“Dealing Full Force”:
Lutsel K’e Dene First Nation’s Experience
Negotiating with Mining Companies

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Last but not least, hats off to Florence Catholique and Delphine Enzoe, for agreeing to travel to the tropics to share Lutsel K’e’s experience and lessons learned directly with communities in West Suriname, South America, in May, 2005.

Marsi Cho.
Foreword

Lutsel K’e Dene First Nation is a Dene Suline (Chipewyan) Athapaskan speaking group of people. Lutsel K’e is the most northern Dene Sultine community situated on the east arm of the Great Slave Lake, Northwest Territories, Canada. The population is approximately 400 although the membership is around 700. Most members live outside the community for many reasons: shortage of houses, high cost of living, isolation, poor education system and lack of satisfactory employment opportunities.

Recently the diamond mining has had a tremendous impact on the community. We had never been involved in the decision-making process of this kind of mine, or any other type of mining.

When Canada’s first diamond mine, BHP Billiton’s Ekati, was being proposed, Lutsel K’e Dene First Nation was given only 60 days to negotiate an Environment Agreement, a Socio-Economic Agreement and an Impact Benefit Agreement. The short timeframe and the fact that the community was not given appropriate resources to prepare properly resulted in agreements that are very weak.

The Government has a Treaty relationship with us; it has a trust/fiduciary relationship and obligation to us that must be exercised to both our benefit. There has been a breach of responsibility by the Government with negotiations around our first diamond mine.

We are not against development but it shouldn’t be done at our expense.

--- Florence Catholique,
Negotiator, Lutsel K’e Dene First Nation

Industry must take all the consideration when dealing with us to ensure that all our rights are upheld, and that we are both benefiting from these types of ventures.

Since the first diamond mine, we have negotiated with two others, and have gained experience.

The following case study describes our experiences negotiating with mining companies and the government, and some of the key lessons we have learned. We hope others reading this will gain strength from these pages as they decide what is best for their communities and how to go about achieving this.

--- Florence Catholique,
Negotiator, Lutsel K’e Dene First Nation
“The information I’m giving is not for you… it’s for the children.”

— Elder

“I’m worried about my children for the future. When things are going to be done with the diamonds in the future — 25 years from now — you never know what it’s going to be like. Maybe we’ll be living like in the third world. For being the richest, we can be the poorest in the future, just because of the mining industry. It’s scary to think about it like that.”

— Lutsel K’e Dene First Nation woman

“And the community has to tell the mining companies. They can’t just move into your land and start developing mines, that’s not right. You have to let them know how you use your land, how you use it to survive, trapping, even berry picking, even the plants is medicine, even the rocks is medicine for use.”

— Lutsel K’e trapper

“The last time we went to Edmonton, [the company] didn’t want to have a meeting with us because I think [our negotiators] asked for a little too much…we all left. They didn’t want to listen. But you have the rights to say what you want. This is your land, this is where you were born, and this is how you’re going to live there until you die. So you have a concern, and you’re scared. What’s going to happen in the future, what’s going to happen to my kids, to my grandchildren? Is the mine going to benefit them? … It’s pretty hard to communicate with a person that you don’t know. They don’t know you, and you don’t know them. All of a sudden a stranger comes and tells you, I’m doing this, I’m going to be on your land… How do you think you’re going to feel? They’re just by your door, outside of your door.

— Elder negotiator

“Make sure that whoever is going to be negotiating is well educated, and that you attend almost every meeting. And just deal with them full force.”

— Lutsel K’e youth
1. Introduction

Why This Case Study?

Indigenous Peoples around the world are increasingly being affected by mining and other development activities taking place on or near their ancestral lands. These Peoples are often unaware of what their rights are in these situations, or what options they have for dealing with companies, NGOs, and government who approach them with potential projects to develop or conserve their lands. While some are “sitting in panic”, having never dealt with these situations before, other Indigenous Peoples are gaining increasing experience interacting and negotiating with developers and conservationists alike, and have a great deal of knowledge and lessons to share.

This case study is a response to requests by South American Indigenous organizations to learn from how Canadian Indigenous Peoples have dealt with mining and other activities on their territories. Specifically, it is a direct response to a request from the Association of Indigenous Village Leaders of Suriname (VIDS) for Canadian Indigenous People to provide capacity-building support to communities in West Suriname who will be affected by proposed open-pit, large-scale bauxite mining by BHP Billiton and Suralco, large-scale hydro-electric development by Suralco, and a nature reserve proposed by the Government of Suriname and the World Wildlife Fund.

In Canada, BHP Billiton has been operating Canada’s first diamond mine, Ekati, in the Northwest Territories since 1998. This mine is often hailed by Canadian government officials as a model example for other countries as they consider how best to engage with Aboriginal communities. Given this reputation, and that communities in West Suriname are about to be affected by the same company, it seemed a natural fit to link them with Indigenous Peoples affected by Ekati.

In addition, since Ekati started operations, there has been a rush to explore and develop other diamond mines in the area. The Aboriginal communities affected by Ekati have now also engaged with Rio Tinto (Diavik) and De Beers, two other large multi-national mining companies. There are many lessons to be shared from this additional experience.

Several Indigenous Peoples (Dene, Inuit, Dogrib and Métis) have been affected by Ekati and subsequent developments, and ideally we would have been able to learn from all of them directly (including from other Dene First Nations). However, with limited resources and previous contacts in Lutsel K’e, The North-South Institute approached the Dene First Nation.

Moreover, Lutsel K’e is facing similar pressures to the communities in West Suriname. Aside from mining, Lutsel K’e has also been affected by large-scale hydro in the past, and is currently negotiating on a potential new hydroelectric development that would service mines in the area. It is also negotiating with Parks Canada on terms for the establishment of a proposed national park that is very close to the community and on its ancestral territory. And it is in ongoing Treaty Entitlement negotiations with the Government of Canada for implementing provisions of the oral version of the Treaty made with the Crown in 1899, which did not involve ceding or surrendering title to ancestral territory. Clearly, linking the Lokono and Trio Peoples of West Suriname with the Lutsel K’e Dene First Nation.

“I sit here in panic. As an Amerindian I love the land. I’m glad somebody is here to help us, we [as Amerindians] are not counted. We need our rights, especially our culture... I’m grieving about the developments... I love my fish, my meat, my farm. I don’t like what the government gives us. If we have our land, we protect it. The mining company is good, because we get benefits. But they must not interfere with our things. If we own the land, then they can come.”

— Lokono woman, Apoera, Suriname (South America) (Kambel 2004)
K’e Dene First Nation (LKDFN) could provide opportunities for a rich exchange going beyond mining, to include lessons learned negotiating for ancestral territory, dams and parks.

**Purpose and Intended Use**

This case study gathers diverse community perspectives to strengthen and complement the knowledge and views that were shared first-hand by two community members from Lutsel K’e who participated in a training session in West Suriname. In addition to this written case study, an accompanying video is being produced.

While these materials are primarily for the use of the West Surinamese communities, they will also be helpful for other communities who want to learn more about the impacts of mining and other activities on or near ancestral lands, and the possible options available with regards to getting organized and negotiating. There are also suggestions from community members for how Lutsel K’e could strengthen its own negotiations.

In addition, the case study provides rich insights to further the current and controversial debates around free prior and informed consent (FPIC), and whether Impact Benefit Agreements are instances of FPIC. It also provides a grounded vantage point from which to assess whether the Ekati diamond mine is indeed a good model for other countries to consider in engaging Aboriginal communities in mining activities.

**Methodology: How the Information was Gathered**

The fieldwork grounding this study was undertaken by North-South Institute researchers Viviane Weitzner and Omaira Mindiola in a 10-day visit to Lutsel K’e in October, 2004. The Wildlife, Lands and Environment Committee (WLEC) of Lutsel K’e gave their approval to this research project, which followed the requisite licensing and consent procedures. Brenda Michel of Lutsel K’e coordinated the fieldwork, and provided translation for the Elders. The WLEC provided a list of key contact people in the community, including community negotiators, Elders, miners, women and youth. A total of 28 interviews were undertaken using a semi-structured interview guide. The WLEC encouraged us to video portions of the interviews, which gave rise to the idea of creating an accompanying video to this case study. In addition to the one-on-one interviews, Brenda Michel and Marie Catholique organized a group of youth in the community to gather their perspectives and concerns with regards to mining.

We also had the opportunity to observe parts of Lusel K’e Dene First Nation annual general meeting, and a community presentation in Lutsel K’e by BHP Billiton and its consultants to share results of some recent studies and new plans for expanding activities at Ekati. In Yellowknife, we met with BHP representatives to inform them of our project and the exchange between Lutsel K’e and West Suriname, and that we would be engaging directly with their counterparts in Suriname.

**Organization of the Case Study**

This Case Study is organized as follows:

- Section 2 presents background information on Lutsel K’e Dene First Nation, the regulatory authorities it works with, and how it has organized itself to deal with increasing pressures on its traditional lands.
- Section 3 provides community perspectives and assessments of interactions with BHP and other mining companies, as well as an overview of the main impacts of diamond mining on the people and their land.
- Section 4 synthesizes community members’ advice for others to consider, and includes suggestions from community members regarding how Lutsel K’e Dene First Nation could strengthen its own negotiations.
- Section 5 briefly concludes the case study.
2. "Dealing Full Force": The Case Study

Lutsel K’e: Its People, Traditional Livelihood and Territory

Lutsel K’e Dene First Nation is located in Canada’s Northwest Territories (NT), approximately 200 kilometres east of Yellowknife, the capital of the Northwest Territories (see map on next page). There are no roads leading to the community, which is nestled on a granite point jutting into Great Slave Lake. There is a daily flight from Yellowknife which takes some 45 minutes. In the winter it is possible to travel to neighbouring communities by snowmobile, and by boat in the summer.

