



Record of Decision

DEC 23-H8

In the Matter of

Applicant Orano Canada Inc.

Subject Application for the Revocation of the Uranium
Mine Licence for the Cluff Lake Project to
Facilitate its Transfer to Saskatchewan's
Institutional Control Program

Public Hearing
Date March 1, 2023

Record of
Decision Date May 10, 2023

RECORD OF DECISION – DEC 23-H8

Applicant: Orano Canada Inc.

Address/Location: 100-833 45th Street West
Saskatoon, SK S7L 5X2

Purpose: Application for the Revocation of the Uranium Mine Licence for the Cluff Lake Project to Facilitate its Transfer to Saskatchewan’s Institutional Control Program

Application received: February 28, 2020

Date of public hearing: March 1, 2023

Location: Virtual hearing

Members present: R. Velshi, Chair
M. Lacroix
V. Remenda

Registrar: D. Saumure
Recording Secretary: M. McMillan
Commission Counsel: P.D. Bourgeau

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Intervenors		
See appendix A		
Other Representatives		
Saskatchewan Ministry of Energy and Resources: D. Zmetana		
Saskatchewan Health Authority: B. Quinn		
Saskatchewan Ministry of Environment: C. McGuire		

<p>Licence: Revoked</p> <p>Exemption to the Province of Saskatchewan: Authorized</p>

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1.0 INTRODUCTION

1. Orano Canada Inc. (Orano) has applied to the Canadian Nuclear Safety Commission¹ (CNSC) for the revocation of the uranium mine licence (UML), UML-MINEMILL-CLUFF.00/2024, for its Cluff Lake Project. The Cluff Lake Project which was decommissioned between 2004 and 2013, is located in northwestern Saskatchewan, situated within Treaty 8 (1899) territory and the Homeland of the Métis and within the traditional territories of the Dene, Cree, and Métis peoples. As part of its application for the revocation of the licence, Orano is requesting that the Commission exempt the Province of Saskatchewan from licensing under the [Nuclear Safety and Control Act](#)² (NSCA), to enable the transfer of the Cluff Lake Project site into Saskatchewan's [Institutional Control Program](#) (ICP), for which the Saskatchewan Ministry of Energy and Resources (SMER) is the provincial authority. Orano's licence for the Cluff Lake Project expires on July 31, 2024.
2. The current licence, issued in [2019](#), authorizes Orano to possess, manage, and store nuclear substances that are associated with the decommissioned Cluff Lake Project. The Cluff Lake Project site consisted of two underground mines, four open pit mines, an above ground tailings management area (TMA), a mill and other support facilities. Mining activity commenced at the Cluff Lake Project site in 1979 and ceased in 2002. Decommissioning activities began at the site in 2004 and physical decommissioning of the mine and mill facilities was completed by 2006, apart from certain infrastructure which remained to support post-closure monitoring. In 2013, the remaining structures and facilities were decommissioned.
3. The Province of Saskatchewan established the ICP in 2007 in order to provide for the long-term monitoring and maintenance of former mine/mill sites located on provincial Crown land. Saskatchewan's provincial legislation establishing the ICP³, [The Reclaimed Industrial Sites Act](#)⁴ and [The Reclaimed Industrial Sites Regulations](#)⁵, require that:
 - mining and milling activities have ended and that decommissioning is complete;
 - post-closure monitoring conducted by the licensee demonstrates that the site is safe and stable;
 - sufficient funds are in place to provide for long-term monitoring and maintenance and for unforeseen events; and
 - the property be released from any and all licences that are issued by

¹ The *Canadian Nuclear Safety Commission* is referred to as the "CNSC" when referring to the organization and its staff in general, and as the "Commission" when referring to the tribunal component.

² Statutes of Canada (S.C.) 1997, chapter (c.) 9.

³ The SMER provided information on the ICP in [CMD 23-H8.6](#). CNSC staff also previously presented a detailed overview of the ICP to the Commission at the October 2018 Commission meeting ([CMD 18-M38](#)).

⁴ Chapter R-4.21 of The Statutes of Saskatchewan, 2006 (effective March 1, 2007), as amended by the Statutes of Saskatchewan, 2014, c.E-13.1; and 2018, c.32

⁵ Chapter R-4.21 Reg 1 (effective March 21, 2007) as amended by Saskatchewan Regulations 109/2010, 80/2018 and 110/2021.

regulatory agencies, including those issued by the CNSC pursuant to the NSCA, thus reverting total custodial responsibility back to the Province of Saskatchewan.

4. If the Commission accepts Orano's application for the revocation of the UML-MINEMILL-CLUFF.00/2024 in order to enable a transfer to the ICP, an exemption by the Commission under section 7 of the NSCA for the Province of Saskatchewan would also be needed. Once the property enters the program, the Province of Saskatchewan will be responsible for the monitoring and maintenance of the site, and for the response to any unforeseen events.

Issues

5. The Commission is required to determine whether and what requirements the [*Impact Assessment Act*](#)⁶ (IAA) imposes in relation to Orano's application for the revocation of the uranium mine and mill licence for its Cluff Lake Project. Satisfying any such requirements can be a prerequisite to a licensing decision.
6. In determining whether to revoke the Cluff Lake Project licence, the Commission is considering whether:
 - a) the decommissioning objectives and criteria established for the Cluff Lake Project have been met;
 - b) the Cluff Lake Project site is passively safe such that no further work is required to remediate the site;
 - c) the site will remain passively safe for the long-term
7. In considering whether to exempt the Province of Saskatchewan from licensing under the NSCA for the Cluff Lake Project to enable its acceptance into the ICP, the Commission is required to decide, pursuant to section 7 of the NSCA and in accordance with section 11 of the [*General Nuclear Safety and Control Regulations*](#)⁷ (GNSCR), whether granting the exemption would:
 - a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed
8. As an agent of the Crown, the Commission recognizes its role in fulfilling the Crown's constitutional obligations, along with advancing reconciliation with Canada's Indigenous peoples. The Commission's responsibilities include the duty to consult and, where appropriate, accommodate Indigenous interests where the Crown contemplates conduct which may adversely impact potential or established

⁶ S.C. 2019, c. 28, s. 1.

⁷ SOR/2000-202.

Aboriginal⁸ or treaty rights⁹. As such, the Commission must determine what engagement and consultation steps and accommodation measures are called for, respecting Indigenous interests.

Public Hearing

9. On August 8, 2022, a [Notice of Public Hearing and Participant Funding](#) was published for this matter.
10. Pursuant to section 22 of the NSCA, the President of the Commission established a Panel of the Commission over which she would preside, including Commission Members Dr. M. Lacroix and Dr. V. Remenda. The Commission, in making its decision, considered information presented for the public hearing held virtually on March 1, 2023. The public hearing was conducted in accordance with the [Canadian Nuclear Safety Commission Rules of Procedure](#)¹⁰ (the Rules). During the public hearing, the Commission considered written submissions and heard oral presentations from Orano ([CMD 23-H8.1](#), [CMD 23-H8.1A](#), and [CMD 23-H8.1B](#)) and CNSC staff ([CMD 23-H8](#) and [CMD 23-H8.A](#)). The Commission also considered written and/or oral submissions from 12 intervenors (see Appendix A for a list of interventions). The hearing was webcast live via the CNSC website and [video archives](#) are available on the CNSC's website. A hearing transcript is available upon request to the Commission Registry.

Participant Funding Program

11. Pursuant to paragraph 21(1)(b.1) of the NSCA, the Commission has established a [Participant Funding Program](#) (PFP) to facilitate the participation of Indigenous Nations and communities, members of the public and stakeholders in Commission proceedings. In [August 2022](#), funding was made available through the CNSC's PFP to review Orano's licence revocation and exemption application and associated documents, and to provide the Commission with value-added information through topic-specific interventions. A Funding Review Committee (FRC), independent of the CNSC, reviewed the funding applications received and made recommendations on the allocation of funds. Based on the recommendations from the FRC, the CNSC [awarded](#) a total of \$201,699.00 to 6 applicants:

- Saskatchewan Environmental Society – up to \$6,435.00
- Ya'thi Néné Land and Resource Office – up to \$27,747.50
- Birch Narrows Dene Nation – up to \$32,466.50
- Métis Nation–Saskatchewan – up to \$33,350.00
- Clearwater River Dene Nation – up to \$47,200.00
- Athabasca Chipewyan First Nation – up to \$54,500.00

⁸ “Aboriginal” is the term used in this document when referring to the Crown’s duty to consult as that is the term used in s. 35 of the *Constitution Act, 1982*. In all other cases, “Indigenous” is the preferred terminology and used accordingly.

