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Chair

Mr. Chris Warkentin

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● (1530)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I'm going to call this meeting to order. This is the 37th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we are continuing our study on land use and sustainable economic development. With us we have a representative from MKO. He is Michael Anderson, the director of the natural resources secretariat.

Unfortunately, we don't have the grand chief with us. We had expected the grand chief to join us, but unfortunately he wasn't able to be here.

Mr. Anderson, we certainly appreciate you being here, and we want to turn it over to you now for your opening statement. We'll give you about 10 minutes if you can fit into that, give or take a little bit. My understanding is that there's a possibility of the bells ringing for a vote at some point in the next short while. My hope is that we can get through at least the opening statement. Then we'll maybe get some questions in, but if not, we'll come back shortly after the votes.

Mr. Michael Anderson (Director, Natural Resources Secretariat, Manitoba Keewatinowi Okimakanak Inc.): I'm at your pleasure, Mr. Chair. Thank you.

As a preliminary matter, I have several binders of material. I apologize that they are not in both official languages. They are tabbed materials with a fair bit of content that I had wanted to discuss during my presentation today, so I would invite members, if they wish, to pick up a copy of the material if they'd like to review that with me as I proceed.

As a bit of background, I would say that I've been working on lands and natural resources management for about 24 years as an employee of MKO, so I've been a personal witness of many of the different waves of activities and policies of the previous Conservative government, the Liberal government, and the current government, in terms of trying to mobilize lands and natural resources planning on reserve, engage first nations in economic development, reduce costs, and provide improved services.

A lot of the comments and suggestions we'll be making come from that real experience of seeing these various waves of different approaches, policies, and activities.

One of the things I'd like to go back to while describing this is a meeting we had recently with Minister Oliver. He raised the question with us of how we could get $500 billion worth of resource development moving in Canada. That was sort of the challenge we had in what I thought was a most excellent discussion.

The second question Minister Oliver asked was how we could address the significant underemployment of aboriginal peoples. That was the way it was described.

Mr. Chair, members of the committee, MKO has some very clear ideas about how to do both of those.

By way of a bit of background, as an organization we began our work on these types of ideas in 1984 with an intervention before the National Energy Board of Canada regarding an export licence for the Limestone generating station. Really, it was the first time Manitoba Hydro went toe to toe with a first nation organization before a regulatory tribunal. It was quite an eye-opener for Manitoba Hydro.

I had expertise from dealing with the NEB in previous proceedings, and MKO was represented by legal counsel, but the end result of it was the same sorts of ideas about capturing meaningful engagement of first nations, having meaningful involvement in procurement and contracting, having meaningful training and employment.

What was described by the minsters of the day—the Minister of Indian and Northern Affairs Canada and the Minister of Energy for Manitoba—was a northern preference clause.

So the promises were made, and what we relied upon in our evidence to the National Energy Board was in fact its decision in the Norman Wells-Zama pipeline. We quite literally whited out Norman Wells-Zama and put Limestone, and we presented the National Energy Board its very same recommendations and suggested that they be made applicable south of 60. Of course north of 60, as well as offshore, the federal government and the NEB have absolute authority to set terms and conditions that are enforceable for energy projects. But when you cross the 60th parallel heading south, there's some reluctance on the part of the federal government to utilize the carrot or the stick to impose policies on provinces.

In its February 1985 decision, the National Energy Board said the magic words, which made us very excited, that MKO's recommendations were "in the public interest". In those days that usually meant the board was going to order it. However, as for NEB's interest in realizing our very detailed recommendations for training, employment, and northern preference, and their concerns about the effect of the Burntwood/Nelson collective agreement and how you would have to address those barriers, and so on, even though they were all essentially in the public interest and adaptable north of 60, given that long history with Justice Berger on the pipeline, the NEB said they would watch with interest how it would all unfold in Manitoba.

In the end, respectfully, the Limestone aboriginal partnership directorate board, which was established to engage in training and employment initiatives, produced what former Chief Robert Wavey of Fox Lake First Nation described as the most highly trained unemployed people in Manitoba.

If we look at the various stages of projects, these waves of multi-billion dollar investments, we see that they've all rolled over the first nations of northern Manitoba and passed us by.

● (1535)

The Limestone project passed us by. Essentially, for Limestone there was a hydro station in Quebec that had recently been finished, and the Revelstoke Dam was just finished in British Columbia—it came online in 1983—so we had two groups of very highly trained and mobilized dam builders who came to Manitoba to build Limestone. First nations persons were essentially doing labour jobs, cleanup, and so forth. Our largest contracting entity, Nelson House Forest Industries, finally got work at the very end of the project in clearing roadsides.

These are the kinds of experiences we've had that have made us dig in and figure out how to answer those questions. How do we achieve employment equity? How do we achieve benefit-sharing? How do we achieve not being rolled over by the wave of development, but actually become a participant in it?

So the comments I have to make to the committee regarding land management and sustainable economic development are with those real-life experiences well in hand, as well as the examples that we have today.

The MKO region covers 487,462 square kilometres in Manitoba, or about three-quarters of the province. At tab 6 of our book, on the third page, there's a map that we included in our recent submission to the special rapporteur on the right to food. This means that all of the large-scale resource developments, such as hydroelectric development, large-scale transmission, mining development, and all the major smelters, including Hudbay Minerals and Vale—formerly Inco—are all within the MKO territory.

