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Conference Results

Between a Rock and a Hard Place: Aboriginal Communities and Mining

Ottawa, Ontario,
September 10-12, 1999

Co-sponsored by the Innu Nation
and MiningWatch Canada

Contents:

- *Workshop Proceedings*
- *Keynote Speech by Daniel Ashini, Chief Negotiator, Innu Nation*
- *Case Studies*
- *Workshop Agenda*
- *Participants List*

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FOREWORD

On September 10th to 12th, 1999, the Innu Nation and MiningWatch Canada co-sponsored a gathering of aboriginal people from communities across Canada to address four questions:

1. What have Aboriginal people learned in the last few years about ensuring a recognition of the relationship between aboriginal rights, jurisdiction and the assessment of mining projects?
2. What have Aboriginal communities learned about respecting and working with the complexities of community responses to development?
3. What are the consequences for the treaty process and impact-benefit agreements of the Innu and Inuit experience with INCO and Voisey's Bay?
4. What role should MiningWatch Canada play in supporting Aboriginal work in the future?

Seventy-three representatives from thirty-two Aboriginal groups and communities, along with representatives of MiningWatch Canada and the United Steelworkers of America attended the workshop.

This document summarizes the proceedings and findings of the event.

We are grateful to the following for providing financial assistance to the workshop:

1. The Canadian Environmental Defence Fund
2. The Walter and Duncan Gordon Charitable Foundation
3. The Richard and Jean Ivey Foundation
4. The Samuel and Saidye Bronfman Family Foundation
5. The Laidlaw Foundation

The findings and recommendations from this workshop will be used by MiningWatch Canada and the Innu Nation to build an agenda for reform of mining practice and policy, and will guide our work in the years to come.

Between a Rock and a Hard Place: Aboriginal Communities and Mining

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September 10-12, 1999

Innu Nation/MiningWatch Canada

Workshop Summary

"If there is a conflict between development and the environment we will choose the environment. I don't want to leave a legacy of destruction for our kids"[*]

"We are at the threshold of becoming a great society or destroying ourselves"

"Aboriginal people across Canada and around the world are witnessing an incredible change on their lands. Mining and related activities, forestry and hydroelectric developments are just a few of the changes that we have seen, but they are among the most destructive."

Introduction:

The relationship between mining operations and communities is a difficult one around the world. Mining and mineral exploration can bring opportunities for economic development, jobs and training. It can also bring environmental destruction, abrupt cultural change, and fundamental changes in the way people use the land.

In Canada, this relationship is a particularly important one for aboriginal communities, which are mostly situated in remote, mineral-rich areas. They face a variety of challenges arising from both the rapid expansion of the mining frontier into new areas and the ongoing toxic legacy of existing and abandoned mines on their lands. Many Aboriginal community members continue to pursue a traditional life-style based on hunting and fishing and/or maintain a spiritual connection to the land, so they are particularly vulnerable to the disruption of the eco-systems and their culture from large-scale mining.

For the Innu Nation this is a particularly pressing issue, and for MiningWatch Canada it is central to any discussion of mining and environmental, socio-economic, and cultural concerns. In response, the Innu Nation and MiningWatch Canada organised this conference, which brought together seventy-three representatives from thirty-two Aboriginal groups and communities, along with representatives of the United Steelworkers of America and MiningWatch Canada. This event represented the first major activity organised by MiningWatch and the first opportunity for Aboriginal representatives to meet outside of industry- and government-sponsored forums to share their experiences and develop a community-based perspective on mining. This document represents a summary of the workshop

[*] Quotes from conference participants are in boxes throughout the text. They are not attributed to individuals.

discussions, and complements the preliminary case studies that were presented by MiningWatch Canada at the workshop, summarising the experience of the Innu Nation (Voisey's Bay Nickel), £utsel K'e Dene First Nation (BHP Diamonds and exploration), Makivik Corporation (Falconbridge's Raglan project), Tahltan First Nation (Tahltan Advisory Group on Mining), Little Salmon Carmacks First Nation (BYG's Mt. Nansen mine), and Nishnawbi-Aski Nation (Ontario's Lands for Life land-use process).

Principal Themes Emerging from the Conference

1. Aboriginal and Treaty Rights

"We need treaties because we need land and resources to survive."

"The treaty process is becoming a way companies have to license themselves to mine and log."

"As a people, we have never recognised the jurisdictions that are now so interested in us and our land. We have never signed a treaty, nor ceded a single square inch of our land. In the past these things were not necessary as it was possible for Innu and non-Innu to share the land and its resources. Today we are forced to deal with governments, companies and individuals who are trying to push us aside in a great rush to claim our land as their own for industrial development."

The relationship between Aboriginal communities and mining must be understood in the context of the broader movement for self-government and recognition of Aboriginal rights, which has won a series of significant political and legal victories in the last three decades. Aboriginal peoples in Canada, be they First Nations, Inuit, or Métis, are the original inhabitants of the land and have never surrendered their fundamental rights to self-determination, nor, in many cases, ownership and control over their traditional lands. Many, but not all, of these peoples have signed treaties with the European colonial powers or the Canadian state on a nation-to-nation basis for peace and friendship, trade, or to share land and resources with the newcomers. In spite of the fact that Aboriginal rights are recognised within the Canadian constitution, their interpretation is still debated. Historically, these rights have either been ignored by the dominant white society or just interpreted very narrowly.

The question for Aboriginal communities is not whether they have the fundamental right to control what happens on their land, but how to exercise these rights in the face of the powerful coalition of corporations and governments eager to develop natural resources (including minerals) on Aboriginal lands.

"Treaties don't stop people from coming on our land to look for resources. What if we don't want a mine at all? The mining company says it's their right to make money. It's our right to make protests and blockades."

There are currently three main processes through which First Nations exercise their right to control mineral development, i.e. to refuse mining companies access to their land, or to participate in mineral exploration and exploitation on their own terms.

The first is the on-going process of negotiating comprehensive land claims or "modern treaties" and specific land claims between Inuit, First Nations, and Métis and the federal and provincial

governments. (Constitutionally, the federal government has primary responsibility for dealing with First Nations but the provincial governments have jurisdiction over natural resources). The comprehensive claims process defines the land-base owned by an Aboriginal group and how jurisdictional decision-making and control over resources between levels of government will be divided or co-managed. Land claims agreements often also include a significant cash settlement to compensate for the surrender or extinguishment of Aboriginal right and title over significant amounts of land and resources.

Land claims agreements are, however, a double-edged sword. Canadian governments are currently showing a renewed interest in signing treaties as a means of clarifying land ownership and thus opening up new lands to mineral development. In the words of one conference participant, governments look at the treaty-making process as a licence to give developers the go-ahead, but no matter who you are you have no right to destroy Mother Earth. You only have the right to manage and preserve, so there is a need to harmonise environmental protection with the need for resources and jobs. Furthermore, the rights granted to governments and corporations in treaties are often exploited to their fullest extent and beyond, while the rights granted to First Nations remain unfulfilled.

"The Environmental laws are not extensive enough to satisfy native people."

"With every mine we have to start the environmental assessment process all over again and if the minister changes we have to start all over in our relationship with the new minister. There should be a national focus and the gains made in one case should become policy so we don't have to start over with every new mine."

"The CEAA has to be re-structured to address aboriginal concerns or there needs to be a whole new Act just for Aboriginal people, to look at social, cultural and environmental impacts."

The second key process for exercising aboriginal rights *vis-a-vis* mining is through environmental assessments. In Canada, major projects which take place on public lands or receive funding from governments are required to undergo an environmental assessment. The corporation which is proposing the project must prepare an Environmental Impact Study to detail potential ecological and social impacts. These studies, along with input from affected groups, may be assessed by an independent panel in order to determine if, and under what conditions, a project may proceed.

The environmental assessment process has been reinforced by the Supreme Court's Delgamuukw decision which determined that two conditions must be met before resource extraction can take place on aboriginal, ceded, or crown land. These conditions are that the affected aboriginal parties must be supplied with sufficient information to assess the project and the government must address the concerns of affected aboriginal parties. Nevertheless, EAs are often poorly executed and fail to take affected communities into consideration.

In the case of the environmental assessment of the Voisey's Bay nickel mine, the Innu Nation was able to translate the high level of organisation of their communities and their links to allies across Canada into effective leverage with governments and the mining company, Inco. They educated and mobilised their community, launched court cases, and occupied the mine site in order enforce their right to control what happens on their land, slow the mine development process, and generate national media coverage. This resulted in:

1. direct participation in the selection of Environmental Assessment Panel members, thus ensuring that Innu concerns would be taken seriously by the panel;
2. the extension of the definition of 'environment' in the assessment beyond bio-physical conditions to include the social, economic, recreational, cultural, spiritual and aesthetic factors; and
3. funding ($80,000) from the mining company towards preparing the Innu contributions to the Environmental Assessment process.

The Innu contribution included:

1. a task force which informed the affected communities about mining issues in general as well as the specific plans for exploration and mine development in their area, and then asked the people what they thought about these mining developments and what direction they would like the Innu Nation to take;
2. a video which allowed community members to express how they felt about the mine and their way of life; and
3. hiring experts who not only evaluated and critiqued the research prepared by the company, but who had to prepare 10-minute radio spots explaining their report to the community, which were subsequently broadcast on the radio.

The resulting report of the Environmental Assessment Panel was considered by the Innu to be a valuable document. The Panel made 107 recommendations, to be met before the project went ahead. Unfortunately, the two most important of these, that a land claims agreement and an impact-benefits agreement be negotiated with the Innu and the Inuit prior to any further development have been ignored by both levels of government. The Innu and Inuit have launched a court case to protest the project approval.

Similarly, the Dené people of the Northwest Territories were able to take advantage of the intense interest in the BHP diamond mine (the first of its kind) and direct access to the Minister of Indian Affairs to put in place community-based monitoring processes designed to offset some of the weaknesses of the Environmental Assessment processes. They point out, however, that there is a need to avoid fighting these issues on a mine-by-mine basis and translate them into policy affecting all potential mining projects.

Overall, conference participants agreed that the Environmental Assessment process needs to be revamped as it doesn't meet the needs of Aboriginal communities and is primarily oriented toward determining how, not if, mine development should go ahead.

The third major mechanism for exercising Aboriginal rights is the negotiation of Impacts and Benefits Agreements. IBAs are addressed below in section 3 on Negotiating With Companies.

2. Community Involvement and Understanding

Mega-projects dis-organise and disrupt the life of a community. Scarce financial, leadership and technical resources get re-directed from dealing with other community problems into dealing with the mining company. Given the potentially huge social and environmental impacts of large-scale mining, the leaders and staff of aboriginal organisations generally try to learn as much as they can in a short time-frame and with limited financial or human resources in order to negotiate with governments and

mining corporations; it should, however, be recognised that this entails significant opportunity costs and many of the participants in the conference felt that they needed to do this work, but that it was thrust upon them and the would rather be dealing with other problems.