⁹ *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74.

¹⁰ SOR/2000-211.

2.0 DECISION

12. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission is satisfied that:
- no requirements under the IAA are imposed in relation to this matter
 - the contemplated licence revocation and exemption of the Province of Saskatchewan from licensing under the NSCA to enable transfer of the Cluff Lake Project site to the Saskatchewan ICP do not present any novel adverse impact on any potential or established Aboriginal claim or right
 - the Commission's responsibility to uphold the honour of the Crown and its constitutional obligations with regard to engagement and consultation respecting Indigenous interests has been satisfied
13. In its consideration of the revocation of Orano's licence, the Commission is satisfied that:
- the Cluff Lake Project site continues to meet the decommissioning objectives and criteria in order for the site to be released from licensing under the NSCA and accepted into the ICP
 - the Cluff Lake Project site is passively safe such that no further work is required to remediate the site and the site will remain passively safe for the long-term.

Therefore,

the Commission, pursuant to section 24(2) of the *Nuclear Safety and Control Act*, revokes the Uranium Mine Licence, UML-MINEMILL-CLUFF.00/2024, issued to Orano Canada Inc. for its Cluff Lake Project located in northern Saskatchewan.

14. The Commission also considered whether to exempt the Province of Saskatchewan from requiring CNSC licensing for the Cluff Lake property under section 7 of the NSCA, to enable its acceptance into Saskatchewan's ICP. Based on its consideration of the matter, the Commission concludes that, in accordance with section 11 of the GNSCR, exempting the Province of Saskatchewan from requiring licensing under the NSCA for the Cluff Lake property will not:
- a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed.

Therefore,

the Commission, pursuant to section 7 of the *Nuclear Safety and Control Act* and in accordance with section 11 of the *General Nuclear Safety and Control Regulations*, exempts the Province of Saskatchewan from the obligation to have a licence under the *Nuclear Safety and Control Act* for the Cluff Lake Project site, intended for transfer into the Province of Saskatchewan's ICP.

3.0 APPLICABILITY OF THE *IMPACT ASSESSMENT ACT*

15. In coming to its decision, the Commission was first required to determine whether any requirement under the IAA applied to the revocation being sought, and whether an impact assessment of the proposal was required.
16. The IAA came into force on August 28, 2019. Pursuant to the IAA and the [*Physical Activities Regulations*](#)¹¹ made under it, impact assessments are to be conducted in respect of projects identified as having the greatest potential for adverse environmental effects in areas of federal jurisdiction. Orano's application does not include activities listed in the *Physical Activities Regulations* that require an impact assessment, or that meet the definition of a project on federal lands.
17. The Commission is satisfied there is no requirement under the IAA for an impact assessment to be completed. The Commission is also satisfied that there are no other applicable requirements of the IAA to be addressed in respect of this matter.¹²

4.0 ISSUES AND COMMISSION FINDINGS

18. In making its licensing decision, the Commission considered a number of issues and submissions relevant to Orano's application, specifically:
 - assessment of the licence application
 - Orano's performance at the Cluff Lake Project site
 - the criteria for release of a site from CNSC regulatory control
 - reaffirming whether the Cluff Lake Project site has satisfied decommissioning objectives
 - Indigenous engagement and consultation
 - the proposed licence revocation
 - the proposed exemption to release the property into the Saskatchewan ICP

¹¹ SOR/2019-285.

¹² The IAA can impose other requirements on federal authorities in respect of authorizing projects that are not designated as requiring an impact assessment, including projects that are to be carried out on federal lands, or projects outside of Canada. This licence revocation and licensing exemption does not engage any such applicable IAA requirements.

4.1 Assessment of Licence Application

19. Orano submitted its [licence revocation and licensing exemption application](#) on February 28, 2020. In its consideration of this matter, the Commission assessed the application submitted by Orano, as required by the NSCA, the GNSCR, and other applicable regulations made under the NSCA. Section 6 of the GNSCR provides:

An application for the amendment, revocation or replacement of a licence shall contain the following information:

- a) a description of the amendment, revocation or replacement and of the measures that will be taken and the methods and procedures that will be used to implement it;
- b) a statement identifying the changes in the information contained in the most recent application for the licence;
- c) a description of the nuclear substances, land, areas, buildings, structures, components, equipment and systems that will be affected by the amendment, revocation or replacement and of the manner in which they will be affected; and
- d) the proposed starting date and the expected completion date of any modification encompassed by the application.

Section 7 of the GNSCR provides:

An application for a licence or for the renewal, suspension in whole or in part, amendment, revocation or replacement of a licence may incorporate by reference any information that is included in a valid, expired or revoked licence.

20. Orano's application and CMD 23-H8.1 describe the process by which the Cluff Lake Project site would be transferred to the Province of Saskatchewan's ICP, should the Commission grant the requested licence revocation and licensing exemption. Orano's application and supporting submission also describe changes since the 2019 Cluff Lake Project licence renewal and information on how the Cluff Lake Project site would be affected by transfer to the ICP.
21. After reviewing the application, the Commission concludes that Orano's application is sufficient and complies with the regulatory requirements respecting an application for licence revocation. The Commission further concludes that Orano's application contains sufficient information respecting the proposed exemption from licensing.

4.2 Orano's Performance at the Cluff Lake Project

22. In consideration of Orano's past performance at the Cluff Lake Project, the Commission examined CNSC staff's assessment of Orano's performance with respect to the CNSC's [safety and control area](#) (SCA) framework. CNSC staff

assessed Orano's performance as it pertains to the 4 SCAs applicable to the Cluff Lake Project uranium mine licence:

- Management System
- Radiation Protection
- Conventional Health and Safety
- Environmental Protection

In section 3 of CMD 23-H8, CNSC staff submitted that, throughout the licence period, CNSC staff assessed Orano's performance in each applicable SCA as "satisfactory". CNSC staff based its assessment of Orano's past performance on regulatory oversight activities including inspections, documentation reviews, and general communication with Orano.

23. The management system SCA covers the framework that establishes the processes and programs required to ensure an organization achieves its safety objectives, continuously monitors its performance against these objectives and fosters a healthy safety culture. In section 3.1 of CMD 23-H8.1, Orano submitted information on its management system for the Cluff Lake Project. Orano reported that its management system specifies requirements for workers who managed and performed work affecting the post-closure environmental monitoring phase of the Cluff Lake Project, focusing on activities which may impact the health and safety of persons or the environment. In section 3.2 of CMD 23-H8, CNSC staff reported that Orano's management system contained appropriate safe operating practices and procedures for the management of the decommissioned Cluff Lake Project. CNSC staff confirmed that Orano implemented its management system as required over the licence term.
24. The radiation protection SCA covers the implementation of a radiation protection program in accordance with the [Radiation Protection Regulations](#)¹³. In section 3.2.1 of CMD 23-H8.1, Orano submitted that radiation sources that once existed at the decommissioned Cluff Lake Project site had either been removed or managed as part of decommissioning activities, and that the Cluff Lake Project site was now at background levels of radiation exposure. In section 3.3 of CMD 23-H8, CNSC staff reported that there are no full-time workers at the decommissioned Cluff Lake Project site and that estimated radiation doses to workers are well below the regulatory public dose limit of 1 millisievert (mSv)/year.¹⁴ CNSC staff assessed Orano's radiation protection program for the Cluff Lake Project to be satisfactory.
25. Regarding radiation protection, the Commission noted that, in its [2019 decision](#), the Commission had recommended that Orano reassess its usage of radiation warning signage around the exploration core sample storage location.¹⁵ At the 2019 hearing, it

¹³ SOR/2000-203

¹⁴ The [Radiation Protection Regulations](#) define the dose limit for a person who is not a nuclear energy worker as 1 mSv per calendar year.

¹⁵ *Record of Decision in the Matter of Orano Canada Inc. 's Application for the Renewal of the Uranium Mine Licence for Cluff Lake Project*, May 2019, paragraph 39

was noted that radiation warning signs were present at the exploration core sample storage location though Orano determined that the area did not meet the criteria for radiation signs under the NSCA and its regulations. Asked for an update on the use of signage at the Cluff Lake Project site since 2019, CNSC staff confirmed that the site is clear of inappropriate signage, including at the exploration core sample storage location. CNSC staff noted that it verified the appropriate use of signage through on-site inspection. The Commission is satisfied that Orano addressed the signage issues.

