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**Written submission from the  
Manitoba Metis Federation**

**Mémoire de la Fédération des  
Métis du Manitoba**

**Regulatory Oversight Report for  
Canadian Nuclear Laboratories  
(CNL) sites: 2018**

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**Rapport de surveillance  
réglementaire des sites des  
Laboratoires Nucléaires Canadiens  
(LNC) : 2018**

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Commission Meeting

Réunion de la Commission

November 7, 2019

Le 7 novembre 2019

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# Review of CNSC Regulatory Oversight Report

Technical Review of the Regulatory Oversight Report for Canadian Nuclear Laboratories Sites: 2018

Manitoba Metis Federation

October 7, 2019



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# Executive Summary

The Manitoba Metis Federation (MMF) has retained Shared Value Solutions (SVS) to undertake a review of the Canadian Nuclear Safety Commission's (CNSC) Regulatory Oversight Report (ROR or "the Report") for Canadian Nuclear Laboratories (CNL) to support the Manitoba Métis Community (MMC) in ongoing communications with CNSC, CNL, and Atomic Energy of Canada Limited (AECL). The scope of SVS's review was limited to the ROR components related to the Whiteshell Laboratories (WL) site in Pinawa, Manitoba. All other sites operated by CNL are outside of Manitoba. The objectives of the review were to

- provide a plain language explanation of the scope and nature of the ROR;
- clearly identify where the MMC's rights, claims and interests overlap with and may be impacted by the information and findings in the Report;
- identify environmental, technical, or regulatory issues with the ROR, and provide recommendations on where and how MMC's rights and interests may need to be better accommodated through revisions and additions to the Report; and
- identify issues and challenges with the Report that will require ongoing engagement and consultation with MMF on behalf of the MMC.

Based on Métis traditional knowledge data collected from the MMC and shared with the MMF, it is apparent that the WL site is within a region where the MMC has a longstanding and well-established record of historic use and occupancy, as well as ongoing current use.

Using the results of the review, the MMF has provided recommendations that focus on opportunities for the CNSC to improve involvement, inclusion and consultation with the MMC on monitoring/oversight for the WL facilities. Where applicable, we have also provided guidance on best practice mitigations, management and monitoring.

Our primary recommendation is for CNL and AECL to work with the MMF to negotiate and secure binding long-term relationship agreements. These agreements should include processes for ongoing communication, stewardship and monitoring by the MMF, capacity funding for the MMF to engage in the negotiation process, and result in long-term capacity funding for the MMF to implement each agreement, including provisions such as the hiring of a dedicated liaison staff person within the MMF, and capacity funding to advance the skills of MMF monitors/guardians who could be present and monitoring on the WL site.

The following is a summary of our recommendations:

- CNL, and AECL representing the Crown site owner, must engage the MMF to establish binding, long-term relationship agreements or similar agreements that enable the MMF, as the duly authorized representatives of the MMC, to address all of the following recommendations with respect to the operation of the WL site, and all future decommissioning activities.



- AECL and the CNSC, as representatives of the Crown, must ensure that ongoing engagement, consultation and accommodation processes, and deliverables such as plans, applications, and assessments, reflect and acknowledge the unique collective rights held by the MMC.
- In cases where CNL, and the CNSC and AECL representing the Crown as regulator and site owner, respectively, cannot develop appropriate mitigations to avoid impacts to the rights, claims and interests of the MMC, CNL and these Crown representatives must provide appropriate accommodations.
- CNL, and the CNSC and AECL, must each engage the MMF in developing communication strategies for the current decommissioning activities that are adequate for all four parties.
- CNL and AECL must each engage the MMF to establish a decision-making process and framework that enables the MMF, as the democratically elected, self government representatives of the MMC, to be meaningfully involved in the determination of the future plans for the WL site alongside CNL and AECL, including considering and integrating Métis traditional knowledge, land use, and occupancy information at and around the site to inform the monitoring and mitigation measures and plans to be used at the site.
- CNL and AECL must each ensure engagement and consultation processes and deliverables, such as plans, applications, and assessments, reflect the unique collective rights held by the MMC.
- CNL, the CNSC and AECL should endeavor to keep the MMF informed regarding enforcement actions at the WL site using jointly developed communication strategies and protocols to ensure any incidents that may have an impact on the rights, interests, and claims of the MMC are communicated to the MMF in a timely manner to ensure that the MMF can respond accordingly and remain informed on the status of the site.
- Due to the importance of natural resources for use by the MMC; CNL, the CNSC, and AECL, monitoring of tissues for radiological and non-radiological contaminants must occur in a manner that will detect any potential impacts on the natural resources which are used by the MMC. CNL and CNSC must engage with the MMF to identify a Métis Liaison who can comment on monitoring design, review data, examine reports (e.g., Annual Environmental Monitoring Reports from CNL), then share information back to the MMF and MMC. This liaison should be involved in the management structure (i.e., committee) for implementation of the Independent Environmental Monitoring Program (IEMP) and the Integrated Monitoring Program (IMP) for the WL site.
- The MMF has limited resources and capacity to undertake the needed oversight of the WL site. Therefore, the role of the Métis Liaison should be funded by AECL, the CNSC and/or CNL as part of long-term relationship agreements. This would build a single point of contact



between CNSC/CNL and the MMF, which would facilitate communication and also build knowledge and expertise within the MMF related to the Whiteshell site and nuclear issues generally.

- Citizens of the MMC exercise their constitutionally protected harvesting rights around the project site, therefore CNL and AECL should consult the MMF about remediation and specifically revegetation objectives for the site. Furthermore, CNL and AECL should incorporate site revegetation strategies into the closure of the site that are informed by this consultation with the MMF and MMC.
- CNL and AECL must work with the MMF to provide engagement and participation opportunities in any environmental protection, monitoring, and awareness training programs in relation to the WL site. This includes the opportunity for the MMF to provide feedback and input into the content of the environmental awareness training programs to ensure Métis traditional knowledge is adequately and appropriately integrated into these programs. This could be achieved through an ongoing Issues Resolution and Dialogue Table established between the MMF and CNL related to the WL site that includes the provision of capacity funding for a CNSC/CNL/AECL liaison position within the MMF.
- The CNSC must engage the MMF to have a more active role in the IEMP at the WL site, similar to what has been carried out between the CSNC and the Algonquins of Ontario at the Nuclear Power Demonstration site in Ontario. This could include collaboratively developing sampling plans for the WL site with the MMF, integrating MMF sites of importance into the sampling program, and having MMF harvesters accompany the CNSC in the sample collection around the WL site.
- The CNSC and CNL will undoubtedly continue to monitor doses to workers, which should decline at the completion of decommissioning. CNSC and CNL should provide safety reports and MMF should monitor these to ensure that doses to Nuclear Energy Workers (NEW) and non-NEW are at background levels by 2030.
- The CNSC needs to provide greater detail on what a below-expectations score means for the security Safety and Control Areas (SCA) for the WL site, and what measures it requires CNL to take to improve the security performance at the site. This should include a communication protocol in the event that there are any implications or risks for the MMC to be aware of, especially to alert citizens who are active harvesters and/or who rely on groundwater for drinking water in the area.
- The CNSC must provide additional information regarding the suitability of CNL's plans to transport and store low- and intermediate-level waste at Chalk River Laboratories in Ontario. The feasibility of these transport and long-term storage plans are of the utmost importance in decision making and management of the WL site and will impact the ability of the MMC to utilize the site in the future.



- The MMF requests that the CNSC, CNL and AECL thoroughly review the issues and recommendations that have been brought forward by the MMF to-date regarding the decommissioning of the WL site with the perspective of what is required in order to comply with the Crown's duty to consult an accommodate, advance reconciliation, and uphold the honour of the Crown related to these activities occurring within the MMC's traditional territory. The MMF acknowledges that the CNSC, CNL, and AECL have already communicated and engaged with the MMF to some degree on these matters. However, there are unaddressed issues remaining that the CNSC, CNL, and AECL should address in future planning and decision making regarding the WL site.
- The CNSC must provide more information regarding the source of the radionuclides, particularly the plutonium, alpha, and beta in the wastewater at the WL site, to provide greater clarity on the sources contributing to certain levels of radionuclides being reached, despite the current stage of activity of the WL site.

In summary, we suggest that the above recommendations be the focus of subsequent meetings between the MMF and CNL, AECL and the CNSC.





# 1.0 Introduction

The Manitoba Metis Federation (MMF) has retained Shared Value Solutions (SVS) to undertake a review of the Canadian Nuclear Safety Commission’s (CNSC) Regulatory Oversight Report (ROR or “the Report”) for Canadian Nuclear Laboratories (CNL) to support the Manitoba Métis Community (MMC) in ongoing communications with CNSC, CNL, and Atomic Energy of Canada Limited (AECL). The scope of SVS’s review was limited to the ROR components related to the Whiteshell Laboratories (WL) site in Pinawa, Manitoba. All other sites operated by CNL are outside of Manitoba (Figure 1). The objectives of the review were to

- provide a plain language explanation of the scope and nature of the ROR;
- clearly identify where the MMC’s rights, claims and interests overlap with and may be impacted by the information and findings in the Report;
- identify environmental, technical, or regulatory issues with the ROR, and provide recommendations on where and how MMC’s rights and interests may need to be better accommodated through revisions and additions to the Report; and
- identify issues and challenges with the Report that will require ongoing engagement and consultation with MMF on behalf of the MMC.

As part of the review, SVS considered any potential intersections with the activities and information provided in the reports with potential risks and impacts to the MMC. The review

1. assessed the adequacy of the information provided, including mitigation, management, and monitoring plans;
2. assessed the intersection of past, current and future regulated activities described in the ROR on the MMC’s rights, claims and interests; and
3. evaluated the use of local knowledge, traditional knowledge and land use incorporated in the ROR.

Using the results of the review, the MMF has provided specific recommendations to address the identified issues and concerns regarding MMC’s values, rights, claims and interests which stem from potential impacts from the past, present and future management of the WL site. Due to the nature of the ROR, as a high-level summary of regulated operations, our recommendations focus on opportunities for the CNSC, AECL and CNL to improve involvement, inclusion and consultation with the MMF on monitoring/oversight for the WL facilities. Where applicable, we have also provided guidance on best practice mitigations, management and monitoring.



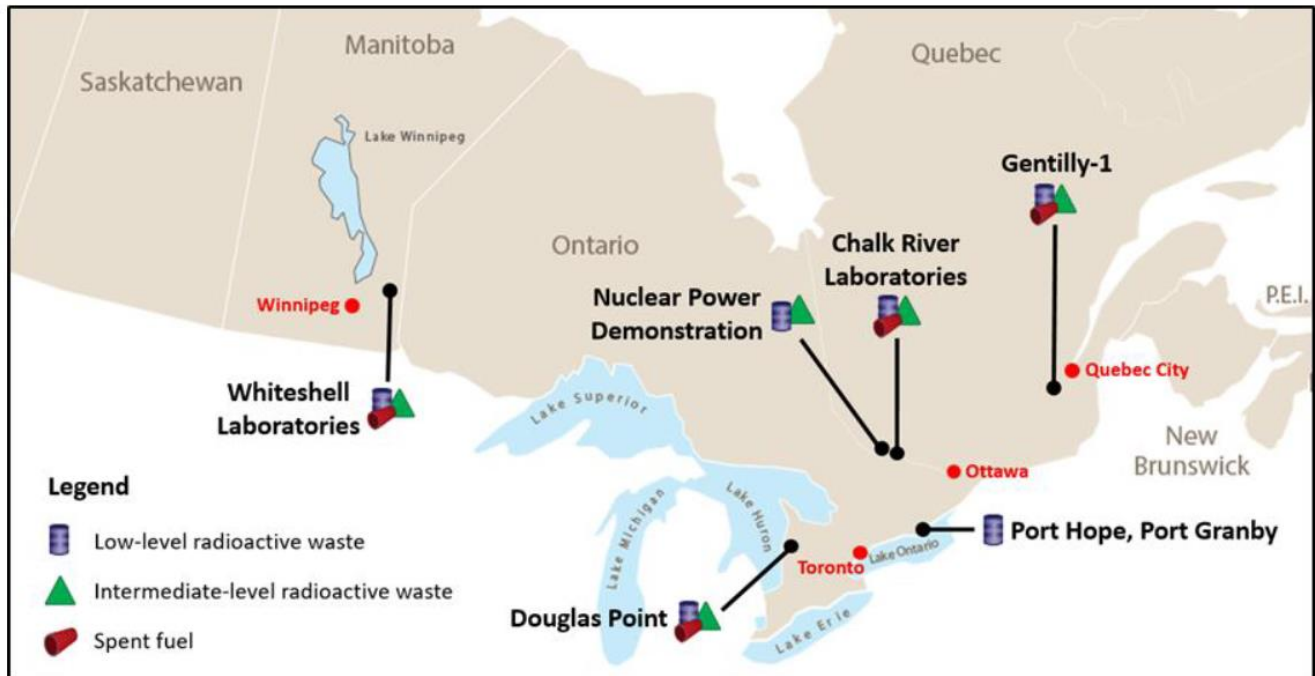


Figure 1. Nuclear sites operated by CNL (CNSC, 2019a)

## 1.1 Regulatory Process

All federally regulated nuclear facilities are legislated by the CNSC. The sites at which these facilities are located require licences to carry out the operations and activities of the regulated facilities. The CNSC evaluates licence applications and grants licences once the site proponent successfully completes a licensing application and meet all regulatory requirements. CNL operates several licenced sites across central Canada focusing on research related to nuclear technologies. These include technologies and related research evaluation for nuclear power generation, waste disposal, health and safety.

Each of the CNL licensed sites are owned by AECL, which is a federal Crown Corporation. AECL receives federal funding to deliver on its mandate and reports to Parliament through the [Minister of Natural Resources](#). AECL also leverages the unique capabilities at its sites to support industry and other third parties on commercial terms. AECL delivers its mandate through a long-term contract with CNL for the management and operation of its sites. CNL maintains and operates the sites under a Government-Owned Contractor-Operated model under agreement with AECL, who retains ownership of the sites and associated liabilities on behalf of the Government of Canada. CNL is managed and operated by the Canadian National Energy Alliance (CNEA), which was the preferred bidder in a 2015 competitive process. The CNEA includes leadership and management from SNC-Lavalin, Jacobs, and Fluor—major engineering and technology companies.

