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Supplementary Information

Presentation from the Manitoba Metis Federation

Renseignements supplémentaires

Présentation de la Fédération des Métis du Manitoba

Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2019

Rapport de surveillance réglementaire des sites des Laboratoires Nucléaires Canadiens : 2019

Commission Meeting

Réunion de la Commission

December 10, 2020

Le 10 décembre 2020

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Regulatory Oversight Report for Canadian Nuclear Laboratories: 2019

Presentation from the Manitoba Metis Federation
December 9, 2020





Overview

- Background & Context: the Métis Nation, Manitoba Métis Community, Métis Rights, Claims and Interests
- Outstanding Impacts and Concerns within the 2019 Regulatory Oversight Report for the Manitoba Métis Community
- Closing Comments & Recommendations

An aerial photograph of a lush forest with a mix of green and yellow trees, suggesting autumn. A blue lake is visible in the upper left, and a large, dark, rocky outcrop is in the lower left. The text is overlaid on a dark semi-transparent rectangle in the center.

**Background & Context: the
Métis Nation, Manitoba Métis
Community, Métis Rights, Claims
and Interests**

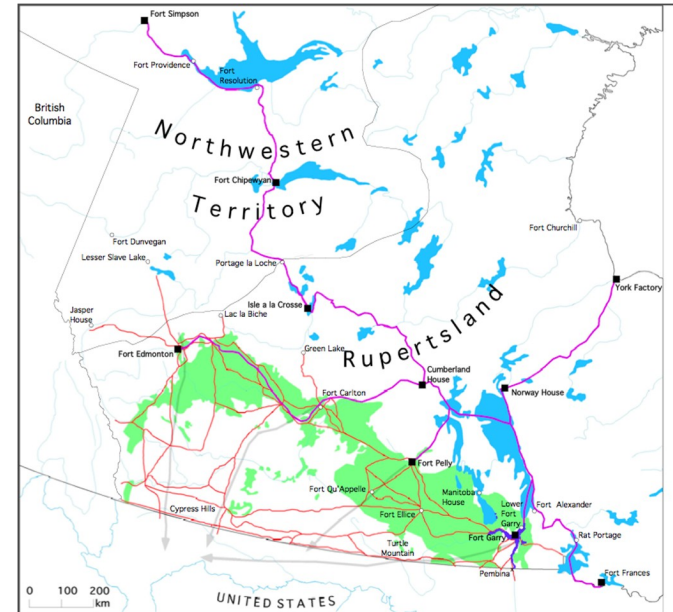
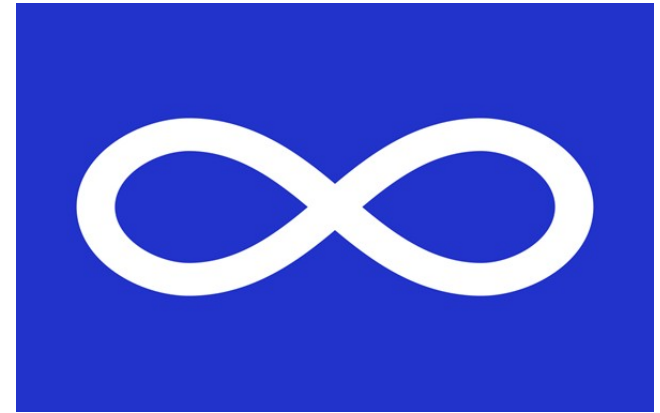


Context & Background

- Métis Nation and Manitoba Métis Community
- The Manitoba Metis Federation
- Métis Rights, Claims and Interests

The Métis Nation

- The Métis Nation is a distinct Indigenous people.
- Métis Nation in general, and in southern Manitoba, finds its earliest roots in the fur trade.
- The heart of the Métis Homeland is the Red River Valley.