26. The conventional health and safety SCA covers the implementation of a program to manage workplace safety hazards and to protect personnel and equipment. In section 3.2.2 of CMD 23-H8.1, Orano submitted that it had implemented a conventional health and safety program to protect the health and safety of workers that visit the site to carry out campaign monitoring. Orano reported two worker injuries during the licence term, neither of which was a lost-time injury. In section 3.4 of CMD 23-H8, CNSC staff submitted that it assessed Orano's conventional health and safety program to be satisfactory. CNSC staff noted that its September 2022 inspection found Orano to be demonstrating a mature safety culture.
27. The environmental protection SCA covers programs that identify, control and monitor all releases of radioactive and hazardous substances and effects on the environment as the result of licensed activities. In section 3.2.3 of CMD 23-H8.1, Orano submitted that it continuously optimized its environmental monitoring program for the decommissioned Cluff Lake Project site during the licence period so that it now reflects the long-term monitoring and maintenance plan (LTMMP) that will accompany the transition of the site into the ICP. The LTMMP is discussed further in section 4.5.1 of this *Record of Decision*.
28. In section 2 of CMD 23-H8, CNSC staff reported that Orano has implemented and maintained effective environmental protection measures to adequately protect the environment and the health of persons. CNSC staff completed an Environmental Protection Review (EPR) for the Cluff Lake Project in 2022.¹⁶ CNSC staff's assessment included a review of the licence application, past environmental performance, and supporting documents. The supporting documents included Orano's environmental risk assessment (ERA), which evaluated current and future risk to the environment from the Cluff Lake Project site. CNSC staff found that concentrations of radiological and hazardous substances in the receiving environment are at levels similar to the natural background, or in line with the 2019 ERA predictions. CNSC staff further reported that the potential risks from radiological and hazardous sources are low to negligible.
29. Further on environmental protection, in section 3.5.5 of CMD 23-H8, CNSC staff provided information on the CNSC's Independent Environmental Monitoring Program (IEMP). In 2017, CNSC staff carried out an IEMP sampling campaign in publicly accessible areas in the vicinity of the Cluff Lake Project site and took samples of fish, surface water, blueberries, Labrador tea, and radon in ambient air.

¹⁶ The EPR report is included in Addendum D of CMD 23-H8.

CNSC staff reported that the IEMP results indicated that the public and the environment in the vicinity of the Cluff Lake Project site are protected, and there are no expected health impacts as a result of past or present operations at the site. The IEMP results were reported to the Commission during the 2019 licence renewal hearing and are publicly available on the [CNSC website](#). CNSC staff noted its ongoing work to incorporate Indigenous knowledge into the activities that CNSC staff undertake as part of the IEMP, and in reviewing sampling and monitoring programs for projects under CNSC oversight.

30. The Commission asked CNSC staff to comment on the recommendation made by the Ya'thi Nene Land and Resource Office (YNLR; [CMD 23-H8.13](#)) regarding the need to quantify the contribution of the Cluff Lake Project to cumulative effects of the uranium industry in the Athabasca basin. CNSC staff explained that the Eastern Athabasca Regional Monitoring Program (EARMP) performs sampling in the Athabasca Basin for the purpose of determining cumulative effects of uranium sites in the area. In section 6.1.1 of its EPR, CNSC staff submitted that the results of the EARMP indicate that cumulative effects associated with uranium mining and milling have not been identified within the EARMP study area. CNSC staff's position is that, although the Cluff Lake site does not fall within the EARMP study area, the EARMP findings provide a reasonable basis for comparison. CNSC staff noted that the EARMP had recently reached the end of its mandate – CNSC staff expressed its intent to advocate to expand the program to also sample locations in the western portion of the Athabasca Basin.¹⁷
31. The Commission agrees with CNSC staff's assessment that Orano's performance in all relevant SCAs has been satisfactory. The Commission is satisfied that the information presented, including the results of CNSC staff's EPR and IEMP campaign, support the conclusion that the environment and the health and safety of persons around the Cluff Lake Project site are protected.

4.3 Decommissioning Objectives for the Cluff Lake Project

32. Conditions of acceptance by the Province of Saskatchewan to transfer the Cluff Lake Project site into the ICP include that operations have ended, and that the site has met established decommissioning objectives, including that the site is safe and stable.
33. In 2003, following COGEMA's¹⁸ submission of a Comprehensive Study for Decommissioning for the Cluff Lake Project, the CNSC developed a Comprehensive Study Report (CSR) under the *Canadian Environmental Assessment Act*¹⁹ which established CNSC-accepted decommissioning objectives for the Cluff Lake Project. The decommissioning objectives were established such that, when achieved, they would indicate that the site had been successfully decommissioned.

¹⁷ *Transcript of the March 1 2023 Public Hearing*, page 168-169

¹⁸ Orano was formerly known as both AREVA Resources Canada Inc. and COGEMA Resources Inc. Both names still appear in documents relevant to the decommissioning of the Cluff Lake Project.

¹⁹ S.C. 1992, c.37 (repealed)

On April 15, 2004, the federal Minister of the Environment concurred with the conclusions of the CSR.²⁰

34. As set out in its [2019 decision](#), the Commission was satisfied that Orano had met all decommissioning objectives established in the CSR and concluded that Orano had met the objectives of the Cluff Lake Project Detailed Decommissioning Plan. The decommissioning objectives include:
- the achievement of the accepted decommissioning surface water quality objectives (DSWQO);
 - levels of gamma radiation, radon, and long-lived radioactive dust which pose no unacceptable risk to traditional land use, and which are consistent with the application of the As Low As Reasonable Achievable (ALARA) principle;
 - a stable, self-sustaining landscape;
 - reduction of water infiltration rates around the tailings management area (TMA) and the Claude waste rock pile to levels that adequately restrict contaminant movement in groundwater and are suitably protective of downstream surface water receptors; and
 - the return of the site to an aesthetically acceptable state that poses no unreasonable risk to persons or to the environment.
35. As explained in its application, Orano revised the Cluff Lake Detailed Post-Decommissioning Plan in 2022 and submitted it as the Cluff Lake End State Report in support of its request for licence revocation. The End State Report describes the current status of the decommissioned Cluff Lake Project site and provides information that the prescribed conditions for IC under Section 3 of the *Reclaimed Industrial Sites Regulations* have been met, including information on the decommissioning objectives.
36. In section 1.2 of CMD 23-H8, CNSC staff reported that it reviewed Orano's End State Report and found that the following sections of the report verify that the decommissioning objectives have been met:
- In section 2.1.1, Orano submitted that surface water quality objectives have been achieved and are predicted to be achieved in the long-term.
 - In section 2.1.2, Orano reported that it applied sufficient cover materials to eliminate long-lived radioactive dust, and to reduce radon progeny levels to near background conditions. Orano further noted that gamma radiation was addressed through surface gamma clearance surveys and remediation, as necessary. Orano submitted that the radiological levels achieved are well within the regulatory limits for members of the public of 1 mSv/year.
 - In section 2.1.3, Orano submitted that decommissioning activities had included work to stabilize the landscape and minimize public safety hazards. This work included the decommissioning and stabilization of underground

²⁰As described in section 4.8 of [Record of Proceedings, Including Reasons for Decision in the Matter of COGEMA Resources Inc.'s Application for a Decommissioning Licence for the Cluff Lake Uranium Mine Project](#), July 2004

mine workings, TMA dam rehabilitation, and revegetation of the site. Orano reported that the Cluff Lake Project site is stable, self-sustaining, and largely reclaimed.

- In section 2.1.4, Orano reported that the soil cover systems for the TMA and Claude waste rock pile have performed as intended for a number of years and that they are self-sustaining and effective in controlling erosion. Orano reported that it expects the covers to remain stable.
- In section 2.1.5, Orano submitted that the Cluff Lake Project site does not pose unreasonable risk to persons or the environment. Orano noted that the site has unrestricted access for traditional use. Orano further reported that ecological integrity has been maintained and that aquatic and terrestrial systems are recovering, and are expected to continue to do so in the future.

