B226, Adobe p.117, line 367]*
2587. We continually -- we -- sorry. We continue to respectfully disagree with the Proponent on this and have made recommendations to that effect in our final written argument. And we also support the recommendation from the District of Fort St. James to move the pump station location from Pitka Creek, as outlined in their final argument. *[Exhibit E4-4-1, Adobe p.8, section iv]*
2588. I'd now like to turn to some language used throughout the application and review process, specifically the use of the word "significant". Northern Gateway argued several times in their written submission that impacts at an environmental and social level would not be "significant". *[Exhibit B226, Adobe p. 10, line 5; Adobe p. 128-129, line 419; Adobe p. 130, line 422]*
2589. The use of that word "significant" has been a common debate throughout this review process, with Northern Gateway continuing to use it to support their contention that this Project will benefit communities, or when they state there are minimal environmental or human health effects resulting from the Project. *[Transcript Vol. 105, Adobe p. 149, lines 31423-31425]*
2590. We submit that where it is convenient to supporting Northern Gateway's assertion that this Project is in the public interest, "significant" means a good thing *[Exhibit B226, Adobe p. 80, line 243, Adobe p. 299, line 1055]*, but where it does not, as when responding to questions about environmental or human health impacts, "not significant" means "there's no issue here".
2591. And we support the argument of the Driftpile Cree Nation regarding Northern Gateway's use of the word "significant" in respect to the potential

- impacts of this Project on the environment. *[Transcript Vol. 177, Adobe pps. 129-130, paras. 2021-2023]*
2592. Northern Gateway stated, in final written argument, that a home less than 500 metres from a pump -- pipeline pump station is well within acceptable levels of noise and risk, and concluded that there would be no significant impact. *[B226, Adobe p. 117, line 365]*
2593. For that homeowner who will wake up every morning to the sight and sounds of a pump station, where there once was a forest filled with moose and rabbits and sandhill cranes, the loss of that wild space is significant. The potential for even a small spill or leak into the aquifers that sit underneath the pump station location *[Exhibit B47-7, Adobe p. 1]* is equally significant to a rancher whose cattle drink from Pitka Creek.
2594. But Northern Gateway failed to see that significant means one thing to their scientists, and something completely different to a homeowner or rancher whose life will be directly impacted by the construction, operation, and abandonment of a pipeline where before there was none of that risk.
2595. So we argue that yes, there is a significant impact to people's lives, should the pump station be built at Pitka Creek, despite what a computer model says and despite how Northern Gateway defines "significant".
2596. I'd now like to speak briefly about social licence. In our written submission, we stated that the communities of Fort St. James and Nak'azdli have denied Enbridge and Northern Gateway social licence to operate in our communities. We stand by that statement here today.
2597. On Monday, the Alberta Federation of Labour raised a question about social licence that I had asked of the Prince Rupert Consultation Panel. *[Transcript Volume 176, Adobe pps. 94-95, paras. 710-712]*
2598. In their written final argument, the Proponent quotes Mr. John Carruthers as stating that gaining social licence for this project is, quote, "*a high priority for us*" *[B226, Adobe p. 83, line 246, transcript reference Vol. 152 para. 26751]* and quote, and "*critically important*" *[B226, Adobe p. 83, line 246, transcript reference Vol. 152 para. 26755]*.
2599. Mr. Carruthers proceeded to spend the next few moments speaking to

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the economics of the Project but he didn't ever answer my original question. Is gaining social licence a pre-condition for building Northern Gateway?

2600. In Prince Rupert, we discussed social licence as defined by the CEO of Enbridge, Al Monaco, and I quote here from Transcript Volume 152, quote:

*"It means that we need public trust and confidence that we can operate safely, and bring benefits to the communities that we operate in." [Transcript Vol. 152, Paragraph 26707]*

2601. As we have discussed here today, we do not have trust or confidence in this Proponent to operate this Project safely. As we have discussed here today, a, quote "trust me" approach isn't good enough. It's also not good enough for the Province of British Columbia [*Exhibit D167-24-2, Adobe page 2, line 5*], Dr. Josette Wier [*Transcript Vol. 177, Adobe pps. 74 – 78, paras. 1596-1636*] or the Coalition [*Transcript Vol. 177, Adobe p. 162, para. 2264*]. And we very strongly support the agreement -- argument of the District of Fort St. James in this regard. [*Exhibit E4-4-1, Adobe p.10-11, all points*]

2602. But as I didn't get a response to my original question from Northern Gateway, perhaps it is a question we should leave with you to consider, the Panel.

2603. Given all you have heard to date, is Northern Gateway proving that they have gained social licence for this Project, a pre-condition for you to consider approval? If achieving it is so "critically important", as the Proponent has stated, and if they haven't achieved it, as they failed to do in Fort St. James, we respectfully suggest that perhaps they need to get it before their application should be considered for approval.

2604. To conclude my portion of oral argument, I found Mr. Neufeld's reference to a black swan event very interesting. [*Transcript Vol. 176, Adobe p. 36, line 204*]

2605. At first, I thought he was referring to an oily duck or some other waterfowl coated in bitumen but upon further research, I found a very interesting definition that seems to apply perfectly to Northern Gateway and that seems somewhat more elaborate than the definition Mr. Neufeld offered us on Monday.

2606. A black swan event is one that is a surprise to the observer, that has a major effect, and that is rationalized in hindsight as having been preventable as it



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- could have been expected to happen, in that relevant information was available but unaccounted for in risk management.
2607. Much was made throughout this review process of Northern Gateway's intent to provide world-class spill response, and the lessons learned from the Marshall, Michigan spill, but if that definition of a black swan event holds true, Enbridge should have seen that one coming, had the information it needed to deal with a spill like that, but didn't account for it in their risk management program.
2608. Then what is to say that Northern Gateway will operate any differently? We don't trust that they will, given that they continue to assert in final argument that a major catastrophic spill is unlikely [*Exhibit B226, Adobe p. 149, line 501*] and given that they have repeatedly stated that detailed emergency response planning will not be undertaken until the Project is approved.
2609. All of the promises of world-class spill detection and emergency response don't mean a thing if that black swan happens to live in your community. It has been a privilege to listen to First Nations, environmental organizations, community groups and individuals who have arrived independently at conclusions very similar to ours. This -- their participation in this process confirms our recommendation for you not to approve this Project.
2610. We are proud to stand with them and we have learned so much from them. Thank you.
2611. **THE CHAIRPERSON:** Thank you, Ms. Kerr.
2612. **MS. KERR:** We know the decision -- I have one more paragraph. Thank you. We know ---
2613. **THE CHAIRPERSON:** Oh. I'm sorry.
2614. **MS. KERR:** That's okay.
2615. We know the decision you have to make, Panel, is a tough one and we ask you not to approve this Project. Should you decide to approve this Project, however, we urge you to adopt our recommended conditions as stated in our written submission as conditions to this Project and to also adopt those conditions of the District of Fort St. James, as protective measures for our community,

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especially those recommendations specific to relocating the pump station from the current proposed location at Pitka Creek.

2616.           The people of Fort St. James will have to live with this pipeline if you approve it. So if it does move forward, we ask you, the Panel, to help us protect our community.

2617.           Brenda Gouglas will now deliver the second part of our final reply argument and this time, and I mean it, thank you.

2618.           **THE CHAIRPERSON:** Thank you very much Ms. Kerr. Sorry for interrupting you.

2619.           Just -- Ms. Gouglas, just so you know, you have about 39 and a half minutes left on the clock.

2620.           **MS. GOUGLAS:** That's great and that will be plenty for me. And I'll say good morning again, Madam Chair, and Members of the Panel. I personally thank you for allowing me to participate in this historic process. And to your support staff, who I called upon a number of times for guidance, thank you as well.

2621.           I echo the words spoken by Kandace to our fellow intervenors. I have learned so much from you. The three times we spoke with you previously, I got to go first for questioning. This time I have learned firsthand the true meaning of someone being a hard act to follow. No offence to those I followed before. I'm just a little biased.

2622.           Although Kandace has touched on Enbridge's track record in her part of our presentation, we feel there is a need to more thoroughly speak with you about Northern Gateway's written argument in that regard.

2623.           Northern Gateway in, their written argument stated, and I quote:

*"A number of speakers argued that Enbridge had a poor safety or spill track record." [B226-2 1356]*

2624.           We contend that statement is incorrectly worded in the past tense. It should be written in the present tense, reading:

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*“A number of speakers argue that Enbridge has a poor safety and spill track record.”*

2625. We certainly argue in the present tense. Since closing of the written argument phase of this process on May 31<sup>st</sup>, there have been another two Orders issued against Enbridge by the NEB. How ironic that one of them was posted on the NEB website the same day that an Enbridge employee was speaking at the NEB Pipeline Safety Forum in Calgary, June the 5th.
2626. If my math is correct and I have accounted for all of them, that brings the total number of current NEB Orders against Enbridge to six (6). We present the recent two Orders to you, the first one very briefly.
2627. NEB Order SO-E101-004-2013 dated June the 3<sup>rd</sup>, 2013 was issued for over-pressure incidents at their Edmonton terminal. Further to that, the Board remains concerned these over-pressure incidents represent potentially systemic non-compliance on other parts of the Enbridge pipeline system.
2628. This was not something new to Enbridge. NEB reminded them of a safety advisory they had issued April 2, 2012.
2629. The second Order speaks directly to a section in Northern Gateway’s written argument entitled "The Influence and Lessons of the Marshall Incident". [B226-2 Adobe Page 167]
2630. NEB Order SO-E101-003-2013 dated June 10<sup>th</sup>, 2013 addresses the fact that Enbridge has not yet fully implemented all the improvements identified as having to be made following the Marshall rupture. These improvements are the “lessons learned” that Northern Gateway mentioned in their written argument, and has throughout other evidence.
2631. Just in case folks need a reminder, the Marshall incident is quickly approaching its third anniversary. It has to be said Northern Gateway’s statements in their written argument and their witnesses’ replies to my questions on lessons learned in Prince George [Vol. 95 para 17493-496] elicit absolutely no trust in them actually doing what they say.
2632. The NEB Order heightens our distrust. Based on that NEB Order and our own gut feelings, we do not agree with the following line from Northern Gateway's written argument and I quote:

*“However, to the extent that Intervenors attempt in argument to focus the JRP in any way on an inquiry into the root causes, environmental or other impacts or any other aspects of the Marshall Incident, such arguments should be disregarded.”*  
[B226-2 556]

2633.           Because Enbridge history keeps repeating itself, we suggest that the JRP should monitor NEB Order SO-E101-003-2013 and the other Enbridge NEB Orders brought forward through this process. They should monitor the NEB site for future Enbridge Orders and weigh heavily all the Enbridge Orders brought forward in their deliberations on whether the pipeline will or can be safe.

2634.           **THE CHAIRPERSON:** Ms. Gouglas, I just ---

2635.           **MS. GOUGLAS:** Yes.

2636.           **THE CHAIRPERSON:** --- want to make sure that you understand that the evidentiary record is closed and so the Panel will be doing all of its deliberations based on the evidentiary record that is present in front of it at this point.

2637.           And so I just wanted to make sure that you were aware of that.

2638.           **MS. GOUGLAS:** Thank you for that.

2639.           **THE CHAIRPERSON:** And as you move forward in your reply, again, this isn't the time to introduce new evidence, it's the -- it's the time to bring forward your comments to arguments that have been filed by others.

2640.           **MS. GOUGLAS:** Of course. Thank you.

2641.           I would now like to move on to the Funding Participants, with a lead-in first with a quote from the Northern Gateway written argument:

*“The FPs seated a panel of witnesses at the Edmonton hearings that provided unwavering support for the crucial need to advance the Project. “ [B226-2 105]*

2642.           During those same hearings, when asked if their company would be

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entering into shipping agreements in the future, [Vol. 80 stating at 29063] four of the five Funding Participants stated:

*“At the current point in time, this would be the entity.” [Vol. 80 Para 29064]*

*“That is our intent today. I can’t guarantee that won’t change sometime in the future.”*

2643.           And:

*“...our intention is that it would be Total E&P Canada Ltd., but as is typical with all of these contracts, there are allowances to assign responsibilities or assign the contract to an affiliate.” [Vol. 80 para 29195]*

*“At this point in time, that would be our anticipation, yes.” [Vol. 80 para 29287]*

*“Yes, we would anticipate that would be the entity.” [Vol. 80 para 29423]*

2644.           We submit that does not show “unwavering support” of the Project as purported by Northern Gateway.

2645.           We submit that if the Funding Participants cannot give Northern Gateway unequivocal support into the future, Northern Gateway cannot guarantee the future viability of the Project.

2646.           We further submit that, with this much ambiguity, the JRP should not determine that “Project Need” is met.

2647.           We would like to turn now to the written and oral argument of the Funding Participants and other evidence they have provided in this process.

2648.           From what we gathered of the Funding Participants’ oral presentation [Vol. 177 para 1383-1473], their argument is all about the money, the money invested to date and what they think will be realized by way of this Project. That argument, really, is no surprise to us.

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2649. The Funding Partners' demonstrated lack of regard by way of no mention at all for intervenors' concerns for the environment and human health effects associated with the oil producers' product, bitumen, is no surprise, either. It is not their pipeline, after all, and they would not be responsible for any effects in the event of a spill.
2650. We truly hope, though, the JRP heavily weighs the intervenors' concerns for the environment and health effects on humans associated with bitumen in regard to this Project. You are our last hope, it seems.
2651. It is interesting to note that one of the Funding Participants listed in their written argument [D29-9] has filed no evidence unless you call their application to become an intervenor and a copy of their written argument, evidence. That company is INPEX Canada Ltd.
2652. All we can garner from their intervenor application is that we can write to them in Tokyo and, if we want to call them, we would call them in India, [D98-1] unlike what has been filed by the other identified Funding Participants. It should also be noted that INPEX Canada Ltd. was not part of the Funding Participants' witness panel in Edmonton. [Vol. 80]
2653. Did they not want to show unwavering support?
2654. We ask that the JRP confirm this perceived overstatement of the number of Funding Participants. We contend that, in absence of evidence of their Funding Participant status, it is incorrect for INPEX Canada Ltd. to be included in this written argument as a Funding Participant and incorrect for them to be counted as a show of support for the Northern Gateway "Project Need".
2655. I want now to draw your attention to some factual errors within Northern Gateway's written argument.
2656. Northern Gateway stated in their written argument that Ms. Kerr had some questions about the Northern Gateway Alliance. [B226-2 1140] It was I that questioned, not Kandace.
2657. While this may be explained away by Northern Gateway as a simple clerical error, we argue that if there is an error in that simple level of detail, there may be other details in construction and operation that Northern Gateway also have missed.

2658. In Northern Gateway's written argument, they stated they listened carefully to the more than 1100 oral statements that were made to the Panel and read with interest the more than 5600 letters of comment. *[B226-2 1323]*
2659. We submit that Northern Gateway has grossly underestimated, either intentionally or inadvertently, the number of letters of comment that have been received through this process. While the number they stated represents letters that were individually filed directly to the public registry site, it does not include the letters submitted by ForestEthics filed August 29, 2012 on behalf of almost 4000 individuals. *[A3E6J0]*
2660. The letters, being in hard copy, are accessible at the NEB library, located at 444-7th Avenue West, Calgary, Alberta, according to the public registry, should Northern Gateway wish to read them with interest. *[A3E6J1]*
2661. In order to more accurately reflect the public record, the stated number of letters of comment received should be more than 9,565; to be more precise, 9,567.
2662. Our last argument is with the idea floated by Northern Gateway that their Project be likened to the Canadian Pacific Railway, references being in both their written argument in the section entitled "Northern Gateway and the National Interest", and in Mr. Carruther's opening remarks in Edmonton. *[Vol. 69 para 14544/14545]*
2663. We find likening the Northern Gateway Project to the Canadian Pacific Railway, to be an interesting concept considering the number of dissimilarities between the two. According to Mr. Carruther's opening remarks, the railway is 142 years old. So yes, it has brought significant benefits for generations of Canadians. Northern Gateway will not bring significant benefits for generations. We have heard through this process its projected life is a mere 30 years.
2664. Northern Gateway connect -- will connect Bruderheim to China. Compare that to the number of Canadian communities CPR connects.
2665. Northern Gateway will move one product each direction supporting the foreign-owned oil producers and foreign refineries. Compare that to the imports and exports the CPR moves, and the number of Canadian businesses and

industries it supports.

2666. Compare the estimated 268 jobs in operation the proposed Northern Gateway pipeline may provide to the number of jobs of the CPR. We did the comparisons; and, there is no comparison.
2667. There is one strikingly -- one striking similarity that certainly appears to be possible if not probable. It is spoken of in evidence from questioning of the Employment and Economic Panel in Prince George, and the potential conditions of approval: my questioning of the panel regarding Enbridge President and CEO Patrick Daniel's conversation with PetroChina, a Chinese firm that showed interest in building the pipeline [Vol. 105 starting at para 30551]; Madam Chair's question of the same panel in regard to foreign hiring [Vol. 106 para 674]; and the witnesses reply to the Chairs' question, and I quote:

*"I certainly wouldn't commit that it will all -- I certainly couldn't commit that it will all be local". [Vol. para 675]*

2668. And last but not least, potential Condition Number 25:

*"Northern Gateway must notify the NEB within 14 days after making any application to Service Canada for a Labour Market Opinion (LMO) for the purposes of using Temporary Foreign Workers for Project construction." [A346-5 AP9]*

2669. That similarity is nothing we as Canadians are proud of. Unlike, it appears, Northern Gateway.
2670. In closing, we endeavoured to find a Canadian icon that the Northern Gateway proposed pipeline Project would aptly be likened to. In so doing, we listened with interest to intervenor questioning of the Enbridge Northern Gateway witnesses. It is with interest that we read the oral statements, letters of comment and written arguments.
2671. Having done so, it has become abundantly clear that for a variety of reasons a great majority of the people who have stood before you through these mediums, and on behalf of those they represent, do not believe this Project is in their interest or the Canadian interest, and that if anything, it will cost them.
2672. In light of what we have learned, we feel the perfect Canadian icon to



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liken the Project to, is the Canadian penny. Because, like the Canadian penny, we submit the Project will cost Canadians more than it is worth.

2673. We thank you again for the opportunity to participate in this process and wish you well in deliberating the need of this Project on behalf of us and other Canadians.

2674. Thank you again.

2675. **THE CHAIRPERSON:** Thank you very much to both, Ms. Kerr and Ms. Gouglas, for your submissions. The Panel has no questions of you and so we will say goodbye to you.

2676. And we'll take our morning break and come back at 10 after 10, please.

2677. Thank you.

2678. **MS. GOUGLAS:** Thank you.

2679. **THE CHAIRPERSON:** Goodbye.

--- Upon recessing at 9:51 a.m./L'audience est suspendue à 9h51

--- Upon resuming at 10:09 a.m./L'audience est reprise à 10h09

2680. **THE CHAIRPERSON:** If we can get everyone to take their seat, we'll be ready to get underway, please.

2681. Thank you very much.

2682. I understand that there's been a change in order from what we've initially published.

2683. If we can get everyone to please take your seats and have order. As it's been said, lots of friendships have been formed over this file and it's apparent in the coffee breaks.

--- (Laughter/Rires)

2684.           **THE CHAIRPERSON:** Thank you very much everyone.

2685.           There's been a change in the order between the Government of Alberta and Gitga'at First Nation. So Government of Alberta will be next and then Gitxaala Nation followed by Gitga'at First Nation.

2686.           So Government of Alberta next, Mr. Kruhlak.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. KRUHLAK:**

2687.           **MR. KRUHLAK:** Good morning, Panel, Madam Chair. Thank you.

2688.           Joining me at the table this morning is -- immediately next me is my colleague Evan Dixon and next to him, Colin King, counsel with Alberta Energy.

2689.           First I'd like to commend Mr. Neufeld for initiating a respectful tone to these reply submissions and I certainly echo that sentiment.

2690.           Now, I've got several brief comments in response to the final arguments of the intervenors who have taken issue with the benefits evidence of Wood Mackenzie, the consultant's report which we filed, and the potential economic benefits of the Project or have referred to that -- that evidence in their argument.

2691.           And for those following us, I expect to be approximately 15 minutes in these remarks.

2692.           First I'd like to say there's been a suggestion that Alberta's position is unclear in these proceedings. And I would submit that Alberta's position has not changed. It has been consistent throughout and that it is here because it's supportive of market diversification initiatives that can result in new and increased markets for Alberta's petroleum products.

2693.           Now, to assist the Panel in its review, Alberta retained the firm of Wood Mackenzie to assess the netback benefits associated with west coast market access. Wood Mackenzie provided a netback report and addendum which responded to this general request, and considered the Northern Gateway Project as a proxy in conducting that analysis.

2694.           We respectfully submit that the Alberta evidence is clear, market

diversification is urgently needed and there are significant economic benefits for Alberta and Canada associated with approving the Northern Gateway Project.

2695. Now, there was also mention during oral argument -- a comment by the AFL which characterized Alberta as somehow misrepresenting the Wood Mackenzie report. And I want to refer to a passage from the conclusion in the addendum -- I provided these references earlier -- but the Wood Mackenzie report states:

*“Our assessment of producers not having access to Asian markets through a West Coast option suggests that Canadian heavy oil producers likely are to lose about C\$8/bbl (relative to refining value) with lost revenues of \$8 - \$12 billion per year for 2017 to 2025 if they are forced to place marginal heavy crude volumes into a more simple cracking configuration in PADD II.” [AFL 778, 779, 781] [Wood Mackenzie Addendum report photograph 8, line 131]*

2696. Although the AFL may have initially misinterpreted this evidence, Alberta believes that connecting and maintaining adequate supply to appropriate coking refineries would avoid price discounting for the length of time that adequate market access is maintained.

2697. This is no attempt to confuse anyone, but it may surprise some to realize that adequate market access would suppress crude prices, Canadian producer incomes, Canadian government taxes, and Canadians’ employment and income opportunities. [AFL 778, 779, 781]

2698. I should clarify, my friend did point out, it’s inadequate access would lead to the suppression of pricing and those associated impacts, not adequate access.

--- (Laughter/Rires)

2699. **MR. KRULHAK:** We submit that the forecasted production you’ve heard of, the current pipeline constraints, it is clearly indisputable that the Northern Gateway and projects like it are urgently needed in order to ensure transportation is available for growing volumes of western Canadian crude oil which are projected to materialize regardless of whether the Gateway Pipeline Project is ultimately approved.

2700. Now, certain intervenors have suggested that Gateway's benefits are short-lived based on Wood Mackenzie's acknowledgements that netback benefits would disappear if and when supply growth exceeded the ability to reach appropriate markets.
2701. First, this acknowledgement was based on a theoretical snapshot of supply growth and transportation dynamics. More importantly it is clear from Dr. York's comments that ample market access is required to avoid selling heavy crude into simple cracking refineries. Gateway and other market access projects are required to ensure that there is adequate and appropriate access to refining markets.
2702. Without Gateway, Canadian supply would be 525,000 barrels per day further away from attaining the equilibrium benefits associated with reaching those appropriate markets. If market access to the appropriate refineries is attained on a continual basis, those netback benefits are significant and enduring. *[AFL Page 17, CFN Page 92, Haisla Page 88, UFAW Page 8-9]*
2703. Secondly, Alberta submits that these arguments ignore, or fail to account for the significant intangible benefits associated with market optionality, which the approval of Gateway would offer. These benefits, which are not fully quantifiable, include facilitating economic access to fast growing markets capable of accepting and processing growing volumes of WCSB supply, reducing reliance on a single geographically limited North American market.
2704. No party has suggested that Northern Gateway will not have a positive netback impact and the arguments of those opposed have really been limited to trying to narrow the scope of the window where netback benefit will operate. The only evidence on the record of these proceedings suggests that there will be a benefit and that benefit is significant.
2705. Now, on the issue of netback benefit, my friend, Ms. Chahley, suggested on Monday that these projected benefits or I think she described them as extraordinary profits should be ignored because they will only fall to the benefit of a handful of producers.
2706. And you may recall, Mr. Neufeld in his opening comments referred to a passage from the Board's Reasons for Decision in Keystone XL *[OH-1-2009]* at page 32, which was partially quoted by the Coastal First Nations at paragraph 384

of their argument. Mr. Neufeld went on to read the entire passage and quote. And I want to refer to it because the passage is also instructive and highlights why Alberta is concerned about maximizing crude oil netbacks.

2707. That passage started with the sentence about new pipelines connecting producing regions with consuming regions change market dynamics in ways that cannot easily be predicted. And I won't take you back through the entire quote again but just for the last sentence of that quote by the Board:

*“Canadian crude oil netbacks provide revenues to governments and to industry to make social and economic investments. In the Board’s view, these investments benefit all Canadians.”*

2708. End of quote.

2709. Accordingly, we submit that the Northern Gateway netbacks don't just benefit a handful of producers, they benefit all Canadians.

2710. Now, another suggestion made in argument by those opposed to the Project is that somehow Northern Gateway will cease to have economic benefit to Canada once the line is full. We respectfully submit this is somewhat simplistic because it fails to account for the significant benefits associated with having additional capacity and more than a single market, as is the case currently. *[AFL Lines 466-468 of AFL, UFAW Pages 8-9]*

2711. It is self-evident that having access to more markets is better than having access to one market. This is particularly in the present case when the current market, the United States, is projected to have flat to declining demand for crude oil while simultaneously experiencing tremendous growth in its domestic oil production.

2712. It is respectfully submitted that the Panel has ample expert evidence before it to conclude that there are significant economic benefits associated with the approval of the Gateway Project and additional transportation options are required to accommodate growing supply.

2713. The next issue I want to address which has been raised by the intervenors is a concept of value add. And again, I think my friend, Ms. Chahley, raised in her oral comments to like of why didn't Alberta explain its policy

position or how will Alberta achieve the value add policy while supporting export options for bitumen.

2714. And I appreciate that Mr. McGowan and the AFL have been longstanding advocates of the value-added proposition. However, they seem to believe that the options are mutually exclusive. Alberta's position is not confusing. Alberta does not see these as mutually exclusive options. Alberta supports market driven solutions that can lead to the development of additional upgrading or refining in Alberta and new market opportunities for both crude oil and refined products.
2715. As in previous NEB hearings pertaining to large scale export pipelines certain intervenors have suggested that the pipeline ought to be denied in order to encourage and facilitate upgrading and refining bitumen in Canada. *[AFL page 21-23, CEP pages 1-5 and UFAW page 12-13]*
2716. First, there's the suggestion that this pipeline should not be approved on the basis of denying the pipeline would somehow induce additional upgrading and refining in Canada and that's simply not supportable. There is simply no evidence to suggest that denial would induce additional developments for upgrading and refining.
2717. But to the contrary, Alberta submits that denial of the pipeline to encourage upgrading could actually send a negative signal to potential investors considering future value add projects as it could stray away from the Board's historic application of market based policies and introduce market access risks.
2718. Further, any suggestion that this Board should vary from a market approach to the development of these types of facilities has been argued before and rejected -- I think as my friend Mr. Bergner referred to -- in other recent pipeline applications, in particular, Keystone, Southern Lights and Alberta Clipper. And Alberta submits that the reasoning from those decisions should once again prevail here. *[CEP Pages 12-24, AFL pages 29-30 and UFAW Pages 17-18]*
2719. The evidence on the record of the proceedings confirms that given forecasted production there are clear and imminent transportation constraints facing not only bitumen but all grades of crude, including synthetic crude oils. All of which require transportation to access markets given that Canada's overall crude oil production exceeds domestic supply. *[York, transcript 1744],[AFL 762]*

2720. Contrary to the suggestion of certain parties, there is no evidence to suggest that Gateway means that future value add will not materialize and there is similarly no evidence to suggest that the approval of the Project will negatively impact refiners or upgraders. *[AFL page 21-23, CEP pages 1-5 and UFAW pages 12-13]*
2721. Again, as in the case of previous pipeline export applications that have come before the Board where there's been similar types of concerns, no party here has registered concerns to suggest that the approval of Gateway will mean it cannot access adequate and competitively priced feedstock needed for either ongoing operations or future expansions.
2722. In response to comments about potential consumer impacts, we submit that there is really no expert evidence on the record of the proceeding that suggests that end use consumers would be impacted by the approval of the Project. To the contrary, expert evidence tendered by Gateway and Alberta confirms that the approval of the Gateway pipeline would have no discernible impact on Canadian end use consumers. *[AFL 861-863]*
2723. Alberta's ongoing support of value add is consistent with market diversification, as it is fundamentally not an either or proposition. Transportation optionality such as that offered by Northern Gateway is essential to the proper functioning of markets and access to new markets may support additional value added upgrading opportunities, as pipelines such as Gateway are capable of shipping a range of products to meet market demand.
2724. We submit that the suggestion that the pipeline ought to be denied to make feedstock available to speculative and yet unannounced upgraders and refineries is without merit.
2725. Fundamentally, Alberta believes that a well -- that well-functioning markets and transportation optionality are likely to contribute to future value add opportunities, a position was -- which also accords with the NEB's historic conclusions in other hearings. Adequate pipeline capacity is an essential component to ensure that both Alberta's crude oil and refined products can access markets where there is demand.
2726. In closing, Alberta submits that it is in the Canadian public interest for Canadian crude oil producers and refiners to have more than one market for their

products and this will provide clear economic benefits. Tidewater access will provide Albertans and Canadians with full value for their non-renewable resources by providing access to significant and fast growing new markets outside those currently available.

2727. Madam Chair, this has been a substantial application and I would commend the Panel and the staff for maintaining a positive, accommodating and cordial hearing. We'd also like to acknowledge all of the participants that appear before you for their thoughtful and respectful presentations.
2728. We appreciate the diligence of the Panel, as demonstrated in reviewing the evidence, and we wish you well in your deliberations.
2729. We thank you for your time and your attention to this matter.
2730. **THE CHAIRPERSON:** Thank you for your submission, Mr. Kruhlak. The Panel has no questions.
2731. **MR. KRUHLAK:** Thank you.
- (A short pause/Courte pause)
2732. **THE CHAIRPERSON:** We'll call next the Gitxaala Nation.
2733. Good morning, Ms. Kyle.
- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. KYLE:**
2734. **MS. KYLE:** Good morning, Madam Chair, Panel members.
2735. I'd like to introduce my articling student, Christopher Evans, is with me here today and I would also like to give the regrets of many members and Hereditary Chiefs of the Gitxaala Nation. They're actually on route from Prince Rupert as I speak because they really wanted to be here today, to hear the closing arguments.
2736. However, because the time estimates haven't been followed strictly, we're up sooner than we had anticipated and, unfortunately, Gitxaala will not be able to be in the hearing room today.



2737. But I do want to thank the Panel for the opportunity to speak on behalf of Gitxaala today. It's my privilege to be here to speak on their behalf and I know that the Hereditary Chiefs and the members wanted to be here to be part of the final argument because, for them, there is much at stake in this process and they have expended considerable time, energy and resources in order to fully participate in this process in good faith.

2738. Not only has Gitxaala filed voluminous materials in this process and filed numerous information requests and conducted cross-examinations in order to better understand the effects, they've also filed numerous expert reports and historical documents to try to express to the Panel what their concerns are and who they are as Gitxaala people.

2739. And of course, most importantly of all, they spent considerable time trying to express their views and concerns at the community hearings in Lach Klan and Prince Rupert. And they have done all of this for one essential reason: to protect their Aboriginal title to lands and waters, their Aboriginal rights to harvest from and live off the sea and, most importantly of all, to protect their culture and their governance and jurisdiction structures, given that these are -- sorry, essential to what it has always meant and continues to mean to be Gitxaala.

2740. We have tried to give justice to these issues in the written argument and we recognize that we don't have the opportunity this morning to repeat those submissions.

