



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 58

Commissioner: Honourable Justice Richard LeBlanc

Thursday

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CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open. The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right. Good Morning.

We have a very busy day today – scheduled – and we have a problem just starting off with technology on the other end. One of the witnesses, Mr. Over, was to join by Skype and unfortunately on their end there's some issues, notwithstanding that it was all tested last evening.

So, what we're going to do this morning is start off with Mr. Snyder, and if and when we can get Mr. Over linked we're going to get him on the screen and then we might have – there might have to be a bit of repetition from Commission counsel and then we'll go from there.

If we don't solve the problem, I'm not certain as to how we're going to manage to get Mr. Over's evidence because right now I don't see a – even a crack in the schedule to allow us to do it. But we will figure out something.

So, it may well be that as we move along we're gonna get interrupted and being advised that he's now joined us and then Ms. Ding will, sort of, re-start and – at least with him – and then we'll keep going. I don't expect these witnesses to be long this morning because I want to get right to the panel – right away.

Okay – we have him. Oh, perfect. So, let's see if we can get him up.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: Okay.

Good Morning, Sir. How are you?

MR. OVER: I'm very well. Thank you. How are you?

THE COMMISSIONER: Good. Thank you.

All right. We're going to start this morning, Ms. Ding.

MS. DING: Thank you, Commissioner.

This morning we have Mr. Greg Snyder with SNC-Lavalin, and over Skype today we have Mr. Ed Over, who was formerly with SNC-Lavalin. And Mr. Snyder would like to affirm his oath and Mr. Over would like to swear his oath.

THE COMMISSIONER: Okay.

All right, if you could stand, Sir, please for your affirmation.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. SNYDER: I solemnly affirm, yes.

CLERK: State your name, please.

MR. SNYDER: Greg Snyder.

CLERK: Thank you.

THE COMMISSIONER: All right and Mr. Over, if I could – to you, if you could stand please.

UNIDENTIFIED FEMALE SPEAKER:
Swear, he wants to swear.

THE COMMISSIONER: Swear, please.

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. OVER: I do.

CLERK: Please state your name.

MR. OVER: Ed Over.

CLERK: Thank you.

THE COMMISSIONER: All right.

Ms. Ding, when you're ready.

MS. DING: Thank you.

Mr. Commissioner, we don't need to enter in any new exhibits today. The exhibits I'll be using are the exhibits already entered in for Mr. Turpin, Mr. Mulcahy and Mr. McClintock.

THE COMMISSIONER: Okay.

MS. DING: Okay.

Mr. Snyder, I'll start with you. Can you take us through your education and your work experience please?

MR. SNYDER: Certainly.

I'm – I graduated from Memorial University in Engineering in 1980. I've been working in dams and public safety for most of my career. I'm – let's see, I've been working in Nova Scotia, New Brunswick, Newfoundland and British Columbia for SNC, Hatch and other companies. I'm a – I've been a member of the Board of Directors for the Canadian Dam Association, also the professional – New Brunswick professional association – professional engineers association and Canadian Water Resources Association.

I've published over 35 papers on dams and dam safety and – as an author or co-author – including four papers last week at the International Congress on Large Dams. So I continue to work in those fields: dam rehabilitation, dam safety and construction.

MS. DING: And you currently still work on the Muskrat Falls Project, is that right?

MR. SNYDER: And I work on Muskrat Falls Project, and have been doing so since 2012.

MS. DING: In what role is that? That you are in currently.

MR. SNYDER: And I'm the engineering manager.

MS. DING: And how did you first get involved with the Muskrat Falls Project?

MR. SNYDER: I was working on the Site C project in British Columbia, which is an 11,000-megawatt project similar in many ways to this project, when I was contacted by SNC and there was a job offer.

MS. DING: Okay, thank you.

Do you know when that was?

MR. SNYDER: Well, I came here in February of 2012.

MS. DING: Thank you.

Mr. Over, thank you for joining us.

Can you take us through your education and your work experience to date, please?

MR. OVER: Certainly. I have a Bachelor of Commerce from York University. Can you hear me okay?

MS. DING: Yes.

MR. OVER: Okay, sorry.

Graduated in 1985. I've worked – I worked at OPG, Ontario Power Generation, for over 30 years. My background is major construction projects. I left OPG in November – sorry November 2011. I was the director of the supply chain in the Hydro Business Unit.

MS. DING: And you're retired now, is that correct?

MR. OVER: That's correct.

MS. DING: And how did you get involved with the Muskrat Falls Project?

MR. OVER: I was a customer of SNC and they approached me and made me an offer. So, I retired from OPG and worked on the Muskrat Falls Project.

MS. DING: Do you know when approximately that was, when you came over to the project?

MR. OVER: November 2011.

MS. DING: Thank you.

I'm mostly interested today in questioning both of you on your involvement with the bid evaluation package CH0009, which is the North and South Dams construction project, and the award that ultimately went to Barnard-Pennecon. Mr. Snyder, do you know when you approximately joined the team for the bid evaluation?

MR. SNYDER: I think it was 2015 in the summer. I don't remember the exact dates.

MS. DING: Okay. And what was your role on the bid evaluation team?

MR. SNYDER: Technical evaluation.

MS. DING: Okay, so did you have any involvement in the analysis of the financial pricing of the bids at any point during your –

MR. SNYDER: No, I never saw any pricing at all. I worked with – on priced proposals.

MS. DING: It was strictly technical evaluation.

MR. SNYDER: Strictly technical.

MS. DING: Thank you.

Mr. Over, I understand you had two periods of engagement on the team. Can you tell us when those were?

MR. OVER: Certainly.

I was approached by Lance Clarke to support Ron Adamcyk who was taking over the contract administration function in late November, early December 2014. I left the project in March in 2015.

MS. DING: And then the second period?

MR. OVER: I was called by Mr. Clarke and asked if I would act as the contract administrator from Toronto.

MS. DING: Right, thank you.

And what was your role on the bid evaluation team?

MR. OVER: I was the commercial lead from Toronto.

MS. DING: And what does the commercial lead primarily do for the team?

MR. OVER: So we interface with the bidders and we do the commercial terms and conditions.

MS. DING: Did you have any involvement with the financial pricing analysis, things like the normalization analysis of the bids at any point during the evaluation?

MR. OVER: I don't believe so.

MS. DING: Thank you.

So, to your knowledge, was it just Mr. McClintock looking at the financial pricing of the two bids?

MR. OVER: I don't know.

MS. DING: So we've heard testimony from Mr. Turpin that he and Roy Lewis had already done an award recommendation in December of 2014 that recommended H. J. O'Connell as the successful bidder.

Now, the Commission hasn't been able to find a copy of the formal recommendation, but I'm going to ask you, Mr. Snyder first: Were you ever aware if Mr. Turpin or Mr. Lewis had already done an award recommendation in December of 2014?

MR. SNYDER: No, I wasn't aware of any.

MS. DING: Okay.

And when you were doing your technical evaluation, did you review any of the work that they had done on the technical evaluation or did you start from scratch?

MR. SNYDER: I started from scratch. I don't recall looking at anything from a previous evaluation.

MS. DING: Okay, thank you.

And, Mr. Over, were you ever aware of award recommendation in December 2014 by Mr. Turpin and or Mr. Lewis?

MR. OVER: We heard rumours that they either completed the evaluation or had made one, but we never saw one.

MS. DING: Okay.

And did you review any of the work they had done on the commercial evaluation when you came on?

MR. OVER: Yes, I did.

MS. DING: Okay, thank you.

So, Madam Clerk, please take us to Exhibit P-02802. Mr. Snyder, Mr. Over, that's tab 3 in your binders. So this is a presentation that Mr. McClintock did for Mr. Power, Mr. O'Brien and Mr. Hussey to propose a revised scoring methodology. And the date on this presentation is July 24, 2015, which I believe is the date of the presentation.

And what we've heard from Mr. McClintock, who testified a few weeks ago, is that the team had evaluated the bids according to a revised bid scoring that Mr. McClintock wanted to present to the Nalcor team on July 24. And this revised bid scoring was different from the scoring that was originally set out in the bid evaluation plan.

And so my question to you, Mr. Snyder, is: Did you attend this meeting on July 24, 2015?

MR. SNYDER: No, not that I recall. I believe I was on vacation on that day.

MS. DING: Okay.

And when was your vacation? Do you remember?

MR. SNYDER: It was July 23 'til the 27th and then again from the 1st of August to the 15th.

MS. DING: Okay.

So you had a period from July 23 and then you came back for a few days –

MR. SNYDER: Yeah.

MS. DING: – and then you left again on August 1.

MR. SNYDER: That's correct.

MS. DING: Thank you.

Do you ever recall being asked to attend this meeting?

MR. SNYDER: No, I don't recall that.

MS. DING: Were you generally involved in any meetings between the bid evaluation team and Nalcor's management team regarding this bid evaluation?

MR. SNYDER: Not that I recall.

MS. DING: Thank you.

And, Mr. Over, did you attend this meeting on July 24?

MR. OVER: No, I did not.

MS. DING: Okay.

Do you recall ever being asked to attend the meeting?

MR. OVER: No, I don't.

MS. DING: And were you generally involved in any meetings between the bid evaluation team and the Nalcor management team?

MR. OVER: I can't recall being involved with any of the management.

MS. DING: Okay, thank you.

And, Madam Clerk, if we go to page 14, please, so this is a bid evaluation with scoring for both bidders in commercial and technical and the third category is: "**Project Organization & Team Quality**." I'll just note that this is the analysis that was ultimately used as a sensitivity analysis in the final award recommendation document and it's the same analysis that shows up on the award recommendation on page 49 of 18 – Exhibit 01870.

Mr. Over, do you recall discussing or having any input in this revised bid scoring with the other members of the bid evaluation team?

MR. OVER: I don't recall any discussion with anyone regarding this page.

MS. DING: Thank you.

And the same question to you, Mr. Snyder: Do you recall discussing or having any input in this analysis here?

MR. SNYDER: No, I don't recall. And given it's got commercial information in it, I wouldn't – not have seen this.

MS. DING: Okay. Thank you.

And, Madam Clerk, can we please go to Exhibit P-03435 and, Mr. Snyder, that is tab 2 in your binder. So I believe this is an evaluation of the project management team for Barnard-Pennecon and we have another one that was done for H. J. O'Connell in our exhibits as well.

You were involved in this analysis. Is that correct?

MR. SNYDER: That's correct.

MS. DING: Okay.

And, Madam Clerk, if we can go to Exhibit P-01870 – and that's tab 1 in your binder, Mr. Snyder – and page 26, please. So this is, I believe, one of the technical scoring sheets that you were responsible for filling out as part of your technical evaluation. Is that correct?

MR. SNYDER: That's correct.

MS. DING: Okay, so when you did the analysis of the project team's experience – the exhibit I just showed you – was – your intention was to use it for this scoresheet. Is that correct?

MR. SNYDER: Yeah, that's correct. There's item 4 on the list, "Organization Charts/Key Personnel." So it would have been for that particular item –

MS. DING: Okay.

MR. SNYDER: – which, as you'll note, is 3 per cent of the weight.

MS. DING: Okay, so when you were asked to do the evaluation of the project teams, you wouldn't have known if it was used for a different – for a much higher weighted –

MR. SNYDER: I would not have been aware of anything like that.

MS. DING: Okay, thank you.

Madam Clerk, can we please go to P-02803, please. And, Mr. Snyder and Mr. Over, that's tab 4 in your binders.

So this is an email from Mr. McClintock to both of you on July 24, 2015, after the meeting with Nalcor management. Mr. McClintock has testified that he proposed the idea of the revised bid scoring, but the idea was rejected and he was asked to stick to the original bid scoring.

So he had testified that he – the team hadn't done the scoring according to the original bid scoring until up to this point. So here he's asking you to fill out the scoresheets from the 2014 bid evaluation plan.

And if we go to page 21, this is an example of the technical scoresheet that we just looked at. Mr. Snyder. Is that correct?

MR. SNYDER: Yes, it looks like it.

MS. DING: So he's asking you to fill out these scoresheets.

At – if we can go to Exhibit P-02805, please, at tab 5 in your binder.

MR. SNYDER: Mm-hmm.

MS. DING: So it looks like this is an email on July 27, 2015, and it looks, like Mr. Snyder, you're sending Mr. McClintock the technical evaluation that he had asked for three days earlier.

MR. SNYDER: Yeah.

MS. DING: You and Mr. Mulcahy worked on that evaluation. Is that correct?

MR. SNYDER: That's correct.

MS. DING: Okay and if we go to page 3.

MR. SNYDER: Mm-hmm.

MS. DING: So we're looking at the scoring you did on July 27. This is the evaluation of the execution plan. And if we scroll to the bottom here, yeah, the difference here between the two bidders is about 2 per cent. So we're looking at 76.8 to 74.5, approximately 2 per cent in favour of Barnard-Pennecon. Is that correct?

MR. SNYDER: That's what it says, yes.

MS. DING: Okay.

And now if we go to the final award recommendation at Exhibit P-01870, please. And that's tab 1 in your binder and we go to page 26. We see here that the spread between the two bidders, if we scroll down to the bottom, is now 80.5 to 70.5.

So the spread is now 10 per cent in favour of Barnard-Pennecon. It appears the gap has grown. And Mr. McClintock has testified that he sat down with you and Mr. Mulcahy again to look at the numbers, after you submitted to him on July 27 talking about various other considerations, and you agreed on changing the numbers.

Now, Mr. Mulcahy has testified that he doesn't remember discussing with Mr. McClintock after you submitted those scoresheets to him on July 27. So my question to you is: Once you submitted them, and before you went on vacation on August 1 – that's about four days – do you recall whether you and Mr. Mulcahy revisited your technical scores with Mr. McClintock?

MR. SNYDER: I don't recall that. I remember filling in the form, but I don't recall, you know, how or when or what.

MS. DING: Thank you.

And do you recall receiving any new information on the bids that may have required a change in technical scores between July 27 and August 1?

MR. SNYDER: I don't remember the dates but I do remember getting a résumé, because in the bid one of the résumés was missing a few pages. So we got an update of that but I don't recall when that time was.

MS. DING: And would you have updated your technical scoresheets because of that résumé?

MR. SNYDER: Yes, because if I recall, the résumé in question had only the first page so it didn't give any details of the experience. So we wouldn't have been able to complete the scoresheet for them.

MS. DING: Okay.

And once you've added in that new résumé or considered that new résumé, would that have changed the technical score from 2 per cent to 10 per cent?

MR. SNYDER: Oh, no. As the – as I said before, the scoring of the team is only about 3 per cent of that overall total.

MS. DING: Thank you.

Mr. Over, my understanding is that typically on bid evaluations, the bid evaluation team and Nalcor's project team would have a review meeting to present the recommendation and go through the evaluation. Were you present when Mr. McClintock presented the final award recommendation to the Nalcor management team?

MR. OVER: No, I wasn't.

MS. DING: Okay.

Mr. Snyder, were you at this meeting?

MR. SNYDER: No, I wasn't.

MS. DING: Okay.

If we can go again to Exhibit 01870, tab 1 at page 26. I believe that's – and we're still on there. Mr. Snyder, beyond these technical scoresheets, did you have any involvement in drafting or preparing the award – the final award recommendation document?

MR. SNYDER: No, I did not.

MS. DING: And, Mr. Over, in your interview you indicated you did have some involvement in drafting the final recommendation, but you indicated that your involvement was limited. Is that correct?

MR. OVER: That's correct.

MS. DING: Can you expand on what you had drafted?

MR. OVER: Yes.

So I prepared the initial template and populated it with some information that I had.

MS. DING: So –

MR. SNYDER: It would be very preliminary.

MS. DING: So that would've just been to do with your commercial evaluation.

MR. SNYDER: Yes.

MS. DING: And if we go to page 1 of this document, Mr. Snyder, you did not sign off on this document. Is that correct?

MR. SNYDER: That's correct.

MS. DING: Okay.

And, Mr. Over, my – sorry, Mr. Snyder, did you review the final signed document at any point?

MR. SNYDER: No, not that I recall.

MS. DING: Mr. Over, my understanding is that you reviewed the draft of the document that went to the project management team, but you did not review the signed final document. Is that correct?

MR. OVER: That's my recollection.

MS. DING: And was there any difference between the document that went to the project management team and this final document that you see in front of you?

MR. OVER: Are you asking me?

MS. DING: Yes, sorry, Mr. Over.

MR. OVER: I couldn't tell you what the differences are. The only difference that I'm aware of is the sensitivity analysis.

MS. DING: So that revised scoring that we see on page – I believe it's 49, you wouldn't have seen this on the version that went to the project management team?

MR. OVER: I don't believe so.

MS. DING: And if we go back to page 1 – Mr. Over, this is still directed towards you – you're listed here as both the contract administrator and the senior commercial advisor, and it looks like Mr. McClintock has signed the recommendation on behalf of both roles. Is that correct?

MR. OVER: Yes.

MS. DING: And you indicated in your interview that there was actually not a commercial – senior commercial advisor on the team. That's an error?

MR. OVER: That was my error. That was my position when I was on the project.

MS. DING: Okay, but it appears that Mr. McClintock has signed for you there regardless?

MR. OVER: Correct.

MS. DING: Okay.

Were you aware at the time that he had signed for you?

MR. OVER: No, I was not.

MS. DING: Mr. McClintock has testified that you would've had access to the final draft of the award recommendation through Aconex. Did you ever review the document on Aconex?

MR. OVER: I don't think so.

MS. DING: And can you comment on the appropriateness of Mr. McClintock having signed your name on behalf of you without your knowledge or review?

MR. OVER: It's a practice on the project.

MS. DING: So it's common that other people would sign for other people without telling them first?

MR. OVER: As far as I know it (inaudible).

MS. DING: So one issue that's been raised by – in this Inquiry is whether there was a preference for Barnard-Pennecon, because H. J. O'Connell had an unresolved, outstanding claim against Nalcor for a previous contract on the bulk excavation package. And I just want to get your – both of your responses on that.

Mr. Over, do you recall any discussions with the bid evaluation team about outstanding claims by H. J. O'Connell?

MR. OVER: I cannot recall any discussions about a client.

MS. DING: Thank you.

And the same question to you, Mr. Snyder. Do you remember ever discussing H. J. O'Connell's outstanding commercial claims?

MR. SNYDER: No, I don't recall any such thing. I wasn't aware there was a claim and I don't see how it would influence the bid anyway.

MS. DING: Okay. Thank you.

Thank you, Mr. Snyder, Mr. Over. That – those are my questions.

MR. OVER: Thank you.

THE COMMISSIONER: All right, good, thank you very much.

Province of Newfoundland and Labrador.

MR. LEAMON: No questions, Commissioner.

Thank you.

THE COMMISSIONER: Concerned Citizens Coalition.

MR. HISCOCK: Mr. Snyder, a quick question for you, which is: As an SNC employee, would you agree with the earlier testimony that Astaldi was selected on the recommendation of SNC with little input from Nalcor?

MR. SNYDER: I wasn't aware of that statement but anything – any selections on the project that were made were – it's a detailed review by all levels at Nalcor.

MR. HISCOCK: Okay.

Thank you.

THE COMMISSIONER: All right, thank you.

Edmund Martin.

MR. CONSTANTINE: No questions.

THE COMMISSIONER: Okay.

Kathy Dunderdale – not here.

Former Provincial Government Officials.

MR. J. KING: No questions, Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown – not here.

Robert Thompson – not here.

Consumer Advocate.

MR. PEDDIGREW: No questions, Commissioner.

THE COMMISSIONER: Former Nalcor Board Members – not here.

And Newfoundland and Labrador Building and Construction Trades Council.

MS. QUINLAN: No questions, Commissioner.

Thank you.

THE COMMISSIONER: Okay.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Good morning, gentlemen. I'm Dan Simmons, lawyer for Nalcor Energy here at the Inquiry.

And I'm going to try and direct questions to you individually, in the same way that Ms. Ding did, and so each of you will know who I'm asking. And if I have the same question for both of you, I'll ask one of you and then I'll ask the other. So I'll try and keep it a bit organized like that.

Mr. Snyder, you've given us some of your background and it sounds like your career had largely been focused on dams, dam safety and engineering work related to dams. Do I understand that correctly?

MR. SNYDER: That's correct.

MR. SIMMONS: Yeah. And what portion of that has been in the hydroelectric industry as opposed to, perhaps, dams used for other purposes?

MR. SNYDER: The majority of it, there's – I did some work with water supply; for example, the City of Saint John, New Brunswick. But most of the work – and there's some work, as well, related to mines and mine tailings, but the majority of it would be hydro or hydro-related. Often, it's fixing up the dams for a hydro project.

MR. SIMMONS: And would the principles that would be applied to dam construction, dam inspection, ensuring dams are safely built and maintained – would they be essentially the same principles that would apply, whether the dam was used for a hydroelectric project or for some other purpose?

MR. SNYDER: Yes, they are.

MR. SIMMONS: Okay.

And in on this particular project you have been engineering manager with SNC, but assigned to the Lower Churchill Project since 2011. Do I have that correct?

MR. SNYDER: No, 2012.

MR. SIMMONS: Since –

MR. SNYDER: February 2012.

MR. SIMMONS: Since 2012. And you have been based where? Physically, where has your office been?

MR. SNYDER: In St. John's.

MR. SIMMONS: In St. John's at the Torbay Road office.

MR. SNYDER: That's correct.

MR. SIMMONS: Correct.

And how much time do you spend on site? How frequently do you travel back and forth?

MR. SNYDER: I usually get up to site about every two weeks for a couple of days.

MR. SIMMONS: Mm-hmm.

MR. SNYDER: Sometimes there's more demand and I'll be there more often for longer periods of time. It depends on what's going on.

MR. SIMMONS: Yeah.

Had you ever considered whether you should be based permanently at site and not in St. John's?

MR. SNYDER: The design office is in St. John's.

MR. SIMMONS: Yes.

MR. SNYDER: So it makes sense to be in St. John's and support the project as necessary from there.

MR. SIMMONS: Yeah.

And can you give us an idea of whether you have any view as to whether there's been any advantage, disadvantage, impediment to having the design office based in St. John's versus actually being situated in Happy Valley-Goose Bay?

MR. SNYDER: I think there are advantages to being in St. John's because there's a lot of local support and – such as, you know, drafting and others, especially things that come in temporarily. There's advantages to having some support at site as well, so it's – I don't have clear

either way; some projects do it one way, some do it another.

MR. SIMMONS: Okay.

And the work that you've been responsible for as manager of engineering, of course I'd understand you don't do all the engineering yourself, there are many other people who do that.

MR. SNYDER: That's correct.

MR. SIMMONS: But you would be responsible for the general oversight and making sure the engineering is done to the necessary quality and standard.

MR. SNYDER: That's correct.

MR. SIMMONS: Okay.

And that would include engineering work related to the stabilization of the North Spur.

MR. SNYDER: Absolutely.

MR. SIMMONS: Yes. And you've been involved with that, I think, probably throughout the project, have you?

MR. SNYDER: That's correct.

MR. SIMMONS: Okay.

We see your name on some of the engineering reports and documents that have been produced.

MR. SNYDER: Probably most of them, yes.

MR. SIMMONS: Okay. Good, thank you.

Now, on this particular bid evaluation, can you give me perhaps a little more description first about what the expectations were of the role that you were tasked to play on this bid evaluation? Because I think you've said it was confined to technical evaluation.

MR. SNYDER: Yeah.

MR. SIMMONS: And how do the evaluation teams – how's the evaluation team work? How are responsibilities broken up? How much do

people work together? Are there separate signed responsibilities?

MR. SNYDER: Basically, John Mulcahy and I would review the proposals, the execution plans from each of the contractors and –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – try to figure out if we thought that they could do it, if this, what they were proposing, was a viable approach.

MR. SIMMONS: Mm-hmm.

MR. SNYDER: We're not necessarily looking for the best approach because, you know, there's not usually enough detail to really assess that.

MR. SIMMONS: Mm-hmm.

MR. SNYDER: It's a more of a: Can they do it? Have they thought it through?

MR. SIMMONS: Mm-hmm.

MR. SNYDER: You know, is the equipment appropriate? And things like that.

MR. SIMMONS: And so the commercial evaluation then, the evaluation of contract terms, contractual proposals, pricing proposals: all those things are something that you would not have been involved in.

MR. SNYDER: No, I wouldn't.

MR. SIMMONS: You –

MR. SNYDER: I wouldn't have seen any of that stuff.

MR. SIMMONS: You wouldn't have seen it. So, in fact, is there a kind of deliberate separation of the people evaluating the technical terms and those evaluating the commercial and pricing terms?

MR. SNYDER: Yes and that's often how it's done. You want to do a technical evaluation separately from the pricing.

MR. SIMMONS: Right. So should it be any surprise then to us that you wouldn't have been

involved very much in the final total package that would go to the project management team for the recommendations coming out of the bid evaluation?

MR. SNYDER: What's the question? Sorry?

MR. SIMMONS: So would we expect them – let me ask you this: Would you have had any expectation to be closely involved in the final recommendation package, in the drafting of the final recommendation package, aside from your contribution?

MR. SNYDER: No, I wouldn't expect that because there are so many other bits and pieces that go in there. I mean it's a commercial but there's also the health and safety and –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – other aspects of the project.

MR. SIMMONS: Right.

Had you been involved in many other bid evaluations for this project?

MR. SNYDER: No, I was a very short period of time on the North Spur.

MR. SIMMONS: Mm-hmm.

MR. SNYDER: I think it was like one day. I'm – just so many other conflicting demands that I didn't really have time for that, in general.

MR. SIMMONS: So are in you – are you in a position then, to tell us how – what the process was, beginning to end, for other bid evaluations in comparison to the way this one was handled?

MR. SNYDER: Not really, other than each project, I know, produced a bid evaluation document –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – similar to this.

MR. SIMMONS: Mm-hmm.

MR. SNYDER: And I do not know, but I assume that they're similar in the approaches, 'cause it's – like a project standard.

MR. SIMMONS: Okay, all right.

Now, Ms. Ding asked you about whether you were aware of there being any discussion about a couple of particular items, as to whether they might've influenced this award in any way. One of those was a suggestion that there was an outstanding claim against one of the bidders arising from other contracts. And I'll ask you more generally: throughout your participation in the process, was there any sign that you saw of any kind of influence or preference being exerted to try and prefer one of the bidders over the other?

MR. SNYDER: No, absolutely not.

MR. SIMMONS: From your evaluation of the technical terms that you were looking at, you've said a moment ago that it was really a matter of looking at it to make sure both bidders were capable, not so much making a fine distinction between which execution plan was better than the other. Do I have that right?

MR. SNYDER: In a lot of cases that's right. You're looking at, you know, who's thought it through –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – but there are the two questions, the scoring comes from, you know, this one might be a bit better –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – from – a lot of the scores you'll see are the same, because they were equal –

MR. SIMMONS: Yes.

MR. SNYDER: – equally capable.

MR. SIMMONS: Yes. So can you give me an idea of what – and at the end, did you and Mr. Mulcahy achieve a consensus on what – on how you would score the different bidders?

MR. SNYDER: I believe so, yes.

MR. SIMMONS: Yes, okay. And many of the questions that you've answered – that Ms. Ding asked you about that scoring process and your involvement in it – you answered along the lines of, you know, I can't recall. I took it to be that you didn't recall all the details of how that process worked through. Was that the correct impression that I took from it?

MR. SNYDER: Yeah, other than what I've said in general, that you –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – you know, we read through the execution plans and, you know –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – see what we think of them. But the specifics on this bid I don't recall.

MR. SIMMONS: Okay.

And I think fairly specifically you were asked whether you and Mr. Mulcahy and Mr. McClintock had had a discussion about whether there should be some revisions made to the scoring, to the technical scoring before it was finalized.

MR. SNYDER: Mmm.

MR. SIMMONS: And I think I heard you to say that you didn't have any recollection of that.

MR. SNYDER: That's correct.

MR. SIMMONS: Now, does that mean that you're telling us that it didn't happen, or that you don't know whether it happened?

MR. SNYDER: I can't recall the details of that time when we were doing the evaluation. I know Ken was around, but –

MR. SIMMONS: Mm-hmm.

MR. SNYDER: – whether he just said, you know, have you got it done yet, or whether he asked – whether we sat down and went through it, I don't recall.

MR. SIMMONS: Okay, okay. So you're not telling us that that did not happen? You're not telling us that you know that didn't happen?

MR. SNYDER: Yeah, that's correct. I'm not telling you I do –

MR. SIMMONS: Okay.

MR. SNYDER: – well, you've got a couple of double negatives in there –

MR. SIMMONS: All right.

MR. SNYDER: – so.

MR. SIMMONS: Let me try it this way. Do you know whether or not that discussion took place? Can you say one way or the other?

MR. SNYDER: I can't say one way or the other.

MR. SIMMONS: Okay, thank you, yeah.

Mr. Over.

MR. OVER: Yes?

MR. SIMMONS: I have some similar questions for you. And I apologize if I'm looking in the wrong direction, 'cause when we have people on Skype I never know which way to look for the camera.

Your background and experience – you are not an engineer. Correct?

MR. OVER: Correct.

MR. SIMMONS: But you have had a long experience in – with Ontario Power Generation. And you've said –

MR. OVER: Correct.

MR. SIMMONS: – that was in major construction projects. Were those – were any of those hydroelectric construction projects?

MR. OVER: Many were hydroelectric.

MR. SIMMONS: Can you give us –

MR. OVER: I – yes I can. So I – go ahead.

MR. SIMMONS: Okay. Can you give us any significant examples of hydroelectric projects that form part of your career before being involved on this one?

MR. OVER: So I worked on the Niagara Tunnel Project in 2004, 2005. I put the contracting strategy and the negotiation for the Lower Mattagami Project. It's a 500-megawatt hydro station.

MR. SIMMONS: Okay, good. Thank you very much.

And if I understand, you were actually recruited to this project by SNC. It was not by the Muskrat Falls Project directly. You came in as part of the SNC team, and did I understand you to say that was 2011, 2012?

MR. OVER: It was the end of 2011.

MR. SIMMONS: In 2011, good.

And some similar questions to those I asked Mr. Snyder. Can you describe for me again just what the extent of your role was on the bid evaluation team for the dams contract, and what you understood to be the expectations for how much you would be involved?

MR. OVER: So when I returned to Toronto –

MR. SIMMONS: Mm-hmm.

MR. OVER: – I wasn't expecting to be involved in the project going forward. I got a call from Mr. Clarke at the end of April, early May. So he asked me to act as the contract administrator from Toronto.

MR. SIMMONS: So what does that mean? What would the role of the contract administrator be in respect of the bid evaluation?

MR. OVER: So I would support the bid evaluation. I'd act as the point of (inaudible) contact with the bidders, and I'd review the terms and conditions.

MR. SIMMONS: Okay, all right.

So you had direct contact with the bidders about the commercial terms? Is that what I understand correctly?

MR. OVER: I had direct contact with the bidders about technical and (inaudible) –

MR. SIMMONS: Okay.

MR. OVER: – commercial. I was the point of contact for the bidders.

MR. SIMMONS: You were asked about a presentation that was made on July 24, 2015, which was a presentation that Mr. McClintock gave. Ms. Ding had some questions for you about that. I'd like to refer you –

THE COMMISSIONER: 23rd?

MR. SIMMONS: Oh, yes. July 2015, I think.

THE COMMISSIONER: Yeah, but it was the 23rd, not the 24th, was it?

MR. SNYDER: I think it was the 24th.

MR. SIMMONS: I think it's the 24th.

THE COMMISSIONER: 24th, okay.

MR. SIMMONS: Yeah. But I do stand to be corrected. And the document I'd like to refer you to – and I don't know if you have this available or not, Mr. Over – is P-02800.

THE COMMISSIONER: That'll be on –

MR. SIMMONS: And I don't know if you have the means there to – you don't have a monitor to see any documents we provide you with, do you?

MR. OVER: No, I don't.

MR. SIMMONS: Okay, well, I'll just ask you, I'll – this is an email message, and it's described as being from you, edover@lowerchurchillproject.ca. And it's to Mr. McClintock and it's Mr. Mulcahy, and it's July 21, 2015. So it was four days before the presentation you were asked about.

And it starts out saying: "Morning Gentlemen,

"I just received a note that Lance is out of the office from the 21 to the 24th.

"Ken,

"I've inserted information using track changes into the commercial section of the presentation. This is a work in progress as we are continuing to have dialogue with both bidders.

"Ed."

So I wonder if that rings any bells and if you can tell us anything more about your participation in the preparation of the presentation that was given on July 24?

MR. OVER: So if I recall – sorry, go ahead?

MR. SIMMONS: No, you go ahead, please, I don't mean to interrupt.

MR. OVER: So Ken sent me an email asking for my input in his presentation. I believe in that email I inserted two pages. One about Barnard-Pennecon, and the other about O'Connell.

MR. SIMMONS: Mm-hmm, okay. Now, where – since you were located in Toronto, how did you participate in this process? Did you travel back and forth to St. John's, did you participate by telephone, in meetings, was it just email correspondence back and forth, some combination of all that?

MR. OVER: Some combination of all that.

MR. SIMMONS: Okay. Were – did you, would you have expected to have to come to St. John's to participate in the presentation of the final results of the bid evaluation to the project team?

MR. OVER: No, I wouldn't.

MR. SIMMONS: Okay. Why not?

MR. OVER: Ken is the point of contact to manage that.

MR. SIMMONS: Right.

So is there anything wrong, in that case then, with Mr. McClintock having been the person to

make those – to present the final recommendation to the team?

MR. OVER: No.

MR. SIMMONS: Okay.

One document you were brought to was P-02803; can we just go there for a moment, please?

THE COMMISSIONER: That's tab 4.

MR. SIMMONS: I think this is the right one.

MR. OVER: Okay.

MR. SIMMONS: Okay.

So this is July 24, and we understand this to be following the presentation – a presentation that Mr. McClintock gave on the 24th. And it says: "Gents

"Please review this and plan to complete your respective sections all as per discussions today."

So my question is: Can you recall anything about the discussions that Mr. McClintock is referring to? And this message was to you, to Mr. Mulcahy and to Mr. Snyder. So do you – can you shed any light on what those discussions were?

MR. OVER: I can't recall any discussions with Ken on that day.

MR. SIMMONS: Okay.

So a similar follow-up question to one I asked Mr. Snyder: How clear and complete are your recollections of the details about how these – this bid evaluation proceeded?

MR. OVER: Can you explain the question, please?

MR. SIMMONS: How much detail do you recall about interactions with Mr. McClintock and others about completing this bid evaluation process?

MR. OVER: Sir, that was four years ago, so it's really hard to remember the details.

MR. SIMMONS: Some of the witnesses we've had up here at the Inquiry relied largely on refreshing their memories from the documents that they've been provided with. Do you – have you done that or are you relying, for your evidence now, purely on what you – what your recollection is independently of the documents?

MR. OVER: I'm relying on the information that I got from the Commission.

MR. SIMMONS: Okay.

Okay. So, Mr. Over, I'll end then with the same question I asked Mr. Snyder, which is: Throughout your participation in this process for this bid evaluation, was there any indication to you, of any sort, that anyone involved had any kind of preference for conducting the evaluation to prefer one of the bidders over the other?

MR. OVER: No.

MR. SIMMONS: Thank you very much.

I don't have any further questions.

THE COMMISSIONER: All right.

Counsel for Mr. Over and Mr. Snyder.

MS. MURPHY: I have no questions.

Thank you.

THE COMMISSIONER: Thank you.

Redirect.

MS. DING: Just one small question to clarify.

Mr. Snyder, Mr. Simmons asked you whether you can say if you had met with Mr. Mulcahy and Mr. McClintock after you submitted your scores to Mr. McClintock on July 27, and you said you just simply couldn't recall. Is that correct?

MR. SNYDER: That's right.

MS. DING: And I just want to clarify, you would've had about four days or so between July 27 and August 1 when you went on

vacation to meet – to have that meeting, if it did happen. Is that correct?

MR. SNYDER: That's correct.

MS. DING: And in order to change your scores that you had worked with Mr. Mulcahy on and agreed to with Mr. Mulcahy, in order to change those scores, would you have needed some basis or some new information to do so?

MR. SNYDER: Not necessarily new information. Just reviewing the documents provided from the contractors a second time, I may come to a different conclusion, but I can't recall whether we did that or not.

MS. DING: Okay. But the difference in your scoresheets from 2 per cent to 10 per cent, that would've been – you would've needed a fair bit of information to make that change?

MR. SNYDER: I don't recall that – what the difference was at any point, and I think as I just said, I don't see that much – whether it's two or 10 being that big a difference because it's really a – it's more of a pass/fail: either the contractors do it – do the work specified. And both of them, we came to the conclusion, could do that.

MS. DING: Okay.

And I just want to clarify, beyond that one résumé that you received, you had no other information that was – that came to you after July 27?

MR. SNYDER: Not that I recollect, no.

MS. DING: Okay.

Thank you.

THE COMMISSIONER: All right.

Thank you, Mr. Snyder, and thank you, Mr. Over. I appreciate your time this morning.

MR. OVER: Thank you.

THE COMMISSIONER: All right.

We'll take a break now just to get set up for the panel, and then we'll begin right away after that.

So we'll just adjourn for five minutes or so.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

Ms. Morry.

MS. MORRY: Good morning, Commissioner. This morning there – we've assembled a panel of people in order to discuss some environmental issues.

If I could ask Madam Clerk to swear in the witnesses.

THE COMMISSIONER: Okay, so we should have the names of the witnesses first.

MS. MORRY: Yes.

On the right we have Jamie Chippett, in the middle we have Dr. Susan Squires and then on the left we have Mr. Martin Goebel.

THE COMMISSIONER: All right.

Mr. Chippett, if you could stand. Do you wish to be sworn or affirmed?

MR. CHIPPETT: Sworn, please.

THE COMMISSIONER: Okay, maybe the – somebody could pass the Bible over to Mr. Chippett?

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. CHIPPETT: I do.

CLERK: Please state your name.

MR. CHIPPETT: Jamie Chippett.

CLERK: Thank you.

THE COMMISSIONER: All right, Dr. Squires, do you wish to be sworn –

DR. SQUIRES: Sworn.

THE COMMISSIONER: Okay.

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

DR. SQUIRES: Yes, I do.

CLERK: Please state your name.

DR. SQUIRES: Susan Squires.

CLERK: Thank you.

THE COMMISSIONER: And Mr. Goebel?

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

MR. GOEBEL: I do.

CLERK: Please state your name.

MR. GOEBEL: Martin Goebel.

CLERK: Thank you.

THE COMMISSIONER: Spell your last name, Sir, please.

MR. GOEBEL: G-O-E-B-E-L.

THE COMMISSIONER: All right.

Ms. Morry.

MS. MORRY: Good morning.

Now, Commissioner, just to provide a bit of context for the parties and for – and just for anyone observing, the – in terms of the issues that we'll be covering, we want to stay strictly within the Terms of Reference and your interpretation of such.

So, in particular, paragraph 41 talks about the extent to which government oversight was achieved, so I wanted to read out a small excerpt of that for the record. So from paragraph 41, sort of near the bottom of the paragraph: "As well, I must consider whether appropriate or proper consideration was given and actions taken regarding potential risk to the environment, human safety and property related to the stability of the North Spur and methylmercury contamination. How these reports or assessments were received by Nalcor and whether they were made available to the Board of Nalcor as well as the Government will also be a part of the investigation to be conducted."

So I just wanted to make clear that we're going to be limiting our Inquiry to the scope of the Terms of Reference.

THE COMMISSIONER: Okay.

