

Committee of Supply

ESTIMATES: MINISTRY OF ENVIRONMENT

March 1, 2016

G. Heyman: At this point, the next line of questioning will be on other water issues from some of my colleagues. I am about to leave. The deputy opposition spokesperson for the environment, the MLA for Saanich North and the Islands, will also have questions, as well as a number of my other colleagues.

I would like to take this opportunity to thank the minister and her staff for the answers that you have provided over the last almost two days. Thank you very much.

Hon. M. Polak: Mr. Chair, could we take a short recess?

The Chair: This committee is recessed for five minutes.

The committee recessed at 3:46 p.m.

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The committee resumed at 3:51 p.m.

[J. Yap in the chair.]

G. Holman: This is kind of the part of the day.... It's a bit of a grab bag, no offence to my colleagues. But we did want to continue with water, and then there are other issues that we are just going to try and pick up through the course of the day, and there's not necessarily any rhyme or reason. It's people wanting to address you with issues of concern to them.

So just on the water issue. Forgive me if the questions have been broached before. I didn't sit in on all of the previous discussions. Around watershed governance, one of the good things about the new Water Act is that the legislation, as I understand it, enables community watershed governance, community watershed boards, and that this is a good thing.

My question is around the funding for such entities, because without funding, it's just volunteer effort, and without resources to do the technical work, to do the monitoring, maybe even ultimately enforcement, depending on the purview of what these boards might look like....

So my question to the minister is: do water rates...? And water rates will be increased. In our view, we don't think they are being increased enough, because there's so much to be done in terms of water management and monitoring and enforcement and all of that.

But just in terms of the concern about applying water revenues to fund various aspects of management, enforcement, monitoring, that kind of thing, would watershed boards — the kind of local governance that's envisioned in the Water Act — be eligible for funding through water rates without triggering concerns about trade agreements, for example?

The minister has spoken before about.... There's a line beyond which you don't want to go. You want to be able to fund management and monitoring activities, but you don't want to take it to the extent where it could be argued in the courts that it violates trade agreements, that you've commodified water, which exposes you to things that you don't want to be exposed to.

So long story short: can water rates fund watershed boards in British Columbia?

[1555]

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Hon. M. Polak: I'm going to turn this around a little bit in order to get at the answer. First, obviously I agree with the member. I think the watershed governance piece is a really important part of the Water Sustainability Act, and I think there's room over time.... Looking at how long the last act lasted, I'm sure this one will last a significant amount of time. There's room, I think, to see those evolve in potentially some pretty exciting ways over the years, and who's to say what those will be. But I think it's a very exciting opportunity.

On the question of: could you fund them from fees associated with water rentals and licences? Here's where I'll turn it the other way around to try and get at the answer. The issue with respect to trade, and whether or not you create a commodity and therefore perhaps have trade implications, goes to the question of: is what you are charging truly a cost recovery exercise, or are you trying to generate revenue?

Cost recovery is not something that we determine arbitrarily; it's determined by all those wonderful, brainy accountants that we surround ourselves with. There are rules as to what you can include as cost recovery. So the question that the member asks really gets summed up like this.

The funds that are collected as fees don't go into, say, a separate trust or anything like that. They go into the consolidated revenue fund. The determination as to whether or not the fees are cost recovery is based on a comparative estimate of expected revenues versus expected expenses. Then the question around whether or not....

It's not so much whether or not they could be funded. They could be funded by all manner of government revenues. We provide funding and have provided funding to various watershed governance groups over the years. The question becomes: could their activities be considered administration of the act?

To answer that question, we have to know what it was they were doing, and that would have to be consistent with what would be considered regular administration of the act. So it's not so much: could you fund them? It's: could you calculate the costs associated with them as part of the regular costs associated with administering the act?

[1600]

G. Holman: Given that, in the minister's view, could a watershed board — say, for example, for Shawnigan Lake or wherever — be funded through water rentals and fees?

Hon. M. Polak: They couldn't directly be, now or in the future, because they're not collected into a separate

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board — say, for example, for Shawnigan Lake or wherever — be funded through water rentals and fees?

Hon. M. Polak: They couldn't directly be, now or in the future, because they're not collected into a separate fund. They go into the consolidated revenue fund, right? So, while a watershed governance group could receive funding from government, whether or not those costs could be considered as administration of the act would depend on what that governance group is engaged in.

If, for example, years and years down the road we got to a place where, rather than the Ministry of Forest Lands and Natural Resource Operations determining an allocation of water, we had regional watershed governance boards making those decisions — well, that's administration of the act. As an example, then, you could count that cost.

But we are a long, long way away from that. Whether or not you could count their costs as administration of the act would depend on what that watershed governance group did.

