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IN THE FEDERAL COURT OF CANADA

(TRIAL DIVISION)

BETWEEN:

THE HAMLET OF BAKER LAKE, et al

Plaintiffs

-and-

THE MINISTER OF INDIAN AFFAIRS
AND NORTHERN DEVELOPMENT, et al

Defendants

* * *

Held before The Honourable Mr. Justice
P. M. Mahoney, at 330 University Avenue,
8th Floor, Toronto, Ontario,
June 4th - 8th, 1979, inclusive.

* * *

APPEARANCES:

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D.T. Sgayias, Esq.,	Indian Affairs and
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R.W. Cosman, Esq.,	Cominco Ltd., and Western
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T.G. Heintzman, Esq.,	for Urangesellschaft
Ms. Marvyn K. Koenigsberg,	Canada Ltd. and Noranda
	Exploration Co. Ltd.

VOLUME XII

Monday, June 4, 1979

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--- Upon commencing at 9:30 a.m., on June 4, 1979.

THE COURT: Mr. Chambers, we do hear from you at the beginning of this?

MR. CHAMBERS: Yes, My Lord, as soon as the Plaintiffs close their case, we will open ours.

THE COURT: I understood it was closed.

MR. CHAMBERS: I think they are to read in more.

THE COURT: You have some more. You did not quite finish?

MR. ESTRIN: No. There will probably be a number of more readings and a number of exhibits.

My Lord, the next Examination I should like to read from is that of the Defendant Cominco. This is the Examination of Lawrence R. McDonald, commencing at page 2, Question No. 4.

Q. And your present position is?

A. Manager, Exploration, Eastern District.

Q. Eastern District of what?

A. Canada is in essence divided by Cominco Exploration into two districts, Eastern and Western, and I am Manager of the Eastern District."

And then Question No. 7.

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" Q. So you would be familiar then with the exploration activities of Cominco in the Baker Lake area?

A. Yes."

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At page 3, Question 17:

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" Q. Just tell me briefly the objects for which Cominco was incorporated, I just want to know what generally is the business of Cominco?

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A. The business of Cominco is mining, and including the exploration of minerals and the manufacture of mineral products."

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Then to Question 19.

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" Q. Does Cominco carry on exploration activity in the Baker Lake Area?

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A. Yes, depending on what one will describe as the Baker Lake Area."

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Here was introduced what is the Baker Lake Area.

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Then we continue with Mr. Cosman, I take it, allowing his client to only answer questions with regard to the area defined by the Order-in-Council.

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Then to page 5, Question 20.

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" Q. Mr. McDonald, in the Baker Lake Area, what particular minerals were you exploring for?

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A. The principal mineral explored for was uranium.

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Q. Were there any other minerals?

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" A. Our staff is alerted to look for any minerals that may be of economic consequence.

Q. What minerals would those be?

A. Any minerals that may exist there.

Q. Now, when did your exploration activity commence in the Baker Lake Area?

A. Are you referring to after the initiation of the injunction or at any time prior to that?

Q. I'm asking at any time prior to that, when did Cominco first commence exploration activity in the Baker Lake area?

A. To my knowledge, from records only, our first work in the area was in the vicinity of Sissons Lake in 1967."

My Lord, we have subsequently been advised that the original Cominco work in the Sissons Lake area was conducted in May/June of 1970 on mineral exploration Permit 110 held by Central Del Rio.

" Q. What type of exploration activity did you carry on around Sissons Lake?

A. We worked on approximately six, as I recall from records, small geophysical grids.

Q. And what do you mean by that?

A. Geophysical work, specifically

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" Q. That is electromagnetic?

A. Correct; -- upon six or seven anomalous areas brought to our attention by an option party, the name of whom I cannot recall.

Q. Did you carry out this work over land that was the subject of a prospecting permit?

A. As I recall from records, they were claims rather than permits."

My Lord, we were subsequently advised that there were no claims staked -- to the knowledge of the company. We were provided with a map by this Defendant showing areas worked on the ground mid-May to mid-June 1970 locating the area of Permit No. 110.

I would ask that be made the next exhibit.

EXHIBIT NO. P-47: Map of Cominco activity, mid-May to mid-June 1970.

MR. ESTRIN: We can go to Question No. 32.

" Q. This exploration activity in 1967 ---"

Which, I take it, My Lord, should be 1970.

"... were aircraft involved in the activity?"

A. A fixed wing aircraft delivered the personnel consisting of two, as I understand, to the area and picked them

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"up on the completion of the work.

Q. So the work carried out was in the nature of ground reconnaissance or ground survey work?

A. In the nature of ground survey work.

Q. Would you recall where that aircraft was based, did that aircraft fly in and out of Baker Lake?

MR. COSMAN: Are you referring to the Hamlet of Baker Lake?

MR. TIMBERG:

Q. The Hamlet of Baker Lake, yes.

A. No, not to my knowledge it did not to -- it probably originated in one of, on either Churchill or Yellowknife.

Q. So it would fly directly from one of those places --

A. Correct.

Q. -- to where the men were working, and deposit them, and later return to pick them up.

A. Correct."

Then Question No. 38.

Q. How long did this work last, in other words how long were the men on the field?

A. Less than two months, to my knowledge."

Then Question No. 42.

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" Q. Then when was the next year that you undertook exploration activity in the area?

A. 1968."

MR. ESTRIN: That answer apparently is correct. We have not been advised that it is incorrect.

We have been supplied, subsequent to the Discovery, with a map -- by Cominco -- which indicates areas where certain activity was carried out in 1968 and indicates brief ground checks. I would ask that map be made an exhibit.

EXHIBIT NO. P-48: Map of Cominco activity, 1968.

MR. ESTRIN: An now Question No. 43.

" Q. And in 1968 where did the activity take place?

A. In 1968 two geologists from Eastern Districts stopped at Sissons Lake ---"

We have been advised that it should be Schultz Lake.

"... for a brief period of time in the course of a reconnaissance program to examine a number of outcrops.

Q. And was this once again in the nature of ground survey work?

A. Yes, very brief.

Q. And the only involvement of aircraft would be to drop the men off and pick them up?

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" A. Correct.

Q. Was there any further activity in 1968 in the area?

A. Yes, in view of the fact that that was in essence a reconnaissance trip, I would have expected that that field crew would have visited a number of sites, all of which would be most indefinite to me now, and would be a very short period of time."

Then Question 48.

" Q. When was the next year you carried out exploration activity?

A. The next year that Cominco functioned was in 1975.

Q. And in that year what activity did you carry out?

A. Cominco carried out an exploration program consisting of geological, geochemical, geophysical work and including drilling.

Q. And in what part of the area was that work carried out?

A. In the area immediately to the south of Baker Lake; the lake, not the hamlet.

Q. Was this land over which Cominco held a prospecting permit or permits?

A. No.

Q. Would this be land over which

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"another party held prospecting permits and Cominco was operating under an option?

A. Not under an option per se.

Q. Well, was the land -- or did another party hold the prospecting permits for the land?

A. Correct.

Q. And what was the other party?

A. Pan Ocean and its associates.

Q. Would you happen to know which prospecting permits we're talking about?

A. I know the permits but I'm not able to describe them numerically."

My Lord, we were subsequently supplied with a sheet showing claim and permit data showing the areas over which activity was carried out by this Defendant in 1975. There are three sheets showing claim and permit data, 6A, 6B and 6C, which I would ask be marked as the next exhibit.

EXHIBIT NO. P-49: Cominco claim and permit data.

MR. ESTRIN: Question No. 56.

Q. When you state that geochemical work was done, what do you mean by 'geochemical work'?

A. A sample of water normally in the order of magnitude of 100 milliliters was collected from water sources generally within a half mile spacing

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"of one another.

Q. And this work would be carried out by aircraft?

A. On occasion, most commonly.

Q. Would the aircraft be fixed wing or helicopter?

A. Helicopter.

Q. You also mentioned geophysical work, could you briefly define what you mean by that?

MR. COSMAN: I take it you're asking what geophysical work was done in the Baker Lake Area?

MR. TIMBERG:

Q. Yes.

A. Principally radiometric surveys conducted by geologists carrying a scintillometer.

Q. So the geologists would walk over the land --

A. Correct.

Q. -- on some type of grid pattern?

A. On a grid pattern recognizing the spacing only in terms of air photographs.

Q. What would be the spacing between the grid lines in their walk over?

A. Approximately a thousand feet.

Q. Yes. Other than the involvement of the helicopter in the geochemical

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"sampling, were aircraft involved in any other way in the activity?

A. Yes.

Q. What was their involvement?

A. Transportation.

Q. The involvement would be that the aircraft would transport the men in to their camp and then transport them out at a later date?

A. Among other things, yes.

Q. And what other things would the aircraft be used for then, if there were other things?

A. To transfer food supplies and diamond drill components.

Q. Was a base camp set up somewhere in the area for this activity?

A. Correct.

Q. Where was the base camp located?

A. At -- do you want that in longitude and -- it was on a bay(ment) of the Kazan River.

Q. Could you locate that a little more precisely for me so I'll know exactly where on the Kazan River?"

And then Question 70:

Q. So you have indicated that the camp was located on the Kazan River south of Baker Lake and west of a lake known as Bissett Lake.

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" How many men were at the base camp at any one time?

A. Approximately twenty-five.

MR. COSMAN: At what time are you referring to when you say 'at any one time'?

MR. TIMBERG:

Q. The maximum number of men that would be in the camp at any one time?

MR. COSMAN: Was that your answer, twenty-five?

A. Approximately twenty-five people would be at the camp during the operating season of the exploration activity.

MR. TIMBERG:

Q. And the aircraft that were used, where were those aircraft based?

A. At the camp.

Q. Would those aircraft fly between the camp and the Hamlet of Baker Lake?

A. Approximately once a week.

Q. And what number of aircraft would be based at the camp, would it be one aircraft or more than one?

A. Two aircraft."

My Lord, page 14, Question 81.

" Q. Just to complete your activities for 1975 for this Kazan River project, where was the diamond drilling carried out?

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" A. Approximately two miles east of the Kazan River.

Q. Would that be two miles east of where you located the base camp?

A. No. And approximately twenty miles south of the south shore of Baker Lake where -- at the mouth of the Kazan River, and approximately ten miles from the base camp.

Q. How many holes were drilled?

A. In 1975, I can't recall the precise number of holes.

Q. Do you have a ball park figure?

A. A ball park figure would be in the order of twenty holes.

Q. And do you have a ball park figure as to the number of feet that were drilled?

A. A ball park figure would be seven thousand feet."

And then Question 87:

" Q. Was exploration activity carried out in the area in 1976?

A. Correct.

Q. And where was the activity carried out?

A. Upon the same permit.

Q. This would be upon land, the subject of permits held by Pan Ocean?

A. Correct.

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" Q. And was the activity in 1976 similar to the activity in '75 in the sense of geophysical surveys, geochemical surveys, et cetera?

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A. Essentially correct.

Q. What was the involvement of aircraft in 1976?

A. Approximately the same as in '75.

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Q. Was the same base camp used?

A. Correct.

Q. Was there another base camp or was there only one?

A. There was only one."

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And then Question No. 97.

" Q. How many men were involved in this activity in 1976?

A. I'm unable to give an accurate count.

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Q. Do you have a ball park figure?

A. Approximately twenty people.

Q. And as with 1975, did you carry out diamond drilling --

A. Correct.

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Q. -- in 1976, in the same location as in '75 or in a different location?

A. Approximately."

Then turn to page 20, Question 114.

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" Q. Now, we're into 1977 now. What activities, or exploration activities

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"did you carry out in 1977 in the Baker Lake Area?

A. None."

Turning to page 23, Question No. 129:

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" Q. And what about 1978? Perhaps I could ask you whether in 1978 you obtained any prospecting permits?

A. Yes, we obtained prospecting permits in 1978.

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Q. Were those permits within the Baker Lake Area?

A. I would understand them to be outside of the Baker Lake Area.

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Q. So in 1978 then Cominco undertook no exploration activity in the Baker Lake Area as was defined by --"

That seems indefinite. Perhaps I should continue from Question No. 131.

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" MR. COSMAN: That was not the answer that was given. The question was whether Cominco had obtained prospecting permits within the area, and the answer to that was no. You haven't yet dealt with claims.

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MR. TIMBERG: Yes.

Q. Did Cominco stake any claims in the Baker Lake Area in 1978?

A. In 1978, no.

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Q. So was there any exploration activity then in 1978 in the Baker

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"Lake Area?

A. In the Baker Lake Area, no. Our intention was to do so but the injunction precluded it.

Q. Okay; did you intend to follow through with your work in the Kazan Falls Area?

A. In January of 1978 we applied for a Land Use Permit to do work in the Kazan, or what we have been speaking of as the Kazan Area.

Q. Did you obtain a Land Use Permit subsequently?

A. A Land Use Permit was issued to us."

Turning the page, My Lord, to Question No. 139:

" Q. Subsequently in 1979 to date, has Cominco obtained further prospecting permits or staked claims in the Baker Lake Area?

A. Yes.

Q. Okay. Could we deal first with claims. Where have your claims been staked?

A. We have staked some claims in the vicinity of Sissons Lake, and an additional group of claims perhaps most easily described as at the east end of Aberdeen Lake.

Q. Are these claims in the

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"vicinity of where Urangesellschaft has staked the majority of their claims? I'm speaking of your claims you staked in the vicinity of Sissons Lake.

A. I'm not entirely aware of where Urangesellschaft has acquired all its land, but relative to Baker Lake our claims would be closer to Urangesellschaft than Baker Lake.

Q. Are you in the process of staking further claims in Baker Lake Area?

A. No.

Q. Dealing then with prospecting permits. Could you indicate to me where in the area you've obtained prospecting permits in 1979?

A. We have gained no prospecting permits in 1979.

Q. That's within the Baker Lake Area?

A. Within the Baker Lake Area.

Q. Have you applied for prospecting permits but the Government has not yet issued them?

A. Within the Baker Lake Area, no.

Q. Do you expect to carry out any exploration activity in the Baker Lake Area this summer?

A. Perhaps.

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" Q. If you did carry out exploration activity, where would it take place, at this time where do you think it would take place?

MR. COSMAN: Answer that if you know where it's taking place --

A. Yes.

MR. COSMAN: -- if you don't know, just indicate that you don't know.

A. In the event that it takes place, it will be likely a reconnaissance program.

MR. TIMBERG:

Q. Over what --

A. It may include part of the west end of Thirty Mile Lake, and that general vicinity."

Then Question No. 150:

" Q. And what type of reconnaissance program would it be, would it involve aircraft or would it involve ground survey work, and ground reconnaissance work?

A. It will involve both.

Q. Okay; have you applied for a Land Use Permit with respect to this proposed activity?

A. No.

Q. Do you expect that you will apply for a Land Use Permit?

A. No."

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My Lord, that is the conclusion of the reading from that Discovery.

My Lord, it is not quite as foreboding as it seems, but here we have clean copies of the Defendant, the Minister of Indian and Northern Affairs and the other governmental Defendants. It is next from these that I will be reading from.

My Lord, I am reading from the Examination for Discovery of Mr. J. Patterson, Dr. M. Ruel, Mr. R. Williams, Mr. A. Ganske, Mr. R. Hornal on behalf of all Defendants save the Defendant mining companies: first commencing December 6 and then continuing 6, 7 and 8 of December, 1978, and then again in February, 1979, on the 27th and 28th days of February, 1979.

My Lord, it was agreed at these Discoveries that no matter which of these persons being discovered gave the answer, the answer would bind all of those connected.

Turning to page 22 of the first volume of December 6, at line 29:

" Q. What action, if any, has the Government taken in regard to wolves?

A. (Mr. Hornal): In the Keewatin?

Q. Yes.

A. (Mr. Hornal): To my knowledge, the only action within the years mentioned, '68 to '78, was the removal of the bounty.

Q. Removal of? And, what was that bounty?

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" A.(Mr. Hornal): I do not remember the figure at this time. I think it was in the vicinity of twenty-five or fifty dollars per wolf."

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THE COURT: I wish you would indicate to me when you are finished with the passage now. These questions are not numbered. The bookkeeping is going to be just a little harder.

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MR. ESTRIN: Yes.

On page 22, commencing at line 29, and at page 23 finishing at line 11. I will try to do that from here on.

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I turn to page 38, lines 17 to 30 on that page.

" Q. Mr. Hornal, you have been in the North a number of years and you have worked as a geologist, at least part of the time I take it, is that right?

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A.(Mr. Hornal): That is correct.

Q. And you have used helicopters from time to time to get around as part of your work?

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A.(Mr. Hornal): That is correct.

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Q. And it is your understanding I gather that helicopters are a major means of transportation for mining exploration activities in the North?

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A.(Mr. Hornal): That is correct."

Turning to page 43, My Lord, line 17 to line 30.

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" Q. If I understand you correctly, you are saying that your Department would not formally lay charges under the Aeronautics Act or Regulations in regard to low flying aircraft.

A. (Mr. Hornal): We have not done so.

Q. And who in the Government would you rely on to have such charges laid if he felt it was appropriate, the Department of Transport, the R.C.M.P.?

A. (Mr. Hornal): I think I would turn the matter over to the Department of Justice.

Q. All right. Are you aware of any complaints that have been turned over to the Department of Justice about low flying planes in the Baker Lake area?

A. (Mr. Hornal): No I am not."

Excuse me, My Lord, for a moment. Page 92. On this Discovery the document entitled "Information Circular, Conservation of Caribou Herds, Baker Lake Area," was made Exhibit No. 10. I would ask that it be made the next exhibit.

EXHIBIT NO. P-50: Information Circular, Conservation of Caribou Herds, Baker Lake Area, and map of caribou calving areas.

MR. ESTRIN: At page 92, My Lord, Mr. Hornal is asked about this exhibit.

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" Q. Mr. Hornal, in the second paragraph of exhibit 10, it is stated:

'Flight of aircraft at low altitude over caribou herds may cause considerable harm.'

And, it goes on to say other things in that regard. Is that advice, those statements contained in paragraph two of Exhibit 10, advice given by your Department to Transport Canada or is that only the position of Transport Canada.

A.(Hornal) I would say that paragraph two is based on advice given to Transport Canada by our Department.

Q. And, do you believe that such advice, such statements to be true.

A.(Hornal) Yes."

I am sorry, My Lord, page 91, line 4.

" Q. I am going to ask Dr. Ruel if he has any information from Transport Canada about the observation of the altitude requirements for 1978.

A. (RUEL) I directed my men to verify with Transport Canada approximately two weeks ago, two to three weeks ago if there were any reports made to Transport Canada about non-compliance with that particular ---"

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" DR. RUEL: A verbal report was made to me that no such reports were available or had been made to the Minister of Transport."

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Then, My Lord, to page 105.

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There was another document that had escaped me, and it would be perhaps helpful to refer to it. It refers again to the subject of low-flying planes. This was marked as Exhibit No. 18 to Mr. Hornal's Examination for Discovery. It is entitled "New Land Management Zones and Regulations, Kaminuriak and Beverly Caribou Herds." It is a two-page document with a couple of pages excerpting legislation attached to it.

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EXHIBIT NO. P-51: New Land Management Zones and Regulations, Kaminuriak and Beverly Caribou Herds.

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MR. ESTRIN: To properly refer to that document we must refer to the second volume on the Discovery at page 329.

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THE COURT: It does not refer to anything on page 105?

MR. ESTRIN: No, I am sorry, My Lord.

THE COURT: All right.

Where are we, Mr. Estrin, now?

MR. ESTRIN: Page 329, lines 6 to 27.

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"---EXHIBIT NO. 18: Plaintiffs' document No. 71 entitled 'New Land Management Zones and Regulations, Kaminuriak and Beverly Caribou Herds'.

MR. ESTRIN: Q. Would it be fair to say that this document repre-

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"sented some thinking of the Government, in your Department, as of April or May, 1978, as to possible regulatory mechanisms for the future?

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A. In thinking of our staff, I would think so.

Q. And --

A. As distinct from the Government.

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Q. Yes. Could you please tell me whether this thinking is still -- the thoughts contained in this document -- are still considered valid for the purposes of the discussion or not?

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MR. SGAYIAS: By whom?

Considered by whom?

MR. ESTRIN: By your Department?

THE WITNESS: (Mr. Hornal): Yes."

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That concludes my reference to that volume; and I am going to try to go in some order.