So this – just before we begin –

MS. MORRY: Yeah.

THE COMMISSIONER: – and for the purposes of the public, I had not initially planned on having this panel. But as I have been hearing the testimony, one of the things that I've noted is that there was a lack of knowledge by many of the individuals who testified when questions were put to them related to – particularly with regards to environmental matters.

So, as a result, we basically were able to find a period of time where we could fit this in. And I do appreciate the quick work of the government in identifying individuals and also your willingness to do this today on short notice. But I do think it will fill out the types of information that I'm going to need in order to respond to the Terms of Reference.

So I would ask counsel – all counsel – to bear in mind that, you know, there is – there are some limits here and I don't want to have to stop you from asking questions or whatever. It's not going to look good for me; it's not going to look good for you, either. So I expect, as professionals, and knowing what the Terms of Reference are and what – how I've interpreted it, that you will basically maintain your questions

and relate them to the Terms of Reference and nothing else.

All right, go ahead, Ms. Morry.

MS. MORRY: Thank you, Commissioner.

And, first of all, I would like to enter the exhibits.

THE COMMISSIONER: Okay.

MS. MORRY: The numbers are P-04115 through P-04191, as well as P-04193 to P-00214, as well as P-00224 through P-04258.

THE COMMISSIONER: So 04224 –

MS. MORRY: Yeah –

THE COMMISSIONER: – to –

MS. MORRY: – through 04258.

THE COMMISSIONER: Okay.

Those exhibits will be entered as numbered.

MS. MORRY: Thank you.

THE COMMISSIONER: One thing that I will advise, because you're in the middle, you may have to move the microphone. Just direct it to your – towards yourself so we can pick you up and the public will hear you as well –

DR. SQUIRES: Okay.

THE COMMISSIONER: – on the webcast.

DR. SQUIRES: All right.

MS. MORRY: All right.

So, first of all, by way of introduction, Mr. Chippett, could you please give the job titles that you've held with the Government of Newfoundland and Labrador and some general years?

MR. CHIPPETT: Sure.

So I started with the provincial public service in 2001 as a graduate recruit. That was a program

government had to expose recent graduates to different areas of the public service. So I was in Labrador in Aboriginal Affairs, the Wildlife Division and Tourism, Culture and Recreation.

Subsequently, I was a policy analyst in the Department of Tourism, Culture and Recreation. Following that – I think it was 2004 – I moved to the Executive Council and I was a member of the Program Renewal Secretariat, which reviewed all of government's programs and services. Moved to Intergovernmental Affairs in 2005 and moved to Cabinet Secretariat late in 2007. From 2007 until January of – 2007, sorry, until April 2011, I was in Cabinet Secretariat. Following that I was deputy minister of Transportation and Works from 2011 to 2013. I was deputy minister of Environment and Conservation from May 2013 to October 2015. In October 2015 I was moved to deputy of Municipal Affairs and in February 2017 the Environment branch became a part of that department and so I'm currently deputy minister of Municipal Affairs and Environment, and that also includes responsibility for Climate Change and Fire and Emergency Services.

MS. MORRY: Thank you, Mr. Chippett.

Ms. Squires – excuse me – Dr. Squires, could I ask you to do the same?

DR. SQUIRES: No problem.

I began with the provincial government in March of 2009; I was with the Wildlife Division at that time as an ecosystem management ecologist in the Endangered Species Program. After a few years I moved to senior manager of Stewardship and Education, so I was with that division for approximately four years. Subsequent to that I was with parks management for four years. I was a year as director of Parks and Natural Areas Division, and then with the Pippy Park Commission as manager of operations. In April of 2017 I moved to the Department of Municipal Affairs and Environment to be the director of Environmental Assessment. And in January of 2019, I became the acting assistant deputy minister for Environment.

MS. MORRY: Thank you.

And so that's your current position as director of Environmental Assessment?

DR. SQUIRES: Sorry, my current position is acting assistant deputy minister.

MS. MORRY: Oh, excuse me. Yes.

And Mr. Goebel, could I ask you to do the same?

MR. GOEBEL: Yes.

I started with the provincial government, the Department of Environment at that time, in October 6, 1983. I was the manager of the water investigations section. In 1997, I became the director of the Water Resources Division with the same department. In 2009 I became the assistant deputy minister for the Environment branch with that department. And I retired in March 31, 2017. I started on April 1, 2017, as a special role as a senior advisor on methylmercury, and that's my current position.

MS. MORRY: Thank you.

So, Mr. Goebel, I'd like to ask first that we go to tab 183 of binder 5, which is Exhibit P-00051.

THE COMMISSIONER: What tab again is that one?

MS. MORRY: So tab 183 of binder 5.

THE COMMISSIONER: I don't have tab 183 of binder 5.

MS. MORRY: You don't have that one?

THE COMMISSIONER: No. So is it just 83 maybe? Is it –?

MS. MORRY: Oh, yes, exactly. So in binder 5 it's tab 83 –

THE COMMISSIONER: Right, okay.

MS. MORRY: – but the (inaudible) – in any case, tab 83 of binder 5, yes.

So, Mr. Goebel, I understand this document is the Government of Newfoundland and Labrador's official response to the Joint Review

Panel. Is it correct that the Department of Environment was responsible for coordinating this response?

MR. GOEBEL: The department, as far as I remember at the time, put together the responses, but the responses – because the recommendations were to other departments and other agencies – would gather those responses from those agencies and compile this all. And then it went from our department to – I’m not sure, another agency for, you know, for the final response to the recommendations.

MS. MORRY: Sure.

THE COMMISSIONER: So what – so just so I understand that. What agency would you have – would Department of Environment sent this to to have it finalized before it was released?

MR. GOEBEL: Well, it goes up the line, you know, from – I guess from, you know, where I as a person would have this across my desk having come from technicians and officials to the deputy minister, and then from there it would go to, well, to government, I guess, to the minister or to the –

MS. MORRY: Sure.

Mr. Chippett, I think –

MR. CHIPPETT: Sure.

MS. MORRY: – would you like to clarify?

MR. CHIPPETT: So, you know, not having been there but knowing how the process worked and some of the prep over the last few days. Environment coordinated a response – just as Martin had said – complied, provided to a deputy minister’s steering committee for some review, including from departments that weren’t lead on any items, so to get the whole government view. And then it would’ve been submitted through a Cabinet submission. And it was actually submitted at the same time that the recommendations on environmental assessment release for the generation project were submitted to the Cabinet of the day.

MS. MORRY: Thank you.

And so this official response came out in April 2012, I understand.

MR. CHIPPETT: That’s correct, and I believe it was the same date that the project was released with terms and conditions.

MS. MORRY: Right.

So in order get a sense of how these recommendations and responses were tracked within government, Dr. Squires, I wanted to put you to Exhibit P-04229, which is at tab 73 of binder 5.

MR. GOEBEL: Here you go.

MS. MORRY: So, Dr. Squires, what is this document and where did it come from?

DR. SQUIRES: This document is a listing of the 83 recommendations that came out of the Joint Review Panel report. The origin of this document starts with how government prepared the response to the report. So what I can understand and read from departmental records is that early on as government was preparing to respond, a table, such as this, was established that identified lead departments and support departments; who was going to respond to the Joint Review Panel – each particular recommendation. I have seen examples of those in 2011, for example, leading up to the preparation of a response.

That morphed into the table that you see in front of you now. The headings were very much the same. The status was – a column was added. It appeared to be subsequent to the response being provided. So you can see versions of this as early as October of 2012 where departments started to, kind of, fill in the current status of these recommendations.

My understanding is that Labrador Affairs Secretariat was asked by Cabinet Secretariat to prepare this table and update it in both 2012 and 2014. They did so, and I imagine based on the experience of preparing the response and the coordinated effort that that took with multiple departments, that it was a similar approach to updating the table. That was, certainly, the approach I followed when I was asked to update the table very recently.

MS. MORRY: Right. And so just to expand on that slightly, you were – this – you were asked to update this table by, well, the Commission and via the Government of Newfoundland and Labrador’s legal counsel. And so is it correct that this is the most up-to-date version of this document?

DR. SQUIRES: That’s correct. So the information you see there to the left of the Status column was not changed. That’s been longstanding and reflects the government’s response to the Joint Review Panel. The dates that you see on the right, some of them were pre-existing. I didn’t delete the, you know, the statuses that were put there at those times; I simply added to them. We sent this to a number of departments, as I said, that would be represented as lead departments: Natural Resources; Tourism, Culture, Industry and Innovation; Fisheries and Land Resources, so a number. They responded with their updates, and we added them in.

If there was a reason to reflect an earlier date than June of 2019, I did that. So an example of that would be if an environmental effects monitoring plan, for example, was approved subsequent to 2014 but between then and 2019, I added – I reflected the date the minister approved it.

MS. MORRY: Sure. Okay, thank you very much.

Now – so perhaps we can move through – this document largely speaks for itself, Commissioner, in terms of providing an update on all these individual recommendations. But I did want to just make note of a couple as we move through this. So perhaps if I – if we could look at page 5. Recommendation 6.5 is “Pilot study for methylmercury mitigation through soil removal.”

Now, I note that the November 2012 status says “No action required by Province.” But there are several subsequent actions. So what is the current status of that recommendation?

DR. SQUIRES: Certainly.

So for that one in particular, the November 2012 status was the only one in the table before I

received it. I reflected the subsequent items as being items that had – that were completed as related to methylmercury and our addressing of those issues.

MS. MORRY: Sure. And my colleague, Ms. Nagarajah, is going to address some of that in more detail later.

And at page 23 of the document – or, excuse me, page 22, actually. There’s a few items here relating to dam safety and stability. Now, could you just describe some of the updates that are on page 22 there –

DR. SQUIRES: Okay.

MS. MORRY: – and how they came to be?

DR. SQUIRES: So, you’re speaking of 14.1.

MS. MORRY: Yes. Yeah.

DR. SQUIRES: The updates from November and May – November 2012 and May 2014 – were present in the table before I received it. The required emergency preparedness plan that was a condition – part of a condition of release from the environmental assessment process, that was approved, and so I’ve reflected the fact that that document was prepared and approved by the minister in this table. We also reflected the fact that we – the department as a whole has done some work to prepare for flooding on the Lower Churchill.

So – but you read it there in June 2019 – the first bullet referencing June 2019 is around the work done on flood forecasting and flood warning completed by the Water Resources Management Division. There’s obviously a lot of detail that goes in there and that website references quite a lot of work, but that’s a high-level summary.

And what was provided by Advanced Education, Skills and Labour was an indication that in recent activities, they’ve certainly been involved in responding and preparing to respond to any emergencies.

MS. MORRY: Thank you.

Mr. Chippett, did you want to comment on that?

MR. CHIPPETT: Sure. Just on the 2019 update. So, you know, for the reference of the Commission, some of that work was done in response to the independent report that government commissioned on the flooding of the Lower Churchill River in, I think it was, May 2017.

MS. MORRY: Oh. Thank you. Is that the one in reference to Mud Lake? Thank you.

MR. CHIPPETT: Mm-hmm. It was completed by Dr. Karl Lindenschmidt.

MS. MORRY: Right.

So, in terms of dam stability, I wanted to ask Mr. Goebel if you could go to Exhibit P-04197, which is at tab 103 of binder 2. So, well, tab 3, it's towards the back of the binder.

MR. GOEBEL: Okay.

MS. MORRY: So, Mr. Goebel, this document is a permit to alter a body of water.

MR. GOEBEL: Correct.

MS. MORRY: What is the significance of this document as it relates to the Lower Churchill Project?

MR. GOEBEL: This is a permit that's issued under section 48 of the *Water Resources Act*. It's a mandatory permit that anybody or any association that contemplates an alteration to a body of water has to complete before that alternation can take place.

It goes without saying that a hydroelectric power dam on a river is an alteration, and so this is a permit that permits that alteration to the body of water. The significance of this is – has been that without it, the project, really, doesn't have the authority to go ahead and change that body of water.

MS. MORRY: Sure.

Now, if we could go to page 3 of this document. At paragraph 14 there. It's headed Dam Safety.

MR. GOEBEL: Yes.

MS. MORRY: So, I wonder if you could talk about how the Canadian Dam Association guidelines relate to this permit.

MR. GOEBEL: Okay.

The Canadian Dam Safety Association, in its day, was formed by a group of people, including myself, who felt that there should be an association of interested people in – people who are interested in dam safety, and that association consisted of provincial regulators, dam owners, which could be private industry or hydro companies, and consultants who specialized in the design and maintenance in dam safety aspects. So, there are three different parties that form this association.

One of the first things that the association did was to create guidelines for dam safety. The association later joined with another association for large dams and became the Canadian Dam Association. So, the focus, however, remained on dam safety.

So, these guidelines, which all the provinces had a hand in in creating, were adopted by some provinces in their own regulations. In some provinces, the guidelines were simply referred to in their regulations. In Newfoundland and Labrador, we'd simply subscribe to them. We state in our application forms, when people apply for permits, that these are the guidelines that must be followed. So it's – so they're basically used by us as a guidance document and as a way of measuring whether or not a dam meets the safety requirements. So we use these guidelines for that.

So the key focus in terms of this permit – because it deals with the alteration to a body of water – is how does the dam actually perform under extreme flood situations. So, if you look at – on the previous page, page 2 –

MS. MORRY: Mm-hmm.

MR. GOEBEL: – you'll see that to safely convey the peak flows, there's some criteria given here.

So the main dam has to be designed to the probable maximum flood, that's what PMF means. That is based on the category of the dam,

the type of dam. There's – this dam, in this case, is a high-hazard dam because of its height, the amount of water and downstream communities. And so the dam, in order to be safe, has to be designed to be able to convey that flow, that PMF.

So, in addition to the basic design that we look for, here on section 14 are some of the other requirements that the dam owner must follow. And those requirements are essentially from the Canadian Dam Safety Guidelines.

MS. MORRY: Right.

MR. GOEBEL: So by putting them here in the permit, we basically tie the proponent to that. Now, I must say that Nalcor has always been a key partner, has also been a partner in the Canadian Dam Association. And this is not something unexpected for them, they know they have to do this. And this just puts it in writing and sets it out.

MS. MORRY: Sure. And, so some of those requirements there that are set out, they –

MR. GOEBEL: Sorry – I was distracted.

MS. MORRY: Sure. Not to worry.

So some of those requirements there, it says: "Carry out an annual Dam Safety Inspection and provide the results to" the "Department.

"Carry out a Dam Safety Review and submit a Dam Safety Report to this Department within two years of the start of reservoir filling and a maximum of every **five years** after that."

So it's correct to say that some of these conditions, they become relevant at later stages of dam construction, not – so after –

MR. GOEBEL: That is correct.

MS. MORRY: – the permit.

MR. GOEBEL: Yes.

MS. MORRY: Right. Now – excuse me.

Excuse me, Commissioner. Now, if we could go to tab 108 in binder 5, so the same one there.

THE COMMISSIONER: Okay, so I don't –

MS. MORRY: This is P –

THE COMMISSIONER: – have anything in 108, binder 5.

MS. MORRY: – 108 –

THE COMMISSIONER: What binder would – ?

MS. MORRY: – so it's tab 8 at the very end there.

THE COMMISSIONER: All right, in binder 5?

MS. MORRY: In – excuse me. I'm sorry, it's binder 2. It's Exhibit P-04201 in binder 2.

MR. GOEBEL: Got it.

MS. MORRY: Thank you.

So this is an information note from the Department of Environment and Conservation that I understand you had some input into. It's dated September 12, 2014. So perhaps you might like to refer to some of the bullets on page 2. There were some questions raised in 2014, by Mr. Cabot Martin about the stability of the North Spur component of the project.

Could you describe the Government of Newfoundland and Labrador's response to some of those concerns?

MR. GOEBEL: Okay.

The North Spur, just to explain, is a natural projection into the river. Basically, the river takes a turn around this sort of peninsula in the river, and the dam – the Muskrat Falls dam takes advantage of that because that's the point where the – where you have the – the water breaks and has the largest drop. It connects the new dam with the North Spur and makes the North Spur part of the overall system for the hydroelectric project there.

This North Spur required some work, geotechnical work, to make sure that it was stable and safe for the increased water levels that

would be – that it would be subjected to. And in the previous documentation for the permit, you will see that the stabilization works, for that North Spur, were part of that permit.

MS. MORRY: Right.

MR. GOEBEL: You know, every dam has geological features. There's a foundation, there's abutments where it has to tie into. And this is no different, but it is a unique configuration, and I think every dam has its – ultimately, has its own unique configuration because dams are just built everywhere.

So, the concerns about the North Spur became known to us through Cabot Martin, Mr. Cabot Martin. A Swedish professor by the name of Dr. Bernander, Stig Bernander, raised some very serious questions about the clay layer that is found in that area – and in particular in the North Spur – and basically expressed concerns for the safety of that part of the structure.

You know, I think we paid a lot of attention to those concerns, fundamentally. And we made sure, essentially, in the same way that we looked at the overall safety of the dam and the overall design of the dam, that Nalcor and its consultants looked at that very carefully.

When we issue the permit, we obviously don't go through all the calculations. We cannot redo the calculations. We cannot redo the design, with the resources that we have in our department. What we do, is we look for that relationship that I spoke to earlier where there is a consultant, an independent consultant that does the work for the owner. And those consultants are where we – you know, where we expect all these questions to be answered, and to be analyzed and to be done properly.

And I believe that's exactly what was done.

MS. MORRY: Thank you.

Now I don't believe it's necessary to go through these exhibits in detail but just to draw your attention to them, Commissioner. There's a tab – P-04202 at tab 109 in binder 2. That's a grid with responses to some of Stig Bernander's commentary.

I wonder – do you know who prepared this document, Mr. Goebel? Or Mr. Chippett?

MR. GOEBEL: So, which document?

MS. MORRY: It's tab 109. I think it's actually just the next one in binder 2 there.

MR. CHIPPETT: I'm not sure I can speak exactly to who prepared it.

MS. MORRY: Yeah.

MR. CHIPPETT: I'm pretty sure I asked for it at the time. So reference back to the earlier briefing note and, you know, some of the concerns raised by Mr. Martin and then Dr. Bernander, as Martin said, was early in his interventions, I guess, doing presentations and so on at the university.

So obviously, there was some pretty serious things being discussed so I had asked for an update from staff, in terms of how we were involved in the North Spur, which is basically what Martin just described, and then some commentary on specific points that had been raised.

MS. MORRY: Okay. Thank you, Mr. Chippett.

And so, Mr. Chippett, I wonder if you could describe any further reports that were commissioned during your tenure on this file?

MR. CHIPPETT: I mean, I guess the one I'm most familiar with was the dam break analysis that I believe was performed by Hatch on behalf of Nalcor, and, you know, in asking questions, being relatively new to the department, about the North Spur and what it was and how it factored in.

In the briefing on the North Spur, Martin and our director of Water Resources took me through the conclusions of that, including that one of the things that would be looked at is the worst case scenario in the event of a failure at the Lower Churchill Project and including that fact that the RCC dam, as it's called, would be the worst case scenario.

So in that report, you also have analysis of North Spur failure and an indication then of how long,

for example, it would be before people in Happy Valley-Goose Bay or in Mud Lake would see rising in water levels; what the peak of those water levels would be and so on, so – that's the report I'm most familiar with. Of the exhibits on the North Spur, in working, you know, off and on closely with Water Resources, I know those folks are familiar with, I think, most of the ones that were in the exhibit, but I haven't been into most of those in detail.

MS. MORRY: Sure. Thank you.

Now I wanted to ask, so just in general, about the role of the Department of the Environment as – and the government as regulator, in its relationship with the proponent. And so – of course, in this case the proponent is a Crown corporation. How – what is the relationship there? Perhaps you could comment on it first, Mr. Chippett?

MR. CHIPPETT: Sure.

So, you know, I think the first thing I'd point you to, is our legislation. So the *Environmental Protection Act* has Part X which is dedicated to, basically, the conduct of environmental assessment. And there's a set of regulations, I think, from 1993 that relate to – I call them triggers or undertakings in terms of projects that would be – would have to undergo environmental assessment. So that's frequently the first role of our department as the regulator, is to examine a proposal for a project and determine does it fit within any of those, or does the minister wish to exercise discretion to conduct an environmental assessment.

So those are kind of our rules of engagement. It sets out things that the proponent has to do as well as what we have to do. Some examples are time frames for public consultation, timelines for the department to produce guidelines and so on. And, obviously, specifically with respect to the generation project, there are things in our legislation that allow us to move to a higher level of assessment which involves the federal government, from the perspective of the Joint Review Panel.

So there's that role as the regulator and I think, you know, there are also smaller roles as the regulator. So I know – I think information's

been shared with Commission, on all the permitting, and I think it's a nine-page spreadsheet on all the permits that have been, you know, allocated over the years, because not every one of those permits would be significant enough to be outlined specifically or dealt with specifically in an environmental assessment registration or environmental impact statement.

So, that's kind of how the process happens –

MS. MORRY: Mm-hmm.

MR. CHIPPETT: – and where our roles of engagement come from.

MS. MORRY: And is it correct that that permit tracking happened within Labrador Affairs?

MR. CHIPPETT: Mm-hmm.

So, in preparation for this event, there's a – I know – I think there's an exhibit on a March 2012 meeting that – where Labrador Affairs was actually tasked, coming out of that meeting, with tracking permits go forward; in other words, post-environmental assessment release. So, they've held that role, since that time.

MS. MORRY: Thank you.

DR. SQUIRES: Can I add just a few –

MS. MORRY: Absolutely.

DR. SQUIRES: – (inaudible).

MS. MORRY: If –

DR. SQUIRES: Yeah.

MS. MORRY: – I was actually just gonna request –

DR. SQUIRES: Okay.

MS. MORRY: – any further commentary there. Thank you.

DR. SQUIRES: Thanks.

Just wanted to make sure you're aware that the *Environmental Protection Act* is binding on the Crown. So, the experience of working with a

proponent, through environmental assessment, that is a Crown or Crown corporation or agency or government, is not unfamiliar. We frequently do that with forestry plans, quarries, breakwaters, and we do that with provincial entities as well as federal entities at some points – DFO is with marine development. So, that's not – this is not a unique experience for the environmental assessment process.

The act gives us – and the regulations that Jamie referenced give us some – excuse me – some details on how we clarify those roles. Probably the most – the best example is the regulations when we go to the level of assessment of something like an environmental impact statement. If we a government department is the proponent, they cannot sit on the committee that would oversee that project, so the regulations set that out.

But a Joint Review Panel, itself, is the most in detail you can go, and it sets – the agreement that was set up for this particular project ensured that the panel, themselves, were non-government members. So, that the environmental assessment process allows for some of that distance between the proponent and the regulator, in this situation.

MS. MORRY: Thank you.

And, Mr. Goebel, did you have any comment on that?

MR. GOEBEL: Well, only that there over – you know, the – time of my career, I have seen probably hundreds of projects. Other projects by Nalcor, or Newfoundland Hydro at the time, include Cat Arm, Burnt canal [sp. Granite Canal]. Private companies have created dams such as Abitibi for Star Lake. Newfoundland Light and Power has projects like Paradise River. There's been government projects such as the Outer Ring Road that we're all familiar with, was a Department of Transportation project.

So, you know, I just confirm what Jamie and Susan have said. You know, as far as I'm concerned as a civil servant, I follow the regulations and the guidelines for those, and it really is irrelevant who the originating department owner/developer is – in my level – in my way of looking at it – they're looked at, following these regulations, and that's it.

MS. MORRY: Thank you.

And, I wonder, too – just to return to developing the formal government response to the JRP recommendations. So, in that period between August 2011 and April 2012, was there coordination with the proponent in any way or consultation? How did that process come together, if we could just – specifically, on that question of proponent versus regulator?

DR. SQUIRES: I can start.

MS. MORRY: Sure.

DR. SQUIRES: So, the – it was a joint panel –

MS. MORRY: Mm-hmm.

DR. SQUIRES: – and certainly the federal government has had much more experience with joint review panels than the provincial government – only – the one previous to Lower Churchill was Voisey's Bay. So, we relied, heavily, on the guidance from the federal government. They had a guidance document on, actually, how to develop the response, including the terminology that would use the formatting of the questions – the template that we provided to government departments to actually fill out the response.

So, that was provided to government departments, and they prepared a response and, at deputy level, was signed – the responses were signed off on. My review of the files – but, obviously I wasn't there – but my review of files and what we've – are checked with departments in recent weeks – no department has identified that their responses were developed with the proponent. They were developed at the departmental levels.

Certainly, the panel would have – the proponent would have been part of the panel –

MS. MORRY: Of course.

DR. SQUIRES: – and been able to respond to the panel and the – and they would have had to respond information requests from the panel. So, there was information sharing at that level.

MS. MORRY: Did you have any comment, Mr. Goebel –

MR. GOEBEL: No.

MS. MORRY: – or Mr. Chippett?

MR. CHIPPETT: Just, generally, that I think – you know, I agree with everything Susan and Martin have said – every legislative time frame, every step of the process got the same level of scrutiny with Nalcor as a proponent as others did. You know, I would say from my own personal experience – I was more aware of, kind of, the – you know, the impact of the regulator’s decision on the project than in other particular projects. And I think that was because, you know, just a comment on the complexity of the Lower Churchill Generation Project.

And if you look at that spreadsheet, just in terms of how the JRP responses are spread out, you know, you hit almost every government department. So, you know, there was more discussion, I think, of, you know, how would government meet some of its commitments, as an example, but also, you know, decisions of the regulator and what that impact would be on the proponent.

MS. MORRY: All right. Thank you.

Commissioner, Ms. Nagarajah is going to continue the questioning on a couple of other topics.

THE COMMISSIONER: Okay. Thank you.

Ms. Nagarajah.

MS. NAGARAJAH: All right. Good morning.

MR. CHIPPETT: Good morning.

MS. NAGARAJAH: I’m going to address my first few questions to you, Mr. Goebel.

MR. GOEBEL: Yeah.

THE COMMISSIONER: Just maybe if you could lower your mic just a bit and – thank you.

MS. NAGARAJAH: Okay.

So, I’m going to talk about a couple of the JRP recommendations from 2011.

MR. GOEBEL: Okay.

MS. NAGARAJAH: So one of them, number 4.5, was full clearing of the Muskrat Falls reservoir. And, can you confirm that this recommendation was just in relation to timber?

MR. GOEBEL: Are these – these recommendations are – I don’t think you have them on the exhibit here.

MS. NAGARAJAH: (Inaudible) is tab 5.

Okay, so that’s binder 5, tab 183, P-00051.

MR. GOEBEL: What tab? Sorry.

MS. NAGARAJAH: Tab 83.

MR. GOEBEL: Eighty-three. Okay.

MS. NAGARAJAH: So, this is – these are the response to the recommendations.

MR. GOEBEL: Okay.

MS. NAGARAJAH: All right. So the first one there, it says, “The Panel recommends that, if” – “The Panel recommends that, if the project is approved” before making – I’m sorry. No, I’m looking at the wrong one there.

Okay.

So, “*Recommendation 4.5*,” that’s on page 3.

MR. GOEBEL: Yup.

MS. NAGARAJAH: It says: “The Panel recommends that, if the Project is approved, Nalcor be required to apply its ‘full clearing’ reservoir preparation option to the Muskrat Falls reservoir.”

And the response is: “The Government of Newfoundland and Labrador agrees with the principle of maximizing the utilization of the forest resource. With limited opportunities to use the resource, and the likely insignificant reductions in mercury levels associated with full versus partial clearing, the Government supports

partial harvesting of the flood zone. If an economic opportunity to use the” right “resource materializes, consideration will be given to harvesting additional fibre.”

MR. GOEBEL: Yes.

MS. NAGARAJAH: Okay. All right. So, can you confirm that that recommendation was in relation to just timber?

MR. GOEBEL: Sorry?

MS. NAGARAJAH: That that recommendation was in relation to just timber? And vegetation, I guess.

MR. GOEBEL: Yes. I can.

MS. NAGARAJAH: Okay.

Can you explain why the government thought that partial clearing was acceptable, even though the JRP recommended that full clearing be done?

MR. GOEBEL: You know, when you look at these recommendations, you know, they summarize – they come out of a conclusion and a summary of the discussion in the joint review panels report. I think sometimes, when you look at these in isolation, you don’t get the full picture of what was discussed and why these recommendations were made the way they were made, unless you actually read the entire chapter in the panel report.

So that chapter – 4.5, on clearing – when you read the report focused on the economic value of that timber, and I think, you know, it’s an environmental benefit to try to maximize the use of that timber, because if you can utilize that timber, you don’t have to cut timber elsewhere.

MS. NAGARAJAH: Okay.

MR. GOEBEL: So there was that objective, I think. And, I think the panel strove, through this recommendation, to achieve that objective.

Now, having said that, in that chapter, there was also mention of methylmercury, but it was as a – sort of a side issue, if you like. It was mentioned that this would also benefit the reduction of

methylmercury. However, the report actually referred methylmercury to another chapter, Chapter 6.

So this, to me – I mean, I can’t read the minds of the panel at the time but, to me, this means they were after full clearing for the benefit of the timber resource.

MS. NAGARAJAH: Okay.

And so what percentage would full clearing have been?

MR. GOEBEL: I’m not too sure offhand what the percentage is. I think full clearing would be like somewhere about 85 per cent or something like that. I’m not sure of the exact numbers.

But full clearing implied that all the timber that was in the reservoir could be removed that you could access; however, there are certain areas you can’t access because the slopes are too steep or it wouldn’t be safe. So partial clearing would exclude certain areas that you’d just – it wouldn’t be practical or it just wouldn’t be safe to harvest.

Also, there were some areas where, during the construction, buffers had to be left in the habitat. So those are areas that were adjacent to the river where eventual inundation would completely cover those and there wouldn’t be any stickup. So there’d be sort of a zone around the reservoir, almost like a bathtub ring, where the clearing was targeted for. So they’re different percentages, a bit different numbers for all of those things and I can’t give you the exact numbers for every scenario.

MS. NAGARAJAH: Okay, so how much clearing of the reservoir has been completed to date?

MR. GOEBEL: Initially about 1.8 square kilometres, 1,800 hectares has been cleared. An additional – I don’t know – 40 or 50 or so was cleared subsequent to, like, in 2017, ’18 in that time period.

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: I’m not sure if I have the exact numbers, but that’s the ballpark.

MS. NAGARAJAH: Okay. Are you able to connect that to a percentage?

MR. GOEBEL: No.

MS. NAGARAJAH: No?

And you talked about maximizing the value of the timber. Is that being done now with what has been cleared?

MR. GOEBEL: No, I don't think it is, because it's – it just simply wasn't economic to transport that timber to a sawmill or to markets. You know, I've – I was up there for site inspection about two years ago and there's a lot of timber just piled up along the side of the road. And that was timber from construction of the roads, for example, and construction of the site itself and that timber was just sitting there. I mean, it was free for the taking, basically, but nobody could use it economically –

MS. NAGARAJAH: Okay.

MR. GOEBEL: – unfortunately.

MS. NAGARAJAH: So despite government's response that they wouldn't do full clearing because they couldn't maximize the value of the timber, that's still not being done anyway, even with partial clearing.

MR. GOEBEL: Yeah, at the time, I mean, it – there was – you know, there was a hope that it could be done and I think efforts were being made to find a way to utilize it, but I don't know if a significant proportion of that was ever accomplished.

MS. NAGARAJAH: Okay.

So we'll move on to Recommendation 6.5, which is on page 8 of the same – or, I guess, it's – okay, it starts at page 7 in the same document and goes on to page 8.

So this one – it says: "The Panel recommends that Natural Resources Canada, in consultation with Nalcor and, if possible, other hydroelectricity developers in Canada, carry out a pilot study to determine (a) the technical, economic and environmental feasibility of

mitigating the production of methyl mercury in reservoirs by removing vegetation and soils in the drawdown zone, and (b) the effectiveness of this mitigation measure. The pilot study should take place in a location where the relevant parameters can be effectively controlled ... and every effort should be made to complete the pilot before sanction decisions are made for Gull Island. If the results of the pilot study are positive, Nalcor should undertake to employ this mitigation measure in Gull Island to the extent possible and monitor the results."

Do you know if any studies on that have been done?

MR. GOEBEL: There's been no studies done in accordance with this, but I'd like to draw your attention that the pilot study has to be done before –

MS. NAGARAJAH: Yes.

MR. GOEBEL: – Gull Island. Since that's not even on the planning horizon, I don't think this applies to Muskrat Falls at all.

MS. NAGARAJAH: Okay.

Moving on to Recommendation 6.7, on to the "Assessment of downstream effects" it says – this is on page 9, now: "The Panel recommends that, if the Project is approved and before Nalcor is permitted to begin impoundment, Fisheries and Oceans Canada require Nalcor to carry out a comprehensive assessment of downstream effects including: identifying all possible pathways for mercury throughout the food web, and incorporating lessons learned from the Churchill Falls project; baseline mercury data collection in water, sediments and biota, (revised modeling taking into account additional pathways, and particularly mercury accumulation in the benthos) to predict the fate of mercury in the downstream environment; quantification of the likely changes to the estuarine environment associated with reduction of sediment and nutrient inputs and temperature changes; and" lastly, "identification of any additional mitigation or adaptive management measures."

So the government's response to that was – that it noted “this recommendation is directed to Fisheries and Oceans Canada and Nalcor.”

MR. GOEBEL: Yes.

MS. NAGARAJAH: So what would the government's role have been in ensuring that Nalcor and, you know, Fisheries were getting this done or started?

MR. GOEBEL: Well, as it says, it's directed to Fisheries and Oceans Canada and Nalcor. So if you look at the four bullets in isolation – so the “possible pathways for mercury throughout the food web, and incorporating lessons learned from the Churchill Falls project,” is something that requires one to look at the food web and fish, in particular. So I think that is why it was directed at Fisheries and Oceans because there was that mandate to look at fish and so on.

But I do know that as we were working through the IEAC subsequent to this – and this recommendation never anticipated the IEAC at that time. So a lot of this work I can identify as having been done by Nalcor's consultants or by others.

For instance, the second bullet, “baseline mercury data collection in water,” this is a very simple undertaking that was – that we recommended, that we asked Nalcor to do and we have that baseline. And that baseline is the surface water monitoring program that is being carried out now, for example.

You know, I could –

MS. NAGARAJAH: Well, when did –

MR. GOEBEL: I could –

MS. NAGARAJAH: When would you have asked Nalcor to do that?

MR. GOEBEL: The –

MS. NAGARAJAH: The baseline water monitoring.

MR. GOEBEL: We asked them to do that in September of 2017.

MS. NAGARAJAH: So that was about six years after the recommendation?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Okay.

So was the government doing any other studies or any other kind of work prior to that, in response to this particular recommendation?

MR. GOEBEL: The Department of Environment operates a hydrometric network and a water quality in a real-time water quality monitoring network. That was in place. It was in place partially even before the project started, because a lot of the data that's required for the design of the dam has to come from the measurement of the stream flows and to have a record. So there's been a record established many, many years prior to even the start of the project.

The stations were added over the years. I can't give you exact dates for which stations, but they were added in response to the need to have good data for this project. At the same time, water quality monitoring has been taking place, as well, there's a climate station because, you know, weather is something that affects the hydrology and the hydrology is important to the hydraulic design of a dam.

MS. NAGARAJAH: Okay.

And so these records that you've – that the government has been keeping since, you know, prior to the project, are they useful or responsive to these JRP recommendations?

MR. GOEBEL: Partially.

MS. NAGARAJAH: Partially?

MR. GOEBEL: The biological aspects of this – if you look at – there's the biota looking at pathways in the food. These are biological processes. The Water Resources Division does not really look at those specifically, so those are directed to Fisheries or to other agencies and to Nalcor to fulfill.

So there's been a lot of environmental monitoring plans. There's an Aquatic

Environmental Monitoring Plan, there's a Methylmercury Monitoring Plan: these are all components that were required by the Environmental Assessment Division that were conditions of the release of the project and that Nalcor has to monitor and measure.

MS. NAGARAJAH: Okay.

Mr. Chippett?

MR. CHIPPETT: Well, just to pick up on Martin's last point. From the environment side, I guess, of our department now, an awful lot of the conditions or responses to the JRP recommendations show up in the authorizing regulation for the environmental assessment release of the generation projects. So, for example, there are conditions for Nalcor to do a human health risk assessment, Martin mentioned the Aquatic Effects Monitoring Plan, there's a mercury plan that involves, for example, otters and osprey.

So there are a number of those plans that were conditions of release. And, you know, I think I can say confidently, we were fairly rigorous in monitoring and tracking and asking for completion of those conditions within the time frames that they were required.

MS. NAGARAJAH: Okay.

THE COMMISSIONER: So can I just –

MS. NAGARAJAH: Yes.

THE COMMISSIONER: So just before we move off this one here, I was interested in the comment made by one of you that, you know, this was actually directed at Fisheries and Oceans Canada and Nalcor. So the way I read the recommendation, it says: "The Panel recommends that, if the Project is approved and before Nalcor is permitted to begin impoundment, Fisheries and Oceans Canada require Nalcor to carry out a comprehensive assessment" in all these areas.

So can I assume for a moment that because Nalcor has been directed to do this, this is part of the release of the EA? Is that what you're

saying, Mr. Chippett, that it was part of the release conditions for the EA?

MR. CHIPPETT: I'm not sure if it's directly in this language but, for example, in terms of the food web and fish downstream and so on, there's a requirement in the conditions for Nalcor to have an Aquatic Effects Monitoring Plan which would overlap with the intent of that –

THE COMMISSIONER: Right.

MR. CHIPPETT: – recommendation.

THE COMMISSIONER: So that would mean that, at least with regards to those things that are referred to in the EA release conditions, you're saying that the department conducts robust review and (inaudible).

Okay, tell me what would happen if the EA – if there's a dispute or uncertainty of some type between the wording of the EA release conditions and those things that are committed to by the Government of Newfoundland and Labrador, in particular, with regards to the JRP recommendations. What – who's monitoring that?

MR. CHIPPETT: So I think as my colleague, Dr. Squires, said earlier the first compilation of putting all the recommendations and so on together was our responsibility. And then at two separate times – I know in 2012 and in 2014 – Labrador Affairs had the responsibility for monitoring the response to each of the JRP –

THE COMMISSIONER: Okay.

MR. CHIPPETT: – recommendations.

THE COMMISSIONER: So aside from the monitoring the Department of Environment is doing now, if I understand this right, with regards to the EA release conditions there's also monitoring done by Labrador Affairs to make sure that these conditions or these recommendations and the responses are being monitored.

MR. CHIPPETT: So I'm not sure how much that had been monitored after 2014. So there are two discreet points in the records where in 2012

and 2014 those updates were done. Obviously, Dr. Squires has gone through, in the last week or so, to do a new update. And, for example, as the deputy of Municipal Affairs and Environment, as I was looking through the record it was, well, how many of the JRP things are, you know, perfectly captured in the EA release? And I think we came up with a number of, you know, 15 or 16 out of the 30 that involved our department.

And there are other ones, of course, that were complete right at the point of government issuing and authorizing regulation or providing the written response. So there were a number that were complete right from the get-go.

THE COMMISSIONER: Right.

So can I – or is it possible, because this is something that I would like to have – is it possible to get some up-to-date analysis from Labrador Affairs, whoever else is monitoring the completion of these recommendations? Is it possible to do the same thing that was done, in other words, for 2012, 2014, so that I can get that so that I can see that these have been covered?

DR. SQUIRES: Certainly that was the attempt that –

THE COMMISSIONER: Okay.

DR. SQUIRES: – what we recently done in recent weeks –

THE COMMISSIONER: Right.

