



Legislative Assembly of Alberta

The 28th Legislature  
First Session

Standing Committee  
on  
Resource Stewardship

Hydroelectric Energy Production  
in Northern Alberta  
Stakeholder Presentation

Monday, December 3, 2012  
6:15 p.m.

Transcript No. 28-1-8

**Legislative Assembly of Alberta  
The 28th Legislature  
First Session**

**Standing Committee on Resource Stewardship**

Kennedy-Glans, Donna, Calgary-Varsity (PC), Chair  
Rowe, Bruce, Olds-Didsbury-Three Hills (W), Deputy Chair

Anderson, Rob, Airdrie (W)  
Anglin, Joe, Rimbey-Rocky Mountain House-Sundre (W)  
Barnes, Drew, Cypress-Medicine Hat (W)  
Bilous, Deron, Edmonton-Beverly-Clareview (ND)  
Blakeman, Laurie, Edmonton-Centre (AL)  
Brown, Dr. Neil, QC, Calgary-Mackay-Nose Hill (PC)  
Calahasen, Pearl, Lesser Slave Lake (PC)  
Cao, Wayne C.N., Calgary-Fort (PC)  
Casey, Ron, Banff-Cochrane (PC)  
Eggen, David, Edmonton-Calder (ND)\*  
Fenske, Jacquie, Fort Saskatchewan-Vegreville (PC)  
Fraser, Rick, Calgary-South East (PC)  
Hale, Jason W., Strathmore-Brooks (W)  
Hehr, Kent, Calgary-Buffalo (AL)  
Johnson, Linda, Calgary-Glenmore (PC)  
Kubinec, Maureen, Barrhead-Morinville-Westlock (PC)  
Lemke, Ken, Stony Plain (PC)  
Leskiw, Genia, Bonnyville-Cold Lake (PC)  
McDonald, Everett, Grande Prairie-Smoky (PC)\*\*  
Sandhu, Peter, Edmonton-Manning (PC)  
Stier, Pat, Livingstone-Macleod (W)  
Webber, Len, Calgary-Foothills (PC)  
Xiao, David H., Edmonton-McClung (PC)  
Young, Steve, Edmonton-Riverview (PC)  
Vacant

\* substitution for Deron Bilous

\*\* substitution for David Xiao

**Support Staff**

W.J. David McNeil	Clerk
Robert H. Reynolds, QC	Law Clerk/Director of Interparliamentary Relations
Shannon Dean	Senior Parliamentary Counsel/ Director of House Services
Philip Massolin	Manager of Research Services
Stephanie LeBlanc	Legal Research Officer
Nancy Zhang	Legislative Research Officer
Nancy Robert	Research Officer
Corinne Dacyshyn	Committee Clerk
Jody Rempel	Committee Clerk
Karen Sawchuk	Committee Clerk
Christopher Tyrell	Committee Clerk
Rhonda Sorensen	Manager of Corporate Communications and Broadcast Services
Jeanette Dotimas	Communications Consultant
Tracey Sales	Communications Consultant
Liz Sim	Managing Editor of <i>Alberta Hansard</i>

**Standing Committee on Resource Stewardship**

**Participants**

Environmental Law Centre.....RS-59  
Cindy Chiasson, Executive Director  
Jason Unger, Staff Counsel



6:15 p.m.

Monday, December 3, 2012

[Mr. Rowe in the chair]

**The Deputy Chair:** Good evening, everyone. I'd like to call the meeting to order. Welcome to the members, staff, and guests in attendance at this evening's meeting of the Standing Committee on Resource Stewardship.

My name is Bruce Rowe, deputy chair of this committee and MLA for the Olds-Didsbury-Three Hills constituency. Our chair couldn't be here tonight, so I will be leading this committee meeting. I would ask that members and those joining the committee at the table introduce themselves for the record. Members who are sitting in as substitutes for committee members should indicate this in their introduction. We'll start on my right.

