

ENCANA SHALLOW GAS INFILL DEVELOPMENT PROJECT
AND EUB APPLICATION NO. 1435831

JOINT REVIEW PANEL HEARING CONDUCTED PURSUANT TO:
SECTION 4.5 OF THE *"AGREEMENT TO ESTABLISH A PANEL
FOR THE ENCANA SHALLOW GAS INFILL DEVELOPMENT PROJECT"*
AND THE EUB'S *RULES OF PRACTICE*

PROCEEDINGS AT HEARING

OCTOBER 24, 2008

VOLUME 16

PAGES 3505 TO 3788

Held at:
Energy Resources Conservation Board
Govier Hall, 640-5th Avenue S.W.
Calgary, Alberta

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(PROCEEDINGS COMMENCED AT 8:29 A.M.)

THE CHAIRMAN: Good morning, Ladies and Gentlemen. Welcome back to our proceedings this morning. I would like to welcome Colonel Bruce back. I, I am sure that you will have a sense that you have been, been missed because I'm sure people will have questions reserved for you, for no other reason than the fact that you've been missed, obviously. So we'll get to those in, in a few moments.

But, Mr. Lambrecht, I believe you have some exhibits to -- that have been tabled this evening -- this morning that you wish to speak to?

UNDERTAKINGS SPOKEN TO

MR. LAMBRECHT: Yes, sir. I understand these are distributed to my friends and to the staff of the Panel. They arise from undertakings that were extended earlier in the week.

There was a request to produce the letters respecting the well, known as the Nishimoto Well, and these are 003-052, a letter of September 15th, 2005, and 003-053, a letter of September 21st, 2005.

Exhibit No. 003-052: Letter from DND to

EnCana - Well in a wetland - September 15,

2005

Exhibit No. 003-053: Letter from DND to

**EnCana - Removal of EnCana Gas Well in
wetland - September 21, 2005.**

MR. LAMBRECHT: And then secondly, a request to produce the annual reports for the CFB Suffield National Wildlife Area for 2006 and 2007. And the 2006 annual report is 003-054 and the 2007 annual report is 003-055.

**Exhibit No. 003-054: CFB Suffield National
Wildlife Area - 2006 Annual Report**

**Exhibit No. 003-055: CFB Suffield National
Wildlife Area - 2007 Annual Report**

THE CHAIRMAN: Thank you, Mr. Lambrecht.

MR. LAMBRECHT: Thank you, Mr. Chairman.

MR. MILLER: Good morning, Mr. Chairman.

Just to re-introduce myself to the Panel, my name is Keith Miller and I'm counsel for SIRC. As it appears that my panel may be appearing today, I'm, I'm appearing to file the curricula vitae of my witnesses and what I've done is I've combined them as one document, sir.

I would propose to enter them as one exhibit and they consist of the Curricula Vitae of Steven E. Moffat, who is the president of SIRC, and Mr. Robert Baron, who is the supervisor of range safety for SIRC as well. And the next exhibit number for SIRC would

1 be 008-003 and I've assigned that on the, on the
2 document itself. Sir, if I might have that filed.

3 THE CHAIRMAN: Yes, that's correct. Thank
4 you, sir.

5 **Exhibit No. 008-003: Curriculum Vitae of**
6 **SIRC witnesses, Steven E. Moffat and Robert**
7 **Baron**

8 MR. MILLER: Thank you. I'll just
9 distribute copies.

10 THE CHAIRMAN: Okay.
11 **DEPARTMENT OF NATIONAL DEFENCE, ENVIRONMENT CANADA, AND**
12 **NATURAL RESOURCES CANADA WITNESSES (ON FORMER**
13 **OATH/AFFIRMATION):**

14 **Dr. Jennifer Rowland, DND (former oath)**

15 **Col Chuck Lamarre, DND (former oath)**

16 **LCol Malcolm Bruce, DND (former oath)**

17 **Mr. Mike Norton, EC (former affirmation)**

18 **Mr. Dave Instrup, EC (former oath)**

19 **Dr. Dave Duncan, EC (former oath)**

20 **Ms. Jessica Coulson, NRCan (former affirmation)**

21 **Mr. Andy Didiuk, EC (former oath)**

22 **Mr. Paul Gregoire, EC (former affirmation)**

23 **Ms. Brenda Dale, EC (former affirmation)**

24 **Dr. Darcy Henderson, EC (former oath)**

25 **Mr. Olaf Jensen, EC (former affirmation)**

1 Mr. Brent Smith, DND (former oath)

2 Ms. Delaney Boyd, DND (former affirmation)

3 Ms. Karen Guenther, DND (former affirmation)

4 Dr. Tony Hamblin, NRCan (former affirmation)

5 Dr. Fons Schellekens, NRCan (former affirmation)

6 Dr. Miroslav Nasteв, NRCan (former oath)

7 Dr. Rod Smith, NRCan (former affirmation)

8 Dr. Stephen Wolfe, NRCan (former affirmation)

9 Mr. Wes Richmond, DND (former oath)

10 Mr. Fernando Martins, DND (former oath) (civilian)

11 THE CHAIRMAN: All right. I believe we're
12 ready to begin the cross-examination of Commander
13 Bruce and we'll begin with the Coalition, followed by
14 EnCana, then Mr. Mousseau of the Secretariat, and then
15 ourselves.

16 Ms. Klimek, please proceed.

17 **UNDERTAKINGS SPOKEN TO**

18 A. MR. NORTON: Sir, sorry to interrupt. I,
19 my sense is this is the appropriate time for these
20 sort of matters.

21 There was one other undertaken -- undertaking
22 given to Mr. Jensen yesterday in respect of three
23 citations from the literature review that he conducted
24 and if it's appropriate now, Mr. Jensen was going to
25 respond to that undertaking orally.

1 THE CHAIRMAN: Yes, this is an appropriate
2 moment for that to occur. Mr. Jensen, please.

3 A. MR. JENSEN: Yeah, good morning. This was
4 in reference to a request from Mr. Denstedt for three
5 references with respect to our systematic review.
6 I'll just preface this by saying most of the
7 information on the systematic review can be found in
8 Exhibit No. 003C-006, which is the Environment Canada
9 reply to Information Requests, and specifically the
10 reply to EnCana No. 69.

11 The three -- I'll go through these documents
12 one by one briefly. The first reference was to a
13 paper by Forman, Reineking and Hersperger in 2002
14 entitled, "Road Traffic and Nearby Grassland Bird
15 Patterns in a Suburbanizing Landscape".

16 The effect we noted for that paper was
17 negative, so the effect on traffic on grassland birds
18 is negative. However, our reviewers noted that the
19 paper didn't contain our target species and contained
20 different grassland bird communities.

21 With respect to data quality, it was an
22 artificial study design. Analytical flaws interfered
23 with effect, size, interpretation. Confounding
24 factors were partially controlled. There were biased
25 observation methods and inadequate sampling intensity.

1 Therefore, the paper was not used in a meta-analysis.
2 It was reviewed and it was not cited except in our
3 Excel sheet summary of all of our citations.

4 The second paper is a paper by Miller, Knight
5 and Miller in 1998 entitled, "Influence of
6 Recreational Trails on Breeding Bird Communities". We
7 noted the effect of trails on the abundance of birds
8 to be negative.

9 Our reviewers indicated this was a good paper
10 with a realistic study design. The analytical methods
11 were robust. The confounding factors were controlled
12 experimentally; unbiased observation methods and
13 adequate sampling intensity. So this paper was used
14 in our meta-analysis and cited in the, in the
15 Government of Canada submission.

16 . The last paper is a paper by Ingelfinger
17 and Anderson in 2004 entitled, "Passerine Response to
18 Roads Associated With Natural Gas Extraction in a
19 Sagebrush Steppe Habitat".

20 So this paper noted that the effect of
21 shallow gas on grassland birds was negative. It's not
22 included in the meta, meta-analysis. It did not
23 specifically address any of the grassland birds in our
24 project, but addressed some con specifics or similar
25 species.

1 As I said, it was cited. It was not used in
2 the meta-analysis and was used as a supplemental
3 citation. I believe one important note is from the
4 abstract to the paper, and I'll, I'll cite it here,
5 and I quote (as read):

6 "While a 39 to 60 percent reduction
7 in [grassland] ... obligates within
8 100 metres of a single road may not
9 be biologically significant, the
10 density of roads created during
11 natural gas development and
12 extraction compounds the effect,
13 and the area of impact can be
14 substantial. Traffic volume alone
15 may not sufficiently explain
16 observed declines adjacent to
17 roads, and sagebrush obligates may
18 also be responding to edge effects,
19 habitat fragmentation, and
20 increases in other passerine
21 species along road corridors.
22 Therefore, declines may persist
23 after traffic associated with
24 extraction subsides and perhaps
25 until roads are fully reclaimed."

1 End quote. Now, one final note is that the
2 reference to being "biologically significant" is, is
3 important. We had, in our meta-analysis, come up with
4 a final number showing the associated decreases in
5 abundance of grassland birds in proximity to trails
6 associated with shallow gas development. And we again
7 modelled that across the entire landscape showing
8 potentially a reduction in 25 percent of abundance of
9 grassland birds in shallow gas infill projects.

10 Thank you.

11 THE CHAIRMAN: Thank you, Mr. Jensen.

12 Mr. Denstedt?

13 MR. DENSTEDT: I have a couple of questions
14 arising out of that response.

15 THE CHAIRMAN: Please proceed.

16 **CROSS-EXAMINATION BY ENCANA ON THE PRODUCED UNDERTAKING**

17 **MATERIAL, EXHIBIT 003C-006, BY MR. DENSTEDT:**

18 MR. DENSTEDT:

19 Q. So, Mr. Jensen, in the last paper, would that have
20 been included in your score card as a negative paper?

21 A. That's correct.

22 Q. All right. And in respect of the Ingelfinger paper,
23 the low traffic volumes there were 700 to 710
24 vehicles per day?

25 A. Yeah, and that's a mistake in the abstract. It should

1 read 7 to 10 vehicles per day.

2 Q. Okay. And in the -- in that paper, in respect of
3 Highway 351, a paved road, the average there was
4 344 vehicles per day and Ingelfinger indicated that
5 there -- no significant decline was detected in
6 respect of Highway 351. Isn't that correct?

7 A. I believe that's correct.

8 MR. DENSTEDT: Thank you.

9 THE CHAIRMAN: Thank you, Mr. Denstedt.

10 That completes the undertakings, I, I understand.

11 Then, Ms. Klimek, please continue or begin
12 your cross-examination this morning.

13 **CROSS-EXAMINATION BY THE COALITION, BY MS. KLIMEK**

14 **(CONTINUED):**

15 MS. KLIMEK: Good morning, Mr. Chair,
16 Panel Members. Good morning, EnCana (sic) Panel. It
17 seems it wasn't that long we saw you all.

18 Now, I'm going to start with a few questions
19 for you, Mr. Didiuk, out of the materials that you had
20 produced, and where we had left, where you and I had
21 left off in our discussion last time when we were up.

22 Now, I promise to be slow today.

23 Now -- I heard someone say "but not too slow"
24 back here.

25 THE CHAIRMAN: That qualifier is important,

1 yes.

2 MS. KLIMEK: No one is anxious to be on
3 their way, I can tell.

4 Q. Now, Mr. Didiuk, when we had to stop our questioning
5 to allow for the information to be provided, you were
6 explaining what you had found with snakes and traffic
7 mortality and I'm wondering if you can do a brief
8 overview of that because I have some questions, and
9 that seems like a year ago that we talked about that.

10 So could you just give us a brief overview of
11 what you were talking about when we had to stop?

12 A. MR. DIDIUK: Yes. We were engaged in my
13 description of some of the information we had
14 pertaining to four main areas of the proposed
15 mitigation measures of, of EnCana in their EPP and
16 that, at the time, we were engaged in discussing the
17 -- what -- Environment Canada's consideration of
18 efficiency of the proposed speed limits and the
19 factors that have to be considered as far as trying to
20 inform the Panel of how these proposed -- how speed
21 limits cannot be a very effective mitigation measure.

22 Q. Now, what did you, in close notes version, find
23 through that series of work that you did on slowing
24 down speed limits and what the effect was on snake
25 mortality and your conclusions on that?

1 A. The close note version is that consistently, even a
2 person who is focused on trying to detect snakes on
3 this pilot study, consistently, almost entirely, was
4 able to safely stop their survey vehicle approximately
5 35 metres beyond the position of the snake.

6 I emphasize safely. I emphasize the fact
7 that it's a person who is trying to see snakes and
8 it's also a circumstance that it's related to the, the
9 factors of allowing a driver to see a snake and this
10 is related to the fact that they're cryptic.

11 There's all kinds of other things on the road
12 that interfere with you seeing a snake and various
13 factors such as that. So it's very difficult for
14 someone who is trying to see a snake to actually stop.

15 Q. Now, if we could turn to your -- one of the documents
16 you produced, 003-051 and at page 47 I think you set
17 out some of your conclusions on this. Do you have
18 that in front of you?

19 A. Yes, I do.

20 Q. And your finding, I believe -- and I'm -- this is
21 leading into some questions (as read):

22 "Development of shallow gas fields
23 which began in 1999 greatly
24 increased traffic. This high
25 traffic is expected to continue and

1 the increased density of well
2 access trails will result in
3 increased traffic over the
4 long-term for maintenance."

5 And I guess, in light of that, and what you've
6 seen, what would you expect would happen with snakes
7 as a result of that? What would be your prognosis?

8 A. I can address that with two considerations. One would
9 require me to indicate to the Panel -- address some of
10 the EnCana's suppositions that there are few snakes
11 killed right now. There are lots of snakes and so
12 it's not a problem.

13 These are what I consider to be subjective
14 opinions that are in the October 7th transcripts. I
15 can provide a page reference; I believe it's page 761.

16 However, Environment Canada, in my
17 experience, I believe I can bring to play, to -- into
18 play some information and actual data to show that
19 this is not the case.

20 Environment Canada has indicated that there's
21 a very large volume of scientific information and
22 publications that indicate that some species,
23 particularly ones such as the Prairie Rattlesnake, in
24 fact, can only withstand -- perhaps you can use that
25 term -- a very small loss, particularly of

1 reproductive aged females. Environment Canada's
2 submission has referred to an excellent study, and of
3 a similar species in Ontario, the Black Rat Snake,
4 suggesting that only one point -- 1.5 percent of adult
5 female mortality due to road mortality is enough to
6 precipitate long-term declines.

7 Having this demographic limitation of, of
8 rattlesnakes, what I would like to make very clear is
9 that even though there may appear to be a small number
10 of snakes -- and I'll return to that in a moment --
11 when they -- for example, in EnCana's 2006 Road Survey
12 Monitoring Program, and there may appear to be a lot
13 of snakes, as EnCana has presented, that is not
14 necessarily the case.

15 When we look at -- there's actually a smaller
16 number of important reproductive adult females, part
17 of the effective population size, and the number of
18 snakes we see on the road has to be modified by
19 several factors to actually come up with a more
20 appropriate estimate of how many are, are actually
21 being killed.

22 I can provide some -- a quick walk through if
23 the Panel should decide to look at these three
24 numbers, because what we need to, to do to come up
25 with potential effects is look at three numbers:

1 How many snakes are there?

2 How many snakes have to be killed to start
3 populations declines?

4 And how many snakes are actually being
5 killed?

6 Q. I think that would be helpful.

7 A. I'll try and do the close-note version again but I
8 think it's quite possible. One moment.

9 I, I want to emphasize that I'm using an
10 excellent study as a model for us, to walk us through
11 very quickly, and some information we have, both from
12 our Environment Canada submission and from EnCana's
13 own snake monitoring program. However, I would like
14 to emphasize that there should -- there is an
15 opportunity to do more robust modelling in this
16 regard.

17 The Government of Canada indicated that -- to
18 the Panel that this was a deficiency when we reviewed
19 the, the EIS and, and this was the EIS -- EnCana
20 remained silent in this respect. But I think this
21 process I'll take you through right now can
22 demonstrate the important facts that I've been
23 alluding to.

24 First of all, we'll just confine ourselves to
25 the -- a portion of the Wildlife Area that's south of

1 interface to the south boundary of the, of the, of the
2 National Wildlife Area because this is where we have
3 quite a bit of information that's needed to go through
4 this exercise.

5 We'll also confine ourselves to reproductive
6 age females because, as I've mentioned, these are the
7 most susceptible proportion -- component as far as
8 population decline, keeping in mind that other age/sex
9 classes, males, and other snakes, also have been
10 killed and contribute to the, the population
11 maintenance or decline.

12 In Appendix G of our -- Environment Canada's
13 submission, we provided regression curves of capture
14 frequencies on all our trip fences (phonetic) that we
15 intercept snakes, intercept snakes moving from the
16 river. I won't go through all the factors but what we
17 can do, what anyone can do perhaps -- I've used --
18 heard the term a "practitioner" in our hearings, of a
19 herpetologist practitioner in this field, would do
20 several things.

21 We'd use these intercept values in terms of
22 how many snakes we -- are captured near the river,
23 originating from the river. We multiply by the number
24 of traps we've set up and what percentage we're
25 intercepting along that front of movement. We adjust

1 accordingly for several factors. I've tried to be
2 conservative in this exercise as far as some -- some
3 snakes may go around these inter -- these fences.

4 We've done studies to show that hardly any go
5 over and we would adjust for the number of adult
6 females because a proportion, their bi-annual breeding
7 or tri-annual breeding, we introduce a factor that
8 account for how many snakes aren't being intercepted.

9 So the number I come up with is -- in this
10 area I've described south of interface, I feel there's
11 an effective breeding population estimate for
12 reproductive females of 575 adult females.

13 Now, I've tried to be conservative in this
14 estimate. I'm comfortable with it based -- using some
15 information over the years. We've had very large long
16 500 metre, 1 kilometre long fences along the river.
17 We've studied several hibernacula, complete counts,
18 and we've evaluated potential on the river. So I'm
19 comfortable with this number as -- for a demonstration
20 exercise. So let's move on to the second number.

21 How many snakes have to be killed to
22 precipitate a decline? From this study on Black Rat
23 snakes, that's referenced, Blouin-Demers and
24 Weatherhead, it's also -- it's an excellent study over
25 ten years of studying the population demographics and,

1 most importantly, several years of monitoring
2 rattle -- black snakes with radio telemetry to look at
3 their mortality including on roads.

4 They've indicated 1.5 to 2 percent of these
5 females have to die to start declines and this
6 exercise will be conservative, let's say 4 percent. I
7 think the rattlesnake is more vulnerable but I'll use
8 a 4 percent mortality rate.

9 So, using that, that value, I think we're
10 looking at approximately -- let me just check because
11 I want to get this -- we have 570 female rattlesnakes
12 but only 23 of these very important snakes have to be
13 killed to initiate a decline. I'm not talking about a
14 precipitous decline, but a long-term decline.

15 So now we can move on to the third number.
16 How many snakes are actually being killed? We've
17 heard testimony from EnCana that there's a small
18 number of snakes. This is something we've struggled
19 with through our cooperative efforts but I can try and
20 quickly walk you -- I'm trying to do the close-note
21 version. I'm almost done.

22 Q. This is important, so don't be worried about --

23 A. Yeah. Well, this has been a central issue we've been
24 cooperatively, cooperatively trying to deal with over
25 the years.

1 EnCana's 2006 snake monitoring program
2 detected nine female -- nine dead rattlesnakes on
3 Bingville and interface. The TERA report that
4 described this is not particularly clear, in many
5 respects, but to our -- based on our information on
6 snake dispersal, we know that very few juvenile
7 rattlesnakes get this far and that's presented in our
8 Appendix G. So we can assume these are adult
9 rattlesnakes.

10 Now, we know that the sex ratio is similar;
11 they're approximately equal from our studies, and it's
12 typical. We know that female rattlesnakes, based on
13 information in Appendix G tend to go a little bit less
14 far. It's the males that are trying to find them.
15 They tend to go a little farther. So let's see how --
16 these nine rattlesnakes that were found, let's say,
17 four of them are female, adult females.

18 So then we have to look at what the study was
19 doing. They were -- there was focus -- the surveys
20 were focused on the vicinity of Bingville and, and the
21 interface at the end. We know from our other many
22 years of study and we know that concurrently there's
23 operational activities going on through that, that
24 whole area south of interface.

25 We can expect that other snakes are being

1 killed that were not detected by that survey effort.
2 So let's be conservative and let's say half as much
3 again. Another couple of female rattlesnakes were
4 killed. So now we're up to six. Then we have to look
5 at how many aren't detected.

6 When a snake is hit by a vehicle, it doesn't
7 necessarily stay there. On pavement that quite often
8 happens, a resisting surface. On these gravel roads,
9 they may be hit in the lower portion of the body,
10 pinched. The study on Black Rat Snakes indicated that
11 for every snake found on the road two were found off
12 the road.

13 I don't think that's the case. I think it
14 was rather a small -- because there was some
15 limitations on their sample size so let's be
16 conservative and say for every snake found on the
17 road, one is found off. So now we have to double that
18 number. So now we're at 12 female rattlesnakes.

19 And then, the final factor to try to adjust,
20 to get an approximation of how many were killed on
21 roads is this study was conducted in the months of May
22 and June, two months, during the movement period of
23 snakes. We can expect that additional snakes were
24 killed in the months of July and August which, at that
25 Bingville area in particular, but we're talking about

1 the whole area, and in -- and September it's a
2 5.5 month dispersal period so let's be conservative
3 again and let's just double.

4 So right now, at this point, we're at 24 dead
5 rattlesnakes on the roads. We're not talking about
6 any interactions and caissons, entrapment by caissons
7 and other -- let's just be conservative. I'm trying
8 to make the best case for, I guess, EnCana.

9 We predicted that based on this excellent
10 model example and reasonable estimate of population
11 size, that we're at that threshold and this is a
12 concerted effort.

13 Now, I want to emphasize to the Panel that
14 I've gone through this modelling exercise and we can
15 -- and I'd be happy to do it with -- because we could
16 say, well, was it 5 or 9 here, is it 570, 600, I'm
17 trying to indicate two things here, that these are
18 reasonable approximations of these three more
19 variables and I'm also trying to demonstrate that
20 perceptions of number of snakes on the road are a
21 great underestimate of what you see.

22 So, in my opinion, and this is supported by a
23 large volume in the scientific literature, that the
24 EIS is silent upon is that this is a -- in the
25 profession of herpetology conservation, road mortality

1 habitat loss is the biggest issue. So, in my
2 judgment, at the current time and level and at some
3 time in the past, road mortality as an additive
4 mortality factor is very likely promoting long-term
5 declines.

6 And I can provide that -- put that for the
7 Panel and what I've described is a process. If the
8 Panel wishes, I can very briefly, hopefully, a better
9 close version, put that in a context of what the Panel
10 is seeking, is this impact -- how do I interpret this
11 as a significant and adverse impact.

12 THE CHAIRMAN: Thank you for that summary,
13 Mr. Didiuk.

14 MS. KLIMEK:

15 Q. Now, Mr. Didiuk, on the same page, we go down to
16 mitigation and what you said here is (as read):

17 "The most effective means of
18 mitigating mortality of snakes due
19 to traffic is through diversion of
20 use the from the areas where snakes
21 are concentrated or travelling."

22 A. Yes.

23 Q. Now, does that mean -- diversion, do you mean not
24 having them go through that area?

25 A. I can clarify for you that -- that for you and, and

1 I'll refer to perhaps a comment of my colleague,
2 Ms. Brenda Dale, yesterday when she says, "If there's
3 one thing I wish, I would not use that particular
4 term". I think under examination from Mr. Mousseau
5 yesterday regarding these proposed exclusion zones,
6 that term sounds a little severe in terms of no
7 activity.

8 I would prefer you to consider the term,
9 "We're looking at restriction zones." In our
10 Environment Canada submission we're suggesting that a
11 meaningful reduction in the activity relating to well
12 visits and other associated activity is what we're
13 seeking for in these spatial temporal zones.

14 The history of our cooperative studies with
15 DND, SIRC and EnCana in the early part of this decade,
16 a lot of effort was, was addressing what we consider
17 to be possible mitigation efforts, the speed limits
18 and what -- and public education programs.

19 Our conclusion was that these could not be
20 effective for a variety of reasons I could discuss.
21 But we -- what was, was needed was not drastic but
22 effective redirection of the bulk of traffic and the
23 initial step that EnCana and SIRC and DND and Canadian
24 Wildlife Service and PFRA collectively decided was to
25 make an initial step, and I stress initial, is to --

1 is the point of entry considerations, Bingville entry
2 away from the river, versus South Buffalo. And this
3 was good and this was allotted by the herpetological
4 conservation community when this was presented at
5 conferences. This was a step forward.

6 But it was always an understanding, and I
7 think it's based on what we all know as common sense,
8 is that although we changed the point of entry farther
9 away from the river to reduce the risk, and we
10 demonstrated that in this 2003 report, the true
11 challenge seems to be what happens to that traffic
12 distribution after it enters Bingville because we all
13 know that eventually they're going to have to go and
14 do their business.

15 And so what Environment Canada has presented
16 in its -- this 2003 report, which was provided to
17 EnCana, that we stressed it provided the, the data and
18 it also stated -- and bear with me for one moment. I
19 think it's -- I can't find the exact page but we made
20 a statement saying, this is a possible, a possible
21 effective means of mitigation.

22 And the last comment I'll make in this regard
23 is that in our written Environment Canada submission
24 and in our submission a couple of days ago, we have
25 proposed this, proposed this as a possible mitigation

1 measure. I can't make a determination if EnCana will
2 be able to even use this, to make it effectively --
3 and I'll give you three reasons why that is.

4 At the time we were formulating this
5 recommendation we were at a certain level of wells per
6 per, per section and level of activity. Can EnCana
7 actually redirect traffic for visits outside these
8 zones in the winter, what have you, effectively to
9 reach a level that I think, since we know that -- we
10 believe that additive mortality was causing population
11 declines at the -- around the 2000 year, the year 2000
12 and likely, even on our earlier studies back in the
13 early '90s, I don't know. They have to go through
14 that exercise.

15 This exercise would also have to be tempered
16 by -- because what we're looking at --we've heard
17 about traffic and what is needed is we've -- a network
18 analysis of traffic, where is it occurring and, you
19 know, if this is a process, would have to be tempered
20 by other environmental restraints and one in
21 particular is that if EnCana can effectively direct
22 this traffic outside these periods in the summer, does
23 that create a problem, let's say, with antelope
24 considerations?

25 So it's an exercise that has to be done. I'm

1 not sure if it's possible, but I feel in view of the
2 ineffectiveness of traffic limits and education
3 programs this is the only possible -- possibility at
4 this time.

5 Q. Thank you, Mr. Didiuk. Now I would like to turn to
6 the two letters that were produced which are 003-052
7 and 003-053 and I'll start with the first one which
8 is September 15th.

9 And as I take it, this was -- these last two
10 letters were the ones that were effective in getting
11 the well out of the Nishimoto wetland. Is that
12 correct?

13 A. MR. MARTINS: Fernando Martins. Yes.

14 Q. And what I -- one of the reasons I asked for this
15 letter was what was the "or else"? And I think that
16 was on the 003-052, the last paragraph. I'll read it
17 to you and then I'll ask you, Mr. Martins:

18 "The issue has been ongoing for too
19 long and not in the spirit of
20 cooperation. The well at grid
21 279901/LSD [and then the legal] is
22 to be removed by October 1st, 2005
23 or I will close all EnCana access
24 to the CFB Suffield except for
25 maintenance purposes."

1 Now, I take it that was what the Base was
2 prepared to do if the well was not removed; is that
3 correct?

4 A. Yes.

5 Q. Now, going to the next letter which is 003-523 (sic)
6 [053], again, I take it this was in response -- there
7 was something done in response to the previous letter
8 and this is the response of the Base to that
9 response?

10 A. That is my understanding, yes.

11 Q. Okay. Now, I have a few questions about this and I'm
12 going to paragraph 1:

13 "References to (a) and (j) above,
14 [and there's a whole list of
15 things] detail a litany of
16 exchanges between SIRC and CFB
17 Suffield regarding the subject
18 well."

19 And then it says:

20 "To summarize, the well is in a
21 wetland. SIRC supervisor range
22 safety was directed to have the
23 subject well removed on September
24 10th, 2004."

25 And ten months and three, four more written

1 directives later the well remains. I'm just going to
2 read a bit of the next paragraph and then I have some
3 questions. Reference 1 is the last of the formal
4 written directives -- reference I, and that was the
5 previous letter that we just discussed. Reference J
6 is (as read):

7 "Present SIRC's counter-proposal to
8 discuss yet again this issue. The
9 counter-proposal reflects SIRC's
10 strategy of deny, delay, deter and
11 deflect, an approach of doing
12 business in the CFB Suffield
13 training area that will no longer
14 be tolerated."

15 Now, my question is why is SIRC the party that
16 you're dealing with on this well? Is it not EnCana's
17 well?

18 A. LCOL BRUCE: First of all, Mr. Chairman
19 and distinguished Panel Members, thank you for
20 accommodating my absence for the last two days. I'm
21 -- I did miss it. I do want to, I do want to ask --
22 or answer this question. I think it's important.

23 As you know, SIRC was established under the
24 1999 Partial Assignment Agreement at which time over,
25 over the course of several years it was decided that

1 in order to provide one focus point or funnel point
2 for all our discussions with industry -- as you can
3 appreciate, there are more than one company operating
4 on the CF Suffield Block.

5 EnCana is by far the largest but not the only
6 one and SIRC provided that, that sort of entry into
7 industry and as well was used as a funnel from
8 industry into the Base and that's, and that's,
9 generally speaking, why it was being sent through SIRC
10 at that particular time.

11 I will note, though, that based on these
12 letters and a couple of other issues that occurred, by
13 the time of my arrival in 2007 my predecessor had
14 decided to go directly to the companies rather than
15 dealing with SIRC because he found that he was no
16 longer able to effectively communicate with industry.

17 I will say that over the past year, again, I
18 have gone back to using SIRC primarily as my funnel
19 point, mainly on the bequest of all the oil and gas
20 companies on the Block as they were finding it quite
21 challenging to keep up with the correspondence at
22 times between myself and industry and therefore we
23 continue now to use SIRC as a funnel point but reserve
24 the right, as we always do, to communicate directly to
25 individual companies as needed.

1 Q. So looking back at these letters then, when you would
2 give a request to the company to do something, then
3 it would be SIRC who would respond with the company's
4 position, or was it SIRC's, or how did, I guess, that
5 work historically?

6 A. Again, a very interesting question. I think that in
7 many cases some of this was personality driven. I
8 will say there has been management changes in SIRC
9 over the course of the last couple of years and
10 therefore the personalities within the organization
11 are somewhat different.

12 The individual or individuals that were
13 involved with SIRC at the time, I believe, felt -- and
14 I'm not speaking for my predecessor because I, I don't
15 purport to do so. However, they believed they had
16 much more authority than they actually had. They are
17 there to assist and, and to resolve issues, but they
18 are not there to speak on the behalf of other
19 operators necessarily.

20 Q. Now, Colonel Bruce, it's our turn to ask you some
21 questions generally and some of these have come out
22 of answers that we received when you -- in your
23 absence and you'll be pleased to know many of the
24 people said "talk to the Colonel about that", so I
25 guess the buck stops there.

1 Now, what I would like to talk about -- and
2 the majority of my questions to you are to deal with
3 enforcement and understanding when things go wrong.
4 So for the next little bit -- and we have to look
5 historically and I know you may have been there for
6 some, but the purpose of that is how are you going to
7 be dealing with things in the future? Are they
8 changing? So that's the framework with, within which
9 I'm going to be asking the next questions, okay?

10 Now, I guess before you can enforce you have
11 to find out if things are going well or not well.
12 Now, what methods does the Base have to determine
13 whether companies are complying with their permits,
14 the laws, what they're supposed to be doing?

15 A. Compliance has always been a significant issue on the
16 Base. As you can appreciate with 10,500 wells plus
17 the ancillary infrastructure, 300 plus vehicles a day
18 on average entering and exiting from industry, as well
19 as a limited organization in terms of my range control
20 and my Range Sustainability Section, compliance is
21 mainly done on a, on a spot-check basis rather than a
22 complete audit, if you will, or, or check.

23 I have instituted a number of, of initiatives
24 to ensure that, as I, as I mentioned before in my
25 Opening Statement, that I am more comfortable with

1 what is going on out on the Base. And as I have also
2 previously mentioned that up until this last year it
3 was easier for an oil and gas worker to get on my Base
4 than it was for one of my own employees, which I found
5 completely unacceptable.

6 To that end we've done a couple of things.
7 First of all, I've issued an amplification letter to
8 SIRC earlier this year to basically provide direction
9 on the things that I want them to accomplish on my
10 behalf, primarily ensuring that all the necessary
11 authorities for when a -- an individual from industry
12 must have before they are allowed to cross the gate,
13 so to speak, to enter into the Range and Training
14 Area.

15 And those authorities range from a safety
16 briefing to ensuring they know where they're going to
17 go and what they are going to do and what routes they
18 are entitled to have.

19 It also ensures that the vehicles are -- meet
20 all the necessary standards and simple things like no
21 alcohol on the range, make sure that everybody has
22 their driver's licence and little things and insurance
23 for vehicles.

24 Once those authorities have been verified by
25 SIRC, and I also have a point that, that I will be

1 able to insert myself in that process to do a random
2 audit on those, then they must cross the gate at which
3 time all those authorities are again certified to be
4 true and accurate.

5 Once they're within the training area
6 themselves, as we do with any user, they run their own
7 range safety net to coordinate the activities on oil
8 and gas, vehicles, but are connected to the larger
9 range control safety net. So, if you will, it's a
10 subnet within a net.

11 It's a -- it's obviously done through radio
12 communications and they also monitor, SIRC does, with
13 their own, if you will, little command post that keeps
14 track via radio of where their folks are. It is not
15 GPS tracked so it's based on trust and it's also based
16 on the assumption that everybody knows where they're
17 supposed to be going.

18 Once they're inside the Block, there are
19 several means of monitoring compliance. The first one
20 is with the range sustainability section, as I
21 mentioned. There are monitors that I have that will
22 go out and spot check to ensure compliance and that
23 includes within the National Wildlife Area in terms of
24 ensuring people are adhering to the conditions of the,
25 of the NWA permit that they had received.

1 And then, finally, I do have other entities
2 just normal patrols, for example, when I'm out and
3 about touring around I will check and -- to see what
4 people are about, as well as the Military Police who
5 will be out monitoring activities that go on.

6 Q. Now, this process --

7 A. MR. MARTINS: Excuse, me, sorry,
8 Fernando Martins.

9 Q. Sorry.

10 A. I would like to just add to Colonel Bruce's comments.
11 When range control and range sustainability section
12 have been expanded, et cetera, there has been or there
13 is no attempt to regulate any activities that are
14 currently regulated by another regulator that is
15 enforcing their, their laws or regulations upon the
16 land.

17 As an example, ERCB has a mandate, and it is
18 ERCB that enforces those rules and laws upon the oil
19 and gas industry at CFB Suffield, whereas the
20 landowner conditions of access, et cetera, those are
21 in Range Standing Orders and those are the types of
22 things that range control would help enforce,
23 et cetera, just as an addendum to Colonel Bruce's
24 comments.

25 Q. Okay. Now, when we were discussing with Ms. Boyd some

1 of the incidents, and she referred us to Exhibit
2 003-019, and we don't need to go there, but there
3 appeared to be none listed there for 2007 and 2008,
4 yet she said there were some incidents that occurred
5 and they were in the presentation.

6 So if we could go to your presentation at tab
7 -- or page 35 -- no, it's the next page. Now, I
8 think these are what she was referring to, the top
9 pictures. Now --

10 A. MS. BOYD: Sorry, excuse me. I'll, I'll
11 just clarify that very specifically the one I'm
12 referring to is in the lower left-hand corner only.

13 Q. Oh, okay. So I would like to know a little bit about
14 this incident and, Colonel Bruce, are you aware of
15 this one or what we're referring to here?

16 A. LCOL BRUCE: Just one moment, please.
17 With regards to the reporting of that particular
18 incident to me, I cannot confirm that in fact
19 occurred, but to explain the incident itself, I, I
20 think it would be important for Delaney to just walk
21 through what happened.

22 Q. Okay.

23 A. MS. BOYD: Essentially, this was an
24 incident that was noted when we were out on the range
25 and we discussed it with a representative from EnCana,

1 Mr. Heese, and he explained to us what happened. And
2 it was a routine maintenance situation whereby I
3 believe, if my memory is correct, I believe it might
4 have been a swabbing truck, but if it wasn't that it
5 was essentially a routine maintenance vehicle that was
6 accessing the NWA to reach an area, and in this case
7 you can see it was fairly sandy soils and it was dry
8 conditions.