Then back to page 105, Volume 1, line 18 continuing to line 24.

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" A. (PATTERSON) So, just to give you an idea when the Baker Lake freeze came on in this area, just the area outlined by the Baker Lake freeze, there is about 5200 claims in that area at that time. So that would mean at that time there would be 5200, 5200 pieces of paper like that."

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Turning, My Lord, to page 117, lines 26 to 30.

" Q. So any Certificate of Work issued prior to November, 1977, would not be made on the basis of the statement made under Oath in writing?

A. (WILLIAMS) That is right.

Q. And would those statements say what work in fact had been done.

A. (WILLIAMS) Yes they would.

Q. And when?

A. (WILLIAMS) Yes. They would say what year, yes."

"Reading" refers to what we have before called the IDS study. I believe my friend Mr. Sgayias has available a clean copy that was made Exhibit 12 to the Examination for Discovery of Mr. Hornal.

THE COURT: Is it your wish to only put in Volume 1?

MR. ESTRIN: Well, My Lord, I am not sure. I suppose it is just like a Discovery in that I refer only to certain portions of the study.

THE COURT: That is all that is referred to -- only the portions that you refer to.

MR. ESTRIN: In that event, I would ask that it be made the next exhibit.

THE COURT: Unless there is some objection.

MR. SGAYIAS: I do not see the necessity for putting in the whole exhibit. There were portions that were accepted by the witnesses

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during the course of the Discovery and portions which were not -- were specifically denied and said were not relevant.

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It is just the portions accepted that I submit should go in.

THE COURT: And that is all here in Volume 1.

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MR. SGAYIAS: Yes. Some of the maps depending on what my friend wishes to put in. However, there are portions of Volume 1 which were not accepted and I object to that becoming part of the record.

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MR. GRAHAM: That would be our position as well, My Lord, instead of the whole report being put in, it is only those sections should be submitted. That would be so in respect of the Government's submission. Of course, we have not seen that study -- or it has not been put to our witnesses and we have not examined any portion of that.

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THE COURT: I appreciate that.

It will be Exhibit No. 52 and I suppose it will be such portions of the IDS study as are referred to in the Discovery that you are about to read in.

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EXHIBIT NO. P-52: Extracts from "Effects of Exploration and Development in the Baker Lake Area: Volume 1 - Study Report (IDS)."

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MR. ESTRIN: At the bottom of page 123 of the Discovery, My Lord, we refer to Exhibit 12

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on the Discovery which would be Interdisciplinary Systems Limited Study. At the top of page 124, line 1:

" MR. ESTRIN: Q. Turn with me to page 265 and that is headed 'Appendix A, Exploration and Development Scenarios'. And, it talks about:

'Activities which are characterized mineral (uranium) exploration and development up to and including development and operation of a mine among other things.'

Now at the bottom of page 265 it sets out that:

'Recent exploration activity in the Study Area has resulted in some claim staking and a definite possibility of future mining operation. While claims have been staked for ore bodies containing various minerals, the most likely mineral to be developed in the near future is uranium.'

My question is would you agree with those statements?

A. (HORNAL) Yes.

Q. And on the next page it talks about 'Design and Planning' under the heading 'Logistics'. It says:

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" 'Among other things all equipment and materials for facilities construction and mining and milling could be barged into Baker Lake during the three month shipping season and off-loaded at a small wharf. Wharf construction might precede shipping by one year. Access to the mine site would initially be by snow road in winter. Large amounts of fuel and chemicals could be re-supplied annually by barge and stock piled. Transport of men, food, and refined uranium could be accomplished by aircraft.'

Do you regard what I have just read as a reasonable logistical statement, a statement of logistics for uranium mines ...

A. (HORNAL) It is a reasonable hypothesis.

Q. And then it goes on:

'The uranium exploration process can generally be divided into three stages; airborne surveys, ground follow-up surveys and detailed exploration. The entire exploration process of a proven ore body may extend several years after which development of a mine and mill

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" facility would be required.'

Would you agree that the exploration process of uranium can hopefully be divided up into those three stages or what is the experience in the Baker Lake area that differs from ...

A.(HORNAL) That is the common custom.

Q. All right.

A.(HORNAL) There are exceptions to this, to these but that would be common in the industry.

Q. And it is common to Baker Lake?

A.(HORNAL) Yes.

Q. Yes. And, the first heading they talk about our airborne surveys. And then it talks about, on page 267, camps for airborne survey crews varying in size and it talks about aircraft for these surveys. It talks about the permit areas in the Baker Lake area can be as large as 180,000 acres. And it says:

'In surveying a Region, instrument equipped aircraft flying grid patterns varying in size from point one to one mile at altitudes of a hundred to two hundred feet. Small helicopters or light fixed-wing aircraft are suitable for this purpose. Flying time averages

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" 'about five hours per day at a speed of 95 kilometers per hour or 60 miles per hour.'

In regard to the Baker Lake area, is it your understanding that in fact airborne surveys have been carried on with some intensity commencing in about the year 1968 pr '69.

A.(HORNAL) That is a lot of questions.

Q. Well, that is my first question and it is limited to that one point.

A.(HORNAL) Airborne surveys have been carried out in the Baker Lake area in some of the years between 1968 and 1978. But, I don't think I would say in all of the years. Now, the intensity is very much a matter of impression, personal impression, I think. There are certainly areas in Canada where it has been carried out with much more intensity in a particular year and there are areas with less intensity.

Q. All right. We will come back to the intensity. Would you agree aircraft flying grid patterns have been flown with the variance stated on page 267 in the Baker Lake area. That is, from point one to one mile. Do you have any information about that

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" A.(HORNAL) It would be ... it would appear to be reasonable. I would have to check the actual records ... I would suspect it ... happened."

MR. SGAYIAS: My Lord, in that sentence an entire phrase is left out.

MR. ESTRIN: "I would have to check the actual records ..." I left that out because I will be coming to some actual records produced to us by the Department.

MR. SGAYIAS: I just think that the complete answer should be put into the record.

MR. ESTRIN: I will be happy to do that. I will read that answer again beginning at line 22 on page 127.

" A.(HORNAL) It would be ... it would appear to be reasonable. I would have to check the actual records we have to see if that has indeed happened. But, it would ... I would suspect it has happened."

Turning to page 137, line 25, and we are continuing the discussion with regard to Appendix A.

Q. I take it going back to this document, Mr. Hornal, that is exhibit 12, volume 1 of the I.D.S. Study ground follow-up surveys have been undertaken in the Baker Lake area?

A.(HORNAL) Yes, that is correct.

Q. And these are conducted ..."

I take it the word should be "through".

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"... the use of base camps and these base camps are operated through aircraft of (or) helicopter, I mean, they are supplied and maintained. Is that the general pattern.

A.(HORNAL) I think I might comment on both the airborne surveys and the ground surveys. The base camp may indeed be the community of Baker Lake but it does not necessarily have to be a tent camp.

Q. All right. But it is the case, is it not ...

A.(HORNAL) There are tent camps.

Q. There are tent camps and have been tent camps in the Baker Lake area.

A.(HORNAL) Yes.

Q. And these are supplied through aircraft.

A.(HORNAL) Correct.

Q. Or helicopter.

A.(HORNAL) Yes.

Q. And, on page 268 there is a heading about camps. It says:

'Fly camps fly from these base camps having two or more men would be relocated several times a season.'

Is that something that has occurred in regard to the mining exploratory

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"activities in the Baker Lake area?

A. (HORNAL) Yes.

Q. And, under the heading

'aircraft' it says:

'Base camps and fuel are transported to camp site locations in winter by ski-equipped DC-3 aircraft for use in the fall and summer. Once in operation, base camps are re-supplied by air using Twin Otters on floats every ten to fourteen days. Helicopters would be used to locate and supply fly camps operated on the base camp and empty fuel drums would be removed the following winter by a DC-3.'

Would you regard that description of aircraft activity purposes as being generally applicable to the Baker Lake mining exploratory activities in the past ten years.

A. (HORNAL) It is generally applicable. That type of aircraft may vary and so on and so forth. But, that is the sequence of events.

Q. Under the heading 'Fuel, Storage and Handling', it says:

'Large fuel caches would be located at base camps with smaller caches distributed later

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" from this cache by helicopter.'

And it says:

'Fuel requirements for summer's operation would be five thousand to fifteen thousand gallons depending on aircraft usage.'

Now, would you regard that ... those statements as being generally applicable in your experience in the Baker Lake area.

A.(HORNAL) Well, ...

Q. Or, to your knowledge.

A.(HORNAL) The small caches may be distributed by fixed-wing plane and there are certainly a number of camps who have caches less than five thousand gallons. But, that sort of activity has taken place in the Baker Lake area.

Q. It talks about survey activities:

'Survey activities could be based for a number of small fly camps. Small teams intensively sample local areas using radiometric surveys ...'

Which, I take it, can be aircraft or foot (inaudible)

THE REPORTER: I'm sorry?

MR. ESTRIN: Hand augering, geo-chemical analysis.

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" Do you agree that is an applicable description that might fit the Baker Lake area?

A. (HORNAL) I would say ... I would think he was talking here about specifically ground crews. It would be unlikely they would be doing airborne surveying but it is applicable."

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Turning the page, My Lord, to page 142, and commencing at line 25:

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" A. (HORNAL) May I help you here by suggesting that I am perfectly prepared to admit having done everything they have done up to the bottom of page 268. This would then be followed by diamond drilling in all likelihood which, if the preliminary diamond drilling is successful, then they will get into a program such as detailed on page 269. But, there is a period where they do reconnaissance diamond drilling, if you wish, to see which area should be examined in greater detail to attempt to determine if an ore body is present."

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Continuing at line 15:

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" Q. Is it not fair to say that the work being undertaken by Urangesellschaft, in the area west of Baker Lake Settlement in '78 was a kind of detailed

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"examination of an ore body that they are talking about on page 269?

A.(HORNAL) No, that was reconnaissance.

Q. Are you saying that from your ... do you know what activity took place ... is that from your personal knowledge, personal attendance.

A.(HORNAL) No, I have not been there. I have read the reports of my staff who have been there and I have talked to Urangesellschaft geologists.

Q. You would call that type of work ... what are we talking about.

A.(HORNAL) Reconnaissance drilling.

Q. Reconnaissance drilling at, what is it, Schultz Lake.

A.(HORNAL) Where they had one of their camps. The correct name is (inaudible).

THE REPORTER: The correct name is?

MR. HORNAL: The correct name is Gull Lake.

MR. ESTRIN: All right. Let's talk about Pointer Lake. Do you know where that is.

A.(HORNAL) I would have to review, to refresh my memory as to where Pointer Lake is.

Q. Mr. Patterson, would you like to say something.

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" A.(PATTERSON) Pointer Lake is a small lake down below where the base camp is where they use, as a base camp, where their aircraft land for supplies. The lake is a small lake just to the north of it where the drill camp was where they were doing their drilling. So, Pointer Lake and Gull Lake refer to the same deposit, the same preliminary drilling area.

Q. Mr. Patterson, I take it you are familiar with the work done by Urangesellschaft at these base camps in 1978, are you?

A.(PATTERSON): I am.

Q. Were you there?

A.(PATTERSON): No.

Q. Would you agree with Mr. Hornal that it is reconnaissance drilling ...

A.(PATTERSON) Preliminary drilling.

Q. So you would say that that has been described as I have read it out on page 269 to Mr. Hornal ... well, let's go back to Mr. Hornal.

Mr. Hornal, are you saying the activity taking place described at page 269 to 270 and at the top of page 271 in the Study is detailed exploration to determine, to define the ore body has not taken place in the Baker Lake area in terms of the uranium.

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" A.(HORNAL) That is correct.

Q. So all the work to date has been of reconnaissance, as you put it, of a reconnaissance nature.

A.(HORNAL) That is my assessment of the work to date."

Turning to page 146, My Lord, line 7:

" Q. So I take it you are saying, in your view, there would be detailed exploration activity before somebody developed the mine.

A.(HORNAL) That is correct.

Q. At the bottom of page 268 you have discovered possible mineral occurrence. You may have only discovered as far as looking for uranium goes a zone of higher radioactivity. And, you will want to sample that zone which will probably require drilling and if that sampling is encouraging, you will then conduct a very large drilling program to attempt to identify whether you have an ore body. What is involved in this large drilling program.

A.(HORNAL) Much like that described on page 269. But, there is a step between page 268 and page 269 and regrettably in the Baker Lake area we have not arrived at page 269.

Q. Now I don't want to belabour the

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"point but what is the step that is missing.

A.(HORNAL) The sampling usually by drilling of the occurrence, the mineral occurrence or the radioactive occurrence discovered in your preliminary work at the bottom of page 268.

Q. Okay. And some of that has gone on.

A.(HORNAL) Oh, yes.

Q. So that is what Urangesellschaft is doing.

A.(HORNAL) That is correct.

Q. At Pointer Lake they were taking out core samples if they could get them out in one piece for analysis.

A.(HORNAL) That is correct.

Q. And then they would get into this detailed exploration if they wanted to proceed.

A.(HORNAL) Yes."

Turning to page 150, My Lord, line 5:

Q. Did diamond drilling at the Urangesellschaft Pointer Lake camp in 1978 take place on a grid pattern with grid lines having been surveyed for that purpose.

A.(HORNAL) I don't know.

Q. Mr. Patterson, do you have any information.

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" A.(PATTERSON) My first question is, what do you mean by 'grid pattern'?

Q. What is your understanding?

A.(PATTERSON) Well, a grid could be something like this (indicating). Like that (indicating). That would be an extensive grid. A small grid would be something like this (indicating) which you have two holes.

MR. SGAYIAS: We're going to have a little problem with that on the record, Mr. Patterson.

MR. PATTERSON: I'm sorry. For instance, I assume they were drilling something linear, they would drill along the line which would be maybe the beginning of a grid. So, you know ...

MR. ESTRIN: Q. Well, let me tell you ...

A.(PATTERSON) Normally in geologic terms when you are speaking of drilling on a grid pattern, you are looking at a deposit which you are drilling on a grid pattern to define it exactly and you set out maybe 30 or 40 or 50 holes which are systematic drillings to sample that. Generally in a stage of defining an ore deposit when you get into a fully defined grid. So ...

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" Q. I am suggesting to you in 1978 Urangesellschaft, at their camp, certainly where they had the drill rig, as you refer to it, there were lines to be observed where little flags or markers are blowing in the wind in straight lines observable over some distance.

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A.(PATTERSON) That is correct. That is a standard procedure for laying out a grid for geologic mapping or geochemical mapping or geophysical mapping for sampling ...

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Q. And for drilling.

A.(PATTERSON) And then when you define things you use that grid for locating where you want to drill your holes.

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It is simply a matter of defining things.

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Q. Mr. Hornal, are you aware whether there has ever been any blasting taking place on any of these areas of mineral activity exploration in the Baker Lake area.

A.(HORNAL) Yes."

And at page 152, line 19:

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" Q. And, can you tell us about any other activity mining companies have done in the Baker Lake area that we have not talked about so far

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"in terms of the general nature of their activities talked about.

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A.(HORNAL) They have taken soil samples for geochemical analysis.

Q. And they do that how?

A.(HORNAL) Hand augering would be one method.

Q. Yes, hand augering.

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A.(HORNAL) That is correct. They may hand auger. They may also take stream sediment samples in which case they will wade into a stream and take sediment out from a few feet from the bank and record the place on the map where they took the sediment and have it ... put it in a bag and have it analyzed. This is most often done on foot.

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Q. And anything else.

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A.(HORNAL) I don't think they talked about geological mapping which of course is the whole key to the situation.

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Q. All right. Well, Mr. Patterson did refer to it. What is geological mapping or surveying or whatever it is.

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A.(PATTERSON) Just the observation and positioning ...well, the observation and identification of surface rock and the proper positioning of that rock relative to other rock

"outcrops on a map so that you can begin to get a pattern, a geological pattern as to what has happened in the area.

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Q. And how is that undertaken?

A. (PATTERSON) Usually by foot traverse.

Q. Foot which?

A. (PATTERSON) Foot travellers.

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Q. Travellers?

A. (PATTERSON) Travellers.

Q. And, as part of that process are stakes put in the ground or some kind of markers?

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A. (PATTERSON) It depends upon the scale at which you are mapping. If you are mapping an area of a very detailed scale, say, one inch to a hundred feet or one inch to ten feet, you will then stake it out. If you are mapping a permit area you will not stake it out.

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Q. What about ... well, all right.

If you are putting stakes in, has this occurred to your knowledge in the Baker Lake area in terms of geological mapping.

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A. (HORNAL) As Mr. Patterson said, yes, certainly stakes have been put in the ground in the Baker Lake area for geological and mostly geophysical

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"mapping I would suspect.

Q. And would these stakes in most cases have some kind of small ... I don't know what you call it, flag flying from them, a little piece of plastic or something, red or orange in colour.

A. (HORNAL) Usually. Certain key stakes in the grid pattern are marked with flagging and sometimes each stake in the grid pattern is marked.

Q. So you could have a given area, a given spot where there is a number of, let's say in a square mile or even in half a square mile there could be a number of stakes ... I don't know what you call them, flags on them.

A. (HORNAL) That is correct.

Q. And this has occurred in the Baker Lake area?

A. (HORNAL) Yes."

We then go to page 156, line 20:

Q. Well, in terms of where these are would Pierre Laporte, your very mobile geologist, has some further information possibly as to this. My main concern is areas of concentration of these flags in terms of areas that are important to caribou. And,

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"I am wondering if there is any way that we can get some idea where these flags have gone up because my information is from my clients, is that there are or have been a number of areas staked with flags which are claimed to bother the caribou. So, I would like to know as best we can; and what can be said about this from your information.

A. (HORNAL) Well, I accept as a matter of fact that the observations of your clients are probably correct. They have seen stakes with flagging. I personally have seen some stakes with flagging in the Baker Lake area but my experience is limited as is the experience of any particular person I can think of in Government service. In this regard I would not want to ask anyone to identify the number or area covered by stakes with flags in any one year.

Q. All right. But I would like to understand however is at what point in the investigation does this flagging take place. Is it when someone wants to do a detailed mapping of a small area. Is that basically when it occurs.

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" A.(HORNAL) It can occur, as you have mentioned, during the staking of claims and can then occur again during the detailed examination of particular parts of those claims.

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Q. I see. And, in your experience how detailed would staking take place when one is doing geological or geophysical mapping? How close together might stakes be? A quarter mile or closer? In your experience.

A.(HORNAL) A hundred feet is a common distance."

And now on page 158, line 14:

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" Q. What is the purpose of the flags.

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A.(PATTERSON) For relocation. You have on the flag, you may have written line 25, plus 00 feet and you do all your work and you look at it and you say, gee, I want to go back to line 25 plus 00 feet and you go back to look at it and you do it that year because if you go back the next year the flag is gone or very often is. But, I mean it is good for short term. And, as he said, it could be a hundred feet apart, two hundred feet apart. The lines could be two hundred feet apart or five

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"hundred feet apart. Just depending on the kind of work, the kind of detail you are doing."

That concluded at line 29. Then we go to page 159, line 17:

" Q. Now, we have talked about a number of kinds of activities that take place and associated with these exploratory activities. Is there anything else we have not talked about that has occurred in the Baker Lake area.

A.(PATTERSON) Prospecting.

Q. Well, that is a good one. There has been a lot of that I take it Mr. Patterson.

A.(PATTERSON) That generally goes along with the Regional, Semi-Regional mapping. Fellows will often go along and have a (inaudible).

THE REPORTER: Excuse me? A ?

MR. PATTERSON: A radioactive detecting instrument ...

Q. I think you should spell that.

A.(PATTERSON) Scintillometer, a radioactive detecting instrument. But, anyway, it is part of the modus operandi when you first go around geological mapping, you are doing geo-chemical sampling, you do water sampling.

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"You are doing soil sampling. Maybe even sampling for frost boils or lichenings. Or whatever you happen to think is going to do the job for you. And, invariably there is the ultimate way, some kind of scintillometer, a radioactive detecting device centered all at the same time.

Q. There are no prospecting crews that work from the ground that you are talking about now but they would work from camps out in the field in many cases.

A. (PATTERSON) Well, yes. It would just depend. If they had an area of interest, they would move in a camp and work out of there for three or four or five days. They might work out of a base camp with small targets that might take a day. So, it just depends on the job.