DR. SQUIRES: – to give you that update.

THE COMMISSIONER: Right.

DR. SQUIRES: We can certainly dig deeper if that's something that you –

THE COMMISSIONER: That's my wish. And how long do you think it would take?

DR. SQUIRES: We – the update you have in front of you, we did over the course of the last five or six days. So we can do that – if we had another week to pull that together –

THE COMMISSIONER: Okay.

DR. SQUIRES: – we could go deeper again.

THE COMMISSIONER: That would be great.

A week or two, I'm not – it doesn't need to be pushed like that, but I would like to have some confirmation of what monitoring has been done with regards to those things that are not included in the release conditions, because I understand those are being monitored by Department of Environment. So those things that are not being included in those release conditions, or there's uncertainty about it, I would like to have some sort of a review of that and what's been happening up to date on that monitoring.

MS. NAGARAJAH: I think, Commissioner, that the intent of the exhibit that we put in this morning – so that's P-04229.

THE COMMISSIONER: Yeah, I'm not sure, in looking at that exhibit last night, that it responds to all of the conditions of the release from the JRP but –

DR. SQUIRES: Okay.

THE COMMISSIONER: – at least not to the extent that it should, so I'd like it a little bit more clarified, like you did in – or like was done in 2012, 2014. I'd like to get one now for 2019.

DR. SQUIRES: Okay.

THE COMMISSIONER: If that's possible.

DR. SQUIRES: With a provincial perspective?

THE COMMISSIONER: Yes.

DR. SQUIRES: Okay.

THE COMMISSIONER: Okay?

MS. NAGARAJAH: Okay, so I'm going to move on to – so, Madam Clerk, can you please pull up Exhibit P-04119. Mr. Goebel, that's at tab 5 of your binder 1.

And I'm just going to scroll down to page 5. Are you on page 5?

MR. GOEBEL: Tab 5 –

MS. NAGARAJAH: Tab 5.

MR. GOEBEL: – page 5? Yeah.

MS. NAGARAJAH: Yes.

So the very first paragraph there it says: “Two Ministerial level meetings were held on January 9, 2013 to discuss potential funding for the Lake Melville research and monitoring program. The first meeting was between Honourable Tom Hedderson (then Minister of Environment and Conservation) and the NG Minister of Lands and Natural Resources Darryl Shiwak followed by a second meeting between Honourable Tom Marshall (then Minister of Natural Resources) and Minister Darryl Shiwak.” A follow-up letter, dated March 1 – so going on it says: “... indicated that there was no funding available to assist the NG with its research and monitoring program. The NG proceeded on their own to have the study completed.”

Mr. Goebel, are you able to speak to why there was no additional funding provided to NG?

MR. GOEBEL: I really can't say why it was, I just know that it wasn't.

MS. NAGARAJAH: Okay.

Well, I'm just going to take you to page – well, I don't know if you have the transcript there, but at page 12 of your transcript, you had stated that: You know, just to be fully open, I can say that it's – I think that the idea was that it was not going to contribute anything – additional knowledge. The outcome of the environmental assessment indicated that the effects of methylmercury would not extend past the outlet of the Churchill River.

So there was an indication at that time that perhaps it was because the study that was done for the environmental assessment was sufficient.

MR. GOEBEL: Yes, you are correct. And yes, that would be a reason why it wasn't done. I think what (inaudible) thinking is – in terms of these meetings where there were high-level meetings with the ministers, I wasn't at those meetings.

MS. NAGARAJAH: Fair enough.

MR. GOEBEL: So I'm not sure what was stated when I gave that information. This was background that I was led to believe.

MS. NAGARAJAH: Right.

MR. GOEBEL: But, I'm sorry, I wasn't at this meeting, so I thought you were referring to (inaudible) –

MS. NAGARAJAH: No, not specifically to that meeting but, in general, why they (inaudible) –

MR. GOEBEL: Well, in general, yeah, I think that's why it wasn't –

MS. NAGARAJAH: Right.

MR. GOEBEL: – that wasn't funded and, I mean, there wasn't a budget for it. There was –

MS. NAGARAJAH: And I mean, you helped write this information note, I believe.

MR. GOEBEL: Yes.

MS. NAGARAJAH: Yeah.

So, at that time, did you think it would, you know, in any way, adversely affect Indigenous groups' perceptions of the project to not provide any funding?

MR. GOEBEL: I'm sorry, I didn't hear the first part of your question.

MS. NAGARAJAH: At that time, did you think it would adversely affect Indigenous groups' perceptions of the project if you were unable to somehow collaborate or provide funding?

MR. GOEBEL: I really didn't have an opinion on that but I think hindsight is 20/20, and I think looking back, that was – yeah, that was a big thing for them because it kept coming back, you know, that government didn't provide the funding for that monitoring for that –

MS. NAGARAJAH: Right.

MR. GOEBEL: – experimental work that the NG wanted to do.

MS. NAGARAJAH: That was going to be my next question, so thank you.

Okay, so I'm gonna – Madam Clerk, could you please pull up Exhibit 04118? This is tab 4, binder 1.

MR. GOEBEL: (Inaudible.)

MS. NAGARAJAH: Okay.

So this is a letter from the – from – sorry, from the minister of Lands and Natural Resources for the Nunatsiavut Government to the minister – the deputy minister for the Department of Environment and Conservation for the Government of Newfoundland and Labrador, and it summarizes a meeting that occurred on October 30, 2015. And do you recall being at this meeting?

I'll just give you a minute to take a look at the letter.

MR. GOEBEL: Okay.

MS. NAGARAJAH: Okay. Do you recall being at this meeting?

MR. GOEBEL: I think I was at this meeting. I mean, the contents of it were – are familiar to me. If I wasn't at this meeting, there were two or three meetings between officials and the NG government where they presented the new results that they had obtained from the Harvard study.

MS. NAGARAJAH: Right.

And what were your impressions of that study at that time?

MR. GOEBEL: When I first came to know of this study – and I don't know if this would've been the first time I heard of it – I was very concerned. I read the study five times and I really couldn't understand all the processes that this particular study went through. But I was alarmed by the findings and the conclusions of the study that indicated that there would be much higher than anticipated methylmercury in Lake Melville, and that that methylmercury, of course, would then get into the biota and into the

food web of the residents who were consuming food that they caught as country food.

There were quite alarming numbers there – alarming increases in both the methylmercury and the surface water of Lake Melville.

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: As well as projected increases, subsequently, that would occur in the populations, and that would manifest itself through what you would find out if you did hair samples and blood samples and so on.

So I took that study very, very seriously, and felt that it required a lot of deeper diving to figure out: How does this model actually work? What does it do? And what does it mean? Because it did contradict what Nalcor was saying at that time and what had been the accepted outcome of their studies, and they had basically found that the downstream affects from the reservoir would not extend into Lake Melville. And –

MS. NAGARAJAH: Okay.

MR. GOEBEL: – this study fundamentally contradicted that.

MS. NAGARAJAH: Right. And the JRP suggested that Nalcor's finding was unsubstantiated. Is that correct?

MR. GOEBEL: Yeah, I'd have to look and see what it said in the JRP.

MR. CHIPPETT: That's correct.

MR. GOEBEL: If you say so –

MS. NAGARAJAH: Okay.

MR. GOEBEL: – that's fine.

MS. NAGARAJAH: And so this study would've – well then, I guess, the JRP didn't really make findings and – with respect to that but – all right.

So, following this meeting, the Nunatsiavut Government made four requests on November 9, 2015 – oh, it's in that same tab there, so that's at page 2.

So 1 was to: “**Fully clear the future Muskrat Falls reservoir** area of wood, brush and vegetation before flooding to reduce methylmercury inputs downstream into Inuit territory, consistent with recommendation 4.5 of the Joint Review Panel.

“2. **Negotiate an Impact Management Agreement**

“3. **Establish an independent Expert Advisory Committee**

“4. **Grant Inuit joint decision-making authority over downstream environmental monitoring and management** of the Lower Churchill project.”

Do you recall when the government responded to these four requests?

MR. GOEBEL: I don’t know that there was a direct response to these.

MS. NAGARAJAH: Well, I can take you to it. It’s at –

MR. GOEBEL: (Inaudible.)

MS. NAGARAJAH: – tab 21 of your binder.

MR. GOEBEL: Okay.

MS. NAGARAJAH: P-04132.

MR. GOEBEL: Okay. Okay.

MS. NAGARAJAH: Okay.

So if you go to page 2 there, it – there’s a response on fully clearing the future Muskrat Falls reservoir. And, by the way, I just want to point out that this is dated June 21, 2016. So that’s about seven months after the initial request was made.

Do you know why there was a delay?

MR. GOEBEL: I really can’t say why it was delayed.

MS. NAGARAJAH: Okay. Would you have been consulted at all in your capacity? I think

might you have been assistant deputy minister at the time?

MR. GOEBEL: Yes, I would’ve been consulted.

MS. NAGARAJAH: Okay. But so – but you’re not sure why the government delayed in their response?

MR. GOEBEL: No, I really can’t say why.

MS. NAGARAJAH: Okay.

THE COMMISSIONER: Might it be the election, late 2015?

MR. GOEBEL: I –

THE COMMISSIONER: You can’t say?

DR. SQUIRES: (Inaudible.)

THE COMMISSIONER: Okay.

Please go ahead.

MR. CHIPPETT: I’ll just note, the letter you referenced earlier was in the caretaker period for that fall election. So it may have had something to do with it.

MS. NAGARAJAH: Okay.

Okay, so, on page 2, we’ve got the first – the response to the first request. So it says, “Please be advised” that “the provincial government indicated on March 15, 2012, in its response to recommendation 4.5 ... that *‘the Government supports partial harvesting of the flood zone.’*” As regulator – just reading further down there, it says: “As regulator, I accept this clearing plan as the most practical and safe option.”

So the first request was no full – they – it was denied, essentially. Do you agree with that?

UNIDENTIFIED MALE SPEAKER: Yes.

MS. NAGARAJAH: Okay.

And so then the second one, Negotiate an Impact Management Agreement, “The NG requested an Impact Management Agreement *‘consistent with*

recommendation 13.9 of the Joint Review Panel.” It says: “The JRP recommendation referenced the need to engage with appropriate parties in the event of consumption advisories.”

So – and then going down it says: “The condition of my acceptance of the HHRAP” – which we will be getting into in a little bit – “addresses the intent of impact management and reflects the core elements of the JRP recommendation.”

So it sounds to me like they’re saying, essentially: Not right now. Is that correct?

MR. GOEBEL: That’s correct, yes.

MS. NAGARAJAH: Yeah. Okay.

And then the third one, Establish an Independent Expert Advisory Committee, “The Government of Newfoundland and Labrador accepted the JRP’s recommendation, that Nalcor establish an ‘Environmental Monitoring and Community Liaison Committee’ to provide feedback on the effects of” this “Project.”

It says, I understand – going back a little bit further down, “I understand the NG were invited by Nalcor to be a member of the committee, but unfortunately declined to participate. The Provincial Government considers that this Committee would have and still does provide an opportunity for discussion of the NG’s concerns on the downstream effects of the Project.”

So I take it that – to me, that reads as: There’s no need to establish an independent expert advisory committee in lieu of this committee. Is that what your understanding is?

MR. GOEBEL: Yeah, there was another committee that was established. I unfortunately don’t know much about that committee or, you know, where it meets or who’s on it or how it’s comprised.

MS. NAGARAJAH: Are you talking about this committee that they’re talking about here in, the Environmental Monitoring and Community Liaison Committee?

MR. GOEBEL: That’s correct, yes.

MS. NAGARAJAH: I –

MR. GOEBEL: And so, I don’t know why then the NG would say they don’t even wanna be on that one, but we’re asking for a committee of – a different type of committee with a different name, but –

MS. NAGARAJAH: Right. Was this environmental monitoring – and you just said you don’t know very much about it.

MR. GOEBEL: I don’t know very much about it, no.

MS. NAGARAJAH: And, Mr. Chippett, do you know anything about it? I’m wondering if it has, you know – if it’s similar to an expert advisory –

MR. CHIPPETT: I’m not –

MS. NAGARAJAH: – committee or –

MR. CHIPPETT: – not really sure other than to say I know it met regularly and I think I’ve read in recent notes that it continues to meet, but I’m not sure exactly how it functions, either.

MS. NAGARAJAH: Okay. Who would know about that?

DR. SQUIRES: I understand that it does meet regularly, from what I’ve been told. I would suggest that it was probably very different than the Independent Expert Advisory Committee in the sense that I know that’s – Community Liaison Committee would’ve been made up of community members and the proponents certainly, but not the expertise that would’ve been on – but that did subsequently get on the Independent Expert Advisory Committee.

MS. NAGARAJAH: Okay, so it’s a different type of committee than was requested?

DR. SQUIRES: Yeah, and we – there are other committees. For example, we have a local river watch community committee as well, that consists of community members, for different reasons. But that’s the most detail I can provide.

MS. NAGARAJAH: Okay.

And then the last one there, Grant Inuit Joint Decision-Making Authority over Downstream Environmental Monitoring and Management, it says, “As you are aware the JRP considered the issue of downstream effects and did not direct a recommendation to the Government of Newfoundland and Labrador to establish joint decision-making with the NG or any other Aboriginal organization. Both the Federal and Provincial Governments issued their respective responses to the JRP’s recommendations on March 12, 2013, after engaging the NG on that Report.”

So going down, it says: “The Provincial Government has consulted, and will continue to consult, the NG on permits and other authorizations required for the Project.” So essentially, that sounds like a no to that request.

MR. GOEBEL: Right, exactly.

MS. NAGARAJAH: Okay.

So now at this point, we know that some of the impact management agreement is being negotiated, that the – that an IEAC was eventually formed. So these concessions, you know, they happened after major protests.

If these agreements had been made earlier, could these protests have been avoided, do you think?

MR. GOEBEL: I really can’t answer what’s, you know, in the minds of the protestors. You know, their statements are the only things that I’ve seen clips of on television.

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: And I don’t know what the organizers of those protests had in mind, what their plan was or what their focus was. They were anti-project, obviously, and they had concerns about aspects of the project, including the North Spur and the methylmercury formation. But, you know, I can’t answer to their specific objectives or what their thought process was.

MS. NAGARAJAH: So do you disagree that, you know, the protest happened because some of these requests were denied?

MR. GOEBEL: It could have something to do with it, it’s completely plausible.

MS. NAGARAJAH: Okay.

Do you think the government could have had, you know, a little bit more latitude in negotiating terms of references – for example, for the IEAC – had they not been under the pressure of having to make decisions, because protests were happening and the schedule needed to move along with the project?

MR. GOEBEL: I mean, the ultimate meeting that took place in October, with all three Indigenous groups and the premier, I do know that the protests were in the back of the mind of everybody in that meeting room. In fact, the protestors, during that marathon meeting, were standing outside the door of the Confederation Building.

So, you know, you can’t avoid that, you know, thinking about, you know, what was going on in that regard. I mean, that was – that was part of what was going on at the time.

MS. NAGARAJAH: Okay. All right.

So, Madame Clerk, can you please pull up Exhibit 04122? This is at tab 8 of binder 1. So, this is the letter from Minister Trimper to Minister Shiwak advising of – have you got that there now?

MR. GOEBEL: Sorry, what tab?

MS. NAGARAJAH: Tab 8.

MR. GOEBEL: Eight? Okay.

MS. NAGARAJAH: So, this is a letter from Minister Trimper to Minister Shiwak, advising of a workshop to be held to discuss the issue of methylmercury. So, this workshop was eventually held on March 22, 2016.

MR. GOEBEL: Yes.

MS. NAGARAJAH: I believe you were there.

MR. GOEBEL: Yes.

MS. NAGARAJAH: Okay. So, what was the purpose of this workshop?

MR. GOEBEL: The purpose of the workshop was to sort of spread background to be – had in our hands at that point in time, the Harvard studies. The purpose of that was to meet with officials and scientists, to try to make a little bit more sense of what the methylmercury issues were and to, basically, exchange information and to get a sense where the current research or the current information was. It was considered to be a scientific workshop. I don't think it was intended that it would produce recommendations or conclusions that would, you know – that would direct a particular action but simply be there so that we have a fuller understanding of what's taking place in the model and what's taking place in the real world.

MS. NAGARAJAH: Okay. Can you talk about – do you recall who attended?

MR. GOEBEL: There were people from my department. There were people from other regulator departments, I believe. For instance, DFO was there. I can't remember if the federal government had people. There were a couple of scientists. I – but I do know that the NG did not attend that, specifically.

MS. NAGARAJAH: Right.

MR. GOEBEL: They were invited. We felt they were a key player in this, but I think they felt that they had already determined what the facts were and did not need to attend this.

MS. NAGARAJAH: Okay.

Was their study considered during these discussions?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Okay.

And I understand that the Human Health Risk Assessment Plan was also discussed during this meeting?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Okay.

All right.

So, I'm going to move on to the Human Health Risk Assessment Plan.

MR. GOEBEL: Okay.

MS. NAGARAJAH: So, if we can go to Exhibit P-04119, tab 5 of binder 1.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. NAGARAJAH: So, this is an information note prior to – I believe it's prior to – if we can just go to – (inaudible).

Oh, okay. So, sorry, this is just – this is prior to the workshop, but Nalcor had submitted their Human Health Risk Assessment Plan at that time.

So, if you go over to page 4, and then I just want to look at the third bullet there. It says: "Nalcor has submitted a Human Health Risk Assessment (HHRA) Plan/ Environmental Effects Monitoring Plan for review. The purpose of the HHRA is to outline the key tasks and activities that will occur as part of Nalcor's commitments and requirements in relation to conducting a final baseline pre-inundation HHRA that focuses on human exposures and risks to mercury (Hg) and methylmercury (MeHg) in key country" foods.

"The HHRA plan is intended to serve as a general framework or process document for the key components of the baseline HHRA program, which includes a dietary survey (DS) and a human biomonitoring program, in addition to the HHRA study."

So, is this – this is monitoring that's meant to be done before impoundment?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Okay.

And what was the – sorry – the purpose of this plan? What were the goals of this plan?

MR. GOEBEL: Any – well, the plan was, I guess – in general terms, was to ensure that there

was an understanding of what the health risks were as a result of the changes that might occur to the food from the – you know, from the area –

MS. NAGARAJAH: Right.

MR. GOEBEL: – as a result of the construction of the dam.

The assessment ultimately included a study that looked at the dietary food basket that was eaten by residents and it also looked at the methylmercury in people's hair to see what their current exposure was.

MS. NAGARAJAH: Okay.

And so, I'm guessing – so this is the plan; can you talk a little bit about the difference between the plan and the assessment? I think Jamie might be able to speak to that as well.

MR. GOEBEL: Well, is this in general, I mean, a plan says here's what we're going to do and try and figure out what it is. And another – and the actual assessment is you go ahead and do that work. That's not to say that the assessment itself doesn't recommend, you know, future monitoring that would be required and, you know, could in itself contain further planning components.

So there is a – you know, to me the Human Health Risk Assessment Plan and the actual human health risk assessment, you know, was – how should I say that, you know, it wasn't a clear distinction of, well, this is the plan; this is the assessment; there was overlap there. And –

MS. NAGARAJAH: And I understand that, like, the assessment part is sort of an on-going thing.

MR. CHIPPETT: So I would just link it back again to the – firstly to the authorizing regulation. So the plan, as I recall, met several conditions of the environmental assessment release so I think in terms of dietary surveys, the human biomonitoring contaminants in country food – they were all contained in the plan, the HHRAP – so basically laid out how all those pieces linked together. And as the statement in the notes speaks about – it really was a process document to say here's how we're going to

measure these parameters, and here's when we're going to measure those parameters.

And then obviously that creates – the first time you do that before impoundment it creates the baseline. And then as you go forward at different intervals depending on what the variable is you would test again to basically have an indication of the effects of the project.

MS. NAGARAJAH: Okay.

And what effect could the actual assessment – the results of the assessments actually have had on any mitigation measures pre-impoundment?

MR. CHIPPETT: Not sure that there would have, you know, based on the assessments that were done that there was really anything specific from a mitigation perspective that could be done. I mean, Martin will often say that, you know, monitoring and management is a mitigation in and of itself. And those documents contained commitments to those.

But effectively, at the beginning, what you were getting was the baseline. And I think – and Martin can speak to this more eloquently than I can – but in one of the studies that was done, for example, on mercury in the human population, there were a couple of individuals even before the project, or any impoundment, who had some degree of elevated methylmercury in their system. So –

MS. NAGARAJAH: Right.

MR. CHIPPETT: – I don't know if Martin has a view on that.

MR. GOEBEL: Okay, just to explain that. So when people were tested for the methylmercury content in their hair, everybody has a little bit of methylmercury.

MS. NAGARAJAH: Right.

MR. GOEBEL: You and I probably have some, it depends on the diet that we have and we can get methylmercury from store –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. GOEBEL: – sorry, store-bought foods as well as from country foods. In general, the study showed that there was a slightly elevated level of mercury in the population, but that was an average for the whole population. Women and children are actually below Canadian averages in terms of methylmercury.

MS. NAGARAJAH: Okay.

MR. GOEBEL: And as Jamie mentioned, there was one or two individuals in that study who had a level of methylmercury that exceeded the first level of the Canadian guidance values, which was – which is the increasing risk level. There's three levels: there's a safe level, there's an increasing risk level and there's an at-risk level.

So there's – there was an individual or two that just barely exceeded that very first at-risk level. Later when the studies were released, there was a condition placed on Nalcor that if it turned out that advisories would be needed for food to – you know, because the level of mercury in that food had increased beyond what was acceptable by the Canadian Food Agency, then Nalcor would be required to provide for compensation or some wording to that effect.

MS. NAGARAJAH: Right.

And so that's the condition that was on the approval of the HHRAP?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Yeah, okay.

So as – I'll take you to that next actually. So that's – Madam Clerk, that's tab – Exhibit 04130, tab 19 of binder 1. So this is just an, "Environmental Assessment Bulletin" and it is dated June 14, 2016. It notes that the plan has been approved and I'll just read out the condition there: "Should downstream methylmercury monitoring identify the need for consumption advisories as a result of the project, Nalcor shall consult with relevant parties representing Lake Melville resource users. Based on the location of the consumption advisories these users could include Aboriginal Governments and organizations as well as other stakeholder groups. Following consultation,

Nalcor shall provide reasonable and appropriate compensation measures to address the impact of the consumption advisory."

So I believe that's what you were talking about.

MR. GOEBEL: That's what I was referring to earlier.

MS. NAGARAJAH: Right.

MR. GOEBEL: Exactly.

MS. NAGARAJAH: Okay.

So I'll just go over to, Madam Clerk, P-04225, and that's at tab 17 of this binder, binder 1. And can – if you can go to page 7. So if we go down to the last bullet there, it says: "It is anticipated that the NG and NCC will view the Minister's decision negatively and react publically. The objective of this communications plan is to clearly explain the Minister's decision, and the counter points to the public discourse on methylmercury and Muskrat Falls to the media, with a priority pro-active interview offered to CBC Labrador Morning."

So, clearly, the government here anticipated that the NG and NCC would not be pleased with the approval of the HHRAP.

So what mitigation strategies did the government consider at that point? Because it sounds like here they're going to put out, you know, media advisories and speak to the media. Was there any attempt to speak to the groups directly?

MR. GOEBEL: I mean the reaction of the NG and people in general to the idea of consumption advisories, I think that was something that they were opposed to. I mean, it was their food that was being affected by this.

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: And just being told not to consume something probably didn't sit well with them.

MS. NAGARAJAH: Right.

MR. GOEBEL: I don't know if there was a real way to counter that but, in fact, there was a subsequent workshop planned where there would be more discussion amongst the scientists about this whole issue.

MS. NAGARAJAH: Right.

MR. GOEBEL: This workshop was planned a little bit better than the first one in that there was an independent chair was selected for it. The workshop took place in Labrador rather than St. John's where there was better access by people who wanted to participate and also the Aboriginal groups were invited to have non-technical participants. In other words, there was an inner table of scientists and professionals and regulators, and then there was an outer table of Indigenous people. Their leaders were there to witness the entire day – the proceedings for the entire day.

I think there was a hope that there could be some discussion and some conclusions could be reached as to what was going on with the science – again, the science was controversial – and try to answer some of the questions that people might have had.

MS. NAGARAJAH: Okay.

I understand, though, before that workshop, though, there was a protest, there was a rally held on June 27.

MR. GOEBEL: Okay.

MS. NAGARAJAH: So I can take you to P-04194. That's at tab 23, binder 1, page 3.

And the first bullet at the top there, it says: "Several protests have occurred since the Minister's announcement and the NG have indicated that they will continue to pursue all avenues available to them, noting that 'Flooding of the Muskrat Falls reservoir shall not be permitted until full clearing is carried out.'"

So this workshop was subsequent to these protests –

MR. GOEBEL: Yes.

MS. NAGARAJAH: – happening then.

MR. GOEBEL: It was in August.

MS. NAGARAJAH: Okay.

MR. GOEBEL: So this date here is –

MS. NAGARAJAH: Yeah.

MR. GOEBEL: – the date of the note, June. Okay, yeah.

MS. NAGARAJAH: Yeah, June 26. Okay.

So you did – you mentioned the second workshop now. So can you go into a little bit more detail about all of the people who were invited to the workshop and who actually attended?

MR. GOEBEL: Well, the most important difference, really, was the NG had people attend. There was, for instance, Carl McLean and –

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: – Rodd Laing were there. There were representatives from Innu Nation as far as I know. There were – consultants were there that represented Nalcor. There was this – scientists from the Harvard study were there and, of course, we had the independent chair and myself. And then, in the outer table, again, I remember Todd Russell with the NCC was there. I believe Grand Chief Anastasia Qupee was there.

MS. NAGARAJAH: Right.

MR. GOEBEL: Our minister was there, Perry Trimper was there.

MS. NAGARAJAH: Okay.

So you discussed – you already discussed a little bit about what the purpose of the workshop was, to sort of discuss the different scientific perspectives or models.

MR. GOEBEL: Yeah, it was to compare scientific notes, if you like.

MS. NAGARAJAH: Okay.

MR. GOEBEL: We were given presentations by the NG on their Harvard study; we were looking at other studies that were done by other scientists. It was a day of wide-ranging discussion about methylmercury. And at the end of it, the leaders were invited to speak and to offer their comments on the day's proceedings and reflect upon what they had seen and heard during the course of the day.

MS. NAGARAJAH: Okay.

Can you give us a very high level in brief, sort of – like, important points to note about the discussions on the differing views of – the differing scientific perspectives on methylmercury? And I understand soil removal was also discussed at this workshop, so a little bit about that too, but very high level.

MR. GOEBEL: I think at that point in time people still hadn't completely analyzed the Harvard work. And I think people still hadn't quite understood how – I mean they understood what the predictions were that that model made. They understood very well that, you know, there's increased methylmercury that was being predicted by this and this was being stressed by the NG the whole time.

But I don't think that people had really been able to delve into the model and fully understand it. You see there was never an opportunity to actually take that model and actually run it for yourself. That model was never – it's not the kind of model that you can take and say, okay, let's see how it works on another reservoir where we already know the effects, and see how well this model actually performs where we already know what the outcome is. You can't do that with this model. It's not that kind of model.

MS. NAGARAJAH: Okay.

MR. GOEBEL: So there was still a lot of questions about it and people were asking questions and trying to get answers.

MS. NAGARAJAH: Okay.

Can you tell us a little bit about, sort of, the uncertainties and the risks associated – one, when I talk about what we're (inaudible) with

soil removal and some of the uncertainties around that that were discussed?

MR. GOEBEL: The uncertainties in the Harvard model you mean?

MS. NAGARAJAH: In general, like when the discussions about soil clearing came up.

MR. GOEBEL: Oh.

I mean the purpose of the soil clearing was to reduce the organic carbon that provides, essentially, the food for the bacteria that methylate the mercury and create methylmercury. Soil clearing was never done anywhere else in the world.

MS. NAGARAJAH: Okay.

MR. GOEBEL: It was never attempted anywhere else for the purpose of reducing methylmercury. So the impact of that was not known from two perspectives. One, the perspective of how much it would actually benefit; nobody really knew. And the other perspective was: nobody knew how that would affect other parameters. Because, I mean, the amount of soil that would have to be removed is, you know, based on the estimates of, you know, half a metre or a metre and a half of soil removal produce vast quantities of organic material that has to be dealt with – has to be placed somewhere.

So, if we talk about the model in more detail later, I can explain why that's –

MS. NAGARAJAH: This would probably be the place for it, but –

MR. GOEBEL: Okay.

MS. NAGARAJAH: – we were – I wasn't going to go –

MR. GOEBEL: Okay.

MS. NAGARAJAH: – into much detail. Yeah.

MR. GOEBEL: So, the Harvard model was, subsequently, used during the time of the IEAC to try to simulate what the benefit would be from the soil removal. So, essentially, the model was

run once before the soil removal, if you like, and then a certain amount of area was taken out of the model to 10 point something – 10.2 or 10.1 or 10.3 square kilometres was removed to simulate the removal of all that organic material, and that model was run again. And then the results were compared as to how much methylmercury that model showed for the surface water in Lake Melville, in the reservoir, and so on and so forth.

So, having done that, depending on the parameters that were used in the model, the reduction of methylmercury by full soil – by partial or targeted soil removal was in the order of 26 per cent. However, that percentage was relative to a baseline, and, in fact, that percentage was probably closer to 16 per cent.

So, you remove all the soil, and, you know, at – for all that effort, you’re going to get a reduction of, let’s say conservatively, 25 per cent. The error in the model itself, the 90 per cent confidence limit, was much, much larger than that. So, the error in the model is much larger than the relatively small reduction in methylmercury.

MS. NAGARAJAH: Ok.

MR. GOEBEL: But the model really worked like this. It said: okay, we’re going to take that soil, and it’s gone. But it’s not. The –

MS. NAGARAJAH: Right.

MR. GOEBEL: – soil has to be put somewhere.

MS. NAGARAJAH: Right.

MR. GOEBEL: And if you look at the SNC soil removal study that was done, they explained that the soil would be placed above the high-water mark at level 42, which is, essentially, the shoreline. So, wherever there was soil, it would be simply pushed up above the shoreline. At no point would the transportation of that material be more than three kilometres.

MS. NAGARAJAH: Okay.

MR. GOEBEL: The boundary of the water shed is a couple hundred kilometres away, so all that material is essentially still there. So the

model did not account for the actual removal of that material. There is no accounting for the fact that that material is actually still in the water shed and instead – you know, it wasn’t underwater, but it was right next to the water.

MS. NAGARAJAH: Okay. Thank you.

So, now we’ve had a quarter flooding of the reservoir. Can you tell us what the results have shown from the water monitoring you’ve been doing?

MR. GOEBEL: Okay.

So even before the IEAC was formally created in October of 2016, the province decided that one of the ways to address the theoretical nature of what was being reported was to actually measure what was actually going on. So you have a model that predicts something. If you can actually measure it, then – and you measure it long enough and well enough, you have a better indication of what is going on than a theoretical model.

So we were asked to create a monitoring plan for surface water quality to test methylmercury and many other water quality parameters. And we prepared a draft plan by September 27, which included a plan to monitor upstream of the project area. So, basically, you monitor the river before there’s any impact whatsoever from the reservoir –

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: – to monitor the surface water in the reservoir, immediately downstream from the reservoir, and then at several stations down the river, to the mouth at Goose Bay, and then at several stations in Lake Melville.

So it was a very comprehensive plan to monitor methylmercury at all of these locations. And at some of the locations, the monitoring would take place at the surface in the middle and at the bottom, or in Lake Melville, and the surface, or at the layer where the salt water and the fresh water intersect.

MS. NAGARAJAH: Right.

MR. GOEBEL: That monitoring is done by consultants for Nalcor. The cost of that monitoring is charged to the project, so Nalcor is paying for it. I understand that there are beneficiaries, NG beneficiaries, who participate in the sample collection. The samples are collected and are sent to an accredited, independent lab, Flett laboratories, where the samples are analyzed. And again, where the samples are analyzed for mercury, methylmercury – total and dissolved – many other water quality parameters, such as parpen. FLUTE measurements are taken with each sample, such as dissolved oxygen, temperature, pH and so on.

So, there's a very, very detailed sample analysis done. Those samples, when they're analyzed, are reported back to Nalcor, Nalcor does some quality assurance on that and sends the results to the department, and we take those results and place them on the web for the public to see. It sometimes takes about two months between the time the sample is taken and for the time for it to show up on the web is just – it takes long to do this analysis.

So, we actually had the first samples taken before the IEAC was even formed.

MS. NAGARAJAH: Right.

MR. GOEBEL: Once the IEAC was mandated, at that meeting, we, of course, tried to get the terms of reference. All the people – the representatives from the groups tried to create this IEAC. We went through all the terms of reference and then, ultimately, to get the chair.

But one other thing that we did was we put that program to the members of the IEAC for comments and for changes, and, in fact, the NG suggested through their representative – Dr. Trevor Bell from Memorial University, who was part of the Harvard team, actually – to make changes to that program to meet the requirements – similar requirements of what was done in the Harvard study.

So, this doesn't duplicate in any way the Harvard study, but it simply monitors the reality of what's going on. So, we have now got – to date – over 1300 samples and so almost two and – well, almost three years record, and we have

gotten preliminary results. And it's out there for everybody to see what has been happening.

One of the interesting things that has happened is that there was a signal – and I say a signal; I mean there were increases in methylmercury in the reservoir subsequent to the initial impoundment.

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: And last year, again, we recognize there's initial impoundment, and we've used the number at 25 per cent impoundment at this point in time. There are some questions as to whether that's – includes, you know, the shorelines and different content. But anyway, for round – in round numbers we use 25 per cent.

So this particular signal in the reservoir showed up slightly downstream at the next station, not as strong and it declined to a point where, by the time you got to Goose Bay, the signal was gone, it was disappeared. There was no difference between, you know, on any particular day, it was – you know, the methylmercury was – at a certain level throughout the entire period of record. And, actually, the methylmercury levels actually went down into Lake Melville, and the further you went towards Rigolet, it got lower and lower.

So I did – I asked for some statistical analysis. We have a statistician in our department and looked at this in detail.

MS. NAGARAJAH: Mm-hmm.

MR. GOEBEL: And a couple of things that we found was that we have plenty of data to ensure that there was sufficient power in this data, that the results could be interpreted.

MS. NAGARAJAH: So even with the – just the 25 per cent increase in the reservoir, you can still –

MR. GOEBEL: Yeah. So even though we have a 25 per cent increase in the – you know, in the flooded area – already we have a quarter of the reservoir filled, if you like – we don't see any increase of methylmercury in Lake Melville. So this is –

MS. NAGARAJAH: What time period would you be looking at there? How much time would pass before you would expect to see some sort of effect in Lake Melville?

MR. GOEBEL: Well, we're measuring the water quality, so we would see that immediately.

MS. NAGARAJAH: Okay.

MR. GOEBEL: Now –

MS. NAGARAJAH: Would you expect downstream effects?

MR. GOEBEL: – there is a lag for how it gets into the biota. So the –

MS. NAGARAJAH: Okay.

MR. GOEBEL: – the bioaccumulation, biomagnification – that takes some time and it depends on the trophic level of the organism. So in the – of course, in the plankton, that would be picked up fairly early. But the top predators, you know, the large fish-eating fish, would take some time for the methylmercury to build up in their bodies. But, it has to be in the water first before it can get picked up any – any of the organisms. And the amount of methylmercury, ultimately, in that food chain is proportional to the methylmercury in the water.

So while we had – from the Harvard study, we had predictions that the methylmercury should increase by 360 per cent, with full flooding and no mitigation to the reservoir. At a quarter of that, we should have had – what's a quarter of 360? You should have a 90 per cent increase, but we have actually got less methylmercury than even the starting value for the Harvard model.

So the average methylmercury right now in Lake Melville is about 0.012 nanograms per litre, but the starting value in the Harvard model was 0.016 or 0.017. So even that – even – so even discounting whether or not there was even any impact from that 25 per cent flooded – flooded area, that shows that there was really an inconsistency in the work that – and it's only natural – I mean we have, like I said, we have 1300 samples.

And going through the Harvard study – there were actually two studies, there were only 48 corresponding samples.

MS. NAGARAJAH: Okay.

MR. GOEBEL: And, I'm not saying that those were wrong or whatever. But for whatever reason, what we have now from analysis out of a certified accredited laboratory doesn't agree with the Harvard study, on that particular point.

MS. NAGARAJAH: Okay. Thank you.

So just going back a little bit we were talking about the second workshop. So I'm gonna go to P-04195. That's at tab 31, page 2. Or –

MR. GOEBEL: Okay.

MS. NAGARAJAH: Okay. (Inaudible) – so this – so this just establishes that the NG did appeal the HHRAP. And I believe that appeal was subsequently denied. Is that correct?

MR. GOEBEL: Yes.

MS. NAGARAJAH: All right. I also just want to note on page 2 there, if we go down to one, two, three, four, five, the sixth bullet down, it says; "Since the workshop, protests have continued ... and the NG, IN and NCC have all inquired as to next steps and timing, expressing concern regarding upcoming flooding planned as part of Nalcor's project schedule." So this was in August 2016. And I understand that initial flooding was coming up in October 2016?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Am I correct? Okay. So even after the workshop, the protest continued. Do you know what was being requested?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Yes?

MR. GOEBEL: Yes.

MS. NAGARAJAH: Do you know what was being requested?

MR. GOEBEL: I think the NG was still – were standing on those four asks that we covered earlier.

MS. NAGARAJAH: Yes. Okay. And why was it necessary to do the initial flooding in October 2016?

MR. GOEBEL: That flooding was required to create a headpond that would allow a stabilized formation to take place. The configuration of Muskrat Falls, there is, of course, a natural – well, it wasn't really a falls, it was more of a rapids, but it created a lot of frazil ice at the downstream side of the – of where the dams are. And that ice could affect the stability of that cofferdam that was being constructed at that time.

So by flooding the headpond before freeze-up, it would create a stable ice cover. And a stable ice cover helps to reduce the amount of frazil ice that is created because there's a lot of turbulence in the air. So –

MS. NAGARAJAH: Okay.

MR. GOEBEL: – so there was a plan by the – by Nalcor's consultants that analyzed all that and recommended that the initial flooding be to 25 metres.

MS. NAGARAJAH: Okay.

So it seems like – I'm gonna just go to P-04148, which is at tab 40, page 2, there. So this is October 2016, so this is nearing the timeline of when Nalcor needs to do its initial flooding.

MR. GOEBEL: Mm-hmm.

MS. NAGARAJAH: And we've got a press release from the Nunatsiavut government, that the president calls on the Premier to help Muskrat Falls Project. So that sounds like protests are continuing at this point.

MR. GOEBEL: Mm-hmm.

MS. NAGARAJAH: Okay.

If we could go to P-04157, that's at tab 51.

MR. GOEBEL: Okay.

MS. NAGARAJAH: So this is a press release on October 27, 2016. So it sounds like some sort of agreement occurred here where – it says here – I'll just go down to the fourth paragraph down. It says: "With respect to the initial phase of flooding, the Premier presented us with several engineering reports that indicate water levels would have to rise this winter in order to protect the structural integrity of the project. We have asked that no flooding take place until those reports have been independently reviewed to verify this is indeed the case. We have engaged the services of an ice expert to review those reports."

