Court File Number: T-452-06

FEDERAL COURT

BETWEEN:

LES AMIS DE LA RIVIÈRE KIPAWA incorporated as 1162209036 QUEBEC INC.

Applicant

AND

THE ATTORNEY GENERAL OF CANADA and THE MINSTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA, THE MINISTER OF FISHERIES AND OCEANS, THE MINISTER OF TRANSPORT, and DAVID S. LAFLAMME CONSTRUCTION INC.

Respondents

AFFIDAVIT OF KIM TURNBULL

I, Kim Turnbull, of the City of Gatineau in the Province of Quebec, MAKE OATH AND SAY, as follows:

1. I am an employee of the Office of Greening Government Operations ("OGGO") at Public Works and Governmental Services Canada ("PWGSC");

2. I was hired on Dec. 2, 2002 as an Environmental Regulations Officer and have worked in the environmental field for more than 8 years with two environmental consulting firms, a conservation authority and the federal government;

3. I have conducted over 150 environmental projects, covering a range of environmental issues from assessments to watershed planning;

4. I have been the Environmental Assessment ("EA") practitioner or the lead EA project manager for over 10 EAs conducted under the Canadian Environmental Assessment Act ("CEAA") for PWGSC;

5. As the PWGSC EA Project Manager for the Laniel dam rehabilitation project, my main duties were the planning, coordination and management of the EAs completed by our consultant, Jacques Whitford Environmental Limited, for the original concept and the proposed design for the replacement of the existing dam at the village of Laniel, Quebec;

6. I was the federal coordinator for this EA that involved PWGSC, Fisheries and Oceans ("FOC") and Transport Canada ("TC"), and was responsible for the public consultation held under the CEAA;

7. I was also responsible to obtain the Navigable Water Protection and Fisheries Act approvals for the project;

8. As part of the PWGSC Project Team, which includes PWGSC engineers and consultants, I am responsible for and aware of the correspondence, communications, information and positions and background material submitted, presented by or on behalf of PWGSC related to the environmental screening of the reconstruction of the dam at Laniel Quebec;

9. As such, I have personal knowledge of the participation by Les Amis de la Rivière Kipawa ("les Amis") in the environmental screening process conducted with respect to the Laniel dam reconstruction project ("the project") on the Kipawa River, to the assertion of navigation rights on the Kipawa River by Les Amis, to the public consultation and stakeholder feedback, to the requests for access to the EA public registry, and to the PWGSC response to the comments received on the EA;

General context

10. Under the Canadian Environmental Assessment Act, PWGSC determined that this project required an environmental assessment;

11. EAs identify possible environmental effects, propose measures to mitigate adverse effects, and predict whether there will be significant adverse environmental effects after the mitigation is implemented;

12. In order to streamline the federal EA process, a description of the proposed rehabilitation project was provided to the federal departments which may have a requirement to conduct an EA prior to issuing a permit or which may have expert advice related to the EA;

13. Both TC and FOC were also responsible to ensure an EA is conducted for the Laniel Dam Reconstruction Project as approvals under paragraph 5(1)(a) and subsection 6(4) of the Navigable Waters Protection Act and under subsection 35(2) of the Fisheries Act were required from TC and FOC, respectively; as noted in Richard Jones and Mélisa Vachon's affidavits, these approvals were in fact obtained by PWGSC;

14. As PWGSC is the proponent of the project, it was agreed amongst the three federal departments that PWGSC would act as the federal EA coordinator for the project;

EA Process – General Chronology/ Overview

15. In December 2003, Robert Laporte, PWGSC Project Manager, briefed Gilles Brasseur, my manager at OGGO, and I on the proposed rehabilitation project at the Laniel Dam and provided a concept design for the new dam;

16. As he explained to us at the time, the project concept was to replace the existing earth dyke and 2-sluice spillway with a 4-sluice concrete dam to accommodate as much as possible a 1:10,000-year flood event as required by the Quebec Dam Safety regulation; of note, even if PWGSC is not legally bound by the Quebec Dam Safety regulation, it generally will put its best efforts to meet or exceed its standards;

