

Dawson City, Y.T.  
December 13, 2010

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4 THE CLERK: Call the matter of the City of Dawson, Your Honour.

5  
6 [DISCUSSION RE LIGHTING IN COURTROOM]

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8 THE COURT: Mr. Cliffe, Mr. Crossman, nice to see you.

9 MR. CLIFFE: Yes, Your Honour. As you indicated --

10 THE COURT: Please be seated.

11 MR. CLIFFE: -- John Cliffe for the Crown; that's C-l-i-f-f-e for the record. And  
12 with me, Your Honour, immediately behind me in the tie, is Mr. Eric  
13 Soprovich. He is the head of the Public and Natural Resources Sectors  
14 Unit of Environment Canada's environmental protection operations  
15 division, and Mr. Soprovich works in Whitehorse at the Whitehorse office  
16 of Environment Canada. And to Mr. Soprovich's right is Mr. Martin  
17 Guilbeault, spelled G-u-i-l-b-e-a-u-l-t. And Mr. Guilbeault is a professional  
18 engineer and is a senior environmental scientist with Environment  
19 Canada, also working in Whitehorse. And they are the two individuals  
20 who, Your Honour, with your leave, I've asked to be here today to, if  
21 required, to answer any questions from the Court, and they are the two  
22 Environment Canada officials working with respect to compliance with  
23 Your Honour's order.

24 THE COURT: Thank you very much, and welcome. Thank you for coming.

25 MR. CROSSMAN: Good afternoon, Your Honour. Tony Crossman, C-r-o-s-s-m-  
26 a-n, for the City of Dawson. And with me today is Mayor Peter Jenkins,  
27 who is here.

28 THE COURT: Mr. Mayor.

29 MR. CROSSMAN: I also have representatives from the project team and the  
30 Yukon Government. We have Deputy Minister Mike Johnson, Assistant --

31 THE COURT: Mr. Johnson, nice to see you again.

32 MR. CROSSMAN: -- Assistant Deputy Minister Leslie Anderson, and a senior  
33 advisor Catherine Harwood.

34 THE COURT: They're all familiar faces.

35 MR. CROSSMAN: And we have our representative and site manager here, Pat  
36 Habiluk from Dawson. And we have a representative of Corix, who is the  
37 contractor who is actually doing the work; it's Stephen Johnson, who is  
38 here.

39 STEPHEN JOHNSON: Your Honour.

40 THE COURT: Thank you. Who have we missed at the far end, just members of  
41 the community?

42 MR. CARLSON: Norm Carlson, superintendent --

43 MR. CROSSMAN: Sorry, I -- sorry, Norm, my apologies.

44 THE COURT: Since we're introducing -- it's like one of those baseball games  
45 when you've got the two worst teams playing, where it's actually easier to  
46 introduce the crowd than it is the players, but we'll -- I consider you all to  
47 be players. Are you just interested members of the public?

1 UNIDENTIFIED SPEAKERS: [Indiscernible].

2 THE COURT: All right. Thanks.

3 MR. CLIFFE: Your Honour, just before my friend opens with his report back to  
4 Court, I just wanted to indicate to Your Honour that Environment Canada  
5 has seen -- has a copy of the report back to Court prepared by the City  
6 and the Yukon Government. They've reviewed it. I've also reviewed it.  
7 And Your Honour should have a two-page document that is a reply from  
8 Environment Canada. And finally, I thought it was appropriate, Your  
9 Honour, one person is missing from those that usually brief me, is Mr. Vic  
10 Enns. You may recall that Mr. Enns is a professional engineer with  
11 Environment Canada, and he has turned over his involvement in this  
12 matter to Messrs. Soprovich and Guilbeault in the last few months. Mr.  
13 Enns is scheduled to retire from Environment Canada early in the New  
14 Year. And I just wanted to say this, that as Your Honour knows, Mr. Enns  
15 was involved with the issue, I call it the issue, the broad issue, before the  
16 charges were brought, after the charges were brought, and of course after  
17 Your Honour's order, and Mr. Enns, and I think it's fair to say, offered very  
18 positive advice to myself as Crown counsel, but also, and it's noted in  
19 some of these previous reports back to Court, positive advice to the  
20 various project teams that have been working here. So I just wanted to  
21 say that to Your Honour, but also, in talking to Mr. Enns, he wanted me to  
22 thank the Court, in a professional way, for the professional opportunity to  
23 work with this matter, not only working with the project teams, but also  
24 advising the Court. He found the experience to be one that was very  
25 positive for him as he moves onto other things in his life. So I just wish to  
26 have that opportunity to indicate that on the record.

27 THE COURT: Perhaps I could add two things; one, it's indication of how long  
28 this project has been ongoing.

29 MR. CLIFFE: Yes.

30 THE COURT: Key members are retiring as we proceed, including myself, I  
31 should add. And secondly, I certainly appreciate his comments, but I  
32 appreciate even more the assistance he's given the Court and this project  
33 over the years, and I would be very grateful to you, sir, if you would pass  
34 on my particular thanks from the Court to him for his assistance and my  
35 best wishes for his retirement, other plans, et cetera.

36 MR. CLIFFE: Yes, I will. Thank you, Your Honour.

37 THE COURT: Thank you.

38 Mr. Crossman, let me just say that I have your material. I very  
39 much appreciated the computer readable form that you forwarded to the  
40 trial coordinator and she was able to forward to me, which I was able to  
41 read before I came to Dawson. So that was very much appreciated. And  
42 I can indicate to you that I've had a chance since my arrival yesterday to  
43 go through the folder. There's some parts of the folder I was more  
44 interested in than others. I'm not an engineer, so some of the engineering  
45 material was of less interest, but other parts were of great interest to me.  
46 So I appreciate your putting that package together. And no doubt you'll be  
47 speaking to some of this today, but I wanted you to know that I

1 appreciated the early receipt of the main report. So thank you.  
2 MR. CROSSMAN: Thank you, Your Honour, and I'm glad that did assist, and  
3 we'll continue with that for the next occasion. While we're talking about  
4 housekeeping matters, so Your Honour has the binder with the Court  
5 update report. One thing that I think might add to today's hearing, and I  
6 have provided this to my friend in advance and he is in agreement, has no  
7 objection to me handing this up, is -- it's a timeline of the significant  
8 milestones for the project since August of 2009. That was the last in-  
9 person court hearing, and it's a one --

10 THE COURT: Just before you go on, let me just say that, for the record, Madam  
11 Clerk will mark this as an exhibit. If it's been filed, but it should be given  
12 an exhibit number. We'll just give this Exhibit 1 number, and the new  
13 material will be Exhibit 2.

14  
15 EXHIBIT 1: White binder - project update report

16  
17 EXHIBIT 2: Timeline of Significant Milestones for the Project

18  
19 MR. CROSSMAN: Thank you, Your Honour.

20 THE COURT: I have it here, and you've seen it?

21 MR. CLIFFE: Yes, I have, Your Honour, thank you.

22 THE COURT: Okay, and still I turn to the most important date and that's  
23 December 31, 2011, so we're still optimistic about that date?

24 MR. CROSSMAN: We are, Your Honour.

25 THE COURT: No doubt I'll hear more about it as we go through today's review.

26  
27 SUBMISSIONS BY MR. CROSSMAN:

28  
29 Mr. CROSSMAN: Thank you, Your Honour. Just by way of background and for  
30 the record, of course, Your Honour made an order, which has been varied  
31 in the past, to require Dawson to build and have operational a new  
32 secondary treatment wastewater facility by December 31, 2011, and  
33 Dawson is here today to report, which is part of Your Honour's order.

34 The last occasion for reporting was an interim report on July 27,  
35 2010, and before that, there was an in-person report to the Court on  
36 August 13, 2009. Today, we can report on significant progress that has  
37 been made. We've finally seen the shovels in the ground. We're actually  
38 seeing large holes in the ground, and we'll hear, during the course, that  
39 this is one of the most significant and probably the most riskiest part of the  
40 project has been completed. Dawson -- the City of Dawson --

41 THE COURT: Why do you say the riskiest?

42 MR. CROSSMAN: Because, Your Honour, the installation of the shafts through  
43 the bedrock is -- you can't predict what sort of rock you will find  
44 underneath, and I'll tell Your Honour a bit more about that detail, and what  
45 happened there.

46 The City of Dawson, as supported by the Yukon Government,  
47 continues to be committed to building the new facility and complying with

1 the court order. I wanted to let you know that I'm going to talk a little bit  
2 about the history, but also a summary and an overview of the progress  
3 that's been made since August 2009. I'll ask Ms. Harwood to provide  
4 some more detail about the construction progress that's been made, as  
5 we did on the last occasion, and I'll also call upon Mr. Mike Johnson to talk  
6 from the Yukon Government's perspective, of course, who is taking the  
7 lead on this construction project for the City of Dawson. And I also wanted  
8 to ask Your Honour whether you wanted to do a site visit at the end of this  
9 hearing or that was something you wanted to reserve for another time.

10 THE COURT: Well, I drove by it today and had a good look from a distance. I'm  
11 not sure that getting any closer will help, but, as I think I mentioned to  
12 counsel when we did a telephone pre-trial on this matter, I did have the  
13 privilege of visiting in August and the team was largely here at that time,  
14 and I very much appreciated their showing me around and explaining the  
15 current status, including explaining what was happening then and what  
16 was going to be happening next. So in that sense, I think I've probably  
17 had a good opportunity to better understand the process. Of course all  
18 this was before bodies, BD as opposed to AD, and there's been quite a bit  
19 of excitement since and digging since, but no, so I'm going to respectfully  
20 decline, unless there's something in particular that you think it's important  
21 for me to see. Right now, it's largely snow-covered. Construction has  
22 stopped, I understand, until early spring or late winter. March, Steve?  
23 March, April, around that time?

24 MR. CROSSMAN: That's right. March, Your Honour, that's right.

25 THE COURT: So I think we'll pass on that, but thank you.

26 MR. CROSSMAN: Okay. Thank you, Your Honour. Let me turn -- just provide a  
27 bit of context for where we are today, and I won't detail the history in any  
28 detail. Some of that history, of course, is in the Court update report and I  
29 won't repeat that. The original order was to make -- to build a mechanical  
30 treatment plant. We found that the cost estimates of that were not  
31 affordable and had grown exponentially. The Court gave leave to the City  
32 of Dawson to explore other options, which it did. After an extensive  
33 review, the preferred option was an aerated lagoon at Lot 1058 and 1059.  
34 Unfortunately, a referendum was passed which effectively prohibited such  
35 a facility at that location.

36 THE COURT: Why would you say "unfortunately"? It requires sort of an  
37 evaluation. If it weren't for the referendum this new project would not have  
38 come about. If one were an optimist, one would proceed by saying, "This  
39 is the better alternative." However, I'm not in a position to judge that, but  
40 all the information I've been getting from you and from others on the  
41 project is that this may very well be a better alternative for a number of  
42 reasons, so. In any event, the referendum did cause a delay. The delay  
43 was unfortunate.

44 MR. CROSSMAN: And that's the unfortunate part that I was referring to, Your  
45 Honour, yes.  
46 So as a result of the referendum, the project team sought solution  
47 from the private sector through a request for proposals, and the successful

1 proponent was a company called Corix, C-o-r-i-x, which is a company  
2 involved in this area of water treatment and wastewater treatment. And it  
3 came -- it proposed a patented mechanical treatment plant with a process  
4 called VERTREAT, V-E-R-T-R-E-A-T, which is a deep shaft technology  
5 that's been used successfully in other places around the world, and  
6 closest to home is the Homer, Alaska facility.

7 Now in August 2009, we reported that a \$25 million contract had  
8 been signed with Corix to provide a secondary wastewater facility that  
9 complies with the Court's order. And the drilling of the test hole at that  
10 time had begun, and the test hole was to determine the type of rock  
11 conditions which would inform the type of drilling required for the deep  
12 shafts which will be storing the wastewater. At that time, we anticipated  
13 that there was still regulatory processes to be completed, in particular, the  
14 Yukon Environmental Socio-Economic Assessment, as well as, of course,  
15 building and development permits and the construction to take place.

16 There was a lot of excitement about at that time, certainly  
17 excitement from the project team, the City of Dawson. I think it's fair to  
18 say that at that time the Court was hopeful that this proposed plan for a  
19 mechanical plant would work. I think it's also fair to say that Environment  
20 Canada was encouraged by the effort and progress -- sorry, I should say  
21 Environment Canada has shown in its reply, which is before the Court  
22 today, that it's encouraged by the effort and progress to advance the  
23 mechanical treatment plant option since August 2009. It remains  
24 cautiously optimistic about the plan, but I think today we've got some  
25 positive news to report on the significant progress and to confirm the  
26 anticipation that the plant will be completed and operational by the end of  
27 next year.

28 Today, I'll give you an overview of what's happened since August of  
29 2009, and I'll ask Ms. Harwood in a minute to give you some more details  
30 about that. But just to set the scene, and if Your Honour turns to the  
31 timeline of significant milestones for the project since August 2009, you'll  
32 see in this one-page document I've tried to highlight some of those  
33 significant issues, or some significant progress.