One of the key lessons identified in the case studies and through discussion at the conference, is that communities facing potential or actual mining projects need to develop and keep to their own agenda, and not simply react to the agenda set out by the mining company or government. To do this effectively requires both educating the community regarding the proposed project, and working out what it is the community values and wants. Community values and goals should not be limited to those related to the proposed mine, but need to be situated in the context of its broader social, cultural, economic and environmental development. This requires a great deal of time and resources to do well, and this should be recognised and paid for by project proponents. The Innu and £utsel K'e Dene case studies illustrate how a community can do this at the project development stage, while the Tahltan First Nation and Makivik Corporation have created community-based institutions capable of speaking with one voice in the on-going monitoring and negotiations around the operation of mines. Institutions such as the Tahltan Advisory Group on Mining also provide a mechanism for keeping the leadership informed while transferring some of the workload involved in monitoring and negotiating regarding day-to-day activity at the mines off of their shoulders and sharing it with other community members and officials.

The new patterns of work, particularly in sites where workers are separated from their families while working at the mine (often in two-week on/two-week off shifts), can create problems in family life and prevent mine workers from fulfilling their traditional obligations to the community. Some communities and unions have been able to negotiate time off for Aboriginal workers to participate in hunting and other traditional cultural activities. The Makivik corporation is undertaking a study on the impact of new work patterns and the results of this should be available next year.

> *"Our people say it's not 2 and 2, it's 3 and 1. When the worker comes back it takes one whole week to get integrated back into the community and his responsibilities. The first week back he is emotionally detached. This is where volatile situations arise."*

The work environment at the mines is often hostile to women's direct participation due to living conditions in the work camps and problems finding adequate childcare. As men from the community take jobs at the mine, responsibility for community leadership and involvement in the traditional economy generally falls to the women of the community, which can increase their workload and lead to tensions when workers return from the mine-site.

The wages paid by mining companies and greater participation in the cash economy can create or exacerbate social problems such as alcoholism within communities. The youth and the elders of Aboriginal communities may have different perspectives on how the traditional economy and way of life are changing under the impact of these mega-projects. Concerns were also expressed regarding the loss of Aboriginal languages and culture in a work setting where they are not valued.

Mineral development, and the economic benefits and costs that come with it, inevitably create conflict among community members. It is important to develop means of mediating conflict and building consensus within the community. Rumours often run rampant, creating distrust, while the possibility for some community members of getting jobs or starting businesses can create inequalities within the community. Companies may well attempt to divide the community or exacerbate existing divisions in

order to overcome resistance and limit the demands being made of them. Open access to information by all community members and clear mechanisms for communication between the community and its leadership are vital to ensure both the accountability of community leaders and the faith of community members in their leadership.

3. Negotiating with Companies

"Don't turn your back on any process they start, even if it's bullshit, because you have to engage to have a voice."

"What is the advantage of staying in the process? Every time someone comes to see us they go away and say that was consent."

There is a lot of talk about 'partnerships' in government and corporate sectors these days. Yet for most communities, their experience with mining mega-projects more closely resembles a home invasion than a marriage or true partnership.

"They come in and start doing their project before consulting so we have to push them away. We have to make the machines and people leave so negotiations can start. We are doing two blockades a year and the people are bored with it but they have total confidence that they own the land."

The key issue in negotiating with companies is to overcome the feeling that the community is powerless against these large corporations. Aboriginal communities in Canada have used a combination of strategic protest (demonstrations, blockades and occupations), legal proceedings, and processes of community empowerment and mobilisation which convinces the company that the community is informed and united with respect to the proposed mining project in order to force mining companies to deal seriously and fairly with the community leadership. Impact/Benefit Agreements (IBAs) are a means of integrating community concerns and participation into the mine development and closure processes so as to ensure that the communities closest to the mine benefit from it. IBAs are contracts signed by the company, community representatives and sometimes governments to specify under what social, economic and environmental conditions the mine will be allowed to operate and establish mechanisms and institutions for monitoring and enforcing these conditions.

IBAs commonly include clauses dealing the hiring and training of community members to work in the mine or provide services to the mining company, cash compensation, and community-based environmental monitoring programs. While the Innu have not yet negotiated an IBA with Inco, they have forced the company to pay for an Innu Environmental Monitor who is empowered to inspect all mining sites in Labrador (not just Inco's) and they have created a Technical Liaison Committee for dealing with on-the-ground issues. They have also insisted upon a spot for Innu representatives on all government inspection helicopters.

One of the challenges which arises after an IBA is negotiated is to create the mechanisms necessary to enforce it. A commitment to hire community members can be meaningless if the employment criteria do not recognise the local situation, e.g. insisting on formal educational requirements rather than training community members to do the jobs, and racial discrimination is a persistent problem. And while employment brings many benefits, it can also result in new social problems. The Inuit of

northern Québec have established an IBA with the Falconbridge corporation which attempts to address some of these problems.

"We have had an IBA for three years and not one benefit has been implemented so far. All we have is acid mine drainage."

"We got our IBAs so we thought it would be good but the implementation is constantly a problem. We had a promise of jobs but now the company says the people are not educated enough to take the jobs."

"The carrots companies dangle are jobs and contracts — but they don't offer a share of the profits of the project. The Innu want royalty sharing."

"We need an inventory of what benefits have been included in IBAs, a checklist for what people should get, or a model."

Community-based environmental monitoring programs are also important given the secrecy and lack of enforcement which is often associated with corporate or government monitoring programs. An independent agency was created by the £utsel K'e Dene to monitor environmental and health impacts of the BHP-owned Ekati diamond mine in the Northwest Territories. It complements the 'scientific' data being gathered by the company and incorporates traditional ecological and health knowledge into a community-base monitoring process. Integrating traditional knowledge can also increase the community's interest and confidence in environmental assessment and monitoring programs.

A concern was expressed at the conference that in focussing only on the negotiation of Impact/Benefit Agreements, Aboriginal communities risk getting sucked into the system and losing sight of the big picture. Companies are willing to provide jobs and training as a form of individualised economic benefit to community members, but this is problematic for many First Nations. It assumes that entry into an economy based on wage employment — in what tend to be particularly brutal, alienating and toxic jobs — is a necessity. It also assumes that economic benefits should be provided to individuals rather than to the community as a whole. Aboriginal communities should have the right and the ability to say no to mineral development when they so choose, or to receive a share of the enormous profits which are made from the resources located in their land to use as they see fit.

"For 150 years we have been pushed around. We are in a very small area now and we want to make a resort but a mining company wants to mine the mountains. We need information so we can stop the mine."

4. Building Community Capacity

Building community capacity is vital if Aboriginal communities are to address the complex and highly technical challenges of modern large-scale mining. Capacity building needs to be both political/cultural (as discussed above in Section 2: Community Education and Involvement) and technical. Stress, excessive work-loads and burn-out are problems for many Aboriginal governments. Aboriginal resource officers, leaders, and community members need training, technical support, and sufficient funds to support these activities if communities are to effectively monitor and co-manage mining operations, or prevent mining operations where their overall impact is deemed to be unacceptable by the community.

"When experts come in to do studies they should stay and train local people so knowledge will grow over time in a community."

Aboriginal communities can't rely wholly on corporations or governments to assist with this process of capacity-building. An important support role was identified for MiningWatch Canada and its member groups to assist with the following:

1. Establishing and maintaining a network of organisations and communities dealing with mining;
2. Publishing a regular newsletter and tracking the activities of mining companies;
3. Developing, maintaining and facilitating community access to a data-base of 'friendly' experts, of communities affected by specific mining companies, and of model/sample mechanisms for dealing with common problems such as an IBA checklist, the historic resource evaluation developed by the Innu to control prospecting on their land, the Tahltan 'target bid' process for bidding on construction contracts, or language from union collective agreements;
4. Develop and distribute educational kits which can be used to quickly bring communities and their leadership 'up to speed' on selected topics e.g. "Mining 101," which explains the mine development process, "Acid Mine Drainage," etc., or "Environmental Assessment 101;"
5. Organise future events. Identifying and working with outside allies can be very useful in order to access expertise, generate public awareness through media coverage, and improve a community's bargaining position with governments and corporations. Nevertheless, Aboriginal communities should be aware of the agendas of these groups. Environmental groups and unions may have different priorities and/or may not be entirely aware or respectful of Aboriginal rights and the goals of Aboriginal communities. MiningWatch Canada may be able to provide a forum for these issues to be openly discussed between the Aboriginal, labour, environmental, social justice and development communities.

5. Monitoring and enforcement

The federal and provincial governments in Canada have been steadily withdrawing from their rôle in environmental monitoring and enforcement in favour of corporate self-regulation. This has been particularly evident in the mining field and is a matter of great concern. Aboriginal communities have attempted to fill the resulting vacuum, and enforce the recognition of aboriginal rights, by signing contracts and treaties with corporations and governments. Experience has shown, however, that communities cannot necessarily trust their 'partners' to fulfill their obligations. Communities need independent means of monitoring compliance and enforcing compliance with any agreements that are made. The community-based monitoring program at the Ekati mine, Advisory Groups which meet regularly with the company (Tahltan First Nation), joint committees (Makivik/Raglan mine) and the hiring of monitoring and enforcement officers who report to and act on behalf of the community as in the Innu case.

In terms of the economic benefits for the community agreed to in IBAs, companies often place educational or training requirements on jobs so that, while they are theoretically available to community members, there are few within the community who meet the prerequisites for the position. The hiring requirements and training opportunities should be explicitly addressed in IBAs.

Another challenge facing communities is what happens to agreements signed with one company when, as often happens in the mining field, it goes bankrupt or is sold to another company. The Tahltan

stress that any agreement that they sign with a company dealing with employment equity, information-sharing, etc. should be considered as part of the assets when the company is sold; the purchaser is, in effect, purchasing community goodwill in respecting existing agreements. In the case of bankrupt companies, communities are attempting to gain access to the financial bonds posted by the company in order to clean-up the mine site.

Enforcing contracts through the court system can be a very expensive and time-consuming process, so it is necessary to include enforcement mechanisms in agreements.

6. The Toxic Legacy of Mining: abandoned mines and clean-up

"In our community we are identifying the abandoned mines now for the sake of our future generations, so that they will know where the pollution is and where not to drink the water."

"Mines come and go but a pure nature can sustain us and our future generations."

Mining, processing and smelting metals releases vast amounts of contaminants into the environment. The dumping of thousands of tons of waste rock; the release of toxic heavy metals and acid into rivers and streams; contamination of the air with toxins such as lead and the generation of acid rain from smelting operations; spills of mercury, arsenic and cyanide from leaching operations; leaks and breaches in tailings pond dams; the removal of vegetation and soil for exploration or digging; disruptions to habitat or migratory routes on which wildlife depend — these are only some of the negative environmental impacts associated with mineral development. Some of these problems, such as Acid Mine Drainage, can persist for centuries after the mine is officially closed. The adoption and rigorous application of the most advanced environmental management systems and technologies can help reduce, but not eliminate, these impacts.