37. The interventions by Birch Narrows Dene Nation (BNDN; [CMD 23-H8.8](#)), the Métis Nation -Saskatchewan (MN-S; [CMD-H8.11](#)), the Athabasca Chipewyan First Nation (ACFN; [CMD 23-H8.10](#)), and the Saskatchewan Environmental Society (SES; [CMD 23-H8.7](#)) raised concerns that the DSWQO are above other provincial and federal guidelines for some contaminants of potential concern. An Orano representative explained that, at the time of the decommissioning EA carried out in 1999, surface water quality objectives for some elements did not exist and so Orano developed its own. CNSC staff noted that, as surface water quality guidelines evolved over time, Orano had used the new guidelines as screening tools in its ERA in order to determine when more detailed assessment was required.²¹ The Commission noted that the DSWQO were discussed during the 2019 licence renewal hearing, at which time the Saskatchewan Ministry of Environment (SMOE) confirmed that the decommissioning objectives remained adequate for the decommissioning of the Cluff Lake Project. The Commission is satisfied with the information provided on this topic and notes that no new information was presented that would make it reconsider the adequacy of the DSWQO.
38. In its intervention BNDN ([CMD 23-H8.8](#)) expressed the view that that the TMA cover at the Cluff Lake Project is too thin. An Orano representative noted that the cover on the TMA has a thickness ranging from 1 to 6 metres, per its design. The Commission noted that the thickness of the TMA cover was discussed at the 2019 licence renewal hearing, at which time Orano provided detailed information on the TMA cover and the factors considered when determining its thickness. The Commission is satisfied that it has not received any new information that would make it reconsider its view of this matter.
39. As part of its intervention, the SES ([CMD 23-H8.7](#)) submitted a review of the decommissioning of the Cluff Lake TMA, which it completed with support from Orano. As part of the review, the SES identified concerns with the adequacy of the decommissioning and considered how these concerns had been addressed in the studies and regulatory processes concerning the Cluff Lake Project site. Though the

²¹ *Transcript of the March 1 2023 Public Hearing, pages 82-84*

SES reported that it did not have sufficient resources to be able to make an objective judgement about whether the decommissioning was technically adequate, it concluded that outstanding issues remained regarding the completeness of the decommissioning related to ambiguity in communications, assumptions made, lack of consensus on values, knowledge limitations, lack of faith in long-term oversight, and trust. The SES recognized that Orano had made significant efforts to reduce uncertainty and to respond to concerns raised.

40. Regarding the SES's submission respecting a lack of consensus on values, the Commission asked for more information on the consideration of Indigenous knowledge and values in activities at the Cluff Lake Project site. An Orano representative said that Orano had considered Indigenous knowledge in the development of decommissioning objectives and criteria for the Cluff Lake Project site. The Orano representative explained that Orano received this Indigenous knowledge through engagement activities with land users, including interviews, questionnaires, and workshops. An Orano representative further stated that Indigenous Nations and communities had reviewed the LTMMP, and that changes were made based on the feedback received.
41. The Commission asked Orano to comment on the matter of SES's concern related to a lack of trust in Orano's collection and interpretation of data. An Orano representative stated that all technical work completed by Orano and its consultants was executed with a high degree of professionalism, supported by qualified engineering and scientific teams.
42. The Commission commends Orano for supporting the SES's review and encourages both Orano and CNSC staff to follow up with the SES to address the issues raised in the intervention. The Commission noted that many of the concerns raised by the SES were discussed during the 2019 hearing and notes that it has not received any new information that would make it reconsider its conclusion that the decommissioning objectives have been met for the Cluff Lake Project site.
43. The Commission is satisfied that, further to its conclusion in 2019, all decommissioning objectives for the Cluff Lake Project site have been met, and that the site is safe and stable. The Commission comes to this conclusion based on the following:
 - The Commission agrees with CNSC staff's assessment that Orano's End State Report reaffirms that the decommissioning objectives for the Cluff Lake Project have been met
 - The Commission remains satisfied that the decommissioning objectives remain adequate for the Cluff Lake Project, as affirmed by the SMOE
 - The Commission remains satisfied that the TMA cover, as detailed in the End State Report, is effective and self-sustaining.

4.4 Long-Term Monitoring and Maintenance

44. A condition of acceptance by the Province of Saskatchewan to transfer the Cluff Lake Project site into the ICP is that sufficient funds are in place to provide for long-term monitoring and maintenance and also for unforeseen events. Subsection 3(2) of *The Reclaimed Industrial Sites Act* states that a key purpose of the ICP is to ensure that the required monitoring and maintenance are carried out on former mine/mill sites located on provincial Crown land.

4.4.1 Long-Term Monitoring and Maintenance Plan

45. In section 2.2.1 of CMD 23-H8.1, Orano submitted that it prepared a LTMMP to be executed following the transfer of the Cluff Lake Project to the ICP. Orano reported that the SMOE had reviewed the LTMMP and that the plan was being finalized between Orano and the Province of Saskatchewan. Orano noted that recommendations from CNSC staff, key stakeholders, and primary land users had been incorporated into the LTMMP.
46. In section 2.3.1 of the EPR report, CNSC staff submitted that Orano's proposed LTMMP is robust and that it focuses on four key areas:
- 1) geotechnical inspections;
 - 2) monitoring future risk in order to validate predicted environmental performance and recovery of the Island Creek and Cluff Creek watersheds;
 - 3) monitoring for recovery, and includes monitoring of sediment, benthic invertebrates, fish, and vegetation;
 - 4) incorporating additional surface water sample locations in areas of interest to known land users to provide additional assurance that the water will remain safe over time

In section 7.1 of its End State Report, Orano explained that long-term maintenance requirements are expected to be infrequent and minimal as the site is stable, self-sustaining, and under passive care.

47. During the hearing, CNSC staff stated that it reviewed the LTMMP and affirmed that Orano had adequately addressed all comments raised by CNSC staff. CNSC staff further said that it found the LTMMP to be technically adequate and that the aspects of the plan that are still being finalized between Orano and the Province of Saskatchewan are not of technical concern to CNSC staff.²²
48. Regarding long-term water monitoring, as raised in the intervention by BNDN (CMD 23-H8.8) and the MN-S (CMD 23-H8.11), the Commission asked for more information on why groundwater monitoring was not included in the LTMMP. An Orano representative responded that groundwater monitoring was not included in the LTMMP because surface water monitoring provides the most accurate monitoring of

²² Transcript of the March 1 2023 Public Hearing, page 92

water contamination. The Orano representative explained that the transport of contaminants in groundwater on the Cluff Lake Project site has been well modelled and that groundwater discharges to surface water very slowly. CNSC staff added that, though groundwater monitoring could provide early warning of transportation of contaminants of potential concern, CNSC staff determined the LTMMP to be acceptable without groundwater monitoring because surface water monitoring at groundwater discharge locations will provide enough warning for mitigation actions to be taken if necessary. CNSC staff noted that there are no wells at the Cluff Lake Project site to enable people to drink groundwater.²³

49. The Commission, noting the concern raised in the intervention by the ACFN ([CMD 23-H8.10](#)), asked if the LTMMP accounted for seasonal variations in surface water quality. An Orano representative explained that Orano had evaluated seasonal variations in both surface water and groundwater and determined the best time of year to complete surface water sampling. The Orano representative noted that seasonal variation in surface water is not significant when evaluating the long-term performance of the Cluff Lake Project site. CNSC staff noted that contamination migrates from groundwater to surface water very slowly and any significant variability in contamination in surface water would occur over many years.²⁴
50. The Commission asked for additional information regarding sediment quality at the Cluff Lake Project site. CNSC staff explained that Orano's ERA looks at sediment quality as an indicator of the health of the benthic community, as a food source for bottom-feeding fish and other aquatic and semi-aquatic ecological receptors such as birds. CNSC staff said that sediment impacts in Island Lake were the result of effluent releases during past operation of the mine. In section 3.5.2 of CMD 23-H8, CNSC staff explained that Orano's ERA indicated that there were still elevated concentrations of some contaminants of potential concern in water and sediments in the Island Creek and Cluff Creek watersheds, but that the system is recovering and will continue to do so in the future. An Orano representative confirmed that the LTMMP includes sediment monitoring to validate that the sediments continue to recover in Island Lake.²⁵
51. The interventions by Clearwater River Dene Nation (CRDN; CMD 23-H8.9) and the SES (CMD 23-H8.7) questioned whether Saskatchewan's ICP has the workforce capacity to complete sufficient long-term monitoring and maintenance at the Cluff Lake Project site. An SMER representative assured the Commission that the Province of Saskatchewan has the capacity to manage the ICP. Asked by the Commission to expand on the qualification of workers completing long-term monitoring and maintenance activities under the ICP, the SMER representative explained that it uses an open tender process to hire qualified consultants to conduct long-term site inspections. The SMER representative noted that these consultants are