Again, similar to our experience with Limestone, none of these large-scale developments have left a long-lasting legacy and have neither employed aboriginal peoples in these resource sectors nor highly trained them. For example, Hudbay Minerals has been operating since the Mandy Mine in 1914—almost 100 years—and Hudbay Minerals and its predecessors have never engaged in underground mining training. There is no legacy left in the local first nations or communities, like the Hudbay computer lab at the Mathias Colomb Cree Nation. So even with 100 years of extracting billions of dollars in mineral wealth from that territory, there is no long-term legacy, either in employment or in other areas.

That comment highlights the need, for example, for engagement in what we call "employment equity", to ensure that employees of large-scale resource developments are roughly proportional to the population of aboriginal people surrounding them. That's what we mean by employment equity.

In terms of procurement, which is another element that we discussed with Minister Oliver, that is a meaningful set-aside of projects and contracts for these large-scale projects within the region. For example, the Manitoba government, when it looks at the $80 million in mines remediation in Lynn Lake, where the mines are all closed down, considers it positive to achieve a 15% set-aside to aboriginals living in the area instead of establishing its policy to try to encourage first nations to achieve 100% of the contract by going to partnerships with the Dene Tlicho, for example, who have developed a considerable expertise in mines development and so forth.

So in looking to answer Minister Oliver's two questions, how do we get $500 billion in development moving—

● (1540)

The Chair: Mr. Anderson, I do apologize. I do have to intervene.

Colleagues, votes are being now called. We have another two and a half minutes on the clock for the opening statement. If there would be a consensus, we could allow that to continue, and then we'll have to break at that point in time for votes.

It's looking like there's unanimity in supporting that, so for the next two and a half minutes we'll remain here, and then we'll head out for votes.

I do apologize, Mr. Anderson.

Mr. Michael Anderson: That's fine, Mr. Chair; I understand. As we shared earlier, it's similar to chiefs business. When the chiefs have a meeting that they need to attend to, then we are at their pleasure.

We were explaining basically the four elements to moving forward under employment and the projects themselves. The first was in procurement and employment equity in a meaningful sense. We can talk about how we think that could be achieved.

The second is accommodation. An example is using the crown-first nation consultation and accommodation process to establish measures with regard to terms and conditions in enforceable licences—which is what we were after with the National Energy Board in 1984—to ensure that these types of initiatives take place. There are substantial tools to do that. We raised that, of course, with the Senate committee. They endorsed our recommendation in *A Hand Up, Not A Handout*.

We need innovative mechanisms to ensure engagement at the community level in terms of business start-ups, investments, and training and employment. There is also, of course, as has been heard from many witnesses, revenue- and benefit-sharing. This takes multiple forms in terms of the sharing of direct revenues of the projects themselves, and the tax revenues governments may receive.

The concept of benefit-sharing is very widespread. There are a lot of different mechanisms and approaches to be taken, but they all tie together with policy. Manitoba Hydro, after operating and building dams in MKO's territory since the 1960s, has no codified aboriginal employment equity policy, so managers cannot be held accountable. Hudbay Minerals, similarly, has no codified aboriginal employment equity policy, so there are no targets that can be measured.

The aboriginal procurement initiative of the province really doesn't reach out to these kinds of capital works and projects. Even if the government itself is contracting the work, like the mines remediation project, the procurement requirements do not work downstream on the subcontract. The instant it's subcontracted, it's gone.

The federal PSAB has much more workable policies, but we're finding, in our experience with it, that it's not always applied as Treasury Board has intended. So the benefits and opportunities that first nation businesses in Manitoba may have secured through federal procurement may not have been achieved.

I believe, Mr. Chair, I've probably hit my two and half minutes.

● (1545)

The Chair: I do apologize—I hate to do it, Mr. Anderson—but I will have to now suspend the meeting.

Colleagues, we'll return immediately following votes, when we will begin the questioning with Ms. Crowder.

● (1545)

(Pause)

● (1635)

The Chair: Colleagues, we'll call this meeting back to order.

I apologize, again, Mr. Anderson, for that little bit of a hiatus. We're back, and I certainly want to thank you again for your patience.

We'll go now to our first questioner. Ms. Crowder, we'll turn to you for the first seven minutes.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair, and thank you, Mr. Anderson. I add my apologies as well.

There are a couple of points I want to ask you about. You didn't specifically talk about this in your presentation.

I believe that 30 nations are part of the MKO group, and there is a substantial amount of development on the MKO nations' traditional territories. What sort of consultation happens with the nations of the MKO when development happens?

Mr. Michael Anderson: Thank you for the question.

MKO represents 30 of the northernmost first nations in Manitoba —65,000 treaty first nation citizens—and as I mentioned earlier, three-quarters of the province, which is basically the entire northern resource area. Historically, there was zero to very little consultation regarding major development. Certainly that includes all the established mines, all the existing hydro projects, with the exception of Wuskwatim, the transmission grid, the road systems, and the rail lines.

In our submission to the UN special rapporteur on the right to food, there is a history lesson by Elder D'Arcy Linklater, of the Nisichawayasihk Cree Nation, in which he describes the progressive changes to the land base without, as he puts it, free, prior, and informed consent. The MKO grand chief adopted Elder Linklater's submission to the special rapporteur, further to Elder Linklater's written request for us to do so. It is in the document we circulated.

In more recent times, the duty to consult in the crown-first nations consultation and accommodation process has been applied largely because MKO has insisted on it. The Province of Manitoba did not have a consultation policy, nor did it have staff to engage in consultation, until MKO and the Northlands Denesuline First Nation worked together to, in essence, develop an application to the Court of Queen's Bench to seek revocation of nine mineral exploration licences that were unlawfully issued without consultation.

