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NUNAVUT WATER BOARD HEARING

MATTER: DRAFT NUNAVUT WATER REGULATIONS
HAMLET OF RANKIN INLET

HEARING HELD AT SINIKTARVIK HOTEL
RANKIN INLET, NUNAVUT
SEPTEMBER 15, 2011

1 APPEARANCES:

2

3 NUNAVUT WATER BOARD PANEL:

4

5 Mr. T. Kabloona Chair

6 Mr. L. Toomassie Member

7 Mr. R. Mrazek Member

8

9 NUNAVUT WATER BOARD STAFF:

10

11 Ms. D. Filiatrault Executive Director

12 Ms. P. Beaulieu Manager of Licencing

13 Mr. B. Kogvik Board Secretary/

14 Interpreter/ Translator

15 Ms. C. Emrick Legal Counsel

16

17 APPLICANT

18

19 ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

20 CANADA

21

22 Mr. G. Binda Senior Advisor

23 Mr. P.L. Lavoie Legal Counsel

24 Ms. T. Milojevic Land and Water Management

25 Director

26

1 INTERPRETERS/TRANSLATORS

2 Mr. J. Ell Inuktitut Language

3

4 Mr. R. Dempster Sound Technician

5 Ms. T. Rizzoli, (CSR)A Official Court Reporter

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1 (PROCEEDINGS COMMENCED AT 10:02 AM)

2 THE CHAIR: Before we begin, I'd like
3 to ask everyone to turn off their cellphones,
4 please, and I would also like to ask Lootie
5 Toomassie to do the opening prayer.

6 (Opening Prayer)

7 **Opening Remarks by Nunavut Water Board Chair**

8 THE CHAIR: Qujananik. If I start to
9 fade, could someone just raise their flag, and
10 I'll try to keep my eyes open.

11 Thank you and good morning. For those using
12 the audio system, English is channel 1 and
13 Inuktitut is channel 2. This hearing, into the
14 review of the draft Nunavut Water Regulations, is
15 now in session. My name is Thomas Kabloona. I'm
16 the chair of the Nunavut Water Board. On behalf
17 of the Water Board, I welcome everyone to Rankin
18 Inlet.

19 To give you some background to this hearing,
20 the Nunavut Water Board is an institution of the
21 public government created under Article 13 of the
22 *Nunavut Land Claims Agreement* and is responsible
23 for the use, management, and regulation of fresh
24 water in the Nunavut settlement area. Pursuant
25 to Section 13.3.6 of the *Nunavut Lands Claims*
26 *Agreement* and Section 29 of the *Nunavut Waters*

1 *and Nunavut Surface Right Tribunal Act*, the
2 Board has delegated its power to dispose of all
3 matters relating to the Board's role in the
4 development of Nunavut waters regulations,
5 including the conduct of this public hearing to a
6 panel of the Board.

7 On March 4, 2011, the Board received a
8 letter dated February 22, 2011, from then Indian
9 and Northern Affairs Canada, now Aboriginal
10 Affairs and Northern Development Canada referring
11 to draft Nunavut waters regulation for review by
12 the Board pursuant to subsections 82.1 and 82.2
13 of the *Nunavut Waters and Nunavut Surface Rights*
14 *Tribunal Act*, which I will refer to in these
15 proceedings as "the Act". The Board also
16 acknowledges receipt of the Nunavut watershed
17 descriptions pursuant to Section 17 of the draft
18 regulations. The draft regulations and watershed
19 descriptions have been filed in the Board's
20 public registry. In addition, copies of the
21 submissions I will discuss below are available on
22 NWB's public registry and our licencing
23 administrator has made available, for public
24 viewing, a copy of these materials at the back
25 table.

26 To put the public hearing process in

1 context, I would like to review briefly with you
2 the Board's role in making regulations and its
3 legislative authority. The legislative authority
4 for making water regulations for Nunavut is found
5 in Article 10 of the *Nunavut Land Claims*
6 *Agreement*, Sections 82 and 174 of the *Act*, and
7 Section 8 of the *Nunavut Land Claims Agreement*
8 *Act* also provides authority to make regulations
9 necessary to implement the *NLCA*.

10 The Board's role in making these regulations
11 set out in the *Act*, Section 82 requires the
12 recommendation of the Minister be subject to the
13 concurrence of the Board for regulations that
14 establish water management areas, authorize the
15 use of waters without a licence, and authorize
16 the deposit of waste without a licence. Section
17 82 of the *Act* also requires the recommendation of
18 the Minister to be made after consultation of the
19 Board for regulations that define waste. Section
20 82 and 174 of the *Act* further requires the
21 Minister seek the advice of or consult with the
22 Board when establishing classes of licence
23 applications that will be exempt from a public
24 hearing. Regarding the holding of this public
25 hearing, Section 51 of the *Act* permits the Board,
26 where satisfied that it would be in the public

1 interest to do so, to hold a public hearing in
2 connection with any other matter relating to its
3 objects, as set out in Section 35 of the Act.

4 Consistent with the objects of the Board,
5 the Board is satisfied that it is in the interest
6 of the public to hold a public hearing to
7 determine if the draft regulations provide for
8 the conservation and utilization of waters in
9 Nunavut, in a matter that will provide the
10 optimum benefit from those waters for the
11 residents of Nunavut in particular and Canadians
12 in general. The decision to hold a public
13 hearing is also consistent with giving due regard
14 and weight to Inuit culture, customs, and
15 knowledge pursuant to Section 33 of the Act.
16 Formal notice of this public hearing was given on
17 June 29th, 2011, and provided to the Board's
18 distribution list and published in News North,
19 Nunatsiaq News, and Kivalliq News.

20 The hearing is being conducted in three
21 locations. Iqaluit on September 13th, Rankin
22 Inlet on September 15th, and Cambridge Bay on
23 September 16th. Following the public hearing,
24 the Board will issue its consultation
25 recommendations and concurrence decision to the
26 Minister.