G. Holman: I do want to segue into Shawnigan. But just to make the general point about while the potential that the water act establishes around more local control over drinking watersheds — that is a good thing. What would not be a good thing is if those costs were downloaded from the province on to communities.

In my view, the provincial government should still retain overall responsibility. If you want to engage local citizens, local governments and local groups, make sure they're properly funded because otherwise you've just kind of handed them off a huge responsibility without the funding. But this is probably a conversation better held off line.

Just on Shawnigan in particular. The member from Cowichan wants to ask a number of questions about the dump facility there in the drinking watershed.

Does the Shawnigan Lake watershed have any particular designation that recognizes it as a drinking watershed? Is there any provincial designation that recognizes its particular value for drinking water for 12,000 residents?

[1605]

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Hon. M. Polak: There's no question that the area is a watershed. Whether or not it has the official designation under FLNRO my staff are pursuing.

I can tell the member this. In the analysis, though, that goes into the granting of any permitted activities, our staff would treat a watercourse with the same care even if it wasn't designated as a community watershed. They take their roles very seriously in terms of protecting not only human health but, of course, the environment as well.

Also, the statutory decision-maker — in the case of Shawnigan, for example — would have been aware of the drinking water takings in the area and would have been mindful of that and also the impact of any downstream effects, as the watercourses are connected.

G. Holman: If the minister could provide me any information about whether or not there is a special designation. Where I wanted to go with this.... And I do appreciate the comment about whether or not there's a special designation, special care is taken. That is the context within which decision-makers make decisions. They know it's a drinking water source.

This is what puzzles me. My colleague from Cowichan has a number of questions about the dump that's now operating in the watershed. What puzzles me is how such an operation, given that it is a drinking watershed — whether or not there's a formal designation — how such a facility.... Why would anyone think it's a good idea to establish such a facility within a drinking watershed?

You're quite aware that the community, through the regional district and community groups that are fighting that proposal, have spent well over \$1 million, essentially defending themselves against what they see as an inappropriate development within a drinking watershed.

[1610]

I guess I wonder: why would we want to even go there as a government, as a society, to even contemplate these kinds of facilities within a drinking watershed? Surely there should be better locations that don't threaten drinking water.

I'll let the minister answer, and then it's over to the member from Cowichan.

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as a government, as a society, to even contemplate these kinds of facilities within a drinking watershed? Surely there should be better locations that don't threaten drinking water.

I'll let the minister answer, and then it's over to the member from Cowichan.

Hon. M. Polak: I will just acknowledge at the outset that there is a question around the zoning that's being heard, or will be heard, in a court of law, so I won't go directly into that topic for obvious reasons.

We, as the ministry, are obligated to consider an application that we receive. The application is then reviewed by technical experts. It is their role to provide a fair evaluation and one that takes into account the concerns of the community and addresses those as best they can. But in the end, they are guided by their scientific knowledge, and they base their permitting decision on that. In many cases, and this one would be included, they provide.... I would say that in most cases, they also provide conditions within the permit that are protective of human health and the environment, and the decisions are made on that basis.

B. Routley: I would like to start with a bit of a preamble to give a bit of the history. Back in 2012, South Island Aggregates came forward to the community, to the minister and to the government with a plan to turn, basically, a rock quarry into a contaminated soil dump. The community was very clear from the outset in saying no.

There was only, basically, the proponent and the chief of the Malahat band who were in support of it. There were no other community groups that I've heard of that were in support of it. In fact, all of the political spectrum was opposed to it, including the Liberal candidate at the time. Certainly the Green, myself, and any other candidates were also very clear, not only provincially but within the community. All of the communities in the Cowichan Valley were opposed to this plan.

However, even after hundreds of letters were sent, and eventually 15,000 people signed a petition.... In any case, the government provided a permit in August of 2013 — a permit, basically, to dump 100,000 tonnes of toxic soil on a mountain in Shawnigan, which is just above the lake. That's 100,000 tonnes every year for 50 years.

One of the questions that I get asked all the time is: how could the process fail the community so badly? I happen to believe, and I don't know whether the minister shares that belief, that we're here to work on behalf of the public interest.

[1615]

The public really want to know how the permitting process could fail them so badly, in that there was a public process. One of the questions I was asked, that I want to pass on and ask the minister, was: was the goal of the public process at all

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The public really want to know how the permitting process could fail them so badly in that there was a public process. So one of the questions I was asked that I want to pass on and ask the minister was: was the goal of the public process at all to, in any way, assess or determine public support? Or does the process have at all any kind of benchmark? Normally, in a democratic process, at least 50 percent plus one is a decision. Actually, in our first-past-the-post electoral system, it's less than that to get elected.

But I would think two-thirds, 75 percent.... It's closer to, I would say, 99 percent of the people in the Cowichan Valley that were opposed. So in terms of a benchmark, it should have been clear to the statutory decision-maker. I'm assuming that's who it was ultimately up to, the statutory decision-maker.

