



Conversations
That
Matter



CENTRE FOR DIALOGUE
SIMON FRASER UNIVERSITY



OH BOY PRODUCTIONS



Conversations That Matter is a partner program for the Center for Dialogue at Simon Fraser University. The production of this program is made possible thanks to the support of the following, and viewers like you.

- Here at Conversations That Matter, we endeavor to look at different sides of an issue. Site C, the massive hydroelectric project under construction in northeastern BC is a controversial and much-debated issue. We produced one episode we called Site C: A Town on Edge. What were the potential consequences to people who worked on the project, and what would be the impact on the city of Fort St. John if Site C was canceled. This is our second conversation about Site C. Today we examine how the West Moberly and Prophet River First Nations have attempted to enforce their treaty rights. As well, we're looking into BC Hydro's math. Does it add up? What are the stakes, both ethically and financially, for BC and BC Hydro customers? Today we sit down with both Gordon Christie and Eoin Finn. Mr. Christie speaks from a legal perspective on why two Treaty 8 nations are battling the Site C project so fiercely. And Mr. Finn addresses the numbers for our conversation that matters. Gordon Christie, welcome to Conversations That Matter.

- Pleased to be here.

- When we look at Site C, we have two First Nations that are working diligently to try and put a stop to the project. Let's start with where are we at in their process?

- They've run into a wall on the legal side.

- Because they've gone to court more than once.

Conversations That Matter is an Oh Boy Productions program. Please help us to continue to produce this program by making a donation at www.conversationthatmatter.tv

- [Gordon Christie] Yeah.

- And both times, their case has not-- just been rejected, not even heard.

- Well, they were heard by the Federal Court of Appeal and the BC Supreme Court, but the appeals at the Supreme Court of Canada were cut short in June, so we won't get a decision from the Supreme Court on this matter. So we don't really know what the Supreme Court of Canada really thinks about these big issues. There are some big issues being raised by this, and--

- And what are the most important ones that we need to keep in mind when we're thinking about Site C?

- The message being sent by the courts is they want these kinds of issues dealt with under the umbrella of consultation, which is where most things have gone the last 10 years or so in Canadian law. The Treaty 8 nations are saying, "Well, we have a treaty, and the treaty has terms in it." Both sides are bound by those terms. The Treaty 8 nations have been living under the treaty for 100-plus years, and they just want Canada to live up to the terms of the treaty that they agreed to. And under the terms of the treaty, when something happens that infringes upon the rights that the Treaty 8 nations have, that should be looked at. And the government should be deciding whether they can justify infringement, or if they have to do something to mitigate the effects. But the courts have been saying, "No, we don't need to go there. "We can just deal with this under consultation." But that's a separate business that's been developed in the last 15 years in the courts, and so we have to--

- Right, and that, sort of, is an outgrowth of Delgamuukw and subsequently Tsilhqot'in that you're supposed to consult, but as-- Treaty 8 is settled, and we have treaty rights.

- Yeah, West Moberly and Prophet River First Nations both have a treaty, so they have established rights. They're set in the treaty, so we shouldn't be thinking we go to consultation. But another game's been played the last 10 years with treaty rights, and there's a real push by the government to put everything into the realm of consultation, because really they just wanna have First Nations talk about their claims, not actually be able to use them. And that traces back to a case called Mikisew Cree, from 2005, dealt with an issue in Wood Buffalo National Park with the building of a road, and the Mikisew Cree have a treaty, and in that case, Supreme Court of Canada said, "Well, when the government is doing something "that infringes, or doesn't infringe upon, "but has an effect on your treaty in some sense or other, "then they need to consult." But now that creates two layers with treaties. You can either just get consultation, which is the government talking about something they're gonna do that has an impact on your treaty. But deeper than that, if the rights in the treaty are being impacted upon, that's called infringement. And that's where the Treaty 8 nations wanna go. They wanna go to infringement because that's meatier. That's like talking about their actual rights, not just having a chance to talk about things. They wanna actually grapple with their rights. And this last round of Conversations That Matter is an Oh Boy Productions program. Please help us to continue to produce this program by making a donation at www.conversationthatmatter.tv

decisions, the Supreme Court decision in June, they've again pushed us back into consultation, so I don't know where the Treaty 8 nations are gonna go. They keep hitting this wall. The message from the Federal Court of Appeal was, "Well, if you wanna talk about infringement, "you have to launch an entirely separate action, "and just have an entirely separate "court matter dealing with that." But that's starting from ground zero, so they'd have to go to BC Supreme Court and launch an action about infringement. It would get appealed to the BC Court of Appeal, get appealed to the Supreme Court of Canada. So we're talking about a four-, five-, six-year process, probably hundreds of thousands of dollars. And of course, at the end of that, the dam will either be built or not built. Other things will have happened. It will probably be built if things keep going the way they're going. So it's a kind of a rock and a hard place for--

- Right, because when you talk to BC Hydro, I had a conversation with Jessica McDonald about, "Okay, why are you building this? "What about First Nations' rights?" And she said, "Well, we're trying to consult with them, "but they won't consult with us." And so this goes to your point that they're being pushed towards consultation, when in fact they're saying, "No, this isn't about consultation. "It's that you are infringing "upon the rights that I already have."