Each year, the CNSC completes a ROR, which presents an assessment of performance at all CNL sites on 14 safety and control areas (SCAs). The CNSC’s assessment process focuses on radiation protection, environmental protection, and conventional health and safety; however, all SCAs are assessed by the CNSC, including the following:



- |                                 |  |
|---------------------------------|--|
| 1. Management system            | 8. Conventional health and safety            |
| 2. Human performance management | 9. Environmental protection                  |
| 3. Operating performance        | 10. Emergency management and fire protection |
| 4. Safety analysis              | 11. Waste management                         |
| 5. Physical design              | 12. Security                                 |
| 6. Fitness for service          | 13. Safeguards and non-proliferation         |
| 7. Radiation protection         | 14. Packaging and transport                  |

The CNSC provides additional information on the SCAs in Appendix B of the ROR (CNSC, 2019). The CNSC bases its assessments on site inspections, technical assessments, reviews of reports from CNL, reviews of events/incidents, and ongoing communication with CNL. The CNSC intends the ROR to be a summary of its oversight activities to ensure that CNL meets all requirements of licences it currently holds.

## 1.2 Whiteshell Laboratories Background

CNL is responsible for the operations and management of the WL site. CNL operates the site through a Government-Owned Contractor-Operated model, whereby the assets and facilities are owned by the AECL but the operations and management fall to the contractor (CNL). Under this model, AECL retains ownership of the lands, assets and liabilities associated with CNL’s licenses, including environmental remediation and other liabilities at the site (CNSC, 2019a). Ultimately, as an agent of the Crown, the responsibilities/liabilities of AECL are the responsibilities/liabilities of the Crown.

The WL site hosts the Whiteshell Reactor #1 (WR1), SLOWPOKE demonstration reactor (SDR) and other facilities, which AECL established in the early 1960s. WR1 operated from 1965 to 1985, at which time the site was placed into a state of permanent shutdown. SDR operated from 1967 to 1990 and is also now permanently shut down. Preliminary decommissioning of the site occurred during the 1990s, when removal of nuclear fuel, coolant and moderators occurred. Removing these materials reduced the amount of radioactive materials on site and lowered the associated risk. Since this time, the site has been inactive and radioactive materials have been undergoing natural decay. Since the site has been shut down and radioactive material is no longer being shipped to the site, the majority of short half-life isotopes have decayed, leaving SR-90 and CS-137 as the most abundant radioisotopes on site.

CNL has indicated that it will decommission the entire WL site in accordance with the WL Detailed Decommissioning Plan (DDP), which has been partially written (CNSC, 2019a). The decommissioning approach previously approved and currently licenced for WR-1 (Licence No NRTEDL-W5-8.04/2018) included the removal and remediation of all activated and contaminated components of WR-1 and associated facilities, including the reactor core. At this time, CNL is reconsidering its proposed decommissioning plan and is proposing to demolish the WR-1 building and decommission the nuclear waste in situ (ISD – In Situ Decommissioning). CNL proposes to demolish and remove above-ground buildings and facilities (two stories). CNL further proposes permanent on-site disposal of the below-



ground structures and facilities, including the reactor and radiological hazards. CNL says it will protect the on-site disposal facilities with an engineered cover to prevent intrusion of soil and groundwater and allow the radioactive contaminants to decay to safe levels. A licence for the ISD proposal has not yet been applied for by CNL or granted by CNSC.

The WR-1 Reactor and other WL facilities have produced a range of radiological and non-radiological contaminants during construction, operation and preliminary decommissioning. Now that the site is moving toward the next phase in decommissioning, CNL plans to limit the risks from previous activities to the extent possible, while mitigating or minimizing new liabilities that arise. CNL completed several activities during the 2009–2019 licence period with plans to have decommissioned the entire WL site by the end of the proposed 10-year relicensing period.<sup>1</sup> The activities currently proposed for the renewed licence period (2019–2029) include the following:

- Decommissioning and waste management – removal of all low-, intermediate-, and high-level waste to Chalk River Laboratories (CRL) or another appropriate location
- Full decommissioning of all remaining Whiteshell Laboratories infrastructure
  - WR-1 Reactor
  - Concrete Canister Storage Facility
  - Waste Management Area (WMA)
  - Shielded Facilities and other main campus nuclear facilities
  - All other non-nuclear buildings and infrastructure

## 1.2.1 Overview of Facilities at the Whiteshell Laboratories Site

The WL site hosts several facilities whose management and decommissioning pose risks to the natural environment (Figure 2). Dust, debris, or runoff from all facilities may contain contamination (e.g., lead paint, asbestos, radioactive contamination). In addition, a large volume of low-, intermediate- and high-level radioactive waste remains on site. CNL estimates that there will be 25,500 m<sup>3</sup> of low-level waste, 1560 m<sup>3</sup> of intermediate-level waste, and 92 baskets of high-level waste (irradiated fuel material) produced during the decommissioning process. Each basket typically holds up to 60 spent fuel bundles and is a key component of the nuclear waste storage system (CNL, 2019). Baskets are made up of copper, steel, aluminum, and boron and are contained within concrete storage casks. During

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<sup>1</sup> At the time of writing this Report, CNL has applied for but not yet been granted a 10 year licence renewal for the WL site decommissioning under its current removal plan.



decommissioning, CNL plans to remove and remediate these risks so that long-term liabilities are limited, and the site is placed into a state that is in accordance with WL site-specific release criteria.

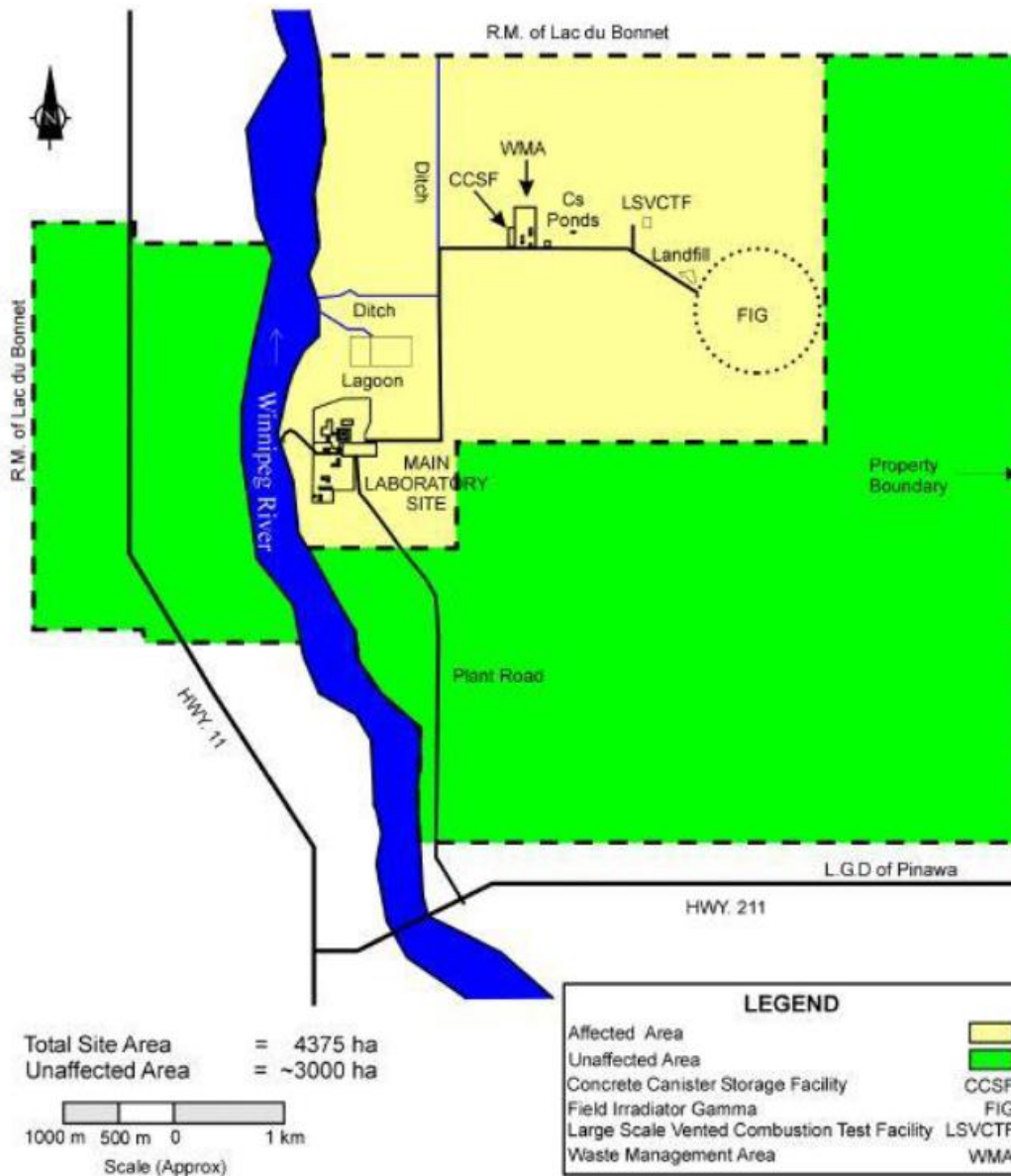


Figure 2. Diagram of Whiteshell Laboratories Site showing Winnipeg River and Property Boundary (CNL, 2019)

The facilities that pose the greatest risk during decommissioning (i.e., that contain the majority of contaminated material) include the following:

- Active Liquid Waste Treatment Centre (ALWTC)
- Waste Management Area (WMA)



- Concrete Canister Storage Facility (CCSF)
- Shielded facilities (SF)
- WR-1 facility

During the operational phase of the WL, the ALWTC received low- and intermediate-level radioactive liquid wastes from nuclear facilities. Low-level wastes were treated and released into the Winnipeg River in a controlled way. Intermediate-level wastes were solidified and transported to the WMA. As of 2018, CNL has completed operations at the ALWTC operations, with the facilities cleaned and scheduled for demolition and decommissioning (expected to be completed by 2020). CNL proposes that this will include removal of remaining equipment (e.g., pumps, pipes, sampling equipment, ventilation equipment). Once equipment has been removed, CNL will demolish the building, with all services severed within 1 m of the building footprint. CNL has completed ongoing management of low-level liquid waste in two systems it constructed in 2017, located in building B100 and B300 (the WR-1 Reactor and the Shielded Facilities buildings).

The WMA contains low-, intermediate-, and high-level waste in solid and liquid form. It also contains small levels of other hazardous wastes. The WMA facilities include buildings, trenches, below-ground tanks, and concrete standpipes and bunkers. CNL has commenced decommissioning of the WMA with the incinerator, which was used to incinerate contaminated solvents and organic coolant. CNL has begun other activities and planning for full decommissioning. This will include decontamination to the extent possible, followed either by demolition or removal. CNL will package and ship radioactive wastes to a long-term storage facility (CNL currently plans on storing these wastes at Chalk River Laboratories in Ontario).

AECL began operation of the CCSF operation in 1977 and used the facility for storage of irradiated fuel bundles. The CCSF currently holds approximately 2300 irradiated fuel bundles, storage cans of defective fuel and fuel fragments. CNL plans to remove the fuel from the cannisters and transport them to the Chalk River Laboratories site in eastern Ontario. Once all cannisters are emptied, decontaminated and/or demolished, the CCSF will be decommissioned as per the Detailed Decommissioning Plan (DDP).

Two facilities comprise the Shielded Facilities (SF): the Hot Cell Facility and the Irradiated Fuel Test Facility. Partial decommissioning of these facilities has been ongoing since 2005. However, CNL has decided to keep some of the cells within the SF operational to support ongoing decommissioning. This may include waste handling, sorting and assessment. Once no further decommissioning work is needed, the SF will be emptied, decontaminated (to the extent feasible) and demolished.

AECL shut down the WR-1 thermal reactor in 1985. AECL de-fueled the Reactor and removed the heavy water moderator. All easily movable radioactive fuel and fluids have been taken away from the site by the site owner/operators, and bulk organic coolant has also been removed and incinerated. CNL plans to complete further decommissioning during the renewed licence period, which will include removal of the reactor and other contaminated equipment. CNL will demolish all above ground buildings. Once all



contaminated components are removed and disposed of, the CNL intends to implement an approach for ISD (pending regulatory approval from the CNSC). This will involve CNL filling the remaining structure and reactor components with an engineered grout. Once fully grouted, CNL will install an engineered cap (graded to ensure drainage). CNL indicates that the purpose of this ISD is to stabilize and lock in place any remaining radioactive materials. It should be noted that the ISD differs from the originally proposed and currently licenced plans to fully decommission and remove WR-1. Once all areas of the WL site have been fully decommissioned, CNL will, on behalf of AECL, transfer the site through periods of institutional and post-institutional control, which may include monitoring and controlled access.

## 1.2.2 Environmental Setting

The WL site slopes toward the Winnipeg River. Groundwater on the site flows toward the river and is discharged through an underground seep to the west of the site. Surface water runoff is also directed toward the Winnipeg River. CNL manages surface water in the vicinity of the WL site through a series of swales and ditches that direct it to the Winnipeg River. During operation of the WR-1 Reactor, CNL treated effluent and stormwater from the WL site at the Active Liquid Waste Treatment Centre and then released the treated effluent and stormwater into the Winnipeg River through an outfall pipe located 8 m offshore. Each of these CNL treatment processes represents potential vectors for the movement of contaminants into the aquatic environment (the Winnipeg River).

At least 61 species of fish inhabit the Winnipeg River (Stewart and Watkinson 2004). These include many fishes from the minnow (Cyprinidae) and darter (Percidae) families; important game fish, such as northern pike (*Esox lucius*), walleye (*Sander vitreus*), several suckers (e.g., white sucker, redhorse), smallmouth bass (*Micropterus dolomieu*), and lake whitefish (*Coregonus clupeaformis*); and two species at risk (SAR), the carmine shiner (*Notropis percobromus*) and lake sturgeon (*Acipenser fulvescens*).

The terrestrial ecosystem surrounding the WL site is within the larger Boreal Shield Ecozone, Lake of the Woods Ecoregion, and Stead Ecodistrict. In general, this ecoregion has a large number of forest types characterized by tall, closed stands of jack pine (*Pinus banksiana*), trembling aspen (*Populus tremuloides*), paper birch (*Betula papyrifera*), white spruce (*Picea glauca*), eastern white cedar (*Thuja occidentalis*), black ash (*Fraxinus nigra*), and American elm (*Ulmus americana*) (Smith et al. 2001). Wildlife are diverse and characteristic of the region, and include gray wolf (*Canis lupus*), American black bear (*Ursus americanus*), moose (*Alces americanus*), white-tailed deer (*Odocoileus virginianus*), snowshoe hare (*Lepus americanus*), hooded merganser (*Lophodytes cuculata*), turkey vulture (*Cathartes aura*), and ruffed grouse (*Bonasa umbellus*) (Smith et al. 2001). The surrounding area consists of cleared lands with areas of peat bog. Whiteshell Provincial Park, the largest provincial park in Manitoba, is located southeast of WL; Pinawa and Whitemouth Falls Provincial Parks are immediately south of the WL site.

