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Dawson City, Yukon Territory
June 28, 2007

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THE CLERK: Recalling the matter of the City of Dawson.

THE COURT: I apologize for the delay, counsel, and ladies and gentlemen, I've been involved with other matters today and I appreciate you're allowing me a few minutes break or interval between the cases. So, in any event, thank you very much and welcome back, Mr. Crossman.

MR. CLIFFE: Yes, Your Honour, John Cliffe for the Crown, and with me at counsel table and to allow a little more public space, with your leave, Your Honour, is Mr. Vic Enns, who you've seen before in court, who's a professional engineer employed by Environment Canada. And to his right is Mr. Dan Lindsey, who's the manager of the Environmental Protection Service of Environment Canada for the Yukon Territory. Mr. Lindsey works and lives in Whitehorse, and both these gentlemen, as you're aware, they've appeared on some of the previous report back to Court dates, have been briefing me on various technical aspects of the reports coming back to court.

THE COURT: Mr. Crossman.

MR. CROSSMAN: Your Honour, I appear for the City of Dawson this afternoon, and with me at the table, Mr. Eric Magnuson, acting deputy minister for the Department of Community Services of the Yukon government, and Mayor John Steins of the City of Dawson. And also in the gallery, Your Honour, I should mention is Mr. Kriss Sarson, who has appeared before, is project manager for the site. And Mr. Pat Molloy and Mr. Paul Moore, who is the chief administrative officer of the City of Dawson as well. And Mr. Tom Ulyett.

THE COURT: Someone who needs no introduction.

MR. CROSSMAN: I thought not, Your Honour. Thank you.

THE COURT: Thank you very much, and thank you to all of you who were mentioned and who are here, and thank you for the rest of you who are here. Just by way of background. When we discussed this next review in Whitehorse, both counsel suggested that it would be a good idea, if at all possible, to hold this review in the Dawson community. I thought it was an excellent idea as well. And while I know that there have been updates, communications in the past, and more than one, I also appreciate that it's not possible for everyone to get to every meeting. So this session here today will provide me and those of you who can withstand the heat and the noise in this hot courtroom and stay the entire time, an opportunity to get a six months view of what is happened and some indication of what's going to happen in the future. So to all of you, too, thank you for attending. And I'm glad no one's sitting on the floor yet. We're getting close.

MR. CLIFFE: Your Honour, perhaps I could just address a matter just before we start with the report back to Court, and that is there was a pending application to vary Your Honour's order that was filed by the Crown on June 14, 2007, and that related to two points. That is, extending the term

1 of the order from its present expiry of December 2008, and also to change
2 the order with respect to a schedule of payments into Court with respect to
3 potential non-compliance of project dates. It was the Crown's intention to
4 pursue the application, and I can appreciate that there were timelines
5 here.

6 I got my friend's materials late in the afternoon yesterday and it
7 consisted of five affidavits, a 20-page argument, and I have not had a
8 reasonable opportunity to examine those materials fully and to consider a
9 reply to them, and that affects bringing on the application today. So what
10 I'm going to ask Your Honour is since it is the Crown's application, is that
11 that application be adjourned *sine die* and if the Crown chooses to renew
12 the application, it will give my learned friend notice. So that's the position
13 I'm in on that preliminary matter, and I think that leaves the matter, subject
14 to what my friend has to say, about the Crown's application to adjourn the
15 application pending to vary the order, just with respect to the report back
16 to Court. And I can say on that that I read the report back to Court as has
17 Mr. Enns and Mr. Lindsey. They provided me some comments to convey
18 to the court.

19 THE COURT: Mr. Crossman, with respect to the pending application referred to
20 you by your friend.

21 MR. CROSSMAN: Yes, thank you, Your Honour.

22 Your Honour, we are here ready to argue my friend's application,
23 and as you know, there's some history behind that application. And, of
24 course, we have people here ready, who are in support of our position on
25 that application. The affidavits have been filed. Those --

26 THE COURT: Very very recently.

27 MR. CROSSMAN: Yes, they were very recent, yes, Your Honour.

28 THE COURT: And if I can adjoin Mr. Cliffe in saying that I, too, have not had a
29 chance to read them. Some of them appeared yesterday and some of
30 them appeared today, and they're quite large.

31 MR. CROSSMAN: Yes.

32 THE COURT: At least attachments are quite large.

33 MR. CROSSMAN: Yes. Yes, Your Honour, and I appreciate that. I certainly had
34 no -- I agree that they'd be filed in that time. I suppose what I can say
35 about them, though, is that they, in fact, don't introduce any new
36 information. In fact, this is simply -- these are affidavits which contain
37 information that is already part of the court record, and those are
38 information from the previous filed court reports, the recent court report
39 which was filed three weeks ago and provided to my friend at that time.
40 And any information from transcripts, which, of course, are past court
41 hearings. And correspondence with my friend. So I suppose what I am
42 saying is there nothing new in the material, Your Honour.

43 I do, though, I have a suggestion, because we're here on the
44 Crown's application and, as I said, we had --

45 THE COURT: Well, we're here for the review.

46 MR. CROSSMAN: We're here for the review, as well.

1 THE COURT: And the application, of course, is a relatively recently resuscitated
2 matter, and just so people here know, counsel and I have discussed the
3 application in a preliminary way several weeks ago, by telephone, and I
4 indicated -- I guess, at that time, Mr. Crossman was opined to defer the
5 application and I indicated that the application should go forward because
6 it essentially was a matter that was already before the Court from the last
7 review, and if it was then necessary for Mr. Crossman, the City of
8 Dawson, the Yukon government, to make a response, that I would provide
9 a further adjournment for that response. However, the main reason we're
10 here is, as I indicated in my comments, and that is to review the progress
11 and see where we're going in the next little while. So your suggestion?

12 MR. CROSSMAN: Yes. Perhaps before I get to my suggestion, Your Honour, I
13 can just -- one other fact is and in terms of the argument provided to my
14 friend, of course, it's the Crown's application and this argument is really --
15 is in anticipation of his submissions to Your Honour today. As you know,
16 from the previous application, we had sought further particulars, and my
17 friend had said, you have particulars. So we had gone with what we had.
18 And it was on that basis that we -- and I think I foreshadowed at that time,
19 which was over two weeks ago, that we would be filing evidence, which
20 was the evidence, in fact, that there's no new information but is already
21 before the Court. The argument, as I said, is provided as a matter of
22 courtesy to my friend. I could have provided that, of course, today, but I
23 thought that it would be best, as I provided it to Your Honour, to provide it
24 in advance, because, again, as I think I might have foreshadowed, this is a
25 complex application, and this is where I come to my suggestion.

26 I think that what my friend's application is really about is perhaps
27 three things. Firstly, extending the time for completion of the new waste
28 water facility to June 30, 2011. Secondly, varying the order to insert some
29 interim milestones that are within the control of the City of Dawson, by
30 which the City can be measured, in terms of their progress, in meeting the
31 completion date, that is, June 30, 2011. The third aspect is the aspect
32 that we take issue with, that is, the City takes issue, which is varying the
33 order to insert another -- inset a penalty regime or a penalty scheme, so
34 that if you fail to meet those interim milestones, penalties come into play.

35 THE COURT: Just for the people here in the courtroom, as counsel know, the
36 original order has a penalty scheme, and with particular time frames
37 related to delay. So the notion of a penalty scheme is not new. As I
38 recall, that was proposed by Mr. Cliffe, six months ago, is more complex
39 than I had inserted in my original order.

40 MR. CROSSMAN: It appears to be inserting some interim penalty scheme,
41 because Your Honour's penalty applies if the City fails to meet the
42 completion date, that is, have the plant constructed and operational by
43 that completion date. So -- and the argument that I've presented, in fact,
44 the evidence that's presented by the way of these affidavits, is, in fact, all
45 directed to the penalty scheme. It does not concern the first two. In fact,
46 the first two issues, about completion date and interim milestones, has
47 been the subject of much discussion, and, in fact, I've provided a draft

1 order to my friend. And my friend provided further particulars, within the
2 last two weeks, in terms of what those milestones might look (sic). In
3 response to that I provided a draft milestone order, if you like, to my friend
4 on June the 23rd, which was Saturday of this week.

5 What the City is willing to say is that the City is willing to live with
6 these -- the new completion date and with these interim milestones. And
7 that was my suggestion in terms of dealing with those today while we had
8 Your Honour's time today. I know that we need to report to the Court as
9 well, and I think we can do that in the time available as well.

10 I have the draft order, which as been provided to my friend.

11 THE COURT: I hear where you're going. I'm going to come back to my point,
12 and that is that the main reason we're here is to do the review, and I
13 anticipate that I'll be in a better position to hear the specifics of what you're
14 proposing after I get a better lay of the land.

15 MR. CROSSMAN: Certainly.

16 THE COURT: And you'll recall six months ago, when the application first came
17 before me, I agreed with you that it was premature. And I'm not satisfied
18 yet, I haven't heard from Mr. Cliffe, I haven't heard from you, but I'm not
19 satisfied yet that anything's changed. And my sense is, generally, that
20 performance dates, completion dates, milestones, make sense when
21 we've got a specific project in mind and we're setting out embarking on it,
22 because then we know what those milestones should be. Mr. Cliffe, you
23 may be able to persuade me to the contrary, but I'm going to suggest that
24 we leave it to the end, and it may very well be that I'm going to suggest
25 that we deal with the application at another date, perhaps several months
26 from now as opposed to six months from now, if we still wish to proceed.
27 But I just wanted to signal that my sense is that specific milestones make
28 more sense when we've got a specific plan in place, that we know what
29 we're doing.

30 MR. CROSSMAN: No, thank you, Your Honour. And perhaps that is the starting
31 point, then, is to fill Your Honour in on what has happened in the last six
32 months.

33 THE COURT: And just so that perhaps, make the point for people who are here,
34 and the other reason I gave for not entertaining the application six months
35 ago was that I wanted to leave the early date in place, to provide me with
36 the flexibility that if things start slipping and we haven't amended the
37 termination date, the penalties would come into place. If I get the sense
38 that people are, in fact, dragging their feet and not proceeding
39 expeditiously, there'll be a fairly early penalty regime coming into place.

40 Now, having said that, I'm not suggesting for a moment that there's
41 any indication that people are dragging their feet, and for those of you who
42 were at the last -- Mayor Steins will recall, I'm sure, I was very
43 complimentary of the progress that was being made and I was feeling very
44 positive about it. So having said what I just said, I'm not suggesting that
45 things are not moving ahead, and if I can indicate to counsel, I, too, have
46 worked through this material. I have reviewed it all. I've leafed the pages
47 of the many technical, and then I've closed them up, and I'm not going to

1 pretend to you that I understand all the technical things, but I've read all
2 the words and so I understand that, and if there's anything really important
3 in the technical maps and charts, I'm sure you'll point them out to me
4 today.

5 So let's proceed with the review.

6 MR. CROSSMAN: Thank you, Your Honour.

7 THE COURT: Tab 1 in the three-ring binder that you provided me, I think sets
8 out a good summary of where things are and what has been done. I'm
9 going to leave it to you, of course, how you want to take me through it, but
10 as you're doing that, just keep in mind that there are members of the
11 community here and it might be worth while repeating something that's
12 obvious to you and obvious to me, because it may not be obvious to them.

13 MR. CROSSMAN: Thank you, Your Honour, that's a good suggestion.

14 Your Honour, and perhaps for the sake of people attending today,
15 we can remind everyone about the history of this matter and which Your
16 Honour has already done to a certain extent, that this is, Your Honour's
17 order is a result of the City of Dawson pleading guilty to a violation of
18 s. 36(3) of the *Fisheries Act*, which prohibits the deposit the deleterious
19 substances in water frequented by fish, and on March 5, 2003, Your
20 Honour sentenced the City, in closed sanctions, including the requirement
21 to build a secondary treatment waste water facility. And that was to be
22 built by September 1, 2004. And the type of plant or facility that was
23 contemplated in Your Honour's order was a mechanical plant.

24 THE COURT: Sequencing battery reactor plant, an SBR plant. So if you hear a
25 reference to SBR, that's what we're talking about. Don't have to go
26 through that long name.

27 MR. CROSSMAN: Thank you, Your Honour.

28 And, however, it was shortly thereafter that the class A estimates
29 came in for this SBR plant, and unfortunately the capital costs and the
30 operation and maintenance costs had increased dramatically, in fact,
31 doubling from those original estimates.

32 It was then that the City explored alternative, more affordable
33 options, because these costs were so significantly out of proportion to the
34 original estimates. And there was a report provided dated July 20, 2004,
35 setting out various options. Then there was an application made to the
36 Court. It was a joint submission. That was on August 26, 2004. And that
37 was to amend the original order to allow the City to explore these
38 alternative options for dealing with the waste water, and for extending the
39 time for completion of the new plant, and the reason, of course, for that,
40 the end completion date to be extended, was so that these options could
41 be explored.

42 Part of the Court's order has always been in the nature of a
43 probation order, that is, to report back to the Court every six months, and
44 that's the purpose of today's hearing. And it's also the purpose to ensure
45 that there's been compliance with the order, and the compliance has been
46 measured by milestones which have been set out in these court update

1 reports. Prior to each court hearing, there is a written report provided to
2 the Court and to the Crown which sets out the progress that's been made.

3 Reports have been provided February 28, 2005, November 1,
4 2005, June 28, 2006, November 17, 2006. And at the last court hearing,
5 this Court directed that the written court update report be provided three
6 weeks in advance, and that was at the suggestion of my friend, to give him
7 more opportunity to review that with Environment Canada.

8 So, as a result, there may be one or two matters that I can report
9 on today which are not in the written report.

10 In the last seven months, I believe Your Honour will agree with me
11 that there has been, again, significant progress made, as Your Honour
12 commented on the last occasion. The commitment is still there from the
13 City of Dawson, and from the Yukon Government, as project manager. As
14 Your Honour knows, it is the Yukon Government that is managing the
15 project, managing the completion of construction for the City of Dawson.
16 It is the City of Dawson that will be responsible for the operation of the
17 plant once the plant is constructed and operational.

18 One of the things that the court update report mentions, and this is
19 in the summary, is on page 4, the third full paragraph refers to an
20 amendment to the memorandum of agreement -- of understanding
21 between the Yukon Government and the City of Dawson. And the
22 memorandum of agreement, the revised one, is at tab 2. Essentially, what
23 this is providing for is greater input, greater management, if you like, by
24 the City of Dawson. And the reason for this, again, is historical. As Your
25 Honour knows, a trustee was appointed for the City for over two years,
26 from 2004 to ending in June 2006. During that time, of course, there was
27 no mayor and council, there was simply the trustee. Now, that there is a
28 mayor and council, has been since June 2006, and since they have taken
29 office and they have become fully involved in this project, there is now an
30 opportunity for greater communication with them and greater participation.
31 And that's what this reflects.

32 The financing, perhaps I can just say by way of background for
33 those who haven't been present before, that, of course, this is something
34 that the City cannot fund on its own. This is a significant undertaking, and
35 as we'll see later on, the capital costs at the moment are estimated, and in
36 today's dollars, at around about \$17 million. Financing has been obtained
37 by the Yukon Government for this project, and that's a partnership funding
38 between the Yukon Government and equal funding from the federal
39 government.

40 Of course, there are controls over that money and in terms of if the
41 costs exceed the funding, I'll call it funding envelope, in place. I'll come to
42 that in a minute.

43 Costs spent to date. Since August of 2004, there's been \$1.09
44 million spent on this project. And since the last court update in November
45 2006, \$232,000 spent. And the cost breakdown is in tab 3 of the court
46 update report.

1 Communication has been an important issue and Your Honour has
2 noted that in the past as perhaps an issue which could be worked on. I
3 understand communications are working well between the project team
4 and Environment Canada, and they're being kept informed of all the
5 developments on this project. And they're being sought for their advice
6 and input on the project. And it's a result of their advice and input that
7 changes have been made to this project. And I'll come to that in a minute,
8 but just to foreshadow that, Your Honour. If you recall, on the last
9 occasion there was concern by Environment Canada about a single or
10 two-cell system with particular retention day times. How long will the
11 waste water be in the particular cell? I believe, and I understand from my
12 clients on the project team that that's been resolved.

13 As Your Honour also knows, that there is still a water licence in
14 existence for the City of Dawson, and there is an interim compliance
15 agreement in place, and there is a monthly testing of the water.

16 One of the significant aspects of this last period of time has been to
17 verify that the aerated lagoon technology is going to work. And the reports
18 that have come from the independent third party private consultant, which
19 is Earth Tech, a company that has experience with these sorts of
20 technologies, the advance from them is that, yes, it will comply with Your
21 Honour's order.