Does the public process mean anything at all, or is it just another step in the process of having a meeting, inviting the public and not bothering to listen to or care about what they have to say?

Hon. M. Polak: It's actually a very good question. It's one I've been asked a number of times.

Firstly, the public input is extremely important with any permit decision, and you see it reflected in the permit conditions. In this case, as a result of the public concerns that were raised and some of the agency concerns that were raised, there were additional measures that were included in the permit.

I can give you some of them: treating discharged water to the most stringent provincial water quality standards for drinking water and/or aquatic life; additional water sampling; an advisory review committee; implementation of an environmental management system; additional site management confirmation systems to ensure integrity of soil receiving, treatment, landfilling and subsequent treatment of the site effluent, and monitoring; and public posting of monitoring data and reports. Those items were added to the permit as a direct result of the input that the statutory decision-maker received during the consultation process.

But the statutory decision-maker operates under statute. In fact, the statutory decision-maker is not allowed to consider the relative popularity of a project. I don't mean that in the vernacular. I mean that in the sense of: it is not a democratic process. There's a really good reason for that.

[1620]

Here's the best example I have found to describe it to people. Let me put to you a reverse question, and this illustrates the reason why a statutory decision-maker must base their decision only on the science and why a politician must not intervene in the decision.

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I have found to describe it to people. So let me put to you a reverse question, and this illustrates the reason why a statutory decision-maker must base their decision only on the science and why a politician must not intervene in the decision.

It goes like this. Here we have a case where, I would say — well, at least I've been told by the CVRD and I don't doubt it — that probably 95 percent of the community, maybe even higher than that, oppose this operation. They don't want it in their community.

The reverse example is this, and we see these things occur. You have a community, a hypothetical community, where their local industry has died. Their sawmill has shut down. The town's in great and terrible troubles. And a new industry comes to town. Somebody comes to town with a plan, and they say: "Boy, I've a plan for you. We can have hundreds of jobs. It's going to enliven the community. It's going to be fantastic."

The statutory decision-maker examines the science and determines that there is no way for this particular operation to proceed without significant adverse effects on the environment or human health and so declines to grant a permit. The community comes to me and says: "Well, hold on. Ninety five percent of our community wants this project. We all want this project. Why won't you approve it, minister?" And that's the answer.

These people make decisions based on their scientific expertise. They are not influenced by public opinion with respect to a project. They are influenced by the public input with respect to areas that they ought to address in terms of community concerns. And that's what this statutory decision-maker has done in the permit decision.

B. Routley: I do find it interesting that you again use this idea that it's somehow scientific.

I took the opportunity to read the letter from the Premier to the Minister of Environment. I found it interesting that in the first couple of pages, the word environment is not even to be found. There is a lot of talk in the first number of paragraphs about a strong economy, about keeping the government lean, reducing costs of administration, the government is resolute in their desire to grow the economy and a way to enable more British Columbians to participate in the economy in meaningful employment.

Then you finally do hear the word environment in the last couple of bullets. In the context, though.... In number nine, it says: "You're going to work with the Parliamentary Secretary on his Round Table on the Environment and the Economy to" — and I suggest this is very informative — "promote environmentally responsible economic development in British Columbia."

[D. Ashton in the chair.]

That's the goal. Really, it's just another way of saying getting to yes. So it's not about protecting, then, the environment.

The minister is essentially confirming for the public here today that there's no interest or concern, and it's her view that the Ministry of Environment's role is certainly not to protect the environment in the Cowichan Valley or to act on behalf of the environment or the watershed in Shawnigan.

It's actually the way of the ministry to simply hand the process over to the statutory decision-maker, say that, "Oh, it's all very scientific" and that there's going to be no political involvement at all. I would suggest that by sending those kind of steering messages to the statutory decision-maker, there is, in fact, a political message sent out.

Again, we're told that it's all very scientific, but could you try again to explain how the process to assess public reaction somehow has failed so badly that it has now cost the province of British Columbia, I'm sure, more than a million dollars. It's cost our....

[1625]

Between the CVRD and the Shawnigan Residents Association.... I know that the Minister of Environment has had representatives in court. I've seen them there myself. There's ministers of.... The Environmental Appeal Board had representatives. There's at least two, maybe three lawyers or more, involved in all of this. It's got to have cost millions of dollars for

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has had representatives in court. I've seen them there myself. There are ministers of.... The Environmental Appeal Board had representatives. There are at least two, maybe three or more, lawyers involved in all of this. It's got to have cost millions of dollars for both the government and the community.

I guess my question comes down to: does the government agree that this support for the project was so poorly understood that this would lead to the kinds of costs that are going on now? Do you still believe this is an acceptable way to do business in British Columbia — to end up costing both the Ministry of Environment and the communities of the Cowichan Valley millions of dollars? This is all okay because we just got a statutory decision-maker, and it's somehow all very scientific?

