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A Study in Contrasts: The EUB Hearings on the Proposed Fort Hills Oil Sands Project

By Dr. Richard G. Thomas

July 1, 2002

It's Canada Day and I'm driving from Edmonton to Fort McMurray. A few days previously, Christyann Olson [AWA Executive Director] asked if I would represent AWA at the upcoming Energy and Utilities Board (EUB) Hearings concerning TrueNorth Energy's (TNE) application to proceed with its proposed \$3.5 billion oil sands mining development known as the Fort Hills project to be located some 90 km northeast of Fort McMurray.

Despite my whining about lack of time, unfinished projects, etc., my arm is readily twistable on this occasion primarily because the fate of one of Alberta's natural heritage jewels – the McClelland Lake Wetland Complex (MLWC) – is hanging in the balance. As conceived, TNE's open pit mining operations would destroy half of MLWC's peatlands, including at least 45% of its supremely spectacular patterned fen. In my 1998 report for Alberta Environmental Protection on the province's Boreal Forest Natural Region I wrote that the MLWC was "worthy of a strenuous protection effort". It's time for me to "walk my talk".

What follows is a rough day-by-day narrative and a highly personal view that tracks what I considered to be the highlights and low points of the Hearings as they unfolded.

DAY 1: Tuesday, July 2:

On the first morning, the ballroom is packed – 200 people is the unofficial attendance estimate. I feel awash in a sea of suits, which makes me nervous since I'm allergic to suits and ties.

Facing the audience are the three men representing the EUB: Mr. Tom McGee (former Mayor of Drayton Valley), Mr. John Nichol and, chairing the proceedings, Mr. Neil McCrank – who is also the Chairman of the EUB. During the course of these Hearings McCrank does 90-95% of the talking for the Board and basically runs the show.

To the Board's right are at least half-a-dozen Board staff, sundry observers, and Ms. June Gossen – the "court reporter" whose skill and stamina will prove to be awe-inspiring. To their left is TNE's panel. TNE has roughly 25-30 employees and consultants on hand throughout the Hearings. Anyone making a presentation before the Board constitutes a "Panel" and is required to be sworn in prior to giving their testimony. The proceedings are formal and highly structured. For neophytes like myself (and I hear many other people make this observation) the overall atmosphere is quite intimidating.

The similarity to a court of law is enhanced by the presence of various lawyers acting on behalf of TNE, the Federal and Provincial governments, and several other groups. Numerous exhibits (almost 70 by Hearings' end) will also be formally introduced as evidence. TNE is represented by Mr. Dennis (Denny) Thomas Q.C. who specializes in appearing for the "dark side of the force" at hearings concerning environmentally contentious development projects. His previous clients include Alberta-Pacific (Al-Pac) and Cardinal River Coals (remember the Cheviot Mine).

Ms. Karin Buss, of the firm Ackroyd, Piasta, Roth and Day, who is appearing (pro bono) on behalf of the Oil Sands Environmental Coalition (OSEC), the Fort McMurray Medical Staff Association and the





Canadian Federation of University Women, will be Mr. Thomas's main protagonist. All lawyers and other interveners have the right to cross-examine each panel, and it is during the interrogation sessions that the Hearings' most interesting exchanges are destined to take place.

Having decided upon the interveners' "batting order" (which we will run through about four times) and ruled against a motion to delay the Hearings for a day, the Board is ready to hear TNE's application. TNE's panel, which initially consists of 14 members, all of whom (based on their CVs) are acknowledged as "experts" by the Board, are introduced at length by Denny Thomas. Their ranks include Ms. Linda Halsey (University of Alberta) and bryologist Dr. Dale Vitt (formerly of the U of A), two of the authors of a study (Halsey et.al., 2001) that has played a pivotal role in some of the tawdry events leading up to these Hearings. D. Thomas also reads out a list of letters TNE has received in support of its proposed project, all of which are entered into the record as exhibits.

TNE's CEO, Mr. David Park, presents the bulk of the company's submission. He and other TNE employees read from typescripts that have been made available to the audience. The air becomes heavy with platitudes and technospeak that, to my ears at least, are frequently divorced from environmental realities. This is especially true of a time-lapse video we get to watch which shows the [proposed] mining of half the MLWC peatland and its subsequent (theoretical) reclamation.