Historically and in the present day, the MMC have exercised their distinct and inherent Métis rights around and downstream of the WL site without limitation. The MMC values access to areas used for harvesting or other traditional land uses, as well as the quality, safety, and availability of medicinal



plants and country foods for consumption, as part of their traditional culture and diet. Adverse impacts on the land or the ability of the MMC to access the land for traditional land use in this territory have the potential to negatively impact the rights, claims, and interests of the MMC.

## 2.0 Manitoba Métis Community

### 2.1 History and Identity

The Métis Nation—as a distinct Indigenous people—evolved out of relations between European men and First Nations women who were brought together as a result of the early fur trade in the Northwest. In the eighteenth century, both the Hudson Bay Company and the Northwest Company created a series of trading posts that stretched across the upper Great Lakes, through the western plains, and into the northern boreal forest. These posts and fur trade activities brought European and Indigenous peoples into contact. Inevitably, unions between European men—explorers, fur traders, and pioneers—and Indigenous women were consummated. The children of these families developed their own collective identity and political community so that “[w]ithin a few generations, the descendants of these unions developed a culture distinct from their European and Indian forebears” and the Métis Nation was born—a new people, indigenous to the western territories (*Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] 2 SCR 670 at para. 5; *R. v. Goodon*, 2008 MBPC 59 at para. 25; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 SCR 623 at para. 2).

The Métis led a mixed way of life. “In early times, the Métis were mostly nomadic. Later, they established permanent settlements centered on hunting, trading and agriculture” (*Alberta v. Cunningham*, at para. 5). The Métis were employed by both of the fur trades’ major players, the Hudson’s Bay and Northwest companies. By the early 19<sup>th</sup> century, they had become a major component of both firms’ workforces. At the same time, however, the Métis became extensively involved in the buffalo hunt. As a people, their economy was diverse; combining as it did, living off the land in the Aboriginal fashion with wage labour (*MMF Inc. v. Canada*, at para. 29).

It was on the Red River, in reaction to a new wave of European immigration, that the Métis Nation first came into its own. Since the early 1800s, the Manitoba Métis Community—as a part of the larger Métis Nation—has asserted itself as a distinct Indigenous collective with rights and interests in its Homeland. The Manitoba Métis Community shares a language (Michif), national symbols (infinity flags), culture (i.e., music, dance, dress, crafts), as well as a special relationship with its territory that is centered in Manitoba and extends beyond the present-day provincial boundaries.

The Manitoba Métis Community has been recognized by the courts as being a distinctive community, with rights that are protected in section 35 of the *Constitution Act, 1982*. In *Goodon*, the Manitoba courts held that

*The Métis community of Western Canada has its own distinctive identity [...] the Métis created a large inter-related community that included numerous settlements located in present-day*





*southwestern Manitoba, into Saskatchewan and including the northern Midwest United States. This area was one community [...] The Métis community today in Manitoba is a well-organized and vibrant community (paras. 46-47; 52).*

This proud independent Métis population constituted a historic rights-bearing community in present day Manitoba and beyond, which encompassed “all of the area within the present boundaries of southern Manitoba from the present-day City of Winnipeg and extending south to the United States” (*R. v. Goodon*, at para. 48).

The heart of the historic rights-bearing Métis community in southern Manitoba was the Red River Settlement; however, the Manitoba Métis also developed other settlements and relied on various locations along strategic fur trade routes. During the early part of the 19<sup>th</sup> century, these included various posts of varying size and scale spanning the Northwest Company and the Hudson Bay Company collection and distribution networks.

More specifically, in relation to the emergence of the Métis—as a distinct Aboriginal group in Manitoba—the Supreme Court of Canada wrote the following in the *MMF Inc. v. Canada* case:

[21] The story begins with the Aboriginal peoples who inhabited what is now the province of Manitoba—the Cree and other less populous nations. In the late 17<sup>th</sup> century, European adventurers and explorers passed through. The lands were claimed nominally by England which granted the Hudson’s Bay Company, a company of fur traders operation of out London, control over a vast territory called Rupert’s Land, which included modern Manitoba. Aboriginal peoples continued to occupy the territory. In addition to the original First Nations, a new Aboriginal group, the Métis, arose—people descended from early unions between European adventurers and traders, and Aboriginal women. In the early days, the descendants of English-speaking parents were referred to as half-breeds, while those with French roots were called Métis.

[22] A large—by the standards of the time—settlement developed at the forks of the Red and Assiniboine Rivers on land granted to Lord Selkirk by the Hudson’s Bay Company in 1811. By 1869, the settlement consisted of 12,000 people, under the governance of Hudson’s Bay Company.

[23] In 1869, the Red River Settlement was a vibrant community, with a free enterprise system and established judicial and civic institutions, centred on the retail stores, hotels, trading undertakings and saloons of what is now downtown Winnipeg. The Métis were the dominant demographic group in the Settlement, comprising around 85 percent of the population [approximately 10,000 Métis], and held leadership positions in business, church and government.

The fur trade was vital to the ethnogenesis of the Métis and was active in Manitoba from at least the late 1770s, and numerous posts and outposts were established along cart trails and waterways throughout the province. These trails and waterways were crucial transportation networks for the fur



trade (Jones 2014; Figure 3) and were the foundation of the Manitoba Métis Community's extensive use of the lands and waters throughout the province. In the early 20<sup>th</sup> century, the Manitoba Métis Community continued to significantly participate in the commercial fisheries and in trapping activities, which is well documented in Provincial government record.



### Fur Trade Routes and Trading Posts, pre 1870

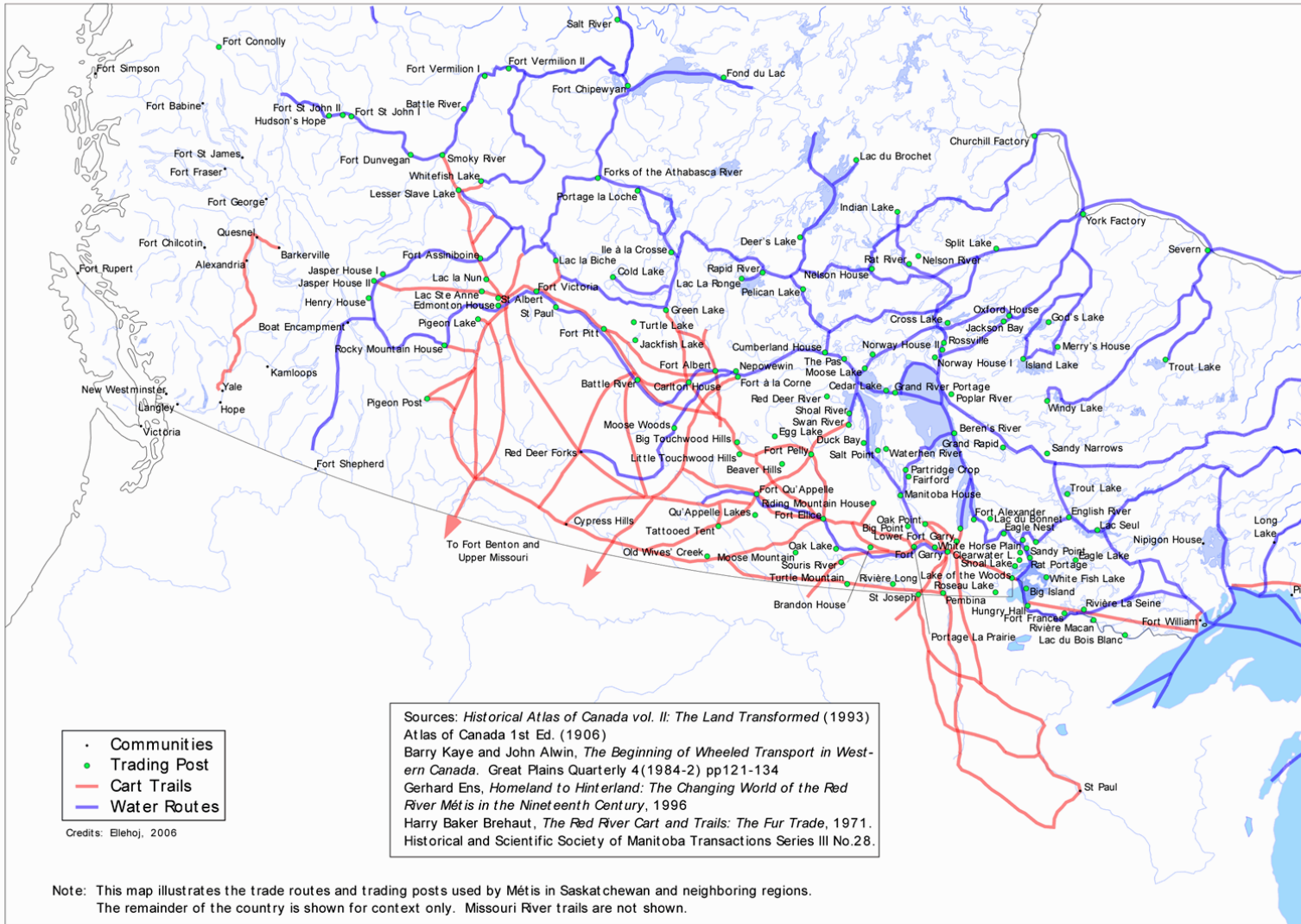


Figure 3. The Fur Trade Network: Routes and Posts Prior to 1870



## 2.2 Manitoba Metis Federation

The Manitoba Metis Federation is the democratically elected government of the Métis Nation's Manitoba Métis Community (Manitoba Métis Community). The MMF is duly authorized by the members of the Manitoba Métis Community for the purposes of dealing with Manitoba Métis rights, claims, and interests, including conducting consultations and negotiating accommodations (as per MMF Resolution No. 8, see Section 2.3). While the MMF was initially formed in 1967, its origins lie in the 18<sup>th</sup> century with the birth of the Manitoba Métis Community and in the legal and political structures that developed with it. Since the birth of the Métis people in the Red River Valley in the early 1800s, the Manitoba Métis Community—as a part of the larger Métis Nation—has asserted and exercised its inherent right of self-government. Over the last 50 years, the MMF has represented the Manitoba Métis Community at the provincial and national levels.

During this same period, the MMF has built a sophisticated, democratic and effective Métis governance structure that represents the Manitoba Métis Community at the local, regional, and provincial levels throughout Manitoba. The MMF was created to be the self-government representative of the Manitoba Métis Community—as reflected in the Preamble of the MMF's Bylaws, which are agreed to by its members as a part of registering with the MMF:

WHEREAS, the Manitoba Metis Federation Inc. has been created to be the democratic and self-governing representative body of the Manitoba Métis Community.

In addition, the purpose “to provide responsible and accountable governance on behalf of the Manitoba Métis Community using the constitutional authorities delegated by its members” is embedded within the MMF's objectives, as set out in the MMF Bylaws. These objectives mandate the MMF to advance the cultural, legal, constitutional, social, economic, and political rights and interests of the Manitoba Métis Community. The objectives of the MMF, as set out in the MMF Bylaws, are as follows:

1. To promote and instill pride in the history and culture of the Métis people
2. To educate members with respect to their legal, political, social and other rights
3. To promote the participation and representation of the Métis people in key political and economic bodies and organizations
4. To promote the political, legal, social and economic interests and rights of its members
5. To provide responsible and accountable governance on behalf of the Manitoba Métis community using the constitutional authorities delegated by its members

The MMF is organized and operated based on centralized democratic principles, some key aspects of which are described below.



**President:** The President is the Chief Executive Officer, leader and spokesperson of the MMF. The President is elected in a province-wide ballot-box election every four years and is responsible for overseeing the day-to-day operations of the MMF.

**Board of Directors:** The MMF Board of Directors, or “MMF Cabinet” leads, manages and guides the policies, objectives and strategic direction of the MMF and its subsidiaries. All 23 members are democratically elected by the membership.

**Regions:** The MMF is organized into seven regional associations or "Regions" throughout the province (Figure 4): The Southeast Region, the Winnipeg Region, the Southwest Region, the Interlake Region, the Northwest Region, the Pas Region, and the Thompson Region. Each Region is administered by a vice-president and two executive officers, all of whom sit on the MMF’s Cabinet. Each Region has a separate office which delivers programs and services to their specific geographic area.

**Locals:** Within each Region are various area-specific "Locals" which are administered by a chairperson, a vice-chairperson and a secretary-treasurer. Locals must have at least nine members and meet at least four times a year to remain active. There are approximately 140 MMF Locals across Manitoba.