I get asked the question from the community: when will enough be enough? We've had protests, thousands of letters, and 1,500 people signed petitions that we've delivered in the Legislature. The minister herself acknowledges it's well over 95 percent in opposition to this project. And somehow the site is all okay because one person, a statutory decision-maker, rolls into town. Actually, he didn't even do that. He admitted on the stand he didn't come to the site — that at the end of the day, it was acceptable to do all this.

Could the minister explain to us how spending that kind of money for the province of British Columbia is somehow a good thing, and do you still stand behind your statutory decision-maker being somehow an acceptable process for the people of Shawnigan Lake and the Cowichan Valley?

Hon. M. Polak: The member mentioned my mandate letter, so I thought it was worth pointing out that the bulk of the letter, aside from the small portions he referred to, outlines a long list of responsibilities that I have within this mandate letter that all directly relate to the environment.

I leave it to the members to decide if they think that's the case. Let's look at No. 2. "Work with emergency management British Columbia and federal government agencies to review and make recommendations to cabinet on ways to improve oil spill safety and response following the *Simushir* power failure on the north coast and *Marathassa* bunker fuel spill in English Bay." I think that's an environmental issue.

Number 3. "Work with the members of the climate leadership team, and develop options for cabinet on how to move forward with our new climate leadership plan, the B.C. government's next generation of climate policy leadership." Again, I would submit to you, that's an environmental issue.

Number 4. "With the Premier's office, prepare for and position British Columbia to make a meaningful contribution prior to attending the United Nations Climate Change Conference, COP 21, in Paris this winter." Again, I would say, a pretty important environmental issue.

Number 5. "Working with the Ministry of Forests, Lands and Natural Resource Operations, undertake an analysis of the impact of lower snowpacks and retreating forests of British Columbia, and make recommendations to cabinet on strategies to protect our forests from any impacts of climate change." Again, I think that's a pretty important environmental issue.

Number 6. "Work with the Ministry of Energy and Mines and Ministry of Forests, Lands and Natural Resource Operations to provide options to cabinet on a wildlife access corridor in southeast British Columbia." Again an environmental issue.

Number 7. "Complete the land-based heavy oil spill response studies and consultations and make recommendations to cabinet on how to ensure our spill response regime requirements are consistent with the Premier's five conditions" — an important environmental issue.

Number 8. "Monitor the progress and participate in the Kinder Morgan Trans Mountain Pipeline expansion environmental review conducted by the federal National Energy Board" — another important environmental issue.

Here's the one that the member mentioned. "Work with Parliamentary Secretary Jordan Sturdy and his Roundtable on the Environment and Economy to promote environmentally responsible economic development in British Columbia." We want economic development — I don't think the member is, for a minute, saying he doesn't want economic development — and we want that to be environmentally responsible. We don't believe the two have to be in conflict.

I think it's clear that while the member wants to propose that somehow the Ministry of Environment's mandate letter doesn't deal with the environment, the vast majority of the content does, quite directly.

[1630]

With respect to the process, the statutory process is not a process to gauge public support. It is to inform the permitting decision. I have pointed out to the member how the input from the public directly impacted the decision of that statutory decision-maker. The alternative to — as the member, I think, rather

It is to inform the permitting decision. I have pointed out to the member how the input from the public directly impacted the decision of that statutory decision-maker. The alternative to, as the member, I think, rather insultingly to staff, puts it — handing it off to a statutory decision-maker.... The alternative is you would end up with environmental decisions being made by politicians who are seeking popularity, who are seeking to appease people who have a strong view. That's what politicians do.

The value in the independent process that we have is that these decision-makers are not influenced by political realities. They are influenced by their knowledge. They are influenced by their expertise. They take their jobs very seriously. I won't, for a minute, impugn their integrity. They make these decisions, and they are difficult ones. They make them knowing, very often, that their decisions aren't going to be popular.

There are many times when they decline to grant a permit or ask for more information that delays a permit. Those decisions aren't necessarily popular either. But they don't succumb to that pressure. If they believe that a permit needs to be withheld or if they believe that a permit needs to be delayed for the receipt of additional information.... Even if that puts a company at risk in terms of their operations, they do it. They do it even though a community might be very angry with them for slowing down a mill or slowing down another industry in their area.

That is what we call upon them to do each and every day. It is an extremely difficult job. It is made more difficult, I believe, when people wrongly impugn their integrity or accuse them of making a decision lightly. They never do that.

B. Routley: It was an interesting statement, especially having probably been there when they introduced the public, political decision of the Great Bear Rainforest. I think that was very much an environmentally impacted decision that was also very much political. So to suggest that environmental decisions somehow have nothing to do with politics is really, quite frankly, outrageous.