**Mr. Webber:** Sure. Len Webber, MLA, Calgary-Foothills.

**Ms Kubinec:** Maureen Kubinec, MLA, Barrhead-Morinville-Westlock.

**Dr. Brown:** Neil Brown, Calgary-Mackay-Nose Hill.

**Mr. Stier:** Pat Stier, Livingstone-Macleod.

**Mr. Casey:** Ron Casey, Banff-Cochrane.

**Mr. Fraser:** Rick Fraser, Calgary-South East.

**Mr. McDonald:** Everett McDonald, Grande Prairie-Smoky, sitting in for David Xiao.

**Mr. Young:** Steve Young, Edmonton-Riverview.

**Mr. Eggen:** David Eggen, MLA for Edmonton-Calder, sitting in for Deron Bilous.

**Mr. Barnes:** Drew Barnes, Cypress-Medicine Hat.

**Mr. Hale:** Jason Hale, Strathmore-Brooks.

**Mr. Anglin:** Joe Anglin, Rimbey-Rocky Mountain House-Sundre.

**Ms Calahasen:** Pearl Calahasen, Lesser Slave Lake.

**Dr. Massolin:** Good evening. Philip Massolin, manager of research services.

**Mr. Tyrell:** I'm Chris Tyrell, your committee clerk.

**The Deputy Chair:** I've already introduced myself, so I'd ask our guests to introduce themselves, please.

**Ms Chiasson:** Good evening. I'm Cindy Chiasson, executive director of the Environmental Law Centre.

**Mr. Unger:** I'm Jason Unger, staff counsel with the Environmental Law Centre.

**The Deputy Chair:** Thank you, and welcome.  
Just a few – oh, sorry.

**Ms L. Johnson:** Late arrival. Linda Johnson, Calgary-Glenmore.

**The Deputy Chair:** All right. Thank you.

Just a few housekeeping items to address before we turn to the business at hand. The microphone consoles are operated by the *Hansard* staff, so your light will come on when you indicate to speak. Please keep your cellphones, iPhones, and BlackBerrys off

the table as these may interfere with the audio feed. Audio of the committee proceedings is streamed live on the Internet and recorded by *Hansard*.

We'll begin with a motion to approve the agenda as distributed.

**Ms Calahasen:** Sure.

**The Deputy Chair:** Thank you, Ms Calahasen. Are there any additions or deletions? Hearing none, all those in favour? Carried. Thank you.

Approval of the minutes of the November 26 meeting, which have been distributed as well. Can I get a motion to do that, please? Joe Anglin. Thank you. All in favour? Carried. Thank you.

We'll move right into our presentations. I've indicated to them that they have roughly 10 minutes. You may go 30 seconds over, but not much more than that. We need to keep to the schedule. It's all yours.

### Environmental Law Centre

**Ms Chiasson:** Thank you very much, and thank you to the committee for inviting us to present before you. I'll say you've set us a tall task. It's a big chore to ask lawyers to speak for only 10 minutes, so hopefully we'll hit the points.

Just to start off, to tell you a little bit about the Environmental Law Centre, we are a registered charity. We've operated for the last 30 years here in Alberta. Our focus is on ensuring that Alberta's laws, policies, and legal processes sustain a healthy environment for future generations. We work towards two main outcomes: one, that Alberta will have strong and effective environmental laws, policies, and legal processes and, second, that Albertans will be actively and meaningfully engaged in decisions and processes that affect the environment.

Just to be abundantly clear, we are a stand-alone organization. We're not part of academia. We're not attached to any of the universities or postsecondary institutions. We are not part of government, which we get asked a lot as well. While we are lawyers, we do not represent clients. We have restrictions in our funding that prevent us from doing representation, so we do not represent clients at all. Our activities focus on legal research, law reform, public education, and information services. That's our background.

We provided – and I apologize that it was late; this has been an unusually busy time of year at the centre and for Jason and me in particular – three materials, and you've got copies of two of the shorter ones. The main piece that we'll be referring to today is a flow chart. If you follow along with that, that will give you most of what you need for what we're speaking of today.

The other two pieces: there is a shorter letter, a two-page letter, which refers to what really has the meat of what you need to know about what we're going to be speaking about. My understanding is that this is going to be posted for you where you get your documents electronically. It is a submission that we made to the Alberta Utilities Commission two years ago, in 2010, tied in with their inquiry that they carried out on regulatory process for approval of future hydro development in Alberta.

A lot of this coincides with what you're looking at, and I really encourage you to have a look at the longer brief. This shorter two-page letter basically points you to a couple of particularly germane points in the brief as well as highlighting for you where there have been changes to legislation since we did our brief.

In terms of following the flow chart, the main chunk of what we're going to speak to is really on federal and provincial juris-

diction in the regulatory system. That's going to be the main piece of it. I'm going to turn it over to Jason for that, and ideally when he gets through it, we'll still have some time left for me to touch on a couple of other points, and if not, I'm assuming we'll catch whatever I would address in the questions. So I'll turn it over to Jason now.