1 As the history of this file was provided at
2 the start of this hearing in Iqaluit, I will
3 provide only a brief summary today. Following
4 the Board's receipt of the draft regulations from
5 then Indian and Northern Affairs Canada, on March
6 4th, 2011, a technical meeting and prehearing
7 conference was held on May 31st, 2011, in Iqaluit
8 and on June 2, 2011, in Yellowknife. In
9 preparation for the technical meeting, written
10 comments were received from 13 parties. The
11 Board issued its prehearing conference decision
12 on June 29th, 2011. The Board directed that
13 decision that the parties address issues in their
14 written submissions and presentations to the
15 Board in the following order: One, issues related
16 to the sections of the draft regulations
17 requiring the concurrence of the Board including,
18 (a), authorization, the use of waters and deposit
19 of waste without a licence and (b), establish
20 water management areas. Two, issues related to
21 sections of the draft regulations requiring
22 advice of and/or consultation with the Board,
23 including, (a), exempting classes of applications
24 from the requirement for public hearing and (b),
25 regulations to inform the definition of waste in
26 Section 4 of the Act. Three, other issues

1 arising from the technical meetings, (a),
2 reclamation security, (b), licencing fees, (c),
3 reporting and maintenance of records issues, and
4 (d), coming into force. Four, other issues
5 identified by the parties.

6 On June 20th, 2011, Aboriginal Affairs and
7 Northern Development Canada filed with the Board
8 a written response to issues raised in the
9 written submissions and technical meeting.
10 Written submissions for this hearing were also
11 received from Kitikmeot Inuit Association,
12 Kivalliq Inuit Association, Nunavut Tunngavik
13 Incorporated, Northwest Territories and Nunavut
14 Chamber of Mines, Newmont (Hope Bay Mining
15 Limited), Nunavut Planning Commission, Government
16 of Nunavut, Department of Community and
17 Government Services, Department of National
18 Defence.

19 I am chairing this panel. The two members
20 of the panel are Ross Mzarek to my left and
21 Lootie Toomassie to my right. Several staff
22 members of the Nunavut Water Board assisting us
23 today are Dionne Filiatrault, executive director;
24 Phyllis Beaulieu, manager of licencing; Ben
25 Kogvik, board secretary/interpreter/translator;
26 and Catherine Emrick with Miller Thomson is here

1 as our legal counsel. We also have an
2 interpreter available for simultaneous
3 translation into Inuktitut, Ben Kogvik from the
4 Water Board and John Ell. For audio support, we
5 have Ryan Dempster with us. If you experience
6 any difficulties with your headsets, Ryan should
7 be able to provide assistance. To ensure an
8 accurate record of the proceeding, we have with
9 us a court stenographer, Toni Rizzoli. To assist
10 Toni, I ask that all parties please state their
11 name before speaking.

12 Before proceeding further, I wish also to
13 make a comment regarding media. In the past,
14 parties in other proceedings have approached the
15 media prior to the release of the Board's
16 decision suggesting comments about what the Board
17 is going to do either procedurally or in terms of
18 the final result. Since the Board cannot comment
19 on pending matters, either by confirming or
20 denying the accuracy of others' statements to the
21 media, the Board would appreciate if all parties
22 would refrain from any such comments that may
23 imply a certain action or decision by the Board.
24 Board members will not discuss the hearing or the
25 matters before the Board with any of the parties
26 or the media. If you have any questions about

1 the Board and its practice or procedure, please
2 speak to Dionne Filiatrault, and she will assist
3 you.

4 If there are no concerns, I would like to
5 move forward to the identification and
6 introduction of the parties by way of a roll
7 call. I will begin the roll call with Aboriginal
8 Affairs and Northern Development.

9 **Roll Call**

10 MR. BINDA: Gilles Binda.

11 MR. LAVOIE: Pierre-Luc Lavoie.

12 MS. MILOJEVIC: Tatjana Milojevic.

13 THE CHAIR: Thank you. If any
14 interveners are present and would like to speak,
15 please identify yourself.

16 It is our tradition to give respect to our
17 elders; therefore, at any time, an elder may
18 speak to the application on file.

19 Is there a representative for the community
20 of Rankin Inlet present that wishes to be
21 recognized? Are there any members of the general
22 public who would like to identify themselves?
23 Are there any representatives from agencies,
24 associations, et cetera who have not submitted
25 interventions but would like to speak?

26 Thank you. Before proceeding, I would like

1 to request that all parties register with Phyllis
2 at the side table. That brings us to the
3 identification of any motions or any objections
4 to the matter that is before the Board.

5 According to the information I have, there are no
6 motions or objections before the Board.

7 Before we proceed with item 'H' of the
8 agenda and a presentation by Aboriginal Affairs
9 and Northern Development, Catherine, I understand
10 we have a housekeeping item.

11 MS. EMRICK: Catherine Emrick, legal
12 counsel for the Board.

13 Thank you, Mr. Chairman. I just have -- if
14 there are no objections, two exhibits to enter
15 into the record. The first is the "Nunavut Water
16 Regulations (Draft) Presentation at the NWB
17 Public Hearings" dated September 2011, electronic
18 copy, and that's submitted by Aboriginal Affairs
19 and Northern Development Canada. The file name
20 for that is 110913 AANDC water regulations
21 presentation-ICHE.PPT. And the second exhibit is
22 the "Nunavut Water Regulations (Draft)
23 Presentation at NWB Public Meetings" dated
24 September 2011 electronic copy -- or excuse me,
25 correction, hard copy, and that was submitted by
26 Aboriginal Affairs and Northern Development

1 Canada.

2 EXHIBIT 1 - ELECTRONIC COPY OF NUNAVUT
3 WATER REGULATIONS (DRAFT) PRESENTATION
4 FROM THE NWB PUBLIC HEARINGS DATED
5 SEPTEMBER 2011 SUBMITTED BY ABORIGINAL
6 AFFAIRS AND NORTHERN DEVELOPMENT, FILE
7 110913 AANDC WATER REGULATIONS
8 PRESENTATION-ICHE.PPT.

9 EXHIBIT 2 - HARD COPY OF NUNAVUT WATER
10 REGULATIONS (DRAFT) PRESENTATION
11 FROM NWB PUBLIC MEETINGS DATED SEPTEMBER
12 2011 SUBMITTED BY ABORIGINAL AFFAIRS AND
13 NORTHERN DEVELOPMENT.

14 THE CHAIR: Thank you. We will take a
15 ten-minute health break.

16 (ADJOURNMENT)

17 THE CHAIR: Welcome back. And thank
18 you, Catherine, for bringing the housekeeping
19 items. I will remind the witnesses that they
20 remain under oath for these proceedings. I'd
21 also remind participants to state their name
22 prior to speaking to assist the stenographer in
23 keeping an accurate record, thank you.

