

Welcome!

We'll start at 9am MT



While you have a moment:

Check out the **Engagement and Consultation Information Package** sent to you ahead of the workshop

Tech issues?

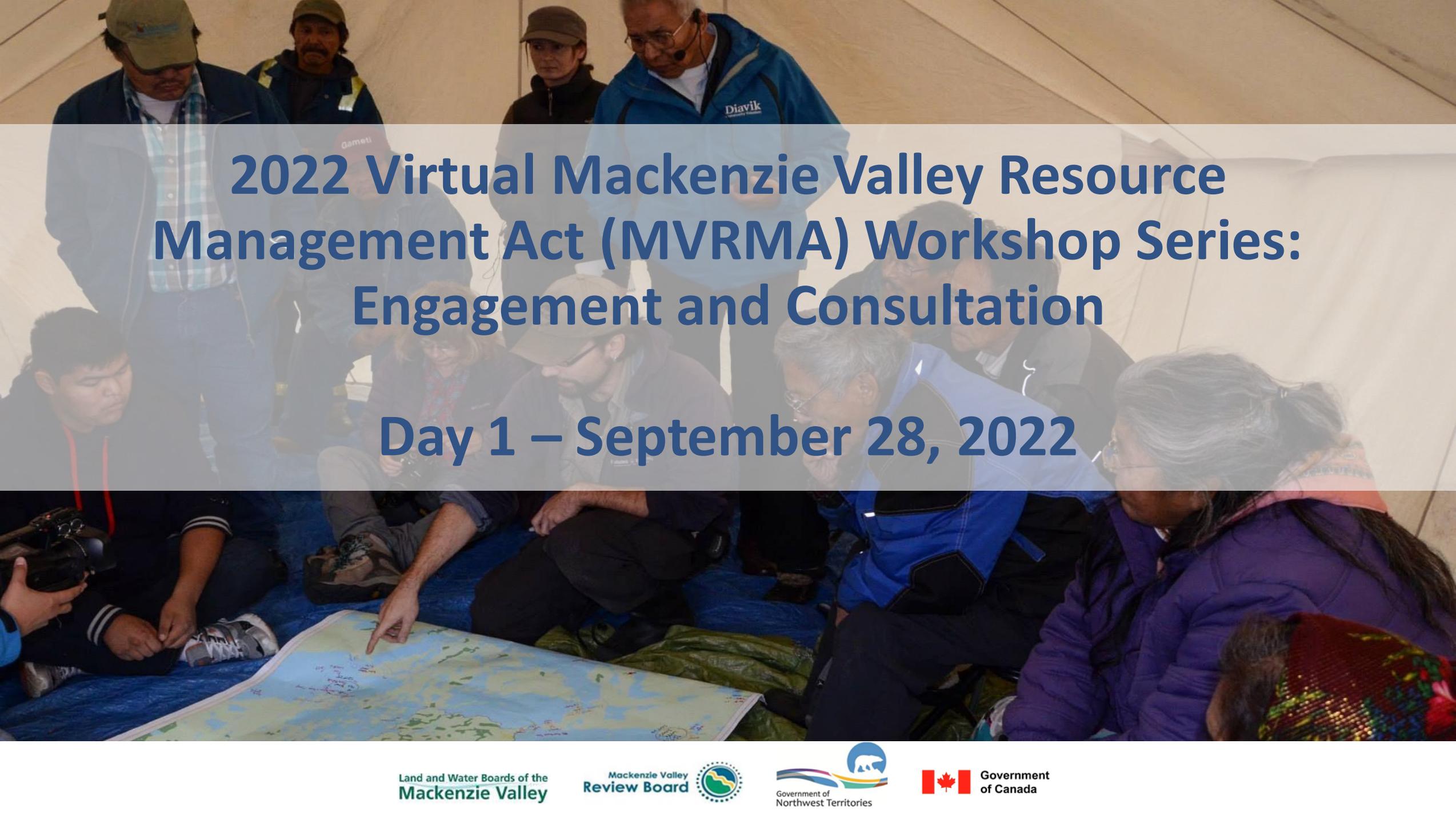
Contact **Rebecca Lafontaine** via Zoom chat

Land and Water Boards of the
Mackenzie Valley

Mackenzie Valley
Review Board



**Government
of Canada**

A group of people, including men and women of various ages, are gathered inside a large tent. They are focused on a large map of the Mackenzie Valley that is laid out on the floor. Some people are pointing at specific locations on the map. The atmosphere appears to be one of collaborative discussion and consultation. The text is overlaid on a semi-transparent blue band across the middle of the image.

2022 Virtual Mackenzie Valley Resource Management Act (MVRMA) Workshop Series: Engagement and Consultation

Day 1 – September 28, 2022

Meet the Team!

Stratos Delivery Team:

Jane Porter, Facilitator

Julia Ierullo, Notetaker

Rebecca Lafontaine, Tech Support

MVRMA Workshop Planning Committee:

Sarah Elsasser (WLWB)

Shakita Jensen (GNWT)

Ryan Fequet (WLWB)

Shelagh Montgomery (MVLWB)

Mark Cliffe-Phillips (MVEIRB)

Jody Pelligsey (WRRB)

Eileen Marlowe (MVEIRB)

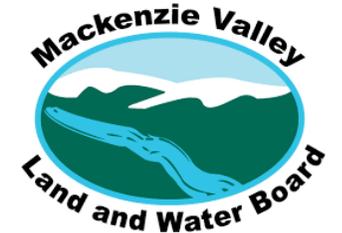
Melissa Pink (GNWT)

Kate Mansfield (MVEIRB)

Marcy MacDougall (CIRNAC)

Tanya Lantz (MVLWB)

Michelle Lewis (CIRNAC)





Land Acknowledgement

Purpose of the MVRMA Engagement and Consultation Workshop

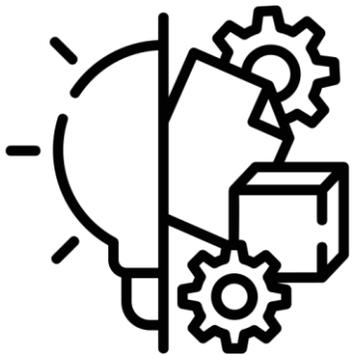
The purpose of this workshop series is to help familiarize participants with the co-management and integrated system of land and water management established through the MVRMA.

Clarify the scope and meaning of what engagement and consultation means in relation to the MVRMA

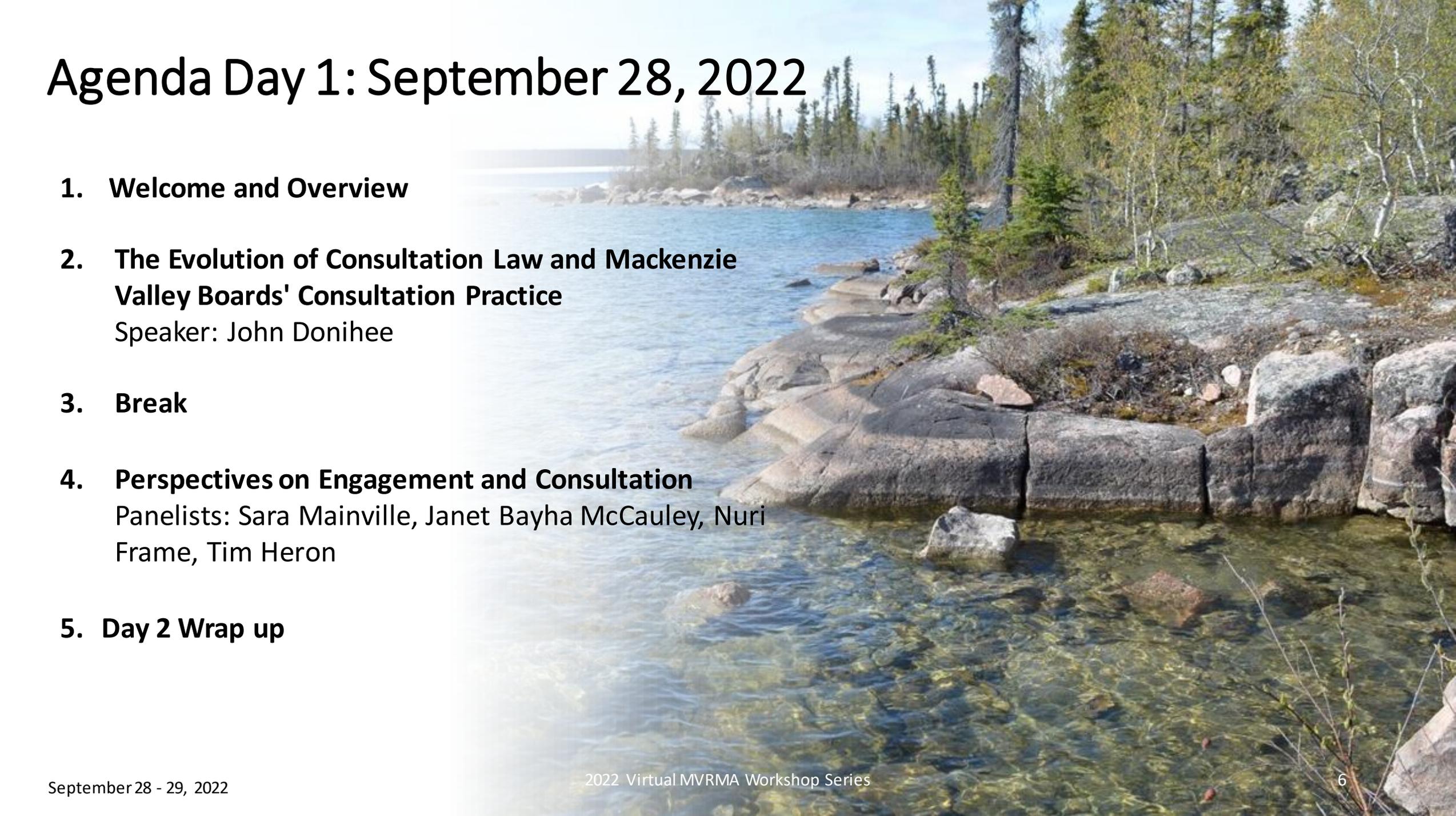
Provide historical and legal context of consultation and engagement as it relates to the MVRMA

