

Whitehorse, Y.T.
October 30, 2008

(TELECONFERENCE COMMENCES)

(JUDGE LILLES, MR. CROSSMAN AND MR. CLIFFE BY
TELEPHONE FROM OTHER LOCATIONS)

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9 THE CLERK: The matter before you this morning, Your Honour, is the City of
10 Dawson.

11 THE COURT: I thank you, Madam Clerk. Again, for the record, it's Judge Lilles
12 and I have with me on the telephone, John Cliffe and Tony Crossman,
13 counsel in this matter.

14 I would indicate for the record that I received a report, which was an
15 interim project update for 2008 that was sent to me by Mr. Crossman.
16 That's the old report, I take it. Is that correct?

17 MR. CROSSMAN: Yes, Your Honour.

18 THE COURT: We don't have anything in writing for today's date that's a written
19 update?

20 MR. CROSSMAN: Well, we have the report that was provided just prior to the
21 September 22nd hearing.

22 THE COURT: Right. Okay, thank you.

23 MR. CLIFFE: Your Honour, perhaps I could lead off. Just for the record it's John
24 Cliffe, that's C-L-I-F-F-E. I appear on behalf of the Crown. I am expecting
25 in the courtroom a Mr. Eric Soprovich, who is a professional engineer
26 employed by Environment Canada in Whitehorse and I am wondering,
27 Madam Clerk, whether you can confirm that Mr. Soprovich is there?

28 THE CLERK: Correct. He is present.

29 MR. CLIFFE: Thank you. Your Honour, Mr. Enns, who you know normally
30 attends these matters when we're in person, he is in Whitehorse and if
31 we're on the telephone he's usually in my office. Since I'm in Edmonton
32 currently, Mr. Enns is not attending but Mr. Soprovich is going to be taking
33 a role in this file, so he is present if Your Honour has any questions today
34 of Environment Canada.

35 THE COURT: Thank you.

36 MR. CLIFFE: And just to confirm also what my friend said, our last report back to
37 Court date was September 27th.

38 THE COURT: Thank you.

39 MR. CROSSMAN: And note for the record, Tony Crossman for the City of
40 Dawson, and I understand that Mr. Tom Ulyett will be in the courtroom.
41 I'm not sure who else might be attending at this time.

42 THE CLERK: Correct, he is present.

43 MR. CROSSMAN: Thank you.

44 THE COURT: Thank you. Who wants to lead off, Mr. Cliffe or Mr. Crossman?

45 MR. CLIFFE: I can go first, Your Honour, and just say that I'm certain that my
46 learned friend will go at matters. I realize, Your Honour, that we have
47 limited time today and we should go right to the matters of business.

1 Your Honour should have before you an application pursuant to s.
2 79.5 of the *Fisheries Act* --

3 THE COURT: I do.

4 MR. CLIFFE: -- that was filed on June the 14th of last year, and it pertains to the
5 renewal of an application by the Attorney General of Canada on
6 November 17, 2006 to vary the end date of Your Honour's order in this
7 matter. And I just note for the record, Your Honour, that since this is the
8 second application to vary the order, the *Fisheries Act*, that is, s. 79.2(2)
9 requires Your Honour's leave to vary. So I thought I'd alert that to Your
10 Honour.

11 Your Honour, in the previous appearances including the
12 appearance I did back in November of 2006, again in June, again to the
13 various appearances in person and on the phone, there's been reference
14 to this application to vary the order. My learned friend has also indicated
15 the intentions of the City of Dawson also wanting to vary the order, but for
16 the sake of expediency and expense, we have decided to rely upon the
17 pleadings that are before Your Honour, that is the Crown's application to
18 vary. And as Your Honour is aware, the circumstances are essentially
19 that the City will not be able to construct a sewage treatment plant facility
20 or system and have it in operation by December 31st of this year, which
21 was the end date of Your Honour's order.

22 In some respects, although I'm talking first, the -- it is an application
23 being brought by the City, as I understand it, backed by the Yukon
24 Government, but, as I say the Attorney General of Canada joins in this
25 application and truly wanted Your Honour's order to be complied with and
26 ultimately to work at the end of the day. So I -- that is the application, to
27 put it in summary, it's an application to vary the end date of Your Honour's
28 order from December 31, 2008 to December 31, 2011. We are seeking
29 your leave to make this application and obviously make the application
30 before Your Honour.