34 The 13th of August in 2009 was the last in-person Court update  
35 hearing. Coming out of that was a promise to provide the Corix contract, a  
36 request from Environment Canada, and that was provided on the 28th of  
37 August.

38 During August, the test hole drilling continued and was completed.  
39 In September, 2009, the contamination that had been flagged at the site  
40 was remediated. This was about 1,200 square metres of contaminated  
41 soil. It took about a month and cost about \$500,000. In October 2009,  
42 key members of the project team went to inspect the Homer facility to see  
43 how that had been running for the last 20 years. In the fall --

44 THE COURT: Just before you leave that, who here went to Homer? Okay. One  
45 of the -- and we're going to come back to this, because I have some  
46 issues that relate to the fact that our community well -- wells are so close  
47 to this -- the drilled holes here. Did Homer have an active plan of

1 monitoring the ground water in and around their plant?  
2 CATHERINE HARWOOD: Not to my knowledge.  
3 THE COURT: That to me is an outstanding issue, just to give you a heads-up. I  
4 want to inquire a little bit more about our plans in light of the proximity of  
5 the wells. Now, my questions are -- do not have as its focus an  
6 engineering kind of perspective. My perspective is this, and that is, in the  
7 event of a leak, and it's detected, what are our fallback plans, either in  
8 relation to the wells or the sewage treatment plant, and will the sewage  
9 treatment plant have to be shut down? If so, what's the fallback plan? So  
10 that's the purpose of my question, and I give you a heads-up on that and  
11 we'll get to that in due course, but go ahead.  
12 MR. CROSSMAN: Thank you, Your Honour, and yes, we can return to that.  
13 Obviously, Your Honour's aware, from the court materials, that there is a  
14 ground water protection plan essentially being put together. There's been  
15 some studies completed in terms of the ground water and --  
16 THE COURT: I don't want to put you out of your -- why don't you just follow  
17 through in the way that you were going and then we'll spend some more  
18 time --  
19 MR. CROSSMAN: Certainly.  
20 THE COURT: -- on that issue when we get to it.  
21 MR. CROSSMAN: Okay. And that's one of those issues, Your Honour, I'll  
22 probably ask Ms. Harwood to talk more detail about. She has a better  
23 knowledge and understanding than I.  
24 In the fall of '09 there was also some test pitting completed at the  
25 south bench and the Dome sites. These are the other lagoon options,  
26 what we would term the third option, if you like, the third contingency  
27 option. The first option, of course, is the mechanical deep shaft facility  
28 that's being constructed at the moment. The second option being that  
29 Corix has a contractual obligation to the Yukon Government that if that  
30 particular facility fails for whatever reason, then it still has to provide a  
31 secondary wastewater treatment facility that meets the requirements of  
32 Your Honour's order, whether that's another mechanical plant or  
33 something else, but that would be up to them. Not to suggest that we  
34 believe it will fail, but that is a contingency that's built in. And of course  
35 what we would consider the third contingency -- the second contingency is  
36 the lagoon option, so there was some work done in that.  
37 In the fall and winter there was also a significant amount of work  
38 completed at the Quigley Landfill. It's a hydro-geological study, because  
39 this is where the bio-solids from the new treatment facility will be disposed  
40 of, and that's obviously an important issue, and you'll see that from the  
41 materials how that fits into the puzzle. In the fall --  
42 THE COURT: It's clearly important with respect to the whole process, I suppose,  
43 from Environment Canada's perspective. From the fisheries perspective,  
44 of less interest to them, but from the broader environmental municipal  
45 point of view, obviously it's part of the entire cycle --  
46 MR. CROSSMAN: It is, Your Honour.  
47 THE COURT: -- and you had a chapter in your materials on that.

1 MR. CROSSMAN: That's right, and of course where that's also important, from  
2 the point of view of the YESAA process. That's a very important  
3 component, as Your Honour probably has read. One of the important --  
4 YESAA, particularly the designated office, spent a considerable amount of  
5 time assessing and considering what would happen at that site.  
6 And talking about YESAA, that was the thing that -- there's a lot of  
7 -- in any of these projects there's a lot of preparation work that goes into  
8 actually creating a successful project, and within the larger project, you  
9 have sub-projects, if you like, and going through and completing the  
10 YESAA process is one of those. So that includes not only preparing the  
11 application, but making it as thorough as possible, because one of the pre-  
12 steps before getting into the official YESAA process is called an adequacy  
13 review, where the designated office looks at the application to determine if  
14 it's adequate. And so the more work you can do and the more thorough  
15 the application can be before you submit it to the designated office, the  
16 quicker you are in terms of going through the official process. We'll hear  
17 more about that process from Ms. Harwood, as well. You'll see that the  
18 YESAA process took place from January through to mid-April 2010.  
19 Importantly -- it's important to note that Environment Canada is one of the  
20 regulatory bodies and of course has participated in that process well.  
21 Part of the YESAA process included the designated office, which is  
22 a body under YESAA, conducting their own open house in Dawson on this  
23 project, as well as a period of public comment and consultation in addition  
24 to the open house. That's important to make sure that, you know, the  
25 community is on side, and we'll hear more about that there was no  
26 opposition to this --  
27 THE COURT: One -- only one person wrote in and expressed some ancillary  
28 concerns as opposed to --  
29 MR. CROSSMAN: That's right.  
30 THE COURT: And this -- I'll say it now, I made notes about it. My number one  
31 note was that communications, both between Environment Canada and  
32 the City of Dawson, have really been at a very high level during this time  
33 period, and we stumbled a bit at the beginning, didn't we? It's really  
34 noticeable. It jumps out at me.  
35 MR. CROSSMAN: Yes. No, I think everyone has agreed that the  
36 communication is going very well, Your Honour. And communication, of  
37 course, not only -- it's also not only part of the YESAA process, but  
38 outside of that, there was a separate communication process that the  
39 project team had with the residents and community of Dawson, which has  
40 been ongoing vis-a-vis the website information bulletins and then  
41 meetings with particular stakeholders, whether it be at the Gold Show or  
42 events like that to inform and keep people up to date with what's  
43 happening with this new wastewater facility.  
44 I should also mention, just to go back to the open house under the  
45 YESAA, and Your Honour pointed this out, the one comment that was  
46 received, was not opposed to the project. It was a detail about one of the  
47 construction features in terms of where a particular concrete batch plant

1 should be situated during that construction phase.  
2 On the 28th of April 2010, the designated office provided their  
3 report and their recommendation. So their role is to review all of the  
4 information, take into account any comments from regulators or the public,  
5 and assess the project under that legislation, and come out with a  
6 recommendation whether to proceed with the project or not, and it was a  
7 positive in that recommendation to proceed.  
8 THE COURT: You said designated office; that's our group here?  
9 MR. CROSSMAN: Oh, sorry, Your Honour, I should explain that. The  
10 designated office is an independent office under YESAA.  
11 THE COURT: Oh, I didn't know that.  
12 MR. CROSSMAN: Under that legislation, there is a separate, independent body  
13 that's set up that does the assessment. The project team prepares an  
14 application, complete with a whole bundle of information and documents,  
15 explaining what the project is about, the environmental and socio-  
16 economic impacts for the community. The designated office, being  
17 independent, then reviews and assesses that as an independent body --  
18 THE COURT: Okay, I understand.  
19 MR. CROSSMAN: -- and then provides recommendation.  
20 THE COURT: And they recommended for the matter to proceed and that was in  
21 April?  
22 MR. CROSSMAN: Yes.  
23 THE COURT: Okay.  
24 MR. CROSSMAN: The next step in the YESAA process is that the -- there are  
25 obviously decisions, government decisions, made as to whether to  
26 proceed with this project. YESAA feeds back into that, into the Yukon  
27 Government, and you'll see that a decision was made by the Yukon  
28 Government to proceed with the project, which is based on the  
29 recommendation of the designated office, and that was made on the 14th  
30 of May 2010.  
31 THE COURT: I see in your timeframe that you provided, there's no additional  
32 YESAA decision point. Are you still -- will you still be requiring some final  
33 approval by YESAA?  
34 MR. CROSSMAN: No, the process is complete.  
35 THE COURT: The YESAA process is complete. Okay.  
36 MR. CROSSMAN: Yes.  
37 THE COURT: This is described as a decision document. It wasn't clear to me  
38 whether it was an interim decision. So YESAA -- the YESAA decision is  
39 positive and it's done?  
40 MR. CROSSMAN: That's correct, Your Honour. We'll come to another process  
41 within this a bit later on, which is the Water Board, of course. There's  
42 quite a few pieces to the regulatory puzzle here.  
43 So yes, the YESAA process is complete; so that is good news.  
44 This was a significant part and a significant concern for everyone in terms  
45 of how long would it take, would it be a positive result, and so we're able  
46 to report that yes, and it -- that YESAA decision and process was a  
47 precondition to doing any significant construction on the site. So without

1 that decision, we could not have put in the shafts which are there today.  
2 I mentioned the Water Board, and that is another process and  
3 we're in that process, as well. And again, a lot of the work done before  
4 you get into the official Water Board process is preparation in terms of  
5 drafting a thorough, comprehensive application to the Water Board.  
6 Again, it's similar to the YESAA process: what is the project about, what  
7 are the impacts on water resources, how are those concerns or issues  
8 mitigated and addressed, similar to some of the issues I think Your  
9 Honour has in mind here. It's a process designed, obviously, about  
10 regulating and ensuring the protection of the water resources, as the  
11 name suggests. The process, from the project team's perspective, is  
12 working with the contractor, Corix, here, is putting together an application,  
13 then consulting with the Water Board. This is before getting into the  
14 official process; to consult with them to ensure that this application is as  
15 comprehensive as possible. And so that's what they've been doing, and  
16 that consultation has been ongoing for many months. They provided --  
17 there've been a number of drafts of that application created. One of those  
18 drafts that was at a significantly advanced stage was provided to the  
19 Water Board for their comment, so that they could get feedback as to, you  
20 know, where are the gaps or this -- more information in this respect would  
21 be helpful for us to go through the process. And so that is one of the -- it  
22 hasn't been submitted yet, but I understand that it will be submitted very  
23 soon.

24 THE COURT: To the Water Board?

25 MR. CROSSMAN: To the Water Board, and we're told that, in discussions with  
26 the Water Board, that once officially into the Water Board process, that  
27 that process would be a six to eight month process. So we still have time  
28 within the window that we have. We've got 12 months, just a little over 12  
29 months, to go.

30 THE COURT: Just -- of course, it's -- you're proceeding, however, to effectively  
31 continue construction notwithstanding the absence of the Water Board  
32 approval?

33 MR. CROSSMAN: Perhaps I should back up there, Your Honour. Yes. Just to  
34 give you a bit of background, there is an existing Water Board licence for  
35 the existing facility, and so that has always been in place. What we would  
36 be applying for is an amendment to that licence to reflect the new facility.  
37 So -- and again, it's anticipated, and the project team is confident, that that  
38 amendment will be made to the licence.

39 THE COURT: I take it with the consultation you've been having with them that  
40 that's been a positive one and you've been responding back to -- filling in  
41 information and addressing any concerns or questions that they've been  
42 raising?

43 MR. CROSSMAN: Yes, Your Honour, that's right. It's an iterative process  
44 --

45 THE COURT: And there are no obvious stumbling blocks at this point?

46 MR. CROSSMAN: Not that I'm aware of, Your Honour. It is an iterative --

47 THE COURT: Looking over to Catherine, and --

1 CATHERINE HARWOOD: That's true, Your Honour. We got some feedback  
2 from them. We're replying to that. The -- and we've been very frank with  
3 the Water Board secretariat because we don't actually speak to the Water  
4 Board, but the staff, the secretariat, has said to us, just be -- just explain  
5 upfront what's going on, that construction must proceed, but we must get  
6 a water licence, so we have to do both at the same time.

7 THE COURT: Okay, but my question was more -- no insurmountable objects  
8 have developed in your discussions with them?

9 CATHERINE HARWOOD: That's correct, Your Honour.

10 THE COURT: Okay.

11 MR. CROSSMAN: So going back to the timeline, Your Honour. On June 7th  
12 was when construction began on site for the, if you like, preliminary  
13 construction for the two shafts, and the two shafts would contain the steel  
14 vessels which will contain the wastewater for the new facility. As a result  
15 of the test hole drilling, it was found that there was fractured rock  
16 underground, which meant that that had to be dealt with before drilling the  
17 actual larger shafts for the steel vessels. And what the -- and what Corix  
18 decided to do to make sure that it had a solid drilling foundation was to put  
19 grout in the rock to -- so that -- to deal with the fractured bedrock issue.  
20 Again, Ms. Harwood would be able to talk to Your Honour about more  
21 details about that, but that was a significant time spent in addressing an  
22 issue which wasn't anticipated until that test hole drilling was completed.  
23 It's one of the unknowns, of course, of going underground. We wish we  
24 had the x-ray eyes but it's not until we start drilling that we find exactly  
25 what's under there.

26 Now that, as you see, took some time to complete, about six  
27 weeks, I understand.

28 After that was completed, then the main shafts could be drilled and  
29 then after those shafts were completed, the drilling, then in those shafts  
30 were installed the steel pipes or vessels which will hold the wastewater.  
31 These are the sealed, watertight and held in place with grouting or  
32 concrete around as well. Again, Ms. Harwood can tell us more about  
33 those details.