- Yeah, we have rights set out in 1899, and they're in the treaty, and let's talk about them. They wanna have a dialogue with Canada, because Canada's the actual treaty partner, not BC. They signed a treaty with the federal government. They wanna have the federal government come and talk about the impact this dam is gonna have on their actual treaty rights. That's what they wanna have.

- Now the argument that-- one of the arguments that I've heard, that's been put forward, is if you take a look at the Tsilhqot'in decision, Justice McLaughlin has stated in there that if it is determined that in the greater good for all, that the rights can be, basically overrun in this consultation process. If we're looking at the Tsilhqot'in decision stream to do that. But does that apply when treaties are in play here? And clearly they are. Everybody agrees that there is a treaty there.

- Yeah, there's the treaty, no mistake about that. But there are many, many big unanswered questions in Canadian law. There's lots of things to work on. And some people would say, "Well, a treaty is there, so there's no aboriginal title. "It was removed in 1899." There are many other people who say, "Well, you have to look at the treaty "and see what the discussions were at that time." And there are certainly arguments to be made that the treaty eliminated most rights the Treaty 8 nations had in exchange for these other treaty rights. But the language isn't clear that it actually meant to, at least in the minds of the First Nations, they weren't being told things that would make it clear in their minds that they were giving up all their land interests. And a treaty is a kind of contract. Its' not a contract, but it's a kind of contract, in that you have to have meeting of the minds. You have to have two parties sit down and agree on what they're treating about. And if the First Nations were never informed that they were actually giving up all their land interests, well then the treaty itself is suspect.

Conversations That Matter is an Oh Boy Productions program.
Please help us to continue to produce this program by making a donation at
www.conversationthatmatter.tv

- But is it not in virtually every treaty that has been signed with any First Nations in Canada that you have the hereditary right to hunt and fish on those lands?

- Oh yeah, and that's what they wanna argue about. I mean, I don't think the Treaty 8 nations are interested in necessarily going this route and trying to show they have title. They could do that. Be a very interesting thing to do. They really just wanna say, "We've got these treaty rights. "You agreed to them. "Let's talk about them." Hunting and fishing are the key ones.

- And so if you go forward with Site C, then where is there to hunt and fish? In essence, you've taken away that right.

- Position of the government has been, both the federal and provincial governments, have been for many, many years, that your treaty rights are still there because you can go hunt and fish somewhere else. But that's ... That's a ... It's a suspect argument, even just conceptually. But if you think there's something there, like, "Oh, they could go hunt somewhere "other than the Peace Valley." Well, the problem is that if anybody knows anything about Treaty 8 area in the northeast part of the province, they know that that part of the province is just completely inundated with industrial development.

- [Stuart] Right.

- And not a lot of other places to go out and fish.

- [Stuart] No.

- The fracking business picked up, there are thousands and thousands of oil and gas developments up there. The land is criss-crossed with roads, everything.

- Deforestation, roads, electricity, yeah. So where you do go hunt and fish?

- Exactly, and that's the kind of thing that the West Moberly and Prophet River wanna have a talk with Ottawa about. Let's just talk about this. It seems like we're at a point where we can't hunt and fish anymore, unless you leave the valley alone, don't put another dam in there.

- How do we start to change this relationship that we have with First Nations? Because we have done everything that we can to sideline them, or to move them out of the picture.

- Well, there's the right kind of talk in Ottawa right now. The question is whether the talk will lead to action.

- [Stuart] And that is ... ?

Conversations That Matter is an Oh Boy Productions program.

Please help us to continue to produce this program by making a donation at

www.conversationthatmatter.tv

- Reconciliation on a meaningful level. Trudeau's government's been talking about actually restarting the relationship, having it be nation-to-nation, the reset of 10 principles they came out with about a week and a half ago. And if you look through those 10 principles, if those were the principles they lived by, and they reframed the relationship according to, that would push us a long way down a better path to having the right kind of relationship. Because those principles talk about these matters of having a nation-to-nation dialogue over these kinds of issues.

- But wasn't it the Trudeau government that gave final approval to Site C?