The idea that this process has not failed the people of the Cowichan Valley, after us seeing millions of dollars spent in the defence of the community and their watershed and we get reiterated from the government and from this minister that it just doesn't matter....

"We don't care what 95 percent of the people say." The process is working wonderfully, from her point of view and from this government's point of view, in that it just doesn't matter how many people are opposed or think that it's wrong in terms of the science.

Now let's carry on and hear some.... Maybe we can get an update now that the judicial review is over. I am always asked what this is costing. Does the minister have any kind of an update on the overall cost to the government in carrying on this fight with the Cowichan Valley regional district and the good people of Shawnigan Lake and the Cowichan Valley?

What are the total costs for the ministry's efforts to justify and defend Cobble Hill Holdings waste discharge permits? And why would the Ministry of Environment not hold a neutral position during the environmental appeal board process in judicial review? By the way, that costs money to end up having lawyers there.

I guess there is more than one question there. Let's take one at a time and see if there is any answer to some kind of an interim report on the financial impact to the budget for say 2014-15, which has just gone by, and do you have any idea of what it will be for 2016-17?

[1635]

Hon. M. Polak: It's the Ministry of Justice and Attorney General which manages that. The question would have to be put to them.

Hon. M. Polak: It's the Ministry of Justice and Attorney General who manages that. The question would have to be put to them.

B. Routley: Could the minister tell us why it's okay for the ministry to not have a neutral position during the Environmental Appeal Board process? Why would the lawyers act in such a way as to actually oppose the community, with their concerns, in the Environmental Appeal Board process and the subsequent judicial review? It got asked again — the question. Why would they be facing their own government's lawyers?

Hon. M. Polak: I don't believe it's appropriate for me to delve into what arguments have been made either at the EAB or in the judicial review.

B. Routley: The May 1, 2015, water treatment commissioning report states that "the water treatment system" — this is at the contaminated soil dump — "is unable to meet permit requirements. Subsequent quarterly reports also indicate that full compliance has not been achieved."

The minister often utters the refrain that the permit conditions must be met and that it's all very scientific. Yet the ministry fails to enforce these conditions.

The community wants to know why the minister has adopted a kind of adaptive management approach which allows the permittee to continue operating without being in full compliance.

Hon. M. Polak: I can advise the member that there was an inspection on May 13, 2015, that assessed 45 permit clauses and found five non-compliances. A follow-up visit then, on June 10, found most non-compliance items were addressed, and significant site improvements have been made by the end of August 2015. All concerns noted on the permit inspection were either fully resolved or in the process of resolution.

B. Routley: Well, "in the process," so they weren't completed.

In response to engineering failures, the Ministry of Environment instructed the permittee to engage an independent site engineer consultant. Stantech Inc. has since been retained and produced reports that confirm the community's fears about unreliable water management. In their January 15, 2016, water management assessment, they document their observations about potential issues, immediate concerns and other serious uncertainties.

Again, why is the ministry allowing this non-compliant, contaminated-waste landfill to continue to operate? Why does the minister not acknowledge that there are serious engineering concerns that must be addressed and that the site should be shut down in the meantime?

[1640]

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Hon. M. Polak: While staff will continue to monitor the site closely, respond to complaints, address any non-compliances, the issue of whether or not the minister steps in to suspend operations is one that must be reasonable and must be based on the advice received from staff with the technical expertise. In the absence of that, there is no justification for the minister to step in and do such a thing. It would be an arbitrary decision, and that is not appropriate.

B. Routley: With due respect, that's absolutely not correct. In fact, I'd like to point out to you that you have the authority, according to section 18(3) (e) of the B.C. environmental act. It states the minister has the power to cancel a permit if "a holder of a permit or an approval or the holder's agent has made or makes a material misstatement or misrepresentation in the application for the permit or approval or in the information required under this Act with respect to the permit or approval."

So this is the law in British Columbia. Clearly, the minister must know by now that there has been, at the very least, one misrepresentation. We've certainly heard from the court a whole litany of misrepresentations in the permit process. On that basis alone, do you now agree that you have the right to cancel the permit?

Hon. M. Polak: The member is well aware that that matter is before the courts, and I'm not going to comment with respect to that.

B. Routley: Does this minister have any circumstances under which this minister believes that it's possible to cancel this permit? Are there really any.... The community wants to know. Are there any circumstances at all?

Hon. M. Polak: It would not be appropriate at all for me to speculate with respect to conditions that might arise.

[1645]

I've already advised the member that a decision to suspend or to remove a permit would be based on the advice and recommendation of staff who have the technical expertise.

B. Routley: I've been asked why there was not an ecological risk assessment done on the site.

decision to suspend or to remove a permit would be based on the advice and recommendation of staff who have the technical expertise.