**Mr. Unger:** Okay. Thanks, Cindy. What I'm going to be focusing on primarily is the kind of dual role of the provincial government and the federal government in regulation of hydroelectric power developments. As you look at the flow chart – that's kind of the primary on the right-hand side there – provincial and federal jurisdiction is not easily overcome. Those splits in jurisdiction aren't easily overcome.

Once you step into the water with a development, you're stepping into a kind of constitutional ambiguity around who is going to regulate a specific development. That's because the federal government has powers over inland fisheries. Many of you are probably aware of the Fisheries Act and the implications of that on development both in terms of habitat protection provisions but also specific provisions in the Fisheries Act related to fish passage and allowances for fishways, and that has, obviously, direct implications for hydro development.

Also, species at risk and migratory birds fall within federal government jurisdiction. Navigable waters, a very central power of the federal government: I will be speaking to that a bit further in a few moments. Also, a key one, one that's not easily defined or overcome, is related to transboundary or interprovincial and inter-territorial impacts from hydro developments, all of which raise the spectre of constitutional issues and, in that regard, potential legal challenges arising from that if one area of law is ignored to the detriment of the federal government or the provincial government.

Obviously, the province also has a large role to play in environmental management and protection under the constitution. Most of the hydro developments we'd consider would certainly be considered local undertakings insofar as they aren't interprovincial. Wildlife impacts, facilities, and of course the impacts of transmission and infrastructure related to these developments have to be considered on a cumulative-effects basis. Finally, underneath all of that we have the process of environmental assessment, both federally and provincially, that plays a role.

Now, interestingly, I quickly took a look under both the Canadian Environmental Assessment Act, the 2012 version, as well as our existing legislation, and the trigger points for mandatory assessments for both of these things are likely quite high when you start talking about run-of-river projects, so the question becomes: if you're not going to have a mandatory assessment of these projects, how are you going to assess and really manage the cumulative effects of multiple projects on a specific reach of river, and how are those impacts kind of considered in decision-making?

If we break out some of those key federal-provincial role issues, I think it's of relevance for everybody to be aware that a lot of these things are in flux currently, both through the federal bills C-38 and C-45 – they've amended the Fisheries Act a couple of times, and some of the amendments are currently before Parliament as well. As well, they're aiming to amend the Navigable Waters Protection Act, which may have implications for navigable waters.

6:25

I guess, just to point out two nuances around both the transboundary impacts of these developments and navigable waters: navigable waters is an interesting area of the law insofar as there's a common-law right for the public to go and navigate on navigable waters. The courts have viewed the Navigable Waters Protection

Act as the ability to create a public nuisance on that public right or infringe on that right through the federal government.

Now, as a stated head of power for the federal government, if you read some academics out there who know a lot more about the Constitution than I do, they'll tell you that the province doesn't have the ability to infringe on navigation. So the question is: with amendments to the Navigable Waters Protection Act, which would potentially exclude a large number of navigable waters, how would that common-law right come up? Would it be litigated? Questions around navigation and these developments have to be considered moving forward.

In terms of transboundary impacts, there are a couple of areas there to consider. Certainly, if the transmission lines or other related infrastructure is going between provinces, for instance to B.C. or Saskatchewan or the Territories, it might be that it becomes a federal undertaking, in which case, again, the provincial role in that process may be diminished or supplanted fully.

More difficult to define – and this is where we've seen litigation in the past – are the actual impacts, the downstream impacts, related to hydro development. We've seen an example of that with the Bennett dam development in B.C., where it ended up in settlement over several decades of legal wrangling, I'm guessing. There were downstream impacts related to the Peace-Athabasca delta and that resulted in settlements against B.C. Hydro, in that case, or the B.C. government. That was also of concern in terms of those interprovincial impacts. Now, the law isn't clear about how those interprovincial impacts might play out in any given circumstance, but it's certainly something that has to be held front of mind when developing these dams and run-of-river projects.

Finally, I think the final kind of mention, I would say, is just managing towards cumulative effects management. I know the province has indicated a move towards that. My assessment of the process and policies in place to reflect cumulative effects management is that they may not be well suited to managing on a regional scale multiple run-of-river projects in a specific area. Regional planning and cumulative effects assessment loom large as well.

Is that time?