Métis Economic Activity During the Fur Trade of the Western Interior

The Métis Nation

“The Métis were originally the descendants of eighteenth--century unions between European men -explorers, fur traders and pioneers -and Indian women, mainly on the Canadian plains, which now form part of Manitoba, Saskatchewan and Alberta. Within a few generations the descendants of these unions developed a culture distinct from their European and Indian forebears. In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture. The descendants of Francophone families developed their own Métis language derived from French. The descendants of Anglophone families spoke English. In modern times the two groups are known collectively as Métis.” (*Cunningham*, para 5)

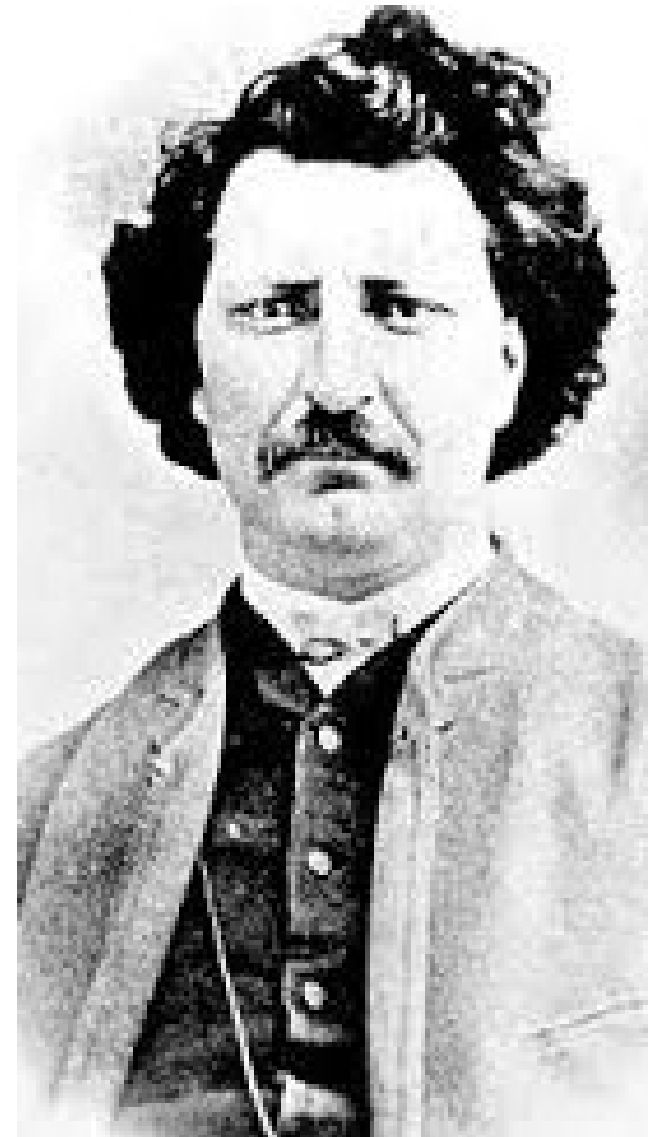
The Métis Nation's Struggle

“The history of the Métis is one of struggle for recognition of their unique identity as the mixed-race descendants of Europeans and Indians. Caught between two larger identities and cultures, the Métis have struggled for more than two centuries for recognition of their own unique identity, culture and governance. The constitutional amendments of 1982 ... signal that the time has finally come for recognition of the Métis as a unique and distinct people.”

--Supreme Court of Canada,
2011 (*Cunningham*,
para 70)

Manitoba Métis Community

“When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it ... but that it had a government of its own, free, peaceful, well--functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose jurisdiction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.”



