



**Written submission from the Ya'thi
Néné Lands and Resources Office**

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

In the Matter of

À l'égard de

**Request for 2-Year Licence Renewal for
Cameco Corporation's Beaverlodge Project**

**Demande de renouvellement, pour 2 ans, du
permis de Cameco Corporation pour le projet
de Beaverlodge**

Public Hearing - Hearing in writing based on
written submissions

Audience publique - Audience fondée sur des
mémoires

March 2023

Mars 2023

YA'THI NÉNÉ LANDS AND RESOURCES INTERVENTION

*In the matter of the Cameco Corporation Beaverlodge Project: Request
to renew its Waste Facility Operating License*



10 February 2023

Introduction

The Beaverlodge mine and mill site and associated properties, located 8 km east of Uranium City, were operated by Eldorado Mining and Refining Ltd. (Eldorado) from 1952 to 1982. During the mining phase, most activity focused on the area north of Beaverlodge Lake where the Fay, Ace, and Verna shafts accessed the underground uranium ore body. Whereas most ore came from these areas, some ore originated from satellite mines that operated for shorter periods of time. Decommissioning of the mines and mill commenced at mine closure in 1982 and was completed in 1985 in which buildings were removed and mine openings were permanently sealed. The mill operated without an effluent treatment process from 1952 to 1977, resulting in a legacy of environmental damage to the area; limitations and moratoriums on fish and water consumption currently exist for many water bodies due to elevated levels of uranium and selenium.

In 1988, Eldorado merged with the Saskatchewan Mining Development Corporation to form Cameco, now the operator and licensee of the Beaverlodge Project. Initially comprised of 70 separate properties, the Beaverlodge Project exists in a state of post-decommissioning monitoring and maintenance since completion of its decommissioning. Of these 70 properties, all but 27 properties have been transferred to the Government of Saskatchewan's Institutional Control Program (ICP). Cameco's original proposed schedule of transfer of the remaining Beaverlodge properties from the Canadian Nuclear Safety Commission (CNSC) regulatory oversight to ICP by the end of the current license term, 31 May 2023, is no longer feasible due to required timelines. As such, Cameco is requesting a license renewal for a 2-year term for the Waste Facility Operating License (WFOL-W5-2120.2/2023). Cameco proposes that this time interval will be sufficient for required regulatory processes, public and Indigenous engagement, and document preparation to support the release of the remaining decommissioned Beaverlodge properties and transfer to the ICP. To be clear, this application involves license renewal only and does not request alteration of requirements or authorizations currently in place.

Ya'thi Néné Lands and Resources (YNLR) holds a Participant Funding Contribution Agreement with the CNSC to provide an intervention related to Cameco's application to renew their current license for an extended two years, to 31 May 2025 (hereafter, the Application).

The purpose of YNLR's intervention is to provide information and context of the Athabasca Denesų́líné and Basin Residents' perspective and concerns regarding this Application, as the Beaverlodge Project lies within Nuhenéné (the traditional territory of the Athabasca Denesų́líné).

For the purposes of this intervention, YNLR adopts and relies on its 2022 intervention in Cameco's request for release of 19 Beaverlodge properties, and in particular, section 3.4, 4, 6, and 7 of that submission.¹

Background of Nuhenéné and YNLR

YNLR works to protect the lands and waters of Nuhenéné for the long-term benefits of its member Denesų́liné 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 operate in Nuhenéné. YNLR is governed by an independent Board of Directors 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 Denesų́liné 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. In addition to protection of lands and waters within Nuhenéné, YNLR works to promote the interests of the region's residents through training, employment, and procurement opportunities.

The First Nation members of YNLR are all signatories to treaties with the Crown.² A significant majority of the residents of the municipalities represented by YNLR are also Aboriginal persons,³ 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 as well as involvement in many 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

¹ CMD22-H5.15

² Fond du Lac and Black Lake Denesų́liné First Nations are both signatories to Treaty 8. Hatchet Lake Denesų́liné First Nation is a signatory to Treaty 10.

³ 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.

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.

Document Timeline and Submission

YNLR was notified of this Application on 13 September 2022 and applied for funding to intervene in the Application soon thereafter. YNLR received the fully executed funding agreement on 3 November 2022. Commission Member Documents (CMD) submitted by CNSC Staff and Cameco were made available on 6 December 2022.