17. As the increased capacity to discharge water from the reservoir was required only to meet, to the extent possible, extreme weather conditions, and as there was no change proposed to the seasonal reservoir levels and flows to the Kipawa River, I determined that a federal screening level assessment would constitute the appropriate level of effort for this project;

18. Early in 2004, our EA consultant, Jacques Whitford Ltd. ("Whitford") was approached to provide an EA of the proposed project;

19. Whitford's initial mandate was to conduct a gap analysis to determine the available information and what, if any, studies were required to support the EA;

20. Upon review of this analysis and considering the nature of the proposed project, a mandate was given to Whitford in the spring of 2004 to conduct a fish and fish habitat study and the EA based on the preliminary design;

21. Based on the recommendations of the preliminary draft EA which was subsequently provided by Whitford as we will see hereafter, a detailed design was

completed by Tecsult in 2005 and assessed in the final EA completed by Whitford in 2006;

22. The decision as to whether a public consultation should be held under CEAA was initially deferred until we had more information; at the time, it was felt that the public would not likely be concerned about the design of the dam, only the impacts of construction work because no change was proposed to the operations, or the seasonal reservoir levels and flows to the Kipawa River;

23. By May 2004, the PWGSC project manager had decided that targeted stakeholder meetings would eventually be held and would focus on the potential impacts of the demolition and construction work;

24. The draft EA report on the original dam concept dated Sept. 2004 was received from Whitford and reviewed by PWGSC by Dec. 2004, **Exhibit KT-1**;

25. This draft preliminary EA report was never finalized but provided guidance for Tecsult, who was retained as the engineering consultant in charge of designing the project, and was the basis for the public consultation meetings;

26. By Feb 2005, FOC confirmed that an approval under the Fisheries Act would be required due to the anticipated harmful alteration, disruption and destruction of fish habitat and, therefore, FOC would be a responsible authority for the EA; Mélisa Vachon's affidavit explains the Fisheries Act approval process and FOC's role in the EA process;

27. At the time of the public consultation meetings (March 2005), PWGSC planned to incorporate the public consultation results and to finalize the EA of the proposed design by April 2005 as the construction contract was to be issued in October 2005 and PWGSC wished to avoid potential re-tendering of the construction contract;

28. By June 2005, TC indicated that they may also be responsible for the EA and that the public consultations held in March 2005 would satisfy their consultation requirements under CEAA; Richard Jones' affidavit explains TC's role in the environmental assessment and the NWPA approval process;

29. A draft EA report on the detailed design was provided by the EA consultant in Sept. 2005 for PWGSC, TC and FOC's review, **exhibit KT-2**;

30. After TC's status as a responsible authority for the project EA was confirmed, on Oct. 7, 2005, the public notice of the completion of the EA report was given, **exhibit KT-3**;

31. Due to the additional information received at the public consultation meetings and due to delays in the NWPA process, the EA decision was postponed several times; however, there was a general agreement amongst the departments responsible for the EA on impacts and mitigation measures by Nov. 2005;

32. For example, the need for a fish habitat compensation plan to obtain the approval under the Fisheries Act was identified, but the plan itself had not been completed by Nov. 2005; more importantly, there were delays in providing acceptable plans to TC; in particular, the upstream boom specifications needed to be based on a commercially available type of buoy that could prevent access to the spillway and the portage trail design was changed several times in order to ensure the shortest and safest permanent access would be available to navigate around the dam; also, arrangements for temporary river access during construction were still under discussion until Jan. 2006, with a focus on the information provided during the public consultation and responses to the two sets of public notices issued under the NWPA;

33. It is my understanding that, given the potential consequences of failure of the dam, the contract was issued for the construction as designed prior to the finalization of

the EA process in order to avoid delaying the work until after the spring fish spawning period; this contract included provision for obtaining approvals and permits before work started; further delays in the EA and NWPA processes resulted in the deferral of the EA decision and of the construction of the cofferdams as any work in the reservoir and river could not proceed until both the FOC and NWPA approvals were received; I understand that the contracting process continued because a re-tendering would likely delay the rehabilitation, which was not acceptable to PWGSC as the completion of the dam rehabilitation was required to ensure the safety and economic well-being of those who live in the area and/or rely on the dam and the reservoir; I understand that Yvon Morin's affidavit deals with the operational aspects of the dam and its potential failure in detail;

