



Oral presentation

Exposé oral

Written submission from the Ya'thi Néné Lands and Resources Office

Mémoire du Bureau des terres et des ressources de Ya'thi Néné

In the Matter of the

À l'égard de

Cameco Corporation, Beaverlodge Project

Cameco Corporation, le projet de Beaverlodge

Application for the Licence Revocation and Transfer of Properties to Saskatchewan Institutional Control Program

Demande de révocation de permis et de transfert de propriétés au programme de contrôle institutionnel de la Saskatchewan

Commission Public Hearing

Audience publique de la Commission

January 30, 2025

30 janvier 2025



**Written Submission from
Ya'thi Néné Lands and Resources (YNLR)
In the matter of:**

**Cameco Corporation's Request to Revoke the Current License and
Release the Remaining 27 Beaverlodge Project Properties to the
Institutional Control Program**



1.0 Introduction

The Beaverlodge mine and mill site and associated properties, located 8 km east of Uranium City, were operated by Eldorado Mining and Refining Ltd. (Eldorado) from 1952 to 1982. During the mining phase, most activity focused on the area north of Beaverlodge Lake where the Fay, Ace, and Verna shafts accessed the underground uranium ore body. Whereas most ore came from these areas, some ore originated from satellite mines that operated for shorter periods of time. Decommissioning of the mines and mill commenced at mine closure in 1982 and was completed in 1985 in which buildings were removed and mine openings were permanently sealed. The mill operated without an effluent treatment process from 1952 to 1977, resulting in a legacy of environmental contamination to the area that will persist for centuries. Many water bodies in the Beaverlodge region which rights-holders rely on for traditional purposes are subject to advisories, limitations, and moratoriums on fish and water consumption due to elevated levels of uranium and selenium.

In 1988, Eldorado merged with the Saskatchewan Mining Development Corporation to form Cameco Corporation, now the operator and licensee of the Beaverlodge Project. Initially comprised of 70 separate properties, the Beaverlodge Project exists in a state of post-decommissioning monitoring and maintenance since completion of its decommissioning. Of these 70 properties, all but 27 properties have been transferred to the Government of Saskatchewan's Institutional Control Program (ICP). Cameco's current Waste Facility Operating License for these remaining 27 properties expires in May 2025; Cameco has submitted an application for revocation of this license in preparation to transfer the remainder of the Beaverlodge properties to ICP, with a public hearing set before the CNSC Commission scheduled for January 2025. This is the subject of this document.



1.1 Ya'thi Néné Lands and Resources Office (YNLR)

The Ya'thi Néné Lands and Resources Office (YNLR) works to protect the lands and waters of the Athabasca Basin for the long-term benefits of its Denesų́łíné First Nations and Athabasca communities, guided by their knowledge, traditions, and ambitions. YNLR is 100% owned by Athabasca Basin communities and governed by an independent Board of Directors appointed by elected community leaders. YNLR currently operates five offices, in Saskatoon, Fond du Lac, Black Lake, Hatchet Lake, and Uranium City. In addition to many land- and resource-related initiatives, YNLR oversees, on behalf of the Basin communities, the implementation of the Collaboration Agreement, a partnership established in 2016 between the seven Athabasca Basin communities, Cameco, and Orano.

YNLR's members include:

- Beneficiaries of Treaty 8
 - Fond du Lac Denesų́łíné First Nation
 - Black Lake Denesų́łíné First Nation
- Beneficiary of Treaty 10
 - Hatchet Lake Denesų́łíné First Nation
- Non-Status Communities
 - Stony Rapids
 - Wollaston Lake
 - Uranium City
 - Camsell Portage

YNLR participates on all committees of the Collaboration Agreement that supports operation of Cameco and Orano's mines, mills, and exploration sites throughout portions of Nuhenéné (Traditional Territory of the Athabasca Denesų́łíné) in return for benefits to the communities.



Through the Collaboration Agreement, YNLR participates in the Athabasca Joint Environmental Subcommittee (AJES) alongside four community representatives and other observers. As a member of AJES, YNLR participates in quarterly meetings and various activities with Cameco and Orano, ranging from exploration to decommissioning.

While YNLR is not itself a rights-holding entity, YNLR represents communities which hold and exercise rights protected by section 35 of the *Constitution Act, 1982*. These communities have lived, relied on, and maintained a reciprocal relationship with Nuhenéné since time immemorial. The mining operations which have left some of the territory not suitable for traditional use were established without the consent of the original peoples of this land, and recent regulatory decisions to release those properties from licensing and regulatory oversight have been made despite YNLR's strong objections, and without meaningful engagement between the decision maker (CNSC) and YNLR.

The protection of YNLR members' treaty rights under Treaties 8 and 10 is central to the work that YNLR does, and particularly in our engagement with Cameco and with CNSC. As the Crown's decision maker for these release decisions, CNSC is required to act honourably towards the Aboriginal peoples who are the Crown's treaty promises. The Honour of the Crown is an important aspect of the Crown's (including CNSC's) duty to diligently implement the Treaty. As the Alberta Court of Appeal has explained, the promises of Treaty 8 were: "easy to fulfill initially but difficult to keep as time goes on and development increases."

1.2 Document Timeline and Submission

YNLR received notification that participant funding was available on 8 April 2024 for participation in this matter. YNLR applied for funding and received confirmation on 6 August of receipt of funding from the Participant Funding Program through the CNSC.



The deadline for the written submission was set at 10 December. YNLR requested an extension to 20 December and was granted an extension to 13 December.

After receiving and reviewing Commission Member Documents (CMD) 25-H3 and CMD 25-H3_1, submissions from CNSC and Cameco, respectively, YNLR is providing this written submission on behalf of its Directors and Members.

2.0 Concerns and Comments

2.1 History of Past Interventions

Beginning in 2019, YNLR has provided several written interventions and oral presentations at hearings regarding Cameco's Beaverlodge Project. Briefly, these were:

September 2019. Cameco requested the release of 20 Beaverlodge Properties from CNSC licensing and transfer to ICP. YNLR did not oppose the transfer of these properties as these areas were of less concern. Instead, YNLR's response (Appendix A) included requests for a longer review period of CMDs and formulation of a written response, engagement with all Athabasca Basin First Nations and communities concerning the Beaverlodge Properties and their current and future monitoring, a human health study investigating cancer rates and health issues related to the uranium mining industry, and remediation of legacy buildings in Uranium City that were constructed by the mining industry and later abandoned. At the time, CNSC did not meaningfully engage with our concerns, and no significant changes to CNSC procedure, engagement practices or monitoring were put in place as a result of YNLR's concerns. Since that time, however, YNLR and CNSC have established a Terms of Reference, and YNLR has actively participated in the Independent Environmental Monitoring Program (IEMP) across Nuhenéné.

February 2022. Cameco requested the release of 18 Beaverlodge Properties from CNSC licensing and transfer to ICP. In our submission (Appendix B), YNLR opposed the transfer of these properties to ICP and recommended that the Commission deny the application and proceed



with Duty to Consult and Accommodate with serious consideration of recommendations of accommodation measures. As well, YNLR requested that Cameco conduct a comprehensive traditional land use study, that funding be provided for YNLR to retain technical advisors to undertake peer-review of technical documents and that a process/venue be established to ask technical questions, a revision to the risk assessment of the Beaverlodge area, a comprehensive psychosocial impact study, and a comprehensive cumulative effects assessment. At the time, CNSC did not meaningfully consider how the release decision would contribute to cumulative effects and relied on its own unconstitutional policy (REGDOC 3.2.2) to assume, without actually having done a proper analysis, that the duty to consult and accommodate was not owed to YNLR members.

February 2023. Cameco requested a two-year extension to their license, from May 2023 to May 2025. YNLR (Appendix C) did not oppose this request but reiterated a request for a cumulative effects study and that the remaining properties are not released until this study is completed. YNLR also requested a review and modernization of the 2014 performance objectives and indicators and that the remaining properties be prohibited from release to ICP until this is completed. YNLR requested that the technical use of the terms ‘safe, stable, and improving’ to describe Beaverlodge properties be revised to prevent confusion with natural uses of these terms, and to provide opportunities for available funding for communities outside of regulatory cycles and timelines to allow for in-depth data collection and analysis. While CNSC largely disagreed with YNLR’s submissions in 2023, YNLR was pleased to note the CNSC’s acknowledgement that even when the Duty to Consult and Accommodate might not be triggered, “a strict legal interpretation of the extent of the duty need not constrain the Commission’s commitment to reconciliation.”¹ The Commission also addressed (for the first time in its records of decision), YNLR’s concerns that the performance objectives and indicators

¹ Record of Decision, 2023, para 76.



for Beaverlodge are inadequate. YNLR appreciated the Commission’s advice that “the adequacy of the performance criteria and indicators... is a matter for consideration at a future hearing for the release of the remaining Beaverlodge properties from licencing...”.² This is that hearing.

2.2 Review of Cameco’s Long-term Monitoring Plan for the Decommissioned Beaverlodge Mine Site

In preparation for the transfer of the remaining 27 Beaverlodge properties to ICP, Cameco has developed the *Long-term Monitoring Plan (LTMP) for the Decommissioned Beaverlodge Mine Site*, which YNLR received in March 2024. The intent of the LTMP is to provide a framework for monitoring the properties and downstream areas to ensure that the objectives for long-term management of the site continue to be met. Once the Beaverlodge properties are transferred to ICP, the monitoring plan will be passed to Saskatchewan’s Ministry of Energy and Resources (MER) for implementation at their discretion.

Cameco requested oral feedback from communities during meetings, but there was no formal opportunity or resource capacity to provide written feedback on the LTMP. YNLR staff met with Cameco on 27 March 2024 and requested the opportunity to provide written feedback, as YNLR believes this Plan is inadequate in its current state. YNLR’s written response to the LTMP was submitted to Cameco and the CNSC on 26 September 2024 (Appendix D). YNLR and Cameco met on 31 October to discuss YNLR’s concerns at which time Cameco indicated that they would provide a written response to YNLR’s concerns but would not revise the Plan itself. Cameco indicated to Garrett Schmidt, Executive Director for YNLR, in a verbal conversation shortly following that meeting that some revisions to the LTMP would be forthcoming. YNLR received Cameco’s written response to YNLR’s comments on 20 November, but as of this writing (13 December), YNLR has not received a revised version of the LTMP.

² Para 80.



The following briefly summarizes YNLR's concerns and recommendations with Cameco's *Long-term Monitoring Plan for the Decommissioned Beaverlodge Mine Site*; we refer the Commission to the original submission (Appendix D) for detailed information.

2.2.1 Community engagement and participation once properties are transferred to ICP. YNLR appreciates the community engagement by Cameco regarding development of the LTMP through various meetings (e.g., June 2023 in Saskatoon, September 2023 in Uranium City). Results of this past engagement are adequately described in the Plan, but direction and plans for proposed future engagement are absent from the LTMP. Once the Beaverlodge properties are transferred to ICP, the Plan will be implemented by MER at their discretion. As such, the LTMP needs to describe explicitly how communities will be engaged, informed, and involved in future monitoring. Without this provision, Athabasca Basin communities have no confidence about their participation in or knowledge of monitoring occurring on their Traditional Lands. It is also unclear as to what opportunities there will be for YNLR and Basin communities to conduct compliance reviews or undertake independent monitoring compared to the degree to which these opportunities are currently facilitated and funded under oversight by the Government of Canada (i.e., the CNSC). These matters should be clarified and committed to by MER and the ICP prior to any decision by the CNSC to transfer the remaining properties.

2.2.2 Requirement for background information and technical details, and justification for proposed monitoring plan. For Athabasca Basin community members to adequately assess and understand the Beaverlodge LTMP in a comprehensive manner to allow for informed engagement, the Plan requires extensive and detailed information that is not available in its current form. Without this information, residents are not able to understand the reasons for which advisories are in place and why monitoring is necessary, and so the objectives for long-term monitoring are elusive, unclear, and ill-defined. The Plan does not provide enough



evidence that the frequency, duration, and timing of the proposed sampling program is sufficient. No historical monitoring data or statistical analysis has been provided as evidence that what has been proposed is statistically rigorous such that the future custodian of the properties (whether Saskatchewan's ICP or the CNSC) will be able to properly detect changes in the environment that would make a difference to human and ecological health risk assessment.

2.3. Concerns Not Previously Addressed and Relevant to Current Intervention

2.3.1 Cumulative Effects. YNLR has called for a cumulative effects study in two prior interventions, and this has yet to be addressed. To date, CNSC has never meaningfully studied or substantively considered cumulative effects in the Athabasca Basin, the failure of which has led to substantial loss of use for YNLR members as the remediation of the Beaverlodge area has resulted in a permanently damaged baseline circumstance. Focusing only on the iterative added cumulative effects contributed by particular projects, rather than considering the totality of cumulative effects, *cumulatively*, defeats the entire purpose of a cumulative effects analysis. The courts have already dealt with this issue in particular reference to Treaty 8, which is one of the Treaties which the Commission must consider in this release application. The Alberta Court of Appeal explained that decision makers must not look at any one potential infringement or adverse impact to Treaty rights in isolation:

“the effects of any one ‘taking up’ of land will rarely, if ever, itself violate an Aboriginal group’s Treaty 8 right to hunt; **instead, the extinguishment of the right will be brought about through the *cumulative effects* of numerous developments over time.** In other words, no one project on [the First Nation’s] territory may prevent it from the meaningful right to hunt – however, if too much development is allowed to proceed,



then, taken together, the effect will be to preclude [the First Nation] from being able to exercise their treaty right.”³

In its recent decisions on Beaverlodge, including the 2022 release and 2023 renewal decisions, the Commission’s response to YNLR’s concerns about impacts to Treaty 8 and 10 rights has been ‘not now’. The Commission has decided that the duty to consult and accommodate is not triggered, and so there is no basis to consider these impacts and the infringements of aboriginal and treaty rights.

Yet the British Columbia Supreme Court, also considering rights under Treaty 8, warned against waiting for a consultation trigger when concerns about impacts and infringement to treaty rights are raised. To paraphrase that court, “The problem with the [Commission’s] emphasis in this case that consultation is the route to protect treaty rights, is that despite years of engagement, their processes have not resulted in a consequential way to assess the cumulative effects of development in the [Beaverlodge] area.”⁴

The law is clear that if there are “a lack of mechanisms” for the Crown to meet its duty of diligent implementation, the Crown is not permitted to simply stop trying or put its promises off for another day. “The Crown’s duty to ensure that its obligations are fulfilled requires that the Crown ‘seek to perform the obligation in a way that pursues the purpose behind the promise’ to avoid leaving Indigenous parties with an empty shell of a promise.”⁵ The duty of diligent

³ *Fort McKay First Nation v Prosper Petroleum Ltd* 2020 ABCA 163 at [para 79](#).

⁴ *Yahey v British Columbia* 2021 BCSC 1287 at para 1735.

⁵ *Ontario v Restoule* 2024 SCC 27 at para 258.



implementation and the honour of the Crown are not merely procedural promises – they require concrete action by the Crown.⁶

Here, even if the Duty to Consult and Accommodate is not triggered (which YNLR does not admit), CNSC must still, on behalf of the Crown, ensure that its decision diligently implements the Treaty 8 promise to protect the treaty beneficiaries’ “way of life”.⁷

This failure by the CNSC and Cameco to properly consider cumulative effects obscures impacts to the Aboriginal and Treaty rights of YNLR’s members. The Commission is not permitted to leave this issue for another day, or another decision maker. Allowing the release of the Beaverlodge properties will exacerbate the cumulative effects of development in Nuhenéné and contribute to the expanding infringement of YNLR members’ aboriginal and treaty rights by entrenching their alienation from a landscape which is not safe or secure for traditional use, despite CNSC’s erroneously labelled performance objectives.

Even if the Commission disagrees that it is required to consider impacts to the Aboriginal and Treaty 8 and 10 rights of YNLR members in making this decision, the Commission is nevertheless required to consider the “constitutional values”, including those which underpin s.35 of the *Constitution Act, 1982* in making its decision. Applying constitutional values to administrative decision-making is not new. The Supreme Court has explained that decision makers are required “to proportionally balance the Charter protections – values and rights – at stake in their decisions, with the relevant statutory mandate.”⁸ “Charter values” are “the values that underpin

⁶ *Restoule* at para 262.

⁷ *Yahey* at para 438, 1751, 1795.

⁸ *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at para 35 [“Loyola”], citing *Doré v Barreau du Québec* 2012 SCC 12 at para 55



each [Charter] right and give it meaning.” This requirement applies to the entire constitution, not only the Charter.⁹

The requirement that administrative decision makers (like the Commission) consider ‘constitutional values’ with specific attention to the honour of the Crown and Aboriginal interests is also consistent with the Supreme Court’s recent decisions in *Restoule* and *Quebec v Pekuakamiulnuatsh Takuhikan*,¹⁰ both of which found that the honour of the Crown imposes substantive obligations on decision makers to act to protect the rights promised in Treaty (amongst other things).

In the context of Section 35, the Commission needs to consider how its decision will affect the relationship between the Crown and Aboriginal peoples: ‘How does my decision advance or hinder the project of reconciliation? How does it uphold or undermine the Honour of the Crown?’ Only then can the decision maker honestly balance those values with other considerations in the wider administrative regime to which it is accountable. A decision which has not accounted for, or which does not adequately balance, s.35 values, would be unreasonable.¹¹

2.3.2 Engagement, Consultation, and Reporting. YNLR is deeply concerned about future engagement, consultation, information sharing, and community involvement in monitoring once all the Beaverlodge properties are transferred to ICP.

Many Beaverlodge properties were transferred to ICP in years prior and as such, have been monitored by MER under the ICP. Although some inspection results are available online, in

⁹ *Law Society of British Columbia v Trinity Western University* 2018 SCC 32 at para 41.

¹⁰ 2024 SCC 39.

¹¹ *Trinity Western University* at para 41.



YNLR's experience, results have not been meaningfully communicated to the affected communities. YNLR provided a letter to MER about the ICP on 11 August 2023 in which our concerns were stated, one of which pertained to how results from inspections are shared with community members. Briefly, other concerns stated in that same correspondence to MER involved the amount of funding calculated and collected for sites entering the ICP, procurement for site inspection work, and transparency and accountability of the ICP. As of this writing (16 months later), this letter has remained unanswered.

YNLR has significant concerns that MER and the ICP are not capable of maintaining institutional control over the Beaverlodge sites effectively, and to the expected standard. In past release hearings, the Commission has largely taken MER at its word that it is ready to accept the transfer of released properties, without inquiring deeper as to its capacity to handle those responsibilities. As described above, real-world experience has shown that it is not performing as expected or required. YNLR recommends that until the Commission is shown evidence that MER is meeting its long-term management, monitoring, and communication obligations on a regular basis, this release application should be denied and no further Beaverlodge properties should be released to ICP.

Cameco has held meetings about the Beaverlodge Project in Uranium City in recent years (e.g., September 2023 and May 2024). However, few Fond du Lac residents have attended those meetings, and to YNLR's knowledge, been invited. To our knowledge, no meetings concerning Beaverlodge have been held recently in Fond du Lac, yet Fond du Lac is the most affected rights-bearing community. There is limited understanding about details of remediation of the Beaverlodge Properties; the suspicion is that all materials were simply buried and remediation was unsatisfactory.



2.3.3 Language Describing Conditions of Properties. YNLR recognizes that CNSC and Cameco use the terms safe, secure, and stable/improving as Performance Objectives concerning the Beaverlodge Properties; the technical terms of safe and secure refers to the land, and stable/improving refers to water quality. From the perspectives of community members, and with the benefit of their Indigenous Knowledge, however, these terms have vastly different natural meanings, leading to confusion about environmental conditions of the Beaverlodge Properties.

YNLR has significant concerns with decommissioned Beaverlodge properties deemed as “safe and secure” given that advisories on fish and water consumption exist in many parts of Nuhenéné surrounding Beaverlodge. Any limitation on consumption of country foods is absolutely not an indication of “safe and secure”, despite the intended usage of these technical terms. This issue is an example of how the failure by Cameco and CNSC to incorporate Indigenous Knowledge into the performance objectives and indicators results in inaccurate and inadequate outcomes. A safe and secure environment is one which is “safe and secure” for residents, traditional harvesters, and people who rely on the environment for sustenance and cultural purposes. Properties cannot be ‘safe and secure’ for traditional use if they are only safe for visitors driving through the property or visiting intermittently for casual recreational use. A definition of safe and secure which excludes the people who live, and have lived, in the area since time immemorial is inconsistent with the honour of the crown.

YNLR notes that the CNSC acknowledged this issue throughout the 2022 and 2023 ROR meetings and is working to eliminate the use of the term “safe” in their presentations. As the regulator of uranium mines and mills, we encourage the CNSC to adopt technical language that better reflects natural terms used by Basin communities, thereby ensuring its use by licensees such as Cameco as well.