Q. And if they were working out of a larger base camp they would be flown to the area of interest.

A. (PATTERSON) That is correct.

Q. And usually by helicopter?

A. (PATTERSON) That is correct.

Q. We have talked about helicopters, aircraft, drill rigs in some instances. We have talked about

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"blasting. What other kinds of noise making activity would be associated with exploratory work. Is there anything else.

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A.(HORNAL) Singing.

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Q. Compressed ... how about electrical generating facilities at these camps. The one I was at, the U.G., Pointer Lake, it was very well appointed. It had a large generation capacity and a lot of noise emanating from that. Is it fair to say all these mining exploratory camps out in the field will ... these base camps will have electricity these days.

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A.(HORNAL) Well the larger ones are liable to have them. The smaller camps, it is unlikely they would have generating facilities. The two to four man fly camp sort of thing."

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My Lord, turning to page 162, line 23.

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" Q. ... Are there any other noise making devices that you can remember.

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A.(PATTERSON) Pluggers.

THE REPORTER: I beg your pardon?

MR. PATTERSON: Pluggers..

MR. ESTRIN: Pluggers.

A.(PATTERSON) Pluggers.

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" A. (PATTERSON) A jack hammer for trenching.

Q. Are these pneumatic? Or how do they work. What powers them?

A. (PATTERSON) Pneumatic. We have gas pluggers. They are used by ... I don't know whether they were used in Baker Lake.

Q. All right.

A. (PATTERSON) But they are a tool used by the exploration industry for trenching."

THE COURT: Probably, Mr. Estrin, this is as good a time as any to give your voice a rest for 10 minutes.

--- Short recess.

--- Upon resuming.

THE COURT: Mr. Estrin.

MR. ESTRIN: My Lord, Volume 2, page 165, line 15:

" Q. ... Do you agree with me that there has been, over this period of time that I have mentioned, perhaps not in every year, but in any event there has been that kind of activity carried out by the Government of Canada and its various branches. I am speaking specifically of Geological Survey

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"of Canada work, legal survey work, water surveys?

A. I agree with you that there has been work done by the Geological Survey of Canada for the purpose of aiding mineral exploration in the Baker Lake area during the period 1968 to 1978.

I query your inclusion of the water survey work. That was not specifically needed for the mineral industry."

Turning to page 167, line 4:

" A. I am aware that the Geological Survey was to first map the Baker Lake area around the turn of the century and visited the area a number of times prior to 1968 for mapping purposes.

Since '68, it has done bedrock geological mapping over portions of the Baker Lake area. It has examined the surficial deposits in parts of the Baker Lake area. It has conducted or it has had conducted aeromagnetic surveys of the Baker Lake area and radiometric surveys of the Baker Lake area.

Q. Would the last four types of surveys you mentioned have been carried out in the period '68 to '78?

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" A. Portions of them have been, yes.

Q. Well, are there any of them that have only been carried out in that period?

A. Well --

Q. Of the ones you mentioned and the types?

A. The radiometric surveys were not carried out prior to 1968. I would think that the detailed surficial geology surveys were not carried out prior to 1968 either."

Turning to page 169, line 3:

" Q. ... I understand there are such things as legal surveys carried out by or on behalf of the Government of Canada in regard to surveying of mining interests?

A. I believe you are referring to the surveying of claims prior to taking them to lease which is a requirement under the Canada Mining Regulations. This work is done by the company holding the claim and I believe he must inform the supervising Mining Recorder that such work is going on.

Q. Okay.

A. He must get instructions

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"from the Surveyor General before he commences the survey.

Q. All right.

A. But the timing of this work is at the discretion of the company.

Q. Let me ask Mr. Williams about that matter.

Mr. Williams, I take it that your office would receive any surveys done pursuant to the requirements Mr. Hornal has mentioned?

A.(Mr. Williams) We do, yes.

Q. And do you receive some prior notification or request for clearance of some kind before the survey work is done?

A.(Mr. Williams) No, not generally.

Q. You would have, however, any surveys conducted in the Baker Lake area in your records?

A.(Mr. Williams) Yes we would.

Q. And have there been such surveys in the period 1968 to 1978?

A.(Mr. Williams) Yes there have been.

Q. I take it the number of surveys would be the same as the number of leases?

A.(Mr. Williams) That's correct."

Then I turn to page 177, line 17:

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" MR. ESTRIN: Okay, and can you tell me, please, to the best of your present knowledge are you aware of any claims that would, in order to maintain their interests, have to be -- for which a lease would have to be applied for in the remainder of 1978 in the Baker Lake area?

A. To the best of my knowledge there is no claims that have to go to lease in 1978.

Q. To the best of your knowledge, how many would have to go to lease to maintain their position in 1979 in the Baker Lake area?

A. Between four and five hundred. That is if they want to keep them all. They may only prefer to keep ten or twenty but, I mean, that is how many have been or were staked in about 1969 if I recall correctly.

MR. ESTRIN: I can see we had better get on to trial fast!

Q. I take it the claims in '68 would have been staked basically in the months of March to September or April?

A. In general -- in general the claims are staked in the Fall.

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" Q. I see.

A. As a result of the Summer's work.

Q. I see.

A. But that is not necessarily the case."

Then, going to the bottom of the page, line 30:

" Q. Well when does the ten-year period run to or from?

A. From the anniversary date of the claim.

Q. When the claim is actually legally granted?

A. That is correct, yes.

A.(Mr. Williams) Ten years from the recording date."

I am continuing at page 180, My Lord, line 20:

" MR. PATTERSON: The claims that have eleven years are the claims within the injunction area which were granted because they couldn't do any work during that freeze period were granted an additional year so it is all the claims that were staked prior to the granting of the injunction.

Q. Yes?

A. Of which there are about fifty-two hundred.

Q. That have a ten-year or --

A. Eleven years rather than ten years."

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Continuing on page 181, line 10:

"Q. As I understand what you said, Mr. Patterson, there are approximately fifty-two hundred claims in the Baker Lake area described by the Order-in-Council which, because of the freeze imposed by Order-in-Council were given an additional year in which to make application for a lease?

A. That is correct.

Q. Does that mean if a claim was recorded in 1968 that it has until 1979 to make --

A. One additional year, yes.

Q. Yes and if I have understood what we have heard earlier this morning correctly, there would be a survey made in connection with each of these applications for lease that will be considered?

A. That's correct."

I turn now to page 196 and refer back to the I.D.S. Study at page 155, now Exhibit P-52, and to line 20:

" Q. ... You can tell me whether you agree or disagree. Would you turn to page 155. Two sentences that begin at that page under the heading 'Critical Areas, Caribou':

'Beverly and Kaminuriak caribou are believed to account for

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" 'essentially all caribou meat obtained by Baker Lake residents. Consequently protection of these populations from serious development-related conflicts is considered essential.'

Would you agree with that?

A. I would agree with the first sentence, yes, and the protection is considered -- protection of these herds is considered desirable by the Government. That is our position."

I turn to page 203, line 28, with reference to page 162 of the I.D.S. Study.

" MR. ESTRIN: ...

Would you turn, please, to page 162. Would you agree or disagree with the statements contained in -- under the heading "Concerns" the first and second paragraphs?

A. I will agree with the facts available to me. I will agree with the first paragraph and I have no information that would suggest that the second paragraph is not accurate."

Continuing then, My Lord, at page 208, with reference to page 170 of the I.D.S. Study, at line 24.

" Q. Would you turn now to page 170 of this study. Would you agree or disagree with the first two paragraphs on that page?"

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At page 209, I read at line 3:

" MR. ESTRIN: All right. It says:
'Given that 'core' and caribou
calving grounds are believed
to be among the most critical
and restricted parts of caribou
habitat, maintaining the integrity
of these areas is believed
essential for long-term well-
being of the caribou population.

Much of the area shown as
critical calving habitat on map 14
may be infrequently used for
calving.'

Now, just stopping there. There
are two statements. First of all,
would you agree with the first
sentence?

A. Yes.

Q. And what -- are you prepared
to state now what position the
Government takes with regard to map 14
in regard to the second sentence?

A. We have contracted addition
studies to examine the areas defined
in map 14 and we are examining these
studies."

I am referring to map 14. It was made Exhibit No. 13
to the Discovery, entitled "Baker Lake Study Area,
Showing Critical Areas for Caribou," prepared by
Interdisciplinary Systems Limited for the Department

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of Indian Affairs and Northern Development, January, 1978, and specifically marked Exhibit No. 13 on the Discovery of Mr. Hornal. I would ask this be made the next exhibit.

EXHIBIT NO. P-53: Map: Baker Lake Study Area, Critical Areas, Caribou, dated January, 1978.

MR. ESTRIN: I turn to page 211, line 20:

" MR. ESTRIN: Yes. Map 14, marked as Exhibit 13 in this Discovery, shows the critical areas for caribou showing the calving areas in gray and post calving areas in pink or brown, if you like, and then it has by other markings major crossing areas.

The first question is in regard to the calving areas shown in gray. What position does the Government take at the present time with regard to the accuracy of these areas?

A. The Government accepts this area subject to further research that has taken place and will in all probability take place in the future ---

And at line 5:

" A. The area is a good guide to the calving areas but is not absolute.

Q. Well, at the present time, is the Government prepared to say

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"that such areas should not be as extensive as they are shown on map 14?

A. No. The Government has not taken any steps except to use these areas to identify calving areas on the Engineers' Land Use Map which is subject to change as more information becomes available."

Continuing, My Lord, at page 219, line 21:

" MR. ESTRIN: Q. Coming back to page 170 in the I.D.S. Study, paragraph 2 states:

'Recent observations of some researchers suggest that caribou calves and pregnant cows are particularly sensitive to and consequently avoid man made facilities.

They further suggest that this sensitivity to and avoidance of man made facilities by pregnant cows heightens as calving approaches. Therefore man made features on or cutting across calving grounds are of particular concern although caribou might approach and cross such features at other times of the year, they may constitute more serious impediments for cows near time of calving.

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" ' Such impediments could bar access to favoured areas of the calving grounds.'

Would you agree or disagree in terms of the Government's belief that this is the case?

MR. SGAYIAS: We would like to deal with that sentence by sentence.

MR. ESTRIN: Certainly if you wish.

A. My impression of that paragraph would be that the Government would be prepared to agree that man made features on or cutting across calving grounds are of a particular concern.

Q. Would that include exploration attempts or mineral activities?

A. If they are there during the calving period."

We then turn to page 223, line 8, and refer again to the I.D.S. Study.

" Q. On the bottom of page 170 and the top of page 171 of Exhibit 12 ..."

Which is Exhibit No. P-52 here.

"... there is a discussion about what researchers have observed or concluded with regard to the impact of aircraft on the calving ground population and, in the middle of page 171, it is stated:

'Until such time as the above divergence of opinion can be

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" 'reconciled, the nature, extent and timing of activities on calving grounds, must, in our opinion, remain a matter of concern.

Would you agree with that statement I have just read?

A. The Government shares the author's concern.

Q. What action, if any, has the Government taken to regulate flying whether by fixed wing aircraft or helicopters or by prohibiting such activity over calving grounds other than the advice contained in Exhibit No. 10, the information circular and some further reference that may have been given to airmen in the NOTAM that Dr. Ruel spoke of?

A. Nothing further has been done by the Government to prohibit aircraft although our Department has published a poster which appeals to pilots to stay above the recommended altitude when caribou are spotted."

Turning to page 230, line 27:

" Q. ... I would like to know if any studies have been made of the cumulative impact of short-term disturbances on the calving ground or during Spring migration where the

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"I.D.S. Study says these exist?

A. I am not aware of any study on the cumulative impact.

MR. ESTRIN: If there are such studies within the knowledge or come to the knowledge of the Government, would you inform me?

A. Yes."

My Lord, subsequently we were informed by the Government that the Department is not aware of any such studies with regard to the impact of exploration activities. I will just read the undertaking as I have it.

It is numbered 40. The question as summarized by Mr. Sgayias was:

" Q. What studies (other than the I.D.S. Report and the studies referred to therein) are there concerning the impact of exploration activities on the caribou calving grounds concerning the duration of any impact on the caribou, concerning any cumulative impact of short-term disturbances on the calving ground during spring migration?

A. The Department is not aware of any such studies respecting the caribou of the Baker Lake area."

Turning to page 233, line 13:

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" THE WITNESS: ... My impression, and I would prefer some time to give you an accurate answer, but my impression is that there could be between ten and fifteen prospecting permits outstanding within the Baker Lake area at the time of the injunction.

MR. ESTRIN: Q. And are you able to tell us of the ten or fifteen how many subsequently were worked pursuant to land use permits?

A. I will undertake to advise you of that. I can't give you an accurate answer now.

Q. All right.

A. You are aware, of course, that one camp or one land use permit could be issued for any number of prospecting activities encompassing any number of prospecting permits?"

In the same context, My Lord, turning to page 246, line 2:

" A. I am saying that the majority of the exploration ---"

I am sorry. I wanted to refer on that page to line 17.

" Q. From the records that you will be supplying to me, would it be fair for me to expect that I will be able to take that information and correlate it to the major crossing

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"areas identified on map 14 and accordingly plot if there are -- if there were land use activities in close proximity to these river crossings other than the ones that you have put on this map?

A. It will be difficult.

Q. Why?

A. We can give you a map showing the center of the base of the land use activity. We are unable to determine with any accuracy where sub camps have taken place or how far out from that camp activity has taken place.

Q. So all that I will be able to do is plot on the geographic limits of the land use permit. Is that what you are saying?

A. All I think that we can give you is the geographic area affected by the land use application which is, in essence, the camp.

Q. The location of the camp itself? Does not the land use permit itself define a total area in which activities can take place or is it basically only authorizing a specific camp to be located in a specific area?

A. It is the authority to have a specific camp in a specific area.

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" Q. So that the camp, if I understand what you are saying correctly, as approved by a land use permit, might not be located within three miles of a major crossing area but nevertheless exploratory activities of a certain kind could be still taking place closer to that river crossing?

A. That is what I am suggesting. I think that would be very hard for you to determine."

Going back, My Lord, to page 238, commencing at line 4:

" MR. ESTRIN: Q. On page 187 of this study, in this exhibit, Exhibit 12, it is stated:

'The effects of camps and exploration activities on caribou at river crossings are a particular concern to Baker Lake hunters. Effects of low-flying aircraft in deterring caribou from using traditional crossing sites near Kazan Falls were repeatedly emphasized during our interviews in Baker Lake.

Aircraft activity around exploration camps at Kazan Falls and the west end of Schultz Lake were also mentioned in the Baker Lake land freeze proposal.'"

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(I.T.C. 1975)

" ' This document and our interviews highlight Inuit concerns that these disturbances have changed caribou behaviour in migration routes.'

What position does the Government take as to the legitimacy of concerns of the Baker Lake hunters in regard to the effects of camps and exploration activities on caribou at river crossings?

A. What position does the Government take -- do you want to go through that again slowly?

Q. Yes. What position does the Government take in regard to the Plaintiffs' concerns, the Inuit hunters' concerns, expressed to the I.D.S. people and reflected on page 187, about mining camps and exploration activities, the effects on the caribou at river crossings?

A. It recognizes the Inuit concerns.

Q. You mean it recognizes that the Inuit have concerns?

A. Yes.

Q. Does it believe that such concerns are valid or invalid?

A. It has reacted to those concerns prior to the injunction period

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"by attempting to remove the offending camps from possible river crossings and attempting, through land use terms and conditions, to minimize the effects of these activities at river crossings. Since the injunction, of course, activities in those areas are not permitted.

Q. I see. At least in regard to major crossing sites identified on map 14?

A. Yes.

Q. When you say the Government has caused such offending camps to be removed, what are you talking about?

A. I am talking about in particular the Inuit concern with the exploration camps positioned near Kazan Falls in the early '70s and these concerns were brought to the attention of the Government and the Government made the company remove its camp.

Q. Which company was this?

A. The company who established the camp was Pan Ocean Oil or its predecessors. The camp was subsequently used for Cominco and Cominco removed that camp. A term and condition under the land use permit granted it.

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" Q. And for what length of time was there some kind of camp located at this location approximately? How many years?

A. At the specific location I am referring to, I would think it would be five years.

Q. And in what year was it removed?

A. Well ---

Q. By Cominco?

A. Subject to the review of my records, I think it was '77.

Q. And in what year was it made a term and condition for Cominco to have that camp removed?

A. '76. If --

Q. Go ahead.

A. Again, I say subject to review of my records.

Q. Right.

A. Within a year one way or the other.

Q. If a camp is established or exploration activities take place in the vicinity of caribou crossings that do not require a land use permit, first of all, would you agree that that is possible?

A. Yes.

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" Q. And secondly if they do not require a land use permit under the regulations, the territorial land use regulations, what present controls exist to prevent that from happening?

A. Nothing that I am aware of.

Q. Would you agree with me that the Government, in having the camp you have just referred to, I take it at Kazan Falls in the vicinity of Kazan Falls removed, agreed that the Inuit had some valid concerns in regard to that camp's affect on caribou or was this done for some other reason?

A. It was done as a result of an investigation carried out at the request of the Inuit and we agreed that that area had been a caribou crossing area. It was not presently a caribou crossing area and we agreed to remove the camp with the possibility that that might have influenced the caribou crossing ---"

I finished reading at line 10 on page 242 and continue at line 20:

" Q. What other mining camps or camps in aid of mining exploratory activities and/or exploratory activities per se have taken place at or in the vicinity of major crossing

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"areas identified on map 14 in the period 1968 to 1977? I exclude 1978. Hopefully, nothing will take place then.

A. There was a major camp, a major mining camp in the vicinity of Christopher Island ---

Q. All right. I wonder if we could -- you were referring to map 14 which has been marked as Exhibit 13 to this Discovery. I wonder if you could take a red pen and mark with a number 1 the point approximately at Kazan Falls where the Cominco camp you referred to a moment ago was located?

A. Here (indicating).

Q. All right. You may proceed with my other question. What other camps or exploratory activities are you aware of in the last ten years conducted?

A. Well, I am aware of a camp and mineral activity in the area of Christopher Island marked No. 2 on this map and I am aware of mineral activity adjacent to the crossings between Aberdeen and Shultz Lake approximately in the area of mark No. 3.

Q. All right.

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" A. But there was no -- I am not aware of the location of camps involved with that particular activity.

While I am generally aware that there has been prospecting and exploration in the area along the Thelon River west of Baker Lake, I am not specifically aware of the camp locations from which this activity was undertaken if indeed there were camps and the activity was not done in Baker Lake itself."

In the same context, My Lord, turning to page 245, at line 4:

" Q. Now, you have already told us that the initial camp at Kazan Falls was established without a land use permit I take it at a period when there was no land use permit system?

A. I didn't tell you that, but that is correct.

Q. Well, what about the Christopher Island activity? Was that pursuant to a land use permit?

A. Again, if it was, it was very late in its life.

Q. Late in the life of the activity of the camp?

A. Yes.

Q. And what about the third area you have identified on map 14?

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" A. Most of the activities west of Baker Lake that require camps would be shown, would have required a land use permit.

Q. Is it your best belief at this time that this third area that you have identified was established with a land use permit? Is that what you are saying?

A. I am saying that the majority of the exploration that took place in this area occurred in 1975 or later.

Q. In the area west of Baker Lake?

A. Yes.

Q. And that is a period during which land use permits came into operation as of 1975?

A. I will agree that it was not until November of '76 -- no. March of '77 that more stringent land use conditions were applied throughout the north and there might have been more camps that did not require land use permits prior to March of '77 than there were afterwards."

MR. ESTRIN: My Lord, I finished reading at line 16 of page 246. Turning to page 273, I should like to refer to map No. 9 of the I.D.S. Study, entitled "Baker Lake Study Area, Biology --

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Caribou Migration Routes, January, 1978."

I am referring to this only for the matters that I will specifically read in.

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EXHIBIT NO. P-54: Map, Baker Lake Study Area, Biology -- Caribou Migration Routes, January, 1978.

line 3:

MR. ESTRIN: My Lord, page 273,

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" Q. Mr. Hornal, as you say, there are a number of sites on map No. 9 that are not on map 14 in terms of crossing sites and do I understand that to mean that the Government does not accept that these additional sites on map No. 9 are, indeed, important crossing sites for caribou?

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A. You should not understand that.

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Q. Are you saying that the Government acknowledges that those are important crossing sites?

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A. It does not deny that they are important crossing sites.