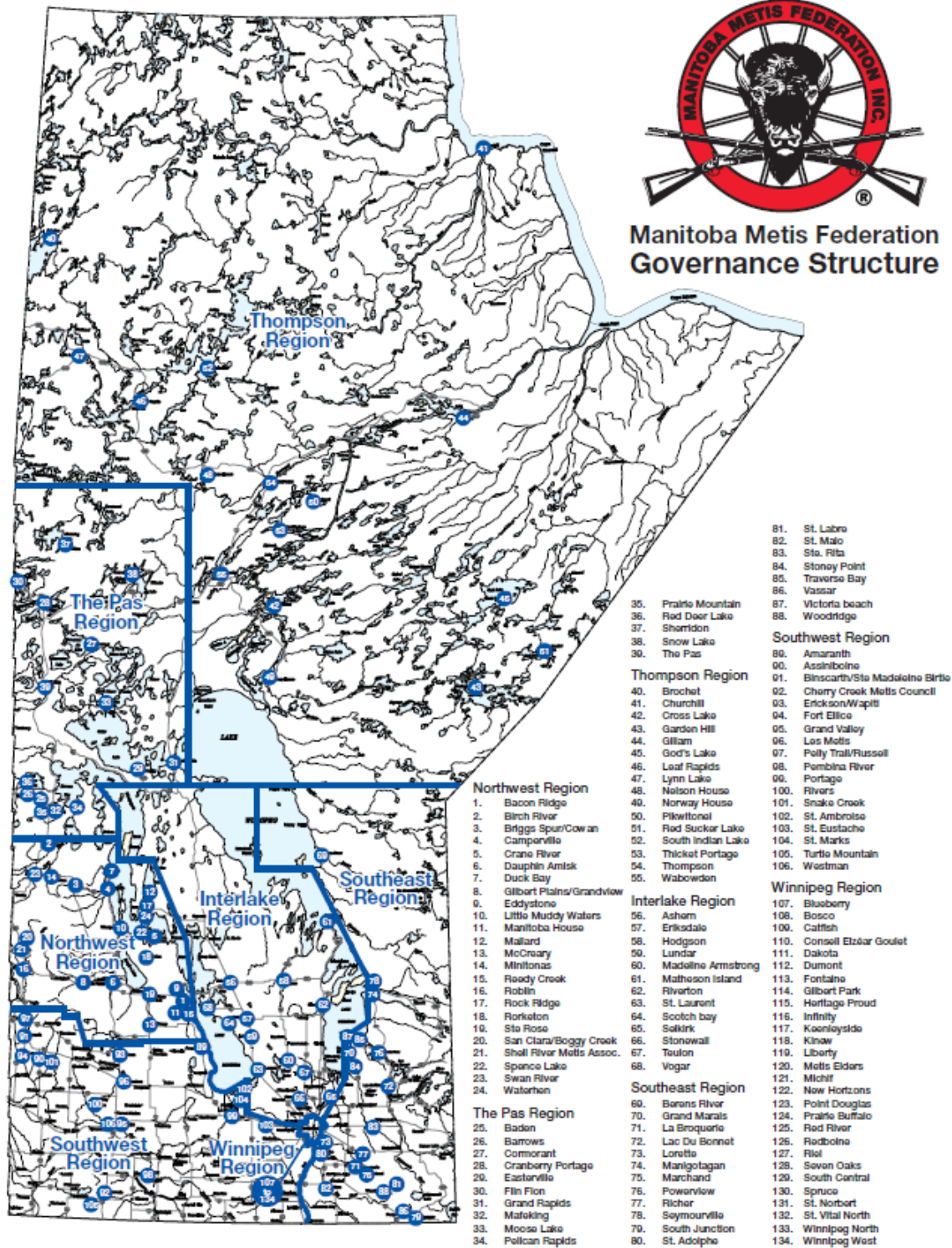


Figure 4. Manitoba Metis Federation (MMF) Regions



## 2.3 MMF Resolution No. 8

Among its many responsibilities, the MMF is authorized to protect the Aboriginal rights, claims and interests of the Manitoba Métis Community, including as related to harvesting resources, traditional culture, and economic development.

In 2007, the MMF Annual General Assembly unanimously adopted Resolution No. 8 that sets out the framework for engagement, consultation, and accommodation to be followed by Federal and Provincial governments, industry, and others when making decisions and developing plans and projects that may impact the Manitoba Métis Community. Under MMF Resolution No. 8, direction has been provided by the Manitoba Métis Community for the MMF Home Office to take the lead and be the main contact on all consultation affecting the Manitoba Métis Community. Resolution No. 8 reads, in part that:

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

The MMF Home Office works closely with the Regions and Locals to ensure the rights, interests, and perspective of the Manitoba Métis Community are effectively represented in matters related to consultation and accommodation.

Resolution No. 8 has five phases:

Phase 1: Notice and Response

Phase 2: Funding and Capacity

Phase 3: Engagement or Consultation

Phase 4: Partnership and Accommodation

Phase 5: Implementation

Each phase is an integral part of the Resolution No. 8 framework and proceeds logically through the stages of consultation.

## 2.4 Manitoba Métis Community Rights, Claims, and Interests

The Manitoba Métis Community possesses Aboriginal rights, including pre-existing Aboriginal collective rights and interests in lands protected by section 35 of the *Constitution Act, 1982*, throughout Manitoba.



Indeed, Manitoba courts recognized these pre-existing, collectively held Métis rights in *R. v. Goodon* (at paras. 58; 72):

I conclude that there remains a contemporary community in southwest Manitoba that continues many of the traditional practices and customs of the Métis people.

I have determined that the rights-bearing community is an area of southwestern Manitoba that includes the City of Winnipeg south to the U.S. border and west to the Saskatchewan border.

As affirmed by the Supreme Court of Canada, such rights are “recognize[d] as part of the special aboriginal relationship to the land” (*R. v. Powley*, 2003 SCC 43, at para. 50) and are grounded on a “communal Aboriginal interest in the land that is integral to the nature of the Métis distinctive community and their relationship to the land” (*MMF Inc. v. Canada*, at para. 5). Importantly, courts have also recognized that Métis harvesting rights may not be limited to Unoccupied Crown Lands (*R. v. Kelley*, 2007 ABQB 41, para. 65).

The Crown, as represented by the Manitoba government, has recognized some aspects of the Manitoba Métis Community’s rights through a negotiated agreement: The *MMF-Manitoba Harvesting Agreement (2012)*. This Agreement was signed at the MMF’s 44th Annual General Assembly and “recognizes that collectively-held Métis Harvesting Rights, within the meaning of s. 35 of the *Constitution Act, 1982*, exist within the [Recognized Métis Harvesting Zone], and that these rights may be exercised by Métis Rights Holders consistent with Métis customs, practices and traditions...” (*MMF-Manitoba Harvesting Agreement*, section 1). In particular, the *MMF-Manitoba Harvesting Agreement* recognizes that Métis rights include “hunting, trapping, fishing and gathering for food and domestic use, including for social and ceremonial purposes and for greater certainty, Métis harvesting includes the harvest of timber for domestic purposes” throughout an area spanning approximately 169,584 km<sup>2</sup> (the “Métis Recognized Harvesting Area”) (*MMF-Manitoba Harvesting Agreement*, section 2; Figure 5 below). The MMF further asserts rights and interests beyond this area, which require consultation and accommodation as well.

Beyond those rights already established through litigation and recognized by agreements, the Manitoba Métis Community claims commercial and trade-related rights. Courts have noted that Métis claims to commercial rights remain outstanding (*R. v. Kelley* at para. 65). These claims are strong and well-founded in the historical record and the customs, practices, and traditions of the Manitoba Métis Community, and it is incumbent on the Crown and Proponents to take them seriously.

The Manitoba Métis Community has its roots in the western fur trade (*R. v. Blais*, 2003 SCC 44 at para. 9 [Blais]; *R. v. Goodon* at para. 25). The Métis in Manitoba are descendants of early unions between Aboriginal women and European traders (*MMF Inc. v. Canada* at para. 21). As a distinct Métis culture developed, the Métis took up trade as a key aspect of their way of life (*R. v. Powley* at para. 10). Many Métis became independent traders, acting as middlemen between First Nations and Europeans (*R. v. Goodon* at para. 30). Others ensured their subsistence and prosperity by trading resources they themselves hunted and gathered (*R. v. Goodon* at para. 31, 33, & 71). By the mid-19<sup>th</sup> century, the Métis





in Manitoba had developed the collective feeling that “the soil, the trade and the Government of the country [were] their birth rights.” (*R. v. Goodon* at para. 69(f)). Commerce and trade are and always have been integral to the distinctive culture of the Manitoba Métis Community. Today, the Manitoba

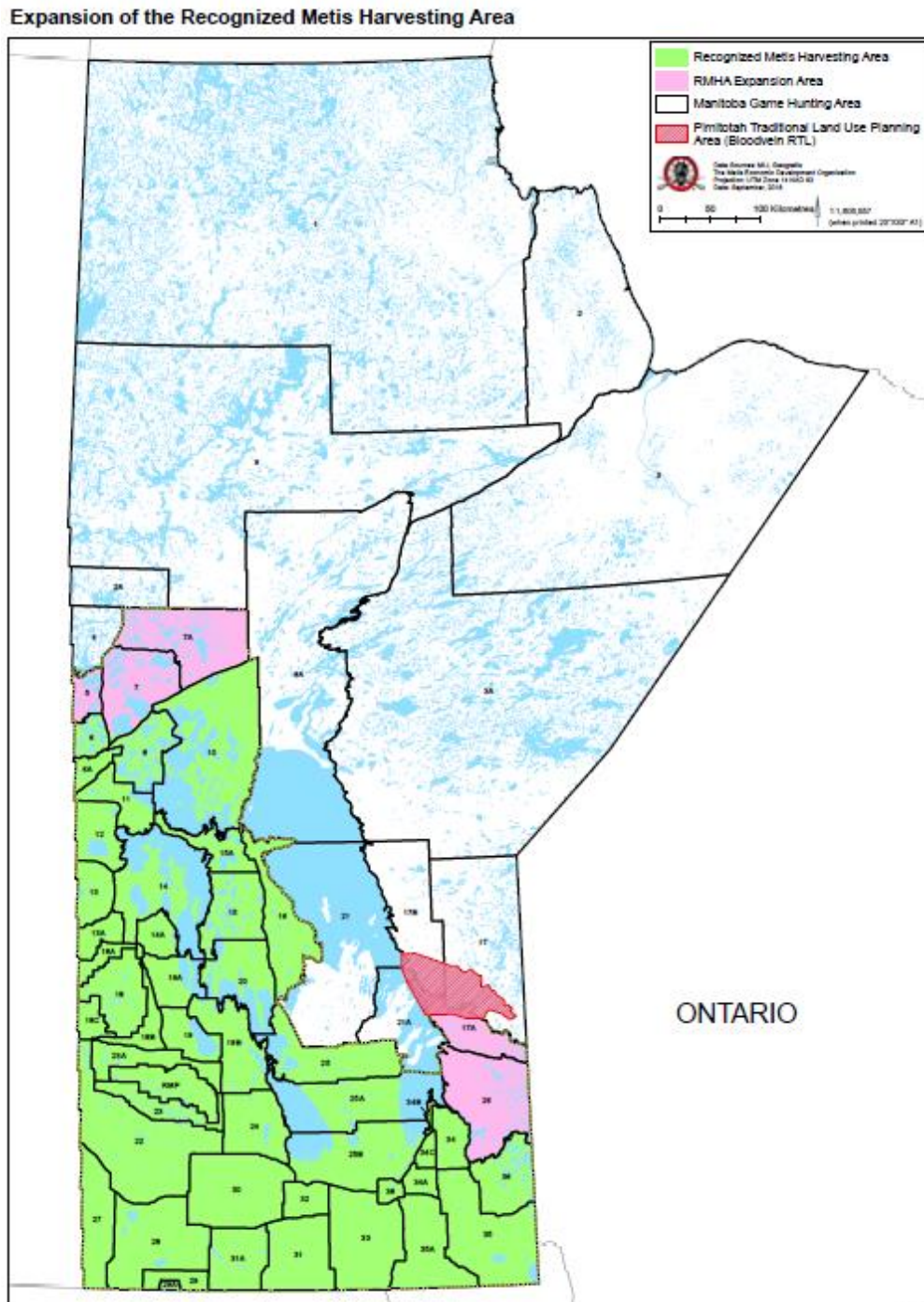


Figure 5. MMF–Manitoba Harvesting Agreement Recognized Manitoba Métis Harvesting Zones (Green and Pink)



Métis have an Aboriginal, constitutionally protected right to continue this trading tradition in modern ways to ensure that their distinct community will not only survive, but also flourish.

Unlike First Nations in Manitoba, whose commercial rights were converted and modified by treaties and the *Natural Resources Transfer Agreement* (“NRTA”) (*R. v. Horseman*, [1990] 1 SCR 901), the Métis’ pre-existing customs, practices, and traditions—including as they relate to commerce and trade—were not affected by the NRTA (*R. v. Blais*) and continue to exist and be protected as Aboriginal rights. First Nations’ treaty rights in Manitoba are, for example, inherently limited by the Crown’s power to take up lands (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para 56). Métis rights, in contrast, are not tempered by the “taking up” clauses found in historic treaties with First Nations. Métis rights must be respected as they are, distinct from First Nations’ rights and unmodified by legislation or agreements.

In addition to the abovementioned rights to land use that preserve the Métis culture and way of life, the MMF has other outstanding land related claims and interests with respect to lands outside of the ‘old postage stamp’ province of Manitoba. Specifically, these claims relate to the federal Crown’s constitutional promise to all Aboriginal peoples, including Manitoba Métis, as set out in the Order of Her Majesty in Council Admitting Rupert’s Land and the North-Western Territory into the Union (the “1870 Order”) which provides

that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The manner in which the federal Crown implemented this constitutional promise owing to the Manitoba Métis—through the *Dominion Lands Act* and the resulting Métis scrip system—effectively defeated the purpose of the commitment. Accordingly, the MMF claims these federal Crown actions constituted a breach of the honour of the Crown, which demand negotiations and just settlement outside of the ‘old postage stamp province’ within Manitoba as well.

The MMF also claims that the *Dominion Lands Act* and the resulting Métis scrip system were incapable of extinguishing collectively held Métis title in specific locations where the Manitoba Métis Community is able to meet the legal test for Aboriginal title as set out by the Supreme Court of Canada. These areas in the province, which the Manitoba Métis exclusively occupied—as an Indigenous people—prior to the assertion of sovereignty, establish a pre-existing Métis ownership interest in these lands.

The MMF has an outstanding legal claim within what was the ‘old postage stamp province’ relating to the 1.4 million acres of land promised to the children of the Métis living in the Red River Valley, as enshrined in s. 31 of the *Manitoba Act, 1870* (*MMF Inc. v. Canada* at para 154).



This land promised was a nation-building, constitutional compact that was meant to secure a “lasting place in the new province [of Manitoba]” for future generations of the Métis people (*MMF Inc. v. Canada* at para 5). This “lasting place” was to have been achieved by providing the Manitoba Métis Community a “head start” in securing lands in the heart of the new province (*MMF Inc. v. Canada* at paras 5-6).

Instead, the federal Crown was not diligent in its implementation of s. 31, which effectively defeated the purpose of the constitutional compact.

In March 2013, the Supreme Court of Canada found that the federal Crown failed to diligently and purposefully implement the Métis land grand provision set out in s. 31 of the *Manitoba Act, 1870* (*MMF Inc. v. Canada* at para 154). This constituted a breach of the honour of the Crown. In arriving at this legal conclusion, the Court wrote

What is at issue is a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Charter* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Métis people with Canadian sovereignty is a matter of national and constitutional import (*MMF Inc. v. Canada* at para 40).

This constitutional breach is an outstanding Métis claim flowing from a judicially recognized common law obligation which burdens the federal Crown (*MMF Inc. v. Canada* at paras 156; 212). It can only be resolved through good faith negotiations and a just settlement with the MMF (see for example: *R v Sparrow*, [1990] 1 SCR 1075 at paras 51–53; *R v Van der Peet*, [1996] 2 SCR 507 at paras 229, 253; *Haida* at para 20; *Carrier Sekani* at para 32). Lands both within the ‘old postage stamp province’ as well as in other parts of Manitoba—since little Crown lands remain within the ‘old postage stamp province’—may need to be considered as part of any future negotiations and settlement in fulfillment of the promise of 1.4 million acres.