Once YNLR received the CMDs, YNLR undertook the following tasks:

- Participated in joint in-person and virtual meetings with the YNLR Board of Directors and Athabasca Land Protection Committee (ALPC) on 15 December 2022.
- Participated in a joint in-person and virtual meetings with CNSC staff on 20 December 2022.
- Conducted a legal review.

YNLR is providing this submission on behalf of its member communities. This intervention is intended to provide the Commission with a summary of key issues relevant to the Application. YNLR and its advisors have engaged in as much analysis as possible within the limited time frame available, especially considering the intervening holidays. In reviewing these submissions, **YNLR reminds the Commission that an absence of analysis or documented concern or discussion should not be taken to indicate that YNLR has no concerns on that issue.** The information contained in the following written document is incomplete and an absence of data does not indicate an absence of value or perspective.

Funding delivery, application review, evidence collection, and intervention preparation were limited to a short window of time and overlapped with the December holidays. As such, YNLR requested and was granted an extension in funding timelines beyond the intervention submission deadline of 10 February 2023 to conduct in-depth interviews with Basin residents about the historical, current, and perceived future traditional land use of the Beaverlodge area. The results of these interviews will not be included in this submission but will be provided to CNSC prior to 1 June 2023, with discussion with CNSC to follow. YNLR intends for the results of these interviews to provide valuable insight into future Beaverlodge licensing processes.

YNLR Concerns and Recommendations

Cumulative Effects

CNSC has never meaningfully studied or substantively considered cumulative effects in the Athabasca Basin. That failure has led to substantial loss of use for YNLR members as the remediation of the Beaverlodge area (and other sites such as Cluff Lake, see YNLR intervention submitted 2 February 2023) has resulted in a permanently damaged baseline circumstance.

Where the Commission has mentioned cumulative effects in its decisions, those mentions have been almost exclusively limited to 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.

Focusing only on the iterative added cumulative effects contributed by particular projects, rather than considering the totality of cumulative effects, *cumulatively*, defeats the entire purpose of a cumulative effects analysis.

Yet this is precisely how the CNSC has failed to meaningfully engage with cumulative effects in the Athabasca Basin over the life of the Beaverlodge project. Rather than consider the regional impact of Beaverlodge, over time and relative to other impacts in the area, Cameco and the CNSC focus only on the iterative new impacts of the particular slice of the project being considered at a particular given time. This hyper-focus on the 'trees', causes the CNSC to miss the whole 'forest'.

This failure by the CNSC (and its licensees) to properly consider cumulative effects obscures impacts to the Aboriginal and Treaty rights of YNLR's members. Because individual project approvals may be limited in scope, or aimed to remediation, or even largely administrative, the CNSC mistakenly asks what **specific** impact from what **specific** CNSC approval or proponent project will adversely affect Aboriginal and Treaty rights. While those questions are necessary, they are not sufficient and they cannot replace meaningful consideration of the **cumulative** impacts caused by multiple developments. As the Blueberry River First Nation explained in *Yahey*: "it is not one single impact from one single regulation or project that has infringed its rights. Rather, it is the cumulative effects from a range of ... authorized activities, projects and developments... within and adjacent to their traditional territory that has resulted in significant adverse impacts on the meaningful exercise of their treaty rights...."⁴

⁴ *Yahey v British Columbia*, [2021 BCSC 1287](#) at para 3.

As YNLR has noted in previous interventions, the fact that CNSC does not appear to have existing processes for assessing cumulative effects is not a legitimate reason for the failure to have done such an assessment.

The British Columbia Supreme Court dealt with similar issues created by the Government of British Columbia's focus on individual projects and approvals, similar to CNSC's primary concern being specific permits and their specific impacts. This focus becomes an artificial and self-imposed fetter on CNSC's discretion.⁵ 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 considered, and they are left to accumulate, as the rights of YNLR members continue to be denuded.⁶

The CNSC has focused on the individual impacts of individual project approvals to the detriment of YNLR members' Aboriginal and Treaty rights. This focus ignores the fact that infringements to Aboriginal and Treaty rights generally happen over time (cumulatively), and not all at once. The Alberta Court of Appeal has explained that:

“the effects of any one ‘taking up’ of land will rarely, if ever, itself violate an Aboriginal group’s Treaty 8 right to hunt; **instead, the extinguishment of the right will be brought about through the *cumulative effects of numerous developments over time***. In other words, no one project on [the First Nation’s] territory may prevent it from the meaningful right to hunt – however, if too much development is allowed to proceed, then, taken together, the effect will be to preclude [the First Nation] from being able to exercise their treaty right.”⁷

