



Oral presentation

Exposé oral

**Written submission from the
Ya'thi Néné Land and
Resource Office**

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

In the Matter of the

À l'égard de

Cameco Corporation, Beaverlodge Project

Cameco Corporation, Projet Beaverlodge

**Application to amend its licence to allow
release of 18 Beaverlodge Project
properties from CNSC licensing**

**Demande de modification du permis de
Cameco visant à retirer 18 propriétés du
projet Beaverlodge du contrôle de la CCSN**

Commission Public Hearing

Audience publique de la Commission

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YA'THI NÉNÉ LAND AND RESOURCE OFFICE INTERVENTION

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



February 22nd, 2022

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1.0 Introduction

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

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

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

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

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

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

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

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

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

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

YNLR urges the Commission to:

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

1.1 Document Timeline and Submission

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

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

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

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

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

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

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

1.2 Limitations

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

1.2.1 Limited Analysis

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

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

1.2.2 Consideration of Traditional Knowledge

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

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

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

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

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

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

1.2.3 Source Documents Unavailable

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

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

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

1.2.4 Insufficient Resources for Necessary Studies

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

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

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

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

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

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

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

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

2.0 Background of Nuhenéné

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

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

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

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

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

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

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

3.1 Overview of Known Historical Land Resource Use

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

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

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

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

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

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

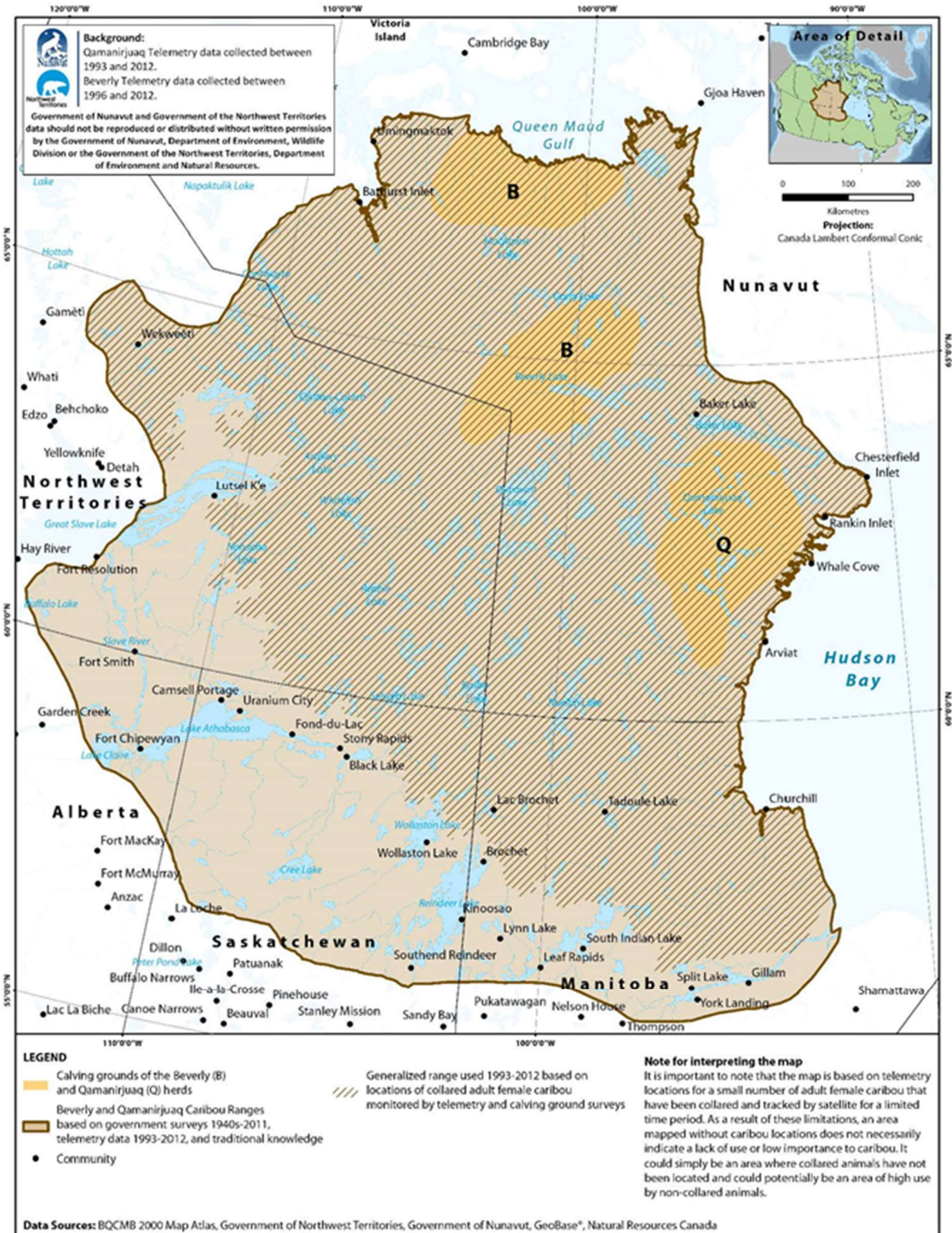


FIGURE 1 - BEVERLY AND QAMANIRJUAQ CARIBOU RANGES BASED ON GOVERNMENT SURVEYS, TRACKING COLLARED COWS BY TELEMETRY AND TRADITIONAL AND LOCAL KNOWLEDGE OF CARIBOU HARVESTERS (BQCMB, 2000).

