



Oral presentation

Exposé oral

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

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

In the Matter of the

À l'égard de

Orano Canada Inc., Cluff Lake Project

Orano Canada Inc., Projet de Cluff Lake

Request to Revoke the Current Licence and
Release the Cluff Lake Project to the
Institutional Control Program

Demande visant à révoquer le permis pour le
projet de Cluff Lake et à transférer la propriété
au Programme de contrôle institutionnel

Commission Public Hearing

Audience publique de la Commission

March 1, 2023

1^{er} mars 2023

YA'THI NÉNÉ LANDS AND RESOURCES INTERVENTION

*In the matter of the Orano Canada Inc. Cluff Lake Project: Request to
revoke the current license and release the Cluff Lake Project to the
Institutional Control Program*



2 February 2023

Introduction

The now-decommissioned mine site at Cluff Lake once consisted of two underground mines, four open pit mines, an aboveground tailings management facility, a mill, and other support facilities. All infrastructure has now been demolished, pit mines flooded and backfilled, waste rock piles and tailings management facility covered, and trees planted.

The Cluff Lake Project is currently licensed to Orano Canada Inc. (hereafter, Orano) by the Canadian Nuclear Safety Commission (CNSC). Orano is requesting revocation of their license UML-MINEMILL-CLUFF.00/2024 and transfer of this property from the regulatory oversight of the CNSC to the Government of Saskatchewan's Institutional Control Program (ICP).

Both the CNSC and the Government of Saskatchewan have reported that performance objectives and criteria for the Cluff Lake Project have been achieved and that the property is deemed ready to be released to oversight by the ICP. Decommissioning objectives include:

- Acceptable water quality at surface waters and flooded pits
- Levels of gamma radiation, radon, and long-lived radioactive dust that pose no unacceptable risk to Traditional Land Use
- A reduction of infiltration rates around waste rock piles that restrict contaminant movement in groundwater and are protective of downstream waters
- A stable, self-sustaining landscape and return of the site to similar appearance prior to mining activities

Crucially, these performance objectives are measured with reference to standards which assume occasional visits and recreational use, rather than traditional use and occupancy of the affected lands in a manner consistent with the traditional way of life of Ya'thi Néné's First Nation members which the Crown promised to protect when treaties were established.

The decommissioned mine site is now accessible to the public, including for Traditional Land Use activities.

The ICP is said to have been established in accordance with Canada's international obligations and is designed to ensure that decommissioned mine and mill properties are monitored and managed indefinitely by the Government of Saskatchewan. It is meant to ensure management and mitigation into the indefinite future of any risks to the environment and persons visiting the site.

Ya'thi Néné Lands and Resources (YNLR) holds a Participant Funding Contribution Agreement with the CNSC to provide an intervention related to Orano's application to revoke their current license and release the Cluff Lake Project to the ICP (hereafter, the Application).

The purpose of YNLR's intervention is to provide information and context of the Athabasca Denesūliné and Basin Residents' perspective and concerns regarding the transfer of the Cluff

Lake Project to the ICP, as this site lies within Nuhenéné (the traditional territory of the Athabasca Denesų́liné).

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 develop the Athabasca Basin's resources. YNLR is governed by an independent Board of Directors appointed by the elected Leadership 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.¹ A significant majority of the residents of the municipalities represented by YNLR are also Aboriginal persons,² 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 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.

¹ 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.

² 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.

Document Timeline and Submission

YNLR applied for funding to intervene in the Application on 20 September 2022. YNLR signed its counterpart of a funding agreement on 18 November 2022 and received the fully executed agreement on 22 November 2022. YNLR received Commission Member Documents (CMD) submitted by CNSC Staff and Orano on 21 November 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 interviews of Athabasca Basin residents
- Conducted a legal review

YNLR is providing this submission on behalf of its member communities. YNLR requested an extension of the deadline for submission of the written intervention from 12 January 2023 to 22 February 2023 (the latter the same deadline as for submission of the presentation for the public hearing) and received an extension to 19 January 2023. A further extension to 2 February 2023 was later provided upon request.

This is the second release application which CNSC has considered for which funding delivery, application review, evidence collection, and intervention preparation was limited to a short window of time and overlapped with December holidays. In YNLR's intervention with respect to the release of 18 properties from Cameco's Beaverlodge Project in 2022, YNLR raised detailed and specific concerns about the timelines of that application, and the impact which those timelines had on YNLR's ability to provide meaningful feedback and ensure that the Aboriginal and Treaty rights of YNLR members were meaningfully addressed.³ Those same concerns apply to this proceeding.