And then if we go on to page 2, the top paragraph says: "In order to minimize the impact of methylmercury as a result of the first phase of flooding, the Government of Newfoundland and Labrador has committed to ordering Nalcor to bring water levels back to normal, after the winter months, so that organic material, such as trees, shrubs and topsoil, can be removed from the reservoir area – again, on the advice of scientific experts."

So this – you know, subsequently we know and we'll get into this a little bit more, that SNC – Nalcor's consultant said that it wouldn't be feasible to bring the water levels back down?

MR. GOEBEL: Well, I think now they said that it wasn't advisable –

MS. NAGARAJAH: Right.

MR. GOEBEL: – to do – to bring them back down again.

MS. NAGARAJAH: Right.

MR. GOEBEL: Yeah.

Oh, I thought you said it was feasible to –

MS. NAGARAJAH: No, no – it wasn't. Sorry.

MR. GOEBEL: Okay, sorry.

MS. NAGARAJAH: Yeah.

But – so – and if actually – if we go to tab 52, we've got – and this is Exhibit P-04158. We've got SNC's feasibility study, I guess, there. And

in this – they, you know, this is dated one day after the press release from the Nunatsiavut Government. And it says that – I’ll actually just go to page 4 there.

So it says: “Finally, should the temporary head pond be drawn down to the natural conditions following a partial impoundment, this could trigger landslides of the reservoir rim that is already recognized as unstable. It may also lead to landslide generated waves that, due to the short warning time and the unpredictability of the intensity, could endanger the safety of the people working at the site.”

So again this is dated one day after NG’s press release that they’ve had discussions with government that – who have now committed to lowering the reservoir after initial flooding. Was the feasibility of doing this not considered before the commitment was made?

MR. GOEBEL: I think that during the course of the meeting there were a lot of high-level people; I think that there was not sufficient time when that commitment was made to consult with the engineers.

MS. NAGARAJAH: And why was there not sufficient time?

MR. GOEBEL: Well, it was all going on at night that evening. I mean there was a meeting that took place well after supper and went on until around 2 o’clock –

MS. NAGARAJAH: Right, because –

MR. GOEBEL: – in the next morning.

MS. NAGARAJAH: – we were approaching the timeline priority.

MR. GOEBEL: And that commitment, you know, got out there without feedback from the consultants on whether or not it would be a good idea to lower the water levels again once they’ve been raised.

MS. NAGARAJAH: Okay.

And do you know when this report was provided to Indigenous leaders?

MR. GOEBEL: The – SNC – no, I don’t know when that was provided –

MS. NAGARAJAH: No?

MR. GOEBEL: – to them.

MS. NAGARAJAH: Okay.

MR. GOEBEL: There was another report done by Hatch, I believe, as well. But during the course of the meeting, as you saw in the written notes, the notes – the – all the studies up until that time were provided to the Indigenous groups so that they could analyze them.

You know, there was – the level of concern was so intense that, you know, we were actually arguing about whether or not it should go to 23 or 24 or 25 and, you know, people were saying, well, can you justify it going to 25? Can’t we just go to 24 or 23? These are not big changes in terms of the water level, but they were significant to people at the time and became a subject of the discussions that evening.

MS. NAGARAJAH: Okay.

And what’s the current status?

MR. GOEBEL: The water levels were not lowered, except to say that, in the middle of the winter, after they had been raised initially, there was a problem with one of the cofferdams and the water level actually had to be lowered on a temporary basis very quickly in order to address that particular problem with the cofferdam. That was fixed and then the water levels were immediately raised up again and they’ve stayed at – I don’t think they went all the way to 25. I think they’re currently around 23.9, if I’m not mistaken. They’re not quite up there, but they’re –

MS. NAGARAJAH: Okay.

MR. GOEBEL: – not back to natural flows, if you ...

MS. NAGARAJAH: Yep.

All right. I’m gonna move on to the IEAC, so, Mr. Chippett, I’ll be addressing these remaining questions to you, okay?

So can you tell us about the negotiations surrounding the formation of the IEAC?

MR. CHIPPETT: I can tell you a little bit about it. I know it started after the October 2016 meeting.

MS. NAGARAJAH: Right.

MR. CHIPPETT: When I – when the departmental structure changed and Environment became a part of the current department structure, the terms of reference had advanced a fair way. And so the initial discussions or negotiations around that, I think, took two or three or four conference calls and in March the terms of reference were agreed to. And then following that, there were a number of calls or discussions with IEAC members on the selection of an independent chair. And the chair was appointed – I think it was August 4th of 2017.

MS. NAGARAJAH: Okay.

And can you take us through the final structure of the IEAC?

MR. CHIPPETT: Sure.

So the structure was such that the province, Nalcor, federal government did not have a vote. So there were three representatives from those organizations – one from each. And then the three Indigenous groups had a vote, as did a representative of the communities of Happy Valley-Goose Bay and Northwest River.

MS. NAGARAJAH: Okay.

MR. CHIPPETT: So, that was the structure. That was really the Oversight Committee and then below that there was a group of six scientists and three traditional knowledge experts from the Indigenous groups, or nominated by the Indigenous groups, that really did the heavy lifting on the science and some of the additional studies that were done and they fed information up to the Oversight Committee and Martin was our representative on the Oversight Committee. And after lots of discussion, Dr. Ken Reimer from Kingston was appointed as the independent chair.

MS. NAGARAJAH: Okay. So, in September, 2017 the IEAC made their first set of recommendations.

MR. CHIPPETT: That's correct.

MS. NAGARAJAH: Can you tell us what those were?

MR. CHIPPETT: Sure.

So, three recommendations: one pertaining to the monitoring program that Martin had referenced earlier; one pertained to Nalcor completing a piece of work that I think they had already been asked to do on the feasibility of soil removal or capping in the watershed; and then the third one related to completing – Nalcor had an independent consultant, Reed Harris, that was working on downstream modelling. And there was a hope to get that work completed before the IEAC made recommendations to government. So –

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: – I forget which date is which, but one was due in December and one was due in February.

MS. NAGARAJAH: I think it was February.

MR. CHIPPETT: Right. So, those were the three. Government accepted those in very short order. There were some small changes to the monitoring program. So, for example, they wanted more sampling in summer than in winter based on the properties of methylmercury at different times of the year. So, we accepted those – changes were made. I think a draft of the feasibility of the targeted soil or the soil removal capping possibility was received in December but the Reed Harris modelling was not completed by the February timeline requested by the IEAC and it wasn't concluded either when the IEAC submitted their recommendations to government.

MS. NAGARAJAH: Do you know when that was complete?

MR. CHIPPETT: I don't know the exact date it was complete, but I think, late in June, Nalcor presented the results to Martin and some of the

team from Water Resources in Municipal Affairs and Environment.

MS. NAGARAJAH: Okay.

And do you know why there was a delay –

MR. CHIPPETT: My –

MS. NAGARAJAH: – in submitting that?

MR. CHIPPETT: – oh sorry.

My understanding was it was a very complex modelling exercise, so the only real thing I remember from that period of time was that it was – you know, it was taking a lot of time; it was complicated. At times, I thought it might not get done at all, based on what I understood was the level of difficulty in completing that project.

MS. NAGARAJAH: Okay.

Can you tell us what the second set of recommendations from IEAC was in April –

MR. CHIPPETT: Sure.

MS. NAGARAJAH: – 2018?

MR. CHIPPETT: Mm-hmm.

So there were four: two related to, again, monitoring, which was key in all the discussions and all of the – you know, kind of the history we've talked about this morning and continuing with the monitoring, but with a specific focus on community involvement, ensuring questions that Indigenous groups or communities in the area would have – and also ensuring that the model had – or the monitoring had enough statistical power to make conclusions. So as Martin spoke to earlier, we did a piece of work on that. Notwithstanding we didn't have decisions on recommendations, we did some of the work to meet the intent of some of those recommendations. So that was monitoring.

The second one was around public health management. So we've talked a lot about food webs and bioaccumulation and so on this morning, and the health guidelines. So there was the notion that, you know, dietary advice

messaging should be created to support the population and different subgroups of the population, and Martin referenced the, you know, increased sensitivity for women of child-bearing age and children, so kind of specific to how the guidelines are divided up.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: And I guess kind of mixed into those two recommendations was the notion that there should be another committee or some kind of oversight body. My sense was the goal was not to just design the program, design the advice and have that come in directly to us as the regulator or to Nalcor as the proponent to disseminate, but there should be continued representation for the groups in both the development and the dissemination of that work. And those two recommendations were agreed by consensus.

The third recommendation relates to, in some way, the discussion from this morning on compensation measures associated with consumption advisories. So, I had, I think, pointed out in my interview that the impact security fund recommendation had not gone through the advisory science committee.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: It wasn't discussed at that level. It had come up at the Oversight Committee level is my understanding. And the concept of it was we understand government has placed this condition on Nalcor that if you can't eat certain species or what have you, compensation should be provided. The idea of the impact security fund was that should be a bond or it should be some financial arrangement whereby it wasn't a decision of government at the time.

The funding was put aside and government was able to – or the groups were able to draw down on it as needed, if it got to the point of consumption advisories. So that was number 3.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: And the final one was around physical mitigation. And so we talked about in the first set of three the fact that there

was this recommendation around the feasibility study. And so this really centered around – based on the Calder model, based on the work of the IEAC around food webs and so on – should we consider removing some of the soil and/or capping wetlands as a way to mitigate increases in methylmercury?

So that was presented in one complete recommendation to the minister of our department, but it wasn't by consensus.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: So NunatuKavut community council and Nunatsiavut and the community representatives, so three of the four that had votes, voted for soil removal and wetland capping. The Innu Nation supported capping alone. And so that recommendation came in based upon a vote –

MS. NAGARAJAH: Okay.

MR. CHIPPETT: – of the IEAC.

MS. NAGARAJAH: Okay.

So now I'd like to turn to P-04226.

[27 seconds of audio recording lost due to technical issue.]

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay, we'll go for another five minutes or so and then we'll probably take our noontime break.

MS. NAGARAJAH: Okay.

All right, so P-04250, which is at tab 95, binder 5, I believe.

Maybe not.

THE COMMISSIONER: You had said earlier 04226, so I'm not sure if we're –

MS. NAGARAJAH: Yeah, I think I've got the wrong reference there.

Binder 2? Yes, okay. So, 04226. It's binder 2, tab 72.

So, if we turn to page 59? So, this is the – sort of the feasibility report for wetland capping and for targeted soil removal, and it's dated March 22, 2018.

So, if we scroll down a little bit, Madam Clerk? That's good.

So, sort of the assumption here says – is that: This work for feasibility would commence in August or September 2018 and be completed by April 2019.

MR. CHIPPETT: (Inaudible.)

MS. NAGARAJAH: On page 59, sorry.

MR. CHIPPETT: Fifty-nine?

MS. NAGARAJAH: Fifty-nine.

MR. CHIPPETT: Oh, now I see it. Sorry.

MR. CHIPPETT: I didn't see the page numbers on the maps. Sorry.

MS. NAGARAJAH: No worries.

MR. CHIPPETT: Okay.

MS. NAGARAJAH: Okay.

So, under Schedule, it says: Start in August or September 2018 and complete by April 2019.

So, was this the understanding that it was for both wetland capping and for targeted soil removal?

MR. CHIPPETT: Do you wanna –?

MR. GOEBEL: Yeah.

MS. NAGARAJAH: Yes?

MR. GOEBEL: Okay.

MS. NAGARAJAH: Is this, sort of, the time period that the work would have to be done for both wetland capping and targeted soil removal?

MR. GOEBEL: Well, what it says here – this is the schedule for both, I believe.

MS. NAGARAJAH: Okay.

MR. GOEBEL: Some of the work would have to be done in the winter. I think there was a benefit to doing some of the work in the winter. I don't know if this report actually went into it.

MS. NAGARAJAH: Okay.

So what was government doing to ensure that any decisions made with respect to the IEAC would fit within this time frame?

MR. CHIPPETT: So I think there – just to go back to the previous question, I think there is – there's referencing in this actual document, to the fact that the work would occur in October, November, up to February, I think, in terms of capping. So I think it is different in terms of the capping, in terms of when it would start.

Soil removal, obviously, was a different story. So, you know, from my perspective, we had received the recommendations. Government had given a commitment that it would meet with the independent – or talk to the independent chair, speak to the other Aboriginal groups as well, once the recommendations were in government's hands. And that commitment, in particular, I think was felt to be important based on the fact that not all the groups agreed on the physical mitigation to be undertaken.

So, throughout the summer, really, that process was ongoing. And, as I mentioned in my interview, one of the things there was we had – we were on a certain schedule. And the day we were gonna meet with the independent chair, our minister changed and the premier assigned a new minister. So that process occurred as well.

And so then in the fall, we started to gear up to get a decision.

MS. NAGARAJAH: Okay.

So there – was government keeping an eye to this timeline to ensure that any commitments were made were actually going to be possible?

MR. CHIPPETT: I think, generally speaking, we knew what the time frames were. But a lot of the focus was on the science, understanding the science and understanding the differences and nuances between the models and the actual data and some of the other factors that were a concern.

MS. NAGARAJAH: Okay.

So this is – (inaudible) – we'll just turn to tab 85 of binder 2. So this is P-04177.

MR. CHIPPETT: You say 82?

MS. NAGARAJAH: Eighty-five.

MR. CHIPPETT: Okay, sorry.

MS. NAGARAJAH: Sorry. Binder 2, tab 85.

MR. CHIPPETT: Yes.

MS. NAGARAJAH: Okay. So, just – Madam Clerk, P-04177. Okay. Can you scroll down a little bit? That's good. Thank you.

So, here it's a – you know, this is from Carl McLean of the Nunatsiavut Government and he's expressing some concern or some frustration that there haven't been any – any response. He says: "I can tell you we are getting extremely frustrated with the lack of action by your Minister in acting on the IEAC recommendations which the Minister has now has in his hands for 4 months. It's also been more than a month your Minister has had a letter from our Minister with no response. In our mind you are certainly not taking this seriously. When will the Minister be making a decision on the IEAC recommendations that he received in mid April?"

Can you comment on that?

MR. CHIPPETT: That – so I recall that email. Actually, it was sent to me and – you know, I think, generally speaking, we had explained in previous email exchanges, that we had wanted to

do these meetings with the groups, particularly with the new minister who had had not been engaged in the file before, and it was a complex subject matter.

So, you know, when the commitments had been met around the meeting with the independent chair and with the Indigenous groups, you know, we were commencing then, I guess, putting information together, in terms of recommendations and so on. The government – there were other things to consider that came along the way, for example, the conclusion of the Reed Harris work and so on.

So, that was – I guess that was – I knew, appreciated they were – the Nunatsiavut Government in particular were frustrated.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: And, but there's a lot of – you know, a lot of complexity, a lot of – a lot of things to weigh when giving and receiving advice on a subject like this. And, you know, that's really a part of the story as to why we didn't respond as quickly as, I'm sure, we all would have liked.

MS. NAGARAJAH: Can we go to – now this is in binder 5, P-04252, tab 97?

So I understand, Mr. Chippett, this is the timeline that you created.

MR. CHIPPETT: I think so, maybe Mr. Goebel and I in tandem at some point in time.

MS. NAGARAJAH: Okay.

MR. CHIPPETT: We were asked to produce one for Executive Council at one point in time.

MS. NAGARAJAH: Okay.

So I'm going to go to page 4 here. So can you just take us through this sort of timeline as to – so this is, I mean, starting with maybe in October, sort of talking about – and talk about, a little about what work was being done to try and get some responses out on the IEAC recommendations.

MR. CHIPPETT: Oh, October 2018? Correct?

MS. NAGARAJAH: Yeah.

MR. CHIPPETT: Right.

So we had – you know, we had a couple of things that were going on consistently; the monitoring program we talked about this morning. There had also been the discussion – a I think it's actually back earlier in the timeline, that Martin and some of the people in Water Resources had started to do the power analysis; you know, in other words how strong is our data in reaching conclusions on that monitoring program and, of course, the Reed Harris work that was presented to Martin and other officials from the department in June.

So, you know, you're bringing that in to briefings. The August 29 briefing with the Premier, obviously, references kind of where we are, what the status of the monitoring is. And then in October we start to bring in that new information and, you know, in my mind we're preparing to go to Cabinet to look for a decision.

I didn't feel in any way, shape or form that I had the ability or the authority to make a decision on this. And, you know, I would have highly doubted that my minister would have felt that he could proceed without briefing and having discussion with the Premier at minimum and likely with Cabinet, of course, recognizing the Premier as the Minister responsible for Labrador Affairs and also the Minister responsible for Intergovernmental Indigenous Affairs.

So in October we're getting – the reference October 12 is to a deck that would add some new information. And October 30 was actually the methylmercury – the conclusion of the methylmercury data analysis that I talked about. I know I reviewed a deck that shows those results, so a deck may have been presented at that time.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: I couldn't at all explain it to you, so I know I sent it back to get the conclusions of it rather than the technical information. And we had been talking that time, around October, about whether or not to move the issue forward. We could have our minister,

you know, at least consult with the Premier and maybe move the decision forward.

And we drafted a draft – we drafted a letter, a potential letter, to go to Mr. Marshall at Nalcor, if it was acceptable for us to move on our own, to communicate government's decision. And then in just, I guess, eight or nine days after that, Minister Letto was appointed to our department.

MS. NAGARAJAH: Mm-hmm.

MR. CHIPPETT: And, of course, again, obviously familiar – he was familiar with the issue, based on being an MHA from Labrador. And so we did briefings for him, and you'll see December 11 we actually – I believe the Premier had requested the meeting, and we had a meeting with the Premier on two issues, IEAC being one of them, and he wanted to bring it to the next Cabinet meeting. So I don't know if that covers a long enough time span for you?

MS. NAGARAJAH: Well, yeah, and so then you go on to make a presentation to Cabinet.

MR. CHIPPETT: That's correct.

MS. NAGARAJAH: And what was recommended to Cabinet in that presentation?

MR. CHIPPETT: So the recommendations to take them as the four that we spoke about earlier, certainly one and two and the notion of, you know, either continuation of IEAC or another version, based on where we were. You know, you're talking about health management, for example, maybe a public health focus group might be an ideal way to go.

So on that one and the health management recommendation in the group, we recommended agreement, based on the fact that government, through the former minister, Perry Trimper, had placed a condition on the Human Health Risk Assessment Plan that we had talked about this morning for compensation. If consumption advisories arose, we thought that was a good starting point for a discussion on an impact security fund. So it wasn't to immediately do it, but as we worked through the monitoring and public health management concerns and established baselines, you would talk more about that recommendation.

And then the fourth one, it was recommended because, at the time, we understood that it could be done in conjunction with some fish habitat work that Nalcor was going to be doing, government wanted to proceed with wetland capping.

MS. NAGARAJAH: And I understand there were a few more meetings in between there.

If we go to P-04244 and that's tab 89 of binder 1.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Actually, 89 at binder 5.

MR. CHIPPETT: Yeah.

MS. NAGARAJAH: Binder 5. Okay. So still the same binder.

All right.

UNIDENTIFIED MALE SPEAKER: Okay. Thank you.

MS. NAGARAJAH: Okay, so this is correspondence between Nalcor and the government –

MR. CHIPPETT: Mm-hmm.

MS. NAGARAJAH: – confirming that, at this point, wetland capping is no longer possible. So, I mean, this couldn't have been a surprise to government given the previous report from SNC.

MR. CHIPPETT: Well, there were a couple of things that were – I won't say it was a surprise, but there had been, you know, elements discussed of the possibility to do some of this work after impoundment. And, you know, there was still some indication, as I understood it, very late, you know, into December and so on that there was a small amount of capping, probably not what –

MS. NAGARAJAH: Right, but now we're into January.

MR. CHIPPETT: – was recommended. So, you know, I guess, part of what was driving our advice was the understanding that there were also other mechanisms to do this besides the capping before impoundment.

MS. NAGARAJAH: Okay.

Was there any feasibility studies done on capping post-impoundment?

MR. CHIPPETT: It was referenced in the feasibility study. It wasn't recommended. The recommended option was the one that had had the most study. And I think there had been some discussions amongst members of the IEAC about the possibility of it being done, but there – no, there wasn't a full feasibility study done on that option.

MS. NAGARAJAH: So there was no strong indication that this could be done post-impoundment?

MR. CHIPPETT: No, it was indicated as a possibility. And –

MS. NAGARAJAH: But you knew it could be done prior to impoundment.

MR. CHIPPETT: Right.

MS. NAGARAJAH: Okay.

All right. So I believe there was a Cabinet update in April –

MR. CHIPPETT: That's correct.

MS. NAGARAJAH: – this – okay, and we do have that at tab 71, I believe – check that before.

Yes, so that is tab 71 of binder 5. And that's P-04227. Let's scroll down – scroll over to page 4 there.

Sorry – and let's go to page – well, okay, so Purpose, it says there, "To provide an update on direction related to IEAC recommendations."

And then on page 6, it says – so this confirms some of the recommendations that you confirmed would be happening. So the "New Oversight Committee to be formed to implement

recommendations on community-based monitoring and health management; Discussion to begin on benchmarks and triggers related to an Impact Security Fund by Committee in context of monitoring data"

And then it says here, "Direct Nalcor to perform soil capping as agreed to by all voting members of the IEAC; combine with fish habitat work."

UNIDENTIFIED MALE SPEAKER: Mm-hmm.

MS. NAGARAJAH: Actually, on that point – well, I'll come back to that, actually.

So soil capping, here it says on page 7 – can we go down to page 7?

So it says, "Direction communicated to Nalcor on February 11," and that was for – it says soil capping –

MR. CHIPPETT: So, if I could just interject there – February 11 is actually an error in the –

MS. NAGARAJAH: Right.

MR. CHIPPETT: – deck.

MS. NAGARAJAH: Right.

MR. CHIPPETT: I think I grabbed from the calendar the last meeting of the coordinating committee instead of the one in January. So I think the correct date is January 14.

MS. NAGARAJAH: Okay. Thank you.

And so it says, "Nalcor indicated soil capping not possible this close to impoundment."

And then here it says, "Permit requested July 2018 for Fish Habitat work not approved by MAE within" the "window" So I take it from the information note that I also saw that Nalcor requested a permit to do the wetland capping in July 2018, and this was denied by ministry – by MAE. Can you explain why it was denied at that time?

MR. CHIPPETT: So, I think, at that point, we – you know, we had hoped – we had thought we would have decisions sooner and we had no idea

in what direction government was going to go, whether it would go with wetland capping or not or something different or some combination of the things. So we thought we would hold that permit until we had a decision.

MS. NAGARAJAH: Okay. And when time is kind of going by, did you think about, you know, approving that permit at any point?

MR. CHIPPETT: Oh yeah. I know it was raised with me. I didn't know – so I knew after the fact, to be quite honest. I knew they had applied for a permit. I didn't know the exact window the permit was for until I, you know, was advised of the – of this fact that they are – that Nalcor was communicating there wasn't enough time, that the window was identified as from July, I think, or August, when they requested the permit, to December.

And so in that time, we really thought we would get a decision, and, you know, I know Nalcor had had discussions with Martin about the fact that they wanted to move on with this particular piece of work. And, you know, my answer was we need to try to get a decision. And at the end of October, I guess, that's when we had drafted that first letter that could, potentially, go to Mr. Marshall at Nalcor to – you know, to hopefully communicate a decision on capping. But, ultimately, the minister changed and we had direction from the Premier to bring it to Cabinet in December.

MS. NAGARAJAH: Okay. And so, at this point, capping is not possible without delaying the project.

MR. CHIPPETT: That's what we've been told.

MS. NAGARAJAH: Okay.

MR. CHIPPETT: Including the consideration of the other options.

MS. NAGARAJAH: Okay. And so I understand. So, where are we now in terms of our responding to the IEAC recommendations and (inaudible)?

MR. CHIPPETT: So, in April – I think April the 8th of this year – the Premier wrote to the Indigenous leaderships and requested a meeting.

And in that letter, he articulated, you know, the desire to move forward with recommendations one and two and to have the discussion about the impact security fund, I guess, in the context of consumption advisories and the monitoring program work that he had agreed to. And then, finally, he wanted to have a discussion with them on, kind of, the physical mitigation recommendation. And the last thing I'd say is a draft terms of reference, which had been developed in our department, was attached to that correspondence. So –

MS. NAGARAJAH: Right. Yes, saw that.

MR. CHIPPETT: Yeah.

MS. NAGARAJAH: Okay.

So I just kind of want to summarize what we've sort of talked about in terms of methylmercury. So we've heard that back in 2011 the JRP recommends that studies be done on downstream bioaccumulation or biomagnification effects of methylmercury.

MR. CHIPPETT: Mm-hmm.

MS. NAGARAJAH: The Nunatsiavut Government approaches the government in 2013 for funding. They're denied. They launch their own study. The NG attempt to engage the government in dialogue about their concerns, they make requests of the government. They're ultimately dissatisfied at the lack of response. They launch the Make Muskrat Right campaign in 2015.

In 2016, there's still dissatisfaction. The Human Health Risk Assessment Plan is approved which the government anticipates is going to create, you know, disorder, possibly, and protests and it appears nothing is really done to engage them at that time either. And now we're approaching a time when the schedule needs to move in October of 2016, the reservoir needs to be partially flooded and people are still unsatisfied.

And under pressure, the government – you know, they meet with the Indigenous leaders, they form the IEAC. And this is one full year after the NG already requested that the IEAC be formed and, again, after the launch of the Make Muskrat Right campaign, after two protests

which have impacted the schedule and have, you know, caused costs for the project. After the IEAC make these recommendations the government continues to delay, with the risk of a further protest, but also creating timelines that are not feasible for actually carrying out any commitment that they might be making to the Indigenous leaders.

So I want to take you to tab 53 of binder 1, which is P-04159. You want to scroll down, Madam Clerk?

So this is a news report from – and there's some quotes from Stan Marshall here and he says: "While Marshall said the flooding had not started as of Tuesday, it has to begin by the weekend in order to protect the site – and the work that has been done – before the winter.

"Nalcor Energy has lost time due to the protests Marshall believes they can't get back. Even though the delays were 11 days on the ground, the ramifications are greater.

"It's like a sprinter who tripped up in a race. The time he spends on the ground is only a fraction of the time lost if he attempts to just pick up and run again. Momentum has been lost, so we've lost two or three months,' Marshall said.

"That's one of the tragedies of these things, when you lose that momentum.'

"The delays to the project are one consequence, the added cost is another.

"Though Marshall said they won't know exactly what the protests cost the company for a while, he said it's 'hundreds of millions.'"

So do you agree that had the government acted more proactively, instead of reactively under pressure, much of this could have been prevented?

MR. CHIPPETT: I can't really speak to, you know, the protests and those, you know, discussions or what have you. I can speak to, obviously, the period we're talking about now. And, you know, as I said earlier, I think ideally everyone would think that it would have been helpful if we had responded earlier.

MS. NAGARAJAH: Okay. Thank you.

Those are all my questions, Commissioner.

THE COMMISSIONER: All right, good, we'll break now for lunch.

And we'll come back at 2 o'clock and we'll begin cross-examination at that stage.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right. Government of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Do you have other exhibits you wanted to enter at this stage?

MS. MORRY: Yes, Commissioner. There's two more exhibits, which are numbered P-04259 and P-24 – sorry, excuse me, P-04260; and they're at tabs – tab 5 of binder 5 – well, tab 5 at the back, rather.

THE COMMISSIONER: Okay. Both of them are at the same place?

MS. MORRY: I –

THE COMMISSIONER: And what are these exhibits?

MS. MORRY: Oh, excuse me. So one of them is actually at tab 4 in the binder 5. The first one is a document – the *Labrador-Island Transmission Link Species at Risk Impact Mitigation and Monitoring Plan*.

THE COMMISSIONER: Mm-hmm.

MS. MORRY: And the other exhibit is a set of – these are some extracts from the notebooks kept by Mr. Chippett that the – we just got these

this morning and some of the associate counsel extracted some ones that are potentially relevant.

THE COMMISSIONER: Okay. So I haven't had a chance to look at those as yet.

MS. MORRY: And – nor have I.

THE COMMISSIONER: So is there a reason we only just got those now?

MR. RALPH: Yesterday, Commissioner, I was meeting with the Clerk of the Executive Council and also Paul Carter of the Oversight Committee, and we were looking at a presentation that Mr. Chippett had made, in which there was a date of February the 11th. And they indicated – they thought the date was wrong, and they said in fact, I think we have notes to that effect that that conversation happened in January.

THE COMMISSIONER: Right.

MR. RALPH: And it occurred to me at that point that their notes hadn't been given to the Inquiry – to the Commission. And then realized that perhaps Mr. Chippett's notes also hadn't been given. So we've gone throughout government this afternoon and yesterday to get notes and that's why it's due this morning.

I know that they – the – when the summons went out in January of 2019 – or 2018, there was a request for all paper records throughout the departments, and for whatever reason the notebooks were not considered a paper record, I guess, because I – I know there's 8,000 references to notebooks throughout the documents that have been given to the Commission but I – it doesn't appear to be any notebooks from deputy ministers or assistant deputy ministers in the records.

THE COMMISSIONER: All right. Okay.

Anything else?

MS. MORRY: Actually, Commissioner, the other document is 04259. That one was actually made – it was a request from a party and it was made on time but it was inadvertently overlooked, so that's the explanation for that one.

THE COMMISSIONER: All right.

So Government of Newfoundland and Labrador, no questions. Nalcor Energy.

MR. SIMMONS: No questions. Thank you, Commissioner.

THE COMMISSIONER: Okay.

The Concerned Citizens Coalition.

MR. HISCOCK: Thank you, Commissioner.

Good day, Will Hiscock here on behalf of the Concerned Citizens Coalition. I believe you will be familiar with some of the members of our group.

I have a few questions, so I'm gonna try and run through them in order of subject matter, I suppose. Mr. Chippett, I would suggest that the vast majority of these questions are probably actually directed at yourself, but where you feel that somebody else might be better able to answer them, then I'll ask that you simply direct it over –

MR. CHIPPETT: Sure.

MR. HISCOCK: – for those specific questions.

Could you please advise what role your department played in the preparation of the government's response to the Joint Panel report?

MR. CHIPPETT: Sure.

So I can speak to the records we've reviewed in the last number of –

MR. HISCOCK: Mm-hmm.

MR. CHIPPETT: – days to get ready. And I know that the deputy at the time – well I'll start – initially our environmental assessment division prepared templates that could be used for each JRP response. So there was a uniform template.

MR. HISCOCK: Yeah.

MR. CHIPPETT: They were sent out, I think by the deputy of our department, to each department that was a lead on a particular

recommendation. And then I'm aware of correspondence where that same deputy sends it to other deputies, who might have a more tangential role, to get their feedback. And then the idea would be that would feed into a deputy minister steering committee that was reviewing the response.

MR. HISCOCK: You're aware obviously that the government's response to the report was basically immediate and negative. Would you agree with that characterization?

MR. CHIPPETT: Can you repeat that?

MR. HISCOCK: That the government's response to the report was immediate and negative. Would you agree with that characterization?

MR. CHIPPETT: I'm not sure I would. It – immediate in the sense that it was – the responses were done at the same time as the release of the project.

MR. HISCOCK: Mm-hmm.

MR. CHIPPETT: And obviously there were a series of different responses in terms of, you know, whether they accepted the recommendation or accepted the intent or pointed out, for example, it was, you know, it was directed to a party other than the provincial government. So –

MR. HISCOCK: Yes. When you say accepted the intent, and as that obviously appears a number of times as the, you know, the response. What government is meaning by that I assume is that they agree that there's an issue but they don't agree with the recommendation.

MR. CHIPPETT: So I – I guess neither of us – Susan and I – Dr. Squires and I worked on this document over the last little while, the updates – and our, kind of, conclusion, but based on separate readings of the document, is that there might have been particulars in a given recommendation; for example, a timeline where the government didn't feel it could be done that way. Or I think in some cases it's what you referenced, there's an issue but we don't necessarily agree with how it's going to be addressed.

MR. HISCOCK: Right.

MR. CHIPPETT: Now, in the meantime, I – you know, I can't speak to what the thinking was at the time. I wasn't around for that. But that's the way I read it.

MR. HISCOCK: Yes. Okay.

'Cause that's not an uncommon response, in that generally what government means when they respond like that would agree with the intent. 'Cause it's a common response throughout a lot of the –

MR. CHIPPETT: (Inaudible.)

MR. HISCOCK: – recommendations, right.

DR. SQUIRES: Just to add to that; I referenced this earlier, but the federal government had a guidance document on how to respond to joint review panels.

MR. HISCOCK: Yes.

DR. SQUIRES: That we – (inaudible) departmental records. I see that in 2011, we took that and created a document that departments could follow in preparing their responses. That guidance document used the terminology accepts, does not accept, accepts the intent of, and explained what those meant –

MR. HISCOCK: Yes.

DR. SQUIRES: – and explained that 'accepts the intent' meant that you – while you accept the principle, the right – the recommendation, you – the spirit of the recommendation, you may not accept the logistics or the operational description of what the recommendation was suggesting you do to meet that. And there was examples provided to departments from the federal guidance document as to what those responses would look like in those natures.

And given – there was direction given that you had to, you know, explain if you did not accept the intent, what you intended to do. And there was certainly given to departments and that came from our work with the federal government.

MR. HISCOCK: Okay.

What firewalls were erected between your department and Nalcor to protect the integrity of the environmental assessment process and to secure compliance with undertakings arising from the report of the joint panel?

MR. CHIPPETT: So, I mean generally I think the description we went through earlier of the role of the regulator versus the proponent, you know, would stand, in that instance. The Act is binding on the Crown, as my colleague said. And, you know, every single step that any proponent would've had to have gone through in an environmental assessment, it was treated the same with respect to Nalcor. So deadlines around public consultation processes, the expectations around consultations with Indigenous peoples, the amount of time we would have – the government would've had to produce guidelines, for example, would all be the same. And the staff that always worked on those particular elements, you know, were the staff that worked on it in that case.

And just to kick it up, I guess, a little bit to the level of assessment that was required, as Dr. Squires said earlier, this is only the second time that the province ever used a Joint Review Panel as a means of assessment. So the panel members and so on were actually exterior to government. Funded, in part, by government, but the panel members and the people that did the analysis and came up with the responses and so on – or the analysis and recommendations, rather, were completely independent of government.

MR. HISCOCK: Can I ask this, I guess: When government is engaged in an environmental assessment process with a mining company versus with another department within the same government, are there differences in how that's carried out?

DR. SQUIRES: No, there's no difference in how that's carried out. So the – if it's a – let's assume it's an assessment that requires something similar to this, in the nature of having to set up an environmental assessment committee, so we're not talking about the basic registration process.

MR. HISCOCK: Right.

DR. SQUIRES: You know, those – the proponent is not allowed on that assessment committee, they'd all participate in assessment committee meetings. And if it was a Crown corporation, they wouldn't do that either. The EA process doesn't require that we – technical advice is shared to proponents, and so the technical advice wouldn't be shared when it's a Crown corporation either.

MR. HISCOCK: Right.

DR. SQUIRES: If the legislation allows the minister to ask the proponent to respond to feedback that we're receiving in this assessment process, it comes in the form of information requests or sharing, maybe, a technical question with the proponent. In that case, that would be done in the manner it's done for every project, whether the proponent is Crown or not.

MR. HISCOCK: Okay, so there's no additional consultation or, you know, the people engaged on the ground here wouldn't be treating – or communicating with Nalcor as a Crown corporation or another government department, any different than they would if it was a Brazilian mining company looking to do work in Central Newfoundland.

DR. SQUIRES: No, we –

MR. HISCOCK: It would be the same process regardless.

DR. SQUIRES: It would be the same process.

MR. HISCOCK: Could you please advise whether the Government of Newfoundland and Labrador had officials in the room throughout the hearings of the joint panel, and to whom did they report?

DR. SQUIRES: Yeah –

MR. CHIPPETT: I couldn't answer that.

DR. SQUIRES: (Inaudible.)

MR. CHIPPETT: Martin, do you recall any of that?

MR. GOEBEL: Oh. I can only speak to one occasion when I actually went to the panel

hearings and I witnessed, you know, the process and it was in Labrador.

MR. HISCOCK: Mm-hmm.

MR. GOEBEL: Yes, there were government officials in there. There were witnesses. There were – there was the public. There was – Nalcor, of course, had a – you know, the questions were directed toward Nalcor for the most part. But I can't tell you who was assigned to that on a regular basis that would be there all the time, if that's what you're asking.

MR. HISCOCK: Okay, well, that is what I am asking. So you were assigned to be there for portions of it.

MR. GOEBEL: There was a–

MR. HISCOCK: Is that correct?

MR. GOEBEL: There was a water resources issue and I went up for that, just to hear what was going to be said that day.

MR. HISCOCK: And you would have been reporting, obviously, directly to your own department upon what went on there, when you were there. Or would you have been reporting more broadly?

MR. GOEBEL: I can't remember now the exact date of it because I can't remember if I was there as a director or in the ADM role.

MR. HISCOCK: Yes.

MR. GOEBEL: I don't know if I was really going to write a report or do a report to anybody in that sense. I mean it was really just – I think it was more for my own benefit, to see what was going on with that particular subject matter. And, you know, I didn't – I certainly didn't write a report or give a report. I might have given a verbal update to my deputy or my ADM at the time, but that would have been it.

MR. HISCOCK: Would you have been aware of minutes, notes, references to the proceedings prior to you going there, that had gone on? So you wouldn't have been briefed about what had transpired before and you haven't seen anything since then to suggest that government was taking

notes in some sort of formal way and reporting on the, that –

MR. GOEBEL: I'm sorry, I really can't remember for sure if that was – if there was somebody there taking notes and providing feedback.

MR. HISCOCK: Perhaps the other members of the panel have seen some evidence that there were had some been reporting upon the events.

DR. SQUIRES: I've not seen any evidence to suggest that there was reporting on the events. Certainly, one of the roles of the Joint Review Panel would have been to examine the information received at the public hearing and to provide the minister with a report on that. That would've been one of their mandated roles of the joint review process.

Certainly, that would have been the official reporting mechanism by which government would have received the outcome of – or the – it was talked about the Joint Review Panel hearings and the outcome of that, the summary of them.

MR. HISCOCK: Okay.

DR. SQUIRES: I've not seen any other notes that suggest what you're referring to.

MR. HISCOCK: Mr. Chippett?

MR. CHIPPETT: I don't have anything further than the first comment I made.

MR. HISCOCK: Mr. Chippett, as well, I'm referring to page 45 of your interview. You confirm that the final testing of the dam does not take place until it is complete. Is that not too late?

MR. CHIPPETT: So, I guess you mean the – they have – Nalcor is required to do a dam safety report two years in and then every five years thereafter, and that's the condition under the permit to alter a body of water. The two years, as I understand it – and Martin is – has much more expertise in this than I do – but the two years is actually more stringent than what the Canadian Dam Safety Guidelines would

require. I think they say five years after and then every five years after that.

So, two years is standard per the guidelines and it's more stringent to – we purposely look for a two-year report rather than waiting five.

MR. HISCOCK: Did you want to make a comment on that?

MR. GOEBEL: Well, just to say that testing – I mean, I think there's – I think what you're really referring to – I mean you don't really test the whole structure of the system. What you have is instrumentation that is placed into the structure. You have different types of piezometers and monitors and stress gauges and all kinds of geotechnical equipment that kind of monitors the dam right from the first filling and then continuously thereafter.

So the two-year dam safety report would look at all those results and provide analysis of those results, and would also look at, you know, the operational conditions and see what the performance was. But, you know, I don't really think testing and such is the right term to use for that kind of process.