34 The last thing that happened on site, and Your Honour's referred to  
35 it before, was the excavation of the foundation for the building itself. Your  
36 Honour might recall from -- Your Honour will have read, of course, that  
37 during the excavation some human remains were discovered, three coffins  
38 in all, and one of the concerns at the time was that that would lead to a  
39 further delay. This was unexpected, despite having done a lot of  
40 investigative work on the site, not only through doing the archaeological  
41 surveys, talking to the First Nation people and other archaeologists about,  
42 you know, what we might expect to find --

43 THE COURT: You forgot to talk to the RCMP or the Northwest Mounted Police,  
44 as they then were. I would say this, and not really humorously, but the  
45 event was publicized across the country, and probably internationally, and  
46 as a result, the good work that you're doing in Dawson with respect to  
47 cleaning up the sewage has gotten a lot of publicity.

1 MR. CROSSMAN: Yes. Again, Ms. Harwood can say a bit more about the  
2 excavation. I think also one of the -- apart from the good publicity for the  
3 City of Dawson, one of the things -- the concern was at the time was that  
4 this may delay the excavation of the foundation so that the foundation was  
5 not ready for construction in the spring when the weather was better, but  
6 due to the hard efforts and dedication of the project team, and the City of  
7 Dawson and the citizens, as well as the First Nations, the work was  
8 completed before the weather prevented --

9 THE COURT: The delay was surprisingly short. I take it the archaeologists or  
10 the anthropologists who got involved were able to deal with it fairly quickly.  
11 Was it three and a half days, or four days, something of that nature?

12 MR. CROSSMAN: Something of that order, Your Honour.

13 THE COURT: Yeah, and I think I mentioned to both of you on the telephone  
14 when we spoke, that when I first heard of this, I too thought there might be  
15 a very significant delay, this possibly being a more ancient burial site,  
16 which could have created more problems, was not the case.

17 MR. CROSSMAN: Yes. And I understand, Your Honour, that in fact the delay  
18 could well have been much longer but for the efforts of the project team,  
19 and actually, as I said, the citizens of Dawson, the City of Dawson officials  
20 and staff, as well as the First Nation officials and people, who actually all  
21 came together to actually deal with this situation in a very, very short  
22 period of time. So yes, a delay of maybe three or four days that could  
23 have potentially been weeks, if not longer. So it is good news that it  
24 happened in that way.

25 Your Honour, having said that, I just want to turn the page of this  
26 timeline document just to quickly highlight some of the future steps before  
27 turning it over to Ms. Harwood to give us some more details of what  
28 actually happened, but as you can see, and we've talked about in the past  
29 I think at the interim update, that there was some -- there is consideration  
30 still over the winter for doing some construction off site, if possible and  
31 feasible, modular-type construction. Over the winter, of course, there will  
32 also be work in getting things prepared, that is, equipment ordered and  
33 ready and to the site, whether it be the rebar for the foundations or  
34 process equipment that will go inside the facility building, that sort of thing,  
35 so the construction can begin in March of next year, when the weather  
36 permits. In the summer of next year it's anticipated the solids handling  
37 facility at the Quigley Landfill will begin construction. The fall is --

38 THE COURT: What does that -- will that consist of? I mean it seems to me I  
39 recall reading the process of dealing with it, trenching and filling in the  
40 trenches and then excavating the trenches. So it's going to be a physical  
41 building or facility built there as well?

42 MR. CROSSMAN: I didn't understand that --

43 CATHERINE HARWOOD: Essentially, it's the four trenches with a fence around  
44 them.

45 THE COURT: Okay. The fencing, then, that's the construction, okay.

46 MR. CROSSMAN: And through the summer you will see the construction of the  
47 facility building across the road to be completed in the fall. November, the

1 beginning of November, I --  
2 THE COURT: And I noted, if you can just let me finish, I noted again this may be  
3 of more interest to me as someone who's been coming to Dawson for  
4 years and years, but the fact that there's been a close communication with  
5 the citizens of Dawson with respect to the style and appearance of that  
6 building, and apparently changes were made that now meet the approval  
7 of the heritage people and others in the community. So well done there,  
8 too.

9 MR. CROSSMAN: Yes, and the project team has worked hard on that aspect,  
10 Your Honour.

11 We see on the current schedule that the beginning of November is  
12 the date for the completion of the facility, the new facility, that things will  
13 be hooked up, and we see the beginning of December being the time  
14 when the plant will be fully operational and compliant. That is a bit of a  
15 change, obviously, from the previous schedule which we reported on back  
16 in August of 2009, which was, at that time, looking at July for the  
17 completion of construction, and into the fall for the -- being in operation  
18 and compliance. There's been some delays and we're going to talk a little  
19 bit about those in a minute, but you can see from the schedule, the  
20 anticipated completion and operation is still within the time required by  
21 Your Honour's order.

22 THE COURT: I should tell you that these very modest delays, if they materialize,  
23 are of no concern to me at all compared to what we've all been through  
24 over these years. So this is -- as far as I'm concerned, if you are able to  
25 maintain this schedule, that's very good news.

26 MR. CROSSMAN: Thank you, Your Honour. With that, Your Honour, if I could  
27 ask Ms. Harwood to address the Court.

28  
29 SUBMISSIONS BY CATHERINE HARWOOD:

30  
31 THE COURT: Nice to see you again, Ms. Harwood.

32 CATHERINE HARWOOD: And you. So thank you for the opportunity to address  
33 the Court today. As you know, but I'll repeat for the record, I'm the project  
34 manager for Yukon Government for the Dawson wastewater treatment  
35 project. I am an acting senior advisor with the Deputy Minister's office of  
36 the Department of Highways and Public Works, Yukon Government, and  
37 I'm a professional engineer with 15 years of engineering experience. And  
38 I have been asked to report in a little more detail on the progress that's  
39 been made since August of 2009 when we were here in this room. As Mr.  
40 Crossman has said, we have our project team, which includes the people  
41 in Court today, senior officials and people here in Dawson such as Pat  
42 Habiluk, who has been a great asset to me.

43 The first thing I wanted to talk about a little bit was communication  
44 on this project, and as has been mentioned, there's sort of two facets; one  
45 has been the ongoing communication with my colleagues at Environment  
46 Canada, and I'd like to take this opportunity to say that we've had some  
47 very frank and I think valuable conversations that I've enjoyed greatly, so

1 thank you for those. They are also very flexible. We manage to make our  
2 monthly meetings and work each other's schedules into it, so it's been a  
3 great team effort. And there has also been ongoing communication with  
4 our stakeholders in Dawson, including the chief administrative officers of  
5 Dawson, Norm Carlson, and after a long trip to Homer, 15 hours each  
6 way, I think, in the car, we had lots of opportunities to talk about the  
7 project.

8 THE COURT: I noticed you made the trip in the summer.

9 MS. HARWOOD: Yes.

10 THE COURT: A lot of good fishing along the way.

11 CATHERINE HARWOOD: It seemed like it was a bit of a blizzard on the first  
12 day, but strange fall weather. And also on the topic of communication in  
13 Dawson, we've carried on with what is almost a tradition of having a booth  
14 at the Gold Show; I don't know if two years constitutes a tradition, but  
15 that's a great way to talk to stakeholders, residents who might not have  
16 otherwise --

17 THE COURT: How did that work out, in fact?

18 CATHERINE HARWOOD: Really well. We counted, you know, how many  
19 people stopped by to talk and there were probably 50 to 60 over two days.

20 THE COURT: Yeah, that's very good. If you had 20, that would be good.

21 CATHERINE HARWOOD: Mm-hmm, and they were -- they had good questions  
22 and good comments. And the other things we've done are to organize  
23 meetings with the Chamber of Commerce, the Klondike Visitors  
24 Association, the Klondike Placer Miner's Association and Tr'ondek  
25 Hwech'in. And then, most interestingly, for me, I spent a day at the Robert  
26 Service school last month talking to Grades 4 through 12, and some of the  
27 questions were just fantastic. We were right on our toes and yeah, so that  
28 was great. We had five presentations in as many hours. It was myself  
29 and Doris Wurfbaum from Highways and Public Works, and it was good.  
30 We also gave them some magnets and some information on the project.  
31 The kids loved the magnets.

32 That's the essence of the communication. The next topic that I  
33 have, in no particular order, was just to touch on the fact that one of the  
34 highlights over the last 16 months has been the successful remediation of  
35 contamination at the current location for the plant. Similar to drilling  
36 through bedrock, you never quite know how much contamination is down  
37 there, so we were able to -- well, the Department of Environment  
38 managed the project and they were able to excavate --

39 THE COURT: What was that contamination? Was it petrochemical?

40 CATHERINE HARWOOD: Yes, mainly. So the Department of Environment was  
41 able to finish that in a timely manner because, of course, the ferry was  
42 going to come out and the land treatment facility is over on the Top of the  
43 World Highway, so things went smoothly, which was excellent.

44 And shortly after that, of course, we were getting ready to submit  
45 the application to YESAA, which was definitely on the critical path for the  
46 project. And the Yukon is lucky in a way because there are legislated  
47 timelines with that *Act*. So we had a bit of an idea of how long some of the

1 chunks would take, but things like the review period for adequacy can take  
2 longer or shorter, depending on what the designated office needs. That  
3 was finished in five weeks. Plus it was over Christmas, of course. I think  
4 Mr. Crossman has touched on the same points I was going to make about  
5 that process, unless you had any questions? Okay.

6 And then the other high point, of course, was the beginning of the  
7 actual construction and having Construction Drilling Incorporated arrive on  
8 site in June and begin the pre-grouting program. So the one test hole,  
9 because there was one about two inches in diameter, indicated fractured  
10 rock, fractured bedrock, and the cores were laid out in the core boxes the  
11 day that we were here at court, so I took a look at them. Not that I'm a  
12 geotechnical engineer, but I was curious. Construction Drilling was here,  
13 they took a look at them. The difference that they found when they went  
14 back in June was a larger zone, a deep -- well, it started a little shallower  
15 and it ended a little deeper -- larger zone of fractures. And Construction  
16 Drilling, in conjunction with Corix, went -- stepped through six holes and  
17 then - I can't remember exactly how the numbers rolled out; it's in the  
18 court binder - making decisions as they went as to whether to do more  
19 and where to do more, to make sure that the grout was penetrating into  
20 those fractures.

21 THE COURT: Is the grout pressurized? Is there a pressurized process for  
22 forcing the grout in the cracks?

23 CATHERINE HARWOOD: There were two processes. One was pressurized  
24 and one was tremie; so the grouting specialist decided which one would  
25 be effective in any given hole. So the fractures in and of themselves are  
26 not a problem; it's when, as in this case, being a slightly active seismic  
27 zone, the grinding of the two faces in the fracture create what's called a  
28 clay gouge, and then that sort of plugs up the fracture itself, and that's  
29 what the grout has difficulty getting past. So those were the challenges.  
30 After 21 holes were drilled and grouted, Corix and Construction Drilling  
31 decided to stop that program and move on to the drilling of the main  
32 shafts. So that was finished, I believe, on July 27th. And then the drill rig  
33 had to be set up with the large drill head in order to drill the main holes,  
34 and, as part of that process, overburden casings were put into place. And  
35 I can't remember the exact diameter. In the order of five feet? Would that  
36 be --

37 STEPHEN JOHNSON: The outside diameter is 54 inches, inside is 52, so it's  
38 one inch thick casing that goes through the overburden into the  
39 bedrock.

40 CATHERINE HARWOOD: So the purposes for that, of course, was to be able to  
41 excavate out the rest of the gravel. And that gravel was donated to the  
42 Klondike Visitor's Association.

43 THE COURT: I read that. It's very interesting, a good decision on your part. I  
44 thought, when I was here in the summer, I thought Steve was actually  
45 going to haul it into his backyard, but you managed --

46 CATHERINE HARWOOD: I suspect he did a little test panning.

47 THE COURT: Yeah, you managed to get it over to the Klondike Visitor's

1 Association; it's a very good decision, again, indicating, I think, a very sort  
2 of -- it becomes part of the community. The community takes ownership  
3 of it when you involve them in that way, so there's something positive for  
4 them out of this process, as well.

5 CATHERINE HARWOOD: I never did hear what sort of payload came out of the  
6 --

7 THE COURT: You should ask Steve how much he left behind.

8 STEPHEN JOHNSON: I did find gold.

9 THE COURT: I don't want to hear about it.

10 CATHERINE HARWOOD: After the overburden was excavated out they were  
11 able to start drilling the main hole with -- two holes, with a drill head that  
12 entailed, I'm not sure how many, but a number of cutting wheels, sort of  
13 like a tunnelling machine, and each cutting wheel has little carbide teeth  
14 on it and so they basically are grinding up the rock as it travels down and  
15 then the ground-up pieces of rock are sucked out and water is circulated  
16 through as a lubricant to make that work.

17 One of the important parts of this process, of course, was the ability  
18 of the drilling team to make sure that the holes were exactly vertical, and  
19 the results there were excellent, well within specifications. I think one  
20 number I read, it was in the weekly reports, was something like nine  
21 centimetres over 30 metres. I could be off by a bit, but when you try to  
22 conceive that, it's excellent. I'm not sure if verticality is a word; I was told  
23 it might not be, but I like it.