3.0 Closing Remarks

We appreciate the progress and collaboration between YNLR and CNSC staff to date. This includes, but is not limited to: our Terms of Reference and associated regular meetings, work plans, and communications; YNLR involvement in many components of the IEMP including the opportunity to deliver a joint presentation at a scientific conference; and securement of two Indigenous Stakeholder and Capacity Funds (ISCF) to (1) support nuclear-related files and to coordinate and participate in CNSC activities, and (2) initiate the development of a resource useful to traditional land users in the Uranium City region. These initiatives have contributed to improved relationships and engagement with the Basin communities.

YNLR has submitted three interventions regarding the Beaverlodge Project, and many of our concerns have yet to be addressed, including cumulative effects, engagement, consultation, and reporting, use of technical language posing as natural language to describe properties. As such, YNLR and the Athabasca Basin communities strongly oppose revocation of Cameco's license and transfer for the remaining 27 properties to Saskatchewan's ICP. Until these concerns are adequately addressed, we advocate that the Beaverlodge Project should remain under federal oversight.



4.0 List of Appendixes

Appendix A: Written Submission from the Ya'thi Néné Land and Resource Office in the Matter of the License Amendment for Cameco Corporation's Request of 20 Beaverlodge Properties from Requiring Licensing under the Nuclear Safety Control Act (September 2019)

Appendix B: Ya'thi Néné Land and Resource Office Intervention in the Matter of the Cameco Corporation, Beaverlodge Project: Application to amend its license to allow release of 18 Beaverlodge Project properties from CNSC Licensing (February 2022)

Appendix C: Ya'thi Néné Lands and Resources Intervention in the matter of the Cameco Corporation Beaverlodge Project: Request to renew its Waste Facility Operating License (February 2023)

Appendix D: Ya'thi Néné Lands and Resources' Response to Cameco Corporation's Long-term Monitoring Program for the Decommissioned Beaverlodge Mine Site (September 2024)

Appendix E: letter to the Government of Saskatchewan's Ministry of Energy and Resources regarding Institutional Control Program – 5-year review of the Reclaimed Industrial Sites Act and Regs

Appendix A

Written Submission from the Ya'thi Néné Land and Resource Office in the Matter of the License Amendment for Cameco Corporation's Request of 20 Beaverlodge Properties from Requiring Licensing under the Nuclear Safety Control Act (September 2019)

**Written Submission from
Ya'thi Néné Land and Resource Office
In the Matter of the;**

A License Amendment

**Cameco Corporation's Request of 20 Beaverlodge Properties
from Requiring Licensing under the Nuclear Safety Control Act**



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Executive Summary

Cameco has submitted closure reports requesting the release of 20 properties at the Beaverlodge site from CNSC licensing. Cameco has requested its properties, or portions of the properties, be transferred to the Institutional Control Program (ICP). CNSC staff performed a technical review and evaluation of Cameco's request, and supports the request to release properties at the Beaverlodge site. All properties meet the applicable performance indicators and regulatory acceptance criteria.

Ya'thi Néné Land and Resource Office completed a technical and legal review of Cameco's request. Ya'thi Néné also conducted engagement sessions with leadership from Uranium City, Camsell Portage, Wollaston Lake, and Stony Rapids and the Chiefs from Fond du Lac, Hatchet Lake, and Black Lake. Ya'thi Néné agrees with the request to release the 20 properties from the CNSC licence and amend the Waste Facility Operating License - WFOL-W5-2120.0/2023. Ya'thi Néné has the following five recommendations.

Recommendations:

1. Provide more than a 30-day period for the submission review from when the CMD is issued to when intervenors have to submit.
2. All First Nations and communities of the Athabasca Basin are to be included in discussion and consultation concerning the properties at Beaverlodge.
3. Keep all Athabasca Basin communities informed of future monitoring results from sites transferred to the ICP.
4. Conduct a human health study on the rates of cancer and health issues related to the mining industry in the Athabasca Basin.
5. Remediate the legacy buildings in Uranium City that were constructed and abandoned by Eldorado Nuclear Limited, now Canada Eldor Inc. (under the federal Crown).

1.0 Introduction

1.1 Beaverlodge Properties

Cameco Corporation (Cameco) has submitted closure reports requesting the release of properties at the Beaverlodge site from the Canadian Nuclear Safety Commission (CNSC) Licensing. Cameco has requested the removal of 20 property sites from the Waste Facility Operating Licence, WFOL-W5-2120.0/2023. Cameco has requested that 19 of the 20 properties, or portions of, be transferred to the Saskatchewan Institutional Control Program (ICP). One of the properties meets clearance levels and therefore, does not require any long-term monitoring or regulatory oversight. This property will not be placed into the ICP. CNSC staff have confirmed that this property poses no risk to the environment or public as a result of its past usage.

If these properties enter the program, the Government of Saskatchewan will manage any monitoring and maintenance and respond to any unforeseen events. Staff from both the CNSC and the Government of Saskatchewan have confirmed the performance objectives and criteria established for the 20 Beaverlodge properties have been achieved. According to the CNSC through their review, the sites are safe now and will remain so in the long-term under the ICP. All properties meet the applicable performance indicators and regulatory acceptance criteria.

1.2 Ya'thi Néné Land and Resource Office

The Ya'thi Néné Land and Resource Office (Ya'thi Néné) works to enhance the environmental, social, cultural, and economic health and well-being of the Black Lake, Fond du Lac, and Hatchet Lake Denesuline First Nations and the municipalities of Camsell Portage, Uranium City, Wollaston Lake, and Stony Rapids. Ya'thi Néné has an independent board of directors that are elected by the community leaders. Ya'thi Néné is tasked with overseeing the implementation of the collaboration agreement with Cameco and Orano on behalf of the seven Athabasca Basin communities. Ya'thi Néné also works on other sustainable development initiatives in the region, focusing on environmental management and socio-economic development.

1.3 Document Timeline

Ya'thi Néné received confirmation on July 22nd, 2019 that they would receive funding from the Participant Funding Program Contribution Agreement through the CNSC. Following this, the Commission Member Documents were sent on August 6th, 2019. Ya'thi Néné scheduled both a phone meeting and in person engagement sessions with the community leaders to provide a summary of the CMD's and allow for questions and concerns to be voiced. Any questions from the meetings and review were then sent to CNSC and a conference call was scheduled with Ya'thi Néné and Cameco by the CNSC. During this call, questions that were identified through our technical review were addressed. The CNSC provided Ya'thi Néné with additional studies, reports and data to review.

The original deadline for submission intervention was September 3rd, 2019 which provided less than a month to be able to complete both a technical and legal review of the documents, along with conducting community engagement through the elected leaders. Ya'thi Néné was granted a three-day extension till September 6th, 2019 to accommodate for a meeting with leadership on September 4th and 5th, 2019. The timeframe allotted did not provide an adequate amount of time to collaborate and engage with all stakeholders involved. Ya'thi Néné is fortunate to have leveraged the CNSC Leadership meetings in Prince Albert on September 5th, 2019 to have collected additional insights from leadership.

1.4 Document Submission

Ya'thi Nene is providing this submission on the behalf of its member communities. A technical and legal review of Cameco's request for property release and license amendment was completed. Ya'thi Néné also conducted engagement sessions with leadership from the seven Athabasca Basin communities.

2.0 Community Engagement

Ya'thi Néné consulted with community leaders from the seven Athabasca Basin communities on two occasions between August 14th, 2019 to September 5th, 2019. Community leaders were provided with a summary of the CMD document from Ya'thi Néné staff as well as Cameco. During the discussion, there were common concerns that were raised.

2.1 Limited Consultation

Some community leaders voiced their concern that not all were provided with information concerning the Beaverlodge properties prior to the submission report, while other community leaders identified that they have been very well informed of the project. Specifically, Fond du Lac feels they have not been involved or consulted enough. This is specific to the remediation activities that are occurring on their traditional lands. Moving forward, it is recommended that all concerned communities be consulted on activities on the land.

2.2 Health Concerns

The concern of health risks, due to the surrounding environment, was another issue that was voiced during the engagement sessions. Some leaders shared their concern that members of their communities are at risk due to exposure from the mining and mill properties. To address these concerns, a scheduled meeting on health status reporting in northern Saskatchewan occurred prior to submission of this document. Following this meeting, leaders stated that an independent and up to date health study needs to be conducted on cancer rates and health issues within the Athabasca region concerning the mining industry.

2.3 Legacy Buildings

Community concerns about the legacy buildings that still exist in Uranium City today that were constructed by Eldorado Nuclear Limited were mentioned during discussions. Community leaders have stated that the buildings are a public health risk and need to be remediated. These buildings were constructed in Uranium City, as part of the support for the Beaverlodge mine and mill. The remediation of these buildings is now the responsibility of Canada Eldor Inc. (formerly Eldorado Nuclear Limited), a subsidiary of the federal Crown, to remediate.

3.0 Environmental Technical Review

The 20 decommissioned properties proposed for release from the CNSC licensing, consist of properties that required little to no remediation once operations at Beaverlodge ended in 1982. Of the 20 properties, property EXC 2 meets clearance levels and does not require any long-term monitoring or regulatory oversight and will not be transferred into ICP.

After review, Ya'thi Néné confirms that the 19 decommissioned properties meet all established performance objectives and pose minimal risk to public safety or the environment. Staff from both the CNSC and the Government of Saskatchewan have confirmed the performance objectives and criteria established for these Beaverlodge properties have been achieved. The sites are reported to be safe by the CNSC and will remain so in the long term under the ICP.

It should be mentioned, that there was significant concern from community leaders about the environmental impacts and the plan for the remaining 45 properties at Beaverlodge that are up for review in 2023 when the current license will be up for renewal.

4.0 Legal Review

The legal review examined the regulations during mining and decommissioning, as well the process of the transfer of the properties to ICP. These actions were also evaluated in ordinance with the Nuclear Safety and Control Act through the CNSC. The most obvious implication of the transfer noted in the legal review is that monitoring and maintenance, will no longer be the responsibility of Cameco, but will be the responsibility of the provincial government. This also includes the frequency of monitoring to move from once a year to a schedule of inspections in 2024, 2029, 2039, 2049, 2059, 2069, 2079, 2094, and every 25 years after 2094. Under this schedule, there will be no compliance reviews or independent environmental monitoring programs required through the CNSC. Ya'thi Néné expects that the provincial government will keep Ya'thi Néné and all Athabasca Basin communities informed of future monitoring results.

5.0 Duty to Consult

In order to fully exercise the crown's obligation for duty to consult and accommodate, all seven Athabasca Basin communities need to be consulted, and their concerns addressed regarding all

properties at Beaverlodge. This includes not only the 19 properties being transferred to ICP, but the remaining 45 properties under the WFOL-W5-2120.0/2023 license.

To ensure that the seven Athabasca Basin communities maintain confidence in this transfer and license renewal process, all communities need to be informed, consulted and their concerns addressed.

6.0 Recommendations

Ya'thi Néné recommends that the Commission accept Cameco's request to amend the Waste Facility Operating License - WFOL-W5-2120.0/2023 to allow for the removal of 20 properties at the Beaverlodge Project, 19 of which will be placed under the ICP. The acceptance of this amendment is based on the following five recommendations:

1. Provide more than a 30-day period for the submission review from when the CMD is issued to when intervenors have to submit.
2. All First Nations and communities of the Athabasca Basin are to be included in discussion and consultation concerning the properties at Beaverlodge.
3. Keep all Athabasca Basin communities informed of future monitoring results from sites transferred to the ICP.
4. Conduct a human health study on the rates of cancer and health issues related to the mining industry in the Athabasca Basin.
5. Remediate the legacy buildings in Uranium City that were constructed and abandoned by Eldorado Nuclear Limited, now Canada Eldor Inc. (under the federal Crown).

7.0 Closing Remarks

Ya'thi Néné has been pleased with the level of communication between the CNSC, Cameco and our office. We appreciate the opportunity to participate in these important processes. However, all communities and community members within the Athabasca Basin need to be better consulted and their concerns addressed regarding activities in their traditional territory.

Appendix B

Ya'thi Néné Land and Resource Office Intervention in the Matter of the Cameco Corporation,
Beaverlodge Project: Application to amend its license to allow release of 18 Beaverlodge Project
properties from CNSC Licensing (February 2022)

YA'THI NÉNÉ LAND AND RESOURCE OFFICE INTERVENTION

*In the Matter of the Cameco Corporation, Beaverlodge Project:
Application to amend its license to allow release of 18 Beaverlodge
Project properties from CNSC Licensing*



February 22nd, 2022

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1.0 Introduction

The Ya'thi Néné Land and Resource Office (YNLR) has a participant funding agreement with the Canadian Nuclear Safety Commission (CNSC) to provide an intervention related to Cameco Corporation's ("**Cameco**") application to amend its Beaverlodge license to release 18 Beaverlodge properties from licensing (the "**Application**").

Cameco has requested the release of 18 of the remaining 45 properties to be removed from their current Waste Facility Operating License (WFOL-W5-2120.1/2023). The release of the 18 Beaverlodge properties means that the properties will no longer be subject to Cameco's license or the regulatory oversight of the CNSC. These 18 sites would, if released, be subject only to the Saskatchewan Government's Institutional Control Program (ICP).

The Government of Saskatchewan's ICP is said to have been established in accordance with Canada's international obligations and is meant to ensure that any risks to the environment and the health and safety of persons will be managed in the future. Limited information has been provided to the CNSC (or YNLR) to confirm the Government of Saskatchewan's ability to meet those obligations.

CNSC staff completed their technical review and evaluation of Cameco's request and agree that the properties meet the regulatory criteria for consideration by the Commission to release the properties from the CNSC licence. CNSC staff reached that conclusion without substantively consulting with YNLR or YNLR's members, and without having fulfilled the Duty to Consult and Accommodate.

For both Cameco and CNSC staff, the so-called 'safety' of the sites proposed for release has been determined on the basis of questionable and flawed data, which substantive and meaningful two-way dialogue with YNLR and its members would have been able to correct.

At the same time that Cameco and CNSC staff are telling the Commission that these properties are safe, YNLR members are being told that those same properties cannot be safely used for the exercise of their Aboriginal and Treaty rights. That inconsistency cannot be reconciled on the basis of the information currently available to the commission.

More must be done by Cameco prior to the sites being released from federal licensing, to ensure that impacts to Aboriginal and Treaty rights are properly accommodated.

Both substantively and procedurally Cameco and CNSC staff have not yet done the work needed to consult with YNLR's members, address the concerns of YNLR and its members, and ensure that Aboriginal and treaty rights will not be impacted by the release decision. The Commission must also consider the impacts to rights caused by rational precautionary avoidance behaviour motivated by the legacy of contamination, contemporary consumption warnings, and other factors which have caused psychosocial impacts to rights. These impacts will not be mitigated without concerted effort and engagement by Cameco and CNSC. While YNLR members continue to use the sites on an ongoing basis in spite of the dangers and fears, it

is reasonable to assume that this baseline use and occupancy would be much higher in the absence of those psychosocial impacts. CNSC must take steps to ensure those impacts are addressed.

The purpose of this intervention is to provide information and context of the Athabasca Denesų́liné and Basin Residents' understanding of the transfer and land use in and around the 18 properties within Nuhenéné (the traditional territory of the Athabasca Denesų́liné).

YNLR urges the Commission to:

- Deny Cameco's application to release the 18 properties from licensing; or
- In the alternative, defer a decision on Cameco's application for not less than 12 months, to allow for the proper fulfillment of the Duty to Consult and Accommodate.

1.1 Document Timeline and Submission

YNLR was first formally made aware of Cameco's Application on August 5, 2021, through a form letter sent by CNSC staff. This was followed by further form letters on which YNLR was blind-copied, sent by CNSC staff on August 11th and August 17th, 2021. YNLR submitted its application for funding to intervene in the application immediately after having been notified, but was not provided with confirmation of funding until November 25, 2021.

YNLR signed its counterpart of a funding agreement on November 25, 2021. CNSC staff did not return a fully executed agreement until December 16th, 2021.

YNLR received Commission Member Documents (CMD) submitted by CNSC Staff and Cameco on December 9, 2021. Despite having submitted and distributed their recommendations, CNSC Staff had still not had a single substantive meeting with YNLR about the content of the Application, nor had it fulfilled (or even begun fulfillment of) the Duty to Consult and Accommodate.

Once YNLR received the Cameco and CNSC CMDs, YNLR undertook the following tasks:

- Conducted a desktop analysis of the 18 properties and the surrounding area;
- Began a technical review of the CMDs;
- Participated in a joint virtual meeting with the elected leaders from the seven communities in Nuhenéné, YNLR Board of Directors, Athabasca Land Protection Committee (ALPC), YNLR Community Land Technicians, and representatives from the CNSC on January 13th, 2022;
- Received and reviewed answers provided by CNSC Staff to comments and concerns raised at the joint virtual meeting;

- Conducted traditional knowledge interviews in Fond du Lac Denesų́liné First Nation and Uranium City; and,
- Conducted a legal review.

YNLR is providing this submission on behalf of its member communities. The deadline for submission was extended for YNLR to February 22, 2022.

1.2 Limitations

YNLR prepared this intervention with very limited time and resources, and despite not having the benefit of meaningful, two-way dialogue with either CNSC Staff or Cameco. This intervention is intended to provide the Commission with a survey of key issues relevant to the Application. A full analysis of those issues will require additional time and resources.

1.2.1 Limited Analysis

YNLR Staff and consultants have engaged in as much analysis as has been possible in light of the limited time and resources available. The CNSC and Cameco CMDs including both included and non-included reference documents, contain hundreds of pages of highly technical material. YNLR only received the CMDs on December 9th, 2021 and taking into consideration the intervening holidays, had very limited time to review and analyze those documents.¹

In this submission, we have attempted to provide our critical analysis where possible, and where not possible, we have identified outstanding questions, information gaps, and preliminary areas of concern which YNLR submits should lead the Commission to reject, or defer, Cameco's application. In reviewing these submissions, YNLR reminds the Commission that they do not represent a complete and comprehensive discussion of YNLR's comments and concerns, and **an absence of analysis, documented concern or discussion, should not be taken to indicate that YNLR *has* no concerns on that issue.**

1.2.2 Consideration of Traditional Knowledge

Shortly before the submission deadline for this intervention, YNLR staff were advised of the existence of particular traditional Denesų́liné knowledge relevant to this Application. The Denesų́liné knowledge in question is in the form of a variable narrative describing the origin of Beaverlodge and the surrounding areas. This knowledge contains important social, cultural and legal principles and rules which have guided and governed Denesų́liné use and occupancy of the Beaverlodge area since time immemorial.

YNLR intends to immediately secure funding to properly collect the Denesų́liné knowledge on which the narrative relies, and analyze it using the ILRU Narrative Analysis Method, an accepted

¹ YNLR understands that CNSC Staff received Cameco's application in January 2021. CNSC has not explained why the application could not have been shared with YNLR at or around that time, given YNLR's long-standing and well-known interest in Beaverlodge.

means of subjecting Indigenous Knowledge to legal analysis for use in proceedings such as this one.²

Collecting the relevant Denesų́in  knowledge and analyzing it in culturally safe, respectful and reliable ways will take time. When completed, the results will provide invaluable context for the CNSC’s decision-making.

In the absence of that Denesų́in  knowledge, and the analysis of it, any decision made by CNSC on the Application will be missing a key piece of evidence.

1.2.3 Source Documents Unavailable

As late as the week prior to YNLR’s extended submission deadline, YNLR staff were becoming aware of additional documents on which Cameco and CNSC Staff were relying. This failure by Cameco and CNSC staff to comprehensively disclose the relevant documents on which the Application is based, has made a rigorous review of the evidence impossible, and has hampered YNLR’s ability to respond in detail to all of the issues.

For example, the Beaverlodge Hab Area Evaluation Technical Memorandum, on which Cameco and CNSC rely, was only provided to YNLR following a specific request, and key pieces of information were redacted.³

In reviewing the materials, YNLR became aware of the significance of a study produced in 2014 for Cameco purporting to describe traditional land use in the Beaverlodge area by certain YNLR members. Both Cameco and CNSC staff rely on this study. YNLR was only provided with a copy of this study 24 hours prior to the submission deadline for this intervention and so is not able to substantively address its findings, however, based on contextual discussion in the CMDs and a preliminary review of the study, some concerns about the study are discussed in section 3.3.

1.2.4 Insufficient Resources for Necessary Studies

Since 2002, YNLR and its members have collected traditional land use data in collaboration with various proponents, regulators and other partners. Each of those instances of data collection have been relatively focused on particular projects. YNLR has never been provided resources to conduct a comprehensive traditional land use and occupancy study of Nuhen n  as a whole, or the Beaverlodge area in particular.

In the course of various projects, YNLR has developed a rolling database of traditional land use data for its members. This database and the data it contains is far from complete **and an absence of data does not indicate an absence of value**. The data collected is limited by:

² See e.g. Hadley Friedland and Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions.” (2015) 1(1) Lakehead Law Journal 33.