For me, Park's most critical statements come during his summation. First, TNE regards the oil sands deposits underlying their leases, in general, and McClelland fen in particular, as "unique" and second, considers the McClelland Lake patterned fen as "representative rather than unique". Both assumptions are patently false, with the latter being based solely upon Halsey et.al.'s (2001) paper.

As my mind begins to wander it occurs to me that these Hearings represent a study in contrasts. For example, 8 days ago I was privileged to accompany a plant ecologist friend and guide/outfitter Charles (Chuck) Beauchamp on an early morning flight (from Fort McMurray) over the MLWC and photograph its remarkable patterned fen (plus various oil sands developments in the area). Later the same morning, Chuck drove us to the western margin of the MLWC and we then walked into the fen. Even at current low water levels, I resembled a mammoth in the La Brea tar pits as I sloshed my way through the flarks that are separated by narrow treed (Black spruce and Tamarack) ridges known as strings. Within 5 minutes we had found 5 species of insectivorous plants, some rare in the province but abundant in the fen. The fen lies at the centre of the whooping crane's migration route. I pick out the calls of Black terns, Common snipe, Lesser yellowlegs, Franklin's and Bonapartes gulls, Red-winged blackbirds, Olive-sided flycatcher.....Now I'm stuck in a crowded, stuffy windowless room listening to technocrats discussing the fate of that marvelous wild place.

Apparently TNE, which at present has 150 employees, spent \$150 million to get to this point and has been preparing for these Hearings for the last 3 or 4 months. I can't help contrasting all the resources the company has brought to bear with what AWA will be throwing at them, namely *moi*. It's definitely a David vs. Goliath contest.

On behalf of her diverse clientele, Karin Buss is the first to cross-examine the TNE panel. Her questions span the gamut from the project's water needs to mine tailings disposal, the collision rates on Highway 63, acidifying emissions and everything in between. It is fascinating to learn TNE offered to fund a Fort McMurray Medical Staff Association study of the community's health requirements, but that provision of this funding was conditional on the Association not coming to the Hearings! TNE, like big industry everywhere, tends to throw money and promises at potential problems. This tactic has proven successful, enabling TNE to sign letters of agreement with three First Nations (Mikisew Cree; Athabasca-Chipewyan; and Fort McKay) which then withdrew from participating in these Hearings.





Many of Buss's sharpest-edged questions were directed at Linda Halsey, whose study (Halsey et. al., 2001) proved crucial in paving the way for Alberta Sustainable Resource Development (SRD) to amend the Fort McMurray – Athabasca oil Sands Subregional Integrated Resource Plan (IRP) – as per TNE's request. This is the now-infamous study that purports to show the McClelland Lake fen is merely "representative" rather than unique. As an offshoot of this work, TNE also suggested that the Thickwood Hills fen was an adequate (ecologically equivalent) substitute for the McClelland Fen, whose protection would counterbalance the loss (to mining) of the latter. This is yet another transparently false assertion – a blatant attempt to equate apples with oranges. It is noteworthy that a subsequent peatland research proposal submitted to TNE in December 2001 by Linda Halsey is to be funded by the company (agreement signed on April 5, 2002) to the tune of \$1 million. This grant is registered in the name of Dr. Kevin DeVito at the U. of A.

Prompted by Buss, Halsey agreed that her assessment of the significance of the McClelland patterned fen did not involve any evaluation of its biodiversity, or of the conservation value of the MLWC as a whole. Asked if her initial research for TNE was designed to provide evidence to refute the IRP, Halsey replied that the proposed IRP amendment was a contentious issue and that she wanted to "present evidence to put MLWC in perspective". She further stated: "I'm a scientist and I provide information."