The substantial adverse impact of cumulative effects on the Aboriginal and Treaty rights and YNLR members, particularly their harvesting rights (rights to hunt, fish and trap, and gather plants for food, medicine, and cultural purposes) is amplified by the fact that the treaty promise by the Crown to protect those harvesting rights is unfulfilled, and must be fulfilled as time goes on.⁸

The harm caused to YNLR's members through these regulatory processes is magnified by the fact that the Commission appears to be of the view that there are effectively no triggers for the Duty to Consult and Accommodate remaining for Cameco in respect of Beaverlodge. For both

⁵ See *Yahey* at paras [1197-1208](#).

⁶ 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.”

⁷ *Fort McKay First Nation v Prosper Petroleum Ltd* 2020 ABCA 163 at [para 79](#).

⁸ *Fort McKay* at para 80.

licence renewals⁹ and releases to the ICP,¹⁰ the Commission has determined that the Duty is not triggered. While YNLR and its members disagree strenuously with that conclusion, the question for the Commission which arises from that conclusion is: 'If not now, when?'. The Treaty promises made by the Crown to YNLR's First Nation members might have been "easy to fulfill initially but difficult to *keep* as time goes on and development increases."¹¹

When an agency such as the Commission is tasked with acting on behalf of the Crown for certain regulatory purposes (such as the regulation of nuclear industry activities, in this case), it also assumes the Crown's constitutional and treaty obligations. Those obligations are upstream of its statutory responsibilities, and **must be fulfilled regardless of whether the statute expressly provides for them to be fulfilled.**¹² If the Commission finds itself seemingly unable to find an opportunity to ensure that the Aboriginal or Treaty rights of affected Aboriginal peoples are considered; if the Commission's response to such concerns is consistently 'not at this time', or 'this particular decision on the larger project won't cause adverse effects', the Commission may be infringing the Treaty rights of YNLR's First Nation members.

After explaining how the government of British Columbia had erroneously relied on a piecemeal approach to consultation – focusing on each individual decision - the BC Supreme Court explained that: "The processes do not consider the impacts on the exercise of Treaty rights or implement protections other than occasional site specific mitigation measures. The Province has long been on notice that a piece-meal project-by-project approach to consultation will not address Blueberry's concerns. To date, there is a lack of mechanisms to meet and implement the substantive rights and obligations contained in the Treaty."¹³ The exact same deficiency plagues the Commission's processes. Remedying that deficiency, and honouring the treaties, requires that the Commission meaningfully consider the cumulative effects of the Beaverlodge project and other Athabasca Basin development on the environment and Aboriginal and Treaty rights.

It is not enough to say that the decision currently under review will not *add* any new impacts (cumulative or otherwise) and so the request should be granted. It is that exact frame of reference which has left the residents of the Athabasca Basin with the damaged baseline they now face. The further CNSC allows Cameco (and other Athabasca Basin proponents) to move

⁹ Commission Record of Proceedings, Including Reasons for Decision, April 3-4, 2013 at para 152.

¹⁰ Record of Decision, DEC 22-H5, at para 100.

¹¹ *Fort McKay* at para 80.

¹² See e.g. *Wahgoshig First Nation v Ontario* 2011 ONSC 7708 at para 41.

¹³ *Yahey* at para 1735.

down the regulatory path without properly assessing cumulative effects, the harder it will be to protect and restore the rights impacted by those effects.

Recommendation 1: CNSC should order that CNSC staff, in collaboration with YNLR, commission a comprehensive regional cumulative effects assessment of the Athabasca Basin/Nuhenéné. The terms of reference for the study should be developed jointly by YNLR and CNSC Staff and the study should be conducted by an independent third party with subject-matter experts. Once completed, the CNSC should convene a hearing to reconsider the “Path Forward” plan approved in its 27 May 2013 decision and further discussed in CMD-14-M60 to incorporate and address the findings of the study.

Recommendation 1A: A condition should be added to Cameco’s renewed licence requiring that it not submit any requests to release additional Beaverlodge properties to the ICP until the study described in Recommendation 1 is completed, and further requiring that any future release applications by Cameco incorporate, and consider, the results of that study.

