

Whiteshell Laboratories Nuclear License Renewal

Written Intervention

Manitoba Métis Federation

September 13, 2024



Executive Summary

This written intervention by the Manitoba Métis Federation (MMF) highlights key issues and concerns regarding the renewal of the operating licence for Whiteshell Laboratories (WL). It highlights the importance of integrating consent-based management and decision-making, particularly with respect to Indigenous rights and land use planning, and evaluates the current decommissioning strategies, environmental impacts, and safety culture at the facility.

Consent-Based Management and Decision-Making - The MMF underscores the necessity for decisions regarding WL's operations to align with consent-based management principles. While there is general agreement on the need for decommissioning and reclamation, there is a lack of consensus on how these should be executed. It is the expectation of the MMF that CNL in decommissioning WL, within the National Homeland of the Red River Metis, will engage and consult with the MMF to ensure Red River Metis rights, interests, and values are reflected. The MMF stresses that WL's decision-making must adhere to these standards, considering the broader implications for Indigenous rights and environmental stewardship.

Land Use End State Planning and Decision-Making - We remain concerned that the Land Use End State (LUES) Plan continues to lack consideration for mutually agreed upon end-state objectives, taking an unfortunately narrow scope to public and Indigenous engagement. The LUES Plan should guide all decommissioning activities to achieve a desired end state, but currently, it fails to integrate a comprehensive vision addressing the desired end state for all affected lands, including their biological, physical, cultural, and social aspects. The MMF is concerned that the plan is being driven by decommissioning activities rather, than shaping decommissioning to achieve a desired land use outcome.

Long-Term Engagement and Relationship Building - Through the course of the term of the existing licence, the MMF have been dissatisfied with Canadian Nuclear Laboratories' (CNL) approach to engagement and relationship building, particularly the handling of the 2023 Memorandum of Agreement (MOA). Despite progress in some areas, there are ongoing issues with how CNL addresses the MMF's concerns, particularly regarding in situ disposal methodologies and broader engagement practices. The MMF calls for a more inclusive and transparent process, emphasizing the need for Indigenous-led environmental monitoring and greater collaboration.

Culture of Safety and Security - WL's safety culture and compliance have become of increasing concern. Notably, fire protection, worker safety, and security over the past licence period have all experienced significant setbacks. We strongly advocate for a more proactive approach to identifying and mitigating safety issues to prevent future non-compliance.

Future Directions - The MMF advocates for ensuring that any amendments to the Nuclear Research and Test Establishment Decommissioning Licence for WL align with regulatory approvals and Indigenous



consent. The MMF calls for CNL to proactively address safety and environmental management gaps and engage meaningfully with Red River Métis throughout the licence renewal process.

In summary, there is a strong need for enhanced engagement, adherence to consent-based management principles, improved safety practices, and thorough consideration of environmental impacts in the ongoing management and decommissioning of Whiteshell Laboratories.



Contents

Executive Summary	2
1.0 Introduction	5
2.0 Background—The Red River Métis and the MMF	6
2.1 The Red River Métis	6
2.2 Red River Métis’ Rights, Claims, and Interests.....	6
3.0 Whiteshell Laboratories Licence Renewal.....	12
3.1 Consent-based Management and Decision-Making	13
3.2 Land Use End State Planning and Decision Making	13
3.2.1 Lack of End-State Objectives	14
3.2.2 Consideration of Affected and Unaffected Lands.....	14
3.2.3 Characterization of Engagement and Outstanding Concerns.....	14
3.2.4 Implications for Decommissioning and Disposal Decision-Making.....	15
3.3 Long Term Engagement and Relationship Building	15
3.3.1 CNL-MMF Multi-Year Memorandum of Agreement.....	16
3.3.2 Capacity Building and Collaborative Environmental Monitoring.....	16
3.4 Culture Prioritizing Safety and Security	17
3.4.1 Security	18
3.4.2 Worker Safety	19
3.4.3 Fire Protection Program	19
3.5 2002 Comprehensive Study Report	20
3.6 Decommissioning and Management of Radioactive Waste Material.....	21
3.6.1 Disposal of Radioactive Waste.....	21
3.6.2 Decommissioning of WR-1.....	21
3.7 Environmental Impacts and Concerns	22
3.7.1 Detection of Contaminants in the Environment.....	22
3.7.2 Perceptions and Psycho-Social Impacts.....	23
4.0 Conclusions and Recommendations	24