²³ *Transcript of the March 1 2023 Public Hearing, pages 61-66*

²⁴ *Transcript of the March 1 2023 Public Hearing, pages 112-115*

²⁵ *Transcript of the March 1 2023 Public Hearing, pages 115-119*

encouraged to engage with local communities to develop on-site expertise to help guide them during site inspections.²⁶

4.4.2 Funding of Long-Term Monitoring and Maintenance

52. In section 1.3 of CMD 23-H8, CNSC staff reported that the ICP contains two Institutional Control funds:
- the Institutional Control Monitoring and Maintenance Fund (ICMMF), for future monitoring and maintenance costs in perpetuity
 - the Institutional Control Unforeseen Events Fund (ICUEF), for costs of unforeseen events

CNSC staff noted that the ICMMF and the ICUEF will replace the financial guarantee required by the CNSC once the property holder/licensee is released from regulatory oversight by the Commission. CNSC staff submitted that the funds maintain assurance that sufficient monies are available to carry out any necessary work as detailed in the LTMMP or due to unforeseen events.

53. In section 4.4 of CMD 23-H8.1, Orano reported that, as the Cluff Lake Project site is transferred to the ICP, Orano will provide the required funds to the Province of Saskatchewan to meet the monitoring and maintenance and unforeseen event requirements. In section 7.2 of its End State Report, Orano explained that it estimated LTMMP funds in accordance with the guidance provided in the SMER document *Institutional Control Program: Post Closure Management of Decommissioned Mine/Mill Properties Located on Crown Land in Saskatchewan*.²⁷ Orano reported that it estimated future costs based on escalation of present costs using a 10-year average Bank of Canada inflation rate. The calculation of the net present value of an annuity that would support future site expenses assumed a conservative rate of return of 3.65%, i.e., inflation plus 2%. Orano has proposed the present value of a cash payment sufficient to support monitoring and maintenance in perpetuity to the Province of Saskatchewan.

4.4.3 Conclusions on Long-Term Monitoring and Maintenance

54. The Commission is satisfied that the LTMMP is adequate for long-term monitoring and maintenance of the Cluff Lake Project site. The Commission notes that CNSC staff assessed that the LTMMP is adequate and that Orano has incorporated recommendations from CNSC staff, key stakeholders, and land users into the LTMMP. The Commission is further satisfied that Orano will provide adequate funding to implement the LTMMP, including for the case of unforeseen events. The Commission further notes that SMER confirmed that the Province of Saskatchewan has the capacity to manage the ICP.

²⁶ Transcript of the March 1 2023 Public Hearing, pages 94-96

²⁷ *Institutional Control Program: Post Closure Management of Decommissioned Mine/Mill Properties Located on Crown Land in Saskatchewan*, Saskatchewan Ministry of Energy and Resources, 2018

4.5 Indigenous Engagement and Consultation

55. The Commission considered the information provided by CNSC staff and Orano regarding Indigenous consultation and engagement activities in respect of this application. Indigenous consultation refers to the common law duty to consult with Indigenous Nations and communities pursuant to section 35 of the [*Constitution Act, 1982*](#).²⁸
56. The common law duty to consult with Indigenous Nations and communities is engaged when the Crown contemplates action that may adversely affect established or potential Indigenous and/or treaty rights. The CNSC, as an agent of the Crown and as Canada's nuclear regulator, recognizes and understands the importance of building relationships and engaging with Canada's Indigenous Nations and communities. The CNSC ensures that its licensing decisions under the NSCA uphold the honour of the Crown and considers peoples' potential or established Indigenous and/or treaty rights pursuant to section 35 of the *Constitution Act, 1982*.
57. The duty to consult is engaged wherever the Crown has "knowledge, real or constructive, of the potential existence of an Aboriginal right or title and contemplates conduct that might adversely affect it".²⁹ Licensing decisions of the Commission, where Indigenous interests may be adversely impacted, can engage the duty to consult, and the Commission must be satisfied that it has met the duty prior to making the relevant licensing decision.

Indigenous Engagement by CNSC Staff

58. With respect to Orano's application for the revocation of the Cluff Lake Project licence and the proposed release of the Cluff lake Project into Saskatchewan's ICP, CNSC staff identified nine Indigenous Nations and communities which may have an interest based on proximity of their communities, treaty area and/or traditional territories to the Cluff Lake property, or due to previously expressed interest in being kept informed of CNSC licensing activities occurring in or proximal to their territories:

- Athabasca Chipewyan First Nation (ACFN)
- Birch Narrows Dene Nation (BNDN)
- Black Lake Denesuline First Nation
- Buffalo River Dene Nation
- Clearwater River Dene Nation (CRDN)
- Fond du Lac Denesuline First Nation
- Meadow Lake Tribal Council
- Métis Nation-Saskatchewan (MN-S/ Northern Region II)
- Ya'thi Néné Land and Resource Office (YNLR)

²⁸ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

²⁹ *Haida Nation*, *supra* note 5, at para 35.

59. In section 4 of CMD 23-H8, CNSC staff submitted that it encouraged Indigenous Nations and communities to apply for participant funding and to participate in the Commission hearing process. CNSC staff sent notification letters on July 14, 2022 providing information on Orano's application, the hearing process, and the availability of participant funding. CNSC staff completed follow-up emails and phone calls to ensure receipt and held meetings to answer questions on the regulatory process and Orano's application.
60. CNSC staff informed the Commission that it coordinated multi-party meetings with interested Indigenous Nations and communities that included CNSC staff, Orano, and the Province of Saskatchewan to discuss Orano's ICP application for the Cluff Lake Project site. CNSC staff further reported that it worked with Orano to invite interested Indigenous Nations and communities to participate in a site visit and observe a CNSC staff inspection of the Cluff Lake site in September 2022. Clearwater River Dene Nation participated in the site visit.
61. CNSC provided further information on in-person engagement activities conducted within the communities. In June 2022, CNSC staff visited Indigenous Nations and communities in the western Athabasca basin of Saskatchewan including Clearwater River Dene Nation, Birch Narrows Dene Nation, Buffalo River Dene Nation, and Métis Nation – Saskatchewan communities to discuss CNSC activities in the region, including the Cluff Lake Project. In September 2022, CNSC staff met with Athabasca Chipewyan First Nation in the community of Fort Chipewyan. At this meeting CNSC staff shared information on the Cluff Lake Project and Orano's ICP application.
62. CNSC staff do not expect this application to cause any new adverse impacts to potential or established Indigenous and/or Treaty rights. CNSC staff's position is that the Cluff Lake Property has been adequately remediated and poses no unreasonable risk to persons or the environment, and that the Province of Saskatchewan will continue monitoring and maintaining the site through the ICP.
63. Though the CNSC would no longer be involved with oversight and engagement for the Cluff Lake Project following its transfer to the ICP, CNSC staff noted that it would continue to be active in the Athabasca Basin regarding other projects.³⁰ CNSC staff affirmed its commitment to meaningful engagement and to building long-term relationships and trust with Indigenous Nations and communities regarding other CNSC-regulated activities in their territory. CNSC staff added that it is also committed to working with Indigenous Nation and communities to address broader concerns regarding fear and avoidance behaviours, and to the gathering and inclusion of Indigenous knowledge and perspectives into regional monitoring and assessment activities.³¹

³⁰ *Transcript of the March 1 2023 Public Hearing*, pages 71-73

³¹ *Transcript of the March 1 2023 Public Hearing*, page 42

Indigenous Engagement by Orano

64. The Commission examined the information submitted by Orano regarding its ongoing engagement with Indigenous Nations, communities and organizations near the Cluff Lake Project site. In section 4.2 of CMD 23-H8.1, Orano reported that it communicated and engaged with Indigenous Nations and communities through a variety of methods including in-person and virtual meetings, fact sheets, email, phone calls, mail, and online channels. An Orano representative said that Orano co-developed its annual engagement and communication plans to provide information in a manner important to each Indigenous community. Orano provided a detailed summary of its engagement activities in its Indigenous Engagement Report ([CMD 23-H8.1A](#)). In section 4 of CMD 23-H8, CNSC staff confirmed that Orano conducted engagement activities and reporting to the CNSC in accordance with the criteria set out in [REGDOC-3.2.2, Indigenous Engagement](#)³².
65. Orano further submitted that, during the licence period, it provided funding to Indigenous Nations and communities to facilitate their review of the LTMMP. An Orano representative noted that Orano responded to LTMMP review comments and offered follow-up discussions with Indigenous Nations and communities to address concerns.
66. Orano also provided the Commission with information on Orano's relationship with cabin owners and frequent land users of the Cluff Lake Project site including the Flett Family and Fur Block N22 trappers. Orano reported that it maintained communication with these land users through letters, phone calls, and opportunistic meetings. Orano's public information and disclosure program is discussed further in section 4.7.1 of this *Record of Decision*.