24 THE COURT: It's descriptive.

25 CATHERINE HARWOOD: Yes. So once the shafts were finished, then the steel  
26 vessels were lowered into the shafts, and of course they had to be welded  
27 as they went because you couldn't put 100 metres into the air and drop it  
28 down. And once a vessel was in place then it was grouted in three to four  
29 lifts. The first lift of grout anchored it basically in the hole and then they  
30 proceeded upwards. At that time -- well, before the grouting started and  
31 during the grouting, the vessels had a cap that had been welded on and  
32 they were filled with air, so pressure tested, and that pressure was then  
33 monitored. They didn't -- the drillers didn't want the pressure to go up  
34 because, then that meant it was being squeezed, nor did they want it to go  
35 down; that meant there was a leak somewhere. So that testing was  
36 conducted successfully as well.

37 THE COURT: So that testing, that pressure used was sort of similar to the  
38 pressure that would be used in these wells when the sewage is being  
39 treated?

40 CATHERINE HARWOOD: They pressure tested it to 150 percent of the design  
41 pressure.

42 So once the vessels had been pressure tested and the results were  
43 deemed satisfactory, and once the grouting was finished, those sealed  
44 caps were then cut off and the internal components were lowered into  
45 place. Of course, they had to be welded as they went down as well. And  
46 lastly, support frames for those internal components were welded to the  
47 tops of the vessels. One of those frames is the down comer support

1 frame, which is also referred to as a boat, and that's what's inside the  
2 boxes that you see on the site. Any questions about the drilling?  
3 Now, I was going to speak a little bit about the excavation of the  
4 building itself, and as was discussed a little earlier, there was a discovery  
5 of human remains. I had spoken with the archaeologist and based on the  
6 best knowledge he had at the time, he believed there were executed  
7 criminals buried somewhere in that area, but his best guess was that it  
8 was over -- or educated guess, was that it was over by the fence line  
9 separating the RCMP compound from the Highways compound. So we  
10 went ahead. And then it was interesting because when we were -- when  
11 the Department of Environment was remediating for contamination, they  
12 were digging in that exact same area to about 12 feet, which is deeper  
13 than where we found the remains, but it was, you know, on a grid pattern  
14 and they didn't -- didn't hit anything, so. Neither did we drill through  
15 anything with the shafts, so that was good news as well.  
16 THE COURT: When you think about it, it's sort of lucky, isn't it?  
17 CATHERINE HARWOOD: Yes, yes, very lucky. It would have been preferable if  
18 we'd found it during the contamination, but that would have slowed that  
19 down, and they had to get over the river, and so.  
20 THE COURT: Yeah, you're probably better off having it happen the way it did, as  
21 you were pressed with time, if I understood correctly, in terms of the  
22 freeze-up, getting rid of the contaminant, so.  
23 CATHERINE HARWOOD: Yeah. So I keep thinking about how positive an  
24 event it ended up being, with the strong cooperation between the  
25 archaeologist, who hopped on the next plane even though he had other  
26 commitments and he had to give up his weekend and all that, and then  
27 Pat Habiluk and Stephen Johnson in particular were there to help the  
28 archaeologist. Because he's here in the room, I must mention Jim  
29 Regimbald was out in the cold sifting through the gravels as well, so, and  
30 there are others. So Dawson, including the heritage director from  
31 Tr'ondek Hwech'in and some of her staff, just came right out, in the cold,  
32 you know, all hands on deck to help manage this find. And I think -- I  
33 wasn't here, but I think it was a topic of great interest and curiosity, so it  
34 was something that some of them were quite -- feeling quite lucky to be a  
35 part of.  
36 THE COURT: Mm-hmm.  
37 CATHERINE HARWOOD: And the archaeologist said something to the effect  
38 that it's a once in a career kind of discovery for him.  
39 THE COURT: Well, and it of course ties in so closely to the history and traditions  
40 of Dawson. Not that -- I'm not suggesting for a moment that those  
41 executions were positive events or were even appropriate events; they  
42 were clearly appropriate for the time, but that certainly ties into the gold  
43 rush and what Dawson is all about. So I think it was positive all around.  
44 The most complete coverage I read was found in the *Globe and Mail*, and  
45 they had a full page, two big articles, filling a whole page, so that was  
46 certainly -- and it was positive, the way I read it.  
47 CATHERINE HARWOOD: So one of the other items that I've been discussing

1 with Environment Canada has been the benchmarking report, which is an  
2 analysis of the Homer plant in light of a national inventory of wastewater  
3 treatment plants. And I was able to finally get the final draft or the final  
4 report on Friday and send it to Environment Canada. Now that report will  
5 be reviewed in the context of a whole bundle of information, including a  
6 sensitivity analysis of the O&M cost estimates, or a study of Dawson's  
7 costs and those sorts of things. It's rather complicated and affected by a  
8 number of variables, such as design decisions, the construction of a  
9 district heating plant and those sorts of things.

10 And on to the topic of schedules, and I wanted to address with the  
11 Court why there is a difference between the schedule we presented to you  
12 in August 2009 and the one we have in the Court binder.

13 THE COURT: You don't have to spend a lot of time on that for my -- unless Mr.  
14 Cliffe wants you to do so. My own view is that the scheduling difference is  
15 rather small in the total context of things, and it doesn't concern me greatly  
16 at this point. Obviously, if it had been done sooner that would have been  
17 that much better, but I'm more interested in getting it done and you seem  
18 to be on track. Mr. Cliffe, do you want some more information on that?

19 MR. CLIFFE: Perhaps just briefly, Your Honour. I don't intend to dwell on it in  
20 my submissions, but I will say something about that just in the context of --

21 THE COURT: Okay. I know you mentioned it in your reply.

22 MR. CLIFFE: Yes, it's in the context of what has been presented in Environment  
23 Canada's reply, so perhaps just very briefly, and given that we have a  
24 short time here this afternoon. Thank you.

25 CATHERINE HARWOOD: Certainly, thank you. Yes, I have some high level  
26 comments just to make. The first one is that, as you can imagine,  
27 schedules on large, complicated construction projects that last multiple  
28 years are constantly changing due to different factors, and there have  
29 been changes since 2009 during -- due to the permitting and regulatory  
30 processes and also the construction events that we've already touched  
31 on. And also, I think, just worthy of note, a reminder that the schedule  
32 presented in the 2009 report was the only one we had at the time and it  
33 was based on the proposal which was based on a 30 percent design. So  
34 it was a conceptual sort of stage that we were still in. And Mr. Crossman  
35 has spoken a little about the next steps, so I won't dwell on those.

36 So I'm almost finished, and the last couple of items relate to  
37 discussions with Environment Canada and some of the work ongoing to  
38 do with the water licence application. I have sent drafts to the Water  
39 Board secretariat and we have, we being the project team, have spent a  
40 lot of time making sure that every one of, I think, 28 comments were  
41 addressed thoroughly in our application. I've also had meetings with  
42 Water Resources to give them updates on the project and on the water  
43 licence application and the process. So we've done a lot of preparatory  
44 work, and Water Resources has indicated that they're more than happy to  
45 work with us during the adequacy review period. So we'll be working with  
46 the secretariat on one hand and Water Resources on another, and of  
47 course any comments from Environment Canada can be incorporated at

1 that early stage as well. And they will be given a copy of everything that  
2 goes to the Water Board secretariat, at the same time as it goes to the  
3 Water Board secretariat.

4 And then the last item is the topic of parallel options, and the last  
5 time I was here in front of you, we were getting ready to -- Pat Habiluk was  
6 going to do some test pitting on the south bench and the Dome Road, so  
7 he had to get approval under YESAA for that and he did complete that and  
8 as you know, there's a report in the Court binder. And we will continue to  
9 work with Environment Canada on that topic and discuss those options  
10 generally.

11 Now you had mentioned earlier that you were going to have a  
12 question about the --

13 THE COURT: Yeah. Do you recall the question; do you want me to repeat it or?

14 CATHERINE HARWOOD: Please.

15 THE COURT: I'm wondering -- you do have a -- Part 4, I think, deals extensively  
16 with monitoring and controlling surface spillage, identifying risks and  
17 remediation and so forth. The remediation for surface spillage I think is  
18 pretty obvious. It's obvious -- it should be obvious in terms of the event  
19 itself, and then the remediation, in at least a normal spillage, would be  
20 quite obvious. I have more concerns about leakage, underground  
21 leakage, should there be faults providing leakage into the aquifer system.  
22 Now did I understand correctly that there will be -- you will have -- you will  
23 be monitoring the aquifer between the sewage treatment plant and the  
24 wells? Do you have devices to do that?

25 CATHERINE HARWOOD: That was one of the recommendations from the  
26 YESAB designated office here in Dawson. The decision body at Yukon  
27 Government varied that recommendation to be more general and correctly  
28 placed the details of those sorts of activities back with the Water Board,  
29 not wanting to preclude what the Water Board might decide. So the  
30 decision document does not specify ground water monitoring wells. And  
31 they have some benefits, but they aren't a silver bullet. So we're  
32 approaching this project from the point of view - and this is in our  
33 application to the Water Board as well - from the point of view that there  
34 are many stages in terms of preventing, monitoring for, stopping and  
35 treating the results of any sort of leak.

36 THE COURT: Yes.

37 CATHERINE HARWOOD: So to the crux of the issue, your question from earlier,  
38 was what does it mean to the sewage treatment plant if there is a leak?

39 And my answer --

40 THE COURT: And I do understand that there are -- a number of intermediary  
41 steps may be nothing if the existing chlorination system is adequate to  
42 deal with any problems that arise. I guess my question was more assume  
43 the worst case scenario, what's the fallback position?

44 CATHERINE HARWOOD: This plant has two of absolutely everything. So were  
45 one shaft be found to be leaking, it would be shut down, repaired if  
46 possible, and abandoned if it had to be.

47 THE COURT: And you would find out which one it was by doing the pressure

1 tests that you did before?  
2 CATHERINE HARWOOD: Static head tests are possible. I haven't -- I'm not  
3 sure about the pressure test because you can't weld a cap back on once  
4 it's in operation, but you can do a static head test which means you'd fill it  
5 up and then let the level of the liquid tell you what was happening.  
6 THE COURT: Okay, right.  
7 CATHERINE HARWOOD: So there are ways to test it. And I think to -- if only I  
8 had a white board and some coloured pens. There's a casing in the  
9 actual aquifer, the one inch thick steel overburden casing remains in place  
10 around each shaft, and that event -- it is seated in the bedrock by one to  
11 two metres and it effectively seals off the shafts from the aquifer itself.  
12 Now the lower part, the steel vessels are surrounded by five to six inches  
13 of grout and then the grouted bedrock that was -- that had to be done for  
14 the drilling. So those barriers are in place as well.  
15 THE COURT: Your view generally is that the likelihood of any leakage would be  
16 remote. Would you say extremely remote?  
17 CATHERINE HARWOOD: Mm-hmm. These -- these have been -- we asked  
18 NORAM this very question, and they have said that they have never heard  
19 of any problems in this regard. They have a deep -- there's a deep shaft  
20 in place in the estuary of the Thames River. It's in shifting sands and  
21 there've been no problems.  
22 THE COURT: Yeah, I saw reference to that. What does that system do? Is it  
23 sewage?  
24 CATHERINE HARWOOD: Yes.  
25 THE COURT: Oh, it is?  
26 CATHERINE HARWOOD: Yes. Perhaps we could arrange a field trip. You  
27 could come, too.  
28 MR. CLIFFE: Thank you.  
29 THE COURT: I'm not going to touch that one. Let me just see if there's anything  
30 else. No, that covers my questions. While you're here, is there anything,  
31 Mr. Cliffe, that you want to pose directly to --  
32 MR. CLIFFE: Not to Ms. Harwood, Your Honour, thank you.  
33 THE COURT: Thank you, Ms. Harwood.  
34 CATHERINE HARWOOD: Thank you.  
35 MR. CROSSMAN: Your Honour, if I could ask Mr. Mike Johnson to say a few  
36 words.  
37 THE COURT: Oh, yes, I was hoping -- I was going to ask Mr. Johnson if he  
38 wanted to speak, or if Ms. Anderson wanted to speak. Let me just say  
39 thank you for being here, because as I may have mentioned on a previous  
40 occasion, the fact that you're even here indicates very clearly that you  
41 consider -- the government considers this to be a very important project. I  
42 think it is; I think it is for the people of Dawson and you assure me, by your  
43 presence, that it is, so thank you for being here.  
44  
45 SUBMISSIONS BY MIKE JOHNSON:  
46  
47 MIKE JOHNSON: Well, thank you, Your Honour. I guess just in terms of my

1 involvement, Catherine Harwood reports directly to me on this project.  
2 She reports to my ADM, Leslie Anderson, on all other things, and we meet  
3 once a week on this project.