34. By Feb. 9, 2006, the three responsible authorities had made their EA decision that they could exercise any power or perform any duty or function with respect to the project because, after having considered the screening report and the comments received from the public, the authorities were of the opinion that the project is not likely to cause significant adverse environmental effects; a copy of the full EA report is attached to the present affidavit as **exhibit KT-4**;

35. Although unable to accommodate the request for passage through the spillway due to a navigation restriction, liability concerns and financial issues, all of which have been addressed in Yvon Morin and Richard Jones' affidavits, PWGSC was able to act upon other concerns raised by kayakers and rafters, for example by shortening the originally proposed portage trail and by widening the proposed portage trail to allow vehicular access;

EA Scoping

36. For the screening level assessment, PWGSC, in consultation with FOC and TC as the responsible authorities, determined that the scope of the EA would largely concentrate on the potential impacts of the demolition and construction of the

Laniel Dam, as no change was proposed to the operations, or the seasonal reservoir levels and flows to the Kipawa River;

37. In response to the issues raised on navigation at the Laniel Dam, I provided some basic information on navigation safety legislation and regulations to the PWGSC project team, **Exhibit KT-5**; however, the fact is that TC is at law the competent federal department on this issue;

38. It is important to note that the scope of the project was discussed with the PWGSC project team at several key points during the assessment process;

39. For example, upon receipt of information on negative impacts of the current operation of dam on fish spawning in the reservoir, the PWGSC project team confirmed that changes to the operation of the dam were not part of the project;

40. Similarly, when the issue of kayaks and rafts passing through the sluices of the dam was raised, PWGSC clearly informed the stakeholders that it was not prepared to condone the current practice of passing through the sluices, exhibit KT-4, Appendix E;

41. In any event, acceptable alternatives, such as a navigable structure that could be used by the general public (ex. a lock) as noted in the Tecsult letter in Appendix F of the EA report, KT-4, did not meet the requirements as outlined by the paddling community and, therefore, were not considered to be viable options to address the concerns raised by les Amis;

42. Moreover, TC confirmed that, as the proponent of the project, PWGSC would have the responsibility to ensure safe navigation near the dam and that the proposed improvements to the portage trail and alternative access provided during the construction period would satisfy the requirements of the NWPAs as evidenced by TC's NWPA authorization attached to Richard Jones' affidavit;

43. Finally, it was explained by PWGSC that its position on passage through the sluice itself was based on safety concerns related to the operation of the dam, which applied equally to the existing structure and to the proposed new dam; as such, the implementation of the project is not the cause of PWGSC's decision to ensure boaters do not have access to the spillway; rather, even the existing dam had a boom upstream of it in order to restrict access to the spillway; in addition, when PWGSC was officially and publicly informed that the kayakers and rafters passed through the sluice during the consultation process, PWGSC took immediate action (i.e. posted signage) to restrict access to the spillway, exhibit KT-4, Appendix E;

EA Public Consultation

44. In the early EA planning stage, potential stakeholders for the project were identified and included Les Amis as their website indicated that there was a 'put-in' at the foot of the dam, **exhibit KT-6**;

45. The Les Amis' website also provided information on their concerns regarding the potential diversion of water from the Kipawa River due to Hydro-Quebec's proposed Tabaret Hydroelectric Project on the Kipawa reservoir;

46. Discussions on the requirements for public consultation under CEAA were based on the information available to PWGSC at the time;

47. Both the likely lack of public concern on the replacement of an existing structure, and the past public interest in the proposed Hydro-Quebec project at the Kipawa reservoir were considered by the PWGSC project team;

48. The decision on public consultation was initially deferred as it was felt that the public would not likely be concerned about the design of the dam, but may have information or concerns related to the impacts of the demolition and construction

work because no change was proposed to the operations, or the seasonal reservoir levels and flows to the Kipawa River;

49. In May 2004, the PWGSC project team decided that stakeholder meetings would focus on the potential impacts of the demolition and construction work on adjacent properties, users of the Trans-Quebec trail which crosses the Kipawa river via the dam and the annual Kipawa river rally held in the immediate vicinity of the Laniel dam;