22 You'll see that from the last court update report there was a
23 concern about the toxicity of the water, and for some time there was a
24 confusion as to what, in fact, was causing the toxicity. And it appears
25 now, from the independent consultant, that it is the low dissolved oxygen
26 levels that are causing the problem, and with ammonia as a secondary
27 contributor to this toxicity. Based on this, the independent consultant,
28 Earth Tech, has been able to move this process of design from the
29 conceptual through to the preliminary design. However, because of this
30 evolving process where conceptual work moves to the more detailed
31 design, there's been refinements and modifications to the proposed plant.
32 And if I could take Your Honour specifically to page 17 of the court update
33 report. Sorry, Your Honour, I misstated that. In fact, it's page 8.

34 THE COURT: My tab 1 ends at 15, I think.

35 MR. CROSSMAN: Yes, that will be a little difficult. Sorry, page 7, I should say,
36 Your Honour.

37 So at the bottom of page 7 you'll see a table, Table 1, and it sets
38 out the history of the development of this aerated technology. And
39 perhaps just by way of explanation, it is the aerated lagoon technology
40 that has proven to be the most affordable but achieving the same
41 compliance as the SBR plant. I won't get into the other issues about this,
42 Your Honour, and perhaps we'll come to that in a minute, but just looking
43 at the progression of the design, we see that, from the table, the number
44 of cells has increased from two to three cells. We see that the surface
45 area has increased from 1.3 hectares to 2.7 hectares. We see the total
46 lagoon volume increased from 57,000 square metres to 108,000 square

1 metres. And we see the maximum retention has increased from 19 days,
2 in the winter, to 38, and from 23 days, in the summer, to 49.

3 Now, the changes in design are for a number of reasons. I think
4 probably they primarily boil down to flexibility. If Your Honour recalls, this
5 is a facility that will need to last for at least 20 years and certainly much
6 longer than that, and if there are changes in population, that it needs to
7 accommodate that. If there are changes in the standards required by law,
8 then it needs to accommodate those as well.

9 So for those reasons we have a number of -- we have greater
10 capacity in this plant. In fact, what I'm told by the experts is that, in fact,
11 two cells will produce compliance with Your Honour's order, but there's a
12 third cell in this present proposal because that will give flexibility. Down
13 the road, when a cell needs to be taken out of commission for servicing,
14 that is, the sludge taken out, that can happen and the facility will continue
15 to operate just as efficiently. That's why two cells will continue to comply
16 with the order.

17 This plant will also have the ability to incorporate pre and post
18 treatment. Again, that's an important factor when considering future
19 population and also future regulation. And those things are the membrane
20 filtering that we've mentioned before in previous court hearings, and UV
21 disinfection.

22 You'll see that the lagoon berm height, and this whole facility, these
23 lagoons will be hidden, if you like, from-- by large berms, and I'm just
24 wondering if we have those -- yes. Perhaps, if Your Honour would
25 indulge, I have some drawings, if you like, schematics of what it might look
26 like, and it may assist the Court to see that, and the people here.

27 THE COURT: Well, I think, perhaps more importantly for the people here from
28 the Dawson community. I've certainly seen lagoon systems before, and
29 the berms surrounding them can be decorated by trees and other things,
30 although I note that when one comes down the frequently travelled Dome
31 Road -- Mr. Crossman, have you run the Dome yet?

32 MR. CROSSMAN: Mr. Ulyett has promised that we should run that this
33 afternoon or tonight.

34 THE COURT: Well, as you come down, you can look down and you'll have a
35 different view of where the lagoon ponds are, and the trees won't be hiding
36 them.

37 MR. CROSSMAN: No, I appreciate that, Your Honour.

38 UNIDENTIFIED SPEAKER: Where would Your Honour --

39 THE COURT: Know what would be good, why don't you put it over sort of in that
40 corner so that, as I say, the people in the gallery can see it, and I can see
41 it, as well.

42 UNIDENTIFIED SPEAKER: We have one more coming.

43 THE COURT: Can they go side by side? Is that high enough for people in the
44 gallery to see? Probably not. Put it up in front of the witness box, I think.
45 And if you -- really have it face the gallery. I step out and see it from
46 there, and it's only one person; I can move. There's the view from the
47 Dome, Mr. Crossman.

1 MR. CROSSMAN: Yes.
2 UNIDENTIFIED SPEAKER: Put the other one on the other side, Your Honour?
3 THE COURT: Sure.
4 MR. CROSSMAN: Your Honour, Mr. Sarson is here, I don't know whether the
5 assistance at explaining (indiscernible - low voice).
6 THE COURT: I think it would be a good idea. Good ahead, sir.
7 MR. SARSON: We can start with this one if you wish. This view was provided to
8 us by one of the councillors and you can see (indiscernible) from the
9 helicopter. It's not from the Dome. This is actually looking the Klondike
10 Valley upper site. This is a revision, a three-cell system as proposed in
11 the preliminary design. Again, these first two cells are fully aerated; this
12 one would be partially, with a settling zone. This is the proposed new
13 process building. So we've got all the waste water is pumped out to the
14 facility, screened and then enters the first cell. Two and three are then
15 back to the site.
16 The intention, you were talking about the berms, the intention is to
17 have them about two metres in elevation above the highway. It addresses
18 the flooding issue and also allows us to landscape it. So that staggering
19 wise, it would be blended in, so when people are driving down the
20 highway, they don't see into the facility itself. You can see the treed areas
21 along the parameter. The top view, you can't really tell with the 3-D
22 aspect of it, but this is representative if you're driving along the highway
23 and you'll just see trees as you go along the berm. So the intent is to try
24 to minimize the aesthetic impact it'll have when you're driving the Klondike
25 Highway. It's close to the actual size it'll be, but it is a rendering so it's not
26 exact. It gives you the magnitude of what the facility will be.
27 MR. CROSSMAN: Can I just ask you to explain the little inset photo. Is that --
28 MR. SARSON: This is the before picture.
29 MR. CROSSMAN: So that's what it looks like now.
30 MR. SARSON: That's what it currently looks like now. And this is what it'll look
31 like roughly when the project is finished. There's currently two lots
32 required to construct. This one is City of Dawson and there's a private lot
33 that's -- one just being worked on.
34 MR. CROSSMAN: So that's Lot 1059 and 1058.
35 MR. SARSON: 1058, yes.
36 MR. CROSSMAN: And we'll come to that in a minute, Your Honour.
37 MR. SARSON: These are the -- there's this additional land there which is Crown
38 land. So there is the ability to expand in the future, if required.
39 MR. CROSSMAN: We can shift to the other one.
40 MR. SARSON: This is looking from the (indiscernible) bluff. It's looking out from
41 the top at the site. (Indiscernible) baseball fields. Same idea. Gives a
42 little more perspective. Klondike Highway, this was a nice day to around
43 the site for aesthetic reasons. Again, construction of the new process
44 building and three cell lagoons. It's the little askew because of the angle
45 that we're at. It does look like we were quite a ways down along the
46 highway but it's not actually that far (indiscernible) and provides a

1 perspective of we (indiscernible) between (indiscernible) recreational area.
2 This is the Dome Road, the outlook or the hilltop.
3 MR. CROSSMAN: Thank you very much. Does Your Honour have any
4 questions?
5 THE COURT: No, I don't. Mr. Cliffe, do you have any questions?
6 MR. CLIFFE: None, Your Honour, thank you.
7 MR. CROSSMAN: Thank you, Your Honour. Part of the court update report,
8 Your Honour, contains the Earth Tech conceptual -- sorry, the draft
9 conceptual report dated March 2007. That consolidates the conceptual
10 design information. If you recall, on the previous court hearings, there
11 have been various other conceptual documents or reports that have been
12 provided by Earth Tech. This is a consolidation of all of those. There's
13 also the Earth Tech Sewage Treatment Improvements Preliminary Report,
14 and that's dated June 5, 2007. That's also in the report. That is a follow-
15 up to the conceptual report, looking at the design, the actual design
16 features. So that's looking at the system, the plant and the building. And
17 it also sets out the capital cost and operation and maintenance cost
18 estimates at a class C level. What will be going from there is class B and
19 class A, in terms of design and cost estimates.
20 It also contains, that Earth Tech report contains the geotechnical
21 report for Lot 1059 by EBA Engineering Consultants, to say that this is an
22 appropriate site from a geotechnical perspective.
23 I think what's important is now to turn to the question of costs, and
24 this is contained in that Earth Tech report that I mentioned. And it's also
25 produced in the summary part of the report, and this is at page 8, page 8
26 of the court update report. It is Table 2. It's headed "Waste Water
27 Treatment Options."
28 THE COURT: Where is it in the Earth Tech report? What I don't recall is
29 whether -- did Earth Tech do a review or did they revisit the SBR plant
30 costs, or is that just something taken from an earlier --
31 MR. CROSSMAN: Your Honour, I'm not sure of that. I can obtain that
32 information though.
33 THE COURT: Okay, just make a note of it.
34 MR. CROSSMAN: So perhaps if I could go to the summary, and I must say I've
35 been using that. I did see that, the summary, in the Earth Tech report but,
36 again, I'll find that information, Your Honour.
37 THE COURT: That's fine.
38 MR. CROSSMAN: Again, as I've said, it's important to put this in perspective in
39 terms of costs, and it's important to remember that more affordable
40 options or less cost does not mean less performance. In fact, Earth Tech
41 is saying that this facility will perform just as well. It will comply with Your
42 Honour's order.
43 If we look at the Table 2 on page 8, we'll see that there's the grader
44 station site, the SBR option, the \$17.5 million capital cost. Operation and
45 maintenance costs, \$731,000.
46 THE COURT: Is there someone here today that can explain to us why the
47 operational costs of the SBR plant are so high?

1 MR. CROSSMAN: I believe Mr. Sarson and Mr. Molloy probably can.
2 THE COURT: Because in other places it's described as a mechanical plant, and
3 I just have difficulty understanding why the costs should be so high.
4 MR. CROSSMAN: Your Honour, I --
5 THE COURT: But it's a number that I've seen several times; it's consistently
6 high, but I just don't understand why. Perhaps somebody could speak to
7 that at a later date.
8 MR. CROSSMAN: We certainly could, Your Honour. And --
9 THE COURT: I think the other thing to note with the addition to the apparently
10 high O&M costs, is the other side of this, of course, the implementation
11 time is substantially reduced in the case of an SBR plant. It's basically
12 half the time, and my guess is - I think it's actually referred to in the
13 documentation - that the YESSA process would be much simplified in the
14 case of an SBR plant, and -- because it's a very established process, and,
15 of course, you don't have lagoons and environment and social impacts,
16 social economic impacts, you don't have the same risk of leaks or
17 membrane breaks and so forth. It may even be less than the two to two
18 and a half years, or it may be less, the YESSA process may be even less
19 than what has been suggested in the report. So there are some other
20 trade-offs that should at least be noted. The SBR process isn't all bad.
21 MR. CROSSMAN: Your Honour, I can certainly address some of those issues
22 now and I can obtain further information, which I believe is set out in some
23 of the previous court reports but I'd need to refresh my memory on those.
24 THE COURT: No, that's fine. There may be somebody here who can do it, you
25 know, just off the top of their head.
26 MR. CROSSMAN: I think Mr. Sarson or Mr. Molloy can.
27 THE COURT: And I guess the other thing to comment is that consistently with
28 respect to the aerated lagoons, there are comments that this has a limited
29 lifetime, 20 years, 40 years. Not clear to me whether they mean at that
30 point we might have to close down one of the lagoons or ponds, scrape
31 out the sludge and move it -- where do you live, Vancouver?
32 MR. CROSSMAN: We'd be happy to accept it, Your Honour.
33 UNIDENTIFIED SPEAKER: Not in my back yard, Your Honour.
34 THE COURT: And that it requires rejuvenation but that its lifetime isn't -- you
35 don't need a new lagoon system. It's not clear to me what's involved
36 there. But I'm assuming, until you correct me, that when they talk about
37 limited lifetimes, they're talking about the fact that a lagoon or lagoons
38 may have to be cleaned out periodically, and as you've pointed out, the three
39 lagoon permits cleaning out of one lagoon while the others are still
40 operational. So I'll look for some direction from you on that too.
41 MR. CROSSMAN: Certainly. And perhaps I can provide this as way of interim
42 response, but certainly each of these infrastructure projects have a limited
43 life; just as if it is a bridge or a road or whatever, it has a life span. In
44 terms of the aerated lagoon, yes, part of that is cleaning out the lagoons,
45 and that is why the third cell is there, to add that flexibility, to take it out of
46 operation and to clean out the sludge.

1 In terms of the SBR plant, one of the -- my understanding, and I
2 maybe stand corrected on this, but one of the reasons for the increase in
3 cost is because of the mechanical nature of it. It is much more of a
4 mechanical process. So things are more likely to break down. It's more
5 complicated. The equipment used. And that cost also drives up the
6 operation and maintenance costs because you need more technical
7 people to be stationed there. They have to be certified to certain
8 standards, and that's a capacity and resource issue, as well as a technical
9 and engineering feature.

10 I can provide some more details a little further and we'll get back to
11 you on that, Your Honour.

12 So just following on from this table, and, again, I want to put things
13 in perspective, is the SBR plant, capital cost, operation and maintenance
14 cost, and we'll see that the user fee there is -- and this is the increase in
15 the user fee; the base, I understand, is around about \$1200 per year for
16 the City of Dawson at present. That's with the \$500 subsidy that the City
17 provides. So we'd have an additional \$1400 per year.

18 If you look at the fourth line, and of course the other two options
19 there, the south bench and the Callison Site C have been other options
20 that have been reviewed, and they've been the subject of previous
21 discussions before this Court. But I want to focus on what the present
22 plan is, and this is the plan, Your Honour.

23 THE COURT: Just before you go on to that plan. The south bench, is that the
24 First Nation proposal on the other side of the river?

25 MR. CROSSMAN: Yes, Your Honour.

26 So the proposed plan, and this is the plan that is going forward to
27 YESSA, is Lots 1059 and 1058, as Mr. Sarson pointed out on the
28 drawings. It's an aerated lagoon. In 2007 dollars, looks like about \$17
29 million in capital cost and about \$293,000 in O&M costs. Now, remember
30 that this is class C estimates. And if you recall, Your Honour, while we --
31 perhaps I'll just finish off this thought and then I'll come back to the cost,
32 but then you'll see the user rate increase is \$560 per year, as opposed to
33 \$1400 per year. And as Your Honour knows, the responsibility for
34 operation and maintenance lies with the City of Dawson. And so that's a
35 cost that they'll have to bear and pass onto residential -- those who use
36 the system.

37 So the conclusion from that Table 1, I think, Your Honour, is that
38 the aerated lagoon is a more affordable and sustainable option for the City
39 of Dawson. However, of course, the additional operational costs are not
40 insignificant. I mean these are significant increases in cost. In fact, if we
41 look at the more affordable option, which is the aerated lagoon at Lot 1059
42 and 1058, the additional cost is \$560 per year per connection, which
43 means an increase of 47 percent. It's a significant increase, obviously.

