



Supplementary Information

Presentation from the Ya'thi Néné Land and Resource Office

In the Matter of the

Cameco Corporation, Beaverlodge Project

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

Commission Public Hearing

March 24, 2022

Renseignements supplémentaires

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

À l'égard de

Cameco Corporation, Projet Beaverlodge

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

Audience publique de la Commission

24 mars 2022



Response to:

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

Ya'thi Néné Land and Resource Office
March 24th, 2022

Outline

1. Thoughts from an Elder
2. Traditional Land User from Uranium City
3. Legal Review of the Duty to Consult
4. Concluding Thoughts from Leadership



Thoughts from an Elder



Thoughts from a Traditional Land User



The Duty to Consult and Accommodate is Owed

A

The Crown has knowledge of YNLR members' rights.



- CNSC (an agent of the Crown) has long known that YNLR members exercise Aboriginal and Treaty rights in the Beaverlodge area.

B

The Crown is contemplating conduct.



- Cameco has asked CNSC (agent of the Crown) to amend its license to release 18 properties from federal oversight and regulation.
- The license amendment is Crown conduct.

C

The contemplated conduct might affect the rights.



- Withdrawing regulatory oversight, which has the effect of removing and/or reducing opportunities for consultation, has the potential to affect Aboriginal and/or Treaty rights.
- Releasing the properties from licensing signals that they are safe to use, and therefore renders permanent impacts which, while licensed and subject to oversight, may still be temporary.

“The honour of the Crown demands that it take into account Aboriginal claims before divesting itself of control over land.”

'But we aren't building anything, how can there be an impact?'



Removing Opportunities for Consultation

- The Supreme Court of Canada has said that “effectively remov[ing] future Crown conduct which would otherwise trigger the duty to consult” may not be consistent with section 35 of the *Constitution Act, 1982*.¹
- The SCC also approved a decision of the Yukon Court of Appeal stating that; “[s]tatutory regimes that do not allow for consultation and fail to provide any other equally effective means to acknowledge and accommodate Aboriginal claims are defective and cannot be allowed to subsist”²
- Release of the Beaverlodge properties will “effectively remov[e]” future opportunities for Crown conduct (licensing decisions) which would trigger the duty consult.
- The Saskatchewan ICP does not involve active regulatory oversight, and does not include opportunities for consultation and Crown decision making. It fails to provide any effective means to acknowledge and accommodate Aboriginal concerns.
- Therefore, even absent novel impacts the Duty would be triggered here.



Making impacts effectively permanent

- As long as CNSC licensing is in place, the possibility remains that Cameco will be required to comprehensively remediate the sites for traditional use. Iterative licensing decisions provide opportunities for rights-holders to raise fresh concerns and seek progress.
- Release from licensing freezes that progress and renders impacts (effectively) permanent.
- Release also creates new impacts, in the form of psychosocial, fear and stigma, and avoidance behaviours resulting from the loss of apparent governmental oversight.

1. *Mikisew Cree First Nation v Canada* 2018 SCC 40 at para 46.

2. *Ross River Dena Council v Yukon* 2012 YKCA 14 at para 37

Cumulative Impacts

Notwithstanding the direct impacts of the current decision, YNLR members who hold Aboriginal and/or Treaty rights face the ongoing diminution of their rights caused by the **cumulative impacts** of decades of development in their territories.

The way of life enjoyed by YNLR's rights-holding members must be protected.

CNSC has never meaningfully considered the cumulative impacts faced by rights-holders at Beaverlodge.

The failure of regulatory systems to meaningfully engage with, and consider, cumulative impacts on a system-wide level has been found to be contrary to s.35 of the Constitution Act, 1982.

Talking is not enough

Consultation is two-way dialogue, leading to mutual understanding, with the goal of protecting Aboriginal and Treaty rights and preserving the honour of the Crown.

Can it reasonably be said that whatever engagement took place here, was consistent with those requirements?

What Went Wrong

Remember:

- Although CNSC sent YNLR a form letter notification about the application in August, funding wasn't confirmed until late November. YNLR cannot be expected to pay out of its own budget the cost of meeting the Crown's duty. (*Saugeen v Ontario (MNR)* 2017 ONSC 3456, *Ginoogaming v Ontario* 2021 ONSC 5866)
- YNLR was provided with no substantive information about the application, and was left to locate and identify the relevant submissions on the public registry on its own.
- When YNLR became aware of documents relied on by Cameco which were not publicly available, YNLR had to specially request them. When they were finally provided, they were redacted for specious claims of commercial sensitivity. The reliability of those documents are questionable, and require further investigation.
- CNSC staff answered questions, but did not engage in dialogue aimed at protecting rights.

What does that leave us?

Cameco and CNSC have failed to justify the basic premise of their assertion to the commission that the properties can be released without impact to Aboriginal and Treaty rights.

They say the properties are safe to use.

- Saskatchewan says you can eat 2-5 *servings* of fish per month
- Cameco says you can spend 3 hours in the affected area per year
- Other than one questionable study, no one has asked the rights-holders if that's enough.