Submissions by Indigenous Nations and Communities

67. The Commission received the following interventions from Indigenous Nations, communities, and organizations:
- ACFN ([CMD 23-H8.10](#) and [CMD 23-H8.10A](#))
 - BNDN ([CMD 23-H8.8](#) and [CMD 23-H8.8A](#))
 - CRDN ([CMD 23-H8.9](#) and [CMD 23-H8.9A](#))
 - MN-S ([CMD 23-H8.11](#) and [CMD 23-H8.11A](#))
 - YNLR ([CMD 23-H8.13](#) and [CMD 23-H8.13A](#))
 - Athabasca Joint Engagement and Environmental Subcommittee (AJES; [CMD 23-H8.12](#))

ACFN, BNDN, MN-S, and YNLR also made oral interventions.

³² CNSC REGDOC-3.2.2, *Indigenous Engagement*, 2022

68. The intervention by the AJES was supportive of Orano's application. The interventions by ACFN, BNDN, CRDN, MN-S and YNLR raised concerns regarding the Cluff Lake Project and Orano's application. Key concerns raised by the Indigenous Nations and communities included:
- Lack of involvement in long-term monitoring and maintenance of the Cluff Lake Project site
 - Lack of recognition and inclusion of traditional knowledge in sampling and monitoring activities and plans
 - Lack of engagement by companies and governments throughout the lifecycle of the Cluff Lake Project
 - Legacy impacts of the site including fear and avoidance of the region for traditional activities as well as cumulative effects
 - Adequacy of engagement activities to be conducted by the Province of Saskatchewan following transfer of the site to the ICP
69. The AJES, in its intervention, informed the Commission that it is a committee that was formed under the 2016 Ya'thi Néné Collaboration Agreement³³ to act as the primary liaison between Orano and the Athabasca First Nations and communities. The AJES representatives are appointed by community leadership and meet at least 4 times a year. The AJES reported that, since 2020, Orano presented twice regarding the Cluff Lake Project and the verification that the site is safe for traditional use with no restrictions. During these presentations, Orano answered questions from AJES representatives. The AJES submitted that it is in support of Orano's application, that it is confident that the Cluff Lake Project site is safe for traditional use and will be adequately overseen by the Province of Saskatchewan.
70. The BNDN asserted that it did not receive meaningful consultation by industry or the Crown during the life of the Cluff Lake Project. The BNDN noted that it has concerns regarding certain decommissioning objectives, such as the DSWQO (discussed in section 4.4 of this *Record of Decision*). The BNDN requested that Orano and the SMER work with the BNDN to address its outstanding concerns related to impacts to its Aboriginal and Treaty rights. The BNDN further requested that it be involved in the long-term monitoring of the Cluff Lake Project site, should it be transferred to the ICP.
71. In its intervention, the CRDN raised concerns regarding the safety of the Cluff Lake Project Site for traditional use, its community members' perceived risks of the safety of the site, the lack of consultation throughout the life of the Cluff Lake Project, and the lack of confidence that the ICP has the capacity to adequately monitor and maintain the site over the long term. The CRDN raised further concern that the Province of Saskatchewan may not fulfil the duty to consult, should the Cluff Lake Project site be transferred to the ICP.

³³ The Parties to the Ya'thi Néné Collaboration Agreement are Cameco Corporation, Orano Canada Inc., Black Lake First Nation, Hatchet Lake First Nation, Fond du Lac First Nation, and the communities of Stony Rapids, Uranium City, Camsell Portage, and Wollaston Lake.

72. Noting the intervenors' concerns, the Commission asked for more information regarding the safety of the Cluff Lake Project site for traditional use. CNSC staff stated that the results of studies and sampling activities conducted by Orano and the CNSC have indicated that the consumption of country foods is safe and that the Cluff Lake site is safe for traditional use. A representative from the SMOE stated that the SMOE agrees that the site is safe and poses a low risk to the public. A representative from the SMER further explained that the Cluff Lake site must be deemed safe prior to its acceptance into the ICP and noted that, if conditions were to change such that the safety of the site is called into question, the Province of Saskatchewan has an action plan in place to address concerns and maintain the safety of the site.
73. The MN-S expressed concern with the lack of consultation that it has received from Orano regarding the Cluff Lake Project. The MN-S noted that Orano began engaging with the MN-S only in the past year, and that the communication received from Orano has been one-way. The MN-S submitted that it had limited opportunity to provide input on the proposed transfer of the Cluff Lake Project site to the ICP which has caused uncertainty regarding how the transfer will impact the MN-S. The MN-S further added that the LTMMP does not include Métis knowledge and does not adequately consider Métis traditional use.
74. The Commission asked Orano to comment on its engagement history with the MN-S. An Orano representative said that it had a long history of engagement with Northern Region 2, however, recently the MN-S had become more structured as a governance organization. The Orano representative stated that, in response to the MN-S feedback regarding their preferred engagement approach under their new governance structure, Orano adjusted its engagement strategy to engage primarily with MN-S. Regarding the LTMMP, the Orano representative noted that Orano has engaged with MN-S since 2021, to ensure that monitoring locations are in areas important to Métis traditional use. Orano also provided capacity funding to the MN-S in 2022 to complete a technical review of the LTMMP.
75. Asked about engagement from CNSC staff regarding the Cluff Lake Project, the MN-S stated that it has a good working relationship with CNSC staff and has been satisfied by CNSC staff's engagement efforts.
76. The ACFN submitted that the cumulative impacts of industrial activities in its territory have diminished its ability to exercise its constitutionally protected rights and maintain its way of life. The ACFN noted that its community members' concerns about contamination at the Cluff Lake Project site causes them to avoid the area. The ACFN also raised concerns regarding the adequacy of the LTMMP and proposed changes to the water quality and biota monitoring plan, sampling program, and the DSWQOs. The LTMMP is discussed in section 4.5 of this *Record of Decision*.

77. In its intervention, the YNLR submitted that the cumulative effects of the uranium industry in the traditional territory of the Athabasca Denesųliné had not been adequately captured, and therefore the Commission has incomplete information on which to base its decision. The YNLR expressed that its traditional use of the Cluff Lake Project site had not been adequately captured by the Cluff Lake Project decommissioning objectives, and that it wanted the opportunity to be involved in the long-term monitoring of the Cluff Lake site.
78. The assessment of cumulative environmental effects of the uranium industry in the Athabasca Basin is discussed in section 4.3 of this *Record of Decision*. Regarding engagement of the YNLR in cumulative effects monitoring, CNSC staff stated that it is open to working with the YNLR on additional regional monitoring and data gathering, with the support of the CNSC's new Indigenous and stakeholder capacity fund. CNSC staff said that it would follow-up with the YNLR on this matter.³⁴
79. Asked to comment, a representative from the SMOE said that the SMOE would make its best efforts to engage Indigenous Nations and communities with the implementation of the LTMMP. The SMOE representative noted that such efforts may include the inclusion of community members in field work.³⁵
80. Regarding the Indigenous engagement efforts to be made under the ICP, a representative from the SMOE said that the Province of Saskatchewan was in the process of reviewing its strategy for Indigenous engagement. An Orano representative stated that Orano included potential future engagement activities in the LTMMP. The Orano representative noted that it envisioned engagement activities to be conducted in a manner consistent with Orano's current methods – meaning that, as new information is available, there would be some level of engagement with Indigenous Nations and communities. The Orano representative noted that funding for engagement is accounted for in the funding for the LTMMP.³⁶
81. The Commission asked the YNLR for its perspective on what was needed for Indigenous Nations and communities to feel comfortable with transfer of the Cluff Lake Project to Saskatchewan's ICP. A YNLR representative said that the Province of Saskatchewan needs to work to gain the trust of Indigenous people and to build a better working relationship with Indigenous Nations and communities.³⁷
82. With respect to fear and avoidance of the Cluff Lake Project site, an Orano representative stated that Orano had worked to demonstrate that the site is safe for traditional use. The Orano representative acknowledged that a small percentage of community members still express discomfort with using the land.³⁸ CNSC staff noted that the CNSC has a mandate to disseminate objective scientific and technical