9 They attempted to use what I understood to be
10 an existing access. However, the vehicle became stuck
11 and they tried to access through other access route
12 into the area and essentially created more than one
13 disturbance, as this photo does demonstrate.

14 This was discussed with us. EnCana came to
15 us and indicated that it, it -- what the details were
16 of the occurrence and we did report this up our chain
17 of command and discussed it within DND on the Base to
18 determine the way forward.

19 Essentially, it was -- we provided to EnCana
20 the ability to, to fix this. They wanted to rectify
21 it, and essentially my understanding is that a very
22 simple procedure was applied to the ground whereby
23 the, the area was raked back into place, recontoured
24 slightly, essentially with people, not machines, and
25 natural recovery is, is going to be used here to

1 reclaim this area.

2 This was one of the situations where we had a
3 case -- this is a case-by-case type situation when
4 we're talking about remediation and reclamation and
5 correcting of disturbances in the National Wildlife
6 Area because we do not yet, as I mentioned in previous
7 testimony, have an established set of permit
8 conditions and environmental assessments in place to
9 deal with ground disturbance and associated
10 reclamation of those disturbances in the NWA.

11 This incident essentially represents a
12 one-off situation. However, the question does arise
13 how often does this occur, especially given the fact
14 that the only reason we found it was an opportunistic
15 find. It wasn't a systematic survey on our part and
16 there could be other incidents like this and how are
17 they being dealt with? So there are definitely
18 uncertainties.

19 A. LCOL BRUCE: I would like to just follow
20 up on, on the whole issue of the NWA and permitting to
21 allow activity in the NWA. As we have highlighted on,
22 on our opening presentation that in order to do
23 activity within a Wildlife Area you would need a
24 permit for industrial type activities.

25 As you can appreciate, there's already 1100

1 wells in the NWA that need servicing. We have had
2 challenges over the last three years attempting to get
3 EnCana to accept the need for permitting. This has
4 been resolved over the last couple of months where
5 they have now accepted the need for permit for routine
6 operations, what we call it, so maintenance, basic
7 maintenance of the wells, as I've previously mentioned
8 in earlier testimony.

9 There are five areas that still need
10 resolution, which I understand has been discussed in
11 some detail in previous testimony, but we're working
12 towards resolving this.

13 But I think it's important to note that it
14 took a letter, a formal letter, to EnCana basically
15 saying, accept this permit. We were trying to give it
16 to them, accept this permit for routine operations or,
17 if you do not, then I have no option but to hand it
18 over to enforcement -- correction, Environment Canada
19 enforcement and it took a formal letter to get that
20 process kick-started. Where we now have resolution,
21 for the most part, on this particular aspect.

22 When it comes to the actual monitoring and
23 compliance, now that we have the permit in place and
24 we are still working, as I said, through some of the
25 issues, I think it's very important to note that until

1 we can sit down with the interested parties and come
2 up with how we are going to tackle some of these
3 issues, whether it be an additional disturbance,
4 whether it be remediation, it, it proves to be on a
5 case-by-case basis until I have that more formally
6 established.

7 So incidents like this that occur we will
8 deal with as a one-off; however, we are in the process
9 of trying to establish a more formal identified system
10 that will allow us to proceed.

11 Q. Just a few follow-up questions from that. Did EnCana
12 have a permit to go out and do this work that led to
13 this incident?

14 A. We're not sure, given we're not sure when the date of
15 this particular incident, but I can, I can take an
16 undertaking to find it for you.

17 Q. Could we have that, please?

18 A. Thank you.

19 Q. And my next question was and maybe that will answer
20 it, is when did it occur and is there some -- and
21 where? Is it close to -- if you could give us that
22 information.

23 A. Yeah, we'll take that on, thanks.

24 Q. Now, one other question, when you said it was an
25 opportunistic find, I take that it was the Base who

1 found this incident? Am I understanding that
2 correctly?

3 A. MS. BOYD: Actually, what it was, was
4 actually Mr. Olaf Jensen was conducting surveys for
5 the Gold-edged Gem, an endangered species on the Base,
6 and he found the site in a sandy soiled area of the
7 southern NWA near Dugway Trail and certainly
8 Mr. Jensen could provide additional details, if
9 necessary.

10 Q. That might -- well, I guess my one question was then
11 EnCana did not report to you that they had a problem
12 out there. It was found by the Base. Am I correct?

13 A. That's correct. The chain of events is that
14 Mr. Jensen reported this to -- I believe it was
15 actually to Ms. Guenther on, I'm told, August 10th and
16 it was then reported to me for NWA related purposes
17 and then we reported that up our chain of command.

18 We contacted Mr. Heese to determine what the
19 situation was and what was happening here and further
20 discussions precipitated from there.

21 Q. And did Mr. Heese tell you when this event actually
22 occurred?

23 A. We would have to determine that through e-mail
24 correspondence. He very well may have and that is a
25 detail I'm sure that is possible to determine if

1 necessary.

2 Q. I think it might be helpful to the Panel to see the
3 correspondence that went back and forth around that
4 incident. Would it be able to be produced?

5 MR. LAMBRECHT: Mr. Chairman, I'm just
6 concerned about closure here. We're now on
7 examination on an undertaking with the request for
8 more undertakings. I don't know how long it will take
9 to get this information, but I am very concerned that
10 it will prolong and I don't want to object. I do wish
11 to express a concern because I don't know how long
12 this will take.

13 THE CHAIRMAN: Thank you, Mr. Lambrecht. I
14 must admit I do share that concern at this point and
15 ask whether this information is absolutely essential.

16 MS. KLIMEK: Well, I leave it to the
17 Panel, but it is a recent event on the NWA and I think
18 it's germane to how things are dealt with and handled.
19 I don't think we need to cross-examine on it. I think
20 it's something they can give you before argument.
21 Just so you have it to review.

22 THE CHAIRMAN: Ms. Klimek, I think we have a
23 fairly good understanding of the situation at this
24 stage --

25 MS. KLIMEK: Okay.

1 THE CHAIRMAN: -- without asking for the
2 details of the correspondence.

3 MS. KLIMEK: That's fine then.

4 Q. I have one last question, and maybe this goes to
5 Mr. Jensen, that you found it while you were
6 surveying what I believe were species at risk. Was
7 this found near an area where there were species at
8 risk or ...?

9 A. MR. JENSEN: No, it's within a kilometre
10 or so of the Dugway Dunes which is an area known now
11 to, to contain Gold-edged Gem.

12 Q. Now, I would now like to turn to the annual reports,
13 003-055 and 003-054 and this will lead into my last
14 questions on enforcement.

15 Now, these are produced, I guess, annually by
16 their nature. They're called an annual report. Is
17 that correct?

18 A. COL LAMARRE: Ms. Klimek, can, can we just
19 wait one second. We're getting the copies brought up
20 to this end.

21 Q. Oh, that will be fine.

22 A. LCOL BRUCE: But yes, that is correct.
23 They are produced annually.

24 Q. And I'm going to start with the first one which is
25 26 February, 07. Now, are these an internal

1 document?

2 A. MS. BOYD: I can provide some clarity on
3 that situation. This is a report that is produced
4 each year that was mandated through the delegation
5 process within DND. It was determined that higher
6 levels of DND wish to receive clarity and oversight
7 and visibility on what was happening within the
8 National Wildlife Area. So this is a report that is
9 produced by the Base, on the Base, and then sent up
10 the chain of command as an information piece.

11 I believe that the intention is also, though,
12 that it is distributed at some point in the chain of
13 command across to Canadian Wildlife Service
14 Environment Canada.

15 Q. Now, I had -- and this might -- your counsel will
16 advise if you're the correct party to answer this,
17 but when we got the one that would have been released
18 through Access to Information and the one we got here
19 is significantly different.

20 As you can see there's huge portions redacted
21 and when you look at the ones that are redacted, it
22 deals with infractions and what is occurring on the
23 NWA. And I guess what I would like to -- and ask for
24 my client's perspective: when the public asks for
25 information on the NWA and information like that is

1 redacted, how is the -- I mean, is the public ever
2 going to be able to access what's going on out there
3 and being a check on whether things are being handled
4 properly?

5 Now, I'll let Mr. Lambrecht intercede whether
6 this is a proper question for you or someone else.

7 THE CHAIRMAN: Mr. Lambrecht?

8 MR. LAMBRECHT: Well, there are two points to
9 be aware of. First, the general process of
10 application for Government information under the
11 *Access to Information Act* and the *Privacy Act* and
12 then, second, the production of Government information
13 in a legal proceeding such as this one.

14 With respect to the first process, when
15 citizens make Access to Information requests of the
16 Government of Canada, there's a process that these go
17 through and the law provides for the documents to be
18 reviewed and for the exemptions to production
19 specified by Parliament in the *Access to Information*
20 *Act* and the *Privacy Act* to be identified and for the
21 documents to be produced subject to those exemptions.
22 I think my friend has called them redactions and
23 there's an appeal process for review of that.

24 So, there is, there is a process that exists,
25 set up by Parliament for the production of that

1 material. I think the short answer to my friend's
2 question is that she is free to pursue her internal
3 remedies on this issue and that what -- what has
4 occurred here is that a legal proceeding has come
5 about and the same information that had been requested
6 in the, in the *Access to Information Act* was requested
7 in a legal proceeding.

8 Now, Section 8 of the *Privacy Act* provides
9 that in legal proceedings or information that is
10 requested is producible. It is not subject to the
11 same exemptions that would operate in respect of a
12 normal application for information under the *Access to*
13 *Information Act* and the *Privacy Act*.

14 So, as a result of that, we have produced, as
15 I mentioned a couple days ago, we produced the
16 unredacted copies to this Tribunal. This is in the
17 normal course of things. I think my friend's concern
18 is one for submissions and really not one for the
19 evidence of this Panel.

20 So that's my submission to you, sir, on that
21 matter.

22 THE CHAIRMAN: Thank you, Mr. Lambrecht.

23 Maybe if I could just clarify my understanding. I
24 think what you're saying is that this information is
25 available, but there is a due process that has to be

1 followed in order to get it and that is the *Access to*
2 *Information Act* and the consequent *Privacy Act* which
3 has to be taken into account as well.

4 MR. LAMBRECHT: Yes, sir. I mean, there are
5 many avenues by which Government information is
6 produced. This is -- this proceeding is a good
7 illustration. One of them is the *Access to*
8 *Information Act* and it operates exactly as you've
9 mentioned and it was not yet completed when this
10 proceeding, which is another means of accessing
11 Government information, was mature.

12 But there are many other ways. It's
13 difficult to be comprehensive about it. Litigation is
14 an excellent example. So it's -- without meaning to
15 be comprehensive, I think it's fair to say that there
16 are certainly means by which the public can become
17 aware of enforcement issues within the National
18 Wildlife Area and this particular question as framed,
19 I think is really one that the Federal panel -- it
20 belongs in submissions rather than in evidence, I
21 think.

22 MS. KLIMEK: I'm okay with that,
23 Mr. Chairman.

24 THE CHAIRMAN: Okay. Please proceed,
25 Ms. Klimek.

1 MS. KLIMEK: But out of that I guess
2 there's one question and perhaps this goes to you,
3 Colonel Bruce or Colonel Lamarre. Has the DND
4 contemplated any way, short of requiring citizens to
5 go through Access to Information to make information
6 on the NWA available to the public? It is a National
7 Wildlife Act -- Area. Is there some other -- is
8 there -- have you contemplated that or is there any
9 way that this information can be made available, other
10 than through this type of process?

11 A. LCOL BRUCE: I think, I think, like all
12 things, what happens on the Base, as you can
13 appreciate, we, we tend not to allow as many visitors
14 as perhaps others would like simply because of the
15 nature of what we do there in terms of Military effect
16 and also Defence research.

17 However, there are a number of forums which
18 we do information on or about the National Wildlife
19 Area and I think the Prairie conservation forum, of
20 which CFB Suffield is a member, of that particular
21 forum, and has been for a number of years and we
22 attend all the meetings, is but one way.

23 The other way is we've tried to come into the
24 20th century with our own website and the like and in
25 there has specific reference to those things that are

1 on or dealing specifically with the National Wildlife
2 Area as well as some of the activities that are
3 ongoing in there. It's not comprehensive yet. It's
4 still a work in progress, but I'm comfortable that
5 those, those types of venues do satisfy that
6 requirement.

7 Q. Okay, thank you for that.

8 Now, looking at this 26 February, '07 annual
9 report, at paragraph 7 of that there's a reference to
10 an infraction and that infraction was EnCana was
11 trapping too close to a known Ord's Kangaroo Rat den.
12 And I take that was referred to enforcement but
13 enforcement determined that there was no clear
14 indication of infraction.

15 I guess this goes to Environment Canada.
16 What types of things do you look for and if there
17 isn't a clear infraction is there anything else you
18 can do about these things to deal with them?

19 A. MR. INGSTRUP: On, on this particular issue,
20 I really can't comment in terms of whether -- I, I
21 would seek clarification from DND in terms of whether
22 Environment Canada was contacted in this case. I
23 really can't comment on that at this point.

24 Q. Well, the report says:

25 "The matter was referred to

1 Environment Canada Enforcement.

2 However, it was determined that a
3 clear infraction was not present."

4 A. MS. BOYD: I can provide some clarity on
5 this that might assist.

6 Q. That would be useful.

7 A. It was referred to Environment Canada Enforcement and
8 that was through the Calgary office. We do have a
9 contact there that we work with. The details were
10 provided of the situation and he looked at that
11 situation and determined that it was not something
12 that he felt it was enough to support a full
13 investigation and subsequent Court proceeding or other
14 legal proceeding surrounding it.

15 So it was not pursued further in that regard.
16 And one of the main reasons for that is that the
17 permit itself, in the wording of the permit, there was
18 some question of semantics and interpretation that,
19 that led to a somewhat questionable interpretation of
20 the situation.

21 It was DND's opinion that it was -- that the
22 Proponent in this case, EnCana, acted outside the
23 spirit of the permit. However, that's why it says
24 here that:

25 "A clear legal infraction was not

1 pursued."

2 It's not to say that there was not, as I said, in
3 our estimation, a situation that could have been
4 handled, dealt with better by the permit holder,
5 EnCana. And we, to that effect, sent a letter of
6 displeasure to the Proponent to comment on that and,
7 and be on record that we were not happy with that
8 situation and what transpired as a result of it
9 especially since it did impact upon research of a
10 listed species at risk.

11 Q. Now, if we go over to the next page and under G:

12 "There was discussion of an
13 abandonment of a well in the Middle
14 Sand Hills. Evaluation of this
15 site by the Base reclamation
16 subcommittee is still pending."

17 Is that still the case with that abandonment?

18 A. COL LAMARRE: I'm sorry, Ms. Klimek, could
19 you specify which paragraph and which subparagraph
20 again?

21 Q. It's page 6 and it's G; it will be 12G.

22 A. COL LAMARRE: We have it now.

23 A. MR. RICHMOND: Wes Richmond. I think that
24 comment actually refers to the fact that SEAC
25 Reclamation Subcommittee that we spoke about, I

1 believe, yesterday, the processes that are required to
2 to, to finalize that process of reclamation have not
3 been fully developed yet.

4 We were in discussions and then we were going
5 to be getting back into discussions again in January
6 with the Province and so I think that's what the
7 reference is to is the fact that there is no
8 formalized process yet, so that reclamation can't be
9 dealt with until that time.

10 Q. Thank you. And the next one, I think it talks a
11 little bit about what we were talking about the other
12 day, H, EnCana conducted a vent leak repair and
13 although the -- I'm paraphrasing:

14 "Although the urgency associated
15 with the repair precluded an
16 Environmental Assessment it was
17 noted that emergency repair work in
18 general must be assessed and
19 included in a routine activity
20 permit."

21 So I take it they were allowed to go in and do
22 what they needed to do without the Environmental
23 Assessment and that's what you were talking about
24 earlier, Ms. Boyd; is that correct?

25 A. MS. BOYD: Yes. To clarify, this is

1 actually a good example of the situation that, that we
2 face regarding emergency work and some of the
3 uncertainties associated with it.

4 This was a situation where it was posed to
5 the Base as being an emergency and it was required
6 that they go in and perform certain emergency work.
7 In these situations, it is my understanding that under
8 CEAA it is not necessary to conduct an Environmental
9 Assessment if we're dealing with certain issues of
10 human safety and health.

11 That was the understanding that the Base took
12 and we provided an immediate response saying, yes,
13 proceed with this work.

14 However, it was some 31 days later that we
15 received an indication that EnCana was going to go in
16 and proceed with the work in a way that was not as
17 originally described. It involved ground disturbance
18 and it was 31 days later which, in our estimation, is
19 not a matter of emergency.

20 So the question of what is an emergency and
21 what is covered is certainly something that, that
22 needs to be determined well before any sort of
23 additional work is, is allowed in this regard because
24 in that case, caissons were being excavated and ground
25 disturbance was involved. That was not foreseen in

1 the original request for the emergency work.

2 Q. Now, I just have a few more questions on these reports
3 and I'm turning to the one dated 25 February, 2008
4 and I'm going to page 5 and it's 13 -- and it's Tab I
5 and it says:

6 "Follow-up on EnCana's
7 post-constructive construction
8 reclamation practices in the NWA
9 including several trail reclamation
10 projects was deferred to 2008 and
11 will be considered by the RSS
12 remediation group."

13 Has that been done?

14 A. MS. BOYD: Just one moment, please.
15 Thank you. There was some follow-up done on some of
16 these sites and we used the Proponent's reports which
17 indicated that they had found certain types of
18 disturbances and leftover materials, such as cement
19 and different things, left at sites. And we went back
20 out, sent out our field people to investigate some of
21 these sites and found that in many cases some of the
22 same materials that were identified by the Proponent
23 were still there and there were ongoing discussions
24 with the Proponent requesting that these materials be
25 removed.

1 Going -- what this is referring to is going
2 back out yet again to determine if in fact that work
3 was done and we have not to date had the opportunity
4 to go and do that.

5 Q. Now, back to you, Colonel Bruce, and I was discussing
6 this with Mr. Richmond in your absence and he invited
7 me to come back and discuss it with you so you can
8 talk to him after.

9 And we were discussing the enforcement that's
10 available to you and this is -- for ease of reference
11 if you want to know where this is, it's at page 2892
12 of the transcripts, but I don't think we need to turn
13 them up.

14 And as I understand Mr. Richmond, truly,
15 really, the only true enforcement you have is to
16 limit access to the companies, is what I understood
17 him to say. Is that true?

18 A. LCOL BRUCE: Actually, very much so, but
19 there are other mitigation measures that -- or other
20 punitive actions that we, we can take and I think
21 Colonel Lamarre addressed them in the Opening
22 Statement with regards to the powers of punishment
23 under the **National Defence Act** and of course DCAARs,
24 Defence Control Access Areas Regulations and it's more
25 abbreviations that I can say.

1 But the bottom line being, is essentially
2 those are fairly specific and can be used, if
3 required, if I so determine with of course legal
4 counsel to say whether or not we, we would have a
5 legitimate case.

6 However, as are aware, Alberta Environment
7 does not have the authority in one or two areas on the
8 Base and they are traditionally, in terms of Alberta,
9 those that have that escalatory types of powers that
10 provide a broad range of punishments for infractions
11 that do occur.

12 Essentially, as it stands now, rather than
13 the DCAARS and the **National Defence Act**, it's
14 constraining access. Not closing access, because then
15 we would assume certain liabilities for infrastructure
16 which I'm sure the average Canadian taxpayer would not
17 want me to assume on their position.

18 But I will give you an instance, for example,
19 in 2004, because of the issues ongoing with industry,
20 we closed the Base for all but essential maintenance
21 activities for two full weeks for development, simply
22 to, to indicate our displeasure with the activities
23 that industry had been performing.

24 I think it's also important to note that it's
25 very challenging to take punitive actions in some

1 cases against industry without being able to tell them
2 why we need to do this and the why is the operating
3 protocols or, in this particular case, the Range
4 Standing Orders, Chapter 7, that deals specifically
5 with oil and gas.

6 We have, as you probably heard already, been
7 trying to put these together for over three years.
8 It, it finally, to be quite frank, I issued them on
9 the 8th of August, 2008 after numerous attempts for
10 detailed consultation with industry and, quite
11 frankly, I was very disappointed on a number of
12 occasions that nobody would show up to sit down and
13 talk about these things, because the whole purposes of
14 the Range Standing Orders was to be able to provide
15 something that people could look to as operating
16 protocols on this Base.

17 They are not meant to replace any current
18 statutes or regulatory regimes that are in place like,
19 for example, the ERCB. They are meant to develop.
20 And how I wish people to operate on Canadian Forces
21 Base Suffield. That would also then provide me a
22 means to measure how successful they are doing against
23 those criteria.

24 I think it's also important to note that
25 there have been infractions that continue to occur

1 that we continue to address. Traffic violations is
2 one. As I mentioned, not all vehicles are GPS tracked
3 yet. Therefore, we trust the individuals that are out
4 there that they understand how to read a map so they
5 can get from point A to point B in accordance with the
6 access plan.

7 There have been violations where vehicles
8 have moved into a red templates. And a red template
9 is where there's live fire going on and it becomes
10 very dangerous and once that occurs we need to shut
11 down the red template until those people are, are
12 moved out.

13 We have also had indications, for example,
14 from SIRC where people at the gates have been found
15 with alcohol in their vehicles and they have been
16 barred from entry. And in fact my understanding is,
17 through industry, they take that quite seriously and
18 in fact have stripped contractors of their, of their
19 obligations to actually work for them.

20 And then, finally, I think what's also
21 important is that I can bar people from the Base as a
22 whole and there was in 2006 a senior member of SIRC,
23 who no longer works for that company, but was a member
24 at the time, who was restricted from the headquarters
25 building and barred from the officer's mess because of

1 his conduct in terms of browbeating my staff. And
2 these individuals -- this individual is no longer
3 welcome as far as I'm concerned.

4 So, though I don't have a full broad spectrum
5 of measures that I may take or as deep as, say,
6 Alberta Environment, I do have a number of measures
7 that I can use and, like I said, though, I need to put
8 certain things in place first, Range Standing Orders
9 being the key component, so that people know what I'm
10 expecting them to do before I can then enforce some
11 sort of, of standard.

12 Q. I just want to clarify one thing, Colonel Bruce. When
13 you said with the RSOs you were disappointed that
14 they didn't show -- people didn't participate. Is
15 that industry you were referring to?

16 A. That is correct. I issued a -- and you've heard about
17 the ADR process and you have heard about a number of
18 activities.

19 My predecessor in 2005 issued the first draft
20 of Range Standing Orders to industry for comment. The
21 comments that were returned were quite scathing and,
22 quite frankly, not very helpful in trying to produce a
23 document that we would have ownership of across the
24 broad spectrum of stakeholders.

25 When I arrived in 2007 I re-invigorated the

1 process and I issued a second draft to industry in
2 December, 2005. There were several meetings.
3 Unfortunately, most of the operators did not show up.
4 SIRC did, on their behalf, but my understanding is
5 there was a number of operators that had indicated
6 that they, SIRC, was not to speak on their behalf.

7 The 23rd of July this summer was the last
8 meeting. I said, before I issue, I would like to have
9 one more sit-down with industry and nobody showed.

10 So in the end I issued a Range Standing
11 Orders on the 8th of August and asked for 60 days. I
12 gave a 90-day implementation period of which I would
13 accept comments back from industry for the first
14 60 days and then I would look at those comments to see
15 if I needed to adjust what I had said, all along
16 highlighting that I am not in the business of
17 replacing the regulatory statutes that are already in
18 place nor would I impose anything that was a threat to
19 health and safety and I needed their input.

20 I have now received inputs on several -- from
21 several companies and I will look at those and see if
22 I need to amend or tweak my Range Standing Orders.

23 I highlight that Range Standing Orders are a
24 living document, meaning that as policies change I
25 will amend them from time to time to ensure that they

1 remain current and relevant.

2 Q. Now, I'm going to -- I have two areas left and I'm
3 just going to switch to PDAs and I'm not going to be
4 long on these. Now, I understand ultimately you will
5 -- it will be you, Colonel Bruce, who signs off on
6 those after they're done on the approval of any
7 individual well and infrastructure; am I correct?

8 A. The PDA process is just part -- will be entered as a
9 part of the Application for Development. I have
10 delegated authority, less for those in the National
11 Wildlife Area, to my G3 who will sign off approvals
12 and I retain the right for all denials in the case of
13 the rest of the Range Training Area but specifically
14 for the National Wildlife Area I do all approvals and
15 denials.

16 Q. Now, this may have been discussed and I've been away
17 for part of it so forgive me if I have asked
18 something that's been done. Are you going to be
19 relying on SEAC for your recommendation or are you
20 going to have some of your own staff look at it as
21 well, independent of SEAC on things such as
22 relaxation of setbacks?

23 A. Are you referring specifically to the National
24 Wildlife Area?

25 Q. Yes, just that area.

1 A. With regard to the National Wildlife Area I -- the
2 more input, the better, as far as I'm concerned. So I
3 will have obviously SEAC's input as well as my own
4 staff who look specifically at Base issues.

5 Q. And will you also be looking to your counterparts at
6 the end? Will you be using those resources, Canadian
7 Wildlife Services, the recovery teams?

8 A. Canadian Wildlife Service and Environment Canada as a
9 whole are an important part of how I manage the
10 National Wildlife Area; and I think it's important to
11 highlight for two reasons.

12 One, they're the experts and we are
13 relatively new to this game and therefore we, we
14 interact with Environment Canada by I would, I would
15 suggest to you on virtually every issue in the
16 National Wildlife Area. So, from my perspective, we
17 will continue that relationship because it's very
18 important.

19 However, I think it's also important to
20 highlight that this is one of many National Wildlife
21 Areas, so what we do here may potentially have
22 significant impact across the full range of National
23 Wildlife Areas and therefore it's very important to
24 keep Environment Canada engaged in the business at
25 hand.

1 Q. Now, my last area of discussion is on regulation on
2 the Base and I'm going to go back to our Access to
3 Information which is 006-018, I believe. And I would
4 like to take you to Document A0182015 and my next
5 questions, although we're looking back historically,
6 is to look at how things get regulated on the Base
7 and I'm not going to belabour the past very long but
8 to use this to get into the future.

9 Now, if we -- on paragraph 2 of that, this is
10 a record of a meeting and if you go down, four lines
11 from the bottom it starts:

12 "In addition, the landowner's
13 agreement is required before the
14 AEUB approves well licences. At
15 Suffield someone has been signing
16 well applications on behalf of the
17 Base and contrary to the Base
18 wishes."

19 Now, do you know what -- who that was or how that
20 was happening?

21 THE CHAIRMAN: Ms. Klimek, I think we've had
22 some discussion already on the matter of, of words
23 that have been blanked out. I'm not sure that the
24 Government can respond to this one.

25 MS. KLIMEK: I think Mr. Lambrecht said

1 that anything that was blanked out when it came here
2 could be discussed, if I understood him correctly.

3 MR. LAMBRECHT: Yes, sir. I'm not going to
4 object to this question. My friend received
5 information that was redacted pursuant to the normal
6 routine Access to Information process which allows for
7 redactions in the material that is produced.

8 There is a section, Section 8 of the *Privacy*
9 Act, which provides that the exemptions do not apply
10 in the case of legal proceedings. We've looked at
11 this. Our view is that the Panel proceedings fall
12 within that phrase of "legal proceedings" in Section 8
13 of the *Privacy Act* so I'm not going to object to this
14 question.

15 THE CHAIRMAN: Thank you, Mr. Lambrecht.
16 Thanks for clarification.

17 Please proceed to respond to that question
18 then.

19 A. MR. MARTINS: Fernando Martins. My
20 understanding was that the blanked-out letters or
21 blanked-out portions there refer to SIRC. In the
22 past, it is my understanding that SIRC had been giving
23 the landowner consent without the Base's knowledge
24 and, as such, applications that were going to the ERCB
25 had the appropriate annotations indicating that they

1 had landowner consent when in fact the Base had not
2 directly given landowner consent.

3 A. LCOL BRUCE: May I, may I just add to
4 that? That is part of the reason for the, the
5 evolving Application for Development and now it is
6 that Application for Development that, in essence,
7 provides landowner consent once it's signed off for
8 approval that goes to the ERCB for, for, you know,
9 demonstration of landowner concurrence.

10 Q. This leads into my next question then because I
11 presume that is no longer happening, that SIRC is
12 signing on your behalf, but when I look through the
13 information we've seen and what we've heard, SIRC
14 seems to be playing everybody's role here and I would
15 like to understand what that has distilled to today
16 because we hear you are giving directions to SIRC or
17 you, being the Base, to remove a well. SIRC is
18 signing on your behalf.

19 So what has all of this evolved to in the
20 role for SIRC, from your perspective, on the Base?

21 A. I think the, the Partial Assignment Agreement in 1999
22 is quite clear in terms of SIRC's role. I felt, as
23 has been alluded to, that there has been some
24 confusion in the past in terms of SIRC's role.

25 The amplification letter, for example, with

1 regards to gates is just one of my mechanisms to, if
2 you will, redefine -- not redefine, that's a bad term
3 -- but to reinforce what my expectations are of SIRC.

4 Essentially, SIRC has a responsibility to
5 collect and remit access fees that stem out of the '99
6 agreement to us, though not verify that those fees are
7 correct. They are just to collect the fees from
8 industry and then annually they present them to me for
9 the Receiver General for Canada.

10 Second of all, SIRC has, as I mentioned, a
11 range safety function as a subset of my larger range
12 control in terms of monitoring and being responsible
13 for movement of oil and gas activities once they enter
14 the Block.

15 They also, as mentioned, have a number of
16 responsibilities prior to somebody arriving at the
17 gate to get on to the Block as well as specific
18 responsibilities at the gate.

19 Q. Now, I understand when I -- that SIRC is a subsidiary
20 or connected with EnCana. Is that your understanding
21 as well?

22 A. They are a wholly-owned subsidiary of EnCana.

23 Q. Okay. Now, do you have any recourse if SIRC doesn't
24 do their job properly? What ability do you have to
25 issue sanctions or any enforcement vis-a-vis them?

1 A. That's an interesting question. I think that there
2 are a couple of recourses that we have not had to
3 resort to, and I think the final one is obviously
4 litigation.

5 But more importantly we deal on a daily basis
6 with SIRC, with regards to issues that are ongoing,
7 and, as I mentioned in my previous testimony, there
8 was one occasion where a senior member of SIRC was
9 restricted or barred from certain places on the Base
10 due to his conduct. So there are activities or things
11 that I may impose depending on how these activities
12 fall out.

13 Q. Now, I've just got two more questions or two lines of
14 questions and for those I need you to go to -- this
15 is the same Document A0182039, and if we could go to
16 page 3 of 7 and No. 13. And I just want to ask you
17 one question out of this and if we look partway down,
18 it says:

19 "Due to the absence of trails in
20 the area of...

21 Is it Moreuilwood? Am I saying that right:

22 "G3 bio is proposing that it be
23 kept as an area of low oil and gas
24 well density for use as a control
25 comparison to more heavily [wooded]

1 areas."

2 And then if we could go to -- pardon -- oh, wood
3 -- "comparison to more heavily used areas". And if we
4 could go to page 22 of your slide, I would like you to
5 identify where that area is and there's a ...

6 A. I believe slide 39 would probably be more useful, if I
7 may.

8 Q. Oh, okay.

9 A. No, just back to the other one, Scott. That's the
10 one. Basically the northeast corner, right -- no,
11 Scott, a little to your left. Right in those areas
12 there.

13 As you can see now, the density of the wells
14 -- and again this is just, you know, a snapshot that
15 sort of is representative because it's not to scale by
16 any means -- it is representative that Moreuilwood and
17 Coriano, which are sort of centre east are the least
18 developed areas on the Base in terms of percentage of
19 disturbance.

20 Q. Now, they have no status such as the NWA; is that
21 correct?

22 A. That is correct.

23 Q. So I guess my question is, we have some indication
24 that an area that has not been designated as an NWA
25 from the Base's perspective should be kept at a low

1 density and is it fair to say that when you have it
2 -- something declared as a NWA it should at least be
3 as protected as this area outside?

4 A. As you can appreciate, that was a recommendation from
5 the G3 biologist at, at the time, saying that this
6 particular area is the least disturbed area.

7 I have, for information purposes, have issued
8 a letter this summer, basically to industry indicating
9 my desire to keep those two, specifically Moreuilwood
10 and Coriano, as well as two others -- no new
11 development will occur in there, no new disturbances
12 -- correction. No new disturbances will occur in
13 there and I will re-assess that on a yearly basis
14 partially pending the outcome of the National Wildlife
15 Area. And I do this for two reasons.

16 The first reason is because the primacy of
17 Military training is what I'm all about and to ensure
18 that this training area is sustainable over the long
19 term for the use of Military training.

20 Those four areas that I've restricted new
21 development in, or new disturbances in, are -- two of
22 them are heavily used for Military operations and the
23 other two are the least disturbed area from our
24 studies on the entire Base including the National
25 Wildlife Area.

1 However, as has been the case in terms of our
2 presentation here is the National Wildlife Area is to
3 be used as a benchmark for the other areas of the Base
4 if and when, depending on the recommendations from
5 this Panel, are such that I might be able to then free
6 up Moreuilwood and Coriano for use for industrial
7 activity depending on the, the recommendations of this
8 Panel. But in the interim I have restricted
9 development as of this summer in those areas.

10 Q. Now, if we could go back to our 006-018 and to
11 Document A0182056 and if we could go to page 8 of 9
12 of that document -- 056, yes. Yes, and I think
13 there's a -- if you keep scrolling down to page 8
14 of 9.

15 And this is on "Blanket Refusal" at the top
16 there. And we've been talking about regulation and I
17 think we alluded to this a bit the other day. But we
18 have here the Alberta Department of Energy and this
19 is a bit of a new player, and it discusses blanket
20 refusal and I would like your thoughts on this.

21 I take it Alberta Energy was at this meeting
22 or had some input to the Base on their concerns about
23 development on the Base at some point; is that
24 correct?

25 A. LCOL BRUCE: Alberta Energy attends, or at

1 least in my experience, the last two SEAC annual
2 general meetings, so Alberta Energy is represented at,
3 at the annual general SEAC meetings.

4 Q. Okay. Now, at this one it said:

5 "Alberta Department of Energy
6 wanted to ensure that new RSOs are
7 flexible enough to judge each issue
8 individually. There must not be a
9 blanket refusal for any given
10 area."

11 Now, is -- what is the role of Alberta Energy
12 vis-a-vis the Base? Does it have one or how do you
13 deal -- or what role -- dealings do you have with
14 them?

15 A. As, as I indicated, first of all, Alberta Energy does
16 sit as a, as a participant within the SEAC Annual
17 General Meeting so that they listen to the way things
18 are. They also have a large part through their Crown
19 corporation, the ERCB, which obviously has a large
20 role to play in terms of technical aspects of oil and
21 gas development on the Base. And then, finally, they
22 are consulted from time to time depending on the issue
23 that we're about to undertake or make a determination
24 on.

25 Q. Now, I guess I would like your thoughts on that, on

1 the -- one thing, that there cannot be a blanket
2 refusal for any given area. And if you want to
3 protect an area for ecological purposes, from the
4 Base's point of view or, I guess CWS, would not a
5 blanket refusal of any development in that be one of
6 the options you may want to consider if you've deemed
7 an area important and you want to protect it?

8 And I guess that's my question for you,
9 Colonel Bruce, and you can consult with your other
10 counterparts there.

11 A. LCOL BRUCE: If I may, I'll, I'll start,
12 and if Environment Canada wishes to join in I, I do
13 encourage them to do so. I think the term, "blanket
14 refusal", is a very broad and all encompassing
15 statement. I think, as we've discussed over, over the
16 course of these three, three weeks, I think it is now,
17 that there are significant industrial footprint on the
18 Base and that footprint is, is there and I think it
19 would be foolish of us to think that it is not, is not
20 something that we, we have and something that we must
21 deal with.

22 Therefore, for example, in this letter that I
23 issued earlier this summer in terms of restricting new
24 disturbances, I did not say no to new development, if
25 they wanted to drill off existing pads, and I also

1 recognized the fact that there are ongoing activities
2 that need to be conducted to ensure the good order and
3 maintenance of those facilities.

4 So I think a blanket refusal is, is perhaps
5 not a correct term in this particular case because
6 there can be no refusal of, of any activity given the
7 nature of what is already in the ground.

8 A. MR. INGSTRUP: We have nothing to add on
9 that.

10 Q. So I guess, to follow up on that then, is it your
11 position that it is -- it wouldn't be a -- it isn't
12 worthwhile looking at some zoning; to say where there
13 are sensitive issues, no new development?