B. Routley: I have been asked why there was not an ecological risk assessment done on the site. As I understand it, part of the argument with the Cowichan Valley regional district and the proponent was whether or not the Cowichan Valley zoning applied.

It became a technical argument, as I understand it, that this was a mine reclamation, not a landfill — so therefore not a contaminated dump, not a landfill at all.

If it was a landfill, landfill site requirements, apparently — according to the minister's own staff — are different, depending on the level of contamination of the soils intended to be deposited at the site. If the soil is contaminated up to the hazardous level, it falls under the hazardous waste regulation and can be deposited under the requirements of the regulation.

If the level of contamination is below hazardous contaminated soil, it can be deposited at a regular landfill site under conditions specified in a site-specific authorization. Ecological risk assessment is part of a landfill siting process.

Does the Minister of Environment try to use technical jiggery-pokery, if I might say, to avoid an ecological risk assessment by saying that you also agree that it is not a landfill or a dump? Do you take the position that this is a mine reclamation site? Is that your argument?

Hon. M. Polak: This permit was issued under the Environmental Management Act. We believe it is the appropriate vehicle to use to evaluate the project, and that it was appropriately applied.

[1650]

I would note that not only do we believe the permit was the appropriate one and the appropriate process, but also that that was then adjudicated by the Environmental Appeal Board, and they upheld the permit as well.

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I would note that not only do we believe the permit was the appropriate one and the appropriate process, but also that that was then adjudicated by the Environmental Appeal Board, and they also upheld the permit as well.

B. Routley: I'm sure that the minister, at this juncture, is well aware of the debate that came up during the Environmental Appeal Board process about the 75 metre layer of granite that was supposed to protect the community. They had told the community that they were well protected. The proponent's geologist and hydrologist even suggested that the nearest aquifer was four miles or four kilometers away. There was another view put forward by the community's hydrologist and geologist that it was possibly fractured limestone, and there could be an aquifer under the site.

Could the minister tell us which view they have adopted at this juncture? Do we have any.... I mean, it's all very scientific — you must have an opinion at this juncture. What exactly is under the site? Is it solid granite? I understand there were additional holes drilled. What does the minister now believe is the status of the site? The community wants to know.

Hon. M. Polak: I believe that the technical staff have made the appropriate determinations based on their expertise. I do not have a science degree. I don't know if the member opposite does. Nevertheless, I respect very much the work that these people do. I know that they do their work with great care. So I follow their advice and their recommendations.

B. Routley: I do see that as a non-answer, because we were simply looking for clarity between one proposed scientific view and another. I do find it interesting and somewhat frustrating that the Minister of Environment can't help us and help the community with a better understanding and clarity of the site.

I do know that one of the amendments that was made to the permit.... And, again, I would bring you back to the fact that the permit can be cancelled if the information that was outlined in the original permit application was incorrect. Particularly if there's any belief that it could've potentially been misleading. But now there's been an adaptive change by using what some refer to as an engineered polyethylene membrane. And there's a definite conflict about the thickness of the membrane.

The minister is now aware that I have sent a letter to the ministry about concerns. I bumped into Dr. Bernhard Juurlink who is a cell biologist. He was a professor emeritus from the University of Saskatchewan. He now lives in... I think it's Mill Bay, certainly in the Cowichan Valley. He's taken a keen interest into what has been told to the good people of the Cowichan Valley and the region about any kind of potential protection that is supposed to be granted as a result of this membrane — that's about the thickness of a toonie, I'm told.

He says, as a cell biologist, that there's no question that these membranes have been scientifically studied. That point number one, they break down eventually. It's a matter of ... it may be decades, but they will break down. There's no question about that. They're not guaranteed in perpetuity. They're not an eternity kind of product; they're a product that will last a number of decades. And, as a cell biologist, he tells us that there is scientific proof — that I have forwarded to the ministry — showing that these toxins can move right through the membranes.

[1655]

Again, it's critical to the community because there is a fear that this is impacting the water table, that there's evidence of water on the site all the time, which is a whole other issue. Could the minister tell us: have you reviewed the science?

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water table, that there is evidence of water on the site all the time, which is a whole other issue. But could the minister tell us: have you reviewed the science, or have, at least, people from your office reviewed the science? Will we eventually be getting a response regarding the concerns of the failure of these membranes?

Are you at all concerned that this could lead to shutting down the site in order to do your due diligence and protect the good people of the Cowichan Valley and Shawnigan Lake from the eventual damage that could occur? Maybe not today. Maybe things are fine when you're doing some tests today. But what about in ten or 20 years? That's something we have to be certain about, in my opinion, as well.

Hon. M. Polak: I'm advised that staff will certainly be reviewing the correspondence and will provide a response in due course.