2741. However, there are a number of issues that have arisen in the submissions of Northern Gateway that we wish to respond to, to the extent that time permits. So to that end, in these submissions today, I wish to address four issues raised by Northern Gateway in its written and oral arguments.

2742. First -- and I'm sure this will come as no surprise -- the sinking/floating question; secondly, the treatment of Gitxaala's evidence; thirdly, assessment of impacts to Aboriginal rights; fourthly, consultation; and fifthly, if time permits, I have some additional miscellaneous points to address from Northern Gateway's argument.

2743. So, first, to the great sinking/floating debate.

2744. One of the critical questions in this JRP process is the fate and

- behaviour of spilled, diluted bitumen. Answering that question is central to the issues that are supposed to be addressed in this process.
2745. That is: What the potential effects of this project are, including to Gitxaala's constitutionally protected rights, whether and how those effects can be mitigated, how significant they will be and, when all is said and done, whether they pose an acceptable risk.
2746. For the Panel to consider the essential questions in this process, it is imperative that it be provided with sufficient and credible information to understand what those effects are and what strategies, if any, could be employed to deal with those effects.
2747. Given the historic importance of this project -- a point upon which all parties appear to agree -- it is imperative that the question of whether there is sufficient information to confidently answer those questions not be given short shrift in this process.
2748. Gitxaala agrees with the written submissions of British Columbia that it is not clear from Northern Gateway's evidence that it will be able to effectively respond to a diluted bitumen spill.
2749. Gitxaala also agrees with B.C.'s submissions and the submissions of many of the intervenors that, "Trust us" is not good enough in this case.
2750. These are issues of grave concern to Gitxaala given what is at stake for Gitxaala if an oil spill occurs. They include impacts to its ability to survive off its lands and waters, to maintain its culture and governance structure and to continue its way of life as Gitxaala people for generations to come.
2751. Gitxaala cannot put blind faith in general and vague assurances of Northern Gateway given what is at stake for them. Indeed, we submit that it would not be fair or reasonable to expect Gitxaala to trust that "all shall be well" in the absence of sufficient information to be satisfied that Northern Gateway's promises can be delivered.
2752. We address that issue in some detail in our written argument and I won't repeat those submissions now. What I want to do today is to take some time to deal with comments made by Northern Gateway in its written argument about one project risk in particular: the risk that diluted bitumen will sink.

2753. This is a risk that, based on evidence filed in this -- these proceedings, is a real and substantial risk that needs to be taken seriously rather than put off to some later date to consider and assess. The time to consider this issue has to be before recommendations are made in this process if there is to be any meaning to the environmental assessment that is being undertaken.
2754. It was apparent throughout the questioning phase of the hearings that the question of whether bitumen products would sink or float was a contentious issue. And parties, including Northern Gateway, spent a considerable amount of time cross-examining on this issue.
2755. The evidence filed on this topic includes the report of Dr. Jeffrey Short entitled "Susceptibility of Diluted Bitumen Products from the Alberta Tar Sands to Sinking in Water" [*Exhibit D72-80-2*], which was filed on behalf of Gitxaala Nation. In that report, Dr. Short explained the circumstances in which a bitumen product tested by Northern Gateway, namely Cold Lake bitumen, would sink in the confined channel assessment area.
2756. Northern Gateway spent considerable time in its written argument criticizing that report, starting at paragraph 840. However, what is critical for the Panel to understand is that Northern Gateway's critique is based on a complete mischaracterization of how Dr. Short reached his conclusions that Cold Lake bitumen would sink in certain circumstances in the CCAA. And I want to explain why that is the case.
2757. In its argument, Northern Gateway presents the mistaken view that Dr. Short used Environment Canada data to reach his conclusions that Cold Lake diluted bitumen would sink in some circumstances. However, in fact, Dr. Short's conclusions were based entirely on Northern Gateway's own evidence.
2758. Dr. Short's report speaks for itself. And given the importance of this issue, Gitxaala urges the Panel to go back to Dr. Short's actual report to see what he based his conclusions on. Having said that, I want to take the time to explain to the Panel why Northern Gateway's contentious -- sorry, contentions are incorrect.
2759. Northern Gateway stated in its argument that Dr. Short based his calculation of the coefficient of thermal expansion, which is needed to determine densities, on a study by Dr. Hollebone of Environment Canada that utilized rotary

- evaporation testing of Albian sour and Wabisca pre-weathered undiluted bitumen. And Northern Gateway suggested that Dr. Short should not have relied on this data for his conclusions.
2760. The fact is, Dr. Short did not rely on the Environment Canada data to calculate the coefficient of thermal expansion for the purposes of determining whether diluted Cold Lake bitumen might sink in areas of the CCAA.
2761. Rather, Dr. Short used data from Northern Gateway's own evidence, specifically, SL Ross's 2012 report entitled "Meso-scale Weathering of Cold Lake Bitumen/Condensate Blend". *[Exhibit B193-2]* And he used that data to determine the coefficient of thermal expansion for Cold Lake bitumen.
2762. And at Adobe page 8 of his report, Dr. Short explains how he used that SL Ross data to calculate the coefficient of thermal expansion for Cold Lake bitumen. *[Exhibit D72-80-2, Adobe p. 8]*
2763. And I'm sure blessedly for you, I won't take you to that paragraph in his report, but I certainly urge the Panel to look at Dr. Short's report in that regard.
2764. Dr. Short also explains how he used that value to determine densities of Cold Lake bitumen as set out in Table 3 of his report, *[Exhibit D72-80-2, Adobe pp. 8, 16 and 17]* and then used the densities in Table 3, in conjunction with Northern Gateway's data on wind speeds, temperatures and salinity, to conclude in what circumstances Gold Lake -- sorry, Cold Lake bitumen would sink in the CCAA. And that is set out in Table 4 of his report. *[Exhibit D72-80-2, Adobe pp. 17 and 18]*
2765. Table -- sorry, Table 4 clearly and expressly indicates that the conclusions set out in Table 4 relate to Cold Lake bitumen. Dr. Short could not have used Environment Canada data to reach conclusions about Cold Lake bitumen, as Northern Gateway seems to suggest, because Environment Canada's data related to Albian Sour and Wabiska Heavy, not Cold Lake bitumen.
2766. Dr. Short's comments on Environment Canada's data in his report but in a separate part of his report, wherein he determines the coefficient of thermal expansion for Albian Sour and Wabiska Heavy and compares those results to the results of the SL Ross 2010 study to get a general sense of comparisons among bitumen products. *[Exhibit D72-80-2, Adobe pp. 6 and 7]*

2767. The Environment Canada data most definitely did not inform Dr. Short's conclusions supported by Table 4 of his report which illustrates the circumstances in which Cold Lake bitumen will sink in the CCAA. *[Exhibit D72-80-2, Adobe pp. 17 and 18]*
2768. The only data that Dr. Short used to base his conclusions that Cold Lake bitumen would sink in some circumstances is data in reports filed by Northern Gateway.
2769. In addition to the data on densities that he used from Northern Gateway's SL Ross 2012 report, Dr. Short also used data from a technical data report filed by Northern Gateway written by Fissel et al entitled "Marine physical environment". *[Exhibit B16-26 to B16-30]*
2770. And he used the data in that Northern Gateway report for wind speeds, temperatures and salinity levels in the CCAA. And he explains that in his report at page 10 and in Table 4. *[Exhibit D72-80-2]*
2771. To determine the propensity of Cold Lake bitumen to sink in the confined channel area at different ocean temperatures and salinity levels and at different wind speeds, he also used the same equations that SL Ross used in its 2010 technical data report, entitled "Properties and fate of hydrocarbons associated with hypothetical spills at the marine terminal and in the confined channel assessment area". *[Exhibit B16-31]*
2772. Once again this is clear from Dr. Short's report. The equations cited by Dr. Short on pages 9 and 10 of his report *[Exhibit D72-80-2, Adobe pp. 9 and 10]* are the same equations used in the 2010 SL Ross report filed by Northern Gateway at pages 27 and 14 of that report *[Exhibit B16-31, Adobe pp. 27 and 14]*.
2773. Dr. Khelifa of Environment Canada also noted in questioning that Dr. Short used the same model as SL Ross had used. *[Transcript Volume 173, lines 25410 and 25411]*
2774. As a result, to suggest that Dr. Short's conclusions are unfounded or based on unreliable information is a completely untenable position for Northern Gateway to take given that those conclusions are based on Northern Gateway's own data and equations. The only difference is that Dr. Short calculated densities of seawater and Cold Lake bitumen at a range of wind speeds, temperatures and

salinity levels based on Northern Gateway's Fissel data in different parts of the CCA, which Northern Gateway did not do.

2775. Northern Gateway also takes the position in its written argument that Dr. Short incorrectly criticized the SL Ross 2012 Meso-scale report in relation to the consideration of wind speed and oil slick thickness. And Northern Gateway relies on work done by Dr. Fingas, a former Environment Canada scientist, to support its contention that neither the thickness of the oil slick nor wind speed is an important factor in the weathering of oil. Gitxaala takes issue with Northern Gateway's position on this for a couple of reasons.

2776. First, the equation used by SL Ross in its 2010 technical data report includes wind speed and slick thickness to determine weathering rates. [*Exhibit B16-31, adobe pp. 14 and 27*]

2777. The fact that SL Ross includes these factors in its equation suggests that it also was of the view that these are relevant considerations.

2778. Second, Dr. Short's criticism wasn't that SL Ross had not considered wind speed or slick thickness in its studies, but rather that it had used a thickness of dilbit that was much thicker than that which would be encountered following a spill, and that the wind speeds used by SL Ross were below the average wind speeds in the CCAA. [*Exh. D72-80-2 at adobe p. 2*] And that's clearly set out at Page 2 of Dr. Short's report.

2779. It is important to note that the Environment Canada witnesses also indicated that wind speed is a factor in determining weathering. In Transcript Volume 172 for example, Dr. Khelifa states at line 25196 that:

*"...the scientific community and most of them, if not the majority, they don't agree with this statement that the effect of wind is [...] not there."*

2780. Dr. Khelifa also noted that Dr. Fingas did not take the position that wind was an irrelevant consideration, but rather that it was important initially and then less so as time went on. [*Transcript Vol. 173 at line 25402*]

2781. Dr. Khelifa also disagreed that slick thickness was not a relevant factor in weathering, indicating that the oil spill modelling community did not share Dr. Fingas' view that thickness was not a factor, and that most of the scientific

- community is of the view that the thickness of the slick matters. *[Transcript Vol. 172 at line 25079 and line 25083]*
2782. In any event, irregardless of these issues, Dr. Short's conclusions that diluted Cold Lake bitumen would sink in the CCAA in certain circumstances is not based on those criticisms; it is based on his calculations using Northern Gateway's data and equations from SL Ross and Fissel reports.
2783. Other parties have already highlighted, as did Gitxaala in its written argument, that Environment Canada witnesses were of the view that there is a possibility that diluted bitumen would sink based on the certain characteristics of the material, and that it is unclear from the evidence what time windows may be available to recover the product. And I will not repeat those references again but I have cited them in my speaking notes for the record. *[Transcript Vol. 170, at line 21636; Vol. 169, line 19779; and Transcript Vol. 173 at line 25405]*
2784. It's also important to note that Northern Gateway's counsel chose not to cross-examine Dr. Short on any of the issues that it has raised in its written argument, despite having full opportunity to do so and despite having spent a considerable amount of time cross-examining Environment Canada's witnesses on Dr. Short's report. *[Transcript Vols. 172 and 173]*
2785. In contrast to the amount of time spent cross-examining Environment Canada on Dr. Short's report, counsel for Northern Gateway only asked Dr. Short himself one line of questions on his "Susceptibility of Sinking" report. And that line of questions related to what information Environment Canada had provided to him. *[Transcript Vol. 175]*
2786. Rather than seek clarification on Dr. Short's methodology for reaching his conclusions in questioning, Northern Gateway has based its critique of Dr. Short's findings on a miss-interpretation and misreading of his report. Again, the report speaks for itself and does not support Northern Gateway's interpretations.
2787. In light of all of this evidence, we submit that Northern Gateway cannot support its position that Dr. Short's report is of little assistance to the Joint Review Panel. What Northern Gateway is critiquing is not actually what Dr. Short did to reach his conclusions.
2788. Quite frankly, in light of Dr. Short's evidence and the evidence of Environment Canada witnesses, it is surprising that Northern Gateway continues

to maintain, as Mr. Neufeld stated on Monday, that it is, quote:

*“...an immutable fact that diluted bitumen will float.”*

2789. End quote.

2790. The immutable fact is that if spilled bitumen has a density greater than that of the receiving waters, either because of weathering or because of sediment interactions, it will sink. That is clear from the evidence, including but not limited to, Dr. Short’s report. *[Exhibit D72-80-2]*

2791. Gitxaala urges the Panel to take full note of the conclusions in Dr. Short’s report, given that those conclusions raised some serious questions about the effects from an oil spill, and the ability of emergency response teams to locate and recover spilled oil.

2792. This is perhaps one of the most critical issues that has been raised in these proceedings, given Northern Gateway’s decision to premise its entire application, including its identification of effects as well as its discussion of recovery mechanisms, on an assumption that spilled bitumen products will float.

2793. As a party most likely to be adversely affected by a spill, Gitxaala is not content with this issue being summarily dismissed or pushed off to another day. If potential impacts to Gitxaala are to be understood or given any weight in this process, the risk of diluted bitumen sinking in its territory cannot be ignored.

2794. So I’d now like to move to discuss some of the comments made by Northern Gateway on other of Gitxaala’s evidence.

2795. In its written argument, beginning at paragraph 859, Northern Gateway takes issue with Gitxaala’s expert reports for criticising Northern Gateway’s application materials, and suggests that Gitxaala’s experts did not make constructive suggestions as to how the JRP should proceed if it were to accept the criticisms, suggest additional emergency response or mitigation measures, or identify follow-up plans or programs.

2796. I respectfully submit that this position of Northern Gateway’s ignores the many suggestions that Gitxaala’s experts made to improve the application.

2797. By way of example, Drs. Bigano and Chichilnisky, as well as Mr.



- Hammond, proposed ways to improve the risk assessment by using different methodologies and taking into account relevant factors. *[Exhibits D72-30-2, D72-27-2 and D72-32-07 at adobe p. 19ff]*
2798. Drs. Candler and Gibson identified various literature sources that could have been used to conduct an assessment of impacts to Gitxaala's rights. *[Exhibit D-72-28-2]*
2799. Dr. Beegle-Krause explained and ran trajectories for a modelling program that could be used to assess potential effects and the effectiveness of proposed mitigation strategies. *[Exhibits D72-32-05 (starting at adobe p. 27), D72-32-06 and D72-32-07]*
2800. The Gitxaala Use Study provided detailed and extensive information that Northern Gateway could have used to undertake an assessment on Gitxaala's current uses and to Aboriginal rights including its governance rights. *[Exhibit D72-12-02, adobe p. 13]*
2801. Northern Gateway did not make any changes, through supplemental filings, to address the issues or adopt the suggestions made or information contained in these reports, other than some comments in some information requests in relation to the Gitxaala Use Study.
2802. And I submit that it is not clear at all from Northern Gateway's submissions exactly what type of information it would have actually utilized or taken into account had Gitxaala provided additional material.
2803. Indeed, it appears from its written submissions, starting at paragraphs 866, that Northern Gateway has essentially dismissed many of Gitxaala's concerns on the basis that Northern Gateway believes them to be based on misinformation or misconceptions.
2804. To suggest that Gitxaala's concerns are misguided or influenced by what Northern Gateway refers to as "alarmist evidence" is, in my submission, an insult to the intelligence and life experiences of the Gitxaala people.
2805. They have experienced spills in their territory. They have traditional ecological knowledge that guides them in relation to what effects will result from tanker traffic or spills. They know there would be impacts to them, their culture and their governance and jurisdiction if they could not harvest, for example,

herring roe around their community of Lach Klan or harvest their preferred and prized seaweed at the top of Banks Island.

2806. They are more than capable of deciding for themselves whether the risks of this Project are acceptable to them, and they do not need and, indeed, do not rely on experts or lawyers to tell them.
2807. The dismissive approach revealed in Northern Gateway's written argument is not consistent with Northern Gateway's position that it has listened carefully and respectfully to Gitxaala as stated by Mr. Neufeld in his submissions. If Northern Gateway had, indeed, been listening to what Gitxaala has been saying about the Project, it would understand that it is a fundamental part of Gitxaala's inherent authority and jurisdiction to decide for itself whether the risks of this Project are acceptable.
2808. Although Northern Gateway says it has been listening, Mr. Neufeld explained in argument that Northern Gateway had already correctly assumed how Gitxaala used its territory before it received the Gitxaala Use Study. He also explained that Northern Gateway already knew prior to obtaining the study about oil spill concerns.
2809. With respect, this is also a dismissive approach. The Use Study contains detailed information far beyond anything discussed by Northern Gateway in its Application materials that could inform robust considerations about impacts to rights. Surely, Northern Gateway is not suggesting that it knew everything the Gitxaala expressed in the Use Study that is relevant to this assessment before the Use Study was provided to it.
2810. If Northern Gateway was listening, it would be aware that Gitxaala has been asking Northern Gateway to incorporate traditional use information into its assessments since as early as September 2010. [*Exhibit D72-22-07 (starting at adobe p. 25) to D72-22-09, Exhibit D72-22-12 (starting at adobe p. 4) to D-72-22-13*]
2811. Northern Gateway chose not to do that.
2812. If the Use Study data had been incorporated into Northern Gateway's assessment of impacts, it would have helped illustrate the various pathways and consequences of effects. For example, the information could have been used to explore the effects on Gitxaala's rights, including culture and governance, if an oil

spill contaminated a House Territory's important and unique harvesting areas.

2813. Northern Gateway's comment at paragraph 872 of its argument that the way to address concerns raised by Gitxaala is to provide fair and accurate information begs the question of whether adequate information has been provided. This highlights one of the fundamental flaws that Gitxaala has identified in the process: a lack of adequate information to understand and assess effects.

2814. Indeed, Northern Gateway's criticisms of Gitxaala's expert evidence ignore the fundamental point that Gitxaala has attempted to stress throughout the JRP process, including prior to the issuance of the Hearing Order; that is, that it is necessary to first understand potential effects of the Project before effective mitigation measures can be identified. [*Exhibit D72-22-07 (starting at adobe p. 25) to D72-22-09, Exhibit D72-22-12 (starting at adobe p. 4) to D-72-22-13*]

2815. You need to know what the effects are before you can decide how to mitigate them.

2816. Gitxaala echoes the submission of counsel for BC Nature and Nature Canada that the onus is on Northern Gateway to provide the information necessary to assess risks and identify mitigation. Without sufficient information to identify impacts, no party, including Gitxaala's experts and, indeed, the Panel, for that matter, could identify effective mitigation measures or undertake a risk assessment, and nor should the intervenors have the onus to do so.

2817. Intervenors simply do not have the budgets necessary for them to do the Proponent's work.

2818. The point that Northern Gateway appears to have missed is that Gitxaala has been concerned since the Application was filed in 2010 about the lack of adequate information to assess impacts and to identify mitigation measures. This was clearly stated in Gitxaala's correspondence and submissions in the fall of 2010 when it identified gaps in Northern Gateway's Application. [*Exhibit D72-22-07 (starting at adobe p. 25) to D72-22-09, Exhibit D72-22-12 (starting at adobe p. 4) to D-72-22-13*]

2819. Despite these information gaps being identified early in the process, Northern Gateway chose not to address them in supplementary filings and, in that context, I submit that it is disingenuous for them to complain that Gitxaala's

- experts did not fix the gaps either.
2820. Information relevant to assessing potential effects and mitigation measures is not something that can wait for future regulatory stages. It is the very essence of an environmental assessment. If there is insufficient information in the Application materials, including the reports and IR responses and TDRs, to assess effects and mitigation, what is the point of this process in which we have all been engaged?
2821. The fact that additional information will come later, as Mr. Neufeld noted in his oral argument, is not a solution to the fundamental problem that has arisen in this process. That fundamental problem is a lack of information to understand and assess potential effects, identify mitigation measures for them and determine their significance as required in this process.
2822. It is not a planning issue, as Mr. Neufeld suggests, but rather, an assessment issue. The assessment is supposed to take place here in this process, not in some future planning exercise.
2823. The fact that there may be sufficient time, as Mr. Neufeld stated, for Northern Gateway to undertake all of the additional studies and planning that it has chosen not to do to date is also not a solution to the problem. Obtaining information necessary to assess impacts and mitigation after the environmental assessment is undertaken cannot possibly help inform the Panel in your deliberations.
2824. It also provides no comfort to the many intervenors like Gitxaala who have had to trust that this assessment process will fully consider and assess project effects because it means that, if a decision to issue a certificate is ultimately made on this Project, it will have been based on incomplete information and, hence, an incomplete assessment.
2825. There is no wilful blindness on the part of the intervenors on this point, as Mr. Neufeld suggests. The reality is that future processes, information gathering or planning, cannot remedy deficiencies in this process if those deficiencies undermine the ability of you to assess impacts.
2826. Nowhere are those deficiencies more stark, in my submission, than in relation to the effects and recovery options if dilbit sinks in marine environments.

2827. We are not talking about minute details about emergency planning or procedures that are missing. We are talking about fundamental information about how spilled bitumen would behave -- sorry, spilled diluted bitumen would behave and what, if any, recovery strategies would be available to deal with that situation and how effective those strategies are likely to be.
2828. Again, these are assessment issues, not planning issues.
2829. Northern Gateway is proposing to bring a product that has never been transported through Gitxaala Traditional Territory before and suggesting that it will confirm later, after Project approval, what will happen if it spills. This is not acceptable to Gitxaala.
2830. I echo Mr. Robinson's submission that it is not whether more information about project effects would convince opponents to support this Project, the issue is whether there is sufficient information for you, the Panel, to assess effects and the effectiveness of proposed mitigation, determine significance and ultimately decide whether this Project is in the public interest.
2831. Gitxaala and many intervenors are concerned that the Panel does not have sufficient and credible information to undertake an assessment that could justify a recommendation for approval of this Project.
2832. I'd now like to talk about assessment of impacts to Aboriginal rights. And this of course is the most important issue of all for Gitxaala. Those rights include not just harvesting rights as Northern Gateway seems to believe, they encompass Aboriginal title, self-government rights that include the rights to decide how their lands and resources will be utilized and cultural aspects of those rights.
2833. We're not in a process here to prove those rights, but Gitxaala has clearly asserted those rights and it is the impacts on those asserted rights that needs to be assessed in this process.
2834. And I would submit that Northern Gateway's position on Gitxaala's Aboriginal rights is inconsistent in both its written and oral evidence. On the one hand, Northern Gateway stated at paragraph 1222 of its written argument that it decided, quote: "*not to debate the nature and extent of asserted rights*" -- end quote -- despite the fact that considering the effects of the Project on Aboriginal rights is one of the requirements of the scope of the factors and other documents

which set out the requirements for this process.

2835. On the other hand, after saying it doesn't debate the nature and extent of rights, it implicitly challenges and tries to cast doubt on Gitxaala's rights at paragraph 1267 of its argument, by referring to, quote: "*The expansive nature of the rights asserted by the Gitxaala*" which also says are innovative. It raises this challenge in the absence of any evidence contradictory the scope of Gitxaala's Aboriginal rights and without conducting cross-examination on Gitxaala's Aboriginal rights evidence.
2836. It is submitted that there is absolutely no basis for Northern Gateway to suggest that Gitxaala's rights that will be impacted by this Project -- for example in Principe Channel -- that they are too expansive, have no validity or no solid legal foundation.
2837. Gitxaala is not seeking a declaration of title in these proceedings. The extent of its traditional territory is not being adjudicated in this process. What is being assessed are potential project effects on its rights, which include title and self-government rights -- and its asserted rights, I should say.
2838. The uncontroverted evidence filed by Gitxaala shows extensive uses and occupation of areas along the proposed tanker routes and the exercise of jurisdiction in those areas from time immemorial, including through the evidence in the Gitxaala Use Study [*Exhibit D72-12-02, adobe p. 17*], the historical evidence, the various expert reports and most importantly, the evidence of the Hereditary Chiefs.
2839. There is no need to consider the entire geographical scope or extent of Gitxaala's Aboriginal title or rights for the purposes of assessing impacts to them. Just the locations of Gitxaala's reserves alone -- 11 of which are in close vicinity to the tanker routes -- [*Exhibit D72-50-2 at adobe p. 8*] as well as the former village sites that are still occupied and used today, make it clear that Gitxaala has a strong title claim in areas in and around Principe Channel, Banks Island and Pitt Island that could be adversely affected by tanker traffic and oil spills.
2840. As noted in our written submissions, several Northern Gateway witnesses commented favourably on the Gitxaala Use Study. Northern Gateway also took the position that the Use Study confirmed what it already believed to be the case, that Gitxaala extensively used areas such as Principe Channel. [*Transcript Vol. 155, lines 30700 to 30705*] Mr. Neufeld reiterated that in his

oral submissions.

2841. For Northern Gateway to suggest in light of that acknowledgement and understanding that Gitxaala's Aboriginal rights are expansive or innovative is difficult to reconcile, given that the extensive use is clear evidence of Gitxaala's Aboriginal rights, including title.

2842. We urge the Panel to go back to the Use Study and look at the maps of Gitxaala's extensive uses along the tanker routes, around Banks Island, including the composite map at Adobe page 17. *[Exhibit D72-12-02, adobe p. 17]*

2843. It is also difficult to reconcile Mr. Neufeld's comment that Northern Gateway had heard that Gitxaala does not wish to discuss economic benefits with its veiled allegation that Gitxaala is merely asserting its rights as in Northern Gateway's words "a precursor to commercial negotiations". There is absolutely no evidence to support such a contention and it is quite frankly an implied and unwarranted challenge to the sincerity of the many Gitxaala Hereditary Chiefs and members who you heard speak about their concerns about this Project.

2844. It seems clear to Gitxaala that Northern Gateway has not really heard or understood what they've been saying at all.

2845. I now want to discuss comments made by Northern Gateway in relation to consultation. Mr. Neufeld stated in his submissions that Gitxaala was simply wrong to argue that the Crown had not delegated consultation to Northern Gateway.

2846. Gitxaala's position is not argument on this point; it is actually the evidence of the federal government in its response to Gitxaala Information Request 1.1.5, which specifically asked whether any aspects of Crown consultation had been delegated to Northern Gateway.

2847. The federal government's response was that consultation had not been delegated to Northern Gateway. To quote, Canada stated:

*"The Government of Canada has not delegated aspects of its consultation or accommodation obligations to Northern Gateway." [Exhibit E9-21-09, adobe p. 9]*

2848. In its written and oral submissions, Northern Gateway takes the

position that the federal government evidence on questioning was that Crown consultation has been ongoing for a long time.

2849.           However, what needs to be made clear is that the Crown consultation that Mr. Stinson-O’Gorman was referencing was consultation in relation to the JRP process and the consultation process only. He provided no evidence to suggest that there has been any Crown consultation on the potential effects of the Project on Gitxaala’s Aboriginal rights. [*Transcript Vol. 173 at lines 26422 to 26425; Vol. 174 at lines 26621 to 26626 and 27427 to 27440*]
2850.           It is that substantive consultation that the Crown is constitutionally required to undertake, but has yet to even commence. It is not too early, as Mr. Neufeld suggested, to assess the adequacy of the Crown consultation process, given the Crown’s approach of leaving all substantive consultation to the end of the process.
2851.           For the reasons and case authorities set out in our written argument, it is too late to start substantive consultation at the end of a process. It is therefore not premature for the Panel to assess the adequacy of the Crown’s consultation process at this juncture. The Crown’s consultation process is fundamentally flawed and inconsistent with the case law.
2852.           Northern Gateway cited the *Taku River Tlingit* case at paragraph 1159 of its argument to support its contention that environmental assessment processes can discharge the duty to consult.
2853.           Although that may be the case in some situations, it’s important to note that the assessment process at issue in *Taku River Tlingit* included a Project Committee, working groups and technical sub-committees with government and First Nations representation, including a group that was specifically tasked to deal with Aboriginal concerns. [*2004 SCC 74 at paras. 6 and 7*]
2854.           Such an approach has not been taken by the Crown in relation to this Project. There has been no attempt by the Crown to address Gitxaala’s concerns in this process to date.
2855.           This JRP process is not a consultation process, it has been clear from the outset that the JRP is not conducting consultation. This is a quasi-judicial process, not a consultation process. To suggest that an adversarial process, including rights of cross-examination, could constitute consultation reveals, in my



- submission, a curious understanding of what it means to engage in the process of reconciliation.
2856. Gitxaala disagrees with Mr. Neufeld's suggestion that the Federal Court decision in the *Gitxaala* case in relation to the TERMPOL process for this Project stands for the proposition that the Panel cannot assess the adequacy of Crown consultation. The Court's only holding was in relation to whether it was appropriate for the Court to intervene in the JRP process before it was completed, because of the alleged failure of the Crown to consult about the TERMPOL report.
2857. The Judge stated that there was nothing before him to suggest that the JRP would not listen fairly to Gitxaala's concerns, weigh all of the evidence and come to its own conclusions. [2012 FC 1336, at para. 54] Those conclusions, I submit, can include conclusions on the adequacy of the Crown consultation process.
2858. It is also important to note that Northern Gateway also mischaracterizes the findings in the *Gitxaala* TERMPOL case at paragraph 1163 of its argument. The Court did not find that the JRP -- sorry -- the JRP process is sufficiently robust as a consultation process, as suggested by Northern Gateway.
2859. Rather, the Judge's view was that the JRP process was sufficiently robust to deal with and accommodate any weaknesses in the TERMPOL process and that therefore, there was no need for him to intervene at that time. [2012 FC 1336, at para. 51]
2860. The Court left it open to be decided another day, whether Crown consultation had been sufficient in relation to this Project. [2012 FC 1336, at para. 54]
2861. So it looks like I will have time to get to a few of the miscellaneous issues. I wanted to just comment on an assertion by Northern Gateway in its written argument that this project is, quote:
- "...once in a generation opportunity to diversify the market for oil."*
2862. I submit that this assertion is not supported by evidence on the record and indeed, it is simply not the case that the Northern Gateway Project is the only

- opportunity to diversify the market given that other projects had been proposed for the same purpose. There is no evidence to suggest that the choice is between approval of this Project on the one hand or acceptance of a risk of an economic black swan event on the other hand, as Mr. Neufeld suggests.
2863. This Project, as all projects, has to be assessed on the basis of these specific risks posed by the specific project at issue. It may be that some projects pose more risk than others, given their geographical location or other factors and are therefore, not in the public interest. The risks of this Project cannot be ignored or downplayed because of economic considerations. If they could, why conduct an environmental assessment at all?
2864. Gitxaala respectfully disagrees with Northern Gateway's assertion that the scope of factors for this Project provides guidance only. CEEA 2012 and the scope of the factors themselves make it clear that the scope of the factors set out the issues that must be addressed in the application and in this process. We set out the reasoning for that position in our written argument.
2865. Northern Gateway, on the other hand, does not provide a rationale for its position and merely relies on a statement by Mr. Green on this point, and with the greatest of respect to Mr. Green, he is not in a position to provide legal interpretations of the requirements of this process.
2866. Northern Gateway noted in its written argument that other types of vessels already regularly use the confined channel area and Open Water Area and that no other operator in the area has committed to the same types of measures that Northern Gateway is proposing.
2867. However, it is critical to note that no other operator is introducing the level and degree of risk that Northern Gateway is proposing to introduce into the CCAA and OWA, both in terms of vessel size and cargo because no other operators are operating very large crude containers and other large oil tankers in the area.
2868. In closing, Gitxaala is hopeful that the Panel will seriously consider its perspectives and give appropriate weight to its concerns as well as be ever mindful of the purpose and requirements of this very important process.
2869. As I stated at the outset, there is much at stake for Gitxaala. The people of Gitxaala urge you to recommend against approval of this Project for the

sake of their current and future generations.