44 Now, I think the other thing to do is to put these in perspective with
45 other Yukon communities, as Your Honour has pointed out in the past.
46 And if I turn to page 9 of the summary of the report and Table 3. What
47 you can draw from this table, and this is the table that's headed "Annual

1 Water and Sewerage for Yukon Communities with Piped Systems." You
2 see that Dawson is number one, presently at \$1200 with the subsidy of
3 \$500. And if we compare those to the other communities, you'll see 429,
4 400, 400, 344, 544 for the other Yukon communities. You see it's orders
5 of magnitude greater, presently. Of course, on top of that --
6 THE COURT: What systems do Faro, Haines Junction, Mayo and Watson Lake
7 have? Watson Lake has a lagoon system; is that right? And what about
8 Mayo, Haines Junction and Faro?
9 UNIDENTIFIED SPEAKER: All lagoons.
10 THE COURT: Also all lagoon systems?
11 UNIDENTIFIED SPEAKER: Facultative lagoons, though.
12 THE COURT: Pardon?
13 UNIDENTIFIED SPEAKER: They're facultative lagoons. They're not aerated
14 lagoons. They're less money to operate. There's no air being pumped
15 into them.
16 THE COURT: Okay.
17 MR. CROSSMAN: Let me turn now to some of the -- to the lot itself, Lot 1059.
18 As Your Honour knows, that land has been secured. It is owned, and it
19 has been zoned for a waste water facility. There are conditions attached
20 to that, but those conditions are being -- have been met. The conditions
21 that have been met in the last six months are -- and I can -- perhaps I just
22 take you through them and summarize them here, Your Honour. Firstly,
23 the first requirement was to complete an independent drinking water
24 impact report examining the impact to Dawson's potable water, that is, its
25 drinking water. An independent consultant, Gartner Lee, was retained to
26 complete the water impact study, and they examined the potential
27 impacts. Gartner Lee concluded that it did not appear that the
28 construction of this aerated lagoon at this site would have negative
29 impacts on Dawson's drinking water. So that's very important to know,
30 and that was a concern, and that's a concern that's been voiced in the
31 past.
32 THE COURT: Let me just interject. I have some notes that I made with respect
33 to the hydrology report in tab 6, Gartner Lee and Associates report. The
34 first thing that struck me about it is that the report seemed to be premised
35 on the fact that some leaks or breaks in the membrane or spills, what I
36 say, are likely or certainly could be expected or shouldn't be ruled out.
37 That's I think the number one thing to keep in mind. And there are a
38 whole bunch of assumptions that they've made, and you know, when you
39 start making assumptions, you start making assumptions, and you don't
40 know whether all those assumptions necessarily will apply. But with
41 respect to their water wells, they concluded that they drew their water from
42 an unconfined permeable aquifer, and that it was particularly vulnerable to
43 contamination. Large sewage effluent discharge from lagoons will
44 negatively impact water quality. Those are just some hand-scribbled
45 notes that I made from that report.
46 Now, what I said was, "Large sewage effluent discharges." Well, if
47 you assume that there aren't going to be any large sewage effluent

1 discharges, or assume there won't be any, obviously there won't be any
2 possible contamination. But if there is a large effluent discharge from the
3 lagoons, then, as I understood the hydrology report, there would be an
4 impact on water quality.

5 MR. CROSSMAN: Your Honour, perhaps you could take me to the place that
6 you are referring to in the report.

7 THE COURT: I was afraid you might ask that. Page 22. It's the conclusion
8 section. As I say, I was reading to you from my notes. Paragraph 3.

9
10 In the event of a catastrophic (large sewage effluent discharge to
11 the well capture zone) impact to water quality in the well was
12 expected.

13
14 And to be clear, I mean, we're talking about a large effluent discharge. I
15 suppose one might be surprised if there was a large effluent discharge
16 and no adverse consequences. So I wasn't necessarily, you know, being
17 critical. I just wanted to point out that when you start summarizing a big
18 report in one sentence, you may not get it exactly right.

19 THE COURT: Yes. Your Honour, no, I agree. When I first read this report, I
20 found it difficult to understand, in fact, what conclusions they were
21 reaching. It was at that point that I asked the project team, what does this
22 report mean. And my understanding is that the conclusion is that there is
23 not a significant impact. There would not be, even in a catastrophic
24 situation. In fact, what I understand is -- and there's a couple of reasons
25 for that, I suppose. One is that this is -- the proposed lagoon site will be
26 one kilometre from the drinking water wells, and the assumption made in
27 this report, in fact, was -- and the assumptions are very complicated, I
28 must say. I found it very difficult to follow those. But I understand the
29 result of all of that is to say that there would not be an impact on the
30 drinking water wells. In fact, the project team has spoken with the Yukon
31 environmental health officer, whose name escapes me at the moment, but
32 --

33 UNIDENTIFIED SPEAKER: Dr. Bryce Lark.

34 MR. CROSSMAN: Bryce Hart?. Who has reviewed the report, has reviewed the
35 situation, and agrees that there is no impact, no negative impact on
36 Dawson's drinking water as a result of this facility.

37 I've also been told that, in fact, other regulations or requirements
38 allow, for example, fuel storage facilities to be 200 metres from drinking
39 water. The passage that Your Honour is referring to -- and I might be
40 wrong on this, and I'll have to take advice of my friends here, but my note
41 here is that this is talking about a catastrophic sewage discharge to the
42 capture zone from the Turner Street emergency outfall as opposed from
43 the aerated lagoon. So if we're talking about a spill from the lagoon, it
44 would have to travel a kilometre to reach the drinking water wells.

45 THE COURT: The Turner Street outfall is where?

46 UNIDENTIFIED SPEAKER: Completely upstream of the wells. Perhaps 150
47 metres of the stream.

1 MR. CROSSMAN: It's an existing -- well, I think what this report does is sort of
2 two things. It's saying the aerated lagoon proposal is not going to impact,
3 but by the way, we think you might have some problems with your existing
4 infrastructure in that they're not really that protected.

5 THE COURT: I think you may be right. As I read further into the small print:
6

7 A continued use of the Turner Street emergency outfall presents a
8 significant risk to the drinking water system during system overflow.
9 Future system upgrades should consider this risk and appropriate
10 changes should be made to ensure long-term protection of the
11 water supply.
12

13 So, reading on, that seems to support your position. There's perhaps an
14 existing problem that needs to be addressed along with the lagoon.

15 MR. CROSSMAN: Your Honour, I should also clarify. Mr. Magnuson has
16 corrected me on the -- it's the chief medical officer, the Yukon chief
17 medical officer, Dr. Bryce Lark, who is willing to come up to the City of
18 Dawson to address the community on this very issue, to give the
19 assurances that I'm giving here today.

20 So just following on from the conditions attached to the
21 discretionary use permit. One of the other conditions was that there be
22 consultation with the Tr'ondek Hwech'in First Nation and the other Dawson
23 stakeholders. As you know, there've been a number of discussions with
24 both of those stakeholders in the past. The project team has initiated a
25 formal consultation process with the Tr'ondek Hwech'in and public
26 consultations have been continued with the Dawson stakeholders. And if
27 you look at the report, you'll see in the summary of the report, again, the
28 listing of those public consultations that have taken place. Unless you'd
29 like me to take you through those?

30 THE COURT: No. But I understand that the attendance at these consultations
31 have been varied, that is to say, in some instances the attendance has
32 been low; is that correct?

33 MR. CROSSMAN: In fact, the consultation, Your Honour, is summarized in a
34 document which is not yet public, but is --

35 THE COURT: No, I don't need to go there. No, you continue.

36 MR. CROSSMAN: If I could just mention this. It has been filed as part of the
37 YESSA application, Your Honour. This is the City of Dawson, YESSA
38 Executive Committee Screening Consultation Summary Report, which has
39 been filed with the YESSA office.

40 Another condition that was to be satisfied was that there be a plan
41 presented and approved by the City detailing the long-term management
42 of the facility, and the Earth Tech reports provide that, including a
43 decommissioning plan in relation to that.

44 There was also another condition that there be continued
45 investigation of alternative sites. And I know Your Honour has made
46 comments about that in the past and we understand the concern with

1 timing on that. As I said, the plan is to proceed with Lot 1058, 1059, with
2 an aerated lagoon system --

3 THE COURT: Let me comment on that. Obviously, time is of the essence, and
4 Mr. Cliffe would probably underscore that. And from my perspective, time
5 is important. I think there is a balancing factor here, and that is, you're
6 only going to get a chance to do this once and you've got to do it right, and
7 that means making sure you use the right technology and you get the
8 locations right, and I think it's very important to make sure that the interest
9 of parties are at least sufficiently bought in that they can take ownership of
10 the result.

11 I do want to make a passing comment. Some of the news reports
12 I've seen might suggest to a casual reader that the City of Dawson and the
13 Government of Yukon is absolutely determined to proceed with this site
14 come hell or high water, because they have no choice, the judge is
15 making them do it, or the Court is making them do it. I want to make it
16 very clear, that's not my position. My position is, yes, timing is critical, and
17 for those of you here who have taken the time to read my original
18 decision, you'll know that even before my decision in 2003, there was a
19 10-year period of time when the City of Dawson was dancing around on
20 this issue, and I made specific findings that they -- part of that dancing
21 was to achieve delay or avoid addressing the problem. So, from my point
22 of view, yes, it is important to move on, but I think it's also very important
23 for everyone to note, but not at any cost. You've got to get it right. Finally,
24 I'm not going to be the person who decides that. I'm going to keep
25 pushing everyone involved to move forward expeditiously and not to drag
26 their feet, but get it right.

27 MR. CROSSMAN: Thank you, Your Honour. As Your Honour knows, the project
28 team has been exploring alternatives to find the right site.

29 THE COURT: And I say that the City of Dawson minutes indicated that they
30 would continue doing that until the matter effectively moves to some very
31 advanced stage. In other words, the City minutes, the council minutes,
32 have said they're going to keep all options on the table and they're going
33 to continue to explore all options until it's no longer practical to do so.

34 MR. CROSSMAN: That time is quickly coming upon us, Your Honour.

35 THE COURT: Has Lot 1058 been acquired yet?

36 MR. CROSSMAN: Not yet, but negotiations are well progressed. Unfortunately,
37 the project team are experiencing difficulties in negotiating the voluntary
38 purchase of that.

39 THE COURT: No, I saw the material, and it just sounds --

40 MR. CROSSMAN: Expropriation may be an option.

41 THE COURT: There are other alternatives available and that might bring the
42 parties together.

43 MR. CROSSMAN: Yes.

44 THE COURT: Since I'm talking here, let me address the other issue that is
45 somewhat relevant to my comments about getting it right and making sure
46 that the various partners are sufficiently on board to take responsibility for
47 the issue, and that is the material you filed with me. The media material

1 alludes to a petition in the nature of a *Municipal Act* which would trigger
2 referendum on an issue in the event that sufficient votes or voters sign the
3 petition. And, no doubt, someone, perhaps His Worship Mayor Steins, will
4 address that at some point. But when you were emphatic in saying 1058,
5 1059, that's it, you know, we're going forward with that, I'm wondering
6 whether there just might be some intervening political process that could
7 push that to the side. That brings me back to my earlier comment. It may
8 be very important for Yukon and the City of Dawson to keep all options
9 open and not focus on one alternative if it turns out that that alternative is
10 not available as a result of political action. But you, no doubt, will want to
11 speak to that at some point. I'm taking you off your game plan. I
12 apologize for that. You go back and continue.

13 MR. CROSSMAN: Your Honour, you're more than welcome to do so. Perhaps I
14 can just respond to that and say the project team are keeping options
15 available, keeping back-up options essentially to this, and of course, if a
16 more appropriate site becomes available, they would proceed. But the
17 concern, of course, has always been the completion date.

18 THE COURT: No, I understand that, but we shouldn't -- I'm trying to send the
19 message out that the completion date, speed should not overrule -- the
20 speed should not result in a bad decision being made. What we want to
21 do is we want to get the right thing done and we want to get it done as
22 quickly as possible. I was a little bit concerned -- it's a media report only,
23 so I understand -- I deal with enough media reports to know that one
24 should take it with a grain of salt, but one report suggested that a
25 consideration of the -- I don't know if it's the south bend site, but the site
26 offered by the First Nation was out of the question because we don't have
27 time, we're out of time. That struck me as maybe not being appropriate in
28 light of, first of all, Dawson City's own minutes, and concerns that I have
29 expressed.

30 On the other hand, I don't want anyone to suggest that after this
31 review, that Judge Lilles says it's okay, we don't have to worry about this
32 plant for another 15 years. That's not what I'm saying.

33 MR. CROSSMAN: I think it's a good point to make, Your Honour. What I could
34 tell you in particular detail is further review of Lot 1028 on the Callison
35 Highway, unfortunately too small footprint. The Dome site --

36 THE COURT: The which site?

37 MR. CROSSMAN: The Dome site.

38 THE COURT: Right.

39 MR. CROSSMAN: Too small. And the First Nation land, unfortunately, there are
40 complications in terms of public infrastructure issues there.

41 THE COURT: Well, there are complications, and I saw them as being in part -- it
42 would be a lease arrangement, I take it, and that raises some problems.
43 But there's also the infrastructure of getting hydro and other things over
44 there. It occurred to me, as well, that I'm not sure what people would do
45 during the lengthy freeze-up and thaw period when it's not possible to
46 cross the river and take heavy equipment across the river in the event that
47 that's necessary. So there are certainly some negatives.

1 There are also some positives, I assume, and that is, by getting
2 infrastructure to the west side of the river, Dawson City, that part of the
3 city is enhanced. So that may be viewed as a positive by some people.
4 MR. CROSSMAN: I'll take your comments back to the project team, Your
5 Honour.
6 THE COURT: Well, indeed, His Worship, the mayor, may wish to comment on
7 some of my political questions before the morning is out.
8 MR. CROSSMAN: And I would like that opportunity perhaps to ask the mayor
9 and Mr. Magnuson to give us an update from their perspectives. Perhaps
10 I can just --
11 THE COURT: And to be very clear, I don't -- I'm very concerned about the
12 petition because if it turns out that -- concerned in the sense that if this is
13 the only alternative we're considering and the petition process ends up at
14 a referendum and that has the effect of stopping this process - I'm making
15 assumptions, I don't know that it would - then obviously we have to go
16 back and start over again, and that causes delay.
17 MR. CROSSMAN: Yes. Perhaps this is an appropriate time to -- if I could ask
18 Mayor Steins to say a few words in terms -- and, again, as Your Honour
19 has pointed out, the City is very committed to this project.
20 THE COURT: Your Worship, come to the dais where there's a microphone and
21 -- it's a great opportunity to speak in a courtroom without having your
22 words filtered by a lawyer. I was assuming that Mr. Crossman would ask
23 for a brief adjournment so he could meet with you and filter your
24 submissions appropriately.
25 MR. STEINS: That's a polite way of putting it, Your Honour. I'd like to thank you
26 very much for agreeing to have the hearing here in Dawson City. As you
27 can see, we have some Dawsonites here in attendance. And you'll recall,
28 at our last hearing, when we asked the Court to consider Dawson, that
29 that was one of the reasons is to try and involve people that otherwise
30 wouldn't be able to travel to Whitehorse, so that they could see and
31 understand the levity and seriousness of what we're discussing here.
32 I'm actually encouraged to hear you say, Your Honour, that
33 although time is of the essence, that it's important that we arrive at a
34 solution that we don't regret down the road. To that, I have to say that as
35 far as mayor and council is concerned, we continue to be committed to
36 solving this problem of a waste water treatment plant. As you know, Your
37 Honour, this has been going on for a long time, since 1983, and we are in
38 the end game process of this exercise.
39 There is the component of the referendum and it does present a
40 difficult problem. Should it be that the result of the referendum obliges
41 council to pass a bylaw forbidding construction of a waste water treatment
42 plant at 1059/1058, this will really put us in a difficult position, obviously,
43 because we'll be -- possibly the Court may see this as us being in
44 contravention of Your Honour's court order, possibly. At least I'm
45 suggesting that there may be potential for a conflict there.
46 THE COURT: I doubt if I would necessarily find it as being in contravention of
47 the order. It's an independent political process. But I think it would not be

1 unrealistic to expect the court to revisit the amended order, and one might
2 not be too surprised if another amendment came into place requiring the
3 city to build an SBR plant.

4 MR. STEINS: Your Honour, I think that option is not possible for us. We're 1800
5 people here.

6 THE COURT: No, I know.

7 MR. STEINS: You know, it's already been shown by Mr. Crossman in that chart
8 in his presentation that we already pay three times as much, you know --

9 THE COURT: No, I understand.

10 MR. STEINS: -- we're the highest in all of Canada. And it begs the question to
11 me, and maybe it's just my paranoia speaking, but why are we being
12 punished this way? Why is it that, you know, Dawson City, a town of
13 1800, is already paying -- the ratepayers are already paying 1800 or 1700
14 without the subsidy for water and sewer, and now the best case scenario
15 suggests that we will be asked to pay an additional perhaps 500 on top of
16 that? And I'm not using this as an argument against building a waste
17 water treatment plant. I've already indicated that the City and YTG is
18 completely committed to this project. There is no argument there. In fact,
19 it's my understanding that Canada is considering legislation that will
20 require all municipalities to do the same, therefore it's a moot point and not
21 even open for argument.

22 THE COURT: And, indeed, as Mr. Crossman has pointed out, there's every
23 reason to expect that the requirements for existing systems are going to
24 be enhanced as opposed to allowed to remain as they are.

25 MR. STEINS: Right.

26 THE COURT: And that's consistent with what's happening in the public mood
27 with respect to the environment.

28 MR. STEINS: Yes. And the lagoon option, Your Honour, from my layman's point
29 of view, seems to be the most environmentally friendly sustainable option
30 that's available to us. Unfortunately, there seems to be some opposition in
31 the community to the location of said lagoon.