31 THE COURT: Mr. Crossman, do you join in that application?

32 MR. CROSSMAN: I do, Your Honour.

33 THE COURT: Okay. And just to comment upon what Mr. Cliffe said, this was an
34 application that's been brought before me several times, and I've
35 adjourned it in part because I thought it was a bit premature. It is now --
36 and premature in the sense that it might be difficult to identify what an
37 appropriate end date would be in the absence of a concrete plan to move
38 forward. However, as this year is expiring and the order I made previously
39 expires on December 31, 2008, necessity requires that I amend the order
40 and I'm open to so doing. And I will indicate, perhaps very briefly at this
41 time, I'm hoping that we can, after I amend the order, that we can speak
42 briefly about another date where we can review the progress.

43 But based on the application before me and indeed based on not
44 only what I've heard today but also what the Court was advised of on the
45 earlier date, when the application was brought, the existing order, that
46 requires the sewage treatment plant facility to be operational by December
47 31, 2008 is hereby amended. First of all, I should say leave is granted to

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1 amend it, and then it is amended to December 31, 2011.
2 MR. CLIFFE: Your Honour, I'll be very happy to draft an order for Mr.
3 Crossman's approval as to form and have it sent to the registry in
4 Whitehorse --
5 THE COURT: Thank you.
6 MR. CLIFFE: -- for Your Honour's signature.
7 THE COURT: Thank you, that would be excellent. Mr. Crossman, do you agree
8 with that?
9 MR. CROSSMAN: I do. Thank you (indiscernible).
10 THE COURT: Are we in a position to speak to another appearance date?
11 MR. CLIFFE: The Crown is prepared to fix another date and would suggest that
12 the latter part of Your Honour's circuit in February. As I understand it,
13 from being briefed by Mr. Enns and Mr. Soprovich, that things are to take
14 place over the next three months. That's the plan according to the -- what
15 has been termed the RFQ and the RFP in this matter. And so it would be
16 good to see, in the Crown's view anyways, how things are moving along,
17 and that time period, perhaps near the end of that second week, as far as
18 the Crown is concerned, would be a good period.
19 THE COURT: I understand that I have open times on the 16th and 19th towards
20 the end of my two-week stay in Whitehorse. Do either of those days suit
21 counsel?
22 MR. CLIFFE: The 19th is agreeable to the Crown, Your Honour. Either one of
23 those dates, but I suggest that we leave as much time as possible to see
24 how the order -- how things are moving along with respect to compliance
25 with the order.
26 THE COURT: Right.
27 MR. CROSSMAN: Your Honour, I agree with Mr. Cliffe. My preference would be
28 Thursday, February 19th as well. Perhaps I could just -- as you know from
29 the last court hearing on the 10th and 22nd, the next step is, as Mr. Cliffe
30 has mentioned, the completion of this RFP process for a mechanical plant.
31 It has gone out. The first part of that RFP process is for the expressions
32 of interest to be provided, and that will take -- those will be received on
33 November the 6th, and then the process continues on from there. So I
34 think again, February the 19th will be a good time (indiscernible).
35 THE COURT: Would it be helpful to your clients if we set that for the afternoon to
36 allow them to travel in from Dawson either in the morning or --
37 MR. CROSSMAN: Thank you, Your Honour. That would be helpful.
38 THE COURT: Mr. Cliffe?
39 MR. CLIFFE: That's agreeable, Your Honour.
40 THE COURT: Shall we say one o'clock?
41 MR. CLIFFE: One o'clock is fine with the Crown. Your Honour, one thing, and I
42 know that we're pressed for time. The Crown would ask if the Court would
43 consider, not necessarily today, but you may recall Your Honour made
44 some very strong remarks with respect to prioritizing compliance with the
45 order. When Your Honour's order was varied for the first time back in
46 August of 2005, I believe was the date, and - 2004 - and the Crown would
47 ask that perhaps Your Honour could consider whether such wording --

1 such words should be repeated and perhaps Your Honour giving some
2 consideration to that, would consider that, advise parties on the next court
3 appearance, whether such remarks can go again.