24 Mr. Binda, please go ahead with your
25 presentation.

26 **Presentation By Aboriginal Affairs and Northern**

1 **Development Canada**

2 MR. BINDA: Thank you, Mr. Chairman.

3 Aboriginal Affairs and Northern Development
4 is pleased to appear at this hearing to discuss
5 the draft Nunavut Water Regulations. My name is
6 Gilles Binda. I am a senior advisor at the --
7 with the Natural Resources Environment branch at
8 the northern affairs organization -- department.
9 In attendance with me, I'll repeat, is Pierre-Luc
10 Lavoie, legal counsel, Department of Justice and
11 Tatjana Milojevic from the land and water
12 management directory.

13 My presentation today will review the legal
14 framework under which the regulations will
15 operate, the development of the regulations, an
16 overview of the application of the regulations in
17 Nunavut, an explanation of the overall structure
18 of the regulations, a review of the issues raised
19 through submissions at the technical hearings and
20 others that we've heard, and a description of
21 what we believe are the next steps in the
22 development of these regulations and the approval
23 of these regulations.

24 The regulations are intended to work within
25 the framework established by the *Nunavut Land*
26 *Claims Agreement* and the Nunavut Waters and

1 Surface Rights Tribunal Board -- sorry, Tribunal
2 Act. The *NLCA* for the creation and operation of
3 the Board while both the *Agreement* and the *Act*
4 provide for the legal framework for the
5 regulation of inland waters in Nunavut. The
6 development of the regulations began in 2006. We
7 formed a multi stakeholder working group composed
8 of Aboriginal Affairs as co-lead with the Water
9 Board as co-lead. Joining us at the table were
10 Justice Canada and the Government of Nunavut.
11 Nunavut Tunngavik Incorporated also participated,
12 but in an observer status. As a starting point,
13 the working group reviewed the Northwest
14 Territories Waters Regulations as well as the
15 various provisions of Section 82 of the *Act*.
16 Section 82 of the *Act* identifies those area for
17 which the governor in council can make
18 regulations on the recommendation of the
19 Minister. The working group then hired
20 a consultant to review the provisions of Section
21 82 and provide option papers for each one and
22 provide us -- and this was based on current
23 practices both within Nunavut and across Canada.
24 So the working group then reviewed all these
25 option papers, and we prepared recommendations
26 that I put together -- together with my

1 colleague, Pierre-Luc, put together as drafting
2 instruction that were provided to the regulatory
3 drafting section of Justice Canada. The drafters
4 then took those recommendations, those drafting
5 instructions, and converted that into regulatory
6 language. Then we -- we took that draft language
7 through numerous meetings and did some fine
8 tuning to come up with what you see in front of
9 you now as -- as a draft set of regulations for
10 the -- for waters in Nunavut. As per the
11 requirement of the *NLCA*, the department also
12 worked closely with NTI to review and refine the
13 draft regulations as they were being developed.
14 Over the course of the years, we also made
15 numerous presentations to -- at various mining
16 shows, such as the PDAC and Cordillera Roundup.
17 So this way we could show stakeholders and the
18 mining industry what was being done and keep them
19 informed on the progress and development of these
20 regulations.

21 Once approved and registered, these draft
22 regulations will replace the Northwest
23 Territories Waters Regulations that are currently
24 being used and enforced in Nunavut. The
25 regulations would apply to any one person that
26 uses water or deposits waste into water in

1 Nunavut. The authority of the Board in relation
2 to the use, regulation, and management of inland
3 waters that's granted under the *NLCA* and *Nunavut*
4 *Waters and Nunavut Surface Rights Tribunal Act*
5 will remain the same under these regulations, so
6 the Board keeps the same powers and everything
7 that it had.

8 We're now going to talk a bit about the
9 structure of these regulations, and overall
10 these -- the regulations are -- there are two big
11 sections in these regulations. The approvals for
12 uses without a licence and the licence uses, and
13 in front of that, you see sections on
14 interpretation and also sections at the back on
15 administrative matters, but the main part of
16 these regs are the approvals without a licence
17 and also the licence uses. The first two
18 sections of the regulations are -- I refer to
19 them as interpretation sections. The first,
20 Section 1, will talk about various definitions,
21 and one of them is the definition of an
22 undertaking. In the *Nunavut Waters and Nunavut*
23 *Surface Rights Tribunal Act*, there is a
24 definition for an appurtenant undertaking, which
25 means -- which is a licenced undertaking. Now,
26 because we have created, in these regulations, a

1 process for an approval without a licence, we had
2 to find a term that we could refer to all types
3 of undertakings, not just the licenced ones, but
4 the ones that are approved without a licence. So
5 we defined the term "undertaking" now to mean a
6 licence use and also one that is approved without
7 a licence. So we have the one term being used
8 now to talk about undertakings.

9 Section 2 has been -- was put into these
10 regulations as a greater certainty clause, and
11 it's just to ensure that for the purposes of
12 13.7.1 of the *NLCA*, which says that all water
13 uses in Nunavut have to be approved by the Board
14 that it is understood that an approval without a
15 licence for use -- or a deposit without a licence
16 and a licence use are both to be viewed as
17 approvals of the Board because the licence -- you
18 have to approve a licence and also you will be
19 approving a use without a licence. So for the
20 purpose of 13.7.1, all of these are viewed as
21 being approved uses to satisfy that requirement.

22 Now, I'll talk about the sections that deal
23 with approvals without a licence, and these are
24 Sections 3 to 6 of the regulations. The creation
25 of an approval process was done to address an
26 operational water management issue in Nunavut.

1 As I pointed out, Section 13.7.1 of the *NLCA* does
2 not allow a use of water or a deposit of waste
3 into water without the approval of the Water
4 Board except for domestic uses and emergency
5 uses, and we've heard throughout the years that
6 while that process required everybody to have a
7 licence for any use, which meant that a
8 university professor, for example, with two
9 students that goes out on the land, does a little
10 bit of research, uses a little bit of water had
11 to get a water licence, so now we've created a
12 process by which the Board will approve a use
13 without a licence based on a form that the
14 applicant will submit to the Board, and the Board
15 will look at that. If it meets the criteria,
16 we'll then be able to approve a use without a
17 licence, which will cut down on the regulatory
18 burden of the Board to go through the major --
19 all of the requirements that a licence requires
20 and also the reporting requirements for the
21 proponent, so the proponent will have to fill a
22 form, which will require different types of
23 information: the name of the applicant, the type
24 of undertaking, the equipment to be used, and the
25 location where he -- the undertaking will take
26 place. Both for the water use and for the

1 waste -- deposit of waste, the -- there will be
2 terms and conditions that are in the regulations
3 that the proponent must follow. It also
4 clarifies how the site must be restored after the
5 undertaking is over and sets a period of time for
6 which the approval may be issued by the Board.
7 It also details the type of information that
8 the -- that the proponent needs to keep, and when
9 it needs to be submitted and how long all that
10 information needs to be kept on record.