While the Lutsel K’e Dene First Nation has over 700 members, approximately 400 live in the community of Lutsel K’e. The people speak Dene Sulin yati, known as Chipewyan in English. Most community people live from hunting (caribou, ducks, ptarmigans, etc.), trapping (beaver, muskrat, etc.), fishing (mainly trout) and berry-picking. Some community members also have jobs with local organizations and government, a small number work full-time at the mines (under 10), and others do contract work and odd jobs. Those who are not employed are on income support.

The community has a school with a gym, community hall, Catholic Church, general store (Co-op), police station, nursing station, Denesuline Corporation (business arm of LKDFN), LKDFN administration office, Wildlife, Lands and Environment office, seniors’ home, adult education centre, and there is also a Community Freezer to preserve country foods and a community sauna. Lutsel K’e has electricity, running water and sewer collection services. There is also a gas distribution centre. Many families have built smoking tipis next to their houses, where they smoke their meat and fish. In Lutsel K’e there is also a rich tradition of sewing, beading and moccasin-making.

Land Rights and Political Organization

Lutsel K’e Dene First Nation is part of Akaitcho Treaty 8 First Nations. These are the Yellowknives and Dene Suline First Nations that negotiated Treaty 8 with the Crown in 1899. These First Nations include four communities: Lutsel K’e, Deninu Kue First Nation, N’dilo and Detah. Akaitcho Territory Government also includes the Smith’s Landing First Nation and Salt River First Nation, although these two decided to go the specific claims route and settled on reserves around the communities of Fort Smith and Fort Fitzgerald.

The Akaitcho Treaty 8 First Nations are currently in Treaty Entitlement negotiations with the Government of Canada to get recognition for their ancestral territory and rights based on the original spirit and intent of Treaty 8. Akaitcho negotiators are using the oral history and knowledge passed down by the Elders as a basis for negotiations, rather than the written Treaty 8 the Government drafted. The oral history tells about the Treaty being a peace and friendship Treaty based on the concept of co-existence, rather than one based on surrendering land and rights.

Diamond Mining Comes to Akaitcho Territory

The Akaitcho Territory currently faces enormous political and economic pressures for mineral development, and specifically diamond mining. The Dene people are not new to mining, having seen devastating impacts of gold and uranium mining from previous projects. But it wasn’t until the
arrival of diamond mining in the 1990s that they became involved in negotiations with companies and the government, and started asserting their rights.

BHP Billiton was the first company to mine diamonds in the traditional land-use area of Treaties 8 First Nations. Since then, Rio Tinto (Diavik) is developing a second diamond mine about 100 kilometres southeast from BHP’s Ekati, and De Beers is operating two separate projects in LKDFN traditional territory: Snap Lake (which has received all permits and is starting full-scale construction, estimated to be in full production by 2007) and Kennady Lake (currently in final phase of exploration with expectations that applications for permitting and operations will be made by the end of 2005) (see claim block map, p. 6). Also, junior exploration companies have been operating in LKDFN traditional territory for a long time already, having acquired their permits many years ago. Companies continue to apply for new exploration permits, many of which the community has refused.

**Input into Decision-Making**

Because the Akaitcho Treaty 8 land claim is unsettled, there is no land-use planning or co-management board set up yet in the region. Instead, the area officially falls under the authority of the Mackenzie Valley Land and Water Board (MVLWB) and the Mackenzie Valley Environmental Impact Review Board (MVEIRB), co-management boards set up under the settled land claims of two other Indigenous Peoples, the Sahtu and the Gwich’in. These Boards regulate land-use permit and water licenses across the Northwest Territories (see box below for a description of the process).

Akaitcho Treaty 8 First Nations do not recognize the jurisdiction of the MVLWB. In 2001, however, Akaitcho Dene First Nations signed an Interim Measures Agreement in which they agreed to work with the MVLWB until a final agreement is signed for the Akaitcho Treaty 8 Territory. In 2004, a

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**Decision-making process under the Mackenzie Valley Land and Water Board (MVLWB) and Mackenzie Valley Environmental Impact Review Board (MVEIRB)**

(excerpt from Ellis 2005)

“Resource development proponents submit applications for land-use permits and/or water licenses to the MVLWB. The board then distributes these applications to all potentially affected aboriginal groups – typically aboriginal groups with communities or traditional land-use interests in proximity to the proposed development. This is the “pre-screening” process (MVEIRB 2003). Aboriginal groups typically have 30-45 days to provide comments and recommendations to the board concerning the proposed development. Once the time for pre-screening has elapsed, the board reviews the applications, consults with technical experts, and either approves or rejects the applications based on their economic and environmental merits. Sometimes hearings are held to seek public input into a review. This typically occurs when a proposed project is deemed to be of significance to the general populace. Finally, the Minister of DIAND, the ultimate land and resource-use authority, must sign off all decisions made by the board. Once granted ministerial approval, proponents receive the relevant permits and licenses for their proposed development, often with attached conditions and restrictions as determined by the board.

Sometimes the MVLWB recommends a proposed project to the MVEIRB for an environmental assessment if it is deemed likely to have significant adverse environmental impacts. Aboriginal groups are able to declare themselves as interveners in environmental assessment, and thus can participate in a number of processes, including the development of terms of reference, a conformity check of the proponent’s environmental assessment report, a formal information request period, technical sessions, and public hearings. If the MVEIRB is satisfied that a proposed development will have minimal negative environmental impacts, it is then referred back to the MVLWB for the issuance of permits and licenses, usually with recommendations for terms and conditions of approval (MVEIRB 2003).”

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“Before the [diamond] mines, they used to put the mines there without any permission from the people in the community; they put mines there and they destroyed the land. From now on, anything that goes on has to come into the community before they sign any agreement or anything. This is our land...”

— Elder
Ministerial Directive was issued directing the MVLWB to make all efforts to work cooperatively with the Akaitcho First Nations, including considering “fully and impartially” impacts of any proposed activity on Akaitcho traditional land use. An office was established to support Akaitcho First Nations in dealing with permits and license applications.

The Types of Agreements Negotiated

As part of the permitting process, mining companies are under political obligation to consult with affected communities and negotiate Impact Benefit Agreements. In addition, the communities participate in negotiations around Environmental and Socio-Economic Agreements between the Government of the Northwest Territories and the companies.

Impact Benefit Agreements usually cover:

- Quotas for employment and stipulation of training programmes
- Hiring a community liaison person
- Counselling and support programs
- Increasing community business capacity and contracting opportunities
- Health and wellness programs

Source: Map designed for this Case Study, based on Florence Catholique (2005) and Bielawski (2003). Concession areas are not exactly but referentially depicted.

Mining claims:

- \[\text{DeBeers}\]
- \[\text{Diavik}\]
- \[\text{DiamondEx}\]
• Education programs
• Annual payments
• Dispute resolution mechanisms
• Sometimes there are scholarships and funding for cultural activities (e.g. caribou hunts).

Key Elements of **Environmental Agreements** include:
• Establishment of independent monitoring agencies
• Compliance
• Security deposits
• Reporting
• Equal consideration of traditional and scientific knowledge
• Environmental management plans
• Community involvement in environmental monitoring and training
• Reclamation and closure
• Dispute resolution mechanisms

**Socio-Economic Agreements** usually specify:
• Hiring practices, employment targets and incentives
• Recruitment strategies, apprenticeship and training
• Literacy programs
• Support for women and families
• Business opportunities and financing
• Social and cultural well-being
• Establishment of a Socio-Economic Monitoring Agency
• Funding
• Dispute resolution mechanisms

**Lutsel K’e Gets Organized**

In order to deal with increasing requests from mining companies, ongoing negotiations and monitoring of impacts, in 1991 Lutsel K’e Dene First Nation established a Wildlife, Lands and Environment Committee (WLEC).

The WLEC is comprised of seven community members, including a youth representative and a representative from the Council (local government). All WLEC members are elected by the community through a standard nomination/secret ballot procedure, except for the Council representative who is appointed the WLE portfolio. The Committee is supported by the Wildlife, Lands and Environment Department (WLED) staff that includes a manager, environmental/land-use researcher, a socio-economic researcher, a GIS technician, a database technician and a multimedia technician.

The WLEC reviews all applications from mining companies with WLED staff, assesses potential impacts, meets with companies and has been delegated the authority to make the final decision on all land use activities applied for within LKDFN traditional territory. It also reviews, provides guidance and approves applications and permits for many other types of activities aside from mining, for example research projects submitted by graduate students and others to study environmental, archeological, social or other issues within LKDFN territory. WLED staff help implement community harvesting activities, and conduct a number of projects to collect traditional knowledge, map land-use, and gather and monitor environmental and socio-economic impacts from mining. With regards
to decision-making, the WLEC Council representative is in charge of informing Chief and Council of WLEC decisions. The WLEC only involves the entire Chief and Council in decision-making around applications for large-scale projects such as a new mine.

**The Ni hat’ni (Watching the Land) Project**

Since 1996, the WLEC has been tracking the impacts of mining on the land and the people. Initially, the WLEC implemented two separate programmes: the Community-Based Monitoring Programme, which focused on socio-economic monitoring (the pilot project was established in 1996 and annual surveys designed by 1998); and the Kache Kue program, which focused on environmental monitoring (established in 1999-2000). In 2002, the two programmes were merged to gain a better picture of linkages and to analyze the impacts each component has on the other. The result is the Ni hat’ni (Watching the Land) Project. This project undertakes a yearly cycle of interviews and surveys of Lutsel K’e community members. Environmental impacts are tracked through interviews with hunters, trappers and other land users. Socio-economic impacts are determined through interviews with mine employees and their families, community health surveys, cultural vitality surveys, youth surveys and leadership review surveys. In addition, there is GIS mapping of traplines, harvesting locations, cabins, burial sites and trails. The WLEC houses a database of all the information gathered, including Elders’ stories, photographs, interview transcripts and other things. Local people are trained as researchers for this project, and the results are presented back to the community.