4 Just by way of introduction, I'm a professional engineer and the  
5 Deputy Minister of Highways and Public Works. Prior to this job, about 30  
6 years, involved in the private sector in civil infrastructure construction,  
7 largely in the north, across Canada, and now for almost the last almost  
8 four years as the Deputy Minister of Highways and Public Works. I'm  
9 largely here, sir, to again say that the Yukon Government is committed to  
10 working and supporting the City of Dawson on this project, not just through  
11 this construction phase, but the operation phase, as well as -- we have an  
12 undertaking and agreement with the City of Dawson to assure that the  
13 O&M costs are sustainable to the people of Dawson. We are continuing  
14 to take the lead in managing this project and --

15 THE COURT: How does that look at the current time to you, the O&M costs? I  
16 know there's a bunch of variables that are still being addressed, which  
17 seem to me to be positive steps, maybe higher initial capital cost, but  
18 lower O&M?

19 MIKE JOHNSON: There's a couple of phases to that. We're continuing to work  
20 with the administration of the City of Dawson to benchmark what their  
21 O&M costs are for wastewater treatment. In the past they've had  
22 amalgamated -- they managed their public works as one account and  
23 we're getting that worked out. I take confidence directly from the Premier,  
24 who has allowed us to put in our MOU with the City of Dawson that Yukon  
25 Government will backstop Dawson on this, and perhaps I'll go to right  
26 directly from there in terms of - as we're talking O&M-- about the most  
27 recent project that we're marking along with this project was the biomass  
28 heating. RFPs, requests for proposals, close this Thursday. We have  
29 gotten approval under the Build Canada Fund to allocate \$4.8 million  
30 towards a facility that will be adjacent to the wastewater treatment plant,  
31 and we will burn -- this boiler will burn either chips or pellets. Our intent,  
32 and we've had extensive discussions with the local entrepreneur who  
33 owns the sawmill, it's a waste product from his site, and how this speaks --  
34 and I believe it's quite positive in terms of helping the O&M costs, is it will  
35 not only heat the wastewater treatment building, but the intent is that it will  
36 heat Dawson's potable water. This became an issue for Dawson when  
37 they went off the diesel generation, as you know, sir, and so -- and it's my  
38 understanding they've been spending \$150,000 a year to heat their  
39 potable water, and this looks like this project will speak to that. So the  
40 capital is taken care of. The other nice thing about it, it's a green initiative,  
41 which I think is pretty positive in today's construction climate. And I am  
42 hoping that it's as efficient enough that there's an opportunity to heat the  
43 social housing apartment that you may have noticed being built on the  
44 same property, and the new hospital building, the swimming pool, the  
45 museum; there's some outgoing opportunities there.

46 THE COURT: Again, there was reference to it in the materials, Mr. Johnson, but  
47 I just sort of skimmed through them because they didn't pertain to the

1 main thrust, but I'm very interested in it on sort of a personal level. You  
2 call this a district heating plant for government buildings; is that what it is?  
3 MIKE JOHNSON: Yes, and we're -- I guess we're taking baby steps. We want  
4 to ensure that we are sizing the initial boiler to heat the wastewater  
5 treatment facility and also to heat the potable water, because Dawson has  
6 to heat its water to get it through the permafrost in any event. But we are  
7 endeavouring to become a centre of excellence in terms of being a centre  
8 of knowledge. You may not know that the \$65 million corrections facility  
9 that our department is building in Whitehorse has a pellet burner in it and  
10 there's -- we're exploring opportunities from that that we could heat up to  
11 the College and to the Takhini Elementary School, if you're familiar with  
12 the geography there.

13 THE COURT: Mm-hmm.

14 MIKE JOHNSON: From a government perspective this is a good project  
15 because, as I was discussing with the mayor prior to meeting here, and  
16 lots of times people form committees about these things and talk about it  
17 extensively. We had a very short window to make a decision about going  
18 down this on this one because it needs to be ready for next fall, and so the  
19 RFP has to close this Thursday because there's a six-month delivery on  
20 the boiler. And we've nominated the type of boiler after we've visited the  
21 Northwest Territories. Yellowknife is building a great deal of their public  
22 infrastructure and heating it with pellets, and so we've looked at what their  
23 experience has been over the last five or six years, and we're also making  
24 sure that we're using the same manufacturers we're using in Whitehorse.

25 THE COURT: Europe does a lot of pellet heating, I understand, so there's quite  
26 a bit of experience out there. I've talked to some people in British  
27 Columbia who produce pellets. They don't sell them locally, they ship it all  
28 to Europe in great quantities, so this certainly sounds like a very promising  
29 step. I'm delighted to hear that you're going to be able to tie it into this  
30 construction.

31 MIKE JOHNSON: We've, you know, had extensive discussions, as I mentioned,  
32 with the local entrepreneur, but our boiler, the boiler we'll be installing, can  
33 burn both chips and pellets. So in the event that something befell the  
34 supply, the local supply, the business case still works to, right now, come  
35 from Prince George.

36 THE COURT: Mm-hmm.

37 MIKE JOHNSON: And there's an opportunity that somebody will build a pellet  
38 plant in Whitehorse or in the Yukon. We have that spruce kill. There's  
39 some opportunities there and other people are looking at that, but back to  
40 that, we believe that will help the O&M costs. That's on the credit side for  
41 the O&M costs. So we've talked about, or I've spoken about the Build  
42 Canada plan and it's in our annual plan. So the money has been  
43 approved in Ottawa for the continuing, ongoing construction here. I don't  
44 think anybody's surprised about that, but that's just something else that's  
45 been done and we're well on track.

46 And I'd just like to give my personal opinion about the delays we've  
47 had. To date is the, I take it, 26-month project and you have a 42-some

1 day delay. When I looked at those delays, and they weren't desirable, but  
2 they aren't caused by a contractor with lack of resources or experience or  
3 initiative or planning. We're not dealing with that. We dealt with some  
4 situations that we really didn't see coming. Like you mentioned, the  
5 morning I heard about the discovery of the remains, I thought we're in  
6 trouble. And I think what hasn't been mentioned was that cooperation was  
7 very important because you -- the archaeologist had told us that we really  
8 can't be digging in frozen ground for additional remains or extracting of  
9 these. So if we had waited to the spring, the ground would have been  
10 frozen down three metres, as it does, and then we would have had to wait  
11 for the frost to come out, and frost comes out from the top down. So we'd  
12 have been some time in June before somebody would have said you have  
13 a clean site. And it was -- I really appreciate the cooperation I got in  
14 Whitehorse from the Department of Tourism and Heritage. They bought  
15 into that it was significant to the project to not wait. Their first indication  
16 was, we'll come back when it's warmer and we'll get to the bottom of this,  
17 but when they understood the implications to the project and the schedule,  
18 they -- and we said we would, --I mean I basically volunteered Pat Habiluk  
19 and Corix stepped up as well, because they were -- would have probably  
20 to leave in the cold weather. Everybody came on board and we now have  
21 a clean site. And we also not just have a clean site for the wastewater  
22 treatment plant, at the same time we did the investigation work where the  
23 biomass unit will go, so no delays there also. That's the extent of my  
24 update for you, sir.

25 THE COURT: Thank you very much, Mr. Johnson. Again, I very much  
26 appreciate your attending today and thank you for your presentation.

27 MR. CROSSMAN: Thank you, Your Honour. I have nothing further, unless Your  
28 Honour has any further questions.

29 THE COURT: Okay, no, I'm content at this point. Do you want to take a five or  
30 ten minute break?

31 MR. CLIFFE: Your Honour, yes, I'd just like ten minutes. I'll just consult with the  
32 Environment Canada folks with respect to my submissions. I'll be  
33 relatively brief, I believe.

34 THE COURT: Okay. Thank you.

35  
36 (PROCEEDINGS ADJOURNED)  
37 (PROCEEDINGS RECONVENED)  
38

39 THE COURT: Mr. Cliffe.

40  
41 SUBMISSIONS BY MR. CLIFFE:

42  
43 MR. CLIFFE: Yes, Thank you, Your Honour. The first thing just to deal with, I'll  
44 just be asking if it's not already marked collectively as Exhibit number 1,  
45 I'd be asking that the Environment Canada --

46 THE COURT: We'd actually mark it as Exhibit 3.

47 MR. CLIFFE: Exhibit 3 that would be appreciated, Your Honour. Thank you.

1 EXHIBIT 3: Environment Canada's Reply to the City of Dawson

2  
3 MR. CLIFFE: And if I might just with respect to Your Honour's question to my  
4 learned friend and to the project team, and that was, I'll just call it in my  
5 layman's terms, the leakage issue, and just say that. And of course what  
6 we're talking about is any potential for, as it might very well be a remote  
7 potential for, contamination of the City's water supply. And I just want to  
8 note this, Your Honour, that Mr. Guilbeault in our meeting this morning,  
9 preparing for court today, was briefing me just on this topic this morning,  
10 because he had a concern when he read at page 7 of the summary in Tab  
11 1 of the report back to Court, just -- no doubt what Your Honour read, and  
12 Mr. Guilbeault took the position that he didn't necessarily want it to be  
13 raised at the report back to Court hearing until he heard, of course, Your  
14 Honour ask the question. His view was that it was a technical matter and  
15 it should be something that should be raised at the technical committee,  
16 and it's his intention, after we met, and it's not an instruction from me, it  
17 was more himself briefing me, that his intention is to communicate with the  
18 technical committee with respect to obtaining the ground water under  
19 direct influence report, which is mentioned at page 7 of the summary in  
20 the report back to Court document; and also to express his concerns to  
21 the committee either in meetings or in writing, with respect to his thoughts  
22 on the issue. So I wanted to leave you that indication, Your Honour, that  
23 Environment Canada is not unaware of the issue that Your Honour raised.

24 Secondly, on the same point, Environment Canada takes the view  
25 on this, because there's going to be -- it's kind of a bigger issue. It's not  
26 just the issue, perhaps, of the failure of -- or leakage from the shafts. We  
27 know that there's -- that in some of these reports, they've talked about the  
28 possibility, the possibility of other sources of contamination at or near the  
29 site. That's another source, and of course now we're hearing about --  
30 which appears to be a very interesting project and one that should no  
31 doubt be supported; it's a green project, the heat project, the biomass  
32 heating project. And I don't know whether there's going to be -- what's  
33 going to flow from that as far as any kind of contamination or like that, but  
34 all of that's got to be looked at as some kind of global kind of concern.  
35 And the way that Environment Canada wants to signal to Your Honour, is  
36 that, one is that they've also flagged the issue, but number two, it's really  
37 something that's got to be flagged. And it's good that Mr. Mayor is here,  
38 and Mr. Carlson, the public works manager for the City is here, because  
39 they're the ones that have to be most concerned, and, in the background,  
40 the Yukon Government with respect to this potential of contaminating the  
41 City's drinking water. So I'll just leave it at that. That it's not something  
42 that Environment Canada was just missing; they had actually been  
43 thinking about it.

44 Your Honour, I am going to do something that I've done in past  
45 appearances in court, and that is, I call it grounding, on two points, and  
46 that is, where we're now here, I think it's, if my arithmetic is right, seven  
47 and a half years after your order was drafted.

1 THE COURT: Don't remind me.  
2 MR. CLIFFE: And Your Honour makes a good point, and I feel I should deal with  
3 it square on right now, just about the fact that we're down the road seven  
4 and a half years. And Your Honour mentioned at least a couple of times  
5 in the exchanges with my friend and with Ms. Harwood, either Ms.  
6 Harwood or Mr. Johnson, with respect to -- the Court is not concerned with  
7 respect to the short time periods of delay, and that's perhaps a fair  
8 comment when we're looking at, you know, getting very close to hopefully  
9 the order being complied with, and that is a fair comment. And it's also a  
10 fair comment when you look at the period of time of seven and a half  
11 years. The thrust I want to leave you with, Your Honour, is that even the  
12 loss of those -- Mr. Johnson says 42 days; my simple calculations, looking  
13 at the timeline documents, it's actually probably at least three months, but  
14 in any event, we're getting down to the short strokes, as they say. We're  
15 getting down to, if work resumes, assuming work resumes in March, and  
16 assuming a schedule that ends in November with this kind of period of a  
17 few weeks before Your Honour's order is -- expires, we're looking at a  
18 period of maybe eight, maybe eight and a half months to do a lot of things.  
19 THE COURT: And if it's not done by early winter of next year, or certainly by  
20 December 31st, we're clearly into possibly another three or four months.  
21 MR. CLIFFE: Well, you could be into three or four months, or a couple of years;  
22 we don't know. I mean, and we're also left with --  
23 THE COURT: I refuse to acknowledge the possibility of a couple of years. I'm  
24 going to ask Madam Clerk to strike the remark from the record.  
25 MR. CLIFFE: Oh, thank you, Your Honour. Well, I'm -- the Crown is hopeful too,  
26 and I say the Crown, the broad Crown, including Environment Canada, as  
27 the Environment Canada's report addresses, they are hopeful that this will  
28 come to a successful end with compliance with Your Honour's order. But  
29 it is a short period of time and Your Honour -- and I suppose we are two of  
30 -- I don't see too many faces from the other side here that have been  
31 around since the beginning of this issue. Perhaps Mayor Jenkins has  
32 knowledge, obviously, because he's a resident here. He's been a  
33 previous mayor here. He's been the MLA and is no doubt aware of the  
34 issue. But those dealing with it directly, the only two that are here is Your  
35 Honour and myself.  
36 THE COURT: And our hair is greying and thinning.  
37 MR. CLIFFE: Yeah, well, speak for yourself, Your Honour.  
38 THE COURT: I'll bring a mirror.  
39 MR. CLIFFE: Yeah, thank you. I don't look at mirrors as a result, but the point  
40 being, I think Your Honour, that the signal that Environment Canada wants  
41 to, of course, Your Honour to hear, but also for the project team to hear,  
42 which are no doubt quite well aware, that the sand in the clock is dripping  
43 through the clock here, and we're -- eight months in this project seems to  
44 go by very, very quickly. So noses to the grindstone, if I can signal  
45 anything, about the concern that Environment Canada has here that this  
46 work get on. Now, I have some other specific comments that I want to  
47 make, but that's the major thrust here. Time is of the essence; it's got to

1 get done and there's got to be -- I like the expression that Ms. Harwood  
2 used, which is, if there's any time it's all hands on deck, it's now to the end  
3 of next year. So I say this as far as my usual remarks -- moving to my  
4 usual remarks, Your Honour, that is, no doubt in the back of Your  
5 Honour's mind, no doubt in the back of the City's mind and in the Yukon  
6 Government's mind, is that raw sewage continues to be discharged into  
7 the Yukon River, and it is well established now that during the summer  
8 months, that raw sewage is deleterious to fish.