50. The consultation meetings were deferred to March 2005 to ensure the engineering design team could present the latest design concept for the new dam at the same time;

51. The EA public consultation held in Laniel on March 16, 2005 focused on potential impacts of the demolition and construction, gathering local and traditional ecological knowledge, and ensuring that the stakeholders understood that no change was proposed to the operations, or the seasonal reservoir levels and flows to the Kipawa River;

52. As described in the public consultation report, there were discussions on the issue of navigation through the dam spillway at the meeting, exhibit KT-4, appendix E;

53. First Nations representatives noted that the loss of recreotourism activities, notably kayaking through the spillway, is of concern to them, exhibit KT-4, appendix E, table 2.1;

54. The representative from Les Amis provided information on the history of kayakers passing through the dam and questioned the basis for PWGSC's decision to not allow passage through the spillway, exhibit KT-4, appendix E, table 3.1;

55. The representative of the Quebec Federation of Whitewater canoers and kayakers (FQCKEV) requested that PWGSC and TC consider the dam itself as navigable as the kayakers have passed through it for 40 years; he also indicated his willingness to work with the government and the municipality, exhibit KT-4, appendix E, table 3.1;

56. PWGSC representatives clearly indicated that the passage through the spillway was not allowed due to safety concerns, explaining PWGSC's responsibilities as the owner of the dam; PWGSC also pointed out that permission had never been requested and was never issued for passing through the spillway, exhibit KT-4, appendix E, table 3.1;

57. Furthermore, PWGSC would never grant permission for such activities as it entails too high a risk of liability and reiterated its concerns on the liability involved, indicating that the question is an operational one that would be addressed by government lawyers, and not through the EA process, exhibit KT-4, appendix E, table 3.1;

58. PWGSC indicated that the construction of a trail was a possibility to allow access downstream of the dam and that the flow of water into the Kipawa River would be maintained during construction, to the extent possible, exhibit KT-4, appendix E, table 3.1;

59. PWGSC asked the stakeholders what the impact on the economy and recreotourism would be if the kayakers could no longer pass through the spillway; in response to this, les Amis indicated that the dam was 1 of 16 rapids and that there are normally 320 kayakers each season; also of note, letters from the regional governments indicate that the loss of navigation through the dam spillway would not be an important economic impact to the region's tourism industry, exhibit KT-4, Appendix F;

60. A public consultation report was prepared by Whitford in May 2005 as a summary of the public consultation meetings held in Laniel in March 2005 with the targeted stakeholder group, exhibit KT-4, Appendix E;

61. This report outlines the concerns raised and the answers provided during the discussion;

62. The draft of the public consultation report was circulated to the stakeholders in May and June 2005;

63. An interim response was received on July 4, 2005 from PK requesting the specific statute and/or regulation that would prohibit whitewater enthusiasts from running the dam at Laniel, and asserting that employees of PWGSC have been aware of the dam being run by whitewater recreational enthusiasts;

64. A full response was received from DS on July 14, 2005 indicated the impacts they perceived to Les Amis activities;

65. In October 2005, I sent an excerpt of the analysis and mitigation measures section of the 'near-final' EA report to present our final responses to the concerns raised since the March 2005 public consultation to the stakeholders, **exhibit KT-7**;

66. The contrasting views on navigation were clearly indicated in this section of the report, acknowledging that "for Les Amis this is an important impact" and that "Many comments have been received from area kayakers: therefore, arrangements must be made for the safe descent into the river.", exhibit KT-7, page 20; in addition, the documents received from Les Amis outlining their concerns were included in Appendix F of the EA report;

67. Final comments were requested in two weeks and no request for an extension was received from Les Amis;

68. The comments and information received from the public and other stakeholders were the subject of numerous discussions within PWGSC (operational requirements), and between PWGSC and TC (NWPA requirements), during the 11 months from the public consultation meeting in March 2005 and the final EA decision in February 2006;

69. By Feb. 9, 2006, the three responsible authorities (PWGSC, TC and FOC) had made their EA decision that they could exercise any power or perform any duty or function with respect to the project because, after having considered the screening report and the comments received from the public, they were of the opinion that the project was not likely to cause significant adverse environmental effects, exhibit KT-4, pages 128 and 129;