What do we know?

YNLR members exercise Aboriginal and Treaty rights throughout the Beaverlodge area.

Current uses are reduced from the pre-mining uses, because of the impacts of the mine, but YNLR members want to reinvigorate the treaty promise, and restore their harvesting rights to what they once were.

The Crown is obligated to continue implementing the treaty promises to protect the treaty beneficiaries' harvesting rights. The "promise" made by the Crown to maintain the harvesting rights of the First Nation signatories "is easy to fulfill initially but difficult to *keep* as time goes on and development increases." But "...the Crown's obligation to ensure the meaningful right to hunt [and harvest] is an *ongoing* one.

(Fort McKay First Nation v Prosper Petroleum 2020 ABCA 163 at paras 80-81).



Beaverlodge Traditional Land Use

Traditional Land Use

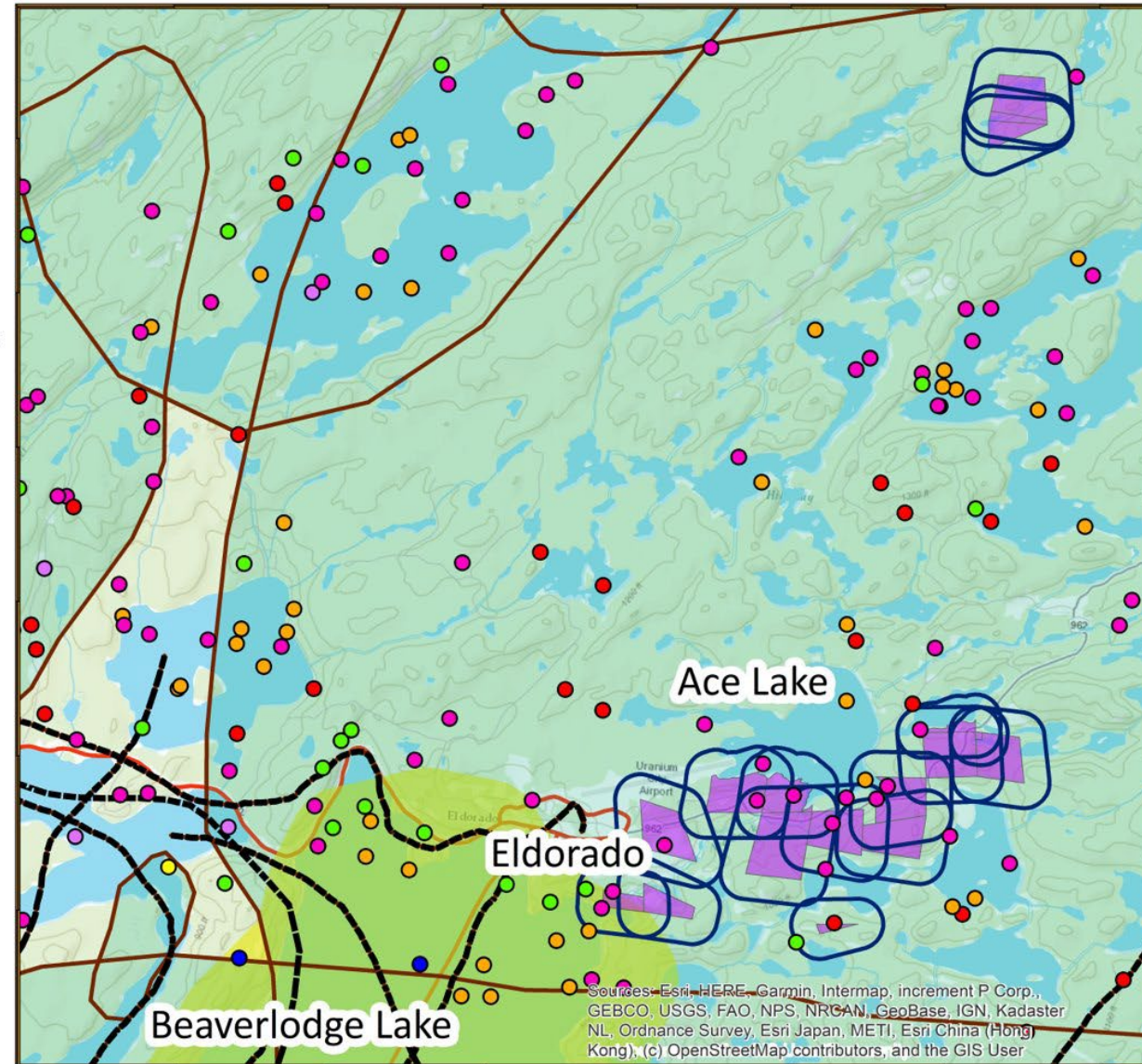
- Archaeological site
- Fishing site
- Gathering site
- Hunting and trapping site
- Overnight site
- Special site
- Wildlife presence
- 250m Buffer
- 18 Properties
- TLU Lines
- Trapping Areas
- Travel Routes
- Spritual Areas
- SK Road Network



