



October 17, 2012

VIA EMAIL

Chuck Hubert  
Senior Environmental Assessment Officer  
Mackenzie Valley Environmental Impact Review Board  
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Dear Mr. Hubert,

**RE: Final Argument Submission**  
**EA0809-004 NICO Project, Fortune Minerals Limited**

Attached to this cover letter is the Government of the Northwest Territories Final Argument submission for the Fortune Minerals Limited NICO Project environmental assessment. It is requested that this submission be posted to the Mackenzie Valley Environmental Impact Review Board public registry for this project.

Please contact Shafic Khouri at [shafic\\_khouri@gov.nt.ca](mailto:shafic_khouri@gov.nt.ca) or (867) 920-6335 if you may require any further details.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary Tapsell". The signature is fluid and cursive, with a large loop at the end.

Mary Tapsell  
Director, Land and Water  
Department of Environment and Natural Resources  
Government of the Northwest Territories  
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Attachment

Government of the Northwest Territories

# NICO Project Environmental Assessment

Final Argument



October 17, 2012

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## 1. Non-Technical Summary

The Government of the Northwest Territories (GNWT) is an intervener to the Fortune Minerals Limited (Fortune) NICO Project environmental assessment (EA). This Final Argument has been issued after active EA involvement and review of the Developer's Assessment Report, Information Requests, Technical Reports and other materials on the public registry.

The current Fortune conception of a Wildlife Effects Monitoring Program (WEMP) should be more appropriately renamed to a Wildlife and Wildlife Habitat Protection Plan (WWHPP). With the understanding of this change, the GNWT is willing to work cooperatively with Fortune, the Tlicho Government, co-management authorities and other interested groups to develop this WWHPP. Should a process take place for developing a WEMP (as defined in section 3.1.2 of this report), the GNWT is also willing to work cooperatively in this process.

GNWT concerns related to increased road access and wildlife in relation to the scope of the NICO Project have been alleviated. This is due to clarification on an all-weather road (see section 3.3 for details), in addition to any such future all-weather road project requiring its own preliminary screening separate from the NICO Project. The NICO Project access road, however, does have the potential to contribute to cumulative impacts on wildlife in the NWT. The GNWT supports the fulfillment of cumulative effects monitoring objectives through an active collaborative approach of regional scale monitoring between governments, developers, Aboriginal groups and other interested parties. Fortune has committed to working with a variety of groups to manage access road. The GNWT is willing to meeting with these groups to discuss options for an approach to regional monitoring. Further Fortune involvement in access road monitoring and possible regional scale monitoring can be considered during future discussions.

The Mackenzie Valley Land and Water Board (MVLWB) is the primary authority for ensuring that environmental monitoring and reporting will be occurring at the NICO Project. Best practices for environmental monitoring have also been committed upon by Fortune. The GNWT believes any additional environmental monitoring for the NICO Project is best achieved through agreement between affected communities and Fortune.

Overall, as the NICO Project relates to biophysical matters, the GNWT agrees with the mitigation commitments that Fortune has made throughout the EA process for the project. The GNWT believes the NICO Project can be undertaken in a way that does not pose a significant adverse impact to the environment provided the commitments made by Fortune are carried out.

Overall, as the NICO Project relates to socio-economic matters, the GNWT views a Socio-Economic Agreement (SEA) as an essential tool to: monitor and test socio-economic predictions; evaluate successes; identify gaps when predictions are not met; as well as adaptive management measures to address unintended results. Ideally, the socio-economic commitments made by Fortune will be formalized in a SEA. In order to link the SEA to the EA, the GNWT recommends a socio-economic follow-up program, in the form of a SEA between the GNWT and Fortune, be a condition of NICO Project approval.

## **2. Introduction**

The GNWT promotes and supports the sustainable use and development of natural resources to protect, conserve and enhance the environment of the Northwest Territories (NWT) for the social and economic benefit of all residents. This responsibility is shared with Aboriginal, federal, territorial, and municipal governments, boards and agencies and every resident of the NWT.

The GNWT has been an active participant throughout the NICO Project EA and has submitted Information Requests and a Technical Report to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) in May and June, respectively, of this year. The GNWT also participated in the Public Hearings during August and October. Between the various phases of the NICO Project EA, GNWT and Fortune officials met for discussions to clarify information and to develop commitments to mitigate possible impacts from the Project. Summaries of these discussions and agreed-upon commitments were submitted to MVEIRB and posted to the public registry.