- Yeah, well again, there's a disjunct between talk and action here. We're waiting to see if the action catches up to the talk, right? That's the big question.

- Thank you very much for coming in and doing this.

- Thank you.

- Thank you.

- [Announcer] Conversations That Matter is a not-for-profit program made possible thanks to the charitable support of the following, and from viewers like you. Please visit www.ConversationsThatMatter.tv and help us to continue to produce this program.

- Mr. Eoin Finn, welcome to Conversations That Matter.

- Thank you.

- Site C. It is a big project, and it's one that you contend we don't need. Why do you say we don't need it?

- The current situation of supply and demand in BC is that BC Hydro has about, at its fingertips, about 73 terawatt-hours of power that it can distribute to all of us every year. Currently the demand for that power in BC is 50 terawatt-hours, so considerably less, and while--

- So we don't produce, necessarily, the extra 24 terawatt-hours.

- Oh, we produce a little extra just in case, and the rest of it, if we produce extra and we don't need it, we sell it in the wholesale in the North American market at a hub called the Mid-Columbian Hub. And it's at a loss. It costs more to generate than we get, but the alternative is to throw it in the ground or stop the water spilling over the dams. So we have a big excess, way more than we need for the security that Conversations That Matter is an Oh Boy Productions program.

Please help us to continue to produce this program by making a donation at www.conversationthatmatter.tv

if it was very cold, or very hot, and there were a lot of air conditioners in BC, that we would still have enough backup to produce all the extra power we need.

- And is this before the final generators come on stream in Revelstoke, and I think Mica Creek has got two new generators as well.

- Mica Creek, I believe is on line, very new. But there's a sixth turbine at Revelstoke that has not yet been-- it's just a hole in the ground, or hole in the dam, that's not been activated. And of course, we have extra capability also from our Columbia River Treaty, which is 80%-plus of the size of the proposed power from Site C.

- Just what we have access to, through the Columbia River power arrangement, is 80% of the total amount that could be produced at Site C?

- Yeah, it's about 4,300 gigawatt-hours versus Site C's 5,100. And we have access to that. We have a treaty that was locked in until 2014. And from 2014 onwards to the end of it in ... seven years from now, when we would presumably renew it, we have the option of declaring that we're gonna want that power.

- And so what happens if we don't declare that we want it? Do we lose that opportunity?

- No, what technically happens right now is there is a technical pass of that electricity, it's a virtual pass, over the border into BC, and we sell it back to them at the agreed wholesale rate, which currently, at the Mid-Columbian point, is just shy of \$20 US per megawatt-hour. When hydro is struggling to break even of charging all of us an average of \$88 an hour. So selling ... Being able to access power at \$20 US an hour, and be able to sell it for eighty ... well, to the residential customers, upwards of \$100 a kilowatt ... uh, a megawatt-hour, would be attractive for hydro. But the the review panel that Harry Swain chaired was specifically told to exclude that entitlement from its deliberations. But I think it comes in--

- [Stuart] Huh?

- Yeah, it was. And it was a-- and so that factor never entered into it. But when you take 73 terawatt-hours and you add 4.4 or something from our entitlement, you're getting to an even bigger number, over and above the 50 that BC has produced. Now against that, the reason that Site C has proceeded is that Hydro's forecast is that electricity demand will increase by 2% a year for the next 20 years, leading to a 40% increase, for which Site C would be needed. And we might even dip into the entitlement from from the Columbia River Treaty. Those numbers are severely subject to question, because in the last 10 years, the power demand in BC has actually gone down by about 2%.

- Despite population growth.

Conversations That Matter is an Oh Boy Productions program.

Please help us to continue to produce this program by making a donation at

www.conversationthatmatter.tv

- Despite the half a million, 534,000 official population increase in BC. Mainly because we're a little more sensitive to the cost, because they've gone up 17%. But the principal reason, and I've dug into Hydro's figures a bit, is that we have de-industrialized lots of BC, and the average power consumption from our industrial sector has, although the number of accounts have gone up in the big industrial sector, the average power consumption for each of them have gone down by almost 40%.

- I gotta get you to hang on for a second while we take a quick commercial break.

- Okay.

- We'll be right back.

- [Announcer] Conversations That Matter is a not-for-profit program made possible thanks to the charitable support of the following, and from viewers like you. Please visit www.ConversationsThatMatter.tv and help us to continue to produce this program.

- One of the things that has been put to me is that Canada of course has signed on to the Paris agreement, our commitments to climate change, and reduction in the burning of carbon-based fuels, and meet a number of these other initiatives, plus the introduction of electric vehicles and so on. Will we still be able to do that, let's say if Site C isn't there? And if so, then how do we do that?