DAY 2: Wednesday, July 3

The day starts with more questions from Buss that include a batch for both Halsey and Dr. Dale Vitt. Originally, Vitt was assisting the Fort McKay Band and Buss has a March 7, 2002 letter by him regarding MLWC that states: "I see little chance that the system will return (post-mining) to its present condition." Vitt says that since TNE constituted its much-vaunted MLW "Sustainability Committee" to maintain water flows/levels and chemistry within natural ranges, his previous concerns have been allayed. According to TNE's plans, dewatering of the McClelland Lake basin would commence in 2011 and mining would start in 2013.

Mid way through the morning session, Buss drops a bombshell that wakes everyone up: in 2000, Koch Industries (TNE's parent company) was fined \$35 million for environmental infractions – the largest civil fine under Federal law in US history (according to the US Environmental Protection Agency's website). Denny Thomas is on his feet immediately to argue that what happened in the USA is "completely disconnected" from TNE's application before the EUB. Of course, he, like everyone else in the room, knows that Buss's line of enquiry is highly relevant, and the Board so rules. This debate prompts Mr. Michael Bruni, the Board's chief counsel, to ask TNE to provide a schematic of its corporate structure. It turns out that Americans comprise one-third of TNE's board of directors and that the chairman of Flint Hills Resources, Dave Robertson, is also the chairman of TrueNorth.

Diana Horton (whose PhD in Botany is from U of A) feels so strongly that MLWC deserves protection that she has driven from Iowa to participate in these Hearings. The main target of her inquiries is Halsey and the size, source and timing of her research monies – especially those from TNE. Horton is also extremely critical of the methodology used by Halsey et.al. (2001) and is relentless in her pursuit of answers.

When, finally, it's my turn to ask some questions, Denny Thomas wants to know how long I'll be and what I'll be asking questions about. He says AWA "is a sophisticated group" and that TNE only heard of our intervention yesterday. I tell the Board I'm not often accused of being sophisticated, and estimate my questions will occupy about 20 minutes. I focus my questions around the timing of TNE's realization that the IRP (and its restrictions) was in place; if they considered the IRP a problem; and what communications took place between Alberta Environment (AENV), SRD and the Department of Energy.

David Park states that in 1998, when TNE acquired the old Solvex leases, they were unaware of the IRP and that its existence came as a "surprise". Interestingly, Solvex's plans did not involve mining within the





MLWC. TNE also originally planned a single “train” mine but, following a drilling programme in the winter of 1999 that proved the existence of substantial oil sands deposits under McClelland fen, started to design a far larger project. With respect to TNE’s request for an IRP amendment, Park said he was confident of the merit of their case, which involved “a unique resource” vs. “ a representative wetland”. He made it clear that the only reason TNE wants to mine in the fen is that it is “more economic” (i.e., more profitable) to do so. This, of course, is regarded as an admirable motive in KleinCo.’s Alberta, where the official provincial religion is greed.

A key aspect of the McClelland Lake fen’s significance and uniqueness is the complexity of its patterning. I asked Halsey (TNE’s “peatlands expert”) about the hydrological significance of McClelland’s complicated reticulate pattern. Basically the more complex its pattern, the more complex is the fen’s water flow system. She told me she could not answer my question because she was not a hydrologist.

TrueNorth’s panel knew of no Boreal patterned fens with a complexity equivalent to that of McClelland’s that had been subject to the levels of damage and degradation planned for the MLWC and then reclaimed. In other words, there are no scientific “controls” out there and MLWC will be the guinea pig subjected to their destructive experiments.

My brief stint was followed by the mammoth effort of Mr. John Malcolm, the interim chief of the nascent Wood Buffalo First Nation. His range of questions was even broader than that of Karin Buss and, every now and then he posed a “zinger” that made everyone sit up. At one point a somewhat exasperated Neil McCrank told Malcolm he had been asking questions for a total of four hours!

DAY 3: Thursday, July 4:

Today commenced with cross-examinations by representatives from the Federal government and Alberta Environment, followed by Michael Bruni and Andrea Larsen of the EUB staff. Bruni endeavoured to unravel TNE’s corporate structure and determine its “financial wellness”. Larsen (an engineer) asked numerous technical questions (most of which were over my head) about TNE’s planned mining and processing operations.