This submission represents the GNWT Final Argument for the NICO Project (EA0809-004). The intent is not to repeat previous submissions but to provide context and clarify issues raised during the Public Hearing sessions; provide appropriate updated information; as well as provide a GNWT position on various topics surrounding the NICO Project EA. The topics discussed in this submission are outlined in the table of contents found on page 1.

### 3. Wildlife

The GNWT, Department of Environment and Natural Resources is responsible for the stewardship of wildlife resources, which includes the collection of baseline information; assessing and monitoring the status of wildlife; wildlife habitat; species at risk; wildlife health; assessing impacts on wildlife from human activities; and, regulating wildlife protection and use.

#### 3.1. Clarification between a Wildlife Effects Monitoring Program (WEMP) and a Wildlife and Wildlife Habitat Protection Plan (WWHPP)

The GNWT presentation and oral comments provided at the Public Hearing on August 30, 2012 were to reflect the comments on wildlife stated in the GNWT Technical Report. It was recognized that GNWT oral comments pertaining to what Fortune identifies as a WEMP were unclear during the Public Hearing and therefore the GNWT requested Public Hearing Undertaking #3 to clarify these comments.

GNWT analysis determined that Fortune blended the concept of a WEMP with a WWHPP. Examination of the draft outline for the WEMP Fortune has proposed led to confusion, as what Fortune has identified in its proposed WEMP is what GNWT determines to be part of a WWHPP. Definitions of what constitutes each plan and program are found in sections 3.1.1 and 3.1.2 of this report, respectively. The GNWT intends to provide more detailed outlines for WWHPPs and WEMPs in the near future. These are intended to guide collaborative development of WWHPPs and WEMPs for this project and other future developments.

For clarity, Fortune should better separate the contents of a WEMP from the contents of a WWHPP. This will ensure the correct information is in the relevant documents. The WWHPP would then fall within the authority of the MVLWB for inclusion during its licensing and permitting of the NICO Project when considering the protection of wildlife habitat under section 26(1)(h) of the *Mackenzie Valley Land Use Regulations*.

The undertaking response also identified that many Fortune commitments to protect wildlife will be captured in waste management plans for the NICO Project, which also fall under the authority of the MVLWB. Additional protection to wildlife is provided under the territorial *Wildlife Act* (and regulations), territorial *Species at Risk Act*, as well as federal legislation – including the *Species at Risk Act* and *Migratory Birds Convention Act* (and regulations). In addition, commitments made by a proponent during an EA become part of the Developer's Assessment Report and are therefore part of the scope of the project undergoing EA.

Traditional knowledge and land use studies put forth by Tlicho Government and the North Slave Métis Alliance, support that the NICO Project site is located in an important traditional and cultural area. During the NICO Project EA, Fortune committed to working cooperatively with a number of groups (the GNWT, Tlicho Government, co-management authorities and other interested groups) to develop a WEMP. Understanding that the GNWT views the Fortune conception of a WEMP to be more a WWHPP, the GNWT is willing to work cooperatively with the abovementioned groups to develop this WWHPP. Should a process take place for developing a WEMP (as defined in section 3.1.2), the GNWT is also willing to work cooperatively in this process.

### **3.1.1. Wildlife and Wildlife Habitat Protection Plan (WWHPP)**

The WWHPP outlines the steps necessary to protect personnel, wildlife and wildlife habitat within the project development area (PDA), also commonly described as a project's direct "footprint."

The WWHPP requires the development of clear protocols and standard operating procedures (SOPs) for project employees and contractors to ensure the implementation of site-specific mitigation. This helps ensure human safety by reducing the potential for interaction between people and wildlife; and reduce or prevent any direct impacts to wildlife and the PDA. The plan is required to provide a set of instructions to mine staff, to show diligence on part of the developer and to comply with legal requirements. Typically, site-specific management data is not directly relevant to regional scale monitoring, but some information may be incorporated into a regional scale monitoring program (e.g., tracking of on-site wildlife mortalities).

### **3.1.2. Wildlife Effects Monitoring Program (WEMP)**

A WEMP encompasses monitoring at a Local Study Area (LSA) and Regional Study Area (RSA) scale during the life of the project. While a WWHPP documents the day-to-day standard operating procedures and best practices for the Project site, a WEMP details larger scale monitoring objectives and methods. The WEMP provides an avenue to test the effectiveness of impact predictions made by the developer during the project's EA, including mitigation techniques employed during the construction and operation phase of the project. The results of this will be used to support adaptive management approaches if needed and to contribute to future cumulative impact strategies.