On November 15, 2016, the MMF and Canada concluded a *Framework Agreement for Advancing Reconciliation* (the “Framework Agreement”). The Framework Agreement serves as the basis for ongoing negotiation aimed at implementing the Supreme Court of Canada’s decision in *MMF Inc. v. Canada* and advancing the process of reconciliation between the Crown and the MMF. It provides for negotiations on various topics including, but not limited to, the “quantum, selection and management of potential settlement lands.” Negotiations under the Framework Agreement are active and ongoing.



## 3.0 Review Findings

SVS reviewed the following documents on behalf of the MMF:

1. CNSC. 2019. Regulatory oversight report for Canadian Nuclear Laboratories Sites: 2018. CMD 19-M24. 104 pp.
2. The Independent Environmental Monitoring Program (IEMP)  
<http://nuclearsafety.gc.ca/eng/resources/maps-of-nuclear-facilities/iemp/index-iemp.cfm>

SVS considered any potential intersections with the activities and information provided in the report with potential risks and impacts to the MMC. The review

1. assessed the adequacy of the information provided, including mitigation, management, and monitoring plans;
2. assessed the intersection of past, current and future regulated activities described in the ROR with the Manitoba Métis Communities' rights, claims and interests; and
3. evaluated the use of local MMC knowledge, Métis traditional knowledge and land use incorporated in the ROR.

Using the results of the review, the MMF has provided specific recommendations to address the identified issues and concerns representative of MMC's values, rights, claims and interests which stem from potential impacts from the past, present and future management of the WL site. Due to the nature of the ROR, as a high-level summary of regulated operations, the recommendations focus on opportunities for the CNSC, AECL and CNL to improve involvement, inclusion and consultation with the MMF on monitoring/oversight for the WL facilities. Where applicable, we have also provided guidance on best practice mitigations, management and monitoring.

### 3.1 Summary of ROR Sections Relevant to Whiteshell Laboratories

CNL relies on international standards and its internal reporting system to maintain safety and security, which are generally considered satisfactory by the CNSC. In 2018, the CNSC completed two inspections at the WL site. Based on these inspections, reviews of reports prepared by CNL and other assessment mechanisms, the CNSC has rated 13 of the 14 SCAs for CNL operations at Whiteshell as "satisfactory," with the exception of Security, which was assessed as being "below expectations." As a result of this assessment, the CNSC issued an enforcement action order to CNL related to security. In response to the enforcement action order from CNSC, the CNL prepared an action plan and has made progress on this issue so that the CNSC considers the issue "closed;" however, details on what this enforcement action



order was related to and what security concerns the CNSC had have not been provided to the MMF or outlined in the ROR. Oversight of the SCAs has been increased for the 2019 period to provide additional scrutiny.

The CNSC notes that CNL is conducting ongoing monitoring at WL as part of their licence requirements, including monitoring of releases of radioactive and hazardous substances to the air, water and soil near the WL site. In 2018, there were no releases from the WL site that exceeded regulatory limits set by the CNSC. The MMF has in previous reports raised concerns with the frequency, timing, and extent (location) of monitoring and sampling and has provided specific recommendations that these be increased.

In addition to the monitoring by CNL, the CNSC conducts an IEMP. Through this program, CNSC staff gather samples of air, water, sediment, soil, plants, and food from areas near the WL site. These samples are analyzed for radiological and non-radiological contaminants. The CNSC has stated that the IEMP should reflect Indigenous knowledge, values and land use where possible, but it is not clear that this has occurred for sampling near the WL site. The MMF has in previous reports provided recommendations that a model that allows for increased involvement of the MMF in the IEMP—such as was done in the past with the Algonquins of Ontario—should be used for the WL site and deeply involve the MMF.

The CNSC has recognized the need to consult with Indigenous people as part of fulfilling the Crown's duty to consult and accommodate, build relationships, and advance reconciliation between Indigenous peoples and the Crown. The CNSC has stated that the goal is to “build partnerships and trust” through consultation (CNSC, 2019, pp 40). It is recognized in the ROR that the WL site is within the traditional territory of the MMC. The bulk of CNSC's engagement with the MMF in 2018 focused on the ongoing planning and licensing for the decommissioning of the WL site. This included information sharing, meetings, and provision of participant funding to support the preparation of comments from the MMF about the various activities and plans proposed. Moreover, the CNSC funded a Métis Knowledge and Land Use Study focused on the area surrounding the WL site.

The CNSC has noted that ongoing decommissioning is occurring at the WL site, which includes removal of the reactor and other contaminated equipment. CNL plans to remove and demolish all above ground buildings. As noted above, the CNSC has reported that CNL plans to implement an approach for ISD of the WR-1 (pending regulatory approval from the CNSC). This will involve filling the remaining structure and reactor components with an engineered grout. Once fully grouted, an engineered cap (graded to ensure drainage) will be installed. The purpose of this ISD is to stabilize and lock in place any remaining radioactive materials. ISD differs from the originally proposed plans to fully decommission and remove WR-1 and is not currently an approved part of the licensing. A review of this revised approach by the CNSC is ongoing and further engagement and consultation with the MMF regarding that proposed approach is required. If successful, it would allow CNL to complete ISD at the WL site.



## 3.2 Evaluation and Recommendations

The Whiteshell Laboratories site is within the traditional territory and Homeland of the Métis Nation's Manitoba Métis Community (MMC). As outlined above, based upon the MMC's emergence as a distinct Indigenous community prior to any Crown assertion of sovereignty or effective European control in the area, the MMC has distinct, collectively held Métis rights, claims, and interests that are protected by s. 35 of the *Constitution Act, 1982*. These rights continue to be exercised today by Métis Citizens throughout their traditional territory, including on and around the Whiteshell Laboratories site, without limitation. It is essential that actions or decisions—including the proposed WL site decommissioning—are undertaken in a way that protects and preserves the continued ability of the MMC to rely on the lands, waters, and resources of their traditional territory to sustain themselves now and into the future.

Based on traditional knowledge data collected from the MMC and shared with the MMF, it is apparent that this is a region where the MMC has a longstanding and well-established record of historic use and occupancy, as well as ongoing current use. The WL site falls within the area of Manitoba where the provincial Crown has recognized s. 35 Métis harvesting rights and activities and MMC Citizens exercise their harvesting rights on and around the WL site. The MMF has shared this information with CNL through a Métis Traditional Knowledge and Land Use Study, Métis Consumption Survey (MMF, 2017) and other reports.

Métis s. 35 rights are a part of the distinct Métis relationship to their traditional territory. The MMC primarily relies on what are now 'Crown' lands within their traditional territory to maintain this distinct Métis relationship and exercise their rights, traditions and cultural practices. Due to increasing development and urbanization there are limited 'Crown' lands available in southern Manitoba for the Métis to exercise their rights. The MMC values access to areas used for harvesting or other traditional land uses, as well as the quality, safety, and availability of medicinal plants and country foods for consumption, as part of their traditional culture and diet. Therefore, the potential impacts and negative effects associated with the operations/management of the WL site, including decommissioning, demolition, and disposal of the associated infrastructure that occur within the traditional territory of the MMC have the potential to impact on the continued ability of MMF Citizens to exercise their rights and maintain their distinct Métis relationship with this area of their traditional territory.

### Rights, Claims and Interests of the Manitoba Métis Community

**Comment 1:** The ROR does not adequately acknowledge, recognize, or account for the rights, claims, and interests held by the MMC that are established and protected under s. 35 of the *Constitution Act, 1982*. The MMC's constitutionally protected rights to the territory in which WL is situated are a crucial distinction between the MMC and the general public or other stakeholders. Although the CNSC suggests that they engaged the MMC through a more targeted approach, it is not clear if or how the described letters, phone calls, meetings, and e-mail correspondence was distinct from the approach taken with the general public and First Nations to account for the unique rights of the MMC. While the Crown can rely on boards, agencies or commissions to discharge its duty to consult and accommodate, the



responsibility for discharging the duty and upholding the honour of the Crown always remains with the Crown. No matter what process or entity is relied on to fulfill the duty, consultation and accommodation with respect to MMC's rights and interests involving the WL site activities, plans and impacts must be meaningfully undertaken.

**Recommendation 1a:** CNL, and AECL representing the Crown site owner, must engage the MMF to establish binding, long-term relationship agreements (LTRAs) or similar agreements that enable the MMF, as the democratically elected, self-government representatives of the MMC, to address all of the following recommendations with respect to the operation of the WL site, and all future decommissioning activities. Moreover, CNL and AECL must consult with the MMF regarding these plans so that Métis traditional knowledge, exercise of Métis rights, and Métis land use information can be considered and incorporated into the plans during closure and post-closure periods.

**Recommendation 1b:** AECL and the CNSC, as representatives of the Crown, must require and ensure engagement, consultation, and accommodation processes, and deliverables such as plans, applications, and assessments, are developed in collaboration with the MMF, and revised to reflect the MMF's input. AECL and the CNSC should use a distinction-based approach for consultation and accommodation, an approach that explicitly recognizes and accounts for the distinct rights, claims, and interests of the MMC, as well as their significant history with the WL site and connection to the land. AECL and the CNSC must consult MMF, as the democratically elected self-government representative of Métis Citizens in Manitoba, on how they would like to be engaged in these processes on an ongoing basis to ensure the rights, claims, and interests of the MMC are adequately considered and, where required, accommodated.

**Recommendation 1c:** In cases where impacts to the rights, claims and interests of the MMC cannot be avoided or mitigated, accommodations must be provided. The MMF must be consulted regarding the development of accommodation measures, where required, as part of fulfilling the duty to consult and accommodate. Such impacts to rights and interests could include, but are not limited to, instances such as a reduced ability to use or access the land in restricted-access areas in and around WL, timing of decommissioning activities that result in disruption to Métis harvesting practices or seasons, and decisions related to remediation or reclamation that affect whether native species or plants relied on by Métis harvesters are reintroduced into the area. Additionally, accommodations must be provided if wildlife or plant materials are found to be contaminated, impacting the ability of the MMC to exercise their rights to harvest and consume wild and traditional foods and medicines that are safe and uncontaminated.

**Comment 2:** In section 2.2 of the report, the CNSC indicates that *"The public and Indigenous groups in the WL area continue to show a high level of interest in CNL's current decommissioning activities at WL, and in CNL's future plans for the site."* The MMF is particularly interested in the CNL's current decommissioning activities at the WL site, as well as future plans for the site, given that Métis Citizens currently exercise their Aboriginal rights and harvesting activities within 100 m of the site, including use



of downstream areas of the Winnipeg River. This proximity of land use to the site by the MMC means that it is vitally important that CNL, AECL, and the CNSC provide information to the MMF in a timely manner regarding the current decommissioning activities and future plans for the site. As noted above, the MMC has distinct, constitutionally protected rights and interests that are potentially impacted by the current activities and future use of the WL site that are not adequately considered in a general public engagement or communications approach. A process for meaningfully continuing to consult with the MMF regarding proposed decommissioning activities and future plans and involving the MMF in decision-making matters related to CNL and AECL's future plans for the site is required.

**Recommendation 2a:** CNL, and AECL and the CNSC representing the Crown, must engage the MMF in developing a mutually agreeable Communication Strategy for the current site decommissioning activities. This Communication Strategy should include a process to inform the MMF on an ongoing basis about decommissioning and demolition activities and potential adverse effects, as well as a process for soliciting feedback and making revisions to the planned activities in light of MMF's feedback and concerns. The Communications Strategy should also include a process for proactive communication with the MMF regarding proposed activities, including shared decision making regarding the timing of such activities to minimize impacts on Métis harvesters access to the WL site and area. It should also follow a distinctions-based approach that recognizes the unique governance structure of the MMF and processes for communication with Manitoba Métis Citizens. This will allow for clearer, more meaningful communication and engagement between CNL, AECL, CNSC and the MMF throughout the full decommissioning process at the WL site.

**Recommendation 2b:** CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, as the democratically elected, self-government representative of the MMC, to be meaningfully involved in the determination of the future plans for the WL site alongside CNL and AECL. This would include, among other things, requiring the consideration and integration of Métis traditional knowledge, land use, and occupancy information at and around the site in the monitoring and mitigation measures and plans. This decision-making process and framework should also explicitly include a role for the MMF in collaboratively determining the future plans, use, and access to the site post-closure. The mechanism for this engagement should be mutually agreed on between CNL, AECL, and the MMF, but may include the creation of a Métis Liaison role (see comment #5), Indigenous oversight committee, and CNSC regulatory involvement.

**Comment 3:** According to Section 5.3.2 on Indigenous Engagement at Whiteshell Laboratories,

*"CNSC staff observed that CNL has a dedicated Indigenous engagement program that covers their operations and activities at the WL site.*

*Consistent with the requirements and guidance of CNSC REGDOC 3.2.2: Aboriginal Engagement, throughout 2018, CNL met and shared information with interested Indigenous communities and organizations. These efforts have included emails, letters, meetings, site visits and tours, community visits, and workshops among others with a major focus being on WR-1...CNSC staff*





*continue to be satisfied with the level and quality of Indigenous engagement conducted by CNL with regards to their operations and proposed projects at WL and continue to adhere to the guidance of REGDOC 3.2.2.”*

Although this wording suggests that CNL has met its regulatory obligations for Indigenous Engagement and has satisfied the CNSC requirements, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process, nor how the described CNL letters, phone calls, meetings, e-mail correspondence, site visits and tours, and workshops were distinct from the approach taken with the general public and First Nations to account for the unique rights of the MMC. It is also unclear what the outcomes and results were from the above engagement methods with respect to the Crown’s obligations, including if the Crown has effectively addressed or accommodated any issues the MMF has in relation to the WL site. As previously noted in other MMF reports regarding the WL site and proposed decommissioning activities, while positive relationships with CNL have developed recently, there are still outstanding issues and concerns that remain unresolved. Where there are Crown actions or decisions that have the potential to impact on the constitutionally protected rights, claims, or interests of the MMC, a meaningful consultation process to address these impacts and concerns is required. While “engagement” may be a best practice, consultation is legally required in these circumstances.

**Recommendation 3:** CNL and AECL must ensure engagement and consultation processes and deliverables, such as plans, applications, and assessments, etc. meaningfully consider, assess, and where required provide mutually agreeable accommodation measures of any impacts on the unique collective rights held by the MMC. AECL and the CNSC, as representatives of the Crown, should use a distinction-based approach for consultation and accommodation, an approach that accounts for the distinct rights, claims, and interests of the MMC, as well as their significant history with the WL site and connection to the land. AECL and the CNSC, as representatives of the Crown, must consult with the MMF, as the democratically elected self-government representative of the MMC on an ongoing basis to ensure the rights, claims, and interests of the MMC are adequately considered and accommodated, and issues raised by the MMC are adequately addressed. Practically speaking, this could include the following measures:

1. Establish a Communication Protocol for informing the MMF of any regulatory oversight activities happening within the Manitoba Métis Homeland. Such a protocol should include clear timelines and processes that not only inform the MMF but solicit their feedback and allow for modification to the planned activities in light of information and concerns raised by the MMF. Joint decision-making opportunities should be built into this process wherever possible.
2. Provide adequate capacity support for the MMF to meaningfully participate in regulatory oversight programs, for example, by funding a Métis Liaison position within the MMF (see Comment #5) or an Indigenous oversight committee.