1.0 Introduction

Whiteshell Laboratories (WL), located near Pinawa, Manitoba, is situated in the heart of the National Homeland of the Red River Métis. This facility was developed in the 1960s as a nuclear research facility and was built without consultation or consideration of impacts on the rights of the Red River Métis. Most of the programs at the facility were discontinued in 1997, and since have focused on decommissioning and demolition activities.

Whiteshell Laboratories is owned by Atomic Energy of Canada Limited (AECL), however, is operated by Canadian Nuclear Laboratories (CNL), an entity operated and controlled by a consortium of privately held organizations. Currently, CNL is proposing to renew the Nuclear Research and Test Establishment Decommissioning Licence for WL, a process which is overseen by the Canadian Nuclear Safety Commission (CNSC). Through CNL's request for a 3-year licence renewal, CNL is proposing to maintain the status quo, including the terms and conditions set out in the current (2020-2024) licence period. Although outside the scope of this licence, as currently contemplated, CNL has indicated an intention to change the disposal methodology for Whiteshell Reactor 1 (WR-1), a key component of the WL facility. Presently, the desired methodological change would see disposal shifting from offsite disposal (currently approved) to the use of in situ disposal. The MMF recognizes that while in situ disposal is not specifically contemplated under the proposed licence and that the CNSC has made it clear that this is indeed outside the scope of these proceedings, the MMF finds it difficult to divorce in-situ disposal from the decommissioning function of WL, given its incorporation in many existing and developing project plans, as well as CNL's own representation in Section 4.1.2 *Whiteshell Reactor* – 1 of the written submission for CNL.

In developing this intervention, the MMF focused on the following core elements:

Recommendation 1a identify where the Red River Métis' rights, claims and interests overlap with and may be impacted by proposed WL activities and decisions;

Recommendation 1b identify environmental, technical, or regulatory issues with WL, and provide recommendations on where and how Red River Métis' rights and interests may need to be better addressed through licencing conditions;

Recommendation 1c identify issues and challenges with the proposed WL activities that will require ongoing engagement and consultation with MMF on behalf of the Red River Métis; and

Recommendation 1d identify outstanding concerns which have not yet been resolved through the Regulatory Oversight Report and other CNSC processes.

As part of the review, the MMF provided an analysis of past and proposed activities described through CNL's written submission and supplemented by CNSC's written submission. Focus was placed on examining the information described to understand how activities and decisions supported by this licence intersect with and may impact the rights, claims, and interests of the Red River Métis. Except where



stated, an assessment of the adequacy of WL management plans, including mitigation, management, and contingency plans was not conducted.

We offer this written submission for consideration by the CNSC.

2.0 Background—The Red River Métis and the MMF

2.1 The Red River Métis

The Red River Métis are an Indigenous collectivity and Aboriginal People within the meaning of section 35 of the *Constitution Act, 1982*. Based on our emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, interests, and claims throughout and beyond the Province of Manitoba.

Since 1982, Métis rights have been recognized and affirmed by section 35 and protected by section 25 of the *Constitution Act, 1982*. These rights were further confirmed and explained by the Supreme Court of Canada ("SCC") in *R. v. Powley*, 2003 SCC 43. Manitoba Courts also have recognized Red River Métis rights in *R. v. Goodon*, 2008 MBPC 59. These decisions have affirmed that the Métis hold existing Aboriginal rights throughout their traditional territories. Our Citizens and harvesters rely on and use the lands, waters, and resources of our traditional territory throughout the Province of Manitoba and elsewhere within the historic Northwest, including in and around the area of the Project, to exercise their constitutionally protected rights and to maintain their distinct Red River Métis customs, traditions, and culture.