**The Deputy Chair:** Just over 10 minutes.

**Ms Chiasson:** Just over 10 minutes. Okay.

**The Deputy Chair:** Very good. Thank you very much.

I'll just remind the committee that the documents for tonight's presentation will be available on our committee website.

We'll move right to questions from the committee and the schedule for questions and answers. We'll start with the Wildrose caucus for five minutes, followed by five minutes for the PC caucus, the Liberal caucus, and the NDP caucus. If time allows, we'll come around again.

Is there anyone from the Wildrose caucus who would like to start the questions? Mr. Anglin.

**Mr. Anglin:** I guess I'm the man. One of the issues that we are dealing with here is that looking at these proposals that have been brought to us, this would all be part of the Mackenzie River delta at some point. It's a part of the watershed. I was wondering if you could comment a little bit more specifically on the nature of the interaction we will have between our new provincial law that just passed, which would be applicable here, the single energy regulator, and the applicable federal laws. How does that also dovetail – that's the way I'll describe it – with the territorial laws of the Northwest Territories?

**Ms Chiasson:** Do you want me to start?

**Mr. Unger:** Sure.

**Mr. Anglin:** And you only have five minutes.

**Ms Chiasson:** In relation to the first piece, in relation to the single energy regulator, that's part of what's been taking up a lot of our time recently. Frankly, the single energy regulator isn't going to come into play because from the provincial perspective it's the Alberta Utilities Commission and potentially the Natural Resources Conservation Board that have the regulatory authority over hydro projects. What's being shifted to the single energy regulator under Bill 2 is more so the fossil fuel energy. Unless there's a change further on to widen the scope of what's going to the single energy regulator, they're not going to come into play.

In relation to how that fits with what's going to happen and the territorial government, I would say that, certainly, in our brief we talk about in relation to the case studies. We look at some of the case studies, including, I think, the Slave River and some of the proposed developments there. Part of what's really key will be looking at how to interface between the two jurisdictions, how to harmonize the requirements and meet what requirements are there, and, as Jason mentioned, looking at the downstream impacts and recognizing that downstream impacts may be more than a few kilometres downstream from the facility, that the impacts may be significantly further.

The other piece – and Jason may want to speak to this more – is in relation to, I think, watershed management, how the watershed will be managed, and the impacts in relation to that.

**Mr. Unger:** I'll just step back one moment, too. Those multi-lateral and bilateral agreements are seen as key insofar as the federal government appears to be hesitant to kind of delve into interprovincial issues to any great degree even though they have a key role there. I think finalizing multilateral or provincial-territorial agreements has to come into play there.

On a broader scale I guess the question becomes how regional planning or watershed planning in the province can facilitate a level of assessment and ensure these projects go forward in an efficient way but also in a way that protects the environment and protects the interests of the downstream users. We parcel up the environment through geographic lines, but obviously our waterways don't really care about that.

**Mr. Anglin:** To sort of follow up on that . . .

**The Deputy Chair:** Two minutes.

**Mr. Anglin:** Don't interrupt me, then.

Just to follow up on that, if the Alberta Utilities Commission, which does take the jurisdiction over the development of hydroelectric, deals with transmission lines of 500 kV or above, environmental impact assessments are not required, but we need an environmental impact assessment on the hydroelectric. That would have to come under what jurisdiction? As I read it, that would come under the single regulator because that's where Alberta Environment will be. Maybe you can help me with that.

**Mr. Unger:** Well, I'd probably have to follow up myself in confirming that, but there's a question of whether or not most hydro developments would even come under an environmental assessment. In the case that they would, the scoping of that assessment might include the transmission facilities, but I'm not sure if it would.

**Mr. Anglin:** Well, you can't have one without the other.

**Mr. Unger:** That's right.

**Ms Chiasson:** That's very true. The tendency in the past in relation to environmental assessment practice has been somewhat too segmented. For instance, if it was hooking up to existing transmission, they were likely only to scope the generation facility. If it's something where it's going to require a build of new transmission, then that new transmission build may also be scoped. It really depends. Just in relation to, I guess, where EIA will sit with the development of the new single energy regulator, our understanding is that it's still up in the air as to whether or not the EIA review function will migrate over to the single energy regulator or whether it will still sit within Alberta Environment and Sustainable Resource Development.

**The Deputy Chair:** Sorry. Time is up. Thank you very much.

A PC question.