That territory, in the very northwest part of Manitoba, of the Northlands first nation has essentially been used exclusively by the Dene for six millennia. The whole area is a Denesuline cultural site, so they're very sensitive about impacts on migrating caribou and on their own cultural sites. In essence, if you're flying in a float plane within their territory, and you see what looks like a good spot to pull your plane up and build a camp, it's because Denesuline hands built that camp over 6,000 years.

They discovered a 17-person exploration camp for CanAlaska Uranium in a very sensitive area, without their knowledge, without their consent, and with zero consultation. The community crossed their arms and said that this was not acceptable. They communicated with the grand chief. The grand chief assigned our office. We began working with the Manitoba Public Interest Law Centre and went from litigation to a discussion with the former Minister of Science, Technology, Energy and Mines, Jim Rondeau. Then he and Chief Danttouze agreed to settle the impending litigation through the creation of what became Manitoba's first codified consultation protocol and an accompanying accord to deal with some of the other issues.

● (1640)

Ms. Jean Crowder: Mr. Anderson, my understanding of the court decisions that have been rendered at the Supreme Court level is that there is a duty to consult at the federal government level as well. You're talking about the provincial government. But at the federal government level, we have a bill before the House, Bill C-38, the budget implementation bill, that appears to undermine that duty to consult when it comes to fisheries habitat, for example.

From the federal perspective, because that's the place where we can make recommendations, is consultation on that resource development, which drives the economy in the rest of the province of Manitoba, happening to the extent it needs to on the use of the land?

Mr. Michael Anderson: The federal consultation historically was non-existent until relatively recently, with the major projects, particularly Wuskwatim, in which there was a joint first nation-crown consultation by the province and Canada. That was the first time a formal—

Ms. Jean Crowder: When was that?

Mr. Michael Anderson: That was in 2004.

Ms. Jean Crowder: Okay, so it was that recently.

Mr. Michael Anderson: Yes. That was the very first time there was anything that MKO would recognize as a crown-first nation consultation process.

I'd like to advise the committee that within months of the Sparrow decision, MKO correctly recognized the significance and requested in April 1991 that the Province of Manitoba engage us in a working group to codify and implement the duty to consult.

Essentially, if you look at all of MKO's letters and submissions and reports that go back to that period of time, they're all absolutely consistent with the doctrine later established by the Supreme Court. We were trying to engage the governments, both federal and provincial, and corporations within the province in what is now recognized as a constitutional obligation of the crown.

In the case of Repap and Tolko, for example, they built something like 1,200 stream crossings for all their forest routes. It was MKO that pointed out that, first, they didn't have authorizations under the Fisheries Act; and second, they hadn't consulted. So after first being told there was no need for those authorizations under the Fisheries Act, the departmental officials involved then began to paper wrap all these stream crossings, again without any formal consultation.

There now are the interim guidelines issued by the Government of Canada that are being applied. But for example, there is a consultation that has been triggered by Fisheries and Oceans Canada on the Kelsey re-runnering project. That is an 82 megawatt increase in overall capacity at the existing Kelsey generating station. Kelsey happens to be sitting at a very critical juncture for the connection of sturgeon habitat between Sipiwesk Lake and the lower Nelson River. There was a report, of which I was a co-author, that was presented in August of last year. The other author is Dr. Terry Dick, a former NSERC research chair and the individual who wrote the original assessment of lake sturgeon for COSEWIC's consideration. I added the traditional knowledge component; he added the science.

That report has never been responded to by either Manitoba Hydro or the Department of Fisheries, so that consultation has ground to a halt.

So it depends on what's going on. If it's a Major Project Management Office initiative, the consultations are proceeding in some form. If it's below the radar and it's been demanded by a first nation....

We've prepared these template letters, which are described as notice of demand for the conduct of a crown-first nation accommodation process, that our first nations fill out with the appropriate information and send in. With those, even though the consultation may be formally engaged, typically it doesn't proceed. There are a number of those within our region that involve Canada that are not proceeding.

● (1645)

The Chair: Thank you, Mr. Anderson.

We'll turn to Mr. Clarke now, for seven minutes.

Mr. Greg Rickford (Kenora, CPC): Mr. Who?

The Chair: Mr. Rickford, for seven minutes.

Mr. Greg Rickford: Okay.

The Chair: I have two competing lists here, so....

Mr. Greg Rickford: Thank you, Mr. Chair.

Welcome to the witness.

It's unfortunate that Chief Harper couldn't be here today. He's a friend of mine from some time back. I've had an opportunity to live and work in a lot of the communities where MKO does its important work.

Michael, we are here today talking about sustainable land use development. As I'm sure it was explained to you, the first phase of this deals to a certain extent with on-reserve issues in these regards. But as the process goes, we realize, first of all, there's some cross-fertilization with respect to traditional lands and the bundles of rights, which the court, or specified claims, or what have you, make a larger subject matter.

The additions to reserves process comes up quite frequently. If I can be frank, most of us here, if not all of us, share some concerns about this long-standing process that takes too long. We certainly want to be able to deal with that. Eventually, I think, between myself and my other colleague here, we'll spend about ten minutes or more fleshing that out.

My question first of all will start as such. We've heard that the process of adding land to reserves is time-consuming. There's no question about that at this point, in this committee, in terms of the work that we've been doing. I understand that the Manitoba Claim Settlements Implementation Act includes provisions that have in fact helped entitlement first nations—there's a list, in our parliamentary library resources here, of which communities they include—provide some degree of protection to third-party interests by providing for pre-reserve designation authority. So this is some new language that we're hearing.

It was stated by Warren Johnson, a witness at this committee earlier this month, that this helps first nations have the ability to accelerate the additions to reserves process and settle uncertainty around the third-party interests.