Highlight innovative and collaborative approaches for engagement and consultation and where it might be going in the future

Get feedback and insights from participants on how to improve engagement and consultation as it relates to co-management processes in the Mackenzie Valley

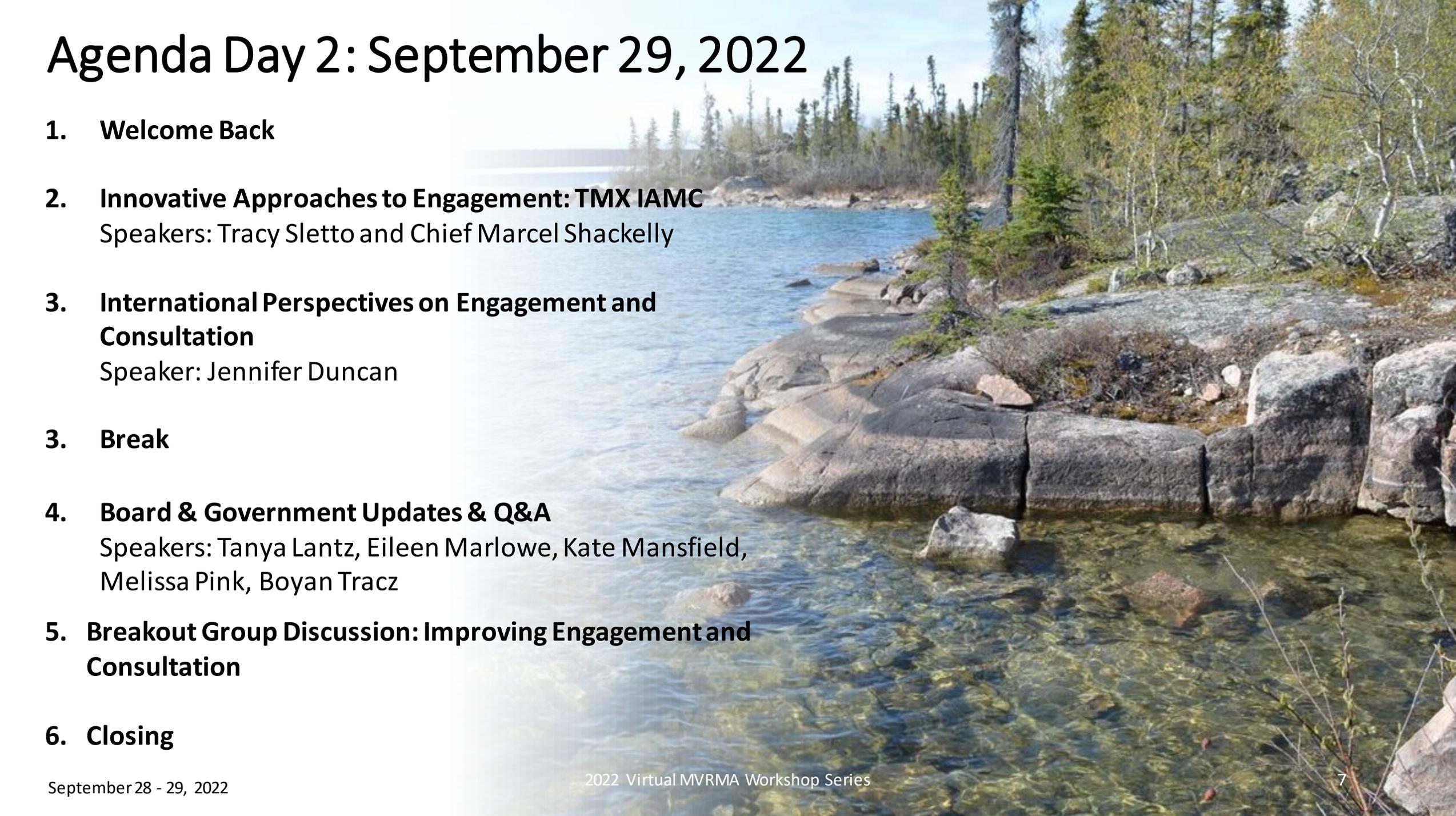


Agenda Day 1: September 28, 2022



1. **Welcome and Overview**
2. **The Evolution of Consultation Law and Mackenzie Valley Boards' Consultation Practice**
Speaker: John Donihee
3. **Break**
4. **Perspectives on Engagement and Consultation**
Panelists: Sara Mainville, Janet Bayha McCauley, Nuri Frame, Tim Heron
5. **Day 2 Wrap up**

Agenda Day 2: September 29, 2022



1. **Welcome Back**
2. **Innovative Approaches to Engagement: TMX IAMC**
Speakers: Tracy Sletto and Chief Marcel Shackelly
3. **International Perspectives on Engagement and Consultation**
Speaker: Jennifer Duncan
3. **Break**
4. **Board & Government Updates & Q&A**
Speakers: Tanya Lantz, Eileen Marlowe, Kate Mansfield, Melissa Pink, Boyan Tracz
5. **Breakout Group Discussion: Improving Engagement and Consultation**
6. **Closing**

How to engage in our Zoom Meeting Today!

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 - Mute / unmute
 - Show / stop video
 - Change your view setup
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 - Participate in the polls and breakout rooms (*when prompted by host*)

Please note: if you are participating via phone, you may not be able to participate in all the same ways.



Warm Up: Chat with your 'neighbour'

In random pair breakout groups (~5 min)

- Introduce yourself and share the time answering:

When you hear the words...
ENGAGEMENT AND CONSULTATION

What are the first 3 words that come to mind for you?
Why?

Let's Hear From You!

When you hear the words “engagement and consultation” what words come to mind for you?

1

Open a web browser on your phone or computer

2

Go to www.menti.com and Enter code **1131 4199**

3

Or use QR code



What is consultation and engagement under the MVRMA?

A brief overview presentation

MVRMA Virtual Workshop

September 28-29, 2022

Mark Cliffe-Phillips – Executive Director

Mackenzie Valley Review Board



What does the MVRMA say about the purpose of the Boards?

(S.s. 9.1) The purpose of the establishment of boards by this Act is to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians.



Why do the Boards consult and engage?

Consultation and engagement is the best way to hear about things that the Boards need to consider, like:

- the concerns of Indigenous people and the public
- the protection of the environment
- the protection of the social, cultural and economic well-being of people and communities in the Mackenzie Valley and
- the importance of conservation to the well-being and way of life of Indigenous people



Let's take a step back- What is consultation?

- **Crown Consultation** refers to the legal obligations of the Crown (Government) when Aboriginal interests (rights and title) may be adversely affected by a Crown decision. **This is not the role of the Boards**
- **Governments rely on the Boards' processes** to help fulfill their duty to consult
- In addition, there are specific consultation requirements laid out in the land claims and the MVRMA that the Boards' and others must follow.



Who is being engaged/consulted?

- Land claims organizations
- Indigenous Governments
- Indigenous organizations
- Federal and territorial governments
- Any other person or group who might be affected by a development

In general, when engaging or consulting it's best to cast a wide net and seek to hear from as many voices as possible of those who may be impacted by a decision.



What is Engagement?

- Engagement is different than consultation.
- Engagement aims to build relationships and trust by exchanging information in the absence of legal consultation obligations.
- Engagement is done by applicants, Government and the Boards to help:
 - Inform
 - Gather feedback
 - Respond to concerns
- Engagement **can help fulfill consultation** requirements.





Q&A Period



Presenter: John Donihee



Willms & Shier Environmental
LLP

- Has advised co-management tribunals in all three territories, about land, resource and environmental aspects of land claim implementation
- Currently of counsel with Willms & Shier Environmental Lawyers LLP
- 1997 – 2004: Research Associate at the Canadian Institute of Resources Law and Adjunct Professor in the Faculty of Environmental Design at the University of Calgary
- Taught Natural Resources Law in the first Akitsiraq law program in Nunavut
- Recipient of the NWT Premier's award for collaborative law in 2014 and repeatedly recognized as one of Canada's top Indigenous Law practitioners
- Holds graduate degrees in both Environmental Studies and Law

The Evolution of Consultation Law and Mackenzie Valley Boards' Consultation Practice

John Donihee

Of Counsel

This presentation provides general information and is not intended to provide legal advice.

**2022 Virtual Mackenzie Valley Resource Management Act
Workshop Series: Engagement and Consultation Workshop
September 28, 2022**

Willms
& Shier

Environment
Indigenous
Energy Law **er**

Environment
Aboriginal
Energy Law

Overview

- **Review of boards' statutory consultation requirements under land claims and MVRMA**
- **Trace the evolution of consultation case law and particularly the boards' roles in Crown consultation**
- **Make brief mention of consultation in relation to UNDRIP and FPIC**
- **Respond to questions**

The Importance of History and Context

- **Consultation is about relationships and an understanding consultation practice in the Mackenzie Valley requires context**
- **Consultation is not a “product” it is a process intended to lead to accommodation and reconciliation**
- **Current MVRMA consultation practice is unique – it blends land claim, co-management, statutory and case law requirements**

Influences on Consultation Practice in the NWT

- **Resource development and communities**
- **Land claims**
- **Co-management**
- **Implementation legislation**
- **Evolution of case law and board roles**
- **Boards' leadership, policies and processes**

Land Claims and Statutory Consultation

- **Negotiators included a definition of consultation in land claims and specific provisions in the resource management chapters require consultation by governments and boards before decisions are made**
- **“consultation” definition is in MVRMA, s. 3 – it requires little more than administrative law fairness**
- **MVRMA and regulations require more, particularly in relation to MVEIRB**

Land Claims and Statutory Consultation

- **Simply meeting statutory requirements would NOT satisfy the Honour of the Crown – the courts have gone much farther**
- **Co-management tribunals bring the community context and expectations to the environmental and regulatory decision-making process**
- **This workshop is an excellent example of the boards' commitment to improving consultation and engagement practices**