3. Develop policy guidance collaboratively with the MMF around the integration of Métis traditional knowledge, land, and resource use into the CNSC's regulatory oversight programs, and AECL's site ownership and decision-making roles, including licensing requirements. This should include how Métis traditional knowledge will be used to inform ongoing monitoring, environmental protection and remediation or reclamation activities in institutional and post-institutional control periods.
4. Provide the MMF with the opportunity to be involved in all aspects of regulatory oversight, and safety and control framework activities, including, but not limited to, the following:
  - a. environmental protection programs
  - b. emergency planning and response
  - c. transportation route planning
5. Set out requirements within the Safety and Control Framework that compel facility operators to meaningfully involve the MMF in all aspects of the management system.

**Comment 4:** Appendix A of the ROR provides a list of inspections that have occurred at all of the CNL managed facilities, including the number of enforcement actions issued by the CNSC at each site. At the WL site, there were two inspections and one enforcement action order related to security. However, the CNSC provides no detail on the reasoning for the enforcement action order and the subsequent process for resolution. Without this information, it is unclear if or how the enforcement action order may have or will impact the MMC, or how the enforcement action was addressed by CNL, or attended to by AECL as the site owner. This information is particularly important given the below-expectations performance of the security SCA at WL site and the evidence that Métis Citizens use and rely on the area of and surrounding the WL site to exercise their harvesting and other s. 35 rights. Security at the site has a direct connection to access and as such any enforcement action orders related to security may impact MMC Citizens access for the purposes of exercising their rights.

**Recommendation 4:** CNL, AECL and the CNSC must keep the MMF informed regarding enforcement actions and orders at the WL site using the communication strategies and protocols recommended in Recommendations 2a and 2b to ensure any incidents that may have an impact on the rights, interests, and claims of the MMC are communicated to the MMF in a timely manner so that the MMF and the MMC can respond accordingly to minimize risks or impacts on Métis Citizens. The MMF recognizes that there may be emergency situations that require an immediate response from CNSC, however, in other circumstances advance communication with the MMF regarding enforcement actions and orders that could potentially impact Métis Citizens and s. 35 Métis rights is required. This could include sharing the results of inspections with the MMF and providing draft enforcement action orders to the MMF for review and comment regarding how the proposed action or order may affect Métis rights-holders.



## Environmental Monitoring of Whiteshell Laboratories Site

**Comment 5:** The MMC has Crown-recognized, s. 35 harvesting rights, including to fish, hunt, trap, and gather plants, firewood and other resources, that must be protected and preserved for future generations. Potential impacts on these rights, including contamination of the species relied on, must be minimized through meaningful consultation and accommodation with the MMF. The CNSC and CNL undertake ongoing environmental monitoring at the WL site through the IEMP and the Integrated Monitoring Program (IMP), respectively. This includes monitoring of effluent, environmental components, and groundwater, the results of which are reported annually. As demonstrated through the Métis Knowledge and Land Use Study (MMF, 2017), Métis harvesters have an abundance of historic and ongoing use in proximity to the WL site. Harvesters fish on the Winnipeg River, upstream and downstream of WL, hunt in the surrounding forests, and gather a range of natural materials for food, fire and fiber. As subsistence users of the land, with Crown-recognized s. 35 harvesting rights, the MMC are at higher risk to exposure than the general public. Moreover, as stewards of the land, the MMC play an important role in the protection of the lands and waters. For this reason, it is important that the CNSC and CNL meaningfully include the MMF, on behalf of the MMC, in the collection, implementation and evaluation of the environmental monitoring completed through the IEMP and IMP.

**Recommendation 5a:** Due to the importance of these natural resources for use by the MMC, it is critical that monitoring of relevant country food and medicinal plant tissues for radiological and non-radiological contaminants conducted by CNL, AECL and the CNSC occur in a manner that will detect any potential impacts on the natural resources that are used by the MMC. Moreover, as the WL site is decommissioned and improved access is permitted, it will be just as important to ensure that ongoing liabilities associated with the site are managed appropriately for the type of use that the MMC will have. CNL must consult with the MMF regarding the development of the monitoring plans so that the distinct circumstances of the MMC and Métis harvesters are appropriately being considered and Métis traditional knowledge and stewardship rights are included in the plans.

**Recommendation 5b:** To ensure that monitoring accurately captures the data required (i.e., the locations, species, and parts of plants/animals consumed by the MMC) and that transparency of results is occurring, it is recommended that CNL and CNSC engage with the MMF to identify a Métis Liaison who can comment on monitoring design, review data, examine reports (e.g., Annual Environmental Monitoring Reports from CNL), then share information back to the MMF and MMC. This liaison should be involved in the management structure (i.e., committee) for implementation of the IMP and IEMP. This liaison should also be able to participate in field-based data collection or identify Métis Citizens from the surrounding area who would be interested in participating.

**Recommendation 5c:** The MMF has limited resources and capacity to undertake the needed oversight of the WL site and support long term monitoring and the unique stewardship challenges that are raised by decommissioning of the WL site and nuclear facility. Therefore, the role of the Métis Liaison should be funded by AECL, the CNSC and/or CNL as part of a long-term relationship agreement.



**Recommendation 5d:** As Métis Citizens of the MMC harvest around the project site, the MMF must be consulted about remediation and specifically revegetation objectives and plan for the site to ensure that native species relied on by the MMC for harvesting are used in remediation and revegetation plans wherever possible. In addition, traditional Métis knowledge should inform these plans and revegetation processes, including the potential for Métis Citizens to be involved in implementing or carrying out these activities. Furthermore, CNL and AECL should incorporate site revegetation strategies into the closure of the site that are informed by this consultation with the MMF and MMC.

**Comment 6:** According to the assessment and monitoring subsection of Section 4.1 The Environment and the Public,

*“CNSC staff confirmed that CNL, in accordance with its environmental protection and monitoring programs, successfully carried out required effluent and environmental monitoring, site inspections, environmental awareness training and program implementation for the sites covered by this ROR. Through compliance activities conducted during 2018, CNSC staff concluded that environmental monitoring conducted at CNL sites and the discharge of treated effluent from CNL sites both met regulatory requirements.”*

Although it is positive that CNSC concluded that regulatory requirements were met with respect to CNL’s environmental monitoring, awareness, and training programs, there is a lack of representation and involvement by the MMF in these programs. Given the MMC’s long-standing relationship to the land at and around the WL site, including knowledge of the land and access to areas used for harvesting or other traditional land uses, MMF involvement in these programs is critically important. Including the MMF in environmental protection and monitoring would increase transparency, build trust, and foster partnerships with the MMF regarding the WL site.

**Recommendation 6:** CNL and AECL must engage the MMF for engagement and participation opportunities in any environmental protection, monitoring, awareness training programs in relation to the WL site. This includes the opportunity for the MMF to provide feedback and input into the content of the environmental awareness training programs to ensure Métis traditional knowledge is adequately and appropriately integrated into these programs. This could be achieved through an ongoing Issues Resolution and Dialogue Table established between the MMF, CNL and AECL related to the WL site that includes the provision of capacity funding for a liaison staff position within the MMF (i.e., a Métis Liaison – see Comment #5) to sit at this Table with CNSC/CNL/AECL.

**Comment 7:** According to Section 4.1.1 Independent Environmental Monitoring Program – Results,

*“It is a priority for the CNSC that IEMP sampling reflects Indigenous traditional land use, values and knowledge where possible. As part of the CNSC’s ongoing relationship building with Indigenous communities, CNSC staff collaborated with the Algonquins of Ontario (AOO) in the development of the sampling plan for the NPD [Nuclear Power Demonstration] Waste Facility. CNSC staff included many of AOO requested locations in the sampling plan conducted in August.”*



*Additionally, in October, CNSC staff collected a variety of samples with the aid of AOO Knowledge Holders. This included traditional and medicinal plants. The results were provided to the AOO in May 2019.”*

The work that the CNSC is doing to engage the Algonquins of Ontario at the NPD site noted above is positive and sets an excellent example of how the CNSC should be engaging with the MMC around the CNL sites. These are the kinds of opportunities the CNSC should pursue with the MMF in relation to the CNL Whiteshell Laboratories site.

**Recommendation 7:** The CNSC should engage the MMF in having a more active role in the IEMP at the WL site, similar to what has been carried out between the CSNC and AOO at the NPD site. This would facilitate a process to consider and address the MMF’s stated concerns regarding outstanding impacts on the MMC, exercise of Métis stewardship rights and obligations, and the need to incorporate Métis traditional knowledge into monitoring and decommissioning plans and activities. This could include collaboratively developing sampling plans for the WL site with the MMF, integrating MMF sites of importance into the sampling program, and having MMF harvesters accompany the CNSC in the sample collection around the WL site.

**Comment 8:** Section 4 Protection of Workers at Site is based on exposure limits for workers and does not account for exposure by Métis land users. Based on monitoring of radiation doses to workers on the WL site (Section 4.2 and Appendix E of the ROR), average and maximum effective doses to workers has increased slightly since 2014 as work has progressed and decommissioning activities have increased. Although doses have increased, the amounts are still far below the annual effective dose of 50 mSV. This is understandable, as workers are exposed during demolition and transport of materials. These doses are indicative of doses to the public if they had full access to the site but should decline as the sources of radiation are removed or controlled. CNSC and CNL will undoubtedly continue to monitor doses to workers, which should decline at the completion of decommissioning. Doses that cannot be distinguished from background would be one indication that the site had returned to close to natural conditions.

**Recommendation 8:** CNSC and CNL should be required to provide safety reports to the MMF so that the MMF can monitor them and consider implications for the MMC and harvesters who will access and use the site to exercise their harvesting and other rights following decommissioning activities. This would increase transparency regarding the decommissioning activities and exposure doses, and allow the MMF to provide information and feedback from the perspective of the use of the land by MMC and their rights and interests that can be considered in these reports.

### General Comments

**Comment 9:** Table D-2 in the ROR summarizes the performance of different SCAs for the Whiteshell Laboratories site from 2014 to 2018. According to the summary table, all SCAs satisfied requirements, with the exception of the security SCA, which was graded as below expectations. However, there is a



lack of clarity regarding what it means for the security SCA to be below expectations, including if there are any risks or implications that the MMF needs to be aware of given the active harvesting and land use by the MMC happening around the site.

**Recommendation 9:** The CNSC must provide greater detail on what a below expectations score means for the security SCA and what measures it requires CNL to take at the site to improve the security performance at the site. Additional information is required in order to determine if Métis rights and interests were considered in the security enforcement order and what impacts on the MMC may result that require additional or responding actions to address. This information would be facilitated by having a communication protocol in place, that could be used if there are any implications or risks for the MMC to be aware of, especially to alert citizens who are active harvesters in the area about changes in access or other security measure they should be aware of.

**Comment 10:** A critical aspect of CNL and AECL's plans for decommissioning the WL site is that sufficient waste storage space will be available at the AECL-owned Chalk River site (the expected destination for the waste) for contaminated materials removed from the AECL-owned WL site. However, no discussion or analysis of availability/suitability of storage at the AECL-owned Chalk River site is provided in the ROR. Furthermore, there is no discussion or analysis of the alternative methods for transporting the waste. These plans are highly relevant to the oversight of the WL site as they will determine the nature and level of risk for future management of the site. While CNL is considering a possible ISD plan for the WL site, this plan has not yet been approved by CNSC. Regulatory oversight and the ROR must align with the existing and currently licenced plan, not a potential future contemplated approach that has not been approved.

**Recommendation 10:** CNSC must provide additional information regarding the suitability of CNL's plans to transport and store low- and intermediate-level waste at Chalk River Laboratories to the MMF for review. The feasibility of these transportation and long-term storage plans is of the utmost importance in decision making and management of the WL site, which will impact the ability of the MMC to utilize the site in the future.

**Comment 11:** Section 5.9 of the ROR on Waste and Decommissioning states the following regarding the decommissioning activities planned at the Whiteshell Laboratories site,

*"The CNSC has received formal proposals from CNL to accelerate decommissioning at NPD and the WR-1 reactor at WL. Both of these proposals involve 'in-situ decommissioning', where major underground structures would be left in place, filled with grout, and capped. In both cases, in-situ decommissioning is not permitted by the current licensing basis, nor is it the end-state documented in CNL's current CNSC staff-accepted decommissioning plans.*

*For each of the NPD and WR-1 projects, CNL has submitted a licence application to the CNSC and prepared a draft EIS for comment by the public, the CNSC and other provincial and federal departments. CNSC staff undertook a review of CNL's draft EISs and conducted licensing reviews*



*pursuant to the NSCA and its associated regulations. As the responsible authority, and working with other federal departments, CNSC staff have identified a number of areas where additional information will need to be included in the final EISs and other technical supporting documentation. For each project, complete licensing and EIS submissions are required before CNSC staff can complete their assessment and proceed to public hearings.*

*For each project, following receipt of a complete licensing submission and final EIS, CNSC staff will write a CMD containing staff's assessment of the licence amendment and the EA report, in support of a hearing on the topic. This CMD will be available to the public and Indigenous groups prior to the Commission's public hearing, the date of which has not been set. The public will be offered the opportunity to submit written and/or oral interventions. Because there will be separate Commission decisions on these projects, they are out of the scope of this ROR."*

Although the specifics on decommissioning the WL site are outside of the scope of the ROR, the MMF has provided several comments, including issues and suggested recommendations on how to address these issues in relation to the WL site decommissioning process. CNL, AECL, and the CNSC must thoughtfully consider and incorporate all of the issues and recommendations the MMF has brought forward to date into future planning and decisions regarding the decommissioning of the site.

**Recommendation 11:** The MMF requests that CNSC, CNL, and AECL thoroughly review the issues and recommendations that have been brought forward by the MMF to date regarding the decommissioning of the WL site with the perspective of what is required in order to comply with the Crown's duty to consult an accommodate, advance reconciliation, and uphold the honour of the Crown related to these activities occurring within the MMC's traditional territory. The MMF acknowledges that the CNSC, CNL, and AECL have already communicated and engaged with the MMF to some degree on these matters. However, there are unaddressed issues remaining that the CNSC, CNL, and AECL must address in future planning and decision making regarding the WL site.