Could you elaborate on the nature of the pre-reserve designation process? More specifically, in what ways has this authority affected the ATR process and addressed the delays in this process?

Mr. Michael Anderson: On the specifics of the pre-reserve designation process and the model that you've described, I was trying, with the case example, to understand. But in the existing Indian Act, there is provision under section 36 to designate a piece of land as a special reserve.

So there's statutory authority for Canada to identify a parcel of land as if it were reserve. I see this step as another tool, similar to that, to pre-designate parcels that may be converted to reserve.

On the movement of lands to reserve, I was part of meetings that were at the Manitoba Legislative Assembly when the predecessor federal minister and late Minister Oscar Lathlin had jointly made a commitment to move 150,000 acres a year to get toward the 1.1 million acres of lands that were provided under the TLE framework. The late Minister Lathlin really wanted to know what the holdups were. I remember we had a good technical chat about our perspectives on that.

A lot of the lands and acres that have moved subsequent to the commitments of the two ministers have been lands for which there have been relatively few conflicts. For example, in the case of the Nisichawayasihk Cree Nation, land within their traditional territory that formed together a chain of lakes that are not developed by hydro, there are no easements on them. There are no mineral claims. There are no other third-party interests that would hold them up.

Mr. Greg Rickford: That would certainly complicate that, but I think what we're appreciating here is what role, if any, the provinces could play—and/or territories, I suppose—in a claims settlement implementation act that would help in some ways to deal with certain kinds of ATRs, notwithstanding some of the more complicated, not just cross-jurisdictional, issues with respect to minerals and other kinds of resources. That kind of implementation act might help deal with pre-reserve designation in the context of ATRs.

Is there a short answer to that?

● (1650)

Mr. Michael Anderson: The short answer is that the lands that are held up all have what regrettably has become a thorny issue.

Mr. Greg Rickford: Right.

Mr. Michael Anderson: For example, in NCN's case, most of the lands with minimal conflicts.... I mean, I'm the TLE adviser for NCN, and they have by far the most complicated of all the selections of any first nation in Manitoba. They've asked us to help stickhandle that process through.

Mr. Greg Rickford: Are you hearing from third parties, Michael, as to whether they think this is better in the context of the implementation act than, say, the situation in another province where there isn't a layer, if you will, or a piece of provincial legislation that could help deal with certain kinds of ATRs?

Mr. Michael Anderson: The informal process that your officials have adopted and are working with, we call parcel A and parcel B. In that situation we take a piece of land that includes an identified area that's in conflict. The area might be a former mine against which there is a mining claim or something like that. We actually carve that area out of the boundary of the selection in order to move the rest of it. We've been creating these different mechanisms of designation in order to move forward so that the whole thing is not hung up just because there's a corner of it that's involved in a mining claim. The area is actually renamed—it's given A, or B, or a new name—and then the other part of it is moved forward.

Mr. Greg Rickford: This is excellent information, Michael.

I'm curious; do you have an inventory of processes that have gone on under this Settlements Implementation Act, in which we could see quantitatively and qualitatively that it has worked better than what we've had, by way of comparison, in other jurisdictions, where there hasn't, let's say, been an act to speed up certain ATRs?

Mr. Michael Anderson: The quick answer is that we absolutely have the capacity to do that. We could do the comparison. If you're requesting that, we'd be happy to do that. Typically, it takes at least eight years to move a parcel from selection to—

Mr. Greg Rickford: We've heard that.

Mr. Michael Anderson: So we're all into looking at anything that works, and if it doesn't undermine the intent for which the selection was made and so forth, we've all been pretty flexible. Actually, your officials in the region have been reasonably flexible about those kinds of things. The other hang-ups have involved areas with a cabin, a camp, on them. That was the reason the selection was made.

Mr. Greg Rickford: So when you say a comparison—

The Chair: Thank you, Mr. Rickford.

I do apologize, but you've gone over time. I was going to try to jump in between the interchange there, but I will have to get to you on another round.

Ms. Bennett, we'll turn to you now for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Michael, maybe you'd like to finish up on the parliamentary secretary's question, and then maybe you can help us understand. You have been intimately involved in these processes for so many first nations. Could you tell us a little bit about what you think the delays are based on. Is there not enough staff? Are there not enough resources? Based on the question we placed on the order paper, there doesn't seem to be a tracking system so that people can know what the holdups are or even what the status of their application is.

Then maybe you can go on and tell us a little bit about some of the success stories in terms of urban reserves, or economic development, or what else you've been able to do.

Mr. Michael Anderson: Thank you for that question, and thank you for allowing me to continue with the parliamentary secretary's question.

We've all tried to make it work where we can. Even though thorny issues have arisen, they haven't.... As another consequence of the two ministers making a commitment to move 150,000 acres a year, a working group was created in Manitoba that involved federal, provincial, and first nations officials. I was one of the people designated at the request of the provincial minister. Of course the grand chief instantly concurred with that request.

I created a table. I like tables. I like to be able to snapshot things and be able to track and plan them. Of all the selections categories of the issues that were held up, I made the observation to all the people sitting on this working group that we are going to figure this out. There is no other group of experts somewhere else in Manitoba who know the TLE framework as well as we do—the director of lands for the department, the senior people from the lands branch in the province, and persons like me and other first nations reps. If we were going to puzzle this out and make it work, this group at the table was going to do it. There wasn't anyone else. Once everyone agreed, yes, that's true, then we began to focus on resolving the issues.

Within the path, what's happened is some intractable issues, like the form of a hydro easement, have frozen those selections, and they're not moving forward. There's a lot of work on a standardized easement agreement, but Hydro has requested the lands under easement be administered by the Province of Manitoba and not as federal land, and that's not consistent with the original TLE framework.