Children are particularly vulnerable to many of these toxins. There are also indications that community members are developing allergies or sensitivities to their traditional food sources as a result of environmental contaminants.

Good mine closure and environmental remediation plans are important. They should form a part of the environmental impact statements prepared by the company and financial bonds should be posted to cover these costs in the event that the company goes bankrupt. Yet even where mine-sites have been supposedly 'restored' and vegetation planted, Aboriginal community members have been told that they shouldn't drink the water or eat the fish and wildlife from the area due to ongoing problems of contamination.

There are currently thousands of abandoned mines in Canada, leaking toxics into the air, earth and water. The conference participants expressed a strong interest in participating in a national campaign to clean up these sites.

Conclusion:

It is estimated that 60% of all mining activity in Canada takes place on Aboriginal lands. This does not include areas where Native people were kicked off their land before the mining company arrived, or where traditional land use is not officially recognised. In many cases Aboriginal peoples have been the hardest hit by the social and environmental impacts of mining activities, from exploration through mine development and operation to closure and abandonment. While land claims agreements,

environmental assessments, and impact/benefit agreements provide some mechanisms to deal with these problems, they are far from adequate, and MiningWatch Canada could play an important rôle in supporting Aboriginal communities and organisations trying to deal with mining issues. The experiences of Aboriginal groups around the country are very different, according to their historical and legal context, but the fundamental importance of the land, water, and natural resources are shared. The workshop was a good start; there is much we need to learn from each other.

The last word belongs to Daniel Ashini, Chief Negotiator for the Innu Nation:
"I have a lot of experience in these matters, but I wish it weren't so. I wish I had never heard of these things… I wish I could use my time to try to solve the problems of my community instead of always fighting these developments. This takes up a lot of my time, time that I could be spending with my family and friends in the community or in the country."

– prepared by Keith Stewart and Irene Sosa, with Catherine Coumans and Jamie Kneen

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Opening Remarks: Daniel Ashini, Innu Nation

It's quite an honour and privilege to be here today on behalf of the Innu Nation. My name is Daniel Ashini and I live in a community called Sheshatshit, with an Innu population of approximately 1100 to 1200 Innu people, and it's one of the two Innu communities in Labrador which the Innu Nation represents in the political socio-economic arena.

Like I said last night, I'd like to thank you for coming to this gathering, I know many people travelled a great distance to be here today, and many of us sacrificed our time away from home, from family and from friends to be here this weekend. I think you all need to be commended for that effort.

From the introductions we heard today, there's a wide variety of people here, from the grass roots level to political leaders from aboriginal communities to technical people. I'm confident that we can share a lot of experiences in many aspects, many stages of the mining industry that we all have been involved in. I look forward to the next two days of our workshop here.

I myself will be talking to you today about the experiences me and my people have had with industrial development on our land, how we have fought against these developments, and what we have learned from these experiences.

Before I go any further, I would like to thank all the hard work that MiningWatch Canada did to help us put on this workshop.

With few exceptions, Aboriginal people across Canada and around the world are witnessing an incredible change on their lands. Mining and related activities, forestry and hydroelectric developments are just a few of the changes that we have seen, but they are among the most destructive.

It may seem incredible to you, but many Innu people remember a time when we had nothing to do with mining or hydroelectric companies, and once they had settled us in the communities of Sheshashit and Utshimassits, or Davis Inlet, the governments did everything they could to pretend we didn't exist. This was the case only 15 or 20 years ago in my community, and only 6 or 7 years ago in Utshimassits.

Munik, who just spoke to you, is one of these people who remember the Innu as a sovereign people with their own sustainable economy based on hunting and fishing, and gathering. Like Munik, my parents were born in the country, and they lived there for most of their lives, just as their ancestors had for thousands of years. I was part of the first generation to be born in the community and grow up there. I learned the hard way that if you take people away from a life they know and force them into new ways of living, you will help to destroy them as a people. Sheshatshit and Utshimassits were built starting around 1968.

As a people, we have never recognised the jurisdictions that are now so interested in us and our land. We have never signed a treaty, nor ceded a single square inch of our land. In the past these things were not necessary as it was possible for Innu and non-Innu to share the land and its resources. Today we are forced to deal with governments, companies and individuals who are trying to push us aside in a great rush to claim our land as their own for industrial development.

For better or worse, I have a lot of experience in dealing with industrial developments in Ntessinan, our land. I have been arrested and sent to jail several times for protesting the military flight training that takes place on our land. I was also faced with arrest when protesting the proposed Voisey's Bay Nickel mine in a 16 day stand off against 50 or so heavily armed RCMP members. As I'm sure you all know very well, dealing with industrial developments such as mines involves much more than protesting. It also involves participating in environmental assessments, attending co-management meetings, and having big arguments with the governments over things like the definition of consultation.

I have a lot of experience in these matters, but I wish it weren't so. I wish I had never heard of these things that I am going to talk to you about. I wish I could use my time to try to solve the problems of my community instead of always fighting these developments. This takes up a lot of my time, time that I could be spending with my family and friends in the community or in the country.

Our first experience with industrial development was with the Churchill Falls power project. We were never consulted or compensated for this use of our land — in fact, we were never even told that below the dam the Churchill River would be reduced to a trickle, that Churchill Falls would cease to exist, and that our canoes, camps, trap lines, hunting grounds and our ancestors burial sites would be drowned forever by the Smallwood Reservoir. I visited a site at the edge of the reservoir with two archaeologists and my uncle, and saw that the reservoir had eroded a hillside and uncovered some Innu graves. I had personally heard of these stories from people in our communities before but they never did really sink in until this direct experience. It was very sad to see that those graves had been destroyed, and completely unforgivable in my opinion.

From our experience with the Churchill Falls power project, we learned that if the government is allowed to do whatever it wants, we would get screwed. We learned that we had to raise our voices effectively in order to be heard. Unfortunately, we find that many government bureaucrats are poor listeners and it has taken them about 30 years to understand what we thought was a simple message: you have to ask us first if you want to use our land. As one of the many people who continuously delivers this message, I can say that while it requires a tremendous amount of sacrifice, delivering this message has been a great experience. It is very encouraging and positive to see the conviction our people have proudly and bravely shown in protecting our land. Seeing the community empowerment that results from this has given me a great deal of strength as a leader.

We faced many more developments on our land over the years, including the proposed Brinco Uranium mine near Makkovik which thankfully did not go into operation for economic reasons, forestry, hunting and fishing camps and Iron ore mining in Wabush-Labrador City and Schefferville.

The next major industrial development came in the mid 1980s in the form of a proposed NATO base, which would have included military low level flying, live ammunition and bombing ranges. Low level flying is when NATO fighter jets are flown at almost supersonic speeds close to the ground, training to avoid radar detection. Officially the jets are supposed to fly no lower than 100 metres above the ground,

but many of our people have seen the jets flying just above the tree tops, skimming the lakes and the rivers that our people depend on for their subsistence.

These jets leave a trail of pollution and a noise so loud and sudden that it has caused people to tip over in their canoes, it has frightened children so badly that they have panicked, run away and got lost. There is a lot of confusion after the jets fly over and things often get knocked off the stove by people panicking, which can give children serious burns. There is documented evidence in Germany that low level flying causes nightmares and other anxiety attacks in children, and they can't sleep properly. There have been no studies done on the effects of low level flying on the Innu, and I don't think I have to tell you what the effects of a live bombing range would be on our land and our people.

We fought low level flying in a variety of ways: we protested at the Canadian Forces Base in Goose Bay, at the Department of National Defence headquarters here in Ottawa and at the Volkel Air Force Base in Holland, we used the media to publicise our situation, and we made the government conduct an environmental assessment of the proposed NATO base. We found protesting and using the media to be very effective in getting our voices heard. Unfortunately, the environmental assessment was not as effective. The problem there was that the government controlled the process, and was being manipulated with interference by the Department of National Defence. To complicate matters, the project was scaled down from a full NATO base, when NATO decided they didn't need a base, to military low level flight training only. We found the assessment to be biased in favour of the Department of National Defence. We eventually boycotted the environmental assessment because of this and other reasons.

Soon after our experience with low level flying, we faced the extension of a logging road right next to our community. With construction of the road already underway we presented the workers with an eviction notice and set up our tents there to ensure that once they left they did not return. We had a meeting with Provincial officials, but that meeting didn't succeed in resolving anything. After that we demanded a meeting with then Premier Clyde Wells. We met with Clyde Wells and were successful in preventing the road from being extended.

Our next big struggle came in 1994, when the Voisey's Bay Nickel deposit was discovered by two prospectors looking for diamonds. When we realised that the exploration company and governments were ignoring our rights once again, we repeated our strategy of protesting that we learned from military low level flying. The protests were effective and made the company and government realise that we were serious when we said there would be no mine without our consent.

I'd like to briefly describe the protests, because I was involved in both protests. The first one occurred shortly after a mineral exploration camp had been established and drilling had already started at Voisey's Bay. After intense community meetings in Utshimassits, it was decided that we had to re-assert governance over our land, and give a strong message to the mining industry and to the governments. Shortly after that meeting a large convoy of snowmobiles left this tiny community in the coldest days of winter, in February of 1995. Men, women and children travelled together. Some people experienced mechanical problems along the way, and without any complaint did their repairs in bare hands in this very cold weather, in temperatures that went as low as –40 to –50.

We arrived at Voisey's Bay and handed the camp manager an eviction notice. We then waited awhile for a response from the company. They informed us that they had permits for the work they were doing, permits from a government who'd never been provided jurisdiction by the rightful owners, the Innu and Inuit, to provide these permits. We then began disrupting the drilling activity they were conducting. This took place all day, with the men, women and children working together. Drilling was disrupted and

stopped while the company officials were confused and tried to figure out what to do next. Over the next few days we set up camps, heated only by wood stoves, right next to the exploration camp, and watched while RCMP members in great numbers were flown in many helicopter trips from Goose Bay, Labrador.

After a number of protests we had at the exploration camp and a number of incidents between our people and the RCMP members, Diamond Field Resources, who had provided the contract for this exploration, intervened, and called for a meeting between Innu Nation officials, Band Council officials and board members of Diamond Field Resources. This happened after 16 days of our people spending their time at Voisey's Bay, protecting their interest, protecting their rights, and trying to give a message to the company that we were serious. The meeting that had been called by Diamond Field Resources I believe was the first step in any exploration that should have taken place with the Innu before any exploration activity commenced. Unfortunately, the company and governments ignored the Innu and the Innu were forced to take action. This was the start of Impact Benefit negotiations with the company directly with the Innu Nation.