MR. HISCOCK: Okay, so the testing, we'll say then, or the monitoring, is ongoing and it's at the two-year mark that you need to have the – that you've required to report on that –

MR. GOEBEL: Yes.

MR. HISCOCK: – continuous monitoring, we'll say.

MR. GOEBEL: Yes, that amongst other things. I mean, when you do the dam safety review, you go back to the design. You look at the design, you look at the hydrology, you basically go through everything, and you look at the structure and you look at the instrumentation that you have. You might take certain samples like the (inaudible) RCC dam; you might take some samples of the concrete and analyze them.

MR. HISCOCK: If the instrumentation that's been embedded in the dam structure and around picks up anomalies beforehand, is there a system that you've requested or put in place that, this

continuing monitoring, if there is an issue, we're not waiting 'til two years to get a report on it?

MR. GOEBEL: Of course. It's –

MR. HISCOCK: What is that?

MR. GOEBEL: Well, it's part of the emergency preparedness plan. So any contingencies or any sign of issue with the dam or the structure or the hydrology would trigger the emergency response plan. So that plan has to be in place before the dam is first commissioned.

MR. HISCOCK: Okay.

And would – it would be the same monitoring systems that are gonna be reported on at the two-year mark in that report that would be – being used to monitor in case of emergency before that. Is that –?

MR. GOEBEL: Yeah, so, you know – again, all your instrumentation is there for the purpose that the instrumentation was designed for: to measure a particular parameter.

MR. HISCOCK: Yeah.

MR. GOEBEL: And some of those would be indicators of problems right away – if there is a problem – right away.

MR. HISCOCK: Yes.

MR. GOEBEL: And others, like, for instance, a piezometer, which measures the water level, might indicate that, you know, the water level is supposed to be at a certain point. And if it suddenly changes, then, you know, there's perhaps a leak or something, so that has to be investigated right away.

So on the other hand, that piezometer might vary a little bit because the water level is fluctuating, and that would be perfectly normal.

MR. HISCOCK: So who's monitoring those instruments –

MR. GOEBEL: The owner.

MR. HISCOCK: – and providing –?

MR. GOEBEL: The dam owner.

MR. HISCOCK: The dam owner.

MR. GOEBEL: Yeah. And the –

MR. HISCOCK: So Nalcor so is doing continuous monitoring of that instrumentation, okay. And they're gonna provide a report within two years.

MR. GOEBEL: (Inaudible.)

MR. HISCOCK: What system is in place to make sure that there can be something more quick if there's an emergency? Could you explain that process, perhaps?

MR. GOEBEL: Yeah. For the dam safety report, they would bring in an independent engineer to go over all of that and, you know, hand over all the data to their engineer.

MR. HISCOCK: So would that be in a critical situation? Would they not have to come to government immediately upon seeing anomalies that could present an emergency in their instrumentation?

MR. GOEBEL: My goodness, if there's something, you know, going wrong, they have to act right away –

MR. HISCOCK: Yeah. So if there –

MR. GOEBEL: (Inaudible.)

MR. HISCOCK: – was a – example, if the water levels dropped, and you suspected a leak –

MR. GOEBEL: Yeah. They would (inaudible) –

MR. HISCOCK: – what would be the process? They wouldn't be contacting their independent engineer at –

MR. GOEBEL: No, no –

MR. HISCOCK: – that point.

MR. GOEBEL: – they would take action as required by, you know, their safety protocols or the response protocols to certain scenarios.

MR. HISCOCK: Would you know immediately, or would the department know immediately? Is there a system in place to ensure the department would know immediately?

MR. GOEBEL: I can't say for sure if – at what point they would have to report that to government. At some point, they have to report that. I'm not sure –

MR. HISCOCK: Well, at the two-year mark they have – they definitely have to have a report.

MR. GOEBEL: Well, at the two year–

MR. HISCOCK: But –

MR. GOEBEL: Yeah.

MR. HISCOCK: – I'm, wondering, before that, what the process is. If there was a leak, you know, tomorrow and (inaudible) said, oh, okay, well, what's – you know, how long is it before the Department of Environment becomes aware that Nalcor knows that there's a leak in the dam?

MR. GOEBEL: Okay. If there's a leak in the dam, Nalcor has to immediately investigate what that problem is –

MR. HISCOCK: Yes.

MR. GOEBEL: – and take immediate action. So, that could be anything from, you know, saying, okay, well, there's a seal there that needs to be fixed, and they'll put out a work order and they'll get it fixed. Or it could be, say, okay, this dam is ready to fail. We've got to evacuate everybody downstream.

So, the response could be, you know, that huge spectrum, depending on what the problem really is.

MR. HISCOCK: How many days would it be before you knew that the seal had been broken, versus how many days would it be before you knew that there was an evacuation order needed to be done from the same date? We find out today –

MR. GOEBEL: Okay.

MR. HISCOCK: – there’s a problem.

MR. GOEBEL: If it’s the seal, we probably never – we’d probably – you know, we might never get told.

MR. HISCOCK: Right.

MR. GOEBEL: If it’s a – you know, an emergency failure-type, there’s – in the emergency plan, there’s a list of who has to be contacted, who has to be told –

MR. HISCOCK: Mm-hmm.

MR. GOEBEL: – and, you know, we’re on the list.

I’m on the list for several dams besides Nalcor. For instance –

MR. HISCOCK: Yeah.

MR. GOEBEL: – Deer Lake. So, every five years when they do their dam safety evaluation, as an example, they’ll have an exercise and they’ll say: Okay, we’re going to do an exercise. This is to check out all the contacts. And they phone me and say: Well, we’re calling you for this exercise and what would you do? And then I’d know that there’s, you know – on a tabletop exercise, I’d know that there was an emergency developing –

MR. HISCOCK: Yes.

MR. GOEBEL: – and I would, you know, take the steps as a government regulator to do what it is that I have to do for my job at that time. Now, I’m not at that job anymore, but –

MR. HISCOCK: Right.

MR. GOEBEL: – I’m giving you that as an example of –

MR. HISCOCK: Yeah, no. I appreciate because –

MR. GOEBEL: – how that works.

MR. HISCOCK: – I think you can understand that, to a lot of people, the idea of a report two years after the filling of the dam raises questions

as to, well, what monitoring is going on, how do we know if there’s a problem before we get the report to two years after the dam is filled, you know? And I think that’s – you know.

MR. GOEBEL: That’s – you know, if nothing goes wrong, two years is, as Jamie said, earlier than normal for the guidelines.

MR. HISCOCK: Mm-hmm.

MR. GOEBEL: But if something does go wrong, it’ll be right away.

MR. HISCOCK: Okay.

MR. CHIPPETT: If I could just add a little bit –

MR. HISCOCK: Yes.

MR. CHIPPETT: – to that in terms of one of the other branches of our department.

So I mentioned earlier Fire and Emergency Services is a part of our department. So Nalcor also has – and this may not just come from a dam failure, obviously, but we exchange information on the water conditions in the Lower Churchill River. So, for example, there’s a notification system that Nalcor was responsible for putting in place. It’s run through the Happy Valley-Goose Bay Fire Department and so, for example, every year in the spring, when ice breaks up and so on, that is there and available and, thankfully in recent years, hasn’t had to be used, but it’s been exercised and so on.

So from an emergency preparedness perspective, that’s how it intersects with the government’s responsibility for fire and emergency services.

MR. HISCOCK: Do you feel that there would be any need to have somebody other than the owner monitoring the instrumentation or that sort of thing? Or would it be beneficial to have somebody other than the owner monitoring the instrumentation?

MR. GOEBEL: As a matter of opinion?

MR. HISCOCK: Yes.

MR. GOEBEL: I don’t think so.

MR. HISCOCK: No.

One could see a scenario where the owner of a dam system being financially tied to any remedial work that would have to be done or whatever might not be the party best – in the best position to judge whether remediation work does need to be done, that you would think, kind of, that there would be a third party, a function for government in terms of reviewing the instrumentation data and saying, you know: We disagree with Nalcor that there's nothing on the go here. We think that actually some strengthening work needs to be done, for example.

MR. GOEBEL: That's a good question. And that's why you have an independent engineer that's usually involved in the review of a dam – the dam safety review. The owners will contact an engineer, and often it's an engineer that wasn't even involved in the original design of the dam.

MR. HISCOCK: So that would be the independent –

MR. GOEBEL: But it's a –

MR. HISCOCK: – engineer would satisfy that piece.

MR. GOEBEL: Yeah, there's an –

MR. HISCOCK: Yeah.

MR. GOEBEL: – independent relationship there.

MR. HISCOCK: Okay.

Is the safety of a natural dam tested using the same criteria as an engineered man-made dam?

MR. GOEBEL: In my earlier testimony, I pointed out that there is a – there's always a geological component to any dam. The one for Muskrat Falls is unique and it's a perhaps more critical component of the overall system that's being constructed there.

MR. HISCOCK: Mm-hmm.

MR. GOEBEL: And it's for that reason that there was a very extensive geotechnical investigation done by the appropriate engineers that are specialists in geotechnical work, in geomechanics, soil mechanics and so on, and they recommended extensive works that be carried out to further stabilize that – the slopes and the – and that embankment so that it functions as if it was a dam.

MR. HISCOCK: Okay.

My client has been informed that the Canadian dam safety regulations serve only as guidelines when it comes to natural remediated dams. Is that correct to the best of your understanding?

MR. GOEBEL: You phrase the question wrong, if I may –

MR. HISCOCK: Yes, no absolutely.

MR. GOEBEL: – (inaudible) dam safety regulations, they are just simply dam safety guidelines.

MR. HISCOCK: Okay.

In conducting its due diligence on the North Spur, did your department consult with Gregory Brooks of the Geological Survey of Canada who testified at the joint panel hearings?

MR. GOEBEL: I'm not aware, no.

MR. HISCOCK: No.

In light of the interest he expressed, did your department meet with Cabot Martin to discuss his concern about safety and stability of the North Spur?

MR. CHIPPETT: I don't know if there was a meeting specifically, but we were aware of the concerns of Mr. Martin and others. And, as I said this morning, my role as the deputy, I felt, was to (a) take those concerns seriously and (b) learn exactly – what about – you know, how my department's mandate intersected with the concerns that were being addressed.

And so it all – you know, the briefing I had, specifically around the time of actually, I think, Mr. Martin's book, was how our focus is on the

hydrology and that particular part of the Canadian Dam Safety Guidelines and how – as Martin described this morning – we construct or populate, I guess, our permit to alter a body of water. So, you know, I guess what I took out of those briefings was that we were focused on making sure any element of the entire structure was not under-designed. So, in other words, the right modelling was used, the latest climate change projections were used; we weren't going through individual elements of the design. But from a hydrological perspective we were looking at the inputs, the precipitation, the flows to make sure that what was there should be adequate from a hydrological perspective.

Martin is an expert in that stuff, so I don't know if he wants to add or if I've done okay, but –

MR. GOEBEL: Thank you, Jim.

Yes, the processes, in fact, what you described, but I don't know if I'm an expert in geotechnical engineering.

MR. CHIPPETT: Right.

MR. GOEBEL: But I do – you know, I do follow the process that's required to ensure that the government is convinced of the safety of the structure.

MR. HISCOCK: All right.

I mean, Cabot Martin raised some serious concerns, and obviously your department is aware of them and –

UNIDENTIFIED MALE SPEAKER: Mm-hmm.

MR. HISCOCK: – you know, your testimony this morning – clear on that.

Why wouldn't you have picked up the phone and given him a call? Or somebody ask him: Hey, listen, we'd like to meet with you for 10 or 15 minutes; we're really interested in these safety concerns you have? Wouldn't that seem just like a pretty natural thing to do rather than – you see what I'm saying? That nobody would approach him and ask him: Is there any more information that you'd like to provide to us? Do you have any further concerns? You know? No?

MR. CHIPPETT: I'm not really – you know, I know we didn't. We didn't meet with Mr. Martin and we were aware of his concerns – some from him and obviously we talked about Dr. Bernander, I think is the name, this morning.

MR. HISCOCK: Yes, mm-hmm.

MR. CHIPPETT: So we're aware of those and – you know, but felt we had discharged our duty as a regulator through those Dam Safety Guidelines, particularly the hydrological portion of them. And we were satisfied to – you know, ultimately our part was to issue that permit to alter a body of water. So staff reviewed that for three months, and we're satisfied at the end of the day that it was safe to do so.

MR. HISCOCK: Okay.

Did your department seek geotechnical expertise from faculty members at Memorial or from experts at C-CORE?

MR. CHIPPETT: Not that I'm aware, no.

MR. HISCOCK: No?

MR. GOEBEL: No.

MR. HISCOCK: Did your department make contact with Dr. Bernander or his graduate student, Robin Dury, who wrote a master's thesis which concluded that the North Spur was unsafe?

MR. CHIPPETT: I know we did – I don't think we met with them. I know there was a piece of work and it's actually in one of the exhibits on – is it Mr. Dury you mentioned, his thesis?

MR. HISCOCK: Yes.

MR. CHIPPETT: There's a piece of work in evidence that I know was, I assume, reviewed by Water Resources, but we didn't contact those people directly, that I'm aware.

MR. HISCOCK: And again, why? You know, the man had just written a master's thesis on the North Spur; why wouldn't you give him a call and ask if he would provide assistance? Can you give insight? You know, these are people who

obviously understood and had done research on exactly this issue.

MR. CHIPPETT: So as I understood it, the – you know, they had the research from Mr. Dury and that was analyzed. But I’m not aware that our department had a meeting with him.

MR. HISCOCK: Did your department consult with Dr. Elfgren, the colleague of Dr. Bernander, who had written to the minister of Natural Resources to inform her of his concerns and those of Dr. Bernander?

MR. CHIPPETT: No.

I think it’s important to just make a small distinction between our role versus, you know, some of the other departments or agencies or engineers that were involved, because our focus is on the hydrological side of it, and is it designed well enough to – and the geotechnical is a part of it, but our primary focus is on the hydrological. And the other piece is that stabilization and so on – I know that’s jumping ahead a little bit – has occurred. We’ve had people on site from Water Resources multiple times and, you know, what they tell me is that the multi-barrier approach that’s been taken to the North Spur is a good one.

MR. HISCOCK: You – again, like, do you understand why it would seem odd to somebody from the outside that you would have eminent people who would have – you know, with a fair bit of background and expertise in the area who are commenting on this and that the Department of Environment is directly interested in these – the subject, wouldn’t even pick up the phone and give them a call or invite them to speak to them? Do you understand why that might strike people as strange from the outside, given that Dr. Bernander, for example, has been – his name has been bandied about for an awful long time in relation to this?

MR. CHIPPETT: I think we review what – you know, the work he’s done and we’ve had people attend presentations to hear him speak and so on. I don’t think, you know, that should be – should mean there’s a suggestion that the department didn’t do its job.

MR. HISCOCK: Okay.

Now, you may have answered this earlier when you were talking about the instrumentation. I’ll ask the question anyway and you can just confirm if this is the instrumentation you were speaking of. But I was wondering if your department had installed or considered installing electronic sensors to monitor seismic disturbances or changes in water levels within the glacial marine clays? Were the glacial marine clays also part of the things that are being monitored by your – the instrumentation that you were speaking of earlier, or is that specifically the –

MR. GOEBEL: No, our –

MR. HISCOCK: – dam water?

MR. GOEBEL: No, our instrumentation is strictly for the flow measurements –

MR. HISCOCK: Yeah.

MR. GOEBEL: – or water quality measurements when I was referring to earlier in – when I was talking about the monitoring that we’re doing in the area, in general. We also have a climate monitoring station. So these are all instruments that pertain to water resources management. The instrumentation that you’re referring to, seismic, you know, instrumentations: all these things are part of the dam. They’re installed in the dam and we don’t have any role in that.

MR. HISCOCK: Okay.

MR. GOEBEL: In –

MR. HISCOCK: So to confirm, there is no instrumentation currently being used to monitor seismic disturbances or changes in water levels within the glacial marine clays. Is that correct?

MR. GOEBEL: I can’t answer.

You know, I’m just saying in general that – when I was speaking earlier about the instrumentation, I was talking about in general the types of instrumentation that might be there. I don’t know specifically what and where – what was installed and where it is.

DR. SQUIRES: Only because of the update I provided to the Joint Review Panel recommendations, I'm not at all directly involved but, certainly, Natural Resources provided an update to the seismic testing to the Joint Review Panel recommendation that indicated that the monitoring components did include seismic – instrumentation for seismic monitoring.

MR. HISCOCK: Okay.

DR. SQUIRES: That's as far as I personally can speak to it, but it indicates to me that there is something there.

MR. HISCOCK: Would your department be able to provide something to the Commission to confirm that there is instrumentation to monitor seismic disturbances or changes in water levels within the glacial marine clays?

MR. GOEBEL: We'll bring back – and, actually, it may come back as a part of the update the Commissioner asked for this morning, so we can probably do it through that process.

MR. HISCOCK: That'd be very much appreciated. Thank you.

Okay. Did your minister meet with people living close to the dam to hear their concerns about their safety, the Minister of Environment?

MR. CHIPPETT: I couldn't speak to that. I don't know if any of the ministers I had when I was in Environment then did that or not.

DR. SQUIRES: The other thing I would add to that is the agreement the minister had – at the time had with the federal minister for the Joint Review Panel. Part of that was public hearings that would have taken place in the location – the geographic location of the project; more of an opportunity to hear feedback from the local residents on a range of issues, but including dam safety.

MR. HISCOCK: Was the minister there?

DR. SQUIRES: I couldn't speak to when the minister was there but, certainly, the joint – the environmental assessment process, the Joint

Review Panel, that function in that capacity, functions to collect the feedback from the public on behalf of the minister.

MR. HISCOCK: Okay, maybe I'll ask this in a slightly different way then: Are any of you aware of an instance where the minister of the Environment has spoken to people close to the dam about their safety concerns?

MR. CHIPPETT: I think – I can't speak to exactly what the conversations were but, for example, when Mud Lake flooded in May of 2017, the Premier and my minister at the time visited Mud Lake and spoke to people there. I also know that coming out of that what – we had put in place a Lower Churchill River watch committee, which was a recommendation of the independent report that was commissioned on that flood.

And so I know – I don't know if he was ever there as minister of Environment but, certainly, as a government MHA. Former Environment minister, Minister Trimper, is actually a member of that committee and so there are frequent updates that come back from folks there, particularly during springtime –

MR. HISCOCK: Mm-hmm.

MR. CHIPPETT: – about flooding and so on. And so I can speak to those two occurrences.

MR. HISCOCK: I have a question that comes from a statement earlier about the most recent data on the mercury situation and the fact that after whatever we're at – almost 24 per cent flooding – that the mercury coming downstream, there had been a vent at the top. As we worked our way down into Lake Melville, it dissipated, basically, to nothing and, in fact, had been a negative compared to the baseline that you had examined in the Harvard study. That's – what was my understanding of your –

MR. GOEBEL: Yeah –

MR. HISCOCK: – testimony earlier.

MR. GOEBEL: – that sums it up.

MR. HISCOCK: Okay.

I was concerned by the implication there which was that, based on the Harvard study that you would have expected, I believe it was 90 – a 90 per cent increase in the mercury levels, based on 25 per cent flooding because you'd expected 360 at a hundred per cent.

MR. GOEBEL: Mm-hmm.

MR. HISCOCK: Okay.

Is that sensible given – is that a sensible conclusion to make, given that the lower portion that – of flooding – we'll say the first 24 per cent – would include a lot of heavily leached ground where – you know, where it had been subject to regular flooding anyways because of the spring runoff.

MR. GOEBEL: Mm-hmm.

MR. HISCOCK: So this is a portion that's regularly flooded, that's now flooded –

MR. GOEBEL: Yeah.

MR. HISCOCK: – versus when you get above that 24 per cent mark –

MR. GOEBEL: Yeah.

MR. HISCOCK: – you're talking about non-leached ground. This is the stuff that isn't subject to annual flooding.

MR. GOEBEL: Right.

MR. HISCOCK: Right?

MR. GOEBEL: Mm-hmm.

MR. HISCOCK: Wouldn't that – wouldn't you expect that, actually, we're not going to be able to get – you know, that the interpretation that you've given that, well, it's not a big deal because we haven't seen the 90 per cent in the first 24. That first 24 isn't where we're going to see big increases.

MR. GOEBEL: Right.

MR. HISCOCK: Wouldn't you say that's correct?

MR. GOEBEL: Yeah, I would say that's correct except for one point. If you look at the actual data for the reservoir location – so station N4 – you will see an increase in methylmercury.

MR. HISCOCK: Okay, you saw an increase –

MR. GOEBEL: But –

MR. HISCOCK: – but, again, you would concede, though, that it's actually the top 76 per cent flood – when we flood the top 76 per cent of the dam, that's actually where we would expect to see the major mercury levels, right?

MR. GOEBEL: Well –

MR. HISCOCK: Because it isn't the leached soil that's been flooded every year.

MR. GOEBEL: Yes and I think you have to take into account that that is a physical observation, but you also have to take into account then that it's not explicitly accounted for in the model either. So, when it's not accounted for in the model, the model has just assumed that there's a linear relationship between flooded area and the amount of methylmercury that ends up in Lake Melville. So using that linear relationship doesn't distinguish the kind of land that's actually flooded.

MR. HISCOCK: Okay. So –

MR. GOEBEL: And there is a difference, also, between a static flood and a dynamic flood. So spring runoff is a dynamic flood. In other words –

MR. HISCOCK: Yes.

MR. GOEBEL: – there's a water level which is a result of the flow; in other words, the quantity of water is flowing down the river. So the more quantity you have, the deeper it is and it's deeper all the way upstream.

When you have a static flood, such as that caused by a dam, then the water level reaches a certain point regardless of how much flow there is, as long as there's enough flow to keep that filled. But, then, upstream from that static level, there's a backwater curve and that will be deeper because of the static level. That's basically a

hydraulics thing. And, as a result, when you have flooding, like spring runoff, then that will extend in addition to the static level upstream.

The third point I'd like to make on that is that the spring runoff flood is of very short duration so, you know, a couple of weeks versus full-time flooding. And when you look at the time of year when you have your spring runoff, it's usually cold; the water is probably basically ice water, a mixture of snow and ice –

MR. HISCOCK: Mm-hmm.

MR. GOEBEL: – and water is just melted. And at that temperature, there's very little organic activity that would create methylmercury whereas when the – when you have the summertime and you have warmer temperatures, that's when you tend to have more methylmercury produced.

So, again, when you look at the data that we've collected, we have a station that's upstream of the reservoir altogether, completely outside the influence of the project. And that gives us sort of a standard against which we can measure and compare all the downstream monitoring results.

So upstream of the project we see, you know, just basically a random fluctuation of methylmercury results. At the reservoir we see two bumps like this, where we have the, you know, post-flooding period and then we see those bumps as you go downstream gradually disappear, to a point where they're gone altogether.

So, the fact that there is a bump there tells us that our monitoring is working – we're picking up –

MR. HISCOCK: Yeah.

MR. GOEBEL: – something and it's different than a natural cause by temperature, because if it was temperature causing that alone then that would have happened to all the other stations too, but it doesn't.

MR. HISCOCK: Okay. In the – I just want to go back to a point you had made when you were explaining that there which was – it was,

actually, in relation to the Harvard study and the fact that they had assumed a linear –

MR. GOEBEL: Mm-hmm.

MR. HISCOCK: – a linear amount of methylmercury, I guess, per rise in the dam. Do you know –?

MR. GOEBEL: It's linear in terms of the area under consideration. So, the – so, the flooded area is roughly 40 square kilometres – 41 square kilometres.

MR. HISCOCK: Mm-hmm.

MR. GOEBEL: So, when – when that was presented to us – then if the flooded area is 25 per cent of that 40 then – we're talking about 10 square kilometres flooded. So, that's how we, roughly, looked at that and that's where we plotted the point at which the water – the water quality was showing us for Lake Melville.

And, at that point, it's well below the prediction. Now, you know, if you argue that – okay, there's probably less methylmercury production where the area is smaller, well then that simply shifts that point over a little bit, but it's still well below even the starting value that was used in the study.

MR. HISCOCK: I take your point on your criticism of the Harvard study, but I want to ask – do you know where the samples were taken from for the Harvard study? Was it below the 24, 25 per cent water mark? Or was it above that?

MR. GOEBEL: Um –

MR. HISCOCK: Or was it low?

MR. GOEBEL: The samples are listed in this – in the study. There's a map that shows where the samples were taken. So, they were taken throughout the – throughout the region and in the river. They don't match, exactly, the same spots where we took our points but in considering the data – looking at the data – there was additional samples taken, for instance, in estuaries or – sorry – in tributaries that flowed into the lake.

I did not include those and I don't think Harvard included those when they calculated the average methylmercury for Lake Melville. I looked at the data and I was able to calculate from their data in agreement with what they used as their starting value which was – which was around 0.016 nanograms per litre.

MR. HISCOCK: Yeah.

MR. GOEBEL: So that, kind of, checked out based on their data.

MR. HISCOCK: Okay. If we could bring up Exhibit 00051, I have a couple of questions,

THE COMMISSIONER: Be on your screen.

MR. HISCOCK: Yeah, that'll be on your screen there.

That's the official response of government to the Joint Review Panel.

THE COMMISSIONER: Right.

Actually, it's at tab 83 of book 5.

MR. HISCOCK: I'm looking first at recommendations 4.1 and 4.2. Those two recommendations and the responses hit at the very essence of the governments decision leading to where we are today.

My question is who specifically prepared those responses? Was it the Department of Finance, Department of Natural Resources, the premier's office?

DR. SQUIRES: I wasn't privy to, kind of, who prepared them individually. There was a document that showed deputies signing off on the recommendations but I cannot recall who signed those.

MR. HISCOCK: Okay.

Do we have that – is that – has that been entered as an exhibit, to the best of your knowledge?

DR. SQUIRES: I'm not aware if it's an exhibit or not.

MR. HISCOCK: Okay, if it's not an exhibit, I'd ask that you provide it to your counsel to provide to the Commission.

Was there a specific written assessment and analysis of each of the recommendations for consideration of the ministers?

DR. SQUIRES: I'm not aware. What I've seen is this document with some background rationale for the responses.

MR. CHIPPETT: So if I could just add to that, I mentioned earlier that the decision to release from – release the generation project from environmental assessment with terms and conditions and the government's response to the JRP recommendations happen together. And so the vehicle for that was a Cabinet paper.

And so I recall the response, largely as it exists here, and as an annex to that. But there was commentary throughout the paper on particular recommendations that were more noteworthy – I'll use that term – from a government perspective.

MR. HISCOCK: Would the ministers in charge, or the ministers who had to sign off on this, though, not have gotten a written assessment and analysis of the individual recommendations and their response. And is that – all of that was contained in that Cabinet document and that's all there was?

MR. CHIPPETT: So there was that. There was also, you know, when a Cabinet paper goes through the system, there's an analysis by the policy committee that it is routed to. So in this case, I think it would've been economic policy so there would've been an analysis there. But I'd have to go back and refresh my memory with the document. I don't know, Susan, if there's anything you've seen in prep?

DR. SQUIRES: No. I mean, I will say that, you know, the departments prepared responses and brought them together as a package. So, the level of analysis they did individually could've varied between departments, but they certainly brought them back as a package together.

And, you know, getting back to your question on there on 4.1 and 4.2, like, the Natural Resources,

for example, was a lead department on those, so I'd imagine they would've had some analysis done and prepared that.

MR. HISCOCK: And I would've expected to have seen some of those, but I'm unaware of those kind of assessment documents on these individual points. So, that's why – that's my question is, if these – if the individual written assessments were done up for the ministers on these points, I guess, my next question is where are they?

What – I'll move onto my next questions, perhaps: What specific –

THE COMMISSIONER: Can I just –?

MR. HISCOCK: Sorry. Yeah.

THE COMMISSIONER: Can we just – sorry. So, I'm mindful of time now because you have –

MR. HISCOCK: Okay.

THE COMMISSIONER: – some other groups coming behind you. You've already been up 15 minutes, so I think your time is coming to an end. I don't want to –

MR. HISCOCK: Okay.

THE COMMISSIONER: – be restricting time, so you better pick the most important questions you have.

But I just want to make this comment: From what I've seen so far in the Inquiry, what the ministers get by way of a Cabinet paper – and I think you've probably seen some of this as well – is that there's a document that is produced by whatever the sponsoring department is or whatever has information in it – maybe appendices to it. There's analysis from Treasury Board or somebody that provides it.

I'm not sure that Cabinet ministers, other than what's done in their own department, would be getting a detailed analysis of what happens in everybody else's department. That may be a bit of a stretch to think that that happens and whatever, but maybe I'm wrong on this, but I'm assuming that this would be a – there's so much paper, there –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: (Inaudible.) But each individual minister, I assume, would have access to whatever analysis was done within their department in that realm of authority that the department has, correct?

MR. CHIPPETT: Correct.

THE COMMISSIONER: And that's –

MR. HISCOCK: And that's what I was wondering. It's not the assessments to other ministers, but assessments to their own ministers –

THE COMMISSIONER: (Inaudible.)

MR. HISCOCK: – when they were (inaudible) about this.

I'm going to try and move very quickly through the last couple of questions I have here.

I'd like to bring up Dr. Leroueil – and I'm sure I'm butchering that name. L-E-R-O-U-E-I-L. He was cited as an authority who's endorsed the safety of the North Spur.

Are you aware that he's suggested that he is not qualified in terms of the dynamic analysis of soil? Doesn't consider that an area of expertise of his?

THE COMMISSIONER: Okay, there's an exhibit that I saw, a letter in here somewhere. I think it's in binder 5, where that is referred to.

Is that the one you're referring to, Mister – do you have the exhibit number there?

MR. HISCOCK: I do not have the exhibit number here.

THE COMMISSIONER: Let me just see if I can find it right quick.

I can't put my finger on it right away either, but I know what you're speaking of, Mister –

MR. HISCOCK: You're – you are aware of that though I assume, is that correct, that he is not considered? No? Okay.

THE COMMISSIONER: I don't think he's totally without expertise, but I think he specifically qualified what he was an expert in in this – there was a couple of lines (inaudible) –

MR. HISCOCK: Yeah, I believe clay not soil, is his (inaudible).

MR. GOEBEL: I really don't know this person or know of his work, so I can't –

MR. HISCOCK: Okay.

MR. GOEBEL: – comment on whether or not he's an expert or – I don't know if his book was ever given to us or not – did anything about –

MR. SIMMONS: 02065.

MR. HISCOCK: 02065. Thank you very much.

THE COMMISSIONER: 02065. So that would be at tab 70 in book 5. (Inaudible), and if you look at page 2 of that exhibit ...

MR. HISCOCK: Yup, and if we – the first paragraph there: "As you know however, if I think I know well the behaviour of clays, sensitive clays in particular, my knowledge on the dynamic behaviour of" soil "and its analysis is rather limited. Moreover ..." and he goes on to say that he didn't receive the appendices that had a number of the – some of the detailed – more detailed information he would've needed in it.

THE COMMISSIONER: There's a letter to (inaudible).

UNIDENTIFIED SPEAKER: Mm-hmm.

MR. HISCOCK: In relation to recommendation 14.2, if we could go back to that document, and that's Exhibit 00051, binder 5, tab 83, exhibit 14.2.

I'm wondering, has your department undertaken an assessment of Nalcor's insurance coverage to make a determination if it has sufficient prudent insurance to meet that recommendation? That

was the recommendation that Nalcor have to carry insurance – "Nalcor will be required to have insurance for losses in the event of possible dam failure in place as per industry standards. In the event of any loss, Government will require Nalcor to respond to any losses resulting from its negligence to the full extent of its legal obligations."

I am wondering if it has that insurance in place and if you've – if your department has checked into it?

Recommendation 14.2, I believe it is.

DR. SQUIRES: Do you recall?

MR. CHIPPETT: There is an update in the table, I guess –

DR. SQUIRES: That's what I am trying to remember –

MR. CHIPPETT: – that Susan had produced –

DR. SQUIRES: – the recommendation table, what number in the exhibits was that? Do you recall?

MR. HISCOCK: The recommendation table? Is that –?

DR. SQUIRES: I can check for you –

MS. MORRY: Excuse me. That's at – Exhibit P-04229 – that's at tab 173 of binder 5 – or tab 73 of binder 5, excuse me.

MR. CHIPPETT: Justice.

DR. SQUIRES: So, it's – Justice was responsible for – were the leading department on this particular recommendation. It describes in the 2012 update – so, immediately after the project that they not require Nalcor accept the liability on a no-fault basis. And they continue claim in updates that there was no change to that.

MR. HISCOCK: Okay. Did they have the insurance in place that was recommended?

DR. SQUIRES: I can check for you. I am not aware of that, personally.

MR. HISCOCK: Okay. Thank you.

And I'll make this my last question, I think. If a member of our group, Mr. Vardy, submitted an ATIPPA request to Nalcor Energy February 25, and he asked these two questions: "Has any engineer provided an attestation as to the stability and safety of the North Spur, once the planned remediation works have been complete? If so, please identify the engineer(s) who have done so and provide copies of the signed attestations."

B: "Has any certificate of safety been provided by any" government "entity (whether municipal, provincial or national) or non-governmental agency (whether professional, international or other) with respect to the Muskrat Falls Generating Station, taking into account the North Spur and the planned remediation" work? "If so, please identify" who has "done so and provide copies of their signed attestations."

The reply received was that there was no responsive records. And that was in March of 2018.

Would you believe that there would be responsive records to that now? Are you able to answer those questions today whether any engineer has provided an attestation to – as to the stability and safety of the North Spur following remediation work or whether there's been – certificate of safety has been provided by any government or other professional body?

MR. CHIPPETT: So I'll start. I don't know about the safety certificate part of it, so I couldn't comment on that.

I'm aware of correspondence – I think some of it's in our packages – correspondence between the Oversight Committee and Nalcor with respect to North Spur. And in terms of some of the independent reviews that were completed – so I'm not sure if the attestations that, you know, you're referring to would be there in exactly the manner in which you're referring to them. But there's correspondence between the Oversight Committee and Nalcor in looking at the North Spur.

MR. HISCOCK: Yeah.

I mean, I'm looking for something a bit more than communications between the oversight and on the subject of the North Spur. You know, has an engineer been willing to sign off and say it's – you know, this is good work; I'm happy to sign off on it?

MR. GOEBEL: You know, generally when engineering companies look at a structure they – you know, they have a quasi-checklist that they check off. They look for, you know, physical things; they look at, you know, how staff are trained; they look at how things are managed; all these things are looked at, and they check them off.

If there's deficiencies, they note them in their report and say: these are deficiencies, or these are, you know, serious deficiencies, or these are things that can be corrected.

So, you know, when I see reports on the safety of the dam, I don't see a certificate in there that they're gonna hang on the wall, for instance. I don't see a – you know, I see a complete report that goes in detail through all the work that they did to ensure that everything is okay. And, occasionally, there's things that have to be corrected, and they are also noted – then noted in the report, and sometimes the companies, you know, follow a suggested timeline to get those corrected.

And that's generally the way –

MR. HISCOCK: But you're not aware of an independent engineer – an engineer who's willing to put their reputation on the line and say, this is safe –

MR. GOEBEL: Well, I think –

MR. HISCOCK: – in terms of, like, an attestation, a – you know, somebody independent saying yes, or a – you know, a governmental body or a professional organization, something along those lines.

MR. GOEBEL: Well, I think in an engineering report for, you know, any structure, they'll say it's satisfactory or not satisfactory. And if it's unsatisfactory they'll say why and what has to be done to correct it. If it's satisfactory, then that's what they'll say.

MR. HISCOCK: And everything has been satisfactory?

MR. GOEBEL: I don't know. I haven't seen it – an evaluation or safety report or any such report, at this point in time.

MR. HISCOCK: So, we can't provide any assurances on that front right now. We're not – we can't say that – there was no records a year ago, and as far as we know, there's nothing to confirm that –

MR. GOEBEL: I –

MR. HISCOCK: – somebody is going to sign off on (inaudible).

MR. GOEBEL: Sorry, I haven't seen any such report. No.

MR. HISCOCK: Thank you. Those are all my questions.

THE COMMISSIONER: Thank you. Edmund Martin.

MR. CONSTANTINE: No questions.

THE COMMISSIONER: Kathy Dunderdale is not here.

Former Provincial Government Officials.

MR. J. KING: No questions.

THE COMMISSIONER: Julia Mullaley/Charles Bown, not here.

Robert Thompson is not here.

Consumer Advocate.

MR. PEDDIGREW: Good afternoon. My name is Chris Peddigrew, and I represent the Consumer Advocate. Just a few questions for you. I won't have you long.

Just going back to the Joint Review Panel report for a moment and the process by which Cabinet was briefed or ministers were briefed. So, the Joint Review Panel report was released, and were there separate briefings for each minister in each department as far you're aware?

MR. CHIPPETT: I wouldn't be aware, specifically. I can speak, generally, to what normally happens. You know, for example, with me and my minister, there would be a briefing between, you know, myself, maybe some of our senior officials, with the minister to talk about the paper, generally, and then any particular matters that pertained to our department.

MR. PEDDIGREW: Your department. Okay.

MR. CHIPPETT: Obviously, a project like this there would be a large number of departments involved. But it would vary in terms of the level of detail that either one would, you know, would have. We would have a lot as Environment –

MR. PEDDIGREW: Right.

MR. CHIPPETT: – because we monitor, you know – there were 11 conditions, for example, from the generation project, and some of those had an awful large number of sub-components to them. So, there would have been a lot of briefing going on with our minister, and our minister would have, in fact, been one of the ministers to sign that Cabinet paper.

MR. PEDDIGREW: Okay. And then the – I guess, the briefing – or was there a separate briefing of Cabinet, collectively, or was it all just done at the ministerial level?

MR. CHIPPETT: So, normally, a paper that – like this one – would be routed to the Economic Policy Committee. Three policy committees of government, all with ministers on them. This being an environmental/economic issue, it would have went to Economic Policy. That's a group of (inaudible) anywhere from six to eight ministers, sometimes appointed by the premier, and then there would be a full discussion in Cabinet.

MR. PEDDIGREW: And who briefs the Economic Policy Committee? Would you have been involved in that briefing?

MR. CHIPPETT: I don't think I would've been because it would've been before my time as the – 'cause I was in Cabinet Secretariat for a while. The deputy of the department whose minister signed, on occasion, briefs EPC or Cabinet on –

MR. PEDDIGREW: Okay, and so it would've –

MR. CHIPPETT: – (inaudible) subject matter is.

MR. PEDDIGREW: It would've been an EPC briefing, as opposed to a briefing of the entire Cabinet?

MR. CHIPPETT: Or both.

MR. PEDDIGREW: Or both.

MR. CHIPPETT: You got to go through –

MR. PEDDIGREW: (Inaudible) I'm sorry.

MR. CHIPPETT: – you got to go to EPC to get to Cabinet.

MR. PEDDIGREW: Okay.

MR. CHIPPETT: So could've been both.

MR. PEDDIGREW: Right. You're not speaking from – you're speaking of normal process, as opposed to –

MR. CHIPPETT: Right, I'm speaking generally –

MR. PEDDIGREW: – (inaudible).

MR. CHIPPETT: – I don't know exactly. I know –

MR. PEDDIGREW: Exactly how it happened.

MR. CHIPPETT: – in the records there is a presentation, but I don't know who delivered it or –

MR. PEDDIGREW: Okay.

MR. CHIPPETT: – (inaudible).