**Consultation Protocol**

In addition, the WLEC has established a consultation protocol for Lutsel K’e Dene First Nation. This protocol sets out 12 very clear guidelines with regards to what the community expects from outsiders who approach it for a permit to undertake activities (including research) in LKDFN territory. This protocol has been an inspiration to other communities such as the Innu of Labrador, who have developed their own protocol (please see Appendix, on page 33). It was developed some time ago and is currently being revised by the WLEC.
3. Community Perspectives on the Outcomes and Implementation of the Agreements around the First Diamond Mine

Community perspectives and assessments of interactions with BHP and other mining companies are rich and converge on several fronts. This section highlights diverse community perspectives, and provides an overview of the main impacts of diamond mining on the people and their land from the perspective of those interviewed for this study.

The First Diamond Mine: BHP’s Ekati

For the people of Lutsel K’e, interactions around the first diamond mine happened extremely quickly. Following hearings about the project (which included some meetings in affected communities), the minister instructed BHP that it had to negotiate impact benefit agreements with the affected communities, and gave the company 60 days to show that “significant progress” had been made.

According to many interviewed for this study (see box), there were no proper consultations around this mine, and instead communities had to go straight into negotiations.

Community leaders were daunted and overwhelmed by trying to understand the proposed plans for the diamond mining, and what the implications could be for the people and the traditional territory in order to negotiate a good deal. “We’re trappers who live off the land. And people live in the bush and trap,” one community member said. “And all of a sudden this mining company comes in. We didn’t know anything about mines, or how to deal with it. That was our first experience. We didn’t know how to negotiate with them.”

The challenges facing Lutsel K’e Dene First Nation in the negotiations were huge:

- The community was on a steep learning curve to understand the diamond industry, and what the impacts of open-pit, diamond mining might be on their land and the people. This was a tall order for anyone, since diamond mining had never been undertaken before in such a cold climate.
- There was tremendous difficulty in understanding the technical language used to describe the diamond process and its potential impacts, and interpreters had a tough time trying to translate these technical terms for which there are no Chipewyan equivalents. Even though a great deal of technical information was made available to the community, community members and leaders did not have the capacity to understand this information, especially such a tight timeframe. Since negotiations around the first mine, there have been large advances in breaking the language barrier. Interpreters have been trained extensively, and there have been a number of terminology workshops (involving both Chipewyan & Dogrib interpreters).

Perspectives on the “Consultations”

“They were building everything right now. The government OKs for the workers to start… everything was in place. And only then they came to us…They said we’ve already informed you of what we’re going to do.”

“We weren’t consulted in the right way. We weren’t told everything we needed to know.”

“All of a sudden they came into the community, and said this is what is happening with BHP developing.”

“With this first mine, I don’t think there were [proper consultations]. It happened so fast for us. So it wasn’t very much consulting…so that’s why we screwed up. …It’s better not to rush into it. You’ve got to have lots of public consultations.”

“I’m not sure if I want to really call it a consultation. It’s a group of people that come in and talk about this is what they want to do… No, I don’t think we were consulted prior to [negotiating] …they were ready to go ahead and do this…and the federal government was giving the license.”
ers) which aim to develop a common way of explaining the technical jargon.

- There wasn’t sufficient information regarding the value of the diamonds to the company, which put LKDFN at a disadvantage when negotiating compensation.

- There was a large misunderstanding with regards to what exactly was being negotiated: Elders thought each new kimberlite pipe — the rock formation where diamond is found — that was proven economically viable and would be mined would bring $1 million in benefits to Akaitcho Treaty 8 First Nations per year throughout the life of the mine; community leaders thought they would be negotiating separate IBAs as new pipes were discovered; and BHP ensured that the definition of “project” used in the IBA covered BHP’s whole claim block, which from their point of view, would mean not having to negotiate another IBA on this land regardless of how many pipes were discovered. This misunderstanding has led to some resentment in the community, with some people saying BHP was “sneaky” and “tricked” the community.

- While best efforts were made by the community negotiating team to keep community members and Elders informed of progress with the negotiations, there was not sufficient time to ensure this was done properly.

- The negotiations themselves had some large impacts on the community and its relations with other Indigenous groups. BHP and the Government of Canada excluded the community of Deninu Kue First Nation from negotiations, even though their livelihood would also be directly affected by mining activities. Lutsel K’e Dene First Nation (LKDFN) and Yellowknives Dene First Nation (YKDFN) had to work together to find a creative solution to the situation, and resolved they would share their IBA funding with Deninu Kue First Nation. This issue has been a source of ongoing tension among Akaitcho Dene First Nations.

It should be noted that from the perspective of the community, the negotiations are not a one-time affair, but an ongoing process. Built into the IBA with BHP is a 5-year review, and community leaders will be using this review to renegotiate as best possible aspects of the agreement and its implementation they are not happy with. While recommendations will be made to strengthen implementation of the Agreement, there are several clauses that are not renegotiable, including the dollar amounts.

**Consent and the Right to Say “No”**

Responses to whether the community gave its consent to BHP going ahead, and whether they discussed the option of saying ‘no’ were revealing. While many community members – and especially the Elders – expressed their disagreement with the mine going ahead, the leadership did not feel it had an option to say “no” to the mine. Many people interviewed echoed

“We didn’t know anything about mining companies, their influence and powers. When they first came and found diamonds, the federal government proposed an IBA. We didn’t know what an IBA was. We had 60 days to come up with an IBA. This wasn’t sufficient time…”

— Community negotiator

“Negotiation was something new, and a lot of people didn’t understand what it was.”

— Community member

“We didn’t have enough [information]. I don’t think we ever had enough time. That’s why the agreement that was put together is not the greatest.”

— Community leader

“Most of the time, while all this negotiating went on, I don’t think all the information came back to the community. The Band Council, they go and they have a meeting, and they come back, and they don’t talk to the community to really say what’s happening. To me, it says that the councillors or whoever was negotiating didn’t really understand what was happening. It was happening too fast for them…”

— Community member
this community person’s perspective: “I don’t think we had a choice. The government had already decided that it was going to come in anyway, regardless of what we said.”

Instead of maintaining its usual position of opposing others from exploiting its resources until its Treaty Lands are settled, Lutsel K’e Dene First Nation’s position was to try to get as many benefits as possible seeing as the mine was going to go ahead anyway9. Agreements had already been negotiated with other Indigenous groups, and Lutsel K’e Dene First Nation risked living with the negative impacts without gaining any benefits if it did not negotiate. In addition, younger, unemployed people expressed particular interest in the jobs the company promised.

While several community members interviewed said Lutsel K’e had given its consent to BHP, most were referring to giving consent to the IBA that was negotiated with BHP to participate in the benefits from the mine, rather than consenting to the mine to go ahead. This is a subtle distinction, because one could argue that implicit in signing an IBA is agreement for a mine to go ahead. One resource person who supports Lutsel K’e Dene First Nation’s negotiations explains this tension:

“On the permits and licenses, no [Lutsel K’e did not give their consent]. But implicit in the IBA agreement, in signing an IBA and an EA you in fact give your consent. If you look at the clauses of these things, it basically says that you agree to participate in the development planning and operation and closure of this mine. An IBA, if you’re a cynic, is a bribe. It’s a thinly veiled bribe.

I certainly think that IBAs can be good, but I don’t think they require the clauses in there that they’re consent. They’re supposed to be simply agreements to look at impacts and benefits…. But the issue of consent doesn’t even have to be dealt with in an IBA…. Of course, there’s all sorts of clauses in there saying they will support unconditionally the mine’s progress, and that’s a scary thought.”

Another resource person stated:

“I don’t think I’d call it consent…I mean they did the best they could to respond to it, but everything was so rushed through…and you look at the agreement…the EA and the IBA and they’re horrible! If you look at some of the stuff that’s been done since then and compare it to that, obviously people didn’t understand what they should be asking for, or monitoring, or keeping an eye on, just because it had never been done before… Consent is when you have all the information, you understand it and you make a decision based on that. With it being rushed through and people not having the understanding, I don’t see that as consent at all.”

Others, like this youth, stressed that the community did not agree with the mine, and the issue is that they were not being heard: “No…I don’t think [the community] agreed at all. But yet they still went ahead with it. That’s what I don’t understand. Why do we have a say into it, if they’re still going to go ahead with it? We have a say, and we should be heard.”

Dissenting Views: Getting Ready to Test the Court System?

Lutsel K’e Dene First Nation now has more control over the issuance of permits in its traditional territory since the Ministerial Directive issued in 2004, the provision of funding to establish an Akaitcho Interim Measures Agreement Implementation Office and the election of a new WLEC supported by a strong staff. According to WLED staff, the views of Lutsel K’e Dene First Nation are now being heard and heeded to by the MVWLB, including objections to the issuance of permits. Once the Akaitcho Agreement is finalized, the goal would be to establish an Akaitcho Territory land and water board issuing its own permits and licenses.
In recent months, Lutsel K’e Dene First Nation has responded quickly to applications for exploration from two diamond and two uranium mining companies. Asserting its right of refusal under the Interim Measures Agreement, Lutsel K’e Dene First Nations wrote strong letters to the MVLWB objecting to the issuance of these permits. The result was that all four companies’ applications were referred to environmental assessments, and all withdrew their application citing they did not want to undertake an entire environmental assessment process for a ‘simple’ exploration permit (WLED, pers. comm., Sept. 2005).

This reflects changing attitudes of community members with regards to future mining activities. Recently, there have been presentations at community meetings by community members with titles such as “Do we need another mine?” People are starting to see the outcomes of mining on the community, and question whether another mine on their traditional lands and “participating” in another IBA would do more harm than good for the community.

Nonetheless, despite Lutsel K’e Dene First Nation’s increase in control to influence decision-making regarding the issuance of permits, the leadership has voiced that it is willing to test Canada’s legal system as other First Nations have done in Canada in the event that the community objects to a future development the government wants to see take place. Akaitcho First Nations have seriously considered recourse to the courts on a previous occasion, when the government issued a permit to a logging company on Akaitcho Territory, and Akaitcho First Nations objected particularly in light of their not having finalized Treaty Land negotiations. As a community leader from Lutsel K’e explains, “We filed a statement of claim, and we got our things together – documents and everything – and we were ready to go to court, because we had enough of these people.” The company decided not to go ahead.