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

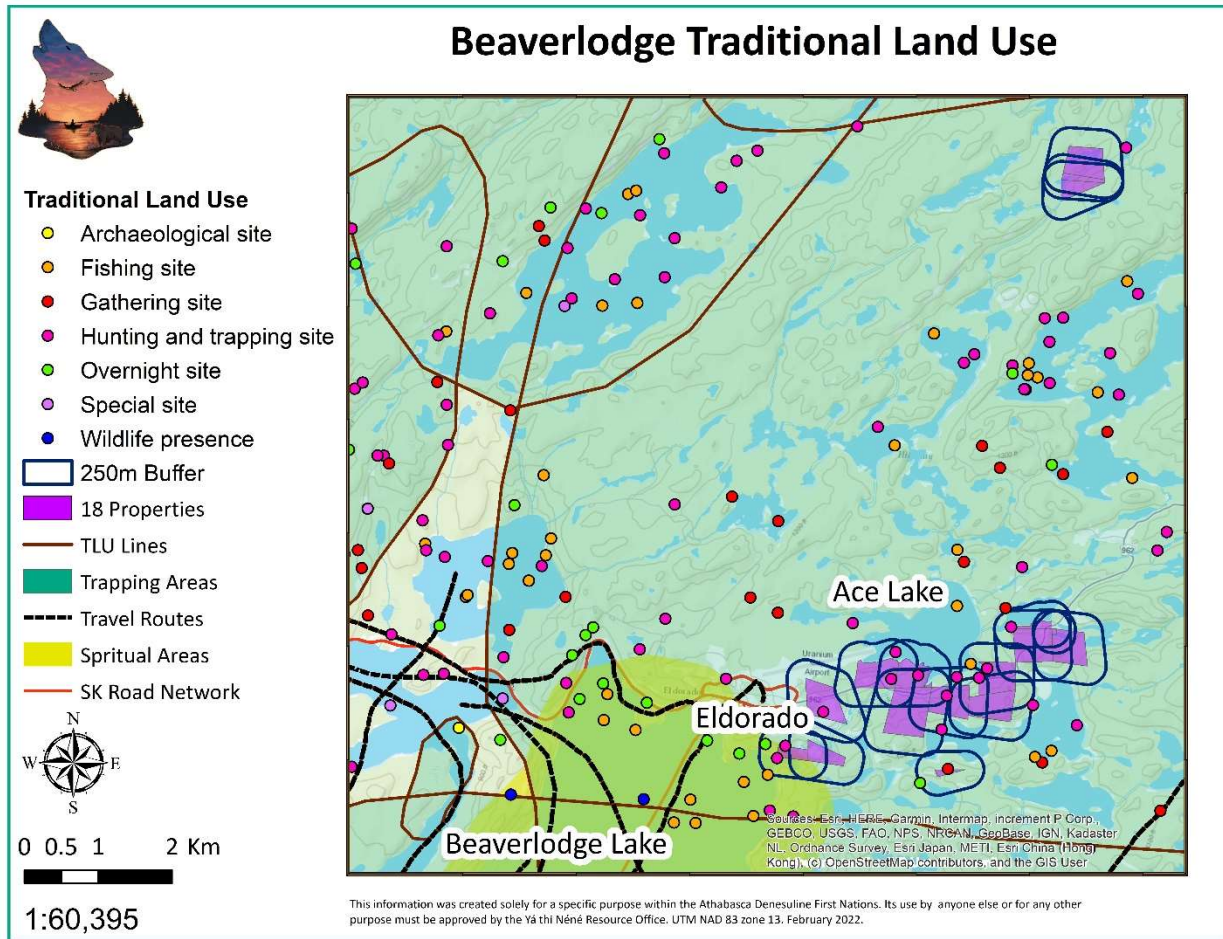


FIGURE 2 - A MAP DEPICTING A SAMPLE OF TRADITIONAL LAND USE BY YNLR MEMBERS IN THE BEAVERLODGE AREA. THE 18 SITES WHICH ARE THE SUBJECT OF THIS APPLICATION ARE SHOWN WITH 250M BUFFERS.