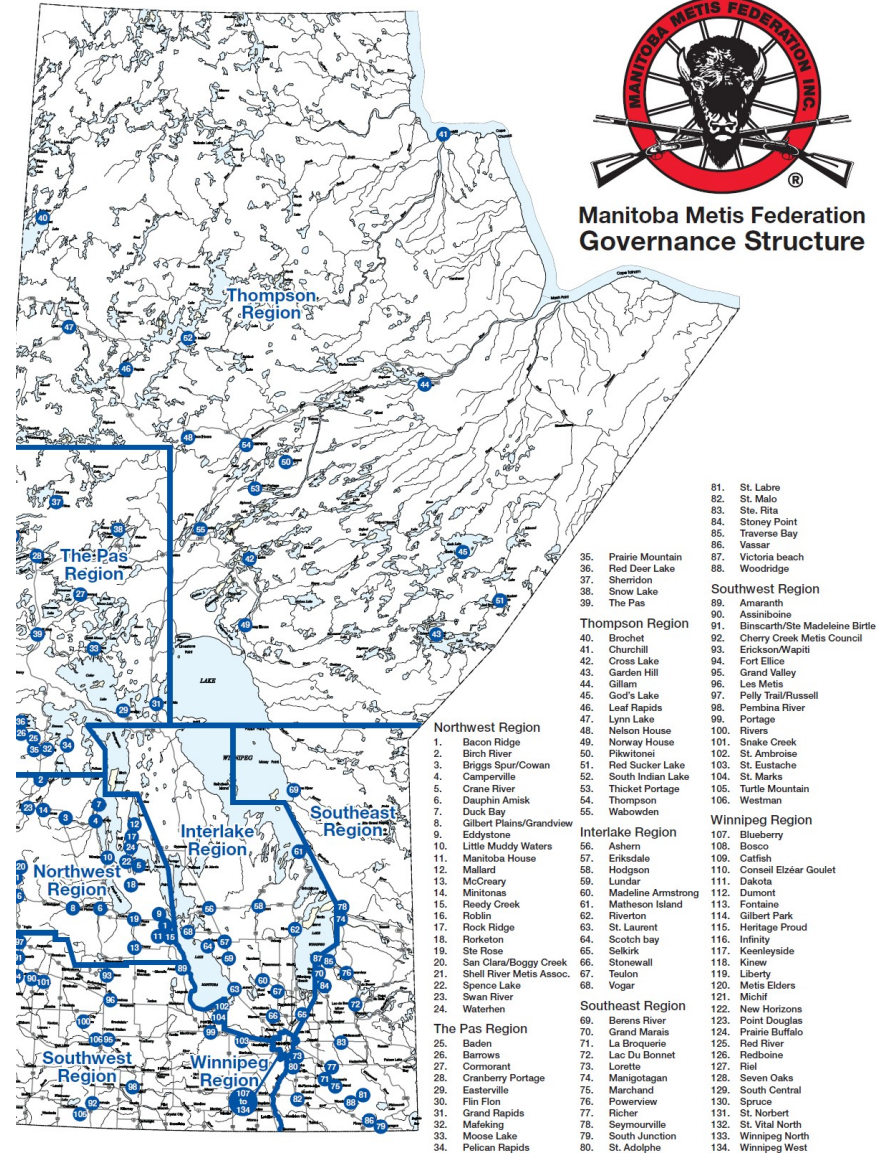


Manitoba Métis Community

- In *Goodon*, the court described the Manitoba Métis Community as a proud independent Métis population that constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present day City of Winnipeg and extending south to the United States.” (para 48)
- “*The lands that they owned...belonged to them once by the Indian Gtle, twice for having defended them with their blood, and thrice for having built and lived on them...*” (Louis Riel)

Manitoba Metis Federation

- The MMF is the official democratic self-government representative for the Métis Nation's Manitoba Métis Community.
- The MMF promotes the political, social, cultural and economic interests and rights of the Métis in Manitoba.
- The MMF is authorized to deal with the collective rights, interests and claims of the Manitoba Métis Community.
- The MMF is organized into 7 Regions, and 140 Locals throughout the Province.