The second protest took place in the summer of 1997, and this was a joint action with the Inuit of Labrador. It took place again at Voisey's Bay. People travelled from Sheshatshit by bush plane, and people from Davis Inlet travelled by boat to Nain, or directly to Anaktalak Bay. This action was taken jointly by the Innu and Inuit because the company had been given permits to proceed with the construction of a temporary road from the coast to where the mineral discovery had been made, and the construction of a temporary airstrip, so the company could get involved in what they called advanced exploration, underground exploration. The company had been provided with the permits, even though there was an environmental assessment which was supposed to take place. We argued that the company was trying to split the project, that the road and airstrip that they were going to build were essentially going to be used for the mine once the mining got started, and the construction should not be allowed to take place.

We proceeded with a court case which unfortunately we lost. We appealed, and while the appeal was taking place the company had already started with the construction of the road. Therefore the Innu and the Inuit decided to stop the work that was being undertaken by the company while we were waiting for a response from the court of appeal. While we were at Anaktalak Bay, where the Voisey's Bay camp was, we heard through communication with our legal council that we succeeded in the court of appeal. I'll talk a little more about this in a few minutes. Anyway, these are a couple protests that many of us were involved in, including Munik, staff people from the Innu Nation and many people from both communities.

We made a mistake in the first protest, I believe. In an effort to prevent the RCMP from coming in and arresting us, we blocked the frozen lake used as a runway. This is what the people of Utshimassits did when they kicked the judge and RCMP out of their community, and it worked very effectively for them. However, this time the RCMP came in by helicopter, and as we all know helicopters can land almost anywhere. Unfortunately, reporters could not come in to report on the protest because airplanes could not land, and we heard that the helicopter company was prevented from bringing reporters in by the exploration companies. Apparently, Archean Resources and Diamond Field Resources were threatening to terminate their contracts with the helicopter companies if reporters were brought in. We did not get a lot of media coverage from this protest, and this meant that it wasn't as effective as it could have been.

At this point I'd like to say that we do not protest just because we like protesting, or for the sake of protesting. We do it when we feel that we have run out of other options, and we feel that there is no other way to get people or governments to listen to us.

In 1995 we put together a task force on mining, and held community consultations in both communities to hear what our people had to say about mining and the mineral exploration companies that were taking over our land. The task force came back to us with several key recommendations, including:

- Land rights should be resolved before any mining goes ahead.
- The company is moving too rapidly and should move at a pace that allows for proper consultation and planning. After all, the minerals aren't going anywhere.
- The Innu Nation should proceed to negotiate an impact benefit agreement, but with extreme caution given the level of opposition and concern within the communities.
- The company should be prepared to go beyond the requirements of the governments' environmental assessment process. It should accept a broad definition of environmental impacts, one that examines past, present and future implications for both natural and human environments.
- The company should be committed to an ongoing process of defining a relationship of partnership with the Innu Nation, one which allows for a meaningful, not just token, role for Innu in decision making regarding a mining development at Voisey's Bay.
- The Innu Nation should continue to view protests as a viable and potential strategy to address the issue of mining developments on Innu land.

The report is called Between a Rock and a Hard Place, and I think many of you have been provided with copies to take back to your communities. The report has been very useful, because it has given us a very clear mandate on how to deal with the company and governments. For example, when we say something like "the communities will not accept this project without a land rights agreement and an IBA," they know we are telling the truth because it can be backed up by this document.

As I said before, when Voisey's Bay Nickel Company (VBNC) tried to build a temporary airstrip and a road at the site, we used the courts to try and stop them. In our opinion this infrastructure was a part of the project and its construction without undergoing environmental assessment would constitute splitting of the project. We were opposed to this because we were trying to get a comprehensive environmental assessment. The governments didn't seem to share our concerns and issued permits to allow VBNC to go ahead with the construction.

We lost our first case but won at the Supreme Court of Newfoundland Court of Appeal, and were successful in stopping the construction this way. In their ruling, Judges Marshall, Steel and Green had some heartening words for us. They said that:

> "In this province, as elsewhere, society has been left to grapple with the deleterious, and at times tragic, effects of unbridled development on the health and security of its residents and upon the environment. The recent experience of the devastation of the fishery through over-exploitation bears stark witness to the consequences of the impact which the pace of humankind's activities, especially those driven by economic forces, can have.
>
> As important as are environmental considerations, sight cannot be lost of the economic and social benefits that flow from the production of these resources... Nevertheless, they cannot be allowed to control the agenda without regard to competing environmental interests."

After the court ruling, we negotiated a memorandum of understanding with the Labrador Inuit Association, the Federal Government and the Provincial Government. This document was key in the positive outcome of the environmental assessment. It allowed us to participate in the selection of panel members, and to set the guidelines the panel would have to follow. I believe that the MOU was a key first

step in getting the recommendations that land rights agreements and IBAs would have to be settled before the project could proceed. But perhaps most importantly, it was probably the first MOU in Canada between aboriginal groups and the governments where no treaty exists. In signing the MOU, the governments essentially said that they recognised the authority of the Innu government, and we were given the same authority over the process as they had.

Funding was a serious issue for us in our participation in the environmental assessment. Our original plan was to conduct a concurrent assessment, one that would use Innu traditional knowledge to predict the impacts of the proposed mine. Unfortunately, we didn't have enough money to carry this out. We did receive $80,000 in intervenor funding from the Canadian Environmental Assessment Agency to pay for experts to review VBNC's studies and the Environmental Impact Statement, and to make presentations at the public hearings. Unfortunately this fell well short of what we required. While we worked closely with the Labrador Inuit Association to make sure we weren't doing the same work twice, we did have to prioritise a few issues for the environmental assessment which meant that there were technical issues we simply could not address. If we go through an environmental assessment process for the proposed Lower Churchill project, we will have to ensure that we have adequate funding to participate fully.

I think that our participation in the public hearings was very effective, and the second key step in getting the recommendations on land rights agreements and IBAs. People were very clear in getting their message across to the panel, and they spoke from their hearts. Because of the community consultation, visits to the site and community meetings, people were clear on which issues were important to put forward to the panel.

People were not ashamed to talk about the problems that exist in both communities and how they have suffered from them. Even though it is difficult to talk about these things, our people have done a lot of hard work to make public the social and cultural misery that we live in. It is heart wrenching to talk about alcoholism, physical and sexual abuse, suicides and how children sniff gas every night, but we felt it was necessary to let people know what is happening in our communities in order to begin addressing our problems.

The panel members were very moved when people told them their life stories and were impressed by people's knowledge of the land. The fact that public hearings were held in the communities helped the panel to understand our living conditions and to put what we were saying into its proper context. This way the panel was able to see what our communities were like and were able to see what people were talking about when they said they were afraid of the social and cultural impacts of the mine, and how these impacts could very well push many people over the edge.

The panel recommended that the mine could go ahead, but not without land rights negotiations being concluded and IBAs being settled. There were also 105 other recommendations, but the key recommendations as far as the Innu were concerned were the ones on the conclusion of our land rights agreement and IBAs. They would have meant that the Innu would be able to consent to the mine through the signing of these agreements, that the Innu Nation would be a recognised government that would have meaningful input into many aspects of the mine, and that the people would have been able to negotiate fair compensation for what they were giving up.

Unfortunately, many Innu are forgetting about the importance of these recommendations in their rush to embrace new business opportunities. Many Innu are being corrupted by non-Innu who are encouraging them to form joint venture business partnerships to get contracts at the mine. These individuals have been blinded by greed, self-interest and the promise of money. This creates a serious conflict for the Innu

Nation and the Band Councils because it pits the private businessmen against our community owned development corporation, which is called Innu Economic Development. Needless to say, VBNC and the governments are happy to encourage these private businessmen.

So what we have here is a situation where before the mine has even opened it has created a serious conflict in our communities. We have friends and relatives fighting amongst themselves, and the community spirit that the Band Councils and Innu Nation worked so hard at achieving is being lost.

If the businessmen are successful in their effort to undermine community efforts, I fear we will have dealt our culture a very serious blow. The collectivity of the Innu people and our tradition of sharing will be lost, and this move will play into the hands of the government and individualism. We will be one step closer to assimilation. We can only hope that common sense will prevail.

In any case, both governments rejected the recommendations on land rights and IBAs in their responses to the panel report. They said that they could not give the Innu a veto over the mine, they could not legally compel the company to conclude an IBA with us, and that the mine could proceed without these agreements. The governments offered no replacement to these recommendations that would have helped mitigate social and cultural impacts of the project other than an assurance that they would continue to negotiate, and that the company should continue to negotiate an IBA with us. We are in the process of taking the governments to court over their decision to allow the project to proceed without land rights or IBAs being in place.

We feel very strongly that we have the right to consent to the mine. We have the right to say no and the right to say yes. If we say yes, there is a responsibility that comes with that which is a very huge burden. This is the responsibility of recognising that a part of our land will be destroyed forever and we must make sure that it isn't destroyed needlessly. If we say no to the mine, and all the opportunities that come with it, we need to understand what we're working towards as a community for our future and our children's future and not just know what we're working against.

As a nation, we now find ourselves with the prospect of having an operating mine on our land in the near future. If this is to be the case, then we are entering into an area of great uncertainty. We have little faith in the predictions of the company as to what will happen to the land and to our communities once the mine opens. I am looking forward to today's and tomorrow's discussions to hear about your own experiences in dealing with mining companies, and how your communities have dealt with the impacts they bring. By sharing with us your stories you will make us all stronger in dealing with the mining industry. I'll also be happy to answer any questions you might have about the Innu Nation's experience with mining to date.

Tshinishkumiten, thank you very much.

Aboriginal Peoples and Mining in Canada: Six Case Studies

Prepared for MiningWatch Canada
by Christine Cleghorn

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Executive Summary

The six case studies presented in this document provide an overview of how aboriginal communities have come to terms with mining and mineral exploration in their territories. Each case study includes a brief summary of the project or problem, followed by a description of how it is being addressed, and then concludes with lessons learned. Case studies about the Innu Nation, £utsel K'e Dene First Nation, Makivik Corporation, Tahltan First Nation, Little Salmon Carmacks First Nation, and the Nishnawbi-Aski Nation are presented.

Lessons learned range from pointers on establishing harmonized environmental assessment processes to impact and benefit agreements to making the time and resource demands of dealing with the mineral industry manageable for small aboriginal governments. While the cases presented are not without their problems, much can be learned from their examples.

Introduction

It has been recognized that mines bring rapid change to communities. For aboriginal communities, mining and mineral exploration can bring opportunities for economic development, jobs and training. On the other hand, it can also bring environmental degradation, change the way people use the land, and make cultural change when people work in wage employment at the mine and are away from their families and the land for long periods of time.

The following seven case studies show how aboriginal communities from across Canada have responded and reacted to the mining industry in their territory. While each community is unique, there are broad lessons which other communities may find useful and helpful to apply in their own situation.

The case studies were developed with (in some cases written by) staff and community members of each community. Each case study presents their perspective about how they have come to terms with the maze of issues related to mining and mineral exploration. The cases are presented in the spirit of learning, so that other aboriginal communities can take what they need from each case study, learn from each others' mistakes and strengths, and apply what is useful in their own situation.