9 THE COURT: I see you've referred to three tests. Were they typical fail tests in  
10 accordance with the normal testing?

11 MR. CLIFFE: Typical fail tests that you see -- that one sees -- that we've seen  
12 for many, many years.

13 THE COURT: Right. Yeah, no, I understand, but it's that same test with the  
14 Rainbow Trout?

15 MR. CLIFFE: Rainbow Trout, the same bioassay test. It was samples taken at  
16 that critical time period when the system is --

17 THE COURT: Overtaxed.

18 MR. CLIFFE: -- getting overtaxed. And then finally, I have to say this from the  
19 Environment Canada's point of view, and have said many times, that  
20 completing this project and the financial funding, notwithstanding the  
21 financial funding has been coming from the Government of Canada, it's  
22 never been -- compliance has never been conditional on the receipt of  
23 funds from the Federal Government.

24 Now with respect to the report at hand, the Crown -- I'm told and  
25 advised by Environment Canada, informed by them, that Environment  
26 continues its involvement with the meetings of the project team, these  
27 technical meetings that they have on a fairly frequent basis.

28 THE COURT: And the minutes are in the binder and, in particular, I reviewed  
29 them to see who was attending.

30 MR. CLIFFE: Yes.

31 THE COURT: And at most of the meetings Mr. Enns was -- at least Mr. Enns  
32 was present by telephone. Some, he had to pass on his regrets, but it  
33 was very clear that he was invited to be part of all of those meetings.

34 MR. CLIFFE: Absolutely, and I also note that at many of the meetings both Mr.  
35 Soprovich and Mr. Guilbeault was there, and when they couldn't be there,  
36 one or the other was there. So there's obviously been representation by  
37 Environment Canada, and you can see from those minutes, Your Honour,  
38 that there's always comments noted by -- when Environment Canada has  
39 offered some advice or offered an opinion on something, that, of course, is  
40 noted. And as Your Honour said, Mr Enns, you know, seemed to be a  
41 frequent contributor in many of those meetings.

42 As the report says, Environment Canada is encouraged by the  
43 commitment and efforts by the project team over the past 16 months, and  
44 I just want to say this, because it can't be forgotten, that when we look at  
45 that seven-and-a-half year period, really what we're seeing, in the Crown's  
46 respectful submission, is that since Your Honour's order was varied in  
47 2008, that's when we've been seeing this real commitment and efforts, as

1 far as the Crown is concerned, and I'm not going to dwell on it, but we  
2 know what the past was like, and I'll just say that.

3 THE COURT: Well, let me say that you say that your -- or that Environment  
4 Canada, your client, is encouraged by the progress to date. I'm happy to  
5 go on record to say that since, when I look at what's happened since  
6 August of 2009, I've actually been impressed with what's been  
7 accomplished. Now your concerns about timeline are, in my view,  
8 important concerns, and I think because of the short timeframe,  
9 everyone's going to have to work super hard to make sure this gets done  
10 according to this timeline. But based on what I've seen happen in the last  
11 14, 15, 16 months, I'm pretty confident it can be done. And when you look  
12 around this room to see who's here, right up to the deputy minister and  
13 the mayor present, indicating their concern with this project, I'm  
14 impressed. And so sure, timelines can fall. I'm also confident, should  
15 there be a deviation in this timeline, I'm pretty confident it will be  
16 something that's totally outside of their control, because I see a real  
17 commitment here.

18 MR. CLIFFE: No, and the Crown doesn't dispute the observation, Your Honour.

19 THE COURT: No, I understand that. You're bringing it to their attention --

20 MR. CLIFFE: Yes.

21 THE COURT: -- you're saying look, timelines are important; let's not lose sight of  
22 it.

23 MR. CLIFFE: Yes, and that's the point, and it's not a criticism, Your Honour.  
24 You know --

25 THE COURT: No, no, I understand.

26 MR. CLIFFE: It's -- if we can go -- if we can look back at the past, you think of  
27 the number of times that you know, counsel and others have spoken to  
28 Your Honour prior to the Court's last variation of assurances and promises  
29 and so on and so forth that have failed.

30 THE COURT: Yes.

31 MR. CLIFFE: And I'm not saying, I'm not a, you know, under the cloud kind of  
32 guy. I want to look at this thing in a very positive way, and Environment  
33 Canada's looking at it in a positive way as well. But I don't want to dwell  
34 on the past. So, as I say, as the report says from Environment Canada,  
35 that Environment Canada remains hopeful that the future work is going to  
36 result in compliance with Your Honour's order.

37 Now there are some concerns, and I want to deal with them very  
38 briefly, Your Honour, and those are addressed in what has now been  
39 marked as Exhibit 3. But before I get to the concerns, I'll just note the  
40 communications, and Your Honour made a point about that as did my  
41 friend and Ms. Harwood, that Environment Canada views it that they're  
42 generally satisfied with these communications. It's a lot better than we've  
43 had, as Your Honour knows, in the past, no communication, and this is  
44 well in advance of that. They're talking and there's exchanges and it  
45 seems to be valuable on both sides.

46 The benchmarking report is something that was addressed in the  
47 Environment Canada's reply, and the next day after the document was

1 filed the benchmarking report was provided to Environment Canada. I'm  
2 told that there may be a further request with respect to information  
3 regarding the benchmarking report. They were addressed, I believe, by  
4 Ms. Harwood, and that was some of these subsidiary reports. But those  
5 are things that can be dealt with by -- in the technical committee scenario.

6 The construction schedule issue is addressed at page 2 of Exhibit  
7 3, Your Honour, and it's -- when Environment Canada and I spoke with  
8 them about this, the word "disappointed" perhaps is a strong word, but  
9 there's probably no other way one can describe that other than to say  
10 there's been time lost, and that's a concern, and I won't repeat myself with  
11 respect to the issue of these timelines, these narrow timelines, that are  
12 left.

13 One thing that they were concerned about, and I don't profess,  
14 when I say this, Your Honour, as much as I've been to the north from my  
15 southern place of work and where I've lived over the past 25 years, is the  
16 fact that there is no work that's going to take place between December  
17 and March. When I mean work, I mean work at the construction site. I've  
18 been to very remote places in the north, and far more northerly than here,  
19 where I've seen work being conducted in the midst of winter. And I don't  
20 know, and that hasn't been addressed by my learned friend, why  
21 construction work is not taking place other than, and I appreciate it, if I  
22 was a construction worker, would I want to be out in minus 30 degree  
23 weather? No, I would not. But I know that work does take place during  
24 that type -- those types of conditions. So I don't know -- and we haven't  
25 had an explanation why that is, because that is a significant time period,  
26 because the actions that they're proposing to do, that is, you know,  
27 fabricating equipment, getting equipment up here for the construction  
28 season to begin in March, surely is something that is able to be dealt with  
29 concurrently with respect to in the -- on the worksite work. No, it may, as I  
30 say, it may very well be there's a very logical reason why, but we have not  
31 heard why work is not being contemplated. And I say that because when  
32 one looks at the July 2010 interim report, there's a similar timeline  
33 document, and it's in the materials at Tab 12. And it speaks of, and  
34 maybe I've misread it, but it does speak of the winter of 2010-2011. And  
35 it's -- I don't know whether Your Honour has that document. It's Tab 12, at  
36 least in my materials. It's the last couple of pages of that tab.

37 THE COURT: Is it the --

38 MR. CLIFFE: It's the interim report, Your Honour.

39 THE COURT: My Tab 12 is Catherine Harwood's -- basically reports on work  
40 done on a monthly basis.

41 MR. CLIFFE: Oh, no, well, my Tab 12 is the interim report from July 2010.

42 THE COURT: Okay, and that's my -- oh, sorry, I've got it. My fault; opened the  
43 wrong tab. I do have it.

44 MR. CLIFFE: Tab 12, and if Your Honour just turns to the last two pages of that  
45 tab, there's a similar timeline, a document timeline, of significant  
46 milestones. And Your Honour will see that the second page of the  
47 document, it references winter 2010-11, and it's -- if Your Honour looks to

1 the points just above it, it talks about construction of the main shafts in  
2 August, the end of the -- the completion of the construction of the main  
3 shafts and begin construction of the building, and then it references winter  
4 2011, construction continues, including some parts of the building to be  
5 completed off site. The way I read it, and I may have read it very  
6 simplistically, that I thought what was being contemplated back in July was  
7 actual winter construction at the worksite. That might be a total  
8 misunderstanding and, again, I just ask the question, why is it that there is  
9 a break over these three months when we are moving down towards a  
10 very tight timeline, in the Crown's respectful submission. And that's what  
11 concerns Environment Canada in --

12 THE COURT: Well, it -- I suppose maybe concern is even too strong. You're  
13 really posing a question. You're wondering whether anything more could  
14 be done in the winter time.

15 MR. CLIFFE: Absolutely, and when I say concerns, I mean --

16 THE COURT: It's a question you have.

17 MR. CLIFFE: -- It's a question, and it ultimately is a question that leads to -- it  
18 becomes in part a basis for their concern regarding getting down to a few  
19 months of time period left to work. So the -- and as has been stated, and  
20 if Your Honour -- I don't necessarily invite you to do this for the sake of  
21 time, here, when you compare the timeline proposed work in July of 2010  
22 and today's proposal, you see that there's this loss of a number of months  
23 with respect to the anticipated completion, which was going to be, and you  
24 may recall that, and was still -- the project team still took the view that it  
25 could be done in the summer of this year, late summer of this year,  
26 looking at completion sometime in July, giving a real handsome kind of  
27 cushion of time to ensure commissioning and so on; whereas now we're  
28 left to really counting -- those months are now a question of weeks. And  
29 what I'm referring to, Your Honour, is the -- if Your Honour looks to Tab 12  
30 again --

31 THE COURT: Yes, I see that.

32 MR. CLIFFE: -- you'll see July 2011 is completion of the plant, and then the  
33 summer and fall of 2011 is commissioning.

34 THE COURT: Now we're into November.

35 MR. CLIFFE: And so, again, and I don't want to be gilding the lily, it's just that  
36 we're down to these few months, these eight months, and it's critical. So  
37 I'll just leave it at that.

38 Moving from the construction schedule, if I may, and I think what's  
39 very important, of course, Your Honour, is the issue of the water licence  
40 application, and we know that there's been -- the draft water licence has  
41 been at consultation with the secretariat, as Ms. Harwood was describing  
42 to us, but the last entry on significant milestones, Exhibit 2, is that that was  
43 dealt with in May of this year. Well, that's six months ago, and we don't  
44 have a date yet forthcoming. It's, in fact, not even mentioned on the  
45 timeline of significant milestones as to when they're going to file that water  
46 licence. And in Exhibit 3, Mr. Soprovich is not mentioned, but Mr.  
47 Soprovich, who deals regularly with the Water Board, has to make

1 appearances on behalf of Environment Canada with respect to  
2 applications made, was informed by the Water Board that this particular  
3 year, and going into next year, they have a heavy volume of applications.  
4 They're anticipating a number of applications. So we know from the  
5 report, and the project team have been candid, they are looking at a six to  
6 eight month period for the Water Board to make its decision. Now again,  
7 you know, it's just something that we just -- I'm certain that the team is  
8 quite well aware of these timelines and I'm re-emphasizing, and perhaps  
9 that's all I'm doing is re-emphasizing, again, this is also critical as well.

10 THE COURT: Are the activity with respect to water licence applications related  
11 to mining activity? Is that --

12 MR. CLIFFE: I understand -- is that correct, Mr. Soprovich?

13 MR. SOPROVICH: Yes.

14 MR. CLIFFE: That's affirmative, Your Honour.

15 THE COURT: Yeah, and we're into -- you're not suggesting, and you may not  
16 know enough of the detail to even suggest this, but it's no suggestion that  
17 the team should be doing anything different, because some of that is  
18 within the control of the Water Board.