14 And I guess the balance here I'm asking you
15 to look at when it comes -- if it comes down to
16 ecological values versus oil and gas, is it your
17 position that oil and gas has to happen? And that's
18 what I hear -- I thought I heard you say, so maybe if
19 you can address those concerns or comments, Colonel
20 Bruce?

21 A. LCOL BRUCE: Yeah, I think it's -- I think
22 you're taking my statement out of context. What I
23 have said was that blanket refusal is not a term I
24 would use nor have I used it in any correspondence.

25 Blanket refusal seems to be a term Alberta

1 Energy used in terms of this particular paragraph, or
2 at least that's what whoever was the author of these
3 minutes thought.

4 The reality is, is there is oil and gas
5 activity occurring throughout the Range and Training
6 Area which includes the National Wildlife Area. When
7 you say "no new development", yes, I can foresee areas
8 that will have no new development. But let's remember
9 that there is activity virtually in every spot of the
10 Base and, therefore, a blanket refusal to say no to
11 any activity in there is not appropriate.

12 MS. KLIMEK: Thank you. I think you
13 clarified that. Those are all my questions for this
14 panel and, thank you, Canada Panel.

15 THE CHAIRMAN: Thank you, Ms. Klimek, for
16 assisting us in, in your questioning this morning and
17 also on previous days as well. I think this may be a
18 -- since we have to change desks and have Mr. Denstedt
19 with EnCana come forward to begin questioning, this
20 might be a good time to take a coffee break for
21 15 minutes and allow that change to occur.

22 So we'll, we'll return in 15 minutes.

23 **(PROCEEDINGS ADJOURNED AT 10:16 A.M.)**

24 **(MORNING BREAK)**

25 **(PROCEEDINGS RECONVENED AT 10:37 A.M.)**

1 MR. DENSTEDT: I apologize, Mr. Chairman,
2 for that.

3 THE CHAIRMAN: Yes. No problem,
4 Mr. Denstedt. I -- just one moment. I believe we are
5 ready to proceed. I'll just check with the court
6 reporters. Yes, we are. Please go ahead,
7 Mr. Denstedt.

8 **CROSS-EXAMINATION BY ENCANA, BY MR. DENSTEDT (CONT'D):**

9 MR. DENSTEDT: Thanks.

10 Q. Welcome back, Colonel.

11 A. COL BRUCE: Good to be back,
12 Mr. Denstedt. Thank you.

13 Q. A couple of preliminary things in respect of
14 Mr. Didiuk's work. If I could just get that
15 reference again, Mr. Didiuk, that would be helpful to
16 me. The one you gave Ms. Klimek this morning.

17 A. MR. DIDIUK: I assume you're referring to
18 the reference of a study with the Black Rat Snake?

19 Q. That's right. It didn't show up on the transcript,
20 that's all.

21 A. This reference is, is provided in Environment Canada's
22 submission. Appendix G. But I can provide it now.
23 One moment:

24 It's referenced on page 291 of our
25 submission, but I can read it out to you if --

1 Q. Yeah, that would be --

2 A. -- that suits your purpose.

3 Q. -- great. That would be very helpful.

4 A. The authors are Roe J.R., Lowe and Demers G., and
5 Weatherhead P.J. 2007, "Demographic Effects of Road
6 Mortality in Black Rat Snake, Biological
7 Conservation", Volume 137 and the year 2000 volume,
8 pages 117 to 24.

9 Q. Thanks, Mr. Didiuk. And is the model you referred to
10 contained in that document as well?

11 A. A description in the results of the model and the
12 input parameters which are the most important things
13 that we have to consider when we're doing our
14 comparisons are provided in that paper.

15 MR. DENSTEDT: Great. Thanks very much.
16 And in respect of Mr. Didiuk's work, EnCana will be
17 responding to that in rebuttal, either later today
18 hopefully or maybe tomorrow.

19 THE CHAIRMAN: Right.

20 MR. DENSTEDT: Thanks.

21 Q. So, Colonel Bruce, a couple questions to start with
22 arising out of Ms. Klimek's cross-examination and in
23 respect of the NWA routine permits, is it fair to say
24 that EnCana had a, and the DND had a difference of
25 opinion as to the legal requirement for that permit?

1 A. LCOL BRUCE: I take it you're referring to
2 the fact that they were calling it a routine for
3 routine activities but there was only one permit and
4 it's called a National Wildlife Permit. Is that the
5 one you're referring to?

6 Q. I'm referring to EnCana's position that the existing
7 wells and the activities associated with those wells
8 are, are not caught by the NWA Act?

9 A. That is my understanding of what EnCana's position is
10 and that's why they accepted the NWA permit for
11 routine activities without prejudice.

12 Q. And is it also fair to say that that ongoing legal
13 debate was the primary reason for their reluctance to
14 accept that permit?

15 A. Again, I would -- I assume that to be the case, but I
16 would recommend that they're the best to answer that.

17 Q. All right. And, in fact, they did reference that in
18 their acceptance of the permit that they still
19 reserved their rights on that legal issue; is that
20 correct?

21 A. That is correct. That's why they said without
22 prejudice.

23 Q. All right. And in respect of the debate around the
24 Range Standing Orders, is it fair --

25 A. MS. BOYD: Sorry. Sorry. Could I

1 please add something just in reference to the NWA
2 permit? It's not entirely accurate that, from, from
3 our perspective that the only reason that they are not
4 accepting that permit is because of that ongoing legal
5 debate simply because for upwards of two and-a-half
6 years we worked with EnCana, and specifically I was
7 working in consultation with EnCana, gathering
8 information, asking them for information to inform the
9 permit to develop it, providing them with drafts,
10 working through the issues, there were definitely
11 issues to work through, for two and-a-half years. It
12 was only once we reached the point where we said,
13 "Okay, you now have to sign this and accept this
14 permit" that suddenly it came forth that, "Actually,
15 we don't think we need one."

16 So it's not entirely accurate that -- that
17 may be their position now, but that was not what was
18 presented to the Base for the last two and-a-half
19 years during the development of that permit.

20 Q. So, Ms. Boyd, do you think it's appropriate for EnCana
21 to have consulted with you and provided you that
22 information? Is that your objection?

23 A. Sorry, could you repeat that question?

24 Q. You indicated that EnCana had been providing
25 information to you and responding to you for two

1 and-a-half years. Is your objection that they were
2 co-operating with you? Is that your objection?

3 A. No, not at all. I -- in that sense, I'm making the
4 point that during that entire period of consultation,
5 at no time did they indicate, "We're co-operating,
6 however we don't believe we need to do this or need a
7 permit"; it was understood through that process that
8 EnCana believed that they needed a permit and were
9 going to ultimately accept one once the issues were
10 resolved.

11 Q. And Ms. Boyd, how do you know what EnCana believes or
12 doesn't believe?

13 A. It is only my interpretation of that chain of events.

14 Q. That's correct.

15 A. LCOL BRUCE: I think it's -- if I may just
16 highlight, I think it's important to note, if somebody
17 enters into discussions about an activity for
18 two-and-a-half years, I, I, I think it would be fair
19 to say one would expect that, that that negotiation is
20 there for a reason.

21 If it had no intention to -- of accepting the
22 permit for the two and-a-half years, I'm, I'm at a bit
23 of a loss as to find out why they would even enter
24 into that discussion if that was their legal opinion.

25 Q. All right.

1 A. MS. BOYD: I will also add to that that
2 they submitted a permit application form, which was
3 the basis for the beginnings of that entire
4 discussion.

5 Q. Ms. Boyd and Colonel Bruce, perhaps I could posit
6 something to you that is pretty common in the energy
7 business. When TransCanada Pipelines, for example,
8 crosses provincial lands or municipal lands, they
9 often submit permits and enter into negotiations that
10 go on much longer than two years in respect of those
11 permits. And every time when it comes time to file
12 the permit, they send in the permit, they say, "We
13 don't think we need this, but here's the
14 information." That's common practice at the National
15 Energy Board and companies like TransCanada and
16 Enbridge. Are you familiar with those companies?

17 A. LCOL BRUCE: Yes, I'm familiar with those
18 companies. And that perhaps is the way it works on
19 industry. And as I said, there is an expectation in
20 good faith when we're chatting that, if there was
21 concerns, it would be helpful to have that stated
22 upfront.

23 Q. Fair enough, Colonel Bruce. And in respect of the
24 Range Standing Orders, is it fair to say that EnCana
25 had concerns about the ability or the jurisdiction of

1 the Base to regulate in respect of the activities
2 that are within the Energy and Resource Conservation
3 Board's jurisdiction?

4 A. I think it's very fair to say that EnCana has raised
5 on a number of occasions, in terms of the RSO
6 development, that they are concerned with some of the
7 protocols that have been placed in that particular
8 Range Standing Order, that it may conflict with ERCB
9 or other health and safety regulations or statutes.
10 In that particular case, as I have stated in my formal
11 correspondence with EnCana, that you need to show me
12 where I'm in error and I will make sure I change it so
13 I do not conflict with any of those particular
14 concerns. Not showing up at meetings does not allow
15 for a reasonable move forward in terms of development
16 of these issues.

17 Q. And is it fair to say, though, Colonel Bruce, that in
18 August of this year EnCana requested a meeting of
19 senior executives from EnCana and senior members of
20 the Military?

21 A. In fact, that meeting occurred on the 8th of August
22 between the Deputy Minister of Defence and Mr. Protti,
23 the Senior V.P. from EnCana. And I wasn't in
24 attendance.

25 Q. And Colonel Bruce, did that meeting help the

1 relationship between EnCana and the Military?

2 A. I think every meeting helps. I think when we sit
3 down, as demonstrated by that particular meeting, that
4 it tends to work. It's when people don't show up to
5 meetings that it doesn't necessarily work as well.

6 Q. And is it, is it fair to say that some of the senior
7 involvement has helped break the impasse that was
8 occurring at the lower levels?

9 A. I think that's very fair. And I, and I -- and I think
10 it's important to highlight, I think the same is now
11 occurring on -- with Alberta in terms of Alberta
12 Environment. And as mentioned, my forthcoming meeting
13 with the Chairman of ERCB. I think all these sort of
14 participating at that particular senior level has
15 started to help the Project move a little quicker
16 forward.

17 Q. And, Colonel Bruce, is it also fair to say that
18 EnCana's frustration and the Military's frustration
19 is with some of the inaction by the senior folks
20 primarily in Alberta but also at Canada? Is that a
21 fair comment?

22 A. I, I would tend not to necessarily agree with that. I
23 think it's, it's not necessarily an action. I'm just
24 not sure that the issues got to, necessarily, where
25 they needed to be to be worked on. And I would say,

1 and this is being brutally frank, I think in the
2 context of the Department of National Defence, it very
3 much is delegated down to the specific Responsible
4 Authority, in this particular case the Base Commander,
5 and until that becomes more than his, his abilities to
6 fix, others will not pile in.

7 And I think what's happened in terms of the
8 oil and gas issue at Suffield is we now see a growing
9 recognition that we need a broader sort of action plan
10 from not just the Government of Canada but from
11 others, Alberta and, of course, EnCana, to resolve
12 some of the issues.

13 Q. That, that's fair comment and a good clarification of
14 the way forward, Colonel Bruce. Thanks for that.

15 A. COL LAMARRE: Sir, can I add on to that,
16 please, Mr. Chairman. The bottom line still comes
17 down to this; that the Minister of National Defence,
18 not the Deputy or anybody else in the chain of
19 command, between the Minister of National Defence, all
20 the way down to Colonel Bruce, has really got anything
21 to say about this.

22 The Minister himself gave authority and
23 direction to the Base Commander of CFB Suffield to
24 look after the Base top to bottom.

25 I would venture to you the fact that they

1 felt compelled to try to call for these additional
2 meetings, meant that they had some question as to the
3 authority of the Base Commander. But, in reality,
4 following those meetings, the authority of the Base
5 Commander and his plan and the way he's proceeding was
6 just reinforced by the entire chain of command.

7 So he is the guy responsible to look after
8 that area. And anybody who wants to go in that area
9 needs to deal with him. Not with the Deputy Minister,
10 not with the Minister, not with me. With him.

11 Q. And Colonel Lamarre, you're not in any way by, in that
12 comment, challenging or suggesting that any person or
13 any corporation shouldn't avail themselves of
14 whatever legal rights they're entitled to, are you?

15 A. Absolutely not. What I am saying is that the person
16 who has been designated by the Minister of National
17 Defence to look after Suffield is Lieutenant Colonel
18 Bruce, the Base Commander.

19 Q. Yeah, and we agree with that.

20 So Colonel Bruce, after that lively start,
21 I'll get to what I really want to talk about. And
22 the first question I think is simple, is how did the
23 DND and the Federal Crown obtain ownership of the
24 Base at CFB Suffield?

25 A. LCOL BRUCE: The lands were expropriated

1 in 1941.

2 Q. And those lands did not include mines and minerals; is
3 that correct?

4 A. I just need to confirm. I believe there are some,
5 some mines and minerals that were included in that,
6 but I, I just need to check.

7 Excuse me, Mr. Chairman, I'm just trying to
8 make sure I have the right term so I don't, I don't
9 say something that is quite inappropriate.

10 THE CHAIRMAN: Please take your time to get
11 the correct information.

12 **SUBMISSIONS RE: LAND TITLES OFFICE DOCUMENTS BY**

13 **MR. LAMBRECHT**

14 MR. LAMBRECHT: While this is going on,
15 Mr. Chairman, let me say, my friend alerted me this
16 morning that he may want to tender some of the
17 documents from the Land Titles Office of Alberta, as I
18 understand it, relating to the ownership of lands and
19 minerals at Canadian Forces Base Suffield through the
20 course of re-examination of Colonel Bruce here.

21 I think it would be prudent for myself as a
22 barrister to consult with my solicitor colleagues
23 regarding Land Titles documents. And I, having only
24 seen the ones proposed to be tendered by my friend
25 here this morning, I have not had that opportunity.

1 I'm working on it, but I think it -- and I'm unable to
2 advise at this moment just sort of how this will
3 proceed. I'll check again with my office at noon.

4 I would say, however, that I'm not sure why
5 it's necessary to tender the Land Titles documents for
6 the purposes of this proceeding. I mean, I'm not
7 intending to block my friend's efforts to do so. I'm
8 saying that if he does so, I would need to consult
9 with a solicitor, and this may, again, prolong the
10 proceedings. And in anticipation of that undesirable
11 effect, I would like to ask why it's necessary.
12 Because I think the proceedings have proceeded to date
13 on certain facts which are stated in the materials.
14 This seems to be further documentation to support
15 facts which are -- have, to this moment, to my
16 understanding, if not perfectly crystallized in terms
17 of their clarity, are not substantially in any
18 dispute.

19 And that is to say that EnCana owns mines and
20 minerals. The Federal Crown owns the remaining land.
21 I wouldn't necessarily restrict that to the surface of
22 the land because Canada is the landowner, which would
23 include surface and below surface materials, but
24 EnCana observes the mines and minerals under the
25 surface.

1 And the situation across the entire Block is
2 quite complicated. There are some Federal minerals
3 owned by the Crown. There are other minerals owned by
4 private parties. Once we go into the Land Titles
5 Office, we're going to start to encounter a thicket of
6 encumbrances and other documents that will appear on
7 the Certificate of Title relating largely to the
8 commercial oil and gas activity that is occurring
9 there.

10 So before we embark upon this, I just -- I'm
11 not quite sure I see what the relevance of the
12 documents is at this point. And I'm concerned that
13 embarkation upon this process might, might prolong our
14 proceedings really for, for no purpose. So I thought
15 I would maybe speak to ask for clarification as to
16 where this is going.

17 THE CHAIRMAN: Okay. Thank you,
18 Mr. Lambrecht.

19 Mr. Denstedt, do you wish to respond to that?

20 **REPLY SUBMISSIONS RE: LAND TITLES OFFICE DOCUMENTS BY**

21 **MR. DENSTEDT**

22 MR. DENSTEDT: Sure. I think we're largely
23 in agreement. And if, if my friend can agree to a
24 couple of facts, I think I can dispense with probably
25 25 or 30 minutes of questions on this.

1 There was some, some confusion, I think, as
2 to the extent of EnCana's rights when I cross-examined
3 this panel in particular about the reservation or
4 exclusion of mines and minerals from the *National*
5 *Wildlife Regulation*. And I wanted to make sure that
6 it's clear on the record that when mines and minerals
7 are reserved out of title, the reservation, which is
8 actually, in this document, says:

9 "The mines and minerals with the
10 full power to work the same and for
11 the purpose to enter upon, use,
12 occupy the said lands and so much
13 thereof and to such extent as may
14 be necessary for the effectual
15 working of the said minerals."

16 If my friend can agree that EnCana's mine and
17 minerals rights includes that reservation, which is in
18 the legal documents, I can dispense with all these
19 documents and move forward.

20 MR. LAMBRECHT: Just a moment if I can speak
21 with my friend.

22 THE CHAIRMAN: Yes.

23 MR. LAMBRECHT: I think underlying -- I'm
24 sorry.

25 THE CHAIRMAN: Mr. Lambrecht?

1 **FURTHER SUBMISSIONS RE: LAND TITLES OFFICE DOCUMENTS BY**
2 **MR. LAMBRECHT**

3 MR. LAMBRECHT: I think, legally, what my
4 friend is attempting to establish is that, at the end
5 of the day, his client has a Certificate of Title from
6 the Land Titles Office of Alberta which has certain
7 words on it. The scope and legal effect of those
8 words is a matter that is interpreted by my friend in
9 a certain way.

10 Basically I think it was alluded to in some
11 of the earlier evidence that the common-law right of
12 the owner of minerals to enter upon the surface to
13 work the minerals is operative here.

14 And the Federal response to that has always
15 been that the right to -- of the mines and minerals
16 owner to enter upon the surface to work the minerals
17 is a complicated matter here because of the function
18 and purpose of CFB Suffield. That's why there is a
19 Memorandum of Agreement which is articu -- which is
20 described as a Surface Access Agreement.

21 So whatever common-law rights there may be,
22 they are affected by the 1975 Agreement. And our
23 interpretation of that Agreement, I think it's fair to
24 say, you've heard the evidence of SEAC yesterday, that
25 there are differences in respect of how that is to be

1 articulated.

2 If my friend wants to tender a Land Titles
3 document, he had an opportunity to do this through the
4 direct examination of his Panel so that they could
5 tender the certificate to say what it's worth.

6 If he has a Certificate of Title, the current
7 one for EnCana, that he wishes to rely upon, that he
8 wants to tender through Colonel Bruce, I would like --
9 I don't, I don't object, but it would be subject to
10 reservations that I would like to check with my
11 solicitors about -- in order to be able to do due
12 diligence concerning Land Titles documents. And,
13 secondly, that all of this is going to be subject
14 ultimately to argument between the parties at the end
15 of the day about how all of this fits together in the
16 unique situation that is Canadian Forces Base
17 Suffield, including the Wildlife Area, in the context
18 of what the Panel is being asked to do here today.

19 THE CHAIRMAN: Thank you, Mr. Lambrecht.

20 **FURTHER REPLY SUBMISSIONS RE: LAND TITLES OFFICE DOCUMENTS**
21 **BY MR. DENSTEDT**

22 MR. DENSTEDT: I may have a simple solution.
23 If my friend can simply agree that EnCana has whatever
24 mines and minerals have been granted to it by the
25 Alberta Crown, we can move forward. If he would

1 stipulate to that agreement, I, I'm okay.

2 MR. LAMBRECHT: He can tender whatever
3 documents he wants to show what it reads. That's -- I
4 think that's appropriate.

5 THE CHAIRMAN: I think Mr. Denstedt --

6 MR. LAMBRECHT: The rest is argument.

7 THE CHAIRMAN: Yeah, I think Mr. Denstedt is
8 not suggesting he needs to table the document.

9 MR. DENSTEDT: If my friend can simply agree
10 that EnCana has whatever mines and minerals rights
11 have been granted to it by the Crown from Alberta, I
12 would have thought that's a simple thing, then if
13 that's in dispute, then I will have to tender evidence
14 and lots of it.

15 MR. LAMBRECHT: Well, I don't know because I
16 haven't been given earlier notice and a chance to look
17 at the -- at what's happened in the last 30 years
18 between the time that minerals were given by Alberta
19 to EnCana. And I won't -- I can't make the submission
20 without discharging my due diligence.

21 I think it's a shorter cut, a shortcut
22 through this for my friend to tender the current
23 Certificate of Title if he has one and then the rest
24 is submissions.

25 MR. DENSTEDT: Okay, so I'm clear, I need to

1 know, is the Government of Canada challenging EnCana's
2 mineral rights at CFB Suffield?

3 MR. LAMBRECHT: I don't think I could be
4 clearer, Mr. Chairman. What we're speaking about here
5 is evidence. If my friend wants to tender his
6 certificate -- for some reason he seems to feel it
7 necessary, and perhaps -- and I don't know the
8 rationale for this -- to prove a fact that we have all
9 proceeded upon to date, without it really elaborating
10 in any clarity upon the full scope of that fact.

11 So if he wants to prove something now with
12 greater clarity, within the Alberta Land Titles
13 system, the way to do that is to tender your
14 certificate. And I'm not objecting to that. I'm not
15 in a position to make any admissions in this regard in
16 the manner that my friend has suggested. And I'm not
17 attempting to assert what my friend alleges. I'm
18 simply saying the law in Alberta says you can rely on
19 your certificate. Let him tender his certificate.
20 The rest is argument in terms of how minerals owned by
21 EnCana might -- how, how the Surface Access Agreement
22 interacts with that in the circumstances that we have
23 today at CFB Suffield.

24 THE CHAIRMAN: Mr. Denstedt, is this a
25 matter that you may be able to deal with it in final

1 argument?

2 MR. DENSTEDT: I can deal with it in
3 rebuttal or final argument. I thought this was a
4 simple thing. My friend may be seeing more ghosts
5 than there are.

6 MR. LAMBRECHT: Well, tender the certificate.

7 MR. DENSTEDT: I'll either deal with in
8 rebuttal or in final argument, sir.

9 THE CHAIRMAN: So we have agreed that the
10 certificate will not be tendered, then, at this point?

11 MR. DENSTEDT: I don't need to tender the
12 certificate at this point. I can still ask my
13 questions without it, sir.

14 THE CHAIRMAN: Thank you.

15 **CROSS-EXAMINATION BY MR. DENSTEDT (CONTINUED):**

16 Q. So I think we got as far as the lands being
17 expropriated, Colonel Bruce. Is that fair?

18 A. LCOL BRUCE: I think that's where I left
19 it off, yes.

20 Q. And in respect of EnCana, what's your understanding of
21 the rights EnCana acquired from the Alberta Crown?

22 A. It is my understanding that EnCana, or its
23 predecessor, purchased certain mineral rights from
24 Alberta in 1975.

25 Q. And do you know, Colonel Bruce, is the CFB Suffield

1 lands registered in the Alberta Land Titles Office
2 under their registry system?

3 A. I am not sure of that.

4 Q. Is that something you could check, Colonel Bruce?

5 A. I'm sure it is.

6 Q. Would you undertake to do that for me?

7 A. COL LAMARRE: I'm sorry, Mr. Chairman, can
8 we just consult a bit on that last undertaking that's
9 being proposed?

10 THE CHAIRMAN: Yes, certainly.

11 A. COL LAMARRE: Thank you.

12 THE CHAIRMAN: Mr. Lambrecht?

13 MR. LAMBRECHT: Sir, if you refer to
14 Exhibit 007-005, which is the 1975 Master Agreement,
15 the terms are defined. There are a number of terms
16 defined. And at page 4 of this agreement, under
17 Item 1C, the term "Base" is used. And there's a
18 reference to an instrument in the Land Titles Office
19 of the City of Calgary there.

20 I mean no disrespect to my friend, but I'm
21 not sure why we're covering this ground. There's a
22 reference on the face of the Surface Access Agreement
23 of 1975 to the appropriate instrument in the Land
24 Titles Office of Alberta.

25 MR. DENSTEDT: Mr. Chairman, if I may

1 explain. We're covering this because rights do flow
2 from contractual obligations and from land
3 obligations. If we're trying to sort out people's
4 rights here, we need to understand what those rights
5 are. And that's, that's part of the process. The --
6 actually, the petroleum and natural gas lease between
7 EnCana and Alberta is on the record I just found out.
8 I didn't know that. And I apologize for that. It's
9 at 002-066. And if my friend is saying that the
10 Surface Access Agreement provides that these lands,
11 the CFB Suffield lands had been brought under the
12 Alberta Land Registry System, I'm satisfied with that.

13 THE CHAIRMAN: Okay. It sounds like we have
14 resolved that issue, then. Mr. Denstedt, please,
15 please move on.

16 MR. DENSTEDT:

17 Q. So Colonel, Colonel Bruce, and you may not be able to
18 answer this question, but I'm going to try anyway.

19 A. LCOL BRUCE: I haven't had a lot of luck
20 so far, but anyway.

21 Q. What's your, what's your understanding of what is
22 included in EnCana's mineral rights? Do you -- is it
23 your understanding that that also includes the right
24 of access?

25 MR. LAMBRECHT: I am going to object to this

1 question. The witness's understanding on this point
2 is hardly material to what occurs legally. I think
3 there has been sufficient evidence before this Panel
4 to make clear that there's a dispute between the
5 parties on their legal positions respectively. That
6 is something that's going to have to be resolved
7 legally. I'm not sure that the further articulation
8 of the views of the parties on which it's already
9 clear from the evidence of SEAC yesterday that there
10 are differences of views and uncertainties is going to
11 shed any further illumination on the role that this
12 Panel is being asked to undertake, which is to
13 determine the environmental effects of the
14 applications for the three wells and the, and the
15 program for drilling in the National Wildlife Area.

16 THE CHAIRMAN: Mr. Denstedt, just in
17 response, the Panel is not certain either of the
18 relevance of this. We, we clearly understand that
19 there are some differences of, of opinion on this
20 matter and I think that has been very clear.

21 MR. DENSTEDT: I understand that,
22 Mr. Chairman, but my friend spent almost half a day
23 cross-examining my senior executive from EnCana about
24 his legal interpretation of a contract. I ask a few
25 simple questions about information that I would have

1 thought that, if the Colonel is being provided good
2 legal advice, he would have some opinion on it. And
3 it's a fair question. And I'm not spending all day on
4 this. I have three or four questions. I'm not
5 spending half a day on it, sir.

6 I would have thought if he has a right to ask
7 Mr. Protti, "What's your interpretation of this
8 clause?", and I'm not allowed to ask the Colonel what
9 his view of the -- EnCana's access rights is to, to,
10 to the Base, which is fundamental to the question, I
11 don't see how that's fair. So I would ask for your
12 ruling on that, sir. I'm happy to move on if you want
13 me to, though.

14 THE CHAIRMAN: Okay. Just one moment,
15 please.

16 Mr. Denstedt, we agree that, in the context
17 of fairness, that you may ask questions on the
18 interpretation of the Agreement and we will see if, if
19 -- we'll ask the Government of Canada to respond as
20 best they can to your questions.

21 **(Ruling on Objection)**

22 MR. DENSTEDT: Mr. Chairman, just to be
23 clear, does that include the two or three preliminary
24 questions I have to the Agreement?

25 THE CHAIRMAN: Well, Mr. Denstedt, I -- we

1 are not, we are not anxious to get into extensive
2 discussions on the nature of documents that are in the
3 Land Titles Office and their accuracy.

4 MR. DENSTEDT: And I don't intend to go
5 there. I think we've crossed that bridge and moved on
6 just to finding out what Colonel Bruce's understanding
7 of EnCana's rights is -- are.

8 THE CHAIRMAN: My understanding, your line
9 of questions are along the lines of getting the
10 Government of Canada's interpretation or view on the
11 Access Agreement. And, if so, please proceed.

12 MR. DENSTEDT: Okay.

13 Q. So, Colonel Bruce, what's your understanding of
14 EnCana's right to access CFB Suffield?

15 A. I would like to refer back to 1975 Agreement. And I
16 will go through the couple of pertinent paragraphs.
17 Page 3 is the first one. I'll just wait until
18 everybody gets the Access Agreement up. Last
19 paragraph on page 3. Canada is willing, and I quote
20 (as read):

21 "... to authorize such entry upon
22 and use of the Base by or on behalf
23 of Alberta or its assignees, Canada
24 being satisfied that the use of the
25 Base for such purposes on the terms

1 and conditions hereinafter set
2 forth is compatible with the
3 continued use thereof of Military
4 purposes and such dual use of the
5 Base may be carried on with safety
6 and efficiency."

7 And then if we go to page 5 Delta, talking about
8 what the Base Commander, in terms of his authorities,
9 to act on behalf of the Minister of National Defence
10 to exercise the powers and privileges by the Base
11 Commander under this Agreement.

12 And then I go to page 6. Paragraph 2
13 basically is simply a right of access subject to the
14 Agreement.

15 And then, finally, to page 5, and I won't
16 prolong this because I know we've gone through this in
17 some, some detail, but if you go down to page 5 alpha,
18 and it goes on page 7, sorry, 5 alpha on page 7, it
19 says (as read):

20 "The Base Commander has
21 jurisdiction and control over all
22 access to the Base 'and' has the
23 authority to coordinate activities
24 thereon for purposes of safety of
25 the Base and all personnel from

1 time to time."

2 And I highlight the "and". So, yes, they have
3 access, but with conditions.

4 Q. Right, and you'd agree that EnCana takes a different
5 view based on Mr. Protti's testimony; correct?

6 A. Yes.

7 Q. And moving on to the *NWA Wildlife Regulation*, and I
8 asked this of Environment Canada, and I'll ask it of
9 you as well, Colonel Bruce. When the wildlife
10 regulation creating the NWA says that mines and
11 minerals are excluded from the ambit of the
12 definition of the National Wildlife Area, what do you
13 take that to mean?

14 A. I'm sorry, which document are you referring to, the
15 RIAS?

16 Q. This is the, this is the wildlife regulation creating
17 the National Wildlife Area.

18 A. The 2004 letters, or is this the RIAs?

19 Q. The actual regulations, sir.

20 A. Okay. So --

21 Q. The regulation excludes from the definition of lands,
22 mines and minerals. And I just wanted to find out
23 what you understand that to mean as the administrator
24 of the NWA.

25 A. That is correct. It says (as read), "excepting

1 throughout all mines and minerals."

2 Now, I think it's worth highlighting, though,
3 if I may, Mr. Chairman, that, in terms of airspace,
4 it's our responsibility, the ground itself is our
5 responsibility, but other than mines and minerals.

6 Q. And, Colonel Bruce, what do you think that means,
7 though?

8 A. What do you mean what do I think that means?

9 Q. Well, as the administrator of the National Wildlife
10 Area, what do you think is excluded?

11 A. I'm still not sure I understand your question. The
12 question, it's pretty, it's pretty black and white
13 there, where they express that all mines and minerals,
14 i.e. resources that are found with under, underneath
15 the ground, are not mine to exploit.

16 Q. So is it your view when those mines and minerals, when
17 the NWA regulations excludes mines and minerals,
18 mines and minerals does not include a right of
19 access? Is that your view?

20 A. That is correct. That is my view.

21 Q. Colonel Bruce, has the Department of National Defence
22 ever purchased mineral rights within CFB Suffield?
23 And I might help you on this. I understand that they
24 purchased coal rights from the CPR in 1957. Is that
25 correct?

1 A. I'm, I'm not sure about coal rights. I do know that
2 we do have certain freehold leases that we do have
3 ourselves, including natural gas deposits on the Base.

4 Q. Okay. Could you undertake just to check if the Crown
5 has obtained those coal rights in 1957?

6 A. COL LAMARRE: Mr. Chairman, again, we can
7 do an undertaking which will generate a lot of work,
8 but I get the impression that the answer, of course,
9 is known. And if that can be presented just as
10 evidence, then perhaps we could just accept it. Is
11 that reasonable, sir?

12 THE CHAIRMAN: One moment, please.
13 Mr. Lambrecht?

14 MR. LAMBRECHT: I am concerned about the time
15 it will take to, to perfect this undertaking. What is
16 the question again, if I might just --

17 THE CHAIRMAN: It had to do with coal
18 rights.

19 Mr. Denstedt, perhaps you could explain the
20 intent or the line of questioning here, please. That
21 might help.

22 MR. DENSTEDT: Yes. The Base bought coal
23 rights from the CPR. It's our understanding they
24 bought those rights in 1957 to ensure no coal
25 development would take place on the Base. My

1 follow-up question is: Have you considered buying out
2 EnCana's rights in the NWA because there's a precedent
3 for it? That's the purposes of my questions. It
4 seems reasonable.

5 THE CHAIRMAN: That question is perhaps
6 something that may be -- they may be able to respond
7 to.

8 MR. DENSTEDT:

9 Q. So, subject to check, Colonel Bruce, the Base has in
10 the past bought coal rights from CPR. Have you
11 considered buying out EnCana's natural gas rights at
12 the NWA?

13 A. LCOL BRUCE: No, I have never personally
14 considered purchasing EnCana's natural gas rights from
15 them if they're not allowed to exploit in the National
16 Wildlife Area.

17 Q. You must be a wealthy man, sir. I meant the
18 Government of Canada.

19 A. And I'm speaking as the Base Commander on behalf.

20 Q. Okay. And I take it, then, that same answer would
21 apply, apply if I asked you the question of that had
22 been considered under the *Canada Wildlife Act* which
23 provides the right of Minister of Environment to
24 purchase lands and also under the **Federal**
25 **Expropriation Act**? There have been no discussions

1 with EnCana about acquiring their rights, their
2 mineral rights under the NWA. Is that fair?

3 A. To the best of my knowledge, that's correct.

4 Q. Thanks. And Colonel Bruce, what's, what's your
5 understanding of your authority to regulate the oil
6 and gas industry on the Base?

7 A. Again, I think in our Opening Statement it was Colonel
8 Lamarre that was very clear in terms of where my
9 authorities and responsibilities lie. We are somewhat
10 different than a corporation, as you can appreciate.
11 We don't have a Board of Governors, per se. We have a
12 Chain of Command. The authority is invested in me
13 through that Chain of Command and the various statutes
14 and legislation.

15 In terms of regulatory authority of oil and
16 gas, my responsibilities lie to the Base itself and
17 that -- activities that are either are on it or above
18 it, as I include the restricted air space on the
19 ground.

20 I have responsibilities to ensure access is
21 in accordance with the requirements for the Base given
22 its nature of what it does, i.e. Military training,
23 and I ensure that my decision-making is in accordance
24 with that, that understanding.

25 Q. And in respect of your authority, is it fair to say

1 that you have both authority and obligations?

2 A. That is true.

3 Q. And I think if I go back to the opening presentation,
4 that it's my understanding, at least, that the
5 legislative flow of authority for the Base Commander
6 comes through the Department of **National Defence Act**
7 through the Queen's regulations and orders to the
8 Range Standing Orders? Do I have that right?

9 A. In terms of Base Commander appointments and the
10 authorities that come from that, it stems from the
11 **National Defence Act** through Queens's Regulations and
12 Orders, that's correct, but obviously there are a
13 number of other statutes and legislative requirements
14 and policies that I must meet and adhere to as well.
15 For example, the **Canadian Wildlife Act**.

16 Q. And those are, those are Acts and policies that you
17 must comply with, but you don't gain any authority
18 under those Acts; correct?

19 A. No, that's, that's not necessarily correct. With
20 regards to the delegation of the Ministerial
21 authorities less -- a couple to the Minister of
22 National Defence who, in turn, delegated them down to
23 me for the National Wildlife Area. I have now the
24 authority in terms of enforcement as well, so I have
25 received additional authorities with the legislation.

1 Q. Right, absolutely, and I understand that. And that
2 flow of authority comes from the Wildlife Regulation
3 and I believe the delegations which you just
4 mentioned. But in, in respect of other policies and
5 rules, for example, **Canadian Environmental Protection**
6 **Act**, no authority flows to you under the Act, but you
7 have obligations under that; is that fair?

8 A. That is correct.

9 A. COL LAMARRE: Mr. Chairman, I mean, this is
10 a very legal aspect of things, but I do have
11 delegations that I think it's probably worthwhile for
12 us to review. Can we take just a second to read over
13 that just to be prepared to answer this line of
14 questioning?

15 MR. DENSTEDT: I'm not going to ask any more
16 questions on the delegations, so. You can avoid
17 reading that if you want to.

18 THE CHAIRMAN: Okay, so this may save you
19 some time and Mr. Denstedt in his questioning, yes.

20 MR. DENSTEDT:

21 Q. So, Colonel Bruce, try and, try and leave the legal
22 area as quickly as I can. How many people does the
23 Base employ in the Range Sustainability Section?