**Comment 12:** According to Table H-4 which described WL annual radionuclide releases to surface water for 2014–2018, uranium, plutonium, and americium are all released at the site. The release of uranium and americium are not surprising given the state of operations at the WL site. However, the release of plutonium is unexpected, given that it is a nuclear fission product. Further to that point, these nuclides have only been monitored in wastewater for the last couple of years, but the reactor was shut down in 1985. Although the amounts are well below the Derived Release Limits, it is unclear where these particular radionuclides, especially plutonium, are coming from in the wastewater measurements.

**Recommendation 12:** CNSC must provide more information regarding the source of the radionuclides, particularly the plutonium, alpha, and beta in the wastewater at the WL site to provide greater clarity on the sources contributing to certain levels of radionuclides being reached, despite the current stage of activity of the WL site. Where additional information is not available, further monitoring and investigation are required in order to identify the sources. In light of the limited monitoring data



available, additional monitoring as part of the decommissioning and post-decommissioning phases may also be required in order to verify that measures remain below acceptable levels over time.

## 4.0 Conclusion

This review of the Regulatory Oversight Report for Canadian Nuclear Laboratories sites for 2018 focused on key issues of concern to the MMF, including impacts to the s. 35 rights, claims, and interests of the Manitoba Métis Community; and the potential project interactions with the environment that may lead to effects on the MMC, including effects on the exercise of Métis rights through impacts to land use and harvesting as described in Section 3.0 of this report. As a result of this review, the MMF has identified 12 issues and, where applicable, has provided recommendations to address these issues.

We have also identified inadequacies in the relationship between the MMF and CNSC, including the consultation process with respect to the following:

- The CNSC's consultation with the MMF, and consideration and assessment of impacts on Métis rights, claims or interests leading to the identification and mitigation or accommodation of potential impacts of the re-licensing on the MMC and Métis rights
- The CNSC's provision of opportunities for involvement of the MMF in follow-up monitoring programs, including the CNSC's Independent Environmental Monitoring Program and the proposed Integrated Monitoring Program.

**Our primary recommendation is for CNL and AECL to commit to a long-term relationship agreement with the MMF regarding the WL site and decommissioning activities. The decommissioning activities require ongoing, meaningful consultation with the MMF in order to discharge the duty to consult. This would be facilitated by a relationship agreement regarding how this process is to be undertaken between CNL and the MMF. Moreover, CNL and AECL should work with the MMF to negotiate and secure binding long-term relationship agreements, with CNL representing the licensed contractor responsible for site operations, and AECL representing the Crown. These agreements should include formal, binding commitments to provide capacity funding and an established Issues Resolution and Dialogue Table to resolve issues and advance the MMF's meaningful involvement with the WL site. These tables should be established between the MMF and CNSC, and between the MMF, CNL and AECL. In addition, the negotiation of capacity funding could include provisions such as the hiring of dedicated CNSC liaison staff person(s) within the MMF, and capacity funding to advance the skills of MMF monitors/guardians who could be present and monitoring on the WL site.**

We recommend that issues related to key concerns expressed by MMF in this report, and unaddressed issues raised in MMF's previous reports, be the focus of subsequent meetings with CNL, AECL, and the CNSC. Moreover, the MMF requires updates on these concerns and the steps that are being taken to address them from CNL, AECL and the CNSC in subsequent reporting.





## 5.0 References

- CNSC. 2019a. Regulatory oversight report for Canadian Nuclear Laboratories Sites: 2018. CMD 19-M24. 104 pp.
- CNL. 2019. *Written submission from Canadian Nuclear Laboratories Ltd.* Application for relicensing of NRTEDL-W5-8.05/2019. Commission Member Documents.
- CNSC 2018. *Licensing Process*. Retrieved from: <http://nuclearsafety.gc.ca/eng/nuclear-substances/licensing-nuclear-substances-and-radiation-devices/licensing-process/index.cfm>
- MMF. 2017. Whiteshell Reactor #1 Decommissioning: Manitoba Métis Traditional Knowledge, Land Use, and Occupancy Study. Prepared for the Manitoba Metis Federation by Shared Value Solutions.



## Appendix A – Comment Tracking Table

Comment #	Section Reference	Issue	Question/Recommendation
<b>RIGHTS, CLAIMS AND INTERESTS OF THE MANITOBA MÉTIS COMMUNITY</b>			
1	General Comment	<p>The ROR does not adequately acknowledge, recognize, or account for the rights, claims, and interests held by the MMC that are established and protected under s. 35 of the <i>Constitution Act, 1982</i>. The MMC’s constitutionally protected rights to the territory in which WL is situated are a crucial distinction between the MMC and the general public or other stakeholders. Although the CNSC suggests that they engaged the MMC through a more targeted approach, it is not clear if or how the described letters, phone calls, meetings, and e-mail correspondence was distinct from the approach taken with the general public and First Nations to account for the unique rights of the MMC. While the Crown can rely on boards, agencies or commissions to discharge its duty to consult and accommodate, the responsibility for discharging the duty and upholding the honour of the Crown always remains with the Crown. No matter what process or entity is relied on to fulfill the duty, consultation and accommodation with respect to MMC’s rights and interests involving the WL site activities, plans and impacts must be meaningfully undertaken.</p>	<p><b>Recommendation 12a:</b> CNL, and AECL representing the Crown site owner, must engage the MMF to establish binding, long-term relationship agreements (LTRAs) or similar agreements that enable the MMF, as the democratically elected, self-government representatives of the MMC, to address all of the following recommendations with respect to the operation of the WL site, and all future decommissioning activities. Moreover, CNL and AECL must consult with the MMF regarding these plans so that Métis traditional knowledge, exercise of Métis rights, and Métis land use information can be considered and incorporated into the plans during closure and post-closure periods.</p> <p><b>Recommendation 12b:</b> AECL and the CNSC, as representatives of the Crown, must require and ensure engagement, consultation, and accommodation processes, and deliverables such as plans, applications, and assessments, are developed in collaboration with the MMF, and revised to reflect the MMF’s input. AECL and the CNSC should use a distinction-based approach for</p>



Comment #	Section Reference	Issue	Question/Recommendation
			<p>consultation and accommodation, an approach that explicitly recognizes and accounts for the distinct rights, claims, and interests of the MMC, as well as their significant history with the WL site and connection to the land. AECL and the CNSC must consult MMF, as the democratically elected self-government representative of Métis Citizens in Manitoba, on how they would like to be engaged in these processes on an ongoing basis to ensure the rights, claims, and interests of the MMC are adequately considered and, where required, accommodated.</p> <p><b>Recommendation 12c:</b> In cases where impacts to the rights, claims and interests of the MMC cannot be avoided or mitigated, accommodations must be provided. The MMF must be consulted regarding the development of accommodation measures, where required, as part of fulfilling the duty to consult and accommodate. Such impacts to rights and interests could include, but are not limited to, instances such as a reduced ability to use or access the land in restricted-access areas in and around WL, timing of decommissioning activities that result in disruption to Métis harvesting practices or seasons, and decisions related to remediation or reclamation that affect whether native species or plants relied on by Métis harvesters are reintroduced into the area.</p>



Comment #	Section Reference	Issue	Question/Recommendation
			Additionally, accommodations must be provided if wildlife or plant materials are found to be contaminated, impacting the ability of the MMC to exercise their rights to harvest and consume wild and traditional foods and medicines that are safe and uncontaminated.
2	Section 2.2	In section 2.2 of the report, the CNSC indicates that <i>“The public and Indigenous groups in the WL area continue to show a high level of interest in CNL’s current decommissioning activities at WL, and in CNL’s future plans for the site.”</i> The MMF is particularly interested in the CNL’s current decommissioning activities at the WL site, as well as future plans for the site, given that Métis Citizens currently exercise their Aboriginal rights and harvesting activities within 100 m of the site, including use of downstream areas of the Winnipeg River. This proximity of land use to the site by the MMC means that it is vitally important that CNL, AECL, and the CNSC provide information to the MMF in a timely manner regarding the current decommissioning activities and future plans for the site. As noted above, the MMC has distinct, constitutionally protected rights and interests that are potentially impacted by the current activities and future use of the WL site that are not adequately considered in a general public engagement or communications approach. A	<b>Recommendation 2a:</b> CNL, and AECL and the CNSC representing the Crown, must engage the MMF in developing a mutually agreeable Communication Strategy for the current site decommissioning activities. This Communication Strategy should include a process to inform the MMF on an ongoing basis about decommissioning and demolition activities and potential adverse effects, as well as a process for soliciting feedback and making revisions to the planned activities in light of MMF’s feedback and concerns. The Communications Strategy should also include a process for proactive communication with the MMF regarding proposed activities, including shared decision making regarding the timing of such activities to minimize impacts on Métis harvesters access to the WL site and area. It should also follow a distinctions-based approach that recognizes the unique governance structure of the MMF and processes for communication with Manitoba Métis Citizens. This will allow for clearer, more meaningful communication and



Comment #	Section Reference	Issue	Question/Recommendation
		<p>process for meaningfully continuing to consult with the MMF regarding proposed decommissioning activities and future plans and involving the MMF in decision-making matters related to CNL and AECL's future plans for the site is required.</p>	<p>engagement between CNL, AECL, CNSC and the MMF throughout the full decommissioning process at the WL site.</p> <p><b>Recommendation 2b:</b> CNL and AECL must engage the MMF to establish a decision-making process and framework that enables the MMF, as the democratically elected, self-government representative of the MMC, to be meaningfully involved in the determination of the future plans for the WL site alongside CNL and AECL. This would include, among other things, requiring the consideration and integration of Métis traditional knowledge, land use, and occupancy information at and around the site in the monitoring and mitigation measures and plans. This decision-making process and framework should also explicitly include a role for the MMF in collaboratively determining the future plans, use, and access to the site post-closure. The mechanism for this engagement should be mutually agreed on between CNL, AECL, and the MMF, but may include the creation of a Métis Liaison role (see comment #5), Indigenous oversight committee, and CNSC regulatory involvement.</p>
3	Section 5.3.2	According to Section 5.3.2 on Indigenous Engagement at Whiteshell Laboratories,	CNL and AECL must ensure engagement and consultation processes and deliverables, such as



Comment #	Section Reference	Issue	Question/Recommendation
		<p><i>“CNSC staff observed that CNL has a dedicated Indigenous engagement program that covers their operations and activities at the WL site.</i></p> <p><i>Consistent with the requirements and guidance of CNSC REGDOC 3.2.2: Aboriginal Engagement, throughout 2018, CNL met and shared information with interested Indigenous communities and organizations. These efforts have included emails, letters, meetings, site visits and tours, community visits, and workshops among others with a major focus being on WR-1...CNSC staff continue to be satisfied with the level and quality of Indigenous engagement conducted by CNL with regards to their operations and proposed projects at WL and continue to adhere to the guidance of REGDOC 3.2.2.”</i></p> <p>Although this wording suggests that CNL has met its regulatory obligations for Indigenous Engagement and has satisfied the CNSC requirements, it is unclear how obligations for Crown consultation, and where appropriate, accommodations, are included in this process, nor how the described CNL letters, phone calls, meetings, e-mail correspondence, site visits and tours, and workshops were distinct from</p>	<p>plans, applications, and assessments, etc. meaningfully consider, assess, and where required provide mutually agreeable accommodation measures of any impacts on the unique collective rights held by the MMC. AECL and the CNSC, as representatives of the Crown, should use a distinction-based approach for consultation and accommodation, an approach that accounts for the distinct rights, claims, and interests of the MMC, as well as their significant history with the WL site and connection to the land. AECL and the CNSC, as representatives of the Crown, must consult with the MMF, as the democratically elected self-government representative of the MMC on an ongoing basis to ensure the rights, claims, and interests of the MMC are adequately considered and accommodated, and issues raised by the MMC are adequately addressed. Practically speaking, this could include the following measures:</p> <ol style="list-style-type: none"> <li>1. Establish a Communication Protocol for informing the MMF of any regulatory oversight activities happening within the Manitoba Métis Homeland. Such a protocol should include clear timelines and processes that not only inform the MMF but solicit their feedback and allow for</li> </ol>



Comment #	Section Reference	Issue	Question/Recommendation
		<p>the approach taken with the general public and First Nations to account for the unique rights of the MMC. It is also unclear what the outcomes and results were from the above engagement methods with respect to the Crown’s obligations, including if the Crown has effectively addressed or accommodated any issues the MMF has in relation to the WL site. As previously noted in other MMF reports regarding the WL site and proposed decommissioning activities, while positive relationships with CNL have developed recently, there are still outstanding issues and concerns that remain unresolved. Where there are Crown actions or decisions that have the potential to impact on the constitutionally protected rights, claims, or interests of the MMC, a meaningful consultation process to address these impacts and concerns is required. While “engagement” may be a best practice, consultation is legally required in these circumstances.</p>	<p>modification to the planned activities in light of information and concerns raised by the MMF. Joint decision-making opportunities should be built into this process wherever possible.</p> <ol style="list-style-type: none"> <li data-bbox="1381 492 1894 768">2. Provide adequate capacity support for the MMF to meaningfully participate in regulatory oversight programs, for example, by funding a Métis Liaison position within the MMF (see Comment #5) or an Indigenous oversight committee.</li> <li data-bbox="1381 816 1894 1369">3. Develop policy guidance collaboratively with the MMF around the integration of Métis traditional knowledge, land, and resource use into the CNSC’s regulatory oversight programs, and AECL’s site ownership and decision-making roles, including licensing requirements. This should include how Métis traditional knowledge will be used to inform ongoing monitoring, environmental protection and remediation or reclamation activities in institutional and post-institutional control periods.</li> </ol>



Comment #	Section Reference	Issue	Question/Recommendation
			<p>4. Provide the MMF with the opportunity to be involved in all aspects of regulatory oversight, and safety and control framework activities, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>a. environmental protection programs</li> <li>b. emergency planning and response</li> <li>c. transportation route planning</li> </ul> <p>5. Set out requirements within the Safety and Control Framework that compel facility operators to meaningfully involve the MMF in all aspects of the management system.</p>
4	Appendix A	<p>Appendix A of the ROR provides a list of inspections that have occurred at all of the CNL managed facilities, including the number of enforcement actions issued by the CNSC at each site. At the WL site, there were two inspections and one enforcement action order related to security. However, the CNSC provides no detail on the reasoning for the enforcement action order and the subsequent process for resolution. Without this information, it is unclear if or how the enforcement</p>	<p>CNL, AECL and the CNSC must keep the MMF informed regarding enforcement actions and orders at the WL site using the communication strategies and protocols recommended in Recommendations 2a and 2b to ensure any incidents that may have an impact on the rights, interests, and claims of the MMC are communicated to the MMF in a timely manner so that the MMF and the MMC can respond accordingly to minimize risks or impacts on Métis</p>