Case Study #1:

The Innu Nation and Inco's Voisey's Bay Nickel Mine/Mill

Nineteen-ninety-four was a year that brought dramatic change to the Labrador landscape, and to the lives of the 1500 Innu people there. That year, two diamond-seeking geologists were heading back to the base camp after a day's work when they stumbled across a rusty outcrop on a small hill just north of Voisey's Bay. What they had tripped over turned out to be one of the world's richest nickel, copper and cobalt finds, located only 79 km northwest of the Innu community of Utshimassits and in the heart of Innu territory. The find was on land shared by Inuit and Innu people, and was located only 35 km from the Inuit community of Nain.

The massive sulphide deposit was discovered by the Newfoundland prospecting company Archean Resources Limited while under contract to Diamond Fields Resources (DFR) of Vancouver, a penny stock company partly owned by Robert Friedland. As the enormous size of the deposit came clear, DFR then found itself in a major bidding war over the rights to mine the ores. Toronto-based Inco Ltd., finally won the bidding over its rival Falconbridge, with a $4.3 billion price tag for the deposit in 1996. Inco took over the Voisey's Bay Nickel Company Limited (VBNC) of St. John's, Newfoundland, as a wholly owned subsidiary and mandated it to continue exploration of the massive mineral deposit and to develop and manage a mine and mill operation at the site.

VBNC currently estimates that 150 million tonnes of mineral resource will be developed as part of the project. Based on present knowledge of mineral resources at Voisey's Bay, three primary mineralized areas will be developed: the Ovoid, the Eastern Deeps, and the Western Extension, now called the Reid Brooke Zone. These zones have different characteristics and require different mining methods. The Ovoid deposit is located near the surface which allows it to be mined as an open pit. Eastern Deeps and the Western Extension however, lie well below the surface thus requiring the use of underground mining methods.

The ore to be extracted from the open pit and underground mines will be processed into concentrates at a mill located at Voisey's Bay. The main components of the project are 50 km of gravel roads, a port facility, an airstrip, an accommodation complex, sewage treatment facility, diesel generating plant, mill, warehouses and office facilities. Mining facilities will include mine rock and overburden storage areas, and a tailings disposal area. The mill was originally designed to operate at a rate of 20,000 tonnes per day, although the present plan calls for a 6,000 tpd mill, to be expanded at a later date. The open pit will be approximately 500 metres wide, 1 km long, and 125 metres deep. Construction and other pre-production activities will generate 7,400 person years of employment. The open pit phase will generate about $1.1 billion in earned incomes and approximately 19,000 person years of employment. During the underground mining phase, it is estimated that 53,000 person-years of employment will be created and about $2.7 billion of income generated (VBNC EIS, 1997).

The find also kicked off an exploration boom that left its stamp on Innu territory in the form of base camps, cut lines, and fuel caches. In 1995 alone more than 250,000 claims were staked, covering nearly half the vast Innu territory. Today that boom has waned, but its legacy continues in the form of abandoned camps that resemble garbage dumps, and camps that have been sold to outfitting companies to use as satellite camps for sport hunters.

The site of the mine and the staked claims area is a place that has been home to the Innu and Inuit for thousands of years. Archaeological work has found evidence of Maritime Archaic habitation (early ancestors to the present-day Innu) dating back 7,000 years before the present, and more that 125 sites

attesting to Innu and Inuit use of the area right up to the present-day. People in Utshimassits (Davis Inlet) and Sheshatshiu were upset by the mineral exploration on their lands, and even more upset at the prospect of a huge mine development going ahead without their consent, in the absence of a land rights agreement, and without an impacts and benefits agreement.

As this was the first time that the Innu had faced these issues, Innu Nation leadership sought a mandate from the communities to take to the mining and exploration companies. A task force was established and the community was provided with a forum to discuss the issues of mining on Innu lands, the potential economic development opportunities, the probable environmental degradation, and the absence of a land rights agreement. The result of the task force, a report titled Between a Rock and a Hard Place (available on the Innu Nation web page at www.innu.ca) was a clear mandate to the leaders. This stated that Innu people did not want any mining developments until a land claim agreement was signed. The people also said they would not consent to any mining developments without an impact and benefits agreement with the mining company involved, and finally that in order to weigh these impacts and benefits the project would need to undergo environmental assessment.

At the same time as the task force was going on, the Canadian and Newfoundland governments began discussions about harmonizing their environmental assessment (EA) processes. Shortly thereafter, it was recognized that the location of the project was within an area subject to ongoing land rights negotiations between the Innu Nation and provincial and federal governments, and the Labrador Inuit Association (LIA) and the provincial and federal governments. To ensure that the EA process would reflect the local political landscape, the four parties entered into negotiations which culminated in the signing of a four-party Memorandum of Understanding (MOU) in January 1997.

The MOU broke new ground in several important areas of significance to the Innu and Inuit. For example, under the Canadian Environmental Assessment Act, the definition of "environment" reads:

> *"environment" means the components of the Earth, and includes*
> *(a) land, water and air, including all the layers of the atmosphere,*
> *(b) all organic and inorganic matter and living organisms, and*
> *(c) the interacting natural systems that include components referred to in paragraphs (a) and (b)*
> (Bill C-13, Section 2:2*)*

In the MOU, the definition of environment reads:

> *"Environment" means the components of the earth and includes*
> *(a) land, water and air, including all layers of the atmosphere,*
> *(b) all organic and inorganic matter and living organisms,*
> *(c) the social, economic, recreational, cultural, spiritual, and aesthetic conditions and factors that influence the life of humans and communities, and*
> *(d) a part or combination of those things referred to in paragraphs (a) to (c) and the interrelationships between two or more of them.* (MOU, 1997*)*

The MOU took local conditions into account in that it involved an expanded definition of environment that forced the proponent to consider these aspects which it might not otherwise have dealt with. It also required that the Panel make its recommendations not only to the responsible Minister, but to the President of the Innu Nation, the President of the LIA, and the Provincial and the Federal Ministers. The MOU was vague as to what will happen in the event that the four parties disagreed about accepting the Panel's recommendations.

An important aspect of the MOU for Innu Nation was that it ensured that the parties to the MOU appointed the Panel members. This was negotiated into the MOU by Innu and Inuit negotiators and was one of the biggest assets of the MOU. It was important for the Innu and Inuit to have a say in the composition of the Panel, so that they would be satisfied that the Panel was credible. During the environmental assessment for the Low Level Military Flight Training Panel in the 1980's, the Innu had seen the impacts of a weak panel with a weak mandate, and were not about to play this game again. Although conducting the environmental assessment took over two years, the Panel was married to a very strict timetable that was prescribed in the MOU. This included only 45 days to complete the public hearings and 90 days to release their final report.

The communities also sent clear messages to the leadership about how they wanted social and economic baseline work conducted for the environmental assessment. While acknowledging that this information would be necessary for the environmental assessment process, they also encouraged the leadership to find ways for the community to control as much of the process as they could. The end result was the Innu Nation taking control of the social and economic studies, by entering into a contractual agreement with VBNC. The goal was to produce a video documentary made by Innu people which would act as a visioning tool for the community while helping the environmental assessment panel understand what kinds of impacts the communities were already feeling from other developments. The end result, Ntapueu (I speak the truth), is a tool that is more meaningful to the communities than paper reports that sit on a shelf, and conveyed a powerful message to the Panel.

But having the MOU in place did not mean that the Innu and Inuit could be certain that the project would undergo comprehensive environmental assessment. While VBNC prepared its Environmental Impact Statement, they also wanted to push ahead with what they called "Advanced Exploration Works" at Voisey's Bay. This included an airstrip, a road and a dock which would be used to support exploration crews undertaking to further delineate the ore body. The Innu and Inuit strongly felt that building a road, an airstrip, and a dock was out of the question. First, the environmental impacts of the so-called advanced exploration works would never be assessed, and the presence of the advanced works would prejudice the environmental assessment; what if the panel recommended putting the airstrip somewhere else? Or not having an airstrip at all? In the end, the Innu and Inuit took the province of Newfoundland, which had issued the permits in the first place, to court. The court agreed with the Innu and Inuit, and the advanced exploration work ground to a halt.

During the public hearings, Innu Nation hammered on three points, namely that Innu would not consent to the project without a land rights agreement in place prior to permitting, secondly that the Innu would not consent to the project without an Impacts and Benefits Agreement in place, and finally that the proponent's failure to explore alternatives to the mine plan made assessment impossible.

The panel's report, released several months after the completion of the hearings, included 107 recommendations. The panel recommended that the project move ahead to permitting, but only after the conclusion of land rights negotiations and after IBAs had been achieved with both the Innu and the Inuit. The Innu were pleased at the panel's recommendations and heralded the report as a major step forward for EA and aboriginal rights in Canada.

Developments since the Panel report's release have been less than encouraging however. In publicly released position papers on the recommendations, both the federal and Newfoundland governments gave the project the green light to go to the permitting stage, in the absence of land rights agreements or IBAs. The Innu and Inuit are left, after 6 years of dealing with the proposed mine, and 2 years of environmental assessment, with little more than they had in 1994, except disappointment and shattered expectations. On

September 3, 1999 the Innu Nation filed court action, asking the courts to quash the federal government's decision since proper consultation was not carried out between the four parties, and to rule that the government could require Voisey's Bay Nickel Company to complete impact and benefit agreements with both aboriginal groups as a mitigation measure, prior to permitting the project. In the bigger picture, the Innu are asking the courts to recognize that the public process of environmental assessment is not window dressing for development, but that the government must take very seriously the Panel's recommendations. The Innu are saying that the government does not have the right to make political decisions and ignore the panel's clear recommendations.

As for mineral exploration, the pace has slowed considerably since the boom of the mid-1990's. Innu Nation developed specific guidelines of conduct for companies operating in Innu Territory, and these guidelines can now be enforced due to threats from protests and legal action, and the panel recommendations on land rights and IBAs. An exploration company in the advanced stages of exploration (Donner Minerals Ltd.) was recently evicted from Innu land for failing to recognise Innu rights.

Lessons Learned:

5. The MOU was worthwhile in making the EA process credible to people in the community. In the future, a legal definition of *consultation* would be valuable in ensuring that when the four parties came together to discuss the panel's recommendations, the playing field would be more level.
6. Taking control of the social and economic baseline studies empowered Innu people and ensured that the communities participated fully in the EA process.
7. Political strength gained from dealing with VBNC was used in other areas, such as speeding up negotiations on land rights and programs and services.
8. Slowing down the pace of development through protests and legal action helped make fighting the mine more manageable.
9. Hiring good experts to present to the panel is key in getting good recommendations. Pooling resources with other groups and fund-raising from different sources was time well spent.
10. Effective public participation in community hearings is equally important. During the public hearings it was clear to the panel that people understood the project, its potential impacts, and were clear on what different technical experts had recommended to the Innu Nation. This gave credibility to Innu experts, Innu Nation, and to people's concerns in the eyes of the panel.

With thanks to Kevin Head, Innu Nation

Case Study #2:

£utsel K'e Dene First Nation and BHP Diamonds Inc.