6:35

**Ms L. Johnson:** Thank you, Mr. Chair. Thank you for joining us tonight, and I appreciate your comments. Is there anything else we need to expand on as overlap between the federal and provincial jurisdictions? I'm fairly new at my job. It seems to me that the federal government is ceding more regulatory powers to the province, and I was wondering if you had any comments on that.

My second – and I may be taking someone else's questions on the First Nations. My constituency represents a city water supply next door to First Nations land, and we're a provincial constituency, so all the jurisdictions mix up when we try to get something done in Calgary-Glenmore. If you could share your knowledge and experience on that, I'm sure the committee would appreciate that.

**Mr. Unger:** Well, certainly, I think it's clear that the federal government is kind of articulating their powers more narrowly towards their constitutional heads of power. You've seen that in Fisheries Act amendments, so I think that's very accurate. We've also seen in the most recent version of the Canadian Environmental Assessment Act that there are provisions in there for substituting environmental assessments from a province or territory, kind of adopting environmental assessments from the province and actually substituting their decisions.

Now, there might be constitutional arguments around actually replacing your decision with a provincial decision, but that's provided for in the new Canadian Environmental Assessment Act. So they are narrowing it, but under the Constitution that can only go so far.

**Ms Chiasson:** In relation to the First Nations question or aboriginal rights, which was part of what my piece was that we didn't squeeze into the 10 minutes, a few points to be aware of. While aboriginal rights are primarily dealt with by the federal government, the provinces share the fiduciary obligations and consultation requirements that come up in relation to aboriginal rights and aboriginal interests. So while it's something that falls primarily within federal responsibility, provinces need to be aware that they may well play a role and that there may well be an expectation there.

Other things to be aware of are that aboriginal rights are different than other legal rights within Canada in terms that, generally speaking, there are constitutional roots for certain of the aboriginal rights and, in particular, section 35 rights under the Charter. There are also rights that arise out of fiduciary duty and the honour of the Crown in terms of dealing with First Nations and aboriginal peoples. These rights are taken very seriously by the courts. Part of what that means practically is that often aboriginal peoples can

get in the door a little easier than, say, an NGO or a stewardship group or a watershed group or that type of thing.

For example, there was a case dealing with Wood Buffalo national park where there was litigation brought by the Mikisew Cree and virtually the same thing brought by the Canadian Parks and Wilderness Society. The Canadian Parks and Wilderness Society didn't make it through the preliminary door in terms of getting standing, which is the ability to participate. The Mikisew Cree did, based on their aboriginal rights. So there's that.

As well, you need to be aware that there are, essentially, different levels of rights within the bundle of what we talk about as aboriginal rights. While there are treaty rights – and much of Alberta is dealt with by treaties, which is different than, say, British Columbia – there are also, for instance, Métis rights, which are different than treaty rights. There are also traditional use rights, which are different as well from treaty rights and may apply to First Nations who have treaty rights. So traditional use rights may be beyond that.

There's a lot there that comes into play. We're environmental experts, so I don't know that we can give you a lot more detail on aboriginal rights, but certainly that's something that comes into play and certainly will be very germane in relation to development in the northern part of the province.

**Ms L. Johnson:** Okay. Well, we'll keep that in mind. Thank you. Thank you, Mr. Chair.

**The Deputy Chair:** You have 30 seconds left if you want to use it.

Did you have a question?

**Dr. Brown:** I'll ask a quick one. Bill C-45, this omnibus bill: where is that at, and is there any hope to get the navigable waters out of the budget bill?

**Mr. Unger:** Well, if you ask me and if I had the power – it's still proceeding as far as I know. I haven't heard anything else otherwise. I think that the quandary people will find themselves in, though, as I mentioned earlier, is that you might find that the schedule of lakes and rivers, the navigable waters, or the navigation protection act, which it would become, would be listed in the schedule to that act and covered by it. Then you might find that the common-law right applies elsewhere, and therefore litigation might arise.

Now, there's a section in that proposed act that would invite anyone who is undertaking an activity to say, "I want this act to apply to me"; in other words, inviting federal jurisdiction to authorize the impact on navigation, which strikes me as a mechanism to kind of say that common-law rights recognizing navigation can only be infringed upon by the federal government. Provincial endeavours might still go that route, but that's just my guess.