32 THE COURT: The location, not the lagoon option, but the location.

33 MR. STEINS: Yes.

34 THE COURT: That presents you with a political challenge of explaining to your
35 constituents very clearly what the alternatives are and what the costs are,
36 and what the consequences are of choosing other sites. But it also
37 speaks I think to the fact that it's really important for you, being the
38 representative of the City of Dawson, and also to the Yukon Government,
39 to make sure that all other potentially viable sites are examined carefully
40 and that information is brought back to the citizens of Dawson, so that
41 they understand very clearly, if you have to proceed with the site, why it is.
42 So that's a political challenge, I think, on your part.

43 MR. STEINS: Yes. And I have to say that, yes, I agree, Your Honour, it's a
44 political challenge, but I do commend YTG and Community Services and
45 project manager and everyone on the team for really knocking themselves
46 out and moving this project forward and initiating all the required studies,
47 you know, trying to answer all of the questions. Mr. Sarson will come up

1 here at the drop of a hat in public consultations where he's been yelled at
2 and berated and has always kept his cool. So it's a very emotional issue.

3 Personally, from a personal point of view, I do believe in the
4 science. I believe that it won't contaminate drinking water and I believe in
5 my heart of hearts that, you know, 10 years from now, when asked
6 where's your sewage lagoon, no one will be able to answer.

7 The problem is, is that what we're looking at here, it's an emotional
8 issue. And, quite frankly, I don't think I would want a sewage lagoon built
9 next to my house, even if it doesn't smell. It's a psychological hang-up,
10 and I think that's what we're faced with. However, having said that --
11 sorry.

12 THE COURT: There's a First Nations community nearby.

13 MR. STEINS: Mm-hmm. Well, the optics aren't very pretty, are they? However,
14 Your Honour will agree that our options here, because of our topography,
15 are extremely limited. You'll remember at one point at one of our hearings
16 we were bringing forward the north end's potential site and everyone was
17 deliriously happy because, wow, it's, you know, downriver of the drinking
18 water and it's all good. But resulting studies, geotech studies, indicate that
19 the ground is unstable, and to repair it and get it to a point where it would
20 be useable for a lagoon would involve millions upon millions of dollars that
21 we don't have. And what are the options? The other option is to have a
22 lagoon out in Callison, but here we have a force main pumping waste --

23 THE COURT: You don't have to get into that detail for me.

24 MR. STEINS: Sorry, I'm on a rant, Your Honour.

25 THE COURT: As I indicated -- no, no, it's an issue very important for your
26 constituents to understand and appreciate, and with the new site coming
27 back on line from the First Nation, there clearly has to be close
28 examination of that. The pros and cons have to be put into place and
29 evaluated and communicated and discussed so that if, in fact, a
30 1058/1059 alternative is the best alternative, people will understand that it
31 is, or if it's the only alternative, only alternative to building a lot of
32 outhouses, then I think if people understand that, then the plan will go
33 ahead.

34 MR. STEINS: I'm glad to hear that, Your Honour. I'm really happy that you're
35 still on this case, and you have more knowledge of it than anyone else, I
36 think, so it's terrific to have that continuity. We really appreciate it.

37 THE COURT: I just wanted to say, you look great in a jacket and tie.

38 MR. STEINS: I thought I'd dress up for Your Honour today. I dressed up for the
39 Governor General, so I thought I might as well --

40 THE COURT: Equal time. I appreciate that. I appreciate that.

41 MR. STEINS: Thank you very much.

42 THE COURT: I just say to anyone here wearing a jacket, it's getting warmer and
43 warmer, and before long I may take off my robe. Gentlemen, please feel
44 free to take your jackets off. It's not intended to be yet another form of
45 punishment to the citizens of Dawson. Thank you, sir.

46 MR. CLIFFE: Thank you very much. If I could ask Mr. Magnuson --

47 THE COURT: Please, Mr. Magnuson.

1 MR. CLIFFE: -- to say a few words, and then I can close.

2 THE COURT: How are you, sir?

3 MR. MAGNUSON: Very good, Your Honour, nice to see you again.

4 THE COURT: And a pleasure to be here. I understand the weather in Dawson
5 is much better than Whitehorse.

6 MR. MAGNUSON: It is. In fact, it is, and it gives me an opportunity to address
7 this matter directly today as the acting deputy minister for the department,
8 and to be able to relay some of the concerns that the Yukon government
9 has with this project.

10 I'd like to just state, on the record, of course, that the Yukon
11 government continues to be very committed to this project. The legislative
12 assembly has passed our budget. There has been budget commitments
13 to this project for a number of years. The entire capital budget envelope
14 has been approved. We have entered into an agreement with Canada.
15 We continue to work on the details of that agreement. It has not been
16 signed off yet. We are moving forward with the sewage treatment facility
17 in Carmacks at the same time. The Yukon Government is committed to
18 the environment and the treatment of waste water and resolving these
19 issues. However, the Yukon Government is not the only government at
20 play in this jurisdiction, and it's a difficult political matter.

21 I can say, though, that our --

22 THE COURT: Let me just say that the progress that you've described, I'm been
23 aware of, and I've been very impressed with the way -- the amount that
24 has been accomplished, particularly in the financial area, knowing that a
25 number of governments are involved and there have been changes of
26 government too. So, yes, I'm very impressed with what's been put in
27 place, recognizing that maybe every "t" and every "i" hasn't been dotted,
28 but clearly well advanced.

29 MR. MAGNUSON: I'd also like to just, if I may, describe for the Court very briefly
30 the additional commitments and challenges to this particular government
31 relevant to the current four or five years with the City of Dawson. The
32 Yukon Government has had to commit significant additional funds in terms
33 of right down to debts and assistance in other financial matters, and the
34 town, in fact, has experienced difficulties financially. They have, I think,
35 done an excellent job of managing the way forward since they have been
36 returned to an elected democratic local government, and we continue to
37 be pleased with their progress and their books to date, but the Yukon
38 government has committed, you know, in excess of \$5 million in advance
39 of this project, just to get back to a basic in-the-black kind of status. So
40 there are definite challenges here and this isn't the only community in the
41 Yukon that the Yukon Government has some responsibility for.

42 That being said, with respect to this project, we are very close to
43 moving forward into the YESSA process. That YESSA process is
44 required, under the legislature, to take one year, regardless of the type of
45 sewage treatment. Any waste water treatment facility must go through the
46 YESSA process, and it's mandated in that process that it's an executive

1 level review, the highest review, and it can take up to a year. And that's
2 irrelevant of the treatment selected.

3 THE COUERT: Yes.

4 MR. MAGNUSON: In addition to that, it's very much the YESSA process that
5 allows for detailed public consultation. We have to do consultation in
6 advance of submitting to the YESSA, and we have to build a certain level
7 of support for the project within the various governments affected, as well
8 as the governments that are representative of the peoples affected. We
9 believe we have that level of support to proceed to the next level, and
10 through the YESSA process there will be additional public hearings, and
11 the board will be an independent board that will make recommendations to
12 the government on the project. So we want to take the project to that next
13 level and have that broader consultation, have it formally documented and
14 formally reviewed through that process.

15 In addition to that, we have had numerous consultations with the
16 local First Nation relative to options, and I myself met with chief and
17 council on a number of occasions. I know that there's been meetings at
18 the highest level politically, between those two organizations, and there
19 has been discussion around this project specifically. We do have a policy
20 of ensuring that public infrastructure is located on public lands. I think
21 that's good due diligence relevant to protecting the public interest and the
22 public investment in that infrastructure. As you are more likely aware than
23 I, there are complications relevant to the constitutional ability of First
24 Nations to deal with lands in the terms of disposition. So that puts the
25 whole thing in a difficult situation. We have experience with other
26 infrastructure projects, most recently in Whitehorse, where we looked at
27 options around this, and, quite frankly, the only way to deal with this at this
28 point in time, in that project, was to work around the First Nation land, and
29 the First Nation land (sic) openly understood and accepted that.

30 We would also like to say that while the Yukon Government, and I
31 can only speak to the Yukon Government's current level of commitment,
32 and that current level of commitment is communicated as often we've
33 communicated commitments in terms of dollars. And I'm not saying that
34 there wouldn't be the political will to increase that commitment, but more
35 than anything what's extremely for the Yukon Government is the
36 sustainability of this community on the longer term. And there have been
37 issues around population. I know that there are two sets of stats that are
38 run for this community. People like to say the population of Dawson is
39 1,800. For the purposes of the *Municipal Act* and in fact the advice of our
40 statistics branch, the minister has accepted that the population number in
41 Dawson is actually 14 -- just over 1,400. And we had to get a legal review
42 on that relevant to the minister determining what percentage of the
43 population would be required to sign the petition before it would move
44 forward towards a referendum, and at 15 percent that number comes to
45 199. So despite the numbers, and I think the general Klondike Valley area
46 may be around 1,800, the City of Dawson is really only 1,400 people. And
47 we don't know what the long-term growth model is for Dawson, but I think

1 if we track the history back, I think growth might be a hard one to
2 substantiate. So we want to find a model that will work for the community
3 today. And I think that what we've learned very much from the
4 communications within the town is that we need to communicate more,
5 and that's very much why we created a picture of what the potential site
6 could look like, and we've got numerous other pictures relevant to current
7 sites, and these sites are operating all over the place. We have great
8 confidence in that. That being said, we need to do more work on
9 communications, and we hope that the YESSA process will do that.

10 So with your Court's leave and the current process that we have
11 before us, we hope to be able to move forward, do more work on this
12 project, and we think that we will find the right solution.

13 THE COURT: Thank you very much. The YESSA submission is intended to go
14 in when? Is there a submission deadline or does it go in in preliminary
15 way or unofficial way or -- first? I know it's a new process.

16 MR. MAGNUSON: Yes. We've gained a fair bit of experience with the process
17 in the last year and a half, and as it stands right now, we've, in our
18 milestone, submitted that we will have the YESSA submitted by July 31st.
19 In practical reality I can tell you that my staff have been working diligently
20 on this, and through weekends, and I've had numerous meetings with the
21 development assessment branch within the Yukon government and the
22 YESSA board. The consultation portion has been submitted and we
23 anticipate, within a couple of weeks, the balance of the submission will be
24 submitted. We also, of course, need to give the City of Dawson time to
25 review that, because they will be signing off on that submission as well.
26 And formally, the process then requires the YESSA adjudicators to review
27 the submission and deem it being complete. And once it's deemed
28 complete, then the clock starts ticking, under the legislation.

29 THE COURT: Okay, just take you back to the First Nation situation, because I
30 think what you've said there was very, very important, and that is,
31 government - I'm just going to double-check with you - government has a
32 policy, and I think it's a firm policy and one that's, I assume, founded on
33 common sense and maybe even some experience, and that is that public
34 infrastructure must be located on public land. Because First Nations, at
35 the current time, are unable to alienate their land, sell it, you would
36 necessarily be in a lease arrangement with them if you proceeded with the
37 south bend; is that what they call that location, south bend location?

38 MR. MAGNUSON: Right.

39 THE COURT: So notwithstanding any lists of pros and cons one might generate,
40 it's really not something that you can consider seriously at the current
41 time.

42 MR. MAGNUSON: It's well beyond my level of authority to go there.

43 THE COURT: All right, okay.

44 MR. MAGNUSON: And in fact it would be very much a democratic process,
45 within at least two, if not three -- I actually -- I can say for certain, within
46 three levels of government, potentially four.

47 THE COURT: Yeah. Yeah. And so --

1 MR. MAGNUSON: It would involve Canada.
2 THE COURT: -- so -- I review this mainly because when I looked at some of the
3 media reports, it seemed to -- it didn't explain what you've just told me.
4 And, secondly, there seemed to be a suggestion that those responsible for
5 looking at alternative sites were merely dismissing this site because of
6 lack of time, and what I've heard from you is that's incorrect.
7 MR. MAGNUSON: That's true, Your Honour, and I appreciate the opportunity to
8 correct the record on that, and I think that, you know, there's a lot of
9 understandings out there and a lot of communications do tend to swirl
10 around. I think our friends in the media try to present as fairly as they can;
11 however, it's a very complex issue, and you can see the resources present
12 here today.
13 THE COURT: Yes.
14 MR. MAGNUSON: It's not an easy thing to understand and grasp.
15 THE COURT: Yes. Thank you. Do you have any questions specifically -- you
16 may have some issues to raise, but anything while he's standing, Mr.
17 Cliffe?
18 MR. CLIFFE: I don't have any questions of Mr. Magnuson, Your Honour, thank
19 you.
20 THE COURT: Thank you very much, Mr. Magnuson.
21 MR. CROSSMAN: All right, perhaps I can just wrap up.
22 THE COURT: Please. I know I've interrupted you a number of times, and then
23 you've interrupted yourself. If you can figure out where you are, I
24 congratulate you.
25 MR. CROSSMAN: I seem to do that well.
26 THE COURT: It's quite a skill.
27 MR. CROSSMAN: Thank you for following me. And I want to thank you again
28 for the opportunity for Mayor Steins and Mr. Magnuson to speak to the
29 Court directly on these issues. I think it's really important, as I think Your
30 Honour has noted in the past, to hear directly from those involved.
31 Just in terms of where we're at. As Mr. Magnuson mentioned, the
32 next step is -- the significant step is the YESSA process. We're about to
33 enter that. The binder on the table is that first part, or, sorry, it's part --
34 how to describe it. The YESSA application has two parts to it. The one is
35 the consultation report and one is socio-economic report. So the
36 consultation one has already been completed, has been filed; in fact, we
37 have a letter from YESSA acknowledging receipt of that. The second part
38 is the socio-economic, which Mr. Magnuson referred to. It's hoped that
39 that will go in in the next couple of weeks.
40 The work plan then is for the regulatory review under YESSA. It
41 looks like a minimum of a year. In terms of the Water Board review and
42 approval, and, again, this is referred to in the report, the best estimate
43 there is somewhere between six and 12 months, from other experience.
44 The teams working will obviously work as quickly as possible to get it
45 through those processes, but these are processes outside of the control of
46 the project team.

1 The fifth item in this list is the YESSA decision document. We're
2 hoping that will come out in June 2008. And that will be the decision
3 document to proceed to the water licence application.

4 Water Board review starts then at that point, and that's item six on
5 this and we're hoping that will take place June 2008. This is an approval
6 for a Type A water licence. It's important to know that, because from the
7 experience of the project team, that's -- typically range between six and 12
8 months for approval, and we're assuming nine months in this timeline.
9 Again, that's a process which is independent of the project team and the
10 City of Dawson and the Yukon Government.

11 The next step is the water licence, the new water licence, which will
12 be based on this new plant is granted or approved. That's item seven in
13 this table. We're hoping that's March 2009. Again, dependent upon the
14 previous approval processes.

15 And just to note there, as Your Honour may be aware, it is a bit of a
16 two step process, where the Water Board reviews this application, but the
17 licence itself is approved, is signed off by the responsible minister. So
18 there is some time lag between the two, because what the minister has to
19 be satisfied is that the process has been followed, that is, the water review
20 process has been followed, correctly followed. If he or she is satisfied by
21 that, then the licence is approved. So -- and, of course, you know, that is
22 in the discretion of the minister. And that's under the Yukon *Water Act*, of
23 course, that provision.

24 Now, the next part, this is where we're getting into the aspects
25 which are within the control of the City of Dawson and the project team.
26 All of these before, apart from the submission of the YESSA application,
27 have been outside of the control of the project team.

28 Number eight on this table is to issue the construction tender. And,
29 again, assuming all goes to plan, we're hoping that's March 2009. So
30 there the tender is based upon the detail of design, and, of course, that is
31 all based on getting the approved water licence, because without the
32 water licences, we don't have a definite plan to build to.

33 The tendering process is anticipated to last about four weeks.
34 When those bids come back from contractors, the construction contract
35 will be awarded based upon a review, of course, and there's due diligence
36 in that process, because the bid proposals have to meet the tender
37 document requirements. It has to be within the approved funding
38 envelope that we're looking at, has to meet the other terms and conditions
39 of the tendering.

40 Once those are reviewed, then the construction tender is award --
41 that is, the construction contract is awarded, with the anticipated milestone
42 May 2009. We anticipate it's going to take three construction seasons to
43 complete this, because there needs to be frost-free construction time.
44 And so you can see that the end -- completion is, and operation is the end
45 of June 2011. Again, all of that is -- if there is any delay in any of these
46 part of the processes, the previous ones, of course, it's like a domino
47 effect. It will have an impact of delaying the other milestones.