The Evolving Case Law

- **Driven by s. 35 of the *Constitution Act, 1982***
- ***Sparrow* (1990), *Delgamuukw* (1997)
governments' obligation to consult emerges**
- ***Haida* (2004) set out the foundation for modern
Crown consultation law**
 - Consultation requirements proportionate to strength of claim and seriousness of potential adverse impact on the exercise of a s. 35 right
 - Honour of the Crown cannot be delegated

The Evolving Case Law

- ***Haida* (2004) cont.**
 - But the consultation exercise can be delegated
 - A duty to accommodate may arise depending on the circumstances but consultation is not a veto over regulatory decisions
- **From 2004 to 2010 it is unclear what the role or responsibilities of administrative tribunals was in consultation – it was clear they could/should be involved – but their actual decision-making authority in consultation process was unclear**

2010 *Beckman* and *Rio Tinto*

- ***Beckman* was the first consultation case brought in the context of a modern land claim**
 - “The Crown cannot contract out of its duty of honourable dealing with Aboriginal peoples”
- **In *Rio Tinto*, SCC confirmed that administrative tribunals *can* play a role in procedural consultation and/or assessing the adequacy of consultation**
 - Role depends on statutory authority of tribunal to decide questions of law

2017 *Clyde River* and *Chippewas of the Thames*

- **Cases involved National Energy Board (now the Canadian Energy Regulator or CER)**
- **Crown can rely on a tribunal to fulfill its duty to consult**
 - BUT – tribunal or agency must possess both the “powers to effect compromise and do whatever is necessary to achieve reconciliation of divergent Crown and Aboriginal interests”
 - Tribunal needs both procedural powers and remedial powers – this depends on tribunal jurisdiction

Boards' Consultation Policies

- **LWB Consultation and Engagement Policy finalized in 2013 after *Rio Tinto* – almost 10 years of operational experience**
- **Rethinking and revision began after *Clyde River* and *Chippewas of the Thames* decisions**
- **MVEIRB adopted the policy in 2019 on an interim basis as a collaborative effort was initiated to address board consultation obligations**
- **LWBs' and MVEIRB's roles and decision-making authorities are different**

Boards' Consultation Policies

- **Public consultation on LWBs updated policy has been completed**
- **MVEIRB still considering its approach**

United Nations Declaration on the Rights of Indigenous Peoples

- **Free, Prior, and Informed Consent (FPIC)**
 - State obligation to consult and cooperate with Indigenous peoples to obtain FPIC
 - Many different interpretations of FPIC
- **Federal government's position**
 - FPIC “builds on and goes beyond the duty to consult”
 - Federal legislation in place to implement UNDRIP does not “immediately change Canada’s existing duty to consult Indigenous groups, or other consultation and participation requirements set out in legislation...”

Takeaways about Boards' Roles in Consultation

- **The Boards are not the Crown which always holds ultimate responsibility for ensuring adequate consultation**
- **MVRMA boards are not the CER or BC Utilities Commission which are vested with extensive legal procedural and remedial powers**
- **Powers can vary with the decision required**
- **The case law must be applied in the proper context and with an understanding of what a board can and cannot do based on its statutory jurisdiction – the courts are clear on this**

Coming Back to Context

- **MVRMA tribunals operate in a unique context – they are the negotiated outcome of settled land claims as well as statutory creations**
- **Co-management makes a difference – board members are community members – they share the historical knowledge, cultural experience and often the Indigenous languages of affected s. 35 rights holders in their proceedings**
- **The boards’ are continuing to work on improvements to consultation – improvements are possible and necessary since the “consultation landscape continues to evolve**

Coming Back to Context

- **In practice, consultation issues are worked out when they arise – there have been no legal challenges to boards' consultation practice since the *Ka'a'Gee Tu* cases in 2007**
- **The collaborative and consensus driven nature of environmental and regulatory decision-making in the Mackenzie Valley is a feature of this unique context**
- **Consultation and engagement are central components of this framework**



Q&A Period





Let's take a short break!

Panelists



Sara Mainville
JFK Law



Janet Bayha McCauley
Tulita Land Corporation



Nuri Frame
Pape Salter Teillet LLP



Tim Heron
NWT Métis Nation

Moderator: Jane Porter

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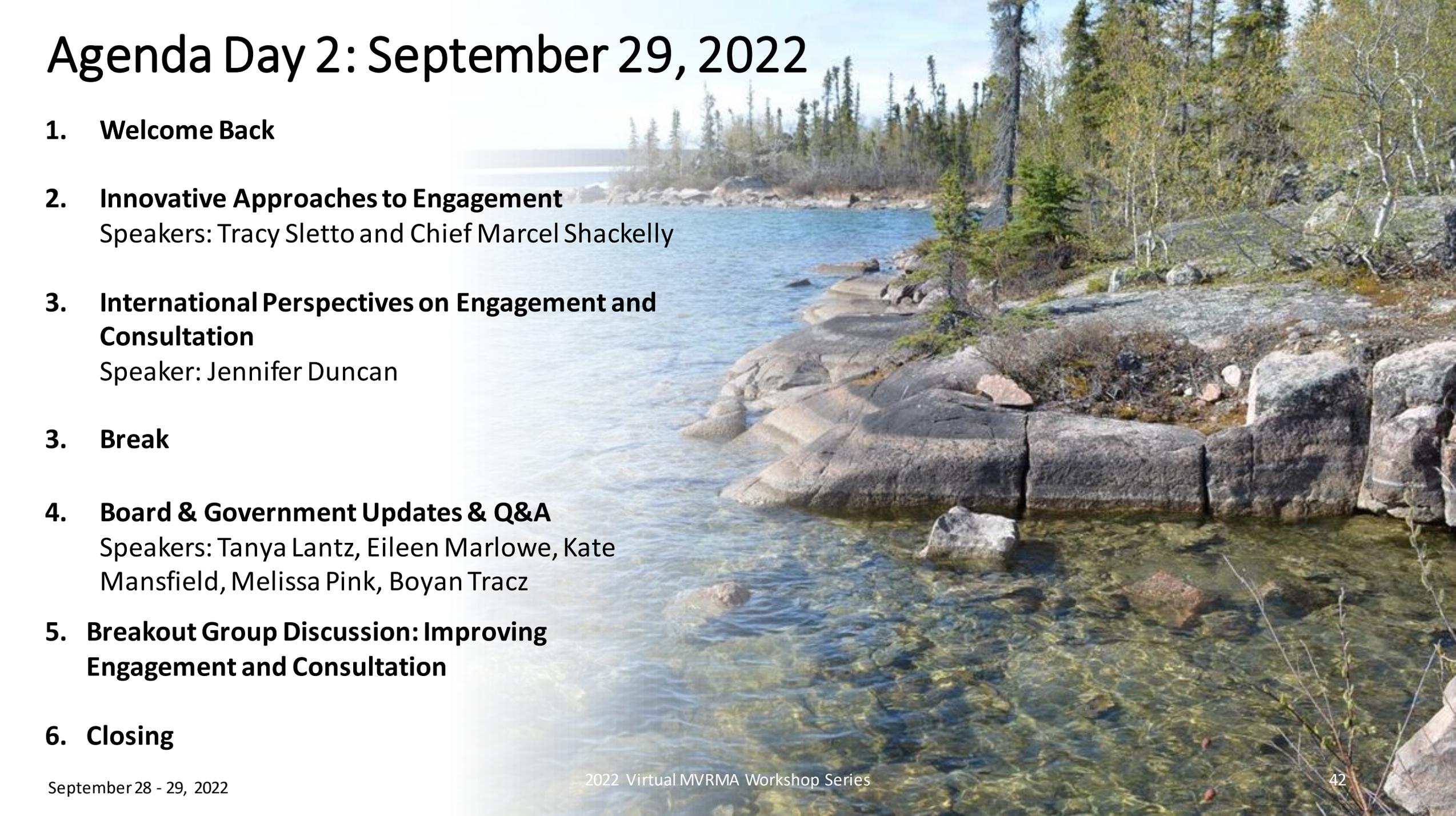