2870. And before I close, I just want to echo all of the compliments by my friends and the other parties to the JRP staff for their tremendous help throughout the process. I will remain forever in awe of Ms. Niro's ability to pull up exhibits and I think read minds. And I also thank the Panel Members for your courtesy shown to us in this process and I wish you the very best in your deliberations.

2871. Thank you.

2872. **THE CHAIRPERSON:** Thank you, Ms. Kyle.

2873. The Panel has no questions. Thank you very much for your submission and also, I thank all parties for your kind comments about the staff. They're entirely deserved.

2874. I'll call next Gitga'at First Nation.

--- (A short pause/Courte pause)

2875. **THE CHAIRPERSON:** Good morning. Mr. Hill, are you going to be speaking first or entirely?

2876. **MR. HILL:** Yeah, I'm going to be -- I'll be starting and my friend, Mr. Ross, will also be having some comments.

2877. **THE CHAIRPERSON:** Thank you very much.

2878. Please go ahead, Mr. Hill.

--- **ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. HILL AND MR. ROSS:**

2879. **MR. HILL:** Good morning, everybody. My name is Cam Hill and my counterpart here is Michael Ross. We're here today to speak on behalf of the Gitga'at Nation.

2880. Before I do so, I would like to take the time to make sure that I thank the Kitsumkalum and Kitselas Nation for allowing us to be on their territory and for all of us to be here today.

2881. First off, I'd like to thank the Panel, the Proponent and all the intervenors for their time in the ongoing participation in this review. In addition, it has been done by the -- done by intervenors before me, I'd like to thank the Panel's staff, as I understand that you have been incredibly helpful to help us throughout this process.
2882. Second, I'd like to make it clear that the Gitga'at are not opposed to development in general but just as the Proponent only considered alternatives that met the purpose of its proposed Project, we too can only consider projects that meet and do not undermine the values and beliefs of the Gitga'at Nation.
2883. And just as the Proponent dismissed those alternatives, we too must dismiss this Project, as it does not meet the purpose and the needs of the Gitga'at people and in our opinion, the people of Canada. It is clear from the record that there have been many issues raised.
2884. As the Proponent stated on Monday, the Panel has been provided with a vast number of arguments, not all of which have been accurately reflecting the evidence and record.
2885. In our respectful opinion, despite the length of the Proponent's arguments, it is unfortunately subject to exaggerations, misinterpretations and the misuse of information in evidence that's been on record. We take this time to note that our comments are not meant to be taken personally and, when we disagree, we are doing so with the utmost respect for all of the parties involved.
2886. Because of the time limit, we will only address the issues which we believe are necessary to address at this time. But our silence is definitely not acceptance and we have full confidence that the Panel will be reviewing the documents with such accuracies in mind.
2887. I would like to address the issue of consultation and engagement and respond to the Proponent's statements regarding our relationship in 2011 under the rescinded agreement and the possibility of re-establishing a positive relationship. *[The Letter Agreement was signed in 2011. At page 256, para 890, of the ENGP Written Argument, the Proponent has stated that is would like to pick up from where the parties were in 2010. In Transcript Volume 163, para 10490, the Mr. Roth refers to the Proponent wanting to get back to where the parties were in 2011.]*

2888. In both the Proponent's written and oral arguments, it has been repeatedly represented that, in 2010 and 2011, there was a relationship between the Proponent and the Gitga'at people in support of this Project. *[NG aid to cross Gitga'at]*
2889. It is also intimated that, had we rescinded the agreement in 2011 -- had we not rescinded the agreement in 2011, that many of our concerns would have been addressed or well on their way to being done so by now. *[Transcript Volume 176, paras 250 and 329]* On behalf of the Gitga'at, I cannot agree with this.
2890. Throughout this process, our community has opened its doors in an unprecedented manner welcoming all parties into our community in hopes that it would provide some understanding of the way of the Gitga'at life. This also includes the Proponent.
2891. In good faith, the Gitga'at entered into agreement to engage in the review process and have discussions with the Proponent but it was a hard decision for us and it did not sit well with many of our people. *[Transcript Volume 163, para 10465]*
2892. The decision to rescind the agreement, however, was the easy part. No one changed our minds or influenced us when we decided that we could not move forward with the Proponent. We never supported the Project, which is one of the reasons why we believed rescinding the agreement was the right thing to do.
2893. Since that time, our people have witnessed their views and beliefs, they've been criticized, questioned, both for the validity and the significance, misrepresented or alternatively simply disregarded. *[For example, the Proponent's criticism of Dr. Gill's and Dr. Ritchie's report and approach to predicting effects, calling it "unfortunate" (ENGP Final Argument, pp. 255-256, paras 883-889)]*
2894. They have seen those experts who expressed these beliefs stand up for our people criticized and blamed. And while we understand that it is nothing personal and it is simply the process, it leaves little room for trust or belief that, moving forward, the Proponent approach towards the concerns of our people would be any different. *[This skepticism is increased in light of the Proponent's statements of how they are going to treat future information, such not*

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*incorporating any further information into the Marine Fisheries TDR (Exhibit B226-2, Northern Gateway Pipelines Inc. Written Argument (“ENGP Written Argument”), page 222, paras 754-755), and their belief that further information on impacts will only support their current conclusions (Transcript Volume 112, paras 10264-10278).]*

2895.           So in response to the Proponent, we respectfully state that there is no relationship. This -- a relationship requires trust and understanding, which we do not believe is present.

2896.           As the Panel is aware, a monetary evaluation is only one part of the economic assessment and only provides a minimum and partial replacement value. It does not provide an estimate of the actual worth of the environment and resources to the Gitga’at. This is precisely why the Proponent’s assessment and characterization of the costs and benefit of this Project are so flawed.

2897.           In its final written and oral submissions, the Proponent has repeatedly endorsed the cost benefit analysis put forward by its experts. Specifically, the Proponent states that the CBA was well received quoting a statement made by Dr. Chris Joseph during cross-examination. [*ENGP Written Argument, p. 66, para 204*]

2898.           However, the Proponent failed to include the rest of the quote where Dr. Joseph states that, while the second version of the Proponent’s CBA is an improvement, there are still important gaps, a sentiment which is subsequently echoed by Dr. Robin Gregory. [*Transcript Volume 165, para 13895-13901*]

2899.           In addition, Dr. Joseph concludes that nothing presented has changed the substance of their conclusions. [*Transcript Volume 165, para 13898*]

2900.           The Proponent also misused evidence of Dr. Gregory regarding passive use values stating that he had questioned their utility. [*Transcript Volume 176, para 81, and ENGP Written Argument, p. 72, Para 29*] What Dr. Gregory actually stated was that 20 years ago when the idea was still in its infancy, passive use values may not have applied in every situation. [*Transcript Volume 165, paras 13639-13642*]

2901.           However, in their report and in cross-examination, Dr. Gregory and Dr. Joseph were clear that passive use values do apply here and are necessary for any CBA involving the Gitga’at. [*Exhibit D-71-7-3, Gitga’at Economic Impact*

*Report, p. 72]*

2902. The lack of understanding and assessment of passive use values, despite Dr. Mansell's recognition of their importance, is also one of the identified gaps in the Proponent's CBA. *[Transcript Volume 165, para 13898]*
2903. In fact, the Proponent specifically states that passive values were included in their CBA. *[ENGP Written Argument, p. 70, para 212]* We respectfully disagree.
2904. As recited in the Proponent's final arguments, Mr. Anielski expressly recognized that many First Nations' values cannot be monetized. He further clarified that, to assess these values, the Proponent needed information to understand what it was talking about. *[Transcript Volume 77, para 25633, as quoted in ENGP Written Argument, p. 70, para 212]*
2905. Our attempt to provide that information to the Proponent in written and oral evidence, as well as responses to information requests, was met with criticism and rejection.
2906. In response to the Proponent's disagreement of the reported values of our harvests set out in the CBA, *[See D71-7-3, Gitga'at Economic Impact Report]* such as our salmon, we state that our numbers are consistent with those reported by the British Columbia Ministry of Agriculture. *[Exhibit D71-33-1 (Response to Undertaking 79) and Exhibit 71-7-3 (Gitga'at Economic Impact Report)]*
2907. We would also note that Mr. Anielski, for the Proponent, stated that gaps between the assessment of a proponent and a First Nation are "fair". *[Transcript Volume 77, para 25633, as quoted in ENGP Written Argument, p. 70, para 212]*
2908. The Proponent also took issue that not all of the values presented in our CBA are directly attributable to the Gitga'at. We have addressed that in our written final arguments the implications and importance of these total values and why they need to be a part of the CBA regardless of if they are attributable to us or to Canadians in general. In our opinion, this further increases the significance of the Project's impacts on the economic interests.
2909. In its final argument, the Proponent comments that a large portion of the revenue to the Gitga'at from our traditional territory is from traditional

- harvesting. *[ENGP Written Argument, p. 74, para 224]* This should not be surprising given our consistent statements that our cultural traditions are of primary importance to all Gitga'at people. *[For example, see Transcript Volume 24, paras 14734 and 14968]*
2910. The Proponent also remarked that we see very little of the other revenue from our traditional territory. *[ENGP Written Argument, p. 74, para 224]* This neglects the clear sentiment expressed repeatedly by our people, including myself, that we are a rich people for the simple fact that we have a way to self-sustain ourselves within our community. We do, however, commend the Proponent's counsel for recognizing that the riches of our culture cannot be traded off for things such as jobs. *[Transcript Volume 163, para 10341]*
2911. Further, the Proponent argued that Dr. Gregory did not take into account the so-called "long-term benefits" offered by the Proponent. *[ENGP Written Argument, p. 73, para 220]* The reality is that these are not benefits to our community, nor are they what we consider long-term when compared to the hundreds of years of benefits that our environment and our natural resources have provided to our people.
2912. The Proponent's statement that the compensation is at the bottom of the benefits offered does not ring true given the many comments that the Proponent has made focussing solely on jobs and money. *[For example, statements of Mr. John Carruthers in Transcript Volume 77, paras 25565-25566]*
2913. For the Gitga'at people, jobs and money are not where we consider ourselves rich; it's how we look after the land and how we take the teachings and the learnings that have been passed down to us for generations.
2914. In response to the Proponent's assertion that the Project will benefit and deliver unprecedented opportunities to First Nations *[ENGP Written Argument, p. 14, para 19]*, it is our opinion that the First Nation, as a recognized self-governing body, should be the one to determine what consists of an opportunity, not the Proponent. This is especially true where the First Nation, such as the Gitga'at, has repeatedly stated the opposite.
2915. In addition, the Proponent's claim that "participation in the Aboriginal ownership program is risk free" *[ENGP Written Argument, p. 41, para 121]* ignores all of the concerns, the impacts and risks put forward by intervenors, including the Gitga'at, which again raises the concern of whether or not the



- Proponent is actually taking our concerns into account.
2916. Nothing presented by the Proponent has changed our opinion that the benefits set out by the Proponent, including spill response jobs and equity ownership, are in complete conflict with Gitga'at values and culture. This is discussed also in our written arguments.
2917. As set out in its final argument, it is clear that the Proponent blames the recession of the 2011 agreement on the Gitga'at experts, in particular, Dr. Gill and Dr. Ritchie. *[ENGP Written Argument, p. 256, para 889]*
2918. However, we have been clear in our original letter to the Proponent in 2011 *[Transcript Volume 163, paras 10463-10470]*, in cross-examination *[Transcript Volume 163, para 10031]* and in our final argument that this is simply untrue.
2919. The fact that the Proponent continues to make allegations suggesting that in any way that we are -- that we were unduly influenced by our experts despite the evidence put forward, including the statements that were made under oath, *[For example, see Transcript Volume 163, paras 10037-10040]* is unfortunate and offensive both to our experts and to us.
2920. Instead of acknowledging the effects observed and reported by our experts, the Proponent has chosen to brush them aside. *[ENGP Written Argument, p. 224-225, para 762]* This minimizes our beliefs and views which we, in good faith, had shared with the Proponent in this process.
2921. We would also note that as reported by the Proponent in its written final arguments, we are not the only ones who believe that a spill is inevitable *[ENGP Written Argument, p. 291, para 1021]* or that this Project will result in adverse impacts. We are not the only group who did not complete a benefits agreement with the Proponent nor the only ones opposing this Project, yet we seem to be the only group that the Proponent is alleging has been unduly influenced by our experts against the Project.
2922. We appreciate the Proponent's position that it is anxious to develop a positive relationship with the Gitga'at *[ENGP Written Argument, p. 256, para 890]* and its -- and its recognition of the Gitga'at as -- Gitga'at's sincere concerns about the Project, which we still have. *[ENGP Written Argument, p. 256, para 888]*

2923.            However, we are still waiting for the Proponent to actually act on this sentiment and treat our concerns and our beliefs as realistic.
2924.            In its presentation on Monday, the Proponent argued that it has provided sufficient evidence to the Panel to make a decision and recommend the Project. *[Transcript Volume 176, para 112]* This is despite the many criticisms and challenges by intervenors and credible experts on said sufficiency. This is a common belief held by numerous intervenors.
2925.            Our Nation also believes that despite the significant direction and guidance provided by the Panel regarding the scope of the factors and issues that the Proponent's information contains huge gaps and inadequacies. As discussed by the Proponent, we recognize -- although we may not believe it to be fair -- that the NEB has a set procedure to follow which allows disclosure and filing of information over time and that all information should be taken into consideration. *[Transcript Volume 176, paras 61-63]*
2926.            However, we would argue in response that, in the same way, the Proponent should have taken the evidence that we have filed throughout this proceeding into account rather than brushing the reported impacts aside as being not significant.
2927.            One of the main errors in evidence put forward in the Proponent's final arguments is in respect to the use of Drs. Gill, Ritchie and Satterfield and Dr. Gregory on spill assessment evidence. *[ENGP Written Argument, p. 74, para 222]* Instead of going through all of the reports, we will only point out a few key points and would kindly ask the Panel to review the assertions made by the Proponent with this in mind.
2928.            As reflected in the actual expert reports, neither the social impacts *[As reported in Exhibit D71-7-2, Gitga'at Social Impact Report]* nor the cultural impacts *[As reported in Exhibit D71-7-7, Gitga'at Cultural Impact Report]* reported relied upon calculations by Dr. Gregory, Dr. Chan and, for her report, Dr. Satterfield stated this during her cross-examination by the Proponent. *[Transcript Volume 163, paras 9803-9813]*
2929.            Nowhere in the report drafted by Drs. Gill and Ritchie does it state that their conclusions are based upon spill evidence by Dr. Gregory, Dr. Chan or Dr. Bocking. *[See Exhibit D71-7-2, Gitga'at Social Impact Report]* This report

stands on its own.

2930. In addition, none of the reports assess solely based on a worst case scenario. For example, Satterfield provided impacts based on three different spill scenarios at different volumes. *[Exhibit D71-7-7, Gitga'at Cultural Report, p. 43, Table 2]*
2931. And lastly, the economic impacts reported by Dr. Gregory and the cultural impacts reported by Dr. Satterfield are based on one-time spills and not -- not re-occurrences every 11 years. *[Neither Exhibit D71-7-3, Gitga'at Economic Impact Report or Exhibit D71-7-7, Gitga'at Cultural Impact Report, state that the effects reported are based on spills occurring every 11 years]*
2932. In response to the Proponent's criticism on the evidence put forward by our environmental experts, that is, the LGL team, we argue that the Proponent has misstated some of the information. *[For example, at page 254, paragraph 879 of the Proponent's final written arguments, the Proponent only provides part of the quote by Mr. Demarchi regarding the realism of LGL's spill scenario. The Proponent failed to include the rest of Mr. Demarchi's statement in Transcript Volume 163, paragraphs 9211-9212, stating that the scenario provided was a possibility, and that in reality, a spill could result in a greater coverage than 1500 kilometres]*
2933. Again, we respectfully ask the Panel to review the report and evidence with this in mind. We have provided a reference as an example in the hard copy of our oral reply for the Panel's convenience.
2934. It is these types of unfortunate misunderstandings that lead us to concerns for us as to whether or not the Proponent is actually taking our evidence seriously.
2935. The Proponent's final argument, including their opinion that the impacts of oil spills on Aboriginal communities are not long term.
2936. In support of this proposition, the Proponent cites in its final argument research compiled by J.A. Fall, in Alaska, after the Exxon Valdez oil spill, which the Proponent states provides evidence that Aboriginal communities "did not endure lasting effects from the Exxon Valdez oil spill". *[ENGP Written Argument, p.236, paragraph 809]*

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2937. This report was also referred to by the Proponent's reply evidence [*Exhibit B83-17*] and is in the oral testimony of Mr. Chris Wooley. [*Transcript Volume 138, Paragraphs 8909 – 8910*]
2938. We reviewed the J.A. Fall research cited in the Proponent's reply evidence. That research was informative but, unfortunately, we found that it clearly did not support the Proponent's conclusion, in paragraph 809 of their final argument, that the Exxon Valdez oil spill did not have long-lasting effects of Alaskan Aboriginal communities.
2939. The Fall research does speak to the incredible resiliency of Alaskan Aboriginal communities that we -- that we admire and we can totally relate to. However, despite such resiliency, the 2006 Fall research which makes specific reference to the state of recovery does find multi-faceted long-term impacts from the spill contrary to the Proponent's assertion in the final argument. The body of the research by Fall and others certainly does suggest that there were long-term social and cultural impacts of the Exxon Valdez oil spill on Alaskan Aboriginal communities.
2940. The reply evidence [*Exhibit B83-17*] filed by the Proponent and cited in their final written argument [*ENGP Final Written Argument, paragraph 807*] also acknowledges long-term cultural impacts that go deeper than just the amount of food harvested.
2941. Therefore, we do not agree with the Proponent's assertion in their written argument that Alaskan communities did not endure lasting impacts of the Exxon Valdez oil spill and the literature before the Panel also does not support that assertion.
2942. Further, we suggest that the evidence before the Panel supports conclusions that we have submitted that oil spills have significant long-term impacts to the Gitga'at culture, its social wellbeing and the economy and recovery is at best uncertain.
2943. I have no doubt that the Panel is well aware of the Gitga'at position on other impacts of oil spills and it is discussed in our written arguments, so I will not go through all of that again. I simply want to emphasize that our respectful opinion that, in the event of a spill of any size, even as small as 5,000 metres cubed, there will be an adverse and significant harm to our people and our environment and nothing that the proponent has put forward has changed our

belief of this and we are quite certain that many others hold that same point of view.

2944. I will now turn it over to my counterpart, Michael Ross.

2945. **THE CHAIRPERSON:** Thank you, Mr. Hill.

2946. **MR. ROSS:** In paragraph 1450, the first paragraph of its conclusion to its written argument, Enbridge says:

*“There are two basic questions to be addressed in the Panel's report to the Governor in Council. These are: whether the Project is in the Canadian public interest, and whether the Project is likely to cause significant adverse effects on the environment.” [ENGP Written Argument, p. 388, para 1450]*

2947. As with its answer to the first question, the answer to the second question Enbridge says, at paragraph 1452 is clear. It says:

*“...with the hundreds of commitments and mitigation measures proposed, the Project is not likely to cause significant adverse effects on the environment.” [ENGP Written Argument, p. 388, para 1452]*

2948. The Gitga'at respectfully submit that the Panel has evidence before it that shows that the Project is, contrary to Enbridge's claim, likely to cause a range of significant adverse effects on the environment. To understand Gitga'at's position on this, we'll have to go a little bit further in reply on this.

2949. So to appreciate the broad range of the Project's potential effects on the environment and thus to understand the full import of Enbridge's answer to the second question, it is necessary to look to the *Canadian Environmental Assessment Act*, simply the Act. [S.C. 2012, c. 19, s. 52]

2950. I'm not going to quote long sections from the Act. I just have a few things because I know you know it.

2951. Section 2(1) of the Act defines environment as follows:

*“'environment' means the components of the earth and includes*

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*a) land, water and air, including all layers of the atmosphere;  
all organic and inorganic matter and living organisms...*

2952. That's (b). And (c):

*"...the interacting natural systems that include components  
referred to in paragraphs (a) and (b)."*

2953. For the sake of convenience, I'm going to refer to environment so defined as biophysical environment.

2954. Section 2(1) of the Act also stipulates that "*environmental effects*", the phrase:

*"...means the environmental effects described in section 5."*

2955. So we need to go to section 5.

2956. Section 5(1) lists some of the environmental effects that are to be taken into account by the Joint Review Panel for purposes of *The Act* in relation to the Enbridge Northern Gateway Project.

2957. Subsection 5(1)(c) provides that these include:

*"(c) with respect to Aboriginal peoples, an effect occurring in  
Canada of any change that may be caused to the environment  
on  
(i) health and socioeconomic conditions,  
(ii) physical and cultural heritage,  
(iii) the current use of lands and resources for traditional  
purposes, or  
(iv) any structure, site or thing that is of historical,  
archeological, paleontological..."*

2958. There we go; I'll trip over that one.

*"...or architectural significance."*

2959. It's like trying to say molybdenum sometimes.

2960. Again, for the sake of convenience, I'll sometimes refer to this class of environmental effects as second-level environmental effects. Accordingly, we will also sometimes refer to effects on the biophysical environment as first-level environmental effects. This is just for convenience and hopefully maintain some clarity.
2961. Enbridge's overall conclusion that its Project is not likely to cause significant adverse effects on the environment logically presupposes its prior conclusions that its Project is not likely to cause significant adverse second level environmental effects on Aboriginal peoples generally and thus it is not likely to cause them on the Gitga'at people specifically.
2962. Illogically predisposes then its prior conclusions that its Project is not likely to cause significant adverse second level environmental effects on, among other things, Gitga'at health, Gitga'at socio-economic conditions, Gitga'at cultural heritage and Gitga'at current use of lands and resources for traditional purposes.
2963. Despite the fact that Enbridge refers to the Gitga'at 65 times in its written argument, and despite the fact that its overall conclusion logically presupposes it, it never explicitly states or argues that its Project is not likely to cause significant adverse effects on Gitga'at health, socio-economic conditions, cultural heritage, or current use of lands or resources for traditional purposes.
2964. What this means is that if Enbridge's presuppositions about its Project second level environmental effects on the Gitga'at are not implied or otherwise adequately supported by other claims it makes in its argument, its written argument, then they amount to nothing more than unwarranted assertions. So let's look at their argument.
2965. Sections XII and XIII of Enbridge's argument are the most likely places in which to locate support for Enbridge's presuppositions. Section XII concerns the environmental and socio-economic effects of marine transportation. *[ENGP Written Argument, starting at page 196]* This is their heading.
2966. Section XIII concerns marine emergency preparedness response and consequences of potential spills. *[ENGP Written Argument, starting at page 226]*
2967. For present purposes, the Gitga'at wish to focus the Panel's attention on Section XII of their written argument which concerns itself with the first and

second level environmental effects that may attend the routine operations of tankers required by Enbridge's Project. They wish to focus it even more particularly on what Enbridge has to say about their -- that is routine tanker operations second-level effects.

2968. In paragraph 763, the final paragraph of Section XII of their written argument, Enbridge lists four key findings that says should be drawn from its discussion in respect of ordinary tanker operations. The first is this:

*"marine transportation associated with the Project is unlikely to cause significant adverse effects on the environment."*  
*[ENGP Written Argument, p. 225, para 763]*

2969. As is clear from what it says in the previous paragraph, 762, Enbridge is claiming that the marine transportation associated with the Project is unlikely to cause significant adverse effects on "the biophysical and human environment."  
*[ENGP Written Argument, pp. 224-225, para 762]*

2970. Assuming that by effects on the human environment Enbridge means to include second-level environmental effects, the question naturally arises, what is the basis for Enbridge's claim that project-related tanker operations are not likely to cause significant adverse second-level environmental effects.

2971. To answer this question we have to look at the approach Enbridge adopted for its own environmental and socio-economic assessment, ESA for short, of its Project-related shipping -- tanker shipping.

2972. Enbridge made the deliberate decision to rely on an impacts pathways approach to determining the effects of its Project related marine transportation on the environment. One of the advantages Enbridge believes it gained by doing so is that it was thereby free from having to collect the baseline data it would otherwise have needed to conduct an adequate environmental and socio-economic assessment of marine tanker effects. *[ENGP Written Argument, pp. 197-200, paras 655-662]*

2973. A further advantage Enbridge confidently claims for its adopted ESA approach is that the future collection of baseline data will not change its conclusion that its Project's introduction of tankers into the waters off B.C.'s coast is not likely to cause significant adverse environmental effects. *[ENGP Written Argument, p. 199, para 661]*



2974. Enbridge's list of plausible effect pathways is short. At paragraph 659 it explains:

*“There are only a few effect pathways through which routine marine activities could result in effects to marine biota or human use. Potential impact pathways considered in the assessment for marine transportation include disturbances associated with vessel presence or noise, collisions or conflicts with moving vessels, wake effects on shorelines, and vessel emissions or discharges.” [ENGP Written Argument, p. 198, para 659]*

2975. In the end, Enbridge identifies only three effects of potential concerns. At paragraph 667, it states:

*“Northern Gateway identified vessel collisions with marine mammals, underwater noise effects on marine mammals, and increased conflicts with fishers, as the effects of potential concern. Mitigation and protection plans, combined with environmental monitoring, have been committed to by Northern Gateway for all three of these effects.” [ENGP Written Argument, p. 201, para 667]*

2976. Thus, Enbridge sums up the key findings of its marine ESA at paragraph 663, and I quote:

*“Routine operations of vessels calling at Kitimat Terminal would have little effect on the marine environment and use of that environment by people. No effects would be significant and all could be effectively managed through adherence to existing regulations, international guidelines, best practices and the mitigation and protection measures committed to by Northern Gateway.” [ENGP Written Argument, p. 200, para 663]*

2977. It is noteworthy, the Gitga'at submit, that while Enbridge's ESA concerned itself in part with identifying and assessing the effects of tanker transport on human use of the marine environment and concluded that these effects would not be significant. It did not concern itself similarly with

identifying and assessing the second level effects on any coastal First Nations health, socio-economic conditions, cultural heritage, or current use of lands and resources for traditional purposes.

2978. At paragraph 670 of Section XII of its written argument, Enbridge states that it ruled out significant human health effects resulting from its tankers' effects on air quality. That is the extent of what it has to say about the effects of tanker transport on health. [*ENGP Written Argument, p. 201, para 670*]

2979. Having concluded that its Project's introduction of tankers into the marine environment would not result in any significant effects on human use of that environment, [*ENGP Written Argument, p. 200, para 663*] Enbridge apparently saw no reason to say specifically that it would not result in any significant effects on Gitga'at current use of its marine environment for its traditional purposes.

2980. The Gitga'at submit that Enbridge is assuming, without argument, and thus without concern for what the facts might say, that the significance of the effects of Enbridge's tanker transport on human use -- and that is human use considered abstractly without regard to any particular community or traditional or other purposes. Anyway, that the significance of the effects of Enbridge's tanker traffic on human use wholly determines the significance of effects of its tankers on Gitga'at use of its marine environment is governed by its traditional purposes.

2981. Enbridge itself is upfront about the assumption it is making. At paragraph 704 it quotes approvingly from the testimony of Mr. Anderson. And I've added some emphasis, but it's hard to do that in speaking but it is in the written.

2982. So this is from Mr. Anderson's testimony. It says first:

*"So under the Canadian Environmental Assessment Act we need to look at the current use of the lands and those resources. And so we look at -- and..."*

2983. He says:

*"...that includes traditional uses, uses of the resources."*

2984. It includes them.

*"So that was the focus of our assessment, that was the scope of our assessment."*

2985.           And he goes on:

*"We looked at whether there would be significant adverse effects on the environment associated with the project and we came to the conclusion that there would not be significant adverse effects on the environment or those who depend on the resources from that environment, [again] **including Aboriginal people.**" [ENGP Written Argument, pp. 209-210, para 704]*

2986.           The Gitga'at submit further that the Panel has before it credible evidence that clearly shows even after having been subject to cross-examination that some of the effects of Enbridge's tanker transport on Gitga'at current use of its marine environment for its traditional purposes are contra Enbridge's assumption not only significant but moreover likely to occur. *[For example, the decline in availability of traditional foods from the decline in population in Hartley Bay as reported in Exhibit D71-7-2, Gitga'at Social Impacts Report, pp. 64-65]*

2987.           Section XII of Enbridge's written argument purports to be about not only the environmental but also the socio-economic effects of marine transportation. At paragraph 761 in its conclusions and key finding subsection Enbridge asserts, I quote:

*"Northern Gateway's assessment of the effects of Project-related to routine shipping operations is unprecedented in Canada, both in terms of the geographic area and **the breadth of biophysical and socio-cultural issues considered.**" (emphasis added) [ENGP Written Argument, p. 224, para 761]*

2988.           Despite what Enbridge purports to be doing and what it asserts to have done, Section XII of its written argument says nothing about the social, economic, or cultural effects on the Gitga'at or any other coastal community, much less their significance or likelihood.

2989.           And yet, Enbridge asks the Panel to adopt its conclusion -- that's Enbridge's conclusion -- by finding that "marine transportation associated with the Project is unlikely to cause significant adverse effects on the environment." *[ENGP Written Argument, p. 225, para 763]*
2990.           The reason for Enbridge's confidence, despite not directly concerning itself in its ESA with identifying and then assessing potential adverse social, economic and cultural effects of tanker transport on the Gitga'at or anyone else is not difficult to deduce. To start, relying on its impacts pathways approach, Enbridge settled upon only three effect of potential concern. *[ENGP Written Argument, p. 201, para 667]*
2991.           Its assessment of these adverse effects concluded that none of them would be significant. *[ENGP Written Argument, p. 200, para 663]* Then, assuming that it follows from this that any adverse, social, economic or cultural impacts resulting from its marine shipping could not be significant, it inferred that none were.
2992.           And so it concluded finally that, quote:
- "marine transportation associated with the Project is unlikely to cause significant adverse effects on the environment."*  
*[ENGP Written Argument, p. 225, para 763]*
2993.           It is significant, the Gitga'at respectfully submit, that section 5(1)(c) of the Act speaks of an effect of any change that may be caused to the environment. It does not limit the underlying change to a change adverse to the biophysical environment. Thus, it does not limit a project's second level environmental effects to only those resulting from its adverse first level environmental effects.
2994.           In consequence, subsection 5(1)(c) allows that Enbridge's Project may introduce change into the biophysical environment which may not, by itself, be considered adverse, which may, nonetheless, cause an adverse effect on for instance, Gitga'at socio-economic conditions, Gitga'at cultural heritage and Gitga'at current use of lands and resources for traditional purposes.
2995.           The Gitga'at also respectfully submit, as a further consequence of the above, that subsection 5(1)(c) precludes the Proponent or anyone else from dismissing the possibility or likelihood of significant adverse second level environmental effects on the Gitga'at people on the basis of a purported

- determination that the introduction of project-related tankers into Gitga'at territory will not or is not likely to have significant adverse first level environmental effects.
2996. Finally, the Gitga'at respectfully submit that Enbridge not only assumed, having assured itself that the introduction of its tankers into the waters off the coast of B.C. would have no significant adverse effects on the biophysical environment. Anyway, they -- we -- the Gitga'at submit that Enbridge not only assumed that its tankers would have no significant adverse effects on Gitga'at society, economy and culture. it also went further to ignore or dismiss credible evidence proving otherwise, particularly evidence submitted by Gitga'at's experts that was subject to cross-examination by Enbridge and others. *[For example, see Exhibit D71-7-2, Gitga'at Social Impact Report, pp. 64-66, and Exhibit D71-7-3, Gitga'at Economic Impact Report, pp. 38-50]*
2997. I don't have the full references here. I'm sorry. We ran out of time. We do deal with this in our argument, but we're talking about the Gill Report, which is D71-7-2, the Gregory Report, the Economic Impacts Report, which is 71-7-3, and the Satterfield Report, which is D71-7-7. And again, we deal to some extent in the argument with this and we don't need to rehearse that here.
2998. Enbridge was so confident in its assumption that even after acknowledging that the Gitga'at had provided a cultural impacts study which manifestly concluded that the introduction of Project-related tankers would likely have significant adverse environmental effects on Gitga'at culture.
2999. It was so confident of its assumption that it had no hesitation asserting that it had "no reason" to believe that such further and future information "would change the conclusions or effects predictions made in the Application". *[ENGP Written Argument, pp. 222-223, paras 755-757]*
3000. It is not merely that Gitga'at respectfully asked the Panel to note that they and Enbridge hold contradictory conclusions as to whether the introduction of Project-related tankers into the marine environment is likely to cause significant adverse second level effects on Gitga'at society, economy and culture. It is more fundamentally that Gitga'at's conclusions rest on the evidence submitted by its experts on social, economic and cultural impacts, while Enbridge's rest on *a priori* inference, in other words, they assume what they prove.

