



“When You Talk - We Listen!”



MACKENZIE VALLEY REVIEW BOARD

DIABIK DIAMOND MINES INC.

EA1819-01

COMMUNITY AND TECHNICAL HEARING

Mackenzie Valley Review Panel:

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Board Member	Kirby Marshall
Board Member	Yvonne Nakimayak
Board Member	Bertha Norwegian
Board Member	Sunny Munroe
Board Member	Jim Edmonson

Yellowknife, NT

September 6th, 2019

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1 --- Upon commencing at 9:13 a.m.

2

3 THE CHAIRPERSON: If we can have
4 everyone take their seats now, please, so that we can
5 begin the day.

6 MS. KATE MANSFIELD: Good morning,
7 everyone. My name is Kate Mansfield, and I'm a senior
8 environmental assessment officer with the Review
9 Board. I just have a few brief housekeeping notes to
10 go over before we begin.

11 Bathrooms are located out that door in
12 the hallway. Fire exits are located at all the doors
13 here, and you can head straight outside, there.
14 Breaks will be called throughout the day at the
15 Chair's discretion. They are not scheduled on the
16 agenda; that coffee and snacks are available at the
17 back and will be freshened up periodically through the
18 day. We will provide lunch again from approximately
19 12:00 to 1:00 at the Chair's discretion.

20 If there is media present today, we
21 request that you look at the media information sheet
22 that was posted to the public registry, and stay in
23 your area.

24 There is also simultaneous
25 interpretation services available in Tlicho, Weledeh,

1 and Chipewyan. Tlicho is on channel 3, Weledeh,
2 channel 4, Chipewyan, channel 2, and English, channel
3 1. If that changes, we'll try to update you with that
4 new information as soon as we have it.

5 Review Board staff would like to take
6 pictures today, so if you do not wish your picture to
7 be taken, please let staff know.

8 We request that everyone participating
9 or listening today sign in at the front table with
10 Catherine. And just as an update, we do have
11 teleconference services available. That should be up
12 and running now, and we've also posted an updated link
13 to a video presen -- a web presentation services on
14 the registry. The link has changed from yesterday, so
15 we've reposted it with that new information for anyone
16 participating remotely. Thank you.

17 THE CHAIRPERSON: Thank you, Kate.
18 Good morning, everyone. My name is Joanne Deneron,
19 and I'm the Chair of the Mackenzie Valley Impact
20 Review Board. Welcome back to the technical hearing
21 for the environmental assessment of Diavik Mine's
22 proposal to put processed kimberlite in the mine pits
23 and underground.

24 An agenda for these technical hearings
25 has been posted to the public registry, but we are

1 behind schedule. Times and order of presentations may
2 be changed at my discretion.

3 The Review Board is holding this
4 hearing to hear directly from the Interveners, the
5 public, and Diavik about the potential impacts of
6 Diavik's proposal. We held community hearings in
7 Behchoko on Tuesday and Dettah on Wednesday to hear
8 directly from the public.

9 Yesterday, Diavik described its
10 project, and Interveners were able to ask questions to
11 Diavik on its presentation. Today, the remaining
12 Interveners will present their interventions and will
13 ask questions from other Interveners, the developer,
14 and the Review Board.

15 All questions and answers are permitted
16 at my discretion. Once a line of questioning has
17 begun, I will allow Interveners and Diavik to question
18 one another directly rather than approving each
19 question. Be advised, however, that I will intervene
20 if it is not clear that the question is relevant or
21 appropriate.

22 I know that we are behind schedule, but
23 the Review Board is committed to hearing what everyone
24 has to say. Please respect the time requirements of
25 other Interveners during their presentations and

1 questioning. Keep to your allotted time, that will
2 make things move slow -- smoothly, and that way,
3 everyone will have a fair chance to be heard. Please
4 use your time productively. Presentations will be
5 timed, and we'll be giving you a five (5) minute
6 warning to keep you on track when your time is up, or
7 you may be interrupted.

8 Again, please use a microphone for all
9 questions and responses, remembering to say your name.
10 Our recorder at the back, Sean, I can see him back
11 there, he stands up every time when someone doesn't
12 say their name so it gives me a warning, as he needs
13 to know who is speaking for the transcripts to be
14 recorded.

15

16 (BRIEF PAUSE)

17

18 THE CHAIRPERSON: I would also like to
19 -- just to remind you to speak slowly and clearly to
20 allow for our interpreters, so that they can be able
21 to transcribe what's being said.

22 So we'll start off now, and due to the
23 availability of the presenters, the Tlicho Government
24 has requested to present first this morning, and then
25 the Government of the Northwest Territories has

1 requested to present their presentation after lunch.

2 Otherwise, we will follow the order that the

3 presenters are that's stated on the agenda.

4 Now if you see the agenda, beside your

5 -- the presenters' names, they -- some of you have

6 fifteen (15) minutes. Some have ten (10). Some have

7 thirty (30). Please try to keep to your allotted

8 times.

9

10 (BRIEF PAUSE)

11

12 THE CHAIRPERSON: Questions from

13 Diavik?

14 MR. GORD MACDONALD: Gord MacDonald,

15 from Diavik. Madam Chair, were we going to review the

16 undertakings before getting into the presentations?

17

18 (BRIEF PAUSE)

19

20 THE CHAIRPERSON: Legal counsel?

21 MR. JOHN DONIHEE: John Donihee.

22 Thank you, Madam Chair. Mr. Macdonald, I -- my

23 understanding is that you are ready to respond to an

24 undertaking given to one (1) of the Board members? Is

25 that correct?

1 MR. GORD MACDONALD: Gord Macdonald,
2 with Diavik. Yeah, we -- we can give an update on
3 where we're at on those undertakings, and there were
4 two (2) that we have given a -- we gave a response to.
5 It -- it would take two (2) minutes, here.

6 THE CHAIRPERSON: Okay. Diavik...?

7 MR. GORD MACDONALD: So we just wanted
8 to advise that Undertaking number 1, which is the tab
9 -- the advantages/disadvantages tables, the -- the
10 Tlichon asked on -- for on the project was delivered.

11 Undertaking number 2, which was the
12 request from the Board for the same for the non -- for
13 the non-alternative, or the other alternative. It
14 should be to you -- you have it now.

15 David asked for information on storage
16 capacity, so we provided a full curve for you that
17 should be there with your staff now. And the Fort
18 Resolution Metis Council asked if we -- and the
19 commitment we'll make -- the answer to -- back to the
20 Fort Resolution Metis Council in review of their
21 studies is that if we can get those two (2) studies
22 posted -- two (2) study proposals within the next
23 week, we'll be able to provide a written response
24 before their closing arguments are due.

25 Thank you very much, Madam Chair.

1 MS. KATY DIMMER: Katy Dimmer, Fort
2 Resolution Metis Council. If I may speak very
3 briefly, Madam Chair?

4 THE CHAIRPERSON: Yes. Go ahead.

5 MS. KATY DIMMER: Katy Dimmer, Fort
6 Resolution Metis Council. Thank you, Madam Chair. We
7 emailed the two (2) documents to Diavik five (5)
8 minutes ago, and we cc'd Chuck Hubert on that email as
9 well. Thank you.

10 THE CHAIRPERSON: Okay. Thank you.
11 Okay. If we could start with our first presentation
12 this morning, please, and it'll be the Tlicho
13 Government.

14

15 (BRIEF PAUSE)

16

17 PRESENTATION BY TLICHO GOVERNMENT:

18 MS. VIOLET CAMSELL-BLONDIN: Good
19 morning, Madam Chair. My name is Violet Camsell-
20 Blondin. I'm a manager for Lands Department, Tlicho
21 Government.

22 Madam Chair, the Tlicho Government made
23 a presentation to you in Behchoko, so we will not make
24 a reference to that further here. This morning, we
25 have two (2) speakers for you, Elder Joseph Judas, and

1 Tony Pearse, our technical advisor.

2 Madam Chair, I wanted to make reference
3 to this hall. This is a significant hall for all of
4 us, because back in 1999, the Dogrib Treaty 11
5 Council, now the Tlicho Government, made several
6 presentations with other Aboriginal groups to the
7 Indobechi (phonetic) Water Board at the time about the
8 Diavik project. That was about twenty (20) years ago,
9 Madam Chair.

10 We are back here twenty (20) years
11 later to talk about closure, and -- and to ensure what
12 we were presented with, and the study report that came
13 out of there was over several vocabularies, such as
14 mitigation, the area will be mitigated, that we will
15 be confident that will be done through this hearing
16 and through the other Water Board hearing as well.

17 We will be confident when we can
18 traditionally use the Ekati area again after closure.
19 We have a long history of being told that the area
20 could be compromised to -- to a level we're not sure
21 could be acceptable to us.

22 This Board, followed by the Lands and
23 Water Board, but most importantly, Diavik, have that
24 responsibility. We have told you what we require:
25 clean water, land that can be used, and no impact to

1 wildlife and fish, and the cultural use of the area.

2 Ekati is a very important lake in this
3 region, and that will be emphasized by our Elder
4 Joseph Judas. Breaching the dike, and allowing the
5 water to go into Ekati is not a favourable or
6 acceptable approach. There are many uncertainties
7 about the modelling that has been identified and
8 discussed here last few days.

9 There is uncertainty that has been
10 identified by our technical advisor, as well, too, and
11 with that short opening comment, I turn the mic over
12 to our Elder Joseph Judas.

13 ELDER JOSEPH JUDAS: I'm just going to
14 say this in my language.

15

16 (INTERPRETED FROM INDIGENOUS LANGUAGE INTO ENGLISH)

17

18 ELDER JOSEPH JUDAS: My name is Joe --
19 Joseph Judas. I'm originally from Wekweeti. I'm one
20 (1) of the advisors from the Elders from the -- for
21 the Tlicho Government.

22 Yes, that I -- we -- we do have some
23 Elders advisors that help us, you know, technical
24 (INDISCERNIBLE).

25

1 (INTERPRETATION CONCLUDED)

2

3 (BRIEF PAUSE)

4

5 THE CHAIRPERSON: Okay. Try it again.

6

7 (INTERPRETED FROM INDIGENOUS LANGUAGE INTO ENGLISH)

8

9 ELDER JOSEPH JUDAS: Yes. My name is
10 Joe Judas. I'm ori -- originally one (1) of the
11 advisors from the Elders from -- for Tlicho
12 Government.

13 And yes, that there's a lot of very
14 important issues that, you know, that are out there
15 that, you know, might -- might be some impact for the
16 Aboriginal people that, you know, the land -- users of
17 the land.

18 Yes, even the history -- the history, I
19 guess, you know, the Aboriginal people from the area
20 that, you know, for every sectors of the regions that
21 use that area, they -- certainly, he says, you know,
22 we were still carrying the issues that, you know, that
23 our ancestors used the land, and then we still do.
24 And then we intend to do it into the future, our --
25 training our younger generations to use the land when

1 possible.

2 Yes, the -- well, we're not the only
3 people that are using the land out there, like, you
4 know, per se traditionally, because, you know, like,
5 they even have -- even the animals use it, mostly the
6 caribou. And the -- so the -- we don't want to see
7 the caribou depleted because, like I said earlier on
8 in Behchoko presentation, that, you know, it's hard to
9 pinpoint the whole average to qualify for the caribou
10 decline.

11 Nonetheless -- nonetheless, we're
12 always cautious about the caribou migration and the --
13 that the case is that, you know, like, hopefully that
14 a diamond mine, you know, especially DMI that will be
15 able to take our word quite seriously to look into the
16 -- our traditional use of land and including the
17 wildlife that's on it and including waterfowls that
18 might use the open pit lake.

19 And I'm pretty sure Diavik saw the
20 issue that they know we are concerned with and then
21 the -- because of the water, the currents in water
22 move around with the wind and then -- and then
23 definitely as the -- when the mine started, I guess,
24 you know, we are advised by the Elders that hopefully
25 that, you know, the mine -- the mine was all be -- do

1 a proper reclamation when the day of the end of the
2 mine life, and then I've seen issues what we're going
3 through.

4 We're headed the right direction but
5 yet, you know, we have to be cautious as to how we
6 know where the land is not going to be as -- as it was
7 when it first started, but nonetheless at least, that,
8 you know, that the major ite -- stuff like assumption
9 that the land will -- it might cost us some -- some
10 pollutions or things like that don't come in that
11 direction.

12 Yes. That the -- definitely says,
13 like, you know, like, the water itself into -- using
14 the kimberlite, processed kimberlite go back into the
15 -- into the pit, I guess, you know, like that's
16 another concerns that we have because the -- the
17 Elders are advising us, saying that, you know, that
18 this isn't a proven thing, you know, and so the
19 assumption that it's hard to -- to go with and then,
20 you know -- so this is what the Elders...

21 And then another thing too, I guess,
22 you know, like, we -- Elders always were concerned
23 about the -- the way the day that -- you know, when
24 that mine was in the prime operation, that the -- that
25 the -- all the dust, I guess, you know from the -- the

1 transporting ores around the area, I guess, was
2 concern, and including the -- the airport, when it --
3 when the dust flies up, when the jet takes off, things
4 like that. And so that the -- there's a lot of
5 possible, you know, that contaminations, that, you
6 know, that -- you know, something like that, you know,
7 is very -- really a main issue from -- amongst
8 Aboriginal communities.

9 So the -- definitely so we've been
10 working with, you know, other various water boards to
11 see that it -- prevented. Thank you.

12

13 (INTERPRETATION CONCLUDED)

14

15 DR. GINGER GIBSON: Thank you, Madam
16 Chair. Ginger Gibson, with Tlicho Government. We're
17 going to turn now to the telephone line, Tony Pearse.
18 Tony...?

19

20 (BRIEF PAUSE)

21

22 MR. TONY PEARSE (BY PHONE): Okay,
23 thank you. Thank you, Madam Chair and Board, for
24 providing me a short bit of time this morning. I know
25 you have a lot (AUDIO ISSUES).

1 I have reviewed the documents on the
2 Registry, including the Proponent's responses to
3 interventions, and nothing I have read changes the
4 contents of what I have said in my written report.

5 The main thrust of this submission is
6 to argue that a decision by the Board at this time is
7 premature. It is premature because, in my view,
8 Diavik has not provided sufficient information to
9 effectively demonstrate that in filling the pit with
10 FPK, fine processed kimberlite, poses no significant
11 environmental risk to Lac de Gras, which is not to
12 argue that Diavik is necessarily wrong, but only that
13 the Company hasn't presented adequate credible
14 evidence that could be relied upon to make a
15 responsible decision at this time.

16 The key question, it seems to me, is
17 whether the extra fine processed kimberlite to be
18 deposited into one (1) or more of the open pits will
19 remain effectively contained at the bottom of the pits
20 forever, such that whatever movements in the overlying
21 water column post closure, infrequent as they may be,
22 will not mobilize the extra fine processed kimberlite
23 into the water column and present a long-term risk to
24 Lac de Gras.

25 To support its case, Diavik has relied

1 solely on computer modelling to make these
2 predictions. Several different exercises using the
3 computer model have been run to test various
4 scenarios. The problem, however, is all this work as
5 the Proponent has stated, is preliminary. Most of the
6 substantive interventions on the public registry have
7 identified numerous and serious problems with the
8 modelling work, including the reviews done by EMAB,
9 GNWT, and the Board staff.

10 Let me emphasize the warnings that even
11 Golder, the contractor that did the modelling,
12 provided. First, a number of, quote, "simplifying
13 assumptions" were employed and that predictions were
14 based on several inputs, all of which have inherent
15 uncertainty, and further, results will be suspect at
16 best and will not withstand scrutiny at worst if the
17 model is applied with insufficient and/or inadequate
18 calibration data.

19 Golder, as well as most of the
20 reviewers, noted particularly that the model assumed
21 pit lake will be full up with Lac de Gras water at the
22 start of the model run, which does not reflect
23 reality.

24 Further, that the PK consolidation was
25 conceptual and based on estimates. I'll talk a bit

1 more about that in a minute.

2 Am I speaking slowly enough for the
3 interpreters?

4 THE CHAIRPERSON: It looks like
5 they're happy.

6 MR. TONY PEARSE (BY PHONE): Okay,
7 thank you. One (1) of the stated objectives for the
8 modelling was

9 "to understand the influence of
10 processed kimberlite consolidation
11 on pit lakes water quality."

12 This objective is arguably the most
13 critical piece to get answers for, but the objective
14 never -- was never achieved because theoretical values
15 were used instead to model PK consolidation, even
16 though Diavik had available real measured field data
17 on hand about extra fine processed kimberlite
18 consolidation rates that it didn't use.

19 The notion of consolidation needs a
20 little bit of explanation, so I would ask you to put
21 Slide 3 up, if you have my slides in front of you.

22 In my written submission, I presented
23 two (2) tables taken from a report submitted by AMEC,
24 a subcontractor to Diavik who carried out field
25 investigations in the processed kimberlite containment

1 area during 2010.

2 AMEC's results were written up in a
3 report and included as a technical appendix to
4 Diavik's 2012 Interim Closure and Reclamation Plan
5 Report submitted to Wek'eezhii Land and Water Board.

6 AMEC drove a number of boreholes in the
7 various parts of the tailing pond and took core
8 samples at various depths. They then conducted
9 settling tests in the lab with the sampled material.
10 I have chosen two (2) samples from one (1) particular
11 borehole to illustrate the issue with extra fine
12 processed kimberlite.

13

14 (BRIEF PAUSE)

15

16 MR. TONY PEARSE (BY PHONE): Slide 3
17 shows the reported data from one (1) borehole.
18 Although a number of test results are presented in the
19 report, this sample was taken at a depth of six (6)
20 metres. The settling test, a handful of kimberlite
21 tailing sample, is stirred into a glass cylinder of
22 water on Day 1 and the separation of this into a
23 bottom sediment layer and a clear water top layer over
24 the course of thirty (30) days is measured. You can
25 see this by the numbers in the table on the left.

1 I've taken those numbers and graphed
2 them to give you the visual picture of this on the
3 right-hand side of the slide, and what you see here is
4 rapid separation of the sample in the first few days
5 as the tailings settle to the bottom, gradually
6 slowing down such that settling and consolidation are
7 more or less complete by the end of thirty (30) days.
8 This is how a typical mine tailings sample would
9 behave when deposited in a water column.

10 In Slide 4 -- turn to Slide 4 --
11 something unusual happens, as shown by a third layer
12 showing up, shown in green, or shown in the table, and
13 you can see the green thin wedge of material in the
14 graph to the right. This shows up about halfway
15 through the test.

16 At this point, the settling process, as
17 shown by the numbers, essentially grinds to a halt for
18 the rest of the test period. The green material is
19 extra fine processed kimberlite.

20 What this test illustrates is that the
21 extra fine processed kimberlite does not effectively
22 consolidate. It settles in the water column, but once
23 on the bottom it does not further compact or
24 consolidate and squeeze out pore water as typical mine
25 tailings would do.

1 It is worth noting that the sample
2 containing the extra fine processed kimberlite was
3 taken at a depth of twelve (12) metres in the pond
4 area, while a sample without the extra fine processed
5 kimberlite, this is the previous slide, that was taken
6 in the same borehole but only six (6) metres deep.
7 This illustrates that the layering of the extra fine
8 processed kimberlite in the containment pond is likely
9 complex and that any plan to relocate this material to
10 the pits is likely to be challenging.

11 Why do I present this information here?
12 As I noted in my written submission, the AMEC report
13 is a substantial and valuable contribution to
14 understanding the behaviour of fine and extra fine
15 processed kimberlite. It is comprehensive and a
16 thorough study of the physical characteristics of
17 processed kimberlite in the containment pond.

18 Indeed, the results of this study
19 caused AMEC at that time to observe that a
20 reconsideration of closure strategies for the
21 processed kimberlite containment area was required, a
22 point Diavik now seems to have picked up on.

23 Unfortunately, Diavik appears never to
24 have used the AMEC information in any of its modelling
25 work for the current proposal. Instead it used

1 theoretical values and assumptions about how extra
2 fine processed kimberlite will settle and consolidate.
3 Not to have used real measured data when it was
4 available and instead used assumptions about extra
5 fine processed kimberlite behaviour only begs the
6 question why would Diavik do this.

7 Diavik hasn't provided useful
8 scientific data on the physical behaviour of extra
9 fine processed kimberlite, but it is likely that the
10 material in a water column such as a pit, or as a pit
11 lake, is extremely sensitive to motion and easily
12 mobilized, another feature that needs further field
13 and lab work. So how stable will it remain over time
14 due to disturbances in the water column?

15 So where does this get us? Well, it's
16 fair to say no one is satisfied with the modelling to
17 date. Many serious questions remain. Even now Diavik
18 acknowledges that further test results regarding fine
19 processed kimberlite behaviour and consolidation
20 characteristics are to be delivered in the near future
21 and those will then be followed by further updating
22 and modelling work. It seems we are all agreed that
23 the modelling needs to be updated, where the
24 differences lie seem to be in timing of the new work.

25 Diavik's position is that this would be

1 delivered after it receives its regulatory approval.
2 This would be wrong and a debasement of the
3 environmental assessment process.

4 Diavik should not now be handed this
5 approval and then sent away to gather exactly the
6 information needed to properly demonstrate that its
7 project would be environmentally acceptable.

8 The network and modelling -- sorry, the
9 test work and modelling to convincingly demonstrate
10 that Diavik's impact predictions are credible is not
11 before us and needs to be for the Board to do its job
12 properly.

13 The best way -- the best way forward
14 for the Board to now complete its review is to
15 commission an independent, qualified expert in water
16 quality modelling to redo the exercise in accordance
17 with terms of reference and other conditions as the
18 Board considers appropriate.

19 I've changed my recommendation here
20 from the written one from review of the modelling to
21 redo the modelling. Diavik's modelling has been
22 sufficiently reviewed at this point to point out its
23 innumerable and consequential problems.

24 Further review of the past work won't
25 be particularly helpful. What is needed is a

1 completely new exercise commissioned by the Board and
2 conducted by an independent expert.

3 So finally, I just want to comment, I
4 think that it's important, as I've made in my third
5 recommendation, that the cumulative effects Lac de
6 Gras is currently undergoing water quality changes
7 from mining activities, and I think it's very
8 important that the Board include a proper cumulative
9 effects assessment in its review.

10 And that's the end of my submission, my
11 testimony, Madam Chair. Thank you.

12 THE CHAIRPERSON: Thank you.

13 Tlicho Government...?

14 DR. GINGER GIBSON: Masi. Dr. Ginger
15 Gibson with the Tlicho Government, we'll go to
16 questions now, Madam Chair.

17

18 QUESTION PERIOD:

19 THE CHAIRPERSON: Questions,
20 Yellowknife Dene First Nation?

21 Questions, North Slave Metis Alliance?

22 MS. JESSICA HURTUBISE: This is
23 Jessica Hurtubise with North Slave Metis Alliance.

24 Madam Chair, I do not have any
25 questions, but I will just ask Andrea Buckman, our

1 consultant on the line, if she has any questions.

2 MS. ANDREA BUCKMAN (BY PHONE): It's
3 Andrea Buckman on the line. No questions.

4 THE CHAIRPERSON: Questions, Deninu
5 K'ue First Nation?

6 MR. MARC D'ENTREMONT: It's Marc
7 D'Entremont for the DKFN. We have no questions.

8 THE CHAIRPERSON: Questions, Fort
9 Resolution Metis Council?

10 MR. ARTHUR BECK: No, none at this
11 time, thank you. Arthur Beck.

12 THE CHAIRPERSON: Fort -- Northwest
13 Territories Metis Nation?

14 MR. ARTHUR BECK: Arthur Beck.

15 I'll have to answer for them, it looks
16 like they didn't make it. They must have had
17 problems, so I guess they have no questions.

18 THE CHAIRPERSON: Questions,
19 Government of the Northwest Territories?

20 DR. BARRY ZAJDLIK: Barry Zajdlik on
21 behalf of the GNWT ENR.

22 What does the Tlicho Government think
23 is acceptable water quality for a closure option such
24 as in pit PK placement --

25 MR. TONY PEARSE (BY PHONE): I'm

1 sorry, could you please repeat the question?

2 MS. GINGER GIBSON: Dr. Ginger Gibson,
3 Tlicho Government.

4 Tony, the question from Barry Zajdlik
5 is: What does the Tlicho Government think is
6 acceptable water quality for closure options such as
7 in pit PK placement.

8 And I'll -- I'll let you treat that
9 first, Tony.

10 MR. TONY PEARSE (BY PHONE): Yes, I
11 can't -- boy, I can't really answer that one. I'm not
12 a water quality expert and I did not examine the
13 various benchmarks and what the predictions were in
14 terms of all of the -- all of the numbers.

15 My time was short and I didn't get to
16 that end of things. So I'm sorry, I apologize, I
17 can't answer that question.

18 DR. GINGER GIBSON: Dr. Ginger Gibson,
19 with the Tlicho Government.

20 I would say that the -- the Board has
21 the opportunity now after Diavik has already submitted
22 their -- their statements on significance and -- and
23 yesterday Mr. Gord Macdonald acknowledged that they
24 had not re -- revised their statements on significance
25 and I think that's something that certainly with

1 guidance from the Elders, having heard from them on
2 Tuesday in Behchoko and hearing from them today from
3 Elder Joseph Judas about the importance of water for
4 animals, for healing, and -- and for cultural use, as
5 well as for long-term confidence in -- in culture,
6 language, and way of life, I think that the Board can
7 re-examine those statements of significance now and --
8 and consider the -- the answer to this question in --
9 in -- from that lens.

10 And so while that's not a question of -
11 - of -- that gives you any clear values, Mr. Zajdlik,
12 I think that it's a -- it gives you the subjective or
13 qualitative statements that can be used to -- for the
14 George -- the Board to make their judgments. Masi.

15 DR. BARRY ZAJDLIK: Barry Zajdlik, on
16 behalf of the GNWT.

17 Thank you for that answer. That's -- I
18 was hoping that a process would be engendered through
19 the question that would allow all stakeholders to
20 weigh in on their valuation with respect to water,
21 because it is a valuation. It's a sociologic
22 valuation.

23 I can provide numbers, but determine of
24 -- determination of significance also has to consider
25 the value of water to all land holders.

1 The second question is in the same
2 vein, it speaks to valuation. And the question is:
3 does the Tlicho Government expect the water quality in
4 Lac de Gras will revert to baseline? Is that a desire
5 or a hope?

6 And if yes, what is a reasonable time
7 frame for that to occur?

8 DR. GINGER GIBSON: Masi. Dr. Ginger
9 Gibson, with the Tlicho Government.

10 The Tlicho agreement requires that
11 water quality, water quantity, and rate of flow
12 through Monfwi Gogha De Niitee are the -- are
13 maintained and kept the same.

14 So I think that provides a -- both a
15 legal and a qualitative approach for -- to answer that
16 question, which is -- is that the Tlicho expects that
17 water that flows through the Tlicho region will
18 maintain its quality.

19 So coming back to baseline is -- and
20 maintaining that purity of water for land, animals,
21 and for people is vital.

22 I hesitate to weigh in on time frame
23 because of the fact that there is so much uncertainty
24 associated with the types of changes we might see if
25 this proposal were to proceed.

1 So I'd -- I'd rather not answer that
2 question, but I -- I know that you've heard from
3 Joseph Judas this morning about how important that
4 waterway is, all the way down to Coppermine. And so I
5 think the expectation from the elders and from the
6 community is that the water will return to its
7 pristine state. Masi.

8 DR. BARRY ZAJDLIK: Barry Zajdlik, on
9 behalf of the GNWT.

10 So, say that fifty (50) years from now
11 there's a pit overturn, as is quite possible, and
12 water quality approaches or even exceeds AEMP
13 benchmarks. That would represent a significant
14 deviation from baseline.

15 Would the Tlicho see that as a highly
16 significant event from an EA perspective?

17 MS. VIOLET CAMSELL-BLONDIN: Violet
18 Camsell-Blondin, Tlicho Government.

19 A very simple response to that is yes.
20 And the uncertainty with global warming and climate
21 change, we have -- there's going to be a -- a big
22 significant difference in the Ekati in the barren
23 lands area.

24 We have a -- a project, we call it
25 Boots on the Ground, and currently we have people that

1 are out on the Conategy (phonetic) area, Courageous
2 Lake area and we've been -- our staff have been going
3 there for years with our Elders and -- and traditional
4 knowledge holders over there. And every year they
5 report to the CIMP program, Cumulative Impact Marking
6 Program and to -- to the GNWT, to the Federal
7 Government, and to our leadership. They see change
8 over there. They see change all the way coming --
9 coming to this area and they make those reports to our
10 leadership.

11 And they compare it to what the elders
12 said back in 1999 in this very hall when they made
13 these testimonies that they wish that they would know
14 be -- be no foreseen changes, but it's inevitable that
15 that's going to happen with the gold -- climate change
16 and that, we have no control over it. Some of it is
17 from international debris that's coming over the
18 Arctic.

19 So the -- the answer to your question,
20 Brian, is yes. There -- there's going to be a
21 significant change. We even see it, visually, when we
22 visit the site.

23 And what Tony said about the water
24 quality in Lac de Gras in five different places,
25 although we have all SNP stations there, we're moving

1 at various locations, even from the BHP, the Dominion
2 Project, we see it. We see those change happening.

3 So yes, the answer is yes.

4 DR. BARRY ZAJDLIK: Barry Zajdlik, on
5 behalf of the GNWT. I have no further questions.

6 Thank you for your responses.

7 THE CHAIRPERSON: Questions,
8 Environmental Monitoring Advisory Board?

9 MR. JOHN MCCULLUM: John McCullum,
10 EMAB.

11 A question for Tony. Yesterday when
12 questions came up about the -- the uncertainties
13 related to the inputs to the model, the water quality
14 model, Diavik expressed the opinion that the
15 preliminary model was actually more conservative and
16 would likely res -- show higher or -- higher results
17 in terms of the water quality, like poorer results in
18 terms of the water quality compared to the new model
19 that they're proposing to -- to carry out.

20 Do you have any comments about that?

21 MR. TONY PEARSE (BY PHONE): No. I'm
22 not a water quality expert or modelling expert at all.

23 I -- all I know is that I think Diavik
24 has agreed that further modelling is required to
25 properly understand processed kimberlite behaviour,

1 particularly the consolidation aspects.

2 And I think we're on the same
3 wavelength there, I think the real -- the real point
4 is that that should be done now and not later. Now,
5 before the -- they get their approvals.

6 In terms of whether that earlier model
7 was more conservative, I can't -- I can't comment on
8 that.

9 MR. JOHN MCCULLUM: Thank you. No
10 further questions EMAB, Madam Chair.

11 THE CHAIRPERSON: Thank you.

12 Questions, Lutsel K'e Dene First
13 Nation?

14 MR. LAUREN KING: Lauren King, on
15 behalf of LKDFN. We would just like to thank the
16 Tlicho Government for their excellent presentation.
17 We have no questions.

18 THE CHAIRPERSON: Questions,
19 Environment and Climate Change Canada?

20 MS. GEORGINA WILLISTON: Georgina
21 Williston with Environment and Climate Change Canada.

22 We have no questions.

23 THE CHAIRPERSON: Lutsel K'e Dene
24 First -- or Lutsel K'e Dene First Nation.

25 MS. LAUREN KING: Lauren King, for

1 LKDFN. Our Elder August Enzoë would like to make a
2 comment

3

4 (INTERPRETATION FROM INDIGENOUS LANGUAGE TO ENGLISH)

5

6 ELDER AUGUST ENZOË: I'm going to say
7 it in my language. I feel stronger in my language.
8 Put earphone on.

9 THE CHAIRPERSON: I'm sorry to
10 interrupt, but we're having technical difficulties
11 You're supposed to be on channel 2.

12

13 (BRIEF PAUSE)

14

15 (INTERPRETED FROM INDIGENOUS LANGUAGE INTO ENGLISH)

16

17 ELDER AUGUST ENZOË: Thank -- thank
18 you. The people sitting with on the Diavik Board for
19 over ten (10) years now. Anyway, I don't -- I
20 couldn't speak English, so that's why I'm speaking
21 Chipewyan.

22 The old-timers that passed before my
23 time, there was a lot of them before. Everybody is
24 gone now. I'm still here with you today though. I'm
25 81 years old now.

1 In the past, we've talked about the
2 mine. It's written all down now. Us -- us real
3 people, we -- we told them what to do before the mine
4 started, the way they're going to work on the mine.
5 They made all the papers. Where are they now?

6 When we talked about -- when we talked
7 about, our concerns we had mentioned that before, and
8 it should have been documented. We don't see any of
9 that documents now.

10 So, we're not -- there's thought of
11 uncertainty in the way things are being done right
12 now; we're not sure exactly where it's at. So, to
13 understand a lot of the stuff, that's pretty hard.

14 We, ordinary people here, we love the
15 land and the caribou that are -- there used to be a
16 lot of caribou before, ever since I can remember. Now
17 we don't have any caribou.

18 We know that the water is changing
19 around the mine, also, but they're not saying it. The
20 many times that I've travelled to the mine, we can see
21 all the big piles of rocks.

22 You know, where the mine is now on the
23 island, the mine is different. It's not like the mine
24 on the mainland, it's different. From now on,
25 everything that's being documented, I wish you would

1 be more -- show the people where the documents are.

2 Next week -- next week I'm going to
3 Diavik again. I -- I sit on the Board, so I'm going
4 to travel to the barren lands again. We were talking
5 about some of the stuff that's happening up there.

6 We'll, you know, probably be -- the
7 caribou we're talking about -- before, the old-timers,
8 they -- the caribou -- the Elders were telling us, in
9 the future, the lands going to change, they told us,
10 the caribou are going to be different.

11 If you are alive, you will see it, they
12 told me, and I'm there now. We're looking at the --
13 look at the caribou tracks. We don't see any caribou,
14 but there's certainly a lot of tracks.

15 There are many years that I lived on
16 the land here. I love my land. I still live on the
17 land. I have a house on the land. I live on the
18 land. I still try to maintain that lifestyle.

19 The documents -- the documents, I want
20 to make sure it's clear and everybody can see it.
21 Thank you.

22

23 (INTERPRETATION CONCLUDED)

24

25 THE CHAIRPERSON: (AUDIO ISSUES)

1 Environment and Climate Change Canada, questions?

2 MS. GEORGINA WILLISTON: Thank you.

3 Georgina Williston, with Environment and Climate

4 Change Canada. We have no questions.

5 THE CHAIRPERSON: Questions, Fisheries
6 and Oceans Canada?

7 MR. DANIEL COOMBS: Dan Coombs,
8 Fisheries and Oceans Canada. We have no questions.

9 THE CHAIRPERSON: Questions, Diavik?

10 MR. GORD MACDONALD: Gord Macdonald,

11 with Diavik. Two (2) quick questions. Ginger or

12 Violet -- Ginger, I guess, both when we were in

13 Behchoko and today, you referred to the Tlicho

14 agreement, and you used language like 'pristine' or

15 'no change' when you're describing water quality.

16 But can you confirm that the Tlicho
17 agreement is actually substantially altered is what
18 the term -- the correct term for the -- in the
19 agreement is?

20 DR. GINGER GIBSON: Masi. Ginger
21 Gibson, with the Tlicho Government. Thanks. Yes,
22 Gord, that's the correct language.

23 MR. GORD MACDONALD: And -- Gord
24 Macdonald, with Diavik. Tony, if you can -- hope --
25 I'm hoping you can hear. I'm not sure if you followed

1 yesterday, but the commitment we made was to revising
2 the modelling and the timing and the expert review was
3 all to be done before deposition would be begin.

4 I think I -- I think I heard you say
5 this morning that it would -- what we were talking
6 about was doing something after we deposited, but that
7 -- that remodelling and everything was do -- was to be
8 done before.

9 I just want to make -- ask if you were
10 aware of that.

11 MR. TONY PEARSE (BY PHONE): Tony
12 Pearse here, Tlicho Government. Gord, I'm not quite
13 sure that from what you just described had changed. I
14 wasn't aware of what you said yesterday.

15 I understood from the documents that
16 are in front of the Board that the modelling work is
17 going to be done as sort of a condition of having the
18 --

19 THE CHAIRPERSON: Tony, would you be
20 able to wait a moment, please? We're having some
21 technical difficulties. We're just waiting for the
22 technician to come back into the room. Just one (1)
23 moment, please.