³⁴ *Transcript of the March 1 2023 Public Hearing*, page 171

³⁵ *Transcript of the March 1 2023 Public Hearing*, page 60

³⁶ *Transcript of the March 1 2023 Public Hearing*, pages 93-94

³⁷ *Transcript of the March 1 2023 Public Hearing*, page 163

³⁸ *Transcript of the March 1 2023 Public Hearing*, pages 68-69

regulatory information. CNSC staff recognized that, given ongoing fear and avoidance behaviours, it has more work to do to build trust and make this information accessible to Indigenous peoples and the public as it continues to oversee other projects in the Athabasca basin.³⁹

Conclusion on Indigenous Engagement and Consultation

83. The Commission acknowledges the current efforts and commitments made by Orano in relation to Indigenous engagement and CNSC staff's efforts in this regard on behalf of the Commission with regards to this application. The Commission also acknowledges and appreciates the participation of, and the information and submissions provided by, all the Indigenous intervenors.
84. The quasi-judicial decision-making being undertaken by the Commission in the matter – the “Crown conduct” that could trigger a duty to consult – is the licence revocation and the exemption decisions that would allow for the transfer of properties from CNSC licensing for the future monitoring and maintenance phase of the properties to the provincial statutory program to oversee that monitoring and maintenance. The application for licence revocation under consideration by the Commission does not include any new project or undertaking at the Cluff Lake Project site. The application being considered is for the removal of the Cluff Lake Project from licensing and regulatory oversight by the CNSC for the purpose of transferring oversight to the provincial statutory program for the long-term monitoring and maintenance of decommissioned mine sites in Saskatchewan. The Commission therefore considered whether the transfer from Federal regulatory oversight by the CNSC to the provincial program would have the potential to affect asserted Indigenous rights in a novel way.⁴⁰
85. Based on the information presented on the record for this hearing, and having heard the submissions of all hearing participants, the Commission is satisfied that this licence revocation will not result in changes to the Cluff Lake Project site that could cause novel adverse impacts to any potential or established Indigenous and/or treaty rights,⁴¹ and therefore, that the duty to consult was not engaged in this matter in a way to demand more than what has been done.
86. Nonetheless, the Crown's obligation to Indigenous peoples and in its dealings with Indigenous peoples also requires upholding the Honour of the Crown and working towards reconciliation, a fundamental purpose of section 35 of the Constitution. In seeking to uphold the honour of the Crown, the Commission considers the concerns raised by Indigenous Nations and communities carefully, keeping an open mind, and seeking to accommodate concerns where possible. A strict legal interpretation of the

³⁹ *Transcript of the March 1 2023 Public Hearing*, page 71

⁴⁰ As noted in *Rio Tinto*, the effects that would trigger a duty to consult are not the effects of the historical harm done. Where there are ongoing effects of historical harm, other types of redress are available to an Indigenous nation or community, outside the duty to consult.

⁴¹ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650 at paras 45, 48-49.

extent of the duty need not constrain the Commission's commitment to reconciliation. The Commission is of the view that the Honour of the Crown⁴² has been upheld in this licensing matter, given the extent of the engagement activities and the opportunities provided by the participant funding program and the public hearing. The Commission acknowledges the extensive participation of Indigenous intervenors, in both written and oral submissions. The Commission is satisfied with CNSC staff's efforts to engage with Indigenous Nations and communities who may have interest in the Cluff Lake Project; efforts made by CNSC staff in this regard are an important part of the work of the Commission toward reconciliation and relationship-building with Canada's Indigenous Nations and communities. The Commission also recognizes the engagement efforts made by Orano.

87. The Commission does not agree with the proposition by some intervenors that the transfer of oversight from the CNSC to the ICP will prevent fulfillment of the duty to consult. The Commission notes that the transfer proposed is to a statutory program under another Crown entity, not to a private party. Under the ICP, there will be continued oversight by the Crown, which is the executive branch of both the federal and provincial governments.⁴³ As the Crown, the Province of Saskatchewan must also satisfy the constitutional duty to consult. The Supreme Court case of *Rio Tinto* can be distinguished on this point. Where Crown conduct in relation to the properties may adversely affect Indigenous rights once under the ICP, the duty to consult would be triggered, regardless of the transfer.
88. In considering the application of the duty to consult relative to Orano's current application, the Commission heeds the Supreme Court of Canada's decision in *Rio Tinto* where it said that the duty to consult is confined "to adverse impacts flowing from the specific Crown proposal at issue—not to larger adverse impacts of the project of which it is a part. The subject of the consultation is the impact on the claimed rights of the *current* decision under consideration" (*Rio Tinto* at para 53; emphasis in original).
89. While cumulative effects of an ongoing project, and historical context, may inform the scope of the duty to consult,⁴⁴ the matter before the Commission cannot properly be used "to attempt the redress of past wrongs. Rather, it is simply to recognize an existing state of affairs, and to address the consequences of what may result from the project."⁴⁵ As noted in *Rio Tinto*, the effects that would trigger a duty to consult are not the effects of the historical harm done. Where there are ongoing effects of historical harm, other types of redress are available to an Indigenous nation or community, outside the duty to consult. The Commission notes that any future application that contemplates a project for industrial development, disturbance to the

⁴² *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, *supra* note 78 at paras 45 and 49.

⁴³ [Constitution Act, 1867](#), 30 & 31 Victoria, c.3 (U.K.), s.9.

⁴⁴ *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247, 18 B.C.L.R. (5th) 234, at para 117.

⁴⁵ *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41, at para 42, citing *West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247, at para 119.

land and environment, or a taking up of the land would likely necessitate an assessment of the combined impact of past, present and potential future human activities and natural processes

90. The Commission notes the acknowledgement by the representatives of the Province of Saskatchewan of the provincial Crown obligations to engage with the implicated Indigenous Nations, communities and organizations, and the potential for future obligations under the duty to consult. The Commission recognizes the Province's authority to fulfill the constitutional obligation to uphold Indigenous and Treaty rights in the long-term monitoring and maintenance of the Cluff Lake Project site.
91. The Commission emphasizes the importance of building trust with Indigenous Nations and communities to build stronger relationships and reduce fear and avoidance behaviours. The Commission recommends that the Province of Saskatchewan continue working with the Indigenous Nations and communities to build trust and find solutions to address their concerns regarding the Cluff Lake site, including involving them in the future monitoring and maintenance of the site. The Commission further recommends that the Province of Saskatchewan improve communication practices related to the ICP in order to build trust and understanding of the ICP among Indigenous Nations and communities.

4.6 Other Matters of Regulatory Importance

4.6.1 Public Information and Engagement

92. The Commission assessed Orano's public information and disclosure program (PIDP) for the decommissioned Cluff Lake Project, and whether Orano's PIDP met the specifications of [REGDOC-3.2.1, Public Information and Disclosure](#).⁴⁶
93. In section 4.2.3 of CMD 23-H8.1, Orano provided the Commission with information regarding its PIDP for the Cluff Lake Project. Orano submitted that its PIDP ensures that information regarding the Cluff Lake Project and the health and safety of persons and the environments is effectively communicated to the public and that feedback is received. In section 4.2 of CMD 23-H8, CNSC staff reported that it found Orano's PIDP to comply with regulatory requirements, including REGDOC-3.2.1. CNSC staff noted that Orano used a variety of communication tools including public surveys, posting information on its website and to social media, community meetings, site tours, and media engagements.
94. The Commission is satisfied that Orano's Cluff Lake Project PIDP communicated information to the public about the health, safety and security of persons and the environment and other issues related to the Cluff Lake Project.

⁴⁶ CNSC Regulatory Document REGDOC-3.2.1, *Public Information and Disclosure*, 2018.

4.6.2 Cost Recovery

95. In section 5.2 of CMD 23-H8, CNSC staff submitted that Orano Canada Inc. is in good standing with the CNSC with respect to the payment of licensing fees for the Cluff Lake Project, in accordance with the [Canadian Nuclear Safety Commission Cost Recovery Fees Regulations](#)⁴⁷. The Commission is satisfied that Orano has met its obligations concerning the payment of licensing fees.