The Ekati diamond mine is located in the Northwest Territories, just 300 km Northeast of Yellowknife. This land is the territory of the £utsel K'e Dene First Nation although it is controlled by the federal government. In the absence of a land rights agreement, the Dene have been dealing with mineral exploration and mining operations for too long. In 1991 diamonds were discovered by BHP and Dia Met, a joint venture which had been formed only a year before. Over the next 9 years, the Dene witnessed an unprecedented mineral staking rush, and the development of the Ekati diamond mine. At the end of April, 1999, the total production from Ekati reached 1 million carats. The environmental assessment process for Diavik, another mine located very close to the Ekati mine, is underway. Although the exploration rush has calmed somewhat since the early 1990s, the legacy of that boom remains; and the Dene continue to deal with the issues created by mining and mineral exploration.

The Ekati mine has been in the operations phase since last year. £utsel K'e Dene First Nation signed an Impact and Benefit Agreement with BHP just after the environmental review process before the project was completed. Although the intent of the agreement was to ensure that those communities closest to the project would benefit from it, £utsel K'e Dene First Nation have actively pursued monitoring and research at the community level to ensure that the impacts on their community of industrialization do not go unchecked. This case study explores how the £utsel K'e Dene First Nation conduct this research and monitoring.

Early in the study it was identified that the monitoring had to be grounded in the priorities of the community. The study grew partly out of the momentum that built up during the environmental assessment process for the mine, as to what appropriate monitoring mechanisms for the mine would be. Naturally, the community priorities and those of the mining company and government do not always match. Although this could have been a considerable obstacle in the monitoring, it has not been. Instead, the community is proceeding with the monitoring that it has determined is the most important, while the company is doing the same. In some areas, such as water quality for example, both parties agreed that monitoring would be necessary. In some ways, the differences in monitoring are essentially differences of scale; the difference between monitoring phytoplankton instead of monitoring healing practices for example.

The studies are funded through the West Kitikmeot/Slave Study, which is partially funded by DIAND. Over three years, the community has undertaken three major studies, namely, *The Community-Based Monitoring Project (1996), Traditional Knowledge Study on Community Health (1997), and Community-Based Monitoring Cycle Three (1998).*

The goal of the first study, the *Community Based Monitoring Project,* was to design a tool that would increase the capacity of £utsel K'e Dene First Nation and other northern communities to address both the positive and negative effects of mineral development. The project consisted of three phases:

6. gathering ideas and Chipewyan terminology for concepts like monitoring, indicators, and community health.
7. development of themes and indicators of community health
8. a four-step process of monitoring was designed to include;
    - gathering information
    - summarizing information and communication
    - evaluation of information with a committee
    - reporting.

The *Traditional Knowledge Study on Community Health* involved documenting traditional knowledge about community health or the Dene way of life (Dene ch'anie) as it was defined in the first study. Elders were interviewed about a range of indicators or issues which they defined as important including:

- healing practices
- individual mental, physical and emotional well-being
- nutrition
- parenting and families
- children and youth involvement in the community
- alcohol, gambling and family violence
- leadership
- togetherness
- respect

Information from this study was used in designing the monitoring. Following this study, the model for Community based Monitoring was implemented. Since 1997, £utsel K'e researchers have been collecting information on specific indicators, and comparing them with the results of the 1997 study.

The studies are conducted by the Lands and Wildlife Committee, which has members from the community's youth committee, elders committee, and band council. Each member of the Lands and Wildlife Committee is expected to go back to their original committee (such as the youth committee) and keep them informed about the research and monitoring. In this way the community stays informed, although public meetings are held as necessary.

Employment at the site has fluctuated over its short life. In 1997, 22 people from £utsel K'e were reported as employed in the mining sector, while six months later only three people were still working there. Low wages, no overtime, little room for advancement, no native food, and concern about environmental hazards were given as reasons for this flux in employment.

The Local Employment officer listed the following obstacles facing £utsel K'e Dene Band members pursuing jobs at the mine:

- lack of job readiness
- inadequate training and development programs
- drug and alcohol problems
- lack of local resource people able to assist in business development
- limited capacity for investment in business development
- lack of infrastructure to support business development.

The Employment Officer suggested that a five stage "Comprehensive Training Strategy" would be a good way to address these problems[1]. The stages are:

4. Life Skills and Job Readiness
5. Adult Upgrading
6. Pre-Employment Training
7. On-The-Job Training
8. Career Development.

[1] £utsel K'e Dene First Nation. 1999. Community Based Monitoring Annual Report. pp. iii.

Traditional food consumption has been monitored for two years. It is not yet known if the level of traditional food consumption has been affected by mineral development, although further monitoring in late 1999 will likely reveal whether or not there has been any real change. A baseline for late summer and winter consumption levels has now been established.[2]

Preliminary monitoring results about the impacts of industrial development projects are also available. Although the potential effects of industrial developments may not be well understood by the scientific community, or may be regarded as insignificant by government and industry, the cumulative effects of many industrial developments may be gigantic. These potential effects and cumulative effects are the cause of great anxiety for members of the £utsel K'e Dene First Nation. This leads to greater stress on the community as a whole. This anxiety should be recognized as an impact on the Dene way of life.

Lessons learned from this style of community participation include:

4. The independent monitoring agency established to look at the impacts of the mine is not mandated to examine anything outside of those environmental impacts. A forum is needed to bring together all of the studies which are being carried out, and discuss them in a meaningful way.

5. Because the community is focused on their own issues and their own priorities, monitoring the impacts from the mine specifically is not necessarily being carried out. This does not rule out future monitoring which will more closely relate to the mining project, but means that drawing the links between cause and effect and relating them to the mine may be more difficult.

6. There were some funds set aside in the IBA to deal with impacts on the traditional economy. The community has taken on a lot of responsibility for the changes in lifestyle that come with wage employment and as a result these impacts are being fed into the monitoring. However, BHP is very inflexible when it comes to linking the mining project to the impacts, especially where those impacts exceed what was predicted.

With thanks to Brenda Parlee, £utsel K'e Dene First Nation

[2] £utsel K'e Dene First Nation. 1999. Community Based Monitoring Annual Report. p. iv.

Case Study #3:

Tahltan First Nation, The Mining Industry, and Environmental Assessment

Working with the mining industry and the associated environmental assessment issues is not new for the Tahltan. They have been formally engaged with the mine approval/development process for over ten years.

The Tahltan Nation is located in the Northwest portion of B.C. and its traditional boundaries encompass 96,000 sq. miles. Their total population is approximately 1,350. Roughly five hundred Tahltans live within the traditional boundaries. The territory is rich in mineral values and has been referred to as the "golden triangle" within the mining and investment communities.

The Tahltan approach to mining has been pragmatic and consistent. The Tahltan have based all their decisions and negotiations on a set of Tahltan Development Principles established in the 1980's.

Those development principles stated the Tahltan fully intend to have substantive participation in the development of natural resources within their territory, without adversely affecting the environment and other land values which significantly define their aboriginal rights traditional use of the land.

With over ten years of dealing with mining exploration, mining promotions, large scale mine development and operational/environmental management issues, the Tahltan have built the capacity for dealing directly and proactively with mining companies. This same relationship has been developed with the provincial and federal government.

This case study explores the Tahltan model of technical assessment, cultural integration and environmental response to mining issues through the Tahltan Advisory Group on Mining (TAG).

The Tahltan First Nation consists of three communities: Telegraph Creek, Iskut, and Dease Lake, located in a 400 km radius of each other. The leadership (Chiefs and Councils) is located in Telegraph Creek and Iskut while Dease is the central location for the Tahltan Development Corporation and the Land Use office.

All three communities work together as a matter of policy since many mine companies have attempted the "divide and conquer" approach in the past by creating divisions within the communities, particularly when a mining interest is located closer to one community then another.

In the early years, mining negotiations with the mines were primarily conducted by the Tahltan Tribal Council and the Tahltan Development Corporation. However this approach tended to disenfranchise the Chiefs and Councils resulting in an unproductive level of distrust and poor communication between the various Tahltan organizations.

The Tahltan have learned when dealing with major issues such as land use planning and resource development projects, they must speak with one voice — not many whispers. They are also committed to delivering decisions and recommendations which are based on their development principles and complete technical assessments.

The work related to mining issues is time consuming and demanding. The average First Nation Local Government office is not equipped to realistically respond to the various technical reports, government referrals and inflexible timelines. The successful format requires realistic levels of fiscal capacity,

technical knowledge and reasonable timelines which allow for community consultation. These elements are required to ensure for timely and thorough completion of technical assessment work.

The Tahltan Advisory Group on Mining was created to handle the workload and issues referred to above and provide an informed linkage to the Tahltan leadership. This linkage assists and facilitates the decision making process with the Chiefs and Councils and offers technical support in the community consultation process at key stages.

The TAG group is supported by the Band Councils including support funding on a project by project basis from the BC Environmental Office, the Canadian Environmental Assessment Agency/DIAND and in some rare cases, the proponent themselves.

The TAG group is comprised of at least one Councillor from each community to ensure information is getting back to the community, two Tahltans with related specialized knowledge (i.e. Tahltan Development Corp.) and two non-Tahltan technical advisors. Each chief has an "open" seat, subject to their interest in the agenda or their availability.

All land use planning and environmental planning activities are handled from the centralized Land Use Office in Dease Lake which builds the agenda, provides the support documents, coordinates the meeting and follow through on subsequent work. A balance between the communities and a diversity of viewpoints and expertise are encouraged. All work produced is transparent and written records are kept for review and distribution if necessary.

TAG is responsible for all mine-related assessments, including operational monitoring, reclamation and closure planning. The technical group must account for deliverables/timelines and ensure the Tahltan leadership is well informed regarding options, recommendations and final decisions.

Regularly scheduled meetings with the mining companies and government ministries ensure that the lines of communications are open. Packages of summary evaluations and impact assessments provide the leadership and their communities with overviews on the various mine projects.

By engaging in all aspects of mine related issues and processes including the BC Northwest Mine Development Review Committee, the Tahltan have been able to maintain a pro-active approach and not simply react to the government and industry processes. Political, cultural, environmental and economic priorities are integrated into every TAG meeting. This encourages capacity building in all areas of interest.

The Tahltan Joint Councils are also involved in policy forums at the provincial level. They are active members of the BC Environmental Assessment Office Aboriginal Advisory Committee that deals with mine development assessment procedures. Provincial and federal policy framework directly affects a First Nation's ability to complete their mandate.

TAG Meetings are only called when there is a full agenda so as not to unduly "burn out" the participants. The meetings also provide an opportunity to do "rumour check" because as we have learned, the industry is fuelled on rumours. Basically, TAG is working because it has built a reputation for open communication, detailed technical evaluations and delivering a product or a decision on a timely basis. Members are often assigned tasks between meetings to keep the momentum of the group going and facilitate ongoing discussion between group members.