If such court action does take place, the key will be reconciling different community views, which have in the past broken down intergenerational lines: Elders objecting to mining, and youth seeing opportunities it presents. Today, however, these lines are not as clear. Many youth are now seeing that opportunities for meaningful employment in the mines are very slim especially given the incompatibility of the two-week rotation with healthy community and family life, and are increasingly voicing disapproval of mining. Other youth object to mining in principle, and choose not to get a job in the mine even though they would likely be good candidates for a job. With regards to Elders, some have grown accustomed to the benefits of IBA money. Finally, the middle-aged adult group vary greatly in their opinions.

Influence on Decision-Making: Perspectives from Women, Youth and Elders

Women, youth and Elders in Lutsel K’e responded differently to questions around whether they have adequate say in decision-making around BHP and the other mines.

While there are no formal organized women’s groups in Lutsel K’e, according to all women interviewed, women have a very strong voice in the community. “Today women are stronger than ever, their voices are heard,” one woman said. “They don’t just sit at the back and say nothing anymore. There are lots of women from here that actually speak up.” Others noted there have been women Chiefs in Lutsel K’e, several Band Councilors are women, and there are many women in Lutsel K’e’s workforce. In addition, negotiations on mining issues have been headed by women. The 2005 Lutsel K’e Dene First Nation annual general meeting made evident that women are not afraid to speak up, as several of the most critical interventions were made by women.
But for youth it is a different story. Youth interviewed for this study expressed frustration and disappointment at not being included seriously in decision-making. One explained “youth had no part in the negotiations whatsoever” around BHP, and that it wasn’t until the signing ceremony for the IBA that took place in the community that she heard about it: “I felt like I had no say in it; I didn’t know what they’d agreed on. I was just hoping they did the right thing.”

Two critical issues around the participation of youth in decision-making are that youth are often shy and do not speak up, but they are also scared to be “shut down” by others. “In the meetings I hardly see youth. If they’re there, they’re always at the back,” said one youth, “and they’re afraid to speak up.”

One youth remembers a community presentation BHP did where the leadership asked all the schoolchildren to attend. At that time youth expressed concerns about how mining was going to change their culture. Other youths interviewed expressed deep concerns with the damage mining is doing to the land: “My concern in the future is that the land will be ruined and the caribou will get sick… and we can’t eat it. For my kids, and their kids…” In addition, they noted there is still nothing to show from the IBAs with regards to a youth centre and other opportunities for Lutsel K’e’s youth.

Letting the youth express their concerns, ensuring that Chief and Council come to explain to the youth in school what is happening with the negotiations, more workshops and encouragement for youth to go for training, and including youth on the negotiations team, are several suggestions youth gave for strengthening the role of youth in community decision-making. In addition, Lutsel K’e youth have now organized a Youth Committee — with a member sitting on Council — to ensure their concerns are heard. The WLEC also has a permanent seat for a youth representative.

Elders have traditionally had the strongest role in decision-making in Lutsel K’e. They are the ultimate advisors to Chief and Council, and traditionally, they had the last say in decisions. The Elders have been involved in decision-making and have met with Elders from other affected communities and also gone on several site visits to see for themselves the impacts of mining on the land. However, they expressed great frustration that even though they did not agree with Ekati’s going ahead, it went ahead anyway. Elders were not as informed as they might have been throughout the negotiations because of time pressures: “When the negotiation was happening, the Elders weren’t informed until it was too late,” one Elder said. “But even though when the negotiators came back to the Elders to give them information, it was already processed. They were informed, but then it was too late. And the government was already ahead with the mines.” With BHP, externally imposed time pressures impeded the Elders from being as involved as they might have been in the initial decision-making, even though there was an Elder on the negotiation team. However, the Elders do not foreclose possibilities of having more say in the future, even with regards to this mine: “In the future, even though [Lutsel K’e] made negotiations, [the Elders’] are still saying that they could say ‘no’ and shut down the mine anytime if they don’t get information.”

“If things keep going the way they are, I think we’re going to lose a lot of youth to alcohol and drugs. A lot of them will be going to different communities or cities. Because right now, the way it’s going for the youth, there’s nothing in place for them. They should have had a pool hall, a computer hall, something for them. All they have right now is the gym in the evenings. And that’s just for boys. What about the girls? I know a lot of girls when they reach a certain age they go to a different place for school. There’s no support for them here. So the future of the youth will be pretty slim if it goes the way it’s going right now.

The way it could be better is for leadership to act on youth’s concerns and encourage them to go for training and such. More workshops is what they need.”

— Youth and miner

“I don’t think they [Elders, Chief and Council] give [the youth] that much chance to speak up. They don’t stand up in the meetings and speak out. I figure they’re afraid to be shut down. But the youth should come out and speak more, because it is all about our youth, the next generation…”

— Youth
Clearly, the community leadership could not engage in appropriate community consultation and consent procedures with Ekati. In more recent processes, the leadership is becoming more aware that they have rights to demand the time they need to do things properly.

Community Perspectives on the Outcomes and Implementation of the Agreements Around the First Diamond Mine

Community members believe the deal they negotiated with BHP had some serious flaws. For one, there were serious misunderstandings about the scope of the IBA, as mentioned above. Second, the funds had to be shared among four communities, rather than three involved in the negotiations. And third, not enough attention was placed on ensuring that the IBA aligned with Lutsel K’ee’s position with regards to their Treaty rights.

However, there are also questions about implementation (see section on impacts and benefits, for further assessments). Some have to do with internal decision-making around how the compensation funds are used or invested, while others have to do with what some characterize as “broken promises” with regards to jobs, and a sense that BHP has started to cut back on a variety of things, including not coming to town as often as it used to because it now has what it wants.

The Independent Environmental Monitoring Agency

There were mixed assessments about the independent environmental monitoring agency established under the Environmental Agreement. This agency is comprised of scientists appointed by the government, BHP, and the 4 Aboriginal groups party to the Environmental Agreement (Treaty 8, Treaty 11, the Métis Alliance, and Kuglutuk Inuit). These experts are nationally – and sometimes internationally – renowned scientists that are appointed to independently assess how well BHP is performing with regards to its environmental commitments. While they do not represent the communities, these experts have a responsibility to present community concerns to BHP and the governments, and to report all findings through regular visits to the communities. While some people interviewed were not aware of this agency or felt they did not have enough information to be able to comment on its performance, many interviewees said this agency is doing a good job, with a couple noting the usefulness of the plain language annual report the agency produces. Others said they were not so happy with the agency, and expressed a series of concerns:

- That there are too many “white guys” doing the monitoring work, more Aboriginal people should be hired, and more fieldwork should be conducted.
- That BHP has cut back on its funding for this agency, including the annual workshop it holds to present its work to affected communities.
- That there are problems the community has been highlighting to the agency and to BHP for several years now and there has been no action to address these. One example is the piling of jagged rocks on the side of access roads; for 4 years now community people have noted that this results in damage to caribou’s legs as they cross the roads, while BHP’s experts attribute this damage to rain. 
- That while BHP has been receptive to potential solutions to problems based on traditional knowledge (for example, ...
building and maintaining a traditional corral to herd caribou so they don’t go onto the mine site during migration), there has been a lack of follow-through likely because the company is still very much operating with a “bottom line” mentality.

Lately there has been some serious questioning of how effective and ‘independent’ the monitoring agency can be when it is so beholden to the company for funding, its role is merely advisory, and its recommendations are not followed-through by the company.

Lutsel K’e Dene First Nation and others tried to address the first concern in its negotiations with the second diamond mine, Diavik (Rio Tinto), by establishing a monitoring agency including only community members. While there have been more community meetings and consultations with this agency, the community representatives have a very difficult time understanding the company’s technical reports and sometimes need to hire consultants for help.

This learning resulted in a different negotiation tactic for the third diamond mine — DeBeers’s Snap Lake. While the meaningful inclusion of traditional knowledge was at the cornerstone of negotiations, the recently established Snap Lake Environmental Monitoring Agency (SLEMA) has both a Traditional Knowledge and a Science Panel, effectively combining both knowledge systems. Lutsel K’e Dene First Nation submitted an independent traditional knowledge assessment (with funding from the company) to supplement the western scientific environmental assessment the company commissioned, and the company agreed in principle to Lutsel K’e’s proposal of implementing a community directed and run traditional monitoring project. Nonetheless, questions remain as to how DeBeers will use the traditional knowledge in the traditional knowledge assessment. In addition, the traditional monitoring project agreed to in principle has been delayed for almost a year (WLED staff, pers. comm., September 2005). In short, the incorporation of traditional knowledge into decision-making at Snap Lake is still to come.

“But the leadership in those days, they jumped when they were told there was 60 days….But why should they listen to their deadline? So what, that’s their deadline? And that’s how it went in those days.”

— Community leader
Impacts of Diamond Mining on the People and the Land

Since Lutsel K’e First Nation started negotiating with mining companies, the community has experienced a wide variety of impacts.

Negotiations

Community members reported a series of effects resulting from the negotiations themselves, including:

- Elders being far more stressed now, worrying about all of the things happening to Lutsel K’e’s land and people: “We’re doing so much work, our minds are being stressed… We worry so much about our land, because… everything used to be different.”

- Meeting fatigue. “It used to be that tonnes of people would come to meetings, and it’s just not there any more. There are some times when mining companies come in, and there are just 2 or 3 people. People don’t see any value to them any more…nothing happens at these meetings, it’s just shows, and there’s just too many of them – people have lives. And you can literally go to a meeting virtually every day.”

- Increased fighting within the community about compensation money and how it should be used.

- Tension within the community between the people and leaders due to misunderstandings about what was actually being negotiated (due in part to translation difficulties)

- Increased tension within Akaitcho Treaty 8 communities about funding allocation and other issues as a result of the Government and BHP’s non-recognition of Deninu Kue First Nation as an affected community.

