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Oral Presentation

Submission from the Ya'thi Néné Land and Resource Office

In the Matter of the

Orano Canada Inc. – Cluff Lake Project

Application for the renewal of the Uranium
Mine Decommissioning Licence for the
Cluff Lake Project

Commission Public Hearing

May 15, 2019

Exposé oral

Mémoire de Ya'thi Néné Land and Resource Office

À l'égard d'

Orano Canada Inc. – Projet de Cluff Lake

Demande de renouvellement du permis
de déclasserement de la mine d'uranium de
Cluff Lake

Audience publique de la Commission

Le 15 mai 2019

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Written Submission from
Ya'thi Néné Land and Resource Office

In the Matter of the;
Application for the renewal of the Uranium Mine Decommissioning
Licence for the Cluff Lake Project

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Summary

The Ya'thi Néné Land and Resource Office (Ya'thi Néné), on behalf of the Athabasca First Nations of Hatchet Lake, Fond du Lac and Black Lake, as well as the municipalities of Camsell Portage, Uranium City, Stony Rapids and Wollaston Lake, have reviewed submissions from both Orano and the Canadian Nuclear Safety Commission (CNSC) regarding Orano Canada Inc. Cluff Lake Project; *Application for the renewal of the Uranium Mine Decommissioning Licence for the Cluff Lake Project*.

In addition to reviewing the *Application of the Uranium Mine Decommissioning Licence for the Cluff Lake Project*, the Executive Director of Ya'thi Néné is a member of the Athabasca Joint Environmental and Engagement Subcommittee (AJES) of the Ya'thi Néné Collaboration Agreement. Ya'thi Néné will share information from this submission and the Commission hearing with AJES members at the next scheduled meeting.

Ya'thi Néné is generally well informed about the activities and undertakings of the uranium mining operations located throughout Northern Saskatchewan. Ya'thi Néné has the technical capacity and resources to review various reports from industry and regulatory groups – in order to inform itself and community members about mining, milling, and decommissioning activities throughout the region. This helps to support the long standing, ongoing relationship with Orano.

Ya'thi Néné offers the following recommendations in response to the; *Application for the renewal of the Uranium Mine Decommissioning Licence for the Cluff Lake Project*, and makes suggestions to improve future reports – in relation to the areas of the CNSC's mandate of the protection of health, safety, security and the environment, along with ensuring that meaningful consultation occurs with the public and those living in the communities near the operation, as mentioned in Section 5.1 and 5.2 of the Commission Member Document (CMD) submitted by CNSC Staff.

Ya'thi Néné recommends that the Commission:

- Accept the proposal to renew the licence issued to Orano Canada Inc., UMDL-MINEMILL-CLUFF.01/2019, with a standardized licence conditions period of five years, with the intention to transfer the Cluff Lake site to the Province of Saskatchewan under the Institutional Control Program (IPC)
- Accept the proposed Detailed Post-Decommissioning Plan, and associated details of the Detailed Decommissioning Plan
- Accept the new licensed area
- Accept the revised financial guarantee of C\$3.5 million for the Cluff Lake Project

Introduction

The Ya'thi Néné Land and Resource Office (Ya'thi Néné) works to enhance the environmental, social, cultural, and economic health and well-being of the Black Lake, Fond du Lac and Hatchet Lake Denesuline First Nations (collectively known as the “First Nations”) and the municipalities of Camsell Portage, Uranium City, Wollaston Lake and Stony Rapids. The First Nations assert Aboriginal and Treaty Rights in the areas throughout Northern Saskatchewan, and exercise traditional activities and assert constitutional Aboriginal and Treaty Rights within these areas.

Ya'thi Néné has the technical capacity and resources to review various reports from mining companies and regulators – in order to be in a position to inform itself and community members about the uranium mining activities occurring throughout Northern Saskatchewan.

Ya'thi Néné is providing this submission on behalf of its member communities. Ya'thi Néné has reviewed the *Application for the renewal of the Uranium Mine Decommissioning Licence for the Cluff Lake Project*, has communicated with CNSC staff, and has been an active member of the Athabasca Joint Environment and Engagement Subcommittee (AJES) associated with the Ya'thi Néné Collaboration Agreement. Ya'thi Néné acknowledges the participation of the CNSC in ongoing meetings and communications. We value the beneficial relationships that continue to be created during this process. In order to continue down this path of best practices, Ya'thi Néné offers comments and recommendations for the Commission's consideration.

Recommendations

Ya'thi Néné is an organized group with the capacity and connections to the communities that can advise both the CNSC and the Commission on areas of interest to the local people. As such, it is recommended that CNSC staff work collaboratively with Ya'thi Néné to continue to refine and focus its information sharing and engagement efforts. Recommendations are discussed in greater detail below.