Q. What position does the Government take in regard to these?

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A. I understand that the major crossing areas identified by the authors of the I.D.S. Report are identified on map 14 which is Exhibit 13.

Q. I see.

A. The Government accepts that

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"there are many other crossing sites such as those identified on map 9 and not on map 14 outside the Baker Lake area where caribou cross. We are, as Dr. Ruel has explained, attempting to examine the data for the major crossing sites identified on map 14.

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If from those examinations we discover reasons to suspect that we should protect all and every crossing site, major or minor, we would then move to do so."

Then on page 275, line 18:

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" A. I also think that many of the major sites identified on map 14 are major areas of hunting for the Baker Lake people, and I think our first interest is to preserve these areas of hunting for these people."

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On page 275 I concluded on line 23.

I next wish to refer to an overlay map which was entered at the Interlocutory Injunction and made Exhibit No. 16 to the Examination for Discovery of Mr. Hornal. I wish to refer to certain aspects of it only.

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Perhaps we could mark that as the next exhibit.

MR. HEINTZMAN: I think it should be identified, My Lord, by virtue of the transcript. I have not seen it before.

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MR. ESTRIN: Well, it is identified by virtue of the transcript. It is Exhibit No. 16, Overlay map marked as Exhibit "F" to the Affidavit of Mr. Cotterill on the interlocutory injunction application produced by Dr. M. Ruel during Examination for Discovery December 7th, 1978.

MR. HEINTZMAN: If my friend has been reading the portions of the evidence identifying it, I suppose that is all right.

MR. ESTRIN: Yes, that's right.

THE COURT: Do you want to start at page 277, line 24?

MR. ESTRIN: Yes, My Lord. Page 277, line 24:

" MR. ESTRIN: Q. Now, Dr. Ruel, you have produced for me an overlay map which was marked as Exhibit 'F' to the Affidavit of Mr. Cotterill in the interlocutory injunction application and I think we should now mark it as an exhibit to this Discovery."

May I now produce it as an exhibit.

THE COURT: Exhibit No. P-55. Baker Lake Land Use Study Map with five overlays.

EXHIBIT NO. P-55: Baker Lake Land Use Study Map with five overlays.

MR. GRAHAM: I understand my friend is going to be dealing with some portions of this, but not all of it.

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MR. ESTRIN: At page 278 of the transcript, My Lord, dealing with the overlay that has only on it No. 2 and items as follows: caribou -- critical areas, spring migration routes, post-calving areas, calving areas, major crossings.

Commencing at line 6:

" MR. ESTRIN: Q. Dr. Ruel, did I understand you correctly when you said that on this overlay, now Exhibit 16, there were major crossing areas marked that are not on map 14, or did I misunderstand you?

A. If I remember correctly, the extent of these crossings here (indicating) are not the same thing as the ones shown here (indicating).

Q. You are saying that the ones marked on the overlay are not as extensive?

A. No. They are more extensive but it is very difficult to compare because on the overlay here (indicating) the scale of the map ---

MR. ESTRIN: Just off the record.
(OFF THE RECORD DISCUSSION)

MR. ESTRIN: Q. I take it that you are satisfied that the crossings marked on this overlay and those on Exhibit 14 are the same in number but there may be slight differences in the extent on the overlay?

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" A. Yes.

Q. All right. Were the crossing areas, the major crossing areas that are on Exhibit 16, this overlay, were they taken from the major crossing sites shown on map 14 or from map 14 and other sources?

A. It is mainly map 14.

Q. I see. Now, are you saying that the Government, in some other map, is recognizing other important crossing sites?

A. Not necessarily other maps. Information gathered, if I remember correctly, was provided to us by C.W.S. or the Fish and Game Branch from N.W.T." I think perhaps it should be corrected, My Lord, it should be N.W.T. C.W.S. is Canadian Wild Life Service.

Turning to page 287, and again with further reference to the overlays, commencing at line 14:

" Q. Mr. Hornal, would you be prepared to answer a few questions related to the overlays?

A. (Mr. Hornal) I would be prepared to try.

Q. All right.

Since we have identified it, we may as well. I take it this overlay was prepared by your department?

A. (Mr. Hornal) Yes.

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" Q. And the areas shown in black on the base map, if you like, is the same study area which is the subject of the I.D.S. Report?

A. (Mr. Hornal) I hope so.

Q. And is the area withdrawn by Order-in-Council in 1977; is that correct?

A. Yes, or is supposed to be.

Q. Yes. If we go to the first overlay, it has upon it -- it is entitled 'Mineral Activity' and can you tell me, please, what the various things are that are marked on it?

A. Well, the red and white line (indicating) represents the proposed route of the Polar Gas Pipeline as of the date this was prepared ---

Q. I see.

A. -- which would be March, 1978. The orange represents the prospecting permit areas then issued. The green represents the areas under claim, approximates the areas under claim, I should say. The upper case initials represent the elements found in the rocks by the companies.

PY stands for Pyrite. CU stands for Copper. PO stands for Pyrrhotite. U stands for Uranium. HEM stands

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"for Hematite. MO stands for Molybdenite. PB stands for Lead. FL ---

THE REPORTER: The last one I have is PB stands for Lead. Is it FL?

THE WITNESS: I believe it to be FL. If it is FI, I quit. If it is FL, it means Fluorite. MAG stands for Magnetite. NI stands for Nickel. ZN stands for Zinc. FE stands for Iron.

Q. These are the standard --

A. Element identifications.

Q. Yes.

A. And then there are areas outlined in blue which indicate our Department's estimates of mineral potential of the area defined as low, moderate and high.

There also appears to be, along the pipeline route, various designations for stockpiles of equipment and camp numbers and borrow sites which would be, I assume, accurate as of March '78.

Q. Yes. Now, on what basis were the appellations high and low and moderate put on the map in regard to mining potential?

A. Well --

Q. What were the considerations that went into that evaluation?

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" A. Well, I really --

Q. First of all, could you break it down? First of all, was this in relation to any specific type of mineral or was it in regard to all types?

A. I would think that it was with regard to all types. I would think that the appellations were attached dependent on the rock type underlying the area, dependent upon the known mineralization within those rocks and the lack of mineralization within those rocks and possibly in the area where the rock type is not visible on surface, geophysical data.

Q. I see.

A. I believe -- Mr. Patterson, you prepared this map?

A.(Mr. Patterson) In conjunction with the Geological Survey of Canada.

Q. Well, Mr. Patterson, can you add anything with regard to anything ---

A.(Mr. Patterson) Well, one of the obvious things is that if you look at the lows, there are no claims, so industry has told us that it is not very interesting. If you look at the highs, there is lots of claims in the high areas, in the areas in

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"which the work started originally in '69 which is in here (indicating). This is called moderate (indicating) which is one of the new areas that they have been working in since 1975.

Q. You said they started in here (indicating)?

A. (Mr. Patterson) Yes.

Q. Could you describe where here is?

A. (Mr. Patterson) Well, in this area here. (indicating).

Q. In the area south of Baker Lake?

A. (Mr. Patterson) Yes.

Q. And identified as the high area?

A. (Mr. Patterson) Right.

Q. And you say that is where the first spur of activity in '69 basically ---

A. (Mr. Patterson) Basically, yes.

Q. Basically was?

A. (Mr. Patterson) Yes.

Q. And then you referred to an area over here (indicating) --

A. (Mr. Patterson) Which is called moderate.

Q. Which is north of --

A. (Mr. Patterson) And Schultz Lake and that is the area in which

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"activity has been since about '73, I guess approximately, and this again is an area (indicating) which is high. Once again, there is a bunch of staking shown.

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Q. You are referring to the area which is north of the hamlet of Baker Lake?

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A. Yes. Pitz Lake over to Schultz Lake again.

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Q. When was that area basically claimed?

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I finished reading at line 11.

Continuing on page 292, line 20:

" Mr. Patterson, would it be fair to say that the major interest of these activities of these companies in this area shown on this exhibit that we are looking at is uranium?

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A. That is correct.

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Q. Now the areas outlined in orange, the permit areas, how long is a permit initially good for?

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A. They are good for three years if they were issued under the old regulations.

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Q. And can you tell me then when the latest year would be when they

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"would run out?

A. Well, some of them would be running out in what, in March of '79, but that is four years because they were given a one-year extension because of the freeze.

Q. And would some of those run out in a later period?

A. Yes. The next year. I think they will all be finished in 1980. They are all in the second or third year.

Q. And is it possible, under the regulations, for a renewal to be obtained?

A. Not a renewal but they can get a new permit.

Q. For the same area?

A. Under certain conditions, certainly yes.

Q. And that would give them another three years?

A. No. It would give them -- oh -- it is north of 68 so it would be three years still in here (indicating). North of 68 they are for five years.

Q. It would give them another five years?

A. Three years.

Q. Three years?

A. Three years, south of 68.

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" Q. I see. Is there a further possibility of a renewal of those permits after that secondary or first renewal?

A. Well, if the area is available you could apply for a permit and whether a permit or not is issued will depend upon a number of conditions. A, if somebody is already in there working and there is hope of things happening --

Q. You don't get another permit?

A. That's right.

Q. Someone could claim these areas (indicating) in the meantime?

A. That is correct. They could be staked at any time providing the ground is available for staking.

Q. All right, and the claims that are shown in green on this overlay ---

A. Yes?

Q. What would be the maximum time that they would be valid for?

A. Well, some of those claims were the ones that would have to go to lease by next year. These are ones that are already leased, eh? These are the International leases. The two leases. One lease is here

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"(indicating) and I guess the second lease is here (indicating).

Q. You are referring to the most southern portion of the study area?

A. Yes.

Q. In here (indicating)?

A. Yes. Ferguson Lake."

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Then, My Lord, page 297, line 3:

" Q. And there are some sketches on this overlay that were done, I think, at the hearing of this interlocutory application. Would those areas be approximately the areas that had claims recorded in 1978?

A. No. Those are the, if I recall correctly, are the outlines of prospecting permits granted by Order-in-Council in 1978.

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Q. The brown lines on here (indicating) indicated that?

A. Right. Yes. That would be about right. Fourteen of them, if I recall correctly.

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Q. And in 1978, were there any further permits issued that were recorded on this map ---

A. Within your. the Baker Lake area?

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Q. Yes?

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" A. As defined by the injunction?

Q. Yes?

A. No. Those are the only permits that were granted in 1978.

Q. And what about any claims recorded ---

A. There were a number --

Q. In '78?

A. There were a number of claims staked and recorded in 1978.

Q. Are they in any major or concentrated area?

A. Yes. In several major areas, right.

Q. Just if you could indicate generally where those --

A. Generally?

Q. Yes.

A. Okay. Aberdeen-Schultz Lake, in through here (indicating).

Q. I see.

A. Some more over here (indicating)

Q. You are indicating --

A. West of Baker Lake.

Q. West of Baker Lake?

A. Yes. West of Baker Lake.

These are the two major areas. This is the largest area in here (indicating)

Q. South of Aberdeen?

A. Yes.

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" Q. Going up to Schultz Lake?

A. Yes.

Q. That was indicated before as the low area of activity?

A. Yes.

Q. Now, having those claims recorded there, would that probably cause you to revise that to moderate or something else?

A. Certainly ---

Q. For that area?

A. -- we certainly would think about it. If they were prepared to stake the claim and did the work, it means that industry has realized it has some potential.

Q. Yes?

A. Yes. That is a fair assessment."

My Lord, I then turn to page 306 and turn to the overlay entitled No. 3: "Fish and Waterfowl -- Critical Areas." There are three colours, blue, brown and green on it. The green area -- on the legend it indicates I.B.P. site, and refers to page 306 of the transcript at line 6. I am sorry. Perhaps we should begin at page 305, line 27:

" Q. Mr. Hornal, we are looking at the next overlay to Exhibit 16 which is entitled 'Fish and Waterfowl Critical Area' and there is an area outlined in green to the south of Baker Lake and it is notes as an

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"I.B.P. site. What is your understanding in that regard?

A. I.B.P. stands for International Biological Program. That program had groups of independent biologists examine the country to identify areas of particular biological interest within the country and they have obviously identified on this map three different sites which they claim have particular biological significance.

Q. And the three sites I take it are the ones in green?

THE COURT: Are fish and waterfowl going to come into play in this Action, Mr. Estrin? We have spent almost two weeks on caribou. I hope this ties in with something that you are really concerned with.

MR. ESTRIN: Yes, My Lord, the I.B.P. study does in particular. I think the I.B.P. study --

THE COURT: All right. Go ahead.

MR. ESTRIN: Commencing at line 14:

" Q. And the three sites I take it are the ones in green?

A. Yes.

Q. Yes.

A. Labelled the Kaminuriak Lake area, Tehek River area and the Thelon River area."

That is the extent to which I can refer to it at this

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time in the transcript, and that ends at line 20.

My Lord, for ease of understanding the area -- one area marked in green is on the right entitled Kaminuriak Lake Area 5-2. The second one is the Tivielik River 5-1. There is another one on the far left-hand side, Thelon River.

We were referring to the overlay dealing with goose and caribou hunting areas, No. 4. Caribou hunting areas are shaded in yellow. Those areas are numbered.

Page 322, commencing at line 19:

" Q. All right. Mr. Hornal, would you agree with me that the areas marked 1, 2 and 3 on the overlay showing the most significant areas for caribou hunting on Exhibit 16 correspond with areas shown on another portion of this overlay where, in there, it has been marked high or moderate mineral activity?

A. And low.

Q. Well, let us take area No. 1 in terms of the caribou significance overlay -- it is bisected by an area of high and --

A. Low.

Q. -- low. Well, high --

A. High. That is high. One-third of it is high and two-thirds of it is low.

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" Q. And subsequently -- subsequent to the preparation of that criteria, it was agreed that right -- well, almost in the middle of that area, there were some further permits issued, a large block of permits issued?

A. Yes.

Q. The area marked in brown?

A.(Mr. Patterson) Four permits.

Q. Four permits?

A.(Mr. Patterson) Yes.

Q. Four permits covering a large area?

A.(Mr. Patterson) Yes.

Q. A relatively large area; is that correct?

A.(Mr. Hornal) Four permits were issued three of which are issued in the high area we described before.

Q. All right. Now, moving over to area No. 2, this would correspond with moderate in the main and in some places low. Is that correct?

A. That is correct.

Q. In that level of mineral activity?

A. Yes.

Q. And area No. 3, the third area that is of most significance to

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"the Baker Lake people, I suggest corresponds to an area of mineral activity which is marked as high.

A. Correct."

On this same overlay there is a red area indicating "Goose Flows" most significant areas.

Turning to page 308, line 10:

" Q. ... Returning to the overlay dealing with goose and caribou hunting areas of significance, there is one block in red which is to the western end of Baker Lake. I take it this overlay means that that is a significant goose hunting area and is that the only one on this sheet?

A. Yes. That is the only one.

Q. And does the Government accept that it is a significant goose hunting area for the people of Baker Lake?

A. Yes."

Mr. Sgayias made a statement on a subsequent discovery which I will let him read in because I do not think I asked for it. It was gratuitously volunteered.

MR. SGAYIAS: With respect to the maps from which the overlay was drawn -- the maps from the I.D.S. -- there was a question posed by my friend -- it was one of the undertakings -- as to whether the Crown accepted the information shown in maps 2, 3, 4, 5, 6, 7 and 8 of the I.D.S. Study. Oh,

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I think we have covered that.

MR. ESTRIN: My Lord, turning to page 315, we are talking about page 181 of the I.D.S. Study. Specifically, the question I want to read in is with regard to page 188 of the I.D.S. Study. It is found on line 21 of page 315:

" Q. Now, on page 188 there are potential impacts described for the main caribou water crossing sites. Does the Government deny that uranium exploration and development activity will cause negative impacts on caribou when they are crossing the major water crossing sites?

A. We do not deny that there may be potential impacts."

I am sorry. If I may go back to the bottom of page 314, and again that is the same topic. Commencing at the bottom of page 314:

" MR. ESTRIN: Q. Well, does the Government deny that there will be impacts on caribou in the post calving movement situation?

A. No.

Q. What impacts does the Government say such activities will have?

A. We don't know."

MR. SGAYIAS: With respect, my friend read in a passage at the bottom of page 315, commencing at line 21. For the purpose of having a

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complete answer, I think that the passage starting at line 2 on page 316 should be read in as well.

Q. And what impacts does the Government believe may occur?

A. We do not know but for the purposes of the Baker Lake zone, we have taken steps, as has been described, to protect that until we can further examine the matter."

THE COURT: If he was going to read them in later, I think it is all right to read it in now.

MR. ESTRIN: That is fair.

Now, My Lord, turning to another volume -- and there was a problem because on the third day of Discovery portions of Volume 3 were lost and only portions remain. I believe it begins at page 334. I am not sure if that is the second or third volume you have, My Lord. It is the first page of this day, December 8.

My Lord, at this time I would like to file what was Exhibit 26 to the Discovery of Mr. Hornal, the Mineral Industry Report, published by the Department of Indian Affairs and Northern Development, for the year 1969 and 1970, Volume II.

MR. SGAYIAS: My Lord, once again there were portions of that report that were put to the witness on Discovery and portions which were not put and portions accepted.

I submit that only portions

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accepted should be put into the record.

MR. ESTRIN: I certainly concur.

EXHIBIT NO. P-56: North of 60,
Mineral Industry Report of
1969 and 1970.

MR. ESTRIN: My Lord, there are a number of these reports, and what happened was that initially I asked questions about the first volume on Discovery and got certain answers which I intend to read in. Subsequently, we received an undertaking that if we were to produce in written form the questions we wished to have answered, we would receive the written answers. That was done.

I would propose to file later today those documents -- the questions and written responses, without having to read those questions and answers into the record, so we can have those taken as if they had been read.

The reason I suggest that is that we could be here for two more days just dealing with those because there is an awful lot of detail in the Mineral Industry Report that the Plaintiff feels important to have in the record and for Your Lordship to be aware of.

THE COURT: If it would take you two days to read it into the record, how long is it going to take me to read the whole report and figure out what it is you want to refer to.

MR. ESTRIN: Well, My Lord, the questions relate to specific years and, in fact, not

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much of each of the reports seemed to be relevant. It is only certain activities and certain years that are relevant to this Action. All of that is summarized in these memos. When it comes to Argument, we will try to put it in very succinct form in which our aspects are relevant.

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We had this in mind. We had an awful lot of trouble ourselves to comprehend this, but I think we need to put this into the record and then I think we will be able to succinctly refer to it.

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THE COURT: Well, if it comes in through Discoveries or comes in through admissions of one of the parties, that is evidence as far as that party is concerned. Get it in the best way you feel you can.

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MR. ESTRIN: At this point, My Lord, I would like to deal with that portion of what is now Exhibit P-56 that was referred to during the Discoveries and the portion, accordingly, not referred to in written undertakings.

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Turning to page 362 of the transcript, having regard to page 1 of this report.

MR. SGAYIAS: Excuse me. I wonder if Mr. Estrin could refer to the page numbers found in the left-hand portion of the report -- A1, B1, F1, because the copies we have and other counsel have do not have page numbers on them, but the alphabetical designation -- just so we may follow along.

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MR. ESTRIN: Take G1.

My Lord, at the top of this page

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the quotation is set out. It appears on page 1 of the Mineral Industry Report. The first sentence is missing at this point in the transcript.

" 'Huge tracts of land, until then unexplored, were acquired under prospecting permits and subjected to thorough geological and geophysical study. The pre-dominance of airborne geophysical surveys in the various programs is a marked change from previous studies done in the area.'

Would you agree with those sentences I have just read?

A. I might want to qualify 'huge', but in general they are correct.

Q. In what way was the airborne geophysical surveys a marked change from previous studies in the area?

A. A supplement to the first question: I would also like to qualify 'thorough', my acceptance of the word 'thorough'. And now to your second question, which was: in what way were the ...?

Q. Were the predominance of airborne geophysical surveys a marked change from previous studies in this area.

A. Most previous studies had

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"been based on prospecting on the ground. In 1969, areas of the Keewatin were identified as being possible hosts for uranium mineralization, and at that time mineral companies were interested in mineral uranium. One of the easiest ways of detecting that over large areas of ground is to use airborne surveys, so they were introduced at that time into the Keewatin.

Q. To your knowledge were there any studies done by your Department or by these companies as to the environmental impact of airborne surveys on wild life prior to this intensive program being started at that point?