**Dr. Brown:** Thank you.

**The Deputy Chair:** Thank you. On to the Liberal question.

**Mr. Hehr:** Well, thank you very much for coming. I'm pretty impressed with your knowledge on the interworking of all these various acts. Frankly, it reminds me why, after I'm done with this business or when my constituents may be done with me in this business, I will not be going back to practising law.

Nevertheless, I was very intrigued by your comments on cumulative effects, and it appears to me, from looking at these projects, there will be a large impact on not only the riverways but the fish,

the surrounding area, and the like. From your view, is our land-use framework set up to deal with the cumulative effects of one of these hydroelectric dams, and if not, then what legislation will try to handle this? Are they adequate, I guess, with enough power to deal with cumulative effects?

**Mr. Unger:** Well, I think the regional planning process and the land-use framework set up an enabling piece of legislation, Alberta's Land Stewardship Act, and regional plans offer that opportunity, but because there's no kind of mandatory system or protocol in place in terms of measuring these cumulative effects and determining specific thresholds in management, it remains to be seen. The underlying structure is there, I think, to manage them. It's kind of how it plays out on the landscape. From initial indications from the lower Athabasca regional plan and environment management frameworks from that, my own assessment would be that it's not well suited for managing cumulative effects. I think you'd have to do that region specific and specific to this issue and, really, kind of manage a regional plan around specific areas and specific issues. It's just too general as it stands now.

**Mr. Hehr:** Okay. Would that mean that before this project would go ahead, the government of Alberta would probably have to do its own cumulative effects study and devise their own rules, regulations on what that might look like?

**Mr. Unger:** That would make sense to me. A regional or a strategic assessment of specific reaches or lengths of river and how those might be impacted: that makes sense to me.

**Ms Chiasson:** Part of it to keep in mind is that in relation to cumulative effects, it's not necessarily just looking at the potential of, say, multiple of these types of projects along a particular reach but taking into account: what are the effects of one of these types of projects vis-à-vis, say, forestry activities in the area, oil and gas activities, other activities that take place on the land base? It's really looking at: what are all the activities that do or foreseeably could take place on a particular land base and fitting it in? Part of, I think, the chore, in addition to what Jason mentioned, is as well meshing what's happening with the land-use framework and regional planning with water management and water planning within the province and how those fit together. Whatever happens on the land base will affect the water and the waterways.

**Mr. Hehr:** No further questions.

**The Deputy Chair:** Thank you. A question from the NDP.

**Mr. Eggen:** Thanks, Jason and Cindy, for coming. It's great to hear from you. I'm just going to ask a couple of quick questions. I'm curious about the proposed federal navigable waters act and how it would affect Alberta's moving water. Are there any relevant moving waters in Alberta that have been potentially taken off the protection of the navigable waters act federally, and if so, which ones? Do you know?

6:45

**Mr. Unger:** I couldn't answer that without actually referring back. It's a very limited number of lakes and rivers that are listed, but there are thousands upon thousands of navigable waters which are excluded, so I can guarantee there are many excluded within the province.

**Mr. Eggen:** So that potentially opens up many more moving waters in this province for hydroelectric, I suppose, if the proposed act does pass?



**Mr. Unger:** Yes, potentially. I mean, I have pointed out in some of my commentary that, in fact, if a common-law right does exist and that was litigated before the courts and an injunction was ordered as a remedy, that could actually be a greater protection than the act would authorize.

**Mr. Eggen:** That's true.

**Mr. Unger:** I mean, generally litigation is not a process for environmental management by any stretch.

**Mr. Eggen:** No. Well, that's right. Just the very existence of a list – what's on the list; what's off the list. You know, there's a potential legal challenge to that. I mean, it's sheer arbitrariness, right?

**Mr. Unger:** Right.

**Mr. Eggen:** I'm a bit new to this. It seems as though this committee is dealing with run-of-river projects. It seems like that's something that you're interested in, right? Are there the same downstream impacts, or is it the same measurement of those impacts, let's say, on run-of-river projects as there is on the conventional hydroelectric dams? Is it measured to the same degree?

**Mr. Unger:** I think as a general comment – I mean, I'm not an expert in the run-of-river versus full-storage dam projects – my understanding is that it is a diminished impact, but they still play a significant impact insofar as often there are mechanisms to hold back quite a bit of water, and then there are also fisheries impacts downstream, impacts on riparian areas, and similar related impacts to full-storage power dams.