70. The decision of significance for navigation can be found in the land use section, exhibit KT-4, pages 112, 113 and 114; as is apparent from these passages of the EA report, this decision was based upon "an interruption of the activities" when considered at a regional scale, i.e. the reservoir and the Kipawa River from Laniel to Lake Témiscamingue; as is also apparent from the report, the responsible authorities concluded that, in light of the proposed mitigation measures, the adverse impacts of the project would not be significant;

71. Although unable to accommodate the request for passage through the spillway due to liability concerns, PWGSC was able to act upon other concerns raised by kayakers and rafters, for example by shortening the originally proposed portage trail and by widening the proposed portage trail to allow vehicular access;

72. By early Nov. 2005, Les Amis had received the following:
    - the public consultation report, exhibit KT-4, Appendix E;
    - the EA analysis and mitigation measures excerpt, exhibit KT-7;

- a separate copy of Tecsult's letter, **exhibit KT-8** (also found in KT-4, appendix F);
- Appendix F of exhibit KT-4, which included the comments from Les Amis and Tecsult's letter of June 15, 2005 noting that the existing and proposed dams were not designed for safe passage of watercraft ; and
- verbal information from PWGSC on a reported accident;

73. This represents all the material upon which the EA mitigation measures, PWGSC's determination of potential liability, and the decision of significance of impacts on navigation were based;

Communications with Les Amis (DS and PK)

74. In addition to the general communications noted above in the Public Consultation section, numerous discussions were held between various members of the PWGSC project team and Doug Skeggs ("DS") or Peter Karwacki ("PK") of Les Amis;

75. As noted in the description below, earlier communications with Les Amis were polite and open attempts to exchange information with the PWGSC project team on the issues related to navigation;

76. The PWGSC project team became aware of PKs continual misrepresentation of discussions with PWGSC personnel, often through the public posting of comments on the paddlers website, **exhibit KT-9**;

77. Meaningful communications between PWGSC and Les Amis became much more difficult due to PK's harassment and derogatory comments of the project team members; in addition, the PWGSC project team was informed that PK had posed as a member of the media when contacting PWGSC Communications through the project information line (1-866);

78. Yvon Morin provided verbal information on an injury reported at the spillway to Les Amis in May 27, 2005 (DS' affidavit, paragraph 82), which was later also provided to Les Amis through an email sent Feb. 3, 2006, **exhibit KT-10**;

79. On June 9, 2005, further comments were posted on a paddlers website concerning a writ of mandamus being considered by Les Amis;

80. I also received a reply from Les Amis acknowledging receipt of public consultation report; however, no changes were requested to the report.

81. On July 11, 2005, I replied to DS on the public consultation process, referring him to Y. Morin, PWGSC, for operational decisions related to the dam;

82. Comments received from Les Amis in response to the terms of reference on the federal government contracting website (MERX) which recommended that PWGSC engage a specific whitewater design consultant were noted and forwarded to the PWGSC Contracting Authority to ensure the tendering process was respected**, exhibit KT-11**;

83. In response to DS's request of Oct 17, 2005, Appendix F of the full EA, which included the comments from Les Amis and Tecsult's letter of June 15, 2005 noting that the existing and proposed dams were not designed for safe passage of watercraft, were sent to Les Amis, **exhibit KT-12**; it was noted at that point that the public consultation report was included in the full EA as Appendix E;

84. In response to PK's written request for access to the public registry documents on October 31, 2005, PK had access to the mandatory public registry documents required by CEAA under section 55 on Nov. 1, 2005;

85. In addition, PK also received a paper copy of the dam operations manual and Tecsult's letter of opinion on the risk of navigating through the sluice (exhibit KT-8);

86. After having consulted all the mandatory public registry documents, PK then requested to view additional documents related to the file, including all documents related to our determination of the risk of running the dam;

87. Upon informing the PWGSC project team of PK's visit, it was agreed in early November '05 that the project team would only be replying in writing to written questions from Les Amis and would need to review and agree to any further releases of the file material;