³ We note that the document provided by the CNSC Registry following our request was not properly redacted, but rather editable black digital highlighter was applied. YNLR has viewed the unredacted version, and discusses it further in section 3.4 of this intervention.

- The particular knowledge of the interview subjects;
- The amount of funding provided for any particular project, which limits the number of interviews that can be conducted;
- The focus of project-specific traditional land use studies on particular, geographically-limited areas.

When considering analysis of traditional land use in these submissions, or the traditional land use maps accompanying these submissions, the Commission should consider that data as a sample, and a snapshot, and not a comprehensive or complete list of all value and use.

In addition to the need to conduct further traditional land use studies, YNLR has identified two additional sources of adverse impacts on Aboriginal and Treaty rights that require further study in order to address. They are:

- **Psychological, social and cultural impacts.** Often referred to (in part) as ‘fear and stigma’, these impacts disincentivize and at their worst, prevent YNLR members from exercising rights in affected areas. A Psychosocial Impact Assessment must be conducted in order for the Commission to have a proper understanding of how its decision might adversely impact YNLR members’ aboriginal and treaty rights, and how to mitigate those impacts.
- **Cumulative Effects.** Nuhenéné has faced substantial industrialization since the early 20th century, and YNLR members have been left with a steadily shrinking usable area for the exercise of Aboriginal and Treaty rights. Properly characterizing and understanding how the cumulative impacts of development, including the iterative contribution to cumulative impacts of Cameco’s Application for release, have affected aboriginal and treaty rights, is crucial to having a complete picture of the impacts of the Application.

2.0 Background of Nuhenéné

YNLR works to protect the lands and waters of Nuhenéné for the long-term benefits of its member Denesųłiné First Nations and Athabasca communities, guided by their knowledge, traditions, and ambitions, while being a respected partner in relations with industries, governments, and organizations who seek to develop the Athabasca Basin’s resources. YNLR has an independent board of directors which is appointed by the elected community leaders and operates five offices in Saskatchewan (Saskatoon, Fond du Lac, Black Lake, Hatchet Lake, and Uranium City).

The organization is mandated by the Hatchet Lake, Black Lake, and Fond du Lac Denesųłiné First Nations, as well as the municipalities of Wollaston Lake, Stony Rapids, Camsell Portage, and Uranium City to act as the initial point of contact for Consultation and Engagement from

Government and Proponents. YNLR works to protect the land and promote the interests of the people in Nuhenéné.

The First Nation members of YNLR are all signatories to treaties with the Crown.⁴ A significant majority of the residents of the municipalities represented by YNLR are also Aboriginal persons,⁵ with Aboriginal and/or Treaty rights protected by section 35 of the *Constitution Act, 1982*.

References in this intervention to “the aboriginal and treaty rights of YNLR members”, refers to the aboriginal and/or treaty rights, as the case may be, held by the First Nations, and/or exercised by the Aboriginal persons resident in the municipalities, as the case may be.

YNLR provides support for the implementation of the Collaboration Agreement (“CA”) with Cameco and Orano on behalf of the seven Athabasca Basin communities among other land and resource related initiatives. YNLR participates as either a member or observer on several committees established through the CA including the Joint Implementation Committee (JIC), Business Advisory Committee (BAC) and the Athabasca Joint Environmental Subcommittee (AJES). Community representatives are also appointed to each respective committee. As a member of AJES, YNLR participates in quarterly meetings and various activities throughout the year from exploration to decommissioning with respect to Cameco and Orano sites. The operation of these committees is currently under review through a 5-year review process under the CA. **It should be noted that the Beaverlodge properties do not fall under Cameco’s respective properties designated within the CA.**

3.0 Rights, Values, and Interests of Ya’thi Néné members in Nuhenéné

3.1 Overview of Known Historical Land Resource Use

Since the 1970s, over 500 Denesų́nė have participated in traditional knowledge, oral history, and land use and occupancy studies that recorded their lives, history, and resource use (e.g. Holland 2001; Elias 2003; Usher 1990 and 2003). This area is synonymous with the range of the Beverly and Qamanirjuaq caribou herds (see Figure 1).

The Denesų́nė of Nuhenéné historically used and occupied the lands, waters and resources throughout the Athabasca Basin. While caribou have always been especially important, the Denesų́nė also hunted and trapped moose, wolf, mink, ptarmigan, spruce hens or wild chicken, ruffed grouse, martin, fisher, beaver, black bear, muskrat, lynx and rabbit to name a few, fished for lake trout, whitefish, pickerel, northern pike, suckers, grayling, burbot among other species and gathered medicinal and food plants including rat root, labrador tea, willow,

⁴ Fond du Lac and Black Lake Denesų́nė First Nations are both signatories to Treaty 8. Hatchet Lake Denesų́nė First Nation is a signatory to Treaty 10.

⁵ According to the 2016 census, 89.5% of Wollaston Lake residents, 78% of Stony Rapids residents, and 60% of Uranium City residents are Aboriginal. Data for Camsell Portage is not available.

juniper, spruce gum, chaga, mushrooms, wild onions, cat tails, dandelion root, wild rose, fireweed, wild strawberries, and other various berries (blueberry, raspberry, cranberry). In undertaking those uses of the lands and waters of Nuhenéné, the Denesų́liné built cabins and camps, identified particular areas of cultural and spiritual importance and passed language and culture on through generations. The lands and waters of Nuhenéné are not simply ‘the place they lived’, they are an essential part of the identity of the Denesų́liné.

As noted above, the information described in this section is not a complete description of Athabasca Denesų́liné land use, and this is especially true as one nears the boundaries of the territory. It reflects the uses and values of the individuals who participated in these studies and are a sample of the actual land use of the Athabasca Denesų́liné.

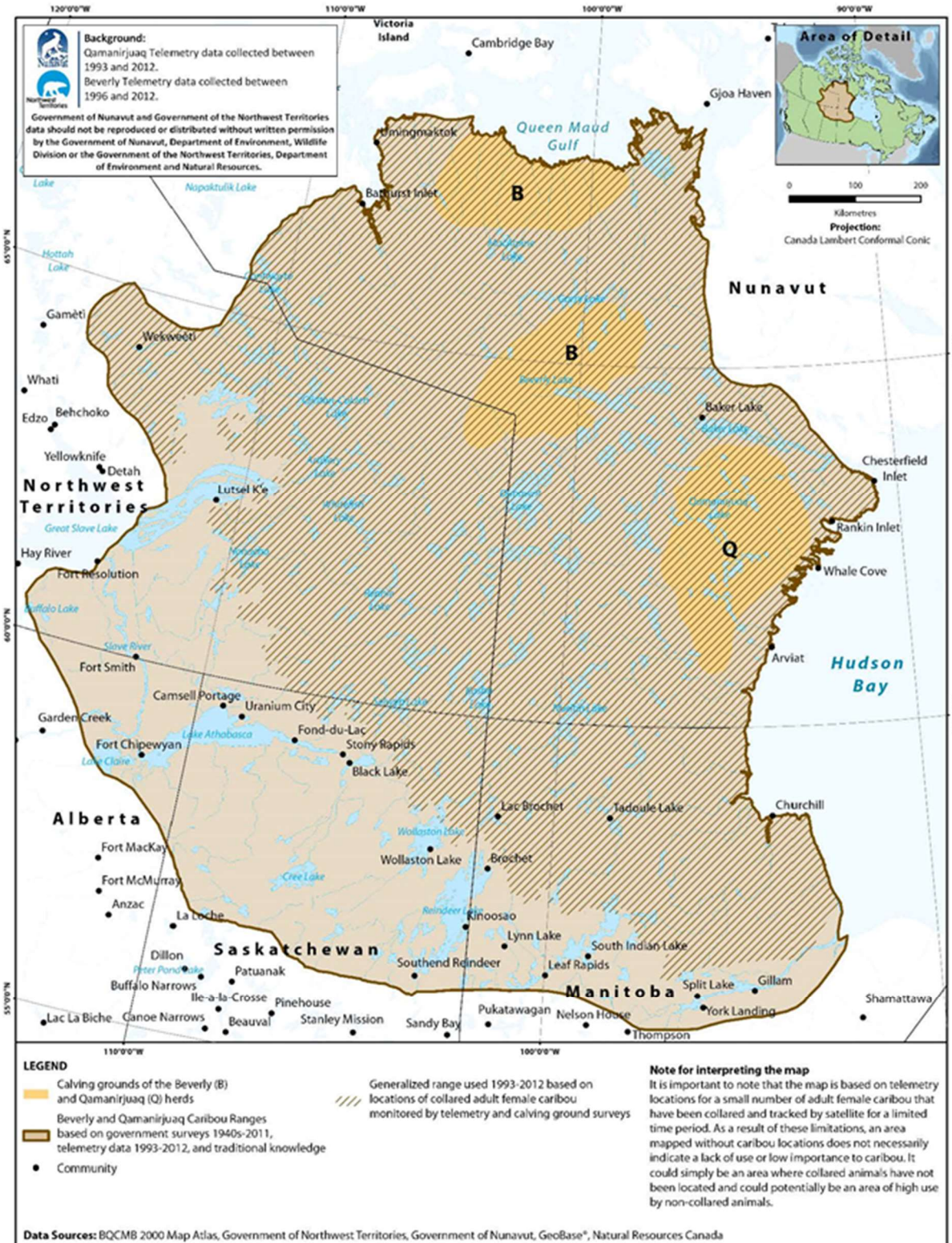


FIGURE 1 - BEVERLY AND QAMANIRJUAQ CARIBOU RANGES BASED ON GOVERNMENT SURVEYS, TRACKING COLLARED COWS BY TELEMETRY AND TRADITIONAL AND LOCAL KNOWLEDGE OF CARIBOU HARVESTERS (BQCMB, 2000).

3.2 Overview of Contemporary Land and Resource Use

YNLR holds datasets of existing land use information for portions of Nuhenéné within Saskatchewan on behalf of the Athabasca Denesų́nė́. The database summarizes the traditional land use and occupancy from various studies dating back to 2002. The studies show the extensive pattern of known travel routes, burial sites, and overnight sites around which hunting, fishing, trapping, gathering, and cultural activities occur.

This database has over 50,000 points of information for Nuhenéné within the province. This information was provided by more than 500 community members. It is important to note that this is not a complete description of Athabasca Denesų́nė́ land use, but it reflects the uses and values of the individuals who participated. Naturally, the traditional land use that Basin residents have shared is just a sample of the actual land use of the Athabasca Denesų́nė́.

When considering contemporary land and resource use by YNLR members, it is crucial to keep in mind that alienation from the land caused by industrial development, and the psychological, cultural and social impacts of uranium mining, including fear and stigma, are significant obstacles, and real impacts, which prevent YNLR members from fully accessing the area. Thus, depictions and descriptions of contemporary land use shows only that land use which has persisted through significant ongoing impact. For YNLR and its members, the goal of restoring land use and occupancy to pre-project levels must be the lens through which these matters are assessed.

YNLR staff used GIS software to display data from its existing TLU database over the 18 properties proposed for release by Cameco. That map within a local study context, is shown at Figure 2.

Despite the limitations described elsewhere in this submission, YNLR members report hunting and trapping, gathering, overnight sites, and fishing locations both within the footprint of the 18 properties, and within 250 metre buffers placed around each site. We note that the use of 250m buffers is consistent with the ‘zone of influence’ approach which is “routinely used by government and other experts in measuring and analysing the impacts of anthropogenic disturbance beyond their immediate footprints.”⁶ Although we have applied 250m zones of influence in Figure 2, 500m zones of influence are also used in some circumstances. Given time and resource restrictions, we do not address the benefits and drawbacks of the two approaches in this submission.

Figure 2 demonstrates that despite continued heavy impacts, and the ongoing fear and stigma which continues to disincentivize the use and occupation of the area, Beaverlodge remains an important focal point for traditional land use which, with additional monitoring and remediation, could be improved even further.

That map also shows that YNLR members are at heightened risk of impacts from properties which have not been properly remediated, and remain unsafe for human use. As will be addressed below, Cameco and CNSC staff rely on flawed assumptions to declare the properties safe. Individuals staying overnight near Beaverlodge Lake, fishing in Ace Lake, and trapping

⁶ *Yahey v British Columbia* [2021 BCSC 1287](#) at para [1049](#).

throughout the affected areas, are not protected by Cameco’s unconscionably low assumptions of fish and water consumption, and duration of stay in the area.

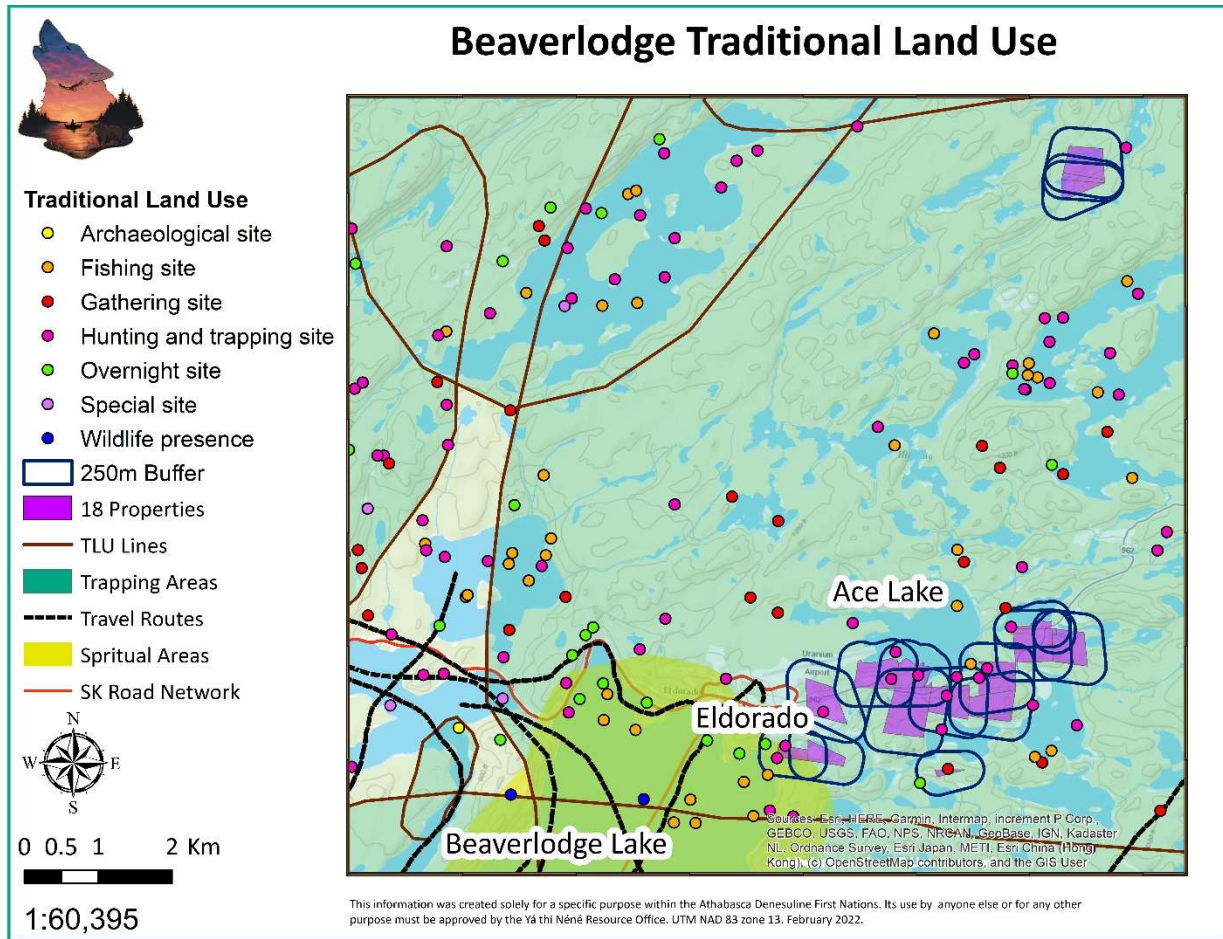


FIGURE 2 - A MAP DEPICTING A SAMPLE OF TRADITIONAL LAND USE BY YNLR MEMBERS IN THE BEAVERLODGE AREA. THE 18 SITES WHICH ARE THE SUBJECT OF THIS APPLICATION ARE SHOWN WITH 250M BUFFERS.

3.2.1 Land Use Plan

From 2003 to 2008, the Athabasca Denesúliné and non-aboriginal community partners developed a land use plan that covers approximately 132,272 square kilometres⁷ (see Figure 3) of their territory. In the land use plan, the territory was categorized into four zones: (1) conservation, (2) special management, (3) multiple use zone, and (4) infrastructure zone. The 18 Beaverlodge properties fall within the infrastructure zone and the special management zone. The infrastructure zone was created in anticipation of future community and infrastructure expansion, and to protect land use and occupancy immediately surrounding the communities. The special management zone involves the protection of cultural places and wildlife habitat where new development may be permitted. Development is allowed as long as the impact on cultural and wildlife resources is minimal.

⁷ Athabasca Land Use Plan, 2008

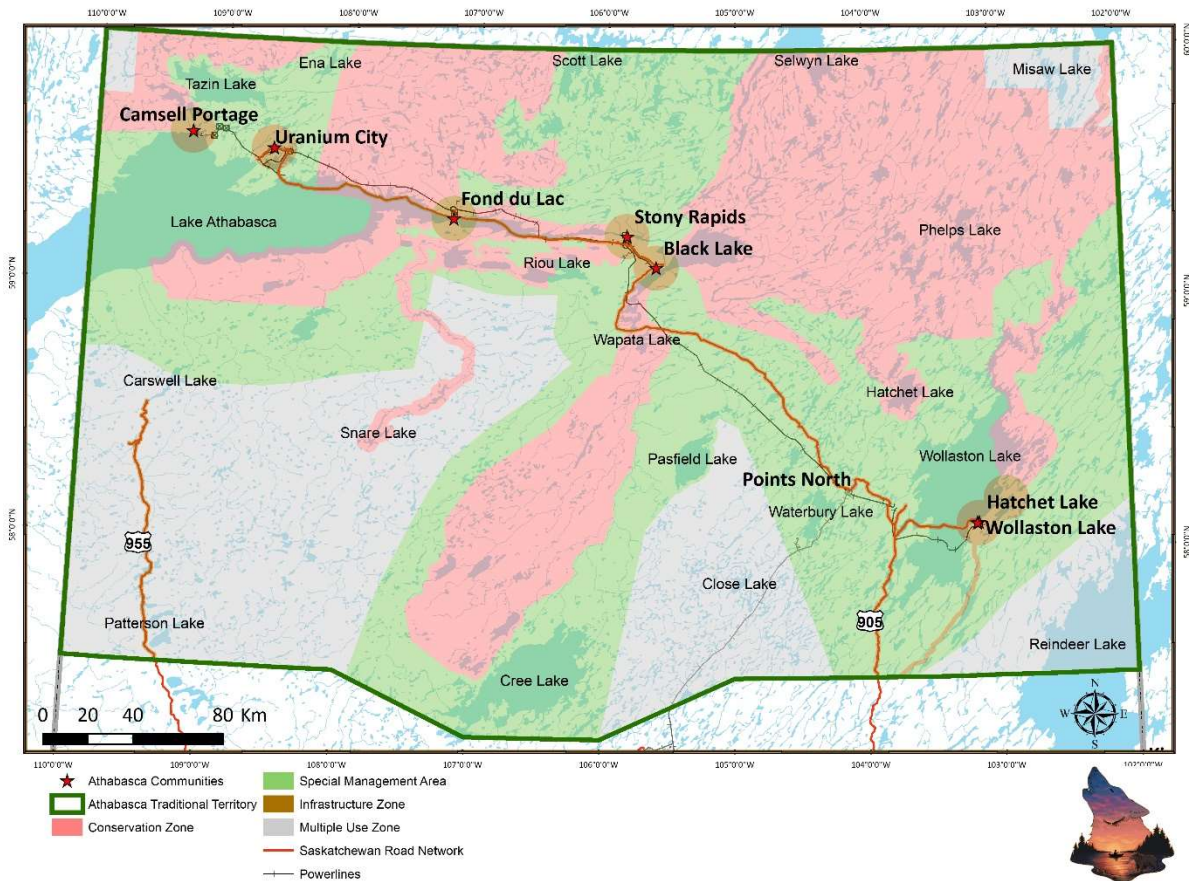


FIGURE 3 - YNLR LAND USE PLAN MAP

3.3 The 2014 Uranium City Consultation on Land Use is inadequate and misleading

YNLR became aware of this report, prepared by SENES (“SENES Report”) on January 10th, 2022 when reviewing the CMDs. Upon further review and consideration, a copy of the report was requested to understand its methods and applicability to this proceeding. YNLR’s concern about the SENES Report arose initially due to the conclusion reported that use of the Beaverlodge properties by Uranium City residents “did not exceed 50 hours per year”.⁸

YNLR requested a copy of the report on February 16th and received a copy, which had been heavily redacted, on February 21st (a statutory holiday in Saskatchewan), 24 hours prior to the submission deadline of this intervention.