24 A. LCOL BRUCE: Currently, there are 22
25 people that work in the range sustainability section,

1 but as I've highlighted before, they're just a subset
2 of my Base operation staff which is in the
3 neighbourhood of 65 to 70 folks that look after and
4 have the responsibility for all operations on the Base
5 which obviously includes the Range and Training Area.

6 Q. And I understand that some of those folks are here, is
7 that, is that correct; that's Karen Guenther?

8 A. There are several folks from my Range Sustainability
9 Section here, yes.

10 Q. And if I, if I -- I have a Range Sustainability
11 Section organization chart. And just if -- I just
12 try to keep people organized here. And you can
13 correct me if I am wrong on any of these. G3 is
14 Major Dale McPherson; is that right?

15 A. That is correct.

16 Q. And the range and training area management officer is
17 Mike Loch?

18 A. Correct.

19 Q. And the RTAM is Brian Talty; is that correct?

20 A. He is the number 2, or the second in command of the
21 range, or the range sustainability section.

22 Q. Okay. And do you have an oil and gas GIS tech?

23 A. Not specific to oil and gas, but I do have a GIS
24 section that looks after all GO products for the Base.

25 Q. Okay. And Mr. Smith is a biology cell coordinator?

1 A. Actually, no, Mr. Smith has been seconded to the
2 director of land, land environment over the last two
3 years to be -- well, probably 18, 20 months, to be
4 working on the Suffield Sustainable Management Plan,
5 or the SSMP. Delaney Boyd has been acting as the head
6 of the biology group for that interim period.

7 Q. Okay. And Ms. Guenther, is she the oil and gas cell
8 coordinator?

9 A. Oil and gas group lead, yes.

10 Q. Group lead. And remediation coordinator, is that
11 Corey Davidson?

12 A. Correct.

13 Q. Great. Thank you. And I think you said this earlier,
14 Colonel Bruce, but what's the approximate cost to the
15 Base of that section?

16 A. Currently it's about \$1.2 million.

17 Q. And that section reports directly to you?

18 A. Through the Base Operations Officer, or the G3, that
19 is correct.

20 Q. Sure. And were you here last Saturday for the
21 informal session?

22 A. Yes, I was.

23 Q. And if you pull up the transcript from that session, I
24 just had a question for you that flows out of that
25 session. And it's page 2317, if we could, from -- it

1 seems like a long time ago. October 18th. And while
2 it's being found, I'll read it out and then I'll pose
3 the question to you. It's page 2317. And it was
4 Mr. Hutton. And he said:

5 "Now I've had experience with the
6 EUB, as it was called at that time,
7 and I must say, it was first class.
8 As a landowner or steward of the
9 land, I made calls on, on
10 deficiencies that an oil and gas
11 company had left after drilling
12 took place near our ranch. And
13 within 24 hours, the EUB was there
14 getting the problem solved. I know
15 the power of the EUB and I know the
16 fiduciary responsibility that you
17 have. And I have no criticism
18 whatsoever of the EUB, your new
19 name, I'm sorry, I think you've
20 done a first-class job."

21 And my question, Colonel Bruce, is, when you have
22 a problem at the Base, do you call the ERCB, and if
23 you don't, why not take advantage of that, that
24 service?

25 A. I think it's important to highlight that ERCB only has

1 certain responsibilities on the Base, as laid out in
2 the 1975 MAA and, therefore, don't have the full
3 range, so it will depend on what the issue is on
4 whether or not I will call on them.

5 But I think it's also important to highlight
6 that I believe the ERCB has a very powerful role that
7 they can assist me with and that's why I have a
8 meeting arranged now. It was originally for the 28th
9 of November but on the 26th of November I will be
10 meeting with the Chairman of the ERCB to discuss where
11 he can assist me further in, in some of my issues down
12 in Suffield.

13 Q. You read my mind. That was my next question. So I'll
14 skip that one and go to the following one. And if we
15 could pull up Exhibit 006-018, and I believe it's
16 from the Coalition's evidence. And it's A0182015.
17 Ms. Klimek was looking at it this morning. 82015,
18 correct.

19 A. I have the document.

20 Q. And if you go to Paragraph 2 of that section, it says
21 (as read):

22 "It must be understood that the
23 Alberta Energy Utilities Board is
24 not concerned about environmental
25 issues associated with oil and gas,

1 only the subsurface resources
2 development."

3 And who is the author of the minutes of that
4 meeting?

5 A. MR. RICHMOND: Wes Richmond. I was the
6 author. And those -- I don't believe those were
7 minutes. It's just a Minute Sheet.

8 Q. A Minute Sheet. I'm sorry, I didn't know there was a
9 difference, so my apologies. And when I go to the
10 *Oil and Gas Conservation Act*, the purposes of that
11 Act, which outline the Board's jurisdiction over
12 Natural Resources in the Province of Alberta,
13 include, for example, the control of pollution above,
14 at or below the surface and the drilling of wells and
15 in operations of the production for oil and gas and
16 in other operations.

17 Colonel Bruce, is it your understanding of the
18 ***Oil and Gas Conservation Act*** that, even though it
19 purports to regulate the industry, both above and
20 below, that that's not the Base's position because it
21 says here "only the subsurface"?

22 A. I just need a minute to go through the MAA because in
23 there it lays out what ERCB's role is on the Base in
24 accordance with the Master Access Agreement.

25 Q. Sure.

1 A. I think if we go to Appendix 3 of the MAA. And it --
2 for the purposes of this agreement, on page 5,
3 Paragraph 4 of the Appendix 3.

4 A. DR. ROWLAND: It's page 33 of 41.

5 MR. DENSTEDT:

6 Q. So I've got that in front of me, Colonel Bruce.

7 A. LCOL BRUCE: Okay, if you can go down to
8 paragraph.

9 Q. Yeah, I've seen it.

10 A. Okay, it says (as read):

11 "The purposes of this agreement,
12 the Energy Resources Conservation
13 Board is hereby designated as
14 though it was so designated
15 pursuant to Section 21 of the Act
16 as the person who may exercise the
17 powers of the Minister of the
18 Environment under Sections 26, 27,
19 29 and 30 of the Act in accordance
20 with Part 2 of these regulations
21 with respect to the drilling,
22 operation, and abandonment of wells
23 or construction."

24 And it goes on a little bit more to talk about
25 pipelines.

1 Q. Right. And Section 4 of the Agreement is a power
2 giving clause; it gives the Energy Resources
3 Conservation Board certain powers but it in no way
4 restricts its overall jurisdiction in respect of
5 natural resources, does it, sir?

6 A. I think that's your interpretation of that particular
7 document. I think it's quite clear that it lays out
8 specific responsibilities for the ERCB with regards to
9 this particular contract.

10 But I do have a couple of other people that
11 would like to just weigh in on this.

12 A. MR. RICHMOND: Wes Richmond again.
13 Mr. Chairman, we've all heard how the MOAs have
14 evolved and people's interpretation of them over the
15 years and how they are being applied. What we have
16 found in our first-hand experience in dealing with the
17 AEUB over the years is that, yes, they do have issues
18 of concern with contamination, whether it be downhole
19 or above the surface, but there are certain limits as
20 to what they will act upon. It has to be a cubic
21 metre of spill, for example, and certain other aspects
22 that may have been left behind by drilling.

23 What they do not purport to become involved
24 in or have the authority over is overall environmental
25 effects of a project, for example. They look at a

1 well-by-well, pipeline-by-pipeline situation with
2 respect to the application that's before them. They
3 do not look at cumulative effects, for example, or the
4 overall effect of an entire project on the environment
5 and its impact on the ecosystems.

6 Now, we at DND are mandated by our
7 sustainability, sustainability development, or, yeah,
8 Sustainable Development Strategy, rather, correction,
9 and the myriad of other policy and environmental
10 regulation that perhaps Alberta is not subject to that
11 we are on our own DND lands, like CEPA, for example
12 and then a number of other things. The Federal policy
13 on wetlands. That sort of thing.

14 So we have a requirement and, as I've said in
15 our Sustainable Development Strategy, a mandate to
16 manage these lands for the ecological sustainability
17 as well as for Military training sustainability.

18 So we realize that there is a regulatory gap
19 in terms of the overall environmental impacts from oil
20 and gas that the Board is not prepared to act upon.
21 And that's been our experience, through discussions,
22 many discussions and meetings with the Board, and with
23 the SEAC members.

24 A. LCOL BRUCE: And I think just to highlight
25 the Sustainable Development Strategy, it's a National

1 Defence document that's tabled in Parliament every
2 three years to ensure its currency and its accuracy.
3 So these things, as you know, are also subject to
4 review by the Auditor General. And many of us know
5 that she's a very thorough individual. So these,
6 these documents and this direction is taken very
7 seriously in terms of fulfilling our requirements.

8 A. MR. RICHMOND: And I would just like to add
9 one thing. We, we were in fact audited, along with
10 another -- a number of other environmental or, excuse
11 me, training areas across the country in 2002 by the
12 office of the Auditor General looking specifically at
13 the Sustainable Management of Ranges Training Areas.

14 Q. So just so the, the Panel is clear, Colonel Bruce, is
15 it the Government of Canada's position that the
16 Energy Resources Conservation Board has no authority
17 in respect of energy development on the Base?

18 MR. LAMBRECHT: I object to this question.

19 MR. DENSTEDT: If we're worried about
20 regulatory --

21 MR. LAMBRECHT: Colonel Bruce has answered --

22 THE CHAIRMAN: Okay, well, what --

23 MR. LAMBRECHT: -- with respect to the
24 Agreement. There is in the end of the day going to be
25 legal argument on this. What my friend is now doing

1 is attempting to get the witness to revise the
2 evidence that he has received by misstating the
3 evidence of the witness. That is objectionable. My
4 friend asked his question. Got an answer. He doesn't
5 like it, so he is asking it in a different way.

6 MR. DENSTEDT: I didn't get an answer, sir.

7 I got his speech about sustainability is what I got.

8 THE CHAIRMAN: I think the question

9 Mr. Denstedt asked, in all fairness, was the Base's
10 interpretation as to the role of the ERCB. I don't
11 see why this that can't be asked -- or responded to.

12 MR. LAMBRECHT: All right. If that's the
13 question, I don't object to it.

14 THE CHAIRMAN: If that is my understanding
15 of your question, sir.

16 MR. DENSTEDT: It's a very simple question.

17 Q. What's the Government of Canada's position? The Panel
18 is trying to figure out if there are -- if and when
19 there are regulatory gaps what is the Government of
20 Canada's position on the ERCB's authority on CFB
21 Suffield?

22 MR. LAMBRECHT: If it is the position -- if
23 he is asking about the Government of Canada position,
24 that's submissions. If he wants to ask what the Base
25 Commander's understanding is, that's a matter of fact.

1 MR. DENSTEDT: Sure.

2 Q. Colonel Bruce --

3 MR. LAMBRECHT: Let's get this straight and
4 stop playing games.

5 MR. DENSTEDT: I'm not playing a game, sir.

6 Q. Colonel Bruce, what's your understanding?

7 A. LCOL BRUCE: Well, I think I've already
8 outlined what ERCB responsibilities are in para 4 of
9 Appendix 3 of the MAA is. So, yes, they do have
10 responsibilities.

11 And second of all, as you are well aware that
12 they are the ones that issue licences for wells. So
13 once that final process has been approved by me, it
14 then goes off to the ERCB for well licensing, or
15 pipeline licensing, whatever it may be. So ERCB has a
16 very intimate role in activities that go on for oil
17 and gas development.

18 I will also highlight that ERCB has a very
19 important role and has been playing over the course of
20 this summer on the three or four incidents that have
21 occurred, whether it be a spill, a venting of a gas
22 well, they come down to conduct their own
23 investigation on top of the ones that we of course
24 launch. So ERCB and ourselves continue to work
25 together on these issues because they do have

1 responsibilities on the Base.

2 Q. Thanks, Colonel. And in respect of the Range
3 Sustainability Section, if they see a problem or an
4 issue in respect of an energy facility, are they
5 trained, instructed to call, to notify the ERCB as
6 well?

7 A. The ERCB are one of the resources that the Range
8 Sustainability Section will go to for advice, guidance
9 and, in the case of specific to them, ask them to come
10 down and have a look for themselves.

11 Q. Okay. And just so, again, I'm clear and the Panel is
12 clear, because the regulatory gap is an issue, if
13 there is one, does the Range Sustainability Section
14 as a matter of course notify the ERCB when there is a
15 problem?

16 A. Again, I would highlight, depends on what the problem
17 is. And, yes, they would if it concerns something
18 that falls within the scope of the Agreement.

19 I do want to highlight, when you
20 make proposal for -- or you've made reference that a
21 regulatory gap -- I think we've already indicated that
22 Alberta Environment has a responsibility in terms of
23 environmental impacts from activities from, for
24 example, oil and gas. And they are not on the Base,
25 nor do they believe they have the authority on Federal

1 lands which we support, but I'm not putting words in
2 their own mouth.

3 So I think that to say that there is only a
4 perception of a regulatory gap I think is incorrect
5 because one exists between ourselves and Alberta
6 Environment's understanding of what they can and
7 cannot do on the property.

8 Q. And it's fair to say that Mr. Protti disagrees with
9 that position.

10 A. I think that's fair to say but, again, I'm not putting
11 words in Alberta Environment's mouth, but I think
12 they've been fairly clear on what their position is.

13 Q. So, again, so we understand this, this regulatory
14 issue, Colonel Bruce, what is your understanding of
15 what happens when there's a conflict between the
16 Master Access Agreement and a regulation?

17 A. Regulation in terms of a statute or in terms of a
18 policy? What, what are you talking about?

19 Q. We're starting with the statute.

20 A. Statutes will take precedence.

21 Q. And is it fair to say that any law would take
22 precedent over a contract? Contract is subject to
23 the law. Is that your understanding of it?

24 A. As a general statement I believe that to be correct.

25 Q. And if we could turn up the Surface Access Agreement

1 one more time. If you go to the execution page,
2 which I believe is 24. Twenty-four. One final
3 question I think on what your understanding of things
4 are is, Colonel Bruce, and that is the portion of
5 this page which is just below the screen, if you
6 could scroll up, where it says (as read):

7 "This Agreement is hereby approved
8 and ratified as a binding
9 inter-governmental agreement of the
10 Government of Alberta as evidenced
11 by the signature of the Minister of
12 federal and inter-governmental
13 affairs."

14 Sorry. I was on a roll.

15 "... as evidenced by the signature
16 of the Minister of Federal and
17 Inter-Governmental affairs."

18 What's your understanding of that part of the
19 contract?

20 A. I believe it's fairly explanatory. It's, therefore,
21 it's a binding inter-governmental agreement, but it's
22 not law.

23 Q. And Colonel Bruce, when the Surface Access Agreement
24 was signed by Canada and Alberta, they appointed
25 representatives to the SEAC committee, one member

1 from the ERCB, one member from Alberta Environment,
2 and one member from the CWS. And do you have an
3 understanding or an opinion of why SEAC was composed
4 of that particular membership?

5 A. I mean, obviously I wasn't there when the composition
6 was formed, but I, I understand that it would make
7 logical sense for that composition of that particular
8 party given that we are -- the Federal land is
9 situated within Alberta.

10 The vast majority of companies that are
11 working on the Base from industry adhere to a number
12 of Alberta rules and regulations and, therefore, it
13 was up to us to ensure that we try to ensure best
14 practices and something that was familiar to the other
15 operators, whether they were on the left side of the
16 Jenner Highway or off the Block or on the Block.

17 That process, as you know, has been very
18 challenging given that we are trying to ensure that,
19 one, we meet all our Federal statutes and
20 responsibilities while still making sure that we are
21 not changing things so radically that the average oil
22 and gas worker on the Base doesn't really understand
23 the rules that he is supposed to apply on or off the
24 Block.

25 Q. Is it possible or perhaps even likely that the

1 composition of the SEAC was recognition of the shared
2 jurisdiction that Alberta and Canada had in respect
3 of the surface and mineral rights?

4 A. It's possible, but I think it's more plausible that
5 the -- it's more a question of making sure that the
6 federal government when it instituted its policies and
7 procedures were not too far remiss and would be able
8 to provide the Base Commander with the necessary
9 expert advice to formulate those internal policies to
10 the Base to ensure that they were, one, logical and,
11 two, fell relatively in line with a number of other
12 agencies.

13 Q. And, Colonel Bruce, does the Range Sustainability
14 Section have any independent representation on it
15 from the ERCB or Alberta Environment?

16 A. No, it's an internal organization that I have stood up
17 to assist me in the management of industrial activity
18 on the Base as well as all other users, as I've
19 stated. When it comes to GIS or the management of the
20 Range and Training Area Management System, I use that
21 to, to -- use it to govern all stakeholders on the
22 Base.

23 Q. And, Colonel Bruce, when the Department of National
24 Defence and EnCana disagree over an issue in respect
25 of a well licence application, what happens?

1 A. It would depend on the context of your question. If
2 they are looking to exceed 16 disturbances per
3 section, as it stands now, I would deny the
4 Application for Development. And, therefore, a
5 landowner consent, to put it in laymen's terms, would
6 not, would not have occurred.

7 If it's with regards to some other matter,
8 and I, and I think a good example is the -- in 1975,
9 and I think it's -- and I go back to the Master Access
10 Agreement, on Section 14(2) it talks about (as read):

11 "Alberta or its assignees shall not
12 assign this agreement or any parts
13 thereof save with prior approval
14 thereof in writing of Canada."

15 And I think what's important here is, an example
16 of what some of the concerns we had was with regards
17 to how this all works, is in 1993 there was a natural
18 gas storage facility underneath the Base. EnCana was
19 running that and eventually sold that facility in
20 2005. And they were using the Master Access Agreement
21 as the primary means to say that this was all part of
22 the Access Agreement. They sold those rights. And
23 the only way the Base found out about it was in the
24 newspaper after the fact, so in contravention with
25 this particular section.

1 We then went back and asked for some further
2 clarity and saying that this could not occur without
3 our consent. And the long and the short of it is is
4 that in 2007, in September, all the lawyers finally
5 got together and decided that this, in fact, facility
6 was no longer or was not actually part of the Master
7 Access Agreement.

8 But what's important here is to note is that
9 it is our understanding and it is our, it is our
10 understanding that the Master Access Agreement
11 provides for a number of things, including things like
12 assignment of rights or roles and responsibilities.
13 And I think it's important to note that that does not
14 always occur.

15 And the Niska facility is a great example
16 because it was worth hundreds of millions of dollars,
17 sold without our consent, and only after the fact, so
18 15 years after the fact did they determine it was not
19 actually part of the Master Access Agreement.

20 And so when it comes to things like
21 disturbances per section or whether or not I sign off
22 on a well or not, it depends on what they want on
23 whether or not they're going to come and ask me or
24 they're not going to come and ask me. So I think
25 that's an important aspect to hoist aboard.

1 Q. So, Colonel Bruce, in respect of the 16 disturbances
2 per section issue, if landowner consent is refused,
3 is the next step, then, to go to the ERCB?

4 A. That is where it's ending up right now. But as you
5 can appreciate, and you've seen all our correspondence
6 to the ERCB, we do not believe that the Government of
7 Alberta has the authority to regulate access. And
8 it's, and it's in our letter of 30 April, 2007.

9 Q. Right. And I'm aware of that correspondence, Colonel
10 Bruce. And it's also fair to say that the Department
11 of National Defence has agreed that the ERCB has the
12 right to issue the licences. The issue that you take
13 -- the thing you take issue with is the access. Is
14 that fair?

15 A. That's correct. I've stated before that ERCB is the
16 licence issuing for wells.

17 Q. If I can move on to just another topic, Colonel Bruce.
18 What's your understanding of the physical and
19 biological aspects of reclamation?

20 A. I think I would ask you for a bit more clarification
21 on that line. I mean, I understand that ultimately we
22 want to, we want to return what has been done back to
23 the state it was before. And the question is what is
24 that standard? Is it near to, is it close to, is it
25 something that works? Our preference is obviously to

1 return to native prairie, particularly in the case of
2 NWA. But if you would like me to be more specific, I
3 think I'd probably need more.

4 Q. No, I think it was actually beneficial for you to
5 bring it back up to where I could understand it, too.
6 And that's my, essentially, my question. I think, is
7 it fair to say, and if we can, if we can just agree
8 to use not technical terms so nobody will get mad at
9 us for using non-technical terms, but is it fair to
10 say that, at the end of the day, reclamation is about
11 putting the land back the way it was?

12 A. Generally speaking, I complete --

13 Q. Generally speaking.

14 A. -- I completely agree. I think -- and it goes back to
15 an earlier comment where I said that it's important to
16 understand what's going on off the Block as well. And
17 that's why I'm holding meetings with the Minister, or,
18 sorry, the Deputy Minister of Alberta because they
19 have a process in place that works that we're trying
20 to tap into.

21 Q. All right. And I guess that's my question. Because
22 the one thing that I don't think I've heard here is
23 that anybody disputes your authority to be the final
24 arbiter on reclamation certificates. It seems like
25 all the minutes agree, Mr. Protti agreed in his

1 testimony, that Base Commander, you're the final say.
2 If you don't like it, they've got to keep working at
3 it. So why hasn't the Range Sustainability Section
4 went out and developed a standard for you?

5 A. I think that's a fair question. As I said before,
6 though, they've really just stood up. And I mean, I'm
7 still in the process of hiring a couple of the folks
8 to fill some of the positions, so. Their focus, shall
9 we say, has been on other things. And, as you can
10 tell by the number that I have here, preparation for
11 the Joint Review Panel has been a significant
12 undertaking by that particular group. As well as the
13 British campaign season in terms of their activities
14 kicks off on the 1st of April by and large and goes
15 right through to the 31st of October. So in terms of
16 managing the Range and Training Area, that has a, has
17 a large -- it takes a large chunk of the time of the
18 Range Sustainability Section.

19 Karen, do you want to add something?

20 A. MS. GUENTHER: Mr. Chair, also within the
21 Range Standing Orders, Chapter 7, we've outlined what
22 we would like to see, I guess, as a draft for
23 reclamation. So it basically just outlines what
24 Alberta Environment criteria is already in place and I
25 guess the way forward that we would like to see that

1 within that document.

2 Q. Thanks, Ms. Guenther. That's helpful, because --

3 A. MR. RICHMOND: Excuse me, sir, I would just
4 like to reiterate something we've said in the last
5 couple of days with respect to -- the SEAC reclamation
6 subcommittee had had meetings to try and develop that
7 sort of process and standard. And that we were
8 intending to get back into that again, certainly with
9 these meetings that the Colonel has talked about with
10 the Province in January. So it's happening on a
11 number of fronts so that we actually define that
12 reclamation document and the final standard.

13 Q. Thanks, Mr. Richmond. So I guess when my friend was
14 talking about the vexed reclamation situation, that's
15 why I was more perplexed than vexed because it seemed
16 like the -- you had the authority to make it happen.
17 It sounds like it is happening. So reclamation may
18 not be as vexed as we thought it was.

19 A. LCOL BRUCE: That is the hope, but I can't
20 under or I can't overstate just what a large
21 undertaking this is going to be given the fact that it
22 has not occurred in terms of final sign-offs for a
23 couple of decades.

24 Q. And is it fair to say that there's lots of good
25 criteria been provided by this panel, Dr. Walker and

1 Dr. Henderson, and Ms. Bradley all have provided some
2 forms of criteria and guidance on some of those
3 issues, so that will be helpful, won't it?

4 A. LCOL BRUCE: I believe that will be very
5 useful.

6 MR. DENSTEDT: Mr. Chairman if I could check
7 with my client, I believe I'm done.

8 THE CHAIRMAN: Please check, Mr. Denstedt.

9 A. MR. RICHMOND: Mr. Chairman, it's Wes
10 Richmond.

11 THE CHAIRMAN: Perhaps we can just wait a
12 moment.

13 MR. DENSTEDT: Go ahead, Mr. Richmond.

14 A. MR. RICHMOND: I just wanted to clarify a
15 little bit with respect to the Range Sustainability
16 Section's mandate. One of the things we haven't
17 talked about here alot is landowner involvement. And
18 that's a key part of any oil and gas development is
19 the landowner's involvement in that process. And I
20 don't think I'm overstating the fact that if Farmer
21 Jones or Rancher Brown had a well or two going on his
22 property, he would be out there with the oil and gas
23 company walking every inch of the ground and letting
24 the company know what issues he had and the things he
25 wanted to see happen with the installation of that

1 well and pipeline and so on. And usually the
2 companies would be fairly amenable to meeting their --
3 the expectations of the landowner.

4 Now, given the fact that we've got
5 2690 square kilometres, 10,500 wells, thousands and
6 thousands of kilometres of pipelines, you can
7 understand that that's a fairly onerous task for the
8 landowner.

9 Now, SEAC does play a role certainly in
10 reviewing and providing a large oversight role, but
11 there are day-to-day issues that the landowner must
12 contend with to make sure that his, his rights and his
13 needs are certainly complied with and are taken into
14 account. So the RSS provides that on a manner of, or
15 a large number of issues from, ranging from Military
16 training, obviously, to oil and gas and other non,
17 non-Military users of that land, so. A fairly
18 all-encompassing and onerous task. Just starting to
19 get up to speed now. And the evolution hopefully will
20 put us in a better position to manage those lands in
21 accordance with the expectations of the public of
22 Canada and the Auditor General and all the various
23 regulations and policies that we're bound by.

24 MR. DENSTEDT:

25 Q. Fair comment, Mr. Richmond. Is it also fair that it's

1 going to take cooperation from industry and the
2 governments and everyone?

3 A. Yes, I would agree with that.

4 MR. DENSTEDT: Colonel Bruce, thanks very
5 much. Always a pleasure.

6 Thanks panel, I'm done.

7 And thanks, Mr. Chairman.

8 THE CHAIRMAN: Thank you, Mr. Denstedt, for
9 your assistance with your questioning this morning.

10 This is obviously a good time to take a lunch
11 break since it's noon.

12 I'm sorry, Mr. McDougall, did you -- I, I
13 didn't notice you edging towards the podium there.
14 And you have something to say before we break?

15 MR. McDOUGALL: I was edging, sir. I am
16 wondering whether it might be appropriate, and this is
17 completely selfish on my part, that I might ask
18 Colonel Bruce five or ten minutes worth of questions
19 as opposed to coming back after lunch and starting and
20 doing it?

21 THE CHAIRMAN: Yes.

22 MR. McDOUGALL: If that's -- obviously if
23 that's acceptable to everybody.

24 THE CHAIRMAN: That's acceptable. We can
25 continue for a few more minutes, yes. I'm sorry, I

1 did not ask to see if you had any questions at this
2 point.

3 MR. McDOUGALL: No, that's quite alright.
4 And I don't have very many. But I thought that it
5 would be prudent that a, as I asked EnCana just a
6 couple of questions about the role of SEAC that it
7 would be prudent to ask Colonel Bruce a couple of
8 questions about SEAC as well.

9 THE CHAIRMAN: Yes, please proceed.

10 **CROSS-EXAMINATION BY SEAC, BY MR. McDOUGALL:**

11 MR. McDOUGALL: Thank you. Thank you,
12 everyone, for that.

13 Good morning, everyone, and Colonel Bruce.

14 Q. Just a couple of questions and specifically with
15 respect to SEAC, you've spoken I think at length
16 about the Range Standing Orders and Chapter 7 of
17 that. I take it you would agree that Chapter 7 of
18 the Range Standing Orders does refer to SEAC within
19 it?

20 A. LCOL BRUCE: It speaks to all manners of
21 oil and gas activities.

22 Q. Did you consult with the, with the SEAC members prior
23 to the drafting or concurrently with the drafting of
24 that document when you were -- with respect to the
25 roles of SEAC?

1 A. They have been involved with the consultation process,
2 yes.

3 Q. Similarly, sir, I take it you would agree that
4 Section 8 of the, I think it's of the Regulations of
5 the Memorandum of Agreement, indicates that SEAC has
6 certain roles with respect to the AFD process.
7 Section 8 of the Regs. I believe Mr. Mousseau
8 outlined those last night in SEAC's evidence. That's
9 it. Section 8.

10 A. Yes, they have a role.

11 Q. But would you agree with me, sir, that the current
12 regimen on the Base is that basically it's the Base
13 and I guess specifically RSS that has drafted the
14 necessary requirements for the AFDs?

15 A. I'm sorry, I don't follow the question. Could you
16 just --

17 Q. Sure. That it's essentially the Base that has
18 determined what requirements industry is required to
19 put in with respect to any Applications for
20 Development?

21 A. No, I don't, I don't think that's fair. I think, as I
22 mentioned before, that the development of the
23 Application for Development, AFD, has been an ongoing
24 process. And I think that all stakeholders have had
25 some input in it and that's why it is what it is

1 today. And it's different from what it was a year ago
2 and much different from what it was two years ago.

3 Q. And did SEAC have any particular input in that
4 process?

5 A. MR. MARTINS: Fernando Martins. Former
6 members of SEAC were directly involved in the
7 development of the AFD process.

8 Q. Okay. Colonel Bruce, I take it you would agree that
9 -- I think we've heard that the Range Sustainability
10 Section has increased in size and scope over the last
11 several years?

12 A. LCOL BRUCE: Very much so, yes.

13 Q. And would you agree that some of the roles of the
14 Range Sustainability Section overlap or are similar
15 to some of the roles and responsibilities of the
16 members of SEAC?

17 A. I wouldn't necessarily agree with that. They do
18 provide advice, much like SEAC does. They do provide
19 inputs from their own expertise and understanding
20 looking at it from a Base perspective. So while
21 advice, yes, but not necessarily the same types of
22 advice that I would get from SEAC.

23 Q. And, sir, would you agree that the RSS has taken over
24 the need or has replaced the need for SEAC on an
25 ongoing future basis?

1 A. Not at all. I think SEAC is a fundamental component
2 of the way I managed industry in terms of the
3 environmental effects and impacts and I would -- I
4 would not entertain any request to actually have that
5 organization stood down because I think I, I rely on
6 them quite heavily for a number of things.

7 Q. Now, sir, you've mentioned a couple times the meetings
8 with the ERCB Chair and the, I think it's the Deputy
9 Minister of Alberta Environment. And I wasn't clear,
10 first of all, whether you've had any conversations
11 with those two individuals or, or, or not, and
12 particularly with respect to the role of SEAC.

13 A. Yes, I've had a number of conversations and meetings
14 with the Deputy Minister of the Environment for
15 Alberta. And we have discussed the role of SEAC.
16 With regards to Mr. McFadden, the current Chair of the
17 ERCB, no, my first meeting with him will be on the
18 26th of November, next month. And I think what's
19 important is, as I've testified earlier, is that my
20 recommendations for structure and resourcing of SEAC
21 will stem largely out of this parallel process that's
22 going on in terms of these meetings with both ERCB and
23 Alberta Environment DM, as well as an all-stakeholders
24 gathering, which date is to be confirmed, but we're
25 looking for, hopefully, the end of January '09 where

1 we talk about cumulative effects assessment and we
2 talk about reclamation. And those will drive, to a
3 large degree, where we will need to reinforce SEAC to
4 assist us in, in fulfilling some of that role,
5 particularly on reclamation.

6 Q. Thank you, sir. Perhaps you could speak to
7 specifically what structural changes or additions,
8 deletions, whatever that you're looking for with
9 respect to SEAC?

10 A. I'm not sure yet. And, again, it will be largely
11 driven by the end result, right. We're looking for an
12 effect on the ground. We're looking for an effect for
13 them to be able to provide to me. And if I can
14 achieve some of that through other systems, that will
15 drive largely the organization.

16 I think in all instances we want to fulfill
17 the role assigned to it within the MAA. I think
18 that's an important role, both advisory to the Base
19 Commander, as well as inputs into reclamation. And I
20 think that government body or that body -- resource
21 levels will be largely determined about, well, how
22 much can I have a system much like Alberta in terms of
23 reclamation work for me and, therefore, not have to
24 repeat it or build it into the SEAC capability.

25 Q. Okay, and, sir, I appreciate that you don't

1 necessarily know what that's going to look at at this
2 point in time, but do you have any sort of impression
3 now whether or not your vision for the future SEAC is
4 going to require a change or a revision, amendment,
5 whatever you want to call it, to the '75 Master
6 Agreement?

7 A. I can't answer that for certain. You know, as I said,
8 it's a very -- it's still a work in progress. And
9 until I get more information, I won't be able to turn
10 around and say I think there needs to be amendment in
11 the MAA. I'm comfortable with, like I said, the
12 advice to Base Commander and their, and their, and
13 their work on the reclamation piece, because I think
14 they are -- they know what they're doing. As I said,
15 SEAC represents key capabilities both from the
16 Province and, of course, through Environment Canada.
17 And I will make sure that as we go through this
18 journey, those folks are part and parcel of the
19 process.

20 Q. Thank you, sir. I just have one last area of
21 question. It has to do with EnCana's proposed
22 changes to SEAC. I take it you would have not
23 necessarily reviewed those in detail, but we're here
24 to hear the evidence with respect to what EnCana sees
25 SEAC as being in the future.

1 A. Again, I think what's important to note is that some
2 of the discussions that occurred between the
3 Department of National Defence and the senior
4 leadership of EnCana was the role of SEAC and how we
5 can move it forward. We both agreed that their --
6 that given their current mandate, that they really are
7 not resourceed to do that yet. And, as I said, I'm,
8 I'm not prepared to settle on a one particular format
9 or structure yet until I've got all the other pieces
10 in place. And once I've lined those ducks up, then I
11 think what's important is we talk to all the
12 stakeholders again in this developmental process and
13 we come up with an agreed-to way ahead, because if we,
14 the parties, and the stakeholders, can say we are
15 happy with this, it's a heck of a lot easier to get
16 government buy-in who will be providing the resources
17 to it.

18 Q. Okay, sir, so just as a final question, then, I take
19 it that you wouldn't necessarily be opposed to a
20 change in the structure of SEAC, whether it be
21 increased or decreased, but as long as there is some
22 consultation amongst all the parties, consensus
23 between those parties as to what that role would be?

24 A. In terms of structure, I believe that's fair. I'm
25 quite happy with the role SEAC has now, but I think in

1 terms of structure, I tend to agree with your
2 comments.

3 MR. McDOUGALL: Those are all my questions,
4 sir. Thank you very much, Colonel Bruce.

5 THE CHAIRMAN: Thank you, Mr. McDougall for
6 those questions.

7 We will now break and perhaps we can try to
8 get back at noon. It's a bit shorter. Or, sorry,
9 noon. At 1 o'clock. We can't turn the clock back,
10 although some of us might wish to, but we'll meet at
11 1 o'clock if we can and return to questioning the
12 federal panel once again. Thank you.

13 (NOON RECESS)

14 (PROCEEDINGS ADJOURNED AT 12:09 P.M.)

15 (PROCEEDINGS RECONVENED AT 1:01 P.M.)

16 THE CHAIRMAN: Ladies and Gentlemen, welcome
17 back. We are going to start with cross-examination
18 from Mr. Mousseau.

19 Please go ahead, Mr. Mousseau.

20 **CROSS-EXAMINATION BY THE BOARD STAFF, BY MR. MOUSSEAU:**

21 MR. MOUSSEAU: Thank you, Mr. Chairman.
22 Good afternoon, Panel.

23 First of all, Colonel Bruce, I'm just
24 wondering if you can indulge me, and tell me that I
25 can't handle the truth, just --

1 A. LCOL BRUCE: Can you?

2 THE CHAIRMAN: I, I will intervene and say
3 you don't have to answer that one, Colonel Bruce.

4 MR. MOUSSEAU: It's a life-long dream
5 fulfilled.

6 Q. Okay. My first question for the Panel has to do with
7 the actual permits that might be contemplated as a
8 result of this process and EnCana has proposed a
9 single permit be issued by DND for all the work
10 associated with the infill project and I just want to
11 understand if, if DND accords with this view or does
12 it envision the issuance of multiple permits?

13 A. MS. BOYD: At this point, it's difficult
14 to predict exactly how the, the permitting will occur
15 and what form it will take. It is certainly
16 conceivable and possible that a single permit can be
17 issued, but I would suspect that it's much more likely
18 that multiple permits will be issued depending on how
19 the Project is presented and also the different tasks
20 that need to occur throughout the Project.

21 Q. Okay and -- right. My next question deals with the
22 issue of preliminarily assessed critical habitat and,
23 and I think from our discussions in the last few
24 days, I, I understand where we are in terms of the
25 legal process for determining critical habitat.

1 And, and what I want to really understand is
2 where are we from the, from the scientific
3 perspective in the process for determining critical
4 habitat, and specifically what more work on the
5 ground is required to finalize the determination that
6 Mr. Ingstrup spoke to, to some degree?

7 A. MR. INGSTRUP: I, I think the easiest way to
8 address that would be on a -- for the five species
9 that we proposed, maybe talking on a
10 species-by-species basis. Is that ...?