1 But that is our best estimate at this stage. As Mr. Magnuson and
2 Mayor Steins have said, the team has worked very hard on this to get it to
3 this stage. We're about to enter the regulatory process with this project,
4 the aerated lagoon at Lot 1059. And unless Your Honour has further
5 questions, there's my submissions this afternoon.

6 THE COURT: No, I don't have any questions at this time, but when I hear from
7 Mr. Cliffe, I may.

8 MR. CLIFFE: Your Honour, it may be appropriate to have a stretch break. I'm
9 prepared to proceed but I know we've been going for some time.

10 THE COURT: Certainly, it's a good idea. Thank you.

11
12 (PROCEEDINGS ADJOURNED)
13 (PROCEEDINGS RECONVENED)
14

15 THE CLERK: Recall the matter of the City of Dawson.

16 MR. CLIFFE: Your Honour, I'll just open by saying that today and what I've
17 heard presented by my learned friend has informed myself, as Crown
18 counsel, and it's further informed Mr. Lindsey and Mr. Enns with respect to
19 the status of things beyond that of the report back to court. And it's
20 informed us in a positive way, and I say that it appears that things are
21 moving along. And most importantly, the Crown has appreciated the
22 confirmation by the representatives of the Yukon Government and the City
23 of Dawson with their respective commitments, as they say, to the project.
24 And I can only say that it is my understanding from that, that as a result
25 they are committed to compliance with Your Honour's order. I'm going to
26 assume that. I think that is a reasonable assumption, and perhaps my
27 learned friend can clarify that later in reply.

28 THE COURT: Well, he certainly asserted that.

29 MR. CLIFFE: Yes.

30 THE COURT: Neither Mr. Magnuson or His Worship Mayor Steins, they didn't
31 use that terminology, but what they said was consistent with counsel's
32 clear statement that they were --

33 MR. CLIFFE: Yes, and all I'm trying to do is just confirm that, because that's
34 important, as far as the Crown's concerned, and no doubt very important
35 for Your Honour.

36 I might ask that, as far as communications is concerned, I don't
37 know whether there's any objection by counsel for the City of Dawson and
38 Yukon, Mr. Crossman, whether Environment Canada could get a courtesy
39 copy of the file of YESSA report to date, and then when the subsequent
40 copy is filed. Environment Canada has not been provided with a copy of
41 those materials. And that's to keep them up to date with respect to what is
42 being filed with the licensing authorities.

43 THE COURT: Perhaps while you're taking a breath, Mr. Crossman may just be
44 able to interject and provide some confirmation of that request.

45 MR. CROSSMAN: Yes, we're happy to do so. In fact, I understood that that
46 would be provided in due course.

47 THE COURT: Thank you.

1 MR. CLIFFE: I want, as a matter of general remarks, and in particular, and no
2 doubt the Court is very well aware, but for the sake of the public that is
3 here, as far as my role, and as Your Honour's quite well aware, I make -- I
4 appear on behalf of the Director of Public Prosecutions of Canada or the
5 Attorney General of Canada with respect to this matter, as I was the
6 prosecutor originally in this case. And as it relates to the proceedings
7 before Your Honour and prior to this appearance as it relates to after the
8 order was made, I've been coming to court to make submissions to Your
9 Honour as a result of being briefed on the various technical aspects, as
10 best I can be, as far as general comment and information for the Court by
11 Mr. Enns and by Mr. Lindsey of Environment Canada. This project and
12 the project that the public and Your Honour is being shown, the aerated
13 lagoon project, and I can call it, at the baseball diamond or near the
14 baseball diamond, is not Environment Canada's project. I think that's
15 been made clear but I have to make that clear again. It's the project of the
16 City of Dawson with the support of the Government of Yukon so as to
17 comply with the order that was made by this Court, and the role of
18 Environment Canada as it relates to this project is to provide technical
19 comments to both the Yukon Government's representatives and the City
20 of Dawson's representatives, when that opportunity presents itself.

21 Now, Environment Canada is most concerned that there is
22 compliance with this Court's order to construct a secondary sewage
23 treatment plant. And their concern here, because they want to ensure that
24 the waters of the Yukon River are protected. That's why they are
25 interested as well.

26 Now, back to the provision of technical comments. Environment
27 Canada hopes that its comments in the past have assisted the Yukon
28 Government and the City, and I think that my friend has indicated that, or I
29 know that someone has already, about that.

30 Now, it's not the role, again, of Environment Canada to go out, and
31 I want to just repeat this, to approve the site that's depicted in the
32 photographs or to approve that location.

33 THE COURT: And nor is it mine.

34 MR. CLIFFE: Nor is it Your Honour's. So I want to just inform the public with
35 respect to we are and who these gentlemen are as it relates to their
36 involvement in this matter, and I repeat, the project that is proposed is the
37 complete responsibility of the Yukon Government and the City of Dawson.

38 Some comments I'm going to make today, Your Honour, as I've
39 made in this past, and I've always made this clear in the reports back to
40 court, I don't want them to be viewed in any way as roadblocks. They are
41 to express concerns to the Court that can be either accepted by the Court
42 or by my learned friend and his clients, or reject them. And it's not there to
43 be a roadblock to compliance with this court order. As I say, that is the
44 primary, if I can call it that, citing of the Crown and the representatives of
45 Environment Canada, that's comply with the court order.

46 And I do have a few things to say, just elaborate a little bit about
47 this prior history for the sake of the public, very briefly; that we are dealing

1 with a court order, that's Your Honour's order, and as Your Honour has
2 said, and is obvious to we lawyers and the Court, that a court order means
3 something, that there are consequences for non-compliance with a court
4 order, and that efforts to comply with a court order, no matter what it is,
5 have to be a high priority for the person for whom the order is directed.
6 And in this case, it's the City of Dawson. They have to comply with the
7 order. It's a high priority, were the words Your Honour used in one of the
8 judgments in this case.

9 Now, with respect to some of the history, Your Honour made some
10 comments about it, my friend has, and for the sake of the public here, and
11 I think it's important, that is from 1983 to 2003, when this matter ultimately
12 became the subject of sentencing upon the conviction of the City of
13 Dawson for violating the *Fisheries Act* by discharging its sewage into the
14 Yukon River, this City had a history of failed promises made to the
15 government regulators to construct and operate a secondary sewage
16 treatment plant. Twenty years. And that's what prompted, as Your
17 Honour is quite well aware, the record reflects it, prompted the
18 investigation of the City's treatment plant and led to the charges in this
19 case. This wasn't a one-off thing. It was prompted by a history here, that
20 is reflected in Your Honour's judgment, which is available to the public.

21 Now, there has been a period, since Your Honour's order, a four-
22 year period, and construction has yet to begin. I think that's -- not
23 anybody -- that stated fact is not in dispute. And there's been efforts to
24 move things along. There's been finance issues. There's been
25 technology selection issues. There's been changes of counsel, and so on,
26 numerous issues, trying to get us on the path that we are now today, but
27 the fact remains that we do have a period of four years of no construction.

28 The Court's order, Your Honour's order, has been varied once, and
29 that means that we changed the term of the order. The order was to
30 expire in I believe it was September 1, 2004, and was extended, in August
31 of 2004, to December 31, 2008. So there's been over -- there's now a
32 period of five and a half years out there to get in compliance with the
33 order.

34 Now, this fast approaching end date of December 31, 2008, and
35 we've talked about that, that is, my friend and his representatives have
36 talked about it and Your Honour has commented upon that, is just not a
37 date that all parties, and I think the public is hearing, is not going to be
38 met, for a number of reasons. And Environment Canada recognizes that.
39 I think it's trite to say, from the perspective of Environment Canada, they
40 are disappointed, but they recognize a reality. But we cannot forget, and it
41 hasn't been mentioned by the City of Dawson or the Yukon, most
42 importantly, that for all these years, leading up to the prosecution and the
43 sentence and the order and the four years since, that the City continues to
44 discharge its sewage into the Yukon River. And it does so, not in
45 compliance with its current water licence, which expires in 2013, and it
46 does, at certain times of the year, and Your Honour is familiar, that is the
47 summer season here in Dawson when the population increases because

1 of seasonal workers, when the population increases because of tourists,
2 that the system is such that its discharge is harmful to fish, that is, the
3 sewage is harmful to fish. And we can't forget that. And what's troubling,
4 initially, is the fact that -- and I'm not saying it is forgotten, but it's not made
5 mention of by the City of Dawson or by the Yukon Government. So I say
6 that and I say that for the sake of -- make these comments with respect to
7 -- for the benefit of the public, and from the perspective, particularly, of
8 Environment Canada.

9 If I can move, then, Your Honour, with respect to the report back to
10 court and I say this, that for Your Honour's information, I think you are
11 probably quite well aware, but for the sake, again, of the public, that the
12 report that comes is a binder of materials, and I think that, as my learned
13 friend, who is far more aware of the technical aspects than I am, I think,
14 after listening to him, that it is full of technical information, and it's to brief
15 the Court but it still is technical information. And what I say about that is
16 this, is that Mr. Enns, who meets -- and Mr. Lindsey, who meet regularly
17 with Mr. Sarson and Mr. Molloy, who have been mentioned in the
18 courtroom, they meet regularly. And these technical aspects in this report
19 are fleshed out further than we deal with in an afternoon in court. So I
20 want to not only reassure Your Honour but reassure the public that
21 technical aspects are further discussed by the experts, if I can call it that,
22 the technical people, the engineers, if I can call it that.

23 So I leave that and I expect that because of the improvements of
24 communications between the parties that this is going to happen in the
25 case of the most recent report back to court. And I'll just have my friend
26 confirm that, but I'm assuming that it's going to be the status quo.

27 MR. CROSSMAN: I'm sorry, I missed that.

28 THE COURT: I didn't realize you were dozing off. I thought Mr. Cliffe was quite
29 scintillating in his remarks, but you must have found them otherwise.

30 MR. CROSSMAN: Your Honour, no, Your Honour is very correct, Mr. Cliffe is
31 scintillating. I was receiving instructions from Mr. Magnuson at the time.

32 THE COURT: I see. I'm only teasing, of course.

33 MR. CLIFFE: I just don't believe that. I think he was.

34 THE COURT: Yeah. I think Mr. Cliffe was looking for confirmation; I have no
35 doubt that it's forthcoming immediately, that the close consultation
36 between or among the experts will continue and that would apply to the
37 technical material in this report and so forth. That commitment has been
38 given, and I must say that since we changed our tack some time ago to
39 include Environment Canada's experts, things have been going along very
40 well, from my perspective, at least.

41 MR. CROSSMAN: Yes. Your Honour, I can make that continuing commitment
42 on behalf of the project team, and, in fact, the project court update report
43 foreshadows that there will be a meeting very soon after this hearing, to
44 discuss the outcomes of this hearing and for the technical aspects.

45 MR. CLIFFE: And I appreciate that, and I also appreciate my friend's flattery,
46 calling my submissions scintillating. But in any event, I'll move on and say
47 this, that if I can go to -- a few comments about the report back to court

1 that I think that from the level of counsel to court, I can express some
2 concerns, which I believe can be worked out, and I'm hoping that they are.
3 Dealing with, firstly, we know now, as a result of looking at the
4 photographs, that we're dealing with a multiple cell, aerated lagoon, and
5 you may recall, Your Honour, when we were back in November, that the
6 focal point was a single cell. So we've moved on and I think that was the
7 comment made earlier, was moved on because of the concerns
8 expressed by Mr. Enns.

9 THE COURT: Yes, I do remember that concern in relation to the single cell.
10 MR. CLIFFE: Yes. And as I recall, I believe it was also mentioned in the court
11 too. So it seems that people are listening and people are acting upon their
12 comments and discussing.

13 So moving on. As it relates to this option, I'm advised, and
14 Environment Canada again, will continue to offer technical comments
15 when and if the City and the Yukon make that opportunity available, so at
16 least, hopefully, these monthly meetings continue.

17 With respect to this option, I'm advised that Environment Canada,
18 its words are, essentially, this is a positive step. And there are, according
19 to Mr. Enns, and for the sake of the future discussions between Mr.
20 Sarson and Mr. Molloy, there are some underlying assumptions with
21 respect to the technology that does give Environment Canada some
22 pause for thought, some concern as to whether the final effluent, and the
23 words are, "will consistently meet the requirements of the *Fisheries Act*."
24 And I don't want to get into all those details. It's warm, it's hot, and it's
25 boring. I signal it as a general comment to the Court, for something to be
26 taken up between Mr. Enns and the representatives, Messrs. Molloy and
27 Sarson. But what it focuses in on, I am advised, is for the Government of
28 Yukon and for the City to plan what they call add-ons, "add-ons" as
29 contingency measures to this particular project to ensure that the final
30 effluent meets the requirements of the *Fisheries Act*. So again, I make
31 this state --

32 THE COURT: It's the membrane technology in the UV, a treatment that they're --

33 MR. CLIFFE: It's treatment. It's dealing with the issue of focusing in on -- as I
34 say, it's underlying assumptions, and one of the those underlying
35 assumptions was that the sewage's dissolved oxygen levels, that is, not
36 much oxygen in the sewage is what is killing the test fish. When -- there
37 are concerns whether that is masking other toxicants in this sewage stew,
38 as we can call it, because we don't know; at every given day, it changes.

39 THE COURT: Spare us the details.

40 MR. CLIFFE: Yes, I won't get into the details, but the constituents change, but
41 the constituents, by themselves, may be toxic. So you have to look at --
42 I'm advised, you have to look at these add-on features to the plan. Now,
43 I'm saying -- I'm not saying that they should do this, I'm saying that they
44 should be looking at this, because the ultimate goal is compliance with the
45 *Fisheries Act*.

46 THE COURT: Perhaps naively, I understood the submission to be that these are
47 -- one of the advantages of this approach is that those add-ons can be put

1 in, and you're saying that they should be considered very seriously. Are
2 you suggesting they should be considered very seriously not so much as
3 an add-on but maybe from the start?

4 MR. CLIFFE: Well, yes. And it goes back to Your Honour's comment, from the
5 point of view, if you're going to do it, and you've got the opportunity to do
6 it, let's do it right. I think that we communicate as counsel to Your Honour,
7 we communicate in our ordinary, non-technical language, but I think that
8 the -- I'm going to assume that the public are like us, that we don't know
9 much about the technical aspect but we can at least understand what
10 we're all saying here. So if they're going to get to it, and they have the
11 opportunity to get it right, let's look at this.

12 The second aspect that I want to focus on, if I may, is costs and
13 funding, because there is a concern that may be explainable, and -- but it
14 is something that occurred to me upon my reading of the material, and
15 that is, if Your Honour can turn to -- I'm focussing in on the summary in the
16 report, page 8, Your Honour.

17 THE COURT: Yes, I've got it.

18 MR. CLIFFE: And my friend spent some time commenting upon what he calls
19 the class C estimates, which I understand are your initial estimates, and
20 you move up the letters of the alphabet, or move down the letters, or up
21 the letters of the alphabet, to B to A, A being your finals. But the bottom
22 entry for the aerated lagoon at Lots 1059, 1058, the baseball diamond, is
23 \$17 million as of the date of this report, which I believe is some time in
24 May of this year. And I just want to pause as I'm hoping it's just a slip, but
25 I'm told by Mr. Enns and Mr. Lindsey, this is the first time that they have
26 actually heard of that figure, was picking up and reading the summary to
27 the report back to court. Now, that might just be a slip and I'm hoping
28 that's all it is. But that is one minor concern; I'm going to assume it's just a
29 minor glitch. But I want to move on to the --

30 THE COURT: What's the glitch? What's the -- just the fact that they have not
31 heard that number before?

32 MR. CLIFFE: They just haven't heard that, and we're talking about the costs of
33 these projects and I would have thought that that would have been
34 communicated to Environment Canada, "This is the cost figures," because
35 this cost figure of \$17 million, as I understand it, is at least something over
36 \$2 million more than had actually been estimated for this project. I believe
37 it was \$14.7 million. Now, this is my understanding of their reading of
38 things, and I want to move to my concern. And my substantive concern
39 comes in this in tab 2 of the memorandum of agreement between the
40 Yukon Government and --

41 THE COURT: Talks about the budgeted amount.

42 MR. CLIFFE: -- and the City, and most specifically I'm looking at page 3 of that
43 agreement. Now, again, I appreciate this agreement, the copy I have, I
44 assume it's the same as Your Honour, is an unsigned document. So I
45 don't know what the -- perhaps we can be told, is it going to be signed, or
46 when is it going to be signed, or maybe even if it is signed. But, in any
47 event, if you look to page 3, and it's going to be under (iv) and that is the

1 continuation -- it's at the top, above the words "Yukon responsibilities,"
2 Your Honour.