MR. PEDDIGREW: Just sort of changing topics here now. The – you're probably aware that Astaldi had – when they were constructing – or beginning their work, they constructed an ICS or a dome structure to attempt to carry out work during the winter. It was unsuccessful, ultimately. And I imagine there was a large

quantity of steel, concrete that had to be then removed from site. Where – do you know where that ended up and were there any restrictions on where it was put or dumped or disposed of pursuant to environmental regulations?

MR. CHIPPETT: I have no idea.

MR. PEDDIGREW: No idea, okay.

MR. CHIPPETT: No.

MR. PEDDIGREW: Do you know whose responsibility it would be? Would that be Nalcor's responsibility as the project proponent?

MR. CHIPPETT: It would be, in terms of the ultimate disposal. I mean, if they were disposing of it, I think most landfills in Newfoundland and Labrador can accept construction, demolition material. I mean, there could've been a responsibility for our Waste Management folks – that's one of the other items we regulate in the department – but I'm not aware that any of those discussions –

MR. PEDDIGREW: Okay.

MR. CHIPPETT: – occurred. But we could check, for sure.

MR. PEDDIGREW: Okay.

Again, changing topics. The transmission line on the Island, just visually from the part you can see from the highway, it's quite a wide swath of land where the trees were removed. Is that the way it will remain? Will the, I guess, swath of land remain that wide? Or is there a plan for any sort of remediation or reforestation?

MR. CHIPPETT: I'm not really sure. I mean, normally there's – you know, just to back it up a little bit from that, one of the things that Nalcor was required to do in constructing the transmission line was to do a plan in terms of commissioning, decommissioning of roads. So plans for some roads to come out and some to stay in. Sometimes the right-of-way, as I understand it, is used as a mode of transportation. And, of course, there's the issue of vegetation control to allow that to happen. So I'm not sure that it's going to get a lot smaller, but I don't know for sure.

MR. PEDDIGREW: You're not sure. Okay.

The wood or the timber that was harvested from making the transmission line on the Island, do you know where that wood ended up? Did it end up with anywhere like Corner Brook Pulp and Paper or any other saw mills or is it just discarded?

MR. CHIPPETT: I'm not aware.

MR. PEDDIGREW: No. Okay.

And finally my last question just relates to Gros Morne National Park. So, I'm just wondering if the environmental regulations that were applicable, I imagine, within the park that brought in extra requirements to the federal government. Am I correct in that?

DR. SQUIRES: Say that again? It brought in ...?

MR. PEDDIGREW: You know, I imagine all the way through Labrador down, then down through most of the Island, provincial laws applied. Was there any additional requirements given that it was a Parks Canada national park, Gros Morne, as the result of some of the transmission line going through the park?

DR. SQUIRES: There was nothing specific in the conditions of release that pertained to the park by itself. But the federal government would've participated in the environmental assessment process for that project as well. And been aware and commented on the components that would've been in the park – are in the park.

MR. PEDDIGREW: Okay. But in terms of the legislation that applied, was it the same as for the rest of – everything outside of Gros Morne or was it that were there –

DR. SQUIRES: Yes. The environmental assessment process is the same regardless of what piece of land you are on in the province. It applies to private land, Crown land –

MR. PEDDIGREW: National parks.

THE COMMISSIONER: – national parks –

MR. PEDDIGREW: Okay.

DR. SQUIRES: – everywhere. Yeah.

MR. PEDDIGREW: Okay. Okay. Those are my questions. Thank you.

THE COMMISSIONER: Thank you. All right, Innu Nation?

MS. BROWN: Good afternoon, Commissioner. Good afternoon, panelists. My name is Julia Brown, and I'm counsel for Innu Nation.

I have a few questions this afternoon and they will be directed at Mr. Goebel. But, Mr. Goebel, if there are questions that you think the other panelists can better address, please feel free to direct my questions to them.

My questions relate to the IEAC process and the mitigation recommendations specifically. Madam Clerk, if we could bring up P-01699?

THE COMMISSIONER: 01699.

MS. BROWN: And it will come up on your screen in a moment.

THE COMMISSIONER: It's actually in tab 69 of your book 2.

MS. BROWN: Thank you, Commissioner.

DR. SQUIRES: (Inaudible)

UNIDENTIFIED MALE SPEAKER: You take (inaudible).

MR. GOEBEL: Okay. I have it here, yes.

MS. BROWN: Okay. Thank you.

Looking at the first page here, we see that this is a report from the independent expert committee to the IEAC. And it is outlining the recommendations of that committee. Are you familiar with this document, Mr. Goebel?

MR. GOEBEL: Yes, I am.

MS. BROWN: Would you have been part of the conversations that preceded the production of this document? And by that, I mean were you involved in any way in that expert committee?

MR. GOEBEL: No. The IEAC, as we talked about earlier, had a two-tier structure, if I can describe it that way. There is the Oversight Committee comprised of representatives of the Indigenous groups, the provincial government, the federal government, Nalcor and the municipalities. There was a subcommittee of scientists who had the – you know, they were the real scientists who looked at all the information.

Those scientists were selected by consensus as a group. There were – many scientists' names were put forward. When we had the Oversight Committee, we looked at a lot of scientists and we ended up selecting a group of six scientists that would be on that subcommittee.

There was a fallback position that if we couldn't reach consensus, that each of the Oversight Committee members could nominate one scientist, except Nalcor could not nominate a scientist. But it didn't come to that but it almost came to that because, in fact, the scientists kind of are aligned with sort of their sponsoring group that nominated them in the first place.

So there were six, what I call, western scientists. In addition to that, there were three Indigenous experts who were placed into that group, but that was not by consensus. Each Indigenous group placed their own Indigenous knowledge expert into that committee. The rest of – nobody had a say in that.

MS. BROWN: Okay. And so you would have been involved in the conversations around the appointing of the scientists –

MR. GOEBEL: Yes.

MS. BROWN: – but you were not part of the scientist conversation.

MR. GOEBEL: No, no.

Once the committee got going they met on their own. The chair ran those meetings. They worked amongst themselves through meetings, through teleconference calls. We got updates from the chair as to what was going on and we were passed information from the chair what was going, but we never participated ever in their meetings.

In fact, we only ever had two occasions to meet with them. There was a meeting in Labrador which, unfortunately, I couldn't stay for it. The scientists – it was just basically informal meeting that took place. It was – it doesn't matter when it was, I believe it was December, but before the – once the committee had finished its recommendations, we had an opportunity, through a teleconference call, to hear the opinion of each of the scientists and to talk about why they made the recommendations the way that they did.

MS. BROWN: Okay.

And so your familiarity with the document would've been from receiving and then reviewing it and speaking with the scientists –

MR. GOEBEL: Yeah.

MS. BROWN: – about the recommendations –

MR. GOEBEL: Yeah.

MS. BROWN: – contained in the document. Is that fair?

MR. GOEBEL: That is fair.

MS. BROWN: Okay.

Okay, if we could go to page 14 of this document. So we have here at page 14 the recommendations of the committee. And what I would like to do is just go through them at a very high level.

We're not going to go through all of these paragraphs, but if we could scroll down to Option 1, we see that these are the options, as I understand it, that the scientists considered and then drew their conclusions about which option they thought was the best recommendation to go forward. So Option 1 is: "No further action required for mitigation," Option 2 is "Full clearing of soils and vegetation."

And I would note that in the second – pardon me, the third paragraph – or sentence there it says that the IEC notes "that the very aggressive schedule that would be needed to achieve this objective could result in undesired side-effects, such as possible stimulation of methylmercury

production.” And I imagine that would be something that was discussed amongst the scientists and maybe we can get to that later.

MR. GOEBEL: Sure.

MS. BROWN: And I imagine you would’ve been privy to some of those conversations after the fact. Is that fair to say, as you were discussing this document?

MR. GOEBEL: Well, I was privy to all the documents that were generated as a result of their discussions, but I never had their discussions, you know. They produced documents and –

MS. BROWN: Right, but you would’ve been –

MR. GOEBEL: – and one like this, but –

MS. BROWN: You would’ve been made aware of the rationale?

MR. GOEBEL: Oh yes.

MS. BROWN: Okay.

Okay, and then Option 3 we see there is: “Targeted removal of soils and vegetation” If we continue on to page 15, we see Option 4 is: “Capping of wetlands” and Option 5 is a combination of 3 and 4, so some soil and vegetation removal and capping of the wetlands.

And then if we just scroll down to the IEC Recommendation on that same page, we see here that the members of this committee did not come to one recommendation. They – there was divergence between the members of this committee about what recommendation was the recommendation to go forward on.

And so we can see here it says: “Six IEC members recommended some sort of pre-impoundment mitigation, with one recommending wetland capping only... five recommending both wetland capping and targeted soil removal” and three members recommended no further action on mitigation. Do you see that?

MR. GOEBEL: Yes.

MS. BROWN: Okay.

And then it also says that each member provided a justification for their decision.

MR. GOEBEL: Yes.

MS. BROWN: And so I’d like to take us to that document now.

MR. GOEBEL: Okay.

MS. BROWN: So that would be 10701 [sp. 01701], Madam Clerk.

And it may be in your binder but I’m afraid I don’t have your tab numbers handy. So we can just go with the screen, if that is acceptable.

THE COMMISSIONER: It’s tab 71.

MS. BROWN: Thank you, Commissioner.

THE COMMISSIONER: It’s in the book.

MR. GOEBEL: Yeah, got it.

MS. BROWN: Great.

So looking at this first page we see that these are the opinions that are mentioned in that report that we just looked at.

MR. GOEBEL: Correct.

MS. BROWN: And what I would like to do is – so what I would like to do is for us to go through these again at a high level. We’re not going to be going through this document in any detail, but we have the summaries here of the opinions of the IEC panel members. And what I would like us to do is link up the recommendation that was made with the individual who made it.

MR. GOEBEL: Okay.

MS. BROWN: And would you have reviewed this document around the time that it was created?

MR. GOEBEL: Yes.

MS. BROWN: Okay.

And it – from my understanding of your answer previously, is that you would have had conversations about these opinions with the scientists and the experts themselves after you received this?

MR. GOEBEL: There was – yes, I indicated there was a teleconference call where the – all the scientists basically went through their recommendations with all the members of the Oversight Committee.

MS. BROWN: Okay.

And so what I would like to do – if we can scroll down to the first summary here, we have the minority opinion of Dr. Maureen Baikie. And her recommendation is: “No further action for mitigation.”

Are you able to tell us, Mr. Goebel, whether Dr. Baikie was one of the scientists or one of the experts on the panel?

MR. GOEBEL: Yes, she was one of the scientists.

MS. BROWN: One of the scientists.

MR. GOEBEL: And her role is largely as a health professional more so than others. And she – that’s why her note is largely about the impacts in terms of peoples’ health and exposure. And she felt that the best way to manage the methylmercury problem was through what ended up being the recommendation for health management.

MS. BROWN: Okay.

And we can also see – if you’ll look there at the second sentence of hers, she says – there’s a “Note that the unintended consequences (side-effects) of the soil removal options are currently not well characterized” So that seems to have been something that she incorporated in her consideration –

MR. GOEBEL: Yes.

MS. BROWN: – for, you know, to go on her opinion here.

Okay, and if we can scroll down to the next summary here, we have a second minority opinion. This is Jim McCarthy. Can you tell us what role he played on the committee?

MR. GOEBEL: He was a scientist.

MS. BROWN: Okay.

MR. GOEBEL: He was the scientist that was originally nominated by myself. But, like I say, all the scientists at the end of it were grouped together and there was trading around and we basically all agreed to this group of six, so ...

MS. BROWN: Okay.

And we see that his recommendation is also for no further action.

MR. GOEBEL: Correct.

MS. BROWN: Okay. And if we can scroll down to the next page, please, we have here the minority opinion of David Lean. Can you tell us what his role was on the committee?

MR. GOEBEL: Again, he was a scientist. He was – if I recall correctly, he was from another province; he was a professor there and a consultant at the same time. Yeah, so that’s –

MS. BROWN: Okay.

MR. GOEBEL: I don’t know much about him directly.

MS. BROWN: And do you recall which party nominated him for inclusion?

MR. GOEBEL: Oh, I was afraid you were going to ask me that.

MS. BROWN: That’s okay if you don’t remember.

MR. GOEBEL: I should know that. And, in fact, somewhere in the notes I came across this great org chart that actually showed that with colours and –

MS. BROWN: I didn’t see the names included on that org chart, but I might be thinking of another one.

MR. CHIPPETT: So I think NunatuKavut nominated Dr. Lean, or David Lean.

MS. BROWN: Okay.

MR. CHIPPETT: Is that correct?

MR. GOEBEL: Yeah, yeah.

MR. CHIPPETT: I think so.

MR. GOEBEL: Yeah.

MS. BROWN: I'm sure my friend will correct us if we have that wrong.

MR. GOEBEL: If we go by process of elimination, we'll figure it out, but –

MS. BROWN: Okay.

MR. GOEBEL: – yeah.

MS. BROWN: So we think possibly NunatuKavut. Okay.

And we see that David Lean has suggested “No further action for mitigation” as well. And if we can scroll down to the next page, we have here – I think this is the final minority opinion. This is the opinion of Wolfgang Jansen. What was his role on the committee?

MR. GOEBEL: Also a scientist.

MS. BROWN: Okay.

And we see that his recommendation is for capping of the wetlands. And if we can scroll down to the next page, we have the majority opinion; we've gotten to the majority.

So here we have Stewart Michelin. And can you tell us what his role was on the committee?

MR. GOEBEL: He was an Indigenous expert.

MS. BROWN: Okay.

And his suggestion is for a combination of Options 3 and 4.

MR. GOEBEL: Yes.

MS. BROWN: And if we can continue scrolling – thank you – we have – the next majority opinion is the – opinion – this is Etienne Pone. What was his role?

MR. GOEBEL: I think he was an Indigenous expert.

MS. BROWN: Okay.

And his recommendation is, again, for the combination of Options 3 and 4.

If we can continue – thank you – we have the majority opinion of Jane Kirk. Can you tell us what her role was?

MR. GOEBEL: Jane Kirk was a scientist, and I know she was nominated by the NG government.

MS. BROWN: Okay, thank you.

And her recommendation is, similarly, for the combination of Options 3 and 4.

MR. GOEBEL: That's correct.

MS. BROWN: Okay.

And if we can go to the next expert, we have David Wolfrey. And do you recall his role on the committee?

MR. GOEBEL: Yes, he was an Indigenous expert and I – there's a sentence at the end which I've always been troubled by, and that was that his opinion was an expression of what he was expected to do by his government as opposed to his own opinion.

MS. BROWN: Well, he's not here to speak for himself but, yeah, I see that you're speaking of the second sentence there.

MR. GOEBEL: Put it in writing.

MS. BROWN: Yeah, okay. And his recommendation was for three and four, is that right?

MR. GOEBEL: Yes.

MS. BROWN: Those two options? Okay.

And are we at the end of the document here? Is there – have we missed another ...?

MR. GOEBEL: No, there's one more.

MS. BROWN: There's one more. Okay, thank you.

Okay and so here we have Trevor Bell. And do you recall his role?

MR. GOEBEL: Yes, he was a professor at Memorial University and he is a scientist, western scientist. But in terms of this discussion here, he did a very unusual thing when we had the verbal discussion and I'd like to talk about that because it's different then this opinion.

When we all had that meeting, people basically went through what was written here, but Dr. Bell said, you know, I would like to talk about something different that has been a concern to all the committee members, and that is about the soil removal. And he said that there shouldn't be a concern because that soil will be removed from the drainage area.

And I was shocked when I heard that. And I quickly looked into the SNC soil removal report and I couldn't find anything in the plan that would say that the soil would be removed from the drainage area.

MS. BROWN: And by that, do you mean the watershed?

MR. GOEBEL: The entire watershed, yes. And I – you know, I didn't have a chance to question him on that directly, but I did send him an email later.

And, you know, now Trevor Bell, Dr. Bell, is a geography professor. He's not an engineer or a biological scientist, he's a geography professor and, by definition, he should know exactly what a drainage basin is.

The SNC report that he quoted from is silent on that. It simply says that the material will be pushed above the high-water mark to the 42-metre level or transported no more than three kilometres. And so I wrote him an email and I said, you know, what – where did this come

from? And then he said he misspoke but, you know, the damage was done.

This email came after the recommendations were out and everybody might have been influenced by this notion that this material would be removed from the watershed entirely. But, you know, if it's a real concern that there is a hazard to this material and then, in his mind, he believes it was to be taken out of the watershed but it wasn't, then it really indicates to me that there is a concern for that material –

MS. BROWN: Do you know –

MR. GOEBEL: – in the watershed.

MS. BROWN: Do you know whether those emails are in the record before this Commission?

MR. GOEBEL: They should be.

MS. BROWN: Okay. I haven't seen those, but that's – that would be something for us to look for potentially.

And so was it your impression that his opinion might be based on a mistaken premise?

MR. GOEBEL: He was very wrong about saying that the material would be removed from the watershed.

MS. BROWN: Okay.

All right, well, we can look for that email exchange. Thank you.

And so having gone through these summaries of the opinions, would you agree with me that four of the six scientists on the IEC did not endorse soil removal and vegetation removal?

MR. GOEBEL: That's correct, four of the six. And let's be clear, some people speak of all nine members as scientists, but when you say the six the scientists, you're referring to the western scientists –

MS. BROWN: I'm referring to the –

MR. GOEBEL: – as opposed to the –

MS. BROWN: – western scientists. That’s right.

MR. GOEBEL: – perfectly –

MS. BROWN: Rather than the experts.

MR. GOEBEL: Yeah.

MS. BROWN: Yes, the Indigenous knowledge holders.

Okay.

And so would it also be fair to say that all of the members of this committee, including the Indigenous knowledge holders and experts, none of them endorsed full soil and vegetation removal? So that was Option 2, none of them chose Option 2.

MR. GOEBEL: No.

MS. BROWN: Is that right?

MR. GOEBEL: That’s correct.

MS. BROWN: Okay.

Now, I would like to look a little bit more closely at just one of the opinions here.

If we can go to page 5? We have here the summary of Wolfgang Jansen’s opinion.

MR. GOEBEL: Yeah.

MS. BROWN: And here, Dr. Jansen explains his reservations about soil removal and explains why he endorses wetland capping. What I will do is read a portion of his summary to you, and you can let me know if it aligns with your recollection of the issues that were discussed.

So Dr. Jansen says here: “I am concerned that pre-Project mitigation options involving the large scale removal of soils in the reservoir area will have side effects that may partially or fully offset the expected decrease in the amount of MeHg produced. Soil disturbance on a much smaller scale than proposed in options 2, 3, and 5 has been shown to increase soil methylation potential and MeHg concentration in fish ... There are just too many unknowns in how

exactly the soil clearing operation will be done to have confidence in a desired outcome.”

Do you recall the scientists, including Dr. Jansen, discussing concerns about the unknowns relating to soil removal?

MR. GOEBEL: It was discussed frequently. I don’t recall the specific day or time, but it’s – this is a well-known issue that was brought up by the scientists, and it was talked about at, you know, other levels as well.

MS. BROWN: Okay. And would it be fair to say – and maybe it would – I’ll take you to the document. So if we can go back to 01699, Madam Clerk? Page 14 at the top.

THE COMMISSIONER: So, again, that’s tab 69 in the same book.

MS. BROWN: Thank you, Commissioner.

So if we look here to Option 2 – and if you can scroll down, Madam Clerk, to Option 2 there. Thank you.

We see here the note that the IEC made that the “aggressive schedule ... could result in undesired side-effects, such as possible stimulation of methylmercury production.” And – I’m sorry, I don’t have your tab number again although the Commissioner just gave it to us. It might have been 62?

MR. GOEBEL: (Inaudible.)

THE COMMISSIONER: Sixty-nine, actually.

MS. BROWN: Sixty-nine, oh, sorry. So I’m just looking at Option 2 there, the last sentence. And the reason I’m taking you back here is to give you a basis, refresh your memory, to agree that the – that scientists other than Dr. Jansen were concerned about possible undesired side effects relating to soil removal. Is that fair to say?

MR. GOEBEL: Yes.

MS. BROWN: And it made its way into the report.

MR. GOEBEL: Mm-hmm.

MS. BROWN: Okay.

I'd like to turn now briefly to Innu Nation's participation in the IEAC and your recollection relating to that.

MR. GOEBEL: Okay.

MS. BROWN: Is it your understanding that Innu Nation opposed soil removal? I can take you to the documents if that would be –

MR. GOEBEL: Yes, of course. Yes.

MS. BROWN: – helpful. That's your understanding?

MR. GOEBEL: Yes.

MS. BROWN: Okay. I'll take you to document P-01702. And this document will provide some context around the issue.

THE COMMISSIONER: Tab 74, same book.

MS. BROWN: Thank you, Commissioner.

So if we look at the first page here, we see that this is the IEAC chair's report to the ministry on the work of the IEAC.

MR. GOEBEL: Correct.

MS. BROWN: You're familiar with this document?

MR. GOEBEL: Yes, I am.

MS. BROWN: Would you have reviewed it sometime around the time it was sent to the ministry?

MR. GOEBEL: Yes, in fact, I reviewed earlier drafts of it, being an Oversight Committee member.

MS. BROWN: Right.

MR. GOEBEL: These recommendations and the letter and the tone of the letter were discussed by the Oversight Committee –

MS. BROWN: Of course.

MR. GOEBEL: – before it was sent so I've seen drafts of this; I've seen the final product, yes.

MS. BROWN: And so were you involved in drafting and putting this letter together?

MR. GOEBEL: I had a few comments that I inserted at one point in time, yes.

MS. BROWN: Okay.

If we can go to page 2 of this document. Mitigation – or, pardon me – “**Recommendation #4: Mitigation of methylmercury impacts.**” We see here that it states, “The IEAC was not able to achieve consensus with respect to mitigation of methylmercury impacts.” The paragraph under says, “Innu Nation voted for the option of capping wetlands only.” And it also states that the member opinions are attached.

So I'd like to take you page 14. Here we have the Innu Nation's opinion on this recommendation. And if –

MR. GOEBEL: Yes.

MS. BROWN: Thank you.

And if we go to page 15, we see that the first sentence here, under the heading Risks of Increasing Methylation by Removing Soil and Vegetation, it states: “IEC experts have stated there are risks and uncertainty involved in removing any soil; it could result in an increase of mercury methylation in the reservoir.” Do you see that?

MR. GOEBEL: Yes.

MS. BROWN: And would you agree that this position, the position that not remove – pardon me – the position for not removing soil and vegetation was aligned with the recommendation of the majority of the scientists?

MR. GOEBEL: Yes.

MS. BROWN: Is it also your understanding based on this that – and what we've just read – that Innu Nation supported wetland capping?

MR. GOEBEL: Yes.

MS. BROWN: Because that's not something that we have discussed in any detail this morning, could you provide us with a very high-level, brief summary of what the basis for the wetland capping suggestion was, what your understanding of that suggestion was?

MR. GOEBEL: Yes. The idea behind the wetland capping is that the wetlands are a higher percentage source of organics and carbon. Methylation, once it occurs under the full impoundment, would introduce proportionally more methylmercury from a wetland area because of the rich organic soils that are in the wetlands, in the organic material. So the idea was very simple: it's simply put a cap on it, which would be material, you know, fill – a fine sand or perhaps even gravel or something so that there would be a separation between that material and the water that's flowing above it. And that would then simply prevent the methylmercury that's produced in that soil from getting into the river.

The idea was tested using the Calder model and it was put into Calder model, and there was predictions made as to how effective that would be. The effectiveness was very, very low, partly because the amount of wetland that could be capped in the reservoir is actually not very much. It was around 1 or 2 per cent reduction in methylmercury impact at the end of the day.

However, Dr. Jansen also pointed out that there's a qualitative aspect to this, and that is that in the long term, this has a lasting benefit that goes beyond the initial flooding and impoundment. So, there's sort of an unquantified benefit in terms of methylmercury reduction as well as the quantified benefit.

MS. BROWN: Okay.

MR. GOEBEL: I hope that wasn't too long.

MS. BROWN: No, no, thank you. That was very helpful.

And those are my questions. Thank you very much.

MR. GOEBEL: You're welcome.

THE COMMISSIONER: I think we'll take our 10 minutes here, now, and we'll come back.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

NunatuKavut Community Council.

MR. COOKE: Hi.

My name is Jason Cooke, I'm the lawyer for NunatuKavut Community Council.

Several areas have been covered by other counsels, so I'm not – I'm going to try not to repeat those but I do have some questions for you. And there will be some questions which may be focused on a particular panel member, but for the others, don't feel shy about jumping in if you think you have some relevant evidence to share. And really, covering – to start, about the response to the recommendations for the Joint Review Panel and then I will also have some questions on the IEAC and particularly around the issues of delay in terms of implementing recommendations.

And I'll just let you know now that based on the evidence we've heard from now, I don't think the Commissioner has really gotten an adequate explanation for the delay, so I – if you could give some further elaboration on that when we get there that would be appreciated.

So, just to start, I understand in terms of the – preparing the responses for the JRP, Mr. Goebel, I think you indicated in your interview that you were involved in that process, correct?

MR. GOEBEL: I was involved in that many years ago at an initial stage, as my role was basically, I guess, an oversight role. The Environmental Assessment Division – there was a director of Environmental Assessment and there were staff, they did the actual legwork and the footwork.

MR. COOKE: Okay.

And you've given evidence on, I guess, the process of the government's response to the JRP – or responses, I should say. But – and so just let me know if I've got it right, and kind of at the end I have some questions – the end of the process that is.

So I took it that the Department of Environment was tasked with assembling the responses from – whether within the department or from other departments. Is that correct?

MR. GOEBEL: Yeah.

DR. SQUIRES: Yeah, that's correct, according to some of the department documents I've seen, letters went out from the deputy, at the time, to deputies of multiple departments asking for a response.

MR. COOKE: Okay.

So once the response document was put together, at least internally at the Department of Environment, did the minister of Environment sign off on it at that point?

DR. SQUIRES: (Inaudible.)

MR. CHIPPETT: So we know from correspondence in the file that Environment coordinated two – what I would call, kind of, two tranches of response. One is the one you just referred to. A second one was then to recirculate, if you will, the initial responses from the lead departments to other departments that would be less engaged but still might have a pressure point, I guess, with their mandate.

And then after that there's reference in correspondence to a deputy minister steering committee reviewing everybody's information. But at the end of the day, the Cabinet paper was signed by, I think, two ministers: the minister of Environment and the minister of Natural Resources.

DR. SQUIRES: I'm not sure who signed the Cabinet paper, but certainly it was likely – potentially the minister for Intergovernmental Affairs at the time, because the agreement for the Joint Review Panel –

UNIDENTIFIED MALE SPEAKER: Right.

DR. SQUIRES: – was with the minister of Environment and Conservation and with the minister of Intergovernmental Affairs for the province. And that was with the minister of Environment – the federal minister of Environment.

MR. COOKE: Okay.

So who – I guess, who had the final word on the responses? Was it Cabinet?

MR. CHIPPETT: In terms of what ended up in the actual response? Yes, that went to Cabinet.

MR. COOKE: Okay.

And in terms of the post-response, I think the evidence – I understood this morning – is that in terms of the monitoring or implementation, that that was left to Labrador Affairs. Am I correct on that?

MR. CHIPPETT: So Labrador Affairs was directed in 2012 and then again in 2014 to update the monitoring sheet that is in evidence, and Dr. Squires did a most recent update in the last few days. The other point I had made this morning was the recommendations around environmental issues, monitoring plans and so on, all of those, I think, ended up in the conditions of release for the generation project. So they were done the same time.

MR. COOKE: Okay. And I guess my question on that because it seemed to me or I – does Labrador Affairs have, kind of, the in-house expertise to be the effective monitor of this? I'm not saying that they aren't. I just – I don't know.

MR. CHIPPETT: So I think it was, you know, more of a policy role or exercise – a coordination role. Labrador Affairs was not evaluating, for example, whether certain conditions were met or had progressed. They were obtaining those updates from the lead departments and populating the update spreadsheet that way.

MR. COOKE: Okay. And I'm – oh, sorry, Dr. Squires, go ahead.

DR. SQUIRES: I'll just add one more thing to that.

MR. COOKE: Sure.

DR. SQUIRES: You know, a fair number of these recommendations will link directly to the 11 conditions that were ordered by government for release of the project. Anything – those – some of those conditions – a fair number of them – were comprehensive plans and monitoring follow-up programs that would've – the Environmental Assessment Division would've been responsible for reviewing those for regulatory compliance and adequacy. And their role in that situation, much like the response, would've been seeking expert advice from other departments that had relevance, including federal departments, and making sure that that was technically sound as it could be.

So while Labrador Affairs Secretariat – certainly from the documents we have read – perform the role much like Jamie has described, that wasn't a role that would've spoke to the adequacy of that piece of work being done.

MR. COOKE: Okay. So that would've been left to which department would have the requisite expertise –

DR. SQUIRES: Yeah, correct.

MR. COOKE: – such as the Department of Environment or Natural Resources or Finance or –?

DR. SQUIRES: Right, the table reflects a dozen lead departments and it would've been those departments who could've been the final authority on whether or not it was adequately addressed.

MR. COOKE: I have a few questions about the table, but before that, the JRP report itself, which is at Exhibit 00041, and that will be at – in tab 82 of binder 5. And I take it each of you are familiar with the JRP report. Or are you familiar with the JRP report? Maybe start there.

MR. CHIPPETT: Yes, I am, yeah.

MR. COOKE: Yeah.

And Mr. Goebel, I assume you would've reviewed it at the time –

MR. GOEBEL: Yes.

MR. COOKE: – as part of your role?

MR. GOEBEL: Yeah.

MR. COOKE: And there's just one place I'd like to take you and it's at page 202. And it's in that box right at the top of page 202. And it's discussing NunatuKavut, which they describe as – in the document as Inuit-Metis. And it says about halfway down, "The Panel recognizes that additional information could be forthcoming during government consultations." And they base that statement on the fact that – in the prior sentence, that there's, "uncertainties regarding the extent and locations of current land and resource use by" – NunatuKavut. And you see that?

MR. GOEBEL: Yes.

MR. COOKE: Yeah.

So my question is, it seems from reading this that the panel is assuming that there would be further government consultations forthcoming. And so my question to each of you is, are you aware that any government consultations to NunatuKavut occurred after the issuance of the JRP report?

DR. SQUIRES: The Indigenous Affairs department – the department responsible for Indigenous affairs – drafted consultation guidelines. That's a typical process after the release of environmental assessment. So when we get to the release of a project and we have various permits or conditions of release, they will draft guidelines that set out how the government will consult with various Indigenous groups on those components. So whether it permanently requires a 30-day review, 60-day review, whatnot.

I'm aware there were guidelines for this project and we would still be following them. So if something came in for – as a condition of release of aquatics environmental effects monitoring plan, for example, we would've had a – Nalcor would've had a requirement to consult and then

we would have the requirement to ensure the duty of consult was fulfilled. So I'm aware of that level of consultation. I can't speak to any other pieces, but that's certainly the routine process in environmental assessment, and the one that certainly sounds like it was followed for the conditions of release for this project.

MR. COOKE: Yeah.

And when you say we in that, you mean we in the general Government of Newfoundland and Labrador, or –

DR. SQUIRES: I mean –

MR. COOKE: – or –

DR. SQUIRES: – the Environmental Assessment division, and how it –

MR. COOKE: Yeah.

DR. SQUIRES: – links to Aboriginal consultation.

MR. COOKE: Okay. So the Environmental Assessment division has to satisfy itself that that consultation is adequate.

DR. SQUIRES: We consult with the staff at the – Indigenous Affairs, and if they – if – and we work with them in Justice if – so if we get – if they can review information, either the consultation process or the questions that have come in from the particular Indigenous group, and if they are satisfied that we've met the duty to consult then we can move on to the next step.

MR. COOKE: Okay, so that was really my question is, is who – which body is it that actually decides on the adequacy?

DR. SQUIRES: Environmental – to my – in my experience, not – I can't speak to this project 'cause I wasn't here at that time, but in my experience in projects that I've been involved in to date, we would not move ahead to determine something is ready to move, unless Indigenous Affairs says we've met the duty to consult.

MR. COOKE: Yeah.

Now going to the response to the recommendations, and – why don't we take a look at that matrix that you prepared, Dr. Squires, which is Exhibit 04229.

THE COMMISSIONER: So that's at tab 20 – I'm sorry, tab 73, book 5, so the same book – 73.

MR. COOKE: And if I understood the evidence from this morning correctly, that this was a document that was an existing document, and – when was it originally created, do you know?

DR. SQUIRES: You can see evidence of a very similar document even before the project release occurred –

MR. COOKE: Mmm.

DR. SQUIRES: – identifying the recommendations and who likely – who would be directed to, you know, the province versus Nalcor for example – and the lead department and support departments, and early versions of, you know, do we accept, do we accept the intent, whatnot. You see a – I've seen a version very similar to this in October of 2012, where you start – now the project's been released, you start to look at status updates of the recommendations.

So who exactly wrote that, I couldn't tell you who penned the first version –

MR. COOKE: Sure.

DR. SQUIRES: – and it was certainly, seemingly meant to be an internal document to kind of keep – provide a snapshot of where certain recommendations were.

MR. COOKE: Yeah, to check where the status was. Okay.

And I think you gave evidence that you – I think Dr. Squires, that you yourself actually were the latest author, or the updater of this, and I think you may have mentioned even last week you had updated it.

DR. SQUIRES: Yes, that's correct. So it was last updated just within the last few weeks; so we went through a process of approaching – first I updated it, just based on the Environment

branch, the staff that I work with, and then we did up something broader. We were asked to do something broader, where we approached the government departments that would be represented as lead, and support departments on the table and ask them if they could provide some additional updates that we could add.

MR. COOKE: And was that precipitated by the fact that you knew you were coming to the Inquiry and that this evidence would be necessary and requested?

DR. SQUIRES: From my understanding, it was a request of the Commission.

MR. COOKE: Yes, indeed, yes.

So let me ask you this before we get into the document itself. When – do you have any idea when it was last updated prior to you doing it very recently?

DR. SQUIRES: Certainly.

So, I was asked to provide an update on the status of the recommendations of the Joint Review Panel. Staff at our – in the environmental assessment division were aware of this table. The last copy they had was from May of 2014. That was from the Labrador Affairs Secretariat, so we went back to them and asked them if they had any further updates to provide, and this is the last version that they had and we started with that as a starting point.

MR. COOKE: Okay. So, from May 2014 then, to June 2019 – five years – your understanding is that this was not updated during that period.

DR. SQUIRES: At least not by the Labrador Affairs Secretariat.

MR. COOKE: Okay.

DR. SQUIRES: They didn't have a copy.

Now –

MR. COOKE: And you're not aware anyone else did?

DR. SQUIRES: No.

MR. COOKE: Okay.

DR. SQUIRES: Now whether they had their own internal tracking mechanisms for the statuses of recommendations, I'm not aware.

MR. COOKE: Let's take a look at the document itself, and can I take you to page 4. Okay. And, I believe it's 6.2, Environmental Flow Standards, and just starting with the, I guess, the column regarding what the response was in the – to the JRP. And in this one it says that the NL government accepts the intent of the recommendation, and then further that the federal government will work with the appropriate parties as required.

And, I think, maybe Dr. Squires you'd given evidence on the different accept; I don't know if reject is the word but –

DR. SQUIRES: Do not accept.

MR. COOKE: Do not accept, yes. I guess that's a –

DR. SQUIRES: Or doesn't –

MR. COOKE: – nice way of saying reject or accepting the intent. And what I took your evidence – and correct me if I'm wrong – is that when they accept intent, they're saying the idea behind it is a good idea, but perhaps the way to get there, we think, might be a bit different than what the JRP thought. Is that a fair characterization?

DR. SQUIRES: That is fair.

MR. COOKE: Okay.

And so when we look in terms of the status: November 2012, no update; May 2014, no update; June 2019, no update – “and understand it was work completed by Nalcor with DFO.” And you see that. So what was the basis for that June 2019 update? Who provided you with that information, and what information did they provide you?

DR. SQUIRES: The Water Resources Management Division is that acronym there; they would have provided that update. So when you read the environmental flow standards, Joint

Review Panel recommendation and the subsequent response, it's surrounding ecological function, in particular around fish habitat.

The Water Resources Division certainly has looked at hydrological flows for various reasons on Lower Churchill, but not in regard to fish habitat. They would look it from a mechanism of flooding, climate change, ice formation and those – that aspect. So they certainly have done that work, and it's referenced in other places in this document. The water monitoring program has been established, but they wouldn't have done it from that – from the ecological perspective.

MR. COOKE: Just on the same page, while we're there, on number – recommendation 11, which is on atmospheric monitoring. And, again, it's one where the government accepted the intent of the recommendation. Do you know if a weather station was actually established within the project area?

DR. SQUIRES: My understanding is that the Water Resources Management Division has both hydrological and climate stations in an area.

MR. COOKE: Okay.

Can I take you to page 6? And starting with recommendation 21, and that's regarding the wetland compensation plan. And this was a recommendation which was accepted by the Government of Newfoundland and Labrador, correct?

DR. SQUIRES: Correct.

MR. COOKE: And you can see the updates, and I guess the last update is May 2019, it says, "Draft plan submitted Nalcor Energy."

My first question is submitted – is it missing submitted by Nalcor? Okay.

And it says, "Currently under review by multiple departments, including the Wildlife Division – FLR." What does FLR stand for?

DR. SQUIRES: That's the department acronym: Fisheries and Land Resources.

MR. COOKE: Okay.

"... and the Water Resource Management Division – MAE." MAE: Municipal Affairs and Environment. Yeah. Great.

I guess my question is it seems to me that seven years seems to be an awfully long time to come up with a wetland compensation plan. Is there any explanation for that kind of delay?

DR. SQUIRES: This status update doesn't reflect the various iterations. So the – what we received in May of 2019 was not the first iteration. Nalcor has been working on drafts and we've got drafts before that that were – have been shared with Environment and Climate Change Canada, for example, as well as the provincial departments referenced here.

The – this also was a condition of release. So there's a multitude of environmental effects monitoring plans and compensation plans that were required as an order from the release of the project. How the proponent submits those is often done on a logical sequence. So some of them would have been required to be implemented in monitoring and follow-up much more early in the project's construction, for example, than another.

So, for example, you know, the ice formation monitoring plan, the navigation environmental effects monitoring plan would have been required earlier, and so there's effort to put those – to complete those first.

MR. COOKE: Okay.

So in particular – 'cause we're focused on this – the wetland compensation plan – is there something particularly about that plan that would require a seven-plus-year period to implement?

DR. SQUIRES: Not that I'm aware the – of anything in particular, (inaudible) – you know, intentional reason to hold it, certainly not. The plan talks – had to kind of describe the wetlands in the area and they've been in discussion I know with – my understanding is Ducks Unlimited and Nalcor had a meeting and discussed the plan. So there's been various conversations with experts and technical folks leading up to the creation, but nothing that I'm

aware of that would be a particular reason as to why we're still working on finalizing that plan.

MR. COOKE: So on the government's end, who is tasked with holding Nalcor's feet to the fire on these things for timing?

DR. SQUIRES: Environmental Assessment Division is and would have regularly checked in with Nalcor in the last few years to see where the status of that plan is.

MR. COOKE: Okay.

And did you express any concern or dissatisfaction about the fact it's taken so long?

DR. SQUIRES: We (inaudible) certainly explained that we've – the plan needs to be submitted and we need – they're well aware that they need to fulfill the conditions and we expect those to be fulfilled.

MR. COOKE: Okay.

Has that been done in writing?

DR. SQUIRES: I'm aware of verbal conversations, certainly, between the environmental scientist that handles this file and the staff at Nalcor responsible for preparing the document.