Review of 2014 standards

CNSC should take the opportunity presented by this licence renewal to consider, and ‘renew’ the performance objectives and indicators which were first ordered in the decision renewing the current licence (WFOL-W5-2120.0/2023) and presented by CNSC staff in the first annual report following that renewal (CMD14-M60).

From the beginning of this ten-year period, the “Path Forward” model and the Commission’s permitted release pathway for Beaverlodge framed the requirement that the properties be ‘safe, stable and secure’ through the lens of recreational and institutional users of the Beaverlodge areas, rather than prioritizing the traditional land users who were displaced when the mines and related facilities were originally constructed.

This misplaced prioritization should be corrected, and the Commission should revisit the ‘Path Forward’ and the accepted performance objectives and indicators when renewing this licence.

An Example: Fish Consumption

When approving Cameco’s renewed licence in 2013, the Commission was assured that “traditional harvesting of country food does not pose any risks to the health or safety of persons...” in part, because the fish consumption advisory “... provides a limit on the amount of

fish an individual can safely consume in a given period of time rather than an absolute zero tolerance fish consumption ban.”¹⁴

Cameco’s assurance, and the Commission’s acceptance of it, confuses recreational harvesting and country food consumption with harvesting for traditional purposes and sustenance-based country food consumption. In reality, the fish consumption guidelines for the affected areas only allow consumption of between 2 and 5 servings (220g each) per month of a variety of fish in certain Beaverlodge lakes.¹⁵ In some other affected lakes, the guidelines recommend consuming no fish whatsoever.

Moreover, it is not the case that consuming servings of fish from lakes contaminated by high levels of selenium (a by-product of uranium mining) below the level recommended by the guidelines will protect harvesters from selenium toxicity, it will merely slow its onset. While the consumption guidelines allow for 5 servings of lake trout per month from Beaverlodge Lake, a harvester consuming 5 servings per month likely faces a very similar human health risk to a person consuming 6 servings per month.

YNLR is concerned that Cameco’s methodology on these matters has not meaningfully changed or been updated in the past ten years. In its May 2021 HAB Area Evaluation Technical Memorandum, Cameco significantly underestimates fish consumption (both in actual terms, and in terms of reasonable consumption for traditional sustenance harvesting), going so far as to use a “fish ingestion rate” approximately 50% lower than Health Canada’s guidelines.¹⁶

The result of these outdated standards has been that Cameco has been permitted to release properties from licensing and federal regulatory oversight despite them being not suitable for traditional resource use.¹⁷

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.

Conclusion on 2014 Standards

¹⁴ Commission Record of Proceedings, Including Reasons for Decision, April 3-4, 2013, paras 52-53.

¹⁵ Saskatchewan Ministry of Environment, Healthy Fish Consumption Guideline, Sept 2016

¹⁶ See section 3.4 of YNLR’s 2021 intervention (CMD22-H5.15) for more information.

¹⁷ The response that the properties are still subject to provincial regulatory oversight is a non sequitur. The ICP is a passive monitoring program which makes no provision for restoration and includes no active oversight or regulation.

As it did in its 2013 licence renewal decision,¹⁸ the Commission should use this renewal as an opportunity to revisit the performance objectives and indicators used by itself and Cameco to determine when Beaverlodge properties are ready for release from licensing.

The performance objectives and indicators, identified nearly a decade ago now,¹⁹ were developed at a particular point in time, and since then, our knowledge about proper approaches to impact assessment, to mining remediation, and of the importance of traditional resource use, have all progressed. Treating those decade-old standards as a permanent and unchangeable truth is unreasonable and ignores the impact of the Beaverlodge project on the traditional land users who are most impacted by it.

The public interest, the safety and security of the environment and people, and YNLR members' Aboriginal and Treaty rights would all be best served by a comprehensive review of the performance objectives and indicators.

Recommendation 2: The Commission should order, as a condition of Cameco's license renewal, that the 2014 performance objectives and indicators be updated to reflect the current regulatory environment, taking into consideration impacts to Aboriginal and Treaty rights, cumulative effects to both rights and the environment, and Indigenous knowledge.

Recommendation 2A: The development of updated performance objectives and indicators should be done collaboratively with CNSC staff, Cameco, and YNLR.

Recommendation 2B: Cameco should be prohibited from applying for release of additional Beaverlodge properties from licensing until the performance objectives and indicators have been updated.