- Exacerbation of historical tensions between Treaty 8 and Treaty 11 communities over the scope of their traditional territories and land claims.

- A spirit of non-cooperation among different Aboriginal communities due to the confidential nature of negotiating IBAs, especially at the beginning. This is changing somewhat now as groups are speaking more openly and even negotiating joint ventures to be in a stronger position to benefit from mine business.

“I think they tried [to include traditional knowledge in decision-making]. It’s hard to blame this on a single person. I think there are good people in all these mines. Some of them are genuinely interested in incorporating the values and ideas of the people in the communities. It’s just that they get direction from Australia or South Africa… And you’re really starting to see that in BHP. Many more of the positions are being filled from Australia. The bottom line is playing much more of a big factor.”

— Resource person

Distribution of Impacts and Benefits

Who’s benefiting most from mining in Lutsel K’e?

- Miners (who are sober and don’t drink all their money away) — middle-aged men: 54%
- Youth (will get more money for programmes): 15%
- Band, Community, Elders, “we’re not benefiting”: 8.33% each

Who’s bearing most of the costs?

- Youth: 30%
- Women: 20%
- Whole community: 30%
- Elders: 15%
- Miner and his/her family: 5%

Overall, are there more positive or negative impacts from mining?

- More negative: 71%
- More positive: 8%
- In the middle: 17%
- Don’t know: 4%

Would Lutsel K’e be better off with or without mining?

- Without: 87%
- With: 13% (“Because they will go ahead and mine anyway, so we might as well get the benefits”)

Note: Percentages based on the total number of people who answered the question
Youth feeling left out of the negotiations and decision-making even though they will be inheriting the problems and dealing with these in the future.

WLEC staff feeling overwhelmed with the amount of work negotiations entail.

**Benefits: “Benefits, but…”**

A variety of benefits from mining were identified by community members. An interesting observation is that each time a benefit was identified, more often than not a qualifier, or caveat, was added.

In addition, a couple of community members said there are no benefits from mining. The following were the benefits identified, in order of priority:

- Compensation money from the IBA, which is then allocated to community programmes and community payouts. Community members noted that while funds are supposed to go to increased programming for youth, for example, this is still yet to come. They did note that there are increased funds available for Elders programming (for example, daily free luncheons) and compassion travel (for family members who need to travel to be close to a sick relative or to attend a funeral). Some said the $500 payout to each Band member that has occurred a couple of times so far (based on a consensus decision by the community and Council) is spent extremely quickly in the community, and can go in one trip to the General Coop-Store for groceries. Others questioned whether payouts are the right thing to do instead of investing these funds for the future generations: “We could have invested in something good for the future.” Many noted that the overall compensation monies the community receives from BHP — $250,000 per year as long as the mine is operating – is a very small amount, compared to what the company makes per day. “There’s definitely not a lack of money coming into this community,” one interviewee said. “I think it’s just the way it’s being spent that it’s not giving as much benefits as it could have. By now in this community, there should have been a daycare, a hotel, a restaurant, a youth centre. A lot of these things that people were expecting to happen. So there could definitely have been more benefits than we’ve seen. And that might still come.”

- Jobs. “But hardly anyone is working there [at BHP’s Ekati] from here… They did at first, but then all of them got let go. Like 20 people…Maybe 2 out of 20 are still working.” Besides the lack of skills and training for mining, difficulties getting jobs due to criminal checks and difficulties maintaining these jobs, many miners decided to quit mining because the two weeks on/two weeks off work rotation took too much of a toll on family life. Mining companies end up hiring people from down South rather than First Nations to fill the positions.

- Job training. “They trained people for heavy equipment operation, but not only in our community. They also did the training in the other communities. So now people are trained in heavy equipment, and there’s not enough work to go around.” One issue raised is that the IBA for BHP did not state that the company be required to give the trainees jobs following the training.

- Funding to enable community hunts. Lutsel K’e uses IBA money to match the funds they obtain through writing funding proposals and requesting donations from governments, mining companies and other organizations for the fall community hunt. At one time, BHP
helped with the community harvest directly: “When the community asked for a charter to go on a caribou hunt, BHP said it would charter the plane. The community thought that was going to be an ongoing thing, that that was part of the deal. But they just got bribed,” one community member said. From 2003-2005, no mining company donated funds for the community fall hunt.

- Funding to carry out community research. “BHP sponsored us to do GIS work, and that’s helped to reach our young and to work with the Elders to capture our traditional knowledge, where they went. It kind of brought us together, young and old. It gave us a chance to understand and re-spark what was lost over the years. It’s always an interesting thing to work with the Elders.”

- Increased business and joint ventures. IBA compensation has enabled Lutsel K’e to embark on a variety of businesses and joint ventures to take advantage of the mining industry, although there is a sense that these have not brought any “real wealth” to the community. The mining companies reserve the right to hire companies who have proven skills and experience to do the job, and it is hard for Lutsel K’e to outbid others. In addition to joint ventures and businesses, in the community itself an information services industry is being built around meetings and presentations in the community (room rentals, translation services, sound systems and taping), as well as honoraria paid for community members who participate in site visits and other events, and who provide information and knowledge through interviews for research projects.

- Increased ability to buy material things. Those who are able to save money from mining (those who are sober) are able to buy more material things – skidoos, houses — and may therefore have a better quality of life.

**Negative Impacts**

The negative impacts people identified fell into two main categories: social/cultural and environmental.

**Social/cultural Impacts**

Most social impacts from mining were related directly to the influx of “too much cash” to miners, their inability to manage budgets, and their lack of life skills. Social impacts identified included:

- Increase in alcohol use
- Increase in drug use and sampling of harder types of drugs (e.g., crack cocaine)
- Youth from the community getting involved with drugs at earlier ages, following their older peers’ behaviour
- Neglect of family and children. Miners often spend their paychecks at the bar in Yellowknife, and some do not come back home when they have two weeks off
- Increased family violence and violence against women
- Increased burden on spouses (usually women) to care for the family
- Family breakups
- Increased gambling
- Youth feeling lost: the first suicides have recently taken place
- Loss of traditional ways and skills, and adoption of “white” values and ways
- Increased materialism and “flashiness”

“**I would feel better if they [the mines] were all gone. Stop destroying our land, they’re literally making big holes in the land.**”

— LKFN woman

“If I was to do it all over again, I’d probably say ‘no’ [to the first mining company].”

—Community leader

“**Lutsel K’e would be better off without mining. Sometimes I think we could have listened to the Elders — money isn’t everything.**”

— Lutsel K’e woman

“When we travel to the mines, we see it in our own eyes that our land is being destroyed.”

—Elder
• More fights breaking out in the community about money
• Increased worry and stress for the Elders as they talk to the youth about behaviour issues
• Decrease in volunteerism in the community; people are being spoiled by money and expect to be paid (for example, expectations of being paid to go to the First Nation's annual general meeting, being paid to teach youth traditional skills, etc.)
• More sickness among the Elders (for example, more cancer); Elders are dying faster
• Increased tension with other communities
• Elders abuse (often related to dependency on parents’ homes rather than their own homes)
• Lack of contribution to family financial needs
• Dependency on social services vs. employment

Environmental Impacts
• Land, water and animals are being destroyed
• Caribou migration has been “screwed up”; they no longer come as close to Lutsel K’e as they have in the past; people need to travel farther to hunt them
• Caribou are getting injured; their hooves and legs are getting torn up and damaged from the rock piled at the side of the mine access roads. The mine sites are on the migration path of the caribou which results in more throughout their migration route (distracting them from feeding) and are therefore getting skinnier
• The watershed is being contaminated, diverted and changed
• Oil spills from vehicles are not being cleaned up properly and could be affecting the land, wildlife and contaminating the watershed
• Big game outfitters are using the mining access roads to take groups out hunting; caribou is being slaughtered and left behind. However, Mining access roads are also used by resident hunters and People now have easier access to many areas previously not utilized intensively
• Increased dust which lands on vegetation that is then eaten by the animals who are then eaten by people; there are unknown food chain effects from dust suppressants and other chemicals used
• Air and noise pollution
• More deformed fish are being found

There are clearly more effects than those listed above, which do not purport to be exhaustive or scientific, but instead based on the perspectives of the people interviewed for this study. In the near future, the WLEC will be undertaking statistical analysis of the data it has collected over the years, which will provide a more rigorous understanding of the various impacts the land and the people have experienced since diamond mining started on Akaitcho Territory.
4. Lessons Learned and Advice: Power Tools for Negotiating

Since the negotiations around the first diamond mine, the community has gone through a lot of learning. A key strategy has been to ground community positions in Treaty rights, and use the pre-screening process for permits to increase Lutsel K’e’s bargaining power. But also, community negotiators have strengthened their skills in negotiating, are now aware of the process used in diamond mining and have a good understanding of its impacts. Likewise, companies have learned from the mistakes of their predecessors and — to use an adjective from one interviewee — are becoming increasingly “progressive” in their dealings with the affected communities.

The following section synthesizes the cumulative, collective learning from these experiences, and presents Lutsel K’e community members’ advice to others considering entering into negotiations with mining companies. It is organized into several key “moments”: Considering whether or not to negotiate, preparing for negotiations, choosing a negotiation team, and negotiations. Much of the advice has been left in the voice of the people.

Considering Whether or Not to Negotiate

**Internal Consultations: Know what your community wants**

- **Start way early.** You’ve got to have very good internal consultations and know what your community wants.
- **The first step is to get a unified, cohesive picture of what your community wants and to know:** “What is our vision for the future — 50 years, 100 years, 6 generations from now? What do you want for your youth? Where are our Elders telling us to go? How are we going to get there?” If your community can get to that point, then you’re half way to wherever you’re trying to get. That can be a huge process in itself. If your negotiators don’t know what the community wants, then the negotiations aren’t going to do anything for the community.
- **Meet with the community without mining people.** Listen to community concerns, including the youth and Elders and everyone. You’ve really got to think about what you’re going to be doing, and every concern is a big concern. If the youth has a question, they are the future. They’ve really got to think about what the effects are in the future. Because it might spoil the land and the animals. Once you spoil the land, you can’t replace it. Just think of your children and your grandchildren and the future. If it was my choice, I wouldn’t go for it. The money will always be there, you can’t replace the land with money, think about it.