11 At this time, Mr. Chairman, I will also just
12 review some of the points that were raised at the
13 technical hearings in Iqaluit and Yellowknife in
14 May and June. There were some points that were
15 raised that we said we'd get back to the Board
16 and to the submitters, and one of -- one of those
17 terms, those points was that the term
18 "unlicenced" that's used in the regulation was
19 deemed to be a bit confusing, and we looked at
20 it, and we -- we discussed this, and we will now
21 redraft the -- everywhere that says "unlicenced"
22 will now read an approval for a use without a
23 licence, so we'll have that terminology
24 everywhere in the regulation. It doesn't change
25 anything in our regulation, but it will make the
26 language more homogenous all the way through.

1 Another point that was raised was that what
2 happens if somebody goes on the land and uses
3 only water that is captured in an artificial
4 container or reservoir that does not come in
5 contact with the ground, such as collecting
6 rainwater and they use the rainwater for their
7 purposes, would they require a water licence?
8 And we've had discussions, and we do not think
9 that in that case if the water does not come into
10 contact with the land, it's just an artificial
11 reservoir, and it's collected rainwater that they
12 use, and that's the only water that they use,
13 they would not require a water licence for that
14 purpose.

15 Another point that was raised was some of
16 the persons that made submissions said what
17 about -- we read the regulations, and they don't
18 say that you require to -- us to pinpoint the
19 location of the deposit of waste. Because these
20 were very small uses, we -- when we put the
21 regulations together, we sort of thought, it's
22 going to be right where the location of the
23 undertaking is, but after second thought,
24 somebody might want to deposit a bit further out
25 away from where they are, so the regulations will
26 now -- will be amended to require the location of

1 the deposit of the waste as an information to be
2 provided to the Board. And also, similarly, the
3 regulations will also be amended to require the
4 location of the deposit of the waste to be
5 reported at the end of the -- when they finish
6 their -- their work to be reported where the
7 deposit of waste was.

8 And lastly in this section, there was also a
9 comment that what happens when a site is an
10 unmanned site? And right now the regulations
11 require the information to be kept on site, and
12 after a discussion within the department and
13 within our regional office, what we will amend
14 the regulations to say is that the proponent may
15 leave a phone number for an inspector to call to
16 get the information, if it's an unmanned site.
17 So having the information -- while the
18 information might not all be there, there will be
19 a number for the inspector to call the person in
20 charge of the site to get the information they
21 require.

22 The licence uses: The sections on licence
23 use has not been changed very much. There's only
24 one -- there's still a requirement for a type 'A'
25 and type 'B' licence and their criteria is set
26 out in the schedules. The one change has been

1 the change of the lower threshold for the
2 requirement for a 'B' licence, which under the
3 NWT Waters Regulations calls for the lower
4 threshold to be at 100 cubic metres per day.
5 This has been lowered to 50 cubic metres per day
6 based on the analysis that we did as a working --
7 the working group did and a technical group out
8 of that working group looked at and came out to a
9 good threshold and also, coming out of that
10 threshold, on -- it was estimated about 35
11 percent of current water type 'B' applications
12 would now fall under an approval without a
13 licence, so that will cut down on 35 percent of
14 the major applications applied to the Board for a
15 licence, so it should cut down on some of the
16 workload and the regulatory burden of the Board.
17 These sections also established the parameters
18 for which -- under which a public hearing is not
19 required in respect of an application, and it
20 also clarifies that no public hearing is required
21 in respect of an application for a use without a
22 licence, either for a use of water or a deposit
23 of waste. The section on security has not been
24 changed in these water regulations. It
25 establishes the criteria that may be -- that the
26 Board may consider when establishing an amount of

1 security, and I will talk a bit later on in my
2 presentation on the security issue.

3 The fees sections has not changed. There's
4 the -- there's no -- there will be no fee for an
5 application -- or an application fee for an
6 approval without a licence. It also sets out the
7 fee structure for the right to use water, the
8 calculation, and how they should be paid. It
9 also clarifies that no licence fees are payable
10 by a designated Inuit organization or Inuit for
11 the right to use -- to use waters on, in, or
12 flowing through Inuit-owned lands. This is a
13 change from what appeared in the NWT Water
14 Regulations. It outlines also -- these sections
15 outline the requirement for keeping books and
16 records, the type of information, where it should
17 be kept, when do you need to submit -- it needs
18 to be submitted, and how long it should be kept
19 for. It also outlines the information that must
20 be reported every year in an annual report. In
21 this section, we also heard a few comments at the
22 technical meetings. There was a mistake that
23 will be corrected. As there was -- in Section
24 10(2) the word "must" will be replaced by "may"
25 as it appeared in the NWT Water Regulations.

26 Again, in this section, there will also be

1 an amendment as with the unmanned -- the
2 approvals without a -- without a licence is that
3 the unmanned stations there will be a provision
4 in there for unmanned stations for people to
5 leave a phone number for an inspector to obtain
6 the information he requires. There was a
7 suggestion that the 60-day extension for filing
8 an annual report be extended to 90 days. After
9 careful examination of this, we believe that it
10 should remain at 60 days. This is -- 60 days is
11 more than what currently appears in the NWT Water
12 Regulations, which does not allow for an
13 extension, so right now there is an additional
14 section in here allowing, in exceptional cases,
15 for a proponent to request -- make a request to
16 the Board for an extension of the period to
17 submit their annual report. So we think that 60
18 days is enough, and it will also allow the
19 inspectors if -- by not extending it too far, to
20 be able to plan to go to these sites over the
21 summer.