19 MR. CLIFFE: Oh, absolutely.

20 THE COURT: Yeah.

21 MR. CLIFFE: I think what the team has to do, and with all due respect to the  
22 team, and they are the best ones to know, is that they have to complete  
23 their water licence application or file it as soon as practicable. I mean  
24 knowing that it's going to take the Water Board at least six to eight months  
25 to deal with it. But the Water Board is impacted by the fact that it's going  
26 to have a heavy volume of applications to deal with. And what I'm noting,  
27 Your Honour, when we're looking at the timeline of significant milestones,  
28 as I say, the filing of the water licence application is not mentioned in the  
29 timeline, and we don't have a date or even a sense of a date of when  
30 that's going to happen. Maybe it's going to be right in the New Year; I  
31 don't know. And all we're saying is, again, that's another item along with  
32 the construction schedule. These are two critical, if you want to call it  
33 milestones: the construction schedule and the filing of that water licence,  
34 those are critical.

35 THE COURT: Let me just interject and ask, you may know, and Mr. Crossman  
36 may not know, when I raised this question with you earlier, you mentioned,  
37 well, we're operating under the old water licence, which is a completely  
38 different animal. But let me ask you this; in the event that the new  
39 application is not finalized by January 1 of 2012, can they -- can you start  
40 operating this plant using the old licence?

41 MR. CROSSMAN: Your Honour, I don't know the answer to that, although I  
42 know that there would be other options, contingency options that would  
43 perhaps be available, such as emergency -- or urgent applications to the  
44 Water Board to --

45 THE COURT: Temporary -- temporary?

46 MR. CROSSMAN: -- vary temporary -- which have been done in the past, yes,  
47 so there is a backup option there, Your Honour.

1 THE COURT: All right. But that -- you really don't want to go there. You want to  
2 -- I think Mr. Cliffe makes a good point. We need to pursue, to continue to  
3 pursue that aggressively, and I understood from your representation that  
4 there's been back and forth on that and I understand that those kinds of  
5 semi-informal back and forths can be very constructive in moving the thing  
6 ahead much faster than it would if you filed it and it came back and you  
7 had to reconsider. The idea here is to get it into totally acceptable form by  
8 the time it goes in, in its final form.

9 MR. CROSSMAN: That's correct, Your Honour, and I think the other point, which  
10 I might have mentioned is that -- and Ms. Harwood may have mentioned  
11 as well, is that the intention is to file that as soon as possible, so.

12 THE COURT: Any sense of how far away you are from doing that?

13 MR. CROSSMAN: I don't have a good sense of that. But I know it's --

14 THE COURT: Anybody have a sense?

15 MR. CROSSMAN: It's a very -- it's an urgent matter for the project team. I know  
16 it's critical.

17 THE COURT: Yeah. And it doesn't tie your hands. I just wondered if you had a  
18 general idea of when that might be happening.

19 CATHERINE HARWOOD: We aim to have it filed within a few days.

20 THE COURT: Oh, really?

21 CATHERINE HARWOOD: Yeah.

22 THE COURT: Okay. And just while I've got -- again, the suggestion, and I  
23 repeated what I heard earlier, or my version of -- my understanding of  
24 what was heard -- I heard earlier, and that is, that you have some  
25 confidence that you've got it in shape that would be fully acceptable  
26 because of the back and forth?

27 CATHERINE HARWOOD: Yes.

28 THE COURT: Okay. So.

29 MR. CLIFFE: Well, that's good to hear, Your Honour. Thank you.  
30 The next point I want to deal with, and it's in a kind of descending  
31 order, Your Honour, is the issue of the parallel options. That's also  
32 addressed in Exhibit 3 and the -- Environment Canada is appreciating the  
33 reality that the mechanical option, the option that is being dealt with across  
34 the street is where we're going, and it's well advanced. However, not to  
35 dwell on the past but there's the past, and it just wants to emphasize here  
36 that the City and the Yukon Government should not extinguish any --

37 THE COURT: There's no suggestion in their report that they were. I mean when  
38 I, again, reviewed that fairly quickly, my sense was that these are there.  
39 Now, you've done additional work on them and they're potentially  
40 available with their drawbacks, such as they are.

41 MR. CLIFFE: Well, there were concerns because there's been inquiries with  
42 them by the project team with Environment Canada with respect to these  
43 land reserves or the interests in or tenure in these sites, and that is as to  
44 the timing of when those should be given up. Now, in the Crown's  
45 respectful submission is, I don't think we need to deal with that here in the  
46 courtroom. Again, it's another technical committee issue, but what  
47 Environment Canada wanted to advise the Court is that let's not do

1 anything rash yet with respect to these options, and that's why they --  
2 THE COURT: Well, I would think that, as Tony is a lay person, not involved in  
3 the technical team, I'd be very surprised if the technical team abandoned  
4 all four options before the one year, I call it the guarantee period, has  
5 been successfully completed, because although it wasn't mentioned this  
6 way, Mr. Crossman, Corix is obligated to produce an operating plant if this  
7 one doesn't work, and it seems to me that the lagoon system may be one  
8 of their fallbacks in the event that there's a problem here.

9 MR. CROSSMAN: It could well be.

10 THE COURT: So you want to keep those options, at least the most viable of  
11 those options, open.

12 MR. CLIFFE: Well, Your Honour's -- Your Honour's ordinary man's view of it is  
13 exactly what Environment Canada's position is, that the long -- what I'm  
14 driving at is, is that there's -- let's not give these things up now. Let's just  
15 wait it out and, more importantly, Your Honour made mention earlier with  
16 respect to the bioassay results. That's a summertime period, so we're not  
17 going to have an opportunity to see how well this plant operates with  
18 respect to bioassay until the summer of 2012. That's the acid test, in the  
19 Crown's respectful submission. So if anything, it should be, you know, a  
20 consideration and Your Honour shouldn't necessarily go -- this is  
21 something for the technical people to talk about, but the timing should be  
22 well down the road about these land interests. That's the point that  
23 Environment Canada --

24 THE COURT: I think -- I think they've heard your position and I'd be surprised if  
25 their position was any different than yours.

26 MR. CLIFFE: I'm hoping that is the case. So those are the factors that I wanted  
27 to address, Your Honour. I've gone quickly. The report is relatively brief,  
28 but, in the Crown's respectful submission, is succinct with respect to those  
29 concerns, meaning, most importantly, the construction schedule concern  
30 and the water licence concern. Notwithstanding these, and the report  
31 concludes, and I want to echo that here, Your Honour, that as  
32 Environment Canada does state in its report, Mr. Soprovich says that  
33 Environment Canada continues to look forward to, as he views it, a  
34 collaboration with the project team as we move into this next phase,  
35 hopefully it's the final phase, of working with them so that Your Honour's  
36 order is complied with. And don't get me wrong, don't get the Crown  
37 wrong, don't get Environment Canada wrong, with respect to their view,  
38 that of course they are - I'll use my words, because they used their words  
39 in the report - are very happy to see, or I'm -- the Crown is happy to see,  
40 Crown counsel is happy to see that we've moved to the stage that we are  
41 at with respect to compliance with Your Honour's order.

42 And I've reflected on this over the number of years, but particularly  
43 over the last, you know, few weeks with respect to this matter, is that the  
44 only way that this environmental problem was going to be addressed, that  
45 is, the deposit of untreated sewage into the Yukon River, was by way of  
46 Your Honour's order. And if it took time and patience for all the parties to  
47 exercise here to get compliance, to get the sewage treatment plant

1 operating and in compliance with the federal *Fisheries Act*, it's worth it.  
2 It's worth the number of years. Others may be critical, but in this particular  
3 case the only avenue here was to, you know, for the Crown to say let's  
4 vary the order, not take an aggressive position of let's prosecute for non-  
5 compliance with Your Honour's order. It was better to wait this thing  
6 through and see what's happening now. And so I share, in some  
7 respects, when Your Honour says, "Well, I'm not concerned about these  
8 couple of months," or so on and so forth, it's been ongoing for a number of  
9 years, but --

10 THE COURT: Provided it's just a couple of months.

11 MR. CLIFFE: It's a couple of months, exactly, but it's what it does in the short  
12 term, it's because it's the short term we're now dealing with, we're now  
13 dealing with this compressed one-year period where there appears only to  
14 be this eight-month time period where work is planned for. And of course  
15 the signal that Environment Canada wants to send to all the parties, no  
16 doubt they have sent it in the meetings, but for the purposes of this Court  
17 and for the public, is that the team has to be putting -- has to be quite well  
18 aware that time is of the essence, nose to the grindstone, all hands on  
19 deck, that the project is completed. But I ask the question again: Is there  
20 any way some on-site work can be dealt with during the winter season?  
21 And those, really, at the end of the day, Your Honour, those are the  
22 Crown's submissions.

23 THE COURT: Thank you. Thank you, Mr. Cliffe. Mr. Crossman, are you in a  
24 position to respond to any of the issues raised, or do you just want to  
25 summarize at this point?

26 MR. CROSSMAN: Your Honour, if I could take just two minutes to --

27 THE COURT: Sure, but why don't you -- can you do it without me stepping  
28 down? Yeah, take your time. I'm just going to shuffle through some paper  
29 while you do that.

30 MR. CROSSMAN: Thank you, Your Honour.

31 MR. CLIFFE: Your Honour, I just wondered whether -- if I could have an  
32 opportunity before my friend replies just to indicate an aspect of the  
33 Crown's -- Environment Canada's concern regarding the construction  
34 schedule, and just a matter of -- if I could just have a moment with Your  
35 Honour.

36 THE COURT: Certainly.

37 MR. CLIFFE: It just -- with respect to -- and both Mr. Guilbeault and Mr.  
38 Soprovich reminded me of this. If Your Honour goes to Tab 12 of the  
39 report, and that's at the July 2010 significant milestones document, and  
40 Your Honour will note on the second page it references: begin  
41 construction of the building end of September 2010. And then it's got the  
42 winter and then July 2011, and then summer-fall commissioning of the  
43 plant; essentially, a one-year period. Now when you look at Exhibit  
44 number 2, which is the document that was filed by my learned friend this  
45 morning, or this afternoon --

46 THE COURT: The timeline.

47 MR. CLIFFE: -- the timeline, again, the same -- the updated document, you will

1 see that they, again, begin construction of building March 2011, and then  
2 we move through these activities of the solids facility, completion of the  
3 building, commissioning of the facility, and that one-year period which was  
4 in July of 2010 is now shrunk to eight or to eight to nine months, so.

5 THE COURT: Although they do have the foundation -- excavation for the  
6 foundation is completed.

7 MR. CLIFFE: Yes, and that's also, I believe, on the -- that's not mentioned on  
8 the -- that's not mentioned on the July document, but yes, you're correct,  
9 Your Honour. It's mentioned on the most recent document filed.

10 THE COURT: Yes. So it's the same, basically, issue of can they squeeze this  
11 work into this abbreviated time period.

12 MR. CLIFFE: Yes, can they squeeze what they initially were projecting, a one-  
13 year period, into an eight month to nine month period. That's the concern.  
14 The only reason I wanted to make that clear to Your Honour was that it  
15 was pointed out to me by Messrs. Soprovich and Guilbeault. It just  
16 appears to be quite easily demonstrated from the documents.

17 THE COURT: Mm-hmm. Mr. Crossman?

18

19 REPLY BY MR. CROSSMAN:

20

21 MR. CROSSMAN: All right. Your Honour, with those comments, if I could ask  
22 for one more minute's indulgence? Thank you.

23 THE COURT: Sure, okay.

24 MR. CROSSMAN: Thank you. Thank you, Your Honour. In response to my  
25 friend's question, if I can start with the construction schedule issue first.  
26 And just to set the scene, my friend referred to the July update report, and  
27 that was the schedule as of July, or June-July, based on the information  
28 that Corix had at that time. Obviously, things have changed since then  
29 and that's why we've provided a revised schedule. Corix is confident that  
30 they will meet that schedule. Just to put it in context and a bit of  
31 background; in that -- the July update, it was the second to last -- or the  
32 page just before the timeline, it was section 9 of that, and I'll just read it to  
33 Your Honour, just for ease:

34

35 Corix has been asked by YG [Yukon Government] to look at  
36 options for continuing construction over the winter of 2010-2011 in  
37 order to avoid any delays caused by the winter weather on the  
38 construction schedule. Corix are investigating options such as  
39 heating and hoarding for concrete pours, parallel work, and building  
40 some components off site...

41

42 Now that last site or the modularization, if you like, we've talked about  
43 that, but they're still investigating those options.

44

45 Corix provided draft schedules to YG on June 30 to show the  
46 possibility of heating and hoarding the concrete this fall and the  
47 construction of modules off site during the coldest months of the

1 winter.

2

3 And just, of course, to bear in mind that the timeline is simply just a  
4 snapshot of that, but I think in terms of the logistics and where we stand, it  
5 would be better to hear from Mr. Mike Johnson, who's had that experience  
6 of construction over the winter and in relation to this particular project. So  
7 if I could call upon him just to say a couple of words.

8 THE COURT: Sure. Certainly.

9 MR. CROSSMAN: Thank you.

10 THE COURT: I think -- and again, not so much -- Mr. Johnson, come forward to  
11 the mike so we can get -- say it's a question specifically asked by  
12 Environment Canada, so they're interested in the answer. But before you  
13 start, Mr. Johnson, is the concrete into that foundation already?