Ya'thi Néné recommends that the Commission:

- Accept the proposal to renew the licence issued to Orano Canada Inc., UMDL-MINEMILL-CLUFF.01/2019, with a standardized licence conditions period of five years, with the intention to transfer the Cluff Lake site to the Province of Saskatchewan under the Institutional Control Program (IPC)
- Accept the proposed Detailed Post-Decommissioning Plan
- Accept the proposed new licensed area
- Accept the revised financial guarantee of C\$3.5 million for the Cluff Lake Project

Accept the proposal to renew the licence issued to Orano Canada Inc.

Ya'thi Néné believes that Orano Canada Inc. is qualified to carry on the activity that the licence will authorize and will make adequate provision for the protection of the environment, and the health and safety of all persons both in and around the proposed licence area. Ya'thi Néné also supports Orano's request to transfer the Cluff Lake site to the Provincial Institutional Control Program, contingent on the acceptance of the long-term monitoring and maintenance plans, and the revised financial commitment.

Ya'thi Néné acknowledges the Cluff Lake project is a decommissioned site and Orano has met the objectives identified in the Detailed Decommissioning Plan. Ya'thi Néné recognizes that the Cluff Lake site has been in post-decommissioning monitoring since 2006, and therefore recommend that the Commission accept the proposed plan to transition the Cluff Lake site into a Post-Decommissioning state. The Cluff Lake project is considered to be one of the first modern uranium mines successfully decommissioned in Canada and Orano has demonstrated, through its submission, that the land contained within the site has been successfully transitioned back to a state suitable for traditional land use purposes. Ya'thi Néné believes the ultimate goal of decommissioning is the successful transition of land back to its natural state, supporting all traditional land practices. Based on the technical review we are of the opinion that all concerns have been identified. We therefore recommend the Commission to accept the proposal to renew the licence issued to Orano Canada Inc. for the proposed 5-year term, allowing the site to transition into a state of post decommissioning, with eventual transfer into the Provincial Institutional Control Program.

Accept the proposed Detailed Post-Decommissioning Plan

Orano has developed an extensive Detailed Post-Decommissioning Plan (DPDP) that Ya'thi Néné recommends the Commission accept. Ya'thi Néné has not reviewed the specific DPDP as referenced in Orano's submission, but we have no explicit concerns arising from the material presented in the submission from both Orano and CNSC staff to the Commission regarding the DPDP.

With final work under the Detailed Decommissioning Plan (DDP) completed throughout 2017/2018, it would make sense for the Cluff Lake project to transition into a state of post-decommissioning. Orano has demonstrated compliance with all appropriate guidelines contained in their current licence, and has clearly outlined all the decommissioning work that has been accomplished since official decommissioning commenced in 2004.

With decommissioning complete, it is expected that the DPDP and Environmental Monitoring Plan will evolve into the End-State Report and a Long-Term Monitoring and Maintenance Plan for the management of the Cluff Lake property by the Province of Saskatchewan under the ICP. After reviewing submissions from both Orano and CNSC staff, Ya'thi Néné has determined that all requirements have been effectively achieved in order to transition the Cluff Lake project into the Provincial ICP.

Orano must continue to monitor and inspect the Cluff Lake site, and report results to the CNSC and the Province of Saskatchewan as agreed to under their management system. The site has no effluent discharges and no longer produces any contaminants or waste. However, Ya'thi Néné would like to

remain informed of any updates or activities regarding the End-State Report or Long-Term Monitoring and Maintenance Plan in the future.

Accept the proposed new licensed area

With the completion of decommissioning activities, the area of provincial and CNSC interest has been reduced. Orano has requested that the proposed new licensed area include only parcels of land contemplated for future transfer into ICP. Ya'thi Néné supports Orano's proposal that areas of land with completed decommissioning planned for future transfer to the Provincial ICP are proposed to remain within the CNSC licence. Only areas of long term control and maintenance should remain with the newly proposed licence. Ya'thi Néné also supports Orano's proposed parcels of land to be removed from the future licence.

Accept the revised financial guarantee of C\$3.5 million for the Cluff Lake Project

Orano intends to transfer responsibility of the Cluff Lake site to the Provincial ICP within the proposed 5-year term of the licence request. Ya'thi Néné supports the proposed 5-year time frame for Orano to prepare to transfer the Cluff Lake site into Provincial ICP. We believe this timeframe will allow all the involved agencies to work collaboratively to ensure the site is properly transitioned, and the appropriate funds are transferred from Orano to the Province.

The ICP legislation allows for the transfer of responsibility for a decommissioned site, or portions of the site, to the Province of Saskatchewan and details the funding requirements to be provided by the owner of the site to the Province. The proposed C\$3.5 million shall be used to maintain a long-term monitoring and maintenance program, and to provide contingency funds for any unforeseen events. Ya'thi Néné believes it is important to have such legislation to protect the health, safety, and wellbeing of future generations, and the environment. Orano's key objective throughout the decommissioning was to remove, minimize, or control potential contaminant sources and thereby minimize the potential for adverse environmental effects associated with the decommissioned Cluff Lake site.