Transparency

YNLR and its members are concerned that there is a disconnect in Cameco's communication obligations. Signs posted near certain lakes in the Beaverlodge area warn of limitations and moratoriums on fish and water consumption. Yet YNLR members were unable to locate any relevant and easily understandable information about those important topics in either the Beaverlodge Factsheet,²⁰ or on the Beaverlodge project website.²¹

¹⁸ At para 9.

¹⁹ CMD14-M60

²⁰ Contained in CMD23-H101-1B

²¹ Beaverlodgesites.com

Commission President Velshi recently stated: "... public confidence in the safety of licensed activities and in the good stewardship of resources is enhanced by transparency and by clear, plain-language messaging. The Commission itself has a positive mandate to disseminate objective information to the public, and it takes the job of transparency, openness, and plain-language communication seriously as a fundamental part of regulatory trust building."²²

Yet for residents of YNLR communities, and traditional harvesters exercising Aboriginal and Treaty rights, the reality of communication from Cameco and CNSC has often been contradictory, confused, and technical.

CNSC and Cameco consistently use the terms "safe, stable and improving" in their communication related to Beaverlodge, reflecting the language described in the 2013 licence renewal and 2014 performance objectives and indicators. However, those terms are used as 'terms of art', connoting meanings other than their natural meanings. For YNLR members, a lake that is "safe" is a lake from which they can drink the water; land is "safe" if it can be lived on for extended periods of time, not mere weeks per year; fish are "safe" if they can be eaten in abundance, not a few carefully measured portions per month.

Public confidence in the licensed activities, and public confidence in the Commission's regulation of those activities, is reduced when communication is partisan, or seems to be suggesting a state of affairs other than what the public has experienced.

YNLR submits that calling Beaverlodge "safe" is no different than Ontario Power Generation describing "nuclear waste" as "sustainability services". It is, at best, marketing-speak which erodes public confidence.

In addition to revising the language being used, Cameco and the Commission must communicate more effectively, in plain language, and in ways that are meaningful to affected communities.

Recommendation 3: The Commission should revisit the language of "safe, stable and improving" to ensure that it is using natural language and not terms of art, and that the language used reflects the lived reality for land users in the Beaverlodge area. If "safe" is to continue being used, the substantive licensed meaning of that word should be updated to reflect the term's natural meaning.

²² [Renewal of OPG licence: President Velshi underscores importance of transparency - YouTube](https://www.youtube.com/watch?v=KJq7aXUjdpA)
<https://www.youtube.com/watch?v=KJq7aXUjdpA>

Recommendation 3A: The Commission should amend Cameco's renewal license to include a condition requiring it to collaborate with YNLR to develop a communication protocol, including but not limited to more and better hazard signage in the Beaverlodge area.

Renewal of License and Updates to Funding Structure

YNLR does not oppose the Application to extend the term of Cameco's Waste Facility Operating License to 31 May 2025. Instead, during this interval of license extension, several studies and investigations need to be conducted, as described above.

These investigations require a collaborative approach between YNLR, CNSC, and Cameco. YNLR requires proactive involvement in regulatory activities that impact residents of Nuhenéné, and this approach needs to become standard practise with all proponents.

As YNLR has informed the Commission in previous interventions, preparation of interventions is often limited to a short interval of time such that submissions are incomplete and/or extensions to deadlines are requested. YNLR urges the Commission to set longer regulatory timelines, and to require proponents to provide longer periods of notice. The public interest is not served by intervenors, including those with constitutionally-protected Aboriginal and Treaty rights, having to scramble to conduct studies and prepare submissions in short, three-month intervals.

Recommendation 4: YNLR was granted an extension in funding timelines beyond the deadline to submit this intervention to conduct in-depth interviews with Basin residents. In the future, the CNSC should make participant funding available outside of specific regulatory application cycles to permit regular intervenors like YNLR to gather and assess evidence at a reasonable pace and in a manner which is respectful of differing capacity limitations. We request that CNSC enhance its transparency about the regulatory schedule and further request that funding be advanced through our Terms of Reference to facilitate timely, complete, and meaningful responses to regulatory activities occurring in Nuhenéné.

Closing Remarks

The Beaverlodge area has a long history of traditional land use is culturally important to Athabasca Basin Denesųłiné and Nuhenéné residents. YNLR appreciates our ongoing communications with the CNSC regarding this and other Applications pertaining to Beaverlodge. This document summarizes our concerns outlined in the Commission Member Documents authored by CNSC and Cameco pertaining to renewal for a 2-year term for Cameco's Waste Facility Operating License.