4 THE COURT: Well --

5 MR. CLIFFE: The Crown had cited that paragraph 19 of Your Honour's judgment
6 in that a number of times to remind the parties how much this order is a
7 priority.

8 THE COURT: Yes. Well, I think you've said it but we'll -- I'm not sure which
9 telephone meeting you're referring to but I think Mr. Crossman is aware
10 that at one of our conferences earlier this year, I spoke very strongly about
11 the need for this matter to go forward, in perhaps less polite terms than
12 found in my judgment, a paragraph referred to from time to time by Mr.
13 Cliffe. So I'm not going to go there today except to remind counsel that I
14 did speak those words and I'm looking forward to significant progress
15 when we meet again in February. I don't think I need to say anything
16 more beyond that at this point, Mr. Cliffe.

17 MR. CLIFFE: Thank you, Your Honour.

18 THE COURT: But I will have some words prepared for February 19th, as a
19 contingency.

20 MR. CROSSMAN: Your Honour, certainly the City of Dawson understands the
21 urgency and the priority that this matter is to be given, and I think that
22 you've heard, certainly from myself and also from Mayor Steins, and from
23 the court update reports provided, that the team that is behind this project
24 has been working very hard on this project to ensure completion. And as
25 you understand, and I think everyone understands, the problem here that
26 has arisen, the real change that has been a set-back for the project, has
27 been the referendum, which meant that the aerated lagoon at Lot 1058
28 could not proceed, although it had already got to a fairly advanced stage
29 and was in the regulatory process, but --

30 THE COURT: I do understand that, and if the alternative you are pursuing now
31 turns out to be as positive as you hope, the referendum may turn out to be
32 a blessing in disguise. But I look forward to hearing more detailed
33 information about that in February.

34 MR. CROSSMAN: Yes, certainly, and we will provide that.

35 THE COURT: Okay. Mr. Cliffe, anything further before I formally adjourn this to
36 February 19th at one o'clock in Whitehorse?

37 MR. CLIFFE: Yes, Your Honour, the only thing I would say, and I don't want to
38 bend the ear of the Court any further given the time limitations, but of
39 course my friend has last spoke as to how he perceives things are going.
40 (Indiscernible) say that Environment Canada has a number of concerns.
41 Some of them -- many of them have been expressed to the working group
42 and between my friend and I, and those are things that will be addressed
43 when we have more time to deal with those in February, and I'll leave it at
44 that.

45 THE COURT: Right. And perhaps a final word from myself. From time to time
46 there's been some slippage in the communication amongst the parties and
47 I trust that communication lines are open and we won't run into any issues

1 with regard to communication. I'm not looking for a response; I'm merely
2 reminding people that the last time we spoke we got things on the right
3 track, and I trust they will remain on the right track until we meet next.
4 MR. CROSSMAN: Your Honour, and I should add, subject to my friend's
5 comment here, I believe the parties have been working on that issue, and
6 certainly from the City of Dawson and the project team's perspective, they
7 have been working very hard on the communication issue. They listened
8 very carefully at the last hearing. The concerns of Environment Canada
9 and of the Court on this issue, and the new team that is in place, have
10 been working; had actually a number of meetings already with
11 Environment Canada, has provided that information that was requested
12 and has set up regular meetings with Environment Canada in addition to
13 the usual communications in between, so.
14 MR. CLIFFE: Well, Your Honour, I don't want to -- again, these are issues -- I'll
15 only say this; there's some encouragement that communications, where
16 there's been seven months of no communication, we're encouraged by --
17 Environment Canada advises me they are encouraged by the start of it,
18 but there's been nothing formally established to confirm that this
19 communication is going to continue, and that's why next February is a
20 good day to speak to the issue fully.
21 THE COURT: Okay. I think we can leave it at that. Thank you, gentlemen.
22 Madam Clerk, can you please close Court?
23 THE CLERK: Thank you.

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25 (PROCEEDINGS CONCLUDED)
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28 This is to certify that the foregoing is a true and
29 faithful transcript of the contents of the record
30 prepared in the above named proceeding.
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34 _____
35 Shannon McMurphy, Transcriber
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