Aside from the workload, a typical obstacle when dealing with the mining industry is accessing accurate, detailed information on your particular area of concern By applying an aggressive interpretation of Delgamuukw (I & II), the Tahltans have been able to require the companies and government to fulfil their consultation requirements. This includes the distribution of reports and data sets to the three Tahltan offices. Through an MOU with the Mines and Energy ministry, an open and productive working relationship exists between the BC government, Regional offices and the Tahltans.

Another obstacle is the continual change in both government and mining personnel or representatives. Re-educating these individuals or interests is time consuming. Providing "imaging packages" is helpful but ultimately "face to face" relationships must be built.

Technical consultants working for the mining proponent can be very distracting and frustrating. In general, they are trying to produce a product or information which suits their client. Therefore they are less then cooperative when TAG challenges their report or requests additional information. Other consultants attempt to have TAG do their work by requesting significant amounts of information from the Land Use Office at no cost.

Lessons Learned

1. Balance your economical, cultural and environmental issues while conducting your cost/benefit analysis.
2. Efficient technical assessment, increased capacity and informed decision making has been improved through the working group format.
3. Continuous expansion of the envelope for recognition of First Nation priorities can be effective — providing you can keep up your end of the agreement.
4. Understanding the relationship between technical priorities of mine development and the cultural/ecological knowledge of the First Nation will expand the scope of the mine assessment process.
5. Cohesion, acting and speaking with one voice, strengthens the First Nation position.
6. Whenever possible formalize your communication protocol with the mining interest or government process.
7. Learn the language and values of the mining industry — it is an advantage when negotiating.
8. Understand that final decisions on projects do not guarantee all issues are resolved. Keep the dialogue going, messages consistent and introduce First Nation values, rights and issues to all forums and processes.

Prepared by Glenda Ferris/Brad Nothstein

Case Study #4:

Little Salmon Carmacks First Nation and B.Y.G. Mt. Nansen Gold Mine

The Mt. Nansen open-pit gold mine is located 60 km west of Carmacks in the Yukon Territory and is adjacent to settlement lands of the Little Salmon Carmacks First Nation (LSCFN). The gold mine began operating in the early 1990s, and declared bankruptcy last year. When operating at capacity, the mine employed up to 70 people and played an important part of the economy of Carmacks. At one time almost 30 people from LSCFN were employees, while other LSCFN members were contracted to provide services to the mine, such as hauling water for example.

The mine's short life was far from a best case scenario. From the start, the water treatment plant, which was supposed to treat the cyanide- and heavy-metal-laced water before it was released into the watershed, did not work according to specifications. Other structures were built without plans, and a diversion ditch was installed without proper authorization. The tailings pond began to leak severely soon after its construction. This was especially worrisome, since cyanide concentrations in the tailings pond often exceeded allowable limits, and required studies on tailings arsenic stability were never submitted. Despite repeated letters and directions from the federal Department of Indian and Northern Affairs (DIAND), the company failed to bring the mine operations into compliance.

In May of this year, the mine owner, B.Y.G. Natural Resources Inc. (BYG), was slapped with large fines for repeated violations relating to toxic mine wastes. Environmental concerns re-surfaced in late June, however, when the receiver, D. Manning & Associates Inc. of Vancouver, walked away from the site. The receiver apparently gave up on mine-site maintenance after creditors of BYG decided to stop funding the work.

The Yukon Territorial Court decision fined the company $300,000 for three contraventions of the Yukon Waters Act (YWA), which date as far back as May of 1997. These were the maximum fines possible under the Act, and this was the first time that the government had ever taken a mining proponent to court using the YWA. The company was convicted of violating its water licence by exceeding the allowable limits of cyanide in its tailings pond; failing to submit a required arsenic stability report; and discharging toxic effluent.

In his reasons for judgement, Judge Heino Lilles stated that BYG failed to show due diligence in meeting the legal requirements of its water licence, and instead "demonstrated an attitude consistent with raping and pillaging the resources of the Yukon."

BYG went into receivership earlier this year, and the mining operation was shut down. It is doubtful the $300,000 in fines will ever be paid, especially since the company still owes the government $225,000 in outstanding reclamation security payments. Estimated costs for site clean-up range from $4-8 million.

The LSCFN had poor communication with BYG since it took over the Mt. Nansen site in the early 1990s. There was no formal mechanism for discussion between the two parties, despite repeated attempts by LSCFN to establish such a mechanism. Therefore LSCFN relied on government reports and informal communication with LSCFN members employed at the site to keep them informed about mine activities. Clearly this was unsatisfactory but was never resolved with BYG.

In 1997, LSCFN called for a Water Board hearing to discuss BYG's breach of water licence. The hearing took over 3 months to schedule, and by that time the problems at the site has worsened. In calling for the hearing, LSCFN hoped to understand what exactly was happening at the site. Since communications with

mine management were so poor, they felt they had no other alternative. Unfortunately the hearing did not bring as much clarity to the issue as they had hoped, although after the hearing LSCFN began getting weekly reports from BYG, however these reports were not as useful as they could have been. They were technical information which was not accessible to the community.

Of great concern to LSCFN is that, since last fall, caribou, bison and moose have been spotted drinking from the tailings pond. In one week LSCFN researchers and YTG Renewable Resources Department discovered 12 different sets of tracks all leading directly into the pond. Samples from one moose were analysed by a lab and showed no traces of the contaminants from the pond, but these results must be taken in the context that the moose was very young and may not have been associated with the pond over a long period of time. At the present time, LSCFN encourages hunters to provide samples from animals harvested in the tailings pond area. The Department of Renewable Resources (Yukon Government) is paying for blood samples from bison to be analysed. This co-operation will help to bring clarity and understanding about the magnitude of the problem and its impacts on the LSCFN community. Because of permafrost conditions and the topography of the tailings pond, constructing a fence around the pond would be very difficult.

At the present time, DIAND is responsible for care and maintenance of the site, and they are consulting very openly with LSCFN in carrying out this task. This includes allowing LSCFN open access to the site. The danger of tailings spills and acid mine drainage is low since the site is being maintained by DIAND, but the cumulative effects of several small spills remain unstudied.

A considerable amount of gold remains at Mt. Nansen, and it is possible that the site will be purchased and put back into operation if gold prices rise.

Lessons learned:

6. Having full access to the site while it is in care and maintenance brings a level of confidence and comfort to LSCFN. The co-operative relationship between DIAND and LSCFN facilitated this access.
7. Maintaining open lines of communication between LSCFN and the community people who had jobs at the site helped LSCFN to stay informed about what was going on at the site when relations with mine management deteriorated.
8. In hindsight, establishing a community working group to work on the Mt. Nansen mine would likely have been beneficial.
9. The mine operated for three years in the absence of any formal training mechanisms. If training initiatives had started earlier the number of LSCFN members who were able to find employment at the site might have been higher.
10. It is important to be vocal about mitigative measures. A fence around the tailings pond would ensure that wildlife do not drink out of it, yet no fence exists at present and it is not likely that one will be constructed. Perhaps this could have been addressed during the environmental assessment or Water Board hearings.
11. It was important to keep communication lines open between mine management and LSCFN.
12. Initiating regulatory triggers (the Water Board Hearing) can be time consuming and this should be factored into strategy.

With thanks to Chris Noble and Richard Mueller.

Case Study #5:

Makivik Corporation and Falconbridge's Raglan Mine

The Raglan mine is located in the Nunavik territory of Northern Quebec, on land that has been home to Inuit people for thousands of years. The mine is 60km west of the community of Kangiqsujuaq and the property covers 55 kilometres. Ore reserves at Raglan are estimated at over 19 million tonnes, and there is a 2,400 tonne per day milling operation on site. Infrastructure at site includes a concentrator, a tailings impoundment area, waste piles, an accommodations complex, a power station, offices, warehouses, and a waste water treatment system. The harbour facilities at Deception Bay were upgraded to accommodate the project, and an airstrip was built. Each year 130,000 tonnes of nickel/copper concentrate are produced at the site and shipped to Quebec City during an 8 month shipping season. From Quebec City it is sent by rail to the smelter in Sudbury, and then returned by rail to Quebec City for shipment overseas to Falconbridge's refinery in Norway.

Makivik Corporation is responsible for the political, social, and economic development of the Nunavik territory. Clearly they have been very interested in the many impacts and potential benefits from the Raglan mine since the ore was first discovered. In 1995 an Impact and Benefit Agreement (IBA) was signed between Falconbridge and Makivik. This agreement includes profit sharing and guaranteed contributions to the Inuit of Nunavik over the next 18 years, as well as training initiatives and other economic development plans.

This year marked the second year of production for Raglan, and the second year that Inuit communities have been dealing with the operating mine. The mechanisms put on place by the Impact and Benefit Agreement have been running for 2 years and already lessons have been learned. The IBA created a body known as the Raglan Committee, which has 3 members from the company and 3 Inuit members. On the Inuit side, there is one representative from each of the 2 closest communities to the mine, and a representative from Makivik. Everything that happens on site comes through the committee, and the Inuit members of the committee report back to their communities. In this way communities are kept informed about what is going on and can also bring concerns or problems from the communities to the Raglan Committee.

Sub-committees have been created as needed. For example there is a sub-committee on training and employment. This includes the school board, human resource staff from Raglan, and the regional government.

The IBA has its strengths and its challenges. Among the strengths are that after 2 years, the spirit of co-operation between mine management and Inuit people is still strong. There is a genuine willingness to work through issues and come to solutions that will work. Formal education is becoming much more of a priority for Inuit people which will benefit Inuit institutions as much as it will benefit the mine. People seem generally happy to have jobs at the site and are proud of working there. On the obstacles side, three key issues have emerged over the last two years: employment, impacts on the family, and on-site issues.

In the employment arena, 20% of the Raglan work force is Inuit, although the goal over the next 18 months is to raise that number to 30% if possible. While it is recognized that employment does have positive impacts on the community, it also brings with it some very complicated problems. The work rotation at site is 4 weeks in, 2 weeks out. In a family where one parent works at the site, the other parent becomes basically a single parent for one month periods. Child care becomes a problem for families where both parents work at the site. Even if their schedules are staggered, it mean that the children require care for 2 weeks straight while both their parents are at the site. Alcohol abuse among employees

who are back in the community on their time off is problematic. These problems of child neglect and substance abuse affect the entire community, not just the individual or family involved.

People encounter discrimination in different ways at the site, although this is difficult to prove. Inuit have expressed that they feel like second class citizens at the site.[3] For example, Inuit people don't seem to be getting promoted at the same pace as employees from Noranda, Val d'Or and other areas of Quebec. Language creates another barrier: With Inuit, French, and English people at the site communication can be a challenge. This issue has been discussed by the Raglan Committee and measures have been taken to address this difficult issue. They include providing explicit information to Inuit regarding job entry, promotion, leaves, lay-offs and so forth so that Inuit people know exactly how the system works. Inter-cultural courses are given to Inuit and non-Inuit.