24 We can hear you on the headsets, but
25 not everyone has them.

1 (BRIEF PAUSE)

2

3 THE CHAIRPERSON: Okay, Tony, if you
4 could please repeat your response.

5 MR. TONY PEARSE (BY PHONE): Yes, it's
6 Tony Pearse here. Gord, I'm not sure, as I was
7 saying, that I -- I'm not sure what you said
8 yesterday. But my understanding of what you have
9 proposed is that the remodelling would be done, I
10 think, in 2020 or something but as a condition of your
11 approval from both the Board -- this Board and the
12 Wek'eezhii Land & Water Board.

13 And it's my view that the modelling
14 done to date isn't sufficient to sort of get past the
15 first Board here, that really the modelling that you
16 need to do with the new consolidation data and so on
17 should be done upfront as part of a way of
18 rationalizing that this project's going to work so
19 that this Board can approve it.

20 Does that make sense?

21 MR. GORD MACDONALD: Gord Macdonald,
22 with Diavik. Tony, I was -- our proposal was that it
23 would be done for the Wek'eezhii Land & Water Board
24 approval prior to deposition.

25 MR. TONY PEARSE (BY PHONE): Applying

1 for an amended licence. Is that right?

2 MR. GORD MACDONALD: Gord Macdonald,
3 with Diavik. Yeah. We are proposing that it would be
4 a condition of the licence, that we would have to redo
5 the modelling, use the expert panel review, and have
6 those model results approved by the Wek'eezhii Land &
7 Boar -- Land & Water Board before we were allowed to
8 begin disposition.

9 MR. TONY PEARSE (BY PHONE): Yeah,
10 that's what I thought your position was. Sorry, it's
11 Tony Pearse again. Now, my deal is that you really
12 need to do it now before this Board gives you an
13 environmental approval because I think that this --
14 this Board really has to understand that this stuff is
15 not going to get mobile in the water column and
16 present a risk to Lac de Gras. I think that's the job
17 that it's wrestling with.

18 And so, that kind of modelling needs to
19 be done right upfront. You've got to make your case
20 here. And if you do it later as a condition, it
21 doesn't kind of work because you've already got your
22 approvals. That's not acceptable, in my view.

23 DR. GINGER GIBSON: Ginger Gibson,
24 Tlicho Government. I just wanted to signal to the
25 Board that this is -- the question that Tony Pearse is

1 raising is a -- is a live one (1) that we've been
2 considering internally and that we -- through our --
3 we've -- we've met with our legal counsel question,
4 and that we're going to be providing and -- and having
5 conversations with your -- asking our -- our lawyer to
6 speak with your legal advisor just to get a feel for
7 the kind of sequencing challenge that we might be in
8 here given that there is uncertainty associated with
9 the modelling and that both Tony and the Tlicho
10 Government, from -- both from the Elders and the --
11 the Depo -- Department of Cultural Lands Protection.

12 We've -- we've put our fingers on this
13 question of uncertainty regarding modelling and the
14 right staging of the science so that the Review Board
15 has sufficient information to make -- to make a
16 determined decision at the right point.

17 So, we've -- we've seen that there's a
18 bit of a gating issue here. And -- and we'll be
19 issuing further comment on -- in our closing argument
20 on this point. Masi.

21 THE CHAIRPERSON: Questions from
22 Diavik?

23 MR. GORD MACDONALD: Gord Macdonald,
24 with Diavik. No further questions.

25 THE CHAIRPERSON: Questions from Board

1 staff?

2

3

(BRIEF PAUSE)

4

5

MS. KATE MANSFIELD: Good morning.

6

This is Kate Mansfield, with the Review Board.

7

The Review Board is seeking to

8

understand the effectiveness of proposed mitigations,

9

including mitigations for impacts on cultural use, and

10

wants to make sure that the mitigations that are in

11

place for this project will allow people to feel safe

12

to drink the water and eat the fish and use the Lac de

13

Gras area.

14

Tlicho Government, can you please

15

comment on if there are specific mitigations that you

16

think need to be in place to address these concerns

17

related to culture and cultural use of the area?

18

DR. GINGER GIBSON: Masi. Ginger

19

Gibson, with the Tlicho Government. I think part of

20

the -- our duty in a public hearing is to listen

21

really carefully, and then make further

22

recommendations at the close of the hearing. And

23

that's -- that's certainly what we're doing here.

24

So, I think you can be certain that we

25

will be providing more guidance on this point in our

1 closing point.

2 With that said, both in the community
3 hearings I think you heard very clearly from the
4 Elders that this is a really important waterway and an
5 important area for historic and future cultural use.

6 So, people will be -- have always been
7 out on that land, and they will continue to go out --
8 they -- they aim to continue to go out on that land
9 and they need to have confidence that that land and
10 that water will be safe for their use.

11 Our hesitation lies in -- in the
12 uncertainty that was presented yesterday when we were
13 listening to the GNWT, and then again with our -- our
14 own technical advisor, Tony Pearse, helping the Elders
15 to understand and see the uncertainty associated with
16 the modelling.

17 We're -- we're in a situation where
18 we're -- we're weighing two (2) options, a higher pile
19 or -- or kimberlite in the pipes. And the -- the
20 Tlicho Government wants to have certainty that they
21 will be able to have confidence.

22 So, one (1) of the mitigation measures
23 we will be seeking is that there be an independent
24 expert peer review that is managed through the
25 Wek'eezhii Land & Water Board and that has a range of

1 expertise assigned to it that is needed in order to
2 shore up the scientific uncertainty.

3 I'm not completely clear on the issue
4 that we discussed just previously about gating -- the
5 gating issue, of when does that science get done so
6 that the Review Board can make its -- its determined
7 decision. So, that's a big unclear to me at this
8 point.

9 That said, we will be issuing more
10 guidance on the question of cultural conditions that
11 the -- the Tlicho Government would like to see to ha -
12 - en -- in order to ensure continual confidence in
13 that area. Masi.

14 THE CHAIRPERSON: Questions, Board
15 staff?

16 DR. NEIL HUTCHINSON: Thank you, Madam
17 Chair. Neil Hutchinson, for the Board. This is a
18 question for -- for Tony Pearse. And I think I would
19 put up his slide 4 as a preface to this.

20 You said in your comments, Tony, that -
21 - you were talking about Diavik mining, the extra fine
22 PK, and putting it into the it. And that seems, in my
23 assessment, to have governed a lot of your concerns.

24 I just wanted to know if you're aware
25 that that activity is not part of the Board's decision

1 for this hearing. We are here to look at depositing
2 the -- the process stream from ongoing mining into the
3 it. And the scope of this Hearing does not include
4 the extra fine PK mining that you've raised concerns
5 about.

6 Does that change the nature of your
7 concern?

8 MR. TONY PEARSE (BY PHONE): It's Tony
9 Pearse here. Yes, I'm aware of that. And I guess
10 that was -- I know that's sort of in the background of
11 what might be happening, so, no, I'm -- I'm really --
12 the slurry that will come from the current mining
13 operation will be comprised of extra fine PK and --
14 and fine PK.

15 And that stuff will be probably
16 separating out at the bottom of the pit. And it's not
17 clear to me what they will do with it in terms of
18 whether it just stays down there as kind of a layer
19 above the -- the consolidated sediment or whether it
20 gets pumped out somewhere.

21 That part of it hasn't been clear to
22 me. But it doesn't change the nature of my concern
23 because the extra fine material still -- still will
24 not consolidate and they'll still have -- it's really
25 the concern of having this stuff down in the pit and

1 that it will stay down there and will not mobilize
2 further disturbances.

3 I realize there's a deep water column
4 involved, that geological processes continue and --
5 and rocks fall off the edge of pits all the time, so
6 that's -- it doesn't change the nature of my concern
7 is the short answer.

8 DR. NEIL HUTCHINSON: Thank you. Neil
9 Hutchinson, for the Board. And that concern is
10 maintained that, even at closure, there's anywhere
11 from a 5-metre, or maybe a 15-metre, cap of -- of
12 dense pore water on top of the fine PK and at least a
13 hundred metres of Lac de Gras water on top of that.

14 You would still be considered about
15 mobilizing, I think your intervention said, of
16 turbidity cloudiness into the upper layers of the
17 lake. So, you would still be --

18 MR. TONY PEARSE (BY PHONE): I think
19 that --

20 DR. NEIL HUTCHINSON: -- concerned
21 about that under those conditions?

22 MR. TONY PEARSE (BY PHONE): Yes. I
23 think if that -- if the extra fine PK is to stay down
24 there as a layer, whether I -- I don't -- it's not
25 clear to me exactly what happens to the pore water. I

1 guess the pore water would move to the top of that
2 layer.

3 But it's -- the hazard would be
4 turbidity in the water column in sort of a continual
5 intermittent basis. And my understanding from the
6 work we did twenty (20) years ago when we had a couple
7 of clay mineralogists involved in -- at the licencing
8 stage of this is that, because these very fine grain
9 clays are electrostatically charged, they have an
10 ability to mobilize metal ions, attract metal ions, as
11 well.

12 So, there's a possible -- another water
13 quality concern that may or may not -- we just -- we
14 don't have...

15

16 (BRIEF PAUSE)

17

18 MR. TONY PEARSE (BY PHONE): Anyways,
19 that -- that's all I had to say on that, I think.
20 Does that help?

21 DR. NEIL HUTCHINSON: Thank you. Neil
22 Hutchinson, for the Board. Yes, that -- that's my
23 question on -- on that issue. I think -- I'm not sure
24 if this is for -- for the Tlicho Government or for Dr.
25 Pearse, but yesterday Diavik, in response to one (1)

1 of my questions, said that the lake would return to
2 baseline condition when all the mining activities were
3 gone from Lac de Gras.

4 And this is what the Tlicho Government
5 have -- have requested. Is it your conclusion that
6 placing the PK in the pit will prevent return to
7 baseline conditions?

8 MR. TONY PEARSE (BY PHONE): It's Tony
9 Pearse here. That's an interesting question. Oh,
10 you're asking -- you're asking me to speculate
11 hundreds of years in the future. And I'm -- I'm not -
12 - as I said, I'm not a water quality expert, so I
13 don't know.

14 Geologically, these things, I suppose,
15 if you go long enough, things kind of dissipate into
16 the environment and -- but I'm speculating, and I
17 probably shouldn't be doing that.

18 DR. GINGER GIBSON: Masi, Tony.
19 Ginger Gibson, Tlicho Government. We don't know.

20 DR. NEIL HUTCHINSON: Neil Hutchinson.
21 Thank you. Just -- I think just one (1) more
22 question. Neil Hutchinson, for the Board.

23 Your slide 5, I believe, had shown a
24 plot of strontium increasing in Lac de Gras,
25 increasing most -- closest to the mining operation but

1 still increasing at the outflow.

2 Most -- my understanding is that most
3 of the strontium is coming in through the diffuser in
4 the mine right now from the -- from the north inlet
5 water treatment plant. The concentrations are highest
6 near the mine.

7 When the mine is gone, when this pit
8 is -- PK is placed into the pit at the mine closure,
9 my understanding is that a lot of this effluent flow
10 will cease.

11 So would, in fact, any movement of
12 salts out of the -- out of the pit into the lake
13 result in a cumulative effect or would it be -- it
14 would be something coming into the lake in an
15 environment where overall loadings were decreasing?
16 I'm just trying to understand how this pit represents
17 a cumulative effect on water quality.

18 MR. TONY PEARSE (BY PHONE): It's
19 Tony Pearse here, Tlicho Government. First of all,
20 that particular slide is just one I picked more or
21 less at random from a number of such slides in a -- in
22 that very comprehensive work that was done by Deh Cho
23 Stantec in 2015, I think.

24 And this is really to show what they
25 basically conclude is that there is a kind of a --

1 there's no real spacial overlap between some of these
2 signals, but there is, in fact, a temporal cumulative
3 effect happening to Lac de Gras.

4 And again, I'm not a water quality
5 person, and I can't really tell you what will happen
6 over time with these things. What we are seeing right
7 now though and what this report shows is there is this
8 increasing trend. I think this particular one shows
9 it fine, but there are lots of others that do as
10 well -- other contaminants.

11 And does it all flush out in, you know,
12 a hundred years from now? Who knows.

13 DR. NEIL HUTCHINSON: Neil Hutchinson.
14 Was that the end of your statement, Tony? You seemed
15 to fade out.

16 MR. TONY PEARSE (BY PHONE): Yeah.
17 The -- that was the end of it. I really can't
18 speculate on that.

19 DR. NEIL HUTCHINSON: Thank you,
20 Madam Chair. That's all.

21 THE CHAIRPERSON: Questions, legal
22 counsel?

23 MR. JOHN DONIHEE: Thank you,
24 Madam Chair. It's John Donihee, Board counsel. I --
25 there's a matter that I'd like to just clear up for

1 the record.

2 This morning, Dr. Gibson made reference
3 to Tlicho rights in the Monfwi area to have water.
4 There's been some debate about it, questioning back
5 and forth between our friends at Diavik and
6 Dr. Gibson, but substantially unaffected or untouched,
7 I suppose, by the effects of mining.

8 And actually on September the 3rd at
9 the community hearing in Behchoko, Chief Daniels made
10 a reference -- at least I assume it's a reference to
11 the same rights that are included in the Tlicho
12 agreement. And he made reference on page 8 of the
13 transcript to section 21.2.3 of the Tlicho agreement.

14 And I just ask our friends at the
15 Tlicho Government to confirm that the rights referred
16 to there to have water substantially unaffected as to
17 quality, quantity, and rate of flow apply only in
18 circumstances where a development is actually taking
19 place on Tlicho land or else close enough to Tlicho
20 lands that the waters flowing into those lands are
21 substantially affected.

22 Now, that's my understanding of that
23 provision in the claim, and I'm certainly open to
24 hearing the Tlicho Government's -- I'd welcome their
25 views on it.

1 But the question I have for you really
2 is, you know, the Diavik project is quite a ways away
3 from Tlicho lands, and I'd be interested to hear the
4 Tlicho Governments' views about whether, in fact, that
5 right laid out in 21.2.3 is really relevant here.

6

7 (BRIEF PAUSE)

8

9 DR. GINGER GIBSON: Masi, Mr. Donihee.
10 Ginger Gibson, Tlicho Government. The Tlicho
11 agreement is a base, and while you're correct that it
12 legally applies to projects within Tlicho lands, it's
13 a principle.

14 This is what the Elders tell us is
15 important, and by referring to that, Chief Daniels was
16 referring to the importance of that principle in
17 Monfwi Gogha De Niitlee. So Elders want all of the
18 traditional waters substantially unaltered.

19 This is also a matter -- Violet,
20 knowing the agreement really well, also pointed me to
21 the end statement of 21.2.3 which indicates that when
22 such waters are on or flow through or are adjacent to
23 Tlicho lands.

24 So while legally and technically,
25 21.2.3 could be interpreted in one way, the elders

1 tell us to interpret this principle broadly. And we
2 will also reflect on this in our closing statements.
3 Masi.

4 MR. JOHN DONIHEE: It's John Donihee,
5 Board counsel. Thank you, Madam Chair. I'll look
6 forward to your argument.

7 THE CHAIRPERSON: Questions from Board
8 members?

9 BOARD MEMBER KRUTKO: Dave Krutko,
10 Review Board. In regards to this slide I'm interested
11 in, it looks like there has been effects already from
12 what this is telling me, and it's increasing in time.

13 So the cumulative effect of what's
14 happening already with something else happening down
15 the road -- regardless it's other types of
16 contamination or what not or climate change -- the
17 long-term effect -- most mine closures and what not,
18 you don't see the effects right away.

19 It takes a couple years for the pits
20 and whatnot to either breach or basically have a
21 situation where a lake will become active by way of
22 putting contaminants in it.

23 So I'm just wondering, looking at this
24 information and from the question that was asked about
25 the data and information that has been presented here

1 today, is it suspicion (sic) for us to make a
2 decision? And I think you say you've done modeling,
3 you've done this and that, but it's not in a public
4 domain for us to see presently.

5 So I'm just wondering what other
6 information -- they mentioned a report in regards to
7 the AMEC report, and when was that done? And more
8 importantly, how does this basically information help
9 us make that decision?

10 My question's to the Tlicho Government.

11 DR. GINGER GIBSON: Masi. I'll
12 address that to Tony Pearse. Tony? Ginger -- that
13 was Ginger Gibson.

14 MR. TONY PEARSE (BY PHONE): Tony
15 Pearse here. I didn't really hear the question. It
16 was kind of breaking up a bit. Can someone repeat the
17 question, please?

18 BOARD MEMBER KRUTKO: Hi, Tony. My
19 question is in regards to slide 5 -- David Krutko,
20 with the Review Board. It looks, from the information
21 as being provided on slide 5, that you are seeing an
22 increase in different type of increases in water
23 testing or whatnot.

24 But by that increase over time and also
25 with the closure of the mine, will be there ongoing

1 increases? But more importantly, what's the
2 cumulative effects of these increases, adding on
3 climate change and other effects that are out there?

4 So I just have a question in regards to
5 this slide. And more importantly, the question that
6 you raise that for us making a decision, not having
7 the baseline or the information that's being
8 collected -- and you also reference the AMEC report.
9 Masi.

10 MR. TONY PEARSE (BY PHONE):

11 Tony Pearse here, for Tlicho Government. The slide
12 that is number 5 there that shows -- and I didn't
13 really take an opportunity to sort of explain this a
14 little bit.

15 But what you see there are six (6)
16 sampling locations, and the baseline period shows up
17 at a little blue bar in sort of the lower left-hand
18 corner of each slide there. And then from the
19 baseline time, you see these increasing trends of, in
20 this case, strontium.

21 It's a very large report. It is
22 available on the Wek'eezhii Land and Water Board, and
23 it's a very comprehensive study of the changes that
24 are undergoing or happening in Lac de Gras right now
25 from the -- from the two (2) mines.

1 If you're asking me sort of about
2 long-term stuff after the mines have all closed down
3 and assuming, you know, there will be ongoing, I would
4 imagine, the seepage from some of these sites, it's --
5 I'm not sure how well they will be able to contain.

6 But generally, the mines have a
7 legacy -- a legacy drainage issue from mines is a very
8 common thing. And so it's not really clear how long
9 it would take for this clear up, but it'd probably be
10 a long time, in geological time anyways. And I'm
11 really speculating there. I think every situation is
12 different.

13 The AMEC report again is work that
14 Diavik commissioned. I believe the field work was
15 done in 2010 -- AMEC -- and they had some -- some
16 concentrators as well went out into the containment
17 area and drilled a bunch of holes and did certain
18 kinds of tests on the -- on the contained, you know,
19 fine kimberlite there.

20 And so a bunch of them -- there was a
21 bunch of lab tests. And that report, which is a
22 fairly comprehensive report, was submitted as a
23 technical appendix to Diavik's annual '20 to 2012
24 Closure Plan Annual Report. And it's an appendix
25 there, and that also is on the Wek'eezhii Land and

1 Water Board.

2 And I've made the point that that's got
3 a lot of very relevant information that Diavik seems
4 not to have used in their modeling work to date, and
5 it should be. I think that stuff is very relevant. I
6 think they've got a lot of information they need there
7 for the -- for the next round of modeling. And I know
8 they're doing additional work as well right now.

9 I hope that answers your question.

10 THE CHAIRPERSON: Questions, Board
11 members?

12 BOARD MEMBER NAKIMAYAK: Good morning.
13 My name is Yvonne Nakimayak. I have a question for
14 Tlicho Government, specifically Joseph.

15 Joseph, I respect you as a hunter, and
16 I respect all the hunters in this room. The hunters
17 and their families will all be able to contribute to
18 this question, but I know you'll be able to help us
19 here.

20 We want to know -- we know that caribou
21 is a keystone species for the people and that we don't
22 know enough about caribou sometimes. And so
23 sometimes, we -- on the other day, you said you want
24 the water to be good all over so it doesn't affect
25 them. They don't get affected by the PK.

1 Can you tell us a little bit how you
2 think caribou might be affected by this project, and
3 what can Diavik do to keep caribou safe?

4

5 (INTERPRETED FROM INDIGENOUS LANGUAGE INTO ENGLISH)

6

7 ELDER JOSEPH JUDAS: The caribou
8 you're talking about in the Ekati area, in the Lac de
9 Gras area. Today when you look at the physical
10 caribou, it doesn't seem to be healthy looking, and
11 we're not seeing a lot of the caribou coming down in
12 our areas and all the areas.

13

14 (INTERPRETATION CONCLUDED)

15

16 THE CHAIRPERSON: Excuse me. If we
17 could just wait. We have technical problem.

18

19 (BRIEF PAUSE)

20

21 (INTERPRETED FROM INDIGENOUS LANGUAGE INTO ENGLISH)

22

23 ELDER JOSEPH JUDAS: Yes. When you
24 ask a question in regard to a wildlife, especially the
25 caribou, before the mine was established, there was a

1 lot of caribou in that whole area of the barren lands.

2 Today when you look at it, it's less.

3 And so today when there's such a large decrease in
4 caribou when you look in that area, there's not much
5 caribou today. As hunters, we live off the land.

6 We -- and we trap up in the barren lands.

7 And so some days, you'll see wildlife,
8 and this is how we trap back in those days. Today
9 when you look at wildlife going around that whole area
10 of the mine and the development -- the industry --
11 when you look at wildlife -- and wildlife, of course,
12 would hear sounds because there's so much sounds when
13 any kind of development hands.

14 As well, when they're piling rocks in
15 huge boulders in areas where the caribou would also
16 break its leg and so forth. When you -- when you put
17 in the -- when you put fine kimberlite into the pits,
18 let's just say if wildlife had fall into the pits and
19 it will never come out. It could never save itself.

20 We know for a fact that this is what
21 the concerns of the elders. We need to treat our
22 wildlife better. We need to make sure that the
23 wildlife is on its own when it's traveling around --
24 near that Ekati area, near that Lac de Gras area.

25 Our Elders always knew that that area

1 is a lake where the animals, the wildlife, the caribou
2 would return to. How do you want to monitor these
3 wildlife in that vicinity of the wild -- of the mines?
4 We need to look at if the land is going through that
5 area, we want to discover wildlife from entering
6 through that area.

7 We need to look at some areas where --
8 as hunters and trappers, we know that that whole mine
9 area -- when they go near that area, they will
10 eventually use that area. We know that wildlife will
11 eventually use that area.

12 I hope that I have answered all your
13 concerns. But when we have concerns, we try to
14 express all our concerns so I hope I answered your
15 question.

16

17 (INTERPRETATION CONCLUDED)

18

19 THE CHAIRPERSON: Masi. Questions,
20 Board members? Okay. That concludes the Tlicho
21 Government's presentation. We thank you for your
22 presentation.

23 And we're going to call a five (5)
24 minute break -- on ly a five (5) minute break so we
25 can come back and start with Lutsel K'e Dene First

1 Nation's presentation.

2

3 --- Upon recessing at 10:37 a.m.

4 --- Upon resuming at 10:49 a.m.

5

6 THE CHAIRPERSON: Lutsel K'e, if you
7 could take your seats, please, so we could start. If
8 Lutsel K'e could start their presentation, please.

9

10 (BRIEF PAUSE)

11

12 PRESENTATION BY LUTSEL K'E DENE FIRST NATION:

13 MS. LAUREN KING: Good morning. My
14 name is Lauren King, and I will be presenting on
15 behalf of the Lutsel K'e Dene First Nation.

16 I would like to begin our presentation
17 by introducing most of my colleagues that aren't here
18 yet from break. But we have Robert Paishegwon, who is
19 a member of the Anishnawbek First Nation, and is the
20 lands manager for the Lutsel K'e Dene First Nation.

21 August Enzoë is an Elder of Lutsel K'e
22 Dene First Nation. He's on the Lands Committee, and
23 is a member of the Diavik TK panel.

24 Stephanie Poole is a councillor for the
25 Lutsel K'e Dene First Nation and works for the Treaty

1 8 Tribal Corporation in the Akaitcho Interim Measures
2 Agreement office.

3 And Ron Fatt is a councillor for the
4 Lutsel K'e Dene First Nation, and is a member of the
5 First Nations Lands committee.

6 I want to begin by acknowledging that
7 Diavik Diamond Mine is located in the traditional and
8 unseated territory of the Akaitcho Dene First Nations,
9 which includes Lutsel K'e Dene First Nation, as well
10 as the Tlicho lands.

11 The Lutsel K'e Denesuline have survived
12 and thrived in the region since time immemorial.
13 Lutsel K'e Denesuline are stewards of the land, and
14 have a responsibility to protect it.

15 Lutsel K'e Denesuline have, and
16 continue, to exercise their inherent and Treaty rights
17 in the Lac de Gras area, and this area was and is of
18 high ecological, cultural, social, spiritual, and
19 economic significance to the LKDFN and many -- many
20 other Indigenous peoples.

21 I would like to state the Lutsel K'e
22 has participated in this process to the best of our
23 abilities, given inadequate funding and limited
24 internal staff. Due to these limitations, LKDFN was
25 unable to hire subject matter experts, both

1 traditional knowledge holders and scientists. As
2 such, our presentation will focus on the meaningful
3 application and inclusion of traditional knowledge.

4 The main issue for cultural uses is,
5 has the actual and perceived effects to Lac de Gras
6 been identified and -- and assessed so that cultural
7 use impacts may be mitigated? The Lutsel K'e
8 Denesuline have already experienced adverse social,
9 cultural, and linguistic impacts from the construction
10 and operation of Diavik.

11 LKDFN members have been effe --
12 effectively alienated from the land, water, and
13 wildlife at the mine site, and within the zone of
14 influence.

15 LKDFN Elders, with their intimate
16 knowledge of caribou, believe that the mine and other
17 mineral resource extraction projects have disrupted
18 the caribous' migration. As a result, the Bathurst
19 caribou herd is unable to access the southeastern
20 portion of their range near Lutsel K'e.

21 The construction and operation of the
22 mine has caused additional stress to the caribou from
23 noise, traffic, dust, and other sensory disturbances,
24 resulting in negative health consequences for
25 individual caribou, and the overall herd's ability to

1 rebound from critically low population levels.

2 A hundred year post-closure scale is
3 inadequate to meaningfully assess cultural use impacts
4 associated with the proposed project. LKDFN members
5 will use this area in perpetuity, if it is clean.

6 To assess the potential impacts
7 associated with this project, DDMI relied primarily on
8 outdated information for an initial environmental
9 impact assessment for the mine. Elder August Enzoë,
10 who is here today, attended the TK panel session in
11 Yellowknife, when the proposed project was discussed,
12 and he did not express support for this project.

13 DDMI held only one (1) public meeting
14 in Lutsel K'e at the beginning of this process, and we
15 feel that overall, there was a lack of meaningful
16 engagement with LKDFN, thus making it impossible to
17 meaningfully assess perceived adverse cultural impacts
18 from the proposed project.

19 Furthermore, AEMP benchmarks, based on
20 traditional knowledge, are required to assist LKDFN
21 land users in assessing the safety, quality, and
22 health of Lac de Gras and the surrounding area. TK
23 should not only be used to assess whether or not fish
24 should be able to access the pit lakes at closure, but
25 should be incorporated into all aspects of the AEMP

1 program, from construction, to post-closure.

2 It is important to acknowledge that the
3 PK -- TK panel is an advisory body, not an
4 environmental monitoring program. The inclusion of
5 visual monitoring by traditional knowledge and the SIS
6 refers to a TK panel members request to observe pit
7 lakes containing processed kimberlite if the proposed
8 project is approved, so that members can provide good
9 advice and recommendations. This does not constitute
10 an environmental monitoring program or a component of
11 one.

12 Lutsel K'e Denesuline land users and
13 Elders have said that if processed kimberlite is
14 deposited in mined out pits, they would not feel safe
15 consuming water and fish from Lac de Gras. Overall,
16 LKDFN feels that DDMI failed to adequately identify
17 and assess how the proposed project may affect Lutsel
18 K'e land users, mainly their perception of the safety,
19 quality, and health of Lac de Gras, which made
20 identifying mitigation measures in the SIS not
21 possible.

22 Moving on to caribou and other
23 wildlife, the main issue is, will caribou and other
24 wildlife be impacted by drinking contaminated water in
25 the pit lakes? It's LKDFN's conclusions that the

1 Bathurst herd population is critically low, which
2 should be the current baseline, and any magnitude of
3 change is significant, 1 percent or less.

4 The proposed project is located in an
5 area that is known to be caribou habitat, and within
6 the migration corridor. LKDFN is not involved in
7 wildlife monitoring, and traditional knowledge is not
8 meaningfully integrated into the monitoring plan.

9 Another significant issue for Lutsel
10 K'e is access to an availability of healthy caribou
11 and other wildlife, which is vital to the Lutsel K'e
12 Dene First Nation, and needs to be recognized. We
13 need to know if caribou and other animals are safe to
14 eat.

15 LKDFN's conclusions are that concerning
16 the health of caribou and other wildlife that may come
17 into contact with the proposed project, is not -- has
18 not been the adequately evaluated in the availability
19 of traditional resources section of the SIS. To
20 determine if caribou and other wildlife are safe to
21 consume, DDMI should incorporate an opportunistic
22 CARMA sampling program for caribou that are found dead
23 or killed within the mine site or zone of influence.
24 This should be added to the Wildlife Monitoring
25 Program, and they should partially fund a Lutsel K'e

1 Dene lead CARMA sampling program, as outlined in our
2 caribou stewardship plan.

3 Fish and fish habitat. The main issue
4 is, will fish be able to live in pit lakes containing
5 PK, and will those fish be healthy and safe to eat?
6 Lutsel K'e's conclusions are that the TK component of
7 the AEMP, namely the fish palatability and texture
8 studies, are not fleshed out and formalized in that
9 document. The use of TK to monitor and mitigate
10 impact to fish habitat is also absent from this plan.

11 DDMI should hire consultants that
12 possess traditional knowledge, or hire traditional
13 knowledge holders and work with them to co-create the
14 TK components of that plan, which should be reviewed
15 by the TK panel and public comments. If the project
16 is approved, the AEMP should be revised to include
17 fish movement and use studies in pit lakes.

18 Regarding water quality, the main issue
19 is -- is meromixes a -- a viable, very long-term
20 containment strategy for processed kimberlite in an
21 Arctic environment? It is Lutsel K'e Dene First
22 Nations' conclusions that they are happy that pit A21
23 has been removed from consideration for PK
24 disposition. LKDFN cannot find any examples of
25 meromictic lakes in the Arctic. This means that this

1 containment strategy is unproven in this environment.

2 It is also clear if DDMI can promote
3 stratification if it's not established within the
4 first two (2) years of pit filling. If meromixes is
5 not established -- is established but not maintained,
6 the cultural use impacts will be irreversible. As
7 well, a hundred year post-closure scale used to assess
8 water quality impacts is too short, as Lutsel K'e
9 members will use the area in perpetuity, if it is
10 clean.

11 We have a number of recommended
12 measures. The first one is DDMI should revise the
13 engagement plan to include -- include specific
14 engagement and participation activities during
15 operations, closure, and post-closure phases of the
16 proposed project. They should work with LKDFN to
17 determine the type and frequency of these engagement
18 activities.

19 DDMI shall engage -- meaningfully
20 engage with LKDFN to identify and assess perceived
21 cultural use impacts and mitigation strategies, which
22 is absent from the SIS.

23 DDMI shall revise their AEMP to include
24 benchmarks based on TK order to assist land users in
25 assessing the safety, health, and quality of Lac de

1 Gras and pit lakes beyond closure reconnection
2 criteria.

3 DDMI shall revise the Wildlife
4 Monitoring Program to include monitoring activities
5 based on TK in order to mitigate impacts to caribou
6 and other wildlife. They should include an
7 opportunistic CARMA sampling program within this
8 manage -- environmental management program.

9 DDMI shall partially fund a three (3)
10 year CARMA caribou sampling program led by LKDFN, as
11 outlined in our caribou stewardship plan.

12 The fish and fish habitat mine
13 components of the AMP should be described in
14 sufficient detail in order to determine the health and
15 safety of fish in Lac de Gras and pit lakes, and as I
16 said, the AMP should also include fish use within pit
17 lakes.

18 We believe that DDMI shall use --
19 should use pre-mining baseline conditions in Lac de
20 Gras for AEMP benchmarks and that before any PK is
21 deposited into mined-out pits at Diavik Diamond Mine,
22 the liability of meromixis must be proven in -- at
23 Ekati Diamond Mine in Beartooth Pit or another similar
24 pit lake containing PK with at least a 40-metre fresh
25 water cap in the Arctic. Within the demonstration pit

1 lake, meromixis be established and maintained over at
2 least one (1) open water season.

3 DDMI shall advise interim closure and
4 reclamation plan to include goal, objectives, and
5 criteria based on TK.

6 In closing, LKDFN has made
7 recommendations for eleven (11) measures related to
8 VECs to the Review Board. We require that these
9 measures be addressed in the EA Report. Lutsel K'e
10 supports placement of PK in four one eight and one
11 five four if it is done in a manner that protects the
12 socio ecological health of the pit lakes in Lac de
13 Gras and surrounding area. However, their support is
14 contingent on demonstration of success in establishing
15 and maintaining meromixis in a pit lake in the Arctic.

16 Otherwise, LKDFN feels that depositing
17 PK in pit lakes will alter cultural uses and
18 relationships to Lac de Gras and effectively alienate
19 Lutsel K'e Dene, Solenay (phonetic) land users from
20 Lac de Gras and the surrounding area. Thank you.

21 THE CHAIRPERSON: Thank you for your
22 presentation. Before we go into questions, our legal
23 counsel has a question.

24 MR. JOHN DONIHEE: Thank you, Madam
25 Chair. John Donihee, Board counsel.

1 It's my understanding that the
2 presentation that was just made includes some
3 recommendations and some content which was not
4 previously provided in the LKDFN intervention. As a
5 result, Diavik has not had the opportunity to respond
6 fully to the material in the -- in the hearing
7 presentation in the way that it was able to for all of
8 the other Interveners.

9 So my -- first of all I'd -- I'd like
10 to offer the -- suggest the Board offer the -- Diavik
11 the opportunity to comment on this, but as they do so
12 I would ask them to consider whether or not, if the
13 Board provided the opportunity to respond in writing
14 to these changes in advance of its final argument,
15 whether that would be a satisfactory way to resolve
16 the difficulties created by these changes.

17 THE CHAIRPERSON: Diavik...?

18 MR. GORD MACDONALD: Gord Macdonald,
19 with Diavik. Thanks, John. I think that would be
20 very helpful for and I think it might be helpful for
21 Lutsel K'e if we can get -- have that opportunity to
22 provide written responses to each of those
23 recommendations so that they can consider them in
24 their closing argument.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN DONIHÉE: Thank you, Madam
4 Chair. John Donihee again. Mr. Macdonald would -- it
5 be convenient for Diavik to provide that response,
6 say, a week in advance of your -- of your final
7 arguments.

8 Is that time enough for you to respond
9 to this?

10 I'm sorry, to the -- pardon me. A week
11 in advance of the other parties, all the other
12 parties' final arguments.

13 MR. GORD MACDONALD: Gord Macdonald,
14 with Diavik. I don't actually know when that date is
15 but we can get these -- these responses next week.

16 MR. JOHN DONIHÉE: John Donihee.
17 Thank you, Madam Chair. I think that resolves the --
18 the issue.

19

20 QUESTION PERIOD:

21 THE CHAIRPERSON: Okay, thank you.
22 Questions to the presentation from Lutsel K'e Dene
23 First Nation?

24 Environment and Climate Change Canada,
25 questions?

1 MS. GEORGINA WILLISTON: Georgina
2 Williston, with Environment and Climate Change Canada.
3 We have no questions.

4 THE CHAIRPERSON: Questions from
5 Fisheries and Oceans Canada?

6 MR. DANIEL COOMBS: Dan Coombs,
7 Fisheries and Oceans Canada. We have no questions.

8 THE CHAIRPERSON: Questions from
9 Tlicho Government?

10 MS. VIOLET CAMSELL-BLONDIN: Violet
11 Camsell-Blondin, Tlicho Government. We have no
12 questions at the time, Madam Chair.