A. Again I would qualify the word 'intensive'.

Q. All right.

A. No."

That left us at line 16 on page G2.

Turning to page 365, or G4, line 30:

" Q. Now, it goes on on page 1 that a major factor in the increase in exploration in the area was the 1968 discovery of uranium in a certain zone by Gulf Minerals Limited. Would that discovery have been in

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"the geographic area we are concerned about - that is, of Baker Lake?

A. No.

Q. Where was it?

A. Northern Saskatchewan.

Q. Are any of the other statements made in that paragraph related to work conducted in the Baker Lake area, as far as you can tell me? The next paragraph does talk about Keewatin. I just wondered whether anything in that preceding paragraph related to Baker Lake.

A. Well, it relates to the Keewatin and, as such, Baker Lake is in the Keewatin. It in general relates to - some of the 82 and 103 prospecting permits were of course in the Baker Lake area; some of the airborne gamma ray spectrometry was done in the Baker Lake area, as was the photogeological studies, the geological mapping, the geochemical surveys, the prospecting and the other airborne surveys.

Q. Mentioned in that paragraph --

A. Mentioned in that paragraph.

Q. -- on page 1 of Exhibit 26?

And then the last paragraph on page 1:

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" 'Major programs of uranium exploration were undertaken by various companies in the central District of Keewatin. Aquitaine Company of Canada Limited undertook airborne radiometric and ground follow-up surveys on 12 prospecting permits and staked a uranium showing at Amer Lake.'

And the paragraph goes on to talk about other activities in the Christopher Island area east of Baker Lake, and in the Kazan Falls region to the southwest, and it speaks of major programs being undertaken by other companies.

Do you agree that what is stated in this paragraph - that is, the last paragraph on page 1 and continuing on the top of page 2 - is correct?

A. Yes."

I turn to page 368, or G7. This is in reference to page 3 of P-56. Commencing at line 20:

" Q. All right. Well, it says then:

'In the southern District of Keewatin and southeastern District of Mackenzie, exploration for uranium was undertaken on permits held ...'

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"on certain companies named, and on claims held by certain companies. Are you able to tell me if any of those areas as described, the Padlei area would be within the terms of the coordinates we are talking about in this case?

A. No.

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Q. Would it be very close to the boundaries of the geographic coordinates, within say 50 miles?

A. Oh, yes, some of them.

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Q. And the next paragraph - well, do you agree that the second paragraph on page 2 is accurate?

A. Yes."

Turning the page, My Lord, 370 or G9, line 9.

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MR. SGAYIAS: Perhaps, if I could interrupt, there is reference in the previous passage to boundaries of the geographic coordinates we are talking about in this case.

Perhaps those coordinates could be clarified. There are certain coordinates with respect to which questions were answered on the Discovery. I understand that those are the ones referred to there.

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MR. ESTRIN: Yes, My Lord. The coordinates are set out somewhere in the Discovery. They are 62 degrees 30 minutes north by 66 degrees north; and from 92 degrees west to 101 degrees west.

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Thank you, Mr. Sgayias.

At page 370, G9, line 9:

" Q. At the bottom of page 2
it says:

'Exploration in the eastern
Northwest Territories continued
at a high level in 1970. Fifty-
four new prospecting permits were
explored, and follow-up studies
resumed in the permits granted
in 1969.'

Do you believe that statement as a
general statement is correct as to
exploration continuing at a high
level in the eastern Northwest
Territories in that year?

A. Relatively speaking for that
area, yes.

Q. And in the eastern Northwest
Territories, would the Baker Lake
area that we are considering be
considered by you as part of that?

A. Yes.

Q. And when you say: relatively
for that area it is high, what would
you be comparing it to?

A. Well, speaking as the editor
of this thing, --

Q. All right.

A. -- high relative to the
activity in that area in previous years.

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" Q. Yes; that is prior to 1969?

A. Prior - in this particular case - prior to 1970, We have already said on the previous page that 1969 was a busy year.

Q. So that do I understand --

A. And it was still busy in 1970.

Q. About the same level as '69 or about the same?

A. All right: about.

Q. Well, am I right that high ... Would it be higher or lower?

A. I would think it would be, without reviewing the number of man-days and other good things, I would think that it would be a little lower than '69."

Continuing at page 372, line 1 -- that is G11:

" Q. All right. At the top of page 3, it says:

'The Dynamic Group of Companies added six prospecting permits to their holdings and performed radiometric, geological and geochemical surveys in the Baker Lake-Kazan Falls areas. Showings discovered in 1969 were explored in detail and drilled.'

Do you agree that those statements are correct?

A. Yes.

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" Q. And in the next paragraph it refers to Aquitaine doing follow-up surveys in the central District of Keewatin and probed the Amer Lake uranium showing. First of all, is the central district outside of the coordinates that we are considering?

A. Portions of the central district include the coordinates.

Q. All right. What is your best information as to, then, Aquitaine - pursuant to what is stated in this paragraph - doing follow-up surveys on mineral showings in the central District of Keewatin; what is your understanding as to whether any of those were conducted within the coordinates we are talking about?

A. Some of them were.

Q. And it says the same company probed the Amer Lake showing with 26,802 feet of diamond drilling. Was the Amer Lake within the study area?

A. Amer Lake is just outside of the study area."

Skipping down to line 10:

" Q. But would be included within the coordinates that I spoke of in this proceeding?

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" A. That's correct.

Q. And it said that 26,802 feet of diamond drilling took place; is that a high number of feet of diamond drilling for this area relative to what had taken place by way of diamond drilling in any previous year?

A. I don't think it was the highest number but it's a very high number relative to what had taken place in any previous year."

Continuing on page 374, G13, line 11:

" Q. Is the greenstone belt referred to in this area that I have described, the coordinates?

A. The greenstone belt is partially within that area. The greenstone belt referred to in page 3 of this paragraph 3 is partially within the area of the coordinates.

Q. And what portion of the area would it be in? If you could just roughly show me on the map and describe it. Could we refer to a map that is made an exhibit? Referring to

A. May we refer to the Caribou Protection Map, Exhibit No. 17."

My Lord, at this time I would ask to file Exhibit No. 17 which has previously been identified. Exhibit 17

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of Mr. Hornal's Discovery was marked at page 302 of the Discoveries. That is the second volume, line 2, page 302.

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" MR. ESTRIN: Q. Mr. Hornal, we now have produced to us something called "The Caribou Protection Map 1978", dated April the 30th, 1978, signed by Mr. A. Ganske, Engineer, pursuant to Section 4, Territorial Land Use Regulations, and, I take it, you have compared --

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Well, let's mark the Caribou Protection Map as an exhibit."

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Because the Discovery refers to this at this point, may I have it marked as an exhibit solely for the purpose of the reading I will be doing with regard to the markings shown on it.

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EXHIBIT NO. 57: Caribou Protection Map 1978.

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MR. ESTRIN: Referring back to the transcript at page 374, G13, line 27.

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" A. The areas of greenstone referred to in this particular paragraph stretch south westward from Rankin Inlet toward Nueltin Lake and cross the southeastern portion of the area defined by your coordinates.

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Q. I wonder if you could just mark

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"in an approximate way this greenstone belt location on Exhibit 17? You are going to do that with a red pen."

The transcript became lost at this point. Mr. Timberg, when he subsequently tried to go over this, did to some extent, and that is found at page 502. It is in regard to what was then Exhibit 26 in the Discovery. Commencing at line 9:

" THE WITNESS: I am prepared to certify that the location, history of current work and results as described in Exhibit 26 are as accurate as we can make them.

Now we have no reason at this time to doubt the accuracy of any of the statements made therein. Correction. Doubt the accuracy of any of the statements made therein.

--- EXAMINATION BY MR. TIMBERG:

Q. I am particularly concerned with pages 66 to 118. These pages I believe deal with the central district of Keewatin and I take it then what you are saying is that whatever is in those pages and anywhere else in the exhibit dealing with location, history, current work and results are correct?

A. Yes as far as they pertain to this inquiry. Geological terms and geological models change and

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"there fore what might be described as sandstone now may be described as a quartz site down the road and so on and so forth but this is of a technical nature but I do not think that it will materially affect the meaning of this reference."

There is another reference to Mineral Industry Reports in general which I think might be helpful to refer to at this time. It is at page 491, bottom of the page, line 25:

" Q. Mr. Hornal for my own clarification and to give me an indication as to what types of documents are available in the Indian and Northern Affairs files whether in Ottawa or in Yellowknife, what document, if any, would I have to look at to see what work has been done in a certain area whether it was with respect to a prospecting permit or with respect to a claim?

Is there such a document that details exactly what work has been done?

A. The ---

Q. Perhaps you answered Mr. Estrin's question earlier?

A. The best summary of the work that is being done on a claim or prospecting permit that I can refer

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"you to are the mineral industry reports which have become exhibits at this Examination for Discovery.

Q. They are the best and most accurate?

A. They are the best summary.

Q. I see.

A. And we believe that they are as accurate as it is possible to make them. They have been checked by the company for correctness before they are released and they purport to represent the activities which took place in a particular area in that year."

My Lord, would this be a convenient time to break? Or would you like to continue for a few minutes?

THE COURT: Although you are getting tired, and my sympathy for you in that respect is unbounded, we do have, by my watch, another 15 minutes.

MR. ESTRIN: I would be delighted to try to continue. Fine.

THE COURT: My sympathy, I might say, is somewhat abated by the fact that I know Mr. Timberg has a gown and can read. If you find that you are wearing yourself out, you may consider getting him to pinch-hit.

MR. ESTRIN: Well, I certainly will consider that over the luncheon adjournment, although it may be that the substantial portion of

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the reading from these Discoveries is coming to an end and we will be putting forward two documents that perhaps may be taken as read.

My Lord, if we may continue at page 386, AA9, at the bottom of that page.

" Q. Now, if we may return to the mineral activity. You have produced to me a number of documents. You produced to me Mineral Industry Reports produced by the Department of Indian and Northern Affairs for North of 60 for the years 1971 and '72, Volumes 2 and 3; a similar report for the year 1974; a similar report for 1973; and a similar report for 1975; and I think I understood from what you said earlier, Mr. Hornal, that the one for 1976 is in production?

A. That is correct.

Q. That is the one that is being translated?

A. Somewhere in that process.

MR. ESTRIN: All right. I'd like to mark these as exhibits on this examination. The 1971 and '72 report, Volume 2, will be Exhibit 27. Exhibit 27 is the Mineral Industry Report, Volume 2 for 1971 and 1972. Exhibit 28 will be the Mineral Industry Report for 1971 and 1972, Volume 3."

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" MR. ESTRIN: Exhibit 29 will be the Mineral Industry Report for 1973. Exhibit 30 will be the Mineral Industry Report for 1974. Exhibit 31 will be Mineral Industry Report 1975."

" MR. ESTRIN: Then you have also produced to me some further documents, Mines and Minerals Activities 1975, published by the Department of Indian and Northern Affairs; we will mark that Exhibit 32; Mines and Minerals Activities of 1976, which we will mark Exhibit 33; Mines and Minerals Activities 1977, Exhibit 34."

" MR. ESTRIN: And finally, a Xerox document, Mineral Exploration Northwest Territories 1978 by W.A. Padgham and Geology Office Staff of the Department of Indian and Northern Affairs, Yellowknife, we will mark Exhibit 35."

My Lord, I would like to enter all of those documents now to be filed as exhibits, except what was Exhibit 28, Volume 3, 1971-72. I believe it is irrelevant.

EXHIBIT NO. P-58: Mineral Industry Report, 1971 and 1972.

EXHIBIT NO. P-59: Mineral Industry Report 1973.

EXHIBIT NO. P-60: Mineral Industry Report 1974.

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EXHIBIT NO. P-61: Mineral Industry Report 1975.

EXHIBIT NO. P-62: Mines and Minerals Activities 1975.

EXHIBIT NO. P-63: Mines and Minerals Activities 1976.

EXHIBIT NO. P-64: Mines and Minerals Activities 1977.

EXHIBIT NO. P-65: Xerox copy Mineral Exploration Northwest Territories 1978.

MR. ESTRIN: My Lord, next is AA12, page 389, line 14:

" MR. ESTRIN: Yes. I wonder if we could deal with these documents this way, and that is: I would propose to - not immediately, that is, within the next few days but within the next, hopefully the next few weeks - have a chance to go through these and I would like to put in writing my questions with regard to whether or not the Department disputes the accuracy of the statements made in these documents that pertain to the Baker Lake area, and I wonder whether I could get an undertaking that we could deal with them on that basis.

MR. SGAYIAS: I think we should be able to do that as long as your request is forthcoming as soon as possible."

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That leads us to the following documents: First is a letter dated January 16, 1979, under my name and addressed to the Department of Justice, Attention Mr. Sgayias, which asked that the following questions with reference to mines and minerals activities be answered by your client, and particularly by Mr. Hornal.

The answer to that letter is a memorandum from Mr. P.J. Laporte to Mr. R. Hornal, and the subject matter is Examination for Discovery, Estrin's letter of January 16, 1979, and attached to the memo, which itself is 14 pages, and the bottom of the 14th page is signed by Mr. Laporte and attached to that is a number of maps which are referred to and also as part of the reply what is a Mineral Industry Report for 1976, which is a Xerox copy. It is with regard to the Keewatin District and by Mr. P.J. Laporte, which is the first memorandum, and it is many pages.

I would ask that my letter of January 16 and the reply of Mr. Laporte, together with the subsequent Mineral Industry Report for 1976, be made one exhibit.

EXHIBIT NO. P-66: Letter dated January 16, 1979, from D. Estrin to D. Sgayias and memo from P. Laporte to R. Hornal.

MR. ESTRIN: Subsequently, with regard to the same materials, My Lord, there were further memoranda produced by Mr. Laporte. The first

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is dated April 2, 1979, from Mr. Laporte to Mr. Hornal, and the subject is Crown's undertakings, Examination for Discovery, February 27th and 28th, 1979.

It is also marked as attachment 70.

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Perhaps that could be marked as the next exhibit.

EXHIBIT NO. P-67: Memorandum from
P. Laporte to R. Hornal
dated April 2, 1979.

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MR. ESTRIN: The next is the document dated April 3, 1979, a memorandum from Mr. Laporte to Mr. Hornal, and again re Crown's undertakings, Examinations for Discovery, February 27th and 28th, 1979. That is a 13-page memorandum and again signed by Mr. Laporte and to which is attached a number of maps.

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EXHIBIT NO. P-68: Memo from P.
Laporte to R. Hornal dated
April 3, 1979, re Crown's
undertakings, Examinations
for Discovery, February 27
and 28, 1979.

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MR. ESTRIN: At this point, My Lord, I will return to reading from the transcripts.

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THE COURT: We have arrived at the break. We will recess now until 2 o'clock.

--- Luncheon Adjournment.

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--- Upon resuming at 2 p.m.

THE COURT: Mr. Estrin.

MR. ESTRIN: My Lord, page 597,
the last volume, line 15:

" Q. Mr. Hornal what information
can you give me about complaints
dealing with harassment to caribou
from aircraft related to non-land
use activities?

A. For the periods 1968-1977?

Q. Make it 1978 as well?"

The answer really begins on page 598, line 4.

" A. I am aware from personal
conversations with people in Baker
Lake of an incident in the mid-
seventies (the exact year I cannot
recall) it has been described to me
where one or two Inuit hunters had
left their canoe and proceeded inland
in search of caribou. They had gone
1-2 miles inland, spotted a caribou,
were stocking that caribou and were
about to fire when a low flying
helicopter came over the hill and
scared the caribou away and the Inuit
hunters had to return to their canoe
empty-handed."

Beginning on the next page:

" I am aware of an incident related

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"to me and Dr. Ruel at a meeting in Baker Lake in the spring of 1978 I believe which took place, which is purported to have taken place ...

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Q. This is 1978 you are talking about now?

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A. This is at a meeting in 1978 when we heard about this incident but the incident is reported to have taken place in the late 60's or early 70's at Kazan Falls where a helicopter passed over a herd of caribou, landed, the herd of caribou approached the chopper and scared the chopper and its occupants away.

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I am aware of an incident, of a report of an incident at Baker Lake in 1977 where two helicopters belonging to Viking Helicopters Limited, a helicopter firm, I believe, working out of Ottawa I hear, made a low level approach to the airport at Baker Lake over the Thelon River and disturbed hunters and fishermen at the Thelon River with their low level approach.

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Q. These are all non land use activity violations?

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"records that I have heard other instances at other meetings at Baker Lake during the period 1974 to 1977 concerning aircraft, the details of which I am uncertain about at this time."

Q. But there would be information in your records?

A. No. There is not information in my records. These instances were discussed in informal meetings with hunters and trappers and residents of Baker Lake. Sometimes they were discussed at formal meetings but no transcripts of these meetings are available.

There are notes from the meetings available which I have examined and which have not refreshed my memory as to the exact details of these instances but I will certify that I have heard other cases that I have not mentioned but I am having difficulty recalling the exact details of the instances.

Q. Would you have or would you be able to provide us at this time with the names of those people in Baker Lake who complained to you?

MR. SGAYIAS: Mr. Timberg, that is not relevant. It is a question of

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"names of witnesses.

MR. TIMBERG: Okay.

MR. SGAYIAS: As well with respect to these complaints, as Mr. Hornal referred on a couple of them, we are admitting that the complaints were made as described. We are not admitting the truth of the complaint, of the facts in the complaint."

Then, My Lord, at page 633, line 23:

" THE WITNESS: Mr. Timberg, yesterday you sought further information concerning undertaking 52 and I agreed to see if I could determine how many applications for prospecting permits within the Baker Lake area were made for 1979.

I have since been advised that the best I can do for you is to tell you that eighty-one permit areas were applied for in the Baker Lake area during November and December of 1978.

Some of these permit areas were applied for more than once and I have no record of how many times this happened.

We issued thirty-six permit areas in the Baker Lake area. Hopefully that is the number you will find circled."

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Now, My Lord, that substantially completes the reading from the transcripts. At this point I would like to refer to specific documents identified during the course of Examinations or pursuant to undertakings, and enter those. For that reason we may need to refer back to the transcripts, but the referrals will be specific documents.

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The first document, My Lord, is Map 13 of the I.D.S. Study, entitled "Recent and Proposed Industrial Land Use." It was Exhibit 4 to the Examination of Mr. Hornal.

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Turning to page 62 of the transcript, line 30:

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"And, I'm also asking if over the lunch break if possible or at a later date if necessary, you can ... they can advise me as to whether this map which I take it, referring to map number thirteen is accurate as far as the Department is concerned--as far as the information it shows.

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A. (PATTERSON) As of January 1, 1978?

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MR. ESTRIN: Yes and for the preceding year.

MR. SGAYIAS: Subject to our reservation as to admissibility at Trial, we can attempt to answer that. Perhaps the map should be made an exhibit.

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" MR. ESTRIN: Yes.

MR. SGAYIAS: Yes, so that we can have it here on the record.

MR. ESTRIN: All right. We will have that marked as Exhibit 4 to Mr. Hornal's Examination for Discovery."

Subsequently, we received in a statement from Mr. Sgayias in regard to the question whether that map be as accurate, and the following was stated:

" As the dates pertaining to the information purportedly shown on the map are unknown, it is not possible to state that it is entirely accurate, although no obvious inaccuracies are apparent."

I would ask that this map be marked as an exhibit.

EXHIBIT NO. P-69: Baker Lake Study Area Map 13, Recent and Proposed Industrial Land Use, January, 1978.

MR. ESTRIN: The next document, My Lord, was made attachment 21 pursuant to undertakings and also identified as Exhibit 54 to the Examination of Mr. Hornal.

It is entitled "Land Use Applications Baker Lake Area." There is a note, "The attached lists all those applications received for work in the area up to January 1st, 1979."

If that could be marked as the next

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exhibit, it is a document containing a cover page and five further pages.

THE COURT: I suppose you should read the parts from page 606 of the Discovery that brings it in, if you have not already.

MR. ESTRIN: Thank you, My Lord. At the top of page 606:

" Perhaps you could briefly identify the Attachment and we will make it the next exhibit.

A. Attachment 21 has a titled page entitled Land Use Application, Baker Lake Area and five pages listing the land use permit number, the name of the company, the date it was received, the area of the permit, the type of operation, the date the permit was issued, the date the permit expired and remarks concerning the permit."

EXHIBIT NO. P-70: List of Land Use Applications, Baker Lake Area, January 1, 1979.