Q&A Period



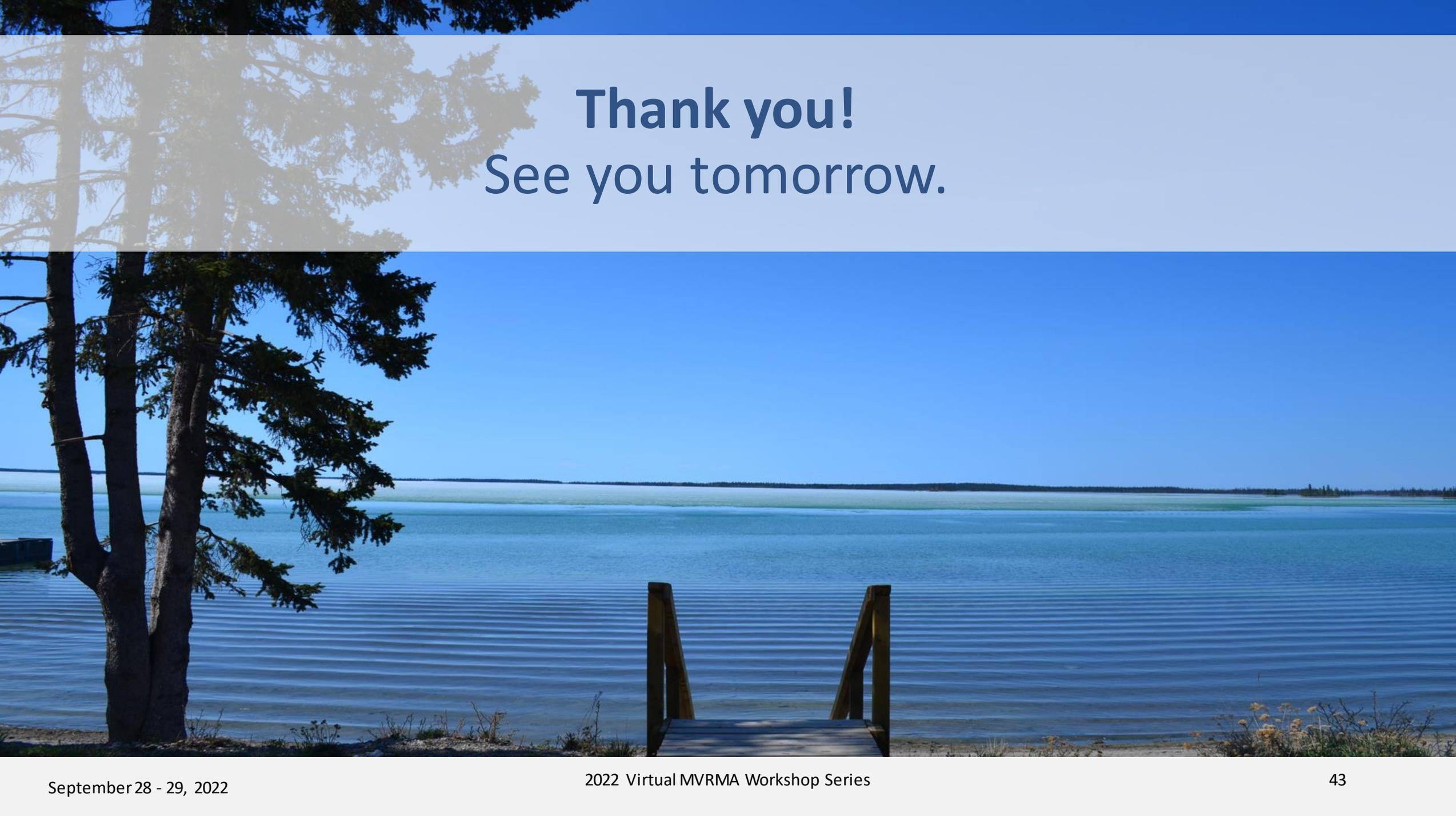
Agenda Day 2: September 29, 2022



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Share your feedback



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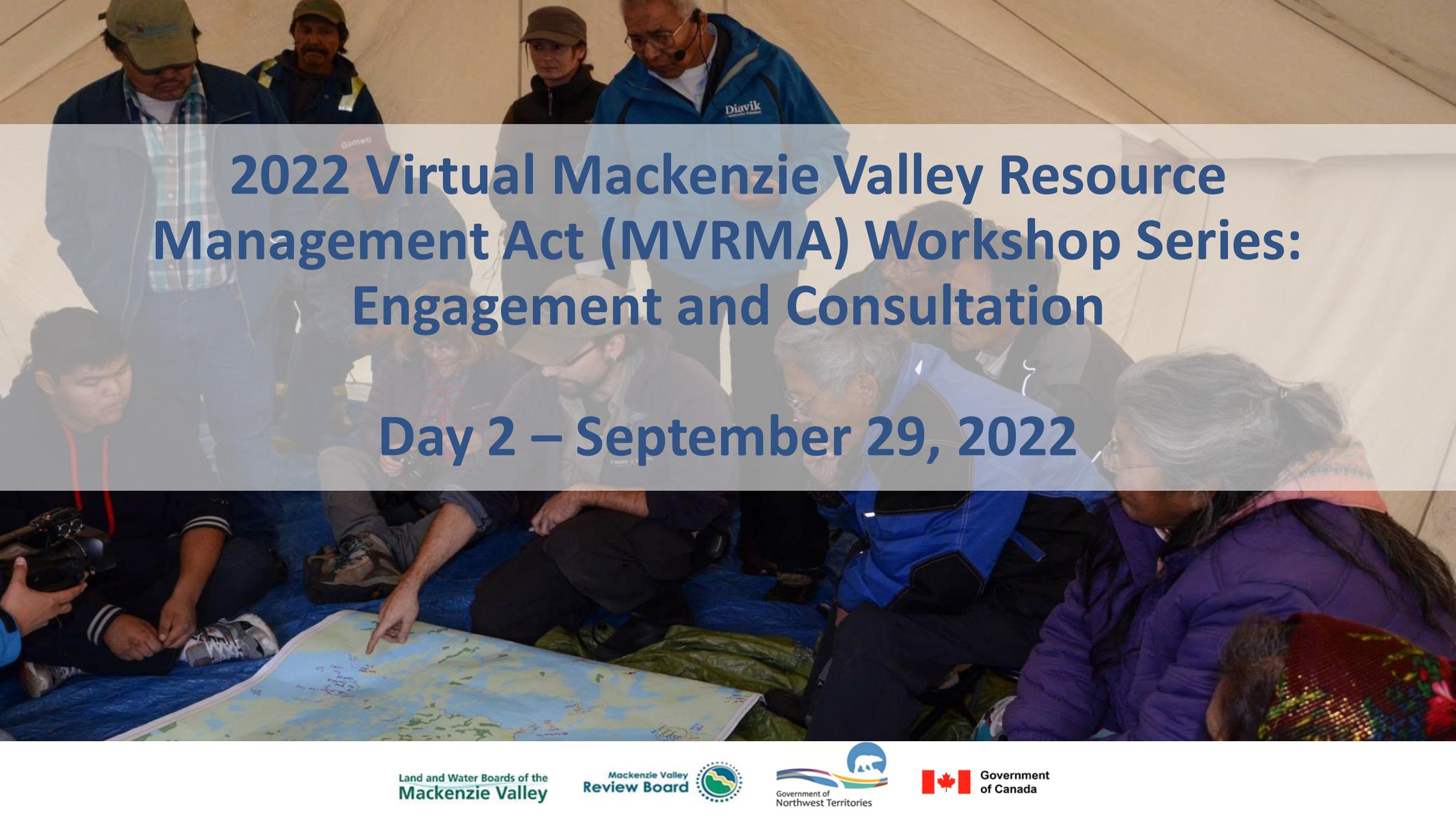
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Land and Water Boards of the
Mackenzie Valley

Mackenzie Valley
Review Board



**Government
of Canada**

A group of people are gathered inside a tent, looking at a large map spread out on the floor. One person is pointing at a specific location on the map. The people are dressed in outdoor gear, including jackets and hats. The background shows the interior of the tent with its fabric walls.

2022 Virtual Mackenzie Valley Resource Management Act (MVRMA) Workshop Series: Engagement and Consultation

Day 2 – September 29, 2022

Agenda Day 2: September 29, 2022

1. **Welcome Back**
2. **Panel 1 Reflections**
Speaker: **Janet Bayha McCauley**
2. **Innovative Approaches to Engagement** Speakers: Tracy Sletto and Chief Marcel Shackelly
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Let's Hear From You!

Type in the chat:

What's one reflection from yesterday's session?

Perspectives on Engagement & Consultation



Janet Bayha McCauley
Tulita Land Corporation

- Born and raised in Deline and out on the land
- Moved to Tulita 20 years ago, got married, has four beautiful children
- Serves on many community/outside boards and committees, and volunteers for various recreation activities in the community.
- Currently Vice President of the Tulita Land Corporation

Innovative Approaches to Engagement – TMX – Indigenous Advisory and Monitoring Committee (IAMC)



Tracy Sletto

Executive Vice President, Transparency and
Strategic Engagement, Canada Energy
Regulator



Chief Marcel Shackelly

Member, Indigenous Advisory and
Monitoring Committee

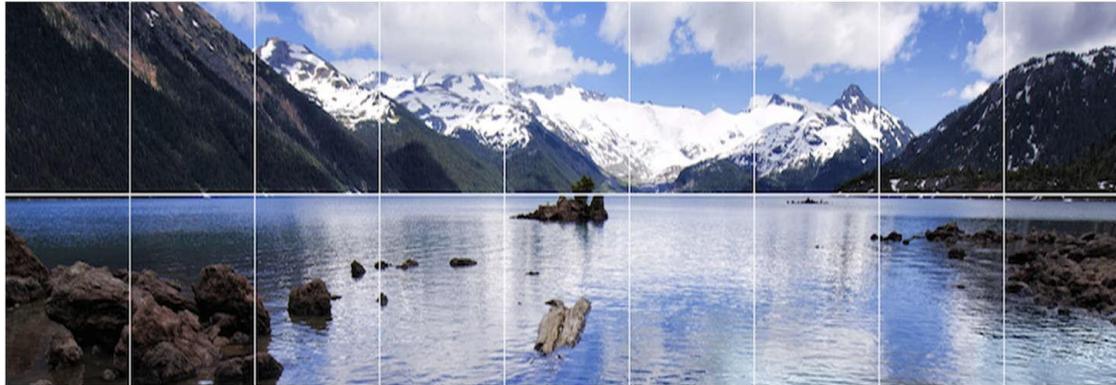


Canada Energy
Regulator

Régie de l'énergie
du Canada

Canada

Reconciliation, Engagement and the TMX-IAMC



Tracy Sletto
Executive Vice President Transparency and Strategic Engagement
Canada Energy Regulator (CER)

Chief Marcel Shackelly, TMX-IAMC member
(Mid-Fraser/Thompson)

INDIGENOUS
Advisory and Monitoring Committee
Trans Mountain Expansion and Existing Pipeline

September 29, 2022



Canada Energy
Regulator

Régie de l'énergie
du Canada

Canada

Overview of Presentation

- The Canada Energy Regulator (CER)
 - Role and mandate
 - Strategic Plan, including Reconciliation Strategic Plan
 - United Nations Declaration on the Rights of Indigenous Peoples Act (*UN Declaration Act*)

- The TMX-IAMC
 - Overview of the Committee
 - Key highlights and accomplishments
 - Look ahead - what's next