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**Community Strength through Internal Discussions: A Resource Person’s Perspective**

“This process with the parks thing has probably been the best consultations the community has had with regards to defining what the community wants before it negotiates. Part of the reason is that it’s been on the table since 1970. It’s always been in the back of people’s minds. But just in the past 2 years, the community has secured dollars to do the internal discussion. So there wasn’t like — OK, so now we’re negotiating, now we’ve got to find out what we want. It was OK, let’s spend a good chunk of time to slowly discuss, whether we want to do this or not. And if we do want to do this: What do we want out of it? What do we need out of it? That’s our position? What are our values? So the community is unified, they really know what they want…So if you talk to an Elder today about what they want in this park, they can tell you. But if you ask them about what’s in the IBA for DeBeers or Diavik – which is supposed to be what they want – they won’t know. It’s very unlikely that they’ll know, other than saying that we get a bunch of money. Even the dollar amount, they don’t know.

The homework you have to do before you get to the table is very, very important. And only goes your negotiators and your community strength. So that internal consultation is tremendously important”
Learn from other communities and build alliances

- Get a lot of information from other people that have already had a mine, and been impacted by the mining companies. And how they’ve been dealing with it: Was it good for them? If not, why not?
- What you guys are doing is great... If people here had the opportunity to go and visit with others who have done the same thing, we wouldn’t have made the kind of mistakes we made with BHP. In other words, the misunderstanding that the negotiation and compensation concern the whole mining area and not each Kimbelite pipe to be mined. All it takes is 5 minutes of someone telling you on the telephone: Don’t do this. That would have solved the whole problem of that claim block thing.
- Make those linkages with other Aboriginal groups, as this project is doing. Learn from other people’s experiences and get those partnerships set up with other First Nations, research organizations and universities. There are a lot of people out there concerned about the issue that have the experience and the knowledge that can help.

Consultation and Consent: Stand behind what your community wants

- There has to be a proper consultation. People have to consent to it. And that’s the proper way to go about doing this.
- If your people want to say ‘no’, then you stick behind them and say ‘no’. If they think it can go ahead as long as it’s done in a responsible way, they want to see some benefits out of that, then you make sure that’s included in writing.
- You decide what “properly consulted” means, and demand that your rights are met (rights such as having access to all the information, being able to understand all the information – that is, information needs to be translated into your language) – only then will you be able to make an informed decision.

Let mining representatives know how you use the land, and where your cultural sites are; build a relationship so they can understand your culture

- If big mining companies want to do something and they come to the community and they want to talk about it, talk about all these things first: The traditional life first, how you’ve been working on the land, all the burial sites. They can’t just move into your land and start developing mines, that’s not right. You have to let them know how you use your land, how you use it to survive, trapping, even berry picking, even the plants is medicine, even the rocks is medicine for use.

Ask them to come to the community and listen to the people’s concerns

- They have to come to the community and talk to the Elders, the youth, and listen as to what might be the best way to see if it’s going to be mined, and that there’s some benefits that’s attached to it.
- Get company representatives to come in and talk to people. A lot of times they’ll send your representative on the monitoring agency, and they’ll say that that person is responsible for consulting and sharing information. Or they’ll send someone from one of the environmental consulting companies they hire to do the fieldwork. People in Lutsel K’e are now insisting – no, we want somebody from BHP to talk to us. That’s who we want to deal with.

Choosing Your Negotiating Team: Who Sits at the Table

Choose a proud and strong community person, not a consultant or a lawyer

- Don’t ever have other people [negotiate] – even if you have a negotiator in training...YOU should be speaker at the table and have presence, not a consultant.
- The person should be able to speak the language, and be proud of who they are. If he doesn’t, he will compromise it...As soon as they [the company] see it, they’ll know it, and catch you right there.
If you can get the parties to agree not to have lawyers at the table, I think that's very valuable. Have lawyers review the stuff after. Lawyers can boggle the conversation, and takes away from actually trying to build a relationship. So, I think it's tremendously important to have your lead negotiators not be some lawyer who travels in every so often, but a community person that's really in touch with the community.

Make sure the person is willing to do it.

**Consider including an Elder and a youth representative on the team**

**Preparing for Negotiations**

**Know your Aboriginal rights and the laws of your country**

- You have to know your Aboriginal rights and the required laws of the national country (Mining Act, Environmental Act, etc.) and who gives the permits and how do you as a First Nation exercise the rights of giving permission, and how is this interpreted in the laws of the country.

- With my rights from Treaty 8, that's how I know I could keep my land... If you guys don't have your own claims, it's going to be kind of hard. Because our way is our Treaty Rights.

**Gather and record your traditional knowledge and map your land use and cultural sites to get your land rights recognized**

- Try and gather all the information that you might require... gather all your traditional knowledge, change of land use. Have educated resource people available – lawyers if you can, scientists or biology or anthropology people. Get these key people together and sit down and tell them what you need to do. And ask for funds through the company or even the government if they can help. And just go from there. It's like a learning process from there.

- For the proof... you've got to show that to your mining company... mapping. All the historical sites, burial sites, everything... hunting, fishing... whatever. So you have to record it... So that's really important. Meet with the Elders, interview elders, even young people.

**Know the mining industry and the value of the minerals on the international market, and invite the powerful representatives to your community**

- We didn't know the diamond industry – so we went to Australia to see. We went to Israel to see how it was dealing. We went to South Africa to look at the issue of blood diamonds... We did it more by the mineral than by the company.

- Know the value... you can't negotiate unless you know the value.
Find out where is the home company, who is on the board, and who has the power. Find out how it’s connected. Invite them to come over. We’ve had people from Rio Tinto come up, we’ve been on BBC.

**Build alliances, and get support from larger organizations you might be part of**

- You may be part of a larger organization, for example the Assembly of First Nations (a national organization in Canada).
- Indigenous Peoples need to get involved in politics and the government of the day to ensure they can access whatever resources are available through that, whether political or economic (funding).
- International/National environmental groups have a lot of power. For example, tourist people, canoers, eagle tourist people, have lots of power, just as much as the mining industry. But you have to be able to get back to the decision-makers at the federal level. They will reap the royalties anyways. Do they want to be known (the government) as reaping the benefits, and having 3rd class people?

**Get organized**

- If you can, hire people.
- Consider establishing a committee like the Wildlife, Lands and Environment Committee, which is well-positioned to help the leadership make informed decisions.

**During Negotiations**

*Take your time and raise funds to support your negotiations (consider getting funding from sources in addition to industry and government)*

- Take your time. Make sure you have lots of money, so you can take your time. So fundraising is a huge thing. And they will always try to handcuff you. Through these negotiations you’re depending on them to give you the money – the government or industry – to give you the money to negotiate against them, or with them. Well they can handcuff you there. So I think it’s really important to get money from other sources.

*Show your culture, and try to build a relationship with the top executives*

- With a relationship between a First Nation and a mining company… It’s better to just show your culture… Take them out on the land, show them what you do on the land. how do you make tea, how do you cook, fish…. Every time a mining company comes in to our community, we take them out on a tour with the skidoo. Put them on a trail, make fire right in the open, at 30 and 40 below [zero]… They have to understand the culture. That’s how you do business.

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**One Perspective on Accepting Funds from Industry**

*BHP has offered to give money to our partners in Suriname for consultations, and they still haven’t made up their mind about whether to take it. You guys did take their funds. Did you feel compromised by that?*

No, I think it’s fine. You can always back it up with an agreement saying this is what it’s for, and this doesn’t mean that we’re saying yes to you. We’re using this money explicitly to decide whether or not to say yes or no. And if we do say yes, what are the terms and conditions of that yes. So that has to be very explicit. They’re only giving you the money. If they give you the money and say ‘This means you’re working with us now’ then you don’t take their money.

*Did you have an agreement with them on what the money was for – that this does not mean you’re agreeing?*

Yes, say this is money for negotiating an IBA, not money for consent. I don’t think that’s the problem. I think the problem is that the money is always limited. And so you have to go to outside sources. There’s lots of money out there; it’s just finding it, getting those foundations that have deeper pockets.
• It’s good to have a good relation. The Chiefs have to be able to have a direct relation with the top executive – at that level. And never think they’re more powerful. They may have more money, but you have the resources. Government should butt out – that’s the happy situation for everybody.

• What you are doing in the end is trying to build a relationship. And this is true for any negotiations. You don’t want to go in and yell and scream at each other. If you’ve made a decision to enter into negotiations, you want to build something that’s good for both parties. The hard thing there is: How do you trust these people? That’s really the question.

• When both parties are negotiating, give each other a chance to say their part.

**Be prepared to compromise**

• If you enter into negotiations, implicit in that is that you want to make a deal. If you’re going to sit down at the negotiating table only to walk away, you might as well make the decision before. If you really know what your people want, when you sit down at the negotiating table you’ve got to realize that there’s going to be some compromise. That’s what negotiation is. But if two people draw their lines in the sand and say that you have to give us all we want, or else forget about it. They’re much more powerful in that sort of stuff, industry and government. So you’ve got to be able to make a bit of a deal. And make some compromises, and that’s possibly the toughest [part].

**Get well-prepared translators, and make sure things are said simply so they can be well translated and understood**

• Translation is going to be a problem. Make sure that things are said simply and possible for translation.

• They’ve got to make it bilingual. They’ve got to have the interpreters, and the interpreters have to know the words that are going to be used so that they can define it. Your interpreters should be made aware, or have some sort of training of the terminology that the mining companies use.