13 THE CHAIRPERSON: Questions,
14 Yellowknives Dene First Nation?

15 MR. MACHEL THOMAS: Machel Thomas,
16 YKDFN. We have no questions at this time, Madam
17 Chair.

18 THE CHAIRPERSON: Questions, North
19 Slave Metis Alliance?

20 MS. JESSICA HURTUBISE: Jessica
21 Hurtubise, North Slave Metis Alliance. I do not have
22 any questions. Andrea, Buckman, do you have any
23 questions on the line?

24 MS. ANDREA BUCKMAN (BY PHONE): Andrea
25 Buckman, on the line. I have no questions.

1 THE CHAIRPERSON: Questions, Deninu
2 K'ue First Nation?

3 DR. MARC D'ENTREMONT: Marc
4 D'Entremont, for the DKFN. We have no questions.

5 THE CHAIRPERSON: Questions, Fort
6 Resolution Metis Council?

7 MR. ARTHUR BECK: Arthur Beck. Fort
8 Resolution has no questions.

9 THE CHAIRPERSON: Questions, Northwest
10 Territories Metis Nation?

11 MR. ARTHUR BECK: They didn't show up,
12 so I guess they have no questions. Arthur Beck.

13 THE CHAIRPERSON: Questions,
14 Government of the Northwest Territories?

15 MS. LORRAINE SEALE: Lorraine Seale,
16 GNWT. We have no questions.

17 THE CHAIRPERSON: Questions,
18 Environmental Monitoring Agency Advisory Board?

19 MR. JOHN MCCULLUM: John McCullum,
20 EMAB. We have no questions.

21 THE CHAIRPERSON: Questions, Diavik?

22 MR. GORD MACDONALD: Gord Macdonald.
23 We have no questions. Thanks for the presentation.

24 THE CHAIRPERSON: Questions, Board
25 staff?

1 MS. CATHERINE FAIRBAIRN: Thank you,
2 Madam Chair. Catherine Fairbairn, Review Board staff.
3 Staff have a couple of questions.

4 On this slide you mentioned that you
5 support putting processed kimberlite in the pits, if
6 it's done in a safe way that protects the pit lakes
7 and the surrounding area.

8 Earlier in the presentation you
9 mentioned that if -- or we heard that if -- if land --
10 if processed kimberlite is put in the pits, land users
11 won't feel safe using the area and Lac de Gras.

12 Could you expand a little bit on those
13 two (2) items and how they're related and maybe what
14 Lutsel K'e believes is required to help users feel
15 safe?

16

17 (BRIEF PAUSE)

18

19 MS. LAUREN KING: Lauren King, LKDFN.
20 So that -- that comment is contingent on demonstration
21 of success of this containment strategy, which is
22 meromictic lake. And so, yeah, it feels like we -- we
23 have to make a decision between a bad and a less bad
24 decision between putting in a PKC facility and a pit.

25 And so to determine if the pit is a

1 viable solution, we want to see that it's demonstrated
2 and we suggested Beartooth Pit as a possibility since
3 it's our understanding that PK has already been
4 deposited in that pit and that it could potentially
5 work with the -- the time lines for this proposed
6 project.

7 So we feel like if PK is deposited in
8 pits without understanding the viability of this
9 strategy and just basing the decision on water quality
10 modelling, that members would not feel safe with PK
11 being deposited in pits, if that answers your
12 question.

13 MS. CATHERINE FAIRBAIRN: Masi.

14 MR. ALAN EHRLICH: Alan Ehrlich, for
15 the Review Board. You recall yesterday there was a
16 bit of discussion of the no-project alternative, which
17 involves the dam raise and then storing the processed
18 kimberlite that is now proposed -- that Diavik now
19 proposes to put into the pit, in the processed
20 kimberlite containment facility, which is above ground
21 on the island.

22 I was wondering if Lutsel K'e would be
23 prepared to share its views of the potential impacts
24 of the no-project alternative with the Review Board.
25 Thank you.

1 (BRIEF PAUSE)

2

3 MR. ALAN EHRLICH: Alan Ehrlich, with
4 the Review Board again. And particularly with respect
5 to impacts on -- or potential impacts on water and
6 caribou, just to match the rest of your presentation.
7 Thanks.

8

9 (BRIEF PAUSE)

10

11 MS. LAUREN KING: Lauren King, LKDFN.
12 So yesterday a comment was made by Diavik that putting
13 PK in the pits was a lower risk than placing it in a P
14 -- PK containment facility, and we had discussed them
15 providing a written statement on why they said that.
16 And so we would like to see that statement before
17 providing sort of a remark about that.

18

19 (BRIEF PAUSE)

20

21 THE CHAIRPERSON: Questions, Board
22 staff?

23

24 (BRIEF PAUSE)

25

1 MR. ALAN EHRLICH: Thanks. It's Alan
2 Ehrlich, with the Review Board. So Lauren, on our
3 recollection yesterday, it appears that that
4 discussion did not result in an undertaking. It was
5 going to be looked at further by GNWT on the
6 transcript. So we're not sure that there is in fact
7 an undertaking that you describe in the works.

8 If you're not able to respond now, I
9 was wondering if -- if Lutsel K'e First Nation would
10 be willing to at least consider and respond in its
11 closing written argument perhaps. And, you know, this
12 is a question I hope to ask to other -- other
13 Interveners as well, but anything you can give the
14 Board now during the hearing is of course quite
15 helpful. Thanks.

16

17 (BRIEF PAUSE)

18

19 MS. LAUREN KING: LKDFN, Lauren King.
20 So our preference is that the PKA, or mine waste, is
21 permanently separated from water, from the
22 environment, if that is at all feasible. So that
23 would be our preference, that it actually never mixes
24 with Lac de Gras.

25

1 (BRIEF PAUSE)

2

3 THE CHAIRPERSON: Questions from Board
4 -- Board members? Thank you, Lutsel K'e, for your
5 presentation.

6 We would now like to ask Environment
7 Canada for their presentation.

8

9 (BRIEF PAUSE)

10

11 PRESENTATION BY ENVIRONMENT AND CLIMATE CHANGE CANADA:

12 MR. RUSSELL WYKES: Good morning,
13 Madam Chair, Board members, Elders, other community
14 members, Board staff, and parties that have joined us
15 here today.

16 May name is Russell Wykes and I'm an
17 environment -- a senior environmental assessment
18 coordinator with Environmental Protections Operations
19 Directorate of Environment and Climate Change Canada.

20 With me today I have Georgina
21 Williston, head of Environmental Assessment North.
22 And on the phone we have Anne Wilson, team lead, Water
23 Quality Expert Support.

24 In this presentation we will discuss
25 ECC's issues, which we have outlined in our final

1 written submission to the MacKenzie Valley
2 Environmental Impact Review Board on August 1st.

3 For those of you who have the handout
4 of our presentation, we have made several changes,
5 taking into account Diavik's response to
6 interventions.

7 To start off, we will outline the
8 status of each of the ECC's technical comments from
9 the technical review submission and responses,
10 focussing on issues that have been recently resolved
11 or resolved pending commitments.

12 Actually, the presentation that we're
13 looking at right now is the old version, so we'll work
14 through it and explain what's -- what's going on.

15

16 (BRIEF PAUSE)

17

18 MR. RUSSELL WYKES: This is still the
19 old version, but we'll -- we'll make it work.

20 Environment and Climate Change Canada
21 currently has no unresolved technical comments.

22 Environment and Climate Change Canada technical
23 comment number 2 and technical comment number 5 are
24 considered resolved by commitments made by the
25 proponent to address the issues identified.

1 For technical comment 2, monitoring
2 during the filling of the pits, we consider that
3 resolved with the commitment.

4 DMI has provided a description of
5 proposed surveillance network program station, 1645-
6 88, which outlines the proposed sampling during the
7 filling of the pits with processed kimberlite during
8 the flooding of the pits with lake water and prior to
9 dike breach.

10 ECC understands that the determination
11 on specific criteria related to closure and breach
12 will be discussed during the Wek'eezhii Land and Water
13 Board water license application review and through the
14 development of the final closure plan.

15 The one major change in our
16 presentation is ECCC technical comment number 3. The
17 use of A21 pit for deposition, which we consider
18 resolved now with DDMI's commitment to not use A21 pit
19 for deposition.

20 Technical comment number 5, updated
21 modelling to increase certainty. We consider this
22 resolved with the commitment.

23 DDMI has acknowledged the limited data
24 set regarding processed kimberlite slurry and has
25 initiated a study at the University of Alberta to

1 further inform PK consolidation rights, poor water
2 development, poor water quality, and subsequently
3 overall water quality in the water column.

4 This study will be completed late 2019,
5 early 2020. And ECC looks forward to reviewing this
6 data when it is provided.

7 I would like to thank everyone here for
8 the opportunity to present our recommendations and
9 conclusions, and we look forward to working with the
10 Board and DDMI moving forward.

11 We are now available for any questions
12 you may have.

13 THE CHAIRPERSON: Thank you for your
14 presentation.

15

16 QUESTION PERIOD

17 THE CHAIRPERSON: Questions from
18 Fisheries and Oceans Canada?

19 MR. DAN COOMBS: Dan Coombs, Fisheries
20 and Oceans Canada. We have no questions.

21 THE CHAIRPERSON: Questions, Tlicho
22 Government?

23 And it looks like they stepped out of
24 the room. Unless there's someone here?

25

1 (BRIEF PAUSE)

2

3 MR. ELDER JOSEPH JUDAS: Madam Chair,
4 at this time we have no questions, thank you.

5 THE CHAIRPERSON: Okay, thank you.

6 Questions, Yellowknife Dene First
7 Nation?

8 MR. MACHEL THOMAS: Thank you, Madam
9 Chair. Machel Thomas. No questions.

10 THE CHAIRPERSON: Questions, North
11 Slave Metis Alliance?

12 MS. JESSICA HURTUBISE: Jessica
13 Hurtubise from North Slave Metis Alliance.

14 No questions from me. But Andrea on
15 the line, do you have any questions?

16 MS. ANDREA BUCKMAN (BY PHONE): Andrea
17 Buckman on behalf of North Slave Metis Alliance.

18 No questions.

19 THE CHAIRPERSON: Questions, Deninu
20 K'ue First Nation?

21 DR. MARC D'ENTREMONT: Marc
22 D'Entremont for the DKFN. We have no questions.

23 THE CHAIRPERSON: Questions, Fort
24 Resolution Metis Council?

25 MR. ARTHUR BECK: Arthur Beck, Fort

1 Resolution Metis Council, we have no questions.

2 THE CHAIRPERSON: Questions,
3 Government of the Northwest Territories?

4 MS. LORRAINE SEALE: Lorraine Seale,
5 GNWT. We have no questions.

6 THE CHAIRPERSON: Questions,
7 Environmental Monitoring Advisory Board?

8 MR. JOHN MCCULLUM: John McCullum,
9 EMAB. No questions.

10 THE CHAIRPERSON: Questions, Lutsel
11 K'e Dene First Nation?

12 MS. LAUREN KING: Lauren King, LKDFN.
13 We have no questions.

14 THE CHAIRPERSON: Questions, Diavik?

15 MR. GORD MACDONALD: Gord MacDonald
16 with Diavik. No questions.

17 THE CHAIRPERSON: Questions, Board
18 staff?

19 MS. KATE MANSFIELD: This is Kate
20 Mansfield, Review Board staff.

21 We do have a few questions, but I just
22 wanted to briefly address -- apologies for having the
23 wrong presentation up. We'll ensure that the updated
24 presentation is on the public registry very soon.

25

1 (BRIEF PAUSE)

2

3 DR. NEIL HUTCHINSON: Thank you. Neil
4 Hutchinson for the Board. I've got two or three
5 questions here.

6 You have asked -- you've said you're
7 satisfied with Diavik's commitment to undertake more
8 modelling to reduce the uncertainty in your model.

9 But based on your issues and
10 recommendations, can the Board conclude that you don't
11 have any concerns that there is significant adverse
12 effects to water quality associated with the project?

13 MS. GEORGINA WILLISTON: Thank you.
14 Georgina Williston with Environment and Climate Change
15 Canada. I'm going to get Anne, who is on the line, to
16 respond.

17 MS. ANNE WILSON (BY PHONE): Thank
18 you, Georgina. It's Anne Wilson with Environment and
19 Climate Change Canada.

20 Is the technology working okay? Can
21 you hear me?

22 MS. GEORGINA WILLISTON: We can hear
23 you.

24 MS. ANNE WILSON (BY PHONE): Thank
25 you. Anne Wilson, ECCC.

1 Thanks for the question, Neil. This is
2 something that we have looked at the proposed
3 modelling that has been done and I am satisfied that
4 although that is the preliminary and order of
5 magnitude modelling exercise, that with further work
6 that has been committed to, and with updating of the
7 modelling with further data prior to any kimberlite
8 deposition, as well as development of an appropriate
9 monitoring program that will confirm the model
10 prediction at every step of the process right up until
11 the pit is about to be filled and subsequently through
12 the fill that the effects to water quality should be
13 very limited and to be managed and predicted prior to
14 any fatal flaws occurring so to speak.

15 DR. NEIL HUTCHINSON: Neil Hutchinson
16 for the Board. Thank you. Thank you very much.

17 Have you, Environment Canada, reviewed
18 the evidence provided by Tlicho Government's expert?
19 And do you have any -- any comment on the concerns
20 that they have raised?

21 MS. ANNE WILSON (BY PHONE): Anne
22 Wilson, ECCC.

23 I only heard the evidence for the first
24 time today and I haven't actually been the person on
25 this file until recently.

1 So, no, I haven't seen that evidence,
2 but the question that came to my mind with respect to
3 the comment about (INDISCERNIBLE) was that it seems a
4 very remote case that now mixes would break down based
5 on the (INDISCERNIBLE) gradient, the configuration of
6 the pit, and the really deep depth that the sediment
7 or particularly water interface is going to be at in
8 the future the -- the line layer of pore water that be
9 -- is expressed above that. And would be expected to
10 be stable. So I would just -- unsure of what the
11 statement that -- that said (INDISCERNIBLE) was
12 questionable so.

13 DR. NEIL HUTCHINSON: Neil Hutchinson
14 for the Board. Thank you very much, Anne.

15 We'd like to request that the Board
16 could have a -- a better understanding if you could
17 provide us an undertaking to -- to provide some formal
18 comments on the Tlicho Government's experts report.
19 Is that possible?

20 MS. ANNE WILSON (BY PHONE): Anne
21 Wilson, ECCC.

22 We can certainly have a look at them, I
23 will -- I'm just wondering what time frame you're
24 thinking of.

25 THE CHAIRPERSON: Legal counsel?

1 MR. JOHN DONIHEE: Thank you, Madam
2 Chair. It's John Donihee.

3 We haven't actually set a date yet for
4 the filing of undertakings. Usually there is some
5 time provided for a little bit of thought and
6 consideration to go into these things.

7 So it might be easier, Anne, if -- if
8 you indicated how long it might take to get that done
9 and we can see if it will work in the time frames
10 we're talking about.

11 MS. ANNE WILSON (BY PHONE): Anne
12 Wilson, ECCC. Thanks for that, John.

13 Given other commitments and -- and
14 staff availability, I think our time is going to be
15 very limited for the next couple of weeks, I would say
16 at least three weeks.

17 And I did want to actually confirm the
18 scope of what Neil is asking there. Whether it is for
19 the intervention that was submitted by the Tlicho
20 Government in its entirety or -- or what exactly,
21 please?

22 MR. JOHN DONIHEE: John Donihee, Board
23 counsel.

24 My understanding is Dr. Hutchinson
25 asked you to review the submission made by Mr. Tony

1 Pearce in this hearing, so his report and -- and of
2 course the comments he made on the -- on the record
3 this morning and to provide ECCC, I don't know if
4 that's too many C's, Environment Canada's comments on
5 whether or not you agree with the concerns raised
6 about, you know, the way the extra-fine PK will affect
7 water quality.

8 MS. ANNE WILSON (BY PHONE): Anne
9 Wilson, ECCC.

10 Some of that is going to be outside of
11 our immediate expertise and they're also internal
12 processes for approval that will take considerable
13 time so I'm reluctant to take that on as an
14 undertaking to provide a scientific critique of their
15 report.

16 Basically what we have to go on in-hand
17 at this point is the track record that we've seen at
18 the Ekati Mine and the work that was going to be done
19 that we are going to rely on prior to any deposition
20 happening.

21 So I -- I think what I'm landing is
22 that I'm reluctant to take this as an undertaking.

23 MR. JOHN DONIHEE: John Donihee, Board
24 counsel.

25 What we're looking for is an expert --

1 an expert opinion, not a scientific study. Does that
2 make a difference?

3 MS. ANNE WILSON (BY PHONE): Anne
4 Wilson, with ECCC.

5 The expertise involved in this may be
6 beyond what was in -- immediately available in the
7 department.

8 MR. JOHN DONIHEE: John Donihee, Board
9 counsel.

10 Where in the Federal Government can
11 this information be secured then? I want to remind
12 you and -- and -- of the obligations that you -- your
13 department bears under section 22 of the legislation.

14 And you know, this seems to be a fairly
15 important point and Environment Canada's
16 responsibility -- is the responsible department under
17 section 36(3) of the Fisheries Act.

18 So I wonder maybe if you can give us
19 some suggestions about how the Board can get some
20 additional analysis of this material.

21 MS. ANNE WILSON (BY PHONE): Anne
22 Wilson with ECCC.

23 We tend to look to NRCAN for expertise
24 on some of the aspects of mining niche development.

25 I would also have some (INDISCERNIBLE)

1 within the department to find out further on this. So
2 I think the best thing is to -- if I can maybe reply
3 before the end of this proceeding as to suggestions on
4 where that expertise may lie.

5 I am just trying to be very clear
6 though that it -- it's going to take a little bit of
7 time.

8 MR. JOHN DONIHEE: This is John
9 Donihee again.

10 Just to be clear, Anne, and you're --
11 you're -- what you're telling the Board is that this
12 is not something that Environment Canada has the
13 expertise to do?

14 MS. ANNE WILSON (BY PHONE): Anne
15 Wilson, ECCC.

16 The extent of the expertise that --
17 what I'm understanding is required is going to be
18 someone with a research background in tailings
19 behaviour as well as industry knowledge and that
20 doesn't reside within my department.

21 And the -- the reviews that we had done
22 rely on a sense of the job that Diavik has presented
23 as far as credibility for modelling, and it relies on
24 what we've seen as far as other sites and previous
25 assessments, such as Gahcho K'e. We don't have the

1 knowledge to look at the -- the physics or the
2 geochemical behaviour of fine processed kimberlite in
3 this instance.

4 So I do want to thank you also for the
5 reminder on the obligations of our department, we're
6 very well aware of them and -- and mindful that it --
7 it is important to contribute to these proceedings to
8 the extent that we -- we can do so.

9 MR. JOHN DONIHEE: Madam Chair, it's
10 John Donihee again.

11 I'll withdraw the request then to
12 Environment Canada. They don't have the expertise,
13 there's no use pursuing it.

14 But I would advise our friends from the
15 Federal family that after discussion with the Board we
16 may come back and -- and seek some additional
17 assistance for the Board on this unique question that
18 seems to have arisen. And if the Board decides to
19 pursue it, we'll be in touch with the rest of the
20 parties about where that's going to go to.

21 Thank you, Madam Chair.

22 Dr. Hutchinson's questions are over and
23 I -- I just have one question, Madam Chair, and so to
24 Environment Canada, Dr. Hutchinson asked a -- a
25 question that was a little bit narrower than what I

1 want to ask, and that -- he asked about whether from
2 the perspective of Environment Canada there were
3 significant impacts likely to water quality.

4 That's asked and answered. I just want
5 to expand that question a bit for our friends at
6 Environment Canada.

7 So my question is really within the
8 areas of ECCC mandate, have you identified any
9 potentially significant impacts in relation to the
10 proposal advanced by Diavik that you wish to bring to
11 the Board's attention?

12 MS. ANNE WILSON (BY PHONE): Anne
13 Wilson, ECCC. I can speak to the water quality
14 aspect, and then turn it over to Georgina or Russell
15 rather. And I would say that we have not.

16 And that is subject to what I've
17 outlined previously, that the Proponent's commitment,
18 the development modelling part is repositioned and
19 then the ongoing monitoring and updated modelling
20 throughout the life of the project.

21 MS. GEORGINA WILLISTON: Thank you,
22 Madam Chair. Georgina Williston, with Environment and
23 Climate Change Canada.

24 The other comments in our submission
25 related to wild -- migratory birds and species at risk

1 which fall under Environment Canada's mandate.

2 And the -- the recommendations were
3 accepted by Diavik to update monitoring plans and
4 ensure that there's no negative interactions between
5 migratory birds and species at risk. So we -- we
6 don't have any outstanding concerns on those -- on
7 those topics either.

8 MR. JOHN DONIHEE: John Donihee, Board
9 counsel. Just to get this right into the language of
10 Part 5 of the MVRA then, are Environment Canada is not
11 predicting any -- or concerned about any significant
12 impacts in the areas related to species at risk or
13 wildlife as a result of a proposal advanced by Diavik.

14 Is that correct?

15 MS. GEORGINA WILLISTON: Thank you.
16 Georgina Williston, with Environment and Climate
17 Change Canada. So, we've been asked this question
18 before about significant impacts, and we have
19 discussed it within -- within Environment Canada.

20 And our -- our thoughts are that this
21 is a determination that the Board makes on whether or
22 not there are significant impacts. We're just
23 providing the information that we -- what we reviewed
24 and the commitments made by the proponents.

25 We consider our -- our recommendations

1 addressed. We look forward to the additional plans
2 and monitoring that the proponent will provide. And
3 we can -- we can review those, also. But we don't
4 have anything further to add on a significance
5 determination.

6 MR. JOHN DONIHEE: John Donihee, Board
7 counsel. So, you're happy right now?

8 MS. GEORGINA WILLISTON: Georgina
9 Williston, with Environment and Climate Change Canada.
10 Ooh, happy. I don't know about that. I would say
11 that we're satisfied and we don't have any further
12 questions or concerns to ask Diavik.

13 MR. JOHN DONIHEE: Thank you, Madam
14 Chair. That's -- that's all our questions from Board
15 and counsel -- or sorry, staff and counsel.

16 THE CHAIRPERSON: Questions from Board
17 members?

18

19 (BRIEF PAUSE)

20

21 BOARD MEMBER KRUTKO: David Krutko,
22 Review Board. I just have a question in regards to
23 the monitoring during the filling of the pits.

24 I know that Lac de Gras is a big lake,
25 but I think one (1) of the concerns I see is how fast

1 are going to draw down that water, but more
2 importantly, the effects it could have on aquatic
3 life.

4 But I think with Climate Change Canada,
5 the big concern we see in northern Canada is
6 temperature change. And by increased temperature, and
7 especially in a lot of our lakes and whatnot, a small
8 shift in temperature in those lakes in regards to fish
9 and aquatic life, they -- they're very sensitive to
10 temperature change.

11 I'm just wondering, is that something
12 you're also going to be measuring or monitoring?

13 Also, you said there was commitments made. Is that
14 something that's also being considered, is the
15 commitment to monitoring the -- basically, the draw --
16 draw down of the water and the temperature may shift
17 or change during that draw down?

18 MS. ANNE WILSON (BY PHONE): It's Anne
19 Wilson, ECCC. I can jump in. A very good question.

20 That -- climate change is something
21 that we are considering in everything we're looking
22 now, and that is an aspect that will have to be
23 incorporated into the closure monitoring and into the
24 final closure planning and any effects of the
25 environment on how the project is to be closed and re

1 -- reclaimed (INDISCERNIBLE). Not a good question.

2

3 (BRIEF PAUSE)

4

5 BOARD MEMBER KRUTKO: Thank you, Madam
6 Chair. David Krutko, with the Review Board.

7 The other concern we have is what time
8 of the year that this draw down's going to take place
9 because spawning is a -- especially for lake trout
10 whatnot, they spawn in shallow water. So, if you're
11 going to draw down the lake and that is an area where
12 spawning takes place, or even grayling or whatnot, how
13 -- or you can also time it so that you're not going to
14 have impacts in the spawning of the -- or all the
15 water during that time of year where spawning is
16 basically taking place.

17 MS. GEORGINA WILLISTON: Thank you,
18 Madam Chair. It's Georgina Williston, with
19 Environment and Climate Change Canada. So, that
20 question touches on the mandate of my colleagues here
21 at Fisheries and Oceans Canada. We're responsible for
22 the protection of fish and fish habitat.

23 So, I would defer to them to respond to
24 that question maybe now or after their presentation.

25 BOARD MEMBER KRUTKO: I was going to

1 save them for next. I was dealing with you now. But
2 because you are suggesting that you do have a
3 monitoring plan in place of what -- when you fill the
4 pits, so I assume your responsibility is part of that
5 monitoring will include ensuring that certain times of
6 the year when spawning is taking place, that you won't
7 be doing that, Environment Canada?

8

9

(BRIEF PAUSE)

10

11

MS. GEORGINA WILLISTON: Thank you.

12

Georgina Williston, with Environment and Climate

13

Change Canada. So, I feel like we are still sort of

14

treading on DFO's mandate.

15

They -- they would have -- they have --

16

my colleague at DFO could probably explain better, I -

17

- I can't speak for them, about timing and different,

18

you know, times of the year where work can't be done

19

to protect fish and fish habitat and fish spawning and

20

what DFO would consider an adequate -- or an

21

appropriate rate of water withdrawal so that the water

22

going into the pit does not affect the rest of Lac de

23

Gras.

24

25

(BRIEF PAUSE)

1 BOARD MEMBER KRUTKO: David Krutko,
2 Review Board. I'll ask the question to Fisheries and
3 Oceans when they come up. Thanks.

4 THE CHAIRPERSON: Questions from Board
5 members? Okay. Thank you. Our next presentation is
6 with Fisheries and Oceans Canada. If you'd like to do
7 your presentation, please.

8

9 (BRIEF PAUSE)

10

11 PRESENTATION BY DFO:

12 MR. DANIEL COOMBS: Good morning,
13 Madam Chair, members and staff of the Board, members
14 of the community present at this Hearing. My name is
15 Dan Coombs, and I'm a senior biologist for the central
16 and arctic region with Fisheries and Oceans Canada.

17 Accompanying me is Alexandra
18 Sorckoff and Tatiana Leclerc, a biologist with
19 Fisheries and Oceans Canada.

20 I would like to thank the Mackenzie
21 Valley Environmental Impact Review Board for providing
22 Fisheries and Oceans Canada with the opportunity to
23 present our final written submission comments and
24 recommendations in respect to this project. As a
25 responsible minister, we hope our comments will be

1 hopeful to the Board.

2 In terms of our presentation today,
3 first, I will provide a quick overview of our mandate
4 and application legislation just to address some
5 recent changes to our Fisheries Act.

6 Second, I will provide an overview of
7 our assessment and recommendations that we provided to
8 the Mackenzie Valley Environmental Impact Review Board
9 concerning Diavik's proposal.

10 Third, I will close our presentation
11 with Fisheries and Oceans Canada's conclusions. And,
12 finally, I will take time to answer any questions or
13 comments related to our presentation.

14 On behalf of the Government of Canada,
15 the current mandate of Fisheries and Oceans Canada's
16 fish and fish habitat protection program is to
17 maintain the sustainability and ongoing productivity
18 of all fish and fish habitat in Canada.

19 Please note the change in language from
20 commercial, recreational, and Aboriginal fisheries to
21 all fish and fish habitat. This change, plus several
22 more, came into force on August 28th.

23 The fisheries and fish habitat
24 protection program is responsible for ensuring that
25 projects in or near water are undertaken following the

1 requirements of the Fisheries Act and the Species at
2 Risk Act.

3 The fish and fish habitat protection
4 program provides guidance to pro -- proponents on how
5 to avoid or mitigate offsets to -- in -- offset
6 impacts in fish and fish habitat.

7 Our regulatory role is now defined by
8 the amended Fisheries Act. Section 35 is specifically
9 what we work under, which now prohibits death of fish
10 and a harmful alteration, disruption, or destruction
11 of fish habitat which, for the sake of this
12 presentation, I'll refer to have -- as had.

13 This is a change from the previous
14 prohibition, which was serious harm. This is a return
15 to the former prohibitions against death of fish and
16 harmful alteration, disruption, or destruction of fish
17 habitat which this project was originally assessed
18 under in 2000.

19 The Act allows for the Minister of
20 Fisheries and Oceans to issue a Fisheries Act
21 authorization in order for a project to proceed. It
22 also now allows for amendments to existing Fisheries
23 Act authorizations which will be assessed under HADD.

24 Fisheries and Oceans Canada notes that
25 Lac de Gras supports a number of important fish

1 species. The fish species that are affected by the
2 project include arctic grayling, burbot, lake trout,
3 cisco, whitefish, longnose sucker, ninespine
4 stickleback, slimy sculpin, and lake chub.

5 For this project, there is an existing
6 Fisheries Act authorization which was issued August
7 2nd, 2000, for impacts resulting from the destruction
8 of fish habitat on six (6) small east island lakes and
9 several streams.

10 Destruction of fish habitat in Lac de
11 Gras was associated with 5 kilometres of dikes and de-
12 watering for pit developments of A154, A418, and A21,
13 along with dike construction in the north inlet and a
14 rocky jetty for a total of -- total impact of two
15 thousand four hundred and thirty-two (2,432) habitat
16 units.

17 And habitat units are just calculated
18 through a ranking of habitat productivity, important
19 life cycle in geographic area. Currently, they apply
20 offsetting measures for the project include the
21 enhanced connection of lakes in the mainland with Lac
22 de Gras, enhanced fish passage and streams on the west
23 island, two (2) community projects, and upon the
24 completing of mining, the development of shallow
25 rearing habitats, spawning shores -- spawning sholes,

1 and shoreline habitat within the diked areas.

2 Currently, all impacts associated with
3 this authorization have been built. And if a dike
4 cannot be breached following mining activities due to
5 the water quality, the Proponent has -- will have up
6 to six (6) months to develop a new compensation --
7 compensation or offsetting plan according to the
8 authorization conditions.

9 Current requirements for monitoring for
10 water quality prior to reconnection is three (3)
11 years.

12 So, DFO initially had concerns in
13 regards to the proposed changes to operations and how
14 it could be legally accommodated in -- in the existing
15 Fisheries Act authorization.

16 The Board's Information Request 3 asked
17 DFO to address the concerns around the changes of
18 intended use to pit A418. The current changes to the
19 Fisheries Act has given DFO the flexibility to
20 accommodate changes and schedule operations and intend
21 use to a process similar to the Fisheries Act
22 authorizations. All new changes will assessed under
23 HADD.

24

25

(BRIEF PAUSE)

1 MR. DANIEL COOMBS: Third, DFO's
2 assessment of the project. we determined the dis --
3 deposition of kimberlite will be within the original
4 footprint of the existing authorization.

5 DFO-FFHPP does not anticipate any
6 additional impacts that has not already been captured
7 under the existing Fisheries Act authorization and
8 will continue to work with Diavik to capture any
9 required original -- or revisions to the original no
10 net loss plan to mitigate fish and fish habitat loss.

11

12 (BRIEF PAUSE)

13

14 MR. DANIEL COOMBS: Collaborating and
15 finding solutions for changes to this project was the
16 main point of discussion at both the Behchoko and
17 Dettah community hearings.

18 Any requirement to find alternate
19 offsetting projects will involve the engagement of the
20 impacted communities and various stakeholders.

21 DFO-FFHPP recognizes that -- Diavik's
22 willingness to work with DFO to address their
23 recommendations as per their response to our
24 intervention.

25 In closing, the proposed project

1 amendment is not anticipated to result in any
2 additional negative impacts to fish and fish habitat
3 not already covered under the existing Fisheries Act
4 authorization.

5 Fisheries and Oceans Canada will
6 continue to work with the proponent and stakeholders,
7 including potentially impacted communities to ensure
8 that concerns related to offsetting programs are
9 addressed. Thank you.

10 THE CHAIRPERSON: Thank you.

11 Questions, Tlicho Government?

12

13 QUESTION PERIOD:

14 MS. VIOLET CAMSELL-BLONDIN: Violet
15 Camsell-Blondin, Tlicho Government. We have no
16 question at the time, Madam Chair.

17 THE CHAIRPERSON: Questions,
18 Yellowknives Dene First Nation?

19 MR. MACHEL THOMAS: Machel Thomas,
20 YKDFN. No questions, Madam Chair.

21 THE CHAIRPERSON: Questions, North
22 Slave Metis Alliance?

23 MS. JESSICA HURTUBISE: Jessica
24 Hurtubise, North Slave Metis Alliance. No questions,
25 Madam Chair.

1 THE CHAIRPERSON: Questions, Deninu
2 K'ue First Nation?

3 DR. MARC D'ENTREMONT: Marc
4 D'Entremont, for the DKFN. We do have a question and
5 maybe some followup. So, DFO, in your -- in your
6 presentation, I think you mentioned, if the -- the
7 water quality doesn't return to what's expected and
8 Diavik can't go forward with its plan to reconnect the
9 -- the pit lakes to Lac de Gras, then that's going to
10 impact the -- the habitat offsetting plan.

11 And I think you said something about --
12 today about six (6) months to -- to reconsider that.
13 I guess, at this point, are you feeling confident that
14 an amendment to the -- the habitat offsetting plan can
15 be reached and have you already been talking about
16 additional offsetting measures? Thank you.

17 MR. DANIEL COOMBS: Dan Coombs,
18 Fisheries and Oceans Canada. I guess you're asking if
19 there's any potential other projects that can be used
20 to mitigate that amount of habitat that would need to
21 be replaced, just for clarity of the question?

22 DR. MARC D'ENTREMONT: Marc
23 D'Entremont, for DKFN. Yeah, you could interpret it
24 like that. Again, it's more of an open-ended question
25 about, at this point, is there anything that's being

1 considered or is -- are -- are you kind of starting at
2 -- are there certain unknowns or -- or things like
3 that?

4 MR. DANIEL COOMBS: There's nothing
5 specific that's been considered. Just been dis -- oh,
6 sorry, Dan Coombs, DFO. There's nothing specific
7 that's being considered as an alternative for this
8 project.

9 There has been discussion of existing
10 offsetting projects of that scale in NWT in what say,
11 for instance, like, an offsite -- a project away from
12 Lac de Gras would look like.

13 But a discussion of what those projects
14 would be would be a discussion with all the
15 communities here and incorporation of traditional
16 knowledge to find projects that would -- that would
17 help to compensate the existing impact.

18 DR. MARC D'ENTREMONT: Marc
19 D'Entremont, for DKFN. Thank you for that response.
20 We have no more questions.

21 THE CHAIRPERSON: Questions, Fort
22 Resolution Metis Council?

23 MR. ARTHUR BECK: Arthur Beck, Fort
24 Resolution Metic Council. Yeah, we have a couple
25 questions. My first question will be to Environment

1 Canada -- DFO, I guess it is, all right, somebody.

2 Anyways, who is going to be testing the
3 water? Is the mines going to be testing the water
4 quality or DFO or Environment Canada? Who's going to
5 be doing the testing for the next ten (10) years or
6 whatever? Thank you.

7 MR. DANIEL COOMBS: Dan Coombs, DFO.
8 It's the proponent's responsibility through their
9 water licence in the Aquatic Effects Monitoring
10 Program.

11

12 (BRIEF PAUSE)

13

14 MS. KATY DIMMER: Thank you. Katy
15 Dimmer, Fort Resolution Metis Council. We were just
16 hoping you might be able to weigh in. I assume you
17 reviewed Diavik's toxicology report.

18 And we just wanted your opinion on the
19 equivalency of the effects on rainbow trout to -- lake
20 trout to culturally preferred species in Lac de Gras,
21 such as arctic grayling, burbot, and suckers.

22 MR. ARTHUR BECK: The reason we ask
23 that is they're bottom feeders. Thank you.

24 MR. DANIEL COOMBS: I hate to give the
25 government answer, but it's not my -- DFO's mandate.

1 Dan Coombs. I'll let my colleagues at Environment and
2 Climate Change Canada address it.

3 MR. ARTHUR BECK: Well, somebody's got
4 to answer. I know the answer. You guys will hear it
5 in my presentation. Thank you.