3 THE COURT: Yes. I've seen it, and in fact I've made a note of it previously,
4 when I reviewed the document.

5 MR. CLIFFE: Yes, it's \$14.7 million. But what is concerning, when you read
6 page 8, it's 17 million, is paragraph 6(iii) on page 3. And I think it's
7 important to just read that out, because it says:

8
9 Yukon is responsible for fulfilling its obligations within budget and in
10 accordance with the work plan attached to this agreement as
11 Schedule A.

12
13 Now, there is no Schedule A to my copy, but maybe that's something to
14 come at a later date, and again I would ask that perhaps we could get
15 some information about Schedule A, but:

16
17 If otherwise acceptable tenders would cause the project to exceed
18 the projected total project cost of \$14.7 million, the parties will work
19 together to modify the project --

20
21 And I'm concerned about those words.

22
23 -- to modify the project in order to maintain project's cost as
24 estimated in Clause 5(iv).

25
26 And it goes on about excluding liability. But my concern is this. We've got
27 a figure of 17 million; we've got a figure of 14.7 million, and I don't know
28 whether the Yukon Government is -- maybe again this is something I don't
29 -- I'm not appreciating here, but I was trying to search through the
30 documents, is the Yukon Government going to be funding its portion, I
31 suppose, of the \$17 million. Are they going back to Canada for its
32 increased portion, and what becomes problematic become the words "will
33 work together to modify the project if it exceeds \$14.7 million" I don't
34 know whether that means, Your Honour, that we only have one cell or two
35 cells and not three, a building, no building. I don't know what that means.
36 So I put that out there for food for thought for all of us as to the
37 commitment. And, again, I may be just not aware of the background here
38 that I'm not seeing; it's not in the material as far as I can see, but my friend
39 may be able to just enlighten us in his reply.

40 THE COURT: And I'm going to ask that we get him to respond to that now,
41 rather than -- and it seems to me somewhere else I read that if the budget
42 is over or if the bids are over the budget, this may then cause additional
43 delay and having to go back to Management Board, et cetera, et cetera,
44 which isn't what it says in this draft agreement. Perhaps you can enlighten
45 us.

46 MR. CROSSMAN: Happy to do so, Your Honour. I suppose the question about
47 numbers, we've seen a number of different numbers for the cost of this

1 plant. The reason is most recently we see the \$17 million, is that it's been
2 updated to 2007 dollars. So that's why the \$17 million. And I'm not aware
3 of --

4 THE COURT: All right. Yeah, go ahead.

5 MR. CROSSMAN: But certainly in terms of -- if there's a question then about
6 how to fund if there's any -- if it's 17 million --

7 THE COURT: Let's go back one step and this memorandum of agreement. Is
8 this a draft agreement or has it already been executed?

9 MR. CROSSMAN: I believe it's just draft still.

10 THE COURT: Is there an intention to bring that number that's in there now up to
11 date, to 2007 dollars?

12 MR. CROSSMAN: I don't think so, in the agreement itself, Your Honour, and its
13 for this reason that -- the reason is that we have funding, as you know,
14 from the Federal Government and the Yukon Government. And the
15 Yukon Government funding is dependent upon the Federal government
16 funding. And the Federal Government, through the Canada Infrastructure
17 Fund, provided \$19 million for the City of Dawson project and the
18 Carmacks waste water project. It was 50-50 share on the Dawson project.
19 The question is -- there is some flexibility that there could be more money
20 from the Carmacks project, once we know those numbers, to put more
21 money into the Dawson project, because the \$19 million is for both
22 projects. So there's some flexibility there. And it's been confirmed with
23 Canada that money can move from project to project. We'll know more
24 within the next year, because we'll be at the detailed class A estimate for
25 Carmacks in that time.

26 At the same time, though, what is important to know is that the
27 Earth Tech's preliminary estimate is a class C estimate, this \$17 million.
28 They have estimated it on the unit values for building a plant in Edmonton,
29 and then multiplying that by 1.5 times, to get to the construction cost for a
30 plant in Dawson. Now, I've talked with Mr. Sarson and Mr. Molloy, and
31 they both have concerns with them taking that approach, in the sense that
32 it doesn't bear out the reality of what actually the costs are in Dawson.
33 And, in fact, their experience, from other projects, other construction
34 projects, which this essentially is, it's a big exercise in moving dirt, they've
35 shown me figures, in fact unit prices which are much lower than what the
36 estimates that Earth Tech are basing theirs on. So Earth Tech's estimate,
37 in other words, is very conservative. They're taking, essentially, a worst
38 case scenario.

39 THE COURT: What I'm hearing from you is that the -- there's no intention, at the
40 current time, to change the number in the memorandum of agreement. It's
41 still the lower number, but you're hoping that by fine-tuning or sharpening
42 the pencil, the 17 million will come down?

43 MR. CROSSMAN: We think it is probably an inflated number, Your Honour.

44 THE COURT: So there's no -- at this point, no commitment from Yukon to
45 increase the 14.7, or whatever it is. I suppose it would be premature until
46 the pencil is sharpened. At that point, referring to some material I saw
47 elsewhere, if it's still over the 14 point, then it has to go back to

1 Management Board in the Yukon, and in all likelihood, Mr. Magnuson,
2 Yukon would have to make that up? Yeah. That's what I understood the
3 implication to be from the other documents.

4 MR. CROSSMAN: And Your Honour, perhaps another point of clarification is
5 that there's no intention to revisit this agreement at this time because we
6 are still at a class C estimate. It's a very general number. We'll go to the
7 class B, which will get us more definitive numbers, and we think the
8 number will probably come down. And then, of course, we'll go to the
9 class A estimate, which will be the number. And so it's only at that point
10 that we would then go back to the agreement, and as Your Honour has
11 pointed out, there may be -- we would go back to the Management Board
12 if it exceeds that funding envelope.

13 THE COURT: The part of the material I was referring to, that indicated that
14 should the dollars be greater we have to go back to Management Board,
15 that is found in a part of the presentation which sets out or identifies
16 potential delay factors, and it identified that as being a delay factor. And
17 so Mr. Cliffe, I think, is raising this as a concern because if the numbers
18 don't come down all the way, there may be a delay in figuring out what to
19 do.

20 Secondly, he's concerned that if part of the process is to start
21 chopping, that you don't compromise the quality of the project.

22 So those, I think, would be two concerns. But Mr. Magnuson, I
23 think maybe wanted to just interject something.

24 MR. MAGNUSON: Just, if I may, Your Honour --

25 THE COURT: Yes, please.

26 MR. MAGNUSON: -- just to clarify. The specific piece with respect to going
27 back to Management Board in the milestones refers to the time period
28 where we go from a class A estimate and out to tender. And until you get
29 a real price returned on the tender, you don't have the opportunity to enter
30 into a contract. What we're referring to here is wrapping up our estimates
31 to a more fine detail, and Your Honour is absolutely correct. And we may
32 revise this agreement and increase our Management Board approval
33 based on a class A estimate in advance of going out to tendering. If we
34 find out, in the process, that 14.4 isn't enough, we're going to go back right
35 away, to avoid a delay, and we're going to have to have the contract value
36 approved to us before we can tender it.

37 THE COURT: And I'm going to speak for myself, Mr. Cliffe, you speak for the
38 Department of Environment. Certainly I would be -- I would want to be
39 aware of the technical data that is generated in the event, hopefully in the
40 remote event, that you actually start re-jigging the design to save money,
41 as this contract suggests you might do.

42 MR. CROSSMAN: Perhaps, Your Honour, I -- again, perhaps a word of
43 explanation. Once this goes through the YESSA process, that's a
44 technical regulatory review and they will look at all of the things and say,
45 look, you know, do you have this and that. And out of that process will
46 come, this is essentially what you need to build. It will sort of refine the
47 design process. And then, of course, there's the Water Board process

1 after that. Again, they will go through that technical detail. And my
2 friend's clients, Mr. Enns and Mr. Lindsey, are all part of that process as
3 well.

4 Now, what the final result of all that is, is that the Water Board will
5 approve a particular design, and it will be a particular, you know, detailed
6 design. So -- and if there were to be changes later on, of course those
7 changes would have to be further approved. So there are the checks and
8 balances in place. But at this time, certainly, there is no intention to build
9 something that would be less than compliance with your order or with the
10 *Fisheries Act*. And I can say that with confidence from the commitment
11 that I've been given and that Your Honour has heard.

12 MR. CLIFFE: Your Honour summarizes the concerns that the Crown has, but I
13 would go further and say this, and I hear what my friends have said and
14 Mr. Magnuson has said, and I accept what they say, don't get me wrong.
15 But what this signals, at this stage, is just that the Yukon Government just
16 has to have the expedited processes that Mr. Magnuson is telling us will
17 happen, in place. Because you may recall we had a gap in things being
18 done during the report, court time periods and so on, and that was pointed
19 to issues about Management Board approvals and so on. And I don't see
20 how the Management Board approval, as has been explained to me not
21 only by the other side, but on this side, is such a complex lengthy process,
22 but I leave that to another day. But all I'm saying is that the Yukon
23 Government has to be aware of, or have put in place an expedited
24 process, if necessary, to get the monies.

25 And I say as well, which I've said in the past, and for the public, as
26 well, that compliance with this order is not conditional upon the
27 Government of Canada providing money to the Government of Yukon. If it
28 means that the Government of Canada says we can't give you any more
29 money, then the Government of the Yukon has to budget and provide the
30 appropriate funds, assuming it's going to continue to support compliance
31 with this order, working with the City of Dawson. So I want to make that
32 very clear, for the public. Don't think that it's an automatic thing that the
33 Government of Canada, through Infrastructure Canada, is going to
34 necessarily give more money. They may. I don't speak for them. So
35 there's a reality here.

36 The next thing I want to deal with, so I alert you to the costing,
37 funding issues, is, again, we don't have the benefit of Schedule A to the
38 draft agreement, and if there is a Schedule A, or, for that matter, a
39 Schedule B or a Schedule C to the agreement, Environment Canada
40 would like the benefit of being enlightened and having copies of those
41 documents.

42 THE COURT: And if there are any, perhaps Mr. Crossman could also file them
43 with the court.

44 MR. CLIFFE: The next point I want to raise is the issue on page -- that part of
45 the report at page 14, Your Honour, that is, back to the summary report,
46 and it's part A(8) on page 14 under the topic, "Summary of Known Issues."
47 That part of the report, from the way I've read it, seems to flow from part

1 A(7). There are a number of -- they refer to a number of assumptions, A
2 to F, and A to F seem to be incorporated with respect to the known issues.
3 So I'm going to directly deal with, comment on some of the known issues.
4 What's interesting, of course, is that the report back to court doesn't tell us
5 what they're going to do about the issues they have identified. I leave that
6 out. Obviously, they are, when you read it, they are substantive or
7 substantial issues. If I can refer to number two, it's the Yukon
8 Implementation Authority, and it speaks of the Management Board
9 granting the Community Services ministry the authority to apply to the
10 Government of Canada for funding, and so on. Then it talks about the --
11 Community Services having to return to the Management Board for
12 additional direction if estimates are higher. And it's referenced this time to
13 the class A estimates, "come in higher than the approved budget".

14 So, again, all I'm flowing -- repeating here is my concern is that the
15 Management Board, and I'm assuming good faith, given the
16 representations that have been made here, I think we all are, including the
17 public, that the Yukon Government is standing behind the City of Dawson
18 as it relates to money. There has to be that expedited processes, that
19 we're not waiting weeks and months for financial approvals. This is key. I
20 understand that -- well, I won't say what I understand, but I'll just say --
21 raise the concern.

22 The -- it goes back to the point that I have stressed to the Court,
23 and for the sake of the gallery here, the public gallery, is that we are
24 dealing with a court order; we are dealing with an agreement that's this
25 agreement at tab 2, the agreement between the City and the government,
26 and we're dealing with the many commitments, today, in this courtroom,
27 and the commitments made in the past, by the Yukon Government,
28 standing behind the City of Dawson. And I see no reason, given,
29 particularly the fact that we're dealing with a court order, that there should
30 not be expedited processes to the Management Board - absolutely no
31 reason - if they are giving us these commitments.

32 If I can move on to number 5, is headed "Sustainability," and I want
33 to read this because the wording, and I don't know whether -- maybe Your
34 Honour didn't have difficulty with the wording, but I did because I really
35 don't understand what this paragraph means or says.

36
37 The proposed waste water facility has to represent a long-term
38 solution that satisfies the current and future regulatory requirements
39 while allowing the City to independently and sustainably manage
40 their waste water treatment requirements. Unless there is a
41 meaningful effort made under this premise, there is a serious risk
42 that the requirements of all affected stakeholders could be
43 compromised.

44
45 I don't know --

46 THE COURT: And I'm not sure what the last sentence means, but I understand
47 the first sentence that there should be built in overcapacity.

1 MR. CLIFFE: Yes.

2 THE COURT: And we've heard about that. And then it says, the balance of the
3 sentence is code for the finances have to be within the means of the City
4 of Dawson. That's how I read that. I'm not sure what the last sentence
5 means.

6 MR. CLIFFE: The way I -- I don't exactly know what the last sentence says, but
7 when one begins a sentence with, "unless something is there," and then
8 "there's a risk," I wonder whether that's a threat. And I don't know a threat
9 about what, but EEC would like that paragraph explained. And I say with
10 the first sentence, that we have to be candid here, and I'm certain His
11 Honour Mr. Mayor is quite well aware, that the City of Dawson, of its own
12 tax base, because of the small population, is going to find themselves in a
13 situation of -- a very difficult situation I would imagine, in funding operation
14 costs of this particular plant. I'm not saying that they won't be able to do it,
15 but it may be problematic. And as I understand, just generally speaking,
16 that there are transfer payments between the Yukon Government and the
17 City of Dawson, so the City of Dawson can be sustainable. So it may be,
18 and I only say this as an idea, that some consideration may have to be
19 back to the government about the issue of operation and maintenance
20 costs, and support to this community of only 1,400 people, as Mr.
21 Magnuson has told us. But I only say that not to foreclose other options
22 here.

23 So I leave you with that, but paragraph 5, I -- quite frankly, I just am
24 perplexed by paragraph number 5 with the words used.

25 If I can deal with paragraphs 3 and 4. They are, and Environment
26 Canada is not insensitive to the, as my learned friend speaks of, the out-
27 of-control factors or the out-of-control matters, that is, they're in the hands
28 of regulators to come up with decisions, to issue permits, and so on. But
29 I'm hopeful, and I make this submission, that when you read paragraphs 3
30 and 4, and what's been emphasized by my learned friend, "It's out of our
31 control, it's out of our control," well, are there aspects that can be in the
32 control of the government and the City. What I mean by that is, things
33 like, and it looks like we're on that track. They're getting to the YESSA
34 filing before they were planning to do it. So early filings, for example.
35 Having processes in place where enquiries and questions coming from the
36 YESSA Board, or from the Water Board, are answered in a timely way.
37 Those kinds of housekeeping things. And I'm certain that what I say is -- I
38 am going to assume are going to be implemented, because we all want to
39 see this order work, but I just signal that, not to say, hey, it's way over
40 there, we've got nothing to do with it. No, no. There's always something
41 that can be done for you to move - not you the Court, but you the levels of
42 government - to deal with whatever obligations they have under YESSA,
43 under the water licence, to ensure that there is a timely consideration of
44 their application.

45 If I can address the issue of tab 9. My friend referred to tab 9 and
46 the schedule. I can say this to Your Honour, that that schedule has been
47 the subject of discussion between the technical team, Messrs. Sarson,

1 Molloy, Messrs. Lindsey and Mr. Enns, and they worked on dates, and
2 where they're having some stumbling difficulties, my friend didn't get into
3 that, is that to the right of that schedule there are a number of bullets, and
4 there's various, I won't say necessarily conditions, but things like
5 conditions about these dates being stated. And it's those kinds of caveats
6 and conditions that are being discussed or have been discussed between
7 the parties, with the hope that we could have gotten to some kind of
8 consensual schedule, and so it's left out there with the hope that in the
9 future technical meetings, that can be resolved with the experts.

10 Now, my learned friend, at the beginning of today's session, said,
11 well, let's discuss, you know, scheduling dates and so on, and I can
12 ensure you that if we get into that today, we will be here for some time, as
13 we, between the Court, the Crown and my friend, attempt to deal with this.
14 I really believe that one more crack at this between the technical people,
15 both sides being reasonable, and leaving their positions in the trenches,
16 we might be able to get something that we don't have to involve the Court,
17 and I really believe it's not something that should involve the Court, but we
18 may have to come back, as you say, a few months down the road, and
19 talk about this. But, in any event, I -- just to inform the Court on that.