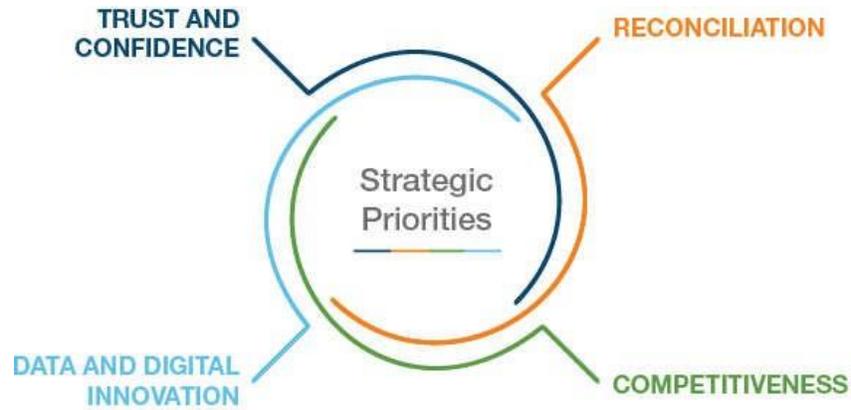


Canada Energy
Regulator

Régie de l'énergie
du Canada



CER's Reconciliation Strategic Priority



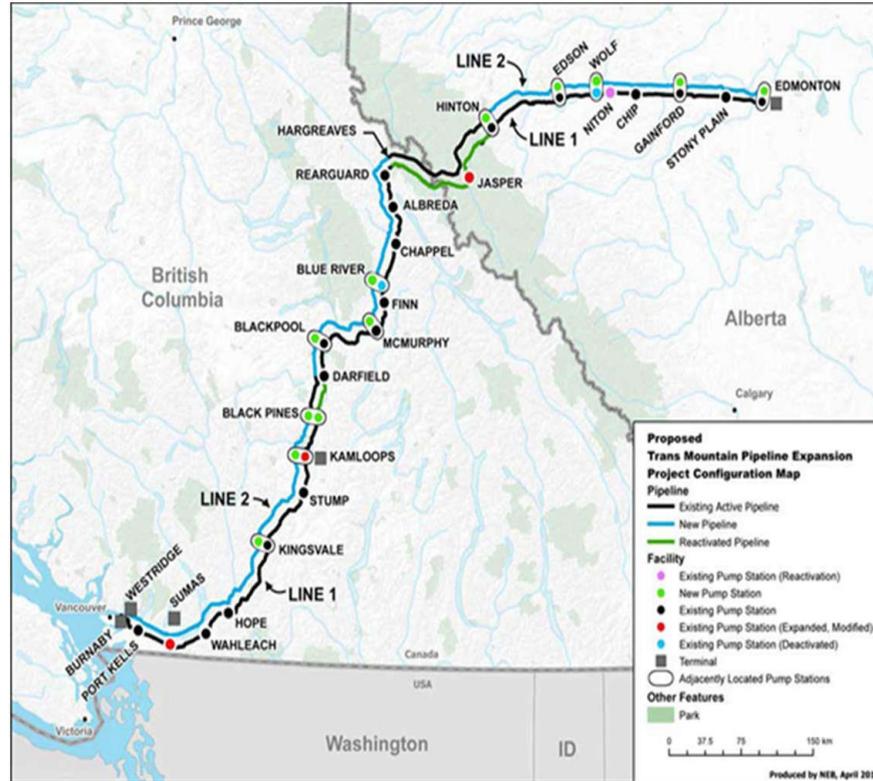


Canada Energy
Regulator

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du Canada

Canada

IAMC-TMX Committee





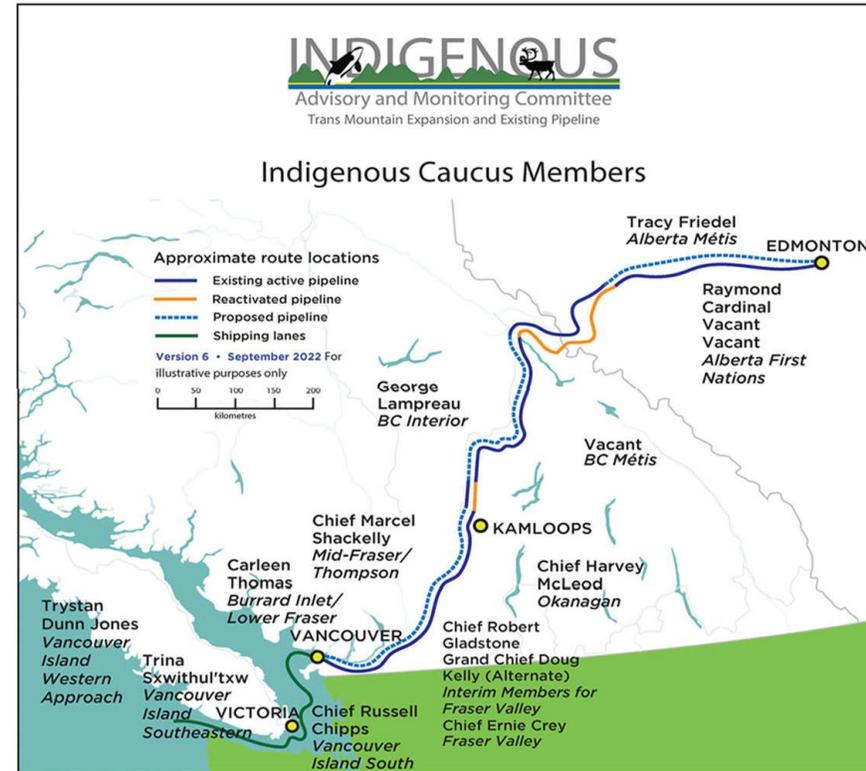
Canada Energy
Regulator

Régie de l'énergie
du Canada



TMX-IAMC Snapshot

Operator:	Trans Mountain Corp.
Status:	Active Construction
Indigenous Nations:	129
Membership: seats	13 Indigenous and 6 Government
Indigenous Co-Chair:	Ray Cardinal (Alberta First Nations)
Gov't Co-Chair:	Joanne Pereira-Ekström, NRCan
Gov't Members:	Tray Sletto, CER Ian Chatwell, Transport Canada Chad Stroud, Canada Coast Guard Alice Cheung, Fisheries & Oceans Saul Schneider, Environment & Climate Change Canada
Indigenous Members:	13-member Indigenous Caucus





Canada Energy
Regulator

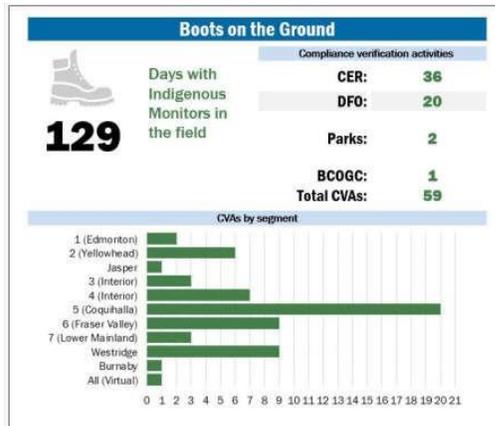
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du Canada



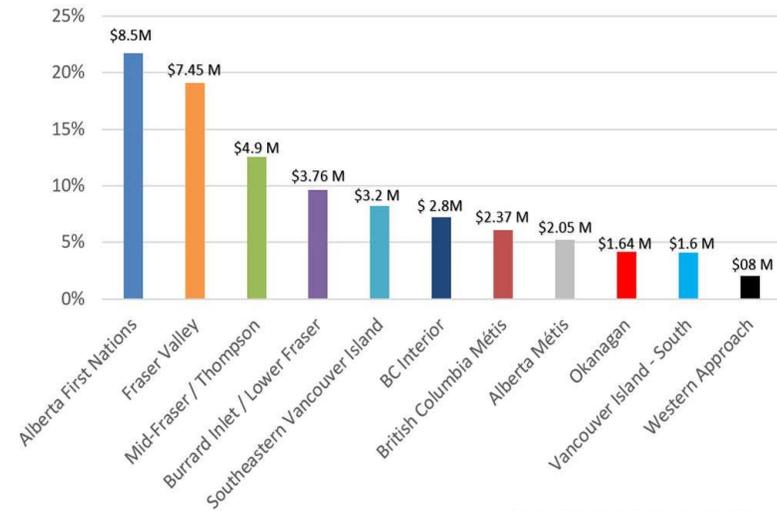
Key Accomplishments



2021 CVAs



Indigenous Communities (129) – Funding Distribution per Region



*Planned percentage of funding by region based on applications received

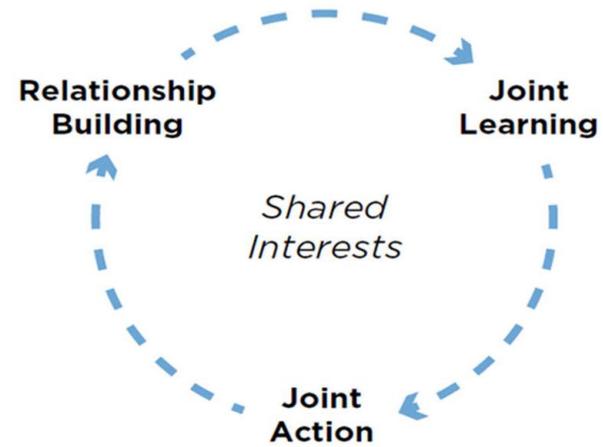


Canada Energy
Regulator

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Canada

Look-Ahead and Next Steps





Canada Energy
Regulator

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du Canada

Canada

Questions or Comments





Q&A Period



Global Perspectives on Engagement and Consultation



Jennifer Duncan

Barrister and Solicitor, Duncan
Law Office

- Sole practitioner specializing in Indigenous law with a primary focus on governance, corporate, regulatory and international law
- Bachelor of Arts in Native Studies from the University of Alberta graduating with honours in 2000
- Obtained her law degree from the University of British Columbia, graduating in 2004
- Member of the Law Society of British Columbia and the Law Society of the Northwest Territories.
- Dehla Got'ine from the Ts'oga Got'ine, and a member of the Behdzi Ahda" First Nation and the Ayoni Keh Land Corporation, located in the Arctic, Northwest Territories, Canada

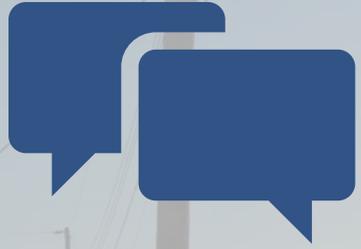


Q&A Period





Let's take a short break!