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3001. In final reply then on this point, the Gitga'at respectfully say that the Panel should reject Enbridge's conclusions regarding the significance and likelihood of the introduction of its tankers having adverse social, economic and cultural effects on the Gitga'at people or even other coastal First Nations. And in consequence, rejects its grand claim that its Project is not likely to have any significant adverse environmental effects.

3002. **MR. HILL:** Excuse me, Madam Chair, how much time do I have? The lights -- I can't see that clock there.

3003. **THE CHAIRPERSON:** Just under 24 minutes.

3004. **MR. HILL:** You're pretty precise, 24.

--- (Laughter/Rires)

3005. **THE CHAIRPERSON:** It's at 23.5150.

--- (Laughter/Rires)

3006. **MR. HILL:** Point taken.

3007. The Proponent states that it has attempted to "reduce the risk of any oil spill as close to zero as reasonably practical and to mitigate the consequences for the Gitga'at in the highly unlikely event" of an oil spill. [*ENGP Written Argument, p. 256, para 888*]

3008. In response, we would state two main things. First, while we appreciate the sentiment and effort by the Proponent, the fact is that without identifying, acknowledging and addressing our concerns, which we do not believe has yet been done, mitigation isn't possible.

3009. And second, according to the Proponent's own evidence, as close to zero is still a one in six chance over the life of the Project. In our respectful opinion, that isn't close to zero, especially when life, as we know it, as a Gitga'at people is at risk.

3010. The Proponent claims that the Gitga'at MUA is well used by larger vessels and not pristine, [*ENGP Written Argument, p. 196, para 651*] contrary to the evidence that we have put forward otherwise. [*Exhibit D71-7-3, Gitga'at*

*Economic Impact Report, pp. 4, and 20-24]*

3011. In support of its argument, the Proponent lists statistics of vessels that in the area over the past 35 years. [*ENGP Written Argument, pp. 196-197, paras 651-652*] What the Proponent fails to acknowledge is that the past and current vessel traffic is miniscule compared to what the Project entails.
3012. In 2008, which is the last year cited by the Proponent, there were only as many as 120 vessels reportedly calling at the Port of Kitimat. However, with the Project, it contemplates 440 tanker transits. It should also be noted that the vessel traffic proposed for the Project will be in addition to the existing traffic.
3013. It is not hard to envision how this will change and damage the pristine esthetic of our marine environment, a feature that we rely on for our economic development, especially in this day in age with the downturn of fishing and forestry. [*For example, see D71-7-3, Gitga'at Economic Impact Report, pp. 45-46*]
3014. In response to the Proponent's assertion that the Project will "reduce behavioural disturbances" and minimize "incremental contribution", [*ENGP Written Argument, pp. 208-209, para 700*] it is our respectful opinion that this is a mischaracterization at best given the amount of traffic that the Proponent is proposing to add onto the already existing traffic.
3015. While the Proponent does recognize the importance of protecting killer whales as set out in its final arguments, [*ENGP Written Argument, p. 205, para 684*] it has failed to take any real steps to protect them. No routes have been changed or traffic decreased. In response to the action that have been proposed by the Proponent, we would state that one, lowering speeds of tankers will have little effect when you are adding a -- sorry -- when you are adding a far higher volume.
3016. It is again trying to across -- it is trying to -- I can put it to you like this. It's like trying to cross the street with one fast car versus 10 slower cars. Logically, the one fast car is far easier to avoid. Two, the Proponent's commitment to survey and monitor would have been far more effective had they started these steps at the time of the application.
3017. The steps to ascertain actual effects for mitigation could have been well underway by now. If, at the end of this process and despite the vast evidence

- in opposition, the Project is recommended, we have, in our written argument, discussed the conditions that we believe should be included. Our view of these conditions has not changed. However, we would like to comment in response to some of the conditions opposed by the Proponent in its submissions.
3018. Spill response time. A key point that the Proponent has continued to champion, including throughout its final argument, is that this Project will result in a world-class spill response system for British Columbia.
3019. In cross-examination, Mr. Owen McHugh for the Proponent testified that in the event of a spill, response would be in place to start the deal with it within 12 -- a 12-hour window. *[Transcript Volume 133, para 876]*
3020. In its written argument, the Proponent committed to ensuring that there would be an emergency response time of six to 12 hours or less for a major, on-water recovery equipment to be on scene for a major spill. In our opinion, this response time is too slow.
3021. According to what the report provided by our environmental experts, there is a high likelihood that in the event of a large spill, large tracks of shoreline would already be oiled within four to five hours. *[Exhibit D71-7-4, Gitga'at Environmental Impact Report, p. viii]* As such, we would advocate for a condition of a faster response time.
3022. We would note that when asked by the Province of British Columbia to commit to providing a response capacity of 36,000 metres cubed within 72 hours, the Proponent refused, stating that it was not "sensible" or "efficient planning" and a "misallocation of resources". *[Transcript Volume 176, paras 290-292]*
3023. And this seems to us to be counterintuitive given the Proponent's repeated commitment that the Project will have a world-class response system.
3024. As mentioned above, the Proponent's strong -- strongly maintains that an oil spill is highly unlikely. *[For example, see ENGP Written Argument, p. 239, para 821]*
3025. The Proponent has also clearly stated that it will not be liable for any damages for a marine oil spill. *[ENGP Written Argument, p. 238, para 815]* As set out in the Proponent's final argument, the individual shippers and their



- insurance will be the ones responsible and it is on the basis of that that we asked -- sorry, and it is on this basis that we are asked to believe that the compensation for a spill will be adequately dealt with.
3026. Yet to date, we still do not know even who the shippers are in this process and which compensation will occur, given some of -- given the fact that some shippers have already entered into agreements with the Proponent and, according to the Proponent, have contributed a large amount of money to the cost of the Application and review process, [*ENGP Written Argument, pp. 34-35, para 113*] we do not understand why liability cannot be allocated prior to moving forward with this process.
3027. The Proponent has always refused to take on any liability for spills despite its -- despite its adamant belief that a spill is highly improbable. [*ENGP Written Argument, p. 256, para 888*]
3028. If the Proponent is unwilling to take the risk of an oil spill, why should the Gitga'at or any other group? The Proponent stands to gain the most from this Project. It only makes sense that it take -- that it take the majority of the risk, whether that be on land or water. Alternatively, it should be a condition that the Proponent have a clear system of liability and compensation, which have been reviewed and accepted by the coastal groups affected, in place prior to the approvals.
3029. In response to the Proponent's comment that the FLC will be established for this purpose, it is our opinion that such a committee will be insufficient given as the words of the Proponent, its success will depend on the member's contributing in good faith discussion to identify concerns and develop mutually agreeable solutions, with understanding and communication. [*ENGP Written Argument, p. 224, para 760*]
3030. As set out above, we are skeptical that such communication and understanding can actually occur.
3031. We maintain our position that these protection plans must be in place prior to the approval of the Project. This is especially true given that there are no regulatory approvals required for shipping activities contemplated in the Project. That is, shippers would not be required to seek environmental approvals prior to the beginning, expanding or modifying shipping operations within Canadian waters. [*ENGP Written Argument, p. 196, para 648*]

3032. This is extremely concerning to the Gitga'at given the Proponent's clear statement that the third party shippers will be responsible for marine operations and the liability for any damage.
3033. In response to the Proponent's assertion that these concerns would have been well on their way to being addressed, we had not rescinded the letter of agreement, that is a complete conjecture and it's irrelevant.
3034. However, at the end of the day we maintain that we see nothing in the JRP's potential conditions that would change the Gitga'at position that the Application should be rejected.
3035. As Enbridge Northern Gateway noted in their final argument, the conditions suggested by the Panel are reflective of and consistent with their commitments. Even within these commitments, the impacts of the Project's operations on our community are far too great, the likelihood of an oil spill is too high, and the consequences of adverse impacts of spills to our culture, our community and our people, as well as our resources, are too great and irreparable.
3036. In response to the Proponent's statement on procedure, we understand that at the end of the day, this will be a decision made by the federal government. However, there is a reason that we have -- that we have this review process. And the issues brought forward need to be given appropriate consideration regardless of who or which group raises it. In establishing this process, the federal government recognized the need to respect the beliefs and opinions and -- of the province and its residences.
3037. In response to the Proponent's assertion that it was required to go beyond what has been required by any other comparable project, [*Transcript Volume 176, paras 113-114*] it is our opinion that it does not matter what assessments of marine transportation was required, only that it was and therefore must be adequately addressed.
3038. The Proponent can argue that it has done more than any proponent before it, but that is all irrelevant. All that matters is what -- all that matters is what it has done in the review process and whether or not that meets the standards required by law.
3039. In finishing, we realize that this has been a long and arduous process

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- for the Panel and we are truly appreciative for the time that you have committed and your willingness to allow us to participate, including coming to our community and hearing from our people. We hope that that experience provided you with some sense of why for the Gitga'at rejecting this Project is the only decision, even in light of the things that the Proponent has placed in front of you.
3040. We recognize that this has also been a long process for the Proponent. But it is a process that it chose to undertake, knowing full well the risks involved, financial and otherwise, including that the Project could be rejected.
3041. Oil shippers and pipelines can go anywhere in the world to move their products, but this is our only home. Our territory is everything to us. Our use -- our unfettered use of the territory defines who we are as a people. It is our source of food, it is our school, it's our church, it's our playground, it's our history and it's our livelihood. It is our only future. We, as Gitga'at, cannot exist without it.
3042. Think of your community, all that's special in it, the place, the people, the memories that make up your home community. Now think of some development in your community put all of your memories at risk without any clear benefit for your individual community. How could your community or any community prosper when everything that they hold dear and sacred is at risk every single day? This is what the Gitga'at face with the Northern Gateway Project.
3043. The Gitga'at have sincere and legitimate concerns regarding the Project and these concerns continue. Even the Proponent has acknowledged that in the final argument. However, unlike Enbridge's approach of discrediting, disregarding or simply ignoring these concerns, we submit that the Panel has an obligation to take them into account when considering the decision.
3044. Madam Chair, I've lost my time again. How much time do I have?
3045. **THE CHAIRPERSON:** Eleven thirty (11:30).
3046. **MR. HILL:** Good.
3047. The Gitga'at have already been impacted by this Project and these effects will be significantly felt, even more so if the Project is approved and it proceeds.

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3048. Personally, right now I should have been home last night. Because of the on goings of the process, some people not showing up, our final argument was pushed up a bit. I have a group of kids that are writing a government exam right now and I should have been there for them last night. On a final night of a study, I should have been there for my family, I should have been there with my job, I should have been there with my class, my community, my work as a Hereditary Spokesperson. This has already impacted my life and the lives of all of the people of the Gitga'at Nation and a spill hasn't even happened.

3049. On Monday, the Proponent stated that we do not live in an ideal world and that "(t)radeoffs are a fact of life". [*Transcript Volume 176, para 225*]

3050. Forgive me, Madam Chair.

3051. We are well aware that we do not live in an ideal world and, unfortunately, our history is full of such tradeoffs and compromises which saw our people die from disease, our children sent away to residential school, and our people completely and utterly displaced as well as the industrialization that has taken so much from our territory that we have tried to look after. Our waters have been raped as well as our lands and we will look after what we have left.

3052. We are respectfully asking that this tradeoff not be imposed on us and that we be allowed to continue to exercise our Aboriginal rights and interests in our traditional ways. The dangers of this Project are very real to us. We do not want to wonder every day if today is the day, the day that people will leave our community forever, the day that our families will be totally separated.

3053. The day a spill occurs is the day that we will lose everything because our territory is what makes the Gitga'at who we are. We are the keepers of our territory and we will continue to protect what is ours by whatever means necessary.

3054. In closing, one of our most entrusted matriarchs we laid to rest this spring. One of her final public appearances was to address you. I'm talking about Margaret Reece. She was in her nineties and she still travelled to the far corners of our territory to do what her ancestors taught her and she put that knowledge onto her family and we have very few of these gems left; James Robinson, Helen Clifton, Sarah Reece, my grandmother, Marjorie Hill.

3055. Their legacy and their teachings will not die with them and the

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- Gitga'at are committed to living the life that we've been taught and that has been handed down to us and we will fiercely protect what is ours.
3056. I thank you, Madam Chair, for all of the time. I thank the Panel. I thank everybody for their hard work and it's been an emotional time.
3057. Thank you.
3058. **THE CHAIRPERSON:** Mr. Ross and Mr. Hill, thank you very much for your submissions.
3059. Mr. Hill, please accept the Panel's sympathies over the loss of matriarch Margaret Reece and, with the level of commitment that you've shown, I personally would expect that your students will excel in their exams and I wish all the best for your community in that way. Thank you.
3060. The Panel has no questions. Thank you very much.
3061. We'll take a break for lunch and be back at 1:20 please.
- Upon recessing at 12:17 p.m./L'audience est suspendue à 12h17  
--- Upon resuming at 1:24 p.m./L'audience est reprise à 13h24
3062. **THE CHAIRPERSON:** Good afternoon, everyone. Please accept the Panel's apologies for being a little late in getting back from lunch.
3063. Are there any preliminary matters that parties wish to raise this afternoon?
3064. Good afternoon, Ms. Kyle.
3065. **MS. KYLE:** Good afternoon and thank you, Madam Chair.
3066. With your indulgence, I just wanted to acknowledge the presence of several Gitxaala Hereditary Leaders and members who have arrived in Terrace now, unfortunately, too late to hear the submissions on their behalf.
3067. But I did want to acknowledge all of them and their attempt to be here at the hearing today to hear the submissions on their behalf. Thank you.

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3068.           **THE CHAIRPERSON:** Welcome to all of you and thank you for taking the time to be here today.

3069.           Thank you very much.

3070.           **MR. HUDSON:** Madam Chair, if I could raise a preliminary matter?

3071.           **THE CHAIRPERSON:** You can, Mr. Hudson.

--- (Laughter/Rires)

3072.           **MR. HUDSON:** And it's a matter that's been raised by counsel for the BC Nature and Nature Canada in a letter to the Panel and the details of which parties can view on the website.

3073.           But in light of his request to be able to participate in real time and make objections during bottom up argument, he's asked for that right. And I think the comment that I would make on that is that perhaps we could have any party that wants to comment on that motion do so by the end of today, meaning midnight, so that we can address -- so that the Panel would have an opportunity to address this motion tomorrow morning well before the bottom up portion of the hearing proceeds because that's -- to what it relates.

3074.           So that's the motion along with a suggestion on how to deal with it. Giving legal advice in public here.

--- (Laughter/Rires)

3075.           **THE CHAIRPERSON:** Thank you, Mr. Hudson.

--- (A short pause/Courte pause)

3076.           **THE CHAIRPERSON:** Thank you, Mr. Hudson.

3077.           The Panel would request any parties who do have comments -- further comments, we note that some comments have already been filed on this motion -- to provide them by -- as Mr. Hudson suggests, by midnight tonight.

3078.           And in those comments, when you're filing, would you please give some consideration to the logistics aspect of what this might entail for having a

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- number of parties joining remotely in real time at the same time and provide any comments that you might have to offer to the Panel in that regard?
3079.           And while I have the microphone, the Panel has been continuing to monitor the pace at which we're going through the top down reply and it's our observation that we're completing this portion more quickly than we had anticipated. We're not wanting to rush any parties and we continue to follow the procedural directions that we have issued.
3080.           To be transparent, the Panel's issue is we don't want to bring everybody back on Monday morning for 15 minutes or, you know, a half an hour or something like that. We recognize the travel cost, the times that it involves everybody to be here for those who chose to be here in person.
3081.           The Friday afternoon 1:00 deadline is a firm one, as I mention, due to unforeseen circumstances. So we're going to continue to monitor how we progress through. And if it turns out that we're within the realm of potentially completing the hearing by Friday at 1:00 in the afternoon if we were to add an hour or two, say tomorrow evening in an evening session, the Panel would take that into consideration.
3082.           So if any parties have comments that they wish to make on that, we'd ask you to do so, either, you know, using the microphone or you could provide any feedback that you have to staff as far as that kind of intention.
3083.           Now, part of that feedback would be similar to what we did in questioning to ask the parties who have yet to speak if they have any updated estimates on the amount of time that they believe they're going to take. And this isn't down to the minute-by-minute. This is not in any way intended to be try to speed through everything. Just mentioning it from the aspect of making sure that we're all respectful of the time and the expense and the resources required for everybody to return.
3084.           So if you do have any comments on that, staff will be around at the break or if anybody wants to address it now or at another point as a preliminary matter, we'd welcome your input.
3085.           I don't see anyone rushing for the microphone so I think we'll carry on with this afternoon and the next party to present oral reply is the Government of Canada.

3086. **MR. SHAW:** Thank you, Madam Chair.

3087. **THE CHAIRPERSON:** Thank you.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. SHAW:**

3088. **MR. SHAW:** Members of the Panel, thank you for allowing us this opportunity. I think we will be about 30 minutes, less than half the time that we had originally booked.

3089. I'm joined at table by my colleagues, longstanding colleagues in this Project, Dayna Anderson to my immediate right and Sarah Bird to her right. Both Dayna and Sarah have been involved since the early days of this Project and without their guidance and good hard work, I would have some difficulty sitting here addressing the Panel at all. So I thank my colleagues for that.

3090. If I may, Madam Chair, the written arguments and oral comments of many of the parties in this Project raised a number of criticisms and concerns regarding Canada's roles and responsibilities with respect to this Project.

3091. In particular, we've heard concerns respecting what I'll address as Part 1 of my oral response. And Part 1 is: The need for the Project and balanced resource development; regulatory framework for pipeline safety and marine safety and the Crown's Aboriginal consultation progress.

3092. I'll address those first and then, as Part 2, NRCan has some written comments regarding potential Conditions 7-8 and 75 through 77. So I'll address those at the end of the first three topics that I've indicated.

3093. In terms of the need for the Project, concerns about economic need for this Project and the need for balanced development have been raised by a number of intervenors. As regards economic need, we've heard from the Alberta Federation of Labour [*Exhibit D4-21-2, Written Argument of the Alberta Federation of Labour*], from C.J. Peter Associates [*Exhibit D25-28-2, Written Argument of CJ Peters at Adobe pages 49-62*], from Coastal First Nations Great Bear Initiative [*Exhibit D35-51-2, Written Argument of Coastal First Nations at Adobe pages 85-101*] and the Communications Energy and Paperworkers Union of Canada [*Exhibit D39-13-1, Written Argument of the Communications Energy and Paperworkers Union of Canada at Adobe pages 3-8*].



3094. In respect of balanced development and concerns surrounding that, we've heard from Coastal First Nations Great Bear Initiative [*Exhibit D35-51, Written Argument of Coastal First Nations at Adobe pages 103-104, paragraphs 453-456*], Douglas Channel Watch [*Exhibit D54-35-1, Written Argument of Douglas Channel Watch at Adobe page 31*] and Nathan Cullen [*Exhibit D44-17-1, Written Argument of Nathan Cullen at Adobe pages 6-7*].
3095. It's to be remembered that Canada's a trading nation. A substantial portion of Canada's GDP comes from foreign trade sector, more than half of which itself is attributable to natural resources. A key factor in determining Canada's economic prosperity and standard of living is access to global markets.
3096. In the energy sector, Canada faces critical, short, intermediate and long-term strategic challenges since virtually all of our petroleum exports go to the U.S. [*Exhibit B1-4, Appendix B of Northern Gateway Application ("Wright Mansell Report") at Adobe page 129*]
3097. In the short-term, the economy is losing tens of billions of dollars annually as a result of the discount at which our crude oil sells in the U.S. mid-west compared to the international price. [*Exhibit D122-3-20, Edmonton Journal article at Adobe page 6*]
3098. Furthermore, we're running out of pipeline capacity in this decade. [*Exhibit E8-5-2, Government of Alberta – Response to JRP's IR no. 1 at Adobe page 4*]
3099. In the longer term, the U.S. development of its immense reserves of shale and light oil means increased competition for growing Canadian production in U.S. markets. Therefore, it's a strategic imperative for Canada to diversify its energy markets. And to do that, Canada must transport its resources to tidewater. [*Transcript Volume 81, September 25, 2012, Adobe page 3, lines 30120-30124*]
3100. Independent studies have been filed with the Joint Review Panel, including the National Energy Board report of "Canada's Energy Future: Energy Supply and Demand Projections to 2035" [*Exhibit B114-2 – National Energy Board, Canada's Energy Future: Energy Supply and Demand Projections to 2035 (An Energy Market Assessment November 2011), at Adobe page 17*], the CAPP report "Crude Oil: Forecast, Markets & Pipelines" [*Exhibit B31-4, Canadian Association of Petroleum Producers, Crude Oil – Forecast, Markets &*

*Pipelines, June 2011 at Adobe pages 5 and 25]* and Wright Mansell Research Ltd.'s report "Public Interest Benefits of the Enbridge Northern Gateway Pipeline Project" [*Exhibit B1-4, Appendix B of Northern Gateway Application ("Wright Mansell Report" ) starting at Adobe page 123]*.

3101. These support the concept that an expanded pipeline infrastructure is critical to Canada's long-term prosperity. Based on the evidence before the Panel, it becomes clear that global energy demand is forecasted to grow significantly.
3102. The vast majority of increased energy demand during that period will come from non-OECD nations, especially in the Asia Pacific region. [*Exhibit B1-4, Northern Gateway Application, Volume 2 (Economics, Commercial and Financing), at Adobe page 12; Exhibit B1-4, Appendix B of Northern Gateway Application, "Wright Mansell Report" at Adobe pages 137 and 138 (pages 13 and 14 of the Report); Exhibit E8-3-2, Written Evidence of Government of Alberta, Wood Mackenzie– A Netback Impact Analysis of West Coast Export Capacity at Adobe page 5 at 46 and Adobe page 12 at line 198]*
3103. Estimated contributions of the Canadian petroleum industry over the next 25 years include trillions of dollars in GDP, millions of person years of employment and over a trillion dollars in net revenues for federal and provincial governments. These revenues can support government programs. [*Exhibit B1-4, Appendix B of Northern Gateway Application, "Wright Mansell Report" at Adobe pages 128 and 129]*
3104. In spite of and notwithstanding huge economic and social benefits, Canada believes the development of its resources must be done responsibly. Canada has been clear that no development will be allowed unless it's environmentally sound and socially responsible. That determination must be based on an independent and thorough science-based review.
3105. To assist in this process, the government participants in this Project have provided detailed, objective and science-based evidence in their written evidence in response to information requests and through the cross-examination of federal government participant witness panels.
3106. Canada is committed to supporting participation of Aboriginal people in resource development opportunities and to fully integrating Aboriginal consultations into environmental assessment and regulatory processes. The objective is to ensure impacts on Aboriginal or Treaty rights are fully considered

- as part of the regulatory decision-making procedures.
3107. In recognizing these objectives, the government has taken broad based action under the *Jobs, Growth and Long-Term Prosperity Act* to strengthen the regulatory framework around resource development to meet those goals. [*Jobs, Growth and Long-Term Prosperity Act, SC 2012 c 19, Part 3 (Responsible Resource Development)*]
3108. The measures, which build on what is already a robust and sound regulatory regime, are focused on improving pipeline safety and addressing an emergency response in the event of land-based or Maritime spills.
3109. We have heard the concerns of intervenors who are worried about pipeline safety and enforcement. These include but are not limited to the Haisla Nation [*Exhibit D80-104-2, Written argument of Haisla Nation at Adobe page 298, paragraph 1583*], Nathan Cullen [*Exhibit D14-17-1, Written Argument of Nathan Cullen at Adobe page 3*] and the Fort St. James Sustainability Coalition [*Exhibit D67-13-2, Written Argument of Fort St. James Sustainability Group, Adobe pages 6 – 9, paragraphs 22 -33*].
3110. We respond to that by saying that Canada has a comprehensive and rigorous pipeline safety regime of enforcement mechanisms and penalties [*For example, National Energy Board Act, R.S.C., 1985, c. N-7, s. 48(3), Division IV (Offences, Punishment and Enforcement), ss. 121 and 122*] administered by the National Energy Board, an expert, arm's-length and independent regulator recognized around the world.
3111. Companies operating interprovincial and international pipelines in Canada are required to follow strict rules and regulations. Pipelines and equipment must meet Canadian Standard Association specifications [*Exhibit E9-6-30, NRCan Written Evidence, Adobe page 15, paragraphs 61-62*], which themselves are considered amongst the most stringent in the world.
3112. Safety, integrity and emergency response programs specific to each company's infrastructure are regularly reviewed and audited by the NEB. The NEB also conducts ongoing pipeline monitoring, inspections and site visits, and it has the ability to issue mandatory compliance orders.
3113. The NEB Act also provides for prosecutions for certain violations of the Act with fines of up to \$1 million and imprisonment of up to five years. [*For*

- example, National Energy Board Act, ss. 48(3) and 121(1)] Decades of experience have proved that pipelines are environmentally safe and sound and furthermore, new pipeline technology is yet safer.*
3114. In the event of a pipeline rupture or spill, the company is liable for all clean-up and remediation costs. [*Exhibit B3-20, Northern Gateway Application, Volume 7B [Risk Assessment and Management of Spills – Pipelines (Part 1 of 2)] at Adobe page 77]*
3115. Companies can be prosecuted and if found guilty, fined up the *National Energy Board Act*. Violators may also be subject to prosecution and fines under other federal legislation, for example, the *Species at Risk Act [Species at Risk Act, S.C. 2002, c. 29, ss. 97-107 (Offences and Punishment)]* and provincial legislation should the environment, species and wildlife or waterways be affected.
3116. In addition, the NEB sets tariffs specific for each pipeline which may require that sediment and water content be less than 0.5 percent by weight to protect pipelines from corrosion. [*Exhibit B39-19 - Crude Petroleum Tariff, Rules and Regulations Governing the Transportation of Crude Petroleum report Effective 10 March 2008 at Adobe page 3, paragraph 4(a)(ii); Transcript Volume 186, October 10, 2012 (examination of NGP Panel 2 by CJ Peter Associates) at Adobe pages 118 to 119, lines 6739-6744; Transcript Volume 109, November 27, 2012, Adobe page 153 at line 6923]*
3117. This applies to all forms of crude petroleum, including bitumen transported by federally regulated pipelines.
3118. Canada proposed to further strengthen pipeline safety under Canada's Economic Action Plan 2012. For instance, that plan proposes the allocation of \$13.5 million over two years to the NEB, to increase the number of oil and gas pipeline inspections by 50 percent annually.
3119. It also proposes to double the number of annual comprehensive audits to identify potential issues and prevent incidents from occurring. Regulations were recently made under the *National Energy Board Act*, empowering the NEB to impose administrative monetary penalties.
3120. It is expected that these regulations will be published in the Canada Gazette Part II in the near future. The administrative monetary penalties add

additional enforcement and compliance tools for the NEB to address infractions.

3121. These administrative monetary penalties provide the means to strengthen safety in a preventive manner and penalties can be cumulative should the infractions not be addressed. *[National Energy Board Act, RSC, 1985, Amendments not in force, section 134]*
3122. The costs of non-compliance will drive companies to be more proactive in improving their systems and internal audits.
3123. Concerns respecting a federal tanker moratorium on the west coast of Canada have been raised by several intervenors including Gitxaala Nation *[Exhibit D72-92-2 Gitxaala final argument beginning at Adobe page 182, paragraph 682]*, Heiltsuk *[Exhibit D85-27-2 Heiltsuk Hemas final argument at paragraph 84, Adobe page 21]* and Josette Wier *[Exhibit D217-64-1 Josette Weir final argument at Adobe pages 23-24, and 27]*.
3124. Again, as a trading nation, Canada depends on marine shipping for economic growth, jobs and prosperity. There is no tanker ban on the west coast, nor has there ever been. The federal moratorium on the -- off the coast of B.C. applies only to oil and gas exploration and development. *[Exhibit E9-6-15 Written evidence of Transport Canada at paragraph 65 (Adobe page 20); Exhibit E9-21-09 Government of Canada Response to IR No. 1 from Gitxaala beginning at Adobe page 88; Exhibit E9-21-06 Government of Canada Response to IR No. 1 from Coastal First Nations Adobe pages 9-11; Hearing Transcript Volume 169, April 24, 2013 at Adobe pages 115 – 118, lines 20312 – 20342 and Adobe pages 126 – 158, lines 20443 – 20806; and Hearing Transcript Volume 170, April 25, 2013 at Adobe pages 14 – 38, lines 20831 – 21088]*
3125. Oil tankers have been moving safely and regularly along Canada's west coast thanks to responsible players in the industry and a strong tanker safety system. *[Exhibit D26-6-2, Written Argument of Canadian Association of Petroleum Producers at Adobe page 31]* There has never been a major tanker spill off Canada's west coast.
3126. There have been concerns raised here by some of the parties respecting the marine shipping regime and the spill response regime. In particular, criticisms levelled by the Province of British Columbia *[Exhibit D137-24-3, Written Argument of the Province of BC at Adobe pages 2-3 at paragraphs 4-6; Adobe page 37 at paragraph 117; Adobe page 42 at paragraph 133; and Adobe page 53*

at paragraph 166], Haisla [*Exhibit D80-104-2, Written Argument of Haisla Nation at Adobe page 280 at paragraph 1480; Adobe page 297 at paragraph 1579; Adobe pages 297-298 at paragraphs 1582-1583*] and Gitxaala [*Exhibit D72-92-4, Gitxaala Comments on draft conditions at Adobe pages 4-5, paragraphs 10-14*].