Both CNSC staff and nuclear industry proponents have extensive resources (both financial and human) available to impose and meet expedited deadlines, repurpose resources to meet urgent needs, and access additional resources where needed. YNLR does not have this capacity. YNLR is largely dependent on participant funding from CNSC for its participation in these hearings and is unable to begin substantive evidence collection or analysis of the application documents until that participant funding is secured. While CNSC and proponents may spend weeks or months planning for and preparing applications and hearing materials, YNLR has only 4-6 weeks (and in this case, interrupted by widely observed holidays) from when participant funding is awarded until submissions are due. This key procedural fairness issue ought to be

³ The Commission described these concerns in paragraph 93 of its Record of Decision but did not address those concerns in any substantive or meaningful way.

addressed by the CNSC to ensure that YNLR (and other Indigenous intervenors) are not prejudiced by systemic procedural inequalities.

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 lacks 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. The data that YNLR were able to collect was limited by:

- The knowledge of the interview subjects, including historical land use knowledge that has been lost over time with succeeding generations
- The amount of funding provided which limits the number of interviews and the amount of secondary analysis which can be conducted
- The narrow timelines provided to submit this intervention

Results of 2022 Community Survey

YNLR Community Land Technicians (CLTs) conducted survey interviews in Black Lake and Fond du Lac Denesų́in  First Nations and Uranium City. Land users were asked twelve questions about their knowledge of decommissioning and remediation of the Cluff Lake Property, their current and historical land use in the area, concerns about the remediation and monitoring of the Property, wishes to be involved in future monitoring of the Property, safety of their drinking water and harvested foods, and concern for future generations. Twenty-five residents were interviewed in December 2022.

Knowledge of decommissioning through participation in meetings or review of documents

Athabasca Basin residents were aware of the closure of Cluff Lake Mine, likely through word-of-mouth and common knowledge. However, all interviewees stated that they have limited knowledge of decommissioning details, as they did not participate in community meetings or review of documents. It is unclear if such meetings were held in communities or if information was disseminated through written documents when decommissioning activities were proceeding. One resident stated that they received information as a Northern Saskatchewan Environmental Quality Committee (NSEQC) member.

Land use in the Cluff Lake region

Seven interviewees (28%) reported present-day Traditional Land Use activities in the Cluff Lake region, and specifically mentioned trapping, fishing, and hunting. Historical use of the area was also reported. More than half were at least familiar with the Site, often through employment

opportunities at the Mine or with exploration projects in the area. Some had historical knowledge of the area based on information and stories provided by past generations.

CNSC regulatory processes over the life of the Cluff Lake project have failed to take into consideration cumulative effects and their impact on land use. The intergenerational dispossession of YNLR members from the area ought to be something CNSC requires be remedied, rather than pointing to (relatively) low levels of Traditional Land Use as evidence that the area is safe for contemporary uses.

Confidence in remediation and monitoring, and institutional and community involvement in future monitoring

Two interviewees (8%) felt the site had not been remediated properly but provided no details about reasons substantiating their position. Most interviewees stated uncertainty about proper remediation due to lack of information (data, photos) or hands-on experience (i.e., opportunity to visit the site); about half of interviewees felt that the Site had been properly remediated based on the available information.

Like confidence in remediation, two interviewees (8%) felt that the Site was not being properly monitored but did not provide details. Most interviewees were unsure about their confidence in current monitoring of the Site, again based on limited information provided to communities and lack of community involvement, but about half of these individuals felt that Site was being properly monitored based on the available information.

Interviewed residents had mixed responses when asked of their opinion about which regulatory institution (CNSC or Saskatchewan Government via the ICP) was better suited for long-term monitoring of the Cluff Lake Site. Several interviewees felt that CNSC communicates more thoroughly with Basin communities than does the Government of Saskatchewan, but an equal number felt that the ICP should be responsible for monitoring going forward. Many expressed hopes for adequate monitoring and reporting to Basin communities.

Overwhelmingly, there was ubiquitous support and request for Athabasca Basin community involvement in monitoring of the Cluff Lake Site into the future. This information was communicated in responses to interview questions involving remediation, monitoring, and confidence in agencies relegated to monitoring of the Site.