TNE staff reiterated their faith that the company’s proposed reclamation scheme would prove successful, although, significantly, they did finally admit “we aren’t entirely sure of what the final landscape is going to look like” and that the greatest uncertainties involve “wetland areas”. In oil sands-speak the end-product of mine reclamation is termed “the closure landscape”.

Responding to Larsen’s questions regarding MLWC and McClelland fen, Vitt gave a glowing, upbeat account of how Canada has the world’s leading experts in peatland reclamation His basic, ultra-optimistic message was: trust us, we have the technology, we know what we’re doing. All this despite the fact that his key example was a non-Boreal, non-patterned, coastal fen in Holland, and that peatlands “reclaimed” thus far have been stripped of their surficial peat deposits, not obliterated by an open-pit oil sands mine.

When the Board’s turn to ask questions arrived, John Nichol got very exercised over TNE’s plan to dispose of high salinity waste water by injecting it into an aquifer that complies with the EUB’s definition of a usable water zone. This issue was to generate considerable discussion and argument throughout the remainder of the Hearings. Nichol stated that the Board had never approved such a practice.

The day’s events closed with a surreal exchange between Neil McCrank and David Park that revealed the Board’s true colours. McCrank, noting the EUB’s “conservation mandate”, wanted to know “how much of the resource would be left in the ground” along lease boundaries and “how will we explain this to our grandchildren?” Park, who has 3 children under the age of four, said he did not want to have to explain to them “how we wasted the resource”. I should note here that the Alberta Energy Department uses the





Orwellian term “sterilizing the land” to describe anything – such as the establishment of a protected area – that results in any part of the oil sands being placed off-limits to mining. There then followed considerable discussion between TNE and the Board regarding “resource sterilization”. Such terminology is doubly Orwellian when one remembers that that oil sands technology (heat, solvents, steam) actually DOES sterilize the land.

DAY 4: Friday, July 5:

The proceedings began with the panel – consisting of anthropologist Ms. Lorraine Hoffman Mercredi and psychologist Mr. Phillip Coutu – representing the Creeburn Lake (important Aboriginal archaeological site) Preservation Society. As did John Malcolm previously, they provided many insights into Aboriginal politics in NE Alberta. They characterized TNE’s “Traditional Land Use Study” as “very inaccurate”, and noted that “people who speak against the land get paid and the people who speak for the land are marginalized.” That truism certainly struck a chord with me.

Next up was the Oil Sands Environmental Coalition panel and all of their speakers did a fine job. From my perspective, both Gail Macrimmon’s (Pembina Institute) and Myles Kitigawa’s (Toxics Watch) presentation were articulate and right on the mark. Macrimmon pointed out that the billion barrels of oil (represented by the bitumen deposits underlying McClelland fen) described by TNE as a “unique resource”, represents a mere 0.33% of Alberta’s total oil sands-related reserves. Dan Vialovich made the point that oil sands companies like TNE should be using the best available technologies (e.g. for controlling pollution) rather than the cheaper “best in class” options they are so proudly touting.

Dr. Diana Horton gave an excellent, heartfelt presentation. Comparing the almost complete loss of Iowa’s original, natural habitats to what was in store for Alberta, she commented that Iowa’s environment had been devastated by agriculture. This prompted the Board member Tom McGee to comment that Iowa’s farms had “fed a lot of people”, which reinforced my conviction that, in my presentation, I had better start from basics and explain why we need to conserve natural biodiversity if we wish to survive.

DAY 5: Tuesday, July 9:

Last Friday I agreed to be bumped further down the order of presenters so that one of Karin Buss’s clients, the Fort McMurray Medical Staff Association (which represents all the town’s physicians) can go first. With impressive sincerity and intelligence the three doctors explain the immense strains that medical services and practitioners in the Fort McMurray area are currently enduring. They argue that without greatly increased resources, approval of TNE’s project will place an additional, untenable burden on a system already operating under severe duress. Dr Sauv e, the Association’s president, remarks that “sometimes we have to legislate common sense.”