MR. ESTRIN: The next document is Exhibit 38 to the Examination for Discovery and it is Attachment 26(C), pursuant to undertakings.

It is a document entitled "1979 Notice." "Take notice that pursuant to section 29 of the Canada Mining Regulations established by Order-in-Council PC-197-3419 ..."

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Following that is a list of numbers, five pages in total, under the name of H.W. Woodward. A number of the prospecting permit numbers have been circled in blue, and I will refer to the transcript in a moment.

I would ask that be made the next exhibit.

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EXHIBIT NO. P-71: Notice re Section 29, Canada Mining Regulations re prospecting permits.

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MR. ESTRIN: They are referred to at page 633 and 634. I believe I have already read that in.

THE COURT: You have read that in. Page 633, line 23 to line 9 on page 634.

MR. ESTRIN: Yes. I believe I should read on page 634 commencing at line 10:

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" MR. TIMBERG: I am afraid to disappoint you. I only count thirty-one on attachment 26-C which is Exhibit 38."

And there is an undertaking to review again that attachment to make sure it is complete.

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Subsequently we received a document, Attachment 75, which says as follows:

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" The undertaking being checked to accuracy of Attachment 26-C, which shows only 31 permit areas being granted in 1979, given the evidence that 36 permit areas were granted that year --

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" A. There were 36 prospecting permits granted in 1979 in the area in question. Those permits are numbered ..."

And there are a number of numbers set out of which five are circled in blue, and that completes the list.

EXHIBIT NO. P-72: List of 36 prospecting permit numbers for 1979.

MR. ESTRIN: And to allow us to understand where these are, the Government produced a map, made Exhibit 39 to Mr. Hornal's Examination and further referred to as Attachment 26-D. It is headed "Baker Lake Study Area Critical Areas, Caribou. It is updated to January 12, 1979.

Perhaps that may be made the next exhibit.

EXHIBIT NO. P-73: Baker Lake Study Area Map updated to January 12, 1979, showing critical areas for caribou.

MR. ESTRIN: The legend indicates that mineral claims in good standing are shown on it, prospecting permits, lapsed mineral claims, with the map updated to January 12, 1979.

Reference to this is at page 454 of the transcript, line 8.

" Q. Now, Mr. Hornal, I am showing you a map marked as Attachment twenty-

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"six (D) to the Undertakings.

A. (Mr. Hornal) Yes.

Q. Could you identify that map for me, please?

A. (Mr. Hornal) This map is similar to Map fourteen of the I.D.S. Report on which there has been superimposed the mineral claims in good standing and the prospecting permits in good standing as of January the 12th, 1979.

Q. I take it then that the prospecting permits indicated for the Baker Lake area on the last Exhibit will all be shown on this map?

A. (Mr. Hornal): That is correct."

The next document, My Lord, is a five-page document with columns on it. It is Attachment 28. In the left-hand column it has certain numbers. Those are referenced in the next column to the National Topographic System and in another column Airborne, Geophysical Work is the next, and the next column is Ground Work, and the next column is Work Done, and the next column is Flight Altitude, and the next column is line spacing. I will explain what that is, if that could be marked.

EXHIBIT NO. P-74: Chart relating to Geological Activity Surveys.

MR. ESTRIN: At page 508, My Lord,

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the question at line 19:

" Q. ... I would like you to explain to me at some future time what attachment 28 means without my having to go to the assessment records."

Then the answer is on the next page at line 9:

" A. The documents, when they are put into this index, are indexed by number and that is the document you see in column one of this particular attachment.

Each document describes a survey which had an element of flying involved with it. A flying survey as opposed to normal supply flights. et cetera. It would be incorrect if I suggested to you that this list represented all the airborne work done in the Baker Lake area during the years '68 to '78 but it is an initial attempt to give you an indication of the sort of work that was done in that area."

Skipping down to line 26:

"Q. ... Was it prepared by looking at the assessment records and then writing in the information that we see on attachment 28?

A. Yes it was. I believe that the work was first identified off the

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"listing of the assessment work, the indexing of the assessment work which I mentioned earlier. Then the file would be examined to see exactly what was done.

Q. I see.

A. And what is listed here is an indication of the height at which the surveys were flown, the spacing at which the surveys were flown, the grid spacing at which the surveys were flown and the type of surveys flown which were questions which Mr. Estrin asked in December."

Subsequently, there was an undertaking given by my friend Mr. Sgayias to produce records of application for mineral leases within the Baker Lake area, along with any surveys attached thereto. Subsequent to that undertaking was produced a document which has been labelled Attachment 29.

I would ask that that be made the next exhibit. It is an application for lease. The name of the applicant is Pan Ocean Oil Limited, for mineral claim situated at 55-M-13 (Baker Lake/Kazan River, NWT.) That is the first one. Attached to that document is another application for a lease by Pan Ocean for mineral claim 56-D-2. The first application I referred to was dated October 17, 1978; the second application is dated the same date; the third application is again from Pan Ocean Oil Limited, the same

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general area, 55-M-13, again dated October 17, 1978. There is another document, an application for a lease by Pan Ocean Oil Limited, claim situated at 55-M-13, again dated October 17, 1978. Another one, Pan Ocean Oil Limited, 55-M-12, October 17, 1978. There is another one by Pan Ocean Oil Limited, 56-D-2. The geographical indication is Baker Lake/Christopher, NWT., October 17, 1978. The next one is Pan Ocean Oil Limited, 56-B-2, again Baker Lake/Christopher, Northwest Territories, October 17, 1978.

I ask to have all of those -- tabled together -- and marked Attachment 29 -- be the next exhibit.

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EXHIBIT NO. P-75: Seven lease applications by Pan Ocean Oil Limited, dated October 17, 1978.

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MR. ESTRIN: Then, My Lord, Attachment 41 is a memorandum from Mr. Laporte to Mr. Hornal, dated January 23, 1979. This attachment was given to us pursuant to an undertaking contained at page 233 of the transcript, essentially stated as follows:

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"How many of the prospecting permits outstanding within the Baker Lake area at the time of the injunction were subsequently worked pursuant to Land Use Permits?"

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And Attachment 41 gives a list of prospecting permit numbers, date of issuance, owner's name, whether work was done, and the Land Use Permit Number if known.

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I ask that that document be made the next exhibit.

EXHIBIT NO. P-76: Memorandum from P. Laporte to R. Hornal dated January 23, 1979, relating to prospecting permits outstanding in Baker Lake area, 1978.

MR. ESTRIN: The next one, My Lord, I just want to try to clarify. I believe it has been made an exhibit, that is P-6. We can have a look at P-6. It is a large map entitled "Caribou Protection 1979." It was also Exhibit 58 to the Discovery of Mr. Hornal. I think there is something I should be reading with regard to that.

It was also marked, My Lord, as Attachment 47 pursuant to undertakings, and that number also appears on Exhibit P-6.

At page 620 of the transcript of February 28, line 2:

" I understand that you have provided me with a revised Caribou protection map?

A. We have. I believe it is attachment 47 and I am prepared to advise you now that since this map was printed, on the 27th of December, 1978, and since as a result of our meetings with the people of the Keewatin and Rankin Inlet on February the 6th, we are extending the area of the crossing at the north end of

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"Kaminuriak Lake to agree with the information given us at Rankin Inlet.

Q. To what extent are you changing that crossing?

A. If I may complete what I am going to say. We are also modifying the crossing at the south-east portion of Schultz Lake, again, according to information received from the people of the Keewatin at the February the 6th meeting and I am prepared to make available to Mr. Sgayias upon my return to Yellowknife the final copy of this protection map which he can forward to you.

Q. Thank you. What is the difference between this Caribou protection map and the one that was put in as an exhibit in the first Examination for Discovery or the first round of examinations?

MR. SGAYIAS: Are you referring to the 1978 Caribou protection map?

MR. TIMBERG: I believe I am. The one prepared by Mr. Ganske.

MR. SGAYIAS: Yes.

MR. TIMBERG: I believe it was Exhibit 17."

We have already had that marked as an exhibit, My Lord.

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" THE WITNESS: In the 1978 Caribou protection map, we delineated calving areas and post-calving areas for both the Kaminuriak and the Beverly Herd.

On this map we have delineated as areas A the area used most often for calving and post-calving activities by the Kaminuriak and Beverly Herds.

We have designated as area B, areas which have, from time to time, been used by those herds for either calving or post-calving activities ---

Q. And what facts or studies did you rely on to decide upon the extent and the location of those areas A and B?

A. We relied upon the work of Mr. Darby ---

Q. The Darby Report we have just been talking about?

A. ThAT's correct.

Q. Anything else?

A. The crossings except for the amendments that I just mentioned, are the same on the 1978 map, on the 1979 map as on the 1978 map. The boundaries of areas A and B have been adjusted slightly from those found in the Darby Report.

Q. Yes I just about to get into that.

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" A. To correspond to easily seen land marks for ease in defining the area. The boundaries now follow rivers and physical features where possible."

Then at page 623 we see this map which was Exhibit 58 Attachment 47 is marked as an exhibit, and that map is now Exhibit P-6.

My Lord, we received an undertaking from the Government that they would show on one map both the 1979 caribou protection boundaries and the Darby Report boundaries. It was given to us as Attachment 74, and stated as a map showing the Darby Report boundary with the 1979 caribou protection boundary modification added in red.

MR. SGAYIAS: My Lord, I really do not see the relevance of that document, unless my friend is going to place in evidence, as part of his case, the Darby Report.

It just compares the caribou protection map to the Darby Report, and unless the Darby Report is part of the case, I do not see how the map has any relevance.

MR. ESTRIN: It was my intention, My Lord, to put it in merely clarifying what in fact happened.

The Government has indicated what they did to modify that map which resulted in Exhibit P-6.

THE COURT: From some earlier

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information they had.

MR. ESTRIN: Yes.

THE COURT: That's all.

EXHIBIT NO. P-77: Map showing Darby Report boundaries.

MR. ESTRIN: The next document, My Lord, is Exhibit 20 to the Examination of Mr. Hornal, which is a list of prospecting permits. It is 21 pages.

I believe the reference is found at page 338, A5, line 17:

" Q. Now, I have been given a number of pages of documents stapled together, 21 pages I believe, headed Prospecting Permits, with numbers from 1 through 542. If I could ask Mr. Patterson to tell me what this document represents.

A. (Mr. Patterson) This is a list of the prospecting permits which have been granted since the coming into effect of the prospecting permits, and again the mining regulations, from 1961 to 1978, including the prospecting permits which were granted by Order-in-Council for the Baker Lake area.

Q. I take it that these then represent prospecting permits throughout the Northwest Territories?

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" A. (Mr. Patterson) That's correct.

Q. But not the Yukon?

A. (Mr. Patterson) There are no prospecting permits for the Yukon. This is for the Canada Mining Regulations which applies only to the Northwest Territories.

MR. ESTRIN: If we could mark this then as the next exhibit.

MR. PATTERSON: I note, for your convenience, we have put a circle around a number of them, and those are all the prospecting permits which were granted within the area which you defined the other day as being the greater Baker Lake area of interest, whatever.

MR. ESTRIN: Yes. I see those numbers, some of these numbers circled, and I understand from what you have told me what they represent."

May that be made the next exhibit.

THE COURT: Exhibit P-78.

EXHIBIT NO. P-78: List of prospecting permits.

MR. ESTRIN: The next documents, My Lord, are Exhibits 42, 43, 44 and 45 to the Examinations for Discovery of Mr. Hornal. They are applications for Certificate of Work by certain

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companies. The reference in the transcript is at page 490, line 3. This is an answer given by the witness.

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" Exhibit No. 42 includes four applications for certificates of work for the KEN-1 Mineral Claim and others dated the 29th of March, 1971, the 29th of February 1972, the 24th of October 1975 and the 28th of February 1978.

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For example for Exhibit 42 in addition to the applications for certificates of work, there are appended appropriate descriptions of the claim groups and claims to which this work should be applied."

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" For Exhibit 43 we have three applications for certificates of work and the appropriate attached documents for the DUB-1 Mineral Claim and others. The applications for certificates of work are dated the 1st of October 1970, the 25th of June, 1971 and the 16th of June 1972."

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" Exhibit 44 we have applications for certificates of work dated July 17th, 1972, for the C-1 and W-1 Mineral Claims among others."

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" And for Exhibit 45 we have four applications for certificates of

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"work dated the 21st of October 1974,
the 8th of October 1976, and 24th of
October 1975 and the 17th of July 1976
for the K-231 Mineral Claim among others."

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I ask that these documents be made the next four
exhibits.

EXHIBIT NO. P-79: Applications for
Certificate of Work (Exhibit
42 to Discovery.)

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EXHIBIT NO. P-80: Applications for
Certificate of Work (Exhibit
43 to Discovery.)

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EXHIBIT NO. P-81: Applications for
Certificate of Work (Exhibit
44 to Discovery.)

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EXHIBIT NO. P-82: Applications for
Certificate of Work (Exhibit
45 to Discovery.)

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MR. ESTRIN: The next document, My
Lord, was what was marked as Attachment 68 to the
Examination for Discovery. Attachment 68 was
Exhibit 48.

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To begin, I would refer to page
524. This was Exhibit 48 to the Discovery of Mr.
Hornal.

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" A. This is a map at a scale of
one to one million entitled 1979
Mineral Activity as of February
2nd, 1979 and this map and the
accompanying table, four pages, pur-
ports to represent the expected
mineral exploration activity within
the District of Keewatin during
the spring and summer of 1979.

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" On the map we have given camp locations where known."

That was marked as Exhibit 48 to the Discovery. Subsequently, we asked for and received an undertaking to bring that exhibit up to date as of April 15, 1979, and as of two weeks prior to trial.

Subsequent to that undertaking, Attachment 68 was produced. So I would like to file Attachment 68, rather than Exhibit 48. Attachment 68 is the most up-to-date document.

EXHIBIT NO. P-83: Map re Mineral Activity.

MR. GRAHAM: I wonder if I could ask my friend, My Lord, just for the purpose of housekeeping, so we all know where we stand, is this the map that serves as a basis for the overlay which is on Exhibit 39?

MR. ESTRIN: Yes.

MR. GRAHAM: It may not be significant, but I am informed, at least by our clients, that there are some substantial errors in that exhibit -- as of that particular date -- in their claims do not extend to anything like the area shown on the map.

We can perhaps deal with that later on. I just wanted to clear up for the record that this in fact is the exhibit that is the basis for the overlay on Exhibit P-9.

MR. ESTRIN: Before we complete this,

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I should inform the Court, My Lord, and my friends that further to Undertaking 68 we received two memos: one dated May 8, 1979, and one dated May 11, 1979.

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The May 8th memo from Mr. Laporte contains the latest version of the table which accompanies Map 68, and shows recent changes.

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The memo of May 11, 1979, has one more change.

I would ask that these two documents be marked together with this last exhibit because they are the keys to it.

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Perhaps the map itself could be the exhibit, and these could be "B" and "C", My Lord.

THE COURT: We will just mark these P-84 and note that they are the key to P-83.

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EXHIBIT NO. P-84: Memos by P. Laporte dated May 8, 1979, and May 11, 1979, relating to Exhibit P-83.

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THE COURT: Mr. Graham is still on his feet, I suppose looking for some sort of explanation.

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MR. SGAYIAS: Do you have some light to cast on this?

MR. GRAHAM: Yes, and hopefully testimony later on today and tomorrow.

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It is my information that that map, insofar as it purports to show areas of prospecting permits and mineral claims, may not be entirely accurate, and I do not think that anywhere in the

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Examination for Discovery it was either asked or admitted that those areas were accurately shown.

It may require some further explanation. I don't know if it is in the transcript or not. But, we hope that it is not to be taken that those areas are accurately showing areas granted or registered as claims.

MR. HEINTZMAN: My Lord, so far as the overlay concerns the two clients that I represent, I did have Urangesellschaft look at the overlay.

I was advised that it did not accurately reflect the areas in which Urangesellschaft had interests. I have not, therefore, had Noranda look at it because it apparently does not represent the current situation.

MR. ESTRIN: Perhaps I should read certain pages from the Examination.

THE COURT: I think you should.

MR. ESTRIN: Perhaps, so it is perfectly clear, I would ask Exhibit 48 be put in as well because there is some concern about, we have been told, in what they meant to tell us. This is a map entitled -- it does not say what it is entitled. It has a legend with a number of indications of camps, settlements and diamond drilling sites; also prospecting permits and major claim groups. It is dated February 15, 1979.

THE COURT: There is apparently a map of areas to be explored in 1979. The discrepancy

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is possibly simply that the Government's apprehension of what the mining companies were proposing to do might be the same as what the mining companies themselves think they are going to do.

This is not a statement, supposedly, of historical fact, but speculation.

MR. ESTRIN: It could be that, My Lord. Perhaps it may be helpful just to see where we came to this exhibit.

Turning, if we could, to page 523 of the transcript, line 8. I may have already referred Your Lordship to this a moment ago. I have already read this portion in, but it might be well to have regard to it as well.

THE COURT: There is nothing from 523 that has been read in yet.

MR. ESTRIN: If I may, then, at page 523, line 8:

" Q. Now, Mr. Hornal, I understand that dealing with intended mineral exploration or exploration activities, mining activities in the Baker Lake area in 1979 and thereafter, you have prepared a map for us?

A. We have.

Q. This is the next area I am getting into so perhaps this would be a convenient time for you to produce it. Is it this map here?

MR. SCAYIAS: We did give you such

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"a map this morning. It is entitled Mineral Exploration Activity 1979 I believe and has a four page key with it."

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" Q. Mr. Hornal you have produced a map to me. Perhaps we could have that marked as the next exhibit after you just briefly explain what it is?

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A. This is a map at a scale of one to one million entitled 1979 Mineral Activity as of February 2nd, 1979 and this map and the accompanying table, four pages, purports to represent the expected mineral exploration activity within the District of Keewatin during the spring and summer of 1979.

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On the map we have given camp locations where known."

" Q. Where did you get that information from?

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A. All this information would have to have come from the companies involved in these projects. The company names involved in the projects are listed on page one of the table and are given a code which is then repeated on the map.

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"Canada is represented by an A on the map and you will find ---"

My Lord, I should put in what was the table accompanying Exhibit 48, if I may.

EXHIBIT NO. P-85: Map: 1979 Mineral Activity, dated February 2, 1979 and Exhibit 48 of the Discovery.

EXHIBIT NO. P-86: Table listing companies and amplifying Exhibit P-85.

MR. ESTRIN: And now continuing at line 18:

" For example, Aquitane Company of Canada is represented by an A on the map and you will find ---

Q. I find a lot of "Us" but here is an A.

A. On the south end of Dubawnt Lake there is an A and also the number fourteen. The number fourteen you can then refer to the table and find that fourteen is a location number which describes an undertaking activity undertaken by Aquitane Company of Canada according to the table north of Dubawnt Lake but according to the map south of Dubawnt Lake which is going to involve a crew of four to five men possibly during July possibly doing prospecting and trenching.

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" Q. Geology and prospecting?

A. Correction. Geology and prospecting. Also shown on the map are proposed diamond drilling sites which are also coded by company letter and by project.

Q. Does this map represent the latest information available to you?

A. This map represents the information available to us as of February the 2nd 1979.

Q. I notice on the map you would go and indicate the area that is presently under Federal Court Injunction. Could you just roughly indicate where that area is for me?

A. Yes. That area is indicated on the map. You have to have very good glasses but it is so shown.

Q. I see.

A. By a faint stippled line.

Q. So I take it that there is a fair bit of activity that is going to be taking place within the present injunction area?

A. That is an assumption when it comes to the words quite a bit of activity but there certainly is going to be activity within the present injunction area according to this map. "

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I think it continues, My Lord, at page 527, line 19.

THE COURT: Perhaps lines 25 and 26 on page 527 sums it up.

MR. ESTRIN: Yes, My Lord. I will read in the whole answer.

" A. Yes. You will note that the prospecting permits and major claims groups are also shown on this map as they affect exploration this summer. The thickness of the outside line determines whether it is a prospecting permit or a claim group. Again I must warn you that this exhibit is our best guess of February the 2nd and is no more than that."

We then received an undertaking at page 552, starting at line 7:

" Q. And as we begin, this morning, I would like to show you Exhibit 48 which you brought to my attention yesterday which is a map showing activity or proposed activity for the Baker Lake area as of February 2nd, 1979.