**Never sign away your Aboriginal Rights**

• Some [IBAs] say that this provides compensation for infringement of any Treaty Rights — It’s unbelievable — and any other rights that you may have. So it’s just something that never should be signed away. And actually can’t be signed away!

• A lot of [IBAs] have contradictory clauses saying at the very front: “We respect the rights of the Indigenous Peoples of this land and we will make every best effort to make sure they’re not infringed upon.” Meanwhile there are whole bunch of clauses in the Agreement. I remember the Treaty lawyer, when we were doing the Environmental Agreement... There was a whole section like that saying how it’s not going to impact the Aboriginal peoples, that this will not infringe on Aboriginal rights and so on. But if you look at the details of the agreement, there’s a whole bunch of clauses that may be construed to infringe upon Aboriginal rights. And she said these sorts of proclamations at the start have absolutely no meaning in court; industry and government have successfully litigated against them.

**Get the company to incorporate traditional knowledge into their plans**

• That’s still not really being done. They’ll come and ask the Elders their opinions about things, but you don’t really see it reflected in the mine’s management plan.

**Don’t put all your cards on the table**

• You’ve got to be able to have a poker face. Sometimes you don’t like what they say; but
we have to have them to get us stuff. For example, on the land activities such as the community hunt.

- Read between the lines. Don’t ever sign anything to the mining companies giving them more power than they already have. When you deal with the mining companies, you’ve got to make sure you’re holding one extra card, you’ve got to always have the upper hand. Like with BHP, that we didn’t have, and it got away from us.

**Keep very good notes on your meetings**

- Always keep everything – always have a recorder; always transcribe the minutes in written form.

**Expect they may try to exclude certain affected communities**

- In the Agreement, BHP didn’t recognize Deninu Kue First Nation. They broke the communities apart. They’ll try to do that over there [in Suriname].

**Be cautious about wording, and make sure commitments have funding attached so they can be implemented**

- Make sure the description for “project” is very clearly defined and that you understand what it means.

- Beware of the “weasel” words in the agreement; they have so many legal experts look to make sure there’s wiggle room for them. For example, DeBeers Canada mining “may” consider traditional knowledge to the greatest extent possible — You’ve got to put in “shall” consider, and be way more specific.

- Have very clear language and make sure there’s money attached to each if the commitments. “DeBeers makes a commitment to support traditional harvesting” means nothing. “DeBeers commits to provide $10,000 this date every year for this purpose”...that’s good.

**Have information and evidence to back up what you’re saying, and put everything you agree to in writing**

- Have some evidence to prove, even if it means getting information from other communities, that you know this is going to happen, because it’s happened in this place and that place.

- Show that you aren’t people that can be walked over. That you have the knowledge, that you have the ability to understand what they’re saying and what they’re talking about, and be able to pick up those little things that they’re trying to sneak by you.

- Be strong and use strong words. Put your foot down. There are international laws, there are treaties, there’s a lot of stuff that can back up Aboriginal Peoples on these rights.

- Use quotes. One thing we do a lot is to use the own company’s quotes back at them. Pick out something from one of their reports, or something that they’ve said at a hearing, and throw it back at them the next day. Like, “Yesterday, you said that – and I quote…” Give examples of where they haven’t met their commitments. Don’t be afraid of them, they’re only a company, a business. Their rights do not supersede Aboriginal Peoples rights. And that’s been proven time and again.

- It’s very important to have things in writing.

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“My advice to people is that...the mining company will do just about anything to get the minerals...taking out the earth for diamonds...I say, watch these people...These people they’ve got money...they can break just about anything there is to break.”

— Miner
**Benefits: Employment, Training, Joint Ventures, Royalties**

- Make sure there are requirements for a percentage of people from your community who will be employed at the project, not just a certain percentage of ‘northern’ or ‘Aboriginal’ people. That could be anybody.

- And for business, the first choice is the Aboriginal people. You should be given that opportunity. After all, it’s your land.

- Negotiate joint ventures with others. Just because you lack the technical expertise, doesn’t mean you don’t get it; your name as an Indian people is almost a guarantee [in Canada] (for getting funding). Also, make sure scholarships are attached to the joint ventures.

- The people that live there, such as ourselves, we hunt, we live off the land. If somebody’s going to come onto the land, then we’re going to have to benefit from it. There’s employment, business and so forth. People want to get educated, training, scholarships. Sometimes we go out on the land, a couple of times a year. And all these things have to be taken into consideration.

- I would say that they need to sit with their local governments and their Government of the country. The Government needs to make sure the people get a great percentage of the royalties. Because the government here is gaining all the royalties, and we’re not. We’re still the poor Dene people here, while our Government is getting it all. And they’re the decision-makers. That’s why we need to have them at our table. Get them at your table, and meet with them, and say, “This is what I want.” And do not give in.

- Don’t only ask for things just for now. It’s for far out in the future... for your children, grandchildren.

**Demand the least environmentally damaging technologies, and funds for research and monitoring; go on site visits; and always ask for a high amount of compensation for ruining your land**

- You take care of your land good, ask for more money. They spoil the land, and the wildlife and everything,...you can’t replace that any more. So that’s why you have to really negotiate with the mines how to develop to not spoil the land and the wildlife.

- Before they put the mines in, study it first really good, and get more advice how they’re not going to destroy the land...in the environment area... and watch that. And always ask for more money. And for the younger children, they are the ones that will be more affected if you don’t watch how the mine company starts out.

- For the wildlife, my advice is that you always ask for money to go do research, or to look at the caribou or any environment; always ask for more money. And always go visit the mine site. And if they’re going to build mines, make sure you always ask for extra money.

- We like our land. We like our water. We like our caribou. Even right now, if you go down to the shore, you could drink the water out of a cup. Right from the shore. We'd like to keep it this way as long as the mine’s on. That’s why we’re really fighting this company. To keep our land safe.

“It’s good that you ask for more money; not just a little sum of money that you put down on the table and discuss and say we’ll go with this... but then you put your concerns and price up higher when you’re dealing with companies like mines. You put your money up high. That’s the only way you get your benefits.... For my point of view, I wouldn’t give anything to the mines or anything, but it’s the government we fight. That’s my advice.”

— Elder
Demand the company make a security deposit for clean-up and reclamation

- A financial statement or security that they put in to make sure that if they (the company) don’t clean it up, the government can then use this money that they hold to clean it up; they won’t have to tax people. A security deposit is always good when it comes to reclamation.

Establish an independent, public watchdog

- When you go through your negotiations it’s always good to have a public watchdog. These are the people that pretty much tell you the truth. They are very useful people.

Get training in budgeting and funds management; consider building into the Agreement a description of how funds are accessed

- Get training before the funds are given... because people don’t know how to handle money.
- In Canada, there has been accusation of nepotism. Agreements can be set up in a way that describes how money is accessed; so money’s not accessed until workshops have taken place where informed decisions have been made... The Principal should always be invested.

Share information with the community, especially the youth

- Inform the youth more, so they can make reasonable decisions when they’re stepping in the seats [of community leaders] when the mine is closed.

Community members’ suggestions for how Lutsel K’e Dene First Nation could strengthen its own negotiations in the future

- Having our own legislation, our own regulations on the traditional lands. So if the people from outside want to come in, then they have to come in and talk with us first.
- Getting the affected communities to come together and have one voice, “instead of 4 little ones ... so that we don’t have a different deal for that group or this group ... so that everybody is in together. That would strengthen things, because we’re just a small, little community here. You know, there are just 600 people here.”
- Getting information and support from other groups who know what happens when the mines are gone.
- Doing a lot of research, and knowing the effects.
- Making sure the leadership listens to the Elders. Because they have lots of knowledge of these things, and they’re really afraid of the mines, of what’s going to happen to the land and water in the future.
- Having community negotiators instead of outsiders, and a youth participate in the negotiations. “Ever since the mining companies approach us saying that they want to mine in our back yard, we should have had one of our youth. We should have had our own negotiator from the time the mines came in.”
- Make sure that the negotiators are consistent, and don’t change all the time. Try to get the same team of people to work on all the agreements that are being negotiated around a mine (for example, the Environmental Agreement, IBA and Socio-Economic Agreement), or at least, make sure they are regularly communicating with each other. That way if there is something that may not be able to be incorporated into one agreement, the team can try to incorporate it in another.
- The Elders and youth need to work together — “Let them [the youth] express their concerns. Here it’s mostly the Elders that have more say, that’s how it is here. They don’t really think about what we [youth] think. They’re advisors, and we’re the learners... But if they can listen to the youth I’m pretty sure they could understand that youth is the future. That there’s not going to be many Elders in the future there to tell us when it’s our turn. But if the youth and Elders can come together and learn from each other... that would be really great.”
- Have politicians (leaders, Chief and Council) come and explain [to the youth]. “They see it as ‘our negotiation’; but it’s also our [the youth’s] land. We’re not really informed of the bigger picture; we just get small pieces.”
- Don’t just post announcements that meetings are going to happen. Share information about the results of the meetings, because people can’t make it to every meeting even if they want to.
Don’t give up…Keep having meetings until a deal is done

- With your negotiations with the mine, don’t just give up and stop; you’re going to have to keep on having meetings and meetings, until your Aboriginal people and the mine company they get together and decide this is good for your people and their mine company. That’s how you could work. If you don’t do that, if you don’t make any deal, if you guys give up, they’re just going to go ahead and they’re not going to give you guys anything.
5. Conclusion

This case study highlights diverse community perspectives on the challenges and also the learning that Lutsel K'e Dene First Nation has undergone since diamond mining came to its traditional territory.