88. In response to further comments from Les Amis, I considered the applicability of navigation information from the Genivar EA report for Tabaret Project; as the Tabaret EA was a regional study based word-for-word on documentation related to navigation produced by Les Amis, the EA was not revised as the Tabaret EA was superceded by more detailed information gathered at the Laniel Dam itself and that providing a safe navigable structure or re-creating the existing structure was not part of the project scope in accordance with PWGSC requirements;

89. Once the review of two documents related to the assessment of the risk of passing through the sluice was completed, I emailed PDF versions of 2 documents on the risk analysis issue to Les Amis in response to their request of Nov. 2005 (exhibit KT-10); when informed that the protected information (name and particulars of the accident victim) could possibly be read from the PDF version, I immediately requested that Karwacki delete the documents;

90. As noted in the Scoping section, reasonable consideration was given to incorporating the comments received on navigation within the scope of the project; for example, many internal meetings and numerous discussions were held within

PWGSC and TC to explain the issues related to navigation, to gather and discuss the available information, and to ensure support within PWGSC and TC for the solutions proposed by the PWGSC project team;

91. Also, PWGSC did act upon other concerns raised by kayakers and rafters; in particular, PWGSC plans to shorten and to widen the proposed portage trail to allow vehicles to take equipment and passengers to the river access; after dropping off the equipment, parking will be available at the municipal lot as is currently the case; alternatively kayakers may choose to cross the river on foot over the new dam (not the bridge) in order to put-in below the dam;

92. In summary, I believe that the PWGSC project team made a reasonable effort to listen to and address the concerns raised by Les Amis and to explain PWGSC's responsibilities as the operator and owner of the dam;

93. PK's actions and the refusal of Les Amis to recognize PWGSC's legitimate concerns about public safety at the dam did however make it difficult to carry out further meaningful discussion, consultation or mediation;

Access to the EA Public Registry

94. As mentioned in the previous section, les Amis had access on Nov. 1, 2005, to the mandatory public registry documents required by CEAA under section 55;

95. Specifically, they not only received copies of the public consultation report (exhibit KT-4, appendix E) and the excerpt of the analysis and mitigation measures (exhibit KT-7), but they were also provided with verbal information on the reported accidents and all stakeholder correspondence related to the EA consultation process as well as the Tecsult letter (exhibit KT-4, Appendix F);

96. As these three documents are the basis of the EA determination of mitigation measures and the significance of any residual environmental effects related to navigation, les Amis were able to participate fully in the EA process as they had all relevant information available to PWGSC on navigation;

97. Subsequent to PK's request to view all the public registry file documents, I reviewed my file, which at that point contained hundreds, if not thousands, of documents, to ensure that there were no additional documents that should be included in the public registry at the discretion of the EA team;

98. A list of potential additional documents was circulated for approval by the PWGSC project team and other responsible authorities in Nov. 2005;

99. As the further requests for information from Les Amis (DS affidavit, exhibits "mm" and following) were narrowed down to information related to PWGSC's assessment of risk and no follow-up was made for the English version of the full EA report, I focused my efforts on satisfying these later requests;

100. Due to the continuous harassing and derogatory conduct of PK, exhibit KT-9, and the threat of litigation, further communication efforts by the PWGSC Project Team were difficult and subject to a more stringent review process than originally planned;

101. As documents in the EA public registry must be screened for potential concerns regarding the release of private, confidential, or other sensitive material, the PWGSC project team eventually decided that any further release of documents would require review of senior management and trained PWGSC Access to Information (ATIP) personnel;

102. The lack of a timely response to requests for more documentation was due to the time required for a more thorough review of the documents requested, including a

200+ page EA report; as the review of this report was not completed when les Amis filed their judicial review application, the full EA report was not provided to les Amis by the PWGSC project team; in addition due to past communications problems and the serious nature of the threatened litigation and public allegations made against PWGSC staff and their consultant, the PWGSC Project Manager became responsible for all communications related to the project;

103. In consideration of the public consultation process and other communications with Les Amis as part of the EA process, I believe that PWGSC met the EA public registry requirements, the goal of which is to encourage an open and transparent decision-making process; of particular importance, it should be noted that all required documents were posted on the CEAA electronic registry and access was provided to Les Amis upon request; furthermore, the public consultation report, the excerpt of the EA report, Appendix F of the full EA report, copies of the Tecsult letter and a verbal report of an accident involving injury were provided to Les Amis to show that their comments and information were considered in the context of the comments provided by other stakeholders, and the responsibilities of PWGSC as the dam operator, and those of TC in approving the proposed dam design for public safety;