B. Routley: Okay. Another example of the concern of scientific expertise is also the fact there was no ecological risk assessment made of the upper Shawnigan Creek and associated wetlands. Note that this creek runs through lot 23, the site of the contaminated soil landfill and the contaminated soil remediation.

There was only a superficial ecological assessment of the creek that, during the rainy season, empties into the upper Shawnigan, with the unsurprising finding that there were no fish in this stream. After repeatedly inquiring to many different members of the Ministry of Environment whether an ecological risk assessment needs to be made for the contaminated soil and landfill site, there doesn't seem to have been a clear answer that I'm aware of. Is the minister aware of any answer from your ministry in regards to this problem?

Hon. M. Polak: Due process has been followed. All of those things were considered in the appeal, and the appeal still upheld the permit.

B. Routley: I do want to close at this juncture by saying that for the people of the Cowichan Valley, it's extremely frustrating that they have to do things like fundraising to try to protect their watershed. It seems to be a conflict within the Ministry of Environment because on the one hand, the minister is working on the Water Act.

I've read in your sections relating to water about the concern for the protection of water and protection of the environment. On the one hand, you've got that. Then the ministry seems to be turned into some kind of minister of permits when it comes to projects like this. It seems to be a seamless flow from... Somebody says, "I've got a great site for a contaminated soil dump," and the next thing you know, they've got permission regardless of what the community thinks.

[1700]

I guess, in closing, I observe that this is a disaster for the community. It's a disaster for the government in the sense that you've now spent well over \$1 million, I'm sure. When the final assessment is known, I believe that your government is spending over \$1 million fighting with the good people of the Cowichan Valley.

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community. It's a disaster for this government in the sense that you've now spent well over \$1 million dollars, I'm sure. When the final assessment is known, I believe that your government is spending over \$1 million fighting with the good people of the Cowichan Valley. I find that totally unacceptable.

I would like the minister to explain, to look into the camera and tell the good people of Cowichan Valley, how on earth this seems like a good expenditure of the money of the good people of British Columbia — fighting with the people of the Cowichan Valley.

Hon. M. Polak: In the course of canvassing this issue very many times, I have made clear to the member, and to others, facts that they continue to misrepresent in responses back to me — for example, comparing this decision to the Great Bear Rainforest and saying: "Well, that was Environment. That was a political decision."

What bothers me most, I think, is that the member, I believe, is actually well aware of the difference between a statutory, regulatory process and an initiative like the Great Bear Rainforest. I think he actually understands that, and yet he stands here and pretends he doesn't. I think that's wrong.

The fact of the matter is we have an independent process in British Columbia to make sure that statutory decision-makers are protected from political interference so that everyone around British Columbia knows that a permit is not going to be granted on the basis of whether or not it's going to make the minister more or less popular. Those decisions should never be made by politicians. They should always be made by people who are independent.

I would note that there was significant angst on the part of the public, on the part of most people, when there was controversy at the federal level around the lack of independence afforded to scientists who work for government. I hope that in the member's presentations here, he's not reflecting the view that somehow we should reverse our stance and remove the independence of these scientists that work for government. It is a key protection for the public that these scientists remain independent and do not have politicians interfering with their decisions.

I know that this has been tough on the community. I also know, though, that it has been very tough on the professionals who work on it. They take their jobs very seriously. To have their integrity questioned — not only that, but to have accusations hurled at them of somehow being unduly influenced — is not only very hurtful, but it can be something that is professionally damaging for them. It's a very challenging thing for them to do this job.

As I mentioned before, they routinely make permitting decisions that are unpopular. In this case, they're unpopular when they granted a permit. In many cases, they are supremely unpopular when they don't grant a permit. The only reason they're able to withstand that kind of pressure and make a fair and independent decision is because they are protected from political influence.

G. Holman: I just want to briefly respond to that, and then my colleagues have some other questions.

On the issue of politicians interfering with statutory decision-makers. As far as that goes, we on this side completely agree with that. The point I was trying to make earlier — and I think, actually, the member from Cowichan was also trying to make — is: to locate a toxic waste dump in a drinking watershed.... There should be a political decision that that's a no-go area.

Why put your statutory decision-makers, the community — everyone — through a process, independent or not, that threatens a drinking watershed? Particularly, as the member from Cowichan said.... This material is going to be there forever; that membrane won't be. There's a great deal of scientific uncertainty about what lies underneath the membrane.

But again, in terms of a reasonable precautionary principle, to site a facility like this in a drinking watershed doesn't make sense. That's where the politics should come in.

[1705]

I don't know if the minister wants to respond. My colleagues have other questions to ask.

Hon. M. Polak: The place where the political guidance is provided is with respect to the Environmental Management Act and the requirements that must be abided by. That direction is there.

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if the minister wants to respond. My colleagues have other questions to ask.