2.2 Red River Métis' Rights, Claims, and Interests

Based on its emergence as a distinct Indigenous People in the Northwest prior to effective control by Canada and the creation of the province of Manitoba, the Red River Métis holds rights, claims, and interests throughout and beyond the Province of Manitoba consistent with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination.

The MMF is mandated to promote, protect, and advance the collectively held Aboriginal rights of the Red River Métis. Through this mandate, the MMF engages with governments, industry, and others about potential impacts of projects and activities on our community. In 2007, the MMF Annual General Assembly adopted Resolution No. 8, which provides the framework for engagement, consultation, and accommodation with the Red River Métis. Designed by Métis, for Métis, Resolution No. 8 sets out the process that is to be followed by governments, industry, and other proponents when developing plans or projects that have the potential to impact the section 35 rights, claims, and interests of the Red River



Métis. It was unanimously passed by MMF Citizens and mandates a "single-window" approach to consultation and engagement with the Red River Métis through the MMF Home Office.¹

In engaging the MMF, on behalf of the Red River Métis, the Resolution No. 8 Framework calls for the implementation of five phases:

- Phase I: Notice and Response;
- Phase II: Research and Capacity;
- Phase III: Engagement and Consultation;
- Phase IV: Partnership and Accommodation; and
- Phase V: Implementation.

This project has the potential to impact Red River Métis rights, claims, and interests and as such, engagement and consultation with the MMF, through the process set out above, must be followed. The Project is located within the traditional territory of the Red River Métis, and in the heart of our Homeland. At one time, this was the "postage stamp province" of Manitoba. This is the birthplace of the Red River Métis and where we currently have an outstanding claim flowing from the Federal Crown's failure to diligently implement the land grant provision of 1.4 million acres of land promised to the Red River Métis as a condition for bringing Manitoba into Confederation and set out in section 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.²

Red River Métis section 35 rights are distinct from First Nation's rights and must be respected. The Manitoba Métis Federation is the National Government of the Red River Métis.

Prior to the creation of Manitoba, the Red River Métis had always exercised its inherent right of self-determination to develop its own self-government structures and institutions centered around the Red River Settlement and throughout the Northwest. As described by Louis Riel in his 1885 memoirs, Métis

¹ More information about Resolution No. 8 is available online at: <http://www.mmfmb.ca/docs/2013-Resolution%208%20Booklet-VFinal.pdf>

² *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623 ("MMF Case"). The Supreme Court of Canada recognized that this outstanding promise represents "a constitutional grievance going back almost a century and a half. So long as the issue remains outstanding, the goal of reconciliation and constitutional harmony, recognized in s. 35 of the *Constitution Act, 1982* and underlying s. 31 of the *Manitoba Act*, remains unachieved. The ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied. The unfinished business of reconciliation of the Metis people with Canadian sovereignty is a matter of national and constitutional import" (para. 140).



self-government was well-established and functioning when Canada came to the Red River Métis in the late 1800s:

When the Government of Canada presented itself at our doors it found us at peace. It found that the Métis people of the North-West could not only live well without it... but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution whose junction was more legitimate and worthy of respect, because it was exercised over a country that belonged to it.

Métis self-government has evolved and changed over time to better meet the needs of the Red River Métis. Today, the MMF is the recognized, democratically elected, self-government representative of the Red River Métis and on July 6, 2021, it signed along with the Government of Canada, the Manitoba Métis Self-Government Recognition and Implementation Agreement.