I don't know whether I asked this yesterday but could I have your undertaking that you will keep us informed to changes with respect to the data and information shown on the map and the attachment?

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" A. We don't, as a general rule, re-do that but I will attempt to so do.

MR. SGAYIAS: I think if we get information about other activities ---

MR. TIMBERG: Or changes to the present activities?

MR. SGAYIAS: Yes or changes to the present activities, yes ---

MR. TIMBERG: You will inform us?

MR. SGAYIAS: Yes but I believe that map shows activities throughout the Keewatin and, of course, you are only interested within the Baker Lake area and we will provide you with information within the Baker Lake area.

MR. TIMBERG: I think I would like to know any changes to any activities shown on the area covered by this map."

Then we get into a bit of discussion about that.

Then at line 20 of page 553:

" THE WITNESS: Would you be satisfied if we under took to review and up-date that document as of say April the 15th?

MR. TIMBERG: I think I would be content with April the 15th and also, perhaps, just before trial as well.

I would be satisfied with April the 15th and just before trial as well.

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" THE WITNESS: Would you be satisfied with just before trial?

MR. TIMBERG: No. I would like to have some time between now and trial."

Anyway, it comes down to line 14 on page 554:

" MR. SGAYIAS: How about April the 15th and two weeks before trial as long as those dates don't coincide.

MR. TIMBERG: Okay. Fair enough."

Then there is some further discussion at the bottom of page 554 which should perhaps be read in. A question at line 23:

" You have indicated the type of surveys that are to be carried out by these various companies in the area covered by the map. What exactly is a trenching survey?

A. Well --

Q. Or is that a survey?

A. It is stretching things to call it a survey.

Q. I see.

A. Both trenching and diamond drilling are operations. Trenching means a sampling of the rock at some depth in the ground attained by either digging a hole or blasting.

Q. I see.

A. And ---

Q. And this first survey you have

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"indicated, that is an airborne geophysical survey?

A. That is correct.

Q. And what is the next one?

A. Reconnaissance geochemical survey.

Q. What type of survey is that?

A. There are a number of different types of reconnaissance geochemical surveys but in general, to do a geochemical survey, you wish to collect either a water sample or a soil sample and have it analyzed for the element or elements for which you are searching.

We call it reconnaissance in nature if the spacing is in the order of or the stations are in the order of several miles; whereas we get down here (indicating) to ground geochemistry ---

Q. Yes. That was my next question?

A. And the stations may be on a grid one hundred to two hundred feet apart or even closer.

Q. I take it that a ground geochemical survey would be conducted by ground parties walking over the terrain. Is that correct?

A. That's correct.

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" Q. And a reconnaissance geochemical survey would be carried out using aircrafts?"

THE COURT: This is very repetitious. We have had some of this already read in.

MR. ESTRIN: Yes, I did not intend to read this in.

THE COURT: No, it just seems to keep coming, doesn't it?

MR. ESTRIN: Yes, My Lord. Insofar as the discussion of this document.

THE COURT: Yes. We know what the document is. We can understand why there might well be a discrepancy between it and what the mining companies intended.

MR. ESTRIN: My Lord, this may be one of the last documents arising out of Discovery. It was marked as Exhibit 55 in Mr. Hornal's Examination. It is a map entitled "Department of Indian Affairs and Northern Development, Land Use, Baker Lake, 1979." It is also known as Attachment 26H.

EXHIBIT NO. P-87: Map: Land Use, Baker Lake Area, January 30, 1979.

MR. ESTRIN: My Lord, at page 416 of the Discovery there is some reference to this map at line 22.

" A second map has now been prepared which shows just the land-use permits. That other map had other information

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"on it. And, I am producing that to you, this new map as Attachment twenty-six (H)."

That is about as much information as the transcript can provide. I do not think there is much doubt as to what that document is meant to represent.

I would also ask to file at this time Attachment 26G, a list of mining claims currently in good standing.

It is a number of pages stapled together. The first column is headed Block Number; the second column has NTS, date registered, date lapsed, claim name, and the owner.

EXHIBIT NO. P-88: List of mining claims.

MR. ESTRIN: This, as I say, is noted on page 418 of the transcript, line 1.

"Undertaking twenty-six, sub (G), is noted as producing a list of claims staked in the area year by year.

What has been produced as Attachment twenty-six is a list of mining claims currently in good standing.

It is not a list of claims staked year by year."

And Mr. Sgayias asked me to advise that it was in good standing as of about the time it was produced, around the 22nd of February, 1979.

My Lord, one of the hopefully

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last things I would like to refer to is some further aspects of the I.D.S. Study. In any event, the Plaintiffs put certain questions in writing to the Government and they responded. I wish to read in certain aspects of that.

My Lord has then Exhibit P-52. I wish to refer to it at III. These additions, if you like, are made pursuant to the discussion at page 334 of the transcript, A-1.

With regard to all of the statements made on III, they are accepted by the Government Defendants with the following reservation:

" The I.D.S. Study reviewed the data base for the time period 1970 to 1978. Although their data base was for eight years, they continually use the 1975-76 and 1976-77 caribou hunting seasons as normal. Accordingly, I.D.S. states that early and late winter and summer are the most important times for caribou hunting. They have cited on page 23 of their text two sources which could indicate this statement to be the normal."

The next page I would refer Your Lordship to is V. I wish to deal with the third paragraph which is accepted as of the date of that report.

THE COURT: That is the first full paragraph under the title "Industrial Land Use"?

MR. ESTRIN: Yes, My Lord.

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At page 17, the first sentence of the first paragraph:

" Baker Lake residents hunt, trap,
and fish over most of the study area."

It is accepted.

Turning to page 22, under the heading "Caribou Hunting." Those two paragraphs are accepted.

THE COURT: All right.

MR. ESTRIN: As is the first sentence of the third paragraph under the headings "Seasonality of Caribou Hunting."

Turning to page 55, under the heading "SUMMARY", into and including pages 56 and 57. All of this is accepted by the governmental Defendants.

THE COURT: The entire Summary, is that it?

MR. ESTRIN: Yes.

Page 155, the first full paragraph under the heading "CRITICAL AREAS: CARIBOU." That paragraph is accepted. However, the Government states the following:

" The Department considers the protection of the caribou population from serious development-related conflict as important and it is the policy of the Department to require, prior to approving any application for development project within sensitive areas, that a complete environmental

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"and social assessment and review of
the proposed project be conducted."

My Lord, that paragraph on page 155 which is accepted
refers to main water-crossing sites on Map 14. I
believe Map 14 is already in.

Finally, on the next page, 156,
continuing through on the top of page 157, to but
not including the heading "DATA GAPS AND GENERAL
CONCERNS" -- all of what is contained on page 156
and that portion at the top of page 157 is accepted.

I believe that is all from the
Discoveries. I sincerely hope so.

While Mr. Golden is dealing
with a few more matters, I am going to attempt to
check this over because the matters are so complex
and voluminous, but I believe that is all.

Thank you.

THE COURT: Have you a few more
matters, Mr. Golden? I just wonder whether we should
interrupt you in 15 minutes or continue.

MR. GOLDEN: If Your Lordship
is contemplating a break in the next few moments, I
think that we had better do it now.

THE COURT: All right. We will
take 10 minutes.

--- Short recess.

--- Upon resuming.

THE COURT: You have found
something else, Mr. Estrin?

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MR. ESTRIN: Not yet, My Lord.

I would like to ask, however, as I indicated earlier, certain of the exhibits that have not been specifically read from be taken as read, and I would like to be more specific, if I may, so we will all be clear as to what we are talking about.

Exhibit P-66, I believe, was my letter to Mr. Sgayias, and then there was a reply from Mr. Laporte.

THE COURT: They went in together.

MR. ESTRIN: Yes. I would like to ask that those materials be taken as read.

I believe P-67 and P-68, further memos by Mr. Laporte relative to the same matters ---

THE COURT: The 2nd and 3rd of April, 1979.

MR. ESTRIN: And, insofar as these memos refer to portions of the Mineral Industry Reports, Exhibits P-56 to P-63, and then there were Mines and Minerals Activities Reports, P-64 and P-65, insofar as Mr. Laporte deals with those and particular aspects of these, I would ask that those portions to which he is referring be taken as read.

THE COURT: Exhibits P-56 to P-65, inclusive.

MR. ESTRIN: Yes. And also Exhibits P-82 and P-83, the applications for Certificates of Work, that those be taken as read.

MR. GRAHAM: I do not know what the

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purpose of having them "taken as read" as opposed to being exhibits in the record ---

THE COURT: They are on as exhibits. "Taken as read"? Does that mean they are all true as opposed to being exhibits? I really don't know.

MR. GRAHAM: Is it conferring on them some degree of ---

THE COURT: The problem of taking something as read means it is fully reproduced in the transcript. Once we do that, we must have a much better idea of what we are referring to, or at least the Reporter must have a much better idea of what is being referred to -- this multitude of blue books, for example -- and he would be able to glean from anything that has been said here.

MR. ESTRIN: Well, it is our intention specifically with regard to the last four items that if there is a problem we can simply argue.

THE COURT: They are in as exhibits and from the Crown's point of view, at least, or the Defendants' point of view, they are documents which have been produced by them.

I do not know what the other gentlemen will have to say about them.

MR. ESTRIN: I think it is more important with regard to the other documents.

THE COURT: But they are on the record.

MR. ESTRIN: With regard to the

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others, P-66, P-67 and P-68, and P-56 to P-65, on the conditions I indicated, I would ask they be taken as read.

THE COURT: You reflect on this, Mr. Estrin, yourself. How is the Reporter -- I say, "Okay, they are taken as read." What is the Reporter then going to do in terms of reproducing them in the transcripts?

MR. ESTRIN: I would, with my friends ---

MR. GRAHAM: Without interrupting my friend, but particularly with regard to the quality of some of the exhibits ---

THE COURT: Those he said he was not worried about.

MR. GRAHAM: But where there are maps -- and of which there are many -- he may have some trouble.

THE COURT: They are exhibits. They are part of the record. They certainly are available to you to argue.

MR. ESTRIN: I certainly have no desire that the Reporter need reproduce the portions of, say, the Mineral Industry Reports that Mr. Laporte is referring to. It is sufficient for all of our purposes -- certainly our purposes -- by way of argument. We simply wish to be able to say this sentence appears in the Mineral Industry Report and Mr. Laporte says this of that sentence.

If it is in the record sufficiently

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on the basis of filing those documents and Mr. Laporte referring to them, we are content that they not be reproduced.

THE COURT: I have no problem, I think, from a technical point of view, if you like, with reproducing your letters or reproducing Mr. Laporte's memoranda in the context of taking them as read. But, then you have about a foot of books and only certain portions of which are referred to in those memoranda and in your letters. Surely, if they exist as exhibits and on the record and are available, I do not know what is gained by taking them as read or some parts of them taken as read.

MR. ESTRIN: I have no desire to add further to the transcript -- I must say that -- by making that request.

I just wanted to clarify that ^{that} there would be no suggestion later on/by not having read those into the record we were, accordingly, disentitled to argue that that forms part of the record in this case.

THE COURT: They are certainly exhibits and they are there before the Court.

MR. ESTRIN: Thank you, My Lord.

MR. GOLDEN: I am extremely grateful to my colleague, Mr. Estrin, for having spared me the reading of the transcripts, although I am very much aware that Your Lordship and other counsel here were not so spared.

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The matter I would like now to deal with comes generally under the heading of matters of which Your Lordship is entitled to take judicial notice. In cases such as this, it has been remarked that the Court is entitled to draw upon history -- historical texts, and that sort of thing. It became a bit of a problem to us as to what the best way there was of handling that in terms of materials. I felt if there were materials to which we wanted to refer Your Lordship -- to which we wanted to direct Your Lordship's attention -- out of the many, many thousands of feet of shelf space this sort of thing occupies, we might best do so by before closing our case to simply file some material with Your Lordship.

In the one case that went to the Supreme Court of Canada under this general subject matter, those documents were given exhibit numbers and did form part of the Plaintiffs' case even though the basis of their admission really was that judicial notice could be taken of them.

With that in mind, My Lord, I intend to tender some documents of an historical nature and some as recent as 1973, and put them before Your Lordship as documents to which Your Lordship would be referred.

They are historical in nature and even in their impact on the case, rather than being assertions of specific facts contained in the documents, although I gather on occasion somebody

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might say something that amounts to a statement of fact.

First, My Lord, I gather that Mr. Versity, who is to my right at the moment, has mortgaged his soul to obtain the last copies of a document entitled "Canada Indian Affairs, Indian Treaties and Surrenders." It is really three volumes: the first two being bound together, and the third one separate, published by the Queen's Printer in 1905.

I would not dare put them in, and we are very fortunate indeed that Messrs. Coles have reprinted this book in a three-volume set. We have obtained copies of that. Unfortunately, not too many, but I understand that there are some hard cover-bound copies of this set available and we have ordered five more and they will be available to all counsel.

Today we only have the paperback copy, and I should like, at this time, My Lord, to file a set of the treaties with Your Lordship. And I suggest to Your Lordship that before any great apprehension sets in that we are only going to be referring to those in the general nature of the manner and style with which the Crown has come to deal with native groups. They are not being tendered so that specific argument can be made from great extracts from them.

We will have, as I have said, more copies available.

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I have one precautionary note, My Lord. There is a misprint that we have been able to find -- there may be others that we have not been able to find -- and what happened was in Volume I, the brown-covered volume, pages 88 and 89, instead of being a continuation of the treaty number 34 and the commencement of treaty number 35, they are misplaced and they are, in effect, reprints from Volume II, pages 88 and 89. The publishers reprinted part of Volume II again in Volume I. Nothing will turn on it whatsoever so far as I can see. Hopefully, the hard-cover version, which will be with us in a few days, will not have that mistake in it.

THE COURT: It would seem at this point in the book to be dealing with the Iroquois, so I think we are fairly well removed geographically from the area that is immediately relevant to the case.

MR. GOLDEN: There were no treaties.

THE COURT: That is my understanding. My understanding was that (a) there are no treaties, and (b) the land we are talking about was never subject to a treaty, at least between the natives and the Crown.

MR. GRAHAM: My Lord, I certainly have, if you like, no objection to my friend having one of these volumes marked as an exhibit, if Your Lordship is willing to receive it as such, although from my point of view I do not think it would be any

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more valid than if I chose to prove the history of Ancient Greece by filing before Your Lordship one of Coles' resume of Herodotus.

THE COURT: I suppose I share your mystification at this time as to what use is to be made of these things.

MR. SGAYIAS: My Lord, I object to these documents being entered as exhibits. They are not documents which have been produced to the other parties; they have not been listed in any list of documents; they have not been produced on Discovery. I submit that on that basis they should not be entered as exhibits, unless my friend is willing to file a supplementary list of documents and permit the Crown any Discovery which may fall upon that.

I would also submit that the documents are irrelevant in that -- I have not seen them, but from what my friend has said, there are no treaties with the area in question or the people in question. They deal with other geographic areas and other peoples and are not relevant to this case.

The Plaintiffs' Statement of Claim makes no allegation of recognition of any rights in fact by the Crown, and I submit that is the only possible issue to which these documents could be directed.

If my friend is of the view that the Court may take judicial notice of these documents and that is how I understand it -- I submit there is

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no necessity for them to be entered as exhibits. They should be entered as exhibits only if they are properly produced and properly proven, either by a witness or by some procedure under the Evidence Act.

On that basis, I submit that the documents in question should not be received as exhibits.

MR. HEINTZMAN: My Lord, if I may speak to the matter, it seems to me that there was an appropriate method for these documents to be received and that is pursuant to a certificate to be obtained from the Secretary of State.

I refer Your Lordship to Sopinka and Lederman in The Law of Evidence in Civil Cases, page 359.

I do not accept the proposition that there are no treaties which may not be of relevance to Your Lordship, and it is my position that the treaty signed with the Chippewa Indians -- particularly the caribou eaters they are called of that particular tribe -- one of which is those treaties and is relevant, and that is Treaty No. 8. That treaty specifically says that the Chippewas released any interests they had in any lands they had in the Northwest Territories.

MR. GOLDEN: Thank goodness we are not acting for the Chippewas.

My Lord, I thought I made it clear at the outset of my remarks that these documents

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were being put in not as specific evidence in the case, but as matters to which we want to direct Your Lordship's attention. Arising therefrom would be some argument.

The flow of argument goes like this -- and I am sure my friend is familiar with it -- when you allege the existence of an aboriginal right, that invokes a legal doctrine which comes from the manner in which the Crown has treated and dealt with native inhabitants of both settled and unsettled lands. It is to that end that these treaties are being put forward.

I thought -- I don't know. Every time I do this I seem to get in trouble -- that it was only fair that before we closed our case that the other side should have an opportunity to know what kind of things we would be raising in argument to Your Lordship. If they do not want to, that is fine with me. I would rather not. But, I think it is only fair to Your Lordship, as well, to have an opportunity to prove some of these materials. We would like to be able to put the balance of this case in in an orderly way.

My friend Mr. Sgayias says the treaties do not refer to the areas in question. That is true. That is not the issue. This feeds a legal argument that is not an evidentiary matter really. It is somewhat like other historic documents we have here -- and my friend will hear about them in a moment -- from the constitutional

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history of Canada and, indeed, some of which has already gone in as part of the legislation brief.

THE COURT: I must confess that I have some problems with entering them as exhibits. To me they are documents that I would certainly receive in argument and are acceptable to support propositions. It is a strange sort of thing.

MR. GOLDEN: Justice Hall, in the Calder v. Attorney-General of British Columbia case, had occasion to refer to this, and Justice Judson, drew heavily from similar material. I don't know which ones were exhibits and which ones weren't. But certainly some of them were. And I modelled the practice that I chose to follow in this case after what I understood was followed in that one.

This is Calder v. Attorney-General of British Columbia, 34 D.L.R. (3d) 1973, and at page 189 of the report (?) He just says that consideration of the issues involves the study of many historical documents and enactments received in evidence, particularly Exhibits 8 to 18 inclusive, and Exhibits 25 and 35.

The Court may take judicial notice of the fact that history, whether past or contemporaneous -- and he cites Monarch Steamship and Carl Sams, which I have here, which is a decision of the House of Lords.

In that case the Court itself recognized that parties might have known a state

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of war might occur. Not that it has occurred, but it might occur.

My friend's reference to the Secretary of State comes from another case in which it was said that certain types of things to be certified by the Secretary of State. Obviously, one of them being a state of war. We are not dealing with a state of war here, and the Secretary of State has nothing to do with this particular problem.

I would just like, My Lord, to continue and indicate another matter to be put forward and perhaps deal with all in good time.

The balance of the treaties, we unfortunately do not have copies of -- they arose after the reprint --not after it was published, but after the original volumes were published, and they comprise six booklets published by the Queen's Printer. Incidentally, they are all admissible as documents published by the Queen's Printer. That is a test. I am not choosing to go under that heading because I am asking Your Lordship to take judicial notice of it and not receive it strictly as evidence. They are six documents taken together. I don't know whether you want to consider them as one or six documents.

THE COURT: These are treaties entered into subsequent to the publication of the original sets of books.

MR. GOLDEN: Yes, My Lord, they

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tend to complete the record. I gather there are more.

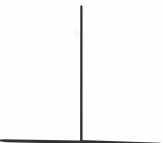
THE COURT: Including Treaty No. 8.

MR. GOLDEN: Yes. That is the one Mr. Heintzman is in love with. That is the one that talks about certain Indians.

Then, from the Public Archives, another Queen's Printer's publication. It contains a number of what are referred to as constitutional documents. And from Volume I we have photocopies. There are three sets at the moment. We will try to get more. These are photocopies of the Articles of Capitulation. It is dated 1797, having to do with hostilities between France and England and certain addresses similar in nature to the kinds of addresses that are the basis of the kinds of Royal Statements, in effect, which are the basis of the aboriginal rights law. I have a photocopy of that. I should try to have more prepared, but here is one of those. It is not of the entire book, I might add, but of just certain portions of it.

Then, Volume II, similarly, there are certain documents -- instructions to Governor Carleton, and so on, and plans for the future management of Indian Affairs which will arise out of those instructions and various correspondence. They do not really look like letters. They look more like what they are. That is another set of material.

And the third volume, similarly, further documents of historic interest.



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THE COURT: These are all reprints of prints of documents edited by the Canadian Archives Historical Documents Publication Board and all printed by the Queen's Printer.