Board & Government Updates

Land and Water Boards of the Mackenzie Valley



LWB Engagement and Consultation Policy and Initiatives Update

MVRMA Workshop – September 28 & 29, 2022



Land and Water Boards of the Mackenzie Valley



Engagement and Consultation Policy

June 5, 2018



Land and Water Boards of the Mackenzie Valley



Engagement Guidelines for Applicants and Holders of Water Licences and Land Use Permits

June 5, 2018



LWB Engagement and Consultation Policy/Guideline Update Process

Policy Update

- Engagement commenced August 2019
- One-to-one meetings Fall 2019 to Summer 2021
- Open, virtual workshops June 9&10, 2021
- Public review of draft update from June 15 to Sept. 8, 2022
- Anticipated Board consideration December 2022

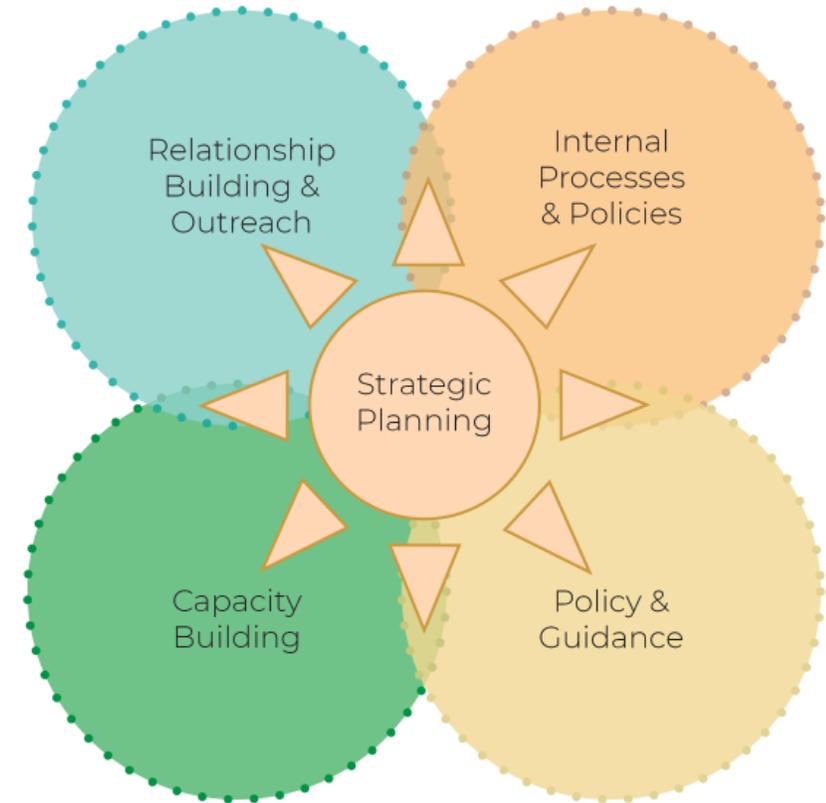
Guideline Update

- Engagement process similar to Policy update process, anticipated to commence in 2023 following Board approval of Policy



Relationship Building and Outreach

Focuses on initiatives that engage stakeholders in the work of the LWBs and helps satisfy the spirit of inclusive and integrated co – management system



Community Outreach Strategy: Overarching Key Messages

1. Improve on building relationships and trust
2. Increase effort and focus to build Indigenous Capacity
3. Increase general knowledge of the regulatory system in Communities
4. Promote accessibility for communities to be able to participate



Marsi cho





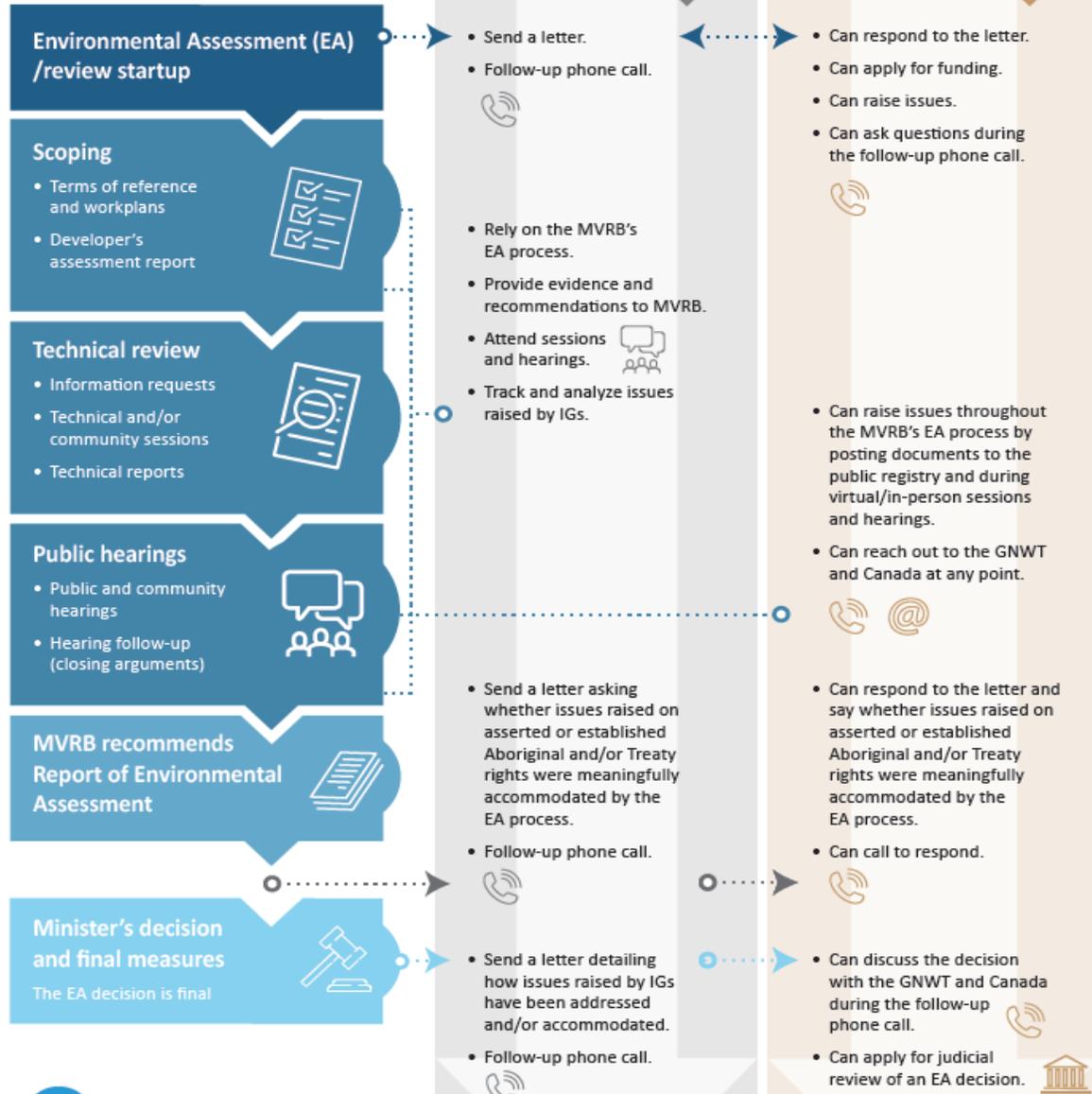
Consultation during environmental assessment in the Mackenzie Valley: GNWT-Canada joint consultation process

September 29, 2022

Canada

Government of
Northwest Territories

Mackenzie Valley Review Board (MVRB) Environmental Assessment Process



- The GNWT and Canada encourage any Indigenous Government or Indigenous Organization, as well as the public, to participate in the Review Board's process.
- The process is the best way to have your voice heard.
- Government relies on the Board's process as the primary means to fulfill its duty to consult with Indigenous peoples



Canada

Government of Northwest Territories

Government of Northwest Territories

Mahsi

Questions?

Melissa Pink
Manager, Project Assessment, Department of Lands
Government of the Northwest Territories
Melissa_pink@gov.nt.ca

Boyan Tracz
Manager, Consultation, CANNOR
Government of Canada
Boyan.Tracz@cannor.gc.ca



Engagement Improvements

Mackenzie Valley Review Board
MVRMA Workshop - Engagement
September 28-29, 2022



The Review Board's processes are rooted in consultation and engagement

- The Review Board understands its consultation obligations laid out in the land claims and the Act
- We want to go above and beyond these minimum requirements by:
 - designing processes that ensure meaningful participation and engagement and
 - providing opportunities for communities and IGs to share their concerns about developments
- good, strategic and meaningful engagement helps us fulfill our consultation obligations and leads to better decisions



Review Board's Approach to Engagement

Work together respectfully

- Co-develop engagement strategies
- increase Indigenous representation at a staff level

Start early and engage throughout

- Include Indigenous governments and organizations in planning.
- New guidelines promote collaborative project planning

Respect and consider local contexts

- Language & translator workshops
- Efforts to visit communities and meet people.