6 THE CHAIRPERSON: Excuse me. They are
7 going to answer someone else --

8 MR. ARTHUR BECK: Okay. All right.

9 THE CHAIRPERSON: -- another
10 department is going to answer.

11 MS. GEORGINA WILLISTON: Thank you,
12 Madam Chair. It's Georgina Williston, with
13 Environment Canada. I understand it's often confusing
14 whose mandate it is between Fisheries and Oceans
15 Canada and Environment Canada. So I can help out
16 here.

17 But I will ask -- and Anne's definitely
18 a bit more of an expert on the appropriateness of
19 different species and why rainbow trout is used versus
20 others. So maybe if I can get Anne -- for you to help
21 out with the answer?

22 MS. ANNE WILSON (BY PHONE): Thanks,
23 Georgina. It's Anne Wilson, with ECCC. This question
24 comes up a lot. You know, people wonder what the
25 relevance is of the species that are used in our

1 standard toxicity testing to the actual native species
2 living in the lake of concern.

3 So of course the reason that we use
4 rainbow trout or one of the main reasons is that they
5 have a standard test protocol and that the fish are
6 readily available. You can also get fish that you
7 test for sensitivity, and you know they're healthy
8 fish. So you could have a test that you could rely on
9 the result and compare the result to the last test you
10 did or to tests that are being run in other sites or
11 areas.

12 And rainbow trout are a nice test
13 species because they are fairly sensitive to the
14 things that we see in mining operations. The other
15 aspects that can be picked up by other species -- and
16 I know there's concern about the species that feed on
17 the bottom -- can be picked up through tests that use
18 sediment drilling in vertebrates, other species that
19 are sensitive to contaminants.

20 So they aren't too exact species that
21 you see there, but they're good surrogates and give us
22 that information. Does that help?

23 MR. ARTHUR BECK: Arthur Beck,
24 Fort Resolution Metis. Actually, not actually because
25 we do not have a rainbow trout here. We have lake

1 trout. It's difference -- they're different. And
2 also, we have arctic grayling. Thank you.

3 MS. ANNE WILSON (BY PHONE): Thank
4 you. Anne Wilson. And I agree, we don't have an
5 arctic grayling test. The rainbow trout are going to
6 be perhaps a little more sensitive to some
7 contaminants from the lake trout or perhaps less. We
8 don't have a test for rainbow trout -- or sorry -- for
9 lake trout.

10 Now, I think the advantages of using a
11 standard test with standard lab organisms really gives
12 us the reliability that -- at least give us a sort of
13 a yardstick. Not a perfect ruler, that's for sure.

14 THE CHAIRPERSON: Questions,
15 Fort Resolution Metis Council?

16 MS. KATY DIMMER: Katy Dimmer,
17 Fort Resolution Metis Council. No further questions,
18 Madam Chair. Thank you.

19 THE CHAIRPERSON: Questions,
20 Government of the Northwest Territories?

21 MS. LORRAINE SEALE: Thank you,
22 Madam Chair. Lorraine Seale, GNWT. No questions.

23 THE CHAIRPERSON: Questions,
24 Environmental Monitoring Advisory Board?

25 MR. JOHN MCCULLUM: John McCullum,

1 EMAB. I just had a couple of clarifications. You
2 spoke about the monitoring programs and how those
3 would feed into the -- I guess DFO's feeling of
4 assurance that there weren't going to be significant
5 impacts.

6 You kind of went through it fairly
7 quickly, and I was just wondering if you could sort of
8 go back through that section of your presentation
9 again.

10 MR. DANIEL COOMBS: So -- Dan Coombs,
11 DFO -- I'll ask the Board if they want me to go
12 through the existing no net loss plan because the
13 existing no net loss plan specifically talks to pits
14 without PK in it, and there may be changes to
15 monitoring if the PK is placed in the pits.

16 THE CHAIRPERSON: I'm sorry. We're
17 having a hard time hearing you up here. Like you're
18 fading out, or you're stepping away or moving away
19 from the mic. Could you just repeat the question?

20 MR. JOHN MCCULLUM: Sure. John
21 McCullum, EMAB. I'm just -- I just want to hear a
22 little bit more about what you thought about the water
23 quality monitoring program in terms of reconnecting
24 and then post-breach. So not really looking for the -
25 - for the no net loss plan.

1 (BRIEF PAUSE)

2

3 THE CHAIRPERSON: Fisheries and
4 Oceans?

5 MR. DANIEL COOMBS: Yeah. So --
6 Dan Coombs, Fish and Oceans Canada -- currently the
7 Fisheries Act authorization requires the proponent to
8 meet the requirements of the AEMP benchmarks before
9 reconnection to the pit. And DFO doesn't consider
10 the -- the pit fish habitat -- having till
11 reconnection occurs.

12 MR. JOHN MCCULLUM: Okay. Thank you.
13 John McCullum, EMAB. Thank you. No more questions.

14 THE CHAIRPERSON: Questions,
15 Lutsel K'e Dene First Nation?

16 MR. ROBERT PAISHEGWON: Hi.
17 Robert Paishegwon. It's okay. So this question's
18 about, I guess, impacts on fish -- fish health.

19 So as you heard over the past couple of
20 days, there are quite a bit of concerns about the fish
21 in Lac de Gras and that the fish are getting sicker.
22 And I understand that DFO looks at, you know, fish
23 death.

24 Can you -- can you, I guess, give an
25 explanation in, like, how you consider that

1 traditional knowledge when, I guess, determining
2 whether or not you think that the mine is having an
3 impact on fish and fish health?

4 Do you only consider whether or not it
5 has acute impact so there's a result in immediate or
6 short-term death? Or do you also consider whether or
7 not the fish are being impacted over time and
8 resulting in early death due to sickness and things
9 like that? Thank you.

10 MR. DANIEL COOMBS: Dan Coombs, DFO.
11 Thank you for question. We don't look necessarily
12 just at the death of fish, but we are looking to
13 sustain the productivity of the fish as well.

14 So it can -- we come down to
15 reproduction success if there is -- we work also
16 closely with our Environment and Climate Change Canada
17 partners to assess whether an ulterior substance is
18 causing that effect or not.

19 For instance, if there is some sort of
20 water quality issue that is causing impact egg
21 survival rates, we consider that impact to fish.

22 MR. ROBERT PAISHEGWON: Okay. Just to
23 follow up on that. So -- sorry, Robert Paishegwon;
24 it's okay -- so what kind of, I guess, testing have
25 you done on fish reproduction so far? Like have you

1 been constantly looking at that over the time of
2 the -- that the mine has been there?

3 MR. DANIEL COOMBS: Dan Coombs,
4 Fisheries and Oceans Canada. Again, this is kind of a
5 shared mandate question between ECCC and ourselves.
6 But I will say at the ground level, it is looked at
7 during the AEMP monitoring programs.

8 ECCC might be able to give a little bit
9 more in-depth answer if you would like.

10 MS. GEORGINA WILLISTON: Thank you.
11 It's Georgina Williston, with Environment and Climate
12 Change Canada. It does -- it is captured through the
13 AEMP programs and then through the water -- through
14 the water boards. Environment Canada reviews those
15 reports.

16 So -- and Anne who is on the line with
17 us would be -- would be involved in that review. So
18 I'm not sure, Anne, if you're able to add anything in
19 addition to maybe what you've reviewed in the past
20 or...

21 MS. ANNE WILSON (BY PHONE): It's
22 Anne Wilson, ECCC. No. Just that we do feel it is a
23 pretty comprehensive aquatic monitoring program and
24 that if any effects or changes are seen, then that
25 gives rise to further monitoring and special studies.

1 So nothing further to add. Thanks.

2 MR. ROBERT PAISHEGWON:

3 Robert Paishegwon. That's okay. Thank you. No
4 further questions.

5 THE CHAIRPERSON: Questions,
6 Environment and Climate Change Canada?

7 MS. GEORGINA WILLISTON:

8 Georgina Williston, with Environment and Climate
9 Change Canada. We have no questions for our Fisheries
10 and Oceans Canada.

11 THE CHAIRPERSON: Questions, Diavik?

12 MR. GORD MACDONALD: Gord Macdonald,
13 with Diavik. Just one (1) question for DFO. Dan, can
14 you just confirm mostly for the Board that you have
15 reviewed the predicted water quality with FPK
16 deposited for the A418 pit -- excuse me -- as required
17 under the authorization, and they have approved Diavik
18 to proceed with construction of fish habitat on the
19 basis that your assessment of the acceptable water
20 quality?

21 MR. DANIEL COOMBS: Yes. We did
22 review that and -- oh, Dan Coombs, DFO -- we did
23 review that to facilitate the creation of the spawning
24 shoals during construction. But that approval was
25 heavily conditioned that this EA process was going and

1 that might change the outcome of that condition.

2 MR. GORD MACDONALD: Thanks so much.

3 THE CHAIRPERSON: Questions, Board
4 staff?

5 DR. NEIL HUTCHINSON: Thank you,
6 Madam Chair. Neil Hutchinson, for the Board. Diavik
7 has predicted that the water quality in the upper
8 40 metres of the -- of the pit lake will be acceptable
9 for fish based on comparison with AEMP benchmarks.

10 Are you confident that their use of a
11 40-metre depth is a basis for understanding and
12 impacts to fish is sufficiently precautionary?

13 MR. DANIEL COOMBS: For the -- the
14 type of lake in the species present, I feel -- oh, Dan
15 Coombs, Fisheries and Oceans Canada -- I feel that
16 it's sufficiently cautionary. There are species that
17 can go deeper within the lake, but they will be
18 limited by dissolved oxygen and light.

19 And -- for instance, like slimy sculpin
20 can go down to a hundred -- a hundred metres, but
21 that's -- every lake's a little bit different. Right?
22 And arctic lakes are low productive and very, very
23 oligotrophic.

24 DR. NEIL HUTCHINSON: Neil
25 Hutchinson -- thank you -- for the Board. So Diavik

1 have said that there is a potential -- well, they said
2 that if, in fact, water quality in the pit does not
3 meet they AEMP benchmarks that they would not open it
4 up to fish in the lake.

5 In which case, there would still be
6 water exchange with Lac de Gras. Is that water
7 exchange likely to be harmful to -- to result in
8 conditions that were harmful to fish?

9 MR. DANIEL COOMBS: This -- like if
10 they -- Dan Coombs, DFO -- this again kind of flirts
11 with the cross mandate of Environment and Climate
12 Change Canada, and there would be questions around
13 whether we consider the amount of the impact and the
14 amount of water going into Lac de Gras and whether we
15 would consider that deleterious or not.

16 MS. GEORGINA WILLISTON: Thank you.
17 Georgina Williston, with the Environment and Climate
18 Change Canada. So it's not an easy question to answer
19 because we would have to know the characteristics of
20 that water, what the -- you know, what compound or
21 contaminants of concern might be in it.

22 So it's not -- I wouldn't be able to
23 say if it would be deleterious or not and if it would
24 have an impact or not without, you know, knowing the
25 water chemistry, knowing the composition of the PK and

1 how it has or hasn't maybe, you know, made its way
2 into the -- into the water column.

3 So it would be premature for us to sort
4 of say one way or another, but it's definitely
5 something that Environment Canada and Climate Change
6 Canada would look at.

7 If the project -- if this were, you
8 know, approved to proceed and we got through all the
9 other hurdles of the water quality monitoring that
10 Diavik's going to do and if we decided that, you know,
11 it was -- they were able to deposit, so I feel like
12 there's a lot of other steps there -- the checks and
13 balances -- that would maybe come before that could be
14 an issue.

15 DR. NEIL HUTCHINSON: Neil Hutchinson,
16 for the Board. Thank you very much. Is it also your
17 understanding that any conditions around this would be
18 addressed under a water licence to the water board --
19 the Land and Water Board?

20 MS. GEORGINA WILLISTON: Thank you.
21 Georgina Williston, with the Environment and Climate
22 Change Canada. I believe so.

23 Environment Canada does have a right --
24 our own regulatory tools, but we don't have -- we
25 wouldn't have any permitting powers or functions for

1 these -- this type of project.

2 So we -- yeah -- the Water Board would
3 be the mechanism, the regulatory body. And if it went
4 through that process and was -- and was approved to
5 proceed, then we would continue to provide our input
6 and our expertise into that process.

7 DR. NEIL HUTCHINSON: Neil Hutchinson,
8 for the Board. Thank you very much. That's all.

9 THE CHAIRPERSON: Questions, legal
10 counsel?

11 MR. JOHN DONIHEE: Thank you,
12 Madam Chair. No questions from counsel.

13 THE CHAIRPERSON: Questions, Board
14 members?

15 BOARD MEMBER KRUTKO: David Krutko,
16 Review Board. My question was in regards to certain
17 times of the year when you have fish spawning, one of
18 the things that's going to happen is you're going to
19 draw down water from Lac de Gras to fill up the pits.

20 I'm just wondering will there be, I
21 want to say, restrictions that are in place or some
22 way of making sure that there's enough water in those
23 areas of the lake where the spawning is taking place
24 that you're not drawing down so much water that it
25 actually will eliminate that fish habitat, especially

1 for spawning?

2 MR. DANIEL COOMBS: Dan Coombs, DFO.
3 Thank you for your question. In the short answer,
4 yes. There are -- there are protocols and guidelines
5 to ensure that -- that water withdrawal will not
6 impact the littoral zone and expose spawning fish.

7 There are restricted activity periods,
8 and then there's also water withdrawal protocols for
9 the Northwest Territories that you cannot draw down at
10 such a rate where you would expose the littoral zone
11 and that spawning habitat.

12 BOARD MEMBER KRUTKO: David Krutko,
13 Review Board. Yeah. My other concern was around
14 climate change and effects we're starting to see in a
15 lot of our water that rivers and tributaries in
16 regards to temperature change in the -- especially in
17 the arctic where we're seeing a six (6) degree change
18 or increase in temperature during the summer months.

19 So my concern is because you have cold
20 water species and they're very sensitive to
21 temperature -- certain fish are -- and I'm just
22 wondering, is that something you're also going to be
23 monitoring is looking at the effects on water
24 temperature on the aquatic life and the fish species?

25

1 (BRIEF PAUSE)

2

3 MR. DANIEL COOMBS: Dan Coombs, with
4 Fish and Oceans Canada. Just to confirm, you're
5 talking about temperature changes as a cumulative
6 effect in regards to climate change.

7

8 (BRIEF PAUSE)

9

10 MR. DANIEL COOMBS: The short answer
11 for us right now is that temperatures -- Dan Coombs,
12 DFO -- is that it's -- temperature's not part of the
13 monitoring plan right now. It's -- our monitoring
14 plan currently for those projects is fish use of the
15 spawning shoals.

16 Water quality and temperature would
17 fall under -- and I'm not sure if temperature is
18 included in the aquatic effects monitoring program,
19 but I think there is a portion where it is.

20 BOARD MEMBER KRUTKO: Thank you.
21 David Krutko, Review Board. Yeah. I'll try to
22 reframe the question. I think my issue started off
23 with the drawdown of the water in the lake.

24 As you draw down the water, the depth
25 of the lake gets shallower. So the water basically --

1 the temperature will increase; it'll get warmer. And
2 certain fish species go to the deeper parts of the
3 lake because they -- they are sensitive to water
4 temperature during the summer months where they'll
5 basically migrate or go to where it's colder.

6 So -- and also if you include
7 temperature change under climate change -- add that
8 six (6) degrees -- will it basically affect, you know,
9 the -- by the two (2) processes taking place where
10 you're drawing down water, the water is dropping in
11 the lake, and the temperature is going to increase.
12 Not only naturally but because of climate change,
13 you're going to see a bigger increase. Thank you.

14

15 (BRIEF PAUSE)

16

17 MR. DANIEL COOMBS: Dan Coombs,
18 Fisheries and Oceans Canada. The way that water
19 withdrawal guidelines are set up are in such a way
20 that any water withdrawal or drawdown will not affect,
21 we'll say, the existing water in the lake.

22 I mean, Lac de Gras is not a closed
23 system. You have water coming in and water going out.
24 The water into the pits will be put in at such a rate
25 where you do not affect the actual amount of water in

1 Lac de Gras beyond the guidelines within the NWT -- or
2 for withdrawal protocols.

3 And therefore, I don't think that the
4 temperature change would be that significant during
5 water withdrawal -- water draw into the pits.

6 THE CHAIRPERSON: Questions, Board
7 members? Okay. Thank you.

8 This concludes the morning session of
9 the presentations. So we'll break for lunch. Right
10 at 1:00, we'll come back with the GNWT doing their
11 presentation. Thank you.

12

13 --- Upon recessing at 12:15 p.m.

14 --- Upon resuming at 1:06 p.m.

15

16 THE CHAIRPERSON: Okay. If we could
17 start again, please. And I think there's just an
18 announcement in regards to the channels. Some of the
19 channels have changed -- changed for translation
20 purposes.

21 MR. MARK CLIFF-PHILLIPS: Thank you,
22 Madam Chair. It's Mark Cliff-Phillips, with the --
23 the Review Board. Just an update in terms of the
24 translation channels, Chipewyan is on channel 5,
25 Tlicho, channel 3, and Weledeh is channel 6.

1 I also just wanted to make a -- a
2 comment in terms of some deadlines. The Board is
3 setting the undertaking deadline for two (2) weeks
4 from today. So that would be two (2) Fridays from
5 today.

6 There was also a -- a notice of
7 proceeding that went out regarding the responses to
8 the Board's supplemental IRs. Initially, we had asked
9 parties to indicate today, by the end of the hearings,
10 that they wanted to submit additional IRs -- or -- or
11 submit additional evidence with regards to those
12 responses. If parties would like to do that, we're
13 just going to set a deadline for submission on the
14 same date as the undertaking deadline. Diavik will
15 then have one (1) week to respond in advance of the
16 parties' closing arguments. Just as a clarification,
17 a notice will go up on the record so you could see the
18 dates in -- in writing and the requests.

19

20 (BRIEF PAUSE)

21

22 THE CHAIRPERSON: Okay. The next
23 presentation this afternoon is with the GNWT. If you
24 would like to start your presentation.

25 MS. LORRAINE SEALE: Thank you, Madam

1 Chair. My name is Lorraine Seale, with the GNWT.
2 Before I introduce our presentation, I'd just like to
3 give a quick update on the question that was posed on
4 Tuesday in the Behchoko hearing regarding government
5 programs for on the land, healing, and the health and
6 wellness of the next generation.

7 We filed a written response with the
8 Board today, and it is on the public registry.

9 THE CHAIRPERSON: Okay. Thank you.

10

11 PRESENTATION BY GNWT:

12 MS. LORRAINE SEALE: So as I
13 mentioned, my name is Lorraine Seale. I'm a director
14 of securities and project assessment with the
15 Department of Lands, which is coordinating the GNWT's
16 participation in this EA.

17 Our presentation today summarizes the
18 GNWT's intervention and identifies which
19 recommendations are outstanding after meeting with
20 Diavik and after reviewing Diavik's responses to
21 interventions.

22 GNWT reviewed Diavik's supplemental
23 information request responses. That review did not
24 result in any changes to our recommendations. Our
25 speakers today are Mr. Nathen Richea, director of

1 water resources with the Department of Environment and
2 Natural Resources, who will present on the water --
3 wildlife and water topics today.

4 ENR's environmental management
5 scientist, Bill Pain, and ENR's retained water quality
6 consultant, Barry Zajdlik, will speak to technical
7 details regarding the water.

8 ENR's wildlife specialist Jan
9 Adamczewski, is also here in the audience today if
10 there are any questions on wildlife. And finally,
11 Morgan Moffitt, senior impact assessment specialist --
12 or sorry, advisor with the Department of Health and
13 Social Services will speak to social well-being.

14 I also want to note, we have several
15 other GNWT staff in the room today from the
16 Departments of Lands, ENR, and Justice, and we do have
17 the inspectors for the Diavik site with us today, too.
18 So I'll pass it off to Nathen. Next slide.

19 MR. NATHEN RICHEA: Good afternoon,
20 Madam Chair. My name is Nathen Richea, and I will be
21 speaking to our recommendations on wildlife and water
22 here today.

23 Regarding wildlife, the scope of the
24 environmental assessment required Diavik to assess the
25 potential effects of the proposed activities on

1 wildlife, including species within the GNWT's
2 jurisdiction, such as barren ground caribou from the
3 Bathurst herd, grizzly bear, wolverine, raptors, and
4 insects.

5 During the scope of the project, the
6 GNWT's position, which remains unchanged, is that the
7 pathways of potential effects on wildlife and wildlife
8 habitat is through exposure of potentially
9 contaminated surface waters. Therefore addressing
10 potential effects on water quality should also address
11 potential effects on wildlife and wildlife habitat.
12 The GNWT has not identified likely significant adverse
13 impacts to the reviewed wildlife species within the
14 GNWT's jurisdiction. The GNWT has reviewed and is
15 satisfied with the information Diavik has provided to
16 date with respect to wildlife. The GNWT recognizes
17 Diavik's commitment in relation to wildlife, and has
18 no additional recommendations for the Review Board to
19 consider.

20 Madam Chair, moving on to our next
21 topic, which is water quality. Throughout the
22 process, and as summarized in our intervention, the
23 GNWT has identified concerns with the appropriateness
24 of modelling conducted to date, and the effectiveness
25 of mitigation strategies proposed by Diavik to ensure

1 acceptable water quality conditions post deposition of
2 PK into the pits and mine workings. The GNWT
3 acknowledges that similar concerns have also been
4 raised by other parties in this environmental
5 assessment process.

6 The GNWT's concern that the mitigation
7 options proposed by Diavik focus on post-closure water
8 quality, after PK is deposited into the pits. As
9 described in our intervention, after PK is deposited
10 into pits and the pits are filled with water, if the
11 water quality is determined to be poorer than the
12 existing modelling shows, and traditional users are
13 unwilling or unable to use the pit lake area, this
14 could represent a significant adverse effect.

15 The GNWT suggests that the deposit of
16 PK into the pits should not be approved unless the
17 water quality is of -- of acceptable quality at
18 closure.

19

20 (BRIEF PAUSE)

21

22 MR. NATHEN RICHEA: It should be noted
23 that the GNWT supports the concept of the deposition
24 of PK into pits and reconnecting the pits upon
25 demonstration of appropriate and acceptable water

1 quality conditions. However, there should be more
2 discussion from Diavik on the potential or feasibility
3 of alternative options, that is, a traditional dam
4 raise, to allow continued use of the processed
5 kimberlite containment facility.

6 Our concern is if updated and revised
7 modelling shows that the deposition of PK to the pits
8 and mine workings results in poor water quality which
9 is unacceptable to traditional -- traditional users or
10 results in a loss of use for traditional purposes,
11 Diavik should not deposit PK into the open pits and
12 should expand the processed kimberlite containment
13 facility to store PK in perpetuity.

14 The GNWT's recommendation to the Board
15 on this issue is intended to draw attention to this
16 issue and to ensure that the deposition of PK to mine
17 workings in the pits would not result in unacceptable
18 conditions in the pits or in Lac de Gras prior to win
19 approval to place PK into the pits.

20 Madam Chair, our first recommendation
21 to the Board is the GNWT is of the opinion that if the
22 deposit of PK into the pits results in poor water
23 quality, which results in the avoidance of the area or
24 results in traditional users no longer using the area
25 for traditional purposes, the contingency mitigation

1 option should include raising the PKC facility such
2 that it can store the remaining PK produced from the
3 site.

4 Diavik should commit to continue
5 refining and updating the modelling to confirm that
6 the deposit of PK into mine workings and the open pits
7 will not result in unacceptable conditions in the pits
8 or Lac de Gras prior to placing PK into the pits.

9 Madam Chair, moving on to our second
10 water topic. As outlined in our intervention,
11 Diavik's responses and summary impact statements do
12 not satisfy the GNWT's request for accumulative
13 effects assessment. Further, the GNWT has -- has
14 asked Diavik to complete an assessment of the previous
15 EA methods and compare them with newer, more modern EA
16 methods.

17 The GNWT would like to note that Diavik
18 did meet with the GNWT on August 14th to discuss this
19 matter. However, the GNWT's recommendation still
20 stands on this topic.

21 The GNWT notes in our intervention that
22 the cumulative effects assessment conducted by Diavik
23 are limited to predicting worst-case water quality in
24 each of the pit lakes over a hundred year period using
25 project specific effects. Further, these assessments

1 pertain to the pit lakes only. It is not clear to the
2 GNWT how the assessment of -- of effects from the
3 proposed project could be determined without modelling
4 water quality within the pit lakes, but also the
5 combined influence of pit lakes, effluent discharge,
6 and other anthropogenic influences on Lac de Gras,
7 such as the Jay Project.

8 As already touched upon in our
9 presentation, the GNWT is also convinced -- or sorry,
10 is not convinced that modelling completed to date and
11 the appropriate -- and the approach used to assess
12 cumulative effects is complete or appropriate.

13 Madam Chair, as the Board is well
14 aware, the Mackenzie Valley Resource Management Act
15 applies to the current project. Section 117, item
16 2(b) requires that cumulative impacts be considered in
17 every environmental assessment.

18 However, the GNWT is not convinced an
19 adequate cumulative effects assessment has been
20 completed for this proposal. As stated by Diavik in
21 their summary impact statement, the Environmental
22 Effects Assessment is based on methods used in the
23 1998 Environmental Assessment Overview.

24

25

(BRIEF PAUSE)

1 MR. NATHEN RICHEA: The GNWT's
2 position is that more recent and revised methods for
3 assessing cumulative effects, the occlusion of the
4 effects pathways, and the overall approach to
5 assessing cumulative effects, should be applied to
6 this process.

7

8 (BRIEF PAUSE)

9

10 MR. NATHEN RICHEA: Madam Chair, the
11 GNWT's recommendation on this topic is as follows.
12 The GNWT is unable to assess the significance of
13 changes to water quality as a result of cumulative
14 effects from the project and the Jay project. Should
15 updated modelling predict water quality conditions in
16 pit lakes or within Lac de Gras, in the vicinity of
17 the mine, are of such poor quality that traditional
18 users could either avoid the area or no longer use the
19 area for traditional purposes, the placement of PK
20 into the pits and underground mine workings should not
21 be approved.

22

23 (BRIEF PAUSE)

24

25 MR. NATHEN RICHEA: Madam Chair, our

1 next topic on water quality is our request that the
2 Review Board require Diavik to provide the total
3 dissolved solids loads to the north inlet water
4 treatment plant.

5 As discussed in our intervention, the
6 GNWT is concerned that the total dissolved solids
7 loads could impact water quality conditions as a
8 result of the deposit of PK into the pits. The GNWT
9 had concerns that the project could change TDS loads,
10 or total dissolved solids loads, that could
11 potentially impact the receiving environment.

12 The GNWT would like to acknowledge that
13 Diavik has since provided this information in their
14 response to interventions. Also, this was a
15 discussion topic between Diavik and the GNWT at our
16 August 14th meeting.

17 The GNWT appreciates Diavik's efforts
18 in assisting us in understanding the impacts of total
19 dissolved solids loads from the pit lakes. I would
20 like to note, however, that the GNWT still -- is still
21 committed to further reviewing this information in the
22 licensing process to ensure agreed to water quality
23 thresholds and benchmarks are achieved in Lac de Gras.

24 Madam Chair, given the information
25 provided by Diavik and our discussions on August 14th,

1 the GNWT's third recommendation in our intervention on
2 total dissolved solids loads may be reviewed -- may be
3 removed from our list of recommendations to the Board.

4 Madam Chair, our last recommendation
5 made in our intervention regarding water quality is
6 the GNWT's concern with using A21 pit for the deposit
7 of processed kimberlite and extra fine processed
8 kimberlite. The GNWT's concern was based on the
9 information presented by Diavik. It appeared that the
10 A21 pit lake was most likely to overturn due to its
11 size and depth.

12 Based on our meeting with Diavik on
13 August 14th, and as presented by Diavik yesterday, the
14 GNWT's understanding is that Diavik has removed A21
15 from the proposed deposit of PK. As such, our fourth
16 recommendation regarding the use of A21 no longer
17 applies, and should be removed from our list of
18 recommendations to the Board.

19 I would now like to pass the
20 presentation over to Ms. Morgan Moffitt to continue
21 with the remaining recommendations. Thank you.

22 MS. MORGAN MOFFITT: Good afternoon,
23 Madam Chair. I am Morgan Moffitt, with the Department
24 of health and social services.

25 The scope of the EA required Diavik to

1 assess the potential impacts of Diavik's proposed
2 activities, not only on water quality and quantity,
3 wildlife, and fish and fish habitat, but on the
4 cultural use of the area.

5 The GNWT recognizes that the health and
6 well-being of Indigenous residents and communities is
7 linked to the health of the biophysical environment,
8 and thereby considered project interactions with
9 cultural use on Indigenous and community social well-
10 being.

11 The GNWT considered the project's
12 interactions with and effects on cultural use in the
13 area, particularly how impacts to water quality may
14 affect cultural users' ability and decision to access
15 and utilize the Lac de Gras area.

16 The GNWT also considered potential
17 effects the project may have on the well-being of
18 Indigenous residents and communities.

19 The GNWT reviewed the evidence and
20 responses provided by Diavik, as well as submissions
21 from other Interveners, particularly Indigenous
22 governments. In reviewing these materials, the GNWT
23 considered that the project area is socially,
24 culturally, and spiritually important to Indigenous
25 peoples.

1 Traditional and continued use of Lac de
2 Gras and the area surrounding it is important to
3 cultural continuity and preservation, and this is
4 related to well-being.

5 There is potential for project effects
6 to contribute to cumulative social impacts on
7 Indigenous residents and communities from diamond
8 mining activities.

9 The Summary Impact Statement did not
10 discuss how residual effects may or may not be
11 connected to community well-being or adequately
12 discuss and develop mitigations to support Indigenous
13 communities' perceptions of adverse effects to the
14 safety, quality, and health of Lac de Gras and the
15 surrounding area.

16 The lack of information provided by
17 Diavik throughout this assessment process has resulted
18 in the GNWT being unable to determine with confidence
19 that this will be mitigated. Perceived effects may
20 impact cultural use of the area, cultural continuity,
21 and thereby community well-being.

22 In the absence of clear commitments
23 from the Company regarding increased engagement and
24 collaboration with potentially impacted Indigenous
25 governments throughout the entire scope of the

1 development, the GNWT submits Recommendation Number 5
2 to the Review Board for its consideration.

3 The GNWT has identified the potential
4 for the project effects to contribute to cumulative
5 social impacts on community well-being, should
6 mitigations to ensure effective engagement,
7 collaborative, and visual monitoring, and the
8 consideration of potential effects on community well-
9 being not occur.

10 Diavik did not provide sufficient
11 rationale and/or evidence in the Summary Impact
12 Statement to support its conclusion that further
13 assessment of cumulative effects on culture use is not
14 warranted. Diavik did not provide comments on
15 pathways between cumulative effects on cultural use
16 and community well-being.

17 With this in mind, the GNWT submits
18 Recommendation Number 6 to the Review Board for its
19 consideration.

20 As IGOs have indicated, a preference
21 for visual monitoring of the project, including
22 potentially affected IGOs -- include potentially
23 affected IGOs in the visual monitoring of all phases
24 of the project and publicly report on these monitoring
25 activities to ensure that potentially affected

1 Indigenous communities are well-informed and aware of
2 the project design, activities, and potential effects
3 for the life of mine.

4 The GNWT is of the opinion that, should
5 negative effects to the biophysical environment not
6 occur, potential impacts can be mitigated with
7 increased engagement, collaborative visual monitoring,
8 and increased public communication.

9 MS. LORRAINE SEALE: Lorraine Seale,
10 GNWT. Thank you, Madam Chair. This concludes our
11 presentation. We'd like to thank the Review Board for
12 the opportunity to present our intervention and
13 recommendations.

14 Just to reiterate, there were six (6)
15 recommendations in our intervention based on Diavik's
16 responses. We've revised that to four (4)
17 recommendations. And again, the Supplemental
18 Information Request Responses did not result in any
19 changes to our recommendations.

20 We are now available for questions.

21

22 QUESTION PERIOD:

23 THE CHAIRPERSON: Okay, thank you for
24 the presentation.

25 Questions, Environmental Monitoring

1 Advisory Board?

2

3

(BRIEF PAUSE)

4

5 MR. JOHN MCCULLUM: Thank you. John

6 McCullum, Environmental Monitoring Advisory Board.

7 Just one (1) question.

8

During discussions with Diavik

9 yesterday about the preliminary modelling, they

10 proposed that the preliminary modelling would actually

11 produce more conservative water quality outputs than

12 the revised model that they're proposing to do later,

13 and we're wondering if you have any views on that.

14

DR. BARRY ZAJDLIK: Barry Zajdlik, on

15 behalf of the GNWT. My review of the assumptions that

16 were made for the model that were used indicates that

17 is correct, that they presented a worst-case scenario.

18 However, it's now clear that the model selected was

19 the best model for the intended purpose. So the

20 answer to your question is it's still open.

21

MR. JOHN MCCULLUM: Thank you. John

22 McCullum, EMAB. No further questions.

23

THE CHAIRPERSON: Questions, Lutsel

24 K'e Dene First Nation?

25

MS. LAUREN KING: Lauren King, LKDFN.

1 It's more of a statement, that the GNWT should not
2 decide if impacts to IGOs can be mitigated, especially
3 when perceived impacts have not even been identified
4 yet.

5

6 (BRIEF PAUSE)

7

8 THE CHAIRPERSON: Okay. Just a
9 reminder to please stick to the questions.

10 Questions, Environment and Climate
11 Change Canada?

12 MS. GEORGINA WILLISTON: Georgina
13 Williston, of Environment and Climate Change Canada.
14 We have no questions.

15 THE CHAIRPERSON: Questions, Fisheries
16 and Oceans Canada?

17 MR. DANIEL COOMBS: Dan Coombs,
18 Fisheries and Oceans Canada. We have no questions.

19 THE CHAIRPERSON: Questions, Tlicho
20 Government?

21 MS. VIOLET CAMSELL-BLONDIN: Violet
22 Camsell-Blondin, Tlicho Government. I have a question
23 in regards to presentation on water quality.

24 In GNWT's intervention position on page
25 6 that was filed, in that it is noted that the project

1 should not be approved unless water quality meets
2 DDMI's benchmark.

3 Further, GNWT also states that:

4 "In the event that updated modelling
5 reveals unacceptable water quality
6 such that traditional users will
7 avoid use of Ekati, then DDMI should
8 not deposit processed kimberlite in
9 the pits and should instead possibly
10 -- or possibly expand a PK -- a PKC
11 facility."

12 My question is, GNWT's position
13 expressing the two (2) points seem to be saying,
14 first, further modelling work must be done, and
15 second, that the modelling must demonstrate acceptable
16 water quality before the Review Board approves the
17 project.

18 I'm just looking for confirmation or
19 clarification that this is indeed GNWT's position.
20 Masi.

21

22 (BRIEF PAUSE)

23

24 THE CHAIRPERSON: GNWT...?

25 MR. NATHEN RICHEA: Thank you, Madam

1 Chair. It's Nathen Richea, with the GNWT. Thank you
2 for the question. We gave the project much
3 consideration when assessing the potential impacts
4 from deposit of processed kimberlite to the pits, and
5 based on the information available, it does not
6 demonstrate that there would be significant adverse
7 effects if PK is deposited into the pits.

8 However, we have concern with the
9 modelling that has been conducted to date, that's
10 available for -- on the record, and the certainty
11 provided by that modelling that the water quality will
12 be as predicted based on the information available by
13 Diavik.

14 So based on that, we're saying that the
15 deposit of processed kimberlite to the pits should not
16 happen until that water quality information is
17 demonstrated.

18 DR. GINGER GIBSON: Masi. Ginger
19 Gibson, Tlicho Government. Nathen, further to that,
20 can you comment on two (2) points?

21 First of all, can you comment on the
22 type of expertise in modelling that you believe should
23 be done, and secondly, we've been having some
24 discussion about the -- the -- the mechanism of that
25 modelling and the -- and the -- the relationship of

1 that -- sort of the -- the -- the -- where that
2 modelling sits.

3 And I'm not going to ask you about the
4 independence of this modelling exercise so much as I'm
5 going to ask you whether you think that -- that
6 modelling exercise can occur once or whether it needs
7 to -- and -- and then we'll get the answers to the
8 questions we're all looking for, or whether you think
9 there needs to be a longer-term expertise in play to
10 provide solid technical overview?