⁸ CMD 22-H5, s 6.2, pg 68.

Given the extremely short timeframe available for YNLR to prepare its response to the SENES Report, this submission contains only a preliminary summary of YNLR's comments, and YNLR will provide more detailed comments during the oral hearing.

- The CNSC Staff CMD describes the SENES report as finding that “the maximum reported **recreational use** of the Beaverlodge properties...” was 50 hours per year. The approach used categorises land use as either Occupational (e.g. someone was there for employment purposes) or Recreational (e.g. all other uses including Treaty/Aboriginal rights based activities). This categorisation plus the redactions makes it difficult to understand where and what traditional land-based activities are occurring. Reading between the redactions it seems that some animals (moose, birds, and furbearers), wood, berries (raspberries and cranberries) were harvested, and some lands were used for camping or cabins, but the harvest locations and whether it was a rights-based harvest is unknown. In response to concerns raised by Athabasca Chipewyan First Nation in 2019 that its members spent considerably more time in the affected areas, CNSC staff assert that “... the risk assessment conclusion that **living a traditional lifestyle and consuming country foods** can be done safely remains valid.”⁹
 - YNLR is concerned that in conflating “recreational use” with “living a traditional lifestyle” CNSC staff critically misunderstand their role in the process, and confuse the “consultative inquiry” with environmental effects.¹⁰
- The study completely ignores members of YNLR other than those who live in Uranium City. The Beaverlodge properties are an important part of Nuhenéné for many YNLR residents who do not live in Uranium City.
- The study's focus on land use over the previous 5-years erases thousands of years of land use and occupancy by YNLR members, and treats the damaged status quo as a baseline. The Crown's treaty promise requires it to continuously fulfill the treaty. This approach to impact assessment perpetuates impacts and artificially reduces the scope of the aboriginal and treaty rights of YNLR members.
- Even if the study were not going to consider historical land use, the ‘living memory’ method common to traditional land use studies ensures that short-term changes to harvesting patterns do not skew study results. We have no way of knowing whether there were extraneous circumstances in 2009-2014 that artificially reduced the frequency and duration of harvesting and use by Uranium City residents.
- The study reduces harvester inputs to raw data without contextual narrative. Understanding why people make the choices they do is an important reason why best practice traditional land use studies contain narrative excerpts from study participants.
- It is not clear whether interviews were recorded and transcribed.

⁹ CMD 22-H5, s. 6.2, pp 67-68.

¹⁰ *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017 SCC 40](#) at para [45](#).

Recommendation 1: A comprehensive traditional land use study should be conducted by Cameco, subject to approval of the terms of reference by CNSC and YNLR, which includes representative samples from all YNLR member communities.

3.4 Beaverlodge Hab Area Evaluation Technical Memorandum

On February 15th 2022, after YNLR submitted a request to CNSC staff, we received a copy of a technical memorandum prepared by CanNorth, described as a “Beaverlodge Hab Area Evaluation”. This was the first time that YNLR had seen a copy of this report, the existence of which YNLR discovered by reading CNSC Staff’s CMD for this hearing.

It should not need to be said that a technical study purporting to determine whether it is safe to use and occupy Nuhenéné is subject matter at the very heart of YNLR’s purpose. YNLR regrets that neither CNSC staff nor Cameco proactively shared this memo despite the memo being dated May 26th 2021.

When it was provided, the document contained black digital highlights in certain key locations. These were ostensibly meant to be redactions, to protect what CNSC advised us that Cameco considered to be “confidential and proprietary” and which “could negatively impact [Cameco’s] competitive position.”¹¹

The document was not properly redacted, and upon single clicking on any of the ‘blacked out’ portions, it revealed itself as a “highlight” not a redaction, and was removable with a single click. Legal counsel for YNLR advised legal counsel for CNSC of this inadvertent disclosure on February 18th, and further advised that the uncovered information did not, in fact, appear to be commercially sensitive.¹² In this section, we discuss that information.

We note that as this document was only provided to YNLR one week prior to the submission deadline for our intervention, our analysis is limited to high-level observations only. Yet, even at that high level, YNLR has grave concerns about the results of the evaluation.

Crucially, it appears that at least some of the information which Cameco intended to redact, was hidden because it suggests that Cameco is not necessarily engaging with these issues in good faith. In particular, Cameco uses a “Fish ingestion rate”¹³ approximately 50% lower than the values recommended by Health Canada.¹⁴ Note that even the values recommended by Health Canada may be lower than appropriate for the particular population at risk in the Beaverlodge Area, as Health Canada’s values are recommended for the “Canadian general population”. While YNLR does not have comparative statistics available at this time, it would surprise us if YNLR members did not have higher consumption rates of fish and wild game than the ‘general population’. At the very least, one would assume that by using a more conservative

¹¹ Email from Richard Snider to Garrett Schmidt, February 15, 2022.

¹² Email from Corey Shefman to Denis Samure, February 18 2022.

¹³ This data was blacked out in the version of the report provided to YNL, while the rest of the table was not.

¹⁴ Government of Canada, “Federal Contaminated Site Risk Assessment in Canada, Part 1: Guidance on Human Health Preliminary Quantitative Risk Assessment”, (2004) Page 12, Table 3
<<https://publications.gc.ca/collections/Collection/H46-2-04-367E.pdf>>.

approach of higher Health Canada values for daily fish ingestion would be more prudent especially when conducting human health risk assessments and equating the results to traditional land users.

Similarly concerning is the underlying assumption of the whole report, that “the total assumed time in the area... is 2 weeks per year, with the receptors [people] consuming fish from the area for a total of 1 month per year.”¹⁵ It is unclear how these assumptions were made and what data they were based on. Traditional land use data collected by YNLR clearly suggests that YNLR members spend more time, and make greater use of sustenance harvested in these areas, and that YNLR members intend to continue increasing their use and occupancy of the area, eventually returning to pre-impact levels of use.

Despite not being provided reasonable time or resources to fully analyze the report, YNLR has identified the following questions which must be answered before any decision is made:

- Why were only Verna Lake and Dubyna Lake receptors considered in the analysis?¹⁶
- How did study authors determine that “total assumed time in the area... is 2 weeks per year” was an appropriate duration for the analysis?
 - Does this duration of exposure reflect a reasonable exposure scenario for traditional land users with rights and values within the affected area?
 - If not, why are impacts to traditional land users not being considered?
 - If so, how did the study authors determine what constituted reasonable exposure scenarios for traditional land users? What specific sources of data did they rely on?
- The report makes certain assumptions about the sources of drinking water for the “hypothetical receptor”, being “Pistol Lake (10%), Beatrice Lake (10%), Mickey Lake (30%), and Donaldson Lake (50%)”.¹⁷ What is the rationale behind this apportionment?
- On what basis did the study authors determine that “3 hrs/yr” for the purposes of the gamma exposure pathway,¹⁸ reasonably represented the time spent by people who use and occupy the affected areas?
 - Does the 3 hour per year assumption take into consideration patterns of use by traditional resource users, and YNLR members exercising aboriginal and treaty rights?
 - If so, how was it considered? If not, why was it not considered?
- Table 3 of the report describes water quality with reference to the “average” level of contamination in affected waterbodies, using the proportional division described above. Justification on the basis of actual patterns of use must be provided. Study authors should describe how averaging contamination levels is statistically defensible.

¹⁵ CanNorth, pg 2.

¹⁶ CanNorth, pg 2.

¹⁷ CanNorth, pg 2.

¹⁸ CanNorth, Table 2.

- In describing “Water and Fish Quality for Calculations” the report refers to the use of “transfer factors” to estimate fish flesh concentrations. What are “transfer factors” in this context?¹⁹
 - How were the values of estimated fish flesh contaminant levels in Table 4 arrived at (e.g. actual fish flesh samples, or estimates?)²⁰
 - What is the scientific and human health justification for relying on averages, rather than the independent values of each lake?
- The report is premised on limited duration stays and limited consumption, akin to a tourist visit. At page 6, the report states: “As the receptors [people] are present at the site and drink water/eat fish for a limited time during the summer only, the use of chronic TRVs are not appropriate.”
 - Does the stated assumption take into consideration use and occupancy patterns of traditional land users and YNLR members exercising aboriginal and treaty rights?
 - If so, the basis of that assumption must be described.
 - If not, an explanation must be provided for why risk impacts to traditional land users and individuals exercising constitutionally protected rights are not considered.
 - Table 5 describes the TRV for selenium for toddlers as 0.0062 mg/kg/d. Health Canada guidance uses 0.0060 mg/kg/d. This discrepancy must be described.²¹
- The report assumes that receptors (people) will rely on supermarket-sourced food for the remainder of the year, other than the 4 weeks of fish consumption from Hab area waterbodies.²² This assumption must be justified with data, and with specific reference to traditional land users and YNLR members exercising Aboriginal and Treaty rights.

The report concludes by stating that on the basis of its findings, “... living a traditional lifestyle and consuming country foods from the Hab area, as assessed, can continue to be done safely.” This conclusion appears to be entirely unsupported by the report itself, which explicitly and repeatedly reaches its conclusions on the basis of short-term, tourist-style visits to the area, and not on the basis of the use and occupancy patterns of traditional land users.

On the face of this report, it is apparent that the conclusions stated by its authors cannot reasonably be relied upon.

In addition to the aforementioned substantive questions, YNLR has serious concerns that CNSC Staff state that they have “reviewed the report” and that they consider the conclusions in the report to be “appropriate”.²³ Even if CanNorth and Cameco’s conclusions about the safety of the site could be justified upon addressing the significant information gaps identified above (which seems doubtful, based on the assumptions on which the report relies), the fact that such

¹⁹ CanNorth pg 4.

²⁰ CanNorth, Table 4 (note that this table was improperly redacted in the version provided to YNLR)

²¹ See Health Canada, “Federal Contaminated Site Risk Assessment in Canada: Toxicological Reference Values (TRVs) Version 3.0” (2021), Table 1, pg 11 <https://publications.gc.ca/collections/collection_2021/sc-hc/H129-108-2021-eng.pdf>.

²² CanNorth, pg 7.

²³ CNSC Staff CMD 22-H5, s 3.1, pg 32 [e-Doc 6540868].

significant and obvious gaps exist make CNSC staff's endorsement of the report cause for concern.

Recommendation 2: CNSC should provide, or direct Cameco to provide, sufficient funding for YNLR to retain technical advisors to undertake a peer-review of the Beaverlodge Hab Area Technical Evaluation along with other technical documents that have been requested.

Recommendation 3: CNSC should provide a process for written information requests, cross-examination, and/or technical conference, to allow YNLR (and others) to ask technical questions of Cameco regarding the Beaverlodge Hab Area Technical Evaluation.

Recommendation 4: A revised risk assessment of the Beaverlodge area should be conducted, which addresses the deficiencies identified in this version.

Recommendation 5: A technical conference should be convened prior to any further licensing applications by Cameco being considered by CNSC, to review, ask questions, and require supplementary information related to the background documents relied on by Cameco.

3.5 Psychosocial Impacts on Potential Future Land and Resource use

Among the potential impacts of the release of these 18 properties from federal licensing is to create fear, stigma and uncertainty regarding the safety of the sites, thereby dissuading rights-holders from engaging in traditional land use practices. Precautionary avoidance behaviour is rational, well-studied, and a harm that won't mitigate itself. Once the properties are released and there is no future possibility of regulatory mitigation, the harm will be entrenched and can only get worse. Mitigation of those impacts is addressed through education, trauma-informed communication and decision-making strategies, and engagement focused on healing and resiliency. That mitigation has not yet taken place.

Decisions made by the Crown, Crown agents, and proponents, can and do have impacts beyond the purely physical and environmental impacts which historically has been the primary concern of environmental assessment and federal regulatory processes. While CNSC's main decision-making focus is rightly on its "objects" – the prevention of unreasonable risk to the environment and health and safety, the prevention of unreasonable risk to national security, and conformity with international obligations – as an agent of the Crown empowered to determine legal issues that arise before it, CNSC must not limit itself to those objects.²⁴

As the Supreme Court of Canada has explained, the Duty to Consult and Accommodate may run parallel with regulatory processes, but they are separate considerations which each must be given their due. "[T]he consultative inquiry is not properly into environmental effects *per se*. Rather, it inquires into the impact on the *right*."²⁵

²⁴ *Nuclear Safety and Control Act*, [SC 1997, c 9, s 9](#).

²⁵ *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40 at para 45 (emphasis in original).

Rights are impacted when Crown conduct interferes with, or prevents, the exercise of those rights such that the way of life of the Aboriginal peoples holding those rights is not maintained. Rights can be impacted by physical changes, such as the presence of contaminants, and rights can also be impacted by perceived changes and by the psychological, social and cultural impacts of development and Crown conduct.

If YNLR members are unable to exercise their aboriginal and treaty rights because of psychological, social and cultural effects of perceived physical impacts, that impact on the right must be addressed through the consultation process.

Whether psychosocial impacts are addressed by remedying the underlying concerns (such as further remediation of the affected areas), by treating the psychosocial impacts themselves (through medical and psychological treatment, cultural healing, or education) or by some combination thereof, they must nonetheless be addressed.

In addition, and prior to attempting to address those impacts, they must be properly understood. Despite decades of significant physical impacts to the landscape and long-term presence of contamination within traditional areas, it does not appear that either proponent or regulator has ever undertaken a substantial study of psychosocial impacts.

Recommendation 6: YNLR recommends that prior to any decision being made on the release of these or additional Beaverlodge properties, a comprehensive psychosocial impact assessment be conducted, at the expense of Cameco, with terms of reference prepared by YNLR and its member communities.

3.6 Results of 2022 Community Survey

In preparation for this hearing, YNLR conducted a joint virtual meeting with the elected leaders from the seven communities in Nuhenéné, YNLR Board of Directors, Athabasca Land Protection Committee (ALPC) members, YNLR Community Land Technicians, and representatives from the CNSC on January 13th, 2022. During this meeting, there were concerns raised on the safety of the sites, access to the sites, fish consumption guidelines, and contaminated wildlife and consumption of the meat.

CNSC staff responded to questions raised at this meeting by email, as agreed by the participants. Those responses, received on January 26th with follow-up questions answered on February 14th, largely repeated and reinforced positions taken by CNSC staff in their CMD for this hearing. The answers provided assert that the Beaverlodge area is safe, despite the evidentiary basis for that assertion being based on visitors, not residents or traditional land users using and occupying the area on an ongoing basis.

3.6.1 Survey Interviews

Following this meeting, YNLR conducted survey interviews in both Fond du Lac Denesūliné First Nation and Uranium City with our Community Land Technicians. Land users were asked ten questions on their knowledge of the 18 properties, concerns about the remediation, their land

use in the area, safety of their drinking water, food they harvest, and the concern for the future generations.

The Athabasca Denesųłiné and Basin residents interviewed acknowledge the remediation work that has occurred at the 18 properties, but there were land users who identified that they are not familiar with the properties or have ever participated in community updates. It was clearly identified by those interviewed that the majority of residents hunt, fish, trap, and gather in and around the 18 properties.

Some interviewees identified little concern with the release of the 18 properties, but those who were concerned about the existing waste and contamination asked if the province would be vigilant in their monitoring. There is concern about contaminated water and the safety of ingesting it. One land user even asked “are they monitoring?” Comments like this show there is a lack of information being provided to residents about these properties and uncertainty of how they will be monitored if they are released to the ICP. The concern around the certainty of the monitoring has as a direct impact on future generations, including their grandchildren. An interviewee shared: “Yes, I am worried about the young generations. They have to drink and hunt for food. They need the water and the animals that live there.”

As the Commission can see from this summary, there is the need for more time to meaningfully consult with the Athabasca Denesųłiné and Basin residents. This is further defined in section 4 on the definition of ‘safe’ properties.

4.0 Inadequate Information

4.1 ‘Safe’ Properties

The determination that the properties are ‘safe’ is based on flawed assumptions and inappropriate defence by the CNSC to Cameco and the Government of Saskatchewan’s institutional control program.

For example, CNSC staff have endorsed Cameco’s view that the Beaverlodge properties are ‘safe’, despite the continued application of fish consumption guidelines which prevent the meaningful exercise of aboriginal and treaty rights in a manner consistent with the way of life of YNLR members.

The fish consumption guidelines are culturally insensitive and inconsistent with YNLR members’ preferred means of practicing their rights. For example, the guideline allows consumption of between 2 and 5 servings (220g each) per month of various types of fish from certain lakes due to the presence of high levels of selenium (a by-product of uranium mining) in those lakes and fish.²⁶ From certain other lakes, the guideline recommends consuming no fish whatsoever.

The guideline suggests several important considerations for this hearing:

²⁶ Saskatchewan Ministry of Environment, Health Fish Consumption Guideline, Sept 2016.

- While the guideline allows that 5 servings of lake trout per month from Beaverlodge Lake may be safe, that consumption will still likely lead to elevated selenium levels relative to a person harvesting fish from a non-contaminated lake. A person regularly consuming 5 servings per month is not likely to be significantly less at risk from the effects of selenium contamination than a person consuming 6 servings per month.
- YNLR members exercising their aboriginal and treaty rights in affected lakes are not doing so ‘recreationally’, but rather for cultural, ceremonial and sustenance purposes. Restricting consumption as recommended is inconsistent with the way of life promised to YNLR’s First Nation members in Treaty.

Advisories on consumption and the impacts to waterbodies are impacts to Treaty and aboriginal rights. The avoidance of areas where people would hunt, fish, trap, and gather but no longer go there because of fear of contamination are significant and have lasting impacts. There is also inadequate information on the safety of water for drinking. This was further emphasized in section 3.6 where a land user shared there is limited signage in these areas to advise people of the potential risk to consuming the water or fish.

We note as well that the consumption guidelines advise people “not to drink from” a series of lakes in the affected areas, including Beaverlodge Lake.

If people cannot drink water due to contamination, that water is not safe. Lakes which are so contaminated as to be undrinkable even when boiled, are not safe.

Releasing the Beaverlodge properties from licensing and transferring the properties to Saskatchewan’s ICP will render these impacts to YNLR’s members rights permanent. While subject to federal licensing, CNSC can enhance the standards which Cameco is required to meet, ensuring the continued remediation of affected sites. The imposition of a permanent impact where there was previously only temporary impacts is a novel adverse impact on rights.

4.2 Inadequate study and consideration of traditional land use

As shown throughout this submission, it is unclear how Cameco and CNSC staff have reached the conclusions they have regarding the safety of the properties for the exercise of rights, given a near complete absence of evidence on the record describing how and where rights are exercised. This glaring lack of information is a significant flaw in their reasoning.

Given the significant deficiencies identified in other aspects of the application materials, such as the Hab Area Visitor Evaluation assessment, and the fish consumption guideline, YNLR suggests that the Commission should not give any weight to Cameco or CNSC staff’s conclusions about the safety of the properties for traditional land use.

Once released from CNSC licensing, the Crown in Right of Canada will have no further ability to address YNLR members’ concerns about impacts to rights. In the absence of comprehensive information about how rights are impacted, and YNLR’s submissions about discrepancies in the

application data, the Commission cannot reasonably release the properties from licensing at this time.

4.3 Saskatchewan Institutional Control Program

YNLR is concerned that Saskatchewan's ICP is not fit for the task of protecting the aboriginal and treaty rights of YNLR members. The ICP is underfunded and its mandate is narrowly concerned with the stability of sites placed in its jurisdiction. The Institutional Control Monitoring and Maintenance Fund (the part of the ICP focused on maintenance and monitoring, rather than emergency management) is reported as having \$252,073 in total fees associated with the ongoing costs of monitoring and maintenance.²⁷ These funds are ostensibly intended to cover the total costs of monitoring for sites held by the ICP in perpetuity. While we have not had the opportunity to engage in an actuarial analysis, it appears to be clear that the level of funding available to the ICP, and the point-in-time source of that funding, means that the ICP is structurally incapable of doing anything other than maintaining the status quo, rather than improving the state of the sites. Functionally, the ICP's role is limited to superficial monitoring, starting every five years, and eventually stretching to twenty-five year intervals.

CNSC Staff's CMD is revealing in its discussion of the long-term monitoring and maintenance costs for the 18 properties in the ICP. At \$230,092.19 for 11 monitoring intervals between 2024 and 2121, CNSC appears to expect long-term monitoring and maintenance to cost no more than \$20,917.47 per interval. We note as well that the CMD is vague in its description of the end-point of monitoring, noting that after 2121 monitoring will continue "every 25 years thereafter."²⁸ If the \$230,092.19 is anticipated to cover the cost of monitoring and maintenance beyond 2121, then the approximately \$21,000/event monitoring estimate will not apply, and even less money will be available per visit.