Reduce the burden of engagement

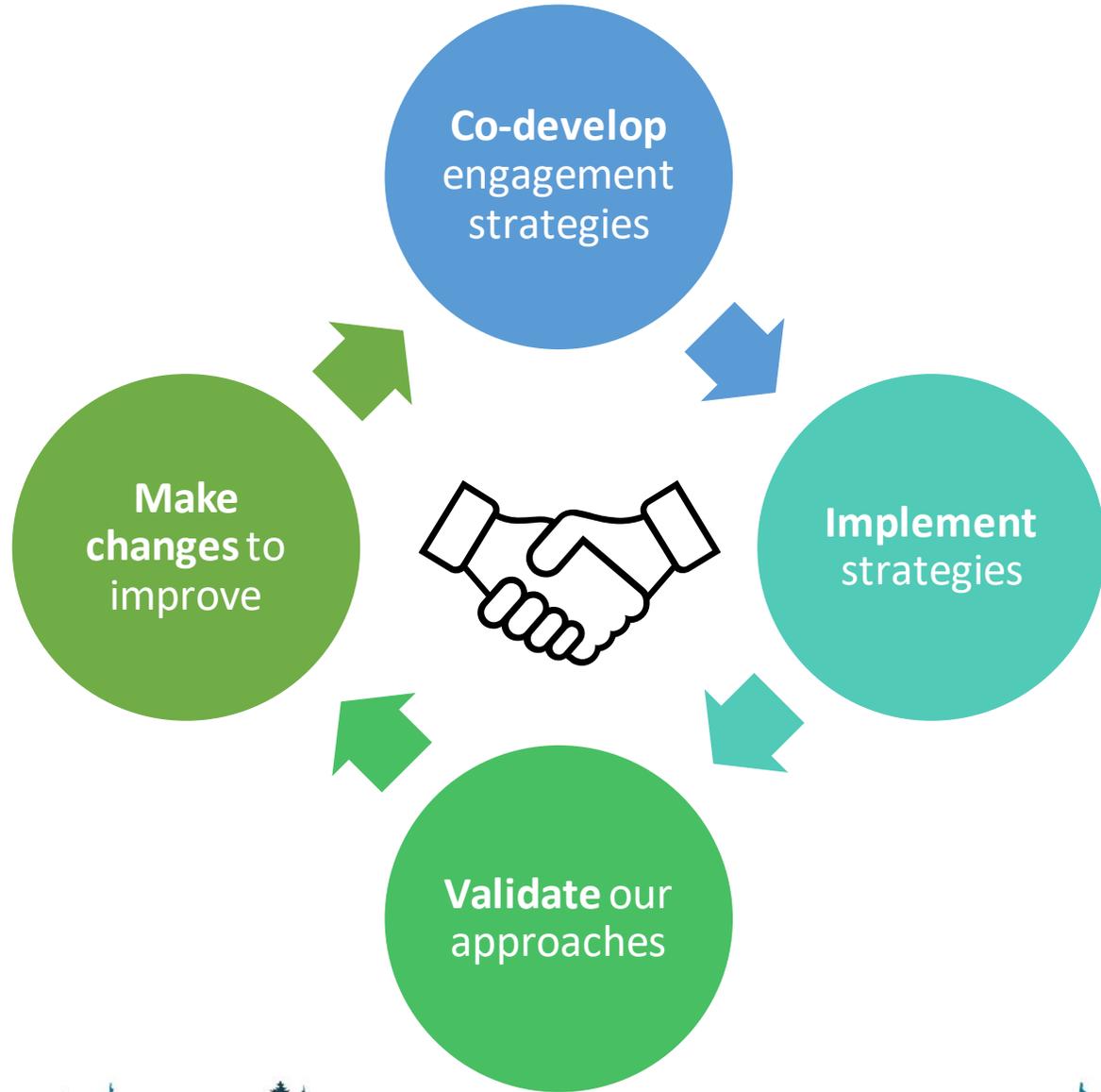
- collaborative initiatives
- coordinated processes
- Education & outreach activities to build relationships & strength local understanding

Support capacity building initiatives

- everyone's job
- advocating for participant funding



What's next?



Marci Cho (*thank you*)





Q&A Period



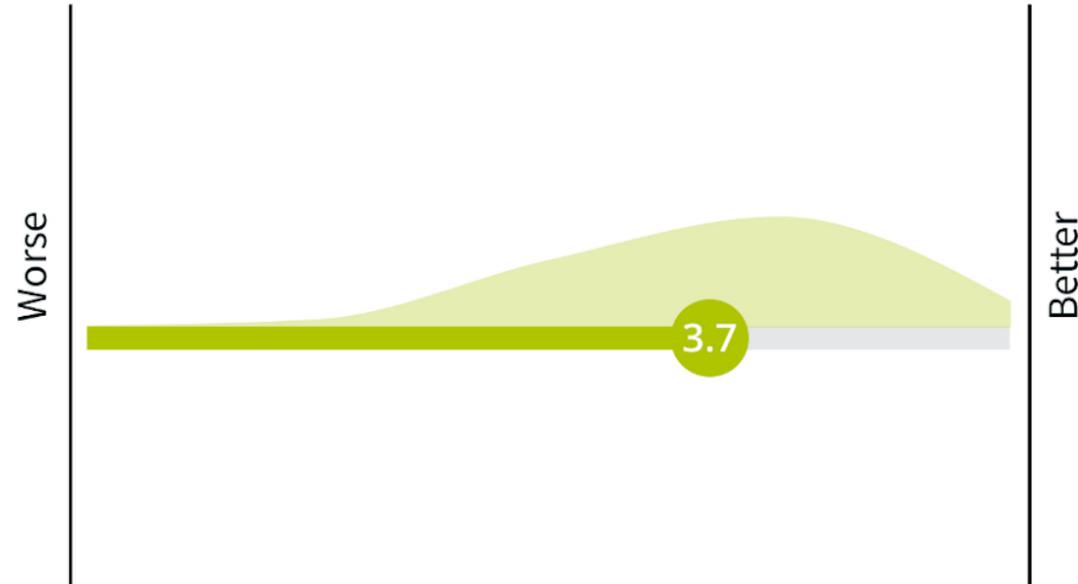
Let's hear from you!

Breakout Group Discussions



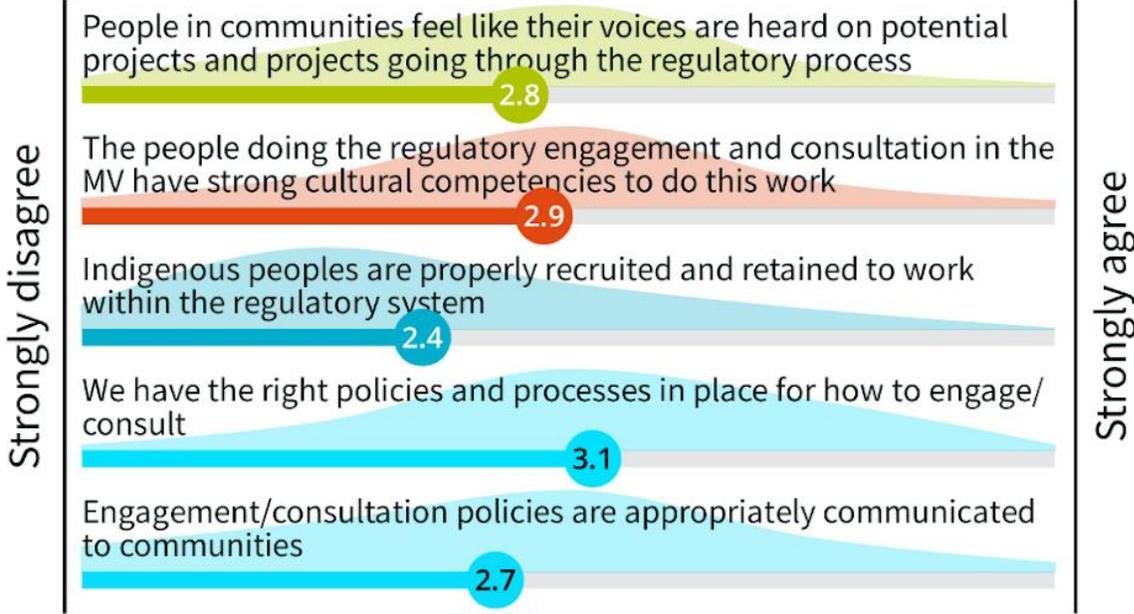
Reminder of Yesterday's Menti Results

In your perspective, when it comes to engagement and consultation with the MVRMA regulatory system, what direction are we going?



Reminder of Yesterday's Menti Results

How much do you agree with these statements:



Breakout Group Discussion: How do we break down the barriers for good, meaningful engagement?

- **We will break into small groups of ~8 – 10 people**
- **There will be one facilitator/notetaker in each group**
- **Questions:**
 1. What could we/you do to help improve our rating on each of these issues?
 - (e.g., How are you contributing to these ratings?)
 2. What are you doing towards building that positive relationship within your workplace, organization, community and as an individual to improve engagement outcomes?
 3. How can we all stay accountable within this reciprocal relationship?

Let's Hear From You!

Questions related to breakout group discussion

1

Open a web browser on your phone or computer

2

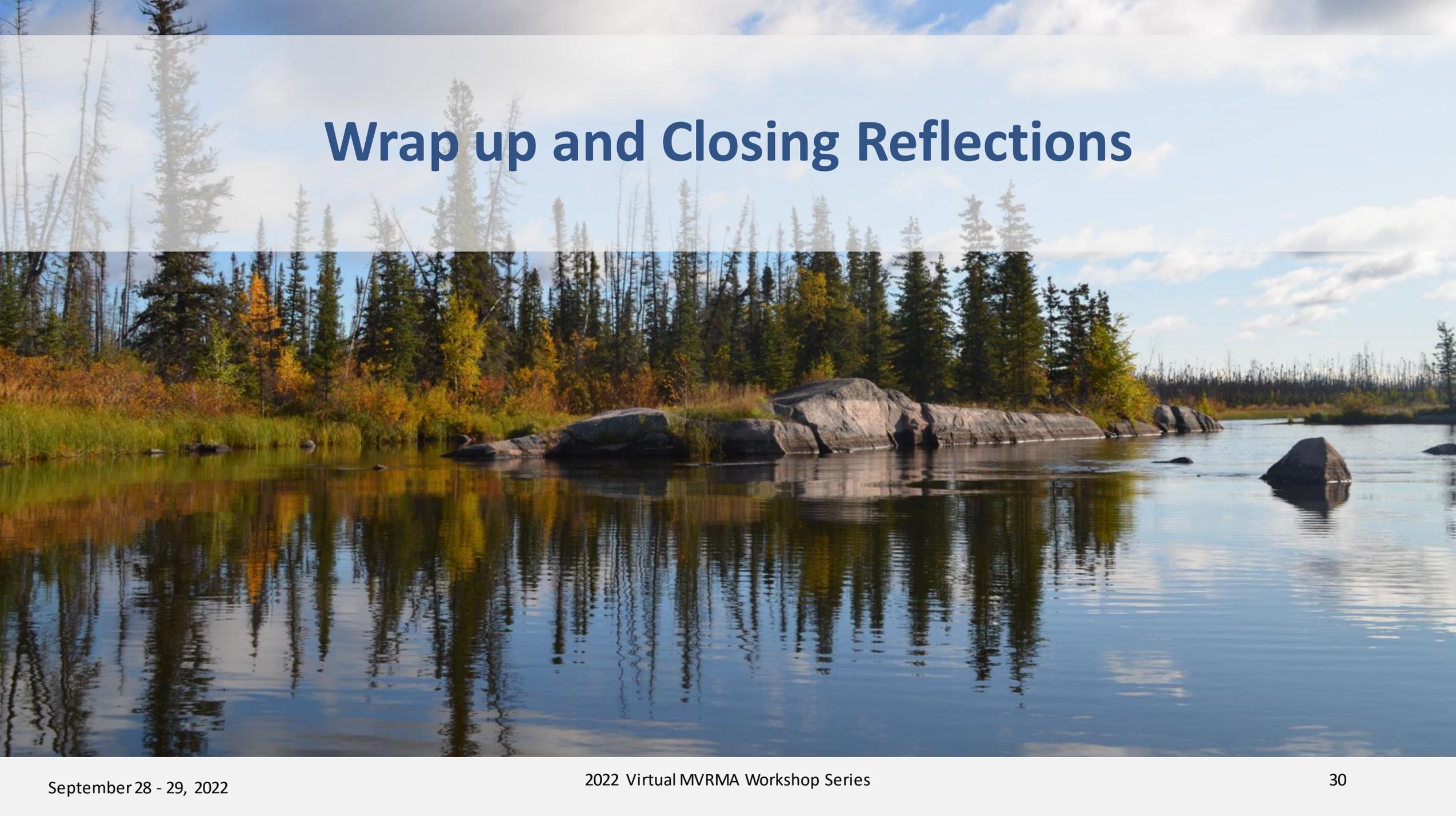
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Or use QR code