11 I'm really interested in your view on
12 this because I think it will help all of us shape our
13 -- our -- this -- the feeling -- the -- the -- how we
14 move forward with respect to staging of this -- the
15 data that's collected and the -- the two (2) different
16 processes we're in, the Review Board process versus
17 the water licensing process. Masi.

18

19 (BRIEF PAUSE)

20

21 THE CHAIRPERSON: GNWT...?

22 MR. NATHEN RICHEA: Thank you, Madam
23 Chair. Ginger, if I could just get -- I'm not sure I
24 fully grasped the second part of the question, if I
25 could just get you to restate.

1 DR. GINGER GIBSON: So -- Ginger
2 Gibson, Tlicho Government. So you can either have an
3 exercise that runs a model and it's a one-time effort,
4 and those people then, they're independent or they're
5 not, and then they go away and we all look at that
6 evidence and we judge it against a particular bar that
7 we all agree is the right bar, or, much like we've
8 seen in, let's say Fortune Minerals, we'd establish
9 peer review committees that over time, with a variety
10 of experts, are able to provide ongoing advice on a
11 question. They serve different functions, they
12 provide different sets of expertise, and they allow us
13 to look at these questions in -- in unique ways.

14 I don't -- I -- I'm -- I don't -- I'm --
15 - I'm looking for people's opinion on this because I
16 think that we should be mindful about how much
17 resource we spend on all of these questions and how --
18 how many different mechanisms we require companies to
19 design over time, and we need to get the right fit for
20 the right problem.

21 So I'm curious about your -- your
22 thoughts about which sort of model will help us unpack
23 this question. Masi.

24

25

(BRIEF PAUSE)

1 THE CHAIRPERSON: GNWT...?

2

3 (BRIEF PAUSE)

4

5 DR. BARRY ZAJDLIK: Barry Zajdlik, on
6 behalf of GNWT. The modelling that's required to
7 understand the effects of this proposal is complicated
8 and requires several levels of expertise or several
9 areas of expertise.

10 One of them is expertise with
11 consolidation modelling. Another is expertise with
12 hydrodynamic modelling, which is the gross movements
13 of water. Another is expertise in modelling
14 groundwater flows, because those are very important
15 inputs to the hydrodynamic model that takes place
16 within the pit lakes. And then the fourth level of
17 expertise or area of expertise that's required is
18 understanding of general water quality movements in
19 Lac de Gras proper.

20 So four (4) -- there would be four (4)
21 linked models at least and within some of those models
22 there are sub-models. So it -- the expertise probably
23 doesn't reside in one (1) person but a group of
24 people. So that answers part of Ginger's question as
25 to who is required to be involved in the process.

1 And that last word, I just used,
2 process is very important. A model is not just built
3 and then used. Diavik has talked about their model
4 being an early-stage model that will be subject to
5 improvements, and they've committed to making
6 improvements, and those improvements add -- involve
7 adding on other mechanistic processes that are
8 happening within the pit lake and other contributors
9 to water quality that inflows into the pit lake, and a
10 better understanding of what happens to the PK as it
11 consolidates.

12 So the process involves sequential
13 decision-making after pieces -- other pieces are
14 bolted on or added to the model. So I envision a
15 process or a panel that meet -- that meets to review
16 and talk about important modifications or updates to
17 the model, and that's -- by updated I mean adding on
18 new pieces as dictated by the expertise of the
19 individuals that are retained.

20 I think that the process has to start
21 early and one (1) of the recommendations that I made
22 was that there's consultation regarding what type of
23 model is even used for the hydrodynamic model, because
24 the model deliverable is a series of predictions, but
25 there's also other things that are important in the

1 utility of that model. One of them is the ability to
2 address uncertainty, and another is to reflect the
3 realities of the exposure -- or of the environment
4 that's trying to be modelled.

5 So a lot of things to consider
6 simultaneously, and what we don't want is for Diavik
7 to go away and update the model that they're using and
8 then a panel of independent experts to be retained and
9 say we don't agree with this, you should have done
10 something else. They need to be involved early and
11 they need to be involved continually. Thank you.

12 DR. GINGER GIBSON: Masi, Barry and
13 Nathen. This is Ginger Gibson, with the Tlicho
14 Government. That was very helpful.

15 In turning our attention to Measure 1,
16 in that measure you suggest that DDMI should commit to
17 continuing refining and updating modelling to confirm
18 the deposition of PK to mine workings, would not
19 result in unacceptable conditions in the pits.

20 So this is a really good opportunity
21 right here for us to think about providing good
22 evidence and good guidance to the Board on how to get
23 at the -- a significance threshold, and -- and so --
24 and I want to -- I want to ask you to speak a little
25 bit about what you mean by unacceptable conditions in

1 the pits. What's that bar for you?

2 And then secondly, I -- I think if we
3 could talk about the types of -- the -- the ways that
4 the Board could usefully provide guidance for further
5 stages of -- of water licensing on thresholds, that
6 would be very helpful.

7 And I'll just remind my colleagues at
8 the experience in the Fortune Minerals Environmental
9 Assessment where we were up against a similar
10 difficult situation where there was not enough
11 information and not enough certainty, and -- and we
12 set qualitative statements for a -- for thresholds at
13 the Environmental Assessment level -- layer, which
14 were then numerically quantified in water licensing.

15 So there's two (2) questions in there.
16 Nathen, can you please comment on the -- what the bar
17 is for acceptable, and can you please discuss the
18 question of qualitative statements for setting a
19 threshold against which -- you know, you're saying we
20 can't -- you know, either we -- if -- if they go above
21 a particular threshold, they need to go and put the
22 kimberlite pipe on the tailings pile, and if it's
23 below, it'll be acceptable to put in the pit.

24 So how do we determine that threshold
25 now and set reasonable standards for the Board to use

1 to give guidance to the -- the Wek'eezhii Land and
2 Water Board? Thank you.

3

4

(BRIEF PAUSE)

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THE CHAIRPERSON: GNWT...?

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to give guidance to the -- the Wek'eezhii Land and
Water Board? Thank you.

(BRIEF PAUSE)

THE CHAIRPERSON: GNWT...?

MR. NATHEN RICHEA: Thank you, Madam
Chair. It's Nathen Richea, with GNWT. And thank you
for the question. It's a -- it's a head-scratcher.

One of the tasks that is given to the
Impact Review Board is to assess significance, and
there's a variety of information that they will need
to consider in making a significance determination.
Part of that piece of information would be water
quality information, and the recommendation that we
have proposed up on the screen, we attempted to
identify that the conditions in the pit may be safe
for water quality purposes, but they may not be
acceptable for traditional use or there may be concern
with the water quality in -- in the pit.

And we feel that both of those pieces
of information are important to consider when making a
determination on significance.

As a water quality specialist, you
know, we use benchmarks and different ways to assess

1 the quality of water from an aquatic environment
2 standpoint.

3 And in our intervention, I think it was
4 Violet that mentioned that we make reference to
5 benchmarks within our written submission. From a
6 water quality standpoint, that's how we assess quality
7 of water and whether it's safe.

8 Where there's uncertainty is from a
9 traditional use or perceived impact standpoint. And,
10 as a water quality specialist, I'm not an expert in --
11 in that.

12 So, for those types of determinations,
13 we would defer those considerations to the Impact
14 Review Board, but we would look to see evidence
15 provided by other Interveners on the potential impacts
16 of the deposit of PK to the pits.

17 DR. GINGER GIBSON: Thank you. Ginger
18 Gibson, Tlicho Government. So, Nathen, would the GNWT
19 support a descriptive statement that we -- that is set
20 out in a measure that includes the parameters and --
21 and allows us to address the other issues?

22

23 (BRIEF PAUSE)

24

25 DR. GINGER GIBSON: What I -- sorry,

1 I'll just continue. What I mean by that is, can you
2 support the development of a measure that allows the
3 Review Board to provide descriptive qualitative
4 statements about how to assess -- how to set
5 thresholds here at this point so that we don't --
6 we're not tied up in a data modelling exercise
7 currently?

8 And -- and we set a significant
9 threshold now through qualitative statements that are
10 then open for use of the data modelling that occurs
11 later. And we use that data modelling to allow us to
12 generate in water licencing the qual -- quantitative
13 statements and expressions of significant thresholds.

14 Do you see where I'm getting?

15 THE CHAIRPERSON: GNWT...?

16 MR. NATHEN RICHEA: Thank you, Madam
17 Chair. Yes, it's Nathen Richea, with the GNWT. And,
18 yes, you're -- you were correct, we've seen that in
19 other processes and we would be supportive of a
20 measure of that nature.

21 DR. GINGER GIBSON: Masi. Ginger
22 Gibson, Tlicho Government. Thank you, Nathen. My
23 final question today is, what are the GNWT's thoughts
24 on the environmental effects assessment definitions
25 used by the Proponent? Masi.

1

2

(BRIEF PAUSE)

3

4

THE CHAIRPERSON: GNWT...?

5

6

(BRIEF PAUSE)

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8

DR. BARRY ZAJDLIK: Barry Zajdlik, on

9 behalf of GNWT. During the -- this process, we posed

10 several requests to DDMI regarding the EA process.

11 Those requests were rejected. We asked first that

12 DDMI consider using the 2012 CEA guidance. And then

13 we asked for a comparison of the 1999 and 2012

14 environmental effects assessment guidance.

15 And then, finally, we asked for the

16 documentation that was used by Stantec to conduct the

17 EA because the idea there was -- or the response from

18 Diavik was that the materials used by Stantec were

19 full congruent with the 2012 CEA guidance.

20 They suggested that what was done was

21 fundamentally unchanged from the 1999 guidance. So, I

22 looked through the 2012 and the 1999 guidance and I

23 found that, at a fundamental level, the -- the

24 response from Stantec is correct, there is no

25 fundamental deviation.

1 However, in 2012, some of the wording
2 around the definitions changes. And one (1) of the
3 key pieces of the wording is the -- the idea of
4 reasoned argumentation. And reasoned argumentation
5 has to do with what you believe or why you believe
6 that a number is the right number to use.

7 And that's implicit in this whole EA.
8 It's about beliefs. They're a numerical number -- or
9 numerical values that speak to toxicity, but there's
10 also sociologic numbers that speak to valuation.

11 Diavik right now is currently using,
12 for the most part, updated water quality guidelines
13 that are consistent with recent CCME guidance.

14 The reasoned argumen -- argumentation
15 that was applied to those benchmarks is that they are
16 protective of aquatic life, and also because CCME
17 water quality guidelines are typically lower than
18 human health guidelines.

19 The guidelines are also protective of
20 human -- humans drinking the water or using it for
21 traditional boiling of tea and things like that. But
22 there is a valuation element to water quality that has
23 to be considered.

24 The Tlicho Government stated the -- the
25 principle of substantially unaltered water quality and

1 that they should apply to this project amendment.

2 Lutsel K'e Dene mentioned baseline water quality is a
3 desirable objective.

4 So, those are two (2) things that have
5 to be balanced, right. Are we just trying to protect
6 aquatic life or are we trying to protect the valuation
7 when we set a benchmark for determining significance?

8 Both of the Interveners that I
9 mentioned, their statements reflect a very high
10 valuation of water quality. The operational Diavik
11 and Ekati Mine's discharge to Lac de Gras are already
12 affecting the water quality in Lac de Gras.

13 The question we have to ask in this EA
14 Hearing and in closing comments is how each
15 Intervener's evaluation of water should be translated
16 into a magnitude definition.

17 For my part, I would consider that
18 effects have already occurred to your -- due to
19 operations. I would also consider that we are
20 discussing a closure option and it is in everyone's
21 best interest to have a walk-away solution.

22 As Neil implied yesterday with his line
23 of questioning, the in-pit solution will lead to
24 incremental loads to Lac de Gras that should be
25 contextualized by the expected diffuse losses from the

1 site.

2 I've been told that water quality
3 closure predictions show that localized acutely salua
4 (phonetic) is possible. Loads from the pit lake could
5 exacerbate that situation.

6

7 (BRIEF PAUSE)

8

9 DR. BARRY ZAJDLIK: In an ideal world
10 and from an ecological perspective only, that is
11 without consideration social valuations, the magnitude
12 of effect associated with uncontrollable losses from
13 an in-pit deposition scenario should be defined by the
14 incremental risk associated with cumulative effects,
15 such as uncontrolled diffusive losses from the site.

16 We did ask DDMI to include those
17 exposure pathways in a water quality model, but the
18 response was at the worst-case scenario, which was
19 already assessed.

20 The missing pathways were dismissed as
21 being inconsequential relative to the worst-case
22 scenario, but no evidence was provided. This leaves
23 us in the unfortunate position of recommending a
24 magnitude definition to be used in assessment of
25 projects of significance in the absence of requested

1 information.

2

3

(BRIEF PAUSE)

4

5

DR. GINGER GIBSON: Masi, to the GNWT
6 for your presentation. Ginger Gibson, with the Tlicho
7 Government. No further questions.

8

THE CHAIRPERSON: Questions,
9 Yellowknives Dene First Nation?

10

MR. MACHEL THOMAS: Machel Thomas,
11 YKDFN. No further questions.

12

THE CHAIRPERSON: Questions, North
13 Slave Metis Alliance?

14

MS. JESSICA HURTUBISE: Jessica
15 Hurtubise, NSMA. No questions, Madam Chair.

16

THE CHAIRPERSON: Questions, Deninu
17 K'ue First Nation?

18

DR. MARC D'ENTREMONT: Marc
19 D'Entremont, for the DKFN. I do have a couple
20 questions. So, in reference to -- yeah, it's up there
21 -- recommendation number 1 that you have where you
22 state you're of the opinion that, if the deposit of PK
23 in the pits results in poor water quality, I'm just
24 looking for some clarity on, I think, one (1) of your
25 responses here.

1 So, here in the recommendation you say,
2 "If it results in poor water quality." But I think
3 you mentioned something about not having poor quality
4 in the pits or ensuring that that does -- doesn't
5 happen. Could you just provide some clarity on that?

6 THE CHAIRPERSON: GNWT...?

7 MR. NATHEN RICHEA: Thank you, Madam
8 Chair. It's Nathen Richea, with the GNWT. Can you
9 further elaborate? I'm not sure if I'm following the
10 question specifically.

11 DR. MARC D'ENTREMONT: Marc
12 D'Entremont, for DKFN. Okay, I'll try to clarify.
13 So, again, in -- in the recommendation, you say you're
14 of the opinion that, if the deposit of PK into the
15 pits results in poor water quality, and you go on to
16 what -- explain what that implication might be.

17 But I thought I heard in one (1) of
18 your responses, I think, to one (1) of the Tlicho
19 Government's question about you're also of the opinion
20 that you -- you want to ensure that water quality
21 won't be impacted or -- or within -- within the pit so
22 that, regardless of whether it occurs now or the
23 outcomes of the future water qual -- model that may
24 show that there could be another if in terms of poor
25 water quality, regardless of that, I thought I heard

1 from you that it's still ens -- you know, be of the
2 opinion or ensure that poor water quality within those
3 pits wouldn't happen in some way or another.

4 I -- and I guess, in terms of some way
5 or another, like, again, if the modelling shows that
6 poor water quality would happen, then an alternative
7 method or -- or, you know, going back to the original
8 plan, that kind of thing, would -- would take place.

9 THE CHAIRPERSON: GNWT...?

10 MR. NATHEN RICHEA: Thank you, Madam
11 Chair. It's Nathen Richea, with the GNWT. And thank
12 you for the clarification.

13 Yeah, so what we were saying in this
14 recommendation was that, in the future as the model is
15 revised, and we had some discussion about --
16 yesterday, and even today, on a panel or independent
17 reviewers helping in the development of that model.

18 So, in the future, if that modelling
19 suggests that there were poor quality conditions, so
20 poor water quality conditions, in the pits as a result
21 of placing PK in the pit, then we would prefer that an
22 alternative approach for this dispose -- disposal of
23 PK be sought by -- by the company.

24 And we really wanted to stress that
25 because we felt that there was a lot of attention

1 applied to what the conditions would be after the
2 disposal of PK to the pits but not a lot of discussion
3 about what are the options of not putting PK in the
4 pits.

5 So, we really wanted to highlight --
6 highlight that. However, during the disposal of -- so
7 say the modelling has been revised and the panel is
8 comfortable with the modelling results and it's
9 approved and PK is placed in the pits.

10 We have some time during the placement
11 of PK in the pits to assess how things are performing
12 within the pits that may change the outcome of the
13 long-term water quality in the pit lakes over time in
14 the post-closure period.

15 So, I think there are checks that we
16 could do or use over time to assess if the conditions
17 in Lac de Gras or the pit lakes at closure may change
18 even during the placement of PK in the pits for
19 unforeseen circumstances or situations.

20 Hopefully, that helps answer your
21 question.

22 DR. MARC D'ENTREMONT: Marc
23 D'Entremont, for DKFN. Yeah. Thank you. That --
24 that helps. I do have another question in regard to
25 your recommendation number 2.

1 So, this was in reference to the fact
2 that you're unable to kind of assess the significance
3 of cumulative effects. And this recommendation was
4 specific to the cumulative effects water quality.

5 However, I would ask, as a result of
6 this, would you reconsider the assessment of effects
7 that you guys determine on wildlife?

8

9 (BRIEF PAUSE)

10

11 THE CHAIRPERSON: GNWT...?

12

13 (BRIEF PAUSE)

14

15 THE CHAIRPERSON: GNWT...?

16

17 MR. NATHEN RICHEA: Thank you, Madam

18 Chair. It's Nathen Richea, with GNWT. And thank you

19 for the question. As we outlined in the beginning of

20 our presentation, specifically on wildlife, our

21 position is, if the water quality in the pit lakes and

22 in Lac de Gras is sufficient to protect aquatic life,

23 it will also protect wildlife.

24 So, hopefully that answers your

25 question.

 DR. MARC D'ENTREMONT: Marc

1 D'Entremont, for the DKFN. So -- so, the big word
2 that keeps coming back is 'if'. So, I just wanted to
3 make that point clear. So, thank you for that
4 response. No further questions.

5 THE CHAIRPERSON: Questions, Fort
6 Resolution Metis Council?

7 MS. KATY DIMMER: Katy Dimmer, Fort
8 Resolution Metis Council. Thank you, Madam Chair. We
9 have a couple questions about social well-being. And
10 then I'm hoping that GNWT might be able to answer some
11 questions concerning caribou.

12 For our first question regarding
13 recommendation number 5 in the slides, Fort Resolution
14 Metis Council is supportive of this recommendation for
15 an updated framework for community engagement, but I'm
16 hoping that you might be able to provide more detail
17 on what such a framework should include.

18 And if you could also define to you
19 what your concept of actively working with all IGOs
20 would include. And, also, we are very curious as to
21 whether a sole commitment to only a single annual
22 meeting would fit within the spirit of this
23 recommendation.

24

25

(BRIEF PAUSE)

1 THE CHAIRPERSON: GNWT...?

2

3 (BRIEF PAUSE)

4

5 MS. MORGAN MOFFITT: Thank you, Madam
6 Chair. Morgan Moffitt. In terms of the framework,
7 the GNWT is of the opinion that the IGOs are the
8 critical knowledge holder here and should take the
9 lead on collaboratively developing that.

10 The GNWT would be happy to support that
11 collaborative development with you. In terms of what
12 is active, again, this would be collaborative and
13 involve continuous discussions with the IGOs, which
14 would relate to the third part of your question, is
15 once a year enough.

16 The GNWT HSS does not believe so.
17 Thank you.

18 MS. KATY DIMMER: Katy Dimmer, Fort
19 Resolution Metis Council. Thank you for that
20 clarification. I'd like to now turn to recommendation
21 6 where you have requested the discussion of visual
22 monitoring.

23 If you could just clarify what you
24 determine visual monitoring and if it involves actual
25 boots on the ground on territory on project monitoring

1 by all Indigenous groups.

2 THE CHAIRPERSON: GNWT...?

3 MS. MORGAN MOFFITT: Thank you.

4 Morgan Moffitt, GNWT. The GNWT would consider boots
5 on the ground visual monitoring.

6 MS. KATY DIMMER: Katy Dimmer, Fort
7 Resolution Metis Council. Thank you for that
8 clarification. In relation to this, Diavik indicated
9 yesterday that there may be some circumstances where
10 they would not be open to offering opportunities for
11 visual monitoring to all Indigenous groups.

12 Is there a circumstance where an
13 impacted Indigenous group that is interested in visual
14 monitoring -- would it be acceptable for this to be
15 denied?

16

17 (BRIEF PAUSE)

18

19 MS. MORGAN MOFFITT: Thank you.

20 Morgan Moffitt. All IGOs would be impacted, and so we
21 would expect them to be included.

22 MS. KATY DIMMER: Katy Dimmer, Fort
23 Resolution Metis Council. Thank you for that
24 clarification. I'd not like to turn to a couple of
25 questions concerning caribou.

1 Could someone from the GNWT just
2 confirm and please let us know what is the current
3 state and vulnerability of the Bathurst caribou herd?

4

5 (BRIEF PAUSE)

6

7 MR. JAN ADAMCZEWSKI: Good afternoon,
8 Madam Chair. Jan Adamczewski, with GNWT/ENR. Our
9 last population survey of the Bathurst herd was in
10 June 2018, last year. And the estimate at that time
11 was eight thousand two hundred (8,200) caribou, which
12 is the lowest by far that we've seen at least since
13 surveys were done.

14 And the trend was still downward, so
15 there is an enormous amount of concern about the
16 future of this herd.

17 MS. KATY DIMMER: Katy Dimmer, Fort
18 Resolution Metis Council. Thank you for that. I'm
19 wondering if you have the numbers in comparison to
20 what the status of the herd was before the mine,
21 before the diamic -- Diavik Diamond Mine, in
22 particular?

23 MR. JAN ADAMCZEWSKI: Jan Adamczewski,
24 with GNWT. The Bathurst herd has had a very
25 spectacular fall from its highest numbers, which were

1 -- at least on our surveys, 1986, the estimate was
2 approximately four hundred and seventy thousand
3 (470,000).

4 After that, through the 1990s, there
5 was a slow decline. 1996 the estimate was still at
6 three hundred and fifty thousand (350,000). And then,
7 of course, more declined, the most rapid decline
8 between 2006 and 2009.

9 And then, as of last year, we were down
10 to approximately eight thousand two hundred (8,200).
11 So, there has been, obviously, a very large decline
12 since the 1990s.

13 MS. KATY DIMMER: Thank you for that
14 information. Katy Dimmer, Fort Resolution Metis
15 Council, my apologies. In our recommenda -- in Fort
16 Resolution Metis Council's recommendations there was a
17 request for the sampling and monitoring of caribou
18 organ meat.

19 And the response to intervention,
20 Diavik indicated that this request is somewhat
21 unconventional. From the GNWT's experience, is the
22 monitoring of organ meat or organ conditions in
23 caribal -- caribou an accepted indicator for caribou
24 health?

25 MR. JAN ADAMCZEWSKI: Jan Adamczewski,

1 with GNWT. There has been a federal northern
2 contaminants program for quite a while now, since at
3 least the 1990s. And under that program, there has
4 been monitoring of contaminants in arctic caribou, in
5 some cases, going back to the 1990s, as well.

6 Not all herds are monitored every year.
7 The porcupine in the Kaminurak are monitored quite
8 regularly, and so there's a whole series of heavy
9 metals and organic compounds that are monitored.

10 Generally speaking, that monitoring has
11 showed contaminants are present but at very low levels
12 and not a whole lot of change over time. But given
13 that some of those contaminants come from the other
14 side of the planet, it's very important to continue
15 that monitoring.

16 If there was a desire to get tissues
17 tested from another herd, then I'm pretty sure we
18 could get in touch with the people who do that
19 testing, and -- and it could be included with other
20 samples that they -- that they run for contaminants.

21 MS. KATY DIMMER: Katy Dimmer, Fort
22 Resolution Metis Council. Thank you for that. Our
23 next question is, it has come to our attention that
24 the Bathurst herd finalized version of the range plan
25 was released at the end of this August.

1 If it is acceptable to the Board -- we
2 understand that the time for evidence has passed;
3 however, if it is acceptable to the Board, we would
4 like to request an undertaking for the GNWT to submit
5 a copy of this report to the Board for their review.

6 MR. JAN ADAMCZEWSKI: Jan Adamczewski,
7 with GNWT. The last time I checked, there was a
8 version of the Bathurst range plan on the ENR website,
9 and there was a period of public review, and I just
10 don't remember the time lines on it.

11 But we can certainly provide that draft
12 to -- to the Board. I suspect you could just as
13 easily pull it from the GNWT website.

14 THE CHAIRPERSON: Legal counsel...?

15 MR. JOHN DONIHEE: Thank you, Madam
16 Chair. It's John Donihee. I just think we should
17 hear from Diavik on this before we start adding new --
18 new evidence to the record at this point in time.

19

20 (BRIEF PAUSE)

21

22 THE CHAIRPERSON: Diavik...?

23 MR. LOUIS BELAND: Louis Bel -- Louis
24 Beland, for Diavik, legal counsel for Diavik. If it's
25 already a public document, we don't have any -- any

1 objection to it. This is something everyone could
2 have consulted beforehand.

3 THE CHAIRPERSON: Legal counsel...?

4 MR. JOHN DONIHEE: Thank you, Madam
5 Chair. John Donihee. I think rather than trouble the
6 GNWT then, we'll just have Board staff secure it from
7 the GNWT website and place it on the record. Thank
8 you, Madam Chair.

9 THE CHAIRPERSON: Questions, Deninu
10 K'ue First Nation?

11 MS. KATY DIMMER: Katy Dimmer, Fort
12 Resolution Metis Council. Thank you, Madam Chair. No
13 further questions.

14 THE CHAIRPERSON: I'm glad you know
15 who you were. Questions, Northwest Territories Metis
16 Nation?

17 MR. JAKE HERRON: Thank you, Madam
18 Chair. Jake Herron, with the Northwest Territories
19 Metis Nation. I just have a -- and I thank you for
20 calling us out while I've been away all week.

21 I just have a question for the GNWT
22 with regard to the social well-being. I appreciate
23 the point that the IGO should take a lead role with --
24 with regard to developing some elements of the
25 collaborative arrangement.

1 However, I think it's fairly common
2 knowledge that, at least from the Northwest
3 Territories Metis Nation, we're lacking in capacity
4 both financially and humanly. That's part of the
5 rationale for why I wasn't here.

6 But having said that, I think it's
7 somewhat imperative for the Metis Nation or the
8 Northwest Territories appreciate that what is the role
9 of the Government of Northwest Territories in
10 assisting those of us that don't have the capacity to
11 articulate in a way with a lot of expertise at the
12 table in the same language, if you wish, with some of
13 the -- some of the bureaucrats that are seeking
14 answers relative to social well-being.

15 And I'm not exactly sure that the role
16 of industry is total responsible for these types of
17 things in view of the fact that the Government of the
18 Northwest Territories, or public government, looking
19 after the well-being of all citizens, notwithstanding,
20 in our case, our interests more specifically is with -
21 - as Metis.

22 So, I guess my question is, the
23 capacity -- is there a process in which the Government
24 of the Northwest Territories is -- makes assessment as
25 to the capacity of the various Indigenous groups to

1 participate in the development of a framework on a
2 collaborative, cooperative basis?

3 Thank you, Madam Chair.

4

5 (BRIEF PAUSE)

6

7 THE CHAIRPERSON: GNWT...?

8

9 (BRIEF PAUSE)

10

11 MS. LORRAINE SEALE: Thank you, Madam
12 Chair. It's Lorraine Seale, with GNWT. In the
13 project-specific sense, the developer is responsible
14 for addressing the impacts of that project.

15 More broadly, there are some government
16 capacity programs. The Interim Resource Management
17 Assistance Program is one (1) example. And there are
18 others available.

19 I'd also note that the Federal
20 Government does have some programs. And we are aware
21 that there are often capacity considerations for the
22 Indigenous governments.

23 THE CHAIRPERSON: Questions, Northwest
24 Territories Metis Nation?

25 MR. JAKE HERRON: Thank you for that

1 response. I appreciate that there's umpteen kind of
2 programs available, I just don't know to what extent
3 the Government of the Northwest Territories
4 proactively reaches out to the Indigenous groups that
5 don't have capacity to fill in the forms or develop
6 proposals in a manner that's consistent or applicable,
7 or even acceptable, for that matter, to the go -- to
8 the various funding agencies.

9 So, I think, in light of the fact that
10 the impacts of -- of the development is project-
11 specific, I appreciate that we're talking about some
12 of the more technical things relative to water and
13 quality of water and -- and well-being.

14 But I think from the po -- my point of
15 view, at least, is that -- why I brought it up is that
16 I don't see any real active engagement by the
17 Government of the Northwest Territories coming to the
18 Metis and saying come on, let's get together, and
19 let's talk about the social economic impact of the
20 Metis in this particular area.

21 So, I guess I'm taking a little slam at
22 them from the point of view that we -- we aren't --
23 and we don't have that (INDISCERNIBLE) capacity or
24 financial capacity to reach out.

25 Conversely, I think they have lots. I

1 mean, it's just evident by what I see here today just
2 the very short time I've been here, that there is
3 sufficient capacity in the Government of the Northwest
4 Territories to maybe make a bit more effort to reach
5 out to -- to us, as Aboriginal people.

6 Thank you. It's just a comment. Jake
7 Herron, with the Northwest Territories Metis Nation.

8 THE CHAIRPERSON: Okay. Thank you.
9 Again, just a friendly reminder, if we could stick to
10 the questions, please. We have a long agenda ahead of
11 us yet.

12 Questions, Diavik?

13 MR. GORD MACDONALD: Gord MacDonald,
14 with Diavik. I do have a few questions. Nathen, in -
15 - in your -- your point about cumulative effects, I
16 heard you say that cumula -- to do proper cumulative
17 effects, it should have included the releases from the
18 pit lakes and other releases from Diavik, like, runoff
19 or -- or discharge, as well as background impacts from
20 Jay and other upstream developments.

21 Did I get that right?

22

23 (BRIEF PAUSE)

24

25 MR. NATHEN RICHEA: Thank you. It's

1 Nathen Richea, GNWT. It sounds about right.

2 MR. GORD MACDONALD: Gord MacDonald,
3 with Diavik. But you said that we didn't do
4 cumulative effects assessment properly, but we did
5 exactly that, where we included the contributions from
6 all of those sources.

7 So, can you help me with the disconnect
8 as to why you say the cumulative effects of this one
9 (1) has not been done completely?

10 THE CHAIRPERSON: GNWT...?

11 DR. BARRY ZAJDLIK: Barry Zajdlik, on
12 behalf of GNWT. There are a bunch of exposure
13 pathways from the mine site that were not included.
14 We had a discussion, that's GNWT and DDMI, with
15 respect to the cumulative effects assessment that was
16 done.

17 And it was my understanding at the time
18 that the cumulative effects assessments included the
19 Jay pit operating at year 23, which is the worst-case
20 prediction for Jay pit.

21 And it also included Diavik operating
22 at full EQC, so they're discharging at the maximum
23 limit allowed by their water licence. Those are the
24 exposure pathways that I thought were included in the
25 cumulative effects assessment.

1 Can you confirm that?

2 MR. GORD MACDONALD: Gord MacDonald,
3 with Diavik. Plus -- plus the PKAs mine workings in
4 the A418 pit.

5 DR. BARRY ZAJDLIK: Yeah, I agree with
6 that, that was another source. But there are other --
7 other sources that are missing, and they're detailed
8 in our intervention. I can't recall all of them, but
9 some of them are losses from the waste rock storage
10 area. I know those are significant in the post-
11 closure period.

12 And because those losses are proximal
13 to the pit lake, they should be included in a
14 cumulative asse -- effects assessment.

15 MR. GORD MACDONALD: Gord MacDonald,
16 with Diavik. All of those are currently included
17 within what's in the final effluent. So, that final
18 effluent includes everything coming off the site, so
19 it is all in there all as one (1) big lump sum at a
20 worst-case amount.

21 So, we think we've overstated the
22 amount of -- of contributions from the project, as
23 well as from Jay, so we -- we do believe that those
24 are there, Barry.

25 DR. BARRY ZAJDLIK: Barry Zajdlik, on

1 behalf of GNWT. Yeah, it's possible that they're all
2 included because those waters are collected in sumps
3 and they report to the north inlet water.

4 But what's different in the scenario
5 post-closure is that you don't have a diffuser
6 operating anymore and the losses are uncontrolled and
7 they're proximal to the pit lake.

8 MR. GORD MACDONALD: Gord Macdonald,
9 with Diavik. I'd like to move on to the -- the
10 framework that we presented for a reconnection cri --
11 for defining reconnection criteria. They're
12 culturally acceptable to pit lake conditions.

13 And we put this in as a -- as a
14 response, and it was in part response to GNWT's
15 recommendation there'd be a need for this type of
16 thing. We've provided that -- we provided how we
17 propose to do this.

18 I was wondering if the GNWT could
19 comment on whether they believe this is helpful. Are
20 we on the wrong path, the right path?

21 THE CHAIRPERSON: GNWT...?

22 MS. MORGAN MOFFITT: GNWT, Morgan
23 Moffitt. So, given the increased perception of risk
24 and the significance of the project area, the
25 framework is a starting point, but it's essentially

1 the status quo.

2 And we think that more work needs to be
3 done and we weren't satisfied with your response.

4 Thank you.

5 MR. GORD MACDONALD: Gord Macdonald,
6 with Diavik. Can you tell me what aspect of the
7 status quo of using the TK panel to develop these
8 criteria, and then using EMAB to -- to help facilitate
9 this with the communities, and then going back to each
10 of the Indigenous groups to get verification, what
11 aspect of this is status quo?

12 MS. MORGAN MOFFITT: Morgan Moffitt,
13 GNWT. Essentially, those are commitments that you've
14 already made and made twenty (20) years ago. Since
15 that time, there's been increased and new monitoring
16 programs, such as the Tlicho Government's Boots on the
17 Ground.

18 Furthermore, you don't actually make a
19 commitment within the scope of this EA that is firm
20 about how you're going to be incorporating Indigenous
21 governments.

22 MR. GORD MACDONALD: Gord Macdonald,
23 with Diavik. I guess we should maybe pull this
24 specific recommendation then; it's number 2 in our --
25 in our proposal -- in our commitments letter in

1 response to interventions where we lay out step by
2 step exactly what we're going to do to develop these
3 visual criteria. They are new commitments.

4 MS. MORGAN MOFFITT: Morgan Moffitt,
5 GNWT. So, I apologize for any confusion there --
6 confusion. Certainly, perhaps they're new to you, but
7 I believe that GNWT's point here laid out in our
8 intervention and in the responses is that they're not
9 sufficient.

10 MR. GORD MACDONALD: Gord Macdonald,
11 with Diavik. So, you did review these then because
12 these came after your recommendation. So, you did
13 review these and they don't mon -- they don't change
14 your can -- your recommendations at all?

15 MS. MORGAN MOFFITT: Morgan Moffitt,
16 GNWT. I did review these. I was not present at the
17 GNWT DDMI meeting, so we didn't have an opportunity to
18 discuss them. But our recommendation, as we said in
19 our presentation, still stands.

20 MR. GORD MACDONALD: Gord Macdonald,
21 with Diavik. On one (1) of these slides, Nathen, you
22 ask about advantages, right, advantages of the
23 alternatives -- of the alternative option, i.e.,
24 putting material back into the -- back on -- into the
25 PKC.

1 We did have a number of discussions
2 with advantages and disadvantages, both of the
3 project, and advantages and disadvantages of the PKC.
4 Does that address -- does that address your need for
5 further discussion about the alternatives?

6 MR. NATHAN RICHEA: Thank you. It's
7 Nathan Richea, with the GNWT. I don't recall
8 specifically referencing the advantages of placing PK
9 in the PKC.

10 I do recall speaking about the
11 disadvantages of placing PK in the open pits and mine
12 workings and as an alternate to that in the
13 eventuality or potential of those conditions not being
14 appropriate regarding to the approved disposal of PK
15 in the PKC facility, which was originally approved for
16 the project back in '99, '98.

17 MR. GORD MACDONALD: Gord Macdonald,
18 with Diavik. There was a point about saying you
19 needed further discussion about the alternative,
20 i.e., putting it back into the processed kimberlite
21 containment area.