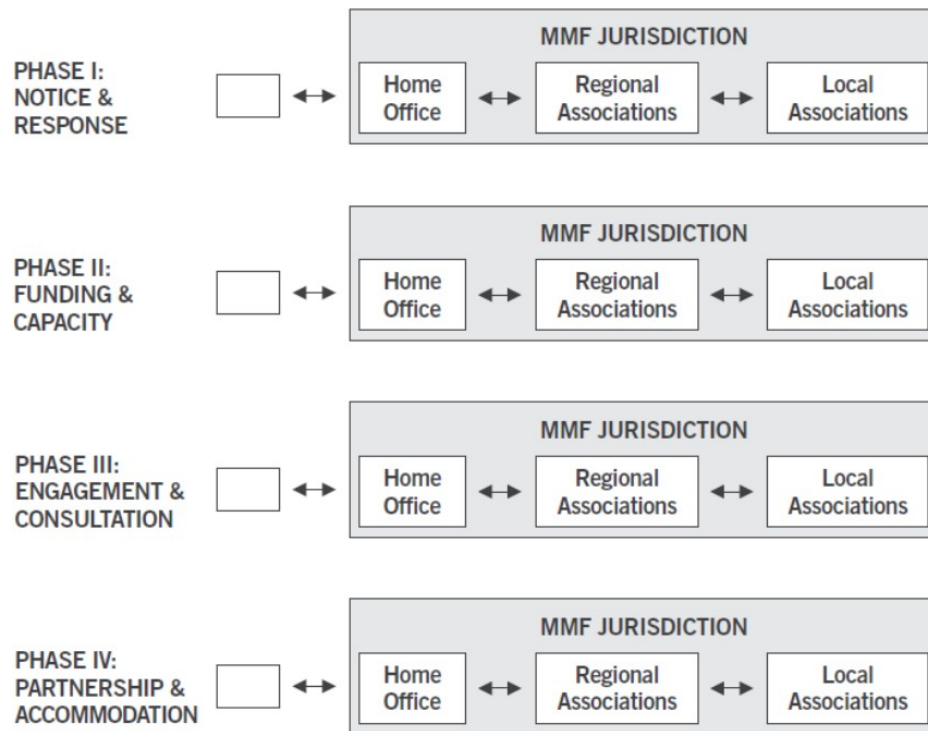
MMF Resolution No. 8

- The Manitoba Métis Community has appointed the MMF Home Office as its authorized representative for the purposes of Crown consultation and accommodation.

- In 2007, the MMF Annual General Assembly unanimously adopted Resolution 8, which reads in part as follows:

“this assembly continue[s] to give the direction to the Provincial Home Office to take the lead and be the main contact on all consultations affecting the Métis community and to work closely with the Regions and Locals to ensure governments and industry abide by environmental and constitutional obligations to the Métis”