An effective WEMP should:

1. Be focused on identified project Valued Ecosystem Components (VEC) that are typically found in or near the area surrounding the project;
2. Be conducted at a local and regional scale that is appropriate to the proposed predictions for the project VEC;
3. Use successful standardized protocols/methods/approaches that are in use by other mines so that consistent monitoring is being undertaken on a regional scale;
4. Be developed and reviewed in collaboration with Aboriginal partners, government, regulatory agencies, and other interest groups including other mines; and
5. Be developed such that monitoring and mitigation techniques can be revisited and revised pending new information gathered (i.e., developed using an adaptive management framework).

It is maintained that regional scale monitoring should take place as an active collaboration between governments, developers, Aboriginal groups and other interested parties. Examples of regional scale monitoring initiatives include the regional scale joint monitoring program to monitor grizzly bear through DNA sampling of hair snags. This study is conducted by De Beers Canada Inc., Rio Tinto Canada Inc., BHP Billiton and the GNWT. The study aims to determine if development activities influence relative abundance and distribution of grizzly bears over time and to assess potential cumulative impact implications (Rescan 2012 ).

### **3.2. Environmental Monitoring**

The MVLWB, governments and industry have made progress toward establishing best practices for environmental monitoring in the North; and Fortune has committed to adhering to such best practices. There have been requests by parties for the establishment of an environmental monitoring agency for the NICO Project. The GNWT is of the view that the primary authority for ensuring that environmental monitoring and reporting will be occurring at the NICO Project is the MVLWB through its Land Use Permit and Water Licence authorizations. For some matters, such as species at risk, regional scale monitoring by co-management authorities is also required. The GNWT believes any additional environmental monitoring for the NICO Project is best achieved through agreement between affected communities and Fortune.



### 3.3. Increased Access and Cumulative Effects

GNWT comments and submissions throughout the EA identified potential impacts of roads on wildlife populations. Impacts can include increased harvest access to wildlife, overall linear disturbance and vehicular mortality. In a GNWT Department of Transportation (DOT) letter submitted to MVEIRB on August 2, 2012 and oral comments made on October 10, 2012 at the Public Hearing, it was clarified by DOT that the GNWT has no capital plans for an all-weather road and that current study work underway did not consider an all-weather road – a road that Fortune maintains is a requirement for NICO Project feasibility. This clarification, in addition to any future all-weather road project requiring its own preliminary screening separate from the NICO Project, has alleviated concerns related to increased road access and pressures on wildlife in relation to the scope of the NICO Project.

The NICO Project access road, however, does have the potential to contribute to cumulative impacts on wildlife in the NWT. The development of harvest management plans, however, is the responsibility of government and Aboriginal communities. Fortune has committed to working with wildlife co-management authorities and other interested parties to manage the NICO Project access road. The GNWT is willing to meet with these groups to discuss options to manage and monitor road access concerns.

Any further Fortune involvement in access road monitoring and possible regional scale monitoring can be considered during future discussions. As stated in section 3.1.2, the GNWT supports the fulfillment of cumulative effects monitoring objectives through a collaborative approach of regional scale monitoring between governments, developers, Aboriginal groups and other interested parties. This concept is also reiterated in the GNWT 2011-2015 Barren-ground Caribou Management Strategy for the NWT. For example, through a collaborative approach for a regional caribou monitoring program, funding and logistical support could be used for: monitoring of Bathurst and Bluenose-East barren ground caribou herds; monitoring and management of harvest; and cumulative effects assessment at larger spatial scales.

### 3.4. Boreal Caribou

Boreal caribou are listed as a threatened species under the federal *Species at Risk Act*, and a recovery strategy is a legal requirement of this listing. The national Recovery Strategy for the Woodland Caribou, Boreal Population, in Canada (the Recovery Strategy) was posted to the federal Species at Risk Registry on October 5, 2012. The Recovery Strategy will affect

strategies, plans and programs of responsible wildlife co-management authorities in the NWT, which include the GNWT.

The Recovery Strategy identifies critical habitat for boreal caribou as a minimum of 65 percent of undisturbed habitat range in the NWT. Disturbance includes both anthropogenic (man-made foot print plus a 500 meter buffer) and fire disturbance. While the NWT boreal caribou population has been assessed as self-sustaining in the recovery strategy, maintaining this status means that the 65 percent minimum of undisturbed range in the NWT must exist. Accomplishing this means implementing actions described in the “Action Plan for Boreal Woodland Caribou Conservation in the Northwest Territories 2010-2015,” as well as developing range management plans. Co-management authorities must also develop and implement a comprehensive monitoring program. The program will need to track boreal caribou population indicators and landscape activities across boreal caribou range in the NWT.