22 MR. NATHAN RICHEA: Thank you. It's
23 Nathan Richea, with the GNWT. I did reference having
24 a discussion about the alternative of placing PK in
25 the PKC facility as there was strictly a focus of

1 placing the PK only in the pits as an option in this
2 process.

3 MR. GORD MACDONALD: Okay. Nathan, I
4 guess maybe you weren't here yesterday, but we --
5 we've been very clear that the alternative is to put
6 that material back into the processed kimberlite -- to
7 put that material in the processed kimberlite
8 containment facility if it -- if it isn't appropriate
9 to put it into the mine workings and that that is
10 fully permitted.

11 And we did go through a discussion as a
12 result of a question from the Board on the advantages
13 and disadvantages of that. So I'm just wondering -- I
14 guess if you haven't heard that discussion, you can't
15 say whether it's adequate or not, but we did have that
16 discussion, and I hope it would address that -- those
17 further discussions you're referring to.

18 MR. NATHAN RICHEA: Thank you. It's
19 Nathan Richea, with the GNWT. I guess we're in
20 agreement that placing PK in the PKC would be a good
21 alternative to placing PK in the pits if we have to do
22 that.

23 MR. GORD MACDONALD: My next question
24 is your discussion with -- sorry, Gord Macdonald, with
25 Diavik -- your discussions with Ginger -- you both

1 seem to agree on something called qualitative
2 statements.

3 Perhaps for those of us who have no
4 idea what you're talking about, could you give an
5 example of what a "qualitative statement" would be
6 that would relate to this?

7 THE CHAIRPERSON: GNWT...s?

8

9 (BRIEF PAUSE)

10

11 MR. NATHAN RICHEA: Thank you. It's
12 Nathan Richea, with the GNWT. Just looking at
13 previous decisions by the Impact Review Board on the
14 EAs for other projects, there are examples of
15 narrative statement included as measures, specifically
16 in relation to the Fortune Minerals environmental
17 assessment.

18 I don't have the exact wording with me
19 of those narrative statements, but they are available
20 online and as part of that decision package.

21 MR. GORD MACDONALD: Gord Macdonald,
22 from Diavik. Could you paraphrase? I see Ginger
23 saying maybe she could help.

24 THE CHAIRPERSON: Tlicho
25 Government...?

1 DR. GINGER GIBSON: Thank you.

2 Ginger Gibson, with Tlicho Government. Maybe if it
3 would just be helpful to the Board, I'll find the
4 specific measure and provide it to Board staff.

5 There was a measure of environmental
6 assessment in Fortunate Minerals and some long info --
7 some good discussion and description in the Board's
8 review of report of environmental assessment that is
9 already on the public record that we can refer our
10 parties to.

11 MR. GORD MACDONALD: Gord Macdonald,
12 from Diavik. That would be very helpful, Ginger.
13 Thank you.

14 My final question for Nathan is that
15 you -- when you're talking about modeling and times of
16 doing -- I think you called them, agree with the
17 checks over time, using the model updates to the
18 modeling.

19 And we had proposed doing updates to
20 the modeling before any deposition, before flooding
21 the pit, and before breaching the dyke.

22 Would you agree that those are the
23 appropriate check -- checkpoints that you're referring
24 to?

25 MR. NATHAN RICHEA: Thank you. It's

1 Nathan Richea, with the GNWT. I agree that those are
2 three (3) that would need to be included in a plan,
3 but I believe there would additional checks prior.

4 And when you say prior to the deposit
5 of PK into the pits, but there's no checks during the
6 placement of PK into the pits and how that is
7 occurring over time and if there are unforeseen
8 conditions in the pits that may modify or alter the
9 model -- the model and the modeling predictions.

10 So I think there's checks that would be
11 necessary during the placement of PK in the pits.

12 MR. GORD MACDONALD: Gord Macdonald,
13 with Diavik. You'd be saying before deposition?
14 During deposition? Before flooding? And before
15 breaching the dyke?

16 MR. NATHAN RICHEA: Thank you. It's
17 Nathan Richea, with the GNWT. Those sound like
18 reasonable checks, but it would be something that
19 would be open to review, particularly during the
20 regulatory process.

21 MR. GORD MACDONALD: Gord Macdonald,
22 with Diavik. No further questions, Madam Chair.

23 THE CHAIRPERSON: Okay. Thank you.
24 Questions, Board staff?

25 MS. KATE MANSFIELD: This is

1 Kate Mansfield, with the Review Board. Just to expand
2 a little bit on a question from our friends at the
3 NWT Metis Nation.

4 So GNWT described some of the actions
5 that you believe Diavik should take to mitigate
6 impacts on cultural use and values and also
7 potentially cumulative effects. These mitigations
8 include effective engagement, collaborative
9 monitoring, and better assessment of cumulative
10 affects.

11 However, the GNWT's mandate is also
12 relevant to cumulative effects and social well being.
13 So would you please be able to speak to some of the
14 actions you believe the GNWT can or should take in
15 order to manage these potential impacts relevant to
16 your mandate?

17 THE CHAIRPERSON: GNWT...?

18

19 (BRIEF PAUSE)

20

21 MS. MORGAN MOFFITT: Morgan Moffitt,
22 GNWT. So the GNWT can work more collaboratively with
23 the Indigenous governments as it has committed to
24 under the Jay (phonetic) measure 8.1

25

1 (BRIEF PAUSE)

2

3 MS. MORGAN MOFFITT: GNWT,
4 Morgan Moffitt. We're also a resource to help
5 facilitate and participate in what DDMI is doing.

6 But also, we respectfully recognize
7 that the traditional users and -- or the traditional
8 users and the Indigenous governments have the critical
9 local knowledge to identify impacts and that we need
10 to build on these -- on this knowledge through
11 participatory processes like this EA. Thank you.

12 THE CHAIRPERSON: Questions, Board
13 staff?

14 MS. KATE MANSFIELD: Thank you,
15 Madam Chair. Kate Mansfield, with the Review Board.
16 I have the same question with regards to the
17 mitigation of potential impacts to wildlife,
18 specifically caribou and how this relates to action
19 the GNWT might take, relevant to its mandate.

20

21 (BRIEF PAUSE)

22

23 MS. LORRAINE SEALE: Lorraine Seale,
24 GNWT. Just a moment. We're getting our speakers
25 organized.

1 (BRIEF PAUSE)

2

3 MR. JAN ADAMCZEWSKI: Jan Adamczewski,
4 with GNWT. I think, as we presented in our initial
5 presentation, our sense is that if the water quality
6 issues are dealt with sufficiently for water quality
7 for fish and aquatic wildlife, we would not expect to
8 see adverse effects on terrestrial wildlife.

9 The cumulative effects issue is
10 definitely one that concerns us, particularly with the
11 Bathurst herd because it is the herd that has a number
12 of mines, a number of roads, more proposals underway.

13 So other recent environmental
14 assessment -- Jay comes to mind; Gaucho Kue -- there
15 were cumulative effects assessment on caribou, and the
16 focus there was, you know, the effect of the proposal
17 but also the proposal and all other developments and
18 foreseeable developments.

19 So certainly if there was another road
20 proposal or another significant mine or something like
21 that, then we would be looking for updated cumulative
22 effects assessment and modeling for caribou.

23 In this case, it seems a bit of a
24 stretch to look for that, given that we are looking at
25 essentially the closure of this diamond mine.

1 And, you know, when you consider the
2 effects that people have raised over the years --
3 noise, dust, blasting, traffic on the roads, the kind
4 of things that might make caribou avoid those areas --
5 as a mine closes, we would expect those effects would
6 actually start to diminish and avoidance probably
7 would be reduced.

8 So with a large enough project that has
9 the potential to affect caribou, we would certainly
10 look for an updated cumulative effects assessment, but
11 we didn't see it as really appropriate or required in
12 this case.

13 THE CHAIRPERSON: Questions, Board
14 staff?

15 MS. KATE MANSFIELD: Thank you,
16 Madam Chair. Kate Mansfield. We have no further
17 questions.

18 THE CHAIRPERSON: Questions, legal
19 counsel?

20 MR. JOHN DONIHEE: Thank you,
21 Madam Chair. John Donihee. No questions.

22 THE CHAIRPERSON: Questions, Board
23 members? Yvonne?

24 MS. YVONNE NAKIMAYAK: This question
25 is additional followup from our staff regarding the

1 discussion you're giving on caribou. My name is
2 Yvonne Nakimayak, Review Board.

3 In your description, you're not --
4 there's no recommendations for wildlife. How -- and
5 you have said here twice now that if it's good -- if
6 the water's good for fish, it'll be good something
7 like a caribou.

8 And I'm thinking, you know, is that
9 what -- I'm thinking from a caribou safety moving
10 forward, is there anything that Diavik could do to
11 keep caribou safe?

12 MR. JAN ADAMCZEWSKI: Jan Adamczewski,
13 with GNWT. Could you please clarify? Are you talking
14 about anything that they do beyond what's currently in
15 place in terms of mitigations and giving caribou right
16 of way and those kinds of things? Or are you talking
17 about specific to this project?

18 MS. YVONNE NAKIMAYAK: Specific to
19 this project, putting PK in the pits.

20 MR. JAN ADAMCZEWSKI: I -- I would
21 have a hard time seeing -- pardon me; Jan Adamczewski,
22 with GNWT. It's -- I have a hard time seeing what
23 sort of mitigations we'd be looking for, given that
24 this is proposed to be placed deep under the water.

25 I mean, the caribou are not going to

1 be -- you know, they'll be at the surface if -- if
2 they're in contact with the lake at all. So again, I
3 would say if we -- if the water quality is acceptable
4 for aquatic wildlife, we -- and for people, we think
5 that should be sufficient for caribou.

6 THE CHAIRPERSON: Questions, Board
7 members? Okay. Thank you, GNWT. Oh, sorry.
8 Tlicho Government...?

9 DR. GINGER GIBSON: Masi, Madam Chair.
10 Sorry, I just want to clarify. Diavik asked for some
11 statements -- the qualitative statements that have
12 come from other EAs.

13 And I just wanted to confirm that the
14 Tlicho Government is willing to provide that -- that
15 wording and that we would be happy to take that as an
16 undertaking if so assigned so that we can provide a
17 more in-depth analysis on this point. Masi.

18 THE CHAIRPERSON: Legal counsel...?

19 MR. JOHN DONIHEE: Thank you,
20 Madam Chair. It's John Donihee. I'm just not sure
21 what you're offering to provide. If it's the measures
22 that came of the Nico project, the Board has ready
23 access to all that information.

24 If it's something else, I think it
25 would be good to know what it is that you're going to

1 provide us because certainly Diavik will be interested
2 to know what that is.

3 THE CHAIRPERSON: Tlicho
4 Government...?

5 DR. GINGER GIBSON: Masi. Ginger
6 Gibson, Tlicho Government. Certainly there's that
7 example, and we're all familiar with it. I think it
8 would be helpful to look if there's more direction
9 that we can find to provide some interpretation about
10 how this may move forward.

11 I know it's the job of the Board, but
12 there's other -- there certainly are potentially other
13 areas where we could look to see how qualitative
14 statements have been useful in providing at the
15 environmental assessment stage direction for the water
16 licencing stage. Masi.

17 THE CHAIRPERSON: Legal counsel...?

18 MR. GORD MACDONALD: Actually,
19 Madam Chair, if I could -- we did look up the Nico
20 ones. That was the -- that was what I was asking for
21 was what those qualitative statements were.

22 I did get -- I did get a copy of what I
23 was looking for, so I think I can take that response
24 off. Thank you, Ginger, for the...

25 THE CHAIRPERSON: Okay. No further

1 questions, legal counsel?

2 MR. JOHN DONIHEE: John Donihee.

3 Thank you, Madam Chair. I think the issue is
4 resolved, and my thanks for the Tlicho Government for
5 the offer, but it appears Mr. Macdonald has what he
6 needs.

7 THE CHAIRPERSON: Okay. Thank you.
8 Thank you, GNWT, for your presentation.

9 This next presentation will be by the
10 Yellowknives Dene First Nation.

11

12 (BRIEF PAUSE)

13

14 PRESENTATION BY YELLOWKNIVES DENE FIRST NATION:

15 MR. MACHEL THOMAS: Thank you,
16 Madam Chair. Machel Thomas, YKDFN. Before I begin my
17 presentation, I'd like to preface this -- preface it
18 by saying in light of many of the things that were
19 presented and have -- hereby we confirm in these
20 proceedings, there are some things that were addressed
21 in our presentation and intervention, and in our final
22 written arguments, these will definitely be addressed.

23 Machel Thomas, YKDFN. My presentation
24 today is divided in seven (7) parts. I will start by
25 going into who the Yellowknives are, the cultural

1 significance, and use of the Lac de Gras area, water
2 quality.

3 Number 4 will not be presented based on
4 what I said in my preface -- fish and aquatic life and
5 reconnecting to Lac de Gras -- and number 7 and final
6 will be close objectives and monitoring.

7 So who the Yellowknives are: The
8 Yellowknives are an Aboriginal treaty-bearing group in
9 the Northwestern Territories under section 35 of the
10 Constitution out of 1982.

11 There are approximately 1,500 members
12 primarily residing in communities of N'dilo, Dettah,
13 and the city of Yellowknife.

14 The YKDFN are descendants of the
15 T'satsaot'ine, the Indigenous Chipewyan-related people
16 living around the Great Slave Lake and referred to in
17 an exploration and fur trader cards as Copper Indians,
18 Yellowknives, and Red-Knife Indians.

19 The YKDFN are the Indigenous people who
20 have always used and continued to use and occupy
21 the -- am I speaking too fast?

22 THE CHAIRPERSON: I haven't heard
23 anybody complain yet.

24 MR. MACHEL THOMAS: Okay. Sorry about
25 that. Machel Thomas, YKDFN. Who has always used and

1 occupied the lands and waters around Weledeh-Cheh,
2 also known as the YK of the -- as the
3 Yellowknife River and Yellowknife Bay and north to the
4 barren lands.

5 The traditional territory additionally
6 extends from Great Slave Lake to the Coppermine River
7 and, on occasions, to the arctic coast.

8 Historically and traditionally, YKDFN's
9 members spent much time in the barrens. The plants,
10 birds, fish, animals, and general wildlife provided
11 sustenance. In the barrens, people hunted, harvested,
12 and chopped.

13 For the Yellowknives, their identity
14 and relationship to the ancestral lands derive from
15 having been born to the land, having lived with the
16 land since time and memorial, and holding knowledge
17 and evidence that their ancestors remain with the
18 land. Birth and burial places for the people's
19 ancestral lands are of the greatest and most
20 significance.

21 Ekati is the Yellowknives' name for Lac
22 de Gras bows (phonetic). Is very important to the
23 people because of the area of caribou. Without
24 caribou, the people could not and will not survive.
25 Caribou harvest provide -- provided families with

1 clothing, toboggans, teepees, floor mats, meat, and
2 fat, vital for winter.

3 So going back to water quality for my
4 presentation, you notice that I may have had
5 developer's views. I will not go through these.
6 These are just placed here so everyone could see the
7 line that we're discussing on. So I'll just go to our
8 position.

9 YKDFN is of the opinion that water
10 quality is the most significant valued component
11 and -- as it has a major influence or knock-on effect
12 on all the other valued components.

13 It is, therefore, paramount to ensure
14 that water quality's as close to the water quality at
15 the genesis of the mine.

16 The modeling can only be deemed thus
17 far as we've all come to know as only temporary. So
18 we await those refinements. In terms of water
19 quality, there has to be some things said on the
20 Yellowknives' behalf for Giant Mine.

21 It has let -- been a very detrimental
22 legacy which is very close to the hearts of the
23 members. I'll hereby read a statement from one of our
24 elders who was quoted in 1997. I did read this at the
25 Dettah hearing, but I will read it again for the

1 benefit of those who weren't here -- weren't there,
2 sorry:

3 "The development of the Giant Mine
4 before there were environmental
5 regulations resulted in airborne
6 arsenic dissolving in the water and
7 settling in sediment of nearby
8 lakes, bays, and rivers, including
9 the Weledeh or the Yellowknife
10 River. Further, airborne arsenic
11 entered these water bodies through
12 enough of melting snow and ice. To
13 this day, sediments on riverbanks of
14 the Weledeh contain large amounts of
15 arsenic. As a result of the mines
16 in this area, the land has been
17 wasted, destroyed, and contaminated.
18 Mining has occurred for more than
19 fifty (50) years, and a lot of the
20 damage has been incurred. The
21 water's contaminated; the fish are
22 contaminated; all the traditional
23 food and the medicine plants have
24 been contaminated; rabbits and
25 grouse are contaminated. The Dene

1 people have become very cautious of
2 eating traditional foods because of
3 the heavy contaminants in the water,
4 land, and air. The contamination
5 even destroys trees, marshes,
6 habitats, and wild berries, all the
7 things that Dene people want to use
8 but cannot use anymore. The Weledeh
9 cannot use the water or eat any of
10 the traditional foods. The mining
11 companies should compensate the
12 people around the area that has been
13 contaminated for destroying their
14 water, fish, land, and wildlife. The
15 Weledeh don't eat the fish in the
16 bay area anymore."

17 And of the quote. Our recommendation
18 in this regard was again to refine the modeling with
19 input from a more robust import. One of the issues we
20 had was that they never gave much consideration to
21 groundwater and the affect it would have on the
22 meromixis process that they proposed.

23 So -- and we also, based on many things
24 that our fellow Interveners have said, believe that
25 monitoring is -- for us is not just about benchmarks

1 and the thresholds. It's very much about perceptions,
2 and we are of the opinion that the proponent did not
3 do enough to smooth over these concerns or try to make
4 core perceptions -- adverse perceptions diminish about
5 the era.

6 So we would like to -- as we did
7 recommend and they did accept in their response to our
8 recommendation that they would incorporate TK a lot
9 into developing this idea of -- and helping our
10 perceptions to be better. So we do -- we do like
11 that.

12 As I said before, number 4, based on
13 what has been said thus far and in their response to
14 our intervention, we will not present on item 4, which
15 is the exclusion of the pit 821 because they have
16 removed that.

17 Fish and aquatic life: For us, there
18 has been a lot of reliance on that the top 40 metres
19 of the water column will be safe and even though this
20 might be scientifically so, again perception. And
21 this is something that we have to work on
22 collaboratively.

23 Another thing that was stated by the
24 proponent was in terms of -- if there was a breach in
25 the dyke and something happened in the pit that there

1 would be an adverse effect on fish, they would close
2 those breaches and not allow fish to enter the pit but
3 allow water to enter the pit.

4 We are not too sure or not very
5 confident that if water is not good for fish, what
6 effect will that have on the wider Lac de Gras? So
7 that was something we very -- we had a concern with,
8 too.

9 We also think, as our position here,
10 that there should be some type of fish habitat
11 analysis. Something I was thinking during this here,
12 too, even though DFO did speak to it -- speak to it in
13 their presentation in terms of the depth that fish go
14 to, it has been said in this proceeding that there --
15 Lac de Gras is, on average, 12 metres deep.

16 My issue was that the fish in Lac de
17 Gras don't go deep because they have never had the
18 possibility to go deep because it's 12 metres between
19 6 to 20 metres, according to what Diavik said. As I
20 said before, DFO did speak to that in terms of oxygen
21 and how they could live.

22 Something else, too, in terms of that
23 top 40 would be safe. It also implies then that
24 the -- there might be something lower than that.

25 So I was thinking just now, too, in

1 terms of a food chain of -- organisms living lower
2 down how that affect fish in terms of the food chain
3 if they eat something that eats something that eats
4 something that lives lower, how would that impact fish
5 quality?

6 And our 6, we come to the reconnection
7 of Lac de Gras. So we -- we will forever reiterate
8 that water quality is very important as it impacts all
9 the other EMCs (phonetic) immensely.

10 So we are at the point where we think
11 that again, as I mentioned before, if water
12 escalates -- if the quality of the water gets so bad
13 that fish can't live in it, we have the opinion that
14 it should not be reconnected.

15 And even that this project is given
16 approval and it is expected to be reconnected, we like
17 to think that, again as was discussed here, that TK
18 criteria would be developed, one problem we have also
19 is that with the TK panel -- I'm not sure if I'm
20 allowed to ask a question here, Madam Chair?

21 THE CHAIRPERSON: Who is the question
22 to?

23 MR. MACHEL THOMAS: It would be to
24 Diavik.

25 THE CHAIRPERSON: Could you finish

1 your presentation first?

2 MR. MACHEL THOMAS: Okay. Where was
3 I? Okay. Machel Thomas, YKDFN. So our position,
4 again, is that water quality is very important, and in
5 the event that we have not -- that the dykes are
6 breached, we are of the opinion that more than likely
7 if that happens, we are in favour -- with that
8 possibility, we would favour a non-breach.

9 A question that was asked yesterday to
10 our -- is it today or yesterday -- to our Lutsel K'e
11 counterparts in terms of a no deposit option. That
12 was not considered because of how the entire process
13 was kind of directed. That will definitely be given
14 some consideration in our final intervention.

15 So we move forward to item 7, which is
16 our closure objectives and monitoring. If this
17 project is given permission, it will undoubtedly
18 change closure -- well, probably no change, but I
19 just -- some closure objectives.

20 And we think that we -- there should --
21 in the development of those, there should be some type
22 of collaborative design between and amongst Indigenous
23 people and the proponent.

24 So we here would say that the confines
25 of developing this criteria with the TK panel is it --

1 on the surface, it looks quite satisfactory. But if
2 you go deeper -- and it was mention sometime during
3 this past three (3) to four (4) and a half days that
4 the TK panel is such a small group and the members of
5 that panel might not necessarily represent the views
6 of their communities.

7 So we want to take that to the wider --
8 a wider area. Diavik did say they'd do some
9 collaboration, start with the TK panel and the move to
10 EMAB. If that could be looked at, but then the entire
11 process has to be mapped out so we could understand
12 because we're -- we are not in favour of just a TK
13 panel and then EMAB.

14 We think some type of workshop
15 setting -- if not necessarily a community meeting with
16 all communities, but some type of workshop setting --
17 where community members can come together from all the
18 different IGOs and have some type of collaborative
19 effort along with the department in delivering this.

20 Herein is the reading of my Holy Word.
21 Masi.

22 THE CHAIRPERSON: I'll allow you to
23 ask your question now. You had a question back when
24 you were talking about fish.

25 MR. MACHEL THOMAS: Yeah. I can't

1 remember it right now.

2 THE CHAIRPERSON: Maybe it'll come to
3 you. Thank you for your presentation.

4

5 QUESTION PERIOD:

6 THE CHAIRPERSON: Questions,
7 North Slave Metis Alliance?

8 MS JESSICA HURTUBISE: Jessica
9 Hurtubise, North Slave Metis Alliance. No questions.
10 Thank you.

11 THE CHAIRPERSON: Questions, Deninu
12 K'ue First Nation?

13 DR. MARC D'ENTREMONT: Marc
14 D'Entremont, for the DKFN. We have no questions.
15 Thank you.

16 THE CHAIRPERSON: Questions, Fort
17 Resolution Metis Council?

18 MR. ARTHUR BECK: Arthur Beck, Fort
19 Resolution Metis Council. We have no questions.

20 THE CHAIRPERSON: Questions, Northwest
21 Territories Metis Nation?

22 MR. JAKE HERON: Jake Heron. We don't
23 have any questions, Madam Chair. Thank you.

24 THE CHAIRPERSON: Questions,
25 Government of the Northwest Territories?

1 MS. LORRAINE SEALE: Lorraine Seale,
2 GNWT. No questions.

3 THE CHAIRPERSON: Questions,
4 Environmental Monitoring Agency Advisory Board?

5 MR. JOHN MCCULLUM: John McCullum,
6 EMAB. Just one (1) question: You had mentioned you
7 envisioned some kind of a collaborative workshop among
8 all of the IGOs to develop TK criteria for rejoining
9 the pit lake to Lac de Gras.

10 Can you just maybe elaborate a little
11 bit more on what you're thinking there: how many
12 people, how that will be done, what would work best?

13 MR. MACHEL THOMAS: Machel Thomas,
14 YKDFN. Thank you for your question, John. It would
15 be in an essential location with key community members
16 under mandate from their governments in a
17 collaborative effort fleshing it out.

18 I'm not entirely involved in the
19 Giant Mine process, but I know that there was some
20 type -- something like that that was developed or done
21 in regard to them developing criteria and such the
22 like in relation to that.

23 MR. JOHN MCCULLUM: Thank you.
24 John McCullum, EMAB. No further questions.

25 THE CHAIRPERSON: Questions,

1 Lutsel K'e Dene First Nation? It looks like it's all
2 up to you, Stephanie.

3 MS. STEPHANIE POOLE: Stephanie Poole.
4 I'm not here representing Lutsel K'e Dene First
5 Nation, but since there's no one here at the table, I
6 think it's safe to assume they have no questions for
7 YKDFN.

8 THE CHAIRPERSON: Thank you.
9 Questions, Environment and Climate Change Canada?

10 MS. GEORGINA WILLISTON: Georgina
11 Williston, with Environment and Climate Change Canada.
12 We have no questions.

13 THE CHAIRPERSON: Questions, Fisheries
14 and Oceans Canada.

15 MR. DAN COOMBS: Dan Coombs, Fisheries
16 and Oceans Canada. We have no questions.

17 THE CHAIRPERSON: Questions, Tlicho
18 Government?

19 DR. GINGER GIBSON: Ginger Gibson,
20 Tlicho Government. We have no questions. Masi for
21 the presentation.

22 THE CHAIRPERSON: Questions, Diavik?

23 MR. GORD MACDONALD: Gord Macdonald,
24 with Diavik. No questions.

25 THE CHAIRPERSON: Questions, Board

1 staff?

2 MS. KATE MANSFIELD: Kate Mansfield,
3 Board staff. We have no questions.

4 THE CHAIRPERSON: Questions, legal
5 counsel?

6 MR. JOHN DONIHEE: John Donihee, Board
7 counsel. Thank you very much for your presentation.
8 I have no questions.

9 THE CHAIRPERSON: Questions, Board
10 members? Thank you very much for your presentation.
11 Did you remember your question yet? It'll come to
12 you.

13 MR. MACHEL THOMAS: No, Madam Chair.
14 Thank you.

15 THE CHAIRPERSON: Before 6, I'm sure.

16 MR. MACHEL THOMAS: Thank you.

17 THE CHAIRPERSON: At this time then,
18 if we could call a five (5) minute break. We have
19 more presentations after that. I think we have
20 four (4) more after this.

21

22 --- Upon recessing at 3:04 p.m.

23 --- Upon resuming at 3:13 p.m.

24

25 THE CHAIRPERSON: Our next

1 presentation is going to be from the North Slave Metis
2 Alliance.

3

4 (BRIEF PAUSE)

5

6 THE CHAIRPERSON: Okay, if we could
7 have quiet, please, so that the presentation could be
8 done.

9

10 PRESENTATION BY NORTH SLAVE METIS ALLIANCE:

11 MS. JESSICA HURTUBISE: Thank you,
12 Madam Chair. My name is Jessica Hurtubise. I am a
13 regulatory analyst for the North Slave Metis Alliance.

14 NSMA represents the Section 35
15 Aboriginal rights bearing Metis people in the area
16 north of Great Slave Lake. Our members live primarily
17 in Yellowknife. NSMA has actively participated in
18 this current EA process, and was an Intervener in Rio
19 Tinto's Diavik Mines project original EA back in 1998.

20 The community of Metis of the Great
21 Slave Lake North Slave area hunted and trapped over a
22 wide-ranging area in the NWT. North Slave Metis
23 Alliance members continue to exercise their
24 collectively held, unextinguished Aboriginal rights as
25 Metis people to the north, and south, east, and west

1 of Great Slave Lake, including the area of Lac de
2 Gras.

3 I would like to first acknowledge the
4 work that has been completed so far for this EA. A
5 number of recommendations that Shin Shiga, the
6 previous manager of NSMA, and I put forward last month
7 have been addressed, and in that sense, I have very
8 little to add, but I will point it out in this
9 presentation.

10 That said, in general, members are
11 supportive of the proposed kimberlite deposit plan,
12 with some conditions based on members outstanding
13 concerns. Members have expressed their desire to
14 prioritize as much as possible the return of the site
15 to predevelopment conditions, as well as have water
16 quality be the leading criteria in determining the
17 pit's suitability for reconnection in Lac -- to Lac de
18 Gras, when and if.

19 Ultimately, our members look for clear
20 plan of action for this PK deposit proposal, one that
21 includes thorough monitoring plans to ensure stable
22 conditions of the pit lakes. With regards to NSMA's
23 recommendations in the Intervener letter, there were
24 seven (7) concerns that were identified and that were
25 put forward, and that were addressed by DDMI.

1 This presentation includes all of those
2 recommendations, but in the interests of time, I'm not
3 going to go through them in detail, because the Board
4 would have reviewed them, but they're here just for
5 the context of the record. However, as requested by
6 DDMI, I will state NSMA's response to their response
7 to our intervention to say whether or not this
8 resolves our members' concerns.

9 So in general, NSMA's concern revolved
10 around the threshold for water quality and wildlife.
11 Up-to-date data, potential unforeseen climate change
12 impacts on the state of the pits, and monitoring
13 potential impacts on fish and fish habitat.

14 So in regards to using up-to-date water
15 quality significance thresholds, NSMA believes the
16 data is insufficiently up-to-date for the 1999
17 comprehensive report.

18 Although the AEMP benchmarks were
19 approved through past processes, and DDMI insists they
20 are kept for consistency with the CSR, NSMA does not
21 believe this is sufficient reason to use such large
22 significant thresholds. We really hope that the Board
23 considers more conserva -- conservative definitions,
24 ones that are closer to baseline of Lac de Gras as
25 opposed to the CCME guidelines.

1 Given the Bathurst caribous' herd
2 sensitive state, our second concern was incon -- in
3 regards to that. We must carefully consider the
4 impacts the herds can sustain in the future, due to
5 the rapid decline. NSMA is not convinced that
6 sufficient information exists on the impacts of water
7 quality to caribou to derive the magnitude ratings
8 that currently exist in this proposed project.

9 So similar to our first concern, NSMA
10 requests that the Board consider the importance of
11 current data to inform the magnitude and ratings for
12 impacts to Bathurst caribou. We greatly appreciated
13 the input from Fort Resolution Metis Council on
14 looking at the -- the updated herd from -- or herd
15 review from GNWT, so we would like that to be included
16 as well.

17 So we hope that the Board also
18 considers how this environmental assessment can impact
19 future environmental assessments that involve caribou,
20 and that threshold should be maintained simply -- or
21 should not be maintained simply for consistency, but
22 instead to match the dwindling herds in this quickly
23 changing climate and environment.

24 In regards to NSMA's concern over the
25 use of updated zinc benchmarks, NSMA accepts DDMI's

1 statement that water quality guidelines are updated
2 every three (3) years, and are done so through Land
3 and Water Board updates. We also accept this based on
4 the premise that the A21 mine workings proposal was
5 removed.

6 For our fourth -- fourth concern, many
7 NSMA members are increasingly concerned about the
8 unpredictable impacts of climate change, notably on
9 the layered state of the pit lakes, which is, at the
10 foundation, the most important part of this project,
11 and the only way that it makes the environment safe.

12 So DDMI -- or sorry, NSMA is pleased
13 that DDMI will work with our members to review some
14 potential climate change scenarios and see if they can
15 be included in a revised modelling for amended
16 underwater licence. For example, like the possibility
17 of upwelling gasses in the pit lake and how that might
18 disrupt the PK settled in the bottom. So we look
19 forward to that conversation with DDMI.

20 So the fifth concern, NSMA brought up
21 the potential issue of climate change causing
22 exacerbated eutrophication of Lac de Gras through
23 reconnection to the pit lakes. We didn't submit a
24 recommendation for this concern, but we just look
25 forward to future opportunities to review details.

1 Our consultants had brought up key
2 studies showing that some deep dwelling species,
3 notably slimy sculpin, are particularly adaptable to
4 low oxygen environments found at depth, especially if
5 this means a good hiding spot for them. So the -- the
6 idea that fish would only occupy the top 40 metres of
7 the pit lakes, members are not -- not convinced that
8 this would be the only place that fish would occupy,
9 and we would like more information in this regard.

10 So we -- and NSMA does accept DDMI's
11 statement that monitoring plans for fish habitat be
12 established by the WLWB, given the research that was
13 presented in NSMA's intervention letter on deep
14 dwelling fish species.

15 We request that the Board consider
16 encouraging DDMI's idea for acoustic monitoring in the
17 pit lake. Acoustic monitoring is a very interesting
18 and upcoming technology, some of which I have
19 personally had in previous contracts and work, and it
20 would be an innovative way to look at how fish are
21 interacting in the pit lakes. It could also be a
22 really interesting training opportunity for community
23 members to go out and participate in this monitoring,
24 or at least one (1) different way to have further
25 information for adaptive management of the pit lakes.

1 For the seventh recommendation, NSMA
2 was concerned that DDMI was not -- had not taken into
3 account the potential risks of wildlife, particularly
4 migratory waterfowl, using the open water formed over
5 the pits. In keeping with the priorities I stated at
6 the beginning of this presentation, NSMA wants at its
7 core that wildlife and people be kept safe from the
8 impacts of the open pit lakes. So we accept DDMI's
9 response to commit to updating the Wildlife Monitoring
10 Program so that it includes the -- the PKMW project.

11 Finally, there exists significant
12 interest from members for ongoing, extended,
13 community-based monitoring of the closure and post-
14 closure conditions of the pit lakes. Providing
15 opportunities and capacities to the Indigenous
16 community members would build public confidence in
17 DDMI and other industrial development projects in the
18 North.

19 DDMI does continue to work with the TK
20 panel to identify opportunities and approaches to TK-
21 based monitoring, but NSMA requests that the Board
22 consider recommending DDMI commit to funding for post-
23 closure monitoring programs so that the communities
24 involved -- that there are more opportunities, both in
25 terms of people providing the input, as well as the

1 number of times providing input, so it's not just one
2 (1) annual done conversation for traditional
3 knowledge.

4 I did briefly mention yesterday how
5 often times, the middle generation of our members gets
6 lost, because there's a lot of interest on Elders and
7 youth, but we -- a lot of our members who are out on
8 the land currently have both knowledge as well as
9 experience in environmental sciences, as well as
10 industry, that could be very, very beneficial to DDMI
11 on determining proper course of action for pit lake
12 stability, as well as the possibility of reconnection.

13 So Board and counsel, thank you for
14 listening to the concerns and recommendations from the
15 members of the North Slave Metis Alliance. Members
16 are looking to the Board for a project that will value
17 their continued input post-operations. The
18 opportunity to take part in monitoring in the Lac de
19 Gras area, and an environment that is safe for people
20 and wildlife, erring on the side of caution and with
21 up-to-date data.

22 They want a safe area which will last
23 and be safe for them for generations to come, as long
24 as the land lasts. Thank you.

25

1 QUESTION PERIOD:

2 THE CHAIRPERSON: Thank you for your
3 presentation. Questions, Deninu K'ue First Nation?

4 DR. MARC D'ENTREMONT: Marc
5 D'Entremont, for the DKFN. We have no questions.
6 Thank you.

7 THE CHAIRPERSON: Questions, Fort
8 Resolution Metis Council?

9 MR. ARTHUR BECK: Arthur Beck, Fort
10 Resolution Metis. We have no questions. Thank you.

11 THE CHAIRPERSON: Questions, Northwest
12 Territories Metis Nation?

13 MR. JAKE HERON: Jake Heron. We don't
14 have any questions, Madam Chair.

15 THE CHAIRPERSON: Questions,
16 Government of the Northwest Territories?

17 MS. LORRAINE SEALE: Lorraine Seale,
18 GNWT. We have no questions.

19 THE CHAIRPERSON: Questions,
20 Environmental Monitoring Advisory Board?

21 MR. JOHN MCCULLUM: John McCullum,
22 EMAB. No questions.

23 THE CHAIRPERSON: Questions, Lutsel
24 K'e Dene First Nation?

25 MS. LAUREN KING: Lauren King, LKDFN.

1 We have no questions.

2 THE CHAIRPERSON: Questions,
3 Environment and Climate Change Canada?

4 MS. GEORGINA WILLISTON: Georgina
5 Williston, Environment and Climate Change Canada. We
6 have no questions.

7 THE CHAIRPERSON: Questions, Fisheries
8 and Oceans Canada?

9 MR. DANIEL COOMBS: Dan Coombs,
10 Fisheries and Oceans Canada. We have no questions.

11 THE CHAIRPERSON: Questions, Tlicho
12 Government?

13 DR. GINGER GIBSON: Ginger Gibson,
14 Tlicho Government. I just wanted to comment that
15 there was many wonderful suggestions in that
16 presentation for good community-based approaches to
17 shore up on -- and strengthen people's confidence in
18 their land, and their culture, and their way of life.
19 So I really appreciated the presentation. I wanted to
20 thank you, and we have no further questions. Masi
21 cho.