Since 1967, the MMF has been authorized by the Red River Métis through a democratic governance structure at the Local, Regional, and national levels. As part of this governance structure, the MMF maintains a Registry of Red River Métis Citizens.³ By applying for Red River Métis Citizenship, individuals are confirming the MMF is their chosen and elected representative for the purposes clearly set out in its Constitution,⁴ including as related to the collective rights, claims, and interests of the Red River Métis.⁵

The MMF Constitution confirms that the MMF has been created to promote the political, social, cultural, and economic rights and interests of the Red River Métis. The MMF is authorized to represent the Red River Métis' collective rights, interests, and claims. This authorization is grounded in the MMF's democratic processes that ensures the MMF is responsible and accountable to the Red River Métis.

The MMF governance structure includes a centralized MMF President, Cabinet, Regions, and Locals. There are seven (7) Regions and approximately 135 Locals throughout Manitoba (Figure 1). There are more than

³ MMF Constitution, Article III outlines the citizenship definition and application process. This definition ("Métis" is defined to mean "a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation ") aligns with the definition of what constitutes a section 35 rights-bearing Métis community as outlined by the Supreme Court of Canada in *Powley* at para. 30.

⁴ *Newfoundland and Labrador v. Labrador Metis Nation*, 2007 NLCA 75 at para 47: "Anyone becoming a member of the [Labrador Metis Nation] should be deemed to know they were authorizing the LMN to deal on their behalf to pursue the objects of the LMN, including those set out in the preamble to its articles of association. This is sufficient authorization to entitle the LMN to bring the suit to enforce the duty to consult in the present case."

⁵ *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 at para 30: "[A]n Aboriginal group can authorize an individual or an organization to represent it for the purpose of asserting its s.35 rights."



three thousand Citizens who live outside of Manitoba. All MMF Citizens are Members of a Local. Locals and Regions work together to authorize and support the MMF Cabinet, and the MMF's various departments and offices. Through elections held every four years, Citizens choose and elect the MMF Cabinet consisting of the MMF President, who is the leader and spokesperson for the MMF, a Vice-President of each Region, and two Regional Executive Officers from each Region. The MMF Cabinet also includes the spokeswoman from the Infinity Women Secretariat.