Comment #	Section Reference	Issue	Question/Recommendation
		<p>action order may have or will impact the MMC, or how the enforcement action was addressed by CNL, or attended to by AECL as the site owner. This information is particularly important given the below-expectations performance of the security SCA at WL site and the evidence that Métis Citizen use and rely on the area of and surrounding the WL site to exercise their harvesting and others. 35 rights. Security at the site has a direct connection to access and as such any enforcement action orders related to security may impact MMC Citizens access for the purposes of exercising their rights.</p>	<p>Citizens. The MMF recognizes that there may be emergency situations that require an immediate response from CNSC, however, in other circumstances advance communication with the MMF regarding enforcement actions and orders that could potentially impact Métis Citizens and s. 35 Métis rights is required. This could include sharing the results of inspections with the MMF and providing draft enforcement action orders to the MMF for review and comment regarding how the proposed action or order may affect Métis rights-holders.</p>
<b>ENVIRONMENTAL MONITORING OF WHITESHELL LABORATORIES SITE</b>			
5	General Comment	<p>The MMC has Crown-recognized, s. 35 harvesting rights, including to fish, hunt, trap, and gather plants, firewood and other resources, that must be protected and preserved for future generations. Potential impacts on these rights, including contamination of the species relied on, must be minimized through meaningful consultation and accommodation with the MMF. The CNSC and CNL undertake ongoing environmental monitoring at the WL site through the IEMP and the Integrated Monitoring Program (IMP), respectively. This includes monitoring of effluent, environmental components, and groundwater, the results of which</p>	<p><b>Recommendation 5A:</b> Due to the importance of these natural resources for use by the MMC, it is critical that monitoring of relevant country food and medicinal plant tissues for radiological and non-radiological contaminants conducted by CNL, AECL and the CNSC occur in a manner that will detect any potential impacts on the natural resources that are used by the MMC. Moreover, as the WL site is decommissioned and improved access is permitted, it will be just as important to ensure that ongoing liabilities associated with the site are managed appropriately for the type of use that the MMC will have. CNL must consult with</p>



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		<p>are reported annually. As demonstrated through the Métis Knowledge and Land Use Study (MMF, 2017), Métis harvesters have an abundance of historic and ongoing use in proximity to the WL site. Harvesters fish on the Winnipeg River, upstream and downstream of WL, hunt in the surrounding forests, and gather a range of natural materials for food, fire and fibre. As subsistence users of the land, with Crown-recognized s. 35 harvesting rights, the MMC are at higher risk to exposure than the general public. Moreover, as stewards of the land, the MMC play an important role in the protection of the lands and waters. For this reason, it is important that the CNSC and CNL meaningfully include the MMF, on behalf of the MMC, in the collection, implementation and evaluation of the environmental monitoring completed through the IEMP and IMP.</p>	<p>the MMF regarding the development of the monitoring plans so that the distinct circumstances of the MMC and Métis harvesters are appropriately being considered and Métis traditional knowledge and stewardship rights are included in the plans.</p> <p><b>Recommendation 5B:</b> To ensure that monitoring accurately captures the data required (i.e., the locations, species, and parts of plants/animals consumed by the MMC) and that transparency of results is occurring, it is recommended that CNL and CNSC engage with the MMF to identify a Métis Liaison who can comment on monitoring design, review data, examine reports (e.g., Annual Environmental Monitoring Reports from CNL), then share information back to the MMF and MMC. This liaison should be involved in the management structure (i.e., committee) for implementation of the IMP and IEMP. This liaison should also be able to participate in field-based data collection or identify Métis Citizens from the surrounding area who would be interested in participating.</p> <p><b>Recommendation 5C:</b> The MMF has limited resources and capacity to undertake the needed oversight of the WL site and support long term monitoring and the unique stewardship challenges</p>



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			<p>that are raised by decommissioning of the WL site and nuclear facility. Therefore, the role of the Métis Liaison should be funded by AECL, the CNSC and/or CNL as part of a long-term relationship agreement.</p> <p><b>Recommendation 5D:</b> As Métis Citizens of the MMC harvest around the project site, the MMF must be consulted about remediation and specifically revegetation objectives and plan for the site to ensure that native species relied on by the MMC for harvesting are used in remediation and revegetation plans wherever possible. In addition, traditional Métis knowledge should inform these plans and revegetation processes, including the potential for Métis Citizens to be involved in implementing or carrying out these activities. Furthermore, CNL and AECL should incorporate site revegetation strategies into the closure of the site that are informed by this consultation with the MMF and MMC.</p>
6	Section 4.1	<p>According to the assessment and monitoring subsection of Section 4.1 The Environment and the Public,</p> <p><i>“CNSC staff confirmed that CNL, in accordance with its environmental protection and monitoring programs,</i></p>	<p><b>Recommendation 12</b>CNL and AECL must engage the MMF for engagement and participation opportunities in any environmental protection, monitoring, awareness training programs in relation to the WL site. This includes the opportunity for the MMF to provide feedback and input into the content of the environmental</p>



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		<p><i>successfully carried out required effluent and environmental monitoring, site inspections, environmental awareness training and program implementation for the sites covered by this ROR. Through compliance activities conducted during 2018, CNSC staff concluded that environmental monitoring conducted at CNL sites and the discharge of treated effluent from CNL sites both met regulatory requirements.”</i></p> <p>Although it is positive that CNSC concluded that regulatory requirements were met with respect to CNL’s environmental monitoring, awareness, and training programs, there is a lack of representation and involvement by the MMF in these programs. Given the MMC’s long-standing relationship to the land at and around the WL site, including knowledge of the land and access to areas used for harvesting or other traditional land uses, MMF involvement in these programs is critically important. Including the MMF in environmental protection and monitoring would increase transparency, build trust, and foster partnerships with the MMF regarding the WL site.</p>	<p>awareness training programs to ensure Métis traditional knowledge is adequately and appropriately integrated into these programs. This could be achieved through an ongoing Issues Resolution and Dialogue Table established between the MMF, CNL and AECL related to the WL site that includes the provision of capacity funding for a liaison staff position within the MMF (i.e., a Métis Liaison – see Comment #5) to sit at this Table with CNSC/CNL/AECL.</p>



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7	Section 4.1.1	<p>According to Section 4.1.1 Independent Environmental Monitoring Program – Results,</p> <p><i>“It is a priority for the CNSC that IEMP sampling reflects Indigenous traditional land use, values and knowledge where possible. As part of the CNSC’s ongoing relationship building with Indigenous communities, CNSC staff collaborated with the Algonquins of Ontario (AOO) in the development of the sampling plan for the NPD [Nuclear Power Demonstration] Waste Facility. CNSC staff included many of AOO requested locations in the sampling plan conducted in August. Additionally, in October, CNSC staff collected a variety of samples with the aid of AOO Knowledge Holders. This included traditional and medicinal plants. The results were provided to the AOO in May 2019.”</i></p> <p>The work that the CNSC is doing to engage the Algonquins of Ontario at the NPD site noted above is positive and sets an excellent example of how the CNSC should be engaging with the MMC around the CNL sites. These are the kinds of opportunities the CNSC should pursue with the MMF in relation to the CNL Whiteshell Laboratories site.</p>	<p>The CNSC should engage the MMF in having a more active role in the IEMP at the WL site, similar to what has been carried out between the CSNC and AOO at the NPD site. This would facilitate a process to consider and address the MMF’s stated concerns regarding outstanding impacts on the MMC, exercise of Métis stewardship rights and obligations, and the need to incorporate Métis traditional knowledge into monitoring and decommissioning plans and activities. This could include collaboratively developing sampling plans for the WL site with the MMF, integrating MMF sites of importance into the sampling program, and having MMF harvesters accompany the CNSC in the sample collection around the WL site.</p>



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8	Section 4 Protection of Workers at Site	Section 4 Protection of Workers at Site is based on exposure limits for workers and does not account for exposure by Métis land users. Based on monitoring of radiation doses to workers on the WL site (Section 4.2 and Appendix E of the ROR), average and maximum effective doses to workers has increased slightly since 2014 as work has progressed and decommissioning activities have increased. Although doses have increased, the amounts are still far below the annual effective dose of 50 mSV. This is understandable, as workers are exposed during demolition and transport of materials. These doses are indicative of doses to the public if they had full access to the site but should decline as the sources of radiation are removed or controlled. CNSC and CNL will undoubtedly continue to monitor doses to workers, which should decline at the completion of decommissioning. Doses that cannot be distinguished from background would be one indication that the site had returned to close to natural conditions.	CNSC and CNL should be required to provide safety reports to the MMF so that the MMF can monitor them and consider implications for the MMC and harvesters who will access and use the site to exercise their harvesting and other rights following decommissioning activities. This would increase transparency regarding the decommissioning activities and exposure doses, and allow the MMF to provide information and feedback from the perspective of the use of the land by MMC and their rights and interests that can be considered in these reports.
<b>GENERAL COMMENTS</b>			
9	Table D-2	Table D-2 in the ROR summarizes the performance of different SCAs for the Whiteshell Laboratories site from 2014 to 2018. According to the summary table, all SCAs satisfied requirements, with the exception of the security SCA, which was graded as below	The CNSC must provide greater detail on what a below expectations score means for the security SCA and what measures it requires CNL to take at the site to improve the security performance at the site. Additional information is required in



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		<p>expectations. However, there is a lack of clarity regarding what it means for the security SCA to be below expectations, including if there are any risks or implications that the MMF needs to be aware of given the active harvesting and land use by the MMC happening around the site.</p>	<p>order to determine if Métis rights and interests were considered in the security enforcement order and what impacts on the MMC may result that require additional or responding actions to address. This information would be facilitated by having a communication protocol in place, that could be used if there are any implications or risks for the MMC to be aware of, especially to alert citizens who are active harvesters in the area about changes in access or other security measure they should be aware of.</p>
10	General Comment	<p>A critical aspect of CNL and AECL’s plans for decommissioning the WL site is that sufficient waste storage space will be available at the AECL-owned Chalk River site (the expected destination for the waste) for contaminated materials removed from the AECL-owned WL site. However, no discussion or analysis of availability/suitability of storage at the AECL-owned Chalk River site is provided in the ROR. Furthermore, there is no discussion or analysis of the alternative methods for transporting the waste. These plans are highly relevant to the oversight of the WL site as they will determine the nature and level of risk for future management of the site. While CNL is considering a possible ISD plan for the WL site, this plan has not yet been approved by CNSC. Regulatory oversight and the ROR must align with the existing and currently licenced plan, not a</p>	<p>CNSC must provide additional information regarding the suitability of CNL’s plans to transport and store low- and intermediate-level waste at Chalk River Laboratories to the MMF for review. The feasibility of these transportation and long-term storage plans is of the utmost importance in decision making and management of the WL site, which will impact the ability of the MMC to utilize the site in the future.</p>



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		potential future contemplated approach that has not been approved.	
11	Section 5.9	<p>Section 5.9 of the ROR on Waste and Decommissioning states the following regarding the decommissioning activities planned at the Whiteshell Laboratories site,</p> <p><i>“The CNSC has received formal proposals from CNL to accelerate decommissioning at NPD and the WR-1 reactor at WL. Both of these proposals involve ‘in-situ decommissioning’, where major underground structures would be left in place, filled with grout, and capped. In both cases, in-situ decommissioning is not permitted by the current licensing basis, nor is it the end-state documented in CNL’s current CNSC staff-accepted decommissioning plans.</i></p> <p><i>For each of the NPD and WR-1 projects, CNL has submitted a licence application to the CNSC and prepared a draft EIS for comment by the public, the CNSC and other provincial and federal departments. CNSC staff undertook a review of CNL’s draft EISs and conducted licensing reviews pursuant to the NSCA and its associated regulations. As the responsible authority, and working with</i></p>	<p>The MMF requests that CNSC, CNL, and AECL thoroughly review the issues and recommendations that have been brought forward by the MMF to date regarding the decommissioning of the WL site with the perspective of what is required in order to comply with the Crown’s duty to consult an accommodate, advance reconciliation, and uphold the honour of the Crown related to these activities occurring within the MMC’s traditional territory. The MMF acknowledges that the CNSC, CNL, and AECL have already communicated and engaged with the MMF to some degree on these matters. However, there are unaddressed issues remaining that the CNSC, CNL, and AECL must address in future planning and decision making regarding the WL site.</p>





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		<p><i>other federal departments, CNSC staff have identified a number of areas where additional information will need to be included in the final EISs and other technical supporting documentation. For each project, complete licensing and EIS submissions are required before CNSC staff can complete their assessment and proceed to public hearings.</i></p> <p><i>For each project, following receipt of a complete licensing submission and final EIS, CNSC staff will write a CMD containing staff's assessment of the licence amendment and the EA report, in support of a hearing on the topic. This CMD will be available to the public and Indigenous groups prior to the Commission's public hearing, the date of which has not been set. The public will be offered the opportunity to submit written and/or oral interventions. Because there will be separate Commission decisions on these projects, they are out of the scope of this ROR."</i></p> <p>Although the specifics on decommissioning the WL site are outside of the scope of the ROR, the MMF has provided several comments, including issues and suggested recommendations on how to address</p>	



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		<p>these issues in relation to the WL site decommissioning process. CNL, AECL, and the CNSC must thoughtfully consider and incorporate all of the issues and recommendations the MMF has brought forward to date into future planning and decisions regarding the decommissioning of the site.</p>	
12	Table H-4	<p>According to Table H-4 which described WL annual radionuclide releases to surface water for 2014–2018, uranium, plutonium, and americium are all released at the site. The release of uranium and americium are not surprising given the state of operations at the WL site. However, the release of plutonium is unexpected, given that it is a nuclear fission product. Further to that point, these nuclides have only been monitored in wastewater for the last couple of years, but the reactor was shut down in 1985. Although the amounts are well below the Derived Release Limits, it is unclear where these particular radionuclides, especially plutonium, are coming from in the wastewater measurements.</p>	<p>CNSC must provide more information regarding the source of the radionuclides, particularly the plutonium, alpha, and beta in the wastewater at the WL site to provide greater clarity on the sources contributing to certain levels of radionuclides being reached, despite the current stage of activity of the WL site. Where additional information is not available, further monitoring and investigation are required in order to identify the sources. In light of the limited monitoring data available, additional monitoring as part of the decommissioning and post-decommissioning phases may also be required in order to verify that measures remain below acceptable levels over time.</p>