There is concern about the monitoring that will occur under the ICP. It is referenced in the CMD22-H5-1 that under the ICP one of the monitoring methods expected is to focus on evidence of recent human visitation. It is not clear how this will be determined and what data will be used for. This shows uncertainty in the potential impacts that these properties could have on individuals if the amount of time at these sites is underestimated. Given the assumptions which appear to have been made in existing monitoring and risk evaluation activities (such as the Hab area visitor evaluation report), YNLR has low confidence regarding the standards and assumptions that will be applied in future monitoring.

²⁷ Institutional Control Monitoring and Maintenance Fund and the Unforeseen Events Fund Annual Financial Statements, pg 14.

²⁸ CMD22-H5, s 6.4, pg 69.

5.0 The Duty to Consult Is Owed and Has Not Been Fulfilled

5.1 The Duty to Consult and Accommodate as it applies to the CNSC
The Canadian Nuclear Safety Commission “is for all its purposes an agent of Her Majesty and may exercise its powers only as an agent of Her Majesty.”²⁹ Being an agent of the Crown, the CNSC “acts in place of the Crown” and is “indistinguishable from... [the Crown], and as such, can owe a duty to consult.”³⁰

The Duty is prospective, aimed at preventing future harm, and thus must be discharged prior to a decision being made.³¹ How the Duty is to be fulfilled will depend on the context of the decision. The CNSC must consider factors such as whether the impacted rights are asserted or established, the strength of an assertion, the intensity of the impact. Colouring the CNSC’s fulfillment of the Duty as an agent of the Crown is the fact that “we are dealing with a constitutional duty of high significance to Indigenous peoples and indeed the country as a whole.”³² As a result, whether consultation is meaningful and reasonable is determined in large part by answering the “controlling question” set out by the Federal Court of Appeal – “what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake.”³³

The honour of the Crown is an indispensable consideration as the Crown (or its agent) works to fulfill the Duty “because it is not honourable for Canada to act unilaterally in a way that could affect the rights of Indigenous peoples without first engaging in meaningful consultation.”³⁴

The honour of the Crown requires more than that the Crown simply avoid sharp dealing. Rather, the historical context of Crown-Aboriginal relations generally, and the legacy of colonialism which has coloured that context, must be considered.³⁵

*“Too often decisions affecting Indigenous peoples have been made without regard for their interests, dignity, membership and belonging in Canadian society, with terrible neglect and damage to their lives, communities, cultures and ways of life. Worse, almost always no effort was made to receive their views and try to accommodate them—quite the opposite. **The duty to consult is aimed at helping to reverse that historical wrong.**”³⁶*

In other words, the Duty does not look to maintain the status quo, but to improve it. Consultation which amounts to little more than taking notes, answering questions, and

²⁹ *Nuclear Safety and Control Act*, s 8(2).

³⁰ *Peter Ballantyne Cree Nation v Canada* [2016 SKCA 124](#) at para [61](#).

³¹ *Squamish First Nation v Canada*, [2019 FCA 216](#) at para [93](#).

³² *Coldwater First Nation v. Canada* [2020 FCA 34](#) at para [27](#).

³³ *Coldwater* at para [43](#) citing *Haida* at para [45](#).

³⁴ *Coldwater* at para [46](#).

³⁵ *Coldwater* at para [48](#).

³⁶ *Coldwater* at para [48](#) (emphasis added).

checking boxes, may be consultation in the dictionary sense of the word, but is not Consultation in the constitutional sense.

The Duty must also take into consideration the cumulative impacts on the rights of the affected Aboriginal peoples, and how the current contemplated Crown conduct may add to those cumulative impacts.³⁷ It may also consider future decisions which may result from the Crown conduct currently under consideration.³⁸ The consideration of cumulative impacts is further addressed in part 7 of these submissions.

Ya'thi Néné is not itself a rights-bearing organization, but has been empowered by its members to represent them, as a 'single-window approach' to consultation, as its members share interests in the Beaverlodge properties and other lands and waters affected by natural resource development in Nuhenéné. Ya'thi Néné's members include First Nations with inherent aboriginal rights and established Treaty Rights under both Treaty 8 and Treaty 10.

In signing the treaties, the Crown undertook to ensure that the "way of life" of the Aboriginal signatories would be maintained.³⁹ That obligation is ongoing, and requires the Crown to constantly ensure that its actions are advancing the protection, and not the narrowing, of the rights promised in the treaty.⁴⁰

In order to effect that protection, the Crown (here, as represented by the CNSC), must fulfill the Duty. Fulfilling the Duty is not simply a matter of giving the affected Aboriginal group an opportunity to "blow off steam".⁴¹ It requires meaningful, two-way dialogue,⁴² but crucially, must involve "more than 'a process for exchanging and discussing information.'" ⁴³

At best, the process thus far has been merely "a process for exchanging and discussing information." At worst, it has been something more akin to the Federal Court of Appeal's description of previous federal consultation teams' "implementation of their mandate essentially as note-takers....".⁴⁴

³⁷ Cumulative impacts are considered as part of the Duty because "the degree of impact cannot be determined in a vacuum and past cumulative impacts may make the impact of the decision at issue more significant it would be if it were only viewed in isolation. Diana Audino et al, *Forging a Clearer Path Forward for Assessing Cumulative Impacts on Aboriginal and Treaty Rights*, 2019 57-2 Alberta Law Review 297, 2019 CanLII Docs 3777, <<https://canlii.ca/t/spvf>> at p 303

³⁸ *West Moberly First Nations v British Columbia* [2011 BCCA 247](#) at para [125](#).

³⁹ *Yahey v British Columbia* [2021 BCSC 1287](#) at para [305](#)

⁴⁰ *Yahey* at para [499](#) citing *Fort McKay First Nation v Prosper Petroleum Ltd* [2020 ABCA 163](#) at para [81](#) (Greckol J, concurring).

⁴¹ *Mikisew Cree First Nation v Canada*, [2005 SCC 69](#) at para 54.

⁴² *Gitxaala Nation v Canada* [2016 FCA 187](#) at para [279](#)

⁴³ *Coldwater First Nation v Canada* [2020 FCA 34](#) at para [41](#) citing *Tsleil-Waututh Nation v Canada* 2018 FCA 153 at paras 500-502 (emphasis added).

⁴⁴ *Tsleil-Waututh* at para 562 (emphasis added).

5.2 The Duty is Triggered by CNSC’s decision on Cameco’s application
CNSC staff incorrectly concluded that the Duty to Consult and Accommodate was not triggered by Cameco’s Application.⁴⁵ This conclusion appears to have been reached on the basis of CNSC staff’s similarly incorrect conclusion, based on a flawed understanding of the legal requirements of the Duty, that “[a]s Cameco’s [Application] does not propose any new activities that could potentially impact Indigenous and/or treaty rights” the Duty to Consult and Accommodate “do[es] not apply.”⁴⁶

The Duty is not triggered by “new activities”. The Duty is owed when (a) “the Crown has knowledge, real or constructive” of Aboriginal and/or Treaty rights, and “contemplates conduct” which might “adversely affect” those rights.⁴⁷ The Duty is to be interpreted and applied in a “generous” and “purposive” manner consistent with its intent.⁴⁸

While the Duty is often associated with the construction of new projects or initiation of new industrial activities, it is not limited to those instances. The Supreme Court has explained that the Crown conduct which triggers the Duty “is not confined to decisions or conduct have an immediate impact on lands and resources” and “strategic, higher-level decisions” also trigger the Duty.⁴⁹

In this case, the language of the Supreme Court in *Rio Tinto* is helpful in understanding how decisions which, for example, are not going to dig new holes in the ground, may still trigger the Duty. The Supreme Court has expressly ruled that “structural changes” to how lands and resources are managed may be sufficient to trigger the Duty.⁵⁰ The Supreme Court provides an example which is directly opposite here: “a contract that transfers power over a resource from the Crown to a private party may remove or reduce the Crown’s power to ensure that the resource is developed in a way that respects Aboriginal interests in accordance with the honour of the Crown.”⁵¹

While the Government of Saskatchewan’s ICP is not a “private party”, the effect of granting Cameco’s application to release the 18 properties from licensing will be to transfer power over a resource out of the hands of the Federal Crown, thereby “remov[ing] or reduc[ing] the Crown’s power to ensure” that the properties are managed in a way which protects the Aboriginal and Treaty rights of YNLR members. That CNSC is aware of the limitations of Saskatchewan’s ICP and the fact that it will not take proactive steps to ensure the continuity of

⁴⁵ 22-H5, s 5.1.1, pg 64.

⁴⁶ CNSC staff have framed this conclusion in a confusing and roundabout way, with reference to REGDOC-3.2.2, which is described as; “sets out requirements and guidance for licensees whose proposed projects may raise the Crown’s duty to consult.”

⁴⁷ *Haida* [2004 SCC 73](#) at para 35.

⁴⁸ *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council* [2010 SCC 43](#) at para 43.

⁴⁹ *Rio Tinto* at [para 44](#).

⁵⁰ *Rio Tinto* at [para 47](#).

⁵¹ *Rio Tinto* at [para 47](#).

YNLR members' aboriginal and treaty rights provides further urgency to the need for consultation.

To be clear, we are not proposing that the Duty is *currently* owed for *past* impacts to rights caused by uranium mining at Beaverlodge. Rather, it is the current decision to release the properties from licensing that attracts the duty, as there is a causal impact between the proposed release and future harm. The landscape has already been altered, but the consequences of the release of the licenses from the CNSC to the ICP are likely to be significant. The consideration of Aboriginal and Treaty rights impacts, therefore, will necessarily consider what has already happened, as well as the likely future impacts of the licensing decision.⁵² The limitations of the ICP regime are clear, so a decision to discontinue CNSC licensing will have foreseeable consequences on future remediation and restoration of rights to use the areas currently under license for the exercise of Aboriginal and Treaty rights. That is the conduct that triggers the Duty.

5.3 Consultation has not been reasonable or meaningful
While CNSC staff have declared that the Duty is not owed in respect of this application, they and Cameco have nevertheless described engagement activities with YNLR.⁵³

YNLR first learned of Cameco's application on August 5, 2021 upon being provided with a form letter by CNSC staff. The letter provided no substantive information about the application or how it might impact the Aboriginal and Treaty rights of YNLR members. YNLR reasonably expected that prior to substantial steps being taken to make the proposed significant change to the management of resources within its territory, it would be consulted and engaged with by both Cameco and CNSC staff.

5.3.1 Cameco's Consultation with YNLR

In November 2021, Cameco organized a virtual webinar and invited YNLR members to attend. As the webinar software only displays presenters, not attendees, YNLR is not aware of how many people attended the session, nor who those people were. YNLR is, however, aware that the session was intended for broad, public consumption and was not intended to, or capable of, supporting meaningful dialogue about the impacts to the rights of YNLR members.

The meeting with Cameco consisted of a high-level presentation, which spoke generally about the history and current status of the Beaverlodge properties. There was little discussion about how the application might impact aboriginal and treaty rights.

As part of Cameco's regular engagement activities with YNLR (both associated with the Collaboration Agreement, which excludes these properties, and otherwise), Cameco arranges site visits and other opportunities to discuss issues of concern on an ongoing basis. These opportunities are not consultation, but are part of a broader pattern of relationship building.

⁵² *West Moberly First Nations v British Columbia* [2011 BCCA 247](#) at para 237-238.

⁵³ See CMD 22-H5, section 5; CMD 22-H5.1, ss 4.2-4.3.

While positive and appreciated, they are not directly substantive on the issues raised in this application, and cannot replace directed consultation.

5.3.2 CNSC's Consultation with YNLR

As YNLR is funded on a 'program basis', it does not have discretionary funding available to provide for meetings and other activities on an ad hoc basis. Although it applied for participant funding as soon as that option was made known to it, funding was not confirmed until November 25th, 2021, and a signed contribution agreement which guaranteed the funds was not provided to YNLR until December 16th, 2021.

Due to CNSC's delay in confirming funding, followed by scheduling difficulties associated with the December holidays, CNSC and YNLR were not able to meet about this application until January 13, 2022.⁵⁴ The January 13th meeting was attended by YNLR's Board of Directors, staff, and leadership from YNLR's member communities, along with CNSC staff.

CNSC staff provided more detail than Cameco had about the nature of the application, and agreed to prepare detailed responses to the questions posed by YNLR representatives about the application. Those responses were received by email in the following weeks.

It is noteworthy however, that by the time of this first meeting and indeed, by the time YNLR's funding was confirmed, CNSC staff had already submitted their CMD (on December 3rd, 2021) containing CNSC staff's recommendation to approve Cameco's application, and their conclusion that the Duty to Consult was not owed.

5.4 Conclusions on fulfillment of the Duty

None of the indicia of reasonable and meaningful consultation were met in this instance.⁵⁵ At the most basic level of consultation requirements, there has simply been no dialogue between the Crown (CNSC) and the rights-holders as represented by YNLR. Asking and answering questions about the Crown conduct is a positive step towards a healthy relationship between CNSC and YNLR, but the consultation process is required to be "more than 'a process for exchanging and discussing information.'"⁵⁶ At most, 'exchanging and discussing information' is all that CNSC did in this case, and whether information was meaningfully 'exchanged' is questionable.

That both CNSC and Cameco concluded in their CMDs for this application that there were no issues of concern to rights-holders it itself an indication that there was no meaningful consultation.⁵⁷ Had there been meaningful consultation, CNSC could not possibly have reached that conclusion.

⁵⁴ YNLR and CNSC enjoy a positive ongoing relationship in general, and engage in ongoing conversations about a variety of issues. Those conversations are generally informal and do not replace a formal consultation process.

⁵⁵ See e.g. *Coldwater* paras 40-51.

⁵⁶ *Coldwater* at para 41.

⁵⁷ CMD22-H5, s. 5.1.1, pg 64.

In addition, had consultation taken place, CNSC staff would have been aware of YNLR's concern about the decisions cumulative impacts, and accommodation measures proposed by YNLR, including but not limited to community-led Indigenous environmental monitoring.

Recommendation 7: The commission should deny Cameco's Application for release of the 18 properties, and direct that CNSC staff discharge the duty to consult and accommodate YNLR's members through YNLR, beginning with the negotiation of a mutually agreeable consultation protocol between CNSC and YNLR, and that the consultation must include a demonstrably serious consideration of recommending accommodation measures.

Recommendation 8: In the alternative to Recommendation 7, the Commission should adjourn the hearing and put Cameco's Application into abeyance until the Duty to Consult and Accommodate is discharged as described in Recommendation 7.

6.0 Cumulative Impacts

6.1 Cameco and the CNSC have systemically failed to consider cumulative impacts

The CNSC has systemically failed to give meaningful consideration to cumulative impacts.⁵⁸

Between 2011 and 2021, the Commission does not appear to have engaged in any substantive consideration of cumulative effects of the Beaverlodge Lake project. On the few occasions when the Commission considered cumulative effects related to other projects, that consideration largely appears to have consisted of accepting CNSC staff's submissions (often baldly asserted, without supporting evidence), that the possible cumulative effects of a given project would not likely result in significant adverse environmental effects. Aside from the fallacy of concerning itself only with iterative cumulative effects added by a particular project, rather than also considering total cumulative effects loading, we note that the CNSC seems to have erred by concerning itself only with cumulative effects to the environment, rather than also considering cumulative effects to rights, as the Duty requires it to do.

This seems, at least in part, to be the case because CNSC does not appear to have processes for assessing cumulative impacts. As the British Columbia Supreme Court recently explained was the Government of British Columbia's failing in this area, CNSC's primary concern being **specific permits and their specific impacts**, becomes an artificial and self-imposed fetter on CNSC's discretion.⁵⁹ Cumulative impacts always seem to be a concern for another time, another process, or another decision maker, the result of which is that those impacts are never

⁵⁸ According to an analysis conducted by YNLR, out of nearly 500 decisions made by the CNSC between 2011 and 2021, cumulative effects are mentioned in only approximately 19 decisions (approximately 3%).

⁵⁹ See *Yahey v British Columbia*, [2021 BCSC 1287](#) at paras [1197-1208](#).

considered, and they are left to accumulate, as the rights of YNLR members continue to be denuded.⁶⁰

Neither CNSC nor Cameco have completed a cumulative effects assessment for this application (or if they did, it is neither referenced nor included in the materials on the record). YNLR is concerned about two cumulative effects considerations related to the Application.

- The iterative added impacts which releasing these 18 properties from licensing will contribute to the overall cumulative impact load in Nuhenéné; and
- The total overall cumulative impacts in Nuhenéné following the release of these 18 properties from licensing

As shown in Figure 4, Nuhenéné has long hosted industrial users and bears the scars of their use. Too often, proponents extract value from Nuhenéné with the Crown regulator's blessing, and when there is no more value to extract, leaves the lands and waters worse off than when they found it, with the Denesų́iné, Cree and Métis inhabitants of Nuhenéné left with growing limitations on the exercise of their aboriginal and/or treaty rights.

⁶⁰ See e.g. *Yahey* at [para 1197](#): "I find there is a significant disconnect between the tenuring and permitting decision makers, such that each believes the other considers treaty rights and/or cumulative effects to a greater degree than they actually do. This disconnect has created a gap through which Blueberry's rights have fallen."

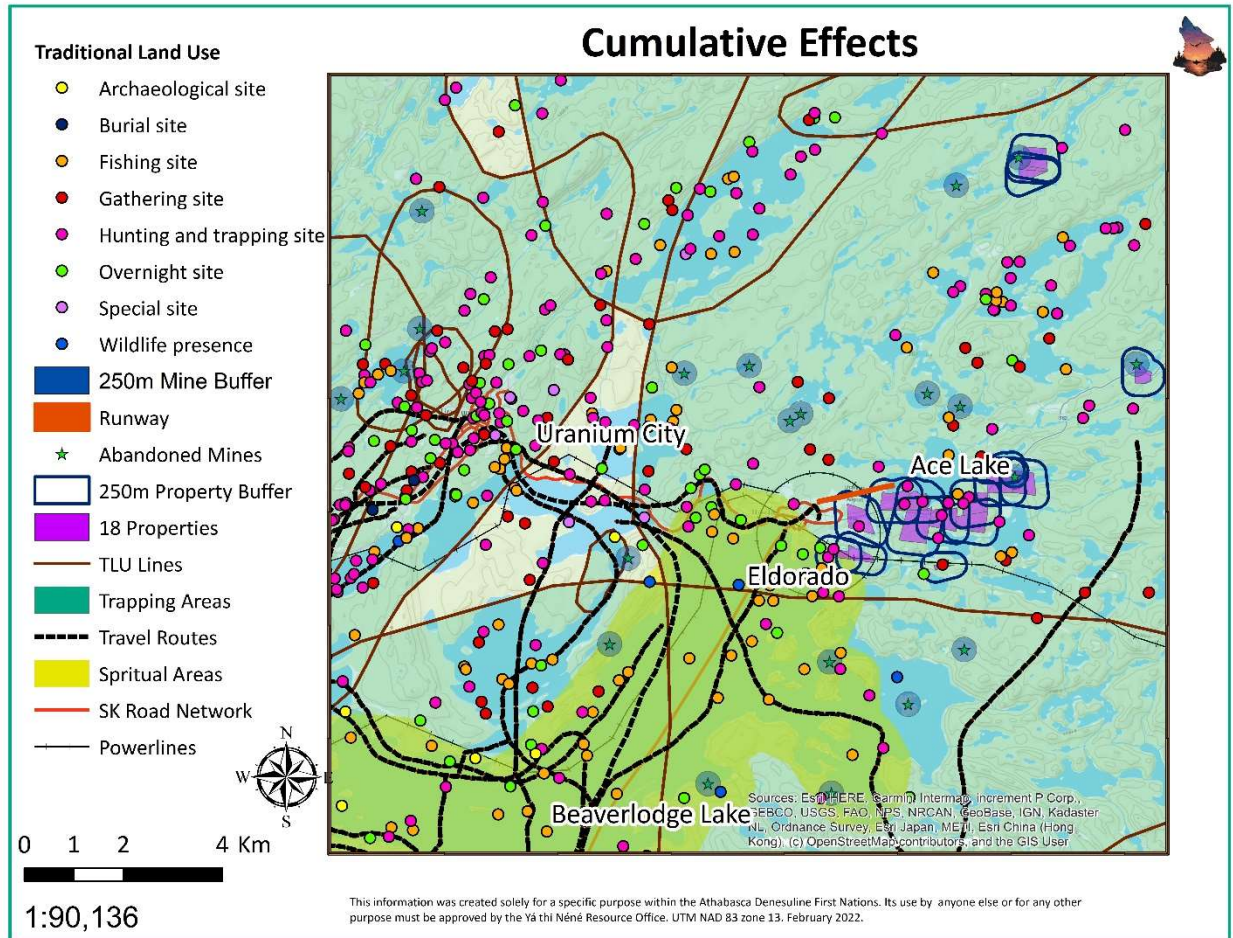


FIGURE 4 - A MAP DEPICTING TRADITIONAL USES OF THE BEAVERLODGE AREA BY YNLR MEMBERS, WITHIN A SUMMARY CUMULATIVE EFFECTS CONTEXT.