These are reserve lands that have an easement protecting use of the lands but subject clearly to the authority of the minister and chief and council. Manitoba doesn't want to do that. They're concerned about Canada having influence on the operation of Manitoba Hydro's water regime.

In terms of pre-transfer uses of lands, which is the question we were talking about earlier, a piece of land would be selected because it's a cultural site. There are camps and cabins on it. The department felt there was a liability concern, and that then delayed all those until we worked those out.

What we ended up working out was that instead of having that release, the acceptance of liability by the first nations covers the entire parcel, which may be several thousands of hectares. We had the release apply to the area reasonably appurtenant to the use. There were compromises, and I was part of the team who helped work that out. Whenever we've hit a wall, we've tried to figure out a way around it.

The easement one is a bit sticky, and it needs to be resolved because there are a large number of sites on the water because that's where our communities settled. The reason our communities are on rivers is for all the right reasons—water supply, communication, transportation, fisheries, wildlife—and so to have these particular selections held up are quite a problem.

We're keenly interested in the ATR process on urban reserves, for example NCN's selection of the Mystery Lake Hotel in Thompson. Apparently there's a ministerial recommendation from region to headquarters suggesting that this proceed, but it is still moving along. There's a site on Madison Street in Winnipeg that MKO is interested in for other reasons, which would be the first urban reserve in the city, Long Plain First Nation, because we have an interest in putting a Muskehki pharmacy in that parcel. It's being converted to Yellowquill College. We have a floor plan to put a pharmacy and a clinic in the college so it would be the first, first nation-owned business on an urban reserve inside city limits in Winnipeg, but that is not proceeding very quickly.

There's a lot of economic opportunity. A lot of benefit would flow from speeding up the mechanism of dealing with urban reserves in particular that are designated for economic purposes. In NCN's case they also have another selection they want to build a large convention centre on, a facility, because the Mystery Lake Hotel doesn't have conferencing facilities and so forth, which would create a hub of activity and business that would benefit the whole Thompson region. Again, issues with easements and dealing with Hydro have held up the piece of land they want to set aside for that purpose.

On problem solving that one, I can say we went to meet with the deputy minister of Northern Affairs and presented the rationale Hydro was using for setting an easement elevation on the land that would render most of the parcel under water or under easement, and therefore not developable. The deputy said that's a no-brainer. We're never going to do that because that particular easement elevation would flood half the Thompson airport and so on.

● (1655)

There's a lot of goodwill, we think, that's necessary to have players encourage each other, to not, in that case, set an easement elevation for a hypothetical project that's never going to get built, just for the purpose of controlling as much of the reserve selection as possible.

Positive development and economic stimulus for the Thompson region have been held up for a decade as a result of this position that's not moving with Manitoba Hydro, even though the deputy minister of Northern Affairs has advised the first nation that we're never going to do that, as did Mr. Brennan before he retired.

We need to try to get senior policy people troubleshooting through some of these hang-ups to get these critical acres moving, so we can create some jobs and build some convention centres and make benefit for the people of the regions based on those reserve selections.

There are a lot of positive results from the TLE agreement, especially in economic use of certain key parcels that are not proceeding.

Another one is, as you would probably expect, we did a detailed analysis of both mineral resources and potential hydro sites on NCN selections, for example. We hired the former deputy minister of mines for the Province of Manitoba to help us do the workup. He had retired, but he knew the ground better than almost anyone we could hire. He advised us of the key mineralization we should be interested in.

We also reviewed all the historic sites for developable hydro power. One of the selections that NCN has made is on the next low head hydro site below Wuskwatim. They've selected both sides of the river, so the Dominion Water Power Act would apply, which would mean they would get all the water rentals, everything. The site has been bedeviled by attempts to model easements so far upriver from Thompson, from the Manasan site, that the site becomes ineligible due to an interpretation of a provision of the TLE framework.

It's one of those things where if you sit reasonable people down in a room and lay the facts out face-to-face, we should be able to come up with some solutions to move these very valuable economic sites forward. Then we'd end up with, at that particular site which is known as Kepuche Falls, a hydro station built by a first nation using its own financial wherewithal. Wow.

● (1700)

The Chair: Thank you, Mr. Anderson.

Mr. Seeback, we'll turn to you now for seven minutes.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

To pick up on the comments and the discussion you had with Mr. Rickford earlier, Manitoba is one of three provinces that has enacted legislation aimed at expediting ATRs arising from TLE and specific claim settlements.

The Manitoba Claim Settlements Implementation Act contains provisions that enable ATR approvals through a ministerial order rather than through an order in council. It also enables pre-reserve designations.

What effect, if any, do you think this legislation has had on the speed at which ATRs are resolved?

Mr. Michael Anderson: I can say the ministerial order is a good thing. It moves the land more quickly. The order in council lands, you're all familiar with the mechanism. It takes a long time. You have to get the committee of deputies together. It's a long process to get an order in council of the federal cabinet.

Having a ministerial designation has substantially sped up the process in some cases.

As I've said, where we've had lands that are ready to go and can be moved, they've moved, and most of them have been surveyed. Most of them either have been set aside already or are in the process of being set aside.

The ones that are not moving, as I've described at some length, are ones with these issues that really require some senior-level troubleshooting once presented with the facts. However, changing it to a ministerial order has also, we hope, permitted the opportunity for departmental officials to take into consideration the field information from their own officers, information from the TLE committee, and from the first nation, and try to make a decision that feeds up through a ministerial recommendation that then can be acted on.

Mr. Kyle Seeback: How does this compare with the pre-legislation period, these timeframes? Could you compare and contrast that a little bit?