Next up are Robin Robinson and Esther Oakes from the Alberta Council of the Canadian Federation of University Women. The two share the reading of a very eloquent text that presents arguments for the protection of MLWC. They even employ a quote from Ralph Klein, which, unfortunately, given the sad state of the province’s environment, has a rather hollow ring to it, namely: “a prosperous province can afford to preserve its natural landscapes and is the richer for it.”

As per usual, Denny Thomas establishes that the two are neither botanists or hydrologists and then spends a lot of time trying to convince them to agree that Dr. Vitt can be relied upon, they can trust TNE and AENV to make sure the fen will be reclaimed, and that more peatland research (by Halsey et.al.) would be the best thing since sliced bread. The “but we’re doing research on the problem” mantra is another patented industry and government device for pacifying a public concerned about runaway environmental degradation.





Finally, before the lunch-break, it's my/AWA's turn. Starting from first principles, I try to explain why the protection of naturally-functioning ecosystems, and the biodiversity comprising them, is so vital. I use a quote from famous Stanford University ecologist Paul Ehrlich: "If we don't maintain the ecological system, there won't be any economic system – there won't be any businessmen, and there won't be any economists." In addition, I make reference to the important book "Nature's Services: Societal Dependence on Natural Ecosystems" (edited by Gretchen C. Daily, 1997) to introduce the concept of ecosystem services.

Using illustrations from my 1998 Boreal Forest Natural Region report, I explain how Alberta's Boreal forests are under siege from industrial development, and demonstrate the unprecedented pace and scale of the latter. I also list the many significant components of the MLWC (e.g. the Lake, the patterned value, its 12 sinkhole lakes, rare plants, bird life, etc.) that merit protection and emphasize that the complex as a whole is unique within the province.

One of the problems faced by environmentalists trying to mobilize public support for Boreal Forest conservation is that the Boreal is generally not perceived to be as scenically attractive or aesthetically pleasing as, for example, the Rockies or west coast temperate rainforest. I assure the Board that this will not be a concern in the case of the McClelland patterned fen, which, by any standards, is a beautiful, visually spectacular landform.

Like Horton, I attack the conclusions of Halsey et. al. (2001) which are based purely on a simplistic comparative morphometric analysis of the McClelland Lake fen. To do so, I use a crude ornithological analogy as follows. If I applied their approach to birds, I could say Whooping cranes, American white pelicans, and Snow geese are all large white birds with black wingtips that utilize aquatic habitats. There are lots of pelicans and geese, therefore, Whooping cranes aren't unique and do not require special protection status.

With respect to TNE's claim that mining half the McClelland peatland and fen will not degrade the rest of the complex (thanks to the Sustainability Committee's future stalwart endeavors), I argue this is pure wishful thinking and cite the line from a Dire Straits song: "De-Nile ain't just de river in Egypt". This draws considerable laughter from Board staff and other audience members. I ask the Board if half of Mt. Rundle (one of Canada's most photogenic and photographed mountains) was mined and replaced with grey-painted fiberglass, would it retain the same value to people as the original?

Searching for evidence of the oil sands reclamation successes referred to by TNE, I note that the only forest close to being certified as "reclaimed", contains 30-40% Siberian Larch, a non-native species, and will have to be cut down. Furthermore, Syncrude's much praised flagship reclamation project, where Wood bison graze on an artificial pasture ("Marvel at magnificent creatures in their **natural habitat**" says their advertisement), may represent a public relations coup, but it also constitutes a stunning example of ecological illiteracy. It should be borne in mind here that reclamation is NOT ecological restoration. TNE's stated goal for successful reclamation is to achieve a "stable, sustainable, and productive landscape". Watch out for those words because a pasture, like Syncrude's bison paddock, satisfies this definition.

I also chastise Alberta SRD for succumbing to political pressure to amend the Fort McMurray-Athabasca oil Sands Subregional IRP. In my opinion, this IRP amendment is the single biggest scandal related to the entire Fort Hills project. To finish, I urge the Board, on behalf of AWA, to adopt the position that the general public's long-term interests would be best served by having MLWC officially established as a protected area, for future generations to appreciate and enjoy.