MR. COOKE: Okay.

DR. SQUIRES: I can't speak to whether there's been something in writing between those officials.

MR. COOKE: Okay, you're not aware of anything in writing?

DR. SQUIRES: Not in writing.

MR. COOKE: Okay.

And just – why don't we just stay there and go to the next one, the riparian compensation plan.

DR. SQUIRES: That's the same plan.

MR. COOKE: Mm-hmm.

DR. SQUIRES: They've merged them together and submitted one document that fulfills both requirements.

MR. COOKE: Okay.

Well, it has not fulfilled the requirements yet because it's still a draft plan.

DR. SQUIRES: Yeah, but they're working on one document that will fulfill both requirements, I should say.

MR. COOKE: Okay.

And do you have any – can you tell the Commissioner any timeline when the plan will be finalized?

DR. SQUIRES: They still have to complete Indigenous consultation on that plan. So, I suspect we're still a number of months out from completing – from having a final document that will be submitted to the minister for approval.

MR. COOKE: Do you know if consultation has been started with Indigenous groups?

DR. SQUIRES: My understanding – well, if it hasn't started, it will start very shortly.

MR. COOKE: Okay.

DR. SQUIRES: We will – the document has been circulated internally, and we're looking to get Nalcor some feedback on what we've seen from a technical perspective.

MR. COOKE: Okay.

So, it seems to me, if you haven't started any – or not you – Nalcor hasn't started any consultation with Indigenous groups, it's still got a ways to go before it's going to be finalized, correct?

DR. SQUIRES: I mean, it's not years. I mean, a ways to go, I guess, is subjective. It would certainly be a few months – would be the earliest time frame, given Indigenous consultation has to happen and the approval process has to be completed.

MR. COOKE: Okay. Can I take you to page 9?

And on recommendation 31, the trapping compensation program. Do you see that?

DR. SQUIRES: Mm-hmm.

MR. COOKE: And, again, this is one where the Newfoundland and Labrador government accepted the intent of the recommendation, correct?

DR. SQUIRES: Correct.

MR. COOKE: Okay.

And I think – I’m expecting your answer is going to be like the last two items that, in fact, the program has not been finalized yet?

DR. SQUIRES: I’m aware of the update that you have in front of you.

MR. COOKE: Mm-hmm.

DR. SQUIRES: So, no – you know, no plans have been received, and there’s a process for submitting concerns, and that’s the level of – the depth of knowledge on that particular recommendation that I’d have.

MR. COOKE: Okay.

And do you know – what the communication has been to people who may be eligible to receive compensation under this program?

DR. SQUIRES: Not aware of that.

MR. COOKE: Because it seems to me that in the update it kind of refers to the fact that the contact information is available on the project website, but it wasn’t clear on social media and all public information. But I wasn’t sure about what the actual outreach has been to those who may have a claim under this program. Do you have any information on that?

DR. SQUIRES: No.

MR. COOKE: Okay.

Last in this document, if I could take you to page 17 and on Recommendation 55, and it says – this is on social effects needs assessment and research. And, again, this is one where the

Newfoundland and Labrador Government accepted the intent of the recommendation, correct?

DR. SQUIRES: Right.

MR. COOKE: And the update June 2019 is saying HCS – and HCS stands for ...?

DR. SQUIRES: Health and Community Services.

MR. COOKE: And it says it “anticipates commencing work on this matter in the Summer 2019.”

Again, I know you’re not here for Health and Community Services – so if they’re the better source – but do you have any explanation, again, why it’s seven years and the work has not even been commenced yet?

DR. SQUIRES: No, I do not.

MR. COOKE: Okay.

But you’d agree it’s the government’s job to hold – number one, to hold Nalcor’s feet to the fire in terms of getting various statuses done in a timely manner. I can see you’re nodding your head so I’ll take that as a yes. Okay.

And in terms of internally again, for example, if maybe Health and Community Services isn’t moving as quickly as one would hope, who in government would be tasked with kind of holding their feet to the fire on, for example, Recommendation 55?

DR. SQUIRES: Each department would’ve been responsible for completing that work, so it would’ve been the responsibility of the department.

MR. COOKE: Okay.

So would every department, for example, have a copy of this document so they would know what they’re expected to do and when, provide updates and et cetera?

DR. SQUIRES: There’s certainly – as I think Jamie pointed out earlier there, when we prepared the response from this, from what I can

read from departmental records, the response itself was brought to a deputy minister oversight committee and was seen to be finalized at a committee sort of level.

This spreadsheet possibly was used to update that committee as well, but I couldn't attest to that. And they might have had some oversight early on as to where things were, but as the project progressed, it looks like departments took ownership of pieces themselves.

MR. COOKE: Well, let me – I'll finish with this. If the Commission hadn't asked you to update this document, would anyone have updated it past 2014?

MR. CHIPPETT: So I was just going to make reference, actually, to the 2012 and 2014 updates. So what our files show is Cabinet Secretariat asked Labrador and Aboriginal Affairs to update in 2012 and 2014. But it seems like the original version, creation came from our department. So I'm not familiar with those discussions, but there seemed to be an effort from the centre at that point and time to coordinate updates.

MR. COOKE: Okay.

That's helpful, but it doesn't really address – I think my question was: But for the Commission asking you to update this document, I'm going to suggest to you it wouldn't have been updated.

DR. SQUIRES: I've certainly, in my time, not updated this document, but when I became director of Environmental Assessment in 2017, Jamie certainly made me aware of the need to – and our process for being – ensuring there was compliance with conditions. And we have, on multiple occasions, updated where we are with conditions, a release for the Lower Churchill Project.

MR. COOKE: But if you're not using a document like this to ensure that, you know, status are up to date, what are you using?

DR. SQUIRES: We certainly had to focus on the conditions and release for the projects, the legally – the order –

MR. COOKE: Okay.

But this is a lot broader than –

DR. SQUIRES: It is.

MR. COOKE: – those conditions, I mean, significantly so. So I take it what you're saying that if it's outside of those conditions, then there wasn't anyone tasked with ensuring the status of them.

DR. SQUIRES: I think there was people tasked. As Jamie pointed out, Cabinet Secretariat asked for updates early on in the project. But I think it's, obviously, a fair statement to make that subsequent to the early years, the updates seem to be – come from more internally to departments as (inaudible) not pulled together in one location.

MR. COOKE: Yeah.

And maybe tasked isn't the right word, because just because someone is tasked with it doesn't mean that they're necessarily following through on it. And that was really the point I wanted make on that, but I'll – why don't we switch gears to the IEAC.

And so I'm going to take you to document 01702, which is at binder 2, tab 74. And I think we looked at this – I think you looked at this document earlier today.

And could we just scroll down, Madam Clerk? So just keep going, please. Oh, I'm sorry; I think we went – yeah. Just a little further up, sorry. No, actually, the page before, I'm sorry – oh, on number 5, monitoring. And you understood that this was provided in April 2018, correct?

MR. GOEBEL: Correct. Right.

MR. COOKE: And, Mr. Goebel, I think you're the – probably the person on the panel most involved with the IEAC. Is that fair, or ...?

MR. GOEBEL: I was on the IEAC –

MR. COOKE: Yeah, so –

MR. GOEBEL: – as the government's representative.

MR. COOKE: Yeah.

In terms of the recommendations that we find in this letter from April 2018, what's been the – what do you understand to be the public response from it, from the province, to date?

MR. GOEBEL: To date – so you said the public?

MR. COOKE: Public – the response from the government to these recommendations, i.e. the official response.

MR. GOEBEL: We've acknowledged the receipt of this letter. And at the time when we had our second minister after this letter, Minister Parsons, we had a telephone conversation with Dr. Ken Reimer, who's the chair of this.

MR. COOKE: Mmm.

MR. GOEBEL: So that at the time that was – you know, when was that? That was in May or June or something like that. I can't remember the exact date. We also had initial telephone conversations with the three Indigenous groups and the minister to again acknowledge the receipt of these recommendations.

MR. COOKE: And you understand, though, that these recommendations, many if not all of them, have a time sensitivity to them if they're going to be implemented, correct?

MR. GOEBEL: Yes, they do.

MR. COOKE: Yeah.

And so – and I'll let any of you, you know, address this, that – and I take it when – Mr. Chippett, in your interviews I think one of the factors you identified is that Environment seems to have had an – kind of an inordinately high turnover of ministers and that was perhaps at least some explanation for the delay.

MR. CHIPPETT: Sure. So if you take it back to – or I'll take it back to when the department was created. You're still negotiating a terms of reference and so on, and then it takes a couple of months to get to agreement on a chair, but all of that leads into the April 2018 recommendations.

And so in terms of, you know, one of the first things – the schedule we had mapped out was to

meet with Ken Reimer, meet with each of the Indigenous groups, and at the same time we were doing that, the Premier had removed our minister from Cabinet. So we had started over with briefings for Minister Parsons, because obviously this could also come up in the House of Assembly and so on, so you're doing briefings generally on getting him familiar on what the different positions of the groups are. And then in the fall we started to work on presentations to take to Cabinet to get a decision. And subsequent to that we did have another ministerial change, but quite quickly after that we were asked to bring it to Cabinet by the Premier.

MR. COOKE: Okay. And it was brought to Cabinet.

MR. CHIPPETT: It was.

MR. COOKE: When?

MR. CHIPPETT: January.

MR. COOKE: Okay.

And has the decision of the Cabinet been communicated to the public?

MR. CHIPPETT: So the Premier wrote the Indigenous groups at the beginning of April and with a view to having a meeting to discuss all of the recommendations. The letter outlined that he was proceeding with or asking the groups to nominate representatives or what have you to proceed to implement the first two recommendations on monitoring and health management.

And the third recommendation on the impact security fund was not – did not come up through the scientists to the Oversight Committee, so the idea was to have a discussion on that while we were having a discussion on the monitoring and the health management. That recommendation really depends on what benchmarks or thresholds you set when you look at the monitoring recommendation, because it speaks to establishing levels for action before you actually get to consumption advisories.

The fourth one, obviously, the Premier had asked to have a discussion with the groups about

the recommendation on physical mitigation. We thought that capping could have been something that could have been pursued. Obviously we've had the discussion, and I've testified today about the fact that when we advised Nalcor of that possibility, the indication was the window was gone to do so. And so that was, I think, a part of what the Premier wanted to meet with the groups on to talk about: where to from here on that recommendation.

MR. COOKE: But everyone understood in April 2018 that the issues that were in the recommendation were – 'cause you said, Mr. Goebel, that they were time sensitive, correct?

I see nodding, but just for the record –

MR. CHIPPETT: I think, you know, four more so than the other three.

MR. COOKE: Sure.

MR. CHIPPETT: Because, for example –

MR. COOKE: Sure.

MR. CHIPPETT: – on three, the monitoring, it's continued. Some of the conditions that – or I guess questions that the IEAC had raised in looking at the monitoring program, there had been pieces of work done on those and some of those things could roll very quickly right now once the new committee gets going. But there's no question there was a time sensitivity with respect to the recommendation of the physical mitigation.

MR. COOKE: Yeah, and if you reach a certain point, even if the Premier and the government accept those recommendations, it becomes moot, doesn't it? If the project is moved ahead to a certain point where simply those measures cannot be done, or cannot be done without a lot of adverse effects from it, then it really renders the recommendation moot, doesn't it?

MR. CHIPPETT: It could be viewed that way.

MR. COOKE: Yeah.

Can I take you to Exhibit 04184? Which is at binder 2, tab 93. It's a technical briefing dated November 6, 2018.

I guess where I wanted to start with this is just: Were you – were any of you involved in preparing this document?

MR. GOEBEL: I was.

MR. COOKE: Okay.

Were you the author of the document, Mr. Goebel?

MR. GOEBEL: More or less.

MR. COOKE: Okay.

And I'm gonna – if we look at page – or slide 14, I think it's page 14 as well, it seems to me that in – at least based on your recommendation that at November 2018 the response was known in the sense of what Nalcor is going to be expected to do, which is the wetland capping. Is that fair?

MR. GOEBEL: This was the proposal at that time, yes.

MR. COOKE: Mm-hmm.

MR. GOEBEL: And it was anticipated that it would be presented as a government response. I –

MR. CHIPPETT: There was not a decision at that stage –

MR. COOKE: Okay.

MR. CHIPPETT: – to proceed with this.

MR. COOKE: Okay. And I – thank you, because that was really my question. Why not?

It seemed to me that they – the government had – putting aside the fact that, at least from NunatuKavut's position, government should've acted much more urgently post-April 2018 given the issues and the time sensitivity. But certainly by November, it doesn't seem that there was any additional information needed. This seemed to have come to – Mr. Goebel, you came to a conclusion on what the recommended approach should be, correct?

MR. GOEBEL: Yes, this was at, I guess the departmental level. This was at, you know, the level where we were at and – but as Mr. Chippett as indicated, it didn't, yet, go up the line for approval.

MR. COOKE: Sure.

But, I mean, you're the department, I mean, Cabinet is going to look to for the expertise on IEAC matters, correct?

MR. CHIPPETT: Correct.

MR. GOEBEL: Mm-hmm.

MR. COOKE: Yeah, so ...

So none of you have an explanation why, for example, a decision was not made in November 2018 by Cabinet?

MR. CHIPPETT: Other than we had a couple things happening. We had prepared this to try to, you know, get prepared for a Cabinet date or what have you. There's the letter in the file where we had largely drafted what this PowerPoint articulates to Mr. Marshall, but it was not sent at the end of the day. And this – I believe the date on this was November 6. And on November 8 we had a new minister and he and I met with the Premier and the Premier asked for this to be brought to the next Cabinet meeting.

MR. COOKE: And when was that?

MR. CHIPPETT: That would have been December.

MR. COOKE: Okay.

MR. CHIPPETT: And that was subsequently deferred, so in evidence there's a January 2019 presentation that looks very similar to this one.

MR. COOKE: Okay.

But the reality is we're here on June 20, still no actual decision by the government. Correct?

MR. CHIPPETT: You know, the Cabinet records show that government wanted to proceed with wetland capping. There have been

decisions on and positions articulated by the Premier in his letter on the other recommendations.

MR. COOKE: So there's a couple of letters in evidence from Ken Reimer to you, Mr. Chippett; one October [sp. August] 15, 2018, which is at Exhibit 04179. I'm not really going to go through it but it's there if you want to look at it.

MR. CHIPPETT: I'd like to see it. Do you have the tab?

THE COMMISSIONER: That's at tab 87 in the same book.

MR. CHIPPETT: Okay, 87?

THE COMMISSIONER: Yeah.

MR. COOKE: And it's on your screen, Mr. Chippett.

MR. CHIPPETT: Yeah.

MR. COOKE: So, Mr. Reimer, it seems, from reading the emails, really making an offer to help. He seems to be willing to help and indicates that he has a good grasp of the issues and he – including the sensitivity associated with each of the recommendations.

So Mr. Reimer wrote you again in September 30, 2018, and that's at F – sorry, 04183.

MR. CHIPPETT: Mm-hmm.

MR. COOKE: I think in the same book.

THE COMMISSIONER: That's at tab 92.

MR. COOKE: Yeah.

And in the email, he's expressing his surprise to you that he didn't get any response to his August 15 email. So my first question is: Is he correct that you didn't respond to his –

MR. CHIPPETT: I don't –

MR. COOKE: – August 15 email?

MR. CHIPPETT: I don't believe I did respond.

MR. COOKE: Okay.

MR. CHIPPETT: And I don't remember – they're obviously both my emails, I don't remember the first email as well as I remember this one because he makes the comment about, you know, new information by Nalcor, you know, kind of trumping, I think, is the notion and the science that was reviewed by the IEC. So I remember that.

MR. COOKE: Yeah.

And do you know what he's referring to when he's talking about – he puts it in quotes, "new information"?

MR. CHIPPETT: I think he's – well, it's either one of two reports. Mr. Goebel may know better than me. But it's either the Reed Harris modelling that was completed for Nalcor or the – I think it's that one, actually, or the Azimuth study on the amount of carbon in the watershed, one of those two documents.

MR. COOKE: So in terms of – and I keep coming back to the, you know, the urgency of, particularly, the fourth recommendation, if it's going to happen. And it doesn't seem to me that from these emails that at least on your end you were, you know, treating it with that – the level of urgency it seemed to require.

MR. CHIPPETT: So I think that's – you know, that statement is – I accept the fact that, you know, there are timelines here that we all wish, I think, could have been earlier but, you know, it was really important to me. It was, you know, obviously a very serious issue, quite outside of what, you know, the public thought and what the groups thought. It was a file that was very important to the Premier, so I don't usually look at those and not treat them with priority, but there are a lot of other things that go on in a department. And so this was one of two or three major files that we were grappling with, I guess, in the fall of 2018.

And, you know, in terms of Mr. Reimer's comments, kind of on a principle basis I did not have a lot of discussion with Mr. Reimer throughout the process. I was involved in when he had been selected by the groups to be chair. I was involved in getting his contract set up and

so on, and then we hardly talked at all because I viewed him as independent. I had a discussion with him at one point; because some of the Nalcor modelling had not been completed did he want me to see about negotiating an extension to his contract.

And so I think we had a good grasp, with Martin's involvement, on what the IEAC was telling us. We had the monitoring which had now reached a different stage, in terms of the number of samples and so on. And we were continuing to do work on the actual recommendation. Some of the things that had actually been pointed out needed to be done to meet that set of recommendations.

So I – you know, it may not have advanced as quickly as I would have liked or it needed to, but I wouldn't stretch it to say that it wasn't important or that there wasn't, you know, a dedicated time being put to it.

MR. COOKE: Just – because you mentioned – and what I understood, when you were referring to Mr. Reimer as chair, is that you were involved in, you know, setting him up in contract and all of that stuff, but then you wanted to have some distance, you know, because he's objective and independent.

MR. CHIPPETT: Mm-hmm.

MR. COOKE: Correct?

MR. CHIPPETT: Right.

MR. COOKE: But that would have ended when he files the – I mean, when the report is out, the recommendations are there.

MR. CHIPPETT: Mm-hmm.

MR. COOKE: So, at that time, there's no real need to have that kind of removal because he's actually trying to assist with the implementation of the recommendations, not affecting his decision-making. Is that fair?

MR. CHIPPETT: I take your point. And I also know that the minister and I and Martin, I think we had a meeting with Dr. Reimer at, you know, at the conclusion of the IEC process, also, after his time as the chair had been done, to talk about

his views on the different recommendations and so on, so ...

MR. COOKE: I'm going to take you to Exhibit 04185 which, again, is in – it's in book 2, it's tab 94. And this is dated November 15, 2018, and it's a letter from NunatuKavut president, Todd Russell, to Graham Letto, the minister of Municipal Affairs and Environment.

And you'll see in it that the first part of the letter is kind of congratulatory on his position as minister and he's a – or was an MLA for Labrador –

MR. CHIPPETT: Hmm.

MR. COOKE: – may be again, I guess we'll see soon, depending on the recount. But, in any case, the rest of the – have you seen this letter before, Mr. Chippett?

MR. CHIPPETT: Yes, I have

MR. COOKE: Yeah.

And were you provided it contemporaneously when it was sent to the minister?

MR. CHIPPETT: I don't recall if it – it may have come in to both the same time. It may have come in to look – probably came in via email to his secretary; I don't think I'm cc'd on it but I'm not sure, so she probably provided it to me. But it would have been around the same time, I think.

MR. COOKE: And in the letter Mr. Russell essentially – I'll paraphrase; he's really, you know, I think reiterating 'cause I think he had expressed it before that – the importance of a timely response from the government. And he never received a response to this letter. Do you have any idea why the minister or the department would not respond to Mr. Russell's letter on this?

MR. CHIPPETT: I don't. Normally there would be a response done and I kind of thought there had been one done but I'm – I know when Minister Letto became the minister he received congratulatory letters and so on from a few folks so – but I had thought there had been a response to this suggesting that we hoped to have some

discussion soon. But maybe that was to a different – maybe that was a different letter.

MR. COOKE: I think there's one more document I'd like to take you to – I'm just about done – and that's Exhibit 04227 and it's a document you'd looked at earlier. And you were asked some questions about it – I just want to go to page 7 for a moment.

THE COMMISSIONER: Tab 71, book 5.

MR. COOKE: Oh, thank you Mr. Commissioner.

And Mr. Chippett, I think you had indicated that the date of February 11 was not – on page 7, the slide that's titled "Soil Capping" –

MR. CHIPPETT: True.

MR. COOKE: – and I think you had put it at about a month earlier, I think you had said January – you thought January 14.

MR. CHIPPETT: Yes –

MR. COOKE: Yeah.

MR. CHIPPETT: – I think that's correct.

MR. COOKE: And so at that time you knew, the department knew, government knew that it simply – in January of – in January that – 2019, that the soil capping was simply not feasible, at least from Nalcor's perspective.

MR. CHIPPETT: Mm-hmm.

MR. COOKE: Those are my questions, thank you.

THE COMMISSIONER: All right, thank you very much.

Conseil des Ekuanitshit

MR. JANZEN: Good afternoon, Commissioner. Good afternoon, panelists. My name is David Janzen, and I'm here on behalf of the Conseil des Innu de Ekuanitshit, which is an Innu community with a reserve in Quebec.

And the first few questions that I would like to ask you have to deal with caribou. I understand that the Department of Environment would be the department responsible for the protection of endangered species. Would that be correct?

MR. CHIPPETT: Not anymore. So under the current construction of departments, the Department of Fisheries and Land Resources contains the Wildlife Division, and within the Wildlife Division there are staff who are responsible for endangered species, or species at risk.

MR. JANZEN: Okay. And maybe – Dr. Squires, did I understand correctly from your interview transcript that you started off working on endangered species when you joined the Department of Environment?

DR. SQUIRES: That's correct.

MR. JANZEN: And so you would be aware that the woodland caribou in Labrador are threatened – designated as threatened under the *Endangered Species Act* and under the Species At Risk Act [sp. National Accord for the Protection of Species at Risk]?

DR. SQUIRES: I am. I was responsible for the rare program. But I am aware of the animal and the avian side of the program as well.

MR. JANZEN: Okay. And I guess that you would be aware that the threatened woodland caribou live on and occupy the territory affected by the project?

DR. SQUIRES: Yes.

MR. JANZEN: Okay. Madam Clerk, if we could please go to Exhibit P-04258. And I'm sorry, I don't have the binder and –

THE COMMISSIONER: That's okay.

MR. JANZEN: – tab number.

THE COMMISSIONER: 04258 would be at tab 3 of book 5.

MR. JANZEN: So this is “**Recovery Strategy for Three Woodland Caribou Herds** (*Rangifer tarandus caribou*; Boreal

population) in Labrador” that was prepared in July 2004; the three herds being the Lac Joseph herd, the Red Wine Mountain herd and the Mealy Mountain caribou herd. And I understand that this document was prepared in response to the designation of those herds as threatened under the *Endangered Species Act*?

DR. SQUIRES: Yes, it's a requirement to prepare recovery documents once the species has been listed under the *Endangered Species Act*.

MR. JANZEN: And if we could go to the bottom of page 5, please, Madam Clerk, it's in the Executive Summary. And maybe before I look at that, I just – I would maybe ask you, Dr. Squires then, if this is a document that you would have previously seen or previously read?

DR. SQUIRES: I'm certainly aware of this document, having worked in that program for two or three years, but I was not the ecosystem management ecologist responsible for preparing it or looking at the recovery strategy in particular. I wasn't on this recovery team.

MR. JANZEN: So, if I am at the bottom of page 5 then, of the exhibit – so the end of the executive summary it says that, “The Recovery Team has concluded that recovery of all 3 herds is ecologically and technically feasible. While considerable portions of all 3 herd ranges are still intact, and several protected areas have been proposed, several challenges remain.

“Illegal hunting” and then “Additionally, resource development and extraction activities continue to increase, previously inaccessible areas are becoming so, and no protected areas have been formally established. Recruitment data suggest that the inherent capacity of all 3 herds to recover is excellent if these challenges can be managed or overcome.”

And I'll just sort of – I'll just read the last paragraph, “The purpose of the Recovery Strategy for sedentary woodland caribou in Labrador is to outline a course of action that will lead to the recovery and de-listing of the Lac Joseph, Red Wine Mountains and Mealy Mountains caribou herds under the Endangered Species Act. Details regarding actions necessary to implement the Strategy will be included in an

accompanying Action Plan, to be drafted within the next 2 years. The Recovery Strategy will be updated as new information becomes available, and revised every five years until recovery has been achieved.”

Were you aware that this document had promised an action plan to – with measures to implement the strategy within two years, and that the recovery strategy was to be revised every five years?

DR. SQUIRES: I can’t speak specifically to this document; I wasn’t a provincial government employee when it was drafted. However, the federal endangered species program creates recovery strategies and actions plans. Provincial legislation requires recovery plans; they’re similar and when species are listed like caribou, when they’re listed both federally and provincially, sometimes you get effort to collaborate on those documents. So I only – from the titles of those documents, I can assume that a strategy was created and they were using a more federal model of creating the action plan at a later date.

So we have provincially listed species that have recovery plans and we have provincially listed species that have federal recovery strategies and federal action plans.

MR. JANZEN: And you’d be aware that the recovery plans then would typically, I think, identify the critical habitat for the species in question?

DR. SQUIRES: That is a requirement of the *Endangered Species Act*, yes.

MR. JANZEN: And I’ll just read the definition from the act: “‘critical habitat’ means habitat that is critical to the survival of the species”

And if we could just go to – I think it’s page 20 of that exhibit, please, Madam Clerk, where at the top we see that the document says that: “Substantial groundwork has been laid to facilitate the process of designating critical habitat, and to ensure” the “completeness and soundness of the final designation.” But the document itself does not identify the critical habitat for the woodland caribou for those three herds, does it?

DR. SQUIRES: I couldn’t speak to this document; I’m not familiar quite enough with it. But I would say that that process was not – if that’s the case for this document, it certainly is not unique. There are other species at risk for which recovery actions were set and the process of identifying critical habitat was a much longer and more detailed process and was done in subsequent updates to the recovery plan.

MR. JANZEN: So, I would take three things coming from document in 2004: One is that an action plan to implement the strategy is promised within two years, that the strategy is to be revised or updated every five years and that the process of identifying the critical habitat for the caribou would be eventually completed.

To your knowledge, have any of those things ever been done?

DR. SQUIRES: I left the Wildlife Division in approximately 2012, 2013, so I cannot speak to what’s been done since then. I know in a table that we updated for the Joint Review Panel, the Wildlife Division provided an update on the recommendations related to caribou and spoke of the recovery plans being updated through a section 11 agreement with the federal government.

MR. JANZEN: Okay, so –

DR. SQUIRES: So that –

MR. JANZEN: – maybe we can just go to, first of all, perhaps, the provincial response to the JRP, which is Exhibit P-00051, please, Madam Clerk, and, first of all, to recommendation 7.3 which is found at the top of page 11.

And so it says that: “The Panel recommends that, if the Project is approved, federal and provincial governments make all reasonable efforts to ensure that recovery strategies are in place and critical habitat is identified for each listed species found in the assessment area before a final decision is made about the effects of the Project on those species.”

And then the provincial response below says that it accepts the intent of the “recommendation but does not accept the proposed timelines.” And I would put it to you that the – in this case, when

they were talking about the recovery strategies and identifying the critical habitat, that the timelines are critical, aren't they?

DR. SQUIRES: Well, I guess, if I'm – we're understanding your question, identifying critical habitat as early as possible would help make land use decisions, certainly. Is that the point of your timeline question?

MR. JANZEN: For example, that it would – yes, that the – identifying the critical habitat and having a recovery strategy in place, that that would be really important or really useful for making decisions related to land use, permitting, those kinds of things, wouldn't it?

DR. SQUIRES: That's a fair comment, yes.

MR. JANZEN: I will then go to Recommendation 7.6, which is just a couple of pages further down in the provincial response. It's on page 12. Recommendation 7.6 relates more specifically to the recovery of the Red Wine Mountain caribou herd.

And: "The Panel recommends that, if the Project is approved, the provincial Department of Environment and Conservation ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountain caribou herd are taken."

And the government response, which is just below the recommendation, is to accept this recommendation; notes that the Red Wine Mountain caribou herd is threatened under the *Endangered Species Act* and under the federal *Species at Risk Act*, and then refers to the 2004 document that we just looked at.

And it says that: "This recovery document is currently being updated with new information, activities complete, critical habitat and new actions required based on the new information that has been gathered over the past seven years. The updated recovery plan is scheduled to be released in 2012."

So were you aware then of the – that the government, the provincial Department of Environment and Conservation, had accepted the recommendation then, to ensure that all adequate resources were available to ensure the

recovery of the – to ensure efforts for the recovery of the Red Wine Mountain caribou herd are taken?

DR. SQUIRES: So I wasn't with the Environmental Assessment Division when this project was sanctioned, so I only read the response to this project when I would have started working with the Environmental Assessment Division. So, no, I could not say that when the project was sanctioned I was aware of that response.

MR. JANZEN: Would you agree that making all reasonable efforts would include updating the recovery strategy, preparing the action plan to implement the strategy that had been promised within two years of the 2004 report, and identifying the critical habitat for the herd?

DR. SQUIRES: The response provided by the department at the time – which is not something I was privy to – reads to me to be reasonable. And I can't speak to why it was written like this nor where we are with the recovery strategies. I'm just – I'm not – no longer part of that program.

MR. JANZEN: But would you agree that an updated recovery strategy and an action plan for implementing the strategy and identifying the critical habitat – that those would form a part of the reasonable efforts that are described?

DR. SQUIRES: I think that's a fair statement.

MR. JANZEN: And if we could then, please, Madam Clerk, go to P-04229. And –

THE COMMISSIONER: (Inaudible) tab 73 in the same book.

MR. JANZEN: Thank you, Commissioner.

And to the bottom of page 6, please, where – just the update for the two recommendations that we just looked at. And – well, I'll just look at the update for the 7.3, the recovery strategies for endangered species, since the comments are quite similar for the Red Wine caribou in particular.

And so it says that in 2012, "A recovery document is in place" for caribou "and is

currently being updated to be released in 2012-2013.” In May 2014: “The woodland caribou recovery plan update has been put on hold pending alignment with federal range planning initiatives, internal work priorities, the completion of habitat work and the completion of the upcoming status review An updated recovery/range plan is expected to be prepared in 2015.” And then in June 2019, “Provincial recovery plans remain pending.”

So, the question that I guess that I have for you is that back in 2004, in the first document that we looked at, the recovery strategy said that the recovery of these three herds was feasible if certain challenges could be overcome. Resource development and access to the territory being one of them. And then it outlines certain steps that needed to be taken in order to follow through to prevent – to overcome those challenges – and I think namely the action plan, an update to the recovery strategy and the identification of the critical habitat.

And meanwhile, there is the planning for this project, which has been going on for quite some time. What explains the delay in updating the strategy, in having an action plan and in identifying the critical habitat?

DR. SQUIRES: I have no explanation to offer you other than what you have read from the table. I was not with the Department of Environment and Conservation in that program at that time so I’m not privy to what work has gone on, on those recovery plans and recovery strategies. So I can’t – I wish I could provide you more of an update than that, but I’m limited to what the Department of Fisheries and Land Resources provided as a current update.

MR. JANZEN: Thank you.

And – but in the meantime, I guess, I mean, the Department of Environment has – is – there are all kinds of permits which are coming through the Department of Environment that Nalcor is applying for to use the territory, develop the territory in different ways – Nalcor’s own species-at-risk mitigation and monitoring plan. Is it justifiable from an endangered species-management point of view to be issuing all of these permits and to – how do we even analyze those permits if you don’t have the critical

habitat identified, if you don’t have a recovery strategy that is up to date and an action plan for implementing the strategy?

DR. SQUIRES: All I can speak to there is that condition of release was around permitting for species at risk, in particular the section 19 permit. Fisheries and Lands provided an update that that was issued. When we do environmental effects monitoring plans that look at – there’s one for species at risk, for example – those would be – and there was another one for caribou – those would be shared with the Department of Fisheries and Land Resources and the staff that would be drafting these recovery strategies, and they would have an opportunity to provide input as to whether the plan set up by Nalcor in those documents were sufficient.

And from an Environmental Assessment Division’s point of view, they would move forward with them if the Department of Fisheries and Land Resources found them to be sufficient from those perspectives.

MR. JANZEN: In order to determine whether they are sufficient, wouldn’t you need to know what the critical habitat for those caribou herds is?

DR. SQUIRES: I guess – how the Department of Fisheries and Land Resources defines their comments and determine the levels of sufficiency would be directed at them. Certainly, they may have access to draft maps or a knowledge of the current range maps that they can use internally. I don’t know, but they would certainly go through their own process of coming to that conclusion.

MR. JANZEN: I guess a question, then, for all three of you, I don’t – this is – I think that at least, I think, people in the Department of Environment, certainly people in Aboriginal Affairs are well aware that the health and survival of these caribou herds is a central concern to the Innu in Quebec.

Has anybody, for example, from Aboriginal Affairs come to speak to the Department of Environment when this would have fallen under their purview or are you aware of any kinds of

pushes to get these things done to get an action plan, to update the recovery strategy?

DR. SQUIRES: I couldn't speak to what happened in the department. I just wasn't part of them at that point.

MR. JANZEN: Okay.

MR. CHIPPETT: I think there was an initiative involving all the Indigenous groups called the round table.

DR. SQUIRES: Mmm.

MR. CHIPPETT: And that included staff from the Wildlife Division, which used to be a part of Environment and Conservation, and was usually supported by our Aboriginal Affairs, Indigenous Affairs folks as well.

I know around specific developments that scientists and folks from Indigenous Affairs have travelled to parts of Quebec, I believe, and Labrador to hold meetings. At some – I can't give you the dates or topics, but I know around environmental issues, around particular developments. So I know those things, but not a great more because I'm not involved with the Wildlife side of things anymore.

MR. JANZEN: To your knowledge, what work has the Department of Environment or other provincial government departments done to quantify the impact of the project to date on these endangered caribou herds?

DR. SQUIRES: There was certainly documentation that would've come in from the proponent in the environmental impact statement. There was a caribou environmental effects monitoring plan – caribou and native fauna – that sets out a monitoring protocol for everything from small-scale effects, like wildlife interactions, for example, to (inaudible) commitments to monitoring. So those would've been planned in a framework and a process that has to unfold now that the project – as the project proceeds to operation.

MR. JANZEN: So that's all the things that the proponent has – documents that the proponent has prepared. Has any – has the provincial departments done anything to try to quantify, in

any way, the impact of the project on those herds?

DR. SQUIRES: The environmental assessment process is certainly one that's proponent driven. So the proponent is responsible for meeting the guidelines set out by the – under the act. So when the guidelines ask for information, it's the proponent's responsibility to provide that information. So, you know, certainly there would've been an onus on the proponent to do that level of work and follow-up as required, set by the condition of release. I'm not aware of what – any studies in particular that the Wildlife Division has done around caribou.

MR. JANZEN: And on a related question, are you aware of any work or studies that have been done by the Department of Environment or other departments to evaluate the effectiveness of any mitigation measures that may have been proposed by Nalcor?

DR. SQUIRES: No, I'm not aware of what the Wildlife Division has done there.

MR. JANZEN: They may have done nothing; they may have done something?

DR. SQUIRES: I couldn't speak to their efforts.

MR. JANZEN: Okay.

I don't know whether any of you will know the answer to my next question, but I've spoken about the permits that were applied for and issued throughout the regulatory approval phase and many of those permit applications by Nalcor were forwarded to the Conseil des Innus de Ekuanitshit. Do you have any idea whether all permit applications were forwarded to the Conseil des Innu de Ekuanitshit or only some?

MR. CHIPPETT: I'm not aware specifically of numbers other than to say that, you know, post-generation project, for example, there were specific consultation guidelines done in terms of how – whether it was us as the regulator in a given permit or another department as the regulator for a given permit, had to discharge our duty to consult.

So we followed those guidelines and normally then, as Dr. Squires said earlier, you know, we

would take our cue – we would make sure the departmental content and so on was provided to the answers, but we'd take our cue from our colleagues in Indigenous Affairs as to whether or not they were, you know, okay to be transmitted back to the Indigenous groups.

MR. JANZEN: So Indigenous Affairs would be the one to decide whether a given permit application should be forwarded on to a particular Indigenous community?

MR. CHIPPETT: Not necessarily. The consultation guidelines that were set up for every permit after the project would've had guidelines around where they should be sent and so on. We followed those. I mean, on the back end, if there are comments on a particular permit or a particular condition of release from environmental assessment, then Indigenous Affairs would ensure that we had followed the guidelines properly and that what was going back, you know, gave full and fair consideration to the points that had been raised.

MR. JANZEN: Okay.

And when these permit applications were coming through the Department of Environment, was there somebody from the department assigned to those permits to determine whether there might be an impact on caribou? Or to determine, for example, what terms and conditions that might be appropriate to attach to the permit in order to –?

MR. CHIPPETT: So normally, I mean, a consultation would be done many times through the – sorry – through the Environmental Assessment Division, but the experts from the department of Wildlife would certainly have input into any terms and conditions or stipulations that would be placed in a permit.

MR. JANZEN: So the experts from the department of Wildlife would've reviewed all permits applied for by Nalcor?

MR. CHIPPETT: Depends on what the subject matter of the permit would be, obviously. So, for example, is a water resources permit – unlikely that would be reviewed by the Wildlife Division.

MR. JANZEN: It's unlikely that that would be reviewed by the Wildlife Division?

MR. CHIPPETT: Right, if it was a groundwater permit, for example, or a – I don't know, I could use examples like SNL septic permits and so on, it would be reviewed – any of the permits would be reviewed by the subject-matter experts in whatever department.

MR. JANZEN: Okay, thank you.

I see that the time is running, so I'll end there.

Thank you.

THE COMMISSIONER: All right.

Grand Riverkeeper Labrador/Labrador Land Protectors.

MS. URQUHART: Good evening, Dr. Squires and Mr. Chippett and Mr. Goebel.

My name is Caitlin Urquhart and I'm representing Grand Riverkeeper Labrador and the Labrador Land Protectors. You'll be familiar with those organizations as two citizen groups that are dedicated to maintaining the ecological integrity of the Grand River.

Dr. Squires, I first have a question for you. It's been brought out to a number of different witnesses and no one seemed to know the answer. So I'm wondering if you could clarify whether further clearing of the reservoir and/or soil stripping would trigger a new environmental assessment or DFO assessment.

DR. SQUIRES: So the environmental assessment regulations set out dozens of triggers for environmental assessment. Land clearing of that nature – soil removal is a pretty unique concept, and by – of itself, I can't see somewhere where that would trigger an environmental assessment. However, when we have some – the environmental assessment triggers were obviously developed at a point in time based on the types of projects that would've been common and understood to be important then. So we could certainly look at each project uniquely and determine whether there's likely reason to do assessment, so there

are a few triggers that you could look to for guidance on that.

So we have triggers on clearing – environmental assessment is required when you're clearing 50 hectares of land or more. Now, that typically applies to farmlands and things of that nature. We have triggers that apply to quarrying 10 hectares or more – for requiring an environmental assessment. Again, this is not a – the project we're talking about is not a quarry, but you might be able to liken it to. And we have triggers when you're moving 1,000 cubic metres of soil for the purposes of creating tunnels and shafts and things.

So there are some triggers that you may look to, but it may also come down to a discretionary decision if you can't link it to an actual definitive trigger.