**Mr. Eggen:** Well, is there a conventional set of standards in this province that would have to be met for either a run-of-river or a conventional dam, or do we just kind of make them up for each project as the project might see fit? Do you have any idea about that? I mean, are the standards for the Bighorn dam the same as the Oldman dam and so forth?

**Mr. Unger:** I think you'd have to get into the details of the conditions around their approvals and licences themselves to determine that. I'm not certain.

**Ms Chiasson:** Yeah. For the most part I would assume that with older dams or older facilities likely not. They tended to be one-off or specific. Again, with essentially traditional storage dams often they were built – for instance, the Oldman dam was designed and built initially as a storage dam, more so for irrigation storage rather than for the power generation piece. There are differing standards. I'm not aware that there are particular standards in relation to their construction tied in with the environmental aspects. There may well be in relation to construction engineering, that type of thing, but as far as I'm aware, there are not particular standards that the provincial government currently has in relation to the environmental impacts of either dam-based generation or run-of-river.

**Mr. Eggen:** So we can presume that each project might carry with it its own set of rules or standards which they would meet or not meet?

**Ms Chiasson:** Yeah.

**Mr. Eggen:** I'm just wondering. Again, presuming that the lower Athabasca region is some place that is being looked at more for either run-of-river or hydro power, I'm just curious to know if the

environmental cumulative effects study that we use for oil sands development is sufficient for us to make decisions or presumptions about hydro, or would we have to have something separate to determine the viability of a hydro project in the lower Athabasca region?

**Mr. Unger:** Personally, I'm not sure if I could answer that in terms of the modelling and scientific information that would probably have to go into that. I'm guessing that a lot of that data isn't sufficient to really articulate all the potential harms at this stage. I guess the question is whether we can get there to assess these impacts.

**Mr. Eggen:** Well, I guess, conversely . . .

**The Deputy Chair:** Sorry, Mr. Eggen, but you've used up about five and a half minutes. We gave you the tail end of Mr. Hehr's questions.

I think we have time for probably two more questions if they're quite quick, so does the Wildrose have anything else? Go ahead, Mr. Anglin.

**Mr. Anglin:** Just with regard to the Alberta Utilities Commission Act – by the way, the fifth anniversary of that act will be in four days – in your opinion, because we get to change policy and legislation in Alberta, would there need to be changes either to legislation or regulation to protect the environment to make sure that we consider the environmental impacts? Do the legislation or regulations thereunder require changes?

**Mr. Unger:** Well, from my own perspective, of course, taking our mandate as the Environmental Law Centre, the environmental assessment process and even our regional or strategic assessment I think should be grounded in regulation insofar as we've seen some things taken out, as you've mentioned, from environmental assessment. I think, certainly, that's required to get an understanding of the impacts, both the project specific impacts and on a regional scale. I think that's important.

**Ms Chiasson:** I would say as well that certainly there is far more direction that could be given to the AUC as a regulator, which has a mandate to regulate in the public interest and make their decisions based on the public interest. What sits in their legislation now in relation to that mandate is that they determine whether a development or proposed development is in the public interest, taking into account the economic, social, and environmental impacts of a proposal. But that's all the direction it gives them. It's very vague, and it's very wide open.

Certainly, something that gives them more direction or perhaps better parameters around what the public interest means from the environmental perspective is a key piece, and regional plans may or may not do this. It will depend in part, I think, on how detailed regional plans are and how much they look at the integration of the different effects and, certainly, the cumulative effects.

The other piece – and this is something we've commented on extensively – would be the ability of people to participate in the hearings and in the processes before the AUC. Standing is restricted to those who are directly and adversely affected. Traditionally in law that has been interpreted across the different tribunals in Alberta that use that as being tied to property interests. Essentially, what you are looking at there is that it creates somewhat of a paradox because you're dealing with a public interest question and the environment, which is a public good, but you are putting the onus on either the proponent – so it's private industry – or on individual landowners or people who can show a tie to

property to represent those broader interests beyond their own interests. To look at broadening who can come forward and can participate in those types of hearings and can provide necessary information for the AUC to make those determinations in the public interest certainly would be an improvement. Again, I'd refer you to our brief because it is discussed extensively there.

**The Deputy Chair:** All right. Thank you.

A PC question? Ms Fenske.

**Ms Fenske:** Okay. I'll ask the first one. Now, do you believe that there's anything that could be done to reduce the length of time for regulatory approvals for hydroelectric development without detrimentally affecting the quality of the environmental reviews? You know, we often hear it takes so long to get approval. What would you suggest we could do to speed it up but still retain that environmental protection?