3127. In response to these criticisms, Transport Canada wishes to reaffirm the following key points. First, that Transport Canada has the mandate to regulate marine shipping and navigation. [*Exhibit Number E9-6-15, Written Evidence of the Government of Canada, Volume 3 (Submission from Transport Canada), at Adobe pages 8-14*]
3128. This holds true whether we talk about existing operations or the addition of any future project or shipping operations.
3129. Through continual improvement and as needs are identified, regulatory amendments may be required. However, due regulatory process would be followed in making any amendments.
3130. To this end, the Government of Canada has recently announced measures including tanker inspections, which will increase to ensure that all foreign tankers are inspected on their first visit to Canada and annually thereafter to ensure they comply with rules and regulations [*Exhibit E9-21-06, Government of Canada Response to IR No 3.9 (h-l) from Coastal First Nations, at Adobe page 43*]; systematic surveillance and monitoring of ships under the expanded National Aerial Surveillance Program [*Transcript, Volume 171, April 26, 2013, at Adobe pages 88-89, paragraphs 23212-23213*]; pilotage programs, which will conduct a review of existing pilotage and tug escort requirements to determine what more will be needed in the future [*Transcript, Volume 156, March 19, 2013, at Adobe page 65, paragraph 31947*].
3131. There will be public port designations. Kitimat will be designated for traffic control measures and a review will determine the possible designation of other ports. [*Transcript, Volume 156, March 19, 2013, at Adobe page 65, paragraph 31947*]
3132. New and modified aids to navigation; the Canada Coast Guard will ensure that a system of aids to navigation comprised of buoys, lights and other devices to warn of obstructions and to mark the location of preferred shipping routes is installed and maintained [*Transcript, Volume 156, March 19, 2013, at*

- Adobe page 65, paragraphs 31949, 31951, 31953 & 31955]* and the Canada Coast Guard will develop options for enhancing Canada's current navigation system, which would be aids to navigation, hydrographic charts, by the fall of 2013 for government consideration. *[Exhibit E921-06, Government of Canada Response to IR No 3.9 (h-1) from Coastal First Nations, at Adobe page 43]*
3133. And taking into account Northern Gateway's voluntary commitments, the TERMPOL review did not identify any regulatory concerns. *[Exhibit E11-3-2, TERMPOL Review Process Report, at Adobe page 34]*
3134. Canada is well prepared for and is ready to respond to oil spills from ships in Canadian waters. Transport Canada administers the national oil spill preparedness and response regime. *[Exhibit E9-6-15, Written Evidence of the Government of Canada, Volume 3 (Submission from Transport Canada), at Adobe page 30, paragraphs 119-120]*
3135. Transport Canada has outlined the measures that are in place to ensure that response to marine oil spill is effective, including inspections of oil handling facilities *[Exhibit E9-6-15, Written Evidence of the Government of Canada, Volume 3 (Submission from Transport Canada), at Adobe page 34, paragraphs 136-138]*, certification of response organizations, oversight and monitoring of planning standards *[47 Exhibit E9-6-15, Written Evidence of the Government of Canada, Volume 3 (Submission from Transport Canada), at Adobe page 31, paragraph 121]* and requirements for drills and exercises *[48 Exhibit E9-6-15 Written Evidence of the Government of Canada, Volume 3 (Submission from Transport Canada), at Adobe pages 15-16, paragraph 45; Adobe page 33, paragraph 131; and Response Organizations and Oil Handling Facilities Regulations, SOR/95-405, s 3(2)(h)]*.
3136. Response times are part of the planning process and assist in preparing for an oil spill. *[49 Exhibit E9-6-20 Written Evidence of the Government of Canada, Volume 4, Part 3, Annexes Guidelines and Standards, (Response Organization Standards), at Adobe page 22, paragraph 3; and Response Organizations and Oil Handling Facilities Regulations, SOR/95-405, s 4(1)(a)]*
3137. They are not explicitly regulated for important reasons; for example, response times will depend on a number of factors, including weather and the safety of the responders, and for this reason they are not regulated but agreed to for planning purposes.

3138. While the current marine spill preparedness and response regime has served Canada well, it is essential to have a system in place that can meet future needs. The government has recently announced additional measures to ensure a world-class safety system. They include an incident command system; the government will establish a Canadian Coast Guard incident command system, which will allow it to respond more effectively to an incident and integrate its operation with key partners. *[Transcript, Volume 171, April 26, 2013, at Adobe pages 145-146, paragraphs 23847 and 23852]*
3139. The government will conduct scientific research on diluted bitumen to enhance understanding of these substances and how they behave when spilled in the marine environment. *[Exhibit E9-21-06, Government of Canada Response to IR No 3.9 (h-l) from Coastal First Nations, at Adobe page 43]*
3140. And a panel was created to review the current marine oil spill preparedness and response system and propose new ways to bring Canada's system to a world-class status.
3141. A tanker safety expert panel has been established. The goal is to prevent accidents from happening and to strengthen our ability to respond in the event that an incident occurs. *[Exhibit E9-21-06, Government of Canada Response to IR No 3.9 (h-l) from Coastal First Nations, at Adobe page 43]*
3142. A number of Aboriginal groups have expressed concerns about the Crown's consultation process in these proceedings, impacts on Aboriginal and Treaty rights, and funding programs available to Aboriginal groups. The number that have made issue with it are about 15 or 18 in number. *[Exhibit D80-104-2, Haisla Nation Written Argument], [Exhibit D6-26-2, Alexander First Nation Written Argument], [Exhibit D72-92-2, Gitxaala Nation Written Argument], [Exhibit D55-11-2, Driftpile First Nation Written Argument], [Exhibit D42-45-2, Council of the Haida Nation Written Argument], [Exhibit D85-27-4, Heiltsuk Tribal Council Written Argument], [Exhibit D85-27-2, Heiltsuk Hemas Written Argument], [Exhibit D85-27-6, Heiltsuk Economic Development Corporation Written Argument], [Exhibit D85-27-8, Heiltsuk Youth Written Argument], [Exhibit D48-15-1 Daiya-Mattess Keyoh Written Argument], [Exhibit D35-51-2 Coastal First Nation Written Argument], [Exhibit D197-13-1, Swan River First Nation Written Argument], [Exhibit D183-16-2, Samson Cree Nation Written Argument], [Exhibit D62-10-2, Ermineskin Cree Nation Written Argument], [Exhibit D111-4-1, Kitasoo/Xai'Xais Written Argument], [Exhibit D71-35-2, Gitga'at Nation Written Argument]*



3143. I won't name them, simply go on to state that first off, the national -- sorry, natural resource sector is a large employer of Aboriginal people in Canada. Resource development projects offer Aboriginal groups huge economic opportunity for investment and employment. Canada is committed to supporting participation of Aboriginal people in these resource development opportunities.
3144. Underpinning responsible resource development is Canada's commitment to fully consulting and engaging Aboriginal groups in the review of any projects that may impact on Aboriginal or Treaty rights. [*Canadian Environmental Assessment Act, 2012, S.C. 2012, c.19, s.52*]
3145. Canada takes its consultation responsibilities seriously and will meet its obligations in an effective and meaningful manner. [*Transcript Volume 174, April 30, 2013, at Adobe page 16, lines 26641-26644 ; Exhibit E9-6-07, Government of Canada – Written Evidence – Vol. 1 (Consultation), Part 6 – Annex 4 Updated Guidelines dated March 2011; Exhibit E9-6-08, Government of Canada – Written Evidence – Vol.1 (Consultation), Part 7 – Annex 5 Approach to Crown Consultation; and Exhibit E9-6-10, Government of Canada – Written Evidence – Vol. 1 (Consultation), Part 9 – Annex 7 Aboriginal Consultation Framework*]
3146. And Canada is committed to fully integrating Aboriginal consultations into environmental assessment and regulatory processes to ensure impacts on Aboriginal or Treaty rights can be fully considered as part of regulatory decision-making. [*Canadian Environmental Assessment Act, 2012, S.C. 2012, c.19, s.52*]
3147. And to aid in facilitating Aboriginal participation in these processes, Canada has established participant funding programs to support Aboriginal groups in sharing information on potential impacts of projects on proven or asserted Aboriginal and Treaty rights. [*72 Exhibit E9-6-03, Government of Canada – Written Evidence – Vol. 1 (Consultation), Part 2 beginning at Adobe page 4, paragraph 9; Exhibit E9-21-08, Government of Canada – Response to IR No. 1 from Gitga'at First Nation at Adobe pages 16-17; Exhibit E9-20-26, Government of Canada – IR Responses – Federal Gov't Participants Annex IV – Aboriginal Funding Review Committee Reports – May 25, 2012*]
3148. In concluding this part, Canada supports the diversification of markets to create jobs and economic growth for Canadians. Canada has also been clear that any development must be environmentally and socially responsible.

3149. The cornerstone of our regulatory system is an independent review by qualified experts. Canada respects that process and will make no decision on any project until it hears from those experts.
3150. In the meantime, Canada is taking steps to needed -- needed steps to further improve the environmental protection regime. Canada will continue to review the system to ensure it remains world-class, that gives Canadians the confidence that the environment will be protected.
3151. Madam Chair as to Part 2, I wish to address some of Natural Resources Canada's written comments respecting Potential Conditions 7-8, 75-77.
3152. As to the first Potential Condition 7-8, relating to composite coatings, Northern Gateway describes Potential 7-8 as of significant concern. As written they impose a requirement for a three-layer composite coating or high performance composite coating for the entirety of the pipeline. In addition, the Coalition also raised a concern about this potential condition in their oral reply argument.
3153. During the November 28<sup>th</sup>, 2012 hearings in Prince George, the Joint Review Panel questioned NRCan on the types of coatings currently being proposed by Northern Gateway and the appropriateness of those coatings.
3154. Natural Resources Canada recommended to the Panel that the multi-layer composite coating would certainly be appropriate for specific areas such as where there is a potential for rock or hard material to strike the pipe.
3155. NRCan's final written argument did not object to the requirement for multi-layer composite coating for the entirety of the pipeline on a technical basis. Northern Gateway's rationale for objecting appears to be primarily economic.
3156. As to Potential Conditions 75 through 77 relating to landslides, terrestrial and submarine, the issue seems to be that written submissions of the Proponent, Haisla, British Columbia and ForestEthics, have quoted from parts of Natural Resources Canada's expert testimony on both terrestrial landslides and submarine landslides. Evidence provided by NRCan's research scientist has been used to support others views on the completeness or adequacy of the information before the Panel.

3157. In addition, in Northern Gateway's oral argument they indicated they generally accept the recommendations by NRCan regarding geohazards but that they question the degree of prescriptiveness that is contained in a number of the proposed conditions.
3158. By way of response, it's important to note that the extent of NRCan's expertise relates to the review of baseline geoscience information but not the calculation of risk by proponents or regulators.
3159. The recommendations offered to the Joint Review Panel by Natural Resources Canada research scientists have remained consistent since the December 2011 final evidence filed.
3160. Northern Gateway will need to complete the identification and assessment of the specific geohazards that may impact the pipeline and the marine terminal. At that point in the planning and regulatory process site-specific mitigation measures will need to be finalized and implemented.
3161. On that basis the view offered by Natural Resources Canada's geoscientists is that the JRP's Potential Conditions 75 through 77 are appropriate. These conditions require that Northern Gateway complete the geohazard assessment, mitigation and monitoring reports for detailed design, which has been undertaken in both a qualitative and semi-quantitative manner to date to support the public hearing process. The department has made recommendations for additions to Potential Conditions 75 through 77 to ensure that these reports meet NRCan's expectations for quality and completeness.
3162. And speaking of completeness that completes our oral submissions. With our thanks, we wish to thank the Panel, the Panel staff, all of the participants who have taken part in these proceedings, for their professional courtesy and the efficient way in which they have developed their positions.
3163. And so we wish to thank everyone and subject to any questions we have concluded our submissions.
3164. **THE CHAIRPERSON:** Thank you, Mr. Shaw, for your submission.
3165. The Panel has no questions.

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3166. **MR. SHAW:** Fine, thank you very much.

3167. **THE CHAIRPERSON:** Thank you very much.

--- (A short pause/Courte pause)

3168. **THE CHAIRPERSON:** We'll call next the Haisla Nation, please.

--- (A short pause/Courte pause)

3169. **THE CHAIRPERSON:** Good afternoon, Ms. Griffith, Chief Councillor Ross.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. GRIFFITH AND CHIEF COUNCILLOR ROSS:**

3170. **MS. GRIFFITH:** Good afternoon, Madam Chair and Panel Members. I'm joined here today by two people, who you obviously are familiar with, Chief Councillor Ellis Ross of the Haisla Nation and Michael Gordon of Michael Gordon & Associates.

3171. I will just make a quick comment regarding your request for input on extended hours to accommodate bottom up argument by 1:00 p.m. on Friday. The Haisla Nation would welcome that, as it would allow us to appear in person.

3172. I'd like to thank you on behalf of the Haisla Nation for this opportunity to speak to you today and to address in reply some of the written and oral arguments that you have received. As my colleagues who have gone before me, if I am at times critical, I am speaking to the argument and not to individuals.

3173. The Haisla Nation has set out its position and views on Northern Gateway's Proposed Project in its written argument and will not repeat what has been said there. Nor will I repeat the many able oral replies to Northern Gateway argument that you have heard to date.

3174. While the Haisla Nation specifically disagrees with paragraphs 5, 6, 1451, 1452, 1454 and 1463 of Northern Gateway's written argument, for all the reasons set out in the Haisla Nation's argument, it also disagrees with many other aspects of Northern Gateway's argument.

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3175. Thus, please accept that a failure to address or reply specifically to something put forward by Northern Gateway or by other parties, in the short amount of time allocated to oral reply argument, does not mean that the Haisla Nation accepts those arguments.
3176. The Haisla Nation reply today will focus on matters raised in Northern Gateway's written argument as well as in reply that we have heard. I will focus on five broad issues in reply, the characterization of Haisla Nation expert evidence in Northern Gateway's written and oral argument; some of the assertion's in Northern Gateway's argument that are not, in our view, supported by the evidence; sufficiency of the information before you and what BC Nature has called completeness of Northern Gateway's application; Aboriginal title and rights issues, and conditions.
3177. Northern Gateway's written argument has characterized the evidence of the Haisla Nation in a particular way, to give it an interpretation that favours Northern Gateway. The Haisla Nation takes issue with this and will identify a few specific examples where this has occurred.
3178. One of these is paragraph 51 of Northern Gateway's written argument, where Northern Gateway refers to the participation of intervenors. In a rather complimentary closing sentence, Northern Gateway says, quote:
- “The Haisla Nation should be commended for producing expert evidence that provided meaningful suggestion that can be used at a later point in time during operational emergency response planning and in the development of the pipeline environmental monitoring program for the Project.”*
3179. Despite the complimentary nature of this comment, the Haisla Nation does have concerns with it.
3180. Northern Gateway would have you, the Panel, believe that the reports prepared by Nuka Research on response gaps and response capacity and by Dr. Hodson on baseline monitoring on behalf of the Haisla Nation are relevant only in the post-approval phase. This is, with respect, an impoverished view of the Haisla Nation's evidence.
3181. The oil spill response gap and response capacity analysis by Nuka was commissioned to analyze the capabilities and limitations to mechanical oil spill

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- response, thus providing a realistic assessment of project risk and potential adverse effects. It was conducted to provide additional information as part of the regulatory review process [*D80-56-3, p. 8*], which takes place prior to and informs project approval.
3182. Further, the report by Dr. Hodson on baseline monitoring [*D80-27-05*] identifies the type of information required to assess effects.
3183. Northern Gateway's comment also suggests that this is the only evidence put forward by the Haisla Nation that is relevant. Not so. The evidence put forward by the Haisla Nation is much broader than Northern Gateway acknowledges at paragraph 51. The Haisla Nation has put forward comprehensive evidence of its Aboriginal title and rights claim, evidence on ecological goods and services which will be impacted by the proposed Project, evidence relating to seismic stability and other geohazards, and evidence on toxicity of oil to fish.
3184. It is understandable that Northern Gateway is seeking to characterize the Haisla Nation's evidence in a narrow way by suggesting that only two pieces of evidence are relevant and then only in the post-approval sphere Northern Gateway is seeking to minimize Haisla Nation evidence which identifies serious concerns with Northern Gateway's application and with the proposed Project.
3185. Northern Gateway's reference to the Nuka research response gap and capacity analysis as having provided meaningful suggestions on the one hand [*B226-2, para. 51*], is in stark contrast to Northern Gateway's later suggestion that the Nuka research response gap and capacity analysis is not particularly helpful [*B226-2, para. 856*].
3186. We heard from Northern Gateway on Monday a concern that some intervenors appeared to have provided criticism for criticisms sake, without making helpful suggestions. It is important to remember that it is not the Haisla Nation's project or the project of another intervenor it is Northern Gateway's proposed Project.
3187. The role of the evidence of intervenors is not to do Northern Gateway's job for it. The burden of demonstrating that the Project is in the public interest and is not likely to result in significant adverse effects is on Northern Gateway not on the Haisla Nation or on other intervenors.

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3188. The Nuka gap analysis identified spill response issues which it is not apparent from Northern Gateway's application had been considered by Northern Gateway. The gap analysis is not only helpful, as argued by the Province of British Columbia, but it is necessary to understand the potential effects of a spill.

3189. Northern Gateway also criticized intervenors, including the Haisla Nation, for not submitting information on effects on fish. At paragraph 440, Northern Gateway wrote:

*“Very little evidence was filed by intervenors regarding the effects of project construction on fish and fish habitat although generalized concerns regarding crossing designs were expressed by groups such as the Haisla Nation and the Office of the Wet'suwet'en.” [B226-2, para. 440]*

3190. This criticism is remarkable, given the preliminary nature of fish habitat information included in the material filed by Northern Gateway. Northern Gateway appears to be suggesting it is the job of intervenors to generate fish and fish habitat information in order to inform submissions on effects.

3191. Northern Gateway has acknowledged at paragraph 484 that the purpose of the pipeline environmental effects monitoring program is to describe the current status of terrestrial and freshwater biota and their habitat. In other words, Northern Gateway has not yet provided that information.

3192. These are not the only places where Northern Gateway's argument casts the evidence of the Haisla Nation in an unfair light. Starting at paragraph 379, Northern Gateway discusses the evidence of Dr. Rathje. Northern Gateway concludes that paragraph by stating:

*“During questioning, Dr. Rathje agreed that the Kitimat Valley Report contained the kind of details she was looking for regarding mitigation measures.” [B226-2, para. 379]*

3193. With respect, this is a mischaracterization of Dr. Rathje's evidence. Dr. Rathje stated that the Kitimat Valley report provided the kind of detailed mitigation measures information she had identified in her report for six select examples of detailed mitigation concepts, but that these mitigation examples did not address the range of geohazards that would be encountered along the pipeline route. [TC 109, lines 5487-5494]

3194.           There are other instances where Northern Gateway has relied on limited aspects of testimony to the exclusion of other contextually relevant testimony.
3195.           Northern Gateway also stated that during questioning Dr. Rathje had agreed that she was not concerned with the way the assessment was conducted. *[B226-2, para. 384]*
3196.           Our review of the transcript confirmed that Ms. Shannon put to Dr. Rathje an excerpt of the SQRA *[B75-2, p. 143]* and that Dr. Rathje agree that Northern Gateway -- agreed that Northern Gateway's evidence indicated a lot of information was taken into account.
3197.           Dr. Rathje was not asked, however, whether she was concerned by the way the assessment was conducted. Northern Gateway could have asked that question, but chose not to. In fact, Dr. Rathje identified information that was missing from the maps produced by Northern Gateway and expressed surprise that these obvious geohazards were not presented.
3198.           I urge the Panel to review the whole transcript of this line of questioning. *[TC Vol. 109, lines 5435-5457]* It will be clear from this portion of the transcript that Dr. Rathje's testimony was limited to the content of the geohazard maps, and was not, as Northern Gateway has tried to suggest, an endorsement of the assessment approach Northern Gateway has taken.
3199.           Northern Gateway then suggested that Dr. Malhotra and Dr. Rathje have conflicting opinions on the use of codes in design to address seismic issues. *[B226-2, para. 388]*
3200.           Once again, Northern Gateway is attempting to put words into Dr. Rathje's mouth. Dr. Rathje did not endorse code-based design. *[TC Vol. 109, lines 5527-5532]* She specifically declined to do so.
3201.           There is no conflict between the evidence provided by Dr. Rathje and Dr. Malhotra. It is clear from Dr. Rathje's statements that she is not endorsing code-based design as appropriate for Northern Gateway's Project, and is actually agreeing with Dr. Malhotra that for this type of project one needs to "go beyond" the code.



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3202. Northern Gateway seeks to rely on testimony provided by Dr. Hodson to support the conclusion that its recovery of the biophysical environment report is a complete answer to chronic toxicity concerns. Northern Gateway does this by presenting Dr. Hodson's evidence out of context.
3203. Northern Gateway takes a statement that Dr. -- made by Dr. Hodson regarding the overall impacts of a spill on the fish community in the Kitimat River to mean that one must guess at whether or not a release would result in chronic effects. This was not Dr. Hodson's evidence. Dr. Hodson was addressing overall impacts at the fish community level, not chronic -- not the chronic effects of oil spills to individual fish. *[B226-2, para. 632 and TC Vol. 164 line 11344-11346]*
3204. Northern Gateway never put to Dr. Hodson the premise that the literature that was reviewed by him and Dr. Collier and Mr. Martin, does not support the contention that an oil spill would result in chronic effects. Northern Gateway never asked Dr. Hodson whether in his views -- his view the literature he reviewed does or does not support the contention that a release could result in chronic effects. Northern Gateway also did not ask Dr. Collier, who was presented for questioning. The toxicity report prepared by these experts speaks for itself. *[D80-27-05]*
3205. Northern Gateway also tries to suggest that Dr. Hodson was unaware of additional information that was provided by Northern Gateway, and became argumentative when presented with this evidence. *[B226-2, para. 643]* Nothing could be further from the truth.
3206. All the transcript shows is confusion as to which document counsel for Northern Gateway was referring to and an inability to read it in the size it was presented. It is clear from Dr. Hodson's testimony, once the proper document was located and provided in an accessible format, that Dr. Hodson was familiar with the information. *[TC Vol. 164, lines 11172-11212]* Dr. Hodson was not unaware of this information; he was just unsure what filing Mr. Neufeld was referring to.
3207. Finally, Northern Gateway seeks to dismiss Dr. Hodson's EHHRA review on the basis that it was prepared starting from a non-objective scientific basis, with the sole goal being to criticize the extensive work contained in the EHHRA. Northern Gateway arrives at this conclusion on the apparent confirmation by Dr. Hodson that the assignment in preparing the EHHRA review was to "criticize" the EHHRA. *[B226-2, para. 636]*

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3208. It is important to bear in mind the role of a critical review in science. It is not, as counsel for Northern Gateway suggests, to only point out flaws and bury the positive. It is to critically assess assumptions, methodology and conclusions in order to test reliability.
3209. So when Dr. Hodson did not object to counsel for Northern Gateway's use of the word "critique" or "criticism", it was because a scientist's analytical approach is by its very nature a critical review.
3210. Dr. Hodson acknowledged that the Haisla Nation did not specifically instruct him to identify all the laudable aspects of the EHHRA. Neither did the Haisla Nation specifically instruct him to identify all the aspects of the EHHRA which undermine its reliability. The Haisla Nation simply asked him to analyze the EHHRA. *[TC Vol. 164, lines 11055-11056]*
3211. Dr. Hodson's EHHRA review speaks for itself. It is objective and scientifically based. In his testimony, Dr. Hodson provided an opinion as to how the EHHRA may be received by the public. This is the only instance in which Dr. Hodson's report or testimony was of a nature beyond the realm of his scientific expertise.
3212. Dr. Hodson was forthright about when he was doing this, and even apologetic for potentially taking Mr. Neufeld's questioning off-track. At all times, Dr. Hodson's evidence has been presented in an unbiased and helpful manner, in keeping with the role of expert scientific witnesses. Northern Gateway has tried to suggest otherwise.
3213. The Haisla Nation submits that paragraphs 636 to 638 of Northern Gateway's written evidence -- sorry, written argument should be given no credence.
3214. Let's talk about the evidence provided by Nuka Research. Northern Gateway relies on Ms. DeCola's acknowledgement that in many instances detailed emergency response plans are only required prior to commissioning to answer criticisms from intervenors that it has not done enough emergency response planning. *[B226-2, para. 624]*
3215. Ms. DeCola's testimony that the detailed emergency response plans are not generally required at the environmental assessment stage, was

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immediately followed by a qualifier however, which Northern Gateway appears to have overlooked.

3216. Ms. DeCola stated:

*“I guess I would just add that, you know, again, taking this back to that first question you put up there, the reason that I think it’s important to have some of this stuff worked out ahead of time again is to inform that risk of how prepared you are.  
[TC Vol. 164, line 11811]”*

3217. Finally, Northern Gateway identified a factual error in Nuka’s Preliminary Oil Spill Contingency Planning Analysis. At paragraphs 625 and 626, Northern Gateway sets out a calculation made by Nuka that used what appears to have been incorrect information as the basis for the calculation.

3218. When confronted with Nuka’s error, Ms. DeCola’s response was, as is to be expected of an expert, straightforward, honest and helpful. Rather than claiming that this oversight would not affect her conclusions, Ms. DeCola was forthright in acknowledging that if one of the base numbers in Nuka’s calculation was wrong, then the result would be wrong and the calculation would have to be redone with correct numbers.

3219. Ms. DeCola also explained why Nuka had undertaken to do the impugned calculation, because Northern Gateway did not provide this type of statistic in its evidence. [TC Vol. 164, lines 11914 and 11955-11961] Clearly, it would have been more helpful for all parties had Northern Gateway provided this information as part of its application.

3220. Northern Gateway seeks to rely on Nuka’s error to impugn Nuka evidence generally. With all due respect, Nuka was not seeking to mislead when it included this calculation. Nuka was seeking to inform and to be helpful, by filling a gap that should not have existed in the first place.

3221. Nuka’s evidence was obviously transparent enough for Northern Gateway to identify the error. Further, Nuka had provided a footnote explanation of what the calculation sought to do so that readers would not be misled. Finally, Ms. DeCola readily acknowledged that with the number presented to her by Mr. Neufeld as accurate, her calculated result would change significantly.

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3222. The record simply does not support a conclusion, as was suggested by Northern Gateway [B226-2, para. 626] that Nuka exhibited little concern about placing inaccurate data and analysis before the JRP with respect to the operational history of Enbridge.

3223. **THE CHAIRPERSON:** Just under 41 minutes.

3224. **MS. GRIFFITH:** Oh, thank you. That was supposed to be his job.

--- (Laughter/Rires)

3225. **MS. GRIFFITH:** Next, I would like to touch on some of the assertions in Northern Gateway's evidence and whether they are supported -- sorry, in Northern Gateway's argument and whether they are supported by the evidence. Due to time constraints I will have to limit myself to some key concerns.

3226. I will start with the SQRA and with how Northern Gateway has described that. In its written evidence, and in its oral reply on Monday, Northern Gateway claimed that the design changes resulted in an 84 percent reduction in risk, as demonstrated through the updated SQRA. [B226-2, para. 266]

3227. The claim that the 84 percent reduction is the result of Project design enhancements and advancements in geohazard identification and mitigation is not supported by the evidence. The original SQRA and the revised SQRA used different approaches to failure frequency. [see Fig 1 on p. 60 of the revised SQRA, B 196-2]

3228. In the original SQRA, Northern Gateway used the maximum failure frequency for each segment. In the revised SQRA, Northern Gateway used the average failure frequency for each segment. Selecting the average failure frequency meant choosing a lower failure value, which in turn reduced overall risk figures. Even without making any design changes, the revised SQRA would result in a lower overall risk, due to the change in approach to failure frequency.

3229. Northern Gateway simply cannot claim that the 84 percent reduction in risk is solely attributable to Project design enhancements and advancements in geohazard identification and mitigation. [TC Vol. 147, lines 20217-20222]

3230. Northern Gateway further claims that the SQRA demonstrates that the

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- median out volume for the entire oil pipeline for a hypothetical worst case full bore rupture was reduced by over 17 percent. This does not mean, however, that the median spill volume for a hypothetical worst case full bore rupture is acceptable.
3231.           Sketching out a pipeline design with block valves that limit spills to a theoretical maximum worst case scenario spill of 2,500 cubic metres and then adding more valves to reduce this to 2,000 cubic metres -- while reducing the spill volume -- does not resolve the issue -- which is still a spill of a significant amount of oil into the Kitimat River. It is like saying our Project is really, really dangerous, so we will make some changes so it will only be really dangerous.
3232.           Further, Northern Gateway claims an additional level of conservatism now exist in its EHHRA as a result of the placement of additional isolation valves. *[B226-2, para. 597]* While the placement of additional isolation valves may have reduced the spill volume for the Morice River modelled -- sorry, for the Morice River spill modelled in the EHHRA, this is not the case for the Kitimat River, where the modelled spill volume for oil was 1,293 cubic metres.
3233.           A review of the most recent document setting out crossing locations and valve placements *[B190-3, p. 11 and 31]* shows the maximum release volume at Hunter Creek to be approximately 1,300 cubic metres, which is the same as shown in the previous iteration of this document which supported the EHHRA. *[B109-4, pp. 11 and 31]*
3234.           I also want to touch on some claims made with respect to spill clean-up costs and the extent to which costs for a spill clean-up in the United States can be expected to be higher than in the rest of the world. In both paragraphs 209 and 616, Northern Gateway refers to Dr. Ruitenbeek's testimony in Edmonton which states the dollar per barrel clean-up costs in the United States are typically an order of magnitude higher than elsewhere in the world. *[TC 76 at line 23417]*
3235.           Further questioning in Prince George, however, led Dr. Ruitenbeek to clarify this statement, refining the difference between the clean-up costs in the U.S. compared to the rest of the world to approximately three to four times larger than in the U.S. *[TC 92 line 14556 and TC 96 lines 19899 and 19910]*
3236.           An order of magnitude difference is one that is a 10-fold increase, so 10 is one order of magnitude greater than one; 100 is two orders of magnitude greater than one. Three to four times larger is not an order of magnitude increase.

3237. At paragraph 309, Northern Gateway refers to site-specific geohazard evaluation in the Kitimat River Valley as a process during detailed engineering where risk assessments are refined and site-specific mitigation measures are planned to reduce the susceptibility of pipelines to geohazards.
3238. Northern Gateway advises that as a result of this work, a re-evaluation of the Hoults Valley alluvial fan in the Kitimat Valley report reduced susceptibility of the pipeline to debris flow by two orders of magnitude. What Northern Gateway has not reminded you of is that this same work also resulted in an increase of the susceptibility of the pipeline to avalanches by an order of magnitude. [B83-8, p. 29] So this type of work may also lead to an increase in susceptibility to risk.
3239. Next, I would like to talk about the issue of sufficiency and completeness of the information provided by Northern Gateway in support of its application. The Province of British Columbia and BC Nature and Nature Canada addressed this point on Monday, and the Coalition spoke to it on Tuesday. But the Haisla Nation has some additional submissions on this point, which I think will be helpful. I note also that this morning Gitxaala and Gitga'at spoke to it and so have a number of other parties.
3240. Northern Gateway has addressed concerns raised by intervenors regarding sufficiency in its oral reply argument and has, in that submission, pointed out that the hearing process includes the filing of an initial application, supporting materials, supplemental information, evidence, reply, information requests and responses and cross-examination. [TC Vol. 176, lines 62 and 63]
3241. The record today is very different from the record that was before this Panel when you assessed sufficiency for the purpose of issuing a Hearing Order. And so it should be, because the Panel is now faced with a different type of assessment. Do you have enough information to determine that this Project is in the public interest, and do you have enough information to conclude that there will not be adverse environmental effects that cannot be mitigated that are of a nature or extent that is significant?
3242. A number of intervenors filed motions in this process seeking that Northern Gateway be required to provide additional information. In a number of instances, the Panel ruled that Northern Gateway had provided a sufficient level of information for, quote, "*this stage of the process*". [A101-1, A135-1] End

- quote. This is clearly in recognition that the information requirements change as the process progresses.
3243. Northern Gateway urges that future post-certificate processes, such as filing of applications for detailed route approval, or even detailed route hearings, along with the NEB's continuing supervisory and enforcement functions [*TC Vol. 176, line 65*], means that you do not have to concern yourself with whether or not you have enough information, because more information will be generated in the future.
3244. Northern Gateway has argued that when intervenors suggest that more information is required at the environmental assessment stage, they are either misguided or willfully blind to the process used by the NEB to regulate pipelines in Canada. [*TC Vol. 176, line 66*] Northern Gateway appears to have missed the point.
3245. We are at the close of an information gathering process which must support and justify a decision. Your role in that is making a recommendation as to what that decision should look like. In order to do that you need, the Haisla Nation respectfully submits, appropriate and adequate information.
3246. The Haisla Nation and other intervenors have argued that the CEEA Scope of Factors sets out information required to be filed by Northern Gateway in support of its application. At paragraph 83 of its written argument, Northern Gateway seeks to characterize the Scope of Factors as providing guidance only. Northern Gateway relies on Mr. Green's testimony for this.
3247. Mr. Green's testimony, however, with respect, is not a conclusion of law and should not be relied on to determine that the Scope of Factors provide guidance only. Mr. Green's testimony may indicate how Northern Gateway has chosen to treat the Scope of Factors in preparing its Application, but it does not dictate how they are to be treated by you.
3248. At paragraph 708, Northern Gateway refers to the purpose of the Marine Environmental Effects Monitoring Program as to describe the current status of marine biota and their habitat and any potential changes in species diversity, abundance and distribution. The current status of marine biota and their habitat is information which, in the view of the Haisla Nation, clearly qualifies as information required under the Scope of Factors.