3.2.1 Land Use Plan

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

⁷ Athabasca Land Use Plan, 2008

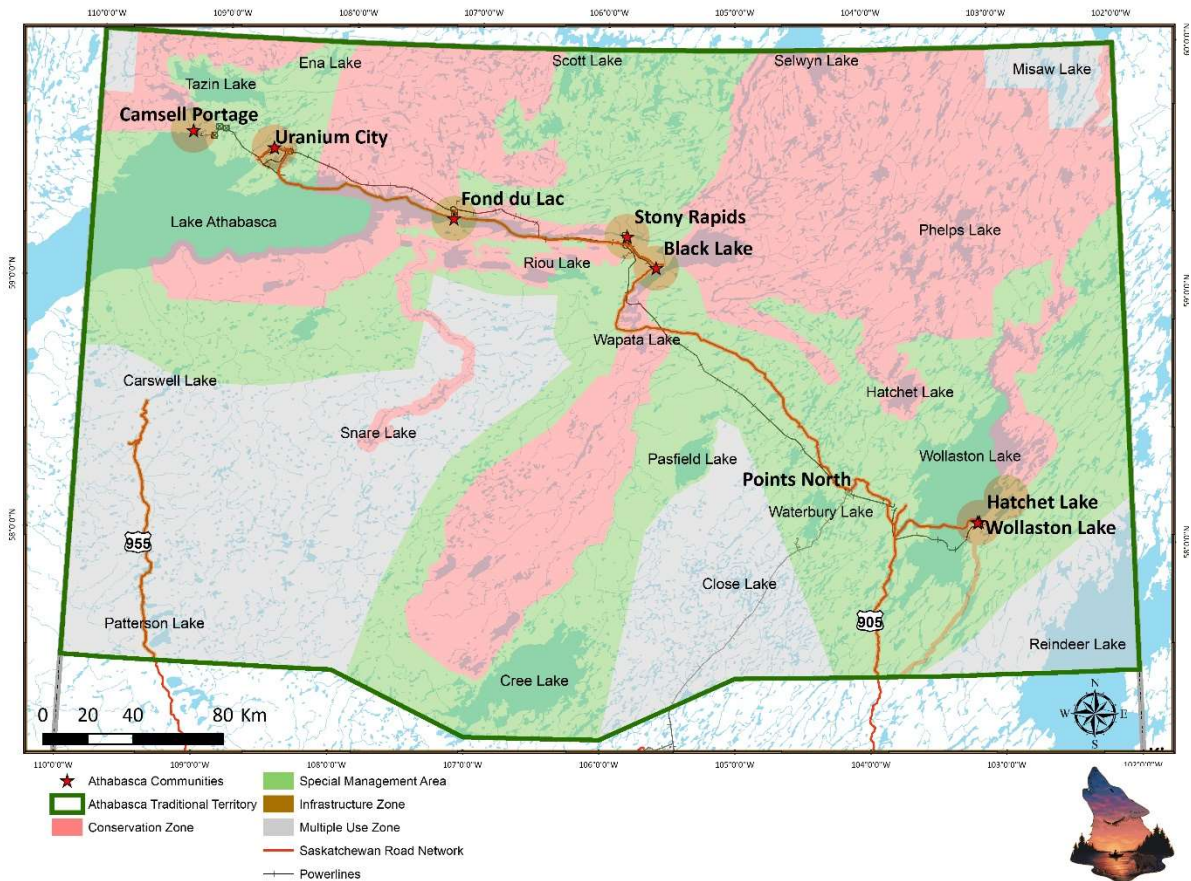


FIGURE 3 - YNLR LAND USE PLAN MAP

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

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

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

⁸ CMD 22-H5, s 6.2, pg 68.

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

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

⁹ CMD 22-H5, s. 6.2, pp 67-68.

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

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

3.4 Beaverlodge Hab Area Evaluation Technical Memorandum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁵ CanNorth, pg 2.

¹⁶ CanNorth, pg 2.

¹⁷ CanNorth, pg 2.

¹⁸ CanNorth, Table 2.

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

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

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

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

¹⁹ CanNorth pg 4.

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

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

²² CanNorth, pg 7.

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

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

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

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

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

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

3.5 Psychosocial Impacts on Potential Future Land and Resource use

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

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

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

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

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

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

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

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

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

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

3.6 Results of 2022 Community Survey

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

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

3.6.1 Survey Interviews

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

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

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

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

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

4.0 Inadequate Information

4.1 ‘Safe’ Properties

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

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

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

The guideline suggests several important considerations for this hearing:

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

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

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

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

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

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

4.2 Inadequate study and consideration of traditional land use

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

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

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

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

4.3 Saskatchewan Institutional Control Program

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

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

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

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

²⁸ CMD22-H5, s 6.4, pg 69.

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

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

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

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

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

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

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

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

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

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

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

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

³⁴ *Coldwater* at para [46](#).

³⁵ *Coldwater* at para [48](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴⁵ 22-H5, s 5.1.1, pg 64.

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

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

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

⁴⁹ *Rio Tinto* at [para 44](#).

⁵⁰ *Rio Tinto* at [para 47](#).

⁵¹ *Rio Tinto* at [para 47](#).

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

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

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

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

5.3.1 Cameco's Consultation with YNLR

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

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

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

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

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

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

5.3.2 CNSC's Consultation with YNLR

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

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

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

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

5.4 Conclusions on fulfillment of the Duty

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

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

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

⁵⁵ See e.g. *Coldwater* paras 40-51.

⁵⁶ *Coldwater* at para 41.

⁵⁷ CMD22-H5, s. 5.1.1, pg 64.