11 Q. That would be helpful, sir.

12 A. Okay. I think the easiest then would be to start
13 maybe with Darcy Henderson on the, the plant species.

14 A. DR. HENDERSON: Darcy Henderson here. With
15 respect to critical habitat for the three plant
16 species at risk, we've outlined in our Government of
17 Canada submission the criteria that we were using at
18 that time when we prepared the submission for
19 identifying critical habitat.

20 As I pointed out to Mr. Denstedt, the maps
21 that appeared in our presentation here didn't
22 correspond entirely with the maps that appeared in our
23 original Government of Canada submission. That's
24 because the criteria we're using has changed and that
25 has changed as a result of our consultations, not only

1 with some of the stakeholders like PFRA, DND, EnCana
2 and other representatives of the Canadian Association
3 of Petroleum Producers, but also internally amongst
4 biologists at Environment Canada and with the people
5 in -- on our recovery team for plant species at risk.

6 So we've met as recently as the first week of
7 September this past year to go through and sort of
8 confirm our, our stance on what criteria we're using
9 at this point in time.

10 Now, about two years ago we started two
11 parallel processes, one for identifying critical
12 habitat, one for developing setback guidelines and
13 what has occurred through those two parallel processes
14 is they've begun to converge so that we're using the
15 information that's been gathered to establish setback
16 guidelines as the scientific criteria for identifying
17 what constitutes critical habitat and what would
18 constitute examples of activities likely to destroy
19 critical habitat.

20 And I believe those setback criteria were
21 provided in the response to Information Requests by
22 the Government of Canada. I'm not sure what the
23 exhibit number is on that, but that's the criteria
24 that we would be using now.

25 Q. That, that's helpful, sir.

1 A. MS. DALE: With regard to -- Brenda
2 Dale. With regard to Sprague's Pipit, the portion for
3 Suffield is -- will of course -- sorry, I can't quite
4 see Mr. Mousseau -- will, will still go through some
5 further review by the scientific subcommittee of the
6 Sprague's Pipit recovery team and there is, at this
7 time, or this past summer, there has been work done in
8 parts of Saskatchewan and there will be work done with
9 some databases we have for some places in Alberta and
10 it is my understanding that we should be in a position
11 to preliminarily assess some additional critical
12 habitat in the coming year. And it won't all use the
13 same process because we had an extraordinary data set
14 of many, many years. These others may take in only
15 two to three years of data. I'm not sure by the look
16 of Mr. Mousseau whether I'm answering his question,
17 okay.

18 And I would pass it over to Dr. Duncan to
19 comment further on the entire process.

20 A. DR. DUNCAN: Dave Duncan. Just in regard
21 to the Sprague's Pipit, there is a substantial amount
22 of information that Ms. Dale alluded to was collected
23 this summer in southwestern Saskatchewan and we're on
24 a plan to identify critical habitat across a large
25 portion of both southern Alberta and southern

1 Saskatchewan, possibly Manitoba in the next 12 months
2 or so, looking at finalizing that December of 2009.

3 So we have a couple different avenues to take
4 with the Suffield critical habitat. It could get --
5 it could be a part of a Provincial action plan for
6 Alberta; it could be part of a smaller action plan for
7 the Base. It could be an amendment to the recovery
8 strategy. There's different options that would, that
9 would sort of help in terms of the timeline, that
10 would frame the timeline that we haven't -- we might
11 go down. We haven't decided which way we're going for
12 finalizing the critical habitat for Sprague's Pipit in
13 Alberta yet.

14 A. MR. JENSEN: Olaf Jensen here. With
15 respect to Ord's Kangaroo Rat, the modelling process
16 in -- at CFB Suffield is most, mostly complete.
17 There's some refinements to the model that need to be
18 done and there needs to be some discussion between
19 the, the Provincial recovery team and whatever might
20 develop for a Federal recovery team and the model
21 might change a little bit once we look at habitat in
22 the Great Sand Hills in Saskatchewan.

23 But it, it's fairly well progressed from a
24 scientific point of view. There's some discussions
25 and some refinements that need to take place.

1 A. MR. INGSTRUP: And, and just to summarize on
2 that, too, I think as an overall comment, our, our
3 level of certainty at CFB Suffield, as I think I said
4 earlier, is probably a lot higher than, than some of
5 the other areas of Canada that we have to work within
6 because often our data sets aren't as robust as, as we
7 have at Suffield in terms of known occurrences of some
8 of these species at risk.

9 And I think another point to emphasize, Dave
10 brought it up, we do have to identify critical habitat
11 across the range of these species, are -- the way we
12 are doing that is in an incremental fashion. So
13 that's certainly how we've approached the whole
14 problem, if you will, of trying to identify it across
15 the range.

16 And I think, just finally, just to remind the
17 Panel that there is a significant consultation
18 component with, with our identifications and that
19 we're in the process of doing that and we're going to
20 be continuing to consult right across the range of
21 some of these species with people who are potentially
22 impacted by, by the identification.

23 Q. And I, I wanted to follow up on something I think you
24 might have said, either it was you, Mr. Ingstrup or
25 you, Dr. Duncan, that this notion or concept of a

1 preliminarily assessed critical habitat was something
2 that was developed specifically for this proceeding.
3 And, and as I understand it, one of the
4 recommendations based on this preliminary assessment
5 is, is, is to not go forward with industrial
6 activity.

7 Keeping that in mind, I'm wondering if this
8 concept is something that Environment Canada is
9 applying in other NWAs; in other words, we've
10 preliminarily addressed some habitat, we don't want
11 anything to happen until we finish that up?

12 A. In terms of other NWAs, it is, it -- certainly if
13 we're aware that a critical habitat designation could
14 be coming up in the very near future, that will
15 certainly -- we would want to see that that's
16 protected. It hasn't -- it's not really an issue on
17 other NWAs because we don't have, you know, the issues
18 that we do at Suffield.

19 We've also provided this sort of advice to
20 other Federal departments who do, you know, who are
21 finding themselves in the -- in a situation where
22 perhaps it's an oil and gas issue. And if we are
23 starting to identify it, we will let those Federal
24 departments on Federal lands know about it and our
25 position has been that you should work towards

1 striving to protect it, you know, and, and certainly
2 until the, the identification is formalized.

3 A good example is we've taken this position
4 actually on some of the PFRA pastures in, in
5 Saskatchewan where we provided advice to PFRA that's
6 very consistent with the type of advice that we
7 provided to the Panel.

8 Q. Is, is it fair to say then that while this concept was
9 developed for this proceeding its, its application
10 isn't going to be restricted to this proceeding?

11 A. I think that, that's a fair comment. I mean, the name
12 we came up -- the label, if you will, of
13 "Preliminarily Assessed Critical Habitat", we
14 discussed this a lot coming up to this hearing because
15 we've never been, you know -- the Act is relatively
16 new and we are just starting to get into the process
17 of formally identifying critical habitat for a number
18 of species.

19 We wanted to convey the message to the Panel
20 that we are very close to and, and with some certainty
21 that there's going to be critical habitat on the NWA
22 and we wanted to come up with a description for that,
23 you know, in terms of where we're at in the process.

24 I think we've been pretty clear that it's
25 not, you know, legally identified yet, but that we're

1 certainly on that course and we -- but we've got some
2 more work to do.

3 A. MR. NORTON: I might just add to that
4 using a slightly different frame of reference, that
5 being the, the specifics of this and other processes
6 under the *Canadian Environmental Assessment Act*. And
7 under that particular piece of legislation in this
8 process and in most Federal EA processes that
9 Environment Canada is involved with in the Prairie
10 Provinces, we are in a Federal authority role and in
11 that role our responsibility is to provide advice to a
12 Responsible Authority department, so in the case of
13 the PFRA pastures in southwest Saskatchewan, we were
14 providing Federal authority advice to PFRA in a
15 screening level assessment.

16 I think the, the approach that we are on is
17 that whenever called upon to provide advice as a
18 Federal authority in a process like that, we will
19 provide the best and most current advice that we can
20 and because the process of identifying critical
21 habitat takes sometime, there will be cases like this
22 one, like the example in Saskatchewan that's recent as
23 well, where the advice we provide is essentially
24 partway through the process of the formal
25 identification of critical habitat but where we have

1 gotten to the point where we have sufficient
2 confidence in the science that we, that feel it is
3 appropriate and valid to provide recommendations to
4 responsible authorities or to a Joint Review Panel in
5 respect of what we know about where that habitat is
6 and with respect to measures that are appropriate to
7 ensure that it is appropriately protected.

8 A. DR. HENDERSON: And this is Darcy Henderson.
9 If I might add, we're following this same process for
10 plants but with a different species of plant, Hairy
11 Prairie Clover on actually another Military Base in
12 Saskatchewan, 17 Wing Detachment Dundurn, and two PFRA
13 pastures that are adjacent to that and we made that
14 proposal more than a year ago and that proposal is
15 evolving along the same lines as the proposal here
16 with these three plant species at risk.

17 Also, for one of the species here Slender
18 Mouse-ear Cress, it occurs on another National
19 Wildlife Area in Saskatchewan and as part of its draft
20 recovery strategy, we are proposing critical habitat
21 identification on that National Wildlife Area as well
22 as Suffield.

23 Q. Thank you, Panel. Those, those answers are useful.

24 Colonel Bruce, I'm going to turn briefly to
25 the 1975 agreement and I'm going to put something to

1 you and, and you can agree with me or disagree with
2 me, but when I read it, it struck me that one way you
3 can interpret that agreement is that it recognizes
4 that the Military has certain areas of expertise and
5 it also recognizes that, in some areas, it may not
6 have expertise. And, and I'll walk through that
7 agreement with you and see if you agree with me. And
8 if we start with Section 8 of the agreement.

9 A. LCOL BRUCE: I have it.

10 Q. Okay, sir. And, and when I read that section it
11 struck me you could interpret this to suggest that
12 with respect to matters relating to Military
13 operations and the use of the Base as a Military
14 asset, the Base Commander is, is the person to make
15 those decisions and it gives him some instruments by
16 which to make those decisions, including the RSOs
17 and, and it refers to matters of safety and
18 efficiency. Is that, is that a fair interpretation
19 or a fair way to look at that section?

20 A. I tend to, I tend to look at Section 8 in a broader
21 context. I tie it back to paragraph 6 and the
22 preamble as well, and I think I look at it in a
23 broader context than perhaps you're defining it now.

24 Q. Okay, sir, and maybe we'll come back to that, but
25 when, when I looked at Section 12, which is the

1 section that, that establishes SEAC, and specifically
2 Subsections 12, 7 and 9, it struck me that -- and
3 those are the two sections that allow the Base
4 Commander to -- or require the Base Commander to act
5 on the advice of SEAC and, and it struck me that
6 maybe what that section was trying to do was
7 recognize that the expertise in the Military is with
8 respect to Military matters and that there's a board
9 that we're going to create that will have expertise
10 in environmental matters and oil and gas matters and,
11 and they're really to guide the Base Commander on
12 those matters.

13 So that's how I interpreted that section to
14 be, is, is to recognize that the Military doesn't
15 have expertise in those areas and that's why it
16 created this body to provide that expertise for the
17 Military.

18 A. I don't disagree with the establishment of SEAC for
19 those recommendations, but again, if I look at
20 paragraph 12(7), I, I do agree that it applies to this
21 but it must be taken in context with 12(1) where it
22 says, paragraph 12(1), and I quote:

23 "Not derogate from the powers and
24 responsibilities of the Base
25 Commander under the other

1 provisions of this agreement."

2 So, I think, like all things in this agreement I
3 find that you must be able to relate it to the whole
4 and not just the individual part that you're looking
5 at specifically.

6 Q. Sure, and what I -- how I interpreted that section or
7 how I thought you might interpret this section, and
8 you can comment on that, was those other sections
9 give you pretty broad powers. This section, in
10 particular, provides a limitation, a specific
11 limitation in two instances. With respect to
12 approvals, you can only act on the recommendation of
13 the Base -- or of SEAC. And with respect to
14 operational concerns and, and perhaps non-compliance
15 with environmental legislation, you again have to act
16 on the advice of SEAC. Is that fair?

17 A. Again, I wouldn't look at it as a constraint. I think
18 of it as an enabler when I read through these things
19 so I, I don't necessarily look at it as a, as a
20 constraining set of impositions.

21 Q. Fair enough, sir. And, and I guess my last question
22 then is you heard some concerns from SEAC yesterday
23 about the clarity of the 1975 agreement as it relates
24 to the role of SEAC and the processes its require --
25 or its obligations under the agreement. And I guess

1 my question is a bit broader than that and I want to
2 know whether, from your perspective, the agreements
3 provide a regulatory process for oil and gas
4 activities that has sufficient certainty and clarity
5 to be -- to protect the environment which it was
6 intended to protect?

7 A. I think if I was to answer that question in the
8 broadest context, I would say that I still believe
9 there are regulatory gaps that exist currently and I
10 think are caused from, or stem from, this original
11 agreement. And I, I refer back to Alberta
12 Environment's participation or the lack thereof in
13 particular fields be given the particular
14 jurisdictional nature of the lands itself, Federal
15 being Provincial. So I'm not sure that this document
16 provides for all of those contingencies. I do think
17 that there are some gaps to be filled.

18 Q. And maybe to follow up on that, sir, you said there
19 were gaps both on the Federal side and on the
20 Provincial side and there were suggestions that
21 changes to legislation, both Federally and
22 Provincially would be required. Is there a way to
23 expand on that or is that maybe something your
24 counsel is going to do in argument?

25 A. I hope the counsel is going to do it in argument. I

1 think, you know, I look at it in very broad themes,
2 right. When I look at jurisdictional issues I look
3 at, okay, where do I have to go to get an answer? You
4 know, where am I going to get that answer to make a
5 decision? Or where am I going to find the knowledge?

6 And if that means that there are regulatory
7 bodies out there that I can approach, there also is
8 legal questions on -- in terms of the status of the
9 Federal land versus Provincial interaction. And
10 therefore, I find that at times I will be considering
11 a decision that perhaps I don't have all the
12 information or I have all the legal authority to
13 perhaps necessarily take that decision, and that's
14 where these jurisdictional gaps sort of result from.

15 Q. Colonel Bruce, I'm going to move on to the, the latest
16 version of the Range Standing Orders and I think this
17 is 003-045.

18 A. I have them.

19 Q. Okay, sir. The first thing I noticed was that the
20 date of issuance is referred to as "D day". Does
21 that mean anything or --

22 A. Other than we were at Juneo (phonetic), not me myself,
23 but -- wait one please.

24 Q. Okay. And, and my only question really, sir, is it
25 your view that the RSOs -- well, Section 7 -- or,

1 sorry, Chapter 7 is going to apply to activities on
2 the NWA?

3 A. That is correct.

4 Q. Okay, sir. Now I want to --

5 A. MS. BOYD: Sorry, sorry, could I just
6 add something to the Base Commander's answer? It is
7 true that Chapter 7 would minimally apply in the
8 National Wildlife Area. However, there would be
9 additional conditions as part of the National Wildlife
10 Area permit and if there were any needed changes or
11 amendments to what was in RSO Chapter 7 that would be
12 different in the NWA, it would be stipulated in that
13 permit.

14 Q. Okay, and just one, one more question there. I know
15 it's been changed to disturbances, 16 disturbances
16 per section and I know that's found under the
17 drilling section. I just want to confirm that
18 disturbances doesn't refer to pipelines. Is that
19 fair?

20 A. LCOL BRUCE: It refers to anything that
21 can cause a disturbance.

22 Q. Okay, so I guess I need to understand then if, if
23 16 wells were approved for a section and they needed
24 to be interconnected by pipelines, would that exceed
25 the, the 16 disturbance?

1 A. It, it may very well, yes. And as -- what we said,
2 there may be more than 16 wells if they're going to do
3 multi-well drilling from a single pad. You know, and
4 we've also made references in the RSOs to if it's a
5 multi-pad drilling then it will be a slightly larger
6 footprint than would normally be found for a normal
7 well, for example.

8 Q. Right. And, and I think I also read in the 16-well
9 disturbance section, I think it was Section 70, that
10 you retain some discretion. So based on information,
11 scientific information about range health, for
12 instance, you've retained the discretion to go beyond
13 that but you need to see certain information before
14 you're going to go there?

15 A. That is correct, and as I, I -- and I think what's
16 important to highlight is 16 disturbances per section
17 is, is an interim cap in terms of the amount of
18 disturbance on the training area. Until we have the
19 science to determine what that threshold or carrying
20 capacity of the land is and if, you know -- given all
21 the other demands on the environment, if it can
22 sustain more then we will allow more as long as it
23 doesn't interfere with the primacy of the, the
24 training area for Military operations.

25 Q. Okay, sir. I want to move on to the three-well

1 application that's in front of this Panel and my
2 question is, is this review process a surrogate for
3 SEAC review?

4 A. That's a very interesting question because I, I think
5 fundamentally what has not happened, it has not been
6 processed through the Base, so the three-well
7 application has not come to me for either denial or
8 approval yet. So, regardless of, of where we stand, I
9 think what's important to note is that ultimately ERCB
10 may recommend or decide on issuing three licences.

11 The question I have to determine is given all
12 other policies, guidelines and directions that have
13 been based out there do they fall within the
14 16 disturbances per section and all the other
15 regulatory matters that I need to look at.

16 So, decision, yes, from the Panel, with
17 respect, but it still needs to go through the Base
18 process to make sure that it falls within all the
19 other guidelines and processes.

20 A. MR. MARTINS: Fernando Martins. Just
21 to add to that, had these three well applications come
22 to the Base being that they are in the National
23 Wildlife Area, we would most certainly have processed
24 them through SEAC to review.

25 Q. Okay. And when I was questioning EnCana, their

1 request was this, that this Panel approve those
2 applications with a condition that they be reviewed
3 by SEAC and the Base Commander and if SEAC and the
4 Base Commander -- if the recommendation from SEAC to
5 the Base Commander was to deny them that they would
6 withdraw those applications. Does that address the
7 concerns of the Base?

8 A. LCOL BRUCE: As long as the process is
9 followed so that it's a fair and open, transparent
10 process, I'm quite happy to, to, to make sure that
11 that does occur.

12 Q. Thank you, sir. I'm going to move on to, to
13 operations and inspections and I had a conversation
14 with EnCana about this. I understand that the ERCB
15 has conducted eight inspections on the NWA since 2003
16 and I'm wondering, from the Base's view, whether it's
17 of the view that that's sufficient?

18 A. It's a hard question to answer when you talk about --
19 I'm not sure what the rate of inspection by ERCB on
20 other areas of the Province are, off the top of my
21 head. So is eight in relation to a similar
22 organization or a similar size footprint somewhere
23 else in Alberta acceptable? Don't know. I do know,
24 though, that again I'm in discussions with ERCB to
25 determine what more can be done because I personally

1 don't know enough about the subject in terms of
2 inspection regimes, but it just sounds low given the
3 amount of infrastructure that we have. But again, I
4 -- it's not something I have a comparison against.

5 Q. Okay, sir. And this is also a question I asked EnCana
6 and it relates to the ERCB's inspection process and,
7 to some degree, it's computer generated so they look
8 at essentially three factors, so operator history,
9 they look at site sensitivity and they look at
10 inherent risk. And my question was given the nature
11 of the lands upon which these wells are proposed, is
12 it the Base's view that the site sensitivity factor
13 should be higher than outside of the NWA?

14 A. Yes, and that's a point for discussion in November.

15 Q. Okay. Thanks, sir.

16 Now, along the same lines, and I think we may
17 have this already, but SEAC's inspections of wells
18 currently is, is limited to an annual reconnaissance
19 and I'm wondering if the Base sees an expanded
20 inspection role for SEAC should the new infill
21 Project go ahead, or is this inspection something
22 that the Base would want to handle as part of its own
23 shop?

24 A. I think it's -- I think the combination of both is
25 probably appropriate, but, again, until I've had a

1 sit-down with Alberta Environment and walked through
2 how they do their sort of inspection process and their
3 understanding of, of the systems that they use, I
4 would be hesitant to say, if we cannot adopt their
5 system almost complete, with some modifications
6 obviously, or do we need to augment that whether that
7 be with additional SEAC resources or additional
8 resources to the RSS section itself, so I'm not, I'm
9 not in a position yet to determine that and probably
10 will not be for another few months.

11 Q. Okay, sir. We've discussed -- Canada has discussed
12 this, EnCana has discussed this, the Coalition has
13 discussed it, and these are the two issues regarding
14 abandonment of wells in Wetlands. And there's two
15 examples that have been discussed on the record where
16 after a long to'ing and fro'ing, EnCana removed two
17 wells and my question is, do you think that if the
18 process contemplated in the 1975 agreement was used,
19 in other words if the Base Commander had immediately
20 issued a stop order and referred those matters
21 directly to SEAC and got a decision out of SEAC, do
22 you think it would have taken as long as it did to
23 resolve those problems?

24 A. I'm not sure what was said the other day and -- with
25 regards to the discussions with SEAC because I'm no

1 speed reader and I must admit it takes me about three
2 hours to get through a day's worth of testimony and so
3 I have yet to finish yesterday's testimony.

4 Q. And just to be clear, I didn't talk to SEAC
5 specifically about that issue.

6 A. Okay. It is my opinion with regards to several of the
7 -- or at least those two wells in question, they were
8 not within those designated areas of, of restricted
9 zones for development, but I may be wrong. I just
10 need to clarify.

11 I think I just wanted to clarify. One was in
12 a sensitive area and one was obviously in a wetland
13 but not in, in the NWA per se, and it was only
14 discovered once they applied for a tie-in of a
15 pipeline, the actual construction of the well, because
16 it was a routine application and when it was through
17 its desktop review seemed to meet all the criteria,
18 the well was allowed to go ahead and be constructed.

19 It was only after the fact on the demand for,
20 or a request for a tie-in of the pipeline that the
21 pipeline request came in with a notice that it was
22 going to need to go through a wetland and that's when
23 it twigged us to say that perhaps this is something we
24 need to go have a look at on the ground.

25 So ERCB or -- correction. SEAC was not

1 invited for that particular one initially because they
2 were not -- it didn't meet any of the criteria that we
3 would normally refer something to SEAC on. Would it
4 have helped resolve the matter more quickly? I'm, I'm
5 not convinced that -- I don't know when something is
6 in a wetland or when it's not in a wetland, so I'm not
7 sure if it would have facilitated speeding up the
8 process at all.

9 However, as you know, we consult with SEAC on
10 many occasions and I spoke to them in specific about
11 the well and it -- until I got that in writing, that
12 seemed to be the only thing that would satisfy EnCana
13 for, you know, getting that well removed from the
14 wetland. I wasn't here for the, the one in 2005.

15 Q. Okay, sir, and I think I probably need to follow up on
16 this a bit. My understanding of subsection 12(9) of
17 the agreement is that if you observe a contravention,
18 a contravention of environmental legislation
19 regardless of the location of the well you can refer
20 that to SEAC and they have 30 days to get your
21 recommendation on that. So maybe if we can look at
22 subsection (9) and you can confirm my understanding
23 of that.

24 A. No, your understanding is correct.

25 Q. Okay. So in the future, if you encountered an issue

1 like this, is that an expedient way to deal with
2 these?

3 A. It is, yes.

4 Q. Thank you, sir.

5 When I was examining EnCana, I asked them to
6 give me some examples of Alberta Environment
7 exercising its jurisdiction over spills on the Base
8 and I just wanted to give this Panel that same
9 opportunity to, if it has any examples of that
10 occurring?

11 A. MR. RICHMOND: Wes Richmond. As far as
12 we're aware, there's no involvement from Alberta
13 Environment other, other than the, the fact that
14 spills are reported to them and in turn they often
15 report those to, to Environment Canada as well.

16 Q. Okay. And I have a few questions on reclamation. I
17 think we covered that ground pretty clear, but I'm
18 wondering, from the Base perspective, reading the
19 regulations and the authorities, I guess the
20 jurisdiction put on to the ERCB, is it one possible
21 interpretation that in fact the ERCB is the
22 regulatory body that's supposed to be signing off on
23 reclamation?

24 A. LCOL BRUCE: Clarify "ERCB". That, that's
25 who you're talking about, not Alberta Environment?

1 Q. No, I'm talking about the ERCB. If you read -- I
2 think we were talking about Section 4 in the
3 regulations that gave to the ERCB certain powers of
4 the Minister of the Environment and those powers
5 arguably included reclamation. I'm just wondering if
6 one way to interpret that is that those -- that
7 authority still rests with the ERCB?

8 A. I'm not, I'm not of the opinion that it does. I think
9 time has moved on from that particular aspect.

10 Q. I think there's a lot of people upstairs who are
11 pretty happy with that answer, sir, but...

12 A. MR. RICHMOND: Could I interject for a
13 second. It's Wes Richmond. I, I did think of one
14 instance on your last question. It was a very recent
15 one where there was a harvest oil spill on the Base
16 and because there was wildlife involved, there were a
17 number of birds that were killed; that the Alberta
18 Wildlife people actually showed up on the Base along
19 with EnCana -- Environment Canada enforcement people
20 to look at the situation of the that is probably the
21 only one I can recollect where we had involvement from
22 Alberta Environment. That's not Alberta Environment.
23 Sorry, it was another department of the Alberta
24 Government then, closely related.

25 Q. Okay. We're getting closer to the barn door, sir.

1 Colonel Bruce, you made a statement earlier today and
2 I'm not certain if it was intended to, to convey the
3 thought that it did, but I'm just wanting to
4 understand is it your understanding that the ERCB is
5 an independent body or board under the Minister of
6 Environment in Alberta?

7 A. LCOL BRUCE: It is my understanding that
8 it's an agency that works through the Alberta Energy
9 Department, but it's an independent or a Crown
10 corporation.

11 Q. Okay, and similarly the Canadian Environmental
12 Assessment Agency is an agency, an independent agency
13 under the Federal Minister of the Environment?

14 A. Correct.

15 Q. Okay. And, sir, I just want to confirm your
16 understanding that this Panel is sitting both as a
17 review Panel under CEAA and as a division of the
18 ERCB?

19 A. That is my understanding.

20 Q. Okay. And again just want to confirm your
21 understanding that as a division of the ERCB it has
22 the authorities of the ERCB but it doesn't report
23 back or consult with the Chairman or other board
24 members with respect to this decision?

25 A. Other board members of --

1 Q. The ERCB.

2 A. The ERCB? It was my understanding they're vested in
3 the authority to make decisions on behalf of the ERCB.

4 Q. Right, and I've just realized I've completely
5 misspoken because this is a hearing for which a
6 notice of hearing was issued before January 1st, this
7 is actually a division of the EUB and not the ERCB,
8 so I guess you can confirm that understanding, sir?

9 A. Yes.

10 Q. Okay. There's been talk of a meeting proposed between
11 you and the Chairman of the ERCB. I just want to
12 confirm that none of the issues arising from this
13 proceeding are going to be the nature of discussion
14 with the Chairman?

15 A. No, the intent of the meeting is, as I, as I've
16 stipulated before, is it's a parallel process. We're,
17 we're trying to move the issues forward, so it is
18 completely independent of this process. But,
19 obviously, depending on the decisions made or
20 recommendations made it will inform that process
21 eventually. Now, when that will be is when the, when
22 the recommendations come out.

23 Q. Okay, sir. And, and with those meetings established
24 with the chair of the ERCB, was any thought given to
25 having representatives from industry attend as well?

1 A. These are preliminary discussions that we're having
2 and I think once we understand the sort of intent and
3 concept that we're talking about, we will then broaden
4 that inclusiveness to ensure that industry, amongst
5 others, are representative.

6 And, and I just want to highlight that one of
7 those first steps is this working group proposed for
8 the end of January which will include all the
9 stakeholders and the issues we are dealing with is
10 cumulative effects as well as reclamation and the
11 cumulative effects obviously, not ERCB but Alberta,
12 with the land use framework, Environment Canada with a
13 number of their initiatives as well as others will be
14 sitting down to discuss how we can best incorporate
15 all of that for use by CFB Suffield.

16 Q. Okay.

17 THE CHAIRMAN: Mr. Mousseau, maybe before
18 you move on to your next question, I, I should
19 intervene and make a, make a clarification for the
20 record here. I just want to be very clear there has
21 been discussion of meetings with the chair of the ERCB
22 and I want to make it very clear that at no time has
23 this Panel received any direction at all from the
24 chair of the ERCB on, on the matter of this Project
25 under review, nor have we received any direction nor

1 has there been any discussion with the Minister of the
2 Environment to whom we report our findings and I think
3 lest there be any doubt I wanted to clarify this point
4 for the record.

5 MR. MOUSSEAU: Okay.

6 Q. My first question of this panel, the goal of that
7 question was to crystallize for me and perhaps for
8 the Panel that Canada's position and the answer
9 Mr. Norton gave me and Colonel Lamarre gave me an
10 answer, too, I'm just going to refer to Mr. Norton's
11 answer and it was the amount of information that has
12 been provided lead to uncertainties of a magnitude
13 that lead to our conclusion that it is not possible
14 to determine with confidence whether in fact likely
15 significant adverse effects are likely to occur after
16 taking into account mitigation measures.

17 And my question is, if this Panel were to
18 recommend approval of the Project, what conditions
19 could Canada recommend to address the uncertainties it
20 has identified?

21 A. MR. NORTON: Somehow I knew we might
22 receive that question and I need to provide just a
23 little bit of a preamble to my answer so that I'm
24 speaking primarily on behalf of Environment Canada.
25 I'm sure my colleagues from DND will answer here. I

1 just want to provide a preamble so that our comments
2 with respect to potential conditions of approval are
3 provided in the clearest possible context.

4 It's important to note that factoring in the
5 information that has been made available prior to this
6 hearing and the information that has been discussed,
7 clarified, sometimes declarified over the last three
8 weeks, that our fundamental recommendation remains the
9 same, that is, that no industrial -- no additional
10 industrial activity should be allowed to proceed in
11 the NWA at this time and that's articulated quite
12 clearly in our submission.

13 There are a number of conditions that I will
14 try to paraphrase briefly here that we believe would
15 need to be put in place or satisfied prior to any
16 approval and those primarily related to the completion
17 of what we would consider to be an adequate assessment
18 of the cumulative effects of the Project. That would
19 need to include considerably more detailed information
20 related to the layout of the various components of the
21 Project, in other words, the -- at least a preliminary
22 siting of wells and pipelines.

23 There would need to be a more complete
24 assessment of the mitigation measures to be employed,
25 that a monitoring program would need to be designed in

1 a much more detailed fashion than is represented in
2 the Environmental Effects Monitoring Program that we
3 have before us and, although it was not a concept that
4 we specifically considered in formulating our
5 submission, the notion of some form of piloting of
6 either the actual physical activities to be
7 contemplated and/or the -- sort of the regulatory and
8 approvals process, in a location other than within the
9 NWA at, relatively speaking, at first blush appear to
10 be sound suggestions.

11 If on completion of those it was determined
12 that the Project as a whole could in fact be
13 constructed and operated in a manner that did not
14 interfere with the conservation of wildlife within the
15 NWA, and ensured the protection of species at risk,
16 their residences and critical habitat, be it
17 preliminarily assessed or in a relatively short period
18 of time formally identified, if those conditions were
19 met, then a couple of conditions that I think we would
20 be looking for would be exclusion zones placed around
21 species at risk, known locations of species at risk
22 that is, their residences, critical habitat or
23 preliminarily assessed critical habitat as well as
24 setbacks from -- for other components relating to the,
25 the biophysical environment including Wetlands and

1 other sensitive wildlife features as well as
2 conditions that I think are reasonably well
3 articulated in our submission related to the, the
4 reclamation plan as laid out by the, by the Proponent
5 right now.

6 I turn to others on my team here to see if
7 they wish to add.

8 A. MR. INGSTRUP: Just a few further comments
9 on -- along the lines of the species at risk. As Mike
10 said, I mean, the uncertainty -- we've got a lot of
11 uncertainty in terms of what the adverse effects would
12 be on the number of species at risk. We noted in the
13 EIS that they found a significance rating of basically
14 insignificant for a number of endangered, threatened
15 and species of special concern. For example, the
16 Sprague's Pipit, where there was an insignificant
17 significance rating in the EIS.

18 We remain concerned. We don't think all the
19 necessary information has been collected that, that
20 would put us in an area of certainty, if you will,
21 with regard to the impact of this Project on the
22 species at risk, and as Mike said, or Mr. Norton, on
23 critical habitat and their residences. So that, that
24 remains a fairly large gap for us.

25 Another area is just with respect to the

1 existing footprint of -- on the National Wildlife Area
2 where -- and I know DND got to it a bit in their
3 presentation in terms of identifying where the
4 threshold is for the National Wildlife Area. We think
5 there's a lot of uncertainty around that and further
6 work needs to be done to clearly articulate where
7 we're at on the National Wildlife Area with respect to
8 critical thresholds that we may be starting to exceed.
9 I think I'll leave it at that. Dave?

10 A. DR. DUNCAN: Dave Duncan. I, I just might
11 want to add some things to our discussion of species
12 at risk here. An important thing to remember is a
13 species at risk, an endangered species is a species at
14 imminent threat of extirpation or extinction and the
15 notion of taking additional risks, and risks can come
16 via uncertainties to a species already at risk is
17 quite unpalatable.

18 We've got a lot of experience, not in this
19 country but in the United States in terms of their
20 *Endangered Species Act*. They've got one of the, one
21 of the notions that's come across in the literature is
22 that adaptive management has often been suggested as a
23 way to move forward with species at risk.

24 In that body of literature, there's
25 recognition that when you're dealing with species at

1 risk the whole notion that the status quo can be
2 better than experimenting and taking chances is a much
3 more prudent and a precautious way to go when dealing
4 with species at risk.

5 The concept of adaptive management has been
6 referred to as a smoke screen in the United States to
7 allow additional risk to be incurred on endangered
8 species and species at risk. This is, to my
9 knowledge, the first time there's been a Panel in
10 Canada that's had so many species at risk issues in
11 front of it, so much critical habitat, potentially,
12 preliminarily assessed critical habitat in this
13 country to date.

14 And I think there's something that we can
15 learn from the United States, that we need to be
16 precautious. The principle of precaution is alluded
17 to both in the preamble and Section 36 or 38 of the
18 *Species At Risk Act*, and this is not -- species at
19 risk are not the kinds of flora and fauna to go
20 experimenting with or to take additional risks with.

21 And the notion of adaptive management must be
22 entered upon very, very carefully because it
23 inherently involves unknowns, uncertainties and taking
24 risks. And species at risk on a National protected
25 area is not the kind of -- not the kinds of tracks or

1 groups of organisms to experiment with and take, take
2 chances with, nor is it suitable within a National
3 protected area.

4 A. LCOL BRUCE: If I might just follow up
5 with two points. I think fundamentally some of the,
6 the issues I would like to see addressed would be --
7 the whole idea of the carrying capacity or the
8 cumulative effect on the property as a whole and, and
9 the reason why I continue to go back to the
10 precautionary approach is just simply as I don't have
11 all that information and therefore I am loath to make
12 decisions of this nature without a broader
13 understanding of the impacts that it will have
14 overall.

15 And then finally it's about time. I'm just
16 not sure that three years scale and magnitude of the
17 Project -- I have no doubt they can drill that
18 quantity of wells. I mean, they do that now in the,
19 in the rest of the Base. It's a question of being
20 able to adapt to, to those issues that do arise within
21 the program that they have laid out and my ability to,
22 you know, given the uniqueness of the NWA, support
23 this with the resources that I currently have
24 available to me.

25 A. MS. COULSON: Hi there. Jess Coulson,

1 NRCan. I just wanted to -- I believe your question
2 doesn't necessarily apply to NRCan specifically
3 because we were -- we're participating in this process
4 as an FA as per the 12(3) request under CEAA, but the
5 recommendations we have provided before this Panel
6 were really to address the deficiencies and problems
7 through the provision of additional data and analysis.
8 So as far as conditions go, we don't have anything to
9 say on that.

10 MR. MOUSSEAU: Thank you, Panel. Those are
11 my questions. Thank you, Mr. Chairman.

12 THE CHAIRMAN: Thank you, Mr. Mousseau.
13 This Panel also has some questions as well and I think
14 that they will -- the good news, Colonel Bruce, is
15 they will not all be directed to you. I think we're
16 going to mix it up a bit. I'll start with Mr. DeSorcy
17 on my right, please.

18 **QUESTIONS BY THE JOINT REVIEW PANEL, BY MR. DESORCY**

19 MR. DeSORCY:

20 Q. Good afternoon, everyone, and welcome back, Colonel.
21 On the last matter, the, the conditions, and this is
22 probably for you, Colonel Lamarre. Yesterday, or
23 sometime recently, there was a discussion about the
24 use of caissons and it wasn't clear to me whether you
25 were suggesting that if the Project were to be

1 approved and go ahead that DND would want caissons
2 used or whether you were saying it was a matter that
3 would have to be discussed later.