What shines through in the community assessment of interactions and negotiations around the first diamond mine is that in some respects it was groundbreaking, while in many others it falls far short of being a model for others to consider. BHP’s Ekati was groundbreaking in that it involved negotiations for impacts and benefits with some of the affected communities, and it did set up a precedent-setting independent environmental monitoring agency. However, Ekati has fallen short of being a model for several reasons:

- Akaitcho Treaty 8 communities were informed the mine was slated to go ahead regardless of their own aspirations for development on their traditional territory. There was no meaningful consultation leading to free, prior and informed consent with regards to the mine going ahead.
- The process and 60-day period for negotiations around the IBA was excruciatingly tight for communities who were completely unfamiliar with diamond mining. While in the end Lutsel K’e gave its consent to the IBA, this was far from “informed”, “free” or sufficiently “prior,” as it should be according to the emerging international standard. In addition, the IBA itself contains a clause noting that community members will not oppose future mine expansion or other activities by BHP on the claim block. This clearly violates the emerging standard of FPIC that sees consultation and consent as ongoing processes.
- One directly affected community was left out of negotiations, and this has caused much tension even though a creative, temporary solution has been found to ensure the community receives some benefits.
- The “hushed” nature of the negotiations between Indigenous Peoples exacerbated historical tensions.
- Lutsel K’e Dene First Nation community members feel the compensation funds they are receiving are a pittance compared to what the company makes from exploiting their diamonds, particularly given the misunderstanding of the scope and definition of the “project” and for the actual long-term damage being done.
- The promised benefits with regards to employment have not panned out, for a variety of reasons noted in the case study.

Lutsel K’e Dene First Nation leaders have noted they will use the 5-year review process to renegotiate those aspects of the Agreement they are unhappy with, based on their Treaty rights. This will be an opportunity for BHP to formally enshrine the concept of free, prior and informed consent of future activities on the claim block in the Agreement, as it has done elsewhere, and provides a propitious moment for future reassessment of whether BHP is a model for others to consider.

Since its experience with Ekati, Lutsel K’e Dene First Nation has grounded its negotiating position with subsequent diamond mines in its Treaty rights. It has used these rights to leverage demands

“I’ve seen those meetings with people crying. People saying, ‘We have no choice; so let’s get what we can out of it’. That’s a very unfortunate position for anybody to be put in. That is the reality of things right now.

And I’ve often thought that people could say no. But they’d have to back it up, and they would have to blockade, they’d have to do stuff like the Iroquois did. And the media, you can be sure, would be hugely on the people’s side. Southern Canada would be on the people’s side too, if the media is used properly. That option sort of comes up, but only in jest. I don’t think anybody really thinks about it too seriously. Because the realities are that people realize they do need some jobs. People have a somewhat defeatist attitude to some of this stuff – that it’s going to go ahead, and it’s out of my control. And the hope is that one day we will have control. But meanwhile, the territory is being piece-mealed away and chewed-up.”

— Resource person
more in keeping with the needs and wants of the community, including with regards to ensuring the process is more appropriate to community ways and timeframes. In addition, since its signing of the Interim Measures Agreement in 2001, Lutsel K'e Dene First Nation has more say in terms of pre-screening applications for permits for activities on its traditional land.

Despite this increased bargaining power, however, activities on Lutsel K'e Dene First Nation territory are still largely controlled by regulatory agencies that the First Nation does not recognize. Unless it is willing to use the court system to demand its rights as the Haida and Taku River Tlingit have, or stage acts of civil disobedience such as roadblocks to get media attention, the operating assumption is that proposed large-scale mines will go ahead on Lutsel K’e’s traditional territory with the community being in a good position to negotiate for benefits and attempt to mitigate impacts. In other words, the sense that the community does not have an option to say “no” will remain.

Recently, however, the leadership and other community members including Elders, have voiced their willingness to go to the courts should future proposed development not align with community aspirations. Having lived with and monitored 7 years of impacts from operating diamond mines, the community has a better understanding of the true costs and the true benefits of diamond mining. This is one of the reasons why many community members view the creation of a national park close by to the community as an important means of protecting the land and the people of Lutsel K’e, as they do the settlement of their land claim.

In the final analysis, the perspectives shared in this case study highlight that far from being examples of free, prior and informed consent which includes the right of communities to say “no” to a development, Impact Benefit Agreements involve community consent to accrue certain benefits from a development which they might fundamentally disagree with, and to try to mitigate impacts. They are one means for Indigenous Peoples to try to protect their land as best possible given a development going ahead.

Every community will come up with its own solutions and strategies for “dealing full force,” whether they choose to say ‘no’ or to negotiate. The perspectives shared in this document will at the very least give a sense of what is possible, what some of the options are for communities facing mining and other developments, and some advice from a First Nation gaining increasing experience in this area. And this invaluable information, as one Elder stressed, is not for us, but “… for the children.”

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References


Wildlife, Lands and Environment Department, Lutsel K’e Dene First Nation. 2005. Personal communication to verify information in the case study.
Endnotes

1. Since 2000, The North-South Institute has partnered with Indigenous organizations in Colombia, Guyana and Suriname to research, document and assess Indigenous experiences of consultations with the mining sector. Currently, this multi-country project is entering a second phase, where capacity-building, further research and multi-party dialogue will be undertaken, with a view to influencing policy and practice at the national level so it is more aligned with Indigenous perspectives, aspirations and rights.

2. And potential related developments such as a refinery, smelter, expanded port, etc.

3. Lutsel K’e has previously shared knowledge in an exchange with Attawapiskat First Nation in Northern Ontario, Canada, facilitated by MiningWatch Canada (www.miningwatch.ca), and expressed interest in learning from an exchange with communities in West Suriname.

4. This section draws from Catholique 2004, Bielawski 2003 and from information gathered through the fieldwork.

5. The 2000 Census identified 377 people living in the community.

6. Based on Catholique 2004

7. Funding for this project comes primarily from the West Kitikmeot Slave Study Society, a Canadian research organization and sometimes is received from other organizations, including private foundations such as the Walter & Duncan Gordon Foundation. Funding from both BHP and WSS has been steadily decreasing over the years, and has forced the program to be downsized. BHP contribution ($70-80,000 CAD per year) for both the WLEC’s GIS Technician and Database Technician, as well as some office expenses and equipment purchases. No other mining company has agreed to contribute funds directly for this monitoring project.

8. Bielawski 2003 gives a very detailed outsider’s perspective of these negotiations and the challenges faced by the community of Lutsel K’e in meeting the Ministerial deadline. Bielawski is currently Dean of Native Studies at the University of Alberta in Edmonton, and was hired by Lutsel K’e Dene First Nation to assist with negotiations.

9. This mine was under the regulatory control of the Department of Indian and Northern Affairs Canada (control that flowed through the NWT Water Board), rather than the Mackenzie Valley Land & Water Board which came into effect later.

10. Community members defined youth as persons between the ages of 12-30.

11. Ellis 2005 provides more detail and analysis of this and other examples of the clash between traditional and western science, and how traditional knowledge often takes a back seat to western science in decision-making.

12. “The community recently decided to allocate a substantial portion of IBA money for two years towards building an arena. This decision was due in large part to the inspiring speeches of a number of youth who came to the allocation meeting and proudly spoke of the benefits they thought the arena would bring, including: having a place for youth to go to keep them busy, away from drugs and alcohol. Many mentioned it would also be a good opportunity for families to do things together.”

13. If they didn’t negotiate they stood to lose out completely on benefits and deal only with the costs.

14. See, for example, Motoc and Tebtebba Foundation 2004.

15. At BHP’s Tintaya mine in Peru, in an agreement with affected communities, BHP has agreed to include free, prior and informed consent for future activities, such as expanding operations (Mego 2005).
Appendix: Lutsel K’e Dene First Nation’s Wildlife, Lands and Environment Committee Protocol for Resource Development

Wildlife, Lands and Environment Committee, Tel: (867) 370-3197

According to Treaty and Inherent Rights – Government is required to ensure that Lutsel K’e Dene First Nation is “consulted” about resource development in our traditional territory.

The Wildlife, Lands and Environment Committee is consulted in the review of land use permits applications, water licenses, and environmental screenings and reviews of proposed projects under the Mackenzie Valley Land and Water Board and the Mackenzie Valley Environmental Impact Review Board.

The Wildlife, Lands and Environment Committee also meets regularly with resource developers about their projects and the potential impacts on the land, water, and wildlife and potential benefits to the community.

Lutsel K’e Dene First Nation Treaty and Inherent Rights

The Lutsel K’e Dene have lived on the land for thousands of years. In 1899, Lutsel K’e Dene First Nation and other members of Akaitcho Territory signed a treaty with the Government of Canada which was to protect our rights to the land, water, wildlife and the other resources of our traditional territory that we depend on for survival.

Over the last 100 years, those rights have not been respected. It is only in the last decade that our inherent rights as a First Nation have been recognized. Today Lutsel K’e Dene First Nation is negotiating with the Government of Canada to ensure that our Treaty and Inherent rights are protected for future generations. These negotiations are not yet completed. To ensure our rights our respected in the interim, Lutsel K’e Dene First Nation will not recognize any resource developer that does not acknowledge our rights to the land and resources of our territory.

Resource Development Protocol

Lutsel K’e Dene First Nation is facing a great increase in mineral resource development in our traditional territory. To ensure that our community benefits from development in our traditional territory and to ensure a good working relationship with the corporations working on our land, a Resource Development Protocol was developed.

The resource developer will:

• Meet with Lutsel K’e Dene First Nation in our community to discuss the proposed project and provide opportunities to discuss the exploration project, and provide ongoing communication about the development and its potential effects on the environment;
• Work together to provide training for local people;
• Work with Lutsel K’e Dene First Nation to develop joint ventures and business opportunities and to ensure “priority employment” for our local people in all areas and at all stages of the exploration and development;
• Provide site visits for community members;
• Work with Lutsel K’e Dene First Nation to incorporate traditional ecological knowledge in the planning and management of the proposed exploration and development project;
• Provide Lutsel K’e Dene First Nation with funding for the above as well as to better facilitate our participation in any review, screening, or environmental assessment of any land use...
permit, water license or regulatory application and for the negotiations of any Impact and Benefit Agreement.

- Work with Lutsel K’e Dene First Nation and other interested parties to ensure that its exploration and development sites are reclaimed;
- Work with Lutsel K’e Dene First Nation to negotiate royalties and revenue sharing from any developments on our land.