MR. GOLDEN: The books themselves are virtually out of print.

I have one set I can share with my friends for now, but we can have more made. At the time this was being done, our Xerox machine gave up, and we are down to three sets.

The pattern that has been disclosed by the original documents -- that is the various proclamations -- which includes some of those I have just filed -- has been continued to modern times. In the more recent history there was a statute and I have, for our own research purposes, three copies of the statute which has been Xeroxed, if I might be presumptuous enough to file one with Your Lordship. It is not necessary to even file a statute but, however, this whole thing is just a matter of convenience. I don't want to file it, certainly, as an exhibit.

It refers to an agreement -- The James Bay and Northern Quebec Agreement -- in which the native right was extinguished by treaty. The agreement was ratified by an Act of Parliament and, indeed, by Provincial Acts.

The only available copy -- the one that I have -- is published by the Government of Quebec in 1976. It is from my library. I will

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try to replace it. It contains the various terms.

I must say at this stage that I do not intend to rely on the terms so much except on the fact of extinction of the native title which is one of the articles. I will be dealing with that. So, unless Your Lordship is personally interested, we needn't get into the various complexities of the agreement. The portion to which we refer is very early. It is section 26.

So, if I may again file both the statute and the agreement that forms part of it ---

As a matter of convenience, the Minister, at the time of the proclamation of the agreement or, rather, the statute and the agreement -- and I do have copies of this and I have provided them to my friends -- put out a statement just saying that, and then going on to indicate in a summary form what the agreement covers.

THE COURT: I would think -- I would be very surprised if I did not find the agreement itself reposing in the journals of the Senate and the House of Commons, since they passed an act referring to it.

I am sure there is a copy of the document. I do not think, though, that what the Minister had to say about it qualifies under evidence or anything that I could take judicial notice of.

MR. GRAHAM: I think the Reader's Digest case is pretty clear on that, My Lord.

THE COURT: I suppose we have all

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had experience with Ministers often saying things and tend to put a somewhat more favourable or unfavourable light on the fact than a perusal of the document in question might lead you to believe.

MR. GOLDEN: I have no problem with that, My Lord. It is just there in the pile, and I will be reading it.

THE COURT: A document for argument.

MR. GOLDEN: In days gone by, King George II and his predecessors made many statements. In modern times, statements pertaining to the same subject matter are customarily made by the Minister of Indian Affairs and Northern Development, and the last such statement that has been made is contained in a statement made by the Honourable Jean Chretien -- I -- dated August 8, 1973. That is the most recent history.

MR. CHAMBERS: My Lord, I object to the introduction of this document in evidence or in any other way. It is on the same footing as Mr. Chretien's statement in connection with the other matters. This deals with the James Bay Settlement. We do not know what the facts are, My Lord. I know what the statement says, but I object to the introduction of this document in evidence or in any other way my learned friend wants to slip it in.

MR. GOLDEN: I don't know why Mr. Chretien should be treated any differently than anyone else. He makes history, I suppose. He would like to feel he does; and I ...

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THE COURT: He has.

MR. GOLDEN: He has, yes. This, in effect, is a confirmation that it is a continuation of the existing policy. In fact, he refers to the same material that is now before Your Lordship and goes on to say that it now continues to be the policy of this Government, which is the fount of the aboriginal title.

MR. CHAMBERS: My Lord, the matter of recognition of any native rights in this present case is very much in issue. We have denied -- the Government has denied -- any such recognition in this case.

The statement my learned friend refers to is a general statement that absolutely does not refer to Baker Lake. My Lord, it is a general statement. Insofar as any statements are in that have any operability to Baker Lake, it is very much an issue in the present case. For this reason I submit that this document is of no probative value to issues in this case and could only result in prejudice.

I would respectfully submit that this document not go into evidence.

MR. GRAHAM: On the same point, My Lord, I think the Supreme Court of Canada spoke on this matter in the Reader's Digest case.

I will get the citation for Your Lordship. I do not have it on the tip of my tongue,

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but it seems to me -- and it is my recollection -- that that case held that a statement by the Minister of National Revenue in the House of Commons as to the purpose of a Section of the Income Tax Act was not admissible before the Court to determine what the nature of the Act was.

If that is not admissible before a Court to determine what Government policy is in respect of legislation, I do not see how a press communique from a Minister's office could be such as is going to bind this Court or determine for this Court what the policy of Government is in a very sensitive area such as this, because if we once get into this, we are going to get into statements of other Ministers in other places on other things which are going to contradict, and Your Lordship will, I am sure, before you are finished, have a volume of Ministers' statements -- some of which will say one thing and some of which will say something else. Some will date back to Sir John A. Macdonald. And, really, I don't think we would ever finish the case. I do not think it is the type of thing Your Lordship can deal with in any reasonable way. I mean, I just do not think it is a realistic thing to do, quite apart from the very legal reason why the Supreme Court of Canada said this type of evidence is inadmissible, because it is too susceptible to changing in the Government.

THE COURT: It seems to me, Mr.

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Golden, what this Court or any Court has to deal with is the law, and whatever the policy of the Government may be at the particular time, until such time as it manifests that policy in law, in legislation of some sort or other, there is nothing for the Court to deal with.

MR. HEINTZMAN: May I just make my submission on that point.

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I strongly support the submissions of Mr. Graham, that what my clients are here to have is a determination according to law and not according to policy. What the Minister may say in one circumstance does not apply when we get into a courtroom and the matter has to be decided according to the facts before Your Lordship, proven, as they must be, by each party -- in the law.

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Whatever any Minister at any time says is not a matter to be considered by this Court.

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THE COURT: I do not think the analogy with the Reader's Digest case is necessarily accurate, because I can certainly see a distinction between what a Minister says Parliament intended when they adopted each section of an act and what in fact it said.

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If Government policy were relevant or material, that is one thing. But, I do not think that a recent statement of Government policy in this case can be material. I certainly am not prepared to accept press releases Ministers recently made as evidence.

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MR. GOLDEN: If I may, I would like to answer my friends on this question, because some things have been said which I think should be corrected.

First of all, the only form that it was ever published in was what is called a "Communique," but specifically what it says is it is a statement made by the Honourable Jean Chretien. It is not a press release or a synopsis of any sort. It is his actual statement. I take it to be accurate.

His Lordship has quite aptly pointed out that it is not tendered to show the Government's interpretation of some legislation or desired interpretation. I would never tender it for that purpose.

The fount and the basis of aboriginal rights in Canada has been held many times and I am trying to recall the appropriate passage in Calder, but I think I can say without any fear at all of contradiction that it has been held to be the various indications of Government policy and, of course, Government, at one point, was -- strictly speaking -- the various monarchs who make statements and latterly became the statements of Ministers of that monarch. That has been cited many times and been used as the basis of aboriginal rights.

In effect, that becomes kind of historical fact upon which reliance is made. Here we have a statement which -- and I assure Your

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Lordship that it does nothing more than reiterate that policy in 1973. It does not refer to Baker Lake specifically. It does distinguish between land for which there have been treaties and land for which there have not in pronouncing on the question.

It is not being tendered -- there are no facts in it, really -- of the statement being made and the fact of the reconfirmation. I do not want to presume on Your Lordship, but just to give an idea. The reference to the relationship with the Federal Government symbolized in treaties entered into in historic times. Lawful obligations must be recognized. It remains the basis of Government policy. This is the same kind of thing that King George put forward in 1763.

I am not being facetious about Mr. Chretien, but he stands in exactly the same shoes. My friend Mr. Chambers thinks of it as some kind of admission we are trying to tender. It is not that at all. It is being put forward in order that we do not have any statement coming about to say that all that old aboriginal rights stuff is no longer applicable.

THE COURT: Mr. Golden, someone has to convince me of that. As far as I am concerned, the Royal Proclamation of 1763 is still the law of Canada and unless it has been abrogated recently, it is a legislative -- if I may use that term -- expression of the policy you are talking about and, as such, I can take it into account. It is law.

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Mr. Chretien may argue it ---

MR. GOLDEN: Mr. Chretien did.

MR. GRAHAM: We do not know if Mr. Chretien went back after giving this
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communique and everyone in his Cabinet said, "You are full of it," and rejected it. We have no idea.

MR. GOLDEN: I guess if that happened ---

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THE COURT: I think, Mr. Graham, that as long as the Minister is speaking in the area of his ministerial responsibility he is certainly stating Government policy, but I do not see that Government policy, as opposed to the law,
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is really properly before me.

MR. GOLDEN: It is no more law, really, than the Proclamation of 1763.

THE COURT: George III had a little more clout in those days than a single
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Cabinet Minister has in these days.

MR. GOLDEN: I suppose what I am really saying, My Lord, is that it is simply a confirmation of a line of Government policy which has no bearing strictly as an admission or some
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kind of confession, or anything else, but has a connotation to the law. Because if I can show that the policy is consistent right up to the present time, it certainly makes my task a lot easier in relationship to the law as it developed over many years. That is all I am really seeking to do.

I fully intend to say to Your

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Lordship, during argument, there is, in our very recent history, indeed five years ago, a confirmation of this statement.

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I have given my friends copies. Your Lordship is the only one who won't have one. But, if that is the case, why not have the full statement instead of the little piece of it that I might choose to quote?

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THE COURT: I simply think, Mr. Golden, that the objections taken to the introduction of a statement by Mr. Chretien are well taken as far as this Court is concerned. It is not something on which I can take judicial notice and the press release or "Communique," or whatever it is, is not the sort of document I feel should be received in evidence.

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MR. GOLDEN: Perhaps, before I indicate what else might be done in respect to that, those are all the documents I am tendering.

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THE COURT: As far as I can see, subject to any argument, these other things that have been put in are all documents on which I can take judicial notice or are at least copies of them or reprints.

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I have Mr. Sgayias' objection to them as being received as exhibits. I see the merit of the objection in a very strict sense, but I also see some practical advantage in the way of keeping track of things throughout this Action and throughout any subsequent proceedings that may come

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along with regard to somehow marking them so that they are identifiable in the record.

MR. SGAYIAS: My Lord, I have no objection to having them marked solely for the purpose of identifying them as long as the parties have the opportunity in argument to argue whether or not the Court should take judicial notice of the documents.

THE COURT: Yes.

MR. SGAYIAS: As long as it is clear on the record that they are not part of the evidence of this case, unless Your Lordship is of the view that he can then take judicial notice of it.

THE COURT: That is the basis they are entered, are they not?

MR. GOLDEN: I think Your Lordship can refer to them in judgment without them being exhibits at all, if that were the case. I think Your Lordship has observed that it might be useful to have them identifiable in some specific way.

MR. GRAHAM: Just before -- I have not had a chance to examine them. I don't know what my friend produced. There are excerpts from three volumes of constitutional documents from the Public Archives and they might constitute exchange of correspondence between Sir John A. Macdonald and Sir Joseph Pope, or something. They are all constitutional documents, but whether, again, they fall into the area of legislative enactments or not that are properly before the Court, I think

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is something we all should have a chance to examine.

MR. CHAMBERS: My Lord, if I may make a suggestion, I have often run into cases where documents go in but not as evidence and only to show that they have been referred to, and they are referred to as exhibits for identification only. So, perhaps they could be marked Exhibits A, B and C, only for identification.

MR. GOLDEN: Thank you, My Lord. I am agreeable to my friend's observations. I am quite content with that.

But, if that is the case, My Lord, I do intend to argue Mr. Chretien's statement and perhaps we should include that as well. If I refer to it in argument, then Your Lordship may decide what he wants to do. I intend to make argument on that question.

THE COURT: I am sure you do, and you will recite it at length, and it will be imbedded in my memory forever. But, I still think it would be a very, very poor precedent to admit a press release as evidence of anything very much other than the press release was made, and the truth of the contents of many press releases, as you know.

MR. GOLDEN: It is not a press release, My Lord.

THE COURT: "Communique" is a very fancy French expression for that.

MR. GOLDEN: Actually, when one

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reads it, one starts out with the first words of the Minister and those are that there is no editorial content in it at all. It is put out by the Department. It is a statement by the Minister. I think there are probably press releases attached to them sometimes.

MR. GRAHAM: They all come that way.

MR. GOLDEN: It will not be marked for identification, I gather, but the others will.

THE COURT: Yes. These can go in the order they were tendered.

EXHIBIT "B" FOR IDENTIFICATION:
Canada Indian Treaties
and Surrenders, from
1680-1902, three-volume
set, Coles.

EXHIBIT "C" FOR IDENTIFICATION:
Six treaties.

EXHIBIT "D" FOR IDENTIFICATION:
Extracts from documents
relating to the
constitutional history
of Canada, 1759-1791,
Part I.

EXHIBIT "E" FOR IDENTIFICATION:
Extracts from documents
relating to the
constitutional history
of Canada, 1759-1791,
Part II.

EXHIBIT "F" FOR IDENTIFICATION:
Extracts from documents
relating to the
constitutional history
of Canada, 1819-1828.

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EXHIBIT "G" FOR IDENTIFICATION:
Book entitled "The James
Bay and Northern Quebec
Agreement."

EXHIBIT "H" FOR IDENTIFICATION:
Statute: James Bay and
Northern Quebec Native
Claims Settlement Act.

THE COURT: Mr. Golden, have you got
any more?

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MR. GOLDEN: I have some housekeeping,
My Lord.

My friend, Mr. Estrin, advises me he
has one more matter he has to deal with, and I have
some minor requests for release of documents
overnight so we may copy them.

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THE COURT: Yes.

MR. ESTRIN: My Lord, there is one
more document I would like to refer to. It is
marked as Attachment 23 to the Examination for
Discovery of the Government. It is headed "Aviation
Notice, May 1, 1974, Conservation - Caribou Calving
Areas."

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It is also marked as Exhibit 56 to
the Examination for Discovery. I am afraid I do not have
extra copies of it. I have a reference to it in
the transcript.

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THE COURT: Exhibit P-89.

EXHIBIT NO. P-89: Aviation Notice,
May 1, 1974, Conservation -
Caribou Calving Areas.

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MR. ESTRIN: It is at page 608 of

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the February 28th transcript, at line 18. It says as follows:

" Document entitled Attachment number 23.

Q. Could you describe it, please?

A. Yes. It is a notice dated May 1st, 1974 concerning caribou calving areas Beverly Lake, Rankin and Bathurst Inlet NWT.

Q. Could you read the last two paragraphs on the first page of that Exhibit to yourself and tell me whether or not you agree with the facts therein?

A. Yes.

Q. Dr. Ruel do you have anything to add?

A. (Dr. Ruel) Could you repeat your question?

Q. I am referring to the last two paragraphs on the first page of that Exhibit. I would like to know whether you agree with the facts stated in those two paragraphs?

A. (Dr. Ruel) Well ...

A. (Hornal) To clarify you are starting with the paragraph that starts 'low flying aircraft are a known cause of stress'?

Q. Yes?

A. (Dr. Ruel) Yes I agree with that."

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My Lord, I perhaps should identify who these people are for the record to make it complete. If I may refer, My Lord, to the first volume of the Discovery, page 1, line 19:

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" MR. ESTRIN: Dr. Ruel, you are the Director of the Northern Environmental Protection and Renewable Resources Branch of the ...?

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DR. RUEL: The title has been changed. It is now the (inaudible).

THE REPORTER: It is the?

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DR. RUEL: It is the Director General of Northern Environment."

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Then, at page 2, line 13:

" Mr. Robert Hornal, can you tell us what your position is?

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A.(Mr. Hornal) I am the Director of the Northwest Territories Region of the Northern Affairs Program. Department of Indian Affairs and Northern Development."

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THE COURT: All right.

MR. ESTRIN: Thank you, My Lord.

THE COURT: Mr. Golden, you have exhibits you wish released.

MR. GOLDEN: We should like, for copy overnight, in order to keep our files in a somewhat reasonable order, the release of Exhibits P-1, I-3, I-4.

I can give Mr. Stinson the following. I should like P-8, P-19, P-20, P-21, I-5, I-7, I-9, P-35, P-40, P-42, P-43 and P-44. And the last exhibit -- I do not have the exhibit number.

THE COURT: The Aviation Notice?

MR. GOLDEN: The Aviation Notice.

THE COURT: Exhibit P-89.

Is there any objection by anybody to that? All right.

MR. GOLDEN: Thank you, My Lord.

And, My Lord, that closes the Plaintiffs' case.

THE COURT: I do not know what to suggest, Mr. Chambers. I hate wasting half an hour but, on the other hand, if you think it is useful to break now and commence fresh in the morning.

MR. CHAMBERS: I would like to clear one thing up first. I would like to correct the record in the early part of the trial in one respect and this will not take very long. I want to indicate briefly to the Court the nature of the evidence that will be called on behalf of us. It is in Your Lordship's hands, of course, whether we

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start this afternoon.

THE COURT: Well, if you do have an opening statement, it might be useful to have it if you are ready to deliver it this afternoon. We will not call any witnesses.

MR. CHAMBERS: My Lord, Your Lordship will recall at the beginning of the trial at Baker Lake I raised the fundamental objection to a certain type of evidence that my learned friend said he was going to call -- on the grounds of irrelevance to the issues of this case.

I concluded my statement, My Lord, on page 15 of Volume 1 of the transcript, which is in front of me right now, and it starts at the last paragraph on page 15, line 6 and finishes at line 13.

If I may read the paragraph.

" However, I am mindful, My Lord, of the desire of the Plaintiffs to air their complaints and their grievances to this Court to the fullest and, therefore, I am disposed not to make a formal objection to the evidence provided that ..."

And what follows now is the subject of my concern and which I want to correct.

"-- provided that the necessity may arise on our part to lead rebuttal evidence is not construed as having laid our objection to such evidence in the first place."

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The statement is obviously
unsensible the way it reads, and I have written out
and intend to read into the record now the statement
I did make and I have checked this out with my
learned friends and they agree.

The last clause provided at line
10 and ending at line 13 is as follows:

... provided that the necessity that
may arise on our part to lead
rebuttal evidence is not construed
as thus having waived our objection
in the first place.

My Lord, we intend to call evidence
which might be classified under three broad
categories. The first type of evidence that will
be put to the first witness goes to the conduct by
the Government with respect to the lands in the
Baker Lake area, and the administration of these
lands.

The second category is expert
opinion evidence to be given pursuant to the
Affidavit or the certified statement of the
expert witness, Mr. Frank Miller, a biologist,
which has been filed.

The third category of evidence
which we intend to lead is rebuttal evidence. This
may be subdivided again into two broad categories,
and that is evidence of caribou behaviour because, as
lots
we have heard/in this trial on the part of these
witnesses as to the alleged behaviour of caribou

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under various conditions and circumstances and we will call evidence to rebut certain aspects of the Plaintiffs' evidence in this regard. Secondly, we shall call rebuttal evidence going to the conditions that prevailed in the Baker Lake area in the 1950s and 1960s, particularly with regard to the availability of caribou meat to the Inuit at that time.

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Your Lordship will recall that a great deal of time was devoted by the Plaintiffs' evidence to establish there was no shortage of caribou meat or hunting until the arrival of the mining companies in 1969 or thereabouts. In this respect we shall lead certain evidence, My Lord, regarding this situation in the 1950s and 1960s, long before there was any mining involvement in the area or any appreciable mining involvement.

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I propose that my learned friend Mr. Sgayias will examine the first two witnesses. The first witness, as I said before, My Lord, will be, in fact, Mr. Hornal, the Senior Administrator in the area, dealing with the land questions, issuance of permits, and so on. That is the gentleman Your Lordship heard a lot about today when certain portions of the Discoveries were read in by my learned friend Mr. Estrin.

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So, therefore, with Your Lordship's permission, we will call the first witness.

THE COURT: Well, if you want to go ahead, I guess we have a half hour here.

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MR. CHAMBERS: I should have said

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perhaps Your Lordship might wish -- in view of the long day we have had -- to leave this until tomorrow morning. However ---

THE COURT: Well, I am quite disposed to recessing now to resume at 9.30 a.m.

--- COURT ADJOURNED TO
June 5, 1979, at 9.30 a.m.

DATE DUE

C IAND Fed Ham 1979 v.12

In the Federal Court of Ca
00064-2254 02-0011720

HAMLET OF BAKER LAKE
ET AL & MINISTER OF IAND

C IAND Fed Ham 1979 v.12

In the Federal Court of Ca
00064-2254 02-0011720