22 THE CHAIRPERSON: Questions,
23 Yellowknives Dene First Nation?

24 MR. MACHEL THOMAS: Machel Thomas,
25 Yellowknives Dene. No questions.

1 THE CHAIRPERSON: Questions, Diavik?

2 MR. GORD MACDONALD: Gord Macdonald,
3 with Diavik. No questions.

4 THE CHAIRPERSON: Questions, Board
5 staff?

6 MS. KATE MANSFIELD: Thank you, Madam
7 Chair. This is Kate Mansfield, with the Review Board.

8 I just have one (1) question. If you
9 could switch to slide 8, please. This is just a
10 clarification question.

11 I believe you said that there was
12 insufficient data provided to justify impact
13 predictions, and I was wondering if you could speak if
14 -- if that's not enough data to justify the in-
15 production -- impact predictions that Diavik made, or
16 that could be used to inform a Board's decision on
17 significance for this issue.

18 And then the follow-up question is what
19 additional information is required?

20 MS. JESSICA HURTUBISE: Thank you.
21 Jessica Hurtubise, North Slave Metis Alliance. I
22 appreciate that question.

23 So to clarify, we don't think that
24 there is enough -- that Diavik provided enough
25 information to thoroughly support their thresholds for

1 -- or magnitude ratings for significant impact on
2 Bathurst caribou. We would like to see the scientific
3 reasoning as to how those magnitude ratings came to be
4 -- came about, and we think that there could be some
5 more recent data that could go into setting those
6 significant thresholds.

7 Would it be possible, Madam Chair, that
8 I pass on the second question to Andrea, our
9 consultant on the line?

10 THE CHAIRPERSON: Yes, that's fine.

11 MS. ANDREA BUCKMAN (by phone): Andrea
12 Buckman, on behalf of the North Slave Metis Alliance.

13 Is it possible to repeat the second
14 part of the question?

15 MS. KATE MANSFIELD: Yes, thank you.
16 Kate Mansfield, for the Review Board.

17 We're just interested in knowing what
18 additional information would be required for you to be
19 satisfied with -- with the impact predictions.

20 MS. ANDREA BUCKMAN (by phone): Andrea
21 Buckman, on behalf of the North Slave Metis Alliance.

22 The impact -- the threshold --
23 significant thresholds don't appear to have any
24 scientific basis. I think a thorough review of the
25 science in terms of what effects alter caribou

1 populations, and potential effects would be warranted,
2 and any studies that may indicate the influence of
3 water quality on the health of caribou would be
4 warranted. There's very little that we've seen in the
5 process that would indicate that these magnitudes --
6 ratings are -- are warranted for caribou based on the
7 major impact being water quality to caribou.

8 DR. NEIL HUTCHINSON: Thank you. Neil
9 Hutchinson, for the Board. You've recommended that
10 the mine site be returned to predevelopment
11 conditions, and that water quality would be one (1) of
12 your primary criteria for determining reconnection.

13 So is -- is your expectation that the
14 water quality in the pits would also be returned to
15 predevelopment conditions?

16 MS. JESSICA HURTUBISE: Jessica
17 Hurtubise, North Slave Metis Alliance.

18 Based on what I've heard from members,
19 the -- so the -- the water quality component is -- is
20 a prior -- is the priority before reconnecting to Lac
21 de Gras. So if water quality is not -- is not set in
22 the pit lakes to a standard that both industry, as
23 well as the Board, and communities are comfortable
24 with, then it should not be reconnected.

25 DR. NEIL HUTCHINSON: Neil Hutchinson.

1 Thank you, the -- for the Board. That was -- that was
2 very helpful, because you've also given approval to
3 the proposal to dispose of processed kimberlite in the
4 pit, and Diavik had predicted that when this occurs,
5 they might not reach predevelopment and conditions of
6 water quality.

7 So would you still approve of the in-
8 pit disposal if the water quality was safe for aquatic
9 life and wildlife, even if it didn't return to
10 predevelopment conditions?

11 MS. JESSICA HURTUBISE: Jessica
12 Hurtubise, North Slave Metis Alliance. So let me just
13 restate your question, just to make sure I understand.
14 So would -- is your question whether or not North
15 Slave Metis Alliance would be comfortable with the pit
16 lakes not being at a state of water quality that was
17 prior to development stages or levels?

18 DR. NEIL HUTCHINSON: Neil Hutchinson,
19 for the Board. Yes, that was my question, and -- and
20 if it was -- but if it was still safe for aquatic
21 life.

22 MS. JESSICA HURTUBISE: Jessica
23 Hurtubise, North Slave Metis Alliance. I don't think
24 I have enough details from my members right now to
25 answer that question, but I would very much like to

1 return to it in writing at whatever date you think
2 would be reasonable for the Board to consider, just so
3 I'm not taking any assumptions on my knowledge, and
4 it's representative of their beliefs.

5 THE CHAIRPERSON: Legal counsel?

6 MR. JOHN DONIHEE: Thank you, Madam
7 Chair. It's John Donihee. Then why don't we record
8 this as an undertaking from NSMA to answer Dr.
9 Hutchinson's question. I think the timing for
10 filing undertakings is two (2) weeks. Is that
11 sufficient time?

12 MS. JESSICA HURTUBISE: Jessica
13 Hurtubise, North Slave Metis Alliance. Yes, that
14 would be more than sufficient time. Thank you.

15

16 --- UNDERTAKING NO. 5: To NSMA: Would NSMA still
17 approve of in-pit
18 disposal if water quality
19 was safe for aquatic life
20 and wildlife,
21 even if it does not
22 return to pre-development
23 conditions.

24

25 DR. NEIL HUTCHINSON: Thank you. Neil

1 Hutchinson, for the Board. I have no further
2 questions.

3 THE CHAIRPERSON: Questions, legal
4 counsel?

5 MR. JOHN DONIHEE: No, no questions
6 from counsel, Madam Chair.

7 THE CHAIRPERSON: Questions from Board
8 members?

9

10 (BRIEF PAUSE)

11

12 THE CHAIRPERSON: Thank you for your
13 presentation. Masi cho.

14

15 (BRIEF PAUSE)

16

17 THE CHAIRPERSON: The next
18 presentation is from Deninu K'ue First Nation.

19

20 (BRIEF PAUSE)

21

22 PRESENTATION BY DENINU K'UE FIRST NATION:

23 MR. PATRICK SIMON: Patrick Simon,
24 Deninu K'ue First Nation. I'd like to start by
25 thanking you, Madam Chair, for this opportunity, for

1 my people's opportunity to have a presentation here
2 today, and I'd like to thank the Board also.

3 And first start off by I guess giving
4 you a sense of the types of people we send to
5 different parts of our territory, given that our Chief
6 and Council has a tradition, culture of ensuring that
7 the right traditional users and the right Elders are -
8 - are brought before these places to speak on the --
9 the territory, because our territory is so vast. It
10 stretches from the south to the north and northeast of
11 this lake, and it has been for thousands and thousands
12 of years.

13 So for myself, I'm not here, and I am
14 Deninu K'ue First Nation Councillor, but I'm -- that's
15 not the reason why I've been asked by my Chief and
16 Council to attend this. It's because I am from the
17 people that use this area. I am from Rocher
18 (phonetic) River. My family is from there. I am a
19 descendent of Chief Snow (phonetic) who signed
20 treaties in 1900 in the shores of our community, and
21 in that capacity that I'm here to -- to speak with you
22 and to sit with Marc when he handles the technical
23 aspect of it so that people know that he has the
24 authority to speak on our behalf, and the authority to
25 speak on behalf of the people of that area, which I

1 am.

2 Our membership is a quite large, 915 of
3 us, and we range and live everywhere, not only in
4 Canada, but we are constantly surprised by where they
5 have ventured or where they have been taken by the
6 past legacies.

7 We also live within all these
8 communities amongst the Indigenous people that have
9 presented before me, and they live in our community
10 too, so our relationships are -- are -- are strong and
11 -- and we like that and we have no problem with living
12 amongst and working together with all the Indigenous
13 people here today, and we always continue to look
14 forward to doing that. So there's a need within this
15 process for us to do that and we -- we are happy to do
16 so.

17 We are part of the Akaitcho Territory.
18 I know this is unsettled territory, but we are in a
19 claim process together with the peoples of the
20 Yellowknives First Nation and the peoples of the
21 Lutsel K'e First Nation, and we hope that we would
22 settle soon so that we can have our own board and feel
23 that we can make decisions of this nature on our land,
24 and we are looking forward to doing that.

25 Of course for my people, treaty is

1 everything. The majority of the signatories of this
2 treaty reside and come from Deninu K'ue. And in
3 saying that, my Chief comes from a signatory that is
4 different from my signatory, and we have no problem
5 representing our First Nations and whatever capacity
6 we may find ourselves in. In this capacity in this
7 area, it is left up to us to do that.

8 We have a territory per se that -- that
9 you could really define the whole of an Akaitcho
10 Territory as defined and recognized by why our treaty
11 is and will always be a place that we will use. We
12 will - we will exert our -- our rights and we will
13 gladly live with all our neighbours in our shared use
14 with them. And we -- and we know them, we recognize
15 them. We are known people -- we are known people and
16 as you know we are -- we were the first capital of the
17 Northwest Territories at one time, and I know that
18 because I'm also the Deputy Mayor in my community.
19 But that's not the reason why I'm here.

20 I'm here because we -- we support -- we
21 support responsible development in our traditional
22 land use area, but we -- we -- we support in a way
23 that is respectful to us and that makes us feel in
24 some way a certain dignity that we deserve. We are
25 trying very hard to focus on this particular issue,

1 given that I was here twenty (20) years ago also doing
2 this exact thing.

3 And, you know, we -- we didn't get what
4 we want but nevertheless we're -- we're still here,
5 we're resilient, we're -- we're going to be here long
6 after Diavik, and we realize that our neighbours and
7 our relations and our friends are also going to be
8 here and we have to live with each other. So we have
9 determined to put that behind us because it could --
10 it could cloud how we deal with this matter if we
11 don't do that, and we're okay with that.

12 So we don't expect the same things to
13 happen back then that -- within this process, and
14 we're very confident that -- that it won't, because --
15 because of the make-up of the Board and our -- our
16 knowledge that things have changed.

17 We are -- we are no longer left out in
18 this area and we don't expect to ever be left out in
19 this area, that out signatory, our rights, and our
20 authorities in this area is -- is becoming to be
21 recognized in a manner that we feel good. So when we
22 leave here, we should feel good.

23 And it was touch and go, you know. I
24 didn't really -- but I'm starting to feel good and I
25 will leave here feeling good, but going home is not a

1 happy thing, you know, but it's what we do in Res
2 (phonetic) in times of what is happening in Res. We
3 go home and we help each other and we take care of our
4 business.

5 We do have concerns with -- with how
6 this will -- will affect the land and the water and
7 the wildlife in that area. We're not -- we haven't
8 totally told anyone how we felt, whether it's we
9 support it or whether it's a good idea or whether --
10 even if it's a good idea, whether putting a pit is a
11 good idea, because we -- we don't have all the
12 information to even tell you that culturally I -- I
13 feel safe drinking that water, because I don't have
14 that information and -- and it hasn't been supplied.
15 And when we do have that information we will -- as you
16 know, we'll -- we'll make it known and -- and
17 hopefully you would have that information, all the
18 information.

19 That is why we are here to ensure that
20 you will have every bit of information to make this
21 decision before you make this decision, because we
22 know that your decision will impact us greatly, and
23 the legacy of that decision, we have to live with it
24 along with our neighbours.

25 So now we reach the part where I'm

1 going to hand it off to my -- to Marc, our consultant,
2 to handle the technical aspects, and if he leaves me a
3 little time I will come back on the mic just for the -
4 - the closing and the thank you, and -- and then go
5 home.

6 DR. MARC D'ENTREMONT: Thank you,
7 Patrick. So my name is Dr. Marc D'Entremont. I'm the
8 Technical Consultant for DKFN. I also want to mention
9 that on the phone line we have Mr. Jesse Sinclair, who
10 was involved with the preparation of the Intervention
11 for this project as well.

12 So there's the three (3) main VECs on
13 the screen that we have some concerns about, and I
14 just want to note that our concerns are the same or
15 similar to these very concerns that have been raised
16 by other Interveners so far, and that of itself is an
17 interesting development of this Environmental
18 Assessment review process, so something that hopefully
19 the Board will -- will take into consideration.

20 So in our -- as I go through each of
21 these components, essentially it's the information
22 that's presented in our Intervention, I won't spend a
23 lot of time on -- on the -- the impact, predictions,
24 and conclusions that Diavik had presented, but I will
25 just touch upon our recommendations that were in the

1 Intervention and how they were addressed in DDMI's
2 responses.

3 So specifically with regards to the
4 water quality, one (1) of the -- the issues in terms
5 of the -- we've heard a lot about the state of the --
6 the water quality model and such. I'm not going to
7 get into that detail, although one (1) of the
8 predictions that came out of that and was raised in
9 some of the questions earlier was the -- the
10 deposition of extra fine processed kimberlite and how
11 that was withdrawn from the project but kept as a
12 potential option for the dredging.

13 However, in its assessment, DDMI
14 concluded that the issues and concerns related to the
15 deposition of any extra fine processed kimberlite
16 would be the same as the deposition of a fine
17 processed kimberlite. And we disagreed with that
18 conclusion.

19 The water -- the water quality model
20 predicted kind of changes in two (2) generic circuit
21 parameters, the conservation of water quality
22 constituent to repair major ions, nutrients, and
23 metals, and a settle -- settle-able constituent to
24 predict the behaviour of particular materials.
25 However, the comparative size, shape, and relative

1 density of the model constituents to either fine
2 processed kimberlite or extra fine processed
3 kimberlite was not included.

4 We concluded the sedimentation rate and
5 the resuspension potential of particles in the water
6 quality is driven primarily by particle size, shape,
7 and density. In addition, the mineralogy of sediments
8 that drive electrochemical interactions can also
9 influence settle-ability.

10 Therefore, the assumption that extra
11 fine processed kimberlite and fine processed
12 kimberlite would behave similarly with respect to
13 these components has not been validated, and the
14 accuracy of the water quality in predicting these
15 components as well remains in question.

16 So we had, as has other Interveners,
17 recommended that third party review of the -- of the
18 model and in its response Diavik has said, yes, they
19 agree with that recommendation, although that it would
20 kind of get deferred to the next regulatory stage. So
21 we do have a green checkmark up there for the response
22 in terms of agreeing with that part of the
23 recommendation but not fully, so hence the -- the big
24 "X."

25 Second in the Summary Impact Statement,

1 Diavik described the potential effects pathways and
2 measurable parameters as a result of the projects,
3 however, it did not include sufficient detail to
4 provide at least conceptual understanding of how the
5 project may result in changes to water quality, in
6 other words, a conceptual site model. This lack of
7 information does not instill a sense of confidence in
8 the residual effects characterization.

9 Therefore, we recommended that Diavik
10 develop a conceptual site model that includes primary
11 release mechanisms of contaminants, so secondary and
12 tertiary release, transport, and uptake mechanisms,
13 and exposure pathways that can be used to communicate
14 the components of the residual effects assessment and
15 demonstrate a comprehensive understanding of the
16 system.

17 In its response to our Intervention and
18 these recommendations, this particular one was not
19 addressed.

20 Third, the significant thresholds were
21 applied within the top forty (40) metres of the
22 surface water in the pit lakes, and as was -- has been
23 discussed here, it's assumed that there is limited use
24 by aquatic receptors or fish below this depth.

25 This threshold of forty (40) metres has

1 not been validated for some large bodied fish, and as
2 we have heard, some fish have been known to occupy
3 depths greater than that.

4 We -- therefore, in our Intervention we
5 recommended that Diavik conduct a literature search
6 and supporting study to identify an evidence-based
7 depth threshold to define this -- this zone in the
8 proposed pit lakes.

9 And in its response to our
10 Interventions, Diavik did not address this
11 recommendation.

12 And finally, the significance threshold
13 for total dissolved solids, or TDS, was provided
14 despite this parameter being subject to project-
15 related changes.

16 Diavik used a human health threshold of
17 five hundred (500) milligrams per litre, however,
18 toxicity testing at other mines in the Northwest
19 Territories, Snap Lake, for example, found the
20 thresholds for the protection of aquatic life that
21 range between 312 and 778 milligrams per litre, and
22 ultimately a site-specific water quality objective of
23 684 milligrams per litre for TDS was used at that
24 particular project, that one being Snap Lake.

25 So therefore we recommended in our

1 Intervention that the AEM -- AEMP threshold of 500
2 milligrams per litre be validated through a suite of
3 toxicity tests prior to characterizing the residual
4 effects.

5 And in its response to this
6 recommendation -- actually Diavik did not address this
7 in its response to our Intervention.

8 So following on the questions raised
9 under the water quality component, we have concerns
10 for fish and fish habitat, from uncertainties
11 regarding stratification of the pit lakes and the
12 associated water quality.

13 Diavik stated that fish would be
14 excluded from pit lakes until all water quality
15 benchmarks are met. And again this comes back into
16 the reference of that forty (40) metre depth.

17 We also had concerns about Pit A21, and
18 as has been stated previously, the -- A21 is being
19 removed from -- form the project, so that particular
20 recommendation has been addressed. However, our
21 previous concern regarding the -- the 40-metre depth
22 zone in the pit lake for aquatic life applies to fish
23 and fish habitat.

24 And, as was mentioned earlier, the
25 particular recommendation to conduct a lit rede -- lit

1 review in that regard has not been addressed.

2 We also had a concern about fish and
3 fish habitat in reference to siltation and
4 disturbance, the specific regards to the breaching of
5 the dikes and the potential effect on the
6 stratification due to this.

7 So, we -- in our intervention we
8 clearly -- or we recommended that Diavik clearly
9 outline the methods and mitigations to be used during
10 breaching of dikes as this is an important component
11 to the impact assessment for fish -- fish and fish
12 habitat and that a proactive contingency plan should
13 also be developed, which includes detailed monitoring,
14 to ensure that breaching is ceased prior to water
15 quality parameter succeeding thresholds.

16 In its response to our intervention,
17 Diavik briefly described how breaching of the dikes
18 would occur, and had also stated that water quality in
19 Lac de Gras would be monitored daily but that the
20 special terms and conditions -- conditions associated
21 with -- with this monitoring would be established by
22 the Wek'eezhii Land & Water Board.

23 So, we considered that a bit of a
24 partial response to our -- our recommendation.

25 And then, finally, with regards to

1 wildlife and wildlife habitat, we've -- we've heard
2 that the -- the potential impacts to wildlife would --
3 or -- or could result if there is a change to the
4 water quality of the area.

5 And that's, since there hasn't been the
6 predicted impact of water quality, there would not be
7 an impact to -- to wildlife. However, we just want to
8 point out that in the scope of decision, you, as the
9 Review Board, stated that:

10 "Given the diminished and precarious
11 state of the Bathurst caribou herd,
12 any potential impact of the pot --
13 proposed activities on the herd
14 should be carefully considered and
15 mitigated."

16 As we've heard, in making its
17 assessment, Diavik used criteria to characterized the
18 project residual effects on wildlife that was
19 consistent with the criteria used in the 1998
20 comprehensive study for the Diavik Diamond project.

21 And, likewise, the determination of a
22 significant effect was consistent with the definition
23 provided in 1998. This definition stated that a
24 significant effect is one that has the high
25 probability of a permanent or long-term effect and is

1 also considered to be of high magnitude.

2 A long-term effect is one (1) that
3 extends beyond a decommissioning of a project which,
4 given the current state of the Bathurst caribou herd,
5 is a real possibility.

6 An effect of high magnitude was
7 characterized by more than a 10 percent change in
8 baseline conditions. We've already heard this
9 afternoon the -- the current state of the Bathurst
10 caribou herd and would argue that a change of a less
11 than 10 percent from the baseline condition may also
12 pose a significant effect to the herd.

13 So, the assessment criteria from twenty
14 (20) years ago does not really show the careful
15 consideration of potential impacts and effects on
16 wildlife.

17 I'd also like to point out that during
18 the Diavik Diamond project review in 1998, DDMI
19 concluded that the project effects in caribou were
20 considered non-measurable at the population level.

21 However, DDMI did acknowledge that
22 potential effects at the time represented incremental
23 stresses on the Bathurst caribou, and these could act
24 in an additive fashion with the stresses from other
25 land use activities.

1 Since the original environmental
2 assessment for the Diavik Diamond project, additional
3 guidance has become available for assessing
4 environmental effects to species at risk where the
5 assessment and residual effects could -- could
6 consider whether such effects may intensify or
7 aggravate the threats to wildlife species.

8 In its assessment for this project, no
9 quantifiable metrics or -- or thresholds were
10 presented for caribou by Diavik, but some of these are
11 -- are present and exist, for example, in the draft
12 Bathurst caribou range plan.

13 Here, the linkages between habitat
14 disturbance, land use activity, and caribou population
15 were evaluated. And the GNWT determined that
16 reduction in herd productivity due to encounters with
17 human disturbances resulted in population effects that
18 were additive to the direct mortality effects of
19 predation and hunting which corroborates the long-
20 standing concerns and knowledge that Indigenous groups
21 have regar -- have regarded regarding industrial
22 development and declines in herd size.

23 So, in consideration of this
24 information, we feel that Diavik did not demonstrate a
25 cautionary level of consideration, particularly in --

1 when you think about how this relates to the perceived
2 risks of effects of the assessment and how this did
3 not show an understanding of the social and cultural
4 and ecological risk.

5 So, we had recommended in our
6 intervention that this be carefully considered and --
7 and further considered carefully.

8 So, in its response to that -- that
9 recommendation Diavik di -- did acknowledge that it
10 did review and consider information that was part of
11 the draft Bathurst caribou range plan and the
12 cumulative land disturbance framework within.

13 But it also reemphasized that, since
14 the project occurs within the existing footprint of
15 the mine, there would not be additional direct
16 disturbances within Bathurst caribou range. However,
17 it is this type of approach that is focussed on
18 ensuring impacts of a project are only causing
19 acceptable levels of change where often results in
20 larger cumulative effects being overlooked and
21 unaddressed.

22 So, it remains a concern of the DKFN
23 that the potential impacts of proposed activities on
24 the Bathurst caribou herd were not carefully
25 considered.

1 So, in -- in closing, I'll -- I think I
2 have a couple minutes to hand it over to -- to
3 Patrick, but we'll just say we did have overall
4 concerns about the -- how effective the consultation
5 and engagement had been.

6 However, DKFN remains committed to
7 working with the Review Board and Diavik on the
8 successful resolution of concerns and looks forward to
9 discussing these further.

10 And -- and the DKFN believes that this
11 can be accomplished with fulsome and effective
12 consultation and collaboration with Indigenous groups.
13 Thank you.

14 THE CHAIRPERSON: Okay. Thank you for
15 your presentation. Patrick, you have a few moments to
16 speak.

17 MR. PATRICK SIMON: Thank you.
18 Patrick Simon, Deninu Kue First Nation. Thank you,
19 Marc. And thank you, Madam Chair, for this time.

20 Before I say my thank you, I'd like to
21 make one (1) thing clear, and is that it's not a
22 selfish thing that we do here. We're not here because
23 of our rights, our authorities, our abilities to
24 harvest the fish and animals in our (INDISCERNIBLE)
25 areas, hours, hours.

1 It's not our duty, also -- the land was
2 given to us by our creator. We believe that, as
3 Deninu Kue First Nation peoples. And we are held
4 accountable to him for that. We really believe that.

5 So, we take this serious, to that
6 degree, that our duties are to that lake. Our duties
7 are to that land and that area. And our duties are to
8 the fish, to the wildlife, to the birds and to every
9 living and nonliving thing in that area.

10 And that is why we're also here. And
11 we want to make that known because we don't hear too
12 much of that, and I didn't hear that around here. You
13 know, I heard a lot about other stuff, but I didn't
14 hear too much about duty, and -- and we want people to
15 know that.

16 We also -- and most importantly, we
17 want you to know that we are here because we have a
18 duty to our ancestors. They protected it. They used
19 it with -- in a balanced approach so that we could
20 have use of it now, so we must also, for our children,
21 for our grandchildren, and many, many more -- and
22 many, many more children to come that come from us
23 because we plan to live here forever.

24 We plan to exercise our rights, our
25 traditions, and our culture in that are wherever

1 because, a lot of times, people have this idea that,
2 you know, we're -- we're dying off, you know, hunting
3 and trapping and the use and the Indianness in us is -
4 - is going to go away, and we can't believe that. We
5 refuse to believe that.

6 We're going to do it forever. That's
7 our believe. That's our resolve. And we have to say
8 that, so -- so I said that. And I -- I want to thank
9 you, Madam Chair. I want to thank your Board for this
10 opportunity. I believe I -- I'm treated very well
11 here.

12 And I hope that I acted accordingly,
13 that I have been dignified and representative of my
14 people. I'd also like to than the Company. I know
15 it's not an easy thing that you do, but you -- you do
16 it, and you do it well, so thank you very much.

17 I'd like to thank the Board staff.
18 They're always very helpful. You know, they go out of
19 our (sic) way. Whether we have a signatory or non-
20 signatory, you guys help us, and we really, really
21 thank because we have to. That's our way. That's our
22 culture.

23 We also thank all the Interveners, and
24 -- and I'm not going to name them all. I might get
25 one (1) wrong and insult everybody, I'd like to thank

1 them. It's -- it's not easy, what we do here, and but
2 we do it because we believe in this land and we
3 believe that -- in our rights and our duties.

4 And we're -- and we believe in our
5 relationships together, that we can share lands, that
6 we can recognize each other in a dignified manner and
7 we can do these things.

8 We can have an economy that has mining,
9 but we ask just that we do it in a respectful,
10 dignified manner, in a balanced approaching, thinking
11 way into the future.

12 So, we -- we thank the members of the
13 public. And we thank the city of Yellowknife. You
14 know, they -- we live in there and we're -- we're
15 always treated, when we come here to these meetings,
16 good by -- by the residents of Yellowknife.

17 And we encourage the Board to ensure
18 that they get all the information, every bit of
19 information they can get, before they make a decision
20 because of the importance of it to us, and because of
21 the legacy that may be left behind here, and for the
22 simple fact that we're going to have to live with it.

23 Thank you, again, Madam Chair. Masi
24 cho.

25 THE CHAIRPERSON: Masi. Thank you for

1 your presentation. And thank you, Patrick, for your
2 kind words. It sounds like you're trying to close out
3 and leave, but we still have two (2) more
4 presentations yet to go through, and lots of questions
5 yet.

6 So, with that, I would like to ask Fort
7 Resolution Metis Council, do you have any questions?

8

9 QUESTION PERIOD:

10 MR. ARTHUR BECK: Arthur Beck, Fort
11 Res Metis Council. No, we have no questions for Patty
12 (phonetic). I'll question him at home. Thank you.

13 THE CHAIRPERSON: Northwest
14 Territories Metis Nation...?

15 MR. JAKE HERON: Jake Heron. We don't
16 have any questions. Thank you.

17 THE CHAIRPERSON: Government of the
18 Northwest Territories...?

19 MS. LORRAINE SEALE: Lorraine Seale.
20 We don't have any questions.

21 THE CHAIRPERSON: Environmental
22 Monitoring Advisory Board...?

23 MR. JOHN MCCULLUM: John McCullum,
24 EMAB. No questions.

25 THE CHAIRPERSON: Lutsel K'e Dene

1 First Nation...?

2 MS. LAUREN KING: Lauren King, LKDFN.

3 We have no questions.

4 THE CHAIRPERSON: Environment and
5 Climate Change Canada...?

6 MS. GEORGINA WILLISTON: Georgina
7 Williston, with Environment and Climate Change Canada.
8 We have no questions.

9 THE CHAIRPERSON: Fisheries and Oceans
10 Canada...?

11 MR. DANIEL COOMBS: Dan Coombs,
12 Fisheries and Oceans Canada. We have no questions.

13 THE CHAIRPERSON: Tlicho
14 Government...?

15 MS. VIOLET CAMSELL-BLONDIN: Violet
16 Camsell-Blondin, Tlicho Government. We have no
17 questions.

18 THE CHAIRPERSON: Yellowknives Dene
19 First Nation...?

20 MR. MACHEL THOMAS: Machel Thomas,
21 YKDFN. No questions.

22 THE CHAIRPERSON: North Slave Metis
23 Alliance.

24 MS. JESSICA HURTUBISE: Jessica
25 Hurtubise, NSMA. No questions at this time.

1 THE CHAIRPERSON: Diavik...?

2 MR. GORD MACDONALD: Gord MacDonald.

3 No questions.

4 THE CHAIRPERSON: Board staff?

5 MS. CATHERINE FAIRBAIRN: Thank you,

6 Madam -- thank you, Madam Chair. Catherine Fairbairn.

7 Board staff and counsel have no questions.

8 THE CHAIRPERSON: Board members...?

9 David...?

10

11 (BRIEF PAUSE)

12

13 MR. DAVID KRUTKO: David Krutko,

14 Review Board. I think you were one (1) of the first

15 presenters that I made -- you made references to the

16 species at risk legislation when it comes to caribou,

17 so could you elaborate in regards to the concerns

18 under the species at risk legislation when it comes to

19 Bathurst caribou?

20 DR. MARC D'ENTREMONT: Marc

21 D'Entremont, for DKFN. So, I didn't make ref --

22 specific reference to the Species at Risk Act. I made

23 reference to the fact that caribou is considered a

24 species risk and that -- their updated methods for

25 conducting an environmental assessment on species at

1 risk compared to what had been done in the original
2 1998 comprehensive -- comprehensive study.

3 THE CHAIRPERSON: Questions, Board
4 members? Thank you very much for your presentation.
5 Moving on to the next presentation, we have Fort
6 Resolution Metis Council.

7

8 PRESENTATION BY FORT RESOLUTION METIS COUNCIL:

9 MR. ARTHUR BECK: Arthur Beck, Fort
10 Resolution Metis Council. I guess I'll start off --
11 introduce myself for the people that don't know who I
12 am. I'm going to start in English. Then Kate's
13 going to take over for a while.

14 And I'm going to do my final
15 presentation in my language, which is -- it makes it a
16 lot easier for me because I think in a native language
17 and I have to translate it to English.

18 So, to speed things up, I will do it in
19 the native language since you have a translator up
20 there. I'd just like to start off with that map in
21 front there.

22 If you take a look at that map, that
23 map was -- was charted by Robert Hood (phonetic) in 18
24 -- April 16th, 1821. That map was the guide that
25 Francois Beaulieu, first Francois Beaulieu, charted

1 that map for that Franklin Expedition.

2 Francois Beaulieu, the first Francois
3 Beaulieu, was married to Akaitcho's sister, Etheba
4 (phonetic). That's where the Beaulieu descendants
5 from. That's where the Metis started.

6 And if you look at that map, you'll
7 that Akaitcho -- you see that foot? Well, in our
8 language, 'Akaitcho' means big foot. You see the foot
9 right on that map. That was the -- that was before
10 Alexander Mackenzie came down in the 1800s to start
11 charting the maps for Canada. This map was charted by
12 Francois Beaulieu.

13 Anyways. And that's -- we descendants
14 from Akaitcho. So, we have 100 percent overlap with
15 Akaitcho. Myself -- my father was a white man. My
16 mother was Chief Snuff's great grandau -- daughter,
17 five (5) generations.

18 So, Chief Snuff had signed a treaty,
19 for Treaty 8. Slow down? Okay.

20 Okay. Okay. And so, Chief Snuff had
21 signed a treaty in Fort Resolution on July 25th, 1900.
22 It was my great grandfather, six (6) generations. I
23 have all my genealogy if anybody wants to see it.

24 And, also, the first people up here was
25 (INDIGENOUS LANGUAGE SPOKEN). It's called the

1 language I speak is (INDIGENOUS LANGUAGE SPOKEN).
2 It's the first language here. So, the people had to
3 learn our language to live with our people. So, I
4 understand a bit of Dogrib. I understand Chipewyan
5 very well. And I understand some Slavey. And I also
6 understand English.

7 But, like I said, I think in the native
8 -- a native tongue, so I'm going to do the last part
9 in my language. But I'll hand it over to Kate right
10 now. Thank you.

11 MS. KATY DIMMER: Thank you. Katy
12 Dimmer, Fort Resolution Metis Council. I'm just going
13 to go back on their slides. So, we're going to talk
14 about two (2) priority issues today. One (1) is
15 caribou and the other is culture.

16 Our two (2) major FRMC concerns with
17 caribou is the current vulnerable state of the
18 Bathurst caribou herd as well as the health of caribou
19 populations and forging grounds in relation to this
20 project.

21 As we will talk more of the great
22 importance of caribou to Fort Resolution Metis Council
23 livelihood and culture and cultural continued --
24 continuing into the future, he will include that at
25 the end.

1 As recognized today by the GNWT, the
2 Bathurst herd is at a very vulnerable state. And this
3 a bio -- this a biophysical condition, but this has
4 already represented a large impact to the members of
5 Fort Resolution Metis Council and the ability of them
6 to access this vital traditional resources, and this
7 quote is representative of this.

8 We ask that -- pardon me. Let me get
9 my notes. Resisting cumulative effects to the
10 Bathurst herd are already significant and any
11 additional impact must be continue -- considered
12 within this context.

13 It is our opinion and it's represented
14 in the Intervention Report that the herd's existing
15 vulnerable state has not been adequately considered by
16 Diavik and that, because of this, any additional
17 impact must be evaluated as having the potential for
18 further loss to caribou.

19 Even the smallest project induced
20 change, even if it is not considered significant,
21 could have a high magnitude effect on the herd. And
22 this is deeply concerning for FRMC members.

23

24

(BRIEF PAUSE)

25

1 MS. KATY DIMMER: Part of the issue as
2 well with Diavik's consideration and assessment of
3 caribou in the summary impact statement is the
4 adequacy of the baseline they examined, and -- and
5 part of this is the -- the time line where they went
6 back to.

7 As we heard from GNWT today, there's
8 been a huge difference between the state of caribou
9 before the mine versus where we are today. And
10 another large gap is the lack of inclusion of Fort
11 Resolution Metis Council Indigenous traditional
12 knowledge.

13 FRMC knowledge holders have important
14 information related to changes in caribou land use and
15 movement patterns made over many years.

16 Without opportunities given to Fort
17 Resolution Metis Council to collect and analyze the
18 member's extensive Indigenous traditional knowledge,
19 critical baseline case, information has not been for
20 this assessment, but there's still opportunity going
21 forward to inform project design mitigations and
22 monitoring.

23 THE CHAIRPERSON: Excuse me. There's
24 a pink paper back there. And that means that you're
25 speaking much too fast --

1 MS. KATY DIMMER: Okay.

2 THE CHAIRPERSON: -- for the
3 interpreters.

4 MS. KATY DIMMER: Apologies. Just to
5 backtrack, I was saying that a collection of Fort
6 Resolution Metis Council members Indigenous
7 traditional knowledge is important going forward for
8 project design as well as mitigations and monitoring.

9 For the purpose of time, I won't read
10 out all of our recommendations for caribou. They are
11 in our intervention report. I'm happy to read them
12 out if anybody requests. I am referring to, of
13 course, our Fort Resolution Metis Council
14 recommendations 1 through 5.

15 And I -- I do have to say that, at this
16 point in time, we -- Fort Resolution Metis Council is
17 not changing those recommendations.

18 Another concern of caribou is
19 population health. As we wish to state and restate,
20 the Bathurst herd is already vulnerable and in
21 decline. Fort Resolution Metis Council members have
22 observed changes to the herd, migration patterns,
23 population, and health over time.