22 Section on administrative matters. There is
23 a section on public registry. This applies to
24 the Board. It prescribes the form of the
25 register and the information it must contain.
26 There's a section on spilled reporting, and it

1 details the requirements of having to report
2 spills. One new section or a section that's been
3 drastically changed is the water management areas
4 section. In the current NWT waters regulations,
5 there are four water management areas for the
6 whole of Nunavut. These are very big areas
7 stating things like, waters flowing into the
8 Arctic Ocean, waters flowing into Hudson Bay,
9 waters on Baffin Island. After discussion with
10 the Water Board technical staff, it was found
11 that those four water management areas were not
12 workable and would not serve a purpose for the
13 Board to be able to use as a management tool. So
14 we've proposed the establishment of 65 water
15 management areas at the sub-drainage basin level.
16 So this will allow the Board to have a tool to be
17 able to actually require specific -- make
18 specific requirements on a specific basin. So if
19 somebody wanted to -- on the Thelon, if somebody
20 wanted to -- if the Water Board wanted to set
21 specific parameters for a -- for developers, they
22 could do it through requiring a regulation be
23 made to make specific requirements for that basin
24 alone and not affect all the other ones in that
25 area. So it will be a good working tool for the
26 Board. The water management areas descriptions

1 are not part of the regulations. As you have
2 probably seen, the description of these
3 regulations take about 200 pages because they are
4 lengthy, and it describes the whole description
5 of each basin and sets out the borders for each
6 one. It's very long. It would have been very
7 costly to include in the regulations, and
8 somebody trying to print just the regulations
9 would have to print everything that came with it.
10 There would be another 200 pages to add to that.
11 So the department will provide the Board with the
12 shape files of these water management areas once
13 the regulations come into force. It's for the
14 Board to use.

15 There was one comment made at the technical
16 hearings in Section 16 for the -- to add
17 electronic mail as a way of information to be
18 provided to the inspector, so 16(a) will now
19 read -- instead of just to an inspector in person
20 or by telephone, it will now read by an
21 inspector -- to an inspector in person, by
22 telephone, or by electronic mail, which brings
23 these regulations up to speed with what people
24 use as information technology right now.

25 I'll now talk about some of the issues that
26 we've heard, the major issues that we've heard at

1 the technical hearings and since then. There was
2 a -- what are the benefits from changing the
3 lower threshold of a 'B' licence from 50 to 100
4 cubic metres per day. Well, I talked about that
5 earlier. We found that through analysis, the
6 change matched to the -- to a good cutoff between
7 those that just use water for -- for the purposes
8 of their camp, while others, as soon as you hit
9 drilling and everything, it would bring it up
10 because of the -- of the deposit of the waste
11 that's being created would, it would kick it up
12 to a 'B' licence anyway, so we put the threshold
13 at 50, and, again, I want to point out that
14 through analysis of a typical year, pre-recession
15 year, we looked at all the licences that came
16 through and 35 percent now would be an approval
17 for a use without a licence, so that would cut
18 down the -- a lot of the burden to the Board.

19 Number 2, the security. Security is a big
20 issue, and the department shares the view with
21 many that have made these comments. It's one
22 that we have committed to address; however, it
23 will not be addressed in these regulations
24 because given the pan-territorial nature of the
25 issue, the interconnectivity of the authorities,
26 roles, and responsibilities linked to securities

1 as outlined in Land Claims and legislation and
2 regulations, as well as different views and
3 different desired outcomes of all the different
4 groups, the department believes it's more prudent
5 to do that in a separate venue, address that,
6 which will be addressed in a certain way, which
7 might require these regulations to be amended
8 down the line or may require legislative
9 amendments or may require something else to
10 resolve this issue, but we do not believe it
11 should be done right now, and it should be done
12 as part of a broader review and will be -- the
13 department will be consulting with effective
14 stakeholders in the near future.

15 Licencing fees: We've heard through
16 comments that many of the programs are
17 complaining that if a project is on Inuit-owned
18 lands, the Water Board is collecting water fees
19 as per the regulations, and the Inuit landowner
20 is also collecting fees based on their exclusive
21 use of water provision in the land claim, so
22 proponents are complaining that they are being
23 charged twice and the arguments that have been
24 made on this issue are very compelling, and
25 we've -- the department is committing to look at
26 this issue. We have to have whole discussions

1 within the federal system, with the Department of
2 Finances, Treasury Board because right now it's
3 considered a revenue coming into Canada if
4 there's a decision at -- we can't make a decision
5 at our level to say, We're not going to -- we're
6 just going to transfer everything to the Inuit.
7 We can't do that. We need to talk within the
8 system, and we also -- we also need to have
9 further discussions with the Board and also with
10 the RAs and NTI as required to ensure that once
11 we have an idea of what we want to do and how we
12 want to resolve it, we have to make sure
13 everybody is on side and that the decision works
14 for everybody. So we are anticipating to make
15 decisions on this and to resolve this issue
16 before the prepublication of these regulations in
17 the Canada Gazette, so we're still anticipating
18 to remain on our schedule for the approval of the
19 regulations.

20 The reporting and maintenance of records, we
21 are -- we have looked at this, and we do not
22 expect that we will be changing any of the
23 requirements for the maintenance -- the
24 maintenance and reporting of records that are
25 presently in the regulations. They match with
26 other regulations that are out there, and they

1 are not completely different than any others.
2 Other issues that were raised also is it was
3 mentioned that perhaps restoration should not be
4 part of the undertaking. It should be done after
5 the undertaking is over. We see that the
6 restoration of the site, unless there is
7 a licence issue, then these are for approvals
8 without a licence that the restorations should be
9 done by the end of the undertaking as part of the
10 whole undertaking, unless the proponent has made
11 an application and has been granted a licence to
12 continue at that site under a licence, and then
13 the site does not have to be restored to its
14 original -- its original manner and what it
15 looked like because now the -- there is a licence
16 use that will continue at that site.

17 There was a comment about certain words and
18 certain style of the regulations that some people
19 thought were -- should be changed and everything,
20 and I'd just like to point out to the Board that
21 many of these we cannot do because they are
22 dictated by drafting convention, and drafters
23 have to work within these conventions, and there
24 are certain words that are never defined in
25 legislation or in regulations, such as what is
26 significant. That is done on a case-by-case

1 basis by -- in this case, an inspector would have
2 to determine what is significant for that
3 purpose. So these are what many of the language
4 or format will not be changing because they are
5 set by drafting convention.