4 I noticed that you didn't include it in
5 talking to Mr. Mousseau as a condition, so would you
6 clarify for me what the situation is regarding DND
7 and the use of caissons and underground wellheads?

8 A. COL LAMARRE: Sir, believing that Colonel
9 Bruce needs to keep busy at all times, otherwise he
10 gets into trouble, I'll turn that one back to him.
11 He's actually, as the Base Commander, in the best
12 position to answer.

13 Q. That's well done.

14 A. LCOL BRUCE: That's another monkey on my
15 back.

16 It really -- it's a question of a little more
17 now or, or a lot later. As you can appreciate we've
18 indicated for reasons of national emergency like, for
19 example, if we were about to go to war with a near
20 competitor, meaning somebody that has the same or
21 similar capabilities that we do, there may be a need
22 to go back into the National Wildlife Area to assist
23 in, in getting ready for that type of, that type of
24 fight.

25 Regardless of what we do in there,

1 aboveground infrastructure inherently represents more
2 danger for training troops simply because it's above
3 ground and, and therefore can be damaged or, or
4 destroyed. I think it was Mr. Kansas said --
5 indicated that when asked the question, sir, I'm not
6 sure if it was from you whether or not a caisson
7 represents significantly more disturbance. And I
8 think his answer was, slightly, it is a larger
9 disturbance but it's once.

10 So, from my Military perspective, my
11 preference is below ground. That said, I know the EIS
12 was done on aboveground infrastructure and I think
13 some of that would rest on the scale and magnitude of
14 the Project and, and the time and tempo that this
15 might have to go in.

16 Q. And, sir, may I ask you, I understand that the wells
17 there in the NWA now, I guess they're a mix, are
18 they, in terms of wellhead location above or below
19 ground?

20 A. For the most part, sir, it is above ground, but there
21 is some that is below.

22 Q. That was my understanding and I guess I'm interested,
23 does the position you're putting forward now
24 represent a change because I assumed, rightly or
25 otherwise, that you would have been part of the

1 earlier decision to put them generally above ground?

2 A. Obviously, sir, I was not in command during the time
3 of decisions made at that particular time. I think,
4 as we've mentioned, it is less of a disturbance
5 initially.

6 However, as threats grow, as capabilities of
7 the Military grow, I think we are now coming to
8 realize that it's best if we can maintain that area
9 for use for any potentially new capabilities and I,
10 and I believe that given the knowledge we had at the
11 time that those decisions were made it was probably
12 the best decision at that time.

13 Q. But in any case, sir --

14 A. MR. MARTINS: Excuse me, sir.

15 Q. Yes.

16 A. Fernando Martins, if I may add, sir, reviewing
17 documents from the past in earlier discussions in the
18 process of developing the, the agreements, et cetera,
19 it appears that DND made concessions that wells would
20 be above ground in certain areas but with the
21 concession that should Military require that that
22 Alberta would recognize that they would have to put
23 the wells below ground and there have been numerous
24 other occasions where we have indicated such a
25 stipulation over the course of years.

1 A. MR. RICHMOND: And if I could add just one
2 thing. It's Wes Richmond again. Throughout the
3 course of the -- of our preparations for these, these
4 hearings it's caused, caused us to reflect fairly
5 deeply into what the impacts of that -- of the 1275
6 wells would be and we've started looking very, very
7 deeply at the Military requirements and what those
8 impacts may have been on the Military.

9 So I believe at the time the proposal was
10 first put in place, we didn't have full, full grip on
11 what, what those impacts could be and it's through
12 this process of preparing for this hearing that we
13 come to the, the realization that there could be some
14 impacts and that's why we're going this way now.

15 A. COL LAMARRE: And, sir, I have to add one
16 more thing. If you look at all of our training areas
17 across Canada, but specifically in the west, we are
18 doing things in those training areas that we never
19 really anticipated or envisioned doing five to ten
20 years ago. So if you take Wainwright as an example
21 through which all Canadian troops go through prior to
22 going on operations, we now have a highly digitized
23 system that takes up a tremendous amount of space.

24 Since battle groups and formations from other
25 parts of the country come to train there, the training

1 area out here is quite crowded, at Wainwright that is,
2 and as a result we have elements of formations at the
3 battle group level and at the formation level that now
4 have to go elsewhere to train.

5 So the demand on our training areas is
6 growing. It used to be that when we went to Bosnia
7 back in the early to mid-90s your training for
8 deployment was approximately three months. Now
9 training, high-readiness training to go overseas to
10 Afghanistan, will take anywhere between six to nine
11 months and you have to fit those training objectives
12 within those training areas where the troops will get
13 brought up to speed for the operations.

14 What Colonel Bruce alluded to also is that
15 the new weaponries that we're using have
16 extraordinarily different templates and we're bringing
17 on board different capabilities to be able to go and
18 take the fight overseas and those capabilities require
19 more space, more time and more of an area where we can
20 actually employ them and train them in a safe manner
21 prior to going overseas so the demand on our training
22 areas is growing right across Canada.

23 Q. Am I in effect hearing that the likelihood that the
24 NWA will be required as an active Military training
25 zone is greater today than it was several years ago

1 when development of gas wells started in the NWA and
2 that, that it's continuing to increase for the very
3 logical reasons that were outlined? Am I, am I
4 hearing you correctly, gentlemen?

5 A. COL LAMARRE: In my opinion, sir, there is
6 a high likelihood -- higher likelihood certainly than
7 there was ten, 15, 20 years ago when drilling first
8 started going into large numbers. Does that mean that
9 we're going to have a call to go in there and start
10 rolling with tanks? I don't believe so. As Colonel
11 Bruce was referring to, it's in the event that we have
12 an event that we do have an ERP event that is coming
13 towards us, then we potentially to.

14 That said, even without that ERP, with the
15 new capabilities that we are bringing in, you can say
16 that the templates we are going to be having that will
17 overshadow into the NWA are larger certainly than they
18 used to be and will potentially continue to increase.

19 So I would say that it is safe to say that,
20 that NWA will continue to have an important role to
21 play and will probably grow in importance as well.

22 A. LCOL BRUCE: If I may just add, sir, as an
23 example, that the Leopard 2 Tank, which Canada has
24 just acquired that is now overseas in the fight and
25 we'll be bringing the stock back to Canada here

1 shortly, the only training area in the country it can
2 fire and manoeuvre with Saabo (phonetic) ammunition,
3 so wartime ammunition, is in Suffield. No other
4 training area in the country can handle that template
5 so this is just one weapon system of a capability.

6 Q. I'm going to go back to the beginning of my question
7 again and just to make sure, if you assume with me
8 that the Panel were to recommend in some form or
9 another that the Project could go ahead, would DND
10 wish us to take any position with respect to whether
11 the wellheads should be above or beneath the surface?

12 A. My preference is below surface, sir, for DND.

13 Q. Thank you. I have a few other things that I wanted to
14 review with, with other Panel Members, one or two,
15 and perhaps I'll be back to you again, Colonel Bruce.

16 One for Mr. Gregoire. I know he's there, I
17 haven't heard from him lately. And, sir, this is a
18 question regarding your earlier description of the
19 SARA permit process, the need for it and, as I
20 understood you, one of the things you said was that
21 should the Project go ahead and should an activity
22 encroach upon setbacks, this would, as I took it
23 down:

24 "Warrant further consideration to
25 determine whether indeed a permit

1 would be required."

2 Now, that's what I think I heard you say, sir.

3 A. MR. GREGOIRE: Yes, that is correct.

4 Q. And, sir, I want to know a little bit more about what,
5 what that means. I don't quite understand what you
6 mean by:

7 "Further consideration to determine
8 whether or not a permit is
9 required."

10 Can you help me?

11 A. The guidelines are set to provide some certainty to
12 industry of course because they want, they want to
13 know whether they are in compliance with various
14 pieces of legislation. In this instance it would be
15 the prohibitions under SARA. We developed the
16 guidelines based on expert opinions and literature and
17 throwing in considerations of the prohibitions.

18 So the guidelines help us to show whether you
19 may be violating the prohibitions or not. So if you
20 were to encroach upon these agreed upon setback
21 distances, then there is reason to believe that you
22 may be in violation of the prohibitions and it
23 warrants closer consideration you need to look at it
24 on a case-by-case basis to decide whether a permit is
25 required.

1 Q. That helps me, sir, because I had missed the point
2 they were just guidelines. But I guess it creates
3 one or two other questions. I heard -- I'm not sure
4 it was you but either yourself or one of the others
5 -- describe some of the tests that would be applied
6 before you issued a permit and I'm referring now to
7 things like whether all reasonable alternatives had
8 been considered and whether all feasible measures had
9 been taken to minimize and whether or not it actually
10 represented a danger to, to the species, but what I
11 don't understand is how you would, what
12 considerations would you take into account when
13 you're deciding whether or not a permit is needed?
14 Would they be along those lines or would it be quite
15 different? I'm not sure I follow.

16 A. Those are indeed the criteria we would use as a
17 foundation and in addition, there's a scientific
18 review, so there's a consultation with appropriate
19 species experts to try and answer those very
20 questions.

21 Q. So, in terms of these considerations to see, to
22 determine whether a permit is required, I take it
23 then you would be having regard for the same kind of
24 issues that you would deal with indeed if you were
25 dealing with a permit application? Do I hear you

1 correctly?

2 A. Yes, I mean, what triggers my involvement would be a
3 permit application and I have to fill that out and
4 answer certain questions before we can move forward
5 and these are some of the questions that need to be
6 answered or brought to my attention.

7 Q. And, sir, what, what I'm trying to get is a better
8 feel for when a permit would be required and I take
9 it from you that it would be through application of
10 the guidelines on a case-by-case basis?

11 A. Yes, the guidelines would be our basis to look at it
12 for the need for a permit, that's correct.

13 A. MR. INGSTRUP: If I could add, too.

14 Q. Please.

15 A. There's a lot of information that we'll look towards
16 in terms of -- that are in the recovery strategies
17 for, for any particular species, so what you find in
18 those strategies is things like recovery objectives
19 for that species and that's where, if we put it in a
20 strategy, there's a critical habitat that's identified
21 for that species as well.

22 But -- and there's quite a bit of other
23 information: What are the threats to that species;
24 what constitutes destruction of critical habitat? So
25 we'll look to those strategies to certainly help us

1 guide any determinations we make when we make a
2 determination that an activity is jeopardizing the
3 survival or the recovery of the species.

4 I think it's important to note that the Act
5 says, or our test is survival and recovery, or
6 recovery. So I just wanted to add that point. That's
7 certainly an important information source for us and,
8 and for people like Paul who will be faced with
9 reviewing these permits.

10 Q. Thank you.

11 One more for Colonel Lamarre just briefly,
12 sir. Yesterday, I think it was, or earlier, you
13 talked about the NWA management strategy and in
14 response to questions, as I recall, you described
15 generally how it was developed, who was involved, and
16 I think you indicated that there was essentially no
17 consultation and you gave reasons, but you also said
18 something along the lines -- well, I've looked in the
19 transcript and you did say:

20 "The strategy document was for
21 folks who potentially are going to
22 use this thing."

23 And I, I just want to make sure I'm
24 understanding. Does that mean that the strategy
25 document is really intended for the Base staff or is

1 its broader circulation intended -- and use intended
2 once it's approved?

3 It's just not clear to me what that document
4 will -- how that document will be circulated, if at
5 all, and are the folks who are -- have the potential
6 to use it, do they include industrial users of the
7 Base or are they limited to your folks?

8 A. COL LAMARRE: Thank you, sir. I will lead
9 off but then I'll turn over to the Base Commander as
10 well who will do the practical application of that
11 strategy.

12 Really, the strategy is established as a
13 resulting -- as a result of the assignment of a
14 National Wildlife Area to CFB Suffield. Based on that
15 assignment, and the delegated powers that were given
16 from the Minister of National Defence to the Base
17 Commander, there's also requirement for him to receive
18 guidelines more so than just you have the National
19 Wildlife Area. There's a strategy for how you will
20 look after it and that was -- has occurred with the
21 strategy itself.

22 The document is not really meant to be
23 distributed to a whole bunch of users, for example,
24 industry or individuals conducting research. The
25 intent is to give guidelines to the Base Commander so

1 that he in turn can do the proper management. And the
2 way that I interpret that is that it means that with
3 his ability to issue instructions, to issue orders and
4 to run systems, that's what he will use as his guiding
5 philosophy.

6 Mr. Mousseau yesterday also asked the
7 question yesterday, if you were to point to one
8 specific document that would be a good guideline for
9 all to follow -- I turn to the Range Standing Orders
10 and that was my answer yesterday. And within there,
11 there are various aspects of the Base that are
12 addressed under it including the environment,
13 including a chapter on oil and gas and including a
14 number of chapters related to training on the Base.

15 So, the strategy exists to give guidance to
16 the Base Commander and his staff. It is certainly a
17 document that is available in the public domain, if
18 you will, but in reality it's a guidance to him to
19 create then orders, instructions and his RTAM system
20 to do the proper management of his responsibilities,
21 specifically the Base, sir.

22 Q. That says I understood you yesterday, sir, and it was
23 just that the comment, "Folks who potentially might
24 use it" then led me to wonder whether it did have
25 another use that I was missing. So I would welcome

1 further comment, but you've answered my question.

2 I have a couple of things further with you,
3 Colonel Bruce, and they're certainly areas you've had
4 considerable discussion on with others, but I, I just
5 want to check a couple of things.

6 One of them relates to SEAC -- several relate
7 to SEAC, and one of them is that I think you said,
8 perhaps just this morning, that you were happy with
9 the, the role that SEAC has now. I think I heard you
10 say that. And I wanted to make sure, sir -- we heard
11 last night, and I know you weren't here, but I expect
12 you're well aware of what we heard, that at least
13 some of the SEAC representatives believe that the
14 role they're now playing is not the full role that
15 their interpretation of the agreement would give
16 them.

17 And I don't know if you agree whether or not
18 they're playing the role that is set out in the
19 agreement in its entirety, or whether you feel that
20 as some of the members of SEAC do, that they're
21 falling short in that regard and can you help me
22 first on that?

23 A. LCOL BRUCE: I think, sir, I would divide
24 that into two parts. I think in terms of their actual
25 role, I believe their role is -- I, I support what has

1 been prescribed as their role, Base Commander
2 advisors, you know, processes within the reclamation.

3 I think the, the key part for them is the
4 ability to fulfill those roles is really what's in
5 question and I, and I think that goes to the heart of
6 the matters. They are currently not resourced to be
7 able to fulfill their mandates as prescribed. Some of
8 their, some of their mandate has been, shall we say,
9 modified over the course of time and I think primarily
10 due to resource constraints but also because of the
11 way the system was designed, for example, industry
12 going directly to SEAC without knowledge of the Base,
13 SEAC not necessarily informing the Base because they
14 had thought that was a parallel process, and therefore
15 giving advice without the Base's understanding.

16 And I think that's why, over the last few
17 years, that's been tightened up a bit to ensure that
18 there's situational awareness amongst all of those
19 that need to have input into that decision process.

20 Q. Well, sir, I, I think you've confirmed that you said
21 you're happy with the way SEAC is fulfilling its role
22 now. You also said that they're falling short on
23 some parts of the mandate because they aren't
24 adequately resourced. We've heard that from many.

25 Tell me, would you be -- you're happy now.

1 Would you be happier if they were resourced
2 sufficiently that they could fill their mandate
3 completely as set out in the agreement?

4 A. Yes.

5 Q. Thank you. One other aspect of, of SEAC as well,
6 although it relates to the pre-disturbance assessment
7 process, and I wonder, sir, if you could turn to your
8 Opening Statement and the figure that showed the NWA
9 permit flow. And it's on page 11 in my hard copy.
10 Do you have that, sir?

11 A. I do, sir.

12 Q. And I appreciate that this is for a NWA permit and, as
13 I understand it, you would require a permit for any
14 activity surveys and the like. I'm going to focus on
15 the activities related to drilling a well, the
16 related flow lines and trails, so that part of the
17 process.

18 And I take it, sir, if I, if I look at this
19 chart that you have here that the PDA process that
20 EnCana has proposed would, would fit in the sense
21 that the results of the six steps that they proposed
22 and which they indicated they would provide data to
23 SEAC and the Base after each step, that that would
24 mean a parallel flow through SIRC, I take it here, to
25 both the Base and to SEAC through that six-step

1 process.

2 And what I want, sir, is to hear what you
3 think of the PDA process itself that they've proposed
4 with the six steps, the notion that you'd get the
5 data at each step. I think in elaboration they
6 indicated they would do it in chunks, perhaps a
7 battery size or more.

8 I'd, I'd like to hear the Base's reaction to
9 the PPA process as proposed by EnCana assuming, as
10 I've suggested, that it would fit into this chart
11 feeding into SEAC and the Base; can you help me, sir?

12 A. I believe I can, sir. I think, I think with regards
13 to that particular flow chart, I think the arrows
14 would then have arrows going both ways because it
15 would be an iterative process based on what my
16 understanding of EnCana's PDA process is.

17 And, therefore, if you will, steps 1
18 through 6 would be an iterative process throughout
19 that life cycle of the establishment of the PDA.

20 That said, eventually that PDA would be
21 completed and form part of an Application for
22 Development that would go through the normal staffing
23 process.

24 As I highlighted in my Opening Statement,
25 sir, I said having not gone through a full PDA process

1 I would be hesitant to say whether I liked it or
2 didn't like it, to be honest with you. But as I
3 mentioned, it looks like it has most, if not more of
4 the components of an EO, or an environmental overview
5 which is done now, and I think any process that is
6 more consultative (sic) in, in this regards would be
7 beneficial.

8 My one concern is, is capacity and I'm just
9 not convinced that SEAC nor my own staff would be able
10 to meet the demands that this will potentially have
11 on, on the Base.

12 Q. And, sir, I, I heard your -- I heard comments earlier
13 on the question of the pace of development and I
14 guess that would be one way to address that capacity
15 matter?

16 A. Correct, yes, sir.

17 Q. And, and, sir, I also heard comments on the notion of
18 a test pilot of the process. We heard that from SEAC
19 last night and I take it that you would also want to
20 do that and to have input in the final form that the
21 PDA would take?

22 A. That would be helpful, yes, sir.

23 Q. Thank you very much for those responses and for your
24 patience.

25 Although I see -- I think I've got another

1 response?

2 A. MR. NORTON: Sorry, sir, I just didn't
3 want to interrupt your, your line of questioning. I,
4 I wanted to add, cycling right, right back where you
5 started, one further comment with regard to the issue
6 of aboveground or below-ground wells.

7 The Base Commander stated his preference and
8 my comments are not intended to take sides one way or
9 the other. It's something I just wanted to propose
10 and that is that you've heard from Canada that one of
11 the dominant themes from us, in our view of the
12 Project, relates to our uncertainty related to the,
13 the environmental -- the impacts of the proposed
14 Project on the environment and indeed on the Military
15 uses of the Base.

16 The, the impacts related to putting wells
17 below ground in caissons has not been assessed as part
18 of the EIS and so they presumably would be associated
19 with different -- I won't necessarily claim greater in
20 every case, but simply different environmental effects
21 and potentially different forms of mitigation might be
22 appropriate and so on.

23 And I would simply suggest that in
24 considering that question, that the level of
25 uncertainty around the overall impact could be viewed

1 to be even greater than where we currently stand.

2 MR. DeSORCY: Thank you, sir. And thank
3 you to the full panel. That's all the questions that
4 I have.

5 THE CHAIRMAN: Thank you, Mr. DeSorcy.
6 Given it's about 2:30, I think we will break before
7 turning to Dr. Ross and his questions.

8 But I did want to add, just in terms of our
9 planning for the rest of the day and what the
10 implications of that will be.

11 We still need to, once we finish the
12 examination of the Government of Canada, we will of
13 course give Mr. Lambrecht the opportunity for any
14 redirect examination that he may wish to undertake.
15 We also have -- after that we'll want to hear from
16 SIRC and we also have the two panel experts that we
17 will want to hear from as well.

18 What this means, I believe, is that we will
19 need to continue into tomorrow. I don't see much
20 chance of completing this afternoon, in other words.

21 And for that reason, for your own planning, I
22 would suggest that we might try to finish at a
23 somewhat earlier hour than we did last night and
24 propose breaking around 5 o'clock or so and of course
25 we also have -- want to give EnCana the opportunity

1 for rebuttal and I forgot to add that into the
2 sequence of events that must occur.

3 So, with all of that, I think it, it is
4 appropriate to make sure we plan for some time to sit
5 tomorrow and we'll come back to that later.

6 So with that we'll break for 15 minutes and
7 reconvene at quarter to 3:00. Thank you.

8 **(PROCEEDINGS ADJOURNED AT 2:30 P.M.)**

9 **(AFTERNOON BREAK)**

10 **(PROCEEDINGS RECONVENED AT 2:47 P.M.)**

11 THE CHAIRMAN: Ladies and Gentlemen, I would
12 like to reconvene. Mr. Denstedt, you wish the floor,
13 please.

14 MR. DENSTEDT: I can let the parties know it
15 might be helpful to know what we're going to rebut
16 tomorrow so people can have the right parties here and
17 if others aren't necessary they can do some
18 sight-seeing. Mr. Collister will be providing some
19 rebuttal in respect of the snakes and, and birds.
20 Dr. Walker has a small amount of rebuttal in respect
21 of reclamation. Mr. L'Henaff and Mr. Heese has --
22 have a small amount of rebuttal in respect of EnCana's
23 operations and Mr. Fudge has a piece of rebuttal on
24 water. It will take -- all in all it will take less
25 than an hour to do that.

1 THE CHAIRMAN: Yes. Thank you,
2 Mr. Denstedt. That's very helpful for everyone to
3 understand.

4 All right then. We'll turn to Dr. Ross with
5 his questions.

6 DR. ROSS: Thank you, Mr. Chair.

7 Q. My first few questions will be fairly straightforward
8 and easier and, as I progress, they will become more
9 complicated especially for me. The first one relates
10 to your response, I guess, this is DND in particular
11 and perhaps Mr. Richmond in particular -- especially
12 your responsibility for the National Wildlife Area,
13 emphasis mine. Yesterday Mr. Richmond you said "we
14 don't manage wildlife" and I guess I would appreciate
15 if you'd help me to understand what you meant better
16 because I'm thinking maybe either you misspoke or I
17 didn't take it in the right context.

18 A. MR. RICHMOND: No, what I said was -- was
19 correct, but I was speaking in, in terms of the larger
20 ungulate populations and deer, elk and antelope. They
21 roam freely on to -- on to the Base and off the Base
22 just as they would any other landowner in the province
23 and it's really Alberta Fish and Wildlife who are the
24 responsible managers for -- excuse me, for wildlife in
25 the province.

1 Q. I thought that was what you might have meant, but I
2 thought I'd make certain I understood.

3 The, the second one relates to -- this is
4 probably more for Environment Canada -- relates to
5 a discussion we had about offsets and, and just let
6 me identify one offset that seems to make sense to me
7 at least conceptually and see if you reject it as
8 readily as you did all the other ones that you
9 rejected yesterday.

10 There are areas in the National Wildlife Area
11 today that have been seeded with Crested Wheatgrass,
12 for example, and one might say as one of the offsets
13 for further development in the National Wildlife Area
14 one could do something with the existing Crested
15 Wheatgrass as a -- as an offset so that there would
16 be -- I guess this is the opposite of how it's
17 usually posed -- no net gain in Crested Wheatgrass
18 availability. Is that, is that any more constructive
19 or is that still a crazy idea?

20 A. MR. INGSTRUP: I'll start, since I made the
21 statement yesterday in terms of sort of dismissing
22 the, the notion of offsets I think on a landscape
23 scale. We certainly have a concern about that. Your
24 proposal here in terms of no, you know, not --
25 essentially not -- implementing, I guess, a no net

1 gain in Crested Wheatgrass is what you're implying and
2 that would offset some further development, it's
3 difficult to comment on that specifically not knowing
4 really, you know, are we introducing more of a problem
5 here for wildlife in general? You know, is the
6 trade-off there?

7 I, I really can't -- I can't comment on that.
8 So, so given that, not having that information, I
9 think I would still have a concern, you know,
10 certainly agreeing to that that would be a positive
11 thing for the National Wildlife Area. But I'll turn
12 that -- I mean, we've got a number of people here
13 particularly Darcy who's probably more versed than I
14 am in terms of Crested Wheatgrass and I think it would
15 be good to get his impressions as well.

16 A. DR. HENDERSON: Yes, Darcy Henderson here.
17 Pages 182 and 183 of the Government of Canada
18 submission actually make, make reference to that idea
19 of using some either preventative techniques to stop
20 invasion from further occurring or even some
21 restorative actions to try and eliminate the area
22 invaded by Crested Wheatgrass as one potential offset
23 that could be considered in this Project. I don't
24 know. We -- I guess, I say, it was an idea that was
25 discussed collaboratively amongst a few of us here.

1 I wasn't sure if someone else had something to add.

2 Q. My, my sense is less than overwhelming enthusiasm.

3 A. MR. INGSTRUP: Correct.

4 Q. The -- let me move on because Mr. Ingstrup suggested
5 that removing Crested Wheatgrass could have an
6 adverse effect on some wildlife and so I, I guess I'm
7 a little concerned about how one might go about
8 managing a National Wildlife Area and let me pick a
9 very different example. It's my understanding that
10 there are several wildlife species that rely on
11 active sand dunes, and I'm seeing a couple of nodding
12 heads over there. I will name a couple of those
13 species and don't push me after the first two, but
14 one of them was the Sprague's Pipit and another
15 one -- another Sprague's Pipit. And not even the
16 first one. I didn't -- I should have gone with the
17 Ord's Kangaroo Rat where I know that's right. But
18 at least there are some species for whom the active
19 sand dunes constitute their habitat and, and I --
20 we've been told by a number of sources that the
21 amount of active sand dunes over the last several
22 decades has sharply decreased and yet there are other
23 species and perhaps the same ones who, like the
24 Crested Wheatgrass, that would benefit from turning
25 active sand dunes into something with a bunch of

1 grass on it.

2 And I guess my question is: Is the intention
3 of managing the National Wildlife Area one of picking
4 which species get to, to benefit? Or is it, in fact,
5 as I might have understood it, he said, hinting, as
6 I might have understood, somehow restoring the
7 natural grasslands ecosystem which I thought -- my
8 last question will be about reclamation, but -- and
9 so let me stop there for now.

10 Do you choose which species benefit or do you
11 attempt to, to restore natural grasslands ecosystems
12 in -- in the National Wildlife Area?

13 A. LCOL BRUCE: Sir, if I could start off and
14 I -- and I say this with being a very humble man
15 saying that I'm not sure what all the technical
16 answers are, but in my particular case, I look at the
17 whole first and then I delve down in specific areas
18 and in this particular case I'm looking at the whole
19 ecosystem as a sustainable entity. But, most
20 importantly, out of all the species at risk, the
21 Kangaroo Rat is my little champion because he is --
22 he is not doing as well because we have been far too
23 effective at minimizing the amount of disturbance in
24 some cases, man, or, you know, natural-occurring
25 disturbance like fires and, therefore, some of the

1 dunes have been stabilizing. So we've introduced a
2 program to try and burn off, if you will, some of that
3 new grass in those particular areas to get some of
4 that movement back.

5 Because out of all the species at risk, and
6 I'm opening myself to be corrected from some of my
7 team, the Kangaroo Rat is the one that I am -- that is
8 not as healthy as all the rest of them nor do they see
9 positive growth in their -- in their numbers
10 necessarily.

11 Q. Just before you continue, Mr. Jensen, I, I do want to
12 indicate to Colonel Bruce that he has jumped ahead to
13 the last part of this question and so I'll be happy
14 to do that. But, Mr. Jensen, please?

15 A. MR. JENSEN: Well, I believe two of the
16 species you might be thinking about are, of course,
17 Ord's Kangaroo Rat as mentioned and perhaps the
18 Gold-edged Gem which is also a sand dune obligate.
19 One of the concepts or principles, of course, in
20 protected areas management is conserving process
21 diversity as well as species diversity, so the intent
22 there is if there's enough processes on the landscape,
23 natural processes, that you've got heterogeneity or a
24 diversity of landscapes that can support a broad
25 diversity of species.

1 From a management point of view, and I'll let
2 my colleagues with DND comment on this one, too, is
3 there would -- there may be a concern, it may become
4 difficult if there's so many users on a land base to
5 be able to fully exercise all of your restoration and
6 research options, so though we might want to restore
7 dunes or, or -- or such -- or other habitats, it may
8 become difficult if the National Wildlife Area becomes
9 so busy it's difficult to do so.

10 Q. I guess just before I get to the fire question,
11 it's -- it's my understanding from the material that
12 I've read that the fire suppression in the National
13 Wildlife Area is the primary cause of the diminished
14 active sand dunes. Is that reasonably correct?

15 A. DR. WOLFE: This is Dr. Stephen Wolfe.
16 I've been looking at this across the prairies
17 considerably and I would have to say that probably
18 disturbance suppression is what you're getting at
19 could be a major role in that, that in some cases --

20 Q. I'm sorry, disturbance --

21 A. I call it --

22 Q. Disturbance pressure?

23 A. I call it disturbance suppression. What I mean is
24 that there are disturbance mechanisms like fire and
25 grazing, generally speaking, that would maintain

1 active sand dunes. So we've lost, for example, the
2 large, you know, the bison ungulates would have had a
3 major impact particularly near river crossings. Fire,
4 of course, is suppressed as a function of disturbance,
5 so those are the two, from -- from this context, major
6 areas. We really don't fully understand the past role
7 of climate and in the consequence of today and its
8 role today. Obviously drought and -- plays a
9 significant role as well and, in fact, most
10 researchers look more to climate and the whole area
11 of disturbance has, has not been well researched as a
12 consequence of that.

13 Q. Let me be clear that I'm talking about the last few
14 decades, so --

15 A. Yeah, in the last few decades --

16 Q. -- the loss of bison is not really --

17 A. No.

18 Q. -- on here.

19 A. Right now --

20 Q. The feral horses, yes --

21 A. Yeah.

22 Q. -- the offset of elk, I, I leave it in your hands to
23 tell me which is more important, but it seems to me
24 that one issue -- it seems to me, from the materials
25 submitted by a number of people, that a fire return

1 period is supposed to be about seven years, in that
2 area, and you folks have turned it into 20 plus?

3 A. That seems to be the case.

4 Q. Okay, thank you.

5 And I guess, if I understood you correctly,
6 Colonel Bruce, and I've heard hints of it earlier,
7 you now are introducing a mechanism of -- let me
8 put words in your mouth -- of restoring the
9 seven-year return period for fires in the National
10 Wildlife Area through some suitable mechanism?

11 A. MS. BOYD: There have been some -- there
12 have been some efforts to introduce fire very I would
13 say surgically in the NWA through particular research.
14 However, in terms of a large-scale plan for
15 re-establishing a natural or emulating the historical
16 fire regime, as you've suggested seven years, that's
17 something that would be part of a plan that is
18 intended to emerge out of the Suffield Sustainability
19 Management Planning process.

20 A. DR. WOLFE: Dr. Wolfe again. Just to be
21 clear, the work that we have done has not been
22 exclusive of fire. We have been looking also at
23 grazing and even other aspects of what I would call
24 managed disturbance, creating a small blowout which is
25 quite different than vehicle activity. I would like

1 to make a point of that, that having an isolated dune
2 area which represents habitat I would not want to
3 suggest that that's the same as creating vehicle
4 disturbance, but we are looking at different
5 mechanisms, three in particular, of active blowouts,
6 grazing and fire.

7 Q. This small blowout, I mean, in Suffield I have a
8 certain image that would be a blowout, but I don't
9 think that's what you mean.

10 A. I -- no, we haven't used any ammunition. There's
11 been --

12 Q. How --

13 A. Hand-dug, a hand-dug pit.

14 Q. I see, thank you.

15 A. Small to begin with and then monitor that through time
16 and look at both the habitat 2 metres by 2 metres by
17 4 metres.

18 Q. Thank you. I'm going to change the subject. Routine
19 and Non-Routine Applications, there are, so far as I
20 can make out, three different meanings for the term.
21 One is the term that EnCana uses when it uses its
22 PDA process. I could probably describe it, but I'm
23 going to leave that alone. The second routine and
24 non-routine is your own terminology and the third
25 routine and non-routine is a terminology that the

1 ERCB uses. As I understand it, all three are
2 conceptually different and yet they're all the same
3 English language words.

4 Can you tell me whether in your opinion and
5 in the opinion of the Government of Canada there is
6 some commonality among the three terms or are they
7 just completely different?

8 A. LCOL BRUCE: Sir, I would not necessarily
9 agree with the difference of definition between EnCana
10 and ours. I believe that they are describing what
11 their desires are in terms of a PDA routine process,
12 i.e. that 80 percent of their applications would be
13 routine. So in terms of defining routine and
14 non-routine, I think we pretty much have it in sync.

15 In terms of what the meanings of "off the
16 Block" are, you're absolutely correct. A non-routine
17 or an application becomes non-routine off the Block
18 when a landowner does not give consent and then it
19 goes off to the various ADR and then on to boards
20 for reconciliation. Those terms do mean something
21 different than what we are talking about.

22 For us, a routine application I think, as we
23 described, is generally speaking we do a desktop, we
24 do a verification of all the paperwork that's been
25 provided and if there is nothing there that triggers,

1 there's no triggers that have been -- that have sort
2 of been switched on, then that application is
3 processed very rapidly in terms of approval.

4 Q. I thought your -- any application in the National
5 Wildlife Area would be --

6 A. Correct, sir, but I'm just saying in terms of
7 "routine" and "non-routine" is the terms that you
8 used.

9 Q. Yes.

10 A. For non-routine, that means there's been some trigger
11 and in the case of the NWA, everyone would be
12 considered a Non-Routine Application.

13 Q. So you only differ with EnCana on 80 percent of the
14 wells?

15 A. No, I think in terms of the differences, we are --
16 in terms of the terms, we are the same. It is my
17 application of those terms, i.e. what I'm going to
18 consider those applications as, and in the case of the
19 NWA they are considered non-routine.

20 Q. Thank you.

21 Mr. Smith and Dr. Rowland, before carrying
22 out your field studies, did you consult with EnCana?
23 And the reason I ask is it seems to me that some of
24 the -- some of the results would have been more
25 clearly delineated had you obtained information on

1 exactly when wells or pipelines were installed and
2 how they were done and so on and so on. And that
3 seemed to me the sort of information that you might
4 have been able to obtain from EnCana. Did you do
5 that before carrying out your field research?

6 A. MR. SMITH: I have asked for some
7 reclamation data historically, yes. In terms of the
8 studies that I have done, I had not asked for specific
9 reclamation data. I did ask for some last year to
10 interpret the results of my data, but I haven't
11 received anything yet, no.

12 Q. Dr. Rowland?

13 A. DR. ROWLAND: With regards to my study, I
14 did, I did two studies and for the second study it was
15 a little more focused on natural gas activity within
16 the Wildlife Area. When I proposed this study it was
17 mentioned to EnCana so I did come out and I met with
18 Mr. Heese and I went through my methodology and what
19 I was trying to do and why and I did emphasize that
20 the reason behind this research was not for the JRP;
21 it was for determining sustainability, but we went
22 through the methodology. He had a few recommendations
23 which I accepted and at that point I did ask for
24 additional information.

25 At that point very little information was

1 provided. It was just mentioned that little records
2 were kept on sort of what techniques were used and
3 when things were installed and stuff like that. So
4 I did use the best available information.

5 Q. I'm going to move on then. Thank you.

6 And perhaps, Mr. Jensen, I'm going to ask
7 about our friends or Colonel Bruce's friends, the
8 Ord's Kangaroo Rat. Could you summarize -- I think
9 you're the Ord's Kangaroo Rat specialist on the panel
10 and so could you summarize for me what you understand
11 to be the most important impacts of this proposed
12 Project on the Ord's Kangaroo Rat?

13 A. MR. JENSEN: I'll defer also to my
14 colleague Dr. Wolfe. With respect to the Project, of
15 course, we looked at a number of factors through our
16 systematic review and assessment of what might be
17 potential effects, so we were looking at
18 fragmentation, bare ground, invasive plants, linear
19 disturbance and traffic on Ord's Kangaroo Rat. As I
20 mentioned a few days ago in testimony, the literature
21 is rather inconclusive with regards to what might be
22 significant effects on Ord's Kangaroo Rat.

23 With respect to this Project, some of the
24 concerns again I believe would come around -- invasive
25 plants would be a concern, linear habitats and these

1 habitats potentially becoming sink habitats for
2 Ord's Kangaroo Rat, as was discussed a couple of days
3 ago.