24 FRMC members are concerned that any
25 additional contamination to Lac de Gras will add to

1 the project zone of influence and decrease the number
2 of healthy caribou in preferred harvesting locations
3 for Fort Resolution Metis Council members.

4 For this project, particular impact
5 pathways of concern are tied to the potential
6 contamination of water and caribou forging grounds, in
7 particular, changes to the taste and smell of lichens
8 or the smell of water.

9 FRMC members believe that this could
10 lead to caribou avoidance of Fort Resolution Metis
11 Council preferred hunting areas.

12

13 (BRIEF PAUSE)

14

15 MS. KATY DIMMER: For our
16 recommendations related to health, I refer to our
17 recommendation 6 and 7 that remain unchanged. I would
18 like to add though recommendation 7 is what is
19 concerning the request for the sampling program of
20 caribou organ meat.

21 And we had clarification today from the
22 Government of the Northwest Territories that this is
23 not an unconventional request.

24 I'd now like -- like to speak briefly
25 of culture. Our concerns with the assessment are the

1 understanding of impacts to Fort Resolution Metis
2 Council cu -- culture and the project-specific and
3 cumulative impacts on culture.

4 So, Arthur will speak more to this in
5 his closing of the importance of Lac de Gras. And he
6 will also -- I will do my best to talk about the
7 importance of Fort Resolution Metis Council members
8 traditional knowledge, but he will also speak to this
9 more so, as well, as an actual knowledge holder.

10 I would like to, at this time, bring up
11 the Mackenzie Valley Review Board's guidelines for
12 incorporating traditional knowledge. We just want to
13 say that this is a great standard. And we thank the
14 Board for producing this document.

15 We understand that it is referred to in
16 other jurisdictions. We, therefore, would like to
17 bring up a couple of quotes from this guidance
18 document to show that Diavik, in their assessment and
19 in their production of the summary impact statement,
20 have not lived up to the spirit of this guidance
21 document.

22 Number 1, our relationship between the
23 developer and traditional knowledge holders should be
24 well established prior to an EIA. This has not been
25 the case with this assessment.

1 2) Developers should still engage in
2 discussions with appropriate Aboriginal organizations
3 and traditional knowledge holders to determine if
4 there's relevant traditional knowledge available to be
5 considered in its project's design.

6 And for use in the EIA process, Diavik
7 has instead referred and put the onus on us -- or on
8 Fort Resolution Metis Council to produce this
9 information and for the Board to request this
10 information, whereas we would argue it is also their
11 responsibility to make sure that their gaps in their
12 assessment are met.

13 In collecting traditional knowledge,
14 this includes assisting and establishing baseline
15 information, determine if there are any necessary
16 project design changes, and also determine any
17 outstanding public concerns prior to entering the
18 application process.

19 Fort Resolution Metis Council was
20 engaged late in this process and generally only at
21 Fort Resolution Metis Council's prompting.

22 It is also important to determine what
23 traditional knowledge might not be presented by
24 individual traditional knowledge holders at community
25 hearings. And it's also supposed to be produced when

1 it is not available to the developer using public
2 sources.

3 Fort Resolution Metis Council was not
4 engaged for the original assessment. There is not a
5 public source available for this project that the
6 developer could refute -- rever -- refer to.

7 And we would argue, just because it's
8 late in the game, that does not mean that the
9 opportunity is gone to include this important
10 knowledge.

11 We also recognize that the Review Board
12 may, in its recommendation at the end of a process,
13 include a measure or suggestion related to traditional
14 knowledge in follow-up or monitoring programs.

15 Fort Resolution Metis Council would
16 urge the Board to consider such conditioning as it's
17 not too late for impacts to be avoided and for better
18 programs to be developed by having access to Fort
19 Resolution Metis Council members' knowledge.

20 The quote's not included in these
21 slides, but I'd also note that the guidance requests
22 that it is the responsibility of Aboriginal
23 organizations to report when there are gaps. And this
24 is our official report, that there are gaps.

25 I'd also like to talk about impact

1 pathways for culture. Fort Resolution Metis Council
2 has not been involved in identifying impact pathways
3 on Fort Resolution Metis Council cultural use.

4 It was acknowledged yesterday that
5 Diavik has not considered perception -- impacts from
6 perceptions of risk or perceptions of contamination.
7 Of real concern for Fort Resolution Metis Council
8 members are the real and perceived tainting of FRMC
9 traditional foods, the real or perceived contamination
10 of water on the land, and the potential loss of
11 teaching areas to FRMC youth due to real or perceived
12 contamination, barring access to their traditional
13 lands in the future.

14 So far, mitigations and commitments
15 proposed by Diavik do not reflect input from Fort
16 Resolution Metis Council, in part, due to their late
17 engagement in this process.

18 Mitigations specific to culture need to
19 be developed with all impact Indigenous groups. FRMC
20 also supports, therefore, GNWT's recommendation 5 as
21 we believe this could be part of that framework.

22 In considering project-specific effects
23 to -- to culture, impacts go beyond changes to the
24 availability of resources. Therefore, impact
25 pathways, such as perceptions of risk, need to be

1 seriously considered and mitigated.

2 Given the gaps in baseline information
3 and the lack of impact pathways, there's not enough
4 information to make a valid project case significance
5 estimate for impacts to culture with confidence.

6 The cumulative co -- context for
7 culture has also not been adequately considered.
8 Existing stressors need to be considered in addition
9 to any existing impacts, barriers, and stressors
10 specific to Fort Resolution Metis Council practice of
11 culture and rights in Lac de Gras.

12 And just a note. In both the
13 cumulative case and the project case, the traditional
14 knowledge and the land use of another nation cannot be
15 used as a proxy for Fort Resolution Metis Council as
16 FRMC members are a distinct people.

17 As I said, our -- the remainder of our
18 recommendations are in our Intervener report on the
19 public record. In re -- in light of the cumulative
20 context, we do ask that the Board find that there is
21 already a preexisting significant adverse cumulative
22 effect on culture and consider project effects in
23 light of this highly sensitive receiving environment
24 and makes its decision on whether the project should
25 be allowed to proceed and under what conditions.

1 I will now pass the mic to Arthur Beck.
2 And I do ask at the conclusion of our presentation, if
3 the Board would consider allowing us to have a
4 question to the Board and Board legal.

5

6 (BRIEF PAUSE)

7

8 MR. ARTHUR BECK: I'm going to do it
9 in my language. It's a lot easier for me. Something
10 this important is very stressful, so it's -- I don't
11 want to translate it in my head. I could make
12 mistakes.

13 I've made a lot of mistakes, but -- but
14 this time, I don't want to. It's very important for
15 the future and the generations of our people to come,
16 and plants and animals and the water.

17 THE CHAIRPERSON: Excuse me, Arthur.
18 I think --

19 MR. ARTHUR BECK: Sorry.

20 THE CHAIRPERSON: The translation
21 isn't coming through. Okay. I'm sorry, if you could
22 start over.

23 MR. ARTHUR BECK: Start over?

24

25 (BRIEF PAUSE)

1 MR. ARTHUR BECK: Start over right
2 from the start?

3 THE CHAIRPERSON: Just say your name
4 and --

5 MR. ARTHUR BECK: Okay.

6

7 (INTERPRETED FROM INDIGENOUS LANGUAGE INTO ENGLISH)

8

9 MR. ARTHUR BECK: Arthur -- Arthur
10 Beck is my name. I am from Fort Resolution. I grew
11 up in Rush River. That's where I grew up, in Rush
12 River.

13 My mother and my -- my parents, they
14 grew up -- they lived on the land. My dad was a
15 trapper. He hunted all over the place. My
16 grandfather, they taught me how to live on the land,
17 to where I hunt along the land to where I look at the
18 plants, the ducks. Ever since I was a kid, I was
19 taught about all the animals and how to respect them;
20 that's the way I grew up.

21 I didn't have any toys to play with on
22 the land. There was no TV. There was nothing we had.
23 So, the animals, the fish, the water, whatever --
24 everything that lived on the land, that was my toys.
25 That's how I respected them. That's the way I feel

1 today.

2 When the white man came here and put up
3 the mines, of course it was hard at the beginning.
4 Where they put up the mine -- I went to where the mine
5 was. I went to their land. And I went to their
6 house. And if I went into their house, I knocked on
7 the door and I walked in.

8 If they told me to have a drink, I
9 don't know where the cups are, I don't know where the
10 sugars are, I don't even know where the spoons are
11 even. I know nothing about their house; it's their
12 house. They know what's in their house.

13 We, living up here, it's the same thing
14 for us. It's our land. We grew up here. We know
15 where everythings are. Winter, summer, spring, in the
16 fall, we know what is happening about the land. We
17 know about the people here.

18 The people that live on the land, we
19 are the keeper of the land, and yet they moved in,
20 too, without asking -- without asking us. They way we
21 live, the way we work, the way we survive, the -- the
22 way we work at things, they didn't ask us.

23 They came here on our land. They --
24 they worked on the land. They made the land all
25 different. Rocks are piled up. The water could be

1 questionable. Things are going away from us now, and
2 it's all the mines that are happening.

3 We, living in Fort Resolution, that is
4 where the first Pine Point mine started. They worked
5 at the lead and the water is questionable. Fort --
6 here, in Yellowknife, the people are scared of
7 arsenic. Nobody eats fish here in the water.

8 You can't drink the water from the bay.
9 All these things, it's all affecting our way of life.
10 Fort McMurray, the water flows from there, where
11 they're working on oil development. The water comes
12 from there.

13 There is chemicals in the fish that we
14 were told. Now, the -- the Elders are scared to eat
15 the fish. It's getting harder for our culture to
16 survive. Nobody is listening to it. Nobody is
17 talking for us.

18 The animals, too, can't talk to us. We
19 don't know what they feel; they can't tell us. That's
20 why I'm sitting here. That's who I pray for, for the
21 animals, the fish, and the water, the animals, the
22 Elders that passed before us, so that we can have a
23 better life for our future.

24 With all the mines that are in place
25 now -- about twenty (20) years, almost thirty (30)

1 years ago -- they were making money. The land is
2 going bad. What are our children going to live on?
3 Everything has moved away from us and things are
4 bad -- gone bad on us.

5 Fort Resolution right now -- where I
6 live -- I hunt all over the place. The people know
7 that. I hunt; I survive. I travel every -- I hunt
8 everywhere. I hunt. I bring meat home. I give meat
9 out to everybody in the community. That was the way I
10 was taught. That was our culture, and that was the
11 way I was taught.

12 Now, I am talking about -- it's very
13 hard to talk here. This is supposedly our land. We
14 are supposed to be the boss of our land. That's not
15 the way it is.

16 People that came from the south,
17 government took over. Canada -- Government of Canada,
18 they were supposed to watch the land for us. They
19 made a deal with my grandfather saying that. They --
20 he signed the treaty, my grandfather. The Government
21 is supposed to watch the land for us and take care of
22 us. We're supposed to be all taken care of.

23 The Government is not watching us now.
24 They don't care for us. They're only worried about
25 the money. We living here -- if you don't have money,

1 you probably can't buy anything with it, so you could
2 probably make fire with that money.

3 For me, the caribou, the buffalo, the
4 muskox, the fish, the water -- we live on that in the
5 past. Since I was a kid, I've been watching that.

6 If one person ate a diamond or drank
7 the oil, I've never seen that happen. The way we
8 live: We eat the caribou; we eat the fish; we drink
9 the water. We're still sitting here talking about it.
10 We have to take care of that for the future of our
11 children.

12 And the animals -- we have to take care
13 of it. We have to talk for them. They can't talk for
14 themselves. The caribou can't talk to you because he
15 doesn't understand you.

16 So you watch the habits, and you watch
17 the -- what caribou does, the way it lives, the way
18 he's in trouble. We can tell that. We can see it. I
19 can see that now. The caribou's in big trouble. I
20 travel everywhere since I was a kid.

21 When I was a kid, I used to travel from
22 Rocher River. We used to go for caribou with dogs.
23 Dogs are not fast. Dogs run ten (10) miles an hour;
24 that's what the dogs travel at.

25 We used to kill caribou on overnight

1 when I was a kid. I'm sixty-two (62) years old now.
2 If I go for caribou -- if I go for caribou now, I have
3 to use skidoo. I burn gas, and it's dark at night.
4 With a little light, I use -- I travel in that little
5 light.

6 From Fort Resolution, we put all the
7 skidoos together -- about seven (7) skidoos for the
8 young men. We go to the barren lands. Sometimes
9 eight (8) nights, nine (9) nights, we're gone out in
10 the barren land because the caribou moved away from
11 us -- 2005. And we had the caribou last in our
12 country in 2005. Even then, it wasn't that much.

13 On this side, people are hunting
14 caribou on this side on the mine road. We don't kill
15 that much caribou. Fort Resolution has a lot of
16 caribou. It has a lot of people. We bring caribou
17 home. We give meat to everybody in the community.
18 Everybody has a taste of it. That's the way we live.

19 Last year, I went -- Tom and I went --
20 we went for caribou. We saw twenty (20) caribou. I
21 brought home two (2). I -- Tom brought two (2) home
22 also. We gave the rest away. We fed everybody.

23 It's very difficult -- it's very
24 expensive to go out there. It's the mine's fault, the
25 way I look at it. It's the cause of the decline.

1 Fort Resolution -- not many people --
2 there's not employment in Fort Resolution. So it's
3 very difficult. You can see it on the picture up
4 there. You see the skidoos on it. That's where we
5 hunted caribou. We have a truck parked there on the
6 mine road. We're hunting. It's difficult to travel
7 that far.

8 Things are different now. Everything's
9 moved away from us. The muskox has moved into our
10 territories, even in Fort Chipewyan. The caribou --
11 the moose are -- the moose are moved away from us.
12 They've all moved onto the barren lands. Fort --
13 around Fort Resolution, there is none.

14 It's -- all the animals are moving away
15 from us. It was not like that before when I was a
16 kid. There was a lot of fish; there was a lot of
17 buffalos. It's our land supposedly.

18 If I was the boss, the rocks that you
19 are talking about -- the rocks that you have taken out
20 and piled it on the rock, that rocks -- the stuff
21 that's seeping out of the rocks is a concern of us.
22 The seepage that's coming out of the rocks -- it's
23 gotta be -- it cannot incur the water.

24 The -- around the pits where all the --
25 they have the bands in there, if you're going to -- if

1 you're going to put something in there, you should dam
2 it up. You want to -- you want to open the dam and
3 let the water flow in.

4 If there's a little bit of wind, the
5 water's always moving. It's not constant. It's
6 always on the move -- the water. There's current in
7 the water, and it's going to seep into the rest of the
8 water body.

9 If I were the boss -- if I were the
10 boss just from looking at the map, I look at the
11 Google map -- if I look at it really good, there's
12 another mine close to where they're working on it.

13 They're -- it appears -- they should
14 have a -- they have a lot of pits on the mainland.
15 They should dump that stuff into the -- because it's
16 expensive, that's why they're not even accepting that.
17 They have to make a bridge to go there to do that. I
18 don't believe that. You can do that in the winter
19 time on the ice.

20 If you can put a pipeline through
21 there, you can haul it there with a vehicle and put it
22 on the mainland; make a big hole there. That's where
23 you should put that -- that processed kimberlite. Why
24 you got to move it away from the water? That is not
25 right for me.

1 And yet you're not protecting the
2 water. The water -- if it rains on the rocks, it all
3 seeps into the water. It's been there for twenty (20)
4 rock -- it's been there for twenty (20) years now.
5 Now they're thinking about it, all the seepage. It's
6 probably leaked into the lake already.

7 The mines, the people that are working
8 there, the ones that are looking at the water -- they
9 say the water is good. Some say it's good. For me,
10 it's not right.

11 The people that are looking at the
12 water, they're supposed to watch -- Environment
13 Canada's supposed to watch the land for us. They're
14 supposed to watch the water, and they're supposed to
15 measure the water and look at the quality of the
16 water.

17 It's our land here. We should look at
18 the water together. None I will believe exactly how
19 good the water is.

20 I am not the boss of what's going on
21 out there. They got to -- they'll do whatever they
22 want. I'm just about near clear, so I got to shut
23 down here.

24 When I talk about the ducks and
25 everything that are gone, it makes me sad. Thank you.

1 (INTERPRETATION CONCLUDED)

2

3 MS. KATY DIMMER: At this point, that
4 concludes our presentation. We would like to put a
5 request towards Board -- the Board's legal before
6 questioning starts, if possible, Madam Chair.

7 THE CHAIRPERSON: Legal counsel...?

8 MR. JOHN DONIHEE: I'm not -- it's
9 John Donihee -- I'm not really sure what to say,
10 Madam Chair. I have a client here, but if the Chair
11 wants to hear what the request is, I suppose I could
12 comment on it after that.

13 THE CHAIRPERSON: Your question,
14 please?

15 MS. KATY DIMMER: Thank you. Katy
16 Dimmer, Fort Resolution Metis Council. Yesterday, you
17 mentioned that the Board may be flexible and could be
18 interested in examining criteria for determining
19 significance for impacts to culture and impacts to
20 water.

21 I was wondering if there could be an
22 opportunity for Interveners to submit examples of
23 criteria before closing arguments that we've -- we
24 deem to be of high standard or acceptable for the
25 Board's consideration.

1 THE CHAIRPERSON: Legal counsel...?

2 MR. JOHN DONIHEE: Thank you,
3 Madam Chair. It's John Donihee again. Madam Chair,
4 the concern that the question raises for me is just
5 that it sounds as though Fort Resolution Metis Council
6 is asking to submit more evidence.

7 And we're sort of at the stage in this
8 process where the evidence stage is soon to close.
9 You know, once the hearing is over, the transcripts
10 and undertakings are filed, normally the evidence
11 stage is over.

12 So I -- I mean, it's -- the question of
13 whether the Board wants to keep that open is a matter
14 for the Board, not for counsel.

15 But my only additional comment in
16 addition to what I said yesterday is that I think it's
17 still open for the parties to produce argument on the
18 basis of the evidence that's already on the record,
19 and that's a stage that's currently intended for the
20 process going forward.

21 So, you know, that's where it sits at
22 the moment, Madam Chair, and I don't know what -- what
23 further to say.

24 MR. ARTHUR BECK: Arthur Beck, Fort
25 Resolution Metis Council. I have to stop talking in

1 my language. I get too emotional, but I'm not
2 finished. I'll do the rest in English here. I'm not
3 so emotional. I got time to translate it.

4 Yeah. We have a lot of experience. I
5 sit on Great Slave Lake Advisory Committee for thirty
6 (30) years. I know all about fish. I sit on the
7 Wildlife Act. I sit on waste management. I'm part of
8 the land use planning. I have a lot of traditional
9 knowledge, and I have a lot of advisors.

10 If it was up to me, that processed
11 kimberlite will never go near the water, and you're
12 going to put it in a pit, and then you're going to
13 open it up.

14 And whoever said fish doesn't go deeper
15 than a hundred and twenty feet should come fishing
16 with me. We have bottom feeders. We have vertebrates
17 on the bottom -- the burbot, the suckers. They go
18 down to eat from the bottom. They come up. The trout
19 eats them. So it's the cycle. Then we eat the trout.
20 You know, it's a vicious cycle.

21 And, you know, De Beers is partners
22 with Diavik. They have a pit not too far, maybe
23 five (5) kilometres away on the mainland. That's
24 where they should put that processed kimberlite.

25 And sure, I understand they have to put

1 a bridge in the summer. But if they can haul diesel
2 and all that fertilizer to blow up the country on this
3 haul road, which is a hundred and some miles away, I'm
4 sure they could haul that little bit of dust four (4)
5 or five (5) kilometres on an ice road and put it in
6 the pit on the mainland so it does not reach the water
7 of Lac de Gras. Thank you very much.

8 THE CHAIRPERSON: Okay. Thank you.
9 Okay. Are we ready to go into questions?

10 Thank you for your presentation, and
11 thank you, Arthur, for speaking in your language
12 there, too, to express your views.

13

14 QUESTION PERIOD:

15 THE CHAIRPERSON: I would now ask
16 questions for Fort Resolution Metis Council, Northwest
17 Territories Metis Nation?

18 MR. JAKE HERON: Jake Heron,
19 Madam Chair. No, there's no questions.

20 THE CHAIRPERSON: Questions,
21 Government of the Northwest Territories?

22 MS. LORRAINE SEALE: Lorraine Seale.
23 We have no questions.

24 THE CHAIRPERSON: Questions,
25 Environmental Monitoring Advisory Board?

1 MR. JOHN MCCULLUM: John McCullum,
2 EMAB. We have no questions.

3 THE CHAIRPERSON: Questions,
4 Lutsel K'e Dene First Nation?

5 MS. LAUREN KING: Lauren King, LKDFN.
6 We have no questions.

7 THE CHAIRPERSON: Thank you.
8 Questions, Environment and Climate Change Canada?

9 MS. GEORGINA WILLISTON: Georgina
10 Williston, Environment and Climate Change Canada. We
11 have no questions.

12 THE CHAIRPERSON: Questions, Fisheries
13 and Oceans Canada.

14 MR. DAN COOMBS: Dan Coombs, Fisheries
15 and Oceans Canada. We have no questions.

16 THE CHAIRPERSON: Questions, Tlicho
17 Government?

18 MS. VIOLET CAMSELL-BLONDIN: Violet
19 Camsell-Blondin, Tlicho Government. No question.

20 THE CHAIRPERSON: Questions,
21 Yellowknives Dene First Nation?

22 MS. MACHEL THOMAS: Machel Thomas,
23 YKDFN. No questions.

24 THE CHAIRPERSON: Questions,
25 North Slave Metis Alliance?

1 MS JESSICA HURTUBISE: Jessica
2 Hurtubise, North Slave Metis Alliance. No questions.

3 THE CHAIRPERSON: Questions, Deninu
4 K'ue First Nation?

5 DR. MARC D'ENTREMONT: Marc
6 D'Entremont, for the DKFN. We have no questions.
7 Thank you.

8 THE CHAIRPERSON: Questions, Diavik?

9 MR. GORD MACDONALD: Gord Macdonald,
10 with Diavik. No questions.

11 THE CHAIRPERSON: Questions, Board
12 staff?

13 MS. KATE MANSFIELD: Kate Mansfield,
14 Review Board. We have no questions, and legal has no
15 questions.

16 THE CHAIRPERSON: Questions, Board
17 members?

18 BOARD MEMBER KRUTKO: David Krutko,
19 Review Board. Just on your subject matters, it seemed
20 like the issues are important to everyone. But it
21 seemed like you were trying to find a venue so that
22 you can be included in a lot of these deliberations
23 going forward through these different committees and
24 structures.

25 So I know that's Diavik committed to

1 annual, ongoing meetings. So I'm just wondering:
2 What's your suggestion in regards to inclusion going
3 forward in regards to how you could be included on
4 discussions on these subject matters with the process
5 going forward?

6 MR. ARTHUR BECK: Arthur Beck, Fort
7 Resolution Metis. My solution is, like I said in my
8 language, this is our country. There's nothing our
9 people -- Aboriginal people, all Aboriginal
10 governments, all Aboriginal people in the Northwest
11 Territories are born and raised in this country. We
12 know everything here of all seasons and how the work
13 and how the -- we live depend on the animals.

14 So we got to go to work together with
15 the mines. They have to start listening to us. But
16 you have to understand this: Scientific knowledge is
17 a little over a hundred years old. Traditional
18 knowledge goes back a thousand years. Scientific
19 knowledge is, like, kindergarten compared to
20 traditional knowledge.

21 But together, they can work and work
22 together with Aboriginal people and industry and
23 everybody. But we have to think of the future
24 generations, but we have to work together as a unit --
25 sit down and talk together, Aboriginal groups,

1 industry, government, everybody for the better of this
2 country and the future.

3 Look at what's happening across the
4 world. You know, I watch TV; I watch David Suzuki a
5 lot. There's lots of things that's happening, and we
6 are the only people that can make it better for the
7 future because the animals can't speak to us; the fish
8 can't speak; nothing. We are the people here
9 responsible for everything that's out there in our
10 land.

11 And this -- and the Aboriginal people,
12 we know everything here. Like, industry comes in.
13 They're new. It -- they're just coming to visit.
14 They're coming -- once they leave, they're gone. Once
15 the rocks, the money, the diamonds is gone, they're
16 gone.

17 But our people have to live here
18 forever. We're not going anywhere, and we have
19 children, grandchildren. We have to look for the
20 future generations, not just ourselves. Thank you
21 very much.

22 MS. KATY DIMMER: Katy Dimmer, Fort
23 Resolution Metis Council. If I might just add a few
24 more words to that.

25 As stated, we do support the GNWT's

1 recommendation for collaborative development of a
2 framework for engagement going forward. There'll be
3 multiple decisions that require information and the
4 regulatory process, as well as Diavik has indicated
5 creating TK-based programs, expanding wildlife
6 management, and also TK reconnection criteria.

7 I don't believe all these can be
8 resolved by a single meeting once a year as Fort
9 Resolution Metis Council would like active involvement
10 in developing as well as implementing any of those
11 plans specific to this project, PK mine workings.

12 THE CHAIRPERSON: Questions, Board
13 members? Okay. Thank you for your presentation.

14 Our last and final presentation for the
15 day will be from the Northwest Territories Metis
16 Nation.

17

18 (BRIEF PAUSE)

19

20 PRESENTATION BY NORTHWEST TERRITORY METIS NATION:

21 MR. JAKE HERON: I'm just trying to
22 figure out the -- okay. Thank you, Madam Chair. Jake
23 Heron. I'm going to have -- you have our
24 presentation. So I'm going to keep it fairly short.

25 Needless to say, many of the things and

1 concerns that Arthur has brought up is things of
2 obviously concerns to the Nation.

3 So I would just like to start off by
4 indicating that the Northwest Territories Metis Nation
5 is comprised up of three (3) Indigenous community
6 organizations. They -- from Fort Resolution, Fort
7 Smith, and Hay River.

8 The NWTMN represents over three
9 thousand (3,000) Indigenous Metis. And we're doing a
10 enumeration at this point in time, and it seems like
11 we're -- we could be even higher than that. It's not
12 to say all the three thousand (3,000) live in the
13 Northwest Territories.

14 But because we are in a claims process,
15 we are doing enumeration that's fairly detailed. And
16 because we're in process, of course, Canada -- or you
17 refer to Canada as Government of Canada; the
18 Government of Northwest Territories recognizes as a
19 government -- and we were one of the first two (2)
20 Aboriginal groups to sign onto devolution. So some of
21 our brothers and sisters may not have liked us to
22 having done that, but we have.

23 So we have -- just so we can reconfirm
24 because it's important for us to appreciate that the
25 things I draw -- as you're talking about going back to

1 his ancestors having signed treaties and growing up
2 onto the land that the mine is located within the area
3 but shared historical and cultural use amongst a
4 number of Aboriginal people in the Northwest
5 Territories. And needless to say, modern treaties are
6 finding ways and means for us to work together.

7 So I just move on to, I think, because
8 the nation is an overarching organization, maintaining
9 an interest of all Indigenous Metis, it is -- we
10 support the efforts that Fort Resolution -- I just
11 want to reflect upon some of those things because they
12 are the -- I guess you can say they're one of the
13 three (3) pillars within our organization that makes
14 us up who we are as a nation group.

15 So the traditional knowledge of the
16 NWTMN or the area that will be impacted by the project
17 has not -- has not been considered by DDM, and I think
18 that's been adequately expressed over a number of -- a
19 number of people have made that presentation.

20 As -- because we are in negotiations
21 per se with claims, we obviously are concerned about
22 our potential adverse effects on our rights. And
23 that's where we sort of take a lead role because we
24 are the agency that is negotiating claims with Canada
25 and the Government of the Northwest Territories.

1 Arthur talked about the caribou. Okay.
2 So again, our indication here is that we -- we have a
3 right to hunt, fish, trap, and gather throughout the
4 traditional territory of the NWTMN, which includes the
5 Lac de Gras area. I know some people may not agree
6 with that comment, but it is what it is. Arthur
7 showed you a map of Sir John -- of Franklin's
8 expedition and what role we played there.

9 Excuse me. The resources that are
10 harvest within a traditional territory are shared with
11 the entire community, as Arthur amply exemplified by
12 his sharing of twenty (20) caribou and taking only
13 two (2) for himself and two (2) for Tom. So that's a
14 very integral part of the cultural aspect that Arthur
15 has shared with you today.

16 I think I also want to -- just a little
17 bit of history, and I think it's not clearly outlined,
18 but I'm sure we all know that the efforts to mitigate
19 some of the concerns of Metis, particularly south of
20 the lake, are somewhat etched in history from the
21 point of view of who got to be IBA holders and who the
22 mining industry may have been encouraged to -- to
23 talk.

24 And we all know that there has been up
25 until recently with De Beers -- there'd been an IBA

1 holder south of the lake, even though, I think we've
2 demonstrated, that our traditional territory goes well
3 beyond north of the lake.

4 So that's an important aspect to keep
5 in mind. It is what it is. And obviously, we look to
6 rectify those situations in the future.

7 So we echo many of the recommendations
8 and accommodations cited with other Indigenous groups,
9 including our Fort Resolution Metis Council.

10 And I think we'd also like to recommend
11 that fully engaged doesn't mean once a year. It means
12 to be active, more than active.

13 And whether it's traditional knowledge
14 that's going to help form maybe some of the basis for
15 some of the criteria for standards that are going to
16 be established, presumably the process is alive --
17 living process, and therefore, we should be able to
18 make some -- some adjustments in the future, pending
19 upon, I guess, the -- your decision to accept the
20 moving forward.

21 So just to -- just to conclude our
22 recommendations just for the record, I know that it's
23 written in record but that it is also a voice, I
24 guess. Communicate that we just want to say that
25 following closure, the Metis traditional harvesters

1 are concerned with the long-term potential impact of
2 any associated changes in hydrology and water quality.

3 Thus, harvesters favour a scenario that
4 allows Lac de Gras water quality to be safe for
5 aquatic life, fish, and fish habitat in the short --
6 as a short period -- in as a short of period as
7 possible.

8 Harvesters are concerned that putting
9 in processed kimberlite into the pits prior to
10 reconnecting Lac de Gras will prolong the time until
11 Lac de Gras can be safer for aquatic life, fish, and
12 fish habitat.

13 Diavik Diamond Mines should negotiate
14 an accommodation of government with the Northwest
15 Territory Metis Nation to address the concerns of the
16 Metis Nation.

17 So I'd like to say, I think that's --
18 it's not that I -- I can talk forever if you give me
19 the opportunity. It's just not -- I'd like to --
20 those are the main -- main recommendations,
21 Madam Chair.

22 And I think -- Arthur made it very
23 difficult for me to speak because there's -- not only
24 because of his strong attachment to the land but as
25 our overarching organization, we follow what they

1 do -- what they want to do. So I think we know our
2 respective place in this deliberation this afternoon.

3 So with that, I'll stop. And thank you
4 very much for giving us the opportunity to be here
5 today, and speak to you about the concerns of the
6 Nation, and recognizing that the Nation not only
7 includes Fort Res but Hay River and Fort Smith and the
8 whole South Slave. And thank you.

9

10 QUESTION PERIOD:

11 THE CHAIRPERSON: Okay. Thank you,
12 Mr. Heron, for your presentation. Questions,
13 Government of the Northwest Territories?

14 MS. LORRAINE SEALE: Lorraine Seale,
15 GNWT. We have no questions.

16 THE CHAIRPERSON: Questions,
17 Environmental Monitoring Advisory Board?

18 MR. JOHN MCCULLUM: John McCullum,
19 EMAB. We have no questions.

20 THE CHAIRPERSON: Questions,
21 Lutsel K'e Dene First Nation? She's coming.

22 MS. LAUREN KING: Lauren King, for
23 LKDFN. No, we have no questions.

24 THE CHAIRPERSON: Thank you.
25 Questions, Environment and Climate Change Canada?

1 MS. GEORGINA WILLISTON: Georgina
2 Williston, with Environment and Climate Change Canada.
3 We have no questions.

4 THE CHAIRPERSON: Questions, Fisheries
5 and Oceans Canada.

6 MR. DAN COOMBS: Dan Coombs, Fisheries
7 and Oceans Canada. We have no questions.

8 THE CHAIRPERSON: Questions, Tlicho
9 Government?

10 MS. VIOLET CAMSELL-BLONDIN: Violet
11 Camsell-Blondin. No question.

12 THE CHAIRPERSON: Questions,
13 Yellowknives Dene First Nation?

14 MS. MACHEL THOMAS: Machel Thomas,
15 YKDFN. No questions.

16 THE CHAIRPERSON: Questions, North
17 Slave Metis Alliance?

18 MS JESSICA HURTUBISE: Jessica
19 Hurtubise, North Slave Metis Alliance. No questions.

20 THE CHAIRPERSON: Questions, Deninu
21 K'ue First Nation?

22 DR. MARC D'ENTREMONT: Marc
23 D'Entremont, for the DKFN. We have no questions.
24 Thank you.

25 THE CHAIRPERSON: Questions, Fort

1 Resolution Metis Council?

2 MR. ARTHUR BECK: Arthur Beck, Fort
3 Resolution Metis Council -- wow, just kidding. I
4 don't have any questions.

5 THE CHAIRPERSON: Don't scare us.
6 Questions, Diavik?

7 MR. GORD MACDONALD: Gord Macdonald,
8 with Diavik. No questions.

9 THE CHAIRPERSON: Questions, Board
10 staff?

11 MS. KATE MANSFIELD: Kate Mansfield,
12 with the Review Board. Board staff and counsel have
13 no questions.

14 THE CHAIRPERSON: Questions, Board
15 members? Okay. Thank you for your presentation.

16 In lieu of time, I'm going to -- we're
17 not that far off the agenda here. But what I would
18 like to do with this time is ask our executive
19 director to have some closing remarks towards the end
20 as to the process what will happen next.

21 MR. MARK CLIFF-PHILLIPS: Mark
22 Cliff-Phillips, with the Review Board. I just wanted
23 to go over sort of the proposed dates for the next
24 steps.

25 As we mentioned a little bit earlier,

1 there was some dates that we propose for the
2 undertaking submission deadline as well as any new
3 evidence or information on the supplemental IR
4 responses to the Board's IRs. And those dates would
5 be September 20th.

6 We would look for Diavik's response to
7 the new IR -- the supplemental IR evidence on
8 September 27th.

9 We would look for parties' written
10 closing arguments for October 4th.

11 And Diavik's responses and final
12 closing argument on October 18th. Thank you,
13 Madam Chair.

14

15 CLOSING COMMENTS BY THE CHAIRPERSON:

16 THE CHAIRPERSON: Okay. Thank you
17 very much. I've just got some quick closing remarks
18 here, too, as well because it's been a very long day,
19 as well as yesterday -- it was a long day as well.

20 In closing, I would like to thank
21 everyone here for your thoughtful and your helpful
22 participation in these hearings. You must have strong
23 backs to be sitting here all day like this for two (2)
24 days.

25 The Review Board relies on the

1 information that we receive from you and to make our
2 decisions, so we value all your input.

3 I would also like to acknowledge and
4 thank everyone who has worked hard throughout this EA
5 to prepare the materials that we have presented over
6 the last few days.

7 A special thanks goes to all the people
8 who have been doing the work to keep us all fed and
9 organized the last few days as well, even the hearings
10 that we had in Dettah and in Behchoko.

11 Thank you also for our interpreters
12 back there. I only saw that pink paper once, so that
13 was really good. I think they're still friends of
14 ours.

15 The transcriber, Sean, thank you for
16 your patience. And the sound technician even though
17 we had some technical difficulties, they were dealt
18 with in a timely manner.

19 We could not do the work here that we
20 need to go through these hearings without all of you
21 and your comments and your presentations.

22 We know that we can only make good
23 decisions if we all work together, and I think that's
24 been said a number of times throughout this hearing.

25 I would also like to thank you all for

1 working together during these hearings to help us make
2 the best decisions possible.

3 With that, I'd like to declare that
4 this hearing be closed, and I will ask for Elder Peter
5 Sangris to say a closing prayer.

6

7 (CLOSING PRAYER)

8

9 THE CHAIRPERSON: Masi.

10

11 --- Upon adjourning at 5:11 p.m.

12

13 Certified Correct,

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16

17 _____

18 Sean Coleman, Mr.

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