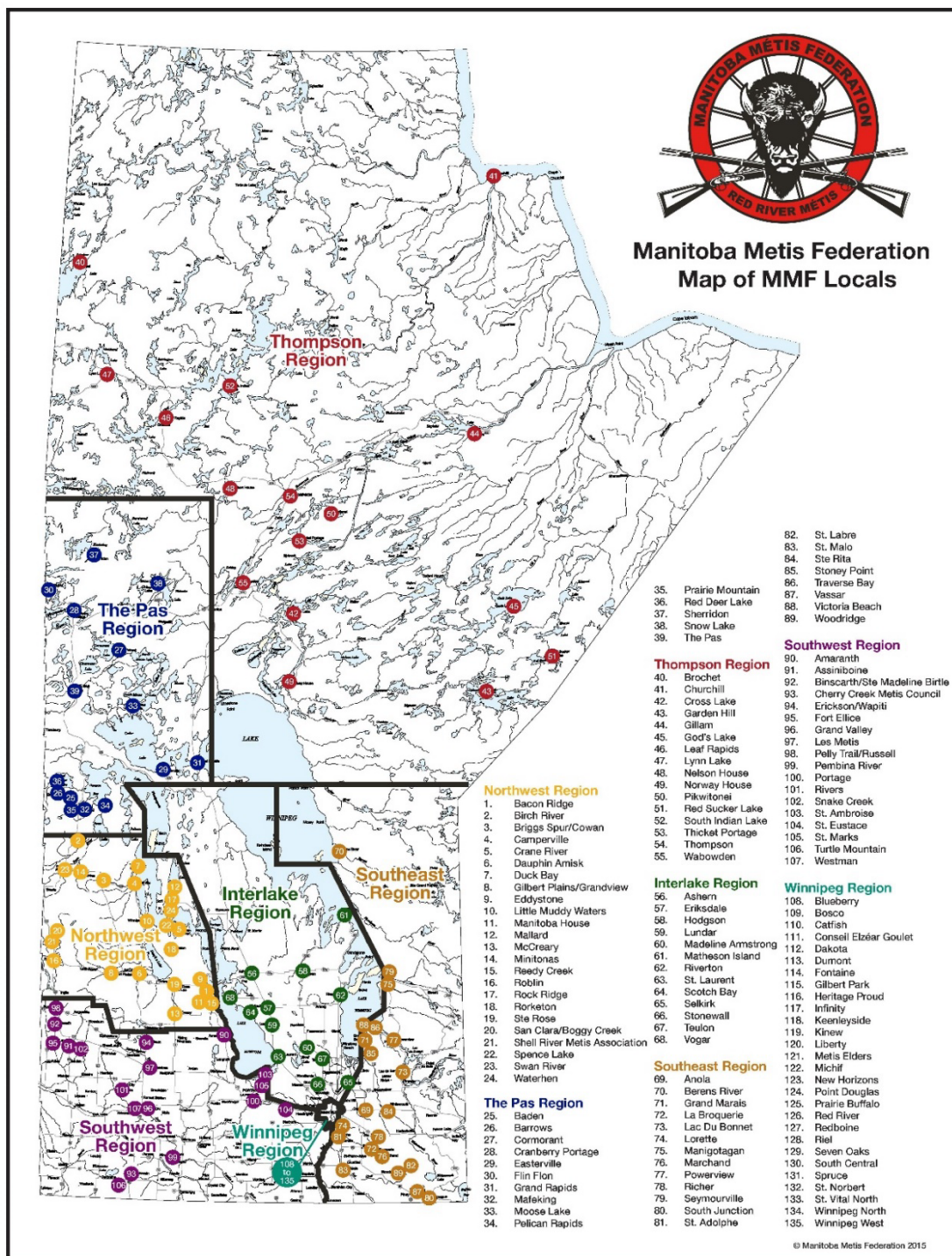


Figure 1. MMF Regions and Locals



The MMF, as the duly authorized representative of the Red River Métis, has been recognized by both the federal and provincial governments in agreements, policies, and legislation. For example, in 2002, *The Child and Family Services Authorities Act* recognized the MMF for the devolution of child and family services to MMF institutions. This Act establishes a series of Child and Family Services Authorities to administer and provide the delivery of services to various distinct Indigenous communities in Manitoba. It creates a Métis Authority, the directors of which is appointed by the MMF.

In 2008, the courts in Manitoba further recognized that "[t]he Métis community today in Manitoba is a well-organized and vibrant community. Evidence was presented that the governing body of Métis people in Manitoba, the Manitoba Métis Federation, has a membership of approximately 40,000, most of which reside in southwestern Manitoba."⁶ In 2010, the Manitoba Government adopted a Manitoba Métis Policy, and stated that:

*The Manitoba Métis Federation is a political representative of Métis people in Manitoba and represents in Manitoba the Métis who collectively refer to themselves as the Métis Nation. ... Recognition of the Manitoba Métis Federation as the primary representative of the Métis people is an important part of formalizing relationships.*⁷

In 2012, the *MMF-Manitoba Harvesting Agreement (2012)* negotiated between the MMF, and the Manitoba Government recognized some of the collective section 35 harvesting rights of the Red River Métis and relied on the Citizenship processes of the MMF as proof of belonging to a rights-holding Aboriginal community:

*For the purposes of these Points of Agreement, Manitoba will recognize as Métis Rights-Holders, individuals who are residents in Manitoba and who hold a valid MMF Harvesters Card, issued according to the MMF's Laws of the Hunt. [. . . and will] consult with the MMF prior to implementing any changes to the current regulatory regime that may infringe