Mr. Michael Anderson: Yes. I was saying that, without intending to be disrespectful, we called the ATR the prevention of reserves policy because it just took so long.

Mr. Greg Rickford: Sorry, what was that?

Mr. Michael Anderson: The prevention of reserves policy. For example, there was an issue with the stale-dating of environmental assessments. Departmental officials would work on doing an environmental site assessment, particularly if a site had any human use prior to that, the storage of fuel or particular things like that. The wheels were turning so slowly that two years passed and at one time the ESA would be stale-dated, and you'd have to do it again.

There have been some internal policy changes made that have allowed, where there has been no subsequent change in land use, the previous ESA to stand and so forth.

The process took so long that when a piece of land was selected, it really wasn't moving to reserve. Often with first nations there has been a recent issue with the loss of use claim. Some of these lands are so valuable that they are delaying being transferred to reserve and converted to reserve, which results in a substantial economic loss, not only to the first nation, but to its partners.

Mr. Kyle Seeback: Would you say it's significantly better than it was before?

Mr. Michael Anderson: I would say, as a practitioner, that there are elements of the change in policy that when properly applied are better than the previous process.

Mr. Kyle Seeback: How much of the progress in converting lands to reserves do you think can be attributed to the legislation?

● (1705)

Mr. Michael Anderson: The ministerial order is a step that removes a considerable period of time consideration. I repeat again that most of the acres that have moved are ready to move. They're remote, there are no mining claims, and there are no hydro easements. You basically send a survey crew out, survey them, and get the survey photo mosaics authorized by the first nation. You get it named by the first nation, and then it goes through the process to be set aside. For those sites the change in statute to ministerial order has sped up the conversion to reserve, but for the ones that are hung up, it's not having the same kind of effect.

Mr. Kyle Seeback: You're talking about some land with difficulties, but what would you say the challenges are right now?

Mr. Michael Anderson: I think reasoned minds getting together to methodically go through the parcels that are in limbo would be of some value right now. That might need some senior policy assistance to say, “This is the decision we're going to take, this is the decision we're going to live with, and let's move on”.

Brokenhead First Nation had several sites that Hydro claimed were affected by hydro development on the Winnipeg River. They were a considerable distance away, and they eventually got Hydro to drop that claim, and so forth. Try to speed up getting those blockages, where reasonable persons acting with information can actually make some decisions and ask whether we can move on.

That was the intent of the TLE working group that the late Minister Lathlin had established in response to the joint commitment of the two ministers. That working group didn't continue the sort of energetic engagement in identifying parcels and concerns, figuring out who was responsible for the concern, who had the concern, who could resolve the concern, and how we could get there. So that site-by-site process has sort of unravelled. I would strongly suggest that it be reinvigorated. I thought it was doing some good work.

Mr. Kyle Seeback: At what stage do you find these things mostly take place—these challenges or things that are slowing down the process?

Mr. Michael Anderson: Interestingly, in many cases with the sites that are the most troublesome the issues arose at a very early stage after selection in the various correspondence back and forth, including from the province. Some of them, for example the departmental concerns regarding the pre-transferred use of lands, arose considerably afterwards.

As far as one of the issues, under the TLE framework agreement a very important provision is that the 1991 additions to reserve policy are grandfathered, so there's an agreement that Canada will not change the ATR after entering into the May 29, 1997, TLE framework agreement. So the rules then will continue going forward.

A considerable amount of time and effort has been invested in resolving concerns that both government parties have come up with after signing the framework agreement. Pre-transfer uses of lands is one big one that Canada came up with. Then this new set of rules for easement lands that Manitoba and Manitoba Hydro are pressing have taken up a considerable amount of time.

The Chair: Pardon me. I hate to interrupt.

Thank you, Mr. Seeback.

We'll turn to Mr. Genest-Jourdain, for five minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good afternoon, Mr. Anderson.

Mr. Michael Anderson: Good day.

Mr. Jonathan Genest-Jourdain: I was particularly interested in the part of your statement where you spoke about...

Can you hear me well?

[*English*]

Mr. Michael Anderson: I can, yes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: I was particularly interested in your statement that the members of aboriginal communities are not included in decision-making bodies and the upper echelons of industry, especially in relation to the development of industry and of resources on traditional lands.

I am a native of a northern Quebec community on the 52nd parallel. Over the years, I have also observed that the deterioration of the social fabric was related to the encroachment of industry on our territory. I would like to know your position on that and in particular, I would like you to give us some idea of the situation in Manitoba.

[*English*]

Mr. Michael Anderson: The legacy issues related to large-scale developments and first nations land are deep and profound. There are elders in some of our communities who have not gone back to their traditional territories where their former homes were because it would literally break their hearts.

I know that companies have some difficulty in understanding how this could persist for more than one generation, but the elders and community members feel that many of the legacy issues are not resolved because they're not resolvable. There's an irreversible adverse effect to changing river systems, water regimes. The seasonal flow of water has been completely reversed. The water is high in the winter when it used to be low, and so forth.

However, having said that, the first nations are insisting, even those who are partners in new development.... For example, the Nisichawayasihk Cree Nation is a 33% equity owner of Wuskwatim, and the Cree Nation partners are collectively a 25% equity owner of the new Keeyask generating station.

There's actually an interesting tension between even their partner, Hydro, and the first nations. There's this thought that when you're a partner in a project you move on; you've accepted what's happened before. But the elders and the community members are insisting on keeping the current impacts and those legacy concerns as equally front and centre as their partnership in building the project. Every step that's taken has to reconcile, to heal, those past impacts.