Figure 4 is a summary depiction of some of the cumulative effects context faced by YNLR members, and is intended to demonstrate only the crowded state of the landscape. While depicted as pinpoints (star icons), the environmental and rights impacts of the abandoned mines are not limited to their footprints, and have system-level impacts. A full study is required to be able to reach conclusions on the additive cumulative effects, and total cumulative effects loading, of the request to release the 18 Beaverlodge properties from licensing.

Throughout CNSC's time regulating the Beaverlodge project, including through its operation, decommissioning, and preparation for release, the publicly released reasons for the Commissions decisions do not describe any substantive consideration of the project's cumulative effects – neither its additive impacts nor the total cumulative effects load following inclusion of the project's additions. This failure to consider cumulative impacts in a meaningful way leaves YNLR's members facing a territory which is increasingly divided into 'postage stamp' parcels of usable and unusable land and water. The ability of YNLR members to exercise their rights in a manner consistent with their traditional way of life has become increasingly limited,

and the Crown, whether represented by the CNSC or otherwise, has not taken any steps to address this concern.

Cumulative impacts to the rights of YNLR members are not simply the continuation of particular iterative impacts. Particularly where a release from licensing will render those impacts permanent, or remove any reasonable ability of government to compel measures to address those impacts, they must be considered new or novel for the purposes of the Duty to Consult.

Recommendation 9: Before this application is decided, and before any further Beaverlodge properties are released from licensing, a comprehensive cumulative effects assessment of an area including the Beaverlodge properties, and addressing cumulative effects to both the environment and to rights, should be conducted.

7.0 The “Path Forward” is a dead end

YNLR is concerned that the “Path Forward” which Cameco relies on to guide its release from licensing requests, and which CNSC has approved, does not provide clear direction as to how its objectives and thresholds will be met, or how the ‘safe’ or ‘improving’ standards relate to the realities of traditional land use.

In evaluating whether the properties in question could be released from licensing, the CNSC looked at the six performance indicators that are detailed in the Beaverlodge Path Forward Report, which was accepted by the province of Saskatchewan and the CNSC during the 2013 license renewal hearing and further clarified in CMD 14-M60.⁶¹ CMD 14-M60 responds to the CNSC request at that hearing for CNSC staff to define predicted performance objectives and actual performance indicators for each property.⁶² While CMD 14-M60 identifies the performance objectives and indicators, it does not go into detail on how these indicators were developed, beyond noting that Cameco developed and clarified them, and CNSC staff found them acceptable.⁶³

The determination by CNSC staff that the properties are safe and will remain safe in perpetuity is made based on assumptions that are flawed and inhibit the accuracy of the analysis, particularly in relation to gamma radiation. This is exemplified well in the CNSC staff’s submission on gamma radiation at the HAB Mining Area.

As originally outlined in CMD 14-M60, Cameco was required to complete a site wide gamma survey, remediate areas where additional cover material was required, and conduct a final, follow-up survey verifying that the cover was adequate. The “regulatory acceptance criteria” for this indicator is that, within a reasonable use scenario, gamma levels at the site are acceptable.⁶⁴

⁶¹ DEC 19-H6, at para 32.

⁶² Canadian Nuclear Safety Commission Record of Proceedings, Including Reasons for Decision, April 3-4, 2013, at para 178.

⁶³ CMD 14-M60, at page 1.

⁶⁴ CMD 14-M60, Table 3.1.

In this way, what the Commission considers to be a reasonable use scenario directly feeds into release decisions. The assumptions made regarding how much a given site is used feeds into the calculation of gamma radiation exposure for site users, which in turn is used by the Commission in evaluating whether a given site is “safe.”

The 2019 release decision discusses the Beaverlodge Site Land Use Study conducted by Cameco in 2014 and submitted to CNSC staff in 2015. This study notes that the maximum reported recreational and traditional use of any of the Beaverlodge properties by Uranium City residents did not exceed 50 hours per year in the five-year study period. This study is limited in scope to residents of Uranium City’s use of the Beaverlodge Site in the five years prior to the study’s commencement and expected future land use.⁶⁵ It does not detail historic, pre-disturbance land use, nor does it detail what future land use would be if the Beaverlodge Site was returned to a truly pre-disturbance state. This omission is critical, and a fatal flaw to both the study itself and any conclusions which rely on the study, as it stands to permanently perpetuate impacts to the Beaverlodge area, by ‘baking in’ the assumptions around limited land use, to all future risk assessment thresholds.

The 2019 release decision describes this omission as follows: “CNSC staff explained that the Beaverlodge land use study did not include historic traditional land use of the Beaverlodge properties. Rather, the study was intended to assess the risk to land users that were and would be using the decommissioned Beaverlodge properties.” Notwithstanding that this submission does not actually explain the omission of traditional and future use of a pre-disturbance quality Site, the Commission ultimately accepts the findings of the 2015 land use study in relation to the performance indicators used in the release decision, while noting that “the scope of the study could have been broader to include and better represent the range of users of the Beaverlodge properties.”⁶⁶

Cameco completed an assessment of the potential human health risks of a visitor to the HAB area, but this report ultimately still uses the same land use assumptions that are baked into the 2015 Land Use Study.⁶⁷

That report states, in discussing the assumptions made for time spent in the HAB area in predicting gamma radiation doses, that “the gamma radiation assumption is based on the maximum amount of time people reported using these areas for recreational purposes in the Land Use Consultation.”⁶⁸

The assumption for total time spent for the area is cited at 3 hours per year, with an assumption of a yearly time spent for the broader area at 2 weeks per year.⁶⁹ The problem with this assumption, and making release decisions on this basis, is that it effectively limits Aboriginal rights to use the land. These assumptions about what constitutes a “safe” amount of time that can be spent on the land in any given year do not accord with the pre-development conditions,

⁶⁵ 2019 Release Decision – para 93.

⁶⁶ *Ibid*, para 103.

⁶⁷ This study is addressed in section 3.4 of these submissions.

⁶⁸ Technical Memorandum, CanNorth, May 26, 2021, page 9.

⁶⁹ *Ibid*, Table 2 and page 9.

or the Treaty promises made by the Crown that First Nation ways of life would not be interfered with.

According to the assessment framework used by the Commission, the Commission is accepting that if time spent using the land increases in the future above the threshold used, harm to human health is likely to occur. Cameco's submissions and the Commission's acceptance of them have amounted to this before, in the 2019 release decision, where it is stated that based on the sensitivity analysis completed, individuals spending significant amount of time in one specific area rather than moving around the properties would reach the public dose limit for gamma radiation.⁷⁰ This is a problematic position because as noted above, the safe, acceptable use of the property becomes locked at an invariable rate. If traditional use one day calls for use of the property without moving from site to site – indeed, spending significant amount of time in one specific area, individuals should be able to do so safely. **A release of the sites before that is possible is tantamount to permanently preventing that possibility.**

In sum, the indicators that the CNSC bases approval decisions on use data regarding land use that is discordant with actual historical use, and assumes, wrongly, that there is no desire/intention to significantly increase that time spent. Approving release on this basis essentially condemns communities to the amount of time that the CNSC has accepted that they spend on the land – this perpetuates those land use patterns because the site isn't remediated further once released and amounts to an extinguishment of the rights. This is tied to fish consumption advisories that do not amount to a regular, everyday consumption level. Again, approving on this basis (that public health is protected through advisories that will never end) perpetuates that level of consumption and use and amounts to an extinguishment of Aboriginal rights related to harvest. When you change this land use assumption the entire argument for release changes.

⁷⁰ 2019 release decision, para 97.

List of Recommendations

Recommendation 1: A comprehensive traditional land use study should be conducted by Cameco, subject to approval of the terms of reference by CNSC and YNLR, which includes representative samples from all YNLR member communities.

Recommendation 2: CNSC should provide, or direct Cameco to provide, sufficient funding for YNLR to retain technical advisors to undertake a peer-review of the Beaverlodge Hab Area Technical Evaluation along with other technical documents that have been requested.

Recommendation 3: CNSC should provide a process for written information requests, cross-examination, and/or technical conference, to allow YNLR (and others) to ask technical questions of Cameco regarding the Beaverlodge Hab Area Technical Evaluation.

Recommendation 4: A revised risk assessment of the Beaverlodge area should be conducted, which addresses the deficiencies identified in this version.

Recommendation 5: A technical conference should be convened prior to any further licensing applications by Cameco being considered by CNSC, to review, ask questions, and require supplementary information related to the background documents relied on by Cameco.

Recommendation 6: YNLR recommends that prior to any decision being made on the release of these or additional Beaverlodge properties, a comprehensive psychosocial impact assessment be conducted, at the expense of Cameco, with terms of reference prepared by YNLR and its member communities.

Recommendation 7: The commission should deny Cameco's Application for release of the 18 properties, and direct that CNSC staff discharge the duty to consult and accommodate YNLR's members through YNLR, beginning with the negotiation of a mutually agreeable consultation protocol between CNSC and YNLR, and that the consultation must include a demonstrably serious consideration of recommending accommodation measures.

Recommendation 8: In the alternative to Recommendation 7, the Commission should adjourn the hearing and put Cameco's Application into abeyance until the Duty to Consult and Accommodate is discharged as described in Recommendation 7.

Recommendation 9: Before this application is decided, and before any further Beaverlodge properties are released from licensing, a comprehensive cumulative effects assessment of an area including the Beaverlodge properties, and addressing cumulative effects to both the environment and to rights, should be conducted.

Appendix C

Ya'thi Néné Lands and Resources Intervention in the matter of the Cameco Corporation
Beaverlodge Project: Request to renew its Waste Facility Operating License (February 2023)

YA'THI NÉNÉ LANDS AND RESOURCES INTERVENTION

*In the matter of the Cameco Corporation Beaverlodge Project: Request
to renew its Waste Facility Operating License*



10 February 2023

Introduction

The Beaverlodge mine and mill site and associated properties, located 8 km east of Uranium City, were operated by Eldorado Mining and Refining Ltd. (Eldorado) from 1952 to 1982. During the mining phase, most activity focused on the area north of Beaverlodge Lake where the Fay, Ace, and Verna shafts accessed the underground uranium ore body. Whereas most ore came from these areas, some ore originated from satellite mines that operated for shorter periods of time. Decommissioning of the mines and mill commenced at mine closure in 1982 and was completed in 1985 in which buildings were removed and mine openings were permanently sealed. The mill operated without an effluent treatment process from 1952 to 1977, resulting in a legacy of environmental damage to the area; limitations and moratoriums on fish and water consumption currently exist for many water bodies due to elevated levels of uranium and selenium.

In 1988, Eldorado merged with the Saskatchewan Mining Development Corporation to form Cameco, now the operator and licensee of the Beaverlodge Project. Initially comprised of 70 separate properties, the Beaverlodge Project exists in a state of post-decommissioning monitoring and maintenance since completion of its decommissioning. Of these 70 properties, all but 27 properties have been transferred to the Government of Saskatchewan's Institutional Control Program (ICP). Cameco's original proposed schedule of transfer of the remaining Beaverlodge properties from the Canadian Nuclear Safety Commission (CNSC) regulatory oversight to ICP by the end of the current license term, 31 May 2023, is no longer feasible due to required timelines. As such, Cameco is requesting a license renewal for a 2-year term for the Waste Facility Operating License (WFOL-W5-2120.2/2023). Cameco proposes that this time interval will be sufficient for required regulatory processes, public and Indigenous engagement, and document preparation to support the release of the remaining decommissioned Beaverlodge properties and transfer to the ICP. To be clear, this application involves license renewal only and does not request alteration of requirements or authorizations currently in place.

Ya'thi Néné Lands and Resources (YNLR) holds a Participant Funding Contribution Agreement with the CNSC to provide an intervention related to Cameco's application to renew their current license for an extended two years, to 31 May 2025 (hereafter, the Application).

The purpose of YNLR's intervention is to provide information and context of the Athabasca Denesų́líné and Basin Residents' perspective and concerns regarding this Application, as the Beaverlodge Project lies within Nuhenéné (the traditional territory of the Athabasca Denesų́líné).

For the purposes of this intervention, YNLR adopts and relies on its 2022 intervention in Cameco's request for release of 19 Beaverlodge properties, and in particular, section 3.4, 4, 6, and 7 of that submission.¹

Background of Nuhenéné and YNLR

YNLR works to protect the lands and waters of Nuhenéné for the long-term benefits of its member Denesų́liné First Nations and Athabasca communities, guided by their knowledge, traditions, and ambitions, while being a respected partner in relations with industries, governments, and organizations who seek to operate in Nuhenéné. YNLR is governed by an independent Board of Directors appointed by the elected community leaders and operates five offices in Saskatchewan (Saskatoon, Fond du Lac, Black Lake, Hatchet Lake, and Uranium City).

The organization is mandated by the Hatchet Lake, Black Lake, and Fond du Lac Denesų́liné First Nations, as well as the municipalities of Wollaston Lake, Stony Rapids, Camsell Portage, and Uranium City to act as the initial point of contact for consultation and engagement from Government and Proponents. In addition to protection of lands and waters within Nuhenéné, YNLR works to promote the interests of the region's residents through training, employment, and procurement opportunities.

The First Nation members of YNLR are all signatories to treaties with the Crown.² A significant majority of the residents of the municipalities represented by YNLR are also Aboriginal persons,³ with Aboriginal and/or Treaty rights protected by section 35 of the *Constitution Act, 1982*.

References in this intervention to "the Aboriginal and Treaty rights of YNLR members", refers to the Aboriginal and/or Treaty rights, as the case may be, held by the First Nations, and/or exercised by the Aboriginal persons resident in the municipalities, as the case may be.

YNLR provides support for the implementation of the Collaboration Agreement (CA) with Cameco and Orano on behalf of the seven Athabasca Basin communities as well as involvement in many other land and resource related initiatives. YNLR participates as either a member or observer on several committees established through the CA including the Joint Implementation Committee (JIC), Business Advisory Committee (BAC) and the Athabasca Joint Environmental

¹ CMD22-H5.15

² Fond du Lac and Black Lake Denesų́liné First Nations are both signatories to Treaty 8. Hatchet Lake Denesų́liné First Nation is a signatory to Treaty 10.

³ According to the 2016 census, 89.5% of Wollaston Lake residents, 78% of Stony Rapids residents, and 60% of Uranium City residents are Aboriginal. Data for Camsell Portage is not available.

Subcommittee (AJES). Community representatives are also appointed to each respective committee. As a member of AJES, YNLR participates in quarterly meetings and various activities throughout the year from exploration to decommissioning with respect to Cameco and Orano sites.

Document Timeline and Submission

YNLR was notified of this Application on 13 September 2022 and applied for funding to intervene in the Application soon thereafter. YNLR received the fully executed funding agreement on 3 November 2022. Commission Member Documents (CMD) submitted by CNSC Staff and Cameco were made available on 6 December 2022.

Once YNLR received the CMDs, YNLR undertook the following tasks:

- Participated in joint in-person and virtual meetings with the YNLR Board of Directors and Athabasca Land Protection Committee (ALPC) on 15 December 2022.
- Participated in a joint in-person and virtual meetings with CNSC staff on 20 December 2022.
- Conducted a legal review.

YNLR is providing this submission on behalf of its member communities. This intervention is intended to provide the Commission with a summary of key issues relevant to the Application. YNLR and its advisors have engaged in as much analysis as possible within the limited time frame available, especially considering the intervening holidays. In reviewing these submissions, **YNLR reminds the Commission that an absence of analysis or documented concern or discussion should not be taken to indicate that YNLR has no concerns on that issue.** The information contained in the following written document is incomplete and an absence of data does not indicate an absence of value or perspective.

Funding delivery, application review, evidence collection, and intervention preparation were limited to a short window of time and overlapped with the December holidays. As such, YNLR requested and was granted an extension in funding timelines beyond the intervention submission deadline of 10 February 2023 to conduct in-depth interviews with Basin residents about the historical, current, and perceived future traditional land use of the Beaverlodge area. The results of these interviews will not be included in this submission but will be provided to CNSC prior to 1 June 2023, with discussion with CNSC to follow. YNLR intends for the results of these interviews to provide valuable insight into future Beaverlodge licensing processes.

YNLR Concerns and Recommendations

Cumulative Effects

CNSC has never meaningfully studied or substantively considered cumulative effects in the Athabasca Basin. That failure has led to substantial loss of use for YNLR members as the remediation of the Beaverlodge area (and other sites such as Cluff Lake, see YNLR intervention submitted 2 February 2023) has resulted in a permanently damaged baseline circumstance.

Where the Commission has mentioned cumulative effects in its decisions, those mentions have been almost exclusively limited to accepting CNSC staff's submissions (often baldly asserted, without supporting evidence), that the possible cumulative effects of a given project would not likely result in significant adverse environmental effects.

Focusing only on the iterative added cumulative effects contributed by particular projects, rather than considering the totality of cumulative effects, *cumulatively*, defeats the entire purpose of a cumulative effects analysis.

Yet this is precisely how the CNSC has failed to meaningfully engage with cumulative effects in the Athabasca Basin over the life of the Beaverlodge project. Rather than consider the regional impact of Beaverlodge, over time and relative to other impacts in the area, Cameco and the CNSC focus only on the iterative new impacts of the particular slice of the project being considered at a particular given time. This hyper-focus on the 'trees', causes the CNSC to miss the whole 'forest'.

This failure by the CNSC (and its licensees) to properly consider cumulative effects obscures impacts to the Aboriginal and Treaty rights of YNLR's members. Because individual project approvals may be limited in scope, or aimed to remediation, or even largely administrative, the CNSC mistakenly asks what **specific** impact from what **specific** CNSC approval or proponent project will adversely affect Aboriginal and Treaty rights. While those questions are necessary, they are not sufficient and they cannot replace meaningful consideration of the **cumulative** impacts caused by multiple developments. As the Blueberry River First Nation explained in *Yahey*: "it is not one single impact from one single regulation or project that has infringed its rights. Rather, it is the cumulative effects from a range of ... authorized activities, projects and developments... within and adjacent to their traditional territory that has resulted in significant adverse impacts on the meaningful exercise of their treaty rights...."⁴

⁴ *Yahey v British Columbia*, [2021 BCSC 1287](#) at para 3.

As YNLR has noted in previous interventions, the fact that CNSC does not appear to have existing processes for assessing cumulative effects is not a legitimate reason for the failure to have done such an assessment.

The British Columbia Supreme Court dealt with similar issues created by the Government of British Columbia's focus on individual projects and approvals, similar to CNSC's primary concern being specific permits and their specific impacts. This focus becomes an artificial and self-imposed fetter on CNSC's discretion.⁵ Cumulative impacts always seem to be a concern for another time, another process, or another decision maker, the result of which is that those impacts are never considered, and they are left to accumulate, as the rights of YNLR members continue to be denuded.⁶

The CNSC has focused on the individual impacts of individual project approvals to the detriment of YNLR members' Aboriginal and Treaty rights. This focus ignores the fact that infringements to Aboriginal and Treaty rights generally happen over time (cumulatively), and not all at once. The Alberta Court of Appeal has explained that:

“the effects of any one ‘taking up’ of land will rarely, if ever, itself violate an Aboriginal group’s Treaty 8 right to hunt; **instead, the extinguishment of the right will be brought about through the *cumulative effects of numerous developments over time***. In other words, no one project on [the First Nation’s] territory may prevent it from the meaningful right to hunt – however, if too much development is allowed to proceed, then, taken together, the effect will be to preclude [the First Nation] from being able to exercise their treaty right.”⁷

The substantial adverse impact of cumulative effects on the Aboriginal and Treaty rights and YNLR members, particularly their harvesting rights (rights to hunt, fish and trap, and gather plants for food, medicine, and cultural purposes) is amplified by the fact that the treaty promise by the Crown to protect those harvesting rights is unfulfilled, and must be fulfilled as time goes on.⁸

The harm caused to YNLR's members through these regulatory processes is magnified by the fact that the Commission appears to be of the view that there are effectively no triggers for the Duty to Consult and Accommodate remaining for Cameco in respect of Beaverlodge. For both

⁵ See *Yahey* at paras [1197-1208](#).

⁶ See e.g. *Yahey* at [para 1197](#): “I find there is a significant disconnect between the tenuring and permitting decision makers, such that each believes the other considers treaty rights and/or cumulative effects to a greater degree than they actually do. This disconnect has created a gap through which Blueberry’s rights have fallen.”

⁷ *Fort McKay First Nation v Prosper Petroleum Ltd* 2020 ABCA 163 at [para 79](#).