At the community level, while sizeable amounts of money have been received through compensations or contracts, not a lot of spin-off economic development has developed from the mine. Where Inuit businesses have been successful in getting contracts from Raglan, in some cases these went to communities who directly benefited, in others, contracts were obtained by one of the regional organizations and still, in other cases, contracts were awarded to private enterprises. The Raglan Agreement is very clear on the procedure for obtaining contracts, Article 6.3.1 states that "...(Falconbridge) enter into good faith direct contract negotiations solely with an Inuit Enterprise, provided that a suitable qualified Inuit Enterprise has been identified..."

The Raglan Committee plays an important role in monitoring on-site. Monitoring is done by Falconbridge but Makivik has input in the studies. An example of co-operative monitoring is the Arctic Char monitoring study, which was completed in 1998 and will be conducted again in 2000-20001. Makivik plans to be as involved in the second phase of the study as in the first phase. Makivik has also conducted studies on water quality in rivers and lakes surrounding the site, in order to have their own data to monitor biophysical change over time. Off-site, Makivik is administering an ongoing study related to the social impacts of the mine on five communities. This work is undertaken solely by Makivik. Falconbridge does not do any off-site monitoring or research.

Looking to the future, tailings is an important issue, especially addressing the cumulative effects of many small spills. This issue is very technical and difficult to address without detailed technical knowledge.

Lessons learned:

- Where there is a genuine effort to work through problems on the part of both the company and Makivik, most issues can be resolved.
2. Except for employment and training, the IBA does not address the monitoring of social impacts. It does address, however, monitoring of environmental impacts.
3. Creating structures that will work for the context of the mine has been very important in the relationship between Falconbridge and Makivik. The Raglan Committee structure works for this site.

With thanks to Robert Lanari.

[3] R. Lenari. Pers. Comm. 25 August 1999.

Case Study #6

Nishnawbi-Aski Nation and Ontario's Living Legacy

In February 1997, Ontario announced Lands for Life, a public consultation process on land use planning for Ontario crown lands within the area of the undertaking. Three planning area were identified: Boreal West, Boreal East, and Great Lakes-St. Lawrence. The Ontario Government established a Round Table for each planning area with representatives from each sector of interest. Many First Nations were strongly opposed to the Lands for Life process with good reasons, primarily the lack of recognition of treaty and aboriginal rights and no recognition of the government to government relationship between First Nations and the provincial government. Nishnawbe-Aski Nation (NAN) Chiefs made the decision to participate in the Lands for Life process by appointing representatives to the Boreal Forest East and West Roundtables. After careful examination of the Lands for Life process, in July 1998 the NAN Chiefs withdrew from the process, citing lack of community consultation and the threat to aboriginal and treaty rights. Because treaty and aboriginal rights were not recognized in the Lands for Life process, the Chiefs determined that the process presented a threat to those rights and refused further participation.

In October 1998, the Ontario government made public over 80 recommendations on land use planning for Lands for Life. The tabled recommendations were drafted by three Chairs of the Roundtables, a consultant, and Ministry of Natural Resources personnel. They worked from draft reports from the roundtables. Industry, First Nations and participants in the process all decried the recommendations based on their context and content.

In November 1998, NAN launched a procedural motion in court to stop the Lands for Life process citing a lack of consultation and breach of legislative process. In May 1999 this court proceeding was adjourned pending further community consultation.

In January 1999 the Ontario government attempted to salvage the Lands for Life process prior to the upcoming election. The Ministry of Natural Resources conducted consultation with various groups to determine the parameters of a possible deal.

In February 1999 the Ministry of Natural resources conducted closed door meetings with industry and the Partners for Public Lands (a coalition of environmental groups) in an attempt to bring unity to the table. These secret meetings formed the basis of the Ontario Living Legacy that was announced on March 29, 1999 by Premier Harris and Minister John Snobelen.

Concerns:

1. The absence of First Nations in the negotiations and the lack of any further plan for inclusion in future processes.
2. Granting of increased tenure rights to the forest and mining industry that significantly strengthened resource industry's interests in resources allocated to them and may require the province to compensate them should lands be withdrawn from tenure arrangements by the province. While existing mines in Ontario will be excluded from this process, new exploration and mining rights will fall under this regime.
3. The resources allocated to these initiatives is designed to divide and conquer the stakeholders including First Nations.

Specific NAN concerns with the Living Legacy:

1. **The disrespect conveyed to the NAN people in the land use planning process.** The conduct of government and industry is not conducive to a good working relationship.

2. **The planning process was flawed.** All affected parties should have been consulted on how to address the failure of Lands for Life instead of the secret meetings which were held.

3. **The 1999 Ontario Forest Accord and Proposed Land Use Strategy provide no substantive role for First Nations in the stewardship of Ontario's resources.** There are no specific measures by which first Nations environmental, economic, and traditional knowledge can be used to steward and manage the resources of Ontario with the provincial government and other commercial concerns. Other recognized environmental management programs such as the Forest Stewardship Council's Forest Certification Procedures recognize and value traditional knowledge. The Living Legacy and Forest Accord lack any substantive direction as to how First Nations might be included within the decisions being made and proposed to be made in the future. Other provinces have adopted measures to address our environmental preservation concerns. For example, the Province of Manitoba and Manitoba Treaty Organizations have reached an agreement on how a network of protected lands will be identified and set aside so as to recognize their rights and interests.

4. **The 1999 Forest Accord and the Proposed Land Use Strategy directly affect our communities' well being.** These agreements will adversely affect man of our communities in their social, cultural, and economic well being. New and expanded protected areas and intensive forest operations will be established. High mineral showings were used as a veto for protected areas, and First Nations had no role in setting priorities for protected areas, unlike industry. Furthermore, our ability to use the planning provisions contained within the Ministry's Forest management Planning Manual to protect our important sites and land use areas will be lost because no comparable mechanism exists for protected area identification and management in Ontario. These new protected and intensive use areas will also affect our treaty and aboriginal rights.

5. Throughout the Lands for Life planning program, NAN was assured by the Ministry of Natural resources that this planning program would not apply to **the far north** (north of 51°). The commitment made in Living Legacy and Forest Accord is to expand forestry and mineral exploration into the far north and identify new protected areas without First Nation input.

6. **The Forest Accord and Proposed Land Use Strategy do not meet the diverse needs of First Nation communities, who are situated throughout the planning area.** Their environmental, social, economic and cultural needs vary depending upon their location and circumstances. The Forest Accord and Proposed Land Use Strategy impose decisions from Queen's Park upon First Nation communities without respect and provision for these diverse needs.

Mining and Mineral Exploration

The Lands for Life and Living Legacy processes have, as a goal, the achievement of greater certainty for resource extraction industries. The mineral industry has made considerable gains through these processes, not the least of which is their ability to conduct mineral exploration unhindered on 88% of the lands in the planning area. Of the 12% which is reserved as protected areas, almost half of these areas will permit mineral exploration. If a protected area demonstrates a strong mineral showing, it will be removed from the protected area, developed, and then redesignated as a protected area. During the period when the

protected area designation is lifted from the land, another area of equal size will be designated a protected area.

What is Next?

In the coming months, NAN First Nations will hear about new initiatives from the Ontario government that will be the mechanism to carry out the following:

- legislation to carry out Lands for Life,
- repeal of the Environmental Bill of Rights to remove obstacles to development,
- increased tenure to forest companies may include fee simple,
- legislation to create equal access to hunting and fishing rights,
- increased participation of municipalities.

NAN does not regret withdrawing from the process at an early stage, and is currently consulting with communities about the next steps forward.

Prepared by Ben Cheechoo, with minor additions by C. Cleghorn.

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Between a Rock and a Hard Place: Aboriginal Communities and Mining

Ottawa, Ontario,
September 10-12, 1999

Agenda

Structure of the Meeting

The meeting will take the form of a workshop to be conducted over two and a half days. The workshop agenda has been developed by the Innu Nation in conjunction with MiningWatch Canada. The opportunity to meet and discuss these issues will integrate the lessons learned from the Innu experience with new knowledge from other aboriginal communities and make clear what role (if any) can be played by MiningWatch Canada to enable future strategies. The workshop will center on learning from one another and building networks. It is not expected to make decisions.

Friday Evening

6:00 pm –7:30 pm - Registration

7:30 - Self-introduction by participants: each community will show where it is on a map and have a few minutes to tell the group about it

If there is time, screening of **Ntapueu**, a community based research project conducted by the Innu Nation focussing on the socio-economic impacts of development on the Innu people.

Saturday Morning

9:00 am. Welcome and opening.

1. Host First Nation, Monique Rich and Daniel Ashini of the Innu Nation, Joan Kuyek from Mining Watch Canada.
2. Brief introductions of participants

10:00 am. Daniel Ashini will present a summary of Innu learnings from the Voisey's Bay experience
10:45- 12:00 am. General discussion of the main points of Daniel's presentation.
12:00-1:00 am. Lunch (in the room)

Saturday Afternoon

1:00 pm – 1:30 pm. Christine Cleghorn will present a summary of issues that First Nations have faced with mineral developments over the past four years (based on her research). Discussion.

2:00 pm – 5:00 pm. Small groups to discuss the following questions. We will try to keep groups small enough to enable everyone to have an opportunity to talk from their experience. *Small groups will be moderated by staff from the Innu Nation and MiningWatch Canada.*

1. Community response: What have we learned about the respecting of and working with the complexities of community responses to development (elders vs youth, supporters of traditional economy vs. the need for jobs, class distinctions, local politics/clans)
2. Existing operations: How are communities dealing with existing mining operations on their lands (community monitoring and environmental problems, job and training opportunities, social and economic effects)
3. Post mine: What is the experience of communities with abandoned mines, company bankruptcies, closure and reclamation?

Saturday Evening

6:00 pm – bus leaves from Hotel to go to Friendship Centre
6:30 pm - Traditional feast at the Odawa Native Friendship Centre. Buses will take participants to and from the hotel.
9:30 pm – bus returns to hotel.

Sunday Morning

10:30 – 11:30 am.

9. Brunch supplied in the meeting room.
10. Summary of workshops from Saturday (summarized by facilitators). Comments and discussion

11:30 – 2:00 pm - Small groups to discuss:

- What have we learned in the last few years about ensuring a recognition of the relationship between aboriginal rights, jurisdiction and mega-projects?
- What are the consequences of the Innu experience on the treaty process and
- Impact Benefit Agreements elsewhere?
- What have we learned about negotiating with mining companies (exploration, environmental monitoring, Impact Benefit Agreements, on-going relationships, closure plans)?
- What other issues do we feel are paramount ?

2:00 – 4:00 pm - Plenary discussion of

1. Key issues from the groups
2. What role (if any) can MiningWatch Canada play in assisting aboriginal communities?

4:00 pm - Closing

Between a Rock and a Hard Place: Aboriginal Communities and Mining

Ottawa, Ontario,
September 10-12, 1999

Innu Nation/MiningWatch Canada

Participant List (by Organization)

Hans Matthews
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