- Well, the answer summarily is yes, we should be easily able to do that. We have, already, a huge surplus that we sell for less than cost, which we have available for use, the Columbia River Treaty entitlement, the sixth generator at Revelstoke. And then you get into the alternate sources, which we've largely ignored. We have Run-of-River contributing a whole pile more, which we've largely ignored, which is geothermal, wind, and solar, all of which are dropping significantly in price, well below anything we could produce from Site C. So it becomes a simple-- If indeed we need the power in the future, then we would have a much more resilient, much more varied, and therefore much more resilient, electrical ecosystem if we had a real variety in our sources.

- If we were to look into the future and say we-- What are the things that could happen that would cause us to have a surprise in our power supply and be unable to keep the lights from going brown?

- The things that would immediately spring to mind would be increasing population. Well, that hasn't bothered us for the last 10 years, it is unlikely to bother us in the next 10, mainly because people are plugging in LEDs and using less power and more efficient appliances, and all our new building codes are contributing to houses being a lot easier to heat than they used to be. Electric vehicles are probably the single biggest potential drain on the existing power supply. But having done the math on your average, as it stands today, electric vehicle, if you were to, as Hydro has estimated, take about 10% of the current

Conversations That Matter is an Oh Boy Productions program. Please help us to continue to produce this program by making a donation at www.conversationthatmatter.tv

population of electric vehicles, there's three million of them on ACBC's books, and Hydro estimates that by 2030 we might have 300,000 of them rolling around BC. What would that do to our power drain? Well, the answer is that about 20% of a Site C would be quite sufficient to handle that, thank you.

- Twenty percent.

- Twenty. And 25% of our Columbia River entitlement, and a lot less of the existing surplus we already have.

- Gotta take one more break before we come back and wrap this up. We'll be right back.

- [Announcer] Conversations That Matter is a not-for-profit program made possible thanks to the charitable support of the following, and from viewers like you. Please visit www.ConversationsThatMatter.tv and help us to continue to produce this program.

- I know you can't speak for BC Hydro, but why do you think they want this to go through so badly?

- I've been in several boardrooms of large hydro companies, and they're dominated by the engineers, to whom the signature project would be a Site C. There's an old expression, and you know I've been a management consultant for almost 30 years, that says if all you have is a hammer, everything looks like a nail. And that's the situation with many hydro companies. Our signature projects are building big dams. Hydro hasn't built one since Revelstoke in '84 or so. They have built transmission facilities like the Northwest Transmission, and if their track record on the Northwest Transmission, which went from 380 million to 700 and something, is anything to go on, the chances that Site C would come in on budget are pretty small, which would add to its cost. And in the end of the day, what that cost matters to is the almost two million customers, the residential customers, who have to pay the fare. BC Hydro has gotten itself into a real difficulty because in large part it's been over-politicized, decisions about what rates they charge, and those are political decisions rather than economic ones, and has built up a large deficit, the worst of any public utility in North America, currently racking in at a debt-equity ratio, which financial analysts look at, of 4.6 to 1. That's way bigger than the average in North America of about 1.5 to 1, which means the owe \$150 for every \$100 in assets they own. If it were you or me, the bank manager would be calling. And the only reason that they haven't is because it's backed by two million customers who will pay the Hydro bill because they can't think of an alternative that heat and power their houses and cook their food. So Hydro is in real financial trouble, and it has adopted unique accounting policies for its deferral accounts, which has further exacerbated the situation, where they're bringing future revenue into current, and then deferring costs that they should be doing now, into future. And that little sleight of hand has brought significant disrepute into how it publishes its results. How we discharge the debt and the deferral accounts included in there back to something reasonable that allows BC Hydro a chance to succeed at its business, which it's very good at, is going to be a 100 million-- well, \$10 billion

Conversations That Matter is an Oh Boy Productions program.
Please help us to continue to produce this program by making a donation at
www.conversationthatmatter.tv

question is how do we put Hydro back in shape and the lights won't be so expensive that Ontario will be laughing at us, going, "Ha ha! You thought we were in trouble, "but look at you guys now."

- So do you think that we're at a point where we can still put the brakes on Site C? Because we've got embedded costs in here already, now.

- We'll be walking away from at least two billion, which have been signed contracts and worked on, on site preparation. And the big contracts left are spillways, and turbines, and the actual pouring of the dam concrete, envelope on the dam itself. I think we can. My math, when I did the math of it all, said that you-- and Harry Swain has said much the same thing, you could spend close to seven billion dollars on capital costs, and if you were to make a business decision, not a political one, a business decision, up to that point it would still be worth pulling the plug and walking away. That's quite sobering.

- Thank you for coming. Yes, it is quite sobering. Thank you for coming in and explaining this.