Both my talk and cross-examination go surprisingly smoothly, and remarkably, during the latter I manage to remain reasonably calm and collected. At one point, Denny Thomas tries to extol the virtues of TNE's Integrated Resource Management plan to me, whereby TNE and AI-Pac will coordinate their activities in





order to minimize road-building, etc. For some reason, I fail to be impressed since the rape and destruction of this particular part of the Boreal Forest is still rape and destruction, no matter how carefully choreographed.

After my turn in the barrel is over, I am encouraged by the number of people, representing almost the entire spectrum of interest groups present in the room – including the oil sands industry, who convey their support for what I had to say. Halsey tells me she “enjoyed my talk” and that “she loves peatlands too”. I am too gobsmacked to formulate any sensible reply.

John Malcolm’s presentation provides a window on the difficulties the 200-member Wood Buffalo First Nation has encountered, since its formation in 1997, concerning their attempt to obtain official recognition. Clearly there is little love lost between Malcolm and TrueNorth’s Bob Cox. John Malcolm refers to industry’s (and KleinCo.’s) tried and true tactic of “divide and conquer” when it comes to their dealing with Aboriginal peoples (not to mention environmentalists).

The evening session involves presentations by an eight-member, mixed AENV/SRD panel chaired by Mr. Mike Boyd. Mr. Boyd manages the province’s Sustainable Development Strategy for the Region – which purportedly “balances” development with environmental protection. Given the fact that less than 9% of Alberta’s Boreal Forest Natural Region remains as wilderness, it is not difficult to guess which side this type of balance favours.

Mike Boyd begins by reading out a description of AENV’s and SRD’s official mandates and responsibilities. More fine-sounding words that, given the political realities of present-day Alberta, are virtually meaningless. Boyd emphasizes that the IRP amendment was a cabinet decision. His panel members read their prepared statements, which I later learn required approval at the Deputy Minister level. Noel Saint-Jean (SRD) also reads out a crucial motherhood statement from the amended IRP, namely: “Surface mining within the Athabasca-Clearwater RMA shall maintain the water table, water chemistry and water flow within limits as indicated by natural fluctuations to maintain ecosystem diversity and function of the McClelland Lake wetland complex where surface mining is not allowed.” More empty words I’m afraid, unless, of course, you believe that the “age of miracles” is not yet dead.

DAY 6: Wednesday, July 10:

Today commences with Karin Buss cross-examining the AENV/SRD panel. Initially she focuses on the dates when, (a) TNE applied for an amendment of the IRP (late Dec. 2001 or early Jan. 2002); (b) their request for an amendment was publicly announced (April 2002); and (c) the amended IRP was released to the public (June 24, 2002). It quickly becomes apparent that the Board, Alberta’s legal counsel and the AENV/SRD panel regard the IRP amendment as a *fait accompli* that is basically “off-limits” to interveners’ questions. Alberta’s lawyer states that it is “not productive to examine the IRP amendment process” since the decision to amend the IRP was made by cabinet. How do you spell “cover up”?

Critics like myself often say IRP really stands for “institutionalized rape and pillage” and the fact that MLWC was declared off-limits to mining (in the face of tremendous opposition by Alberta Energy) speaks volumes regarding its conservation value. Public review of the proposed amendment was limited to a two-day open-house held by SRD in Fort McMurray. Participants were provided a questionnaire that polarized the debate into “creating jobs for the future” and “contributing to economic growth” vs. “protecting the wetlands (fen)”.

In Alberta the so-called “stakeholder process” is typically used (as John Ralston Saul would put it) as an “exclusionary device”. MLWC belongs to all Albertans, not just the inhabitants of a single-industry boom town. As usual, SRD worked hard to achieve the (predetermined) “desired decision”. The original IRP





(1996) involved about four years of intense negotiation to craft. It only took two months for TNE's requested amendment to be approved.

Buss asked St. Jean for the meaning (in practical terms) of the amended IRP's motherhood statement (given above), and was told "the data are not there" to answer that question. Apparently, TNE's Sustainability Committee will determine what "maintain(ing) ecosystem diversity and function" actually means.