Decommissioning was designed to minimize the need for care and maintenance activities and to prioritize passive care. With these objectives achieved, Ya'thi Néné agrees that the financial requirements of the site can be reduced. We believe the proposed C\$3.5 million financial guarantee will be sufficient to support long-term monitoring and maintenance of the Cluff Lake site, ensuring an adequate level of protection and sustainability.

Additional Points for Consideration

The Duty to Consult and Accommodate arises every time the Crown has knowledge of potential Aboriginal rights, and contemplates conduct that could adversely affect those rights.¹ Throughout Ya'thi Néné's engagement with CNSC and with Orano Canada Inc over the years, that Duty and its application to Ya'thi Néné with respect to the Cluff Lake Project has been recognized.

Document review and submission process

Ya'thi Néné appreciates any opportunity to review and discuss application documents, report submissions, and engagement opportunities. There continues to be efficient participation, communication, and information sharing between Orano, Ya'thi Néné, and CNSC staff.

The documents provided by CNSC staff and Orano Canada Inc. regarding the *Application for the renewal of the Uranium Mine Decommissioning Licence for the Cluff Lake Project* contain detailed information about the current and proposed future state of the Cluff Lake site, as well as additional reports from contracted environmental assessment groups. This information can be highly detailed and technical, as it outlines specific programs, requirements, and legal obligations of the associated documents. In order to develop a meaningful submission, Ya'thi Néné must review all applicable documents, consult the appropriate stakeholders, and then create a submission document. This process requires time and can be onerous on a small organization.

The timeline to create and submit a report to the Commission regarding the Application for a Licence renewal for Orano's Cluff Lake project allowed only 30 days between the initial release of documents by the CNSC, until the final submission deadline of April 15th, 2019. This timeframe does not give Ya'thi Néné an adequate amount of time to collaborate with stakeholders throughout Northern Saskatchewan to discuss topics and recommendations they would like to see incorporated into Ya'thi Néné's submission to the Commission. Additional time would be needed in order to develop a truly meaningful document that encompasses the thoughts, ideas, and recommendations of impacted stakeholders.

The Duty to Consult and Accommodate requires the Crown "To do more than receive and understand the concerns" of Ya'thi Néné, the Crown is "Required to engage in a considered, meaningful two-way dialogue."² The very short time frame provided for our review makes a true dialogue difficult.

Tailings Management Area (TMA)

The Tailings Management Area (TMA) has long been a point of discussion in regards to the Cluff Lake site. Orano has spent a considerable amount of time, energy, and financial resources to ensure the TMA infrastructure is physically, chemically, and ecologically stable.

¹ *Tsleil-Waututh v _____* 2018 FCA 153 at para 487.

² *Tsleil-Wautuh* at para 558.

Orano had contracted SNC Lavalin to review the TMA engineered cover to ensure it was meeting proper specifications and requirements. Ya'thi Néné has not reviewed the supporting TMA documents referenced throughout Orano's submission.

Based on information provided from Orano and CNSC staff, Ya'thi Néné is confident that proper measures have been taken to ensure the effective decommissioning and safety of the TMA and its associated infrastructure.

Indigenous engagement

Ya'thi Néné believes it is important to be engaged on the topic of decommissioning as it directly relates to restoring natural process and traditional ways of life to the land, water, air, and ecosystems. Ya'thi Néné is aware that Orano has a long record of public engagement with regards to the Cluff Lake project extending to the pre-mining period.

Throughout the decommissioning and post-decommissioning periods, Orano has engaged with community members and local organizations in an attempt to understand their needs and develop relationships. The importance of meaningful consultation is critical, and Ya'thi Néné hopes that meaningful consultation will continue into the future, and be applied to decommissioning and post-decommissioning projects throughout the region.

It should be highlighted that the successful decommissioning of the Cluff Lake project should create confidence in the decommissioning process and serve as an example of how to approach mine site restoration in Northern Saskatchewan. Ya'thi Néné is of the opinion that the successful decommissioning of the Cluff Lake site was achieved through a collaborative approach that saw industry and community working together with the shared goal of returning the land back to a pre-development state.

Ensuring that community members and local organizations maintain confidence in this process throughout the 5-year renewal license period (and beyond) will require that all parties maintain open lines of communication and continue to build on the collaborative relationship that currently exists.

Closing Remark

Ya'thi Néné has been pleased with the level of communication between the CNSC and our office. We appreciate the opportunity to review reports published by the CNSC. We view these documents as knowledge pathways, as they allow Ya'thi Néné to both share and collect information from community members in a variety of ways. This transfer of knowledge is critical in ensuring all people of Northern Saskatchewan are meaningfully informed with regards to the ongoing operations within the greater region.