Resolution No. 8 Framework



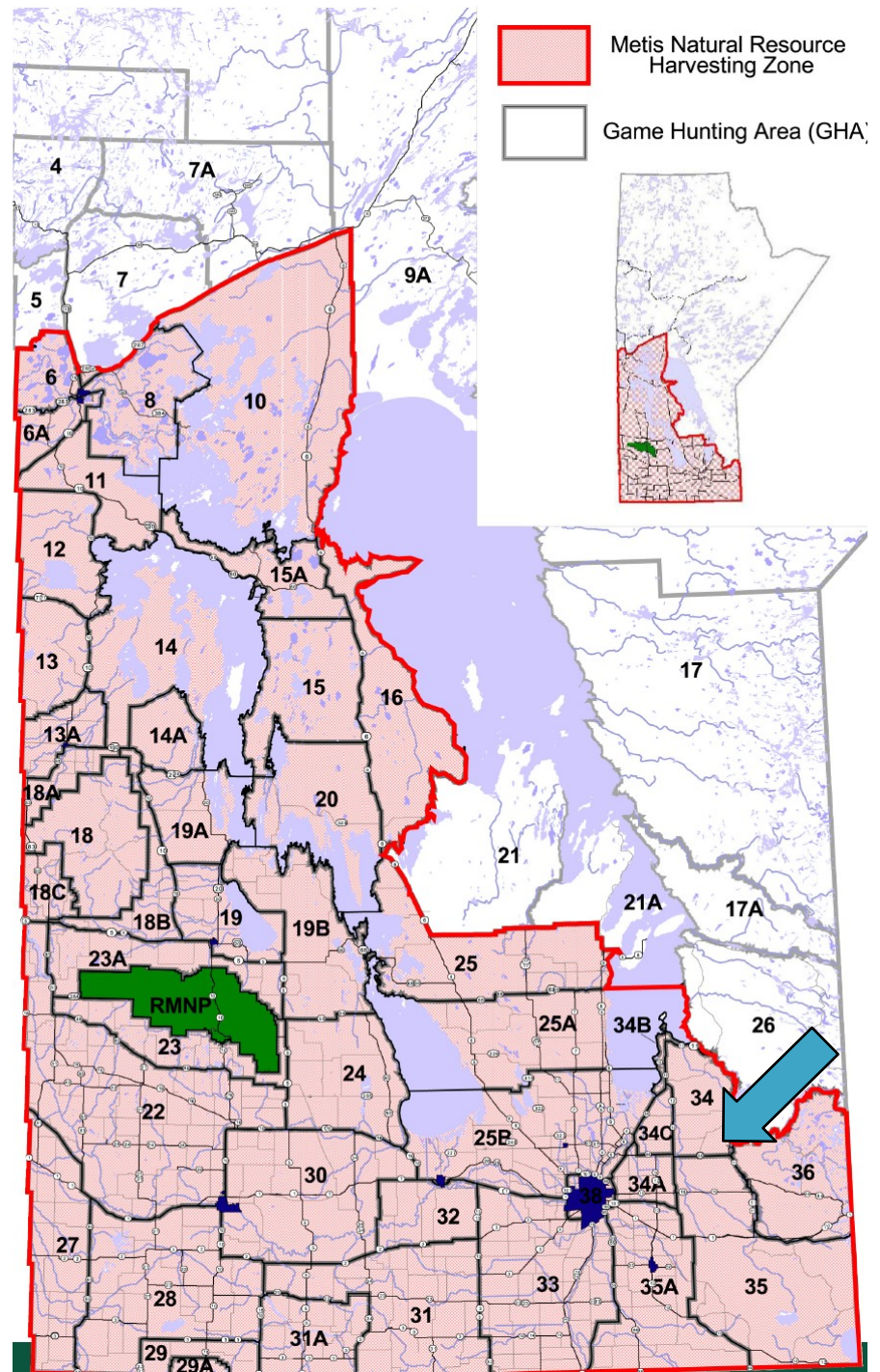
Métis Rights, Claims and Interests

- The Manitoba Métis Community possess Aboriginal rights, including, pre-existing Aboriginal collective interests in lands protected by section 35 of the *Constitution Act, 1982*, throughout their homeland and traditional territory.
- In 2008, in *R. v. Goodon*, the Provincial Court of Manitoba affirmed the existence of constitutionally protected Métis harvesting rights in the province:

“The Métis community of Western Canada has its own distinctive identity. As the Métis of this region were a creature of the fur trade and as they were compelled to be mobile in order to maintain their collective livelihood, the Métis "community" was more extensive than, for instance, the Métis community described at Sault Ste. Marie in *Powley*. The Métis created a large inter-related community that included numerous settlements located in present-day southwestern Manitoba, into Saskatchewan and including the northern Midwest United States.” (para 46)

Crown Recognized Métis Rights

- In 2012, the MMF and Manitoba government concluded the MMF-Manitoba Harvesting Agreement which recognizes Métis rights to “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, the ability to harvest timber for domestic purposes” throughout an area spanning approximately 800,000 km² (the “Métis Recognized Harvesting Area”).
- MMF has strong assertions of harvesting rights beyond this recognized area.



Métis Rights, Claims and Interests

- In 2013, in *Manitoba Métis Federation Inc. v. Canada*, the Supreme Court of Canada held that the federal government had “failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.” The SCC wrote:

“What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import.” (para 140)

- This constitutional breach continues to burden the federal Crown and gives rise to an outstanding claim regarding the 1.4 million acres of land promised to the Métis.

Métis Rights, Claims and Interests

- Beyond those rights already established through litigation and recognized by the courts or in agreements with the Crown, the Manitoba Métis Community claims commercial and trade related rights.
- The Manitoba Métis Community's pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the *Natural Resources Transfer Act* and continue to exist and be protected as Aboriginal rights today.

MMF - Canada Negotiations

- On May 27, 2016, the Government of Canada, and the MMF executed a Memorandum of Understanding on Advancing Reconciliation.
- On November 15, 2016, Canada and the MMF executed a Framework Agreement for Advancing Reconciliation that formalized a negotiation process between Canada and the MMF to:
 - “jointly develop a renewed nation-to-nation, government--to--government relationship” and “to arrive at a shared solution that advances reconciliation between the Parties consistent with the purpose of section 35 of the *Constitution Act, 1982* and the Supreme Court of Canada’s decision in *Manitoba Métis Federation Inc. v. Canada (AG)*.”
- These negotiations are ongoing, including related to:
 - Quantum, selection and management of potential settlement lands;
 - Water and subsurface rights;
 - Wildlife, fishing and fisheries;
 - Environmental Assessment; and
 - Land management, among other topics.