4.7 Licence Revocation

96. Orano has applied for the revocation of its uranium mine licence, UML-MINEMILL-CLUFF.00/2024, for its Cluff Lake Project to allow transfer of the Cluff Lake Project site into Saskatchewan's ICP.
97. CNSC staff recommended that the Commission revoke UML-MINEMILL-CLUFF.00/2024. As discussed in section 4.4 of this *Record of Decision*, CNSC staff reaffirmed that the decommissioning objectives and criteria for the Cluff Lake Project have been met, including that the site is stable and self-sustaining. Orano's performance at the Cluff Lake site over the current licence term is also discussed in section 4.3 of this *Record of Decision*.
98. Based on the evidence on the record for this hearing, as described in the above sections, the Commission is satisfied that:
- a) the decommissioning objectives and criteria established for the Cluff Lake Project have been met;
 - b) the Cluff Lake Project site is passively safe such that no further work is required to remediate the site;
 - c) the site will remain passively safe⁴⁸ for the long-term

The Commission therefore revokes UML-MINEMILL-CLUFF.00/2024 to allow transfer of the Cluff Lake Project site into Saskatchewan's ICP.

4.8 Exemption under Section 7 of the NSCA to Enable the Transfer to the Province of Saskatchewan's Institutional Control Program

99. A site cannot be accepted into the ICP until remediation activities have been completed and the relevant regulatory authorities – in this case the CNSC – have issued a release: according to section 3(f) of the *Saskatchewan Reclaimed Industrial Sites Regulations*, the CNSC must agree, in writing, to grant the Government of Saskatchewan an exemption from the obligation to hold a licence under the NSCA before properties can be transferred into the ICP. That is, once the province has confirmed that the site is eligible for transfer to the ICP, a Commission decision is

⁴⁷ SOR/2003-212

⁴⁸ "Passively safe" refers to a state where safe conditions are maintained without any required human action or activity

required to release the site from the current CNSC licence and to exempt the Province of Saskatchewan from licensing under the NSCA in order for the site to be transferred into the ICP

100. In section 4.5 of CMD 23-H8.1, Orano submitted that the Saskatchewan Ministry of Energy and Resources had provided a letter of intent for the acceptance of the Cluff Lake Project site into the ICP. Orano also submitted that the Saskatchewan Ministry of the Environment had provided a letter of intent to issue a Release from Decommissioning and Reclamation as per section 22 of [The Mineral Industry Environmental Protection Regulations, 1996](#). In section 1.3.2 of CMD 23-H8, CNSC staff confirmed that it had received the letters of intent from the SMER and SOE.
101. In considering whether to exempt the Province of Saskatchewan from licensing under the NSCA for the Cluff Project to enable its acceptance into the ICP, the Commission is required to decide, pursuant to section 7 of the NSCA and in accordance with section 11 of the GNSCR, whether granting the exemption would:
- a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed
102. Regarding decommissioning and remediation activities at the Cluff Lake Project, as discussed in section 4.4 of this *Record of Decision*, the Commission is satisfied that Orano's End State Report reaffirms that the decommissioning objectives and indicators have been satisfied and that decommissioning of the Cluff Lake Project has been successful.
103. In section 1.3 of CMD 23-H8, CNSC staff reported that the primary objectives of the ICP are to protect human health and safety and the environment, which the ICP achieves through monitoring and maintenance, and funds for unforeseen events. With respect to security, CNSC staff noted at the 2019 licence renewal that there was no Category I, II or III nuclear material⁴⁹ at the Cluff Lake Project site and that nuclear substances were limited to natural uranium and its decay products. Further, an SMER representative said that, residential and industrial land use will be restricted under the ICP to ensure the long-term safety of the site.⁵⁰ With respect to conformity with measures of control and international obligations to which Canada has agreed, CNSC staff confirmed that the ICP satisfies Canada's obligations under the [Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management](#) as well as other relevant international recommendations and guidance. CNSC staff provided additional information on this matter in [CMD 18-M38](#).

⁴⁹ As defined in the Nuclear Security Regulations, SOR/2000-209

⁵⁰ *Transcript of the March 1 2023 Public Hearing*, page 97

104. The Commission noted that Orano had recommended that industrial land use be restricted following the proposed transfer of the Cluff Lake Project to the ICP. An SMER representative confirmed that, upon acceptance into the ICP, restrictions will be in place to prevent land development.
105. Based on the information examined by the Commission with respect to this hearing, the Commission is satisfied that the conditions for an exemption pursuant to section 11 of the GNSCR have been met. Therefore, the Commission exempts the Province of Saskatchewan from licensing obligation under the *Nuclear Safety and Control Act* for the Cluff Lake Project site.

5.0 CONCLUSION

106. The Commission has considered Orano's application for the revocation of its uranium mine licence for the Cluff Lake Project, UML-MINEMILL-CLUFF.00/2024 to facilitate transfer of the site to Saskatchewan's Institutional Control Program (ICP). The Commission concludes that:
- a) the decommissioning objectives and criteria established for the Cluff Lake Project have been met;
 - b) the Cluff Lake Project site is passively safe such that no further work is required to remediate the site;
 - c) the site will remain passively safe for the long-term

Therefore, pursuant to section 24(2) of the NSCA, the Commission revokes Orano's uranium mine licence for the decommissioned Cluff Lake Project site.

107. In addition, the Commission concludes that, in accordance with section 11 of the GNSCR, exempting the Province of Saskatchewan from requiring licensing under the NSCA for the Cluff Lake Project site will not:
- a) pose an unreasonable risk to the environment or the health and safety of persons;
 - b) pose an unreasonable risk to national security; or
 - c) result in a failure to achieve conformity with measures of control and international obligations to which Canada has agreed

Therefore, pursuant to section 7 of the NSCA, the Commission exempts the Province of Saskatchewan from licensing obligation under the NSCA for the Cluff Lake Project site, intended for transfer into the Province of Saskatchewan's ICP.

108. The Commission notes that the release of the Cluff Lake Project to Saskatchewan's ICP marks the first time that a modern decommissioned uranium mine will be released from CNSC's regulatory oversight into the regulatory oversight of a provincial government. The Commission commends Orano and CNSC staff on the successful management of the Cluff Lake Project over the regulatory lifecycle of the project. The Commission is satisfied that the Cluff Lake Project site is safe and stable, and poses a low risk to the health and safety of persons.

109. The Commission emphasizes the importance of building trust with Indigenous Nations and communities to build stronger relationships and reduce fear and avoidance behaviours. The Commission recommends that the Province of Saskatchewan continue working with the Indigenous Nations and communities to build trust and find solutions to address their concerns regarding the Cluff Lake site, including involving them in the future monitoring and maintenance of the site. The Commission further recommends that the Province of Saskatchewan improve communication practices related to the ICP in order to build trust and understanding of the ICP among Indigenous Nations and communities.

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Velshi
Rumina

May 10, 2023

Rumina Velshi
President
Canadian Nuclear Safety Commission

Date

Appendix A – Intervenors

Intervenors – Oral Presentations	Document Number
Birch Narrows Dene Nation, represented by T. Moberly	CMD 23-H8.8 CMD 23-H8.8A
Athabasca Chipewyan First Nation, represented by C. Davies-Flett, M. Thompson, E. Araujo, M. Olsgard, R. Desjarlais, J. Deranger and E. Flett	CMD 23-H8.10 CMD 23-H8.10A
Métis Nation-Saskatchewan, represented by S. Landrie-Crossland, E. Janvier and M. Hanson	CMD 23-H8.11 CMD 23-H8.11A
Ya’thi Néné Land and Resource Office, represented by A. Sayne and D. Kellett	CMD 23-H8.13 CMD 23-H8.13A
Intervenors – Written Submissions	
Saskatchewan Mining Association	CMD 23-H8.2
Cameco Corporation	CMD 23-H8.3
Canadian Nuclear Association	CMD 23-H8.4
Denison Mines Corp.	CMD 23-H8.5
Saskatchewan Ministry of Energy and Resources	CMD 23-H8.6
Saskatchewan Environmental Society	CMD 23-H8.7
Clearwater River Dene Nation	CMD 23-H8.9 CMD 23-H8.9A
Athabasca Joint Engagement and Environmental Subcommittee	CMD 23-H8.12