As noted in the GNWT Technical Report, the projected lease area for the NICO Project and about 5 km of the access road are outside the boreal caribou range boundary, while about 24 km of the access road is within the range. The project footprint, including the access road, will need to be reviewed by responsible co-management authorities under the principles defined in the Recovery Strategy.

The NWT Species at Risk Committee (SARC), established under the territorial *Species at Risk Act*, is responsible for assessing the status of species that may be at risk in the NWT. The SARC has an obligation to carry out its assessment using the best available information that includes Aboriginal traditional knowledge, community knowledge and scientific knowledge. Boreal caribou will be assessed by the SARC in December 2013. Boreal caribou’s SARC status will serve to guide the future plans and actions of co-management authorities in relation to the conservation of this caribou subspecies.

### **3.5. Moose**

As identified at the Public Hearing on August 30, 2012, concerns over moose populations have recently developed due to recent declines in Mackenzie Wood Bison herd populations. The herd has been reduced by approximately a third due to the anthrax outbreak during this last summer. The outbreak, combined with current harvest restrictions on the Bathurst Caribou Herd, indicates that moose populations could be subjected to increased harvesting pressures. The GNWT surveys moose approximately every three years, with the next scheduled survey being in November of this year. Moose monitoring and areas to be surveyed will be reassessed after this survey.

Upon the cooperative development of a WWHPP (as defined in section 3.1.1) for the NICO Project, the GNWT will likely identify the need to include moose in this plan in order to mitigate against any direct effects to moose associated from the project.

### **3.6. Wildlife Conclusions**

The GNWT agrees with the wildlife mitigation commitments that Fortune has made throughout the EA process for the NICO Project. The GNWT believes the NICO Project can be undertaken in a way that does not pose a significant adverse impact to the environment provided the commitments made by Fortune are carried out.

## **4. Socio-Economics**

The GNWT recommends that a formal follow-up program, in the form of a Socio Economic Agreement (SEA), be a condition of approval for Fortune Minerals Limited (Fortune's) NICO Project. The GNWT advanced this position in its technical report dated June 19, 2012, and during the Public Hearings held between August 27 and 31, 2012.

The *Mackenzie Valley Resource Management Act* (MVRMA), under section 117(3)(c) requires a Panel, in the review of a project, to consider the need for any follow-up program including the requirements of such a program. The MVRMA also states under section 117(2)(e) that MVEIRB may include, in consideration of the development, any other matter determined to be relevant. The GNWT views these sections of the MVRMA to be consistent with a requirement for a follow-up program, as defined in the MVRMA, when warranted. This is consistent with GNWT interpretation of similar provisions since 1998.

It is the GNWT position that SEAs are best implemented as a follow-up program to EAs or environmental impact reviews. Such an agreement with Fortune would confirm and formally recognize its socio-economic commitments regarding the NICO Project and provide for ongoing monitoring and adaptive management with respect to associated socio-economic issues.

The negotiation of a SEA with Fortune for its NICO Project is in accordance with the GNWT Sustainable Development Policy.

Fortune has stated a willingness to discuss a SEA with the GNWT. The GNWT prefers the completion of Impact and Benefit Agreements (IBAs) prior to SEA discussions. However, it is important to distinguish that IBAs are private contracts and, as such, the GNWT is not privy to the contents of these agreements. Additionally, IBAs are not directly linked to the EA, yet SEAs

are directly linked to the EA: not as a mitigation measure, but rather as a follow-up program provided for by the MVRMA. A SEA negotiated between the GNWT and Fortune would be consistent with or complementary to the provisions in any private IBAs or other similar agreements between Aboriginal organizations and Fortune.

The GNWT recognizes Fortune's commitment to transparency by reporting results of its activities and its commitment to establishing a Socio-Economic Monitoring Plan to determine the effectiveness of its mitigation measures. The GNWT views SEAs as an essential tool to: monitor and test socio-economic predictions; evaluate successes; identify gaps when predictions are not met; as well as adaptive management measures to address unintended results. Ideally, the socio-economic commitments made by Fortune, including the items for reporting and the Socio-Economic Monitoring Plan itself, will be formalized in a SEA. In order to link the SEA to the EA, the GNWT recommends a socio-economic follow-up program, in the form of a SEA between the GNWT and Fortune, be a condition of NICO Project approval.

## 5. References

Mackenzie Valley Review Boards Public Registry, Fortune Minerals Ltd. (2012). Retrieved from Mackenzie Valley Review Board website: [http://reviewboard.ca/registry/project.php?project\\_id=72](http://reviewboard.ca/registry/project.php?project_id=72)

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