MS. URQUHART: And just based on – you know, I'm not expecting you to be a subject-matter expert in the harmful alternation and habitat destruction piece, but would you expect that that type of action would also trigger a DFO assessment?

DR. SQUIRES: It may, yeah.

MS. URQUHART: I believe, Mr. Goebel, you were talking about methylmercury monitors in the water, and I just want to understand – so are those monitors that are placed in the water and that remain there, or are they samples that are taken at specific points in time?

MR. GOEBEL: The methylmercury monitoring program, that's based on taking samples and sending them to a laboratory for analysis at the laboratory.

MS. URQUHART: And who takes those samples?

MR. GOEBEL: They're taken by a consultant for Nalcor.

MS. URQUHART: Is anyone from the government present when those are taken?

MR. GOEBEL: No.

MS. URQUHART: Okay.

And you noted that the information from these samples is then posted on the Government of Newfoundland and Labrador website?

MR. GOEBEL: That's correct.

MS. URQUHART: And how is that information then communicated to local residents?

MR. GOEBEL: That – it's posted on the website. Initially, when that monitoring program was started, whenever there was an update we'd send a note to the Indigenous groups who were also members of the IEAC. But after a while, I think they got used to the idea that updates were occurring regularly and available data was always the most current. So any time they wanted the data, they just look at the website.

MS. URQUHART: So – but there wouldn't have been, say, a news release or contact a local media or posters –

MR. GOEBEL: No.

MS. URQUHART: – in supermarkets or anything like that to inform local residents?

MR. GOEBEL: No, it's just such a regular ongoing monitoring program, it's – no, we wouldn't do that.

MS. URQUHART: Luckily some of the – my materials aren't even covered by others.

Now, I can't recall whether this was Mr. Chippett or Mr. Goebel saying that when – I believe it was in 2014 – Nunatsiavut was denied funding for the monitoring. Was that – you're nodding, Mr. Chippett – was that you who was talking about that?

MR. CHIPPETT: We both commented, but I can –

MS. URQUHART: Okay. Correct me if I'm wrong, but I understood that the reason was because at that point, it was believed that the effects would not extend beyond the mouth of the river. Is that correct?

MR. CHIPPETT: That's my understanding. There may have been other – you know, other

reasons, in terms of whether a department had budgeted for it or what have you. So I couldn't speak to those from another department, but I think generally, based on a JRP response, government had accepted that those effects would not move further downstream.

MR. GOEBEL: Yeah.

MS. URQUHART: You're also agreeing, Mr. Goebel.

Madam Clerk, if you can please pull up P-000352. I don't believe this is –

THE COMMISSIONER: (Inaudible) on the screen.

MS. URQUHART: – gonna be in your materials. It's just a clip or a sort of snippet of a report. It's – so this is actually in – contained in the submissions that Grand Riverkeeper and Labrador Land Protector made to the Commission, and at – Madam Clerk, please, at page 29 at the bottom. And this is – we've discussed this a number of times at the – here at the Inquiry, so you may be familiar with this.

In January 2017, Nalcor commissioned a report from a company referred to – or known as LGL Limited, and this is a small excerpt of the executive summary of their report. And it indicates – so the: As part of a direction from the Joint Review Panel, Nalcor was required to address downstream effects in more depth than in previous submissions. LGL "... was retained by Nalcor and concluded that the aquatic and the aquatic components of the 'terrestrial' Assessment Area should include at least Goose Bay and possibly inner Lake Melville of central Labrador." And it goes on thereafter.

But at that point – and from our understanding, this report was not released to – or was not provided to the Joint Review Panel. This is something that my clients found subsequently in 2018 – came to their attention. However, were you aware at the time of the JRP that there was evidence or indications that there may be effects beyond the mouth of the river?

MR. CHIPPETT: I wouldn't have been – wouldn't be able to speak to that because I

wasn't involved in the JRP process at all. But I wasn't aware of this document.

MR. GOEBEL: I wasn't aware of it.

MS. URQUHART: And Madam Clerk, if we can please pull up the JRP report, which is P-00041. Oh, sorry.

THE COMMISSIONER: That one's at binder 5, tab 82.

MS. URQUHART: On page 17, please, Madam Clerk. And I won't read the entire section. This is just the overview of the – Madam Clerk, if you can please scroll down. Thank you.

There's a section, actually, a page, earlier that talks, specifically, about methylmercury. But in this case, the panel says, you know, Nalcor has concluded that the project wouldn't have impacts beyond the mouth of the river. "This was challenged by a number of participants," particularly Nunatsiavut. "The possibility of mercury moving downstream in sufficient quantities to contaminate fish and seal, and eventually require consumption advisories, was a particular concern." And it goes on to say that DFO "... presented some recently released research showing that mercury from ... Churchill Falls ... was measured in several fish species in Lake Melville over 300 km away, but Nalcor maintained that mercury and other Project effects" would not be measurable. Were – at the time of this – the release of this – and subsequently, the government must have been aware, certainly, of this research that DFO had provided and of the concern from the panel that these effects were not limited to the river and would extend into Lake Melville.

MR. GOEBEL: Like, I mean, you know, I don't know – just reading that paragraph, now, I don't know how Fisheries and Oceans can say that mercury measured over here was from over there.

MS. URQUHART: Were – so you were around at the time, Mr. Goebel? Was the department aware that there was a possibility of effects beyond the mouth of the river into Lake Melville?

MR. GOEBEL: I think we – we were in agreement with the conclusion of Nalcor in their perspective that there would not be effects of methylmercury downstream past the mouth of the river – in other words, past Goose Bay.

MS. URQUHART: Madam Clerk, if you can please pull up P-01609.

THE COMMISSIONER: 1609. This one will be on your – oh, 01609, this will be on your screen.

MS. URQUHART: So, this is a letter directed to then-premier Kathy Dunderdale. It's prepared by – written by President Lyall. And it indicates – Madam Clerk, if you can scroll down, this is in response to the panel report. Immediately thereafter, Nunatsiavut is writing to the government to express, you know, its thoughts about those 83 recommendations. And it specifically says that Nunatsiavut echoes the concerns that the panel expressed, that the assessments that Nalcor did did not extend beyond the mouth of the river and therefore did not consider impacts on them as Inuit.

And so – again, I just want to confirm that, in response, the position of government was we agree with Nalcor, there are no effects beyond the mouth of the river?

MR. GOEBEL: That is correct.

MS. URQUHART: And despite that, there was some awareness that consumption advisories may be required. That was something that was considered at the time.

MR. GOEBEL: Yeah, I think it was recognized that there would be effects from methylmercury in the reservoir itself and that if there were fish caught that were from the reservoir, they could be – if they're affected significantly – that there could be consumption advisories for those fish, or fish that perhaps travel downstream from that point, from that reservoir

MS. URQUHART: And I expect that at the time, conversations about consumption advisories and the challenges that those pose, and the impacts that they have on individuals and cultures were discussed within the department.

MR. GOEBEL: I don't really think so. I mean, consumption advisories, as I stated this morning, are a common outcome of reservoirs. We have consumption advisories on the Island on many reservoirs. I named a few: Cat Arm, Star Lake, Burnt Pond. It doesn't necessarily mean that the fish cannot be eaten. It does not mean that the fish cannot be caught. It only means that there's a consumption advisory, and that for certain species, the frequency of the eating more of the amount that is eaten should perhaps be reduced to whatever the guideline would be depending on several things: the species of fish involved and the size and age of the fish.

If it's really extreme, then they would recommend that they not be eaten at all. But consumption advisories, you have to take them on a case-by-case basis; and they would be issued based on, again, the species that are locally caught and what the people typically eat.

MS. URQUHART: That being said, there's – experience says that, you know, we don't have to look far – we look at Nunavut and we look at the POP situation with their – with fish there and the significant cultural impacts that it had when there were consumption advisories that the fish could be eaten, but people felt that they would be ingesting toxins. And regardless of the fact that they could safely eat some, the fact that the advisory exists –

MR. GOEBEL: Mmm.

MS. URQUHART: – means that many people will choose not to eat country food altogether.

MR. GOEBEL: Right. That's a very good observation – I'm aware of it and the IEAC was aware of it. That is why the recommendation on health management was so important. Because it was important to advise people appropriately, not to scare them. In other words, just because there's an advisory on certain fish doesn't mean it applies to all fish. And just because there's an advisory on some fish doesn't mean that it applies to all foods or country foods.

It just means that precautions have to be taken – and especially for women and pregnant women and children – with certain fish that are affected by the methylmercury. And it needs to be communicated in a manner that's appropriate

and sensitive. As you say, the concern for, you know, other things like the cultural impact of catching food has to be recognized. So the recommendation on health management is so important in that regard and that it involve – that the committee that would set that up would involve the community to make sure that those aspects are addressed.

If it comes down to that issue – hopefully it doesn't – but it's a safety thing and, you know, if the appropriate targets are set ahead of time and people are aware of what the restrictions are, I think that whole process – that whole issue would go much, much better.

MS. URQUHART: Thank you.

Dr. Squires, you were speaking about environmental assessment processes broadly and also specifically around the JRP and expressed the – that it's important that there is independence between the regulator and the panel in a situation such as this, where we're dealing with a Crown corporation.

Can you just elaborate on why that's – why that exists, that separation?

DR. SQUIRES: So the goal of the environmental assessment process is to get the best available information for the minister to make a decision. My comment on the separation – there was the fact that a Joint Review Panel is one of the most elaborate tools that the environmental assessment legislation has to offer to undertake an environmental assessment. And that particular arrangement – and it's only called for and it has to be actually called for by Cabinet – it's only called for under the most, kind of – due to the scope and the nature of the project and obviously the public interest in the project.

So for that – because of those reasons, those reasons apply to this project in particular. A decision was made to use a Joint Review Panel and the benefit of the Joint Review Panel, I think, in this situation was that it's not – (inaudible) of non-government employees. Under the legislation, you have environmental assessment committees established for environmental preview reports and environmental impact statements, which are –

lower is not the right word, but a different type of review. Those have to be made up of government – provincial and federal government employees, for example. So the Joint Review Panel takes it another step. So my point was I see the benefit of that for this particular situation.

MS. URQUHART: Okay.

And so in the Joint Review Panel, you were saying that the sort of safeguard or the arm's-length distance between the government and the proponent and – oh, sorry, the government and the decision-maker or the Joint Review Panel – is created by having external experts who aren't government officials.

DR. SQUIRES: I think it helps in this situation. The environmental assessment committees that are set up for other projects would be very similar in the sense of, just like the Joint Review Panel, they would intake the technical information, they'd review documents from the proponent, they'd intake the public comments and review those, and they'd provide recommendations. So the process is exact – is very similar. Much more elaborate in the Joint Review Panel, but the principles of the process are very similar. But for the Joint Review Panel it is external.

MS. URQUHART: And you see a benefit to that, as you say, in this case. So in this case, the Government of Newfoundland and Labrador has political will to get this project done. Nalcor is established for the express purpose of exploiting the Lower Churchill, and Canada has signed on to a memorandum of understanding between Newfoundland and Nova Scotia and – use this as sort of a nation-building project. So in this case, it's especially important that there's some independence or some objectivity in the Joint Review Panel. Would you agree? I guess both Mr. Goebel and Ms. Squires.

DR. SQUIRES: Yeah, certainly. I mean, I would think it's logical to assume that folks submitting questions, or also presenting at public hearings, appreciate the fact they were speaking to an independent panel.

MS. URQUHART: Mr. Goebel, you're shaking your head.

MR. GOEBEL: Yes.

MS. URQUHART: Okay.

So again, in this instance I would view their recommendations as carrying a pretty significant weight because they do have that independence. They aren't influenced by any of those factors that I just mentioned.

Would you agree?

DR. SQUIRES: I certainly think that, you know, they – no, they weren't influenced by those factors and – but I don't know that I'd go as – I would not certainly go to the reverse and say that environmental assessment committees are influenced by those factors, because they're technical staff, they're not political, they're not executive and they make technical recommendations.

So to – I certainly wouldn't want to leave the impression that a joint review panel is somehow less political than the environmental assessment committees that we would establish.

MS. URQUHART: I understand. Not to cast aspersions on the committees, just in this particular case there's at least that – the apprehension of bias is removed by having an external person with that –

DR. SQUIRES: Potentially, yes.

MS. URQUHART: Okay.

DR. SQUIRES: Yeah.

MS. URQUHART: And you – Dr. Squires, you'd also indicated that you didn't believe that the Government of Newfoundland and Labrador's response should be influenced by Nalcor, is that correct?

DR. SQUIRES: I have no – I have not read anything to suggest that Nalcor reviewed the government responses, or at least the departmental records, that I've seen, but I was not in Environmental Assessment nor with this particular branch at that time, so I can only go by what I've read or other departments have said, and none have said that their records show

that Nalcor reviewed the response. That's as much as I can –

MS. URQUHART: Okay, Mr. Goebel would you agree?

MR. GOEBEL: I wouldn't be involved in that in any case.

MS. URQUHART: But would you agree that they ought not to be involved?

MR. GOEBEL: Oh, of course. Yeah.

MS. URQUHART: Okay, and Mr. Chippett as well?

So, we've indicated – actually, Madam Clerk, if you can go to P-01534, please. These exhibits, I have a number of them here that have actually already been brought out before the Commission but I'd just put them to you now, this is a note from a meeting that was held between Nalcor and some senior Government of Newfoundland and Labrador officials on August 26, 2011, which is the day following the JRP report and after it's released, and in which Mr. Ed Martin provides his thoughts to senior government officials.

So would – I take it that that's – that you wouldn't expect to see that type of meeting.

DR. SQUIRES: So this meeting was a response to the Joint Review Panel report, or information request from the Joint Review Panel?

MS. URQUHART: It was held the day following the release –

DR. SQUIRES: Okay, sorry.

MS. URQUHART: – of the report of the panel. So "The panel summarizes all points" – da, da, da – this is their – this is notes made of the commentary, essentially, that Mr. Martin was providing in respect of the panel report. Is that common practice, that a proponent would speak to senior government officials the day following the report release?

DR. SQUIRES: It's challenging to say whether it's common because we've only done this one on Voisey's Bay.

MS. URQUHART: Right.

DR. SQUIRES: So in a typical – in other environmental assessment processes, the recommendation from the assessment committee would go right to the minister, and there's no public reporting of that report. Although, other jurisdictions do release a technical document that summarizes the reports, and I assume proponents may in fact write to ministers or speak to those reports. But in our jurisdiction, we don't release the technical report prior to the minister making a decision.

MS. URQUHART: Making a decision, okay.

DR. SQUIRES: So to say it's common, it's challenging because we – I don't have anything to compare it to.

MS. URQUHART: Okay.

Mr. Goebel or Mr. Chippett, have any comment on ...

MR. CHIPPETT: Just trying to understand exactly what the meeting is again.

MS. URQUHART: Sorry?

MR. CHIPPETT: I'm trying to understand what exactly the document refers to.

MS. URQUHART: So these are meeting notes from a meeting that was held on August 26, 2011, which is the day following the release of the JRP report between Ed Martin of Nalcor and a number of senior government officials within Environment and Conservation.

MR. CHIPPETT: Can you go back to the top and we can see who the officials were?

MS. URQUHART: Absolutely.

MR. CHIPPETT: All right. So I don't know any of those. I don't think those officials were from our –

MS. URQUHART: Charles Bown was from –

MR. CHIPPETT: – department.

From Natural Resources –

MS. URQUHART: – Natural Resources.

MR. CHIPPETT: – I assume –

MS. URQUHART: Yup.

MR. CHIPPETT: – right?

MS. URQUHART: And I believe Heather MacLean was communications for the premier, if I'm not mistaken. Mr. Ralph can correct me if I'm wrong.

MR. RALPH: No, I think so.

MS. URQUHART: In any case, I just wanted to flag that.

Madam Clerk, if we can pull up P-00988, please.

And this is, again, some – I believe these are – so this were – these were notes from a deputy ministers' steering committee meeting, and they were meeting with the – so senior government officials, again, on the Lower Churchill steering committee were meeting with members of Nalcor to discuss responses to the panel reports. So, again, that would not be – is that something that you'd be – wouldn't expect to see, and you hadn't seen anything to that effect earlier?

DR. SQUIRES: (Inaudible) this one.

So, from what I'm – I'm not sure all of these people's – their role, but I believe they're internal. And so the deputy at the time, which was Bill Parrott – there are documentation, and I don't know if you scroll down, maybe this will become familiar to me, but he did send a letter in looking for feedback – or looking – starting to look at the – how the response would be prepared to departments.

MS. URQUHART: Mm-hmm.

DR. SQUIRES: So, if those folks are internal to departments, I would expect that meeting to have happened.

MS. URQUHART: Okay.

So, here, I'm just saying that their – on their agenda, they're looking at Nalcor's responses to these recommendations as part of what they are

– as part of their process in developing their response. It was (inaudible).

DR. SQUIRES: So, yeah. If Nalcor prepared a response –

MS. URQUHART: Mm-hmm.

DR. SQUIRES: – if Nalcor wrote their own response to the departmental – the panel’s recommendations, they could have read that.

MS. URQUHART: Okay.

And, Madam Clerk, if we can go, please, to P-01401?

And this will be an email from Gilbert Bennett of Nalcor to Charles Bown, dated December 1, 2011. And this is proposing some wording for Government of Newfoundland and Labrador’s response to one of the recommendations.

Again, just wanted to get your view on whether that would – whether that seems appropriate or whether that’s common or whether you would expect to see these types of communications.

DR. SQUIRES: Again, I – common is a hard word to use because we only have this as an example.

The process by which the Environmental Assessment Division sought feedback appears to me, from the files that I’ve read, to be through the departments. I can’t speak to what individual departments would have done in preparing the recommendations – the responses to the recommendations that they would have a lead on.

MS. URQUHART: Okay. Thank you.

I’m going to move on to discussion of monitoring, and so we’ve discussed this fairly extensively already. Madam Clerk, if we can please just return to P-00041? Oh, and I don’t have the page reference, so this may be – I’m just trying to think what’s the easiest way to do this.

If – maybe I’ll go to – I think it’s in here. Sorry.

Actually, if you can go, please, to P-00051? This is the Government of Newfoundland and Labrador’s response, and it’s at tab 83 of binder 5. Page 30, please, Madam Clerk.

So the panel recommends that – and just at – near the bottom there, the Authorizing Regulation – “lists and requires Nalcor to implement all of its environmental management commitments in relation to the Project made during the course of the environmental assessment”

And, Madam Clerk, if we can please go to – that’s just to set the – this is what the Joint Review Panel has recommended, and now we’re going to look at the undertaking of release, which is 02702, please, Madam Clerk. On page 2.

And you’ll note – so, under the Conditions of release, number 4(a), rather than actually list out the commitments, there is sort of a blanket clause that indicates that Nalcor will abide by all commitments. And it goes through the environmental assessment, through the EIS information requests, through the environmental assessment panel, through the information requests in that context and so on. So all of these commitments, they must abide by, but they’re not listed there and they’re not, sort of, gathered in one place at this time as – or as recommended by the JRP. So that was a decision that was made, and now I’m wondering – we haven’t seen a list of all of these commitments.

Has any – does anyone have any information as to whether one was ever created? How those – whether Nalcor created it and provided it in, you know, in one way or another? If it exists?

DR. SQUIRES: I’m not aware of a list that listed everything – it’s a requirement of any proponent whether they submit a registration-level document or an environmental impact statement that we’re holding them to what they put to paper.

MS. URQUHART: Mm-hmm.

DR. SQUIRES: So the fact that they abide by all commitments in the EIS document is a normal part of the process, but I’m not aware of a list that would list out all those requirements.

MS. URQUHART: Okay, so obviously we've seen this table with the 83 recommendations from the JRP that was updated in 2012, 2014 and 2019, but we don't have a list of all of the commitments that Nalcor made throughout the processes – the environmental impact statement, the EA, et cetera, all the IRs throughout the whole process. We don't have any consolidated list of those – of that information?

DR. SQUIRES: Not that I'm aware of.

MS. URQUHART: Mr. Chippett?

MR. CHIPPETT: I don't think so. I mean, you'd have to consider that a lot of these things would be, I think, caught up in permitting outside of the EA process.

So there would be references to certain things throughout the EIS, some of them which wouldn't be of the scale that you would have a full condition in the undertaking release order. So, you know, it's not an environmental effects monitoring plan or an Environmental Protection Plan, but a lot of these things, for example, would show up on your tracking sheet that Labrador and Aboriginal Affairs was tracking with respect to permits post-project.

MS. URQUHART: Sorry. So when you're referring to a tracking sheet, you're talking about just for that permit?

MR. CHIPPETT: Well, for any particular –

MS. URQUHART: For any permit they would have a tracking sheet.

MR. CHIPPETT: The sheet that I think we've entered in to the Commission's documents has every permit really that has gone through after –

MS. URQUHART: Mm-hmm.

MR. CHIPPETT: – project's been released. So there would be series of those that would pick up some of these things.

MS. URQUHART: So I think the key word being, some. So how do you confirm that it picks up all of these conditions?

MR. CHIPPETT: I don't think there's – I'm not aware of a list that has all of this.

MS. URQUHART: Mr. Goebel?

THE COMMISSIONER: So let's just – this is – I've already asked for an update with regards to the other list. So it seems to me that if that's what the regulation says, somebody or some way there, it should be quite easily done to establish what the commitments were that were put in writing by Nalcor. Those can be compared to the list that's already been prepared and we should get an update on whether or not all of those conditions were met.

It may be that some of those will have been met through the permits, just a matter of noting that. But I would be anxious to see that because one of the things that I'm looking at is how all of this was being monitored.

MS. URQUHART: Thank you, Justice.

And I believe that in some of Nalcor's documents there are lists that have a – there are a number of them so I'm not sure how up to date they all are, but my read is that there's over 450 specific commitments that were made. And so I find it surprising that the only list contains the 83 recommendations only – and/or the permitting. That those – you know, that the government wasn't tracking what Nalcor was doing on this.

THE COMMISSIONER: So are you referring to those items that would be in the proponent's package for the EA?

MS. URQUHART: I will have – I believe it was actually – I'm trying to recall where I – there's been so many folders and releases. I do have a document that appears to essentially go through and indicate what the status of these are from the Nalcor side. I have to find it again, unfortunately. It's kind of gotten lost in the shuffle but –

THE COMMISSIONER: Because that might be helpful to Ms. Squires.

MS. URQUHART: Absolutely.

THE COMMISSIONER: And she's – and, you know, Ms. Squires, you may also need to speak to the Nalcor environmental people, because they may well have a whole catalogue of what they had committed to and that could be a little bit easier for you.

MR. CHIPPETT: I think there's a lot of that that exists, but it may not all be –

THE COMMISSIONER: Right.

MR. CHIPPETT: – together in the one place.

THE COMMISSIONER: Where it should exist, though, I would've thought would be with you, with your department. If you're monitoring the commitments, how you can monitor something you don't know? So, you know, like – or you may not know.

But, anyway, we'll see how it goes. And it may well be it's all been taken care of and I just want to see that.

MS. URQUHART: Thank you, Commissioner.

So then – so, obviously, we have a table. The next question I was wondering about was – this is maybe an indelicate term, but in law we have what we call a tickler system, which is just a system that reminds you when there's a deadline or a date that you don't want to miss or that you – you know, that's important and it just flags it in your calendar. Or, often, in firms we have, you know, multiple different systems to make sure that you don't miss important deadlines.

Was there a system like that to flag the deadlines for these various different compliance pieces that any of you are aware of?

MR. CHIPPETT: Not that I'm aware of, but I do know – and, again, I go back to the releases of both the generation project and the Transmission Link Project, that those were captured very much like the JRP recommendations were. And one of the things that builds in timelines is the fact that certain things are needed before construction, certain things are needed before impoundment. So that kind of creates a timeline around those. But, again, the things that we focused on, primarily,

are conditions of release from both of those environmental assessments.

MS. URQUHART: Okay.

And that's what you both – to both of your knowledge, there isn't sort of a system that tracks deadlines? Dr. Squires, Mr. Goebel? No. Okay.

And in terms – so I guess this is probably difficult understanding the system a bit better that there's permits across various different departments, but is there – you know, is there a central person? Is there anyone who's sort of the lead or in charge of just making sure or checking in periodically on compliance? Is there any particular sort of compliance officer assigned to this?

DR. SQUIRES: There's no compliance officer that would be across government departments that would be able to do what you suggest. Certainly, there was a decision made early in the project release by what we understand, have been told, is that Labrador Affairs secretariat played an oversight role in compiling that permitting tracking, but individual permits would be – and compliance for those would still rest with the department that issued them and the legislative authority they have to issue them.

MS. URQUHART: And is confirming that the other – you have nothing to add on that? All right.

I actually talked about that. That's fine.

In terms of – this is actually for Mr. Chippett. So you'd indicated that you were satisfied – this is just in terms of the North Spur – with the stability. And I believe you acknowledged, essentially, Government of Newfoundland and Labrador doesn't have the sort of geotechnical expertise or that sort of very specific expertise to do an additional analysis of –

MR. CHIPPETT: I guess what I was trying to clarify was the role of our department –

MS. URQUHART: Mm-hmm.

MR. CHIPPETT: – in assessing Nalcor’s proposal for the permit to alter the body of water against the Canadian Dam Safety Guidelines.

MS. URQUHART: Right.

MR. CHIPPETT: So our focus would be on, as I said earlier, the hydrological portion. Mr. Goebel went through that I think very, very well, in terms of the parameters that are set out in the permit. You know, I think the geotechnical expertise was arrived at through other mechanisms, whether it be the independent engineer or people did independent reviews.

But from a Water Resources mandate perspective, what I’ve been advised is we can be confident that Nalcor has met the guidelines and the permit is appropriate, given the conditions on the river now and into the future.

MS. URQUHART: And so I guess there’s no – what I’m sort of getting at is there’s no expertise within – you know, you would retain outside expertise to do any type of assessment or analysis of the geotechnical or engineering aspect, right? And that you were confident that the Dam Safety Guidelines, as they were applied to this natural feature, were sufficient?

Sorry, you’re shaking your head. Just for the –

MR. CHIPPETT: Yes, absolutely.

MS. URQUHART: – record.

MR. CHIPPETT: Yeah.

MS. URQUHART: And just even in the event – even despite the fact that it’s sensitive clay or there – that there are – that there is (inaudible).

MR. CHIPPETT: I mean, as Martin described earlier, there’s – you know, there are geological features that are parts of all kinds of dams and they’re evaluated along with the actual structures that are built. So I guess what I’m confident in is the process that our staff followed in issuing the permit, utilizing the Canadian Dam Safety Guidelines.

MS. URQUHART: Okay.

And was it a common practice to request, from Nalcor, key messages on issues relating to the project?

MR. CHIPPETT: Not necessarily, but I always felt, and I know there’s a couple in the package I reviewed last night, that if my minister could be asked about a given matter, that obviously the most important thing for he or she to have was our part in it. But I thought it was helpful for him or her to have what the other person might be saying, not so they could say it, but for them to be aware, even insofar as knowing what types of questions the different ministers might get. Obviously, my minister would get a different question on the North Spur versus the minister of Natural Resources.

So it was a good way to kind of brief them on Question Period or what have you and what might come up.

MS. URQUHART: Okay, so – and I expect you’re probably talking about – Madam Clerk, if you can put P-04198, and there’s another one in here as well, but this, just as a – by way of example. And here we have an email to you; this is from 2014, to you, Mr. Chippett, from Deborah Thomas of – who’s a communications –

MR. CHIPPETT: Mm-hmm.

MS. URQUHART: – official at Nalcor, and just going through some of those key messages. So you would request this because the expertise on the information is housed in Nalcor.

MR. CHIPPETT: Right and just to give my minister a full picture. I mean, it happens on other things as well. I’ll use the example of the berm around the Health Sciences that’s being talked about in the media. My minister has a very different role in that decision as the regulator for environmental assessment and the Water Resources Division, than the Transportation and Works minister and the Minister of Health who are hoping to build the berm. But it’s still good to have ministers at least in the loop on what other people are (inaudible).

MS. URQUHART: And so would have request – in that case, that example, you would request

the information from Eastern Health or the builder.

MR. CHIPPETT: Right.

MS. URQUHART: Okay.

And, Mr. Goebel, so I just wanted to ask you – so, obviously, you mentioned that each project had its own unique features. And, in this case, one of them is actually the estuarine body that the water is flowing into and then, thus, the mix of different water types in Lake Melville.

MR. GOEBEL: Correct, yes.

MS. URQUHART: Okay.

And so that is – you were mentioning that some of the – these studies, it's very challenging to test the accuracy when this is a unique feature that – they've not built a dam on something similar, so we don't have any other analogous projects that we can look to, to determine how – the fate of mercury in those types of conditions.

MR. GOEBEL: Well, you know, I don't want to argue but I mean the downstream impacts – I mean other dams also have downstream impacts.

MS. URQUHART: Mm-hmm.

MR. GOEBEL: I'm not sure what –

MS. URQUHART: So the way in which the fate of methylmercury, or how methylmercury is going to interact in this very particular context, we've not seen before. We've never – you know, there isn't – we don't have other cases of –

MR. GOEBEL: Okay.

MS. URQUHART: – this type of an estuary with a dam adjacent.

MR. GOEBEL: Okay. So, I mean really the issue be – came to light when Harvard did the research on that and presented the paper about the impact of the project on Lake Melville and the food chain and the methylmercury. That's when we first became aware of that type of issue with that type of downstream body of water.

MS. URQUHART: Okay.

In the Muskrat – Make Muskrat Right campaign you discussed a bit earlier, you're aware that that was based largely on the demands of the Nunatsiavut Government as they were – had been brought forward in November, so the sort of four key demands that they were asking for.

MR. GOEBEL: Mm-hmm.

MS. URQUHART: And to your recollection, were any of those demands to cancel or terminate the project?

MR. GOEBEL: I'm not aware that they made those demands. The demands – those four demands you mean?

MS. URQUHART: Yes. I mean none of those demands asked for the project to be cancelled or terminated.

MR. GOEBEL: Oh, that's right.

MS. URQUHART: Yeah.

MR. GOEBEL: Yeah.

MS. URQUHART: Okay.

And following the protests and the meeting on October 26 with the Indigenous leaders and the Premier –

MR. GOEBEL: Mm-hmm.

MS. URQUHART: – in which there were a number of agreements made and the Indigenous leaders requested that the protesters leave the site, they did ultimately do that.

MR. GOEBEL: Yes.

MS. URQUHART: So you referred to the protesters as anti-project, but I would put to you that that is not accurate.

Would you –

MR. GOEBEL: Okay.

MS. URQUHART: I'm just giving you an opportunity, because from my view these

protestors had specific demands and concerns. When they were being addressed they agreed to leave, so I don't see them as being anti-project. They may be anti-poisoning, they may be anti-flooding, they may be anti a lot of things, but referring to them universally as anti-project is inaccurate, I would put to you.

MR. GOEBEL: Okay. I'm fine with that, yes.

MS. URQUHART: Thank you.

Those are all my questions, Commissioner.

Thank you.

THE COMMISSIONER: All right, counsel for the panel members.

MR. M. KING: I'll be brief, Commissioner.

Mr. Chippett, I actually only have a couple of questions for you. Earlier, during questioning by counsel for the Commission, you were referred to a document. I believe, Madam Clerk, it was 04159.

THE COMMISSIONER: Okay, that's tab 53 in book 1.

MR. M. KING: Thank you.

And so this document contains a CBC news post, I suppose, dated November 1, 2016. And you were asked some questions – or a question in relation to this document. And my notes might not be precise, but you made the comment: I can't really speak to the protests and those discussions, I can speak to the period we're talking about – or I can't speak to the period we're talking about. Ideally, everyone would have responded earlier.

So, Mr. Chippett, do you have anything to add to those comments?

MR. CHIPPETT: Just that, you know, in reviewing all the files, even over the last number of days and weeks, that there had been a lot of different things that have, you know, influenced how quickly we were able to respond. You know, I noted earlier I certainly didn't have the authority to make that decision and – but, you know, felt we did our best to make

recommendations on what could have been the decision.

And, you know, I would certainly want to say that, you know, I do not believe at any point in time anybody, you know, wished to delay this or had that as an objective, not based on any of the discussions that I had, but, you know, a few of the things I laid out contributed to, you know, decisions coming later than we would've liked.

MR. M. KING: And when you make the comment, you don't believe anyone deliberately delayed the response; you're speaking to both, I guess – the civil service, as well as Members of the government?

MR. CHIPPETT: I mean, I can't speak exactly to every single member who's been involved, but of people I've talked to – and, you know, Martin and I have had a large part in this, in the department – it's certainly no intent to, you know, to run a decision to the point where it couldn't be done.

MR. M. KING: And you were in fact questioned on, I guess, the delay in the government finalizing a response to the recommendations made by the IEAC, and you were referenced a couple of times today some ministerial changes, and I believe one of those being in April 2018?

MR. CHIPPETT: That's correct.

MR. M. KING: So can you – this may sound like an obvious question, I suppose, but can you explain to the Inquiry, to the Commission, the effect of a ministerial change on the process of –

MR. CHIPPETT: Sure.

MR. M. KING: – what we're doing, what you were doing here –

MR. CHIPPETT: (Inaudible.)

MR. M. KING: – coming up with a response?

MR. CHIPPETT: I've been through a number – I've been a deputy for almost 10 years – and, you know, it depends obviously on the individual minister. It depends on the circumstances, you know, of somebody who

comes from the backbench who's never been a Cabinet minister, or somebody who comes very quickly and you're in the middle of a big issue. So certainly nobody really foresaw the Cabinet change that would've happened in April, because, you know, it came about as a result of complaints in the House of Assembly.

My normal approach to – or what's become my normal approach to briefing a new minister is to, you know, try to have that minister briefed by every divisional head in the department to ensure that he or she has a good handle on, you know, where everything is. They'll be approached from multiple standpoints, whether it's stakeholders or colleagues or the public or what have you.

And so you do the full departmental overview. And then, obviously, depending on the time, you've got bigger issues that you bring to the forefront. And, you know, we certainly had two or three that we would've been briefing on then, and this would be one of them

[1 minute of audio recording lost due to technical issue.]

MR. M. KING: Okay?

UNIDENTIFIED MALE SPEAKER: Yeah.

MR. M. KING: Thank you.

So, following April in 2018 can you briefly just take us through then what happened because work continued on the file? So, perhaps, you could summarize that for the (inaudible).

MR. CHIPPETT: So, there were particular pieces I alluded to earlier that, you know, were questions – or I took them as questions – that the IEAC work had put to us. For example – how good is your monitoring program? So, they had supported the monitoring program, but there was debate around how good that data was because some of the results were so low.

So, statisticians in our department did a piece of work on whether or not the data was as good as we thought it was and by good I mean it was demonstrating very low levels of methylmercury. So, that continued. The

monitoring itself and the analysis of those samples continued.

You know, we've since done a piece of work on what the new monitoring follow-up program might look like. So, you know, there was work continuing and in the meantime, we were bringing in that new information to get ready to, you know, certainly, brief the Minister of Municipal Affairs and Environment but also the premier and Cabinet.

MR. M. KING: And the incoming minister, of course, in April 2018, was Minister Parsons. Correct?

MR. CHIPPETT: That is correct.

MR. M. KING: And he, obviously, had another portfolio that he was working on.

MR. CHIPPETT: Right. So, he – he was doubled up with us. He was Minister of Justice and Public Safety and Government House Leader and also our Minister of Municipal Affairs and Environment.

MR. M. KING: Did meetings continue with the Indigenous groups throughout the summer of 2018?

MR. CHIPPETT: They did. Yes. Yeah.

MR. M. KING: And so, then we get into the fall and you mentioned there are other projects that your department was dealing with at the time.

MR. CHIPPETT: Mm-hmm.

MR. M. KING: Can you elaborate on that please?

MR. CHIPPETT: So the – two of the other big things that had legislated time frames at the time, was our carbon-pricing submission to the federal government and –

MR. M. KING: Would you describe that as a big project?

MR. CHIPPETT: That's a very big project. It's one of the bigger things I've worked on in my career. It's obviously been the first time one has

been required in the province based on the federal legislation and so on. And we were working through a significant environmental assessment, as well.

MR. M. KING: And then can you take us through the steps you took in October – I believe, you referenced a letter that was drafted; never finalized?

MR. CHIPPETT: Right. So –

MR. M. KING: At the end of October.

MR. CHIPPETT: Right.

So in October – and I think it had come, you know, based on discussions Martin and I had had about the permit that Nalcor was looking for. We chose to try to advance the issue, yet get out on it a bit by drafting a letter that could be sent from our minister to outline, really, what the Premier's letter outlined in April. And obviously it was ultimately determined that we wanted this – wanted it to go to Cabinet and we all know about the –

MR. M. KING: (Inaudible.)

MR. CHIPPETT: – went through the two meetings that we did on – in that respect.

MR. M. KING: Right, and it was initially supposed to go to Cabinet in December and you indicated that got deferred.

MR. CHIPPETT: Right.

MR. M. KING: Okay.

So throughout this process, Mr. Chippett, was there any time – did you, yourself, have any authority to make a final decision on the government response to the recommendations?

MR. CHIPPETT: No, I didn't.

MR. M. KING: Is there anything I haven't covered that you'd like to say? I ask the same question to the other two members of the panel.

MR. GOEBEL: I'm good.

Thank you very much.

MR. M. KING: Thank you.

THE COMMISSIONER: Redirect.

MS. NAGARAJAH: No questions, Commissioner.

THE COMMISSIONER: Okay.

I just have two quick ones.

First of all, you talked about – one of the things you talked about, Mr. Chippett, was the impact security fund –

MR. CHIPPETT: Mm-hmm.

THE COMMISSIONER: – if there was a food advisory. Do you know who pays for that if – who is responsible to pay for that? Does that come from Nalcor or does that come from government?

MR. CHIPPETT: So, I mean, kind of the preamble to that had been the earlier acceptance of the Human Health Risk Assessment Plan and the condition Minister Trimper had put on it for –

THE COMMISSIONER: Right.

MR. CHIPPETT: – Nalcor to provide compensation –

THE COMMISSIONER: Mm-hmm.

MR. CHIPPETT: – if consumption advisories were used. So I think the intent of that one – even though it wasn't as well developed as the other recommendations – was Nalcor would be responsible for compensation.

Martin may be able to –

MR. GOEBEL: Yeah, I think that's still a cost that would be attributable to the project.

THE COMMISSIONER: All right, okay.

And one other question – obviously, some things have been happening recently, and we're going to get that maybe from Premier Ball when he testifies. But I'm assuming the issue of what's going to happen with the reservoir is still a little

bit in doubt, in the sense that there are still ongoing discussions, as I understand, involving the three Indigenous leaders, all right?

And is there a D-Day, so to speak, with regards to when that decision is going to be made?

MR. CHIPPETT: I don't know –

THE COMMISSIONER: To your knowledge?

MR. CHIPPETT: – exactly. At the meeting – so on June 11 the Premier met with the Aboriginal leaders.

THE COMMISSIONER: Mm-hmm.

MR. CHIPPETT: And he asked for feedback, within a week or so, on the draft terms of reference that had been provided and any other aspects of, you know, the four recommendations, I think, that the groups wanted to provide. I know that the Innu Nation has responded to that request. I'm not aware that NunatuKavut or Nunatsiavut have at this stage. So – but I would think there would be another discussion in relatively short order once we have everybody's feedback.

THE COMMISSIONER: Okay, good.

Thank you very much for your time.

My apologies to everyone for being so late today but I did want to get this done.

So we'll start tomorrow at 9:30 and I can guarantee we will be finishing tomorrow at 4:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.