6 Next steps, while the department is
7 participating right now and continuing on this --
8 the NWB process of obtaining comments from
9 interveners and from the public on these
10 regulations, and we are continuing to seek -- to
11 work closely with the Board to obtain the
12 concurrence of the Board. Secondly, we have to
13 continue to closely consult with NTI, as per the
14 *NLCA*, and third, is to consult with other
15 stakeholders that the department has a
16 responsibility to consult with and may not be
17 part of this process, and we're talking about
18 trans-boundary groups and everything to ensure
19 that they are aware of the -- what is being done
20 for Nunavut and that everybody is -- is apprised
21 of the work. Following that, we will be
22 reviewing and addressing the outcomes of the
23 consultations, which means any other submissions
24 and also whatever the Board writes back to the
25 Minister as their report to the Minister on
26 these -- on these regulations, and then from

1 there, we will proceed with the federal approval
2 process, which means approval by the governor in
3 council.

4 Any other comments can be sent directly to
5 Glen Stephens, who is the director of land and
6 water management. Glen was scheduled to be here
7 for these hearings but was pulled away for other
8 priorities at the department, so -- but any
9 comments or anything should be sent to Glen.
10 Thank you, qujananik, and I'll be ready to answer
11 questions.

12 THE CHAIR: Thank you. Before we go
13 on to questioning, we'll take a ten-minute health
14 break.

15 (ADJOURNMENT)

16 THE CHAIR: Welcome back. We shall
17 open the floor to questioning from the public to
18 the applicant.

19 **Member of the Public Question Aboriginal Affairs**
20 **and Northern Development Canada**

21 JIM WALL: Mr. Chairman, my name is
22 Jim Wall. I'm with the Department of Community
23 and Government Services here in Rankin Inlet.

24 Better? Yes. I'm Jim Wall. I'm with the
25 Department of Community and Government Services
26 here in Rankin Inlet.

1 MS. FILIATRAULT: Let go.

2 JIM WALL: Okay. Mr. Chairman, I
3 have a couple of quick questions for
4 clarification to the Department of Aboriginal
5 Affairs and Northern Development through you.

6 MR. BINDA: You have to press your --

7 THE CHAIR: Aboriginal Affairs, do you
8 have an objection to any questioning?

9 MR. BINDA: No objection.

10 THE CHAIR: Please go ahead with your
11 questions.

12 JIM WALL: Thank you, Mr. Chair. So
13 a quick question for clarification on section
14 number 6, and this is Section 1: (as read)

15 A person who is authorized under these
16 regulations to use water or deposit waste
17 without a licence may maintain accurate
18 detailed records.

19 The question is concerning a licenced deposit of
20 waste in a municipality. Now, the concern or the
21 question that's been raised, you know, within
22 our -- I guess our operations and maintenance
23 division is to maintain records within the
24 municipality is not so much an issue, but if we
25 are expected to maintain those records actually
26 within the pump house, is that the intent of

1 this? Or is it just simply to be maintained
2 within the municipality per se, the location of
3 the appurtenant undertaking?

4 MR. BINDA: Thank you, Mr. Wall. I'd
5 just like a clarification. You were mentioning
6 that you were looking at Section 6. Section 6 is
7 for the unlicensed uses of water. I think the
8 amount of water that would be used in
9 municipalities is probably in the licensing
10 section, or are we talking --

11 JIM WALL: Some of the very, very
12 small ones may actually fall below the criteria.
13 Some of the very small municipalities may fall
14 into that category.

15 Mr. Chair, there -- sorry, I apologize for
16 that. The question would essentially be that
17 there may be some small municipalities which
18 would fall, I guess, into the unlicensed
19 category, but, I mean, most of them already have
20 licences, so ...

21 THE CHAIR: Thank you. Mr. Binda?

22 MR. BINDA: Mr. Chairman, can I just
23 ask Mr. Wall to just repeat his question. I'm
24 just trying to get my head around the question
25 itself.

26 JIM WALL: The question basically is

1 not so much the -- I guess, the issues of the
2 licencing per se, but it's more related to the
3 actual storage of the records associated with the
4 data. Now, the question is are they going to be
5 permitted to be stored within the municipalities.
6 For example, if we have an office located in that
7 community or at the hamlet office, whatever it
8 may be, but some of the pump houses do not --
9 there's not really enough physical room in those
10 pump houses to have the data stored physically on
11 the premises of that facility. The question is
12 would they be permitted to be stored at a
13 location within the municipality and made
14 available to the inspector. Basically having the
15 phone number in the pump house, we could then
16 store the data in the hamlet office or in the CGS
17 trade shop, for example, and not have to have
18 them maintained on the physical premise of the
19 pump house. That's the question.

20 MR. BINDA: Thank you for that
21 clarification. We already, Mr. Chair, talked
22 about unmanned stations allowing proponents to
23 leave phone numbers for inspectors to be able to
24 access the information by calling a person. Not
25 being an expert on municipalities and that kind
26 of site, I would assume -- it would seem to me

1 it's almost the same type of situation where if
2 there's no room there, if there was a phone
3 number for somebody to call -- for the inspector
4 to call and be able to get the information, I
5 believe that that would be quite acceptable.

6 MR. LAVOIE: Mr. Chairman, just a
7 question of clarification on the question for
8 Mr. Wall. The site you're referring to, are we
9 talking about unmanned sites?

10 JIM WALL: Mr. Chair, there was
11 actually -- all of the water systems per se are
12 physically -- they're not -- they are manned, but
13 the building itself, there's typically not an
14 operator in them full time. They may, in fact,
15 be operated by the water truck operator. Now,
16 there are some small municipalities which may
17 have a water use that could theoretically fall
18 into the unlicensed category. That's pretty
19 unlikely that they would ever be unlicensed. The
20 question also applies equally to Section 13,
21 perhaps that's a better -- that was sort of the
22 second stage of that is if there was something
23 that didn't meet the category of a licence under
24 the volume of use, so typically the other -- the
25 other question -- the second stage of that
26 question would apply more to Section 13 and then

1 the larger municipalities, they would still have
2 to maintain the books and the data within that
3 particular location. If there's a provision
4 under the regulations, for example, with the
5 remote phone number that they could call, the
6 inspector and say, Yes, I want to have access to
7 the book. We would simply say, Yes, that's no
8 problem. They are stored within the hamlet
9 office, or they are stored within the CGS trade
10 shop or wherever it may be, still available
11 within the location of the appurtenant
12 undertaking but not maintained physically on the
13 premises where the water treatment or
14 distribution takes place. It's really a question
15 for clarification so that we could basically know
16 exactly where we have to -- the question's not so
17 much we're concerned with maintaining the
18 records. It's just simply where are they
19 physically going to be housed in the manner which
20 basically protects those records in the longer
21 term and makes them most available to the
22 inspector.