**Mr. Unger:** It's not an easy thing to do, but I would suggest that creating a process whereby federal involvement is co-ordinated and done early in the process both in terms of the assessment itself – notwithstanding, perhaps, people not wanting federal involvement in certain aspects,

I think that once you're in the water, you're in federal waters by nature of our Constitution. That has to play a role, for sure, in terms of co-ordinating with the federal government. How that interplays with the new Canadian Environmental Assessment Act remains to be seen, but I think that's one process.

The difficulty, of course, is actually having the scientific data and underpinning to do those assessments in a quality fashion so that you are going forward on a good base of knowledge, anyway.

6:55

**Ms Chiasson:** The other piece – and it's going to sound a little counterintuitive – is that, again, we're going to go back to the piece around standing and to some extent opening up standing beyond directly and adversely affected. While it sounds counterintuitive that you will shorten up the time by letting more people in the door, you can look at creating it so that it's broader but put parameters around it so that you don't get every Tom, Dick, Harry, or Jane who wants to have a say coming through the door. You look at putting parameters around: do they have a genuine interest in the subject matter? Is there valuable information that they can bring and contribute to the decision-making?

Often, a lot of times, what ties up proceedings is in relation to that initial procedural wrangling over who gets in and who doesn't, and a lot of the fighting is around that. A lot of that is what ends up going beyond the tribunals into court. That piece there, in terms of doing that piece and looking to bring the people who have the knowledge to the table and getting that information in to them and to the decision-makers, may also help to streamline your time as well. Part of it – and this is some research that we've got ongoing within our office tied in with this – is also to look at the role of other industry competitors. Often, when you look at some of these proceedings, a lot of industry competitors are coming in and filing as intervenors and what they have to contribute to the process.

We've done research, and we've seen material coming out of Australia, where they have essentially limited that so that

commercial competitors don't get to come in the door because often they're more of a clog on the process than, say, landowner groups, NGOs, stewardship groups, any of those types of people. So taking a look at who gets to participate and how can also potentially have an effect on helping to move your process through more efficiently.

**The Deputy Chair:** Thank you very much. Everybody was mindful of the clock, so we're done just about dead on time.

Ms Chiasson and Mr. Unger, thank you very much for your presentations and for responding to the questions and answers. I would remind the committee that if anyone has a question that didn't get asked and answered, please submit it to the committee clerk, and we'll forward it on for a written response. Thank you for that.

Moving along to other business, as an update on the December 13 presentations we have three environmental issues groups confirmed for that afternoon: the World Wildlife Fund of Canada, Water Matters, and the Pembina Institute. Since we have three presenters, we will only be taking an hour-long lunch from 12 noon to 1 p.m. Then we will hear from the three groups together from 1 to 3 p.m. Groups will have time for a 15-minute presentation each. Then the remaining hour and 15 minutes will be reserved for questions from the committee.

There are a couple of updates in regard to the draft stakeholder list, and I'll turn the floor over now to Dr. Massolin, our head of research services, to fill us in on the changes.

**Dr. Massolin:** Thank you, Mr. Chair. What I'd like to report is that the stakeholder that I mentioned at the last meeting, Dr. James Feehan from Memorial University, who is an expert in electricity economics and the economics of public investment as well as cost-benefit analysis of natural resource development, is available for a meeting with this committee in early February. I think it just remains to be set up with the chair and the working group at that point. That's the one update.

The other is that we're still looking for another presenter to present at the same time in conjunction with this, sort of on an economic feasibility stakeholder basis. There is one other potential individual by the name of Professor Jean-Thomas Bernard, who is a visiting professor from the University of Ottawa, who is likewise an economist and has done some work on hydroelectrical projects, not any work, however, in Alberta just given the fact that Alberta doesn't have that many. He is potentially available as well. We're working out the details for that, and we'll report to the working group with a further update.

Thank you.

**The Deputy Chair:** All right. Thank you, Dr. Massolin.

The date of the next meeting is December 13. From 10:30 to 12 noon it will be Manitoba Hydro doing a presentation, and then from 1 to 3 p.m. it is the environmental issues groups that I mentioned before.

Does anyone else have anything in other business?

With that, we move to adjourn. Mr. Barnes. Thank you very much. Thank you to everyone.

[The committee adjourned at 7:01 p.m.]