An aerial photograph of a dense forest with a mix of green and yellow trees, suggesting autumn. A blue lake is visible in the upper left portion of the image. The foreground shows a rocky, greyish-brown terrain. A dark, semi-transparent rectangular box is overlaid on the lower half of the image, containing white text.

Outstanding Impacts and Concerns of the Manitoba Métis Community

Recommendation #1

The duty to consult and accommodate the Manitoba Métis Community is clearly triggered and discharged to the appropriate jurisdiction

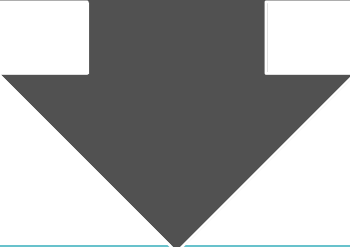
In order to ensure that the duty to consult and accommodate is fulfilled the Commission must require CNL/AECL to develop clear mitigation, avoidance, and/or accommodation measures alongside the MMF where appropriate

The Crown owes the
Manitoba Métis
Community a Deep
Duty to Consult

- The following factors support a deep duty to consult and accommodate regarding the CNSC Regulatory Oversight Report:
 - Established and Crown-recognized s. 35 Métis harvesting rights
 - Judicially recognized outstanding Métis claim for land and ongoing MMF-Canada negotiations regarding land and environment
 - Evidence in MMF Reports that demonstrate use of the regulatory area by MMF Citizens to exercise their harvesting rights
 - Background and context of dispossession of Métis from our homelands, including the Whiteshell site
 - Limited amount of Crown land available in the area for Métis to exercise their rights

Recommendation #2

There are outstanding concerns and interests of the MMF regarding the future plans of the Whiteshell site, as discussed in the ROR and other CNSC hearings



CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, to be meaningfully involved in the determination of the future plans for the WL site alongside CNL and AECL

Recommendation #3

Although the ROR suggests that CNL has met its regulatory obligations for Indigenous Engagement, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process

AECL and the CNSC, as representatives of the Crown, must consult with the MMF, as the democratically elected self-government representative of the MMC on an ongoing basis to ensure the rights, claims, and interests of the MMC are adequately considered and accommodated, and issues raised by the MMC are adequately addressed.

Recommendation #4

CNSC continues in this ROR to provide no detail on the reasoning for the enforcement action order made in 2018 and associated with the low rating on the Security SCA for the WL site.

CNL, AECL, and the CNSC must keep the MMF informed about all enforcement actions and orders at the WL site. This should be done through and based on the communication strategies and protocols that honour and abide by MMF Resolution No. 8

Recommendation
#5

The MMC has Crown-recognized, s.35 harvesting rights, including to fish, hunt, trap, and gather plants, firewood, and other resources, that must be protected and preserved for future generations

Due to the importance of these natural resources for use by the Métis, it is critical that monitoring of these resources is conducted by CNL, AECL, and the CNSC. With direct involvement of the MMF

An aerial photograph of a vast forest with a lake in the background. The trees are in various shades of green and yellow, suggesting autumn. A large, dark, rocky outcrop is visible in the foreground on the left. A semi-transparent black box is overlaid on the lower half of the image, containing the title text.

Closing Comments & Recommendations

Summary of MMF Recommendations

In order to ensure that the duty to consult and accommodate is fulfilled the Commission must include a licencing condition for ongoing consultation with the MMF

In order to ensure that the duty to consult and accommodate is fulfilled, a process for addressing the outstanding impacts and concerns of the MMF should be included as a consideration in the regulatory oversight report

The Commission's approval conditions and review of the regulatory oversight reports must align with Canada's commitments to implement UNDRIP and advance reconciliation and a Nation-to-Nation relationship with the Métis



Thank you