20 The other brief comments that I want to make come at page 8, and
21 that is with respect to --

22 THE COURT: Are we back to tab 1?

23 MR. CLIFFE: Yes, the summary, Your Honour, excuse me. And at tab 1, page
24 7, not page 8, this is under the heading, "The Canada-Wide Strategy" and
25 so on. I'm looking at the first real paragraph on page 7, and it talks about
26 this anticipated municipal waste water strategy and the anticipation of the
27 authors of the summary that this is going to result in the development of
28 regulations of the *Fisheries Act*. We have visited this topic before. I say
29 this for the sake of the gallery that may read this report, and also, again,
30 to the representatives of the Yukon and the City, that I am advised that, to
31 put it in the vernacular, I have been advised I wouldn't bet on this. It's not
32 something you take to the bank. It's what I would call, quite frankly,
33 speculation. Hopeful speculation. But it's in a situation of this:
34 Consultations aren't complete, and that's talking to the various
35 stakeholders on this issue.

36 THE COURT: Is what is contemplated here regulations for municipal waste
37 water facilities that would be less onerous than the general ones?

38 MR. CLIFFE: I don't know. That's the thing, we don't know. But what I can tell
39 you, Your Honour --

40 THE COURT: When I read this, I assumed the opposite, that, in fact, they're
41 going to be more onerous, and that this is not going to provide an easy
42 way out. Quite the contrary.

43 MR. CLIFFE: Yes. It may be more onerous; it may be less onerous. That's why
44 I say it's speculation. But to give Your Honour an idea of how that set --
45 that type of regulation works under the *Fisheries Act*, under the Act there
46 are numerous sets of regulations that regulate effluent from various
47 industries. For example, there's the pulp and paper effluent regulations,

1 deal with pulp mills. And they have a certain type of toxicity test. We've
2 heard about this 96 hour bio-assay and so on. Well, there's a scheme of
3 regulation that deals with effluent from pulp mills, regular day-to-day
4 process effluent. Same with respect to the metal mining industry. And it
5 goes on with respect to the poultry industry and so on. And what's out
6 there that is being discussed by the stakeholders, we make mention of the
7 Canadian Council of Environment Ministers, the various municipalities, is
8 can we get to something that we can agree on with respect to the
9 regulation of municipal waste water or sewage. And that's out there being
10 discussed.

11 But what I'm saying here is, and you may recall from other
12 appearances that we've had, the hope that there's going to be a
13 regulation, the hope that we've come to an agreement. Well, we're far, far
14 away from that, and I'm just very -- I'm concerned, not overly concerned,
15 I'm concerned that somehow this is getting into the mix of the decision
16 making, because right now the law is, you've got to comply with s. 36(3) of
17 the *Fisheries Act*. There are no regulations that exempt you in some form
18 or another.

19 The next point I want to raise is just back to the water licence, and
20 that is -- the second paragraph under the Yukon Water Licence, page 7 of
21 15, Your Honour, you'll see that.

22 THE COURT: Yes.

23 MR. CLIFFE: It makes mention, and my friend had made mention of:

24
25 The Water Board will not start the official review of the water
26 licence application until the proponent provides verification of the
27 YESSA decision document --
28

29 And we understand that.

30
31 -- however, the Water Board will complete an initial assessment of
32 a water licence application to ensure its adequacy.
33

34 It goes on:

35
36 The submission of the water licence application is scheduled to
37 allow for the review and incorporation of initial feedback from
38 YESSA, and by so doing, this will allow the Yukon and the City to
39 submit more accurate and complete application, potentially
40 minimizing the time taken from the Water Board review process.
41

42 So that's what I mean, in effect, when I say, there's efforts, you can
43 get on with it to kind of quicken your process. There's some statement
44 here that that's available, and I don't when they, in fact, would do that or if,
45 in fact, they're going to take advantage of that. The future activities
46 document, future activities, what they're going to do over the next six
47 months, speaks of developing a water licence application for the City

1 under B(1). And I don't know whether that draft licence can be sent,
2 perhaps during the six months, and somehow, at least initially, looked at
3 and assessed, to be available when the YESSA decision document comes
4 down. I just put that out as perhaps an example. I don't know all the
5 workings here.

6 Page 9 of the document speaks of -- the reference to the annual
7 water and sewage for Yukon communities with piped systems. I was
8 interested to know, and maybe my friends can provide that to Environment
9 Canada because they don't have this information, that the City of
10 Carmacks is not mentioned in that schedule because it is going to SBR,
11 and it would be interesting to know what that -- what the annual water and
12 sewage rate would be for Carmacks.

13 Just a matter of clarification, and we think we understand what's
14 being talked about, in this paragraph underneath the Table 3, Your
15 Honour, it makes reference to, "based on the work completed to date."
16 There's the conclusion that we have heard, that the aerated lagoon seems
17 to be way to go. The last paragraph says:

18
19 The City and Yukon will advance this project to the regulatory
20 assessment and review process over the next six months.

21
22 Now, I'm assuming that that means, and maybe my friend can correct me,
23 that that's the YESSA filing that we already have and the water licence
24 that's being drafted.

25 MR. CROSSMAN: Yes.

26 MR. CLIFFE: Okay.

27 The final remark I want to make with respect to the report back to
28 court, Your Honour, is just with respect to my friend spent some time at
29 page 10, with respect to the various things that the City of Dawson wanted
30 the Yukon Government to do with respect to the zoning, the discretionary
31 use zoning for the site, and the number one was the Gartner Lee Potable
32 Water Study, and there's no mention as to whether the City has, in fact,
33 accepted the conclusions of that report or not. That would be interesting
34 to know. So I leave that.

35 I just want to move on to - I'm just about closing my submissions
36 here, Your Honour - but to say this, that, and for the sake of the public, the
37 way the Crown, and I'll leave aside Environment Canada, but for
38 consultation with Environment the issues that I've become familiar with in
39 dealing with this matter, about getting to construction and operation of a
40 sewage treatment plant in my mind are probably five issues. And they
41 are, firstly, selection of an appropriate technology; getting available land;
42 cost and funding, all one item; public opposition, and, finally, and perhaps,
43 surrounding big P, Politics. And I say those five items because I make the
44 submission that, all one has to do is read the newspaper and perhaps look
45 at the TV, that those five issues appear to be the issues that happen with
46 respect to public infrastructure projects, and, in particular, sewage
47 projects, anywhere they're built in North America. When you think about

1 it, it's kind of common sense, that these are issues that the public and
2 regulators and proponents get interested in, and are critical to whether
3 you're going to have a facility or not. And as I said earlier, in the opening
4 of my submissions, the Crown acknowledges that we're moving better
5 than we were some time ago on these issues. And I think it's fair to say
6 that Messrs.. Sarson and Mr. Molloy have led that charge, and they've
7 done good work, and I get that feedback from Mr. Enns. And I think
8 perhaps between the three of them, and I'll add in Mr. Lindsey's come in
9 in the last year or so, between the four of them their concern about getting
10 that project done and thereby complying with the order.

11 But where are we at now, in laymen's terms, for the sake of the
12 public, and that is, the way I see it, the Crown sees it, is with respect to
13 selection of technology, it appears they've selected it. We've got it
14 presented. There's some technical issues that I've addressed earlier, that
15 there's some technical concerns that Mr. Enns has. Land is still out there.
16 They've got a portion of it, but it's still out there in Lot 1058, and that has to
17 be a priority. Has to be a priority. How they're going to do it, of course, it's
18 for them. But I want to pause and say, well, they've selected a
19 technology, but as Your Honour has said, is there a contingency back
20 there. And we talked about that in 2005, going into 2006. You may recall
21 the discussions we have had in reports back to court, about the Gant
22 charts, the timetable charts, for aerated lagoon versus SBR. And we add,
23 you may recall, as well, the term we used, the drop dead date of February
24 2006. Well, SBR kind of dropped off the whatever; it dropped dead on
25 that date, I suppose, but what I'm saying to Your Honour is this. Are there
26 contingencies out there for technology because maybe they're not going to
27 get Lot 1058? Are there contingencies, and I think my friend did address
28 it, on land? There may be other land sites.

29 Funding and costs, I say this, that there's money in place right now,
30 and there's a lot of money. But I say, and not to be overly Messrs., there
31 has to be the expedited processes in place for Management Board here,
32 and a recognition, that money, the budget may go over, and that money's
33 got to be made available.

34 I say this, that public opposition, Your Honour has commented
35 upon that. And we all know there is that -- this concept that comes out
36 over the last 20 years, the NIMBY syndrome, not in my back yard. And I
37 go back, for the sake of the public, that there's a court order here. The
38 court order is it has to be done. It's got to be done. It has to be complied
39 with by the City of Dawson. It can't be ignored. And I wouldn't get into the
40 details, but as Your Honour is aware, yesterday Your Honour dealt with a
41 person charged with, in effect, contempt of an order, and Your Honour had
42 to deal with that person, in a criminal context, for non-compliance of a
43 court order and jail was imposed. And when we look to orders of this
44 Court with respect to processes under the *Criminal Code of Canada*, you
45 violate the simplest of orders, it could be a bail term, not to be found in a
46 hotel bar, or not to phone a victim of a crime, alleged victim of a crime. It's
47 not uncommon for this Court, when that person is convicted of breaching

1 priority. That would give, in my respectful submission, Your Honour
2 comfort as we move into the next phase, that is the Court, comfort, and it
3 should give comfort to the citizens of Dawson.

4 Those are my submissions, Your Honour. Thank you.

5 THE COURT: Thank you. Mr. Crossman, anything you'd like to say in reply?
6 There were a number of quasi-questions posed, some, I don't want to say
7 rhetorical, they weren't calling for an immediate answer, but there may be
8 some comments that you wish to make at this time, independent of Mr.
9 Cliffe's comments or perhaps partially in response to his comments.

10 MR. CROSSMAN: I do, Your Honour, and not wishing to extend the hearing too
11 long, I just have a couple of points, if I could, to clarify. And it is really -- it
12 is heartening to hear my friend say that essentially progress is being made
13 and that is being acknowledged by Environment Canada and Yukon
14 Environment.

15 THE COURT: Yes.

16 MR. CROSSMAN: And I think then it sounds like we're all on the same page in
17 that sense. And I think my friend has also heard that the commitment, not
18 only through me, but more importantly, through Mayor Steins and Mr.
19 Magnuson, I don't think that there can be any doubt about that
20 commitment.

21 My friend also mentioned a number of times not so much -- well, in
22 fact, what I was grateful to hear about was not concerns with the past
23 here, but really suggestions for the future, if I can put it that way, in terms
24 of "Have you thought about this? Have you thought about that? Maybe
25 you can save some time in this way." Obviously--

26 THE COURT: Constructive suggestions.

27 MR. CROSSMAN: -- constructive suggestions I'm sure will continue to be made
28 by the technical people as they meet at a technical level.

29 So I can't answer all of my friend's questions there, however, I can
30 say, though, for example, one concrete example that strikes me where --
31 and I think, in fact, I know this from speaking with Mr. Sarson and Mr.
32 Molloy, that they are looking at every avenue in terms of trying to find the
33 most efficient way of completing this project, and that's their challenge.
34 And as you've heard from Mr. Magnuson, in fact, I mean, Mr. Sarson has
35 been working weekends. He spends a considerable amount of his time
36 working on this project. And you heard from Mayor Steins, if there's an
37 issue that arises, Mr. Sarson is up here in Dawson at the drop of a hat.

38 One concrete example, my friend mentioned about the water
39 licence, and this is -- and perhaps I can take you, as a concrete example,
40 to tab 9 of the update report, and it's the second document there, the
41 milestone document which I took the court through earlier today. And we
42 see the YESSA process there, the YESSA review in number 2, and that's
43 going to -- we anticipate that ending in June 2008, and completing detail
44 design, though, ahead of the end of the YESSA process. So that's a
45 concrete example of trying to save some time because by that time the
46 process will have unfolded so that they will have got the significant portion
47 of comments. They can incorporate those into the detailed design. So

1 they are not waiting until the process ends, is what I'm saying to the Court.

2 If you look at point number 4, the submission of the water license,
3 this is exactly what my friend is being suggested. Instead of waiting to get
4 the decision document from YESSA, which in fact is item number 5, it's
5 June 2008, the water licence is going to be submitted, the application is
6 going to be submitted in April, so two months beforehand, again, for that
7 very reason; it's a preliminary application to be reviewed so that any
8 comments can come back, and by the time the YESSA document comes
9 back and the decision is made, it starts straight away.

10 They are just examples, but I know that there are other examples
11 that I could ask Mr. Sarson about, so --

12 THE COURT: I think we did note that earlier, but to mention it again now I think
13 is useful because it reflects an attitude that I think Mr. Cliffe was averting
14 to, and not just certain specific things, but reflects an attitude which is
15 extremely important.

16 MR. CROSSMAN: And I hope Your Honour can see that that attitude is
17 reflected, in fact, in the way the work is being progressed. And what I can
18 ask my friend is, if there are more of those suggestions or -- constructive
19 suggestions, then again, I would invite his clients to communicate those
20 through, and I'm sure they're doing that. But again, as I said, it would
21 probably be helpful, you know, to have that discussion of course ahead of
22 time before we appear before Your Honour.

23 Just a couple of other points, Your Honour, I wish to address. My
24 friend mentioned about the fact that there is a continuing discharge into
25 the river, and that of course is true; there's no change. Although, of
26 course, as Your Honour knows, there were upgrades made after the
27 sentence was imposed back in 2003. What interim measures could be
28 done, were done, but admittedly, they weren't a great deal. However,
29 what I'm told in terms of what the testing that's done, and what my friend is
30 concerned about here is the *Fisheries Act* obviously, and the *Fisheries Act*
31 of course is premised on, if I can put it in these terms, thou shall not
32 deposit deleterious substances in water frequented by fish. What that
33 means, though, from a practical perspective is that does the testing of the
34 water pass the LC50 test.

35 THE COURT: The salmon fry test.

36 MR. CROSSMAN: Exactly. What I understand from the project team is that is
37 happening on a monthly basis, and I didn't hear from my friend, I don't
38 think there's any allegation that there's been failures.

39 MR. CLIFFE: I'll address that. There has been failures, Your Honour.

40 THE COURT: I notice that some of these were in the file, but they appear to be
41 two or three early spring months, and when I looked at them -- and when I
42 say the file, there didn't seem to be summer months reports but --

43 MR. CLIFFE: I'm just wondering, Your Honour, I don't want to -- I'm certain my
44 friend is aware of this, and I don't -- maybe with all the material and I know
45 that I've been snowed under with all of this material, there may be some
46 aspects that he is not recalling and I can just show him right now before
47 he continues his submissions.

1 MR. CROSSMAN: That's helpful for my friend pointing that out. I wasn't, as I
2 said, I wasn't sure what he was referring to, so --

3 THE COURT: Is it -- again, I don't want to get in detail but previous cycles have
4 been, indicate that the problems were in the summer time for the reasons
5 indicated by Mr. Cliffe. Has that changed in any significant way?

6 MR. CLIFFE: Your Honour, what I've got here is this. As I understand the
7 information that has been provided, the Yukon Government retained a
8 consultant called Golder & Associates and last year, those material
9 months, the important months, Golder did a study for the Yukon
10 Government and during the course of that, that is during the period of
11 August 7th to September 4th, that's sort of probably a very busy month in
12 the jurisdiction here, eight bio-assay samples were taken during that time
13 period. They were tested in the Golder & Associates laboratory, that is the
14 fish bio-assay samples was conducted there in North Vancouver and six
15 of the eight samples showed death of the fish within the time periods.

16 I might also say that there are -- they take monthly samples I
17 understand, to be tested and there is some indication that some of those
18 monthly samples have passed during the critical period. That has given
19 Mr. Enns some concerns because what happens, from not only what I've
20 been briefed, but my experience is that, depending upon, for example
21 when you take the samples, I'm not trying to suggest anything improper
22 here, depending on when you take the samples, there may not be heavy
23 use of the system and therefore what is tested may not be deleterious. As
24 well, it's how you deal with the samples when it's tested, what we call in
25 the courts, continuity, that is, are they affected in transport, are they
26 affected in the containers they're in, those kinds of things because it
27 actually did surprise, I'm told, Mr. Enns that they passed. And there is no
28 information in the documents that Environment Canada has with respect
29 to those samples to indicate how, when they were sampled, where they
30 were sampled in the facility, as well as how they were dealt with from the
31 point of sampling to the point of delivery to the lab. So it's not to say it
32 didn't happen but it kind of raised some eyebrows. Mr. Enns' view is that
33 Golder & Associates study is probably more reflective of the bio-assay
34 results during the critical period.