⁸ *Fort McKay* at para 80.

licence renewals⁹ and releases to the ICP,¹⁰ the Commission has determined that the Duty is not triggered. While YNLR and its members disagree strenuously with that conclusion, the question for the Commission which arises from that conclusion is: 'If not now, when?'. The Treaty promises made by the Crown to YNLR's First Nation members might have been "easy to fulfill initially but difficult to *keep* as time goes on and development increases."¹¹

When an agency such as the Commission is tasked with acting on behalf of the Crown for certain regulatory purposes (such as the regulation of nuclear industry activities, in this case), it also assumes the Crown's constitutional and treaty obligations. Those obligations are upstream of its statutory responsibilities, and **must be fulfilled regardless of whether the statute expressly provides for them to be fulfilled.**¹² If the Commission finds itself seemingly unable to find an opportunity to ensure that the Aboriginal or Treaty rights of affected Aboriginal peoples are considered; if the Commission's response to such concerns is consistently 'not at this time', or 'this particular decision on the larger project won't cause adverse effects', the Commission may be infringing the Treaty rights of YNLR's First Nation members.

After explaining how the government of British Columbia had erroneously relied on a piecemeal approach to consultation – focusing on each individual decision - the BC Supreme Court explained that: "The processes do not consider the impacts on the exercise of Treaty rights or implement protections other than occasional site specific mitigation measures. The Province has long been on notice that a piece-meal project-by-project approach to consultation will not address Blueberry's concerns. To date, there is a lack of mechanisms to meet and implement the substantive rights and obligations contained in the Treaty."¹³ The exact same deficiency plagues the Commission's processes. Remedying that deficiency, and honouring the treaties, requires that the Commission meaningfully consider the cumulative effects of the Beaverlodge project and other Athabasca Basin development on the environment and Aboriginal and Treaty rights.

It is not enough to say that the decision currently under review will not *add* any new impacts (cumulative or otherwise) and so the request should be granted. It is that exact frame of reference which has left the residents of the Athabasca Basin with the damaged baseline they now face. The further CNSC allows Cameco (and other Athabasca Basin proponents) to move

⁹ Commission Record of Proceedings, Including Reasons for Decision, April 3-4, 2013 at para 152.

¹⁰ Record of Decision, DEC 22-H5, at para 100.

¹¹ *Fort McKay* at para 80.

¹² See e.g. *Wahgoshig First Nation v Ontario* 2011 ONSC 7708 at para 41.

¹³ *Yahey* at para 1735.

down the regulatory path without properly assessing cumulative effects, the harder it will be to protect and restore the rights impacted by those effects.

Recommendation 1: CNSC should order that CNSC staff, in collaboration with YNLR, commission a comprehensive regional cumulative effects assessment of the Athabasca Basin/Nuhenéné. The terms of reference for the study should be developed jointly by YNLR and CNSC Staff and the study should be conducted by an independent third party with subject-matter experts. Once completed, the CNSC should convene a hearing to reconsider the “Path Forward” plan approved in its 27 May 2013 decision and further discussed in CMD-14-M60 to incorporate and address the findings of the study.

Recommendation 1A: A condition should be added to Cameco’s renewed licence requiring that it not submit any requests to release additional Beaverlodge properties to the ICP until the study described in Recommendation 1 is completed, and further requiring that any future release applications by Cameco incorporate, and consider, the results of that study.

Review of 2014 standards

CNSC should take the opportunity presented by this licence renewal to consider, and ‘renew’ the performance objectives and indicators which were first ordered in the decision renewing the current licence (WFOL-W5-2120.0/2023) and presented by CNSC staff in the first annual report following that renewal (CMD14-M60).

From the beginning of this ten-year period, the “Path Forward” model and the Commission’s permitted release pathway for Beaverlodge framed the requirement that the properties be ‘safe, stable and secure’ through the lens of recreational and institutional users of the Beaverlodge areas, rather than prioritizing the traditional land users who were displaced when the mines and related facilities were originally constructed.

This misplaced prioritization should be corrected, and the Commission should revisit the ‘Path Forward’ and the accepted performance objectives and indicators when renewing this licence.

An Example: Fish Consumption

When approving Cameco’s renewed licence in 2013, the Commission was assured that “traditional harvesting of country food does not pose any risks to the health or safety of persons...” in part, because the fish consumption advisory “... provides a limit on the amount of

fish an individual can safely consume in a given period of time rather than an absolute zero tolerance fish consumption ban.”¹⁴

Cameco’s assurance, and the Commission’s acceptance of it, confuses recreational harvesting and country food consumption with harvesting for traditional purposes and sustenance-based country food consumption. In reality, the fish consumption guidelines for the affected areas only allow consumption of between 2 and 5 servings (220g each) per month of a variety of fish in certain Beaverlodge lakes.¹⁵ In some other affected lakes, the guidelines recommend consuming no fish whatsoever.

Moreover, it is not the case that consuming servings of fish from lakes contaminated by high levels of selenium (a by-product of uranium mining) below the level recommended by the guidelines will protect harvesters from selenium toxicity, it will merely slow its onset. While the consumption guidelines allow for 5 servings of lake trout per month from Beaverlodge Lake, a harvester consuming 5 servings per month likely faces a very similar human health risk to a person consuming 6 servings per month.

YNLR is concerned that Cameco’s methodology on these matters has not meaningfully changed or been updated in the past ten years. In its May 2021 HAB Area Evaluation Technical Memorandum, Cameco significantly underestimates fish consumption (both in actual terms, and in terms of reasonable consumption for traditional sustenance harvesting), going so far as to use a “fish ingestion rate” approximately 50% lower than Health Canada’s guidelines.¹⁶

The result of these outdated standards has been that Cameco has been permitted to release properties from licensing and federal regulatory oversight despite them being not suitable for traditional resource use.¹⁷

We note as well that the consumption guidelines advise people “not to drink from” a series of lakes in the affected areas, including Beaverlodge Lake. If people cannot drink water due to contamination, that water is not safe. Lakes which are so contaminated as to be undrinkable, even when boiled, are not safe.

Conclusion on 2014 Standards

¹⁴ Commission Record of Proceedings, Including Reasons for Decision, April 3-4, 2013, paras 52-53.

¹⁵ Saskatchewan Ministry of Environment, Healthy Fish Consumption Guideline, Sept 2016

¹⁶ See section 3.4 of YNLR’s 2021 intervention (CMD22-H5.15) for more information.

¹⁷ The response that the properties are still subject to provincial regulatory oversight is a non sequitur. The ICP is a passive monitoring program which makes no provision for restoration and includes no active oversight or regulation.

As it did in its 2013 licence renewal decision,¹⁸ the Commission should use this renewal as an opportunity to revisit the performance objectives and indicators used by itself and Cameco to determine when Beaverlodge properties are ready for release from licensing.

The performance objectives and indicators, identified nearly a decade ago now,¹⁹ were developed at a particular point in time, and since then, our knowledge about proper approaches to impact assessment, to mining remediation, and of the importance of traditional resource use, have all progressed. Treating those decade-old standards as a permanent and unchangeable truth is unreasonable and ignores the impact of the Beaverlodge project on the traditional land users who are most impacted by it.

The public interest, the safety and security of the environment and people, and YNLR members' Aboriginal and Treaty rights would all be best served by a comprehensive review of the performance objectives and indicators.

Recommendation 2: The Commission should order, as a condition of Cameco's license renewal, that the 2014 performance objectives and indicators be updated to reflect the current regulatory environment, taking into consideration impacts to Aboriginal and Treaty rights, cumulative effects to both rights and the environment, and Indigenous knowledge.

Recommendation 2A: The development of updated performance objectives and indicators should be done collaboratively with CNSC staff, Cameco, and YNLR.

Recommendation 2B: Cameco should be prohibited from applying for release of additional Beaverlodge properties from licensing until the performance objectives and indicators have been updated.

Transparency

YNLR and its members are concerned that there is a disconnect in Cameco's communication obligations. Signs posted near certain lakes in the Beaverlodge area warn of limitations and moratoriums on fish and water consumption. Yet YNLR members were unable to locate any relevant and easily understandable information about those important topics in either the Beaverlodge Factsheet,²⁰ or on the Beaverlodge project website.²¹

¹⁸ At para 9.

¹⁹ CMD14-M60

²⁰ Contained in CMD23-H101-1B

²¹ Beaverlodgesites.com

Commission President Velshi recently stated: "... public confidence in the safety of licensed activities and in the good stewardship of resources is enhanced by transparency and by clear, plain-language messaging. The Commission itself has a positive mandate to disseminate objective information to the public, and it takes the job of transparency, openness, and plain-language communication seriously as a fundamental part of regulatory trust building."²²

Yet for residents of YNLR communities, and traditional harvesters exercising Aboriginal and Treaty rights, the reality of communication from Cameco and CNSC has often been contradictory, confused, and technical.

CNSC and Cameco consistently use the terms "safe, stable and improving" in their communication related to Beaverlodge, reflecting the language described in the 2013 licence renewal and 2014 performance objectives and indicators. However, those terms are used as 'terms of art', connoting meanings other than their natural meanings. For YNLR members, a lake that is "safe" is a lake from which they can drink the water; land is "safe" if it can be lived on for extended periods of time, not mere weeks per year; fish are "safe" if they can be eaten in abundance, not a few carefully measured portions per month.

Public confidence in the licensed activities, and public confidence in the Commission's regulation of those activities, is reduced when communication is partisan, or seems to be suggesting a state of affairs other than what the public has experienced.

YNLR submits that calling Beaverlodge "safe" is no different than Ontario Power Generation describing "nuclear waste" as "sustainability services". It is, at best, marketing-speak which erodes public confidence.

In addition to revising the language being used, Cameco and the Commission must communicate more effectively, in plain language, and in ways that are meaningful to affected communities.

Recommendation 3: The Commission should revisit the language of "safe, stable and improving" to ensure that it is using natural language and not terms of art, and that the language used reflects the lived reality for land users in the Beaverlodge area. If "safe" is to continue being used, the substantive licensed meaning of that word should be updated to reflect the term's natural meaning.

²² [Renewal of OPG licence: President Velshi underscores importance of transparency - YouTube](https://www.youtube.com/watch?v=KJq7aXUjdpA)
<https://www.youtube.com/watch?v=KJq7aXUjdpA>

Recommendation 3A: The Commission should amend Cameco's renewal license to include a condition requiring it to collaborate with YNLR to develop a communication protocol, including but not limited to more and better hazard signage in the Beaverlodge area.

Renewal of License and Updates to Funding Structure

YNLR does not oppose the Application to extend the term of Cameco's Waste Facility Operating License to 31 May 2025. Instead, during this interval of license extension, several studies and investigations need to be conducted, as described above.

These investigations require a collaborative approach between YNLR, CNSC, and Cameco. YNLR requires proactive involvement in regulatory activities that impact residents of Nuhenéné, and this approach needs to become standard practise with all proponents.

As YNLR has informed the Commission in previous interventions, preparation of interventions is often limited to a short interval of time such that submissions are incomplete and/or extensions to deadlines are requested. YNLR urges the Commission to set longer regulatory timelines, and to require proponents to provide longer periods of notice. The public interest is not served by intervenors, including those with constitutionally-protected Aboriginal and Treaty rights, having to scramble to conduct studies and prepare submissions in short, three-month intervals.

Recommendation 4: YNLR was granted an extension in funding timelines beyond the deadline to submit this intervention to conduct in-depth interviews with Basin residents. In the future, the CNSC should make participant funding available outside of specific regulatory application cycles to permit regular intervenors like YNLR to gather and assess evidence at a reasonable pace and in a manner which is respectful of differing capacity limitations. We request that CNSC enhance its transparency about the regulatory schedule and further request that funding be advanced through our Terms of Reference to facilitate timely, complete, and meaningful responses to regulatory activities occurring in Nuhenéné.

Closing Remarks

The Beaverlodge area has a long history of traditional land use is culturally important to Athabasca Basin Denesųłiné and Nuhenéné residents. YNLR appreciates our ongoing communications with the CNSC regarding this and other Applications pertaining to Beaverlodge. This document summarizes our concerns outlined in the Commission Member Documents authored by CNSC and Cameco pertaining to renewal for a 2-year term for Cameco's Waste Facility Operating License.

Appendix D

Ya'thi Néné Lands and Resources' Response to Cameco Corporation's Long-term Monitoring Program for the Decommissioned Beaverlodge Mine Site (September 2024)



Ya'thi Néné Lands and Resources

Response to Cameco Corporation's Long-term Monitoring Program for the Decommissioned Beaverlodge Mine Site

September 2024



Introduction and Background

The Beaverlodge mine and mill site and associated properties, located 8 km east of Uranium City, were operated by Eldorado Mining and Refining Ltd. (Eldorado) from 1952 to 1982. During the mining phase, most activity focused on the area north of Beaverlodge Lake where the Fay, Ace, and Verna shafts accessed the underground uranium ore body. Whereas most ore came from these areas, some ore originated from satellite mines that operated for shorter periods of time. Decommissioning of the mines and mill commenced at mine closure in 1982 and was completed in 1985 in which buildings were removed and mine openings were permanently sealed. The mill operated without an effluent treatment process from 1952 to 1977, resulting in a legacy of environmental contamination to the area that will persist for centuries; advisories, limitations, and moratoriums on fish and water consumption currently exist for many water bodies in the Beaverlodge region due to elevated levels of uranium and selenium.

In 1988, Eldorado merged with the Saskatchewan Mining Development Corporation to form Cameco, now the operator and licensee of the Beaverlodge Project. Initially comprised of 70 separate properties, the Beaverlodge Project exists in a state of post-decommissioning monitoring and maintenance since completion of its decommissioning. Of these 70 properties, all but 27 properties have been transferred to the Government of Saskatchewan's Institutional Control Program (ICP). Cameco's current Waste Facility Operating License for these remaining 27 properties expires in May 2025; Cameco has submitted an application and request for revocation of this license in preparation to transfer the remainder of the Beaverlodge properties to ICP, with a public hearing set before the CNSC Commission scheduled for January 2025.

In preparation for the transfer of the remaining 27 Beaverlodge properties to ICP, Cameco has developed the *Long-term Monitoring Plan (LTMP) for the Decommissioned Beaverlodge Mine Site*, which Ya'thi Néné Lands and Resources (YNLR) received in March 2024. The intent of the LTMP is to provide a framework for monitoring the properties and downstream areas to ensure that the



objectives for long-term management of the site continue to be met. Once the Beaverlodge properties are transferred to ICP, the monitoring plan will be passed to Saskatchewan's Ministry of Energy and Resources (MER) for implementation at their discretion. Cameco requested oral feedback from communities during meetings, but there has been no formal opportunity to provide written feedback on the LTMP. YNLR staff met with Cameco on 27 March 2024 and requested the opportunity to provide written feedback, as YNLR believes this Plan is inadequate in its current state. The following are YNLR's comments on Cameco's *Long-term Monitoring Plan for the Decommissioned Beaverlodge Mine Site*. YNLR strongly recommends that Cameco carefully considers each of the following comments and revises the Plan as needed.

Background: Ya'thi Néné Lands and Resources (YNLR) and Nuhenéné

Ya'thi Néné Lands and Resources (YNLR) works to protect the lands and waters of Nuhenéné, the traditional territory of the Athabasca Denesų́łíné, for the long-term benefits of its member Denesų́łíné First Nations and Athabasca communities. YNLR is guided by Denesų́łíné and community members' knowledge, traditions, and ambitions, while being a respected partner in relations with industries, governments, and organizations who seek to operate in Nuhenéné. YNLR is governed by an independent Board of Directors appointed by the elected community leaders and operates five offices in Saskatchewan (Saskatoon, Fond du Lac, Black Lake, Hatchet Lake, and Uranium City).

YNLR is mandated by the Hatchet Lake, Black Lake, and Fond du Lac Denesų́łíné First Nations, and the municipalities of Wollaston Lake, Stony Rapids, Camsell Portage, and Uranium City to serve as the initial point of contact for consultation and engagement with governments and proponents. In addition to protection of lands and waters within Nuhenéné, YNLR promotes the interests of the region's residents through training, employment, and business opportunities.



YNLR's Concerns and Recommendations

The following three points summarize YNLR's concerns and recommendations for revision of the *Long-term Monitoring Plan for the Decommissioned Beaverlodge Mine Site*. Further detail is provided in Appendix A.

1. *Requirement for background/detailed information.* For Athabasca Basin community members to adequately assess and understand the Beaverlodge LTMP in a comprehensive manner to allow for informed engagement, the Plan requires extensive and detailed information that is not available in its current form. Without this information, residents are not able to understand the reasons for which advisories are in place and why monitoring is necessary, and so the objectives for long-term monitoring are elusive, unclear, and ill-defined.

Information that should be included in the LTMP are:

- A brief history of mining and milling on the Beaverlodge properties together with identification of responsible parties for the properties currently, as well as a clear explanation of the proposed path forward (i.e., revocation of Cameco's license and transfer of remaining properties to ICP).
- The goals of the LTMP are to ensure the Beaverlodge properties and downstream areas are "physically and radiologically safe, secure, and stable." The Plan requires clear and explicit definitions and quantifications of these terms, as well as an explanation of how the technical use of such terms in the LTMP likely differ from residents' inherent understanding. Despite inclusion of qualifiers of "physically and radiologically", the term "safe" remains particularly problematic as has been discussed many previous meetings with Cameco and CNSC.
- Saskatchewan's Environmental Quality Guidelines (SEQGs) for the various contaminants of concern in the region that will be monitored according to the LTMP.



- Safe consumption limits (i.e., the interpretation of SEQGs: Saskatchewan Health Authority’s Consumption Guidelines for fish and water) for water bodies for which fish and/or water advisories are in place in the Uranium City region. A citation for these Guidelines should also be provided.
 - Current (results of most recent sampling) contaminant levels at each of the water monitoring stations and fish collections; this information would be best presented as a table in an appendix. Estimates of statistical variance, where applicable and available, should also be provided.
2. *Lack of technical details and justification for proposed monitoring plan.* The report does not provide enough evidence that the frequency, duration, and timing of the proposed sampling program is sufficient. No historical monitoring data or statistical analysis has been provided as evidence that what has been proposed is statistically rigorous such that the future custodian of the properties (whether Saskatchewan’s ICP or the CNSC) will be able to properly detect changes in the environment that would make a difference to human and ecological health risk assessment.

The Plan proposes to monitor only three elements of potential concern (uranium, radium-226, and selenium). It is not clear from the document why only these three contaminants were chosen for long-term monitoring. Nor is justification given for excluding other contaminants of potential concern that have been the subject of historical monitoring efforts.

The LTMP is devoid of technical details and explanations on figures and throughout the report in general. For example, figure captions are omitted from the report; these are essential to aid interpretation. SEQGs should be presented as horizontal lines on all figures so readers can readily determine how current and projected levels of contamination compare with accepted metrics of water quality.



3. Community engagement and participation once properties are transferred to ICP. YNLR appreciates the community engagement by Cameco regarding development of the LTMP through various meetings (e.g., June 2023 in Saskatoon, September 2023 in Uranium City). Results of this past engagement are adequately described in the Plan, but direction and plans for proposed future engagement are absent from the LTMP.

Once the Beaverlodge properties are transferred to ICP, the Plan will be implemented by MER at their discretion. As such, the LTMP needs to describe explicitly how communities will be engaged, informed, and involved in future monitoring. Without this provision, Athabasca Basin communities have no confidence about their participation in or knowledge of monitoring occurring on their Traditional Lands. It is also unclear as to what opportunities there will be for YNLR and Basin communities to conduct compliance reviews or undertake independent monitoring compared to the degree to which these opportunities are currently facilitated and funded under oversight by the Government of Canada (i.e., the CNSC). These matters should be clarified and committed to by MER and the ICP prior to any decision by the CNSC to transfer the remaining properties.

Closing Remarks

YNLR requests that Cameco revise their *Long-term Monitoring Plan for the Decommissioned Beaverlodge Mine Site* to adequately address our concerns and recommendations. We are particularly concerned about Athabasca Basin community engagement and participation once the Beaverlodge properties are transferred to Saskatchewan's ICP. We appreciate the opportunity to review and comment on the LTMP and look forward to further discussions with Cameco and the regulators.