The support for Athabasca Basin community involvement in monitoring, combined with the generally limited understanding among community members of the current state of monitoring and concomitant lack of trust in the safety of the site is further evidence of how Saskatchewan's ICP is not a suitable replacement for CNSC monitoring. As community members mentioned, communication from the Government of Saskatchewan is sporadic and often unhelpful, while monitoring occurs every five years, eventually dwindling to only once per quarter of a century.

Concern about risk of contaminants to environment, human health, and future generations

Fourteen (56%) interviewees expressed concern for risk of contaminants to the well-being of the environment, including to birds, fish, and mammals. The remainder of interviewed residents reported no concern conditional on adequate monitoring into the future.

Likewise, fourteen (56%) interviewed residents had concerns about risk of contaminants to human health through consumption of harvested game and drinking water. Not surprisingly, nearly all Uranium City residents were included in this group, undoubtedly due to their experience with the legacy of contamination near that community. The remainder of interviewees stated no concerns, again conditional on continual monitoring and reporting to communities.

Half of interviewed Basin residents expressed concern about risk to future generations, whereas the remainder did not have concerns, again conditional on continual monitoring and reporting.

Discussion of Interview Results

Land use and assertion of Traditional Territory

When considering contemporary land and resource use by Athabasca Basin residents, it is imperative to keep in mind that alienation from the land caused by industrial development, and the psychological, cultural, and social impacts of uranium mining, including fear and stigma, are significant obstacles and real impacts which prevent residents from fully accessing affected areas. Even when industrial sites (or former industrial sites) have been remediated, the psychological, social, and cultural impacts of those sites may continue. Treating physical impacts as the only impacts is reductive and inconsistent with the Crown's treaty obligation to ensure that the "way of life" of the treaty nations are protected.⁴

These impacts disincentivize, or worse, prevent Basin residents from exercising Aboriginal and Treaty rights in such areas. As well, Nuhenéné has faced substantial industrialization since the early 20th century, and cumulative impacts of development has left residents with a steadily shrinking usable area for the exercise of their rights. CNSC has never substantively accounted for either the total cumulative effects load in the Cluff Lake area or Athabasca Basin, or the additive cumulative effects contributed by the Cluff Lake Project. Given the intensity of uranium mining and other development in Nuhenéné, this failure to consider cumulative effects and how those cumulative effects have impacted Basin residents from exercising their Aboriginal and Treaty rights is not justifiable. Without a proper cumulative effects assessment, CNSC will be making its decision with incomplete information and depriving YNLR (and its rights-holding members) of constitutionally-guaranteed opportunities to be consulted.

Depictions of contemporary land use describe only land use that has persisted through time, despite impacts. Thus, we urge the Commission to consider interview results as only a sample

⁴ *Yahey v British Columbia* 2021 BCSC 1287 at para 438

and temporally limited snapshot of land use, and not a comprehensive list of all value and use. The goal of restoring land use and occupancy to pre-project levels must be the lens through which these matters are assessed. To do otherwise would condemn Basin residents – many of whom are treaty partners with the Crown – to be content with the equivalent of scraps from the Crown’s table, rather than to be at the table, as equals, as they were promised in the Treaty. Just as the CNSC Commissioners would not be satisfied if they purchased a house, only to be given an empty lot filled with buried asbestos, neither are YNLR members satisfied to be told that the territory which they stewarded from time immemorial until the 20th century should be acceptable to them in a damaged state.

The Cluff Lake Project lies well within Nuhenéné. Since the 1970s, hundreds of Denesų́líné have participated in traditional knowledge, oral history, and land use and occupancy studies that recorded their lives, history, and resource use. The traditional territory of Nuhenéné is synonymous with the range of the Beverly and Qamanirjuaq caribou herds. The Denesų́líné of Nuhenéné historically used and occupied the lands, waters, and resources throughout the Athabasca Basin. While caribou have always been especially important, a multitude of other species and resources have been used as food and medicine and are of cultural and spiritual importance. In undertaking those uses of the lands and waters of Nuhenéné and its resources, the Denesų́líné built cabins and camps, identified 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 Denesų́líné.