In Stoney Cree, it would be, *Kwayaskonikiwin*—to achieve balance. So the elders are insisting that ceremonies be done, that recognition be done, to not forget what happened and move forward.

The impacts of the past developments are around everyone every day. The communities insist that be recognized.

● (1710)

[*Translation*]

Mr. Jonathan Genest-Jourdain: What is the turnover like? If I understood what you said correctly, training is given to members of the communities. That also goes on in the communities. ERAs, impact and benefits agreements are concluded with the companies. Training is planned, and a percentage of jobs have to be set aside for the communities.

However, the fact remains that there is quite a high turnover rate among the employees from the communities. That phenomenon is linked among other things to the deterioration of the fabric, that is to say that the company managers claim that the employees are not reliable. They claim that Indians from the community do not turn up once the cheque has been issued. Are the same claims made in your area? Does industry put these things out there in order to justify a constant turnover among the aboriginal workers?

[*English*]

Mr. Michael Anderson: There are circumstances that are very similar in our communities, partly because of isolation, lack of support for workers when they're in camps, and so on. The agreements are attempting to provide support for workers and to adapt their work schedules so their lives and their communities, including their harvesting activity, can be accommodated in their employment on the projects. It still has a long way to go.

On the Wuskwatim project, there was what was described as cross-cultural training, which the first nation was responsible for. Interestingly, when you took a tour of the Wuskwatim project and you came through the plant gate, you would be handed a list of the customary law principles of the Cree Nation as they would apply to the construction of a hydro station. Then, if you were working in that plant, all of this would be explained to you—how the project was inherently inconsistent with the customary law but that all of these other activities would be undertaken to try to reconcile it.

In terms of our workers, it's very important that there be support for them—for counselling, for assistance with their communities. If people are at a distance for long periods of time from their families, particularly if they're from remote communities, it is apparent to employers that those persons are less reliable than others. But they have a different cultural outlook on time and seasons and community needs, and their families' needs. We're trying to grow the resource industry to match the expectations of our citizens.

The Chair: Thank you very much.

We'll turn to Mr. Wilks now, for five minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thanks, Mr. Chair.

Thanks, Michael, for coming today.

A vast majority of first nations communities in Canada operate under the Indian Act. As I understand it, in the case of the MKO most of the communities are that way as well.

I have two questions for you, and then I'll let you answer them. Managing reserve land under the Indian Act is, shall we say, weak. What are some of the challenges faced by land managers under the provisions of the Indian Act?

My second question is, in your experience, what factors influence a first nations community's decision to remain under land management under the Indian Act, as opposed to joining the first nations land management regime, for example?

● (1715)

Mr. Michael Anderson: The most obvious limitation for first nation environmental management is that section 81 of the Indian Act doesn't provide a head of authority for a first nation to manage the environment and its lands in that common sense.

One of the former environment managers of Manitoba region and I spent a long time trying to figure out how we could twist and turn and tweak the current legislative framework to result in an environmental management regime. It might be of interest to the committee, as kind of a sidebar, that when the chiefs in the assembly created the Natural Resources Secretariat in 1988, we equipped ourselves almost immediately with a geographic information system and satellite imaging capabilities, so that we could do mapping of both our communities and the surrounding territory.

The region was so excited about what we were doing that there were proposals jointly between the regional director general and our grand chief to headquarters to try to resource the kind of capacity that we represented on a long-term basis, so that the region would have a partner to try to work through some of these issues.

We weren't successful in achieving it. I was very grateful for doing a small national tour encouraged by the Manitoba region to see what we have here in Manitoba and how maybe it will work for you. But the essence is the statute doesn't provide clear tools for managing the environment side of the equation. As for the First Nations Land Management Act, first nations like Opasquiak are interested in it because they need the tools to deal with leases to do economic development on reserve of other persons other than themselves as well as their own members.

They had trucking operations, for example, and prior to the First Nations Land Management Act, they didn't have the authority to enforce their own leases. If they were having trouble with people dealing with battery acid or fuel or oil, or they wanted to deal with those individuals, they didn't really have all the tools they needed. Under the land management act, they have a bigger tool kit that they can use to properly manage their lands in the sense that prudent and reasonable managers would expect of their lands.

It's a tool kit that works for first nations that have need to use it. It's less applicable, although not exclusively so, to a first nation that is more remote and that is managing, typically, its own lands and may not have any certificates of possession or any individual possession of land through a formal mechanism. People live through custom. That's their house, that's the point of land on the lake where their family has always lived, and it's administered essentially through custom, through chief and council and the entire community.

Other first nations have gone into pretty rigorous regimes like the Squamish Nation. That's the classic case of Joe v. Findlay, where they did have a truck operation over by Indian Arm, and they couldn't control it. So it was that gap in the law between a head of authority under the Indian Act, which does exist in that case, and implementing it through bylaws.

One of the other projects we've been keenly interested in is filling the statutory authority where it does exist under section 81 with a comprehensive scheme of bylaws for on-reserve land environmental management to make the tools work as much as we can make them work.

There was a time in the past where Manitoba region was keenly interested in creating these kinds of frameworks, but it's less so today.

The Chair: We will now turn to Mr. Bevington for five minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you.

Thank you to Mr. Anderson. Quite obviously you have a wealth of experience in this particular area, and I appreciate what you're telling us here today. Some of it may take a little time to digest.

I'm interested in what's happened over time with the hydro facilities. I guess the original one was Grand Rapids?

Mr. Michael Anderson: The first large project in the north was Kelsey, which was constructed to provide power to the Inco operations at Thompson. That was a co-project built originally between Inco and Hydro, and became a Hydro project.