Appendix A: Detailed Comments and Recommendations for the *Long-term Monitoring Plan for the Decommissioned Beaverlodge Mine Site*

COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
1.	General comment applicable to the LTMP in its entirety	<p>For the reasons listed below, this report does not provide a suitable basis for a long-term monitoring plan. The Beaverlodge site had decades of mining activity prior to meaningful environmental standards and a huge footprint over a number of sites. Chemicals of concern include both stable and radiological elements. Cameco's modelling shows that the concentrations of uranium and selenium will remain well above water quality guidelines at some sites for several decades. This emphasizes the need for a strong monitoring program to ensure declining impacts on the local environment.</p> <p>The LTMP presented here is devoid of a statistical analysis of past monitoring programs that would support the proposed monitoring schedule. The program, particularly for fish, has very low statistical power and would be unable to detect changes in the concentration of chemicals of potential concern (COPCs) with any certainty.</p> <p>The LTMP focuses entirely on water sampling of a few elements and very infrequent monitoring of fish. A comprehensive plan should include monitoring of full water chemistry, the status of the aquatic</p>	<p>The long-term monitoring program needs to be reconsidered and presented with far more details. These details must be based on a rigorous analysis of previous work by knowledgeable people with experience in developing a long-term monitoring program.</p> <p>In addition, it is critical that the LTMP meaningfully consider suggestions from First Nations and Uranium City residents to monitor more fish species, and more frequently. The LTMP must include more input from the users of traditional lands and consumers of country foods.</p> <p>More recommendations are outlined below for specific issues with the LTMP.</p>



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
		<p>biotic community in downstream waters, and the recovery of the whole Beaverlodge system.</p> <p>Most concerning is the LTMP report authors' opinion that the concentrations of the three main COPCs will continue to decline, in line with modelling, and that monitoring of water and fish can be reduced in the future. They provide no support for that opinion. Long-term monitoring programs must be vigilant about the possibility of increases in releases from remediated sites in the event of changing environment conditions, specifically changes due to climate change (increasing temperatures in summer and winter, precipitation extremes, wildfires, etc.). A robust monitoring program with frequent sampling and appropriate QA/QC needs to be capable of detecting changes in water chemistry. As proposed, this LTMP will not be able to detect genuine changes in water quality.</p> <p>The LTMP makes no contingency for the possibility of new COPCs as the Beaverlodge site recovers. Instead, it focuses only on U, Se, and Ra-226. Analyses for a broader range of COPCs in water, including hydrocarbons if present on the site, should be a routine component of the monitoring program. This would ensure the continued "safety" of the site in relation to the surrounding environment.</p>	
2.	Page 1, paragraph 1	It is not clear from reviewing the LTMP how the Athabasca Basin communities will be informed of the future monitoring results coming from the proposed LTMP, how that compares to the reporting and	The LTMP should clearly outline the reporting requirements for results, including how and when the results will be shared and with whom,



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
		<p>communication for the properties while under CNSC oversight, and what opportunities may be available for input and consultation on any proposed changes to the program. This is important information to be provided to YNLR, so that they can fully understand the implications of the Beaverlodge properties being transferred into Saskatchewan’s ICP.</p>	<p>and how that compares to the same current CNSC requirements related to the properties under the Beaverlodge Environmental Monitoring Program.</p>
3.	Page 1, paragraph 2	<p>While the LTMP report references the objectives of managing the Beaverlodge properties as to ensure the properties and areas downstream are physically and radiologically “safe, secure and stable,” it is not clear from the LTMP how “safe, secure, and stable” are defined. The performance objectives include unrestricted public access and an assurance that the site is “safe.” Some areas have restrictions on access (e.g., maximum of 30–40 days) due to groundshine and gamma radiation. These issues should be included in a monitoring program.</p> <p>The LTMP program should support quantitative performance indicators, based on the statistical analysis of long-term trend data, in addition to those described here.</p>	<p>The ultimate objectives for the LTMP must also reflect how Athabasca Basin community members define “safe, secure, and stable,” and not rely solely on a western scientific technical understanding of what “safe, secure, and stable” means. This report should include a full description of what “safe, secure and stable” means in terms of the Beaverlodge LTMP, and detail how that definition encompasses community definitions of the same criteria.</p> <p>This LTMP needs to be comprehensive to monitor all components of the site. As presented here, the LTMP only includes water monitoring of three elements and fish, and no recommendations for monitoring the recovery of the terrestrial environment or the recovery of the aquatic community (e.g., status of benthos</p>



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
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and forage fish species, adverse ecological effects) in receiving waters.

4.	Page 1, paragraph 3	The LTMP states that “the technical evaluation builds off over 40 years of environmental monitoring.” However, none of that monitoring data, analysis, or assessment is presented in the LTMP as an evidence basis for this monitoring plan. The data should be used to show the statistical power of water sampling and the ability of the LTMP to detect changes in water chemistry over time.	Very little of previous monitoring data or assessment reports are cited in this document to establish temporal trends. Relevant data should be summarized, with measures of uncertainty and predictions of declines or increases in the concentration of COPCs. The proposed LTMP needs to build off earlier data, with justification for only three COPCs being monitored, in a way that makes sense for reviewers.
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5.	Table 2.1	The technical evaluation to support the Beaverlodge LTMP proposes a frequency of every five years for water sampling.	The quantitative indicators required to make such a decision need to be outlined here, based on sampling frequency and uncertainty.
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		The LTMP also states that the objectives of the sampling program are to collect information to “support the removal of the healthy fish consumption guideline.” The intent of the program is to “discontinue (monitoring) after healthy fish consumption guideline removed.”	Proposing to analyze fish every 20 years cannot be supported without compelling evidence from a more rigorous program (as per comments provided elsewhere in this document) than the one proposed. Residents want more fish sampling, which makes sense given the extent of contamination and the elevated levels of selenium and uranium in
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COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
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			surface waters. The impacts of high uranium levels on the health of the fish community also need to be monitored and assessed.
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6.	Table 2.1	As mentioned in comment 5, the LTMP states that that the ultimate goal of the sampling program is to support the eventual removal of the healthy fish consumption guideline and drinking water advisories. However, selenium toxicity is also a concern for fish reproductive rates, which may result in population level effects for some fish species.	In addition to the safe consumption endpoints, the LTMP should consider including an objective of ensuring the resurgence of fish populations to healthy levels that support subsistence harvesters.
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7.	Page 4, paragraph 1	<p>The LTMP states that “surface water is the best indicator of overall aquatic environment recovery.</p> <p>As a result, sediment and benthic invertebrate monitoring are not required as part of LTMP to meet program objectives.”</p>	<p>There needs to be a stronger argument here to suggest that sediment and benthic sampling are not necessary. Due to the nature of selenium biogeochemical cycling, there may be elevated biological and sediment concentrations that are contributing to biomagnification and bioaccumulation concerns for fish and humans, despite a very low concentration in the water column. Selenium cycles in aquatic habitats by moving in and out of sediment.</p> <p>Given the history of the site, the recovery of the receiving environment, including the status of benthos and the larger fish community, should</p>
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COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
			be monitored.
			The LTMP should also include monitoring of background or reference sites to determine temporal trends of regional changes in the environment that might not be associated with the Beaverlodge site. The area is undergoing effects due to climate change, which may correspondingly result in changing releases from Beaverlodge.
8.	Page 4, paragraph 2	Any changes in sampling frequency need to be supported by a statistically robust sampling program with the ability to detect any decreases or increases in elemental concentrations with time.	This section of the LTMP needs to recognize that concentrations may decrease but may also increase with time (i.e., the models may be inaccurate). The monitoring program must be able to detect those changes.
9.	Page 4, paragraph 3	The LTMP states that there is potential to “reduce surface water sampling frequency for each location to once every 10 years after 15 years of more frequent sampling.” However, there is no indication of if or how concerns from members of the Athabasca Basin communities will be considered prior to the reduction of sampling frequency. Based on Figure 2.2, such a reduction in sampling frequency would be based on only three sampling events, which is minimal given the history at the Beaverlodge properties.	Please provide further information on how concerns from members of the Athabasca Basin communities will be meaningfully and appropriately considered prior to any reductions in the sampling program.



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
10.	Page 5	The LTMP references “performance indicators,” and “recovery,” without providing a clear definition of recovery, a list of performance indicators, or a rationale for both.	<p>Please clarify what these “indicators” are. Are they quantitative values, based on past monitoring, or qualitative “pass/fail” decisions?</p> <p>Also, the term “evaluate natural recovery” needs a definition. Does it apply only to the decline of the three COPCs or the receiving environment as a whole?</p> <p>Please define performance indicators at some point early in the report.</p> <p>Please clarify why no performance indicators have been developed for certain stations and in particular BL-3, which appears to be the most downstream station in the Fulton Creek watershed, based on the maps provided.</p> <p>How are extreme concentration values due to natural variability differentiated from a new impact from the Beaverlodge site?</p>
11.	Page 6, paragraph 1	The LTMP indicates that surface water sampling at select stations can be discontinued at the discretion of the province. There is no mention of if or how YNLR’s concerns would be considered, or whether proper consultation would occur prior to the discontinuation of sampling.	It is inappropriate for the provincial government to have sole discretion in discontinuation of any or part of the LTMP. YNLR must be properly consulted prior to any changes to the sampling



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
12.	Page 9 and Appendix C	<p>The 20-year interval for sampling is far too long, considering that there may be changes due to climate change. Mercury levels alone (in northern pike and possibly lake trout) may exceed guidelines, even though they may not be associated with Beaverlodge.</p> <p>The historical data presented in Appendix C are not strong enough to build a long-term monitoring plan. It is not clear from the presented data if the concentrations have been corrected by sex and age or length of the fish. The statistical power from the high uncertainty and small sample size is extremely low and warrants more frequent sampling.</p>	<p>program being made and must consent to the changes.</p> <p>Given the magnitude of resources available for remediating the site, the interest in the consumption of fish in a traditional fishery or sport fishery certainly warrants a robust sampling program to assure Indigenous rights-holders and the public that the fish are safe to eat. Mercury should be analyzed with the COPCs to ensure that recommendations to consume the fish are not exceeding mercury guidelines.</p> <p>Recommendations from First Nations and the public should be built into a rigorous sampling program.</p>
13.	Page 9, paragraph 5	<p>The LTMP states that “the fish sampling program would be discontinued when the healthy fish consumption guideline is removed in Beaverlodge, Martin, and Cinch Lakes.” However, this endpoint for sampling does not consider the potential for psychosocial impacts within the Athabasca Basin communities, or the fact that fish population dynamics (and not just fish tissue chemistry) may have been impacted by the Beaverlodge site activities.</p>	<p>The fish sampling program should be continued until the Athabasca Basin communities have confidence that the fish are safe to eat in amounts and for relevant fish tissues that are consistent with local subsistence/traditional diets, and that fish populations have recovered</p>



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
			to levels that support the exercise of Aboriginal and Treaty Rights.
14.	Page 20, paragraph 3	The LTMP states that “questions were also raised related to sediment monitoring...Cameco responded by noting that sediment monitoring has been completed in the region. Water is the leading indicator for environmental recovery.”	<p>Water is an important medium for monitoring, but sediment and benthic organisms integrate changes over time. A full LTMP should ideally monitor several components of air (e.g., dust, precipitation), water, and sediments.</p> <p>If the sites are considered “safe” before transfer to Saskatchewan agencies, why is travel and occupancy of the properties still restricted for land users?</p>
15.	Page 24, paragraph 3	With respect to the proposed surface water monitoring program, the LTMP states that “monitoring can be discontinued once SEQG are being met for Se, U, and Ra-226 during two consecutive sampling events.” This criterion for discontinuation of monitoring seems arbitrary, and no rationale is provided for why this threshold was chosen.	The criteria for discontinuing sampling need to be more quantitative, with specific statistical benchmarks. For example, the program needs to show a high level of confidence (80%) to detect a 5% change in concentration. The administrators of the program should also be prepared to increase sampling frequency if concentrations increase, using the same standards. Additionally, any decisions regarding the discontinuation of monitoring should not be



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
			made without full, meaningful consultation with the Athabasca Basin communities.
16.	Page 25, paragraph 4	The LTMP states that “there is likely little benefit of monitoring fish tissue chemistry more often” than the proposed fish sampling frequency of every 10 years.	Please provide evidence for this. Residents and First Nations have recommended more species and more frequent analysis, which are reasonable requests, particularly for traditional users of the fishery.
17.	Page 25–26	It is not clear from the LTMP which parts of the fish will be submitted for chemical analysis.	Given that certain COPCs accumulate preferentially in different parts of fish (e.g., Ra-226 may be higher in bones than muscle tissue), and traditional harvesters may consume other parts of the fish beyond just muscle tissue, it is important that the LTMP sampling program collect fish samples for analysis that are relevant to the parts of the fish consumed by First Nation harvesters.
18.	Page 26	This section rationalizes the analysis of fewer fish at fewer places. “The purpose of the fish component of the Beaverlodge LTMP is to identify when the healthy fish consumption guideline can be removed from the three waterbodies it pertains to [...] and therefore sampling is focused on these waterbodies”. The Athabasca Basin communities have a right to be residents, and First Nations want to know if fish are	The details of Cameco’s fish chemistry baseline program mentioned on page 26 should be published and used to aid recommendations at other sites, not just for selenium but for mercury as well. The nutritional benefits of fish consumption should also be communicated



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
		safe to eat, regardless of whether they are the select fish species from the minimal number of waterbodies that Cameco has selected for the LTMP.	with Indigenous rights-holders and the public if COPC levels, including mercury, are low.
19.	Page 27, paragraph 1	The document states that the LTMP is “for implementation when all Beaverlodge properties have been accepted into the IC Program.” However, it’s not clear in this document what monitoring, if any, has been occurring for the properties that have already been transferred from CNSC licensing to the Saskatchewan ICP.	Please provide detailed information on what monitoring has been occurring on the Beaverlodge properties that have already been transferred to the Saskatchewan ICP, and how that monitoring correlates to the proposed LTMP presented here.
20.	Figure 4.1	Figure 4.1 states that surface water will be evaluated such that “if COPCs are above SEQG or SEQG does not apply, are trends as predicted?”	If COPCs are above SEQG, effects to the biotic community should be investigated, particularly for uranium due to its chemical toxicity.
21.	Page A-1, final bullet point	The LTMP contingency plan states that “if levels/risks are unreasonable conduct further investigation, evaluation of risk, and/or development of plan to reduce risks.” This proposed wording is vague and could be left open to interpretation, resulting in inaction following concerning sampling results.	It is recommended that the LTMP include clear timelines and triggers for the development and implementation of further investigation and plans to reduce risks, should concerning results arise. The process for triggering additional investigation and/or risk mitigation must include meaningful consultation with Athabasca Basin communities.



COMMENT #	DOCUMENT REFERENCE	COMMENT	RECOMMENDATION
22.	Figure B.1	It's unclear what is being shown in the figure. There is a solid blue line that is not in the legend. Other modelling by Cameco shows uranium levels far exceeding SEQG values well into the future at some sites.	Please clarify the legend and lines in the figures. Also, please explain the discrepancy between the LTMP findings and the Cameco modelling mentioned in the comment.
23.	Figure B.1	Based on the graphs presented in Figure B.1, it appears as though the concentrations of radium-226 in water are anticipated to steadily increase over the next 100 years at three of the four waterbodies presented, before starting to decline. It is unclear how these predicted increases support the definition of the site being "safe and stable" to justify the transfer of control from CNSC licensing to Saskatchewan's ICP.	Please provide clarity on how "safe and stable" is defined in relation to the predicted recovery of surface water for radium-226.
24.	Appendix C, paragraph 2	The additional information provided for the technical evaluation of the fish sampling program in Appendix C of the LTMP indicates that "the exact approach for setting/removing the healthy fish consumption guideline is up to the SHA."	Similar to previous comments, the removal of any healthy fish consumption guidelines must be done with proper and meaningful consultation with the Athabasca Basin Communities.

Appendix E

Letter to the Government of Saskatchewan's Ministry of Energy and Resources regarding
Institutional Control Program – 5-year review of the Reclaimed Industrial Sites Act and Regs

11 August 2023

Aaron Saufert
Director of Mineral Programs and Development
Energy and Resources, Mineral Policy
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Re: Institutional Control Program – 5-year review of the Reclaimed Industrial Sites Act and Regs

Dear Aaron:

Thank you on behalf of YNLR for the invitation, from your Ministry of Energy and Resources (MoER), for the invitation to participate in the 5-year review of the Reclaimed Industrial Sites Act (RISA) and Regulations (RISR).

The format for YNLR's response will be to first address the three topic areas that MoER has identified. Following comments and recommendations for these topic areas YNLR will go on to address a fourth topic area of concern. In each case the intent will be to make a recommendation with minimal, but sufficient, context in anticipation of the ongoing involvement by YNLR as this legislative review proceeds.

Topic Area 1: The amount of funding calculated and collected for potential sites

Comments: The calculation and collection are arguably core components of the RISA/RISR, however it is the endpoint of a chain of procedures dealing with the assessment of proposed sites for acceptance into the ICP. Without visibility and participation at a committee level in the assessment of proposed sites, funding calculations are already largely determined without local community participation. Further to this general comment and to exemplify the need for greater transparency and accountability; it is noted, RISA/RISR direct that monies from the Monitoring and Maintenance Fund (MMF) and Unforeseen Events Fund (UEF) are to be invested so as to ensure the long-term viability of these two funds: that direction has failed to be effectively implemented since the passing of the RISA/RISRs

Recommendations:

1. The RISA and/or RISRs be amended to bring in more detailed requirements around how such programs are to be costed, in terms of process, and what factors such cost estimates are to be based on¹. Further to this: the exact process with the committees involved – their roles, scope of responsibility and rules for membership appointments (specifically Aboriginal Government and/or delegates) – needs to be detailed in the RISA and/or RISRs.
2. Amendments to the RISA and/RISRs should be made to include Indigenous Government, or their delegates, representation in the committees that assess proposed sites for inclusion in the ICP.
3. Amendments to the RISRs should be made to include Indigenous Government, or their delegates, representation in the Fund Advisory Committee.

¹ It is recommended in the amending of the RISA/RISRs in this area; MoER should review and consider the “Guidelines for Closure and Reclamation Cost Estimates for Mines” put out by the Land and Water Boards of the Mackenzie Valley in the NWT

Topic Area 2: How the work for site inspections is procured

Comments: There are several ways to address procurement for site inspections. These include public tendering, geographic restrictions on bidders, hiring preferences/restrictions for northerners and even sole source contracting. All of these options are possible through amendments to RISRs or through subsequent policy changes. However, from YNLR's perspective: 1) the determination of the requirements for inspections; and 2) assistance with training, so that Indigenous communities can more competitively participate in the procurement process, are both far more relevant.

Recommendations:

4. Similar to Recommendation 2 above, and to ensure that the preliminary steps are addressed to make the procurement process for sites inspection work relevant to Indigenous communities: amendments to the RISA and/RISRs should be made to include Indigenous Government, or their delegates, representation in the committees that assess proposed sites for inclusion in the ICP.
5. Dealing specifically with the procurement process for site inspection work respecting northern preference: a new regulation-making authority should be added to section 18 of the RISA, and further details could then be fleshed out in the RISRs, with applicable provisions for northern preferences

Topic Area 3: How the results and outcomes from the inspections are shared with community members

Comments: The 5-year ICP reports are already required to be publicly available in accordance with section 15(5)(b) of the RISA. It would not be difficult to request a reasonable (and modernizing) extension of that level and type of disclosure for the promulgation of inspection results. Unfortunately, fulfilling the fiduciary responsibility to inform, consult and accommodate Indigenous people living in the vicinity of ICP sites cannot be addressed simply through a paper publication or posting on an internet site. Fortunately, a working model – based on the Saskatchewan Government's Duty to Consult Policy (DTC policy) - already exists that could be modified, or provide guidance, to partially address the need to promulgate these inspection results. But it must be noted that the current DTC policy is not, in itself, adequate to solely address the promulgation of inspection results to Indigenous communities. Specific communications plans would need to be developed based on indigenous community participation as some sites may trigger more of a response or require more communication compared to others.

Recommendation:

6. MoER should engage with MoGR and YNLR to develop a process to inform residents of Nuhenene of the results of ICP site inspections using YNLR as the conduit to facilitate this communication. When MoER, MoGR and YNLR have an agreed upon an adequate process the RISA/RISRs should subsequently be amended to support this process.

Topic Area 4: How can the RISA/RISRs be made more transparent and accountable in a cost effective and timely manner.

Comments: The RISA/RISRs are very limited in any form of public transparency and accountability. Further to this, virtually all the actives carried out under this Act and Regs are internal to the bureaucracy

of MoER without the involvement of the public or affected parties and rights holders to this legislation. A few, of many, examples of this fact include the lack of any public information or involvement in the:

- Assurance Fund;
- Fund Advisory Committee; and
- Deliberations for the transfer of proposed sites to the ICP, including costing and standards for acceptance to be transferred

Recommendations:

7. The RISA/RISRs should be amended to create a Minister's advisory committee. This committee would meet annually, or more frequently as required, and the committee would have the authority to review any and all aspects of the implementation of the RISA/RISRs. Further to this, this committee would report directly to the Minister of MoER; and
8. The Indigenous Governments represented by YNLR should be a member of the legislative drafting committee and should be a co-drafter of all amendments reviewed and proposed for the RISA /RISRs.

Thank you again for the invitation to participate in the 5-year review of the Reclaimed Industrial Sites Act (RISA) and Regulations (RISR). YNLR remains available for further participation concerning the review of this legislation. YNLR is also available for further discussion specifically concerning recommendations 7 and 8. Also concerning these two recommendations; YNLR will be in contact with MoER to raise this as a topic at our next regular YNLR/MoER update meeting.

Respectfully

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