23 THE CHAIR: Aboriginal Affairs?

24 MR. BINDA: Mr. Chair, we -- like I
25 say, we looked it at from the point of view of
26 unmanned station, but I take Mr. Wall's point of

1 view that it makes a lot of sense to us that the
2 information could be stored in another location
3 if there's no room for being able to store it
4 there and having proper information and
5 everything for everybody to reach. It is
6 something I could also, at a later time, just
7 talk a little bit with our inspectors also at the
8 department just in -- but right now I do not see
9 a problem, but it is something we'll take into
10 consideration.

11 THE CHAIR: Thank you. Mr. Wall?

12 JIM WALL: Thank you, Mr. Chairman.

13 Second point for clarification, Section 13(b):
14 (as read)

15 Keep the records -- or the books and records
16 on the site of the appurtenant undertaking
17 during the period of its operation or until
18 the expiry or cancellation of the licence.

19 Essentially with a municipal water licence, these
20 licences typically do not expire. I should --
21 I'll clarify that. The licence, for example, is
22 typically issued for a five-year period. So
23 from, say, the year 2000 to 2005. Then they are
24 typically renewed and continue essentially on
25 into the future. Now, the question would be, how
26 long are we going to have to maintain the data

1 associated with that particular water licence or
2 licenced activity may be a better way to say it
3 and maintain those records essentially going
4 forward. Our industry standard -- essentially
5 industry standard is seven years of data is
6 maintained on the site. That seems to be sort of
7 an industry standard, which is applied south of
8 60. That being the case, when we have a water
9 licence which is typically renewed and going
10 forward, how long are we going to be expected,
11 Mr. Chair, to maintain the data, for example,
12 say, the activities which took place from 2000
13 to 2005, are we going to be expected to maintain
14 that until 2012? Or are we going to be expected
15 essentially to maintain that information going
16 forward essentially ad infinitum. That's the
17 question, Mr. Chair. Thank you.

18 THE CHAIR: Thank you. Aboriginal
19 Affairs?

20 MR. BINDA: Mr. Chair, that's a good
21 point raised by Mr. Wall. If you would look at
22 13(c), it says that the books and records should
23 be kept for a period of at least five years so
24 that's what our -- after the expiry or
25 cancellation of the licence. So if -- to us if
26 you're renewing, it's a new one every five years,

1 it should be based on that information.

2 THE CHAIR: Mr. Wall?

3 JIM WALL: Thank you, Mr. Chair.

4 That clarifies that point. That's good. And the
5 final question would be with regards to Section
6 13(a), Section 4: (as read)

7 The licensee must maintain accurate and
8 detailed books and records of the
9 concentration of a substance or substances
10 in the deposit solid or liquid that has the
11 effect of making the deposit waste.

12 Typically water licences will list, you know, or
13 prescribe a series of parameters, which may be
14 required to be -- to be tested during a specific
15 period of time. The problem -- and it's more an
16 operational issue with regards to the wastewater
17 side of things. If you're utilizing a
18 biochemical oxygen demand, for example, that's no
19 problem for us to do in locations like, you know,
20 Iqaluit, Cambridge Bay, Rankin Inlet where we
21 have jet service. You're basically able to get
22 the samples to a laboratory within a period of
23 time as described by the standard methods for the
24 analysis for water and wastewater or laboratory
25 protocols. The question is is there going to be
26 any consideration given to, I guess, acceptable

1 substitutions to certain parameters, such as the
2 BOD possibly from a chemical oxygen demand,
3 which 'A' can be done on site and that gets us
4 away from some of the logistical issues
5 associated with water sampling. Mr. Chair, we've
6 run into the same issue, and I believe the
7 inspector has run into similar issues basically
8 getting samples from a place like, say,
9 Qikiqtarjuaq or Coral Harbour back to a
10 centralized location where they can then be
11 further transported on to an approved laboratory.
12 That would be my only question. Is there any
13 consideration as this process moves forward to
14 basic substitutions of parameters, such as a COD
15 for a BOD.

16 THE CHAIR: Aboriginal Affairs?

17 MR. BINDA: Mr. Chair, specific
18 requirements for testing and everything, the
19 department believes that the Board will be
20 issuing guidelines to the proponents on what
21 should be collected and also if there's any
22 possibility of substitution, everything should
23 appear in those guidelines to the -- to the
24 various developers or proponents.

25 THE CHAIR: Thank you. Dionne?

26 MS. FILIATRAULT: Thank you, Mr. Chairman,

1 Dionne Filiatrault. I just wanted to clarify the
2 point given that Aboriginal Affairs has referred
3 to the guidelines. The guidelines that the Board
4 is proposing to issue are guidelines in relation
5 to an understanding of the regulations and
6 operational considerations of the regulations.
7 With respect to specific concentrations of
8 substances that would be evaluated for any
9 particular site, that is part of the
10 site-specific analysis that's done for any given
11 water licences, and those concentrations and
12 types of testing and methodologies that are done
13 would be done in the actual water licence on a
14 site specific, case-by-case evaluation. That
15 being said, as far as the issues that Mr. Wall
16 has raised with respect to testing and various
17 locations and the ability to actually do
18 appropriate testing given the northern and remote
19 nature of some of the communities that GN has to
20 deal with, the -- it's our expectation from the
21 Water Board's point of view that the new
22 municipal wastewater effluent regulations that
23 are in draft form that are being considered by
24 Environment Canada right now for the rest of
25 Canada, at some point in the future, I believe
26 it's five years, they are looking at establishing

1 concentrations of substances for municipalities,
2 and there will be specific northern
3 considerations to deal with these long-standing
4 issues that Mr. Wall has raised. So I hope that
5 provides some clarification.

6 THE CHAIR: Any more questions,
7 Mr. Wall?

8 JIM WALL: No, Mr. Chairman. That
9 actually provides a good understanding I think of
10 the process of how it's going to proceed. I'm
11 quite happy with that, thank you.