35 I think it's well-known that outside of the summer season, early fall
36 season, that the system is not taxed the way it is in the summer time, that
37 it passes and it also passes because of the effect of the bleeders, diluting
38 the waters during the winter season. So I signal that out to -- I don't want
39 to embarrass my friend, I just want to be sure that he knew there is some
40 other information and I, quite frankly, as an aside, I get snowed under with
41 all this material and have someone put, draw my attention to it.

42 MR. CROSSMAN: Thank you. Thanks to my friend -- in fact Mr. Sarson has
43 reminded me about that report now that my friend has pointed out which
44 one he's referring to. In fact that was the study undertaken by Golder to,
45 in fact, identify what was the basic, what was the reason for the failure,
46 what was the toxicity. You'll remember there was some confusion about --

47 THE COURT: Yes, lack of oxygen versus preponderance of ammonia.

1 MR. CROSSMAN: And in fact the intention by Golder was to try and get a failure
2 out of the system, so they targeted particularly times when they expected
3 that there may be an exceedence, so this was a deliberate thing to try and
4 do that, so I think Your Honour has to see it in that context. What I
5 understand, again from the project team, is that on the other samples that
6 are taken on a monthly basis is that they are, for the whole, passing the
7 requirements. That probably is the subject of further discussion between
8 the technical people.
9 My friend asked for a copy of the YESSA consultation summary
10 report, this is part one of the YESSA application. I'm happy to provide that
11 to my friend right now.
12 THE COURT: Noted.
13 MR. CLIFFE: Thank you. I'll pass this on to Mr. Enns for his midnight reading
14 tonight, Your Honour.
15 MR. CROSSMAN: And perhaps as a housekeeping measure while we're on the
16 topic of reports, if the report that was filed with the court, the court update
17 report can be filed as an exhibit with the court as is usual practise.
18 THE COURT: Yes, we'll mark -- we'll do that, mark it as an exhibit.
19 MR. CROSSMAN: That would be great. My friend mentioned about the
20 memorandum of agreement and the Schedule A missing, we can provide
21 that of course. I understand, again from the team, that Schedule A is the
22 same Schedule A that was in the previous agreement and copies of that
23 are in the previous reports. There is no change to that but we're happy to
24 provide a further copy --
25 THE COURT: Not for me, if it's the same.
26 MR. CROSSMAN: If my friend requires it, I'm happy to do so. My friend also
27 talked obviously about the money issue and the question about, we don't
28 want any further hold-ups if there are cost overruns. I think we dealt with
29 that issue already but the question was also, will the Yukon Government
30 have to go back to the Federal Government again for more money if the
31 final numbers come in higher. I'm told by Mr. Magnuson that the Yukon
32 Government will manage any of that.
33 My friend made the point which I mentioned at the outset about
34 trying to expedite things, trying to make it as efficient as possible and even
35 in those items which were admittedly out of the control of the project team,
36 again I think you've heard today the commitments that, yes, they're doing
37 everything they can to move processes along even if they're not the
38 controller of that process.
39 My friend also mentioned about that -- there being discussions
40 about these intra-milestones and with the suggestion that I think is a very
41 good one, that maybe some further meetings between the parties are
42 possible to try and finally resolve that. I understand the parties are very
43 close on that. I have, although having said that, I understand from the
44 project team that they have provided as much accommodation and
45 compromise that they can, for things that are, in other words, within their
46 control. I don't want to get into a debate about that issue, obviously here,
47 this is not the appropriate place --

1 THE COURT: But I think the point is perhaps in the first instance that some
2 further meetings and discussions could be held. This is apropos, a
3 possible amendment to the existing order. And my sense is that I would
4 like to read the documents that you filed even if they are documents that
5 are old documents and I think we should arrange perhaps to have a
6 teleconference in a month or two time, counsel and myself and whoever
7 else you want to bring on board, and just see where we're at and see what
8 you want to do, if anything, at that point. And then we can make some
9 hard and fast decisions after that.

10 MR. CROSSMAN: I think that's a good suggestion, Your Honour. I don't know if
11 it helps Your Honour to see, certainly where the project team is in terms of
12 the milestones, I had, in fact, a draft of what the -- essentially I think it is,
13 it's the most accommodation they can give. Essentially they're agreeing to
14 milestones which are in their control and --

15 THE COURT: Yes. Well, I'd rather not get involved with that now, I'd rather you
16 have some further discussions and see what comes out of that. I would
17 hope that they would go into the further discussions not with a fixed
18 position that nothing more can be done, but rather, with an open mind to
19 see if there aren't some additional things that could be done, so an
20 accommodation can be arranged. But let's not get into that now.

21 MR. CROSSMAN: No, I -- again, don't want to get into that, Your Honour. But
22 the issue -- perhaps I can just highlight it without getting into the detail of
23 it, that it is an issue which there is a difference of opinion as to whether it's
24 --

25 THE COURT: Don't file it now.

26 MR. CROSSMAN: No, no, I'm not going to file it, no. I just wanted to let you
27 know that it's an issue -- it's a debate about whether this is an issue which
28 is in the control of the project team or not.

29 THE COURT: Right. And obviously I understand that distinction.

30 MR. CROSSMAN: My friend mentioned about the Canada-wide strategy and I
31 think as Your Honour pointed out, we think in fact the standards will be
32 higher and so that is why the future has to be built for that to
33 accommodate that.

34 My friend also mentioned about the Carmacks plant and was
35 interested to know about the cost of that because he understood there
36 was an SBR plant. I'm informed by Mr. Magnuson that, in fact, it isn't an
37 SBR plant, it's a different technology.

38 THE COURT: What's the technology?

39 MR. MAGNUSON: It will be a mechanical treatment solution likely extended
40 aeration, but the village of Carmacks is very much opposed to the MBR --
41 or sorry, SBR, but we are moving forward with a mechanical solution.

42 THE COURT: We're speaking of different technologies and Mr. Cliffe raised that
43 issue in his presentation, that is to say, selective technology, making sure
44 we keep on top of all of the alternatives. One alternative that has come up
45 in the past and has been dismissed, but I've not seen a lot of discussion
46 about why it has been dismissed, and that is the Zenon membrane
47 technology. Is that technology so unsuitable that -- or so obviously

1 unsuitable or inappropriate that it's not even worth consideration, is that
2 why there's so little written up about it, Mr. Magnuson?

3 MR. MAGNUSON: With all due respect, Your Honour, we've looked at that
4 technology in a very in-depth way through the Carmacks project and
5 although we haven't brought that documentation to this court, I can assure
6 you that in our setting, that that technology is not particularly appropriate,
7 it's significantly costly and it's relatively new in terms of overall sewage
8 treatment and we're concerned on a number of technical parameters.

9 MR. CROSSMAN: It's hard to keep up with the technologies, isn't it?

10 THE COURT: Yes, but that's one of the reasons why you should hurry and finish
11 this because you'll be evaluating new technologies and not being able to
12 get on with the work.

13 MR. CROSSMAN: And just talking about technical matters, my friend also asked
14 the question about whether the City had accepted the Gartner Lee report
15 about the drinking water and the answer is yes. In fact, tab 10, it's the
16 second document in there, it's a letter from the City of Dawson. Do you
17 see that, Your Honour?

18 THE COURT: Yes.

19 MR. CROSSMAN: Thank you. There was one issue which, perhaps I can just
20 talk to Mr. Magnuson about it. Perhaps the final issue before I come to a
21 housekeeping matter is the issue about sustainability and my friend, I think
22 suggesting that in the future there should be some sort of additional
23 money given to the City of Dawson to cover the additional operation
24 maintenance costs. That's the whole question about sustainability. As
25 you know, we've discussed that issue before. It's the responsibility of the
26 City of Dawson. Perhaps if I could ask Mr. Magnuson, he's closer to that
27 issue, I think he has a better answer than I could provide the Court with on
28 that.

29 MR. MAGNUSON: With respect to sustainability, Your Honour, you may be
30 aware, as many people are, that sustainability is a huge issue
31 environmentally across the country and in fact is one of the pillar policies
32 with the Federal Government, and the Federal Government is exercising
33 policy instruments through infrastructure funding that ensures
34 sustainability formulas are considered when infrastructure is being
35 constructed, and part of the review of this project for sustainability is
36 through the Canadian Strategic Infrastructure Fund. In addition to that,
37 the Government of Canada has established a Gas Tax Transfer Fund
38 directly for municipalities and municipalities in Yukon will benefit from that
39 gas tax transfer for capital dollars only. And as a provision of that capital
40 funding transfer, they must complete an integrated community
41 sustainability plan and if they can't demonstrate that they have a
42 sustainable community, they're subject not to receive --

43 THE COURT: You mean financial sustainability?

44 MR. MAGNUSON: Yes. It's on a number of factors, but financial, social and
45 environmental sustainability. So it's very much a public policy issue and it
46 is driven down. In respect to that, the Yukon Government also needs to
47 make certain requirements upon its municipalities in terms of

1 sustainability, nevertheless, the Yukon Government does have a
2 comprehensive municipal grant program. Those are unrestricted grant
3 funds to be used on operational and/or other requirements that the
4 municipality sees fit. The municipality has to make choices to try and
5 balance the needs of its communities and those funds go towards
6 everything from recreation to municipal infrastructure needs and issues.
7 So it's a very difficult task to balance all of the needs and requirements of
8 communities both at a municipal level, at a territorial level and at a Federal
9 level. So I would argue that that's a job best left to political process --
10 THE COURT: Agreed. I don't think Mr. Cliffe was wanting to intervene in that. If
11 I can put it in a different perspective, I think he was alluding in a general
12 way to the fact that municipalities are creatures of the Territorial
13 Government in the Yukon, otherwise Provincial Government and they
14 exist only because of the Territorial government and the terms on which
15 they exist and the supports they get or don't get are determined solely by
16 the Territorial Government. And I think Mr. Cliffe was saying, you know, if
17 something really critically important for a community comes along,
18 obviously it's the responsibility of the parent government, being the Yukon
19 Government to make sure that it's the child, a municipality, I don't mean
20 that in a prerogative way -- or in a derogative way, I'm meaning in terms
21 of it's a structure, a hierarchal structure, the parent government will have
22 some responsibilities.
23 And I think that's all he was saying that, you know, who knows what
24 might come down the road environmentally that might require a
25 substantial adjustment of Territorial Government to Municipal Government
26 funding because of some requirement imposed by Canada that couldn't in
27 any way be met by Municipal Governments under the current regime, and
28 I think that's all he was saying. And I understand what you're saying too,
29 that we need to have these regimes and structures and there's got to be
30 sustainability and what you said is not inconsistent with what he said.
31 MR. MAGNUSON: And I also just refer back to my earlier comments that the
32 Yukon Government has been a very good parent recently --
33 THE COURT: Yes, in this particular case we can say that, as all of us are --
34 many of us are parents, and perhaps you've had a wayward child and
35 you'd have to take a little more responsibility, impose some curfews and
36 other disciplinary manner or orders and now things have straightened out
37 and we go on with life. But, yes, I think that's sufficient.
38 MR. CROSSMAN: I think that's very good clarification, thank you, Your Honour.
39 One last matter as I said before I close, just a housekeeping matter
40 and I don't know from a court reporting point of view if we're going to keep
41 with the timetable of providing a court report three weeks in advance as
42 we did on the last, for this hearing. And there may be some advantage in
43 doing so, I haven't spoken with --
44 THE COURT: Well, I think we should maintain that unless there's some problem
45 and then get back and we'll talk about it or whatever. But while you're
46 dealing with the report, I've made a note here specifically acknowledge
47 the, I think, tremendous work that goes into preparing this document.

1 Now, I know that you want to take credit for it, Mr. Crossman, but I suspect
2 that --

3 MR. CROSSMAN: Of course, Your Honour.

4 THE COURT: But I suspect that, and I have no idea whether this is correct or
5 not, but I suspect that Mr. Sarson and Mr. Molloy probably deserve most
6 of the credit and there are probably others as well. I recognize it's a lot of
7 work, really a lot of work that has gone into it. I've heard the comments by
8 His Worship the Mayor, to the support, the availability of these two
9 individuals and I just want to recognize their contributions and others to
10 this project. I suspect -- I know that whenever I take on a major project
11 and put things in writing and that's also helpful in clarifying my thinking in
12 future direction, so I hope all this work isn't viewed as a waste of your
13 time, it's not something that you do just for this court appearance but that
14 it's helpful in other ways as well. I'm confident that it is, but clearly a lot of
15 work has gone into it, excellent documents, very helpful and as a result of
16 that work, I note that some of the earlier tensions in our meetings and
17 discussions appear to have evaporated and as a result of that work we're
18 pulling together as a team.

19 MR. CROSSMAN: I would reiterate, and although I wish to take credit, Your
20 Honour, I cannot. Mr. Sarson is the primary author of the report with
21 assistance from Mr. Molloy and have done a fantastic job. In fact, I'm told
22 that in terms of project time spent to prepare for this hearing, including
23 preparation of the report and other things, it could be in the vicinity of 80 to
24 100 hours. That's just for this court reporting. That's a significant portion
25 of time, obviously, as Your Honour -- but that's the commitment that is
26 shown here.

27 So with that, as I said, there was just one other housekeeping
28 matter, Your Honour, which was if we continue with the report three weeks
29 ahead of time, which I'm happy to do so, I'm wondering if we could ask if
30 my friend could respond say within a week of the hearing in terms of any
31 concerns with the report. I don't know if that's unfair or fair to ask of that
32 but it would help. It may resolve some of the issues here.

33 THE COURT: No, no, I think it's very fair and quite consistent with -- I mean,
34 we're modeling this on a civil process and that's what one would normally
35 expect and that would permit you to come to the hearing with answers to
36 some of these questions rather than going down the line and having
37 people whisper in your ear.

38 MR. CLIFFE: The Crown has got no objection to that, Your Honour.

39 THE COURT: It's a good idea, good suggestion.

40 MR. CROSSMAN: We may be able to resolve some of these issues ahead of
41 time, so thank you.

42 MR. CLIFFE: Your Honour, just to -- two things and it's nothing earth shattering.
43 My friend made mention of the fact that we're speaking on behalf of Yukon
44 environment. Of course we're not. This is a separate Territorial --

45 THE COURT: No, I think --

46 MR. CLIFFE: And secondly, your comments with respect to my submission as it
47 relates to Mr. Magnuson's reply you accurately described my submission.

1 THE COURT: I thought you were going to scold me for speaking on your behalf.

2 MR. CLIFFE: Absolutely not, thank you.

3 THE COURT: I think that then brings this to an end. There are some people
4 here, I take it technical people on one side and am I correct in assuming
5 that there are members of the community on this side? You are all
6 members of the community? Well, you're the ones who lasted and
7 survived the heat. I've noted as I mentioned earlier that this room gets
8 very hot. Now, someone - not myself - someone more critical than myself
9 would attribute that to lawyers speaking at length. I wouldn't do that, but I
10 do want to thank you for persevering and staying and listening and
11 hopefully this has been helpful to you and that you learned something new
12 or perhaps some new questions have been raised as a result of this. But
13 we've had a lot of information disclosed. I appreciate your attendance.
14 Thank you very much and have a great week.

15 To counsel and to other people on the bench who participated and
16 helped and contributed, thank you very much, I'm sure you would have
17 preferred to be somewhere else on this nice sunny hot day, other than
18 Whitehorse, where it's not sunny and hot. But I really appreciate your
19 attendance and your contributions and I join Mr. Cliffe in saying that
20 there's significant progress, things are on the right track, communication is
21 good and I'm certain everything that can be done will be done to make this
22 project come to fruition. So thank you very much.

23 MR. CLIFFE: Your Honour, with respect to the next issue, we just leaving that
24 with Ms. Proctor consulting us --

25 THE COURT: Yes, I think so. I think what the procedure might be that I'm going
26 to read through the material that was filed and some time in the next little
27 while she'll contact you for a telephone date about two months down the
28 road.

29 MR. CLIFFE: Yes. Thank you.

30
31 (PROCEEDINGS CONCLUDED)

32
33 This is to certify that the foregoing is a true and
34 faithful transcript of the contents of the record
35 prepared in the above named proceeding.

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39 _____
40 Jan Graham, Transcriber
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