4 I might refer you as well to the discussion
5 in our submission around Ord's Kangaroo Rat which
6 describes it in a bit more detail, but if you're
7 looking for sort of the top two, I suppose, the
8 potential for the development of sink habitats through
9 the development or enhancement of roads or trails in
10 the National Wildlife Area is certainly a concern as
11 well as invasive plants. But, to be fair, the
12 invasive plant issue seems somewhat inconclusive with
13 respect to Ord's Kangaroo Rat with respect to our
14 literature review anyway.

15 I think, again, as I said a couple of days
16 ago, that likely relates to the fact that most of the
17 studies on Ord's Kangaroo Rat have been done in the
18 United States where they're not subject to the same
19 climatic or population variability factors that they
20 are here in Canada. I think that's -- unless
21 Dr. Wolfe has more to add, I'll leave it there.

22 Q. Dr. Wolfe, please?

23 A. DR. WOLFE: Yes, Dr. Wolfe. The only
24 thing I have to add has been with regards to soil
25 compaction and looking at the natural sand dune

1 habitats which have relatively loose sand compared to,
2 say, road habitats that have compacted soils and the
3 effects that that has on Kangaroo Rats. Specifically,
4 for example, the thermal regime for winter, in the
5 wintertime the compacted roads can be colder and that
6 can affect winter mortalities of Kangaroo Rats.

7 Q. Sorry, so is the compaction the same as the sink
8 habitats that were referred to earlier or is it
9 compaction even in their, their normal homes?

10 A. In that regard it's a sink in so much that if the
11 population moves into an area like that, they may not
12 do as well so that population declines and that's
13 what's referred to I believe as the sink.

14 A. MR. JENSEN: And to emphasize from
15 yesterday's testimony, it may seem inconsequential,
16 but again, when you've got a population that naturally
17 loses up to 90 percent of its, of its numbers over a
18 winter, any further perturbations can result in
19 potential local I would say extirpation but loss of
20 satellite populations, so it can be a significant
21 factor.

22 Q. I'm going to come back to you in a moment, Mr. Jensen.
23 I'm just going to give Ms. Dale a heads-up that the
24 next question will be exactly the same for Sprague's
25 Pipits, but just before I get there, you alluded to

1 fragmentation and I wasn't sure I understood the
2 nature of fragmentation that might have an adverse
3 impact on Ord's Kangaroo Rats.

4 A. MR. JENSEN: And there's a number of my
5 colleagues that might want to address this issue
6 as well with their species. It's, of course, become
7 a fairly substantial point of conversation at these
8 hearings as to whether or not the activities that are
9 proposed in this Project would constitute any kind of
10 fragmentation, so I'll try not to give too long of
11 an answer, but of course we're talking about roads
12 to some extent but generally trails and along those
13 trails we're talking about some volume of traffic
14 that's going to be using those particular trails.

15 Habitat fragmentation is sometimes viewed in
16 a binary context; it's either/or. In this context
17 we're really talking about some kind of linear
18 feature, traffic moving along it and habitat being
19 fragmented in the sense that animals are not
20 absolutely not using that habitat, but their abundance
21 or survival is reduced along those, those corridors.
22 That does result in some form of habitat fragmentation
23 in that there's either a local population sink or
24 habitats are severed.

25 In the case of Ord's Kangaroo Rat, the

1 fragmentation might result in the fact that you've got
2 these habitat sinks that Ord's Kangaroo Rats are drawn
3 in towards and they don't necessarily survive there.
4 It means where they might have otherwise travelled
5 across the landscape to more suitable habitats that
6 would allow for long-term persistence, they're either
7 not travelling all the way to a further habitat
8 because their animals are becoming trapped along the
9 road where it appears to be good habitat but isn't,
10 so the good habitats that used to be connected are
11 now severed by a sink habitat along a road and are
12 fragmented.

13 There's lots, I think, Ms. Dale might wish to
14 discuss with respect to birds. For Ord's Kangaroo
15 Rat, that is part of the explanation on fragmentation.

16 Q. As I say, she's next. Okay, I think I understand your
17 response in the context of Ord's Kangaroo Rats and
18 I'm just looking at others to see if there may be --
19 please, Dr. Henderson?

20 A. DR. HENDERSON: Yes, I agree with Mr. Jensen
21 that there's been some confusion over this.
22 Fragmentation is really a process that ultimately
23 leads to habitat loss or degradation and there are
24 different components to that process and they all have
25 to do with human land use activities. So in the early

1 stages of fragmentation there are different processes
2 such as perforation, which is the creation of holes in
3 a landscape that could be quite small, and dissection
4 which is usually by linear features. And as time goes
5 by, those linear features can start to grow in some
6 cases if there's an invasive species that established
7 along them and that leads to the shrinkage of the
8 patches that are created by all of this dissection
9 and perforation and as those patches shrink there's
10 sometimes attrition, so complete loss of habitat
11 patches for one particular species.

12 In some cases, that also leads to the
13 creation --

14 Q. Could you help me to see how that would work for
15 Colonel Bruce's little friends?

16 A. For the Ord's Kangaroo Rat?

17 Q. Yes.

18 A. Well, in that case, if you compare this process of
19 fragmentation to say a natural disturbance regime,
20 natural disturbance regimes do not necessarily follow
21 the same patterns of human land use. Drought, for
22 example, will have a regional impact. It will affect
23 everywhere all at the same time. Fire creates patches
24 and space that are not connected to some other network
25 of fires. Grazing also creates patches, but sometimes

1 these are connected by networks and trail networks
2 that livestock have created.

3 So there's some similarities to some of our
4 human land use patterns with natural disturbance
5 regimes, but other forms of natural disturbance are
6 completely unlike our human land use activities,
7 especially industrial land uses and the creation of
8 roads, pipeline rights-of-way, those are quite
9 different from any, any type of natural disturbance
10 on the landscape.

11 And for Kangaroo Rats, for example, the point
12 that I think Mr. Jensen has been trying to make and
13 also with Dr. Wolfe is that these sand dune patches
14 are important for Kangaroo Rats and they will find
15 their way between these patches to disperse and spread
16 around the landscape. But when we create these linear
17 features of disturbed ground it also attracts Kangaroo
18 Rats, a long linear line of sand is not a naturally
19 occurring feature, and vehicles driving back and over
20 top of sand --

21 Q. Yeah, I'm sorry, I was thinking of the spread of
22 invasive vegetation.

23 A. Oh, okay.

24 Q. The example I was looking for. I couldn't quite link
25 that to a Kangaroo Rat.

1 A. Okay. In that case I guess there's a couple of
2 different issues. In one case, invasive species may
3 establish on these disturbed trail networks and they
4 will spread throughout the landscape along those
5 networks and find their way to these isolated sand
6 dune patches and some of those species can establish
7 in sand dunes and may help lead to the, the rapid
8 stabilization or more rapid stabilization of those
9 dunes. Some of those species might also compete with
10 food plants that are important to something like a
11 Kangaroo Rat. Again, I'm not that familiar with the
12 Kangaroo Rat, so I don't want to speak on any specific
13 species.

14 A. MR. JENSEN: The only other point to add
15 perhaps on the invasive species is, Dr. Henderson
16 mentioned invasive species displacing plants that may
17 be of value to Ord's Kangaroo Rat. There is some
18 literature, although still somewhat inconclusive,
19 about the quality of the food that comes from invasive
20 species, but I wouldn't lend too much weight to that.
21 There, there is debate back and forth about whether or
22 not invasive species plants are better or worse. It
23 does appear there are differences, but how that
24 affects survivorship in these northern populations is
25 unknown.

1 Q. Thank you. And lest anyone else wants to stop me, I'm
2 going to move on to Ms. Dale and, again, the same
3 basic question: What are the most important impacts
4 that the Project would have on Sprague's Pipits who
5 don't care about sandy habitats?

6 A. MS. DALE: Brenda Dale. Well, the most
7 important thing would be, as I understand, there will
8 be about 350 kilometres, if I have my numbers right,
9 of new linear disturbance and this species, Sprague's
10 Pipit, is an area-sensitive species and it is a
11 species that avoids edge and so it comes down to a
12 question of whether or not they perceive these trails
13 and pipelines as edge.

14 And I think I mentioned before that they kind
15 of are making their choices on two levels: they're
16 going to make it on a landscape level, on features
17 that are on a landscape level and also on a
18 microhabitat level and there is certainly, when I was
19 speaking about knowing their area sensitivity and edge
20 sensitivity, those are things we know from studies
21 elsewhere. But we also know that they have very
22 specific microhabitat kind of preferences and some of
23 those things that are very important to them are the
24 amount of residual material and mainly what is lying
25 on the surface as well as standing, standing dead

1 material, and that's because of their particular
2 habits.

3 So what Sprague's Pipits are about, since
4 this is my last opportunity, I will try and make this
5 bird a little more real for you, you may have noticed
6 in the picture that they're very -- they're colored
7 very much to fit into the landscape and they're
8 basically -- most of their life is about not being
9 seen and they, they are -- they don't need any
10 perches. They don't want to perch. They do all of
11 their singing in the air. So their vision of the
12 earth is a little bit like when you were flying out in
13 a helicopter out on the Base during your visit. So
14 they're several hundred feet, maybe even higher, up in
15 the air singing and they move around their territory
16 and so for them a line on the ground that has more
17 bare ground is visible and it is very likely that it
18 could influence where they put their territory and
19 the reason it could, and I am speculating here, but
20 the reason I can see -- understand some of the effects
21 we seem to be seeing, that some studies seem to be
22 seeing, is that when they do come to earth they
23 basically again don't want to be seen. So, for us,
24 when they're in the sky, they're just merely a speck.
25 When they come down, they come -- plummet to earth,

1 they go under the grass and they go to, say, their
2 nest without being seen.

3 So, for them to cross a barrier where there's
4 more open ground, that would mean that that would very
5 greatly limit the number of ways they could, say,
6 approach their nest because they would have to cross
7 this open ground in order to get there and their whole
8 modus operandi is not to be seen.

9 So that's one way I can envision why it is
10 that this is visible to them and that it might matter
11 to how they select their territory. I'm not saying
12 I know for sure because we couldn't know that, but
13 this is something I know about their particular
14 behavior that might explain why it is that they seem
15 to be avoiding trails.

16 As I said, they perceive edge, they avoid
17 edge. They do not like these invasive exotic species
18 that have different structure and, again, this has
19 to do with their different microhabitat needs --
20 sorry, I'm going too fast. I apologize.

21 So it's got to do with the kind of habitat
22 they need to hide their nest in and so on and Crested
23 Wheatgrass, for example, has too much space between
24 the plants, open, open space between the plants. It
25 doesn't tend to go into a nice recumbent structure so

1 that they can put their nest under it, that kind of
2 thing. It doesn't offer them what they need.

3 So I think these extensive linear development
4 (sic) is going to be a fairly large issue for them
5 and we are, we do see, I'm sorry, we do see some
6 evidence, as I say, from, even from the data that was
7 presented that -- that some tests that were not
8 subject to -- sorry, not subject to observer bias or
9 where there was a comparison between two habitats or
10 two well densities did show differences. They were
11 non-significant, but they were a fairly substantial
12 size and the power was lacking to say for sure that
13 they were not important differences.

14 When we re-analyzed our data, we found some
15 patterns that seemed to show there was a problem as
16 well and, as I say, there is literature related to
17 edge and area and exotic vegetation that would support
18 all this. There is Mr. Linnen's study which the one
19 for gas did not show a significant effect, but he did
20 note that it was very obvious to him, this is his
21 professional judgment, that there was a pattern of
22 avoidance of trails.

23 And so I think there is support. It's a very
24 limited literature at this point. I would reference
25 back to something Dr. Stelfox said that 20 years ago

1 nobody thought narrow linear openings in forests were
2 a problem, but we now realize they are and this is
3 sort of a new area of research that's just starting to
4 be followed.

5 So I'm sorry I went on for so long. I hope
6 I've answered your question.

7 Q. That was certainly very helpful.

8 A. MR. JENSEN: Sorry, Mr. Ross, if I may add
9 one --

10 Q. Please.

11 A. -- one thing that may be of use, just for the record,
12 I'll direct you perhaps to a couple of items in the
13 material that might be of use. As I mentioned, we've
14 discussed over the last few days quite a bit about
15 this sort of improbability that these small features
16 and relatively low traffic volumes could, could sever
17 habitat in some way. Environment Canada was, of
18 course, very interested in this topic and I believe
19 we took a very systematic and thorough approach with
20 our literature review.

21 I will point to, out of interest, the
22 Government of Canada submission which is 003-012 and
23 page 302 which you could look at at your leisure
24 if you like and it presents a meta analysis or an
25 analysis of linear disturbance features on grassland

1 birds and highlights the key papers and shows fairly
2 conclusively that there is some kind of an effect.

3 Secondly, I'll point you to the Environment
4 Canada Reply to Information Request, 003-006,
5 specifically the reply to EnCana Number 14 which is
6 our re-analysis of the Linnen papers and, again, we
7 found very significant evidence for the effect of
8 these low-volume small trails on grassland birds and,
9 finally, our response to EnCana Number 80 which,
10 again, is a summary of the major papers we reviewed
11 and the effects that we found. And I think there is
12 fairly conclusive evidence in the literature to show
13 even though it seems improbable at first glance that
14 these small trails and low-volume traffic could cause
15 fragmentation, that there is, there is an effect.

16 Q. Thank you. I certainly have read those documents more
17 carefully than I might have wished and -- but I
18 appreciated your oral responses today. They've been
19 very helpful.

20 I'm going to move on to my last question
21 or last set of questions which really relate to
22 restoration or reclamation. Yesterday, when you were
23 asked about what reclamation standards -- I hesitate
24 to use the words "criteria" but restoration targets
25 you would have, your response was: Restore it to

1 what it was. Now, the devil is in the detail and so
2 let me give you an example of where I hope you want
3 to change your mind, but you might not.

4 There are within the National Wildlife Area
5 places that have been disturbed where people 80 years
6 ago or thereabouts came in and planted Crested
7 Wheatgrass and other things and I'm assuming that if
8 one of those were disturbed by "restore it to what it
9 was", you mean restore it to natural Prairie
10 grasslands of the appropriate qualifier, but -- and
11 so I guess the devil is in the detail. Restore it --
12 have I captured your idea right, that you don't want
13 to restore it to what it was before the well went in
14 or before the pipeline went in but to what it was
15 before when the bison were still here?

16 A. DR. HENDERSON: You bring up a very good
17 point about context. Oh, sorry, it's Darcy Henderson.
18 About context and certainly there are these old
19 fields, formerly cultivated fields that were seeded to
20 Crested Wheatgrass perhaps 80 years ago, perhaps as
21 recently as 50 years ago by the PFRA and I agree that
22 if you were to set some objective for a small
23 one-hectare disturbance, to try and revegetate that
24 to native species is not, is not a reasonable idea
25 for a variety of reasons.

1 One, Crested Wheatgrass is likely to
2 re-invade that site if the entire area surrounding it
3 is all Crested Wheat and the person implementing the
4 reclamation or restoration on that site would be
5 investing a lot of resources that might otherwise be
6 wasted. So in that context of those particular
7 landscapes, that might not be a good idea immediately.
8 However, if it is part of a larger management strategy
9 for the NWA to restore that whole area, that whole
10 pasture simultaneously when some of this development
11 is occurring or is being abandoned, there might be
12 a complementary opportunity there to work
13 synergistically together and restore both the old
14 field and the industrial disturbances to a native
15 Prairie. But, again, this has to do with the context
16 of the location, the time, whether there's a
17 management strategy that's detailed enough and in
18 place at that time. So some flexibility should be
19 there to account for all of those, those different
20 situations.

21 Q. Suppose that one wanted to establish, in this case I
22 want to use the word "criteria" very carefully,
23 criteria for issuing reclamation certificates, if I
24 listened -- when I listened to you folks yesterday
25 I had the impression that the criteria consisted of

1 measures that would demonstrate the vegetation had
2 been restored to whatever it was your target was,
3 native Prairie grassland or whatever, but you also
4 observed that that would take many decades.

5 And so the question that I have for you is:
6 Are there early indicators that the revegetation, the
7 reclamation has been successful and that even though
8 the grassland may not look like a perfect Prairie
9 grassland from 100 years ago, it's been successfully
10 reclaimed and a rec cert, as the DND call them, a rec
11 cert should be issued? Are there these early
12 indicators of success?

13 A. I suppose that's one area of inquiry and research
14 that's ongoing and it's something that the Proponent
15 has suggested. Their paired-pipeline analysis
16 actually conceptually is is a good idea, it's
17 something that I agree with. You're establishing a
18 chrono sequence of sites to evaluate a trend over
19 time. Trend analysis is probably better achieved
20 with some other form of statistical analysis, maybe
21 regression rather than the approach that was taken in
22 this case. In fact, the data they collected could
23 probably be re-analyzed with regression to actually
24 try and demonstrate a trend.

25 The problem we have is if we have not

1 completely achieved what we would consider
2 restoration, whatever those targets may be, we're
3 trying to project into the future what is going to
4 happen and we have not conducted necessarily enough
5 research that shows all the intervals and stages of
6 succession towards that successful recovery.

7 So while I agree in principle with the idea
8 that there could be indicators, early indicators of
9 succession, I have not seen any information that would
10 lead me to the conclusion that they've identified some
11 of these indicators and that successful reclamation or
12 restoration will actually occur and in part because we
13 don't know what that end criteria, what that reference
14 is supposed to look like. That's something that has
15 not been agreed upon yet, something that the Base
16 Commander has suggested will be discussed at a meeting
17 in January, something that Ms. Boyd has also mentioned
18 could be some additional condition in a National
19 Wildlife Area permit that might be different from the
20 existing Alberta reclamation criteria that's described
21 in the Range Standing Order.

22 Q. My last question will be -- my last question and I
23 need more water. My last question will be the same
24 as my first question was on this one and that is the
25 goal, the objective of reclamation. Except now I

1 want to target your two colleagues at the back from
2 PFRA, because it may well be, at least intuitively in
3 my mind and others at this hearing have suggested,
4 that the objectives of reclamation for the purpose of
5 grazing may be different and may even be incompatible
6 with the objective of restoring to native prairie.
7 And so I ask PFRA whether there are important
8 differences or whether reclamation to native grass
9 prairie would work for the use to which the grazing
10 uses on -- in the National Wildlife Area?

11 A. MR. COOK: Hugh Cook, PFRA. We've dealt
12 with some of the same issues that are happening here
13 on PFRA community pastures where we have areas that
14 have been seeded down to Crested Wheat in the past and
15 they're difficult to manage when they're in with the
16 native range. When you bring cattle in, in the
17 spring, the Crested Wheat has already -- like, we
18 don't usually bring cattle in until close to the 1st
19 of June, so by the time you bring cattle in, that
20 Crested Wheat has already started to mature a bit and
21 the cattle tend
22 to want to make use of the native range, so it is
23 difficult then to capture the growth of that Crested
24 Wheat with, with the grazing season that we try to
25 operate and we operate that so that we can protect

1 those native grasses. We like to give them a nice
2 start in the spring so that we don't overgraze them.
3 When we bring cattle in they tend to want to go to
4 that native range and we don't get to use that Crested
5 Wheat.

6 So I guess, from our perspective, we can use
7 Crested Wheat when it's in large enough blocks and
8 we can fence it out and we can hold the cattle there.
9 If it's mixed in, like what we see on Suffield where
10 there's strips of it, very difficult to make use of
11 that, if we could we could probably control the
12 spread, if we could graze that, that grass and keep it
13 from going to seed, you know, we could probably slow
14 down the spread, but we're unable to do that just
15 because of the, of the way it's laid out.

16 Q. I see.

17 A. So, from our perspective, you know, it either should
18 be a seeded grass or a native range and then we get
19 better use of it.

20 DR. ROSS: Thank you very much. Those
21 are all my questions, Mr. Chair.

22 A. MR. BRISTOL: Bill Bristol, if I could just
23 add --

24 DR. ROSS: Oh, sorry, please.

25 A. MR. BRISTOL: -- add one or two more

1 comments. I guess PFRA has had, you know, quite a
2 growth or a knowledge curve on the use of Crested
3 Wheatgrass and when our community pastures were
4 originally incorporated in the 30's, large areas were
5 essentially blowing dust and we seeded those to
6 Crested Wheatgrass just to stabilize them. And from
7 my perspective, not being, you know, an expert on
8 reclamation but somebody who is more versed in
9 wildlife ecology, I would have to say that, you know,
10 we've learned from that. I don't think we really do
11 any more seeding of Crested Wheatgrass and returning
12 something, you know, to as natural a state as possible
13 is probably our ultimate goal.

14 So I would see a great deal of agreement
15 with, with what Dr. Henderson was saying.

16 DR. ROSS: All right. Thank you very
17 much, Mr. Bristol, Mr. Cook. Indeed, thank you to the
18 entire panel.

19 THE CHAIRMAN: Thank you, Dr. Ross.

20 Q. I have a number of questions that jump around a lot
21 here, trying to fill in some of the blanks, I guess,
22 and there's not too many left I don't think, but
23 other than in my mind perhaps on a couple issues.
24 But the first one I want to -- I want to belabor,
25 once again, the issue that my colleague Mr. DeSorcy

1 raised about the caissons and ask Colonel Bruce some
2 more questions in that respect.

3 You indicated, and I guess what's behind my
4 question is really trying to get a sense of the
5 future use of that National Wildlife Area. We had
6 not heard anything about caissons until the hearing
7 started, actually, because it is our understanding
8 that the Project before us and it is our
9 understanding the Project before us involves
10 proposals to construct above-ground wells and not
11 caissons. I wonder, the example you gave, Colonel
12 Bruce, about a potential expanded template for the
13 use of leopard tanks, does that -- would that require
14 the installation of caissons because I understand
15 your template goes into that area now and you do have
16 above-ground wells there?

17 A. LCOL BRUCE: No, sir, that would not
18 require it. I'm looking more long term and I'm
19 looking at potential of the use of this Range and
20 Training Area at a later date, particularly in a
21 national emergency or in a fight if we were going to
22 come to one with a near competitor, because that would
23 mean that all that infrastructure would eventually
24 have to go underground in order to ensure the training
25 that occurred there would be done in a safe manner.

1 But no, in particular for new weapons systems, no,
2 that is not necessarily the case.

3 Q. So your thinking, again, we all hope this will never
4 happen, but your thinking is that for training
5 purposes then you would need to have caissons because
6 presumably you would have tanks and equipment in
7 there, just like you have in the Military Training
8 Area; is that correct?

9 A. If it became a national emergency, I would say that is
10 a potential, yes.

11 Q. Just continuing on on this to try to understand your
12 policy, is it your policy then to start replacing
13 the current above-ground wells with caissons in the
14 National Wildlife Area at this point?

15 A. No, it is not.

16 Q. Okay. Okay, thank you. That completes my questioning
17 on that issue.

18 The next question I have is, again, a bit of
19 a follow-up to the matter that Mr. Richmond responded
20 to in one of Dr. Ross's questions about management of
21 wildlife in the National Wildlife Area. I'm, I'm a
22 bit perplexed. I, my understanding of wildlife is
23 that they have a hard time understanding whether
24 they're under Provincial or Federal jurisdiction and
25 I get the sense that you're not going to manage those

1 species in that National Wildlife Area that are
2 covered by Provincial jurisdiction? I may have
3 misunderstood the answer.

4 A. LCOL BRUCE: No, sir, that's not the case
5 at all, but as you can appreciate, given that it is,
6 as you quite rightly mentioned, these animals do tend
7 to move, it's important that we, we follow or at least
8 adhere to some of the, the policies that Alberta is
9 developing or in some cases Saskatchewan. And a case
10 in point is chronic wasting disease. Saskatchewan has
11 one particular policy in terms of, you know, let live
12 so to speak, if it's -- they're not doing any kind of
13 eradication process for it.

14 Well, Alberta has essentially on each
15 identified fine they will cull every animal within a
16 10-kilometre circle from that point of where that
17 animal was found and then a subsequent cull will occur
18 every year thereafter for five to keep the population
19 of a density of less than 1 percent. Saskatchewan
20 doesn't do that, but given the nature of where we are
21 there's a lot of those animals across the
22 interprovincial boundaries as well.

23 Just so you are aware, sir, the -- I think --
24 I'm not sure if you were speaking about a specific
25 herd or not, but in the case of the elk, for example,

1 their re-introduction has been quite successful and
2 those animals, much like the Pronghorn we have seen,
3 understand that they are relatively safe in the
4 Suffield Block compared to other parts of the province
5 or provinces and, therefore, we tend to have quite a
6 large gathering of those animals on the ground.

7 However, as I've spoken to members of Alberta
8 Fish and Wildlife is that we will be sitting down in
9 the spring next year, and this is all part and parcel
10 of what occurred this summer, to start talking about
11 a strategy to come up managing the elk herd, for
12 example, in conjunction with the Province of Alberta.
13 So I think it's more of a partnership rather than a
14 laissez faire attitude.

15 Q. The example I was thinking of, actually, was Pronghorn
16 that for which the winter range is, is very important
17 in the National Wildlife Area. I presume that
18 because this is a National Wildlife Area that you
19 would offer those Pronghorn appropriate protection
20 while they were in that range?

21 A. Sir, by virtue of them actually being on the Base,
22 they are protected. There is no hunting, as you know,
23 on the Base.

24 Q. Right.

25 A. Plus, there is not the sort of same human footprint,

1 as you were -- that you would get perhaps in other
2 places.

3 A. MR. RICHMOND: Wes Richmond again. Just to
4 elaborate a little further on that, I think the
5 Colonel is quite clear. It's a joint venture between
6 the Province and ourselves. The whole of CFB Suffield
7 as a wildlife management area and it had been
8 designated that way decades ago and, as I said
9 earlier, we don't -- we don't manage the vast majority
10 of the wildlife, the migratory birds, for example, and
11 the in-and-out movements of ungulates and, and most of
12 the species on that range we, we don't interact with.
13 We do certainly have policies with respect to how to
14 deal with species at risk and this sort of thing and,
15 and we do talk about in our Range Standing Orders
16 about no interaction with wildlife. You know, we
17 allow them basically to go on their own and we take a
18 dim view of anybody taking pot shots at them during
19 exercises or attempting to run them over and that sort
20 of thing. So in that vein we do manage from that
21 perspective, but by and large we don't interject
22 ourselves into the process of what they do naturally
23 coming on to or off of the Base, but we do ensure that
24 we don't do anything that would ruin the, the sanctity
25 of the, the critters themselves or, or the protected

1 area that we're talking about.

2 A. MS. BOYD: And, sorry, I'll just add one
3 additional point to that, just as a point of example,
4 say, with Pronghorn. We certainly, as Mr. Richmond
5 said, are not trying to interject ourselves into, say,
6 the Pronghorn's lives, but we would do anything we
7 could to assist with wildlife management, for example,
8 ensuring that our fences that are installed are
9 installed with appropriate height restrictions such
10 that it facilitates movement of wildlife, just as one
11 example.

12 A. MR. INGSTRUP: If I could add on that, in
13 terms of national wildlife areas across the country
14 we do manage them for all wildlife.

15 THE CHAIRMAN: That was my understanding.

16 A. Yes. We certainly welcome Federal land, even the
17 Provincial species on to our areas.

18 But the other aspect I was just going to
19 mention is, as an example, Last Mountain Lake National
20 Wildlife Area in Saskatchewan. We do have hunting,
21 there is hunting allowed on that, for things like deer
22 and what have you, so there is active management going
23 on on some of our national wildlife areas for
24 Provincial species.

25 THE CHAIRMAN: Okay, thank you for that

1 clarification.

2 My next question is directed to Environment
3 Canada. This has to do with the constraints mapping
4 of the -- well, of your, in fact, to be more specific,
5 constraints mapping for preliminary critical habitat.
6 We've talked a lot in this, in these hearings about
7 certainty and uncertainty and I wonder, you've used
8 the term "preliminary critical habitat", but I, I
9 don't really have much of an understanding of what the
10 certainty is associated with your identification of
11 critical habitat here overall.

12 I'm thinking of the, of the, the total amount
13 of preliminary critical habitat you've identified
14 which, if I recall, would cover about 94 percent of
15 the National Wildlife Area.

16 A. MR. NORTON: I'll just start with just
17 a couple of very general comments to contextualize
18 the way in which we have approached both the
19 identification of preliminarily assessed critical
20 habitat and critically our recommendation that, in
21 fact, it be protected at this point.

22 Q. Maybe, just as you do, I guess what I'm really trying
23 to get at is: Can you give us any sense of the, of
24 the difference that may occur between preliminary
25 critical habitat and your final selection? I mean,

1 what kind of order of magnitude potentially are we
2 talking about in terms of difference? What is the
3 range of uncertainty, I guess, in your, in your
4 prediction?

5 A. DR. DUNCAN: Dave Duncan. It does range
6 from species to species. I think you've heard from
7 Dr. Henderson when it comes to the three plants we are
8 very far progressed in terms of our thinking and
9 consultations and, in fact, rethinking of that, so
10 there's a very high degree of certainty in the map in
11 our presentation which Dr. Henderson pointed out is
12 different from that in our submission. There's a very
13 high certainty, extremely high certainty in that map
14 for the three plants. There's less certainty for the
15 Sprague's Pipit and the Kangaroo Rat. There's
16 certainty, as much certainty as possible, that there
17 will be critical habitat for those two species. How
18 much and where the boundaries are is questionable
19 right now and I don't know how to explain or even
20 guesstimate how much certainty there is or isn't
21 because what will happen over the next year is that
22 these exercises that are looking at critical habitat
23 in Southern Saskatchewan and Southern Alberta will
24 give us -- put it in more of a perspective, if you
25 will, put Suffield in a more holistic perspective at

1 a larger scale so it will help us decide; is it
2 everything that we have preliminarily assessed or
3 is it some smaller portion of that which we have
4 preliminarily assessed?

5 In terms of the Kangaroo Rat, I would say
6 there's quite a bit of certainty on where the active
7 dunes are and, as Mr. Jensen explained, whether the
8 roads are critical habitat is a big question mark for
9 us in terms of Kangaroo Rat.

10 I think that's the best that I can offer,
11 unless someone else whose got some more
12 species-specific information can add on to that.

13 THE CHAIRMAN: I think I'm about as
14 comfortable as possible, I guess, at this stage with
15 that answer. There obviously still is a fair bit of
16 uncertainty, if I can summarize, in the overall
17 identification of preliminary critical habitat and
18 more so in some species than others to correct or to
19 add to that.

20 I would like to move on to the matter of
21 SARA and perhaps Dr. Duncan or Mr. Gregoire, you could
22 respond to this. I believe we heard earlier that
23 there are I think, if I recall, eight permits have
24 been issued for research purposes I believe in the NWA
25 and that's really not the essence of my question. But

1 what I'm really trying to get a handle on is, is the
2 extent to which you issue permits associated with
3 industrial activity rather than research. In other
4 words, I'm trying to get a sense as to whether this
5 Act which is designed to protect species and critical
6 habitat, in fact, frequently results in the issuance
7 of permits for the destruction of that habitat or the
8 species from industrial practices.

9 A. MR. GREGOIRE: I guess I can relate to my --
10 it's Paul Gregoire -- relate to you my experiences on
11 that and from the number of years I've been dealing
12 with the permitting, we do see that industry likes to
13 streamline their processes and get their works
14 underway and for the most part or almost entirely they
15 prefer to avoid the need for permitting because it
16 slows down their activities and their timelines so
17 from what I've been seeing, industry has been using,
18 for example, timing restrictions, setback distances
19 in order to comply with the legislation so that they
20 do not have the need to require permits. So that's
21 what we've been seeing in this region for the most
22 part.

23 THE CHAIRMAN: And I understand, from
24 EnCana's proposal, that's their intent here as well,
25 but I'm just trying to get a sense of, are there

1 situations where you do still issue permits where,
2 you know, you, you can't avoid some destruction of
3 critical habitat or the species? Is there evidence of
4 that?

5 A. Yes, and so there are provisions in the legislation
6 for the incidental harming of species or due to
7 activities. And although we have not issued any
8 within this region, I think it was mentioned in
9 earlier evidence, we did mention examples in Ontario
10 which had to do with bridge maintenance, another was a
11 First Nations reserve, a cemetery maintenance and
12 burial issues where they did issue permits, I guess,
13 against harming a threatened plant and --

14 Q. I recall those examples.

15 A. Right.

16 Q. They didn't strike me as intense industrial
17 development.

18 A. No.

19 Q. That was part of my question, so perhaps it's the
20 nature of the fact that the Act implies in this
21 instance you're looking at its application on Federal
22 land and that's perhaps not a normal type of
23 application that you see?

24 A. MR. INGSTRUP: I was going to make that
25 point. Prohibitions, being that they only apply on

1 Federal lands, I think you're absolutely right, that's
2 a -- could be a reason why you don't see a lot of
3 permits being issued for, for industrial activity.

4 Q. Thank you.

5 My next question, and I think this one should
6 be directed to you, Colonel Bruce. In the Government
7 of Canada's submission in February, there was a
8 recommendation that new or additional Federal and
9 Provincial legislation might be required to provide
10 you with the necessary authority and a couple
11 comments there first.

12 I note also in the RIAS that it says -- and
13 you don't need to look at it -- it just says that
14 this regulation, in other words, the **Canada Wildlife**
15 **Act** regulation, I'll quote:

16 "Will significantly strengthen DND
17 powers for protecting wildlife
18 compared with relying on the
19 **National Defence Act** which does not
20 contain provisions pertaining to
21 wildlife."

22 I wondered, given those additional powers that
23 you now have, why it was that you felt you might need
24 more powers beyond that. Was it the intention of that
25 recommendation, although I believe it referred to both

1 Federal and Provincial legislation, would you be
2 satisfied or would it meet the intent if the Alberta
3 Environmental Protection, the EPEA, in fact, was
4 applied on Federal land in the NWA, would that still
5 necessitate in your view the need for additional
6 Federal legislation?

7 A. LCOL BRUCE: Sir, I think you've hit the
8 sort of my concern in terms of existing legislation
9 in that that jurisdictional gap I keep referring back
10 to has no escalation of punitive action to be taken
11 in case of breaches or non-compliance, much that is
12 found in, for example, the Alberta Act. I'm not a
13 lawyer by any stretch of the imagination, but I do
14 believe that if, if powers in that nature were
15 allocated, and I'm not sure if it's a Provincial law
16 or something that we would adopt Federally and how
17 that would apply, but yes, those are the type of
18 things that I would be looking at.

19 So I'm not sure if I can say in absolutely
20 certainty to take an Alberta law and apply it onto a
21 Federal piece of land, but I think in terms of the
22 powers and scope potentially, yes, that's what I would
23 be looking for.

24 Q. We have heard earlier in testimony that I guess other,
25 at least one other example where that Act does apply

1 on Federal land is my understanding or it could apply
2 on Federal land and I wondered if, in fact, if it
3 did, would that be sufficient or do you feel that you
4 need additional legislation on top of that? I ask
5 this question because I'm trying to understand the
6 legislative framework here under which you might
7 operate and all the tools you might need to deal with
8 this matter.

9 A. I think it's a very interesting prospect, sir. To be
10 honest with you, I, I'm not sure that I could give you
11 a definitive answer. I am, I do understand that there
12 are other precedents that have been set particularly
13 in the North with regards to applying Provincial-type
14 jurisdiction in a Federal context up in the Northwest
15 Territories, for example, and I believe, I believe,
16 as I say again, that that would be very helpful and
17 I believe that would also satisfy most of my
18 jurisdictional concerns.

19 Q. Maybe I'll ask one final question on this. Has there
20 been any discussion about additional -- about,
21 about -- or let me put it this way: Has this matter
22 been raised in a regulatory context within the
23 federal government to create new legislation for the
24 National Wildlife Area? Has there been any
25 discussion to start that initiative, to your -- to

1 your knowledge?

2 A. MR. INGSTRUP: Not to my knowledge.

3 A. LCOL BRUCE: And not to my knowledge
4 either, sir.

5 Q. Okay, thank you.

6 My next question relates to the, the
7 management strategy. I guess I had presumed earlier
8 with some questions that I had asked the Coalition
9 and EnCana that there might have been consultation
10 with stakeholders on this document and you have
11 explained that this has not occurred and given
12 reasons why and I don't want to pursue that at this
13 stage, but I did have one specific question and then
14 a bit of a follow-up.

15 My question is: I noted in the -- well, the
16 first question, I'm sorry, is this strategy, once
17 it's signed off by the Minister, will this be issued
18 in draft form or will this be final?