Dr. Horton continued to probe the IRP amendment and was told by Neil McCrank that "what led up to those decisions is not important to us". Since many people would not have attended the Hearings if the IRP had not been amended, I also considered it fair game. Alberta's lawyer got plenty of exercise jumping up to block my questions, and Neil McCrank told me to pursue another line of enquiry. The panel would not even answer my general question regarding the definition of a "stakeholder" under the IRP process.

When I queried the absence of Parks and Protected Areas staff from the panel (which contained no botanists or peatland experts), I was told that the matter fell under the mantle of cabinet confidentiality. St. Jean even said that the location of the line delineating the western edge of the "no surface access" zone (within McClelland fen), which follows the section boundaries in stair-step fashion, had been decided by cabinet.

All in all, the panel's performance made me feel ashamed to be an Alberta taxpayer. One of the most pernicious legacies of the so-called "Klein revolution" is the incredible degree to which political interference has penetrated every level of the bureaucracy with respect to environment-related decision-making. Serving the best interests of Alberta's environment and the people of Alberta, has been replaced by serving the best interests of the Minister, the PC party and its political supporters, and one's career prospects. Whom or what did Neil McCrank have in mind when he told Mike Boyd that his panel had "looked after your client very well through this process"? As far as I'm concerned, the provincial government's evasiveness regarding the IRP amendment was the absolute low point of the entire Hearings.

By 4:50 pm everyone's evidence had been presented and, after a 10-minute breather, it was time for closing arguments. I found Denny Thomas's 45-minute exposition to be both depressing and, at one point, astonishing. He characterized the Mikisew Cree, Fort McKay and Athabasca-Chipewyan First nations as the only persons who can make a case for being "directly and adversely affected" by TNE's proposed development. (This is the EUB's ultimate weasel clause). Coincidentally, all three had signed Letters of Agreement with TNE and not intervened at these Hearings.

Then, in a thinly-veiled threat to the Board, Thomas declared that the democratically-elected government of Alberta had approved the IRP amendment and, hence, already made the policy decision that TNE's project is in the public interest and should go ahead. Basically, his argument was that the Board's function now was to formally approve TNE's application and set conditions regarding the development and operation of its mine. Thomas further pronounced that "the Board is bound to follow the intention of the Alberta government" – so much for the EUB's independence! Neil McCrank later asked Thomas to clarify his opinion that the Board was obligated to follow the IRP amendment.

Karin Buss's and Diana Horton's final remarks were excellent. Buss reminded the Board of its Whaleback decision, which she regarded as a precedent for turning down TrueNorth's application.

Sometimes less is more, and I chose to limit my closing argument to five minutes duration. Thankfully, John Malcolm had the courage to say what many of us were thinking, i.e., Denny Thomas's earlier remarks (re the Board having to acquiesce to cabinet decisions pertaining to the IRP) were very disrespectful and made a mockery of both the Board and these Hearings.





After a few minor comments from other interveners the ordeal, for all concerned, was nearly over. A representative from the Federal Department of Justice reminded the Board that the Feds (primarily the Department of Fisheries and Oceans) would not be in a position to complete and present their submission to the EUB until September 6 of this year. Ordinarily the Board tries to render a decision within 90 days of the termination of any given Hearings.

In his closing remarks Neil McCrank hoped that the hearings process would “balance many competing interests” and that, as mandated, the Board would arrive at a decision that “will be in the public interest”. The EUB is on record as stating it does not want to create “winners” and “losers”. Unfortunately, the sad reality is that whenever humans compromise (e.g. over proposed development projects), inevitably it is the integrity of our environment that ends up being compromised.

After all was said and done, several TNE panelists walked over to shake hands with Diana, myself and others in “the environmental camp”. One even told Diana that they’d do their best to take care of the fen (there’s nothing like confidence in the Board’s decision, eh?).

I started thinking about one final study in contrasts. Rightly or wrongly, it was my feeling that for most oil sands executives attending the Hearings, MLWC simply represents columns of figures on a spreadsheet. The clinical and detached “professional” demeanour of the TNE panelists often contrasted markedly with the emotional involvement and passion that characterized MLWC’s defenders. To them it was all part of a day’s work; for us the plight of the fen touched something far deeper.