Hon. M. Polak: The place where the political guidance is provided is with respect to the Environmental Management Act and the requirements that must be abided by. That direction is there.

The statutory decision-makers are not put in a bad spot, as the member characterizes it. They have the tools to be able to make these decisions, based on what is appropriate, given the applications that they receive. They have done that in this case. I am confident that they have made that decision with the best of their technical expertise and with the greatest of integrity.

D. Routley: I have some questions for the minister related to issues in my constituency. But being a neighbour of the issue that has been discussed here, I feel I have to add that I think there's a long stretch of grey area between the muzzling of scientists at the federal level — where they were not permitted to express an opinion and were consistently overruled — to this, which seems to be the political arm of government using, as a bulkhead, the statutory decision-makers and their decision-making right and duty and obligation in the province.

Clearly, the people of this region — not simply just some opposition MLAs that are a bit of a burr under the minister's saddle here but tens of thousands of people who are citizens of British Columbia — are absolutely opposed to this. I consider that the role of government isn't to override science and isn't to follow purely the whim of what people want or don't want but to balance those — to show leadership and balance these interests.

The people of this region feel that the government and the minister.... With respect, I'm not sure why she would resist understanding this. They are looking for the government to provide leadership not by making the decision but by stopping what's happening in order for there to be a fulsome review of this. That's all we've ever asked.

Pull the permit, wait, and let work that's adequate and endorsed by the people of the region be completed. Perhaps then people would support, if they could be shown that this was a safe spot, an appropriate location. Then they could be persuaded. Right now they are not persuaded. Constituents in the member for Cowichan Valley's constituency, and my own, are now being met with cease-and-desist orders from the company, telling them they cannot any longer protest this.

This is getting out of hand. There has been violence, when a truck driver assaulted a female protester at the site. This is getting out of hand. This is the moment when this minister and the government should step in and provide some distance from the heat of this and give the community a chance to have a voice. I'd like the minister to stand up and say that she's hearing that, she's sensitive to that, and that she'll listen to the people who we represent.

Hon. M. Polak: I'm going to walk briefly through the statutory process again, because it is extremely important. There isn't a grey area between the muzzling of scientists and the constant overruling of their decisions and what I am being asked to do here. There is a provision within the act for the minister to step in.

[1710]

That provision within the act, though, is not one that allows the minister to step in just arbitrarily on her whim. In fact, one of the portions of the arguments I hear that puzzles me the most is the accusation that I receive that says: "Oh my goodness, there must be some political reason why she's not doing this." That defies logic.

Interjection.

Hon. M. Polak: Chair, please.

That defies logic.

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portions of the arguments I hear that puzzles me the most is the accusation that I receive, which says, "Oh, my goodness, there must be some political reason why she's not doing this." That defies logic.

Interjection.

Hon. M. Polak: Chair, please.

Imagine, as a politician — you're all politicians. What would be the political decision — in other words, good politics for me or good politics for my government? The political decision would have been to instantly pull the permit. I would have been praised. I would have been lauded. Maybe they wouldn't have thrown a ticker-tape parade for me, but they certainly would have been very happy with me, I'm sure.

That is why these decisions are not left with politicians. Because these decisions, if left to politicians, will be made potentially for that politician's individual popularity or for a government's individual popularity. That is why maintaining the independence of those who work in the scientific fields within our ministries, mine and others, is so extremely important.

We live in a country and in a province where we respect the rule of law, and that means that these are not popularity contests. They are decisions to be made based on the science. I don't know if the member was in the room when I gave the illustration I did to his colleague, but I will provide it again for the record.

If you had a situation where something was going to be potentially harmful but was supported by the vast majority of the community, that statutory decision-maker is still obligated to make a decision not to proceed in spite of the tremendous popularity. We have those situations all the time, where there is pressure coming from companies who want a permit right away. "If we don't get the permit right away, we're going to have to shut down. It's jobs."

These people withstand all of that because they're independent. They don't have to worry about somebody not voting for them because they didn't get their permit soon enough. The statutory decision-maker process is not one that those people take lightly. They have obligations such that if they were to go outside of their particular knowledge or the act, these people could go to prison.

Those are the kinds of considerations that weigh on the minds of these folks when they have difficult decisions to make around a permit — because they are technical experts, because they have certifications, because they have professional requirements on them.

If you want to take the position that all of these decisions should be made by politicians, that's fine, but be clear about it. Don't play around the edges. Don't play around the edges to be popular and say, "I'm defending these folks," when in fact what you are advocating is to overstep the bounds of ministerial responsibility. That's what you're advocating. Don't pretend it isn't.

At the end of the day, these folks are independent. They do good work. They're knowledgeable. We have an exceptionally strong system in British Columbia because they are independent. We intend for them to remain that way.

In terms of any future actions I might take, they will be based on the technical advice from my staff, and they will not be based on my best politics.