19 A. Sir, once the Minister's signed it, it will be final.

20 Q. Okay, so there is no further opportunity then for
21 consultation on it. Okay. In the strategy there is
22 an indication that there are numerous roles and
23 services provided by the NWA and one listed is it
24 provides a source of native seed for re-claiming
25 anthropogenic disturbances in the Military Training

1 Area and NWA. I was not aware from my reading that
2 this sort of thing was occurring and I just wondered
3 if you could confirm whether that is occurring now or
4 whether that's a future plan?

5 A. MS. BOYD: For several years it has been
6 the case that in that, in that area the Base has on a
7 fairly I would say relatively small scale harvested
8 particular seed, native seeds from the National
9 Wildlife Area. We send those seeds away for cleaning
10 and then have a small cache that can be used for,
11 again, very small reclamation projects elsewhere on
12 the Military Training Area and in this way I think
13 that's an important example of how the National
14 Wildlife Area not only has its own inherent benefits,
15 but also in that same section where it indicates that
16 it acts as a mitigation area for the Military to
17 compensate for the impacts of operational requirements
18 on other areas of the CFB Suffield Range.

19 I think this is an example of how, in terms
20 of looking at the Base and managing it on a landscape
21 scale, the NWA does provide for such things as acting
22 as a seed source.

23 Q. It sounds like this is being done on a pilot scale
24 in a sense when we're talking about small plots and
25 I wonder if you could give me some indication of

1 success that you're seeing with, with that operation?

2 A. MR. SMITH: We've only undertaken one
3 trial seeding project given up until now the
4 limited -- pardon me, given the limited manpower to
5 actually achieve some of these projects. So to date,
6 while we have a few hundred pounds of seed we've only
7 actually put in the ground maybe a couple hundred
8 pounds. So to monitor large-scale studies, no, we
9 haven't done that yet.

10 Q. Okay. Thank you.

11 Related to the, I guess, management plan, if
12 I can use that in a very generic context, and I
13 appreciate there's a number of documents that you
14 have that I think encompass that, you have talked
15 about the need to develop thresholds for different,
16 for different Valued Ecosystem Components and I guess
17 when one develops thresholds there is considerable
18 amount of value judgment that goes into the
19 establishing of those thresholds and I wonder if it
20 is your plan to consult more widely on the creation
21 of those particular thresholds in order to establish
22 some kind of upper capacity in the National Wildlife
23 Area?

24 A. LCOL BRUCE: If I may, sir, we're going to
25 actually do that across the entire Base. And the

1 whole Suffield Sustainable Management Plan which is,
2 as we've said, been a little slower than we had
3 originally hoped when we initiated this Project in
4 2006 will be distributed to all the stakeholders to
5 have a look at to see what we want to do.

6 As you can appreciate, it behooves all of us
7 to make sure that our science, which this would be
8 largely science-based, will have an opportunity to
9 verify and test our theories on those particular
10 studies to ensure that we have the best available
11 knowledge to make decisions on. So, yes, they will
12 be. It's just not ready yet since I have only seen of
13 the six boards I believe you were briefed on the other
14 day, I have personally only seen the first draft of
15 one board. So it's not ready for public consumption
16 yet.

17 Q. But your intention is to consult with other users in
18 the Base? I think you mentioned stakeholders.
19 Would that include --

20 A. Yes.

21 Q. -- perhaps the public as well in that sense?

22 A. It will be for sure industry, PFRA, other government
23 departments, in particular, you know, Environment
24 Canada and we will I think -- it might be a reasonable
25 suggestion to be able to say that we will brief it

1 at something like the Prairie Farm -- or Prairie
2 Conservation Forum is another venue that we
3 potentially will do that in.

4 Q. Thank you. My next question goes into the area of,
5 I guess, soils and perhaps Dr. Smith might be the
6 person to best respond to this. I asked EnCana a
7 question when they were sitting where you are as to
8 whether any of their drilling -- I guess I was
9 specific on drilling, but whether any of their
10 drilling activities had actually resulted in
11 slumping, visible slumping in the NWA. Their answer
12 was -- was no. And I understand the approach that
13 Dr. Smith has suggested and Dr. Wolfe I believe, but
14 I wonder if soil slumping, as a result of oil and gas
15 activity and pipelining, has been a serious problem
16 in the NWA. I'm just trying to get a sense of this
17 in practice. Can anybody respond to that for me,
18 please?

19 A. DR. SMITH: Rod Smith speaking. That I'm
20 aware of, I would have no field data to corroborate
21 that. Mine was purely based on a scientific
22 evaluation. Slumping is certainly potential, though,
23 but if we limited ourselves just to slumping, we're
24 only considering the highest magnitude events which
25 understandably also the lowest frequency. I

1 understand there may be something else that probably
2 could --

3 THE CHAIRMAN: I think we didn't hear the
4 last part because the microphone --

5 A. DR. SMITH: The slumping themselves would
6 be the highest magnitude events, but clearly are the
7 lowest frequency, but ...

8 A. MR. MARTINS: Fernando Martins.

9 THE COURT REPORTER: Your mic isn't on.

10 A. MR. MARTINS: Fernando Martins. Sorry. A
11 number of years, sir, ago there was a site in Koomati
12 along one of the, the coulee breaks in the Riverbank
13 zone in which a pipeline was installed and SEAC
14 visited the site and expressed some concerns to the
15 installation of that pipeline and associated erosion
16 issues that went with that, so not ideally slumping,
17 I guess, by definition but there were some serious
18 erosion issues associated with that coulee break site.

19 Q. Do you recall whether that was in, within the
20 100-metre setback that EnCana has proposed as
21 mitigation on this proposal?

22 A. MR. MARTINS: This, this pipeline started
23 on the plateau, went over top of the, the coulee break
24 and down towards the actual river area so, yes, it
25 would be right through an entire coulee break.

1 Q. It was within by the sound of it then, yeah. Okay,
2 thank you. But, other than that, there has been no
3 at least visible evidence of that kind of a problem
4 in particular in the NWA but also on the Base. Thank
5 you.

6 A. DR. SMITH: Yeah, and Dr. Smith speaking,
7 I would say we can't limit ourselves simply to the
8 large magnitude of these slump events. There is the
9 potential, as I've discussed, for rock topple, rock
10 fall, that kind of event and that would require a
11 careful monitoring to assess whether that had taken
12 place or not but potentially could have a significant
13 impact.

14 And further to the setbacks, it was never
15 defined that the setbacks extended to coulees and
16 seasonal watercourses. It was purely in the EIS,
17 it was simply identified in relation to the South
18 Saskatchewan River itself. There are clearly other
19 slopes that should have this setback allowance and so
20 there the considerations are routings of pipelines,
21 roads in consideration of vibrational activity, and
22 its potential to set these off.

23 Q. Thank you for that clarification.

24 My next and probably last area of questioning
25 is -- no, I have one more, sorry -- I wanted to raise

1 the issue of groundwater and perhaps before this
2 hearing ends, I will be a little bit more clearer
3 in terms of my understanding of the issue of
4 groundwater, but I wondered, we heard earlier in the
5 testimony that DND -- and I think this is a question
6 for DND, actually -- had stopped using groundwater,
7 if I understood properly, if my understanding was
8 correct -- or stopped groundwater withdrawal. If
9 that is a correct understanding, I wonder if you
10 could tell me the reason for that?

11 A. MR. RICHMOND: Wes Richmond.

12 THE COURT REPORTER: Your mic isn't on.

13 THE CHAIRMAN: I think you have to use the
14 other one.

15 A. MR. RICHMOND: Sorry about that. Wes
16 Richmond. I'd probably need clarification as to which
17 water source you're talking about. The, the only
18 wells which we had used were for supply of water to
19 the Base. Is that what you're referring to?

20 THE CHAIRMAN: Well, I recall hearing, and
21 I didn't note the actual area in the transcript, but
22 I thought it was said that the Department of National
23 Defence had stopped withdrawals of groundwater and I
24 thought that was just throughout the whole of the
25 Base, but perhaps you could clarify that.

1 A. Yeah, the only groundwater source that we had actually
2 exploited was for the supply of water for the Base.
3 Now, that's for public consumption, fire fighting
4 purposes, that sort of thing. We had a number of
5 wells that were drilled in I believe it was 1992,
6 somewhere in that range. We had and still do have a
7 river water source quite a number of kilometres south
8 of the Base on the South Saskatchewan River and that
9 system had become rather old and decrepit and we were
10 looking at the possibility of replacing it and were
11 actually forced into looking at another option which
12 would be wells to draw water from the Lethbridge
13 pre-glacial trench that you, you've heard about a
14 number of times and those wells were actually
15 developed in conjunction with a new water treatment
16 plant for the Base and we began drawing water from
17 those wells but had always experienced difficulties
18 with those wells because of the -- there was a lot of
19 sand coming up with them and so on, so there was a lot
20 of pre-mature wear on the pumps and the water was of
21 such a quality and the mineral content was such that
22 there was a fair amount of chemical required for the
23 treatment of it and softening and so on and so forth,
24 so significant costs associated with the production of
25 that water and always running into problems of having

1 to replace the pumps and so on.

2 So we grew more and more reliant again on
3 river water as opposed to well water and basically
4 weaned ourselves off of river water -- or well water
5 and then we're exclusively back to river water, but
6 now we've begun to have problems again with our river
7 water source because, of course, it had never been
8 upgraded as we wanted to do back in the early '90s.
9 So we've now got problems with both the river and the,
10 the wells and I believe just recently we're back to
11 I think 100 percent use of well water again, but I
12 could stand corrected. The Base Commander I think has
13 more recent knowledge.

14 Q. Okay. I guess I was wondering. I maybe had an
15 incorrect impression --

16 A. LCOL BRUCE: No, I think I understand what
17 you're saying.

18 Q. -- on groundwater and I wondered, the reason I
19 wondered was whether, in fact, you had stopped using
20 it was because of concerns of drawdown of the
21 aquifer?

22 A. Well, in 2007 we stopped drawing any water from things
23 like dugouts and the like out in the training area
24 except on an emergency basis, so we used to I think in
25 the past and I can stand corrected, I'm not sure how

1 many years ago, but we did used to draw water for fire
2 fighting and the like for our trucks, but that's no
3 longer the case and virtually stopped all of that
4 as of 2007. So for the most part, we truck it out of
5 the main water sources on the Base out to holding
6 tanks at various locations within the training area
7 to use for fire fighting capability.

8 A. MR. RICHMOND: Just one more thing, if I
9 could. The use of water out on the Prairie was from
10 dugouts that had been created not from actual
11 withdrawal of groundwater. To my knowledge, I don't
12 know if we've ever drawn groundwater in the Range and
13 Training Area.

14 Q. Thank you. And maybe my last question related to that
15 is I know you did some recent studies with LandWise
16 that looked at, I guess, the -- at some of the
17 Wetlands and their state of, I guess, of or their
18 environmental state, to use a general term. I
19 wonder, with all of your photography work and
20 mapping, if you have any idea as to whether over a
21 long period of time you're seeing any trends in terms
22 of reduction in Wetlands? I'm talking now about the
23 whole of the MT -- the whole of the Base.

24 A. MR. SMITH: Brent Smith. I've heard of
25 only casual observations from people that have been

1 around for a number of years that have observed
2 declines in water levels around the Hamlet of Suffield
3 which could be as a result of the drawdown of the
4 aquifer, but there's no hard data to confirm that, and
5 that's all we have right now.

6 Q. Nothing on the Base from your mapping, your
7 photographs going back over a number of years by the
8 sound of it then?

9 A. MR. SMITH: The issue, sir, is that water
10 levels fluctuate as a result of climate, so there's a
11 lot of variability and to try to pin it down to, to
12 groundwater drops in aquifers is, is difficult at this
13 point.

14 Q. I was thinking more of the surface ponding areas,
15 not -- not the groundwater, but I think you've
16 answered my question. Okay. Yes, Mr. Norton, did
17 you have something to add to this?

18 A. MR. NORTON: Not to that specifically.
19 I got the impression that you were about to, to wrap
20 up and I was going to first apologize that after three
21 weeks my brain is working a little more slower than it
22 may have been at the beginning and would ask whether
23 you would be willing to turn back to your questioning
24 around the certainty on the preliminary critical
25 habitat for just a moment?

1 THE CHAIRMAN: If you have something more to
2 add, that would be -- that would be helpful.

3 A. MR. NORTON: A few of us have been
4 conferring and I'm not certain that we did an adequate
5 job of conveying our best response to the question
6 that you asked and, as I recall, your question was
7 essentially trying to get a handle on the degree of
8 uncertainty around the critical habitat that we have
9 preliminarily assessed in our submission and I would
10 like to note, I guess, that there's in this context
11 at least two senses in which we could consider
12 uncertainty.

13 One is uncertainty around the science behind
14 which we have identified the maps that we have -- that
15 we have presented and the other area is because this
16 is only a preliminary assessment of critical habitat
17 and, as has been discussed, there is a formal process
18 that needs to be completed and I would label that as
19 process uncertainty and I think it might be helpful
20 to separate those two.

21 On the, on the scientific side, I think the
22 uncertainty exists for sure, but the level of
23 uncertainty is quite low. It's very low for the three
24 plant species. It's quite low, very qualitative, I
25 realize, but quite low for the Kangaroo Rat and a

1 little higher for the Sprague's Pipit.

2 Where there definitely -- where we would
3 definitely have to acknowledge uncertainly is around
4 the remainder of the process that has been to unfold
5 so, as we've discussed, there are consultations
6 required that are not complete at this point and
7 those may lead to revisions and ultimately the formal
8 identification of critical habitat is a decision that
9 our Minister must take and we can't purport at this
10 point to have confidence as to how that process needs
11 to unfold.

12 What we have tried to accomplish with the
13 recommendations around preliminary critical habitat
14 at this point can be characterized as us recommending
15 that the opportunity be maintained, that these areas
16 that we think from a biological perspective are likely
17 to constitute critical habitat that the opportunity
18 will be maintained that it can ultimately be formally
19 identified as critical habitat and effects of the
20 Project, should they proceed in the relatively
21 near-term future before that process has had a chance
22 to play out, could reduce the opportunity that exists
23 as of today.

24 I hope that's helpful.

25 Q. Thank you, Mr. Norton. That's helpful.

1 That concludes my questions and I see a sigh
2 of relief over there. That concludes all of our
3 questions, I guess, from this Panel.

4 So I would like to also take the opportunity
5 to thank all of you for your presentation and also
6 the response to all of our questions and those of
7 others in the proceedings the last number of days.
8 Thank you very much.

9 We will now -- I'll ask Mr. Lambrecht, first,
10 if you wish to redirect, to have redirect examination
11 of this panel?

12 MR. LAMBRECHT: Just two very minor
13 questions.

14 **RE-EXAMINATION BY MR. LAMBRECHT:**

15 Q. First, panel, some of you used the term "litter" in
16 your evidence. What is litter in the sense that you
17 used it?

18 A. DR. HENDERSON: As a plant ecologist, litter
19 that I'm commonly referring to is herbaceous plant
20 material that has senesced or died and
21 is accumulating on the soil surface, so it's not the
22 currently green growing vegetation but a lot of the
23 dead vegetation that would be existing at the soil
24 surface.

25 I understand that wildlife biologists and

1 people who do habitat analyses may have slightly
2 different definitions.

3 A. MS. DALE: My response would be that,
4 in many ways, bird biologists tend to use litter only
5 for that material that's lying loose on the ground.
6 In the case of the litter index, that I wish I had
7 called something else, we were referring to both
8 standing and fallen dead material, plant material.

9 Q. All right. And, Colonel Bruce, just my note of your
10 evidence concerning the circulation of the draft
11 Range Standing Order after your arrival on the Base
12 was that you arrived in 2007 but circulated the draft
13 in December of 2005. Just for clarification, when
14 did the draft of that get circulated?

15 A. LCOL BRUCE: Draft Number 2, which is the
16 one that I had my involvement with, was circulated in
17 December of 2007, so that's the second draft of the
18 original document.

19 MR. LAMBRECHT: All right, sir.

20 And, Mr. Chairman, that concludes the
21 re-examination.

22 THE CHAIRMAN: Thank you, Mr. Lambrecht.

23 Our plan is to continue a little bit longer and I
24 believe that people from SIRC are present. If we
25 bring them forward to perhaps hear their presentation,

1 then I guess this would be an appropriate moment for
2 this panel to remove itself and to have SIRC come
3 forward. I would like to at least begin to perhaps
4 hear their evidence and then determine the extent to
5 which we might have cross-examination.

6 So, once again, I thank the Government of
7 Canada for their assistance before this Panel.

8 A. COL LAMARRE: And thank you, sir, and
9 Members of the Panel.

10 **(DEPARTMENT OF NATIONAL DEFENCE, ENVIRONMENT CANADA, AND**
11 **NATURAL RESOURCES CANADA WITNESS PANEL EXCUSED)**

12 **(PROCEEDINGS ADJOURNED AT 4:23 P.M.)**

13 **(BRIEF BREAK)**

14 **(PROCEEDINGS RECONVENED AT 4:32 P.M.)**

15 THE CHAIRMAN: Ladies and Gentlemen, I think
16 we're ready to start again. Mr. Miller, you've got
17 your Panel assembled here and I would like to start,
18 please.

19 MR. MILLER: Thank you, Mr. Chairman. On
20 January 4th of this year, 2008, the Joint Review Panel
21 sent a letter to Suffield Industry Range Control Ltd.
22 requesting it present evidence regarding roles and
23 responsibilities as it relates to past and present
24 natural gas developments in the NWA, and especially to
25 EnCana's proposed Project.

1 In particular, the Panel expressed interest
2 in learning more about SIRC's role in Pre-disturbance
3 Assessments and in the reclamation and closure,
4 closure phases and that was set out in the letter.

5 In response to the Panel's request, SIRC
6 filed a written submission on February 25, 2008. That
7 document has been assigned Exhibit No. 008-002.

8 On May 30, 2008 SIRC filed responses to
9 Information Requests from the Government of Canada and
10 that document has been assigned Exhibit No. 008-001.

11 The -- as you, as you've observed, SIRC is
12 presenting two witnesses to speak to its filed
13 evidence.

14 Closest to the Panel is Mr. Steven Moffat,
15 who is the president of SIRC. He will address
16 questions concerning SIRC's policy and position
17 related to its roles and responsibilities; and to
18 Mr. Moffat's left is Mr. Robert Baron, who is SIRC's
19 supervisor, range safety. He will address questions
20 concerning operational aspects of SIRC's roles and
21 responsibilities.

22 And as I dealt with this morning, the CVs for
23 these gentlemen were marked collectively as
24 Exhibit 008-003. Sir, if the witnesses may now be
25 sworn.

1 THE CHAIRMAN: Thank you, Mr. Miller.

2 **SIRC WITNESS PANEL:**

3 **Stephen Moffat (Sworn)**

4 **Robert Baron (Affirmed)**

5 THE CHAIRMAN: Please proceed. Please
6 proceed, Mr. Miller.

7 **EXAMINATION IN CHIEF BY MR. MILLER:**

8 MR. MILLER: I'll start with you,
9 Mr. Moffat. Sir, were SIRC Exhibits 1 and 2 and your
10 curriculum vitae, being part of SIRC Exhibit 3
11 prepared by you or under your direction?

12 A. MR. MOFFAT: Yes, sir.

13 Q. And do they have -- do you have any corrections to
14 make to those documents?

15 A. No, sir.

16 Q. Is the information contained in those documents
17 accurate to the best of your knowledge or belief?

18 A. Yes, sir.

19 Q. And do you adopt SIRC Exhibits 1, 2 and 3 as the
20 evidence of SIRC in this proceeding?

21 A. Yes, sir.

22 Q. And do you adopt your CV as your evidence in this
23 proceeding?

24 A. Yes, sir.

25 Q. And, Mr. Baron, were SIRC Exhibits 1 and 2 and your

1 curriculum vitae, being part of SIRC Exhibit 3
2 prepared by you or under your direction?

3 A. MR. BARON: Yes, they were.

4 Q. And do you have any corrections to make to those
5 documents?

6 A. I do not.

7 Q. Are those documents accurate to the best of your
8 knowledge or belief?

9 A. Yes, sir, they are.

10 Q. And you adopt your CV as your evidence in this
11 proceeding?

12 A. I do.

13 MR. MILLER: With that, Mr. Chairman,
14 these witnesses are now available for questioning.
15 Thank you.

16 THE CHAIRMAN: Thank you, Mr. Miller. And
17 welcome Mr. Moffat and Mr. Baron.

18 In order of questioning I see Ms. Klimek
19 would be first but as she is shaking her head I assume
20 that you have no questions then to -- or do not wish
21 to conduct cross-examination.

22 I next ask Mr. Lambrecht if he wishes to
23 raise questions with the members of this SIRC Panel.

24 MR. LAMBRECHT: Yes, sir. If I might have
25 your indulgence, I realize it's late. I just need to

1 find one passage in my papers.

2 THE CHAIRMAN: Certainly, Mr. Lambrecht.

3 **CROSS-EXAMINATION BY GOVERNMENT OF CANADA, BY**

4 **MR. LAMBRECHT:**

5 MR. LAMBRECHT:

6 Q. Gentlemen, have you been able to inform yourselves
7 about the traffic volumes that enter CFB Suffield as
8 a result of oil and gas development collectively, all
9 of it, on the Base recently?

10 A. MR. MOFFAT: I'll start, sir. The short
11 answer is yes. As part of our regular duties we, we
12 track and count every vehicle that comes through,
13 through our gates. And I will defer to Mr. Baron if
14 you want to get anymore details about that or indeed
15 how we track it over the years.

16 Q. Well, in your tracking and counting, do you
17 distinguish between oil and gas vehicles and other
18 vehicles?

19 A. MR. BARON: Yes, sir, we do. Each of my
20 gate guards, every vehicle that passes through, as it
21 enters the range is physically counted on a sheet. We
22 only count oil and gas traffic. We do not count any
23 transitory Military traffic entering the Base.

24 Q. And do you keep summaries of your counts annually?

25 A. Yes, sir, we do.

1 Q. And what would be the most current years for which you
2 have annual counts?

3 A. Right up to the end of September, 2008.

4 Q. All right. And can you give us some idea, over the
5 last few years, what the annual counts of oil and gas
6 traffic on to the Base are?

7 A. The rough daily average would be somewhere in the
8 order of 300 to 325 vehicles per day.

9 Q. What about a total?

10 A. Annually, that would run from, I believe in the last
11 few years, anywhere from between 105 to roughly
12 120,000 per year.

13 Q. All right. We heard a few moments ago -- were you
14 here listening to the evidence this afternoon?

15 A. MR. MOFFAT: Yes, sir, we were both here.

16 Q. There was some reference to a past practice, not a
17 present practice, but a past practice, where SIRC may
18 have signed some Applications for Development forms
19 which went to ERCB and SIRC's signature may have sort
20 of served as some kind of evidence of landowner
21 consent without the knowledge of the Base. Do you
22 know anything about such a practice in the past?

23 A. Yes, sir, just give me a second. I'm going to get my
24 reference material here.

25 Q. Thank you, sir.

1 A. I believe the practice to which you refer,
2 Mr. Lambrecht, is, is one that was initially laid out
3 when the 1999 Partial Access Agreement was signed. I
4 believe it is Schedule E and again -- forgive me, I
5 believe it will start at least with schedule E. It
6 laid out the practice where it was -- in fact if you
7 go to that particular schedule, if I may read it,
8 would that be helpful? Schedule E of the Surface
9 Access Agreement says that there would be an annual
10 meeting and one of the aims of that annual meeting,
11 and I paraphrase up to that point, would be, and I
12 quote:

13 "To obtain the approval of the Base
14 Commander in principle for the
15 proposed operations."

16 End of quote. That particular schedule then goes
17 on, sir, to explain that with that approval in
18 principle, the practice as laid out at that time was
19 that then provided direction for range safety to
20 conduct the, the procedures outlined in paragraph 4 of
21 that schedule which would include, I would expect, I
22 think what you were referring to.

23 Q. All right, thank you. And, and I can read the
24 agreement and is it your understanding that that
25 practice, whatever it was in the past, has now

1 ceased?

2 A. That is my understanding, yes, sir.

3 Q. Yes, sir, okay.

4 MR. LAMBRECHT: Thank you very much,
5 Mr. Chairman, I don't have any other questions of
6 SIRC.

7 THE CHAIRMAN: Thank you, Mr. Lambrecht.
8 EnCana, do you have any questions?

9 MR. DENSTEDT: We have no questions, sir.

10 THE CHAIRMAN: Thank you, Mr. Denstedt.
11 Mr. Mousseau?

12 MR. MOUSSEAU: I have two questions, I
13 think, sir.

14 **CROSS-EXAMINATION BY THE BOARD STAFF, BY MR. MOUSSEAU:**

15 MR. MOUSSEAU:

16 Q. I've spoken with the, with the Base Commander and I've
17 spoken with EnCana about the existence of an accurate
18 and up-to-date map of trails in the NWA and I'm
19 wondering if that is a document, or if, if SIRC has a
20 map that accurately shows the authorized trails in
21 the NWA?

22 A. MR. BARON: We have battery maps that we
23 obtained from Midwest Surveys that my staff use.
24 Other than those battery maps, which we have obtained,
25 I believe in 2007, that's the most accurate maps we

1 have.

2 Q. Okay. And I understand one of the, one of the goals
3 of EnCana over the next three to six months is to
4 complete an access map and work with DND to finalize
5 which trails within the NWA are authorized and which
6 ones aren't. Are those discussions that SIRC would
7 necessarily need to be involved in or want to have
8 some input into?

9 A. MR. MOFFAT: Thank you. I believe so,
10 Mr. Mousseau, but clearly the, the decision process of
11 which ones to be used are beyond what I am mandated to
12 do. Certainly, once those decisions are made then,
13 yes, I would hope to be involved so that we could
14 adjust those aspects of access control and movement
15 control that we are responsible for to organize those
16 to conform with those routes that are chosen.

17 Q. And, and once that's done and authorized trails are,
18 are identified, does SIRC have any enforcement duties
19 if it were to find out that an industry operator had
20 gone off an authorized trail?

21 A. The short answer, Mr. Mousseau, is yes. As is
22 clearly, I believe at least, stated in the agreements,
23 the Surface Access Agreement in particular, operators
24 are to follow all these orders and directions and SIRC
25 has been granted in the Surface Access Agreement the

1 authority to remove access rights from an operator who
2 violates any of those instructions to include
3 directions as to what route to or not to take.

4 I don't know if -- Mr. Baron, do you want to
5 add anything anecdotally or not? No, I don't think
6 it's necessary.

7 Q. Has SIRC ever taken such a step in the past?

8 A. MR. BARON: Yes, we have. I can't give a
9 specific example as to -- for example, an operator
10 violation of using an access trail, but there's
11 numerous instances where an operator or one of their
12 service providers has breached a rule or a regulation,
13 if you will, that we have given them and we have
14 removed them from the range, from as little as a
15 period of two weeks to lifetime suspensions for
16 various offences.

17 Q. I guess that was my last question is -- is there a
18 sliding scale of consequence?

19 A. Yes, there is. For example, there's a speeding policy
20 in the Base Range Standing Orders which we enforce on
21 behalf of the Base Commander on oil and gas industry
22 vehicles and that has a sliding scale of suspension
23 starting at 14 days up to a lifetime suspension.

24 There are some things pertaining to, globally
25 what we call range safety, which would involve someone

1 out of curiosity or more likely out of stupidity,
2 fiddling with live ammunition or any type of
3 ammunition, that's an automatic lifetime suspension.

4 Entering a live-fire template, either
5 accidentally or purposely because they're curious, or
6 again intellectually challenged, would result, would
7 result in, depending on the situation, a six-month
8 suspension all the way up to -- it could be a lifetime
9 suspension. And that has happened -- I couldn't give
10 you the frequency but it does happen.

11 Q. That just -- that leads me to one last question. Is
12 there similar consequences for unauthorized entry
13 into the NWA?

14 A. Yes. I started -- to make a simple answer a little
15 more difficult. I started in 2002 with SIRC and in my
16 initial training when I came there, it's always been
17 our practice regardless of who the person is, if
18 someone comes on the radio in the morning when they're
19 going to work and they say, I'm here and I would like
20 to go there, if the location they give that they are
21 going through is the National Wildlife Area, one of
22 the things our radio operators automatically do, if
23 they don't know, for example, the -- if it's an EnCana
24 operator, they know they have a right to go there.

25 If they don't recognize the call sign or the

1 individual who is going there, they immediately ask
2 them why are you going there and what is your reason
3 and if, for example, they just say, well, it's quicker
4 for me to get from Point A to Point B by going through
5 the NWA. No, I'm sorry.

6 And if in fact that individual did that, that
7 breaches another regulation of you did not stick to
8 the route you said you were going to and depending on
9 the day, for example, if there's live firing going on,
10 that person would be removed from the range for life.

11 So even if they went into the National
12 Wildlife Area, it's going to get them kicked off for
13 two weeks.

14 MR. MOUSSEAU: Thank you, Mr. Chairman.

15 Those are my questions.

16 THE CHAIRMAN: I will turn to my colleagues
17 on the Panel. Okay, Dr. Ross.

18 **QUESTIONS BY THE JOINT REVIEW PANEL, BY DR. ROSS:**

19 DR. ROSS:

20 Q. In your submission, you indicate that SIRC involvement
21 in Pre-disturbance Assessments is normally limited to
22 the very initial stages involving coordination and
23 the facilitation of information gathering relevant to
24 a particular site. I couldn't figure out what that
25 meant. Do you go dig up soil?

- 1 A. MR. MOFFAT: On the contrary, no, sir.
2 What I was referring to, or what we were referring to
3 in that reply was more in line with our regular duties
4 of coordination and gathering of information to be
5 submitted in most cases to the Base or whatever.
6 That's all it was, is just a normal -- our normal
7 duties as outlined in the agreement.
- 8 Q. And, and the next item, I assume, has a very similar
9 response and that is in terms of practices of
10 reclamation and abandonment are just part of your
11 normal core tasks, coordination, monitoring and
12 verification -- same, same answer, is it?
- 13 A. Yes, sir.
- 14 Q. Thank you. Mr. Mousseau was asking you about your
15 monitoring of, of violations. How do you measure
16 speeding? Do you have secret radar tracks out there?
- 17 A. MR. BARON: Each of my staff and myself
18 included, as a matter of fact before I became the
19 supervisor range safety, we engaged the services of
20 one of the R.C.M.P. officers in Canada who is a radar
21 instructor at their Academy in Regina, and he came and
22 gave us a two-week course on our radar guns that we
23 purchased specifically for that purpose. And my staff
24 now does go out and do speed enforcement. And in
25 order to assist with that, one of the individuals that

1 we recently hired is a newly retired Military
2 Policeman whom we poached from Colonel Bruce's staff.
3 Q. That's twice I've tried to make a joke and found that
4 I was bang on.

5 The -- my last question. Yesterday we heard
6 from SIRC. Admittedly SIRC has been, has been around
7 longer -- sorry, SEAC. I've, I've got a strange
8 combination of letters written down here. SEAC is
9 what I was trying to do and I see I've put an "R" in
10 the middle of it.

11 We heard from SEAC and the folks from SEAC
12 have encountered, over the last third of a century
13 that this has been around, some problems with
14 uncertainty, certain authority and responsibility and
15 especially resource challenges.

16 Now, you folks have yet to hit your first
17 decade and so I would expect different -- my real
18 question is: have you encountered any significant
19 problems by way of being able to fulfill your
20 responsibilities or making sure you have enough
21 resources?

22 A. MR. MOFFAT: Thank you, Dr. Ross. The
23 short answer is, no, as it stands, right now. Since I
24 arrived last year I increased the -- we increased our
25 staff levels to where they are now and for the moment

1 they are adequate so we have not had any challenges in
2 that respect.

3 With respect to carrying out our mandate,
4 unless my, my colleague tells me different, I also
5 believe the answer to that is no -- I mean, yes, of
6 course, sir, there are always challenges, but we've
7 hired some good folks. We have a good -- at least in
8 my opinion, a good working relationship with Colonel
9 Bruce and, and his colleagues and of course there are
10 speed bumps, the radar guns notwithstanding, but we
11 work through those, so the short answer is no.

12 Q. Would there be any difficulties if -- we've heard some
13 discussion at this hearing about the prospect of
14 using GPS units on all traffic so that you would be
15 better able to monitor where they're going and
16 presumably how fast they're going. Would that cause
17 any complications for you folks?

18 A. No, as a matter of fact we are looking into that right
19 now. I think the Commander alluded to the fact that
20 we have been working together to bring our practices
21 more in line with what he, what he wants, not that
22 they weren't bad before, but he is -- this is his
23 responsibility and I do this on his behalf.

24 And one of the things we are looking at right
25 now, in fact, in conjunction with the Cold Lake Air

1 Weapons Range, is a GPS chip that can be inserted into
2 different types of radio so I don't have to buy a
3 completely different system.

4 So we're -- but it is very embryonic and
5 we're, we're still not there but again, the short
6 answer is, yes, we are actively considering it.

7 DR. ROSS: Thank you very much, Mr. Chair.

8 That's all the questions I have.

9 THE CHAIRMAN: Thank you, Dr. Ross.

10 **QUESTIONS BY THE JOINT REVIEW PANEL, BY MR. CONNELLY:**

11 MR. CONNELLY:

12 Q. I think I've just got one question. I understand that
13 accidents and that sort of thing are reported to SIRC
14 if and when they happen on the Base?

15 A. MR. MOFFAT: Yes, sir.

16 Q. Do you also receive reports of, let's say, wildlife
17 vehicle collisions and that sort of thing?

18 A. MR. BARON: Yes, we do.

19 Q. Could you give me a sense of, of the frequency of
20 that?

21 A. Sir, I would have to say that would be less than
22 annually. I can't think of the last instance.

23 Q. Sorry, no more than one per year, is that ...?

24 A. Yeah, maybe, sir. We had -- I can't believe it was
25 last year or the year before, a vehicle struck an

1 antelope, for example. I couldn't give you a date on
2 that. It's relatively infrequent.

3 THE CHAIRMAN: Thank you. That completes my
4 questioning. We've, we've heard quite a bit about
5 SIRC over the duration of our proceedings, so I think
6 that's also reflected in, I guess, the positive
7 paucity of questions that we have here this evening.
8 That concludes our questioning.

9 Mr. Miller, did you have any redirect that
10 you wish to raise?

11 MR. MILLER: Even if I did, Mr. Chairman,
12 I think at five to 5:00 on a Friday afternoon after a
13 long week I might get lynched if I did so -- but I
14 don't, in any event. Thank you, sir.

15 THE CHAIRMAN: Thank you, Mr. Miller.

16 **(SIRC Witness Panel Excused)**

17 THE CHAIRMAN: All right, Mr. Denstedt.

18 **UNDERTAKING MATTERS SPOKEN TO:**

19 MR. DENSTEDT: Mr. Chairman, we have an
20 undertaking to file that was given by -- given to
21 Mr. Mousseau on October 15th at page 1429, line 2 of
22 the transcript, and it's regarding the consolidated
23 list of commitments made throughout this proceeding.
24 We purport to mark that and I've kind of lost track of
25 the numbers, 135 or 6.

1 THE CHAIRMAN: I think it would be -- if my
2 list is up to date it would be 136. Mine isn't up to
3 date but it is now, I guess so 136. Thank you.

4 **EXHIBIT NO. 002-136: EnCana's commitments**
5 **from hearing**

6 MR. DENSTEDT: And if there are any
7 commitments tomorrow we'll simply update this list.

8 THE CHAIRMAN: Okay. Thank you,
9 Mr. Denstedt.

10 **CONCLUDING REMARKS:**

11 I would like to thank the SIRC Panel and
12 Mr. Miller for your attendance and for the information
13 you've provided today.

14 That concludes our hearing today, but in
15 terms of tomorrow, just let me spend a moment about
16 starting time, and what will happen.

17 Tomorrow we will be hearing from the two
18 Panel experts and also rebuttal from EnCana. I would
19 propose that we start at the regular time at 8:30
20 tomorrow morning and hopefully with that, we will have
21 an earlier completion in the day and that would be, I
22 think, something that everybody would appreciate, I
23 hope, including me.

24 So with that we'll close the proceedings and
25 we'll see you tomorrow morning at 8:30. Thank you.

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(PROCEEDINGS ADJOURNED AT 4:58 P.M.)
(PROCEEDINGS TO RECONVENE ON SATURDAY,
OCTOBER 25, 2008, AT 8:30 A.M.)

REPORTER'S CERTIFICATION

I, Tambi Balchen, CRR, CSR No. 9166, Official
Realtime Reporter in the Provinces of British Columbia
and Alberta, Canada, do hereby certify:

That the proceedings were taken down by me in
shorthand at the time and place herein set forth and
thereafter transcribed, and the same is a true and
correct and complete transcript of said proceedings to
the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 25th day of October, 2008.

Tambi Balchen, CRR, CSR No. 9166

Official Realtime Reporter