The ICP and Athabasca Basin community involvement in future monitoring

Limited information has been provided to YNLR to support the Government of Saskatchewan’s assertion that it’s ICP is able to meet the obligations of ensuring that monitoring, management, and mitigation of decommissioned properties occurs into the indefinite future. YNLR is concerned that Saskatchewan’s ICP is not fit for the task of protecting Aboriginal and Treaty Rights of Basin residents. The ICP is not adequately funded; as of March 2021, the Monitoring and Maintenance Fund (the mandate of the ICP focused on maintenance and monitoring, rather than emergency management) balance was reported at \$426,625⁵; these funds are ostensibly intended to cover the total costs of monitoring of all sites held by the ICP in perpetuity. Likewise, as of March 2021, the balance of the Unforeseen Events Fund (the mandate of the ICP to cover any unforeseen (emergency) future events that are not covered by Monitoring and Maintenance Fund) was a mere \$62,221.⁵

Interviews with Athabasca Basin residents indicated that community involvement in monitoring of the Cluff Lake Site is imperative, as is adequate dissemination of results of that monitoring to Basin communities. YNLR has received little information from Government of Saskatchewan’s Ministry of Energy and Resources (that is responsible for the ICP) staff about how Basin communities will be involved in monitoring of this site going forward. Ministry of Energy and

⁵ [Publications Centre \(saskatchewan.ca\)](https://publications.saskatchewan.ca)

Resources personnel have expressed some interest in communicating with YNLR about the ICP but no focused meetings have occurred.

CNSC's assessment that the ICP is capable of managing the remaining nuclear liabilities, and that the affected properties are safe and secure for Traditional Land Use, is of little to no value if the communities who are meant to be using those lands do not know, or do not trust, the available information. Environmental management requires ongoing and culturally appropriate communication strategies which meaningfully address fear and stigma and facilitate the involvement of locally affected communities in the continued rehabilitation and monitoring of their territories.

Cumulative Effects

CNSC has never meaningfully studied or substantively considered cumulative effects in the Athabasca Basin generally, or Cluff Lake in particular. That failure has led to substantial loss of use for YNLR members as the remediation of Cluff Lake (and other sites) 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. Until the full cumulative effects situation in the Athabasca Basin is understood and considered by CNSC, no regulatory approvals for transfer to the ICP should be granted.

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.⁶ 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.⁷

⁶ See *Yahey v British Columbia*, [2021 BCSC 1287](#) at paras [1197](#)-1208.

⁷ 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."

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 CNSC must be able to understand and address the full cumulative effects circumstances before proceeding with this, or any other Athabasca Basin regulatory request.

Recommendations

Recommendation 1

Prior to granting Orano's application to revoke its Cluff Lake license and transfer responsibility for the site to Saskatchewan's ICP, CNSC staff and ICP staff should be required to work with YNLR to develop a communications strategy which will guide communication with Basin communities about future and ongoing monitoring of the site.

Recommendation 2

Prior to granting Orano's application to revoke its Cluff Lake license and transfer responsibility for the site to Saskatchewan's ICP, CNSC should require that the proponent and/or the Government of Saskatchewan (through the ICP) develop in collaboration with YNLR a community-led monitoring program which will supplement the monitoring proposed to be done by the ICP. The community-led monitoring program should reflect the Indigenous knowledge of YNLR's Indigenous members, should be fully funded by the proponent and/or the Government of Saskatchewan, and should complement, and not duplicate, monitoring being done by the ICP. The parties (Orano, Saskatchewan, YNLR) should be required to submit a workplan and budget and confirm that each party is in agreement with the proposed program.

Recommendation 3

Prior to granting Orano's application to revoke its Cluff Lake license and transfer responsibility for the site to Saskatchewan's ICP, 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, the study should be conducted by an independent third party with subject-matter expertise, **and all CNSC regulatory proceedings related to ICP in the Athabasca Basin/Nuhenéné should be put on hold until the study has been completed and a technical conference held by the Commission to assess how the findings of the study impact future regulatory decision-making.**

Recommendation 4

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.

Closing Remarks

The Cluff Lake Project lies within Nuhenéné, the traditional territory of the Athabasca Denesų́liné. YNLR appreciated our timely communications with the CNSC regarding this Application for revocation of Orano’s license for Cluff Lake and transfer of this property from the regulatory oversight of the CNSC to the Government of Saskatchewan’s ICP, and this document summarizes our concerns outlined in the Commission Member Documents authored by CNSC and Orano. Transfer of information is critical in ensuring all peoples are meaningfully informed with regards to ongoing operations within the region.