0 0.5 1 2 Km



1:60,395



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Cumulative Effects



Traditional Land Use

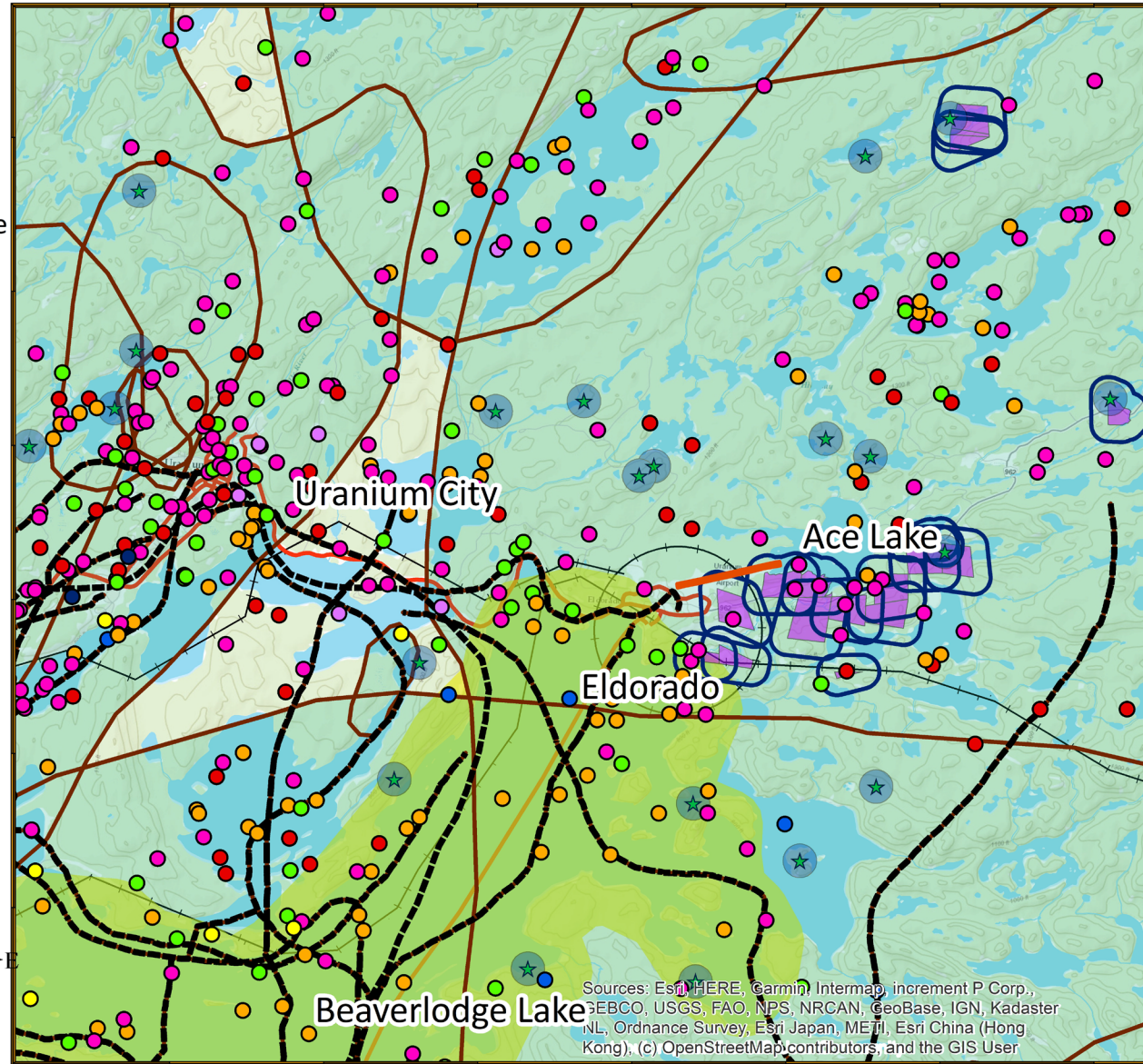
- Archaeological site
- Burial site
- Fishing site
- Gathering site
- Hunting and trapping site
- Overnight site
- Special site
- Wildlife presence
- 250m Mine Buffer
- Runway
- ★ Abandoned Mines
- 250m Property Buffer
- 18 Properties
- TLU Lines
- Trapping Areas
- Travel Routes
- Spritual Areas
- SK Road Network
- Powerlines



0 1 2 4 Km



1:90,136



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User

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What 'New Information' is needed?

There are at least three broad categories of new information which have not previously been made available to the Commission.

1) Traditional Knowledge

2) Analysis and concerns about the reports on which Cameco's application is based.

3) Cumulative Impacts

YNLR did not have the opportunity to present this information before, and the refusal of our adjournment requests leaves us with not enough time to properly collect and report on that information now.

Thoughts from Community Leadership



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.



Recommendations

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.



Marsi Chogh!

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