Wrap up and Closing Reflections



Next Steps

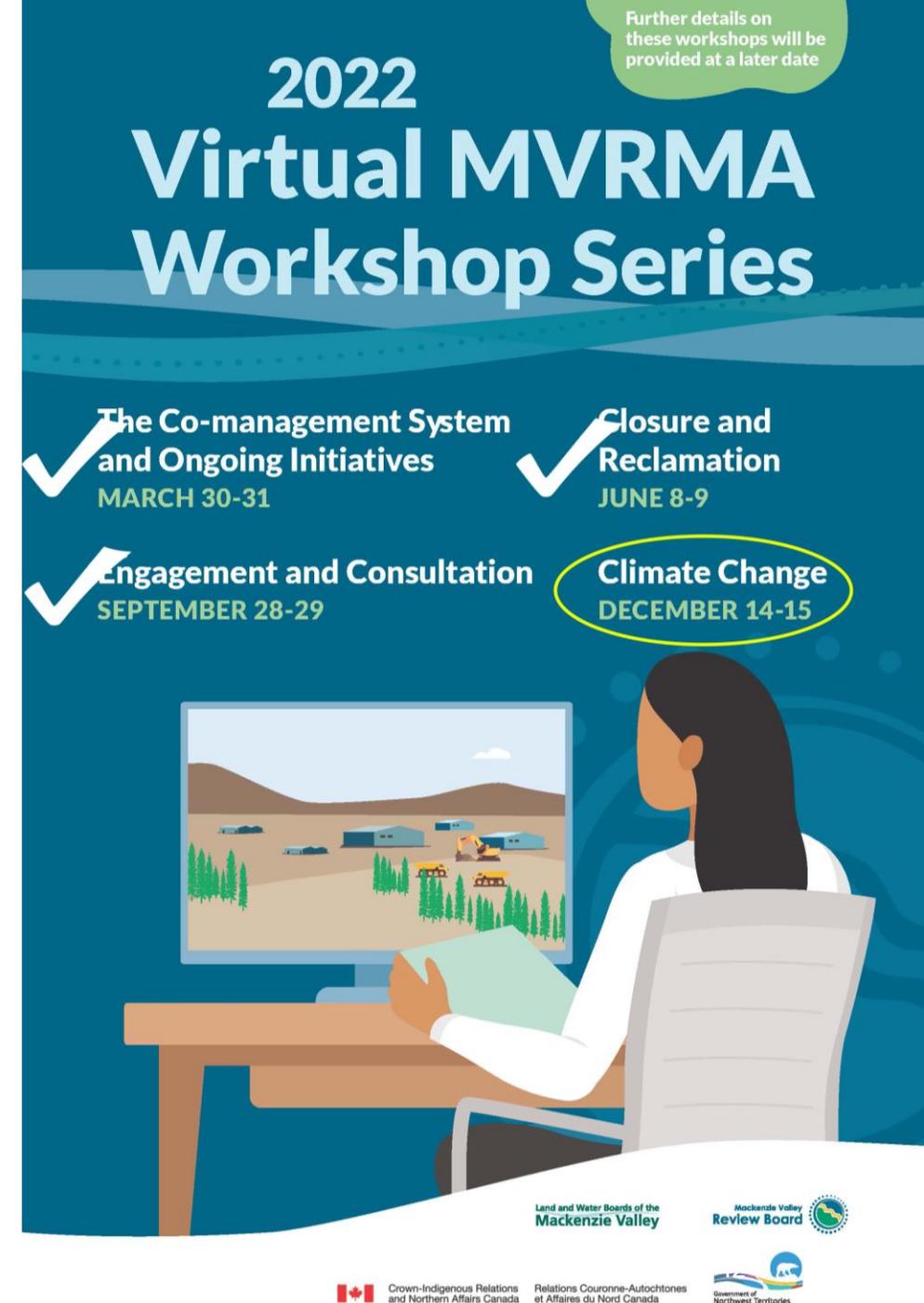
Final Report:

- Once complete, will be emailed to all participants and available on the Outreach page of the Land and Water Boards' websites

Final 2022 virtual workshop:

Given the ongoing Covid-19 circumstances, the MVRMA Workshop Planning Committee had decided to host a series of four virtual half-day workshops in 2022 rather than the typical several-day long in-person workshop once per year. The topics of the virtual workshop were based on a survey conducted in Fall of 2021.

- Dec. 14 & 15 is on Climate Change
- Registration details for the December workshop will come closer to the date



Further details on these workshops will be provided at a later date

2022 Virtual MVRMA Workshop Series

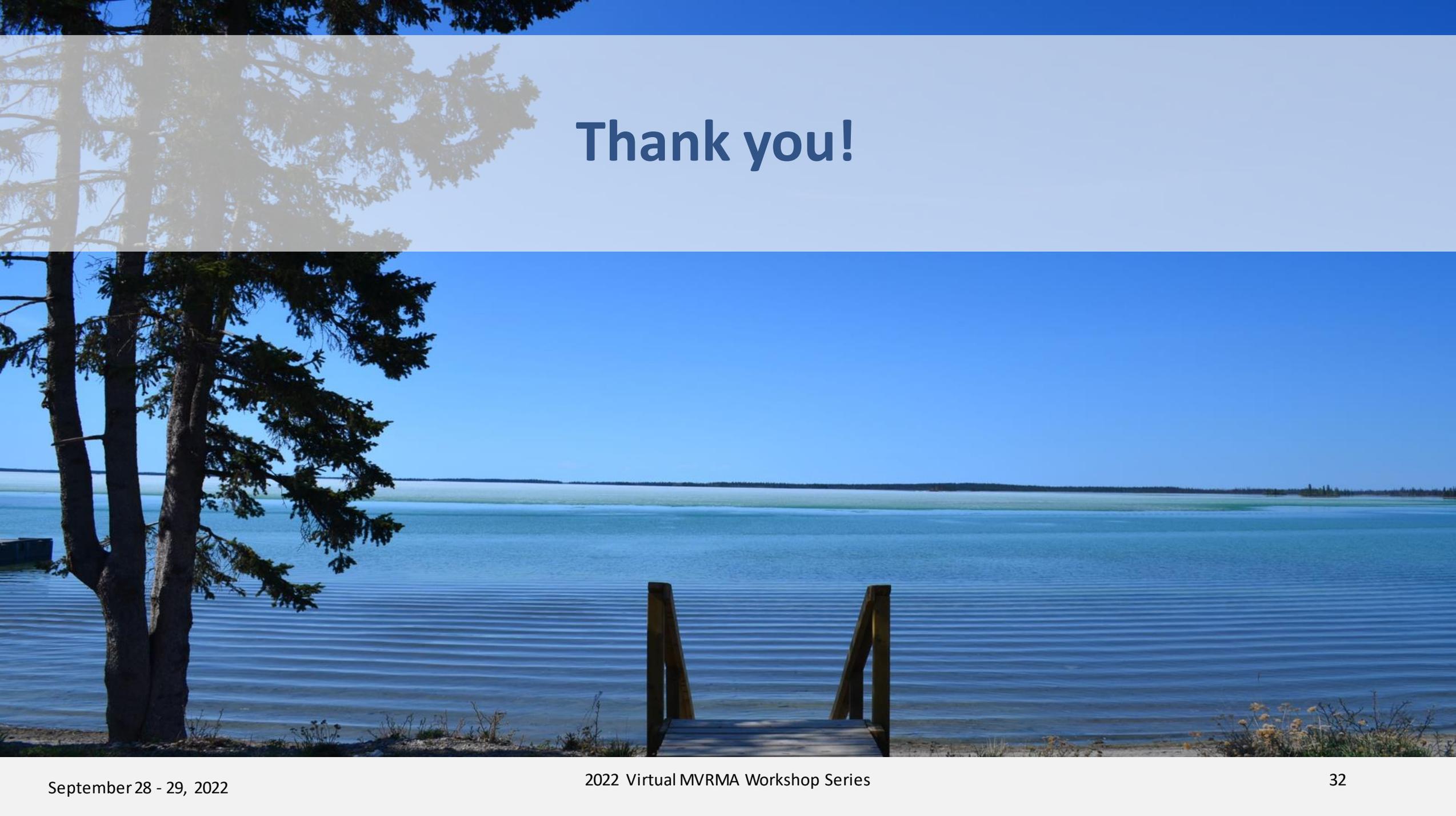
- ✓ The Co-management System and Ongoing Initiatives
MARCH 30-31
- ✓ Closure and Reclamation
JUNE 8-9
- ✓ Engagement and Consultation
SEPTEMBER 28-29
- Climate Change
DECEMBER 14-15

Illustration of a person sitting at a desk with a computer monitor displaying a landscape scene.

Land and Water Boards of the Mackenzie Valley
Mackenzie Valley Review Board
Crown-Indigenous Relations and Northern Affairs Canada
Relations Couronne-Autochtones et Affaires du Nord Canada
Government of Northwest Territories



Share your feedback



Thank you!