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3249. Information required by the Scope of Factors is not the only Project assessment information Northern Gateway has failed to provide. It has also failed to provide information required under the NEB Filing Manual with respect to terrestrial impacts.

3250. The NEB Filing Manual requires detailed biophysical and socioeconomic information for certain projects such as the proposed Project. For fish and fish habitat this includes fish species and life stages of ecological, economic or human importance, seasonal ranges, seasonal sensitive periods, habitat use, movements and general population status, description of sensitive areas and sensitive habitats including wetlands and riparian areas.

3251. In Haisla Nation IR 1.42f, the Haisla Nation requested the following information on fish habitat in the Kitimat River:

*“Please describe which part of the river each species uses at each life stage including migration routes.*

*Please identify and map critical habitat, including the spawning shoals of all the species of fish that use the river for reproduction.*

*Please provide information on which of these habitats would be affected by an oil spill and to what extent.”*

3252. Northern Gateway replied that the information is not available and that information on sensitive habitats and use would be obtained during surveys associated with control point mapping. [B39-3, p. 150]

3253. This information is still not available. Northern Gateway simply has not met the information requirements of the Scope of Factors in the NEB Filing Manual.

3254. Next, I'd like to talk about Aboriginal title and rights. There are a number of issues which I must address under this heading.

3255. Northern Gateway has suggested that this Joint Review Panel is operating under the same terms of reference as the Panel at issue in the *JackPine Mine* decision was and that this, together with a judicial review decision regarding the TERMPOL review for this Project, means that you do not have to consider



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- adequacy of consultation. The Haisla Nation disagrees.
3256. Northern Gateway claims that it has been responsive to the Haisla Nation's concern -- concerns. The Haisla Nation disagrees with this and has set out in its written argument why this is the case. However, I will touch briefly on a few aspects of Northern Gateway's argument that require reply.
3257. I will also discuss impacts to Aboriginal title and rights and mitigation.
3258. Does the Panel have the duty to assess adequacy of consultation?
3259. The Haisla Nation has set out in its argument in support of -- has set out its argument in support of a finding that the Panel must assess adequacy of consultation but does not wish to -- but does wish to reply to a point made by Northern Gateway on Monday.
3260. Northern Gateway stated that the *JackPine Mine* decision and the decision of Justice Barnes with respect to a judicial review make it clear that the Panel does not have to trouble itself with the adequacy of Crown consultation on this Project.
3261. Northern Gateway referred to the differences between the Joint Review Panel Agreement for the JackPine Mine Project and for the Northern Gateway review, as: "a distinction without a difference". [*TC Vol. 176, lines 277-281*]
3262. My friend appears to be suggesting that the authors who penned two different agreements did not turn their minds to language and their choice of words. I suggest to you that in an agreement such as the Joint Review Panel Agreement, which no doubt went through a number of drafts and passed through a number of hands prior to being finalized, language is deliberately chosen to capture intention.
3263. Further, the federal government has amended the Joint Review Panel Agreement for this review midstream but chose not to amend it in a way that brought it into alignment with that governing the JackPine Mine review. This too must be seen as being deliberate.
3264. Northern Gateway also seeks to rely on a court decision which it says has described the JRP process as "sufficiently robust" to address any Aboriginal

concerns with the process. *[B226-2, para. 1163]*

3265. In fact, what the Federal Court said is that the JRP process seems to be sufficiently robust to address weaknesses in the TERMPOLE report and determined that Gitxaala's request for relief was premature. That was at paragraph 51. *[Gitxaala Nation v. Canada (Transport, Infrastructure and Communities), 2012 FC 133]*
3266. The Court also said that it was premature for the Court to intervene in the process before it has reached the conclusion, suggesting that the JRP would listen fairly to Gitxaala's concerns, weigh all the available evidence and come to its own conclusion. *[para. 54]*
3267. The Federal Court may have deferred to the JRP process but that is not, with respect, a direction to the Panel that it must not assess adequacy of consultation.
3268. We also heard from CAPP, the Canadian Association of Petroleum Producers, that the Panel need not trouble itself with, and indeed cannot, assess the adequacy of consultation as that has not yet happened or is not yet complete. *[TC Vol. 177, line 1362]*
3269. That does not mean, however, that the Panel cannot assess what has happened to date or that it cannot assess what must occur in the future and give serious consideration to, as part of its public interest determination, whether the process, as proposed, is likely to be able to discharge the honour of the Crown.
3270. As set out in the final argument of the Haisla Nation, Northern Gateway has not addressed the concerns of the Haisla Nation. Further, Northern Gateway's written argument suggests that Northern Gateway has not actually understood the concerns of the Haisla Nation.
3271. On Monday, Northern Gateway referred to the argument of the Haisla Nation as criticizing the geotechnical work done by Northern Gateway in sometimes rather colourful language, and then referred specifically to a statement made in the Haisla Nation's argument that states that the Project represents unique circumstances and that it will transport highly toxic hydrocarbons. Northern Gateway states that there is nothing particularly unique about its Project. The Haisla Nation disagrees.

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3272. In cross-examination, Northern Gateway confirmed that Enbridge does not operate pipelines in areas that have terrain and seasonal climatic characteristics of the Kitimat River Valley. That creates a unique situation as it relates to construction, operations, maintenance, leak detection and spill response. *[TC Vol. 96, 20022-20024]*
3273. Further, you heard this morning that the Ermineskin Cree and -- from the Ermineskin Cree Nation and Samson Cree Nation that there are a number of factors that make this Project unique.
3274. At paragraph 1152, Northern Gateway refers to the Aboriginal Engagement Program not having succeeded in resolving all concerns of all groups along the right-of-way or the Coastal Nations and then refers to ongoing concerns being expressed regarding issues such as a marine oil spill risk. Northern Gateway would have you believe that this is the only unresolved issue, which is simply not true.
3275. The Panel only needs to read the final argument of the Haisla Nation to understand that the Haisla Nation's concerns with the Project span the effects of pipeline and terminal construction and operations, as well as the potential for spills into the terrestrial, freshwater and marine environment. This is understandable, given that all three aspects of the proposed project are in Haisla Nation territory.
3276. Northern Gateway refers to additional work done in the Kitimat River Valley, with respect to both preliminary design work and response planning. We heard Northern Gateway say on Monday that these reports were provided in reply evidence because Northern Gateway had heard Chief C'ekwikas, Ken Hall, of the Haisla Nation describe the proposed Project as a double-barrelled shotgun, with both a marine and terrestrial component, and that this had resonated.
3277. Apparently, it had not resonated enough. Northern Gateway addressed, at best, one of the barrels of that shotgun and, when I say "at best", there are still a number of concerns relating to the Kitimat River Valley that have not been addressed.
3278. Northern Gateway also refers to testimony from Ms. Holder suggesting that the Haisla Nation had ignored the two Kitimat River Valley reports. *[B226-2, para. 1202]* Far from it.

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3279. The Haisla Nation, in its IR No. 4, submitted numerous information requests addressed at those reports and sought to question Northern Gateway in detail regarding its spill response capability in the Kitimat River Valley. [*Exhibit D80-70-2, HN IR No. 4, and Exhibit B132-2, NG's response to Haisla IR No. 4, and at TC volumes 146 and 147*]
3280. More troubling than what I have just discussed, however, is that with respect to impacts of the pipeline right-of-way from Prince George to Kitimat, Northern Gateway refers to the PTP pipeline and the mitigation measures proposed for that pipeline, suggesting that because the PTP pipeline has support of First Nations, Northern Gateway's assessment of environmental effects, including effects on traditional use, is reliable.
3281. Northern Gateway's proposition is that because First Nations along the PTP pipeline support that project, then provided Northern Gateway implements the same mitigation, there will be no significant adverse environmental effects from its Project, including environmental effects on traditional use. This is not logical. There is not necessarily a linkage between support for one project and lack of environmental effects from another project.
3282. Put simply, Northern Gateway does not understand the issues associated with its Project. Northern Gateway cannot look strictly at footprint impacts and determine that, since one project was able to negotiate an impact benefit agreement with respect to that project, the suite of mitigation applied to that project would be acceptable to the new project. Impacts from one project may be acceptable given the context. In the context of a different project, those same impacts may not be acceptable.
3283. It is clear from Northern Gateway's questioning of the Haisla Nation and from its written argument that Northern Gateway seeks to equate its Project with an LNG project but Northern Gateway is not an LNG project. Northern Gateway is proposing to transport entirely different products.
3284. Society recognizes that different activities are subject to different rules, depending on the nature of risk. For example, Masters need different qualifications to operate pleasure craft than to operate VLCCs and building codes are different for public buildings than for private dwellings.
3285. The Haisla Nation's concerns with the Project are driven by the different nature of the risk associated with an LNG project on the one hand, and

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with Northern Gateway's Project, on the other hand. Northern Gateway seeks to divorce its Project from the products it will ship. That is understandable, given the concerns associated with a spill of condensate or diluted bitumen.

Understandable? Yes. Possible? No.

3286. The only way Northern Gateway's proposition in paragraph 1243 makes sense is if Northern Gateway were proposing to use the pipeline to transport natural gas and if it had engaged in respectful negotiations with the Haisla Nation to achieve an Impact Benefits Agreement.
3287. Northern Gateway continued to try to equate the Haisla Nation's concerns about the environmental effects with the impacts to Aboriginal rights and title. [B226-2, para. 1255] There is definitely a linkage but it is not, as Northern Gateway has tried to suggest, one where mitigating the impacts from construction to a level where they are not deemed significant by Northern Gateway will result in no adverse impacts to Aboriginal rights.
3288. It may seem like common sense to Northern Gateway to propose that its conclusions of non-significance of adverse environmental effects is the end of any concerns regarding effects on current use of land and resources for traditional purposes [B226-2, para. 1256] but this is not so. There is no need for me to go there today, as it is fully addressed in the Haisla Nation's written argument.
3289. With respect to the proposed terminal site, Northern Gateway states that, since the Haisla Nation has stated that the development of the terminal site for an LNG project would be appropriate, then:
- "Provided that adequate consultation occurs, there is no inconsistency between the use of the site for an energy terminal, and any underlying claims to Aboriginal rights, including title." [B266-2, para. 1258]*
3290. Northern Gateway is wrong. This simplistic analysis ignores three significant aspects of Aboriginal title: the inalienability of Aboriginal title and the inability to use the lands in a way that abrogates from that title; the fact that Aboriginal title includes the right to choose the use to which the land is put and the inescapable economic component.
3291. Not all energy projects are created equal. The Haisla Nation has assessed and weighed the risks associated with natural gas and has made an

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informed decision about the use of Reserve lands and Aboriginal title lands for LNG projects. *[TC Vol. 164, 10655-10657]*

3292. Can I just get a time update, please?

3293. **THE CHAIRPERSON:** Fourteen (14) minutes and twenty-eight (28) seconds.

3294. **MS. GRIFFITH:** Thank you.

3295. With respect to oil spill concerns, you have just heard before me that the federal government has intentions to increase its ability to respond to oil spills. To date, these are intentions and evaluations of potential need for improvement. There is no evidence before you that these are or will be in place.

3296. Northern Gateway has not addressed the Haisla Nation's concerns with respect to oil spills and the ability to mitigate oil spills. You've heard a lot about this. We questioned Northern Gateway extensively about this. Other parties providing their oral arguments have referred to it repeatedly. You have also heard that Northern Gateway is simply saying "Trust us".

3297. The Haisla Nation has heard that term before, often. Too often and too often, having that trust has had disastrous consequences. I refer you to the oral evidence provided by Haisla Nation Elders and Chiefs.

3298. Northern Gateway rejects the submissions of intervenors, including the Haisla Nation that Northern Gateway should not have done more in the way of response planning. *[TC Vol. 176, line 150]*

3299. Northern Gateway seeks to rely on the fact that filing of detailed finalized response plans is not required prior to commencement of operations to justify the work it has done with respect to response planning. *[TC Vol. 176, line 163]*

3300. The fact that a particular regulatory agency has not required a detailed response plan at the environmental assessment stage in the past does not that -- does not mean that a plan for a plan, or for many plans, will necessarily be enough to satisfy the burden of proof in an environmental assessment.

3301. The question the Panel needs to ask itself is: What does this particular

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- project need to provide or demonstrate, in the environmental assessment process, with respect to feasibility of mitigation?
3302. To suggest that this is not an issue just because other projects do not require detailed operational response plans until prior to operations does not dispose of this issue.
3303. We heard from Northern Gateway that it respects the Haisla Nation's position that it is not prepared to discuss economic opportunities and benefits at this time [TC Vol. 176, line 243 and B266-2, para. 1247] but this respect is qualified respect. The respect for this position exists only as long as it is not, at the same time, argued that the burdens and benefits of the Project are unfairly distributed. [TC Vol. 176, line 244]
3304. It is beyond doubt that the Haisla Nation will shoulder greater burdens from the proposed Project than any other party to these hearings. These burdens will not come just from a spill but also from construction and routine operations.
3305. The Haisla Nation has set out that Northern Gateway's Project is antithetical to Haisla Nation stewardship obligations for its territories -- for its territory.
3306. Northern Gateway is seeking to impose an environmental risk that threatens the Haisla Nation way of life and Haisla Nation cultural heritage. Northern Gateway is suggesting that the Haisla Nation become complicit in imposing this risk, by becoming an equity owner of the Project. That is not a rational expectation on the part of Northern Gateway at this stage of project review.
3307. Chief Councillor Ellis Ross has been clear about that in the record. He stated that the Haisla Nation looks first at environmental aspects of proposed development before considering economic benefits. [TC Vol. 164, line 10929]
3308. And if the environmental impacts are disproportionately borne by the Haisla Nation, that is a concern in and of itself, that is not only valid in the context of consideration of economic benefits, but that is generally valid.
3309. Finally, from the Haisla Nation Aboriginal title and rights standpoint, perhaps the most troubling aspect of Northern Gateway's argument is found at paragraph 435. Northern Gateway states:

*“Northern Gateway acknowledges that voluntary acquisition of the terminal site would require future discussions with the Province of British Columbia as well as the Haisla Nation.”*

3310. By referring to voluntary acquisition at the terminal site, Northern Gateway suggests the alternative of a forced taking.
3311. Given the Haisla Nation’s strength of its Aboriginal title claim to the terminal lands, the taking of land for the proposed terminal raises complex constitutional -- consultation and accommodation and justification issues.
3312. The veiled threat of expropriation should give the Panel pause. This would not be socially responsible. It is inconsistent with the spirit of reconciliation which underpins the judicial decisions governing consultation and accommodation as a means to preserve and protect section 35 rights.
3313. This is simply the wrong Project to deliver diluted bitumen to tidewater. It is the wrong Project, in the wrong place, at the wrong time, with the wrong engagement process.
3314. I'd like to address conditions briefly, but I would ask if I could get a seven-minute warning? That would be useful because Chief Councillor Ellis Ross has some comments as well.
3315. Northern Gateway suggested that some of the Haisla Nation submissions on conditions appear to be designated to load more stringent requirements on the Project for that -- for the sake of that and suggests that they were often -- that there are often no particular reasons provided. This reinforces the Haisla Nation's concern that Northern Gateway has not heard and does not desire to address the Haisla Nation's concerns.
3316. The Haisla Nation's submissions on conditions are consistent with its stewardship obligations for its territory and its obligation to protect the lands, waters and resources of Haisla Nation territory for future Haislas.
3317. I urge the Panel to reject the Northern Gateway's proposed changes to Conditions 16 to 18 and 23 to Condition 38 -- and I'm doing this quickly because I'm running out of time -- to Conditions 43 to 36 (sic) and 54 to 77 -- sorry, 54 to 57, to 48 and 51, and to 142 and 143. The Haisla Nation has made submissions



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on conditions in its written argument.

3318. Before finishing, I want to leave you with one piece of evidence. I'm going to read from the Transcript Volume 8, January 10<sup>th</sup>, 2012, from the evidence of Chief Councillor Ellis Ross, and I quote:

*“At the very least, I’d like you to understand that there’s options to get this product to Asia. There are options. Kitimat’s not the only option. Kitimat was never just the only option for a smelter mill, it was never the only option for a pulp and paper mill and so on and so on and so on. There’s always options. At the very least, the very least, in assessing this project, please, don’t -- just don’t regard Haisla as just this collateral damage ensuring that this product gets to Asia. Don’t just consider the economics. Take what you’ve heard, take their pain and their emotions and apply that to your decision-making. Apply it like it was happening to your own family. Apply it like it’s your heritage because, quite frankly, it is.” [TC Vol. 8, lines 4356-4357]*

3319. End quote.

3320. Subject to any questions from the Panel, those are my submissions. Chief Councillor Ellis Ross has some comment.

3321. But before I turn the microphone over to him, I echo the comments of my colleagues regarding the courteous nature of these proceedings. In addition, on behalf of the Haisla Nation’s legal counsel who have had the privilege to appear before you and on behalf of the Haisla Nation’s technical advisors -- because this has very much been a team effort -- I would like to thank you. And I’d like to thank the NEB and CEAA staff for their courtesy, assistance and hard work in making the hearings go as smoothly as they have. And I wish you luck with your deliberations.

3322. But here first is Chief Councillor Ellis Ross.

3323. **CHIEF COUNCILLOR ROSS:** Five minutes.

3324. Okay, thank you. Thank you for this time and this opportunity to present to the Panel, speak to the Panel.

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3325. I've been representing Haisla Nation since 2003 in one form or another. Personally, 10 years ago I was opposed to any type of development regardless of the project or associated review processes. At the time I was convinced by my peers to keep an open mind and review technical and environmental facts, as well as economic benefits that would flow to my membership. I agreed and now I have different outlooks on initiatives like forestry activities or major projects like natural gas exports.

3326. I have taken the same approach with this proposed Project and in light of the facts or the lack of facts, my position on behalf of my people has only been confirmed and strengthened that this Project should not proceed.

3327. By the way, we had experience with expropriation for the past 30 years, it's not a good process and it can only escalate the anxiety to my people have around this proposed Project at a time when we should be thinking about reconciliation between First Nations and the Crown.

3328. Thank you.

3329. **THE CHAIRPERSON:** Ms. Griffith, do you have anything to add in the last three minutes 50 seconds?

--- (Laughter/Rires)

3330. **MS. GRIFFITH:** You shouldn't have asked.

--- (Laughter/Rires)

3331. **THE CHAIRPERSON:** Three minutes 40 seconds.

--- (Laughter/Rires)

3332. **MS. GRIFFITH:** I'm honoured; I had a lot of comments on conditions.

3333. I'll go straight to the marine environmental effects monitoring condition. Let me just find myself in my notes.

3334. But one of the -- one of the key issues was -- one of the suggestions

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- made by Northern Gateway was that the survey framework should consider monitoring of groups of fish species, I think was the terminology they used, and the Haisla Nation would vehemently object to that.
3335. Each salmon and eulachon should be surveyed separately. And to allow the survey of species groups would potentially allow the grouping of the salmon -- all the salmon and eulachon into anadromous fish and this -- this is not acceptable.
3336. With respect to the Project Environmental Effects Monitoring -- sorry, pipeline -- PEEMP and the MEEMP, Northern Gateway has suggested removing references to preconstruction work because this would take out prior to, during and after construction. This is inappropriate. A certain amount of that work has to take place preconstruction and the solution is to include all three phases of monitoring, not to remove the reference to preconstruction.
3337. Northern Gateway proposes that Conditions 43 to 36 (sic) and 54 to 77 for the TLU Investigation Plans be deleted. The Haisla Nation disagrees. The fact that these would be covered in the commitments and under Conditions 2 and 3 would remove the requirement for NEB approval. So these conditions should stay in -- as separate conditions with the ongoing requirement for NEB approval.
3338. With respect to watercourse crossing contingency plans, Northern Gateway has proposed significant changes. Its rationale states that it would notify and begin construction immediately if it had to change its crossing approach. Northern Gateway seems to be suggesting that it is not capable of planning 21 days ahead for watercourse crossings. This raises obvious concerns about Northern Gateway's general construction and planning abilities.
3339. The Haisla Nation was under the understanding that secondary methods of watercourse construction were being considered because Northern Gateway had not yet done enough field investigations to land on suitable construction methods.
3340. Now, it appears Northern Gateway is saying it will not have enough information at the actual time of construction to be confident that this proposed -- that it's proposed construction method will work.
3341. Interestingly, Northern Gateway has claimed a high level of certainty for significance evaluation of potential construction effects on the productive

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capacity of fish habitat due to the use of proven approaches to mitigate these effects and then stated that where gaps in data exist, or logistics for given crossings are complex, further studies will augment the understanding of potential effects and risk before permitting occurs. *[Exhibit B3-9, p.109]*

3342.            Yet, its submission on watercourse crossing contingency plans -- on the watercourse contingency plans suggests to the contrary. So this condition should not be altered.

3343.            **THE CHAIRPERSON:** Ms. Griffith, you are now out of time.

3344.            Do you have three summary sentences that you'd like to complete with?

3345.            **MS. GRIFFITH:** Since I've already given my thanks, no. But thank you again.

--- (Laughter/Rires)

3346.            **THE CHAIRPERSON:** Thank you very much.

3347.            Thank you very much, Ms. Griffith, Chief Councillor Ross for your submissions. The Panel has no questions. Thank you.

3348.            Let's take our afternoon break and come back at 10 after 3, please?

--- Upon recessing at 2:55 p.m./L'audience est suspendue à 14h55

--- Upon resuming at 3:10 p.m./L'audience est reprise à 15h10

3349.            **THE CHAIRPERSON:** If we can get everyone to take their seats again, please?

3350.            So I can see by the presence at the table, and also was informed after lunch, that there has been another switch in the order. And so MEG Energy will be going next followed by Heiltsuk Economic Development Corporation.

3351.            We've had a media request asking what the unforeseen circumstances were that caused us to alter our hearing schedule.

3352.           And so we want to share with the people in this room, given that there's been a media request about that, that regrettably there's been a -- I guess first of all, as we've gone through this journey I'm sure that all of us personally have experienced both the beginnings and the endings of life in our own families and with our friends.
3353.           Regrettably, there have been three unexpected deaths which has caused the requirement to amend the hearing schedule.
3354.           So again we're not trying to rush anything. If the right thing to do is to come back on Monday that's what we'll do, but we do need to finish the hearing at one o'clock on Friday.
3355.           So we'll just continue to proceed on that basis. It could be that we may extend the hearing hours a bit today and have Heiltsuk begin -- Heiltsuk Economic Development Corporation, and potentially some of the other Heiltsuk parties who are registered, to present their reply this afternoon, even in the early evening.
3356.           So we're going to just continue to play this one as it best rolls out. We've all invested a great deal of energy and commitment into this process and I can assure you that the Panel and our staff remain absolutely committed to bringing this to the appropriate conclusion.
3357.           And so we will run with whatever works best but we're just letting you know that the Monday -- sorry, the Friday at one o'clock is a hard line in the sand for us and we're very prepared to be back on Monday if that's the right thing to do.
3358.           We're just trying to also weigh the balance of the parties having to return and be here on Monday, if people choose to leave over the weekend.
3359.           So with that, we'll hear from MEG Energy Corp.
3360.           Mr. Keough?

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MR. KEOUGH:**

3361.           **MR. KEOUGH:** Thank you, Madam Chair, Panel members.

3362. Before I start, I probably should make a general apology to the court reporter and possibly the translators because the ever-persuasive Ms. Niro, convinced me to give her a copy of my handwritten notes and I just hope they think they are in one of our official languages.

--- (Laughter/Rires)

3363. **MR. KEOUGH:** Madam Chair, these remarks are made on behalf of MEG Energy or MEG and will be restricted largely to the economic issues that have been the focus of MEG's active participation in this proceeding.

3364. As you are aware, MEG is a funding participant that strongly supports the Enbridge Gateway Project and does so strongly now and throughout the whole process.

3365. In MEG's view, it is imperative that we see this Project through to fruition. We urge you, the JRP, to focus and rely upon the facts and evidence and not get caught up in the unsupported assertions that appear to be driving many of the positions being advanced by certain intervenors.

3366. These positions are not sustainable when viewed objectively and I will discuss those a little bit in a few moments.

3367. We submit to you the dreams that new Canadian upgraders and/or refineries will pop up out of nowhere, if the Gateway Project is denied, are simply not supported by any facts or evidence.

3368. Likewise, protectionist views that would seek to thwart the free market forces simply lack validity and cannot trump the clear evidence before you.

3369. As well in the statements regarding the identity of the parties supporting the Gateway Project, to the extent that it is relevant at all, which we submit it is not, cannot override the evidentiary demonstrations that show that the applicable legislative requirements have been fully met.

3370. The JRP should look to the NEB's longstanding facilities approval mandate and the criteria you have applied consistently to guide you in your decision-making process. This is the best way to ensure that your legislative mandate is fulfilled and that the right decision is arrived at.

3371. As well, we submit to you that the passage of time should not serve to embellish or enhance the evidence that was actually presented to you by certain of the witnesses who appeared before the JRP.
3372. I will have more to say on this later but we now see certain parties, like the AFL and CEP and the ForestEthics Coalition, seek to elevate the testimony that was given way back in Edmonton by witnesses such as Ms. Robyn Allan.
3373. While these parties now seek to rely upon this testimony from Ms. Allan to support certain of their economic positions that they are advancing, let us not forget that, in September 2012, when Ms. Allan appeared before you, that she was an unattached witness seeking out a party to justify her participation.
3374. The reality has not changed. In fact, Ms. Allan truly was a witness at large, as was discussed with her at Transcript Volume 80, paragraphs 28173-28187.
3375. As well, while not wanting to be unfair, we submit it is accurate to suggest to you that during questioning, Ms. Allan struggled with certain fairly basic concepts regarding the pricing of Canadian crude oil relative to international market pricing. That's also at Volume 80, paragraphs 28263 to 28281.
3376. Again, it is important for the Panel to rely upon the facts and not turn past evidence into something it is not based on argument you have heard. We say to you, look at the record. We invite you to stack up the expert evidence provided by Wright Mansell, Muse Stancil and Wood Mackenzie and compare it to what Ms. Allan had to say to you.
3377. MEG can also confirm to you that it associates itself with the remarks made by the other funding participants, by CAPP, by the Government of Alberta, and by Northern Gateway itself. Those remarks will shorten my comments to you because I do not need to repeat them.
3378. While MEG did not actively participate in certain aspects of the hearing it did monitor the evidence continuously and we can confirm that we are largely supportive of the positions that have been put to you by those parties.
3379. Now, I have to say to you that MEG finds it nothing short of astounding that the AFL, CEP, and the Coalition question the level of support provided by the funding participants for the Gateway Project. You heard about

- that extensively in their arguments. These parties speak to the aggregate \$140 million that was expended as of September 2012 as though it were a pittance. I would refer you to paragraphs 26042 and 29834, plus their argument.
3380. We find this difficult to comprehend. These are real dollars. These are huge dollars. And the funding participants have put this money totally at risk in order to advance this Project. They've done so because of the importance of the project.
3381. If these parties had not supported the Project, taken these risks and stepped up with these dollars, there would be no project. That is the uncontroverted evidence before you and that is the reality of the situation.
3382. Now, these intervenors talk about commitments, and while we're not sure of the process followed by these organizations in terms of showing a commitment for anything I guess, the evidence before you confirms that when the funding participants execute transportation service agreements it is a commitment of at least a billion dollars for each 50,000 barrels of capacity. These are huge obligations; large dollars.
3383. It is certainly not unreasonable for parties to want to understand the terms and conditions attached to any approval that may be granted and to have a better estimate of the costs involved before making a final decision. These are the steps any prudent business would take and they certainly do not reflect a lack of commitment. There is no evidence to support such bald assertions. This is just good business.
3384. Now, this brings up certain remarks made by my friend, Ms. Chahley. Now, don't get me wrong, I quite like Ms. Chahley, and while it may sound like I'm picking on her a little bit, if it sounds like that it's because I am, and I told her I was going to do that because she said she was leaving before I would make my remarks, so I'm expecting to hear from her when she reads the transcript.
3385. I'm going to suggest to you that at points Ms. Chahley got a little carried away and strayed a bit from the actual evidence. Her remarks also tend to be fixated on the origin of some of the owners of certain shippers and appear designed to have the JRP draw some what we submit are unsubstantiated and likely adverse inferences. Ms. Chahley makes several references to the ownership and shippers, including MEG. For example, at Volume 80, paragraph 29084 and Volume 81, paragraph 30006, and following, plus she raised it in argument at



paragraphs 849 and 850.

3386. Now, these comments are made despite the fact that Ms. Chahley herself during cross-examination questioned Mr. Moe who appeared on behalf of MEG Energy. Mr. Moe confirmed that CNOOC owns 14.8 percent of MEG, and that was at transcript 29084, and has one out of 10 directors on its board, at paragraph 30006.
3387. Now, in argument Ms. Chahley also sought to make sweeping statements regarding Gateway being the first pipeline designed to export raw bitumen and that the exports were not being destined for the United States. That was paragraph 815 of her argument.
3388. Again, those comments do not align with the actual evidence before you. The funding participants confirmed that various crudes can be shipped on Gateway and it provides the flexibility to sell what the market wants. That's at Volume 80 of the transcript, paragraphs 29756 to 29760.
3389. Likewise, the funding participants confirmed that the U.S. West Coast and the Pacific Northwest were target markets off Gateway as they are seeking market diversity. And that's at Transcript Volume 81, paragraph 29990. They indicated that this is particularly the case given the decrease in the supply of Alaska North Slope crude available to those U.S. markets.
3390. While it was openly acknowledged that the Asian markets are large and attractive for Canadian crudes by no means are they the only markets. There are many target markets.
3391. Now, these same intervenors were critical of the support for the condensate pipeline. This was covered by both Northern Gateway and the funding participants, and I do not need to repeat what has been said. MEG's witness Mr. Moe spoke extensively on the condensate issue. This was also referred to by Ms. Ho in her remarks to you yesterday.
3392. Now, we submit Ms. Chahley got a bit carried away on another point and seeks to again draw some negative inferences by referring to Gateway as a private pipeline. I guess that's for the funding participants. And that was in her argument at paragraphs 852 and 853.
3393. While it is indeed curious why the AFL and other similarly situated

- parties would trouble themselves with this point regarding the percent of uncommitted capacity on the pipeline, particularly when no actual perspective shippers are here commenting on that matter, we can only speculate on the motives for those type of comments because they certainly were not made clear. We submit to you that these type of comments lack any credibility and should be ignored by the JRP.
3394. Now, on a higher level, the submissions made by the AFL and CEP, with whom they associated themselves, should be sounding very familiar to the NEB at this point in time, and that is because, as noted by several parties in argument and, in fact, acknowledged by the AFL and CEP themselves, these very same positions have been advanced in a number of other pipeline proceedings before you. As noted, they've been rejected every time. We submit to you that the same result should happen here.
3395. In the end result, MEG submits that Gateway has fully demonstrated that all of the NEB's facility approval criteria have been met and the requested approvals should be granted. MEG submits that this national infrastructure project has been demonstrated to be in the overall public interest.
3396. MEG submits that Northern Gateway has proactively addressed the numerous issues that have confronted it. While we appreciate that certain conditions are likely to be imposed on any approval granted, we note that Northern Gateway has extensively addressed this matter and MEG has commented on a number of the conditions that are of importance to it. I guess all of them are important to it given that it may be footing the bill for the imposition of conditions.
3397. In closing, we submit to you, this Panel should recommend that the Northern Gateway Project be approved.
3398. Thank you, Madam Chair and Panel members.
3399. **THE CHAIRPERSON:** Thank you, Mr. Keough.
3400. The Panel has no questions of your submission.
3401. We'll call next the Heiltsuk Economic Development Corporation, please.