That was followed then by Kettle, the first large generating station on the Nelson River at Gillam, and then Grand Rapids.

Mr. Dennis Bevington: People in Grand Rapids, I visited there a couple of summers ago, and they were very concerned about the treatment that they've had in terms of the hydro facility and what it had done to their community, and some of the unresolved issues that they have with the federal government over this.

Are you familiar with those issues?

● (1720)

Mr. Michael Anderson: I am. I've done some work with the two of them. Actually, in terms of the project sequencing, it was Kelsey, then Grand Rapids, then Kettle. Kettle was not possible until long-distance high-voltage transmission was technically feasible.

One of the reasons Grand Rapids was begun in January 1960 was because the transmission length wasn't that long. It's our thinking today that if you applied to build Grand Rapids in 2012, you would never get a licence to do it, because it was the fourth largest freshwater inland delta in North America. Even the United States Department of the Interior, when they did the environmental review of it, intentionally underlined several key facts like that.

In the case of Grand Rapids, the project was constructed, and no settlement was arrived at with them until 1991. The settlement at the time was a full and final $5 million. That seems unthinkable as a measurement of the value of that generating station on a full and final settlement basis. They subsequently arrived at a further arrangement with Manitoba Hydro regarding the re-licensing of the dam. The licences are about to expire. As a condition of their support for relicensing the project, Manitoba Hydro has agreed to provide annual payments to the community on a basis that was agreed to through negotiation with the first nation. The future agreement is very different from the past one.

Mr. Dennis Bevington: Has the federal government had a hand in this as well?

Mr. Michael Anderson: Well, interestingly, Canada was not a party to the original agreement, nor is it a party to the current one. Members may be aware, and the parliamentary secretary certainly is, that there has been outstanding litigation, which has been moving along slowly, between the Grand Rapids First Nation and Her Majesty, because Canada was not a party to the original settlement. The first nation takes the position, and we would agree, that Canada did have and continues to have a responsibility regarding the construction, operation, and licensing of the Grand Rapids generating station. I happen to be one of the witnesses for the Grand Rapids First Nation in that case.

Mr. Dennis Bevington: I notice that you have some details about some of the work that had been done on fuel storage and lands management. How many communities do you still have in the region that are off transmission lines? Do you still have a number of diesel-fired communities?

Mr. Michael Anderson: Well, the report you referred to, which includes that case study, is “The Fiduciary Obligation and the Environmental Management of First Nations' Lands”. As a bit of background, the department circulated this report to every first nation in Canada as part of the lands-in-trust review held many years ago. They considered the discussion in it to be important enough that it was part of the tool kit given to everybody. We're updating it now.

To answer your question, though, there are two types of fuel consideration. We have four communities left that are on diesel: the Barren Lands First Nation, the Northlands Denesuline First Nation, Sayisi Dene First Nation at Tadoule Lake, and Shamattawa. They're the four most northerly first nations, if you draw an arc around them.

The fuel storage we were talking about in this case study was also fuel for heating, because many of our communities, even though they have electricity, still use heating oil for personal use and for backup. Even though there is a grid now to most of the east side first nations, the grid does go down. When you have a nursing home or a personal care home or places like that, you have oil as a backup.

There were many types of tanks in the community. Also there was gasoline, diesel fuel, lubricating oil, and so on. This case study was about how to manage that. The concern was that, at the time, the department had engaged in an arrangement with the Province of Manitoba, without speaking with the first nations about whether that was the process they wanted, to have fuel storage tanks monitored, regulated, and so forth.

What originally brought it to our attention was that some of our first nations were getting enforcement orders on provincial letter-head. The chief and council were receiving letters from the Province of Manitoba about the condition of their fuel tanks. Those, of course, were delivered to me very quickly, and then we began this dialogue with the region. Subsequent to this original paper, the fuel storage regulations were established under the Indian Act. They were then placed under federal authority.

● (1725)

The Chair: Thank you, Mr. Anderson. I do want to thank you for the testimony today. We certainly appreciate you putting up with us running in and out. Certainly, I want to thank you for coming and bringing testimony. I can tell you that it has been valuable.

There was some information that had been requested from certain members around the table. I don't know if there's a recollection as to what that might have been. You are not compelled to send it to us, but if you would, our committee would certainly appreciate it. I think there was a comparison that was asked for by Mr. Rickford, as well as some information from Ms. Crowder. Maybe you can—

Ms. Jean Crowder: No, actually, I have a question for the parliamentary secretary, which is separate. It's just a very brief question.

The Chair: Okay. Very good. If that would be available, I know that would be really appreciated. If you would just make it available to the clerk, that could then be distributed to committee members. Like I say, it's not something that we compel you to do, but if you have it available, that would be helpful.

Thank you so much for coming. I think there's just some committee business that we have to undertake now. Then, we will be free to leave.

Ms. Crowder.

Ms. Jean Crowder: It's actually just a very quick question for the parliamentary secretary. I submitted a notice of motion, but realized that we're going to run out of time.

I am wondering if it is possible to have the minister come on supplementary (A)s, which were referred to the committee. I know the last supply day is coming up. I don't think it has been scheduled, but we have to have him before the last supply day. I realize that, because we have no committee meeting on Thursday, we won't be able to talk about the motion on Thursday. I wonder if you could ask the minister if he would come some time before the last supply day.

Mr. Greg Rickford: Sure.

The Chair: On that, committee members, just recall that there is no committee meeting on Thursday. The next committee meeting is an in camera meeting on Tuesday. It is going to be just deliberations with regard to what we heard while we were travelling. We're going to have a discussion as committee members, so that's next Tuesday's meeting.

Thank you so much. We will now adjourn.

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