12 THE CHAIR: Thank you. Any questions
13 to the applicant by staff?

14 **Nunavut Water Board Staff Questions Aboriginal**
15 **Affairs and Northern Development Canada**

16 MS. FILIATRAULT: Yes, Mr. Chairman, thank
17 you. Dionne Filiatrault, I have one question,
18 and it relates to the references that Aboriginal
19 Affairs made in their presentations to ongoing
20 consultation following, I guess, the Board's
21 public process that there's still going to be
22 ongoing consultation. Can Aboriginal Affairs
23 confirm that any proposed or future changes to
24 sections that require the Board's concurrence or
25 consultation with the Board will be brought back
26 to the Board if that is raised -- if there's

1 issues raised in relation to those provisions
2 through the ongoing consultation?

3 THE CHAIR: Thank you. Aboriginal
4 Affairs?

5 MR. BINDA: Gilles Binda, yes,
6 Mr. Chair. If there are any amendments done to
7 what is currently done in the draft on those
8 sections that the Board must give its concurrence
9 they will go back to the Board for review again.

10 THE CHAIR: Thank you. Any more
11 questions from staff?

12 MS. FILIATRAULT: Just one clarification,
13 Mr. Chairman. In Mr. Binda's response, he
14 confirmed concurrence only. I just want to make
15 sure that it is consultation and concurrence
16 provisions.

17 THE CHAIR: Thank you. Aboriginal
18 Affairs?

19 MR. BINDA: Gilles Binda, yes,
20 Mr. Chair. We do confirm that it will be for
21 consultation sections and also the concurrence
22 sections.

23 THE CHAIR: Thank you. Questions to
24 the applicant by board members?

25 **Nunavut Water Board Questions Aboriginal Affairs**
26 **and Northern Development Canada**

1 MR. MRAZEK: Thank you, Mr. Chairman.
2 In the written submissions and in the hearing, we
3 have heard reference to the need for the guidance
4 documents. The Board would like -- appreciate
5 the hearing view of the resources and support
6 beliefs are required in support of the
7 implementation of the regulation once in force.
8 The Board is not asking Aboriginal Affairs at
9 this point the question now, but it has come to
10 the Board's attention that the Chamber of Mines
11 will not appear before this Board prior to the
12 closing of the meeting. As you may recall, prior
13 to the closing of the hearing, the Chamber of the
14 Mines will be providing a written reply to a
15 question posed to them at the hearing in Iqaluit.
16 The question is does Aboriginal Affairs have any
17 objection to the Board posing the above question
18 to the Chamber of Mines and requesting that they
19 include the reply in their written response which
20 is expected tomorrow? Thank you.
21 THE CHAIR: Thank you. Aboriginal
22 affairs?
23 MR. BINDA: Gilles Binda, no.
24 Aboriginal Affairs has no objections at all to
25 the Board making that request.
26 MR. MRAZEK: Thank you.

1 THE CHAIR: Catherine?
2 MS. EMRICK: Catherine Emrick, legal
3 counsel for the Water Board. Could I just
4 clarify -- I'm sorry, could I just clarify if the
5 question was read out?
6 MR. MRAZEK: Yes.
7 MS. EMRICK: Thank you.
8 THE CHAIR: Thank you. Five-minute
9 health break.
10 MS. FILIATRAULT: Mr. Chairman, the staff
11 has no further issues, housekeeping, or
12 otherwise.
13 THE CHAIR: Thank you. We will now
14 proceed with the closing remarks by the
15 applicant, Aboriginal Affairs.
16 MS. EMRICK: Just a point of
17 clarification, Mr. Chairman. I think closing
18 statements by Aboriginal Affairs, they will be
19 present tomorrow.
20 THE CHAIR: Thank you, thank you. The
21 Board would like to thank the parties, including
22 specially, Aboriginal Affairs and Northern
23 Development Canada; staff and legal counsel;
24 interpreters, John Ell and Ben Kogvik; court
25 reporter, Toni Rizzoli; Ryan Dempster with PIDO
26 for the audio system; and community members and

1 elders for their valued participation in this
2 hearing. Thanks also to the community of Rankin
3 Inlet for their hospitality and patience of the
4 Board.

5 This hearing will continue on Friday,
6 September 16th in Cambridge Bay. As we do not
7 have any other parties or people from the
8 community presenting, we're adjourning this
9 hearing. I would like to thank all of you that
10 have taken the time to travel to Rankin Inlet
11 today, especially Aboriginal Affairs and Northern
12 Development Canada. This hearing will now
13 adjourn and will continue on Friday, September
14 16th in Cambridge Bay. I would now like to ask
15 Lootie Toomassie to do the closing prayer.

16 (Closing Prayer)

17 (WHICH WAS ALL THE EVIDENCE TAKEN AT 11:49 AM)

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1 CERTIFICATE OF TRANSCRIPT:

2 I, Toni Rizzoli, certify that the foregoing pages
3 are a complete and accurate transcript of the
4 proceedings, taken down by me in shorthand and
5 transcribed from my shorthand notes to the best
6 of my skill and ability.

7 Dated at the City of Calgary, Province of
8 Alberta, this 20th day of September, 2011.

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Toni Rizzoli, CSR(A)

14 Official Court Reporter

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EXHIBITS ENTERED

EXHIBIT 1 - ELECTRONIC COPY OF NUNAVUT 14
WATER REGULATIONS (DRAFT) PRESENTATION
FROM THE NWB PUBLIC HEARINGS DATED
SEPTEMBER 2011 SUBMITTED BY ABORIGINAL
AFFAIRS AND NORTHERN DEVELOPMENT, FILE
110913 AANDC WATER REGULATIONS
PRESENTATION-ICHE.PPT.
EXHIBIT 2 - HARD COPY OF NUNAVUT WATER
REGULATIONS (DRAFT) PRESENTATION
FROM NWB PUBLIC MEETINGS DATED
SEPTEMBER 2011 SUBMITTED BY ABORIGINAL
AFFAIRS AND NORTHERN DEVELOPMENT.
EXHIBIT 2 - HARD COPY OF NUNAVUT WATER 14
REGULATIONS (DRAFT) PRESENTATION
FROM NWB PUBLIC MEETINGS DATED
SEPTEMBER 2011 SUBMITTED BY ABORIGINAL
AFFAIRS AND NORTHERN DEVELOPMENT.