Official Languages

104. The mandatory public registry documents required to be in both official languages were provided to the general public through the CEAA website registry and paper copies were consulted by les Amis during their visit at our offices on Nov. 1, 2005, which I made reference to in the previous section;

105. In fact, les Amis not only had access to copies of the public consultation report in French (exhibit KT-4, appendix E) and English, **exhibit KT-13**, and the excerpt of the analysis and mitigation measures (exhibit KT-7) in both official languages, but almost all communications between PWGSC staff and Les Amis were conducted in

the language of choice of les Amis representatives to the best of my knowledge; for my part, I addressed all stakeholders in the language of their choice throughout the EA process;

106. As such, I understand that one of Les Amis' concerns regarding the EA process is that they were not provided with the full EA report in English; this claim is made despite the fact that all information pertaining to navigation were provided to them in English; as such, they are making this claim although they clearly understood PWGSC's views on navigation through the sluices, and that, as a result, les Amis were able to participate fully in discussions regarding the EA determination of potential impacts to navigation, the mitigation measures and the significance of any residual impacts after mitigation;

107. This being said, the full EA report was not provided to les Amis, or any other stakeholder, in English for the following reasons;

108. I was of the view that an excerpt of Section 5 of the EA report (analysis and mitigation measures) would be an appropriate document to be circulated to the public consultation group as it would:
   - be easier to read;
   - focus on the key issues of navigation, archeology and fish habitat;
   - be equally informative;
   - be translated in time to meet our timeframes for finalizing the EA;
   - constitute the most efficient way of communicating the relevant information to the stakeholders, including possible direct public access through the electronic public registry; and
   - meet the requirements under CEAA and the Official Languages policy.

109. It is of note that I contacted the Canadian Environmental Assessment Agency ("CEAA") in January and September 2005 concerning this issue;

110. In September 2005, a CEAA representative indicated that the EA document we consult on during the public consultation process should be available to the stakeholders in both languages and that, although it is common practice to provide a long executive summary in both official languages, there is a risk that the full EA report may have to be translated at short notice (ie: when it becomes apparent that the summary is not an adequate way to communicate the EA findings of interest to the stakeholders); these requirements were met during the consultation process since the documents we consulted on, which contained all the relevant information to the stakeholders, were provided in both languages;

111. I also initiated a request for translation and determined that the cost would range from $15,000 to $19,000 and the translation would take 4 to 6 weeks, in addition to the time required to review the translated document;

112. In light of these considerations and the fact that the EA report was 200+ pages, I determined that translation of the full EA report required an unacceptable amount of time in view of the original deadlines and the urgency of finalizing the EA to avoid delaying the work and I felt that concise bilingual documents containing the details on the EA analysis, mitigation and conclusions would facilitate the public consultation process since three stakeholders preferred to communicate in English; another option considered was creating a brief bilingual federal screening report for signature by PWGSC, TC and FOC; however such documents usually refer only to the conclusions of the un-translated consultant's report without providing any details;

113. Under the Official Languages Policy, PWGSC can "distribute lengthy documents by choosing the most efficient way to communicate with the targeted public in the official language of their choice while taking into account the linguistic obligations of the Official Languages Act";

114. My decision regarding the creation of a bilingual EA excerpt document took into account a number of factors, including the goal of public consultation; the nature of the document; PWGSC's ability to provide the document in the other official language free of charge and within a reasonable timeframe; the potential costs and logistics involved in distributing the full EA report (over 200 pages) in both official languages to the many members of the public who had already provided comments under the EA and NWPA processes; and the environmental impact of producing numerous copies of the full EA report in both official languages;

115. In view of all of the facts mentioned above, PWGSC's obligations under the CEAA were all fulfilled;

116. All of the facts contained in the present affidavit are true to the best of my knowledge.

_____
KIM TURNBULL

SWORN before me in the city of Ottawa
in the province of Ontario on this 11th day
of August 2006.

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Commisionner of oaths