So, where do we go from here? My conclusions regarding the Hearings are as follows. First, aside from the threat to MLWC, there are plenty of serious environmental, socio-economic and technical issues related to TNE’s proposed development. One oil sands executive even told that he thought there was considerable doubt that TNE could raise the cash required to finance the Fort Hills project if it receives EUB approval.

However, it seems highly unlikely that the Board will be able to deny TrueNorth’s application given the level of political pressure behind its approval. That the IRP amendment has already occurred is crucial and, of course, is no accident or surprise. The Board will set numerous conditions, and thereby “raise the oil sands (approvals) bar” another notch, when it gives TNE the green light.

However, I truly believe that the oil sands industry in general, and TNE in particular, is vulnerable to negative publicity concerning MLWC. AWA and other NGOs need to join forces with US-based environmental groups to mount a public awareness campaign in Koch Industries backyard, and show potential users of TNE’s oil the true upstream environmental impacts of their consumer choices.

It is extremely important that we do not give up on securing protection for MLWC. We have time and I am convinced this spectacular site can be saved. There are viable solutions to the problem confronting us. Already, a few of the more progressive voices in the oil sands community are talking about lease trading, or other companies supplying TNE with ore to replace that “lost” if MLWC is protected. The industry as a whole would (deservedly) score an enormous PR coup if such a deal could be brokered. However, Alberta Energy would undoubtedly oppose such a solution tooth and nail. We therefore need to prod, cajole, bully, persuade and shame KleinCo. into doing the right thing, for once, on behalf of Alberta’s priceless natural heritage.

The TNE/MLWC situation – especially the behind-closed-doors amendment of the IRP and the role of Halsey et.al.’s (2001) paper in same – reminds me of a bumper sticker I saw in New England a few years ago. It said: “If you’re not outraged, you’re not paying attention.”

The fight to save the McClelland Lake fen has only just begun.





Closing Argument: Richard G. Thomas

EUB Hearings, Wednesday, July 10, 2002

Mr. Chairman, members of the Board, Board Staff, ladies and gentlemen,

McClelland Lake Wetland Complex belongs to ALL Albertans – not just a select group of “stakeholders”. Democracy had absolutely nothing to do with the recent amendment of the Ft. McMurray-Athabasca Oil Sands IRP.

In my professional opinion as a protected areas expert, this wetland complex as a whole is a unique and invaluable part of the province’s natural heritage. Nothing I have heard or seen during the course of these hearings has made me doubt the validity of this assertion. Destruction of the MLWC for short-term economic gain would be an ecological and cultural disaster.

Optimistic talk of reclamation, mitigation, and maintaining the unmined portion of the complex in a “natural state” is both spurious and irrelevant. We are being asked to have faith that industry’s technological fixes can somehow reproduce NATURAL ecological complexity and variability, a belief system that remains completely undemonstrated. The Board is being requested to allow TrueNorth Energy to unleash a devastating environmental experiment upon McClelland Lake fen, with no known precedent or (in the scientific sense) adequate “controls”.

Any mining will inevitably result in the ecological integrity and other diverse values of the whole complex, being irretrievably compromised.

I have rarely seen a development-related controversy where the environmental “rights” and “wrongs” were so clearly defined.

In the opinion of the AWA, full protection of MLWC is undoubtedly in the best interests of BOTH the general public AND Alberta’s oil sands industry. If mining within the fen receives official approval, we predict that the long-term negative PR impacts upon this industry, and its management by the Alberta government, will be severe and far-reaching.

Thank you.

(Richard Thomas is a researcher and consultant on Boreal Forest, migratory bird, and protected areas issues.)

Halsey, L., Nicholson, B., Devito, K., and Vitt. D. 2001. Landscape and Landform Variation in Patterned Fens Within Alberta. In: Supporting Information For Alberta Government Review of Guidelines in Fort McMurray-Athabasca Oil Sands Sub-regional Integrated Resource Plan, Appendix 2 – Research Paper.

http://www.truenorthenergy.com/html/irp/index2.htm#_Toc4232339