--- (A short pause/Courte pause)

3402.           **THE CHAIRPERSON:** Good afternoon, Ms. Fong, Ms. Humchitt.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. FONG:**

3403.           **MS. FONG:** Good afternoon, Madam Chair and Panel Members.

3404.           With us today is also, from my office, Ms. Julia Hinks representing Heiltsuk. So the Heiltsuk intervenors, there are four of the groups, and so there's an allocation of four hours. We may or may not need all four, but what we would suggest to do is to not artificially break up the hour by hour and announce a stop and the -- the start of another intervenor, but to let us proceed.

3405.           So we would ask that we can do that if that's okay and then we'll just make sure we're finished within our four-hour period.

3406.           **THE CHAIRPERSON:** Ms. Fong, each of the Heiltsuk-related intervenors have registered as separate intervenors ---

3407.           **MS. FONG:** Correct.

3408.           **THE CHAIRPERSON:** And so they would be subject to the same rules as all other intervenors.

3409.           And so each Heiltsuk entity would have up to an hour to provide their reply argument.

3410.           **MS. FONG:** Yes.

3411.           **THE CHAIRPERSON:** And so we would stop after the hour is up and move on to the next Heiltsuk intervenor who has asked to provide reply arguments as well.

3412.           So we won't -- because that wouldn't be fair to the other parties.

3413.           **MS. FONG:** I see.

3414.           All right, then we shall start with Heiltsuk Development Corporation,

thank you.

3415.           **THE CHAIRPERSON:** That's the party that we called, yes.

3416.           **MS. FONG:** Thank you.

3417.           So the Heiltsuk Development Corporation manages the business affairs of the Heiltsuk people. We call them HEDC for short. They act to create economic independence from government and to foster economic well-being from promoting sustainable development.

3418.           HEDC applies Gvi'ilas, which are the laws passed down by Heiltsuk ancestors that include laws stewarding resource use and environmental management.

3419.           Now, our first response point is regarding consultation and participation in this Joint Review process and it deals with the lack of consultation to date.

3420.           Now, Northern Gateway has asserted in its written closing submission that consultation with the Crown and Aboriginal groups has been ongoing for years. In submitting that Aboriginal groups have had the opportunity to be consulted about the environmental assessment process, and how Aboriginal groups could participate in the Project, Northern Gateway essentially argues that consultation has been adequate to date in their submissions.

3421.           Now, we disagree. The Crown has failed to adequately consult with Heiltsuk Nation.

3422.           According to the amended Joint Review Panel agreement, the Government of Canada will rely on the consultation effort of the Proponent, and the Joint Review Panel process, to the extent possible, to assist in meeting its duty to consult. But nothing that has occurred to date, individually or collectively, constitutes adequate consultation.

3423.           So we say there's no consultation by the federal government. Under the Crown's own "Aboriginal Consultation and Accommodation" document, the Crown has formulated and recognized certain guiding principles. Guiding Principle Number 4 requires a meaningful consultation process that is, among other things: "accessible, reasonable, flexible and fair"; founded in principles of

good faith, respect and reciprocal responsibility; and includes accommodation.  
*[E9-6-07- Updated Guidelines, at page 14]*

3424. Now, Guiding Principle No. 4 requires a process characterized by good faith, and an attempt by the Crown to understand Heiltsuk's concerns, and to actually address them. Yet, the Crown hasn't consulted with Heiltsuk Nation.
3425. A meeting explaining that the Crown is using the JRP process is not consultation in itself. Federal officials have met with Heiltsuk on only two occasions regarding the Project: once, in November 2010 and, again, in August 2011. These meetings do not constitute consultation. They were brief and did not involve any comprehensive discussion of the Project or its impacts on Heiltsuk.
3426. The Crown's failure to consult with Heiltsuk is of particular concern in light of the Heiltsuk's established commercial right to herring spawn-on-kelp fishery.
3427. Now, we also say that there's been no engagement through Northern Gateway. Further, Northern Gateway was required to contact Aboriginal groups potentially impacted by the Project, provide them with information, document the groups' concerns, including information on unresolved concerns in its Application. And yet, Northern Gateway appears to substantively rely on its consultation with the Turning Point initiative and Coastal First Nations to fulfil its obligations to Heiltsuk Nation.
3428. Even after Heiltsuk invited Northern Gateway to discuss concerns regarding the Project in November 2010 -- a meeting that Northern Gateway's Aboriginal Consultation and Regulatory Compliance Manager initially questioned as being without any purpose, given Heiltsuk's obvious position -- Northern Gateway did not accurately record Heiltsuk Nation's unresolved concerns in its Application update. *[24-2 – Update to Application Vol. 5A, at adobe page 382]*
3429. Northern Gateway did not record Heiltsuk Nation's continued opposition to the Project and described their concerns in such a general manner that one couldn't understand the particulars of the concern.
3430. And I am going to go to the mitigation table later on in my submission because Northern Gateway complains that the intervenors did not respond to the mitigation table and we're going to tell you why we didn't respond.

3431. Now, Northern Gateway has failed to engage with Heiltsuk on any meaningful level to assess their concerns, and accurately record these concerns.
3432. And the JRP process, we say, is not adequate consultation in itself. The JRP process is also not a true consultation. In essence, the JRP process by its very nature is incapable of providing the asserted deep and meaningful consultation and we heard that from Mr. Stinson O’Gorman that that’s what Canada is purporting to provide: deep and meaningful consultation. Northern Gateway is incorrect in implying that Aboriginal groups have had any true input with respect to the most fundamental aspects of this process.
3433. Now, we say that consultation is part of a reconciliation process, and requires meaningful dialogue between Crown and Aboriginal peoples.
3434. In contrast, the JRP process is an inherently legal and adversarial process. It utilizes applications, affidavit evidence, interrogatories, cross-examinations of expert panels that were sometimes 15-30 experts, objections to questions. The nature of the process restricts the free flow of information which is at the heart of consultation. So, for example ---
3435. **MR. NEUFELD:** Madam Chair, I apologize for interrupting, but I’m having some trouble understanding what this submission has to do with the HEDC, the submissions to you. I understand that the Heiltsuk have issues with Crown consultation but this is not addressed in their argument in-chief of the HEDC.
3436. And this is apropos to your comment about the fairness of basically having a four-hour submission on all of these issues at large bundled up into the various different elements. So if we could just get some clarification on that, I’d appreciate it.
3437. **MS. FONG:** Is that an objection because if it is, I will respond.
3438. **MR. NEUFELD:** Well yes, it is.
3439. **MS. FONG:** Thank you very much.
3440. We have read the procedural rules. There are limit -- no limitations on what we may respond to. Northern Gateway has provided 400 pages, I believe or 395 plus an additional 100 pages of appendix materials. It’s a significant amount.

Each intervenor is entitled to respond to their submissions, as well as the submissions of other parties who made closing submissions.

3441.           So we have that entitlement, HEDC. It does not necessarily need to be related HEDC's submissions themselves because that's not the purpose of response. We are not here to repeat HEDC's closing submissions because that would a proper objection too. So that's one.

3442.           Secondly, in HEDC's submissions, we did adopt other Heiltsuk intervenor submissions if that were a limitation but I can't see that would be any fair limitation and is not a limitation, I'm sure, that has been visited on any other intervenor providing a response.

3443.           **THE CHAIRPERSON:** Does that complete your submissions on the objection, Ms. Fong?

3444.           **MS. FONG:** Yes, thank you.

3445.           **THE CHAIRPERSON:** Mr. Neufeld?

3446.           **MR. NEUFELD:** Well I'd simply go back and say, Madam Chair, this is a way of having four hours instead of one.

--- (A short pause/Courte pause)

3447.           **THE CHAIRPERSON:** We do note that there were four separate parties who were registered and accepted as intervenors and so we will hear from each of the parties who have registered -- provided written argument and registered to provide oral reply.

3448.           Ms. Fong, we would remind you, however, that there's no need to repeat anything that's already been stated and you can adopt positions that have already been brought forward. And so we would ask you to be mindful, the same way we have observed with all parties, in terms of not repeating anything that's already been stated, as you go forward with your comments.

3449.           **MS. FONG:** Thank you. I will then proceed.

3450.           Now as an example of the inherently legalistic process, I think the most -- one of the most obvious examples that occurred during the JRP process

was that there were five First Nations that were denied the opportunity to question federal government participants, whereas a true consultation process would have provided these First Nations with an opportunity to access fuller information about the federal government's evidence on issues of key importance to First Nations. We think it was self-evident.

3451.           **THE CHAIRPERSON:** Ms. Fong?

3452.           **MS. FONG:** Yes?

3453.           **THE CHAIRPERSON:** Can you help the Panel understand how this is -- where this is replying to an argument that's previously been filed?

3454.           **MS. FONG:** Yes. Thank you. So that goes back to their initial assertion. So Northern Gateway has asserted that there has been appropriate consultation. That's what they've said. They have many, many pages on that and so that's what we're responding to and as part of that response, we are saying that there has not been appropriate consultation.

3455.           That this process, in itself, is not an appropriate consultation, a legalistic process with objections, with cross-examinations, with all those. The problem being, the lack of a free-flow of information and one of the examples we give you are the five First Nations who could not cross-examine or test Canada's evidence.

3456.           **THE CHAIRPERSON:** Thank you for clarifying, Ms. Fong. You've made your point in that regard and we'd invite you to move to your next point.

3457.           **MS. FONG:** Thank you.

3458.           And so to close that point, you know, our point, really is that it being so legalistic, there wasn't the capacity -- the financial capacity or the human capacity for allowing the First Nations to be able to participate and it is not in itself a -- the legalistic process, a proper consultation process.

3459.           So now I'm going to move to limited participation due to funding and I will link it to specific provisions which Northern Gateway has set out or specific arguments that they've set out in their submissions. And of course, we didn't see these submissions at the time we drafted our submissions.



3460. Northern Gateway addresses a potential concern raised by counsel about the low participation of First Nation intervenors in the JRP process by proposing that -- and this is their word:

*“...the decline in the number of Aboriginal groups participating in each successive phase of the JRP process shows that interests and concerns are being addressed and resolved outside the hearing process through ongoing engagement.” [para. 1166]*

3461. Well, there’s simply no evidence that supports this assertion at all. No Aboriginal group has testified that they have ceased to participate in the JRP process because they are satisfied by the mitigation efforts of Northern Gateway. And in fact, there is -- to the contrary -- some significant evidence that there are First Nations wishing to participate in the JRP process but have been unable due to severe restrictions on funding.

3462. So there are different reasons why First Nations have dropped out or ceased to participate. And the three examples I would point out to you are in a June 2010 letter, Chief Councillor of Kitimat Village Council wrote to the Canadian Environmental Assessment Agency confirming the importance of First Nations providing evidence to the JRP.

3463. The letter noted that the funding allocated by CEAA crippled their ability to participate in the quasi-judicial process by failing to provide adequate funding for meaningful participation. *[Ex. C1571, page 2 (Adobe p.4)]*

3464. Another example is on January 26<sup>th</sup>, 2012, Chief Leon Chalifoux of the Swan River First Nation, noted that the funding for CEAA to participate did not allow Swan River First Nation to provide an adequate picture of land and territory. The Chief asserted that it was impossible to assess projects and impacts without adequate funding. *[Hearing Tr. Vol. 16, paras. 9,103 and 9,104]*

3465. And then as you all know, on February 4<sup>th</sup>, 2013, Art Sterritt prior -- made remarks prior to the Panel on Emergency Preparedness, noting that the Coastal First Nations have not been provided with the funding necessary to engage in the process meaningfully or effectively.

3466. As a result, Coastal First Nations, which represented nine First Nations

- and I have to be fair, some of them, such as Heiltsuk, also had separate individual representation but some didn't. You know, they were not able to cross-examine Northern Gateway's Emergency Preparedness Response Panel or any of the subsequent panels.
3467. And indeed, it is Northern Gateway's very own closing submissions that the JRP process is an extensive process. They themselves have identified, in their own submissions, that they have now undergone 69 days of questioning, that government and intervenors have undergone 18 and that they provided -- that's Northern Gateway -- 56 witnesses, 36 of whom were experts, and as you know, their submissions are 400 pages plus 100 pages of attachment.
3468. The extensive JRP process, again, is one that's highly legalistic, engages sophisticated expert evidence, and requires significant financial and human capacity to meaningfully participate. So we say the only reasonable inference to be drawn from a First Nation ceasing to participate is lack of capacity, not they they've been properly mitigated, with the exception of one, Nuxalk Nation. They objected to the JRP process because they said it wasn't in good faith effort to consult. [*Ex. D156-3-1*] So they had a different reason.
3469. Now, Northern Gateway has recognized that two First Nations have consistently participated and those are Haisla and Gitxaala and they mentioned that in their closing submissions.
3470. And frankly, I don't think they had an option. They're at the epicentre of this Project. They don't have an option but to give whatever they can possibly give and be here as much as they can possibly be.
3471. And now I want to move to Aboriginal ownership and Aboriginal support. Now Northern Gateway, they seek to establish economic need for the Project by referring to a 10-percent equity participation for Aboriginal groups [*at paras. 115-122*], which it says has been accepted by 60 percent of eligible Aboriginal communities. [*at para. 119*]
3472. Now, implicitly Northern Gateway submits that the Aboriginal groups participating in the equity offer support the Project. But we say to you that inference should not be drawn, that is not necessarily the case.
3473. First, no Coastal First Nation has accepted the equity offer, that's clear from their submissions. The equity offering has only been accepted by 12 of 22

B.C. inland Aboriginal groups. *[Exhibit B83-40 at 17-18 (NG Response to IR Request)]*

3474. And secondly, the Panel should not take from Northern Gateway's submissions that First Nations who accepted the equity offer, with the exception of Alexander First Nation, approve of the Project, even though this is what their very president said.

3475. Mr. Carruthers testified that 60 percent of the Aboriginal communities themselves have signed up for the equity in the Project looking to develop business opportunities, trainings and jobs. And he goes on and he says:

*“So there is -- certainly the most vocal would indicate there's opposition to the Project, but, in fact, 60 percent have agreed to support the Project.” [quoted at N-G's submission at para. 243 at pages 81-82]*

3476. Well, we say, in fact, there's no evidence that shows this other than from the one Nation, Alexander First Nation. There's no listing of the other First Nations who accepted the equity agreement. There's no evidence from any of the Nations who accepted the equity agreement as to why they accepted the equity agreement. And apart from Alexander First Nation, no Nation participating in the equity agreement has appeared here to support the Project.

3477. Northern Gateway's submissions fail to note that an equity partner is expected not to oppose the Project. *[Exhibit D72-22-11 at 8 – 12 (Attachment to Affidavit of Chief Elmer Moody)]*

3478. So if you actually look at the citations themselves and you look at the documents which the citations cite, there's more information in them than sometimes what's written in their submissions and that's a piece of information that was missing.

3479. And it's our position that accepting money to not oppose the Project, which is -- which an Aboriginal group may do because they might have really, frankly, not the capacity to oppose the Project in any event -- it's not the same thing as supporting the Project. So that inference cannot be fairly drawn.

3480. And now, moving on to: Failure to address the potential harms.

3481. I'm going to start with identifying and attempting to address Aboriginal concerns. And here -- here's when I'm going to move to that 1,000-page mitigation document.
3482. So Northern Gateway asserts that its Aboriginal engagement activities have been extensive and successful in identifying and addressing Aboriginal concerns. *[Section XV starting at para. 1038]*
3483. They complain in their submissions that it prepared a 1,000-page mitigation table setting out a detailed summary of concerns raised by Aboriginal groups, which included Northern Gateway's mitigation proposals.
3484. So while it's true that 1,000 pages is a lengthy document -- allows, you know, the length itself per se doesn't speak to the accuracy of the information.
3485. So, for example, let's look at what it said about Heiltsuk. For example, in the mitigation table, Northern Gateway describes Heiltsuk's concerns quite vaguely as -- and this is their language:
- “marine impacts on food supply, livelihood and eco-tourism, effects and mitigation measures for tanker traffic, project mitigation and compensation and emergency response plan and oil spill emergency response ...”*
3486. With no further description of identification of the source or any particulars of the concern.
3487. How would you know what the concern is?
3488. And that's important for you because you need to know what the concern is to determine whether Northern Gateway has met its obligation to you.
3489. In response to Heiltsuk Nation's concern regarding emergency response plan and oil emergency response plan -- and again, this is still in the mitigation table -- Northern Gateway appears to have provided stock responses without regard to Heiltsuk in particular.
3490. So an example, Heiltsuk's territory is adjacent to the Open Water Area, not to the Confined Channel Assessment Area, but Northern Gateway provided a general response referring to the General Oil Spill Response Plan as a

mitigation measure. So let's dig a little further and look at GOSRP. GOSRP includes -- it tells in their submissions the Marine Oil Spill Response Plan, the Geographic Response Plans, the Community Response Plan. *[N-G subm. para. 770]*

3491. But GOSRP can't address Heiltsuk Nation's concerns that this plan will -- because it's focused on the Confined Channel Assessment Area. So, for example, you've heard evidence about the Marine Oil Spill Response Plan, it is largely focused on the Confined Channel Assessment Area.

3492. You've also heard evidence about the Geographic Response Plan. And that again, is focused on the Closed (sic) Channel Assessment Area and does not include Bella Bella, and we've provided those citations. *[HTC Written Submissions at paras. 74-76 and Hearing Transcript Vol. 144 at para. 15579]*

3493. And then, there's the Community Response Plan, it's also only applicable to the Closed (sic) Channel Assessment Area. Northern Gateway's response on their conditions in their closing submissions, Conditions 5(r)(v), sets out that Northern Gateway plans for the Community Response Plans to be developed only for:

*"...participating coastal communities in the Confined Channel Assessment Area". [Exhibit B226-3]*

3494. By providing mitigation measures in their mitigation chart that's 1,000-pages long, that apply to the CCAA as opposed to the OWA, where Heiltsuk's located, Northern Gateway's failed to identify and address Aboriginal concerns.

3495. So when they say they've made -- and I don't remember the number -- 3,000 phone calls -- when they've drafted a 1,000-page mitigation chart and they complain that First Nations have not commented on them and have not taken them up on it, what would Heiltsuk take them up on?

3496. Those mitigation measures apply to the Confined Channel Assessment Area. The Heiltsuk are located adjacent to the Open Water Area; it just misses the mark.

3497. Now, let's look at, again, the conflation of the Open Water Area and the Confined Channel Assessment Area.

3498. There's been a lot of focus on the Confined Channel Assessment Area and, towards the end of hearing, I think there was a lot of complaint that there wasn't enough work done in the Open Water Area. And we see that in other's closing submissions as well as our own closing submissions. I mean the Heiltsuk's closing submissions collectively.
3499. So let's take a closer look at, when they say the CCAA and the OWA, are they actually covering the OWA?
3500. Northern Gateway asserts that it is and remains the only marine liquids terminal project to have undertaken an assessment of marine shipping in as large an area as the CCAA and the OWA, that's in their closing submissions. [*para. 650*]
3501. However, closer examination of Northern Gateway's assessment of marine shipping in the CCAA and the OWA reveals a lack of study of the OWA. The OWA, however, is the lengthiest part of the tanker route. Whether you're going north or you're going south, it is the longest part.
3502. So, for example, Northern Gateway refers [*at paragraph 654*] to operational requirements aimed at minimizing environmental effects, such as whale-vessel collision risks and underwater noise effects, which it says would be less -- less than that of other large vessels "plying the waters of the CCAA and OWA..."
3503. However, the following is also clear. Northern Gateway's whale monitoring boat is to survey only the CCAA, from May to October [*Application Volume 8B, Exhibit B3-26*], so that's not the OWA. In the marine transportation hearing, Northern Gateway witnesses confirmed they had not conducted surveys for any biological group in the Open Water Area, as they believe there's adequate information in only the public literature. [*hearing transcript vol. 111 at paragraphs 10452-10455*]
3504. Northern Gateway asserts in its closing submissions [*at paragraphs 708-732, and 742-746*] that its Marine Environmental Effects Monitoring Program will describe the current status of marine biota and their habitat, and any potential change in species diversity, abundance and distribution and habitat quality in the PEAA, the CCAA and the OWA due to direct effects of routine Project activities, or potential spills.

3505. So this is supposed to include shoreline studies, marine birds, and specific species or a species group of marine birds. But this isn't consistent with their testimony of Northern Gateway's experts. Northern Gateway has been unequivocal in its evidence on the record that it does not intend to conduct detailed monitoring studies in the OWA. Northern Gateway committed to conducting surveys in the CCA and terminal area, not in the OWA.
3506. Northern Gateway has committed to developing a marine environmental effects monitoring program in the Confined Channel Assessment Area. *[hearing transcript volume 114 at paragraphs 12514-12518, no mention of OWA]* There's no mention of the OWA.
3507. Northern Gateway's written submissions assert *[at para. 712]* that sites within the CCAA and OWA will be used to monitor effects from routine marine operations and, if a marine spill would occur, oil spill effects. But the citation Northern Gateway relies on says nothing about monitoring effects in the OWA. The citation is a hearing transcript *[Volume 114, paragraphs 13143-13144]* where Mr. Jeffrey Green testifies that the environmental effects monitoring program will involve the establishment of a site-specific, quantitative database for representative areas throughout the CCAA and at the marine terminal site.
3508. Northern Gateway's written submissions also note *[at para. 713]* that as appropriate, information will be stratified by shoreline habitat type to allow characterization of communities and environmental quality for the major shoreline habitat types in the CCAA and OWA.
3509. But again let's look at the citation, but the citation refers to a particular exhibit, *[Exhibit B46-38 at page 8]* a document that pertains to the CCAA, and only notes that Northern Gateway will conduct limited surveys of marine birds and mammals in the OWA. *[page 11]*
3510. We're not going to take you to each and every one, but in the section where they describe the work that they have done and they're going to do in the CCAA and the OWA, it's very important to look at the citation and read the citation itself, because it is not clear that in fact the work was done in the OWA or will be done in the OWA.
3511. Now, I'm just going to move to a lack of OWA modelling can't

- support a “no risk” conclusion for the OWA. And here Northern Gateway asserts there’s simply no evidence that the Project is likely to affect herring resources within Heiltsuk’s territory, and they also say there’s no evidence the Project would affect any of the planned programs for co-management of fisheries resources within their territory.
3512. Northern Gateway further submits in its closing submissions that while tankers may transit a portion of Heiltsuk’s traditional territory, the probability of any kind of incident, much less one leading to a significant oil spill, is extremely low. They say there’s simply no credible nexus between the Project and effects on the rights of Heiltsuk.
3513. Well, we say that’s a pretty self-serving statement for them to make, that there’s simply no evidence that the Project will affect Heiltsuk’s Aboriginal rights or any of their fisheries co-management programs when they haven’t conducted adequate spill modelling in the OWA, when they haven’t conducted baseline marine studies regarding the central coast herring stock, and when they haven’t properly examined any of Heiltsuk’s co-management programs for fisheries resources.
3514. So let me give you an example. I think a simple glaring example is the failure to even read the central coast marine resource -- central coast marine use plan.
3515. Through counsel, Northern Gateway asserted that the Project would not interfere with marine planning activities in any way because the tankers would only be a small fraction of the vessels in the coastal waters. But the central coast marine use plan which is harmonized between four coastal nations, if you read it, it actually prohibits tankers in the area.
3516. The Project’s tankers are going to be running through the marine use plan, which is a substantial interference with the right of co-management which is the very purpose of the idea of a harmonized marine use plan. So there is interference, and that would have been easy to identify if the marine use plan would have been read.
3517. Northern Gateway is only able to assert that there’s no evidence, satisfying them, linking a spill to an effect on Heiltsuk’s interests because of, frankly, its failure to commit or to conduct their spill modelling and their failure to conduct the baseline marine studies regarding the central coast herring stock.



3518. But Northern Gateway is the Applicant; it bears the burden of applying its resources, which it advises us are vast, and we've heard they're vast, to procuring the studies necessary to identifying the behaviour and measure the effects of any spill in the OWA. Only in this way may you, the Panel, fully understand the potential adverse environmental impacts of a spill in the OWA, and the effectiveness of possible mitigation measures.

3519. Northern Gateway can't relieve itself of completing its application by shifting that burden onto Heiltsuk and saying to Heiltsuk "Well you haven't proven to us that your herring are going to be affected". We're not the ones who are supposed to do the spill modelling or the marine baseline.

3520. In fact, some evidence does show the need for Northern Gateway to carry out research concerning the OWA, they ignored this, and in particular, the testimony of Mr. Steven Groves, DFO Section Head, Salmon and Herring, and PICFI North Coast Area Coordinator, I asked him the question:

*"But you would agree that an oil spill could potentially affect the stocks so that even though the route would not overlap with where the fishery is occurring, the fishery could be affected?"*

3521. And here I was talking about herring. And Mr. Groves he said:

*"It's Steven Groves here. We could agree that there is a possibility of that to occur, that a spill could have a detrimental effect on herring." [Hearing Transcript Volume 168]*

3522. Now, Northern Gateway, because it was a government panel, had the right to cross-examine Mr. Groves but they chose not to cross-examine him on that testimony. So there is certainly some evidence.

3523. Now, let's move to refusing to understand Aboriginal concerns. Northern Gateway relies on the exchange between Mr. Guujaaw of the Haida Nation and Mr. Carruthers, who's the CEO of Northern Gateway, to illustrate the benefits that would flow to Aboriginal peoples, and to argue that opposing the Project based on the risk of an oil spill is to unreasonably reject billions of dollars that the Canadian economy needs. [para. 243]

3524. And the key part of it -- it's a long exchange which is worthwhile to

read, but the key part of it, which I'll cite to you, is this. Mr. Carruthers says:

*“If you want to make the chance of spill zero, you have to have no project and then you have to say we don't want the benefits. So you can say, well, I don't want a spill, but in fact you're saying I don't want [...] billions of dollars that Canada economy sees, that improves our standard of living. I don't want [...] 44 billion that Canadian governments get to provide for services, and I don't want the jobs. So yes, we can get [...] to zero, but we also have to, in that aspect, say we don't want the benefits the project provides.”*

3525. Now Mr. Guujaaw says:

*“Yeah, I think that's what people have said.”*

3526. So this entire exchange is actually set out in Northern Gateway's closing submission.

3527. Now, while the analysis may be understandable from a purely financial perspective of a group like Northern Gateway, they are a global for-profit corporation. Here's what it fails to account for, it fails to account for even acknowledge the volumes of evidence put forward by First Nations intervenors who are able to participate in this process, demonstrating coastal First Nations' position that the consequence of a significant oil spill would result in incalculable damage to the cultural, social, political and economic fabric of coastal First Nations. First Nations and their way of life, what Guujaaw is saying is, it's simply not for sale.

3528. Northern Gateway's financially-centred perspective has resulted in their failure to grapple with the fundamental concern of First Nations along the coast, which is the potentially catastrophic impact of a spill on the ability of coastal First Nations to preserve their way of life.

3529. Now, even in a language throughout their closing submissions, Northern Gateway uses terms to characterize a risk such as “highly unlikely”, “extremely small”, but without ever addressing the catastrophic results to First Nations following a black swan event. They're simply saying it's not going to happen.

3530. To be fair, Northern Gateway, you know, doesn't deny that if there was a significant oil spill it would cause adverse effects to Aboriginal communities and it has the potential to interrupt traditional use [*para. 1253*] and I've cited that in our closing. However, by failing to grapple with the total community impact and devastation such a spill would cause, Northern Gateway fails to provide a complete description of the project risk to you.
3531. Now, let's move to planning for a plan. Really a lack of readiness. Northern Gateway complains they've been criticized for proposing a plan for a plan rather than being commended for offering to prepare plans that could be the responsibility of government. This complaint attempts to obscure Northern Gateway's obligation to complete the application, which neither shifts the burden to intervenors or defers the assessment activities until after the Project approval. We say they can't do that.
3532. The plans and activities -- and I'll provide a list of what's -- a short list of what's in their submissions. The plans and activities which Northern Gateway proposes to plan or complete after receiving approval, should they receive it, they address some key issues.
3533. They address baseline marine information that's necessary to understand the impacts of a potential oil spill. They address organization between First Nations and others about the management of marine traffic. They address identifying highly sensitive areas that would require priority in terms of spill response.
3534. They address how spill response is going to be carried out, who's going to be involved, where are these centres -- the spill response centres going to be located, what equipment is going to be in these spill response centres, and what's going to happen with the training for these spill response centres.
3535. These plans and activities, they also are planning to address what will happen when oil engages with water. Depending on where geographically it enters the water, how much oil enters the water then and how the weather conditions will affect oil entering the water, and how to find the oil once it's under the surface of water.
3536. And some of these plans and activities also engage whether oil entering the water can be retrieved, and if not, what happens to it. So here's a short list of the plans and incomplete activities which we culled from their closing

- submission.
3537.           There is -- and it's not complete -- the Marine Environmental Effects Monitoring Program, which breaks down into Quality and Shore Line Program, Marine Bird Monitoring Program, site-specific surveys for several marine biotas, including eulachon and rock-fish.
3538.           Another plan to plan is the Marine Mammal Protection Plan and then a plan to a committee would be Fisheries Liaison Committee. Then, there's the Marine Fish Habitat Compensation Plan, the Fish Monitoring Program, the Community Response Plan, the Geographic Response Plans, the Marine Oil Spill Response Plan, securing sites for major spill response centres and determining response equipment, securing response organizations to staff the major spill response centres, conducting the additional trajectory modelling, conducting the additional research concerning the fate and behaviour of diluted bitumen by the scientific advisory committee. *[Tr. Vol. 176, para. 180-182]*
3539.           We say these activities are core components to an environmental assessment. They are necessary in order for Northern Gateway to compete its Application to you.
3540.           If Northern Gateway is permitted to basically defer the completion of their Application until after approval -- which we say is not permitted by the legislation -- you know, the public is just going to be deprived of the opportunity to examine the adequacy of Northern Gateway's fulfilment of its commitments.
3541.           The Province's submission has merit that one reason for not approving this Project would be the public's lack of opportunity to probe and test Northern Gateway's additional work. *[BC para. 113]* There's no reason for them not to be here with all those plans completed so that we can have a proper public testing of that work and you, as a Panel, can have all the information you need and a completed application to make a good, informed decision. There's no reason.
3542.           And in closing for this one intervenor, we do adopt the submissions of Gitxaala, Haisla, Haida, and Gitga'at and we adopt the conclusion of the Province of British Columbia to refuse the Project approval.
3543.           And those are the submissions for Heiltsuk Economic Development Corporation. Thank you.