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

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

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

6.0 Cumulative Impacts

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

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

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

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

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

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

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

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

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

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

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

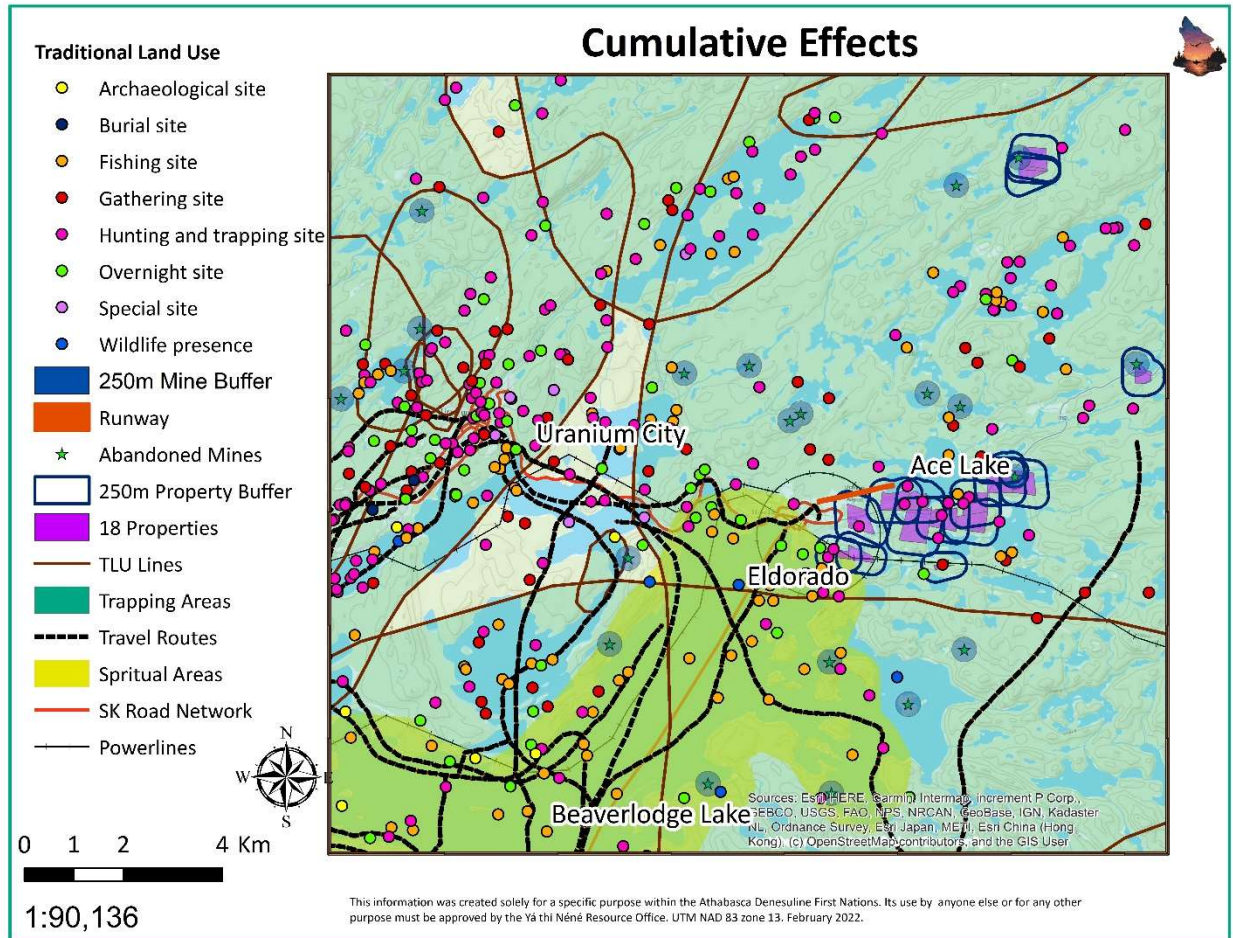


FIGURE 4 - A MAP DEPICTING TRADITIONAL USES OF THE BEAVERLODGE AREA BY YNLR MEMBERS, WITHIN A SUMMARY CUMULATIVE EFFECTS CONTEXT.

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

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

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

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

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

7.0 The “Path Forward” is a dead end

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

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

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

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

⁶¹ DEC 19-H6, at para 32.

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

⁶³ CMD 14-M60, at page 1.

⁶⁴ CMD 14-M60, Table 3.1.

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

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

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

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

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

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

⁶⁵ 2019 Release Decision – para 93.

⁶⁶ *Ibid*, para 103.

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

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

⁶⁹ *Ibid*, Table 2 and page 9.

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

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

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

⁷⁰ 2019 release decision, para 97.

List of Recommendations

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

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

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

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

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

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

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

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

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