14 MIKE JOHNSON: No, sir.

15 THE COURT: No, okay. So you've dug the hole and that's -- okay. Go ahead.

16 MIKE JOHNSON: So construction could go on right now, very expensive, very  
17 inefficient. You cannot pour concrete on frozen ground, so you are going  
18 to put --

19 THE COURT: Hot.

20 MIKE JOHNSON: -- you need to heat the ground, keep it heated. You need to --  
21 when you pour concrete it needs to be protected and heated above zero --  
22 for seven days in order for it to start on its longer term curing process, so  
23 you can do it. It's my opinion in my oversight of their schedule, because  
24 I'm very cognizant of the completion date and what they have to do, that  
25 the work that remains to be done is very achievable. It's straight ahead  
26 work next year. It's a steel building, pre-engineered almost, and it just  
27 goes -- it'll be assembled and then Corix will have the mechanical, and  
28 they have a good Whitehorse mechanical firm that they're working with on  
29 the mechanical side, Keith Plumbing & Heating, have done extensive,  
30 complicated mechanical installations. So we could -- if we were nervous  
31 about it we'd be bringing it to Corix's attention right now and pushing and  
32 driving them to show us how they're going to meet what looks to be  
33 perhaps a slipping schedule or unattainable schedule. We don't see that,  
34 and that's why we're able to stand here and say that everything looks still  
35 achievable by --

36 THE COURT: Well, steel buildings go up very quickly, so long as you don't have  
37 to wait for the steel.

38 MIKE JOHNSON: And that's what they do now in the winter. That's -- now in  
39 July, they didn't have the as-built drawings or the design drawings done  
40 for the building in order to order the building. We're at 95 percent on the  
41 design right now and the building itself is designed; that package is  
42 complete. So they can go out for procurement on that. It's them and  
43 NORAM's assembly of the components to make the mechanical work, and  
44 we know that's coming. I don't think I'll speak out of turn. Mr. Johnson  
45 told me this afternoon he's expecting three sea cans delivered in January  
46 of components for the project. So I don't have that concern.

47 THE COURT: Great.

1 REPLY BY MR. CROSSMAN, continuing:  
2

3 MR. CROSSMAN: Thank you. Your Honour, just two other issues to address.  
4 My friend addressed the issue of the parallel options and the question --  
5 there was some discussion about leaving them all as available options,  
6 and particularly mentioned these land reserves for the lagoon options.  
7 Perhaps I should explain a bit of the background to that to say that this  
8 was not an initiative of the project team or of Dawson, but of residents who  
9 are interested in using these particular pieces of land who have come to  
10 the project team and said, "When will you be able to release those?" And  
11 the project team went to Environment Canada to ask the question, and so  
12 I think that's part of the technical discussion that will take place in terms of  
13 -- which hasn't occurred yet, as I understand it, but will be dealt with in  
14 terms of working out an appropriate time. So the question has been  
15 asked and that will be worked out in the technical committee.

16 The last issue, Your Honour, was about the Water Board and the  
17 water licence application. My friend raised questions or concerns about  
18 the busy schedule of the Water Board in the coming year. Two things to  
19 note about that is, that one, the approach that the project team has made  
20 already to the secretariat of course means that the Water Board has this  
21 project on its radar, and in fact, I understand -- I don't know if this might be  
22 too strong of words, but sort of on their schedule for next year. So it's  
23 anticipating that that application will be made and that will be part of their  
24 tasks, one of their load, during the year. So they're aware of that. The  
25 other part to mention is, that I understand or have been advised that in  
26 fact additional water, sorry, additional resources have been added to the  
27 Water Board and its secretariat, to deal with this additional load that is  
28 anticipated for next year.

29 THE COURT: Anything further from Environment Canada on --

30 MR. CLIFFE: If I could just have a moment. I don't believe so, Your Honour, but  
31 I'll just have --

32 THE COURT: Sure. And perhaps while you're doing that, I'm going to raise one  
33 question, and maybe Ms. Harwood is the best person to respond to it, but  
34 whoever can, respond to it. And the package of materials you put  
35 together, very, very complete, and there's one section on media. It's 3,  
36 and again, I've leafed through that, and actually I found some of it very  
37 interesting and I think Mr. Mayor in particular will be -- is pleased and may  
38 even be responsible for some of the major construction things that are  
39 taking place in the Dawson community. It, I think, bodes well for the  
40 community and is a good indication of what's going to be happening in the  
41 future in this town. But there's also a package here of a variety of  
42 criticisms in the media of the particular technology, whether it's the same  
43 technology or slightly different technology, it's not very clear to me. They  
44 seem to be -- I wonder if someone could speak briefly to address the  
45 apparent discrepancy between the evaluation your technical team has  
46 made and some of the reports from other locations, which seem to  
47 suggest that they've abandoned this technology, whether it's this

1           technology or similar technology, and it doesn't seem to be working for  
2           them.  
3       CATHERINE HARWOOD: Shall I?  
4       THE COURT: Please.  
5       CATHERINE HARWOOD: I will be brief, because you've asked me to.  
6       THE COURT: I didn't ask you to be brief.  
7       CATHERINE HARWOOD: Oh, okay. I thought I heard that; it was wishful  
8           thinking, perhaps. I could take some notes. The quick answer, the brief  
9           answer, is that when I look at the media coverage, one particular article  
10          stands out as being negative and in detail, and it's my opinion, which I  
11          also expressed in my letter to the editor that --  
12       THE COURT: This is the Keevil argument or -- the article?  
13       CATHERINE HARWOOD: Yes, yes. Exactly. That there was some incomplete  
14          and not so careful research done. So my letter to the editor was to try and  
15          point some errors in fact out again. The longer answer is that in North  
16          America, there have been some plants that have been shut down, but not  
17          because of the treatment. A brewery that was going to close, a cheese  
18          factory that had issues with the cost of producing that cheese that had  
19          more to do with trucking than to do with the treatment of the water that  
20          they were using the shafts for. So it's easy, I think, sometimes, to fire at a  
21          target and provide bits and pieces of stories to support the message that's  
22          trying to be sent out. And the other media reports that came out around  
23          the same time, after our technical briefing, were positive. If there's a  
24          theme to that research, the reporter was in --  
25       THE COURT: I'm less concerned --  
26       CATHERINE HARWOOD: Okay.  
27       THE COURT: -- about the -- I was more interested -- I mean I'm familiar with  
28          media reports, believe it or not, from my position. Sometimes they get it  
29          right and sometimes they really get it wrong. But from your technical  
30          team's point of view, your perspective on your technology and your  
31          explanation for the different results or apparent results from a couple of  
32          the examples indicated, well, you've explained some of them already.  
33       CATHERINE HARWOOD: Mm-hmm.  
34       THE COURT: Is it a different process as well that you're using now than the one  
35          that --  
36       CATHERINE HARWOOD: There are some differences in that -- in some of the  
37          examples given in the media and elsewhere. They were industrial plants,  
38          they weren't municipal. There was a focus on North America, but this  
39          technology has been used in Japan and China and Finland and all over.  
40          It's almost as though if it's not used in a town just like Dawson, in a place  
41          very close to Dawson, then you can't compare, but after interviewing the  
42          operator of the Virden, Manitoba plant, who operated it for over 20 years  
43          from its beginning until his retirement, and from interviewing the staff  
44          multiple times at Homer, we're confident that we have the right  
45          information. And those are two municipalities.  
46       THE COURT: And just before you go, you may have the answer to this. It was  
47          raised in the material, I can't recall where, but are you hopeful that the

1 level of expertise of the operator will be such that it would be a position  
2 that would be easy to fill?

3 CATHERINE HARWOOD: That's our expectation. We're working on that with  
4 Norm Carlson's group.

5 THE COURT: Okay. So it's still a question mark; you're still sorting it out?

6 CATHERINE HARWOOD: Yeah, there's a way of evaluating a plant and  
7 assigning points to it and then determining what level is required. So  
8 we're fine-tuning that and looking also at other options in terms of  
9 whether, say a Level 3 operator is required, whether that operator has to  
10 live in Dawson and operate the plant all the time or if they can be a remote  
11 supervisor.

12 THE COURT: On call sort of. Yeah, okay. Thank you.

13 CATHERINE HARWOOD: Yeah.

14 MR. CLIFFE: Your Honour, if I could just have a moment just to make my  
15 consultation [indiscernible] invited me, and I'll just be able to reply to the  
16 Court.

17 THE COURT: Yes, please.

18

19 REPLY BY MR. CLIFFE:

20

21 MR. CLIFFE: I don't have anything specific, Your Honour, in reply other than  
22 maybe some more information for Your Honour with respect to the issue  
23 of the Water Board. As my learned friend has stressed, as others have  
24 stressed from the project team addressing you with respect to having this  
25 initial -- this sort of pre-consultation with the secretariat of the Water  
26 Board, Mr. Soprovich, who again is in the courtroom, advised me, and he  
27 has a considerable amount of experience with the Water Board, says that  
28 that's nothing new. The mining companies and others making  
29 applications do the same kind of, if you want to call it, pre-vetting before  
30 an application is considered. So that's the only piece of information he  
31 wanted to share with Your Honour so that you have as full an appreciation  
32 of what the process is. So what was being done, of course, by Dawson  
33 and the YG is not something unusual; it's a practice.

34 THE COURT: Yeah. Mr. Crossman, anything further from you?

35 MR. CROSSMAN: No, I would agree with their comment.

36 THE COURT: Well, thank you very much to everyone, to counsel, but more  
37 particularly to the people sitting behind the bar. You're not getting paid the  
38 same bucks that the lawyers are getting paid, so I appreciate your all  
39 being here, although no doubt you're on expense account.

40 I'm not going to repeat what I said earlier when I addressed Mr.  
41 Johnson. I continue to be impressed by the initiative that I've seen in the  
42 last 14, 16 months, and I will say this; the fact that you're all here speaks  
43 to your commitment to getting this done. I'm very impressed by the fact  
44 that it looks like some other infrastructure work will tie into this initiative  
45 that will benefit the community of Dawson.

46 Maybe I should make one more comment for -- since Mr. Cliffe  
47 points out that none of you were here at the beginning of this process.

1           Some of you may be wondering why we're doing this, because it's  
2           probably not something that either counsel are particularly familiar with in  
3           a construction process like this, and certainly I wouldn't expect you to be  
4           familiar with it either. So just a bit of a reminder; the reason we're doing  
5           this, because at the time of the original conviction of the City of Dawson,  
6           the City of Dawson volunteered to participate in this process. It's not  
7           something that the Court made up or invented, but rather, the City of  
8           Dawson, through counsel, said, "We want to deal with this matter and one  
9           of things we're happy to do is meet with Your Honour several times a year  
10          to report on the progress." So that's why we're doing it.

11           Now when it's all done, Environment Canada, counsel, Yukon,  
12          Dawson, no doubt will sit down and ask themselves, was this process  
13          worth it? Was it helpful? And if it wasn't, no doubt you'll make every effort  
14          to avoid getting involved in such a process again. On the other hand, if  
15          you find that it was, you may end up encouraging this kind of involvement  
16          working together. I must say that in the last 16 months there's a dramatic  
17          difference in the various parties collaborating, working together, and as a  
18          result, what I've seen is progress moving ahead at light speed compared  
19          to what was happening before, when there seemed to be a breakdown in  
20          communication and there was almost a degree of antagonism in the air;  
21          quite a different situation today from my perspective. I congratulate you  
22          on the progress you've made and hopefully we'll have one more  
23          opportunity in 2012 to congratulate you on the completion of this project. I  
24          look forward to that day. So thank you to everyone.

25          MR. CLIFFE: Your Honour, just with respect to -- before Court adjourns, should  
26          we deal with -- I know we're moving into another year, and should we deal  
27          with another report back to Court just working through Ms. Proctor's office  
28          --

29          THE COURT: Yes, please.

30          MR. CLIFFE: -- and then just deal with it that way?

31          THE COURT: Yeah, I was in fact, I was going to suggest that counsel decide a  
32          general timeframe and just contact her with enough advance time so that  
33          --

34          MR. CLIFFE: Does your Honour have any time period in mind? Six months,  
35          eight months, anything like that?

36          THE COURT: I think counsel should speak to their clients and decide when a  
37          good, appropriate time would be --

38          MR. CLIFFE: Very well.

39          THE COURT: -- in terms of measuring progress or -- I'm not suggesting that we  
40          wait until it's completed, but at some point there's clearly a benchmark  
41          time when people can look to the end of the road and say, we're going to  
42          be there, everything's going well; here's what we've done.

43          MR. CLIFFE: Very well, Your Honour.  
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1 THE COURT: So I'll leave it to counsel and their clients to determine that, but  
2 yes, we should do it at least once more.

3 MR. CLIFFE: Thank you.  
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5 (PROCEEDINGS ADJOURNED GENERALLY)  
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7  
8 This is to certify that the foregoing is a true and  
9 faithful transcript of the contents of the record  
10 prepared in the above named proceeding.  
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14 Shannon McMurphy, Transcriber  
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