3544. **THE CHAIRPERSON:** Thank you, Ms. Fong.

3545. We'll call next the Heiltsuk Hereditary Chiefs.

--- (A short pause/Courte pause)

3546. **MS. HUMCHITT:** Good afternoon, Panel.

3547. **THE CHAIRPERSON:** Good afternoon, Ms. Humchitt.

**--- ORAL ARGUMENT BY/PLAIDOIRIE PAR MS. HUMCHITT:**

3548. **MS. HUMCHITT:** And just a little, brief introduction, as I have traditionally done since I've been here and this is for the benefit of any Heiltsuk who may be listening to the broadcast right now and also my other relations. My name is Carrie Humchitt. My traditional name is Takvagila'avgva, which means in translation, copper-maker woman.

3549. My father is a Heiltsuk Hereditary Chief, Hemas Wilfred Humchitt of Bella Bella. I also have to acknowledge my Gitxsan relations and, as I am one of the grandchildren of Delgamuukw.

3550. I also want to acknowledge, as it between Nations, that I am on Tsimshian territory and I thank them for allowing me to be on their traditional territory.

3551. I am here representing the Heiltsuk Tribal Council, HEDC youth voice and the Hemas. Me and Lisa Fong were listed as co-counsel for all of these intervenors and I also wanted to acknowledge the Heiltsuk Nation back home and I consider it an honour to be here to represent my people.

3552. One of the things that I want to address right from the start -- and this goes back to the opening submission which occurred on Monday, June 17<sup>th</sup>, from the Northern Gateway Project and in regards to -- I am going to respond to a statement which was made by my friend, Mr. Neufeld.

3553. In terms of the June 17<sup>th</sup> Northern Gateway presentation, this refers to the statement made and it's Adobe page 46, paragraphs 272 to 274. It states:

*“The argument is wrong and the Crown consultation program makes it clear while the obligation to consult resides with the Crown, the mechanism for exchanging Project information and use of the Project regarding mitigation and accommodation and Aboriginal concerns includes all the process that we’ve been undertaking.”*

3554. And specifically, I’m referring to my friend Mr. Neufeld’s statement in regards to the Crown Mr. Stinson O’Gorman’s statements and that he could not possibly have been clearer on that point during his appearance before you.

3555. If he repeated it once, I dare say he repeated it 1,000 -- 100 times and that it may have been during Ms. Humchitt’s cross-examination of him one afternoon in Prince Rupert alone. The summation made by Mr. Neufeld was that this was indicative of our remarkable display of consistency in answering the same identical response.

3556. And in regards to this actual statement and categorization of the cross-examination of Mr. O’Gorman on the Consultation Panel, I would respectfully say that this was misrepresented by the Northern Gateway and, conversely, to his supposition that it was actually proof that there had been consultation by the Crown, we take the opposite view in that there are numerous passages within the transcript itself which actually show that, if anything, the Crown has failed to consult with the Heiltsuk Nation.

3557. I do not have to repeat what my friend, Lisa Fong, has said that there was only two meetings with the Heiltsuk Nation by the Crown and, in regards to that, I would also adopt Terri-Lynn Williams-Davidson view on this and the Haida submission as well. And this has pretty well been brought up by everything First Nation’s intervenor, not just the Heiltsuk Nation.

3558. It’s been brought up by the Gitxaala. It’s been brought up by the Haisla, the Council of the Haida Nation and the Coastal First Nations of which the Heiltsuk Nation is a part of.

3559. And they are also brought up even by the Treaty Nations which have been represented during this hearing. That includes the Ermineskin Cree First Nation, the Alexander First Nation and Driftpile Cree, the Daiya-Mattess Keyoh, the Gitga’at, the Gitxaala and the Haisla Nation, all who have appeared before us and it has been -- and confirmed by each of these nations that -- in their

- presentations that adequate consultation has not occurred with any of these nations.
3560. And in regards to the duty to consult aspect of that, the cross-examination that he's referring to with Mr. O'Gorman, if anything can be typified -- and I can point to exact areas in the transcript -- these can be generally viewed as a refusal to answer any consultation questions on the part of the Heiltsuk Nation. And that response by the Crown in regards to whether or not there were meetings planned with the Heiltsuk Nation, a consultation schedule, confirmed that there were no such plans contemplated with the Heiltsuk Nation.
3561. And while the Heiltsuk Nation had requested an undertaking to -- for a Crown consultation record to be provided Madam Chair Leggett advised me that you did not think you had the authority to order such an undertaking. As a result of that there is not going to be any Crown consultation record provided despite numerous references by the Crown about the extensive consultation that had supposedly occurred. There's no record to show this at all.
3562. And in regards to the duty to consult and this was also referred in the Haida presentation and the Heiltsuk Nation would like to adopt the Haida presentation insofar as they're addressing the duty to consult. When does a duty to consult arise? It arises soon as the Crown has constructive or real knowledge of an adverse impact.
3563. And going to the Northern Gateway submission, it refers to the actual date -- and if you just give me a moment, I'm going to pull up the reference.
3564. A review to the Joint Review Panel Agreement -- and this is referenced right in the Northern Gateway document -- the draft JRP agreement was in 2006. This is when the Crown had knowledge that this Project was contemplated. We are in 2013 right now; it's been seven years since this Project was first contemplated by the Crown.
3565. And while the Crown has steadfastly maintained that they have done consultation, they actually have not. That's been shown by the presentations and the cross-examinations leading up to this hearing by virtually all of the First Nations, that no real Crown consultation has occurred. Rather, they have relied upon the Joint Review Panel process as a consultation process, and it hasn't happened.

3566. There has also been affirmations by various Crown representation, specifically Mr. Stinson O'Gorman and other members of the Crown representatives. This includes CEAA, the Environmental Assessment Agency, this includes the DFO which is another one, and they have all affirmed that the consultation is not going to take place in time to inform this process. It's going to occur in Phase IV upon Project approval.
3567. This is contrary to what's put forth in Haida, that consultation must occur at the earliest opportunity. I find it hard to believe that the Crown has not had time to adequately consult with First Nations, when considering they had constructive knowledge of potential adverse impacts in 2006.
3568. And even in my cross-examination of Mr. O'Gorman -- and I asked if there would be any consultation occurring between now and the end of this year, prior to the decision being made, it was confirmed that there was not going to be any schedule of consultation with the Heiltsuk Nation.
3569. In terms of -- I'd also like to bring up that we are not the only nation that this has happened to. If you look at the -- at the final arguments of each of these nations, they have all consistently brought up is that there have been no meaningful consultation and accommodation on the part of the Northern Gateway.
3570. And we'd also like to adopt what has been brought forth, but even -- even before this hearing, it is not like the Crown or the Northern Gateway did not have constructive knowledge of the Heiltsuk Gladstone right. This was submitted in the initial intervenor application on January 4<sup>th</sup>, 2011.
3571. The Crown cannot claim that they had no knowledge that we did not consider this process -- the Joint Review Panel process -- to be sufficient in terms of satisfying the duty to consult with the Heiltsuk Nation. This is also in the original intervenor submission dated January 4<sup>th</sup>, 2011.
3572. The Crown or the Northern Gateway, they cannot claim that they did not have knowledge that the Heiltsuk Nation considered ourselves to be owed a special duty of consultation by virtue of the *R. v. Gladstone* decision, which affirmed our Supreme Court of Canada right to a commercial herring fishery because this was also in our original intervenor submission dated January 4<sup>th</sup>, 2011.



3573. Even if there wasn't the initial consultation from the time the Crown first had constructive knowledge that this might have adverse impact upon the rights of the Heiltsuk Nation, they had the opportunity from the time of the intervenor submission -- which is over two years ago now -- that we had that right and that we were owed a special duty of consultation as a result of that right.
3574. That has given the Crown agencies, including the DFO and the Crown consultation coordinator, Environment Canada, all of the federal agencies which represent the Crown, adequate time to consult with us before this process was over, and they failed to do so. It was not even a priority.
3575. In terms of other opportunities for consultation, during the informational meetings which were referred to by my friend, Lisa Fong -- I remember because I was at this meeting that we had asked for further meetings and this was not followed up on -- there was numerous opportunities for Crown to meaningfully consult with the Heiltsuk Nation and it was never done.
3576. In terms of -- sorry, I'm just bringing this up here. I'm referring to the cross-examination and this is in regards to the Federal Government Panel Number 4, and I refer to the cross-examination of Mr. Dean Stinson O'Gorman, and paragraph 27895.

*"MS. HUMCHITT: So the federal government is refusing to show any records of meetings with the Heiltsuk towards confirming whether or not there was adequate consultation with the Heiltsuk Nation?"*

*"So Madam Chair, the government is in an ongoing process of both consulting through the JRP process and continuously updating its assessment of the adequacy of [the] consultation and going into Phase IV, continuing to deliver on the meaningful consultation process that we've set up."*

3577. This is pretty well typical of the comments made by Mr. Stinson O'Gorman, as it was noted further in the transcript that he was reading from a piece of paper. There was no direct answers to any of my questions regarding consultation, rather he directed his answers to you yourself, Madam Chair, and simply repeated what was written on a piece of paper. If anything, this highlights that this is not appropriate and this does not make this a consultation process.

3578. It was also emphasized by Mr. Stinson O’Gorman that transparency was paramount in this process. The fact that so many of my direct inquiries on when the Heiltsuk Nation was going to be consulted and records of any meetings of consultation were met with the same repeated scripted responses shows that the Crown was not entering into this process with any intention of providing any confirmation of meaningful consultation, not only with the Heiltsuk Nation but also with other First Nations who have pretty well confirmed our same experience.
3579. Madam Chair, I’m noticing the time and I probably have at least an hour and a half left in mine.
3580. **THE CHAIRPERSON:** Ms. Humchitt, allow me to clarify, you have 43 minutes and 15 seconds.
3581. **MS. HUMCHITT:** Sorry. I guess that’s how long I have.
3582. **THE CHAIRPERSON:** And the Panel would like to -- just for continuity, we find it very helpful to finish completely with a party, so we’d like to have you complete this afternoon representing the Heiltsuk Hereditary Chiefs.
3583. **MS. HUMCHITT:** So you want me to go till after five?
3584. **THE CHAIRPERSON:** Forty-two (42) minutes and 45 seconds.
3585. **MS. HUMCHITT:** Okay.
3586. **THE CHAIRPERSON:** Or whenever you complete before then.
3587. **MS. HUMCHITT:** Okay. One of the other things brought up during my cross-examination of Mr. Stinson O’Gorman is the fact that there had been no strength of claim assessment for the Heiltsuk Nation, and having been involved in a mediation process with the Gladstone Reconciliation Program, one of the things that we had received, and it did not take long to receive that, was a strength of claim assessment, and there has not been one for the Heiltsuk Nation in regards to assessing the rights and title of the Heiltsuk Nation.
3588. **THE CHAIRPERSON:** Ms. Humchitt, can you help us understand which argument you’re replying to when you’re dealing with strength of claim?

3589. **MS. HUMCHITT:** Yes. One of the things that has been brought out in this process is that the Crown has relied upon the Proponent to pretty well consult with the -- not only the Heiltsuk Nation but the other nations, and one of the relevant things that this has resulted in is that the Crown has not done duties of consultation that it normally does.

3590. **THE CHAIRPERSON:** And I believe you've made that point and we've understood that. I was just -- I thought that you moved on to another aspect and I was just wanting to make sure that I could anchor myself with which argument you were replying to.

3591. **MS. HUMCHITT:** Okay. I'll move on.

3592. In terms of the other cross-examinations of the federal Crown, and this is still -- I'm moving back towards the duty to consult. In regards to the Panel's leading up the consultation panel, and I refer specifically to Federal Government Panel Number 1, and that's where the CEAA was cross-examined, in addition to the DFO, and I had attempted to ask each of these federal agencies what efforts they have made to consult with the Heiltsuk Nation. I was consistently referred to the Aboriginal Consultation Panel, which was Panel Number 4.

3593. **THE CHAIRPERSON:** Ms. Humchitt, I'm just seeking to understand, you've had your opportunity to provide written argument and now this is the opportunity to provide a reply to arguments made by others.

3594. **MS. HUMCHITT:** M'hm.

3595. **THE CHAIRPERSON:** Can you help us understand which argument that you are replying to?

3596. **MS. HUMCHITT:** I'm still replying to the introductory argument made by Northern Gateway where we find that Mr. Stinson O'Gorman had confirmed that adequate consultation had occurred, and I'm attempting to show that it has not occurred.

3597. In terms of the -- when we went to I think about meaningful consultation one of the things that I had gone through in my cross-examination of Mr. O'Gorman was the federal guidelines with respect to the duty to consult. This clearly laid out what the Crown's duty was in regards to the duty to consult. And one of the issues -- sorry, I'm speaking too loudly.

3598. One of the things that has to be assessed by the federal Crown is impact upon existing rights. And one of the existing rights which hasn't been assessed with respect to the Project is the potential impacts upon the Gladstone fishing rights as affirmed in the Supreme Court of Canada in 1996, and this was confirmed even when I attempted to question the DFO on the -- their knowledge of the existence of the right, this was met with an objection and referred to the Consultation Panel Number 4.
3599. Upon going to the Consultation Number 4, I had attempted to inquire about the Crown's knowledge of the Gladstone right to a commercial fishery, and once again, after being referred from numerous panels to the Consultation Panel, there was no answer forthcoming.
3600. There's been no assessment of a potential impact upon the Gladstone right, which is a commercial right in the fishery. And as my friend Lisa Fong has stated, it has been denied, you know, by Northern Gateway in their submission that there will be any impact upon the right.
3601. However, in my cross-examination of the DFO, it was affirmed that there was potential impact, as my reference to a visual aid clearly showed the spawning populations of herring intersected with the tanker route. And there's admission that this could possibly have an impact upon the spawning of the herring.
3602. And in regards to this, this was not only the DFO that had failed to consult with the Heiltsuk Nation or even discuss consultation with the Heiltsuk Nation.
3603. And I will put paragraph 18541 of my cross-examination of Federal Panel Number 1.

*"I'll put the same question to Environment Canada as I put to the DFO: Does not Environment Canada think that it's important to consult with First Nations at the earliest opportunity on this project?"*

3604. The answer by Ms. Laura Maclean:

*"I think that [...] in fact, one of the principles that underlines*

*the consultation framework that the Government of Canada has presented.”*

3605. While she states this in response, this is really contradictory with the approach of Crown consultation in this matter which has basically referred all consultation to Phase IV which is post-approval, well after this hearing will be over, and this actually works against early consultation happening. This is another way that the Crown has failed in its consultation efforts with the Heiltsuk Nation.

3606. And I've asked the same questions of each panel -- each federal panel I mean.

*“In regards to it being done early, you just stated there's no plans for meeting with the Heiltsuk Nation and considering that this is a phased approach can you estimate for me what the approximate date in which the Heiltsuk Nation would be consulted with?”*

3607. And while Ms. Laura Maclean answered she did not directly answer the question and instead made a global statement which did not provide any confirmation of any plan to consult with the Heiltsuk Nation. And as stated, in regards to the DFO, I got the same response from Environment Canada.

*“Those are also questions that might be directed at the fourth panel in case they might have additional information to offer.”*

3608. In good faith, I had attempted to ask these questions when I had the opportunity to consult -- I mean -- sorry, to cross-examine the Government of Canada and steadfastly, no matter which agency it was, whether it was Environment Canada, you know, DFO or whatever Crown agency I happened to be dealing with, I was always referred to the fourth panel.

3609. And one of the other reasons -- and I'm going to be moving into a different direction now, as I believe I've exhausted this part. And this goes towards why this is not a consultative process as there is no dialogue.

3610. And I was asked by yourself, Madam Chair, what is the relevance of that in the proposed application and it was just simply to confirm that there had never been any meetings with the Heiltsuk Nation.

3611. And also in going to the Consultation Panel, there was never any direct answers forthcoming, no records of Crown consultations. Mr. O’Gorman read scripted responses from a piece of paper and offered no information as to what efforts were undertaken by Crown agencies as to what consultation had taken place.

3612. This is not conducive to meaningful consultation. This is not conducive to acting within the honour of the Crown and this also, I would say, is not conducive to the Crown acknowledging their fiduciary duty to the Heiltsuk Nation.

3613. I’m not saying that other nations are not owed a fiduciary duty but we are owed a specific one as a result of the Gladstone right. And the Gladstone right is also an economic right.

3614. One of the other things which is also been problematic for the Heiltsuk Nation is that the DFO, as an agent of the Crown, had delegated the duty to consult to the Proponent. This was -- this is not an isolated observation. This has been repeated by other First Nations up until the Heiltsuk Nation coming before you.

3615. And I refer to you a specific portion of the transcript which highlights that the ultimate responsibility for the duty to consult lies with the Crown. However, it wasn’t done in this case. I’ll just refer to specific portion of the transcript with my conversation with the DFO.

*“And in terms of [the] DFO, are [the] DFO going to be providing funding to First Nations communities for the purposes of finishing traditional land use studies?”*

3616. Answer by Mr. Michael Engelsjord in relation to the pipeline Project, paragraph 18644:

*“No, [...] we don’t fund those studies that would be the responsibility of the Proponent if there was going to be any funding from external. And there are funds [...] available through EA processed, but not [...] from DFO.”*

3617. And also I asked about the funding for fisheries surveys to be done

through the DFO. Mr. Michael Engelsjord response to that:

*“We would consider that the responsibility of the Proponent to fund.”*

3618. This clearly goes beyond a procedural aspect of consultation. While there is a portion of consultation that can be delegated to Proponent it has gone well beyond procedural and appears to be a full delegation of the duty to consult.

3619. In regards to -- I'm going to move on to a different area. There is also the issue of cumulative effects not being considered in this assessment. And this has been brought up by virtually all of the intervenors. And when I mean all of the intervenors I mean with the exception of the pro-pipeline intervenors, the tar sands developers and CAPP, and the Chamber of Commerce.

3620. And it was stated that -- and we adopt this position of the B.C. submission. And I refer to it directly from June 17<sup>th</sup>, Adobe Page 9, paragraph 27:

*“In summary, with respect to the potential for spills from the pipeline, while the Province acknowledges that such spills may not be a common event, the Province submits that the information Northern Gateway has provided is incomplete, and may downplay the potential for both large and smaller spills.”*

3621. Throughout this process, it's been commonly referred to as black swan and it's the view of the Heiltsuk Nation that this is another reason why the Application should be rejected at this point in time, is that there is incomplete information, not only with respect to rights and title impacts of the Heiltsuk Nation and other Nations but also that there is no worst case scenarios contemplated, you know, by the Northern Gateway.

3622. They are seemingly content to address routine operations but it's been the experience of the -- of -- and I refer to this globally, especially lately. I can refer to a specific event because it's been referred to in some great detail during the course of these hearings that spills do happen.

3623. And one of the, you know, primary dilbit -- you know, the tar sands oil spills occurred in Michigan and this is another reason why the Heiltsuk Nations feels that this Application should be rejected at this time.

3624. We share the view of Josette Wier in this was characterized as an incident by the Northern Gateway when, really, it was an accident.
3625. And it also works against the alleged economic benefits that could come out of the Northern Gateway. Effectively, any economic benefits can be nullified by a spill. The cost of the cleanup in Michigan is a billion and counting and it's not even complete yet. They haven't even finished the complete cleaning -- cleanup of that spill.
3626. And the "sink or swim" issue, in regards to dilbit, has been extensively commented upon and I cannot say what will happen when dilbit goes into the ocean and I hope that day never comes but the experience in Michigan shows that it does definitely sink and there hasn't been a comparable spill to that.
3627. In regards to potential impacts on -- in regards to going back that the information is not complete. The inadequate assessments, specifically, I am referring to a cumulative impact assessment on marine species along the tanker route.
3628. And the response from Michael Engelsjord of the DFO:
- "So the assessment of cumulative effects is not something part of the DFO's regulatory review process. It's part of an environmental assessment under the Canadian Environmental Assessment Act and that's what the purpose of this process is about, providing our advice to the process on cumulative effects to fish and fish habitat.*
- So there will be no scientific assessment of this by the DFO?*
- On cumulative effects? No, nothing outside of this environmental assessment process."* (As Read)
3629. This is another reason, in the Heiltsuk Nation view, why this Application should be rejected at this time as there is no cumulative effects impact and what is different between us, as intervenors and the other intervenors -- and I'm referring specifically to Coastal First Nations -- is that we don't just rely on this like for a commercial herring fishery.



3630. This is part of our FSC. This is a part of the food we eat. We eat 40 percent of our diet from the sea. There has already been the impacts which are pre-existing to the tanker Northern Gateway project being contemplated and now there's going to be over 200 tankers a year, which is going to be on top of those pre-existing impacts.

3631. In terms of critical research needed to inform the environmental assessment, this will also be done post-approval. This is confirmed in my cross-examination of Thomas King from Federal Panel No. 1 and it refers to some studies recommended by Kenneth Lee, the former head for COOGER, which is an acronym for Centre for Offshore Oil and Gas Energy Research.

3632. And I go directly to my cross-exam:

*"So there's no plans to complete the series of studies as recommended by Dr. Kenneth Lee?"*

*I think what Mr. Lee meant is he was thinking in advance of those studies that would be done. We normally work on conventional oils and this is a non-conventional product."*

3633. And this statement is -- in itself, is of concern because there has been extensive reference to conventional oil and how you would deal with conventional oil but this oil is anything but conventional. It has very different properties from conventional oil and, even in when comparison with EVOS which was a conventional oil, there has been no big improvement in the cleanup of oil once it hits the water.

3634. Despite the advances allegedly made in cleanup, this hasn't resulted in a lot of -- let's see -- I would say a percentage of oil that is cleaned up greater than what was previously cleaned up on -- before these supposed improvements.

*"And in reference to toxicological tests that you used to clean up spill, doesn't the DFO consider this research to be crucial to inform the assessment?"*

3635. Mr. Thomas King:

*"This is very crucial research and it will most likely be done after the initial research studies are done."*

3636. I'm just wondering how much time I've got left?

3637. **THE CHAIRPERSON:** Eighteen (18) minutes and fifty (50) seconds.

3638. **MS. HUMCHITT:** Thank you.

3639. And I'm moving on to a different area and this is in regards to Species At Risk. This has also been dealt with in some detail in past presentations and this comes directly from the Northern Gateway statement in their submission:

*“From the outset of project development, Northern Gateway has embraced the importance of protection of Species At Risk from project-related effects. This is not only true for a species potentially affected by proposed pipelines but also for species potentially affected by tankers calling at the Kitimat Terminal.” (As Read)*

3640. And then, it refers to -- further in the document of the Northern Gateway that:

*“Northern Gateway has committed to prepare a Marine Mammal Protection Plan and that will describe the measures that Northern Gateway will implement to manage and monitor project-related environmental effects on marine mammals associated with underwater noise, blasting potential, marine mammal vessel interactions. A framework document was submitted that describes how and when the MMPP would be developed. This commitment is consistent with potential Condition 47.” (As Read)*

3641. Once again, this is a “Trust us” scenario and there's been numerous references throughout here that a lot of what is contemplated by the Northern Gateway involves us, as First Nations, to trust that these studies will be done. However, as stated before, you know, there isn't a duty upon Northern Gateway the same way there is a duty upon the Crown, you know, to fulfill this duty.

3642. There may be a liability but there's no duty if they do not; at least not as per the *Haida* decision.

3643. And there has been no apparent -- and even when we tried to ask the DFO about working, you know, with Northern Gateway, there seemed to be a commitment to it but there hasn't been any work done as of yet and I've questioned both about it.

3644. When the DFO is questioned about possible impacts on Species At Risk, there is no confirmation of any plans to do any studies as to the Species At Risk which may be impacted as a result of the Project.

3645. And in terms of answering questions in regards to the Species At Risk, my question was, is DFO going to have time to complete an assessment of all the Species At Risk which might be impacted by this Project prior to approval, Ms. Tracy Sandgathe of the DFO answered:

*“As part of our providing evidence and information to the Panel, we did provide information on species at risk and potential impacts to those species, so it's the DFO's view that this information is complete.”* (As read)

3646. And then there was a pause, as there has been quite frequently, and a refusal to answer the question.

*“We don't have anything more to add at this time.”*

3647. I've experienced that so much during this entire process that direct inquiries have not been answered or been referred to the -- the Consultation Panel.

3648. One of the concerns about this and this is actually kind of generically referred to in the Northern Gateway submission as supernatural British Columbia references to cultural impacts. There was quite a bit of information in regards to cultural impacts.

3649. One of the species at risk in the area is killer whales. Killer whales is one of our clans. It's also one of the clans of other First Nations. Basically, you are hurting a member of our family. You're hurting a part of our culture.

--- (A short pause/Courte pause)

3650. **MS. HUMCHITT:** It was -- it's not acceptable to our nation. It's not

acceptable to our people and this is something that cannot be compensated by money, the damage done to these spiritual animals, which has great significance to my people, and not only my people, but all of the Coastal First Nations pretty well have a connection to these animals. They are living beings to us. They have spirits. They are part of our families and it amounts -- and I've said this before -- to cultural genocide for our people.

3651. This is something that is always emphasized by our Hemas. Our young people know from a very young age what the value of these animals are to us and when you speak of mitigating damages or when Northern Gateway speaks of it, by slowing tankers down, this is not going to prevent damage or death of these animals.

3652. There is also the humpback whales which also have spiritual and cultural significance to us and this cannot be compensated, the damage that will happen to our culture. It pretty well goes for every living resource that we have. It is not just a source of sustenance, but it also has a strong cultural value to us which can't be compensated.

3653. What is concerning to me, and this is another reason why I feel that this isn't appropriate as a consultation process, is that there have been limits on the inquiry that we have been able to ask and that is not a dialogue.

3654. And I'm going directly to another question that I posed to the DFO.

*"Did not the DFO review of the threats to humpback whales in 2005 name the proposed tanker traffic to Kitimat as a threat to whale recovery?"*

3655. And, no disrespect, I'm just stating this as a legal fact that -- and this was responded that the witnesses would answer within the confines of the evidence that has been filed. This is another reason why we don't feel that this is appropriate as a consultation process as put forward by the Crown.

3656. In regards to the food, social and ceremonial aspects and impacts upon the Heiltsuk people, and I refer to Art Sterritt of the Coastal First Nations as we are one of the Coastal First Nations, and he had specifically asked for an FSE impact assessment for the Heiltsuk. What is interesting to me is that Art Sterritt also identified killer whales as being his clan, which emphasizes the cultural value of that animal to us.

3657. To cut it direct to the point, FSE assessments once again were not contemplated until post-assessment which means that that information is not available for this current assessment and therefore does not inform this process and that is another reason to reject the application, once again, because of the incomplete information.
3658. There is also numerous other studies that I can refer to where I question the DFO, the baseline hard carbon study in Hecate Strait, another place where incomplete information as there was no confirmation from Thomas King, through my cross-examination of the DFO, that this was going to be done either.
3659. In regards to Northern Gateway, you know, and they had directly referred to this in their submission. This was referred to by my friend, Lisa, during the course of questioning the Heiltsuk suggested in the -- that Gateway that their rights would be affected by the Project. As mentioned previously, the Heiltsuk are somewhat unusual among Coastal First Nations by having received judicial recognition of an Aboriginal right to commercial harvest, sale of herring roe on kelp. While they acknowledged that there was a right, they denied that this would have any impact upon that right.
3660. And this -- I would like to cross-reference this with the Government of B.C. submission and this highlights that there's contradictory information put forth by the Northern Gateway and I refer to the Government of B.C. submission on page 10, para 31:
- "NG concedes that the effect of a spill could span over several generations at certain times of the year. Multiple classes of certain fish species could be affected. Furthermore, the effect of a spill on threatened species such as eulachon, for instance, would not necessarily be reversible."*
3661. While the Northern Gateway has discounted the Heiltsuk Aboriginal right to fish and claimed that there will be no impact, this, in fact, confirms in my view that the Northern Gateway has no intent to honour legal requirements regarding Aboriginal rights or attempt by the Government of B.C. recommendation that -- and I directly quote from them:

*"...legal requirements regarding Aboriginal and Treaty rights are addressed and First Nations are provided with*

*opportunities, information and resources necessary to participate and benefit from a heavy oil project." (As read)*

3662. Northern Gateway has just said that they don't think that our right will be impacted, and this is contrary to, you know, the effect of spills.

3663. However, there was recognition of the DFO, the potential impact on Heiltsuk FSE and herring. In my cross-examination of Steven Groves:

*"And are you aware of the impacts of this fishery with significance or FSE requirements for our people in the event of the spill?" (As read)*

3664. And he went on to confirm, you know, that you know if there's possibly spill next right to where there would be some spawning or, you know, some sort of life history of herring, there could be a lethal effect there, so there certainly would be if there was parameters around that question.

3665. And I refer to -- kind of in summation on this point -- it's not like the Enbridge counsel is unaware of this right. They've been at every hearing and they've heard all of the testimony with respect to the Heiltsuk herring fishery.

3666. And in my cross-examination, it says -- I start out:

*"Yes, this map represents an overlay of the tanker routes with the spawning areas of the Heiltsuk Nation. Actually, not the Heiltsuk Nation, the herring population. As you can see, where the line intersects, there's a yellow cross-section on the map where it intersects with the purple areas.*

*Would you agree that the tanker route intersects with the spawning area?" (As read)*

3667. And Mr. Steve Groves of the DFO:

*"I would agree that your diagram does show an intersection between the spawning areas listed and the yellow tanker traffic proposed route, so we have showed that there is potential impact upon the herring fishery despite Northern Gateway's denial that there is going to be an impact." (As read)*

3668. I'm not sure how much time I have left.
3669. **THE CHAIRPERSON:** Two (2) minutes and fifty-nine (59) seconds.
3670. **MS. HUMCHITT:** Okay.
3671. In summation, this highlights not all of the issues, but some of the issues with respect to the Heiltsuk Tribal Council. It's hard for me to refer to our Nation in silos as we operate together on a communal basis despite us being divided as intervenors.
3672. We all have the same concerns with respect to the Northern Gateway Project, that there has been incomplete information, that the duty to consult has been inappropriately delegated to the Proponent in this matter, and that there is no trust of the Heiltsuk Nation towards Northern Gateway that a spill won't happen.
3673. Their history shows that they have a significant spill history which does not inspire trust in the Heiltsuk Nation that one won't happen in our territory. It's a violation of our rights, our title, our sovereignty. We consider tankers coming into our territory as an act of trespass and the Crown has failed to consult with the Heiltsuk Nation in breach of their fiduciary and legal duties under Section 35 of the *Constitution Act of Canada*.
3674. Thank you. Those are my submissions.
3675. **THE CHAIRPERSON:** Thank you, Ms. Humchitt.
3676. The Panel has no questions of the Heiltsuk Hereditary Chiefs and thanks you for your submission.
3677. Ms. Humchitt, you referred to something just in the last few minutes of your presentation where you said that -- I heard you to say that the Heiltsuk groups who have registered as intervenors all have similar concerns.
3678. And it was something that I just wanted to remind all parties going forward that, as we move down the list, there are parties who've already raised concerns in reply that other parties coming afterwards may also have, and there's no need to repeat or to refrain those reply comments as Ms. Humchitt did in a

couple of instances. You can simply adopt the words, the arguments that have come or the reply that has come before from the other parties.

3679.               And I would encourage everybody to do that. It's very helpful to the Panel as opposed to repeating information that the Panel has already heard.

3680.               So with that, we'll close for today and resume tomorrow morning with the Heiltsuk Tribal Council at 8:30. Thank you. Good night.

--- Upon adjourning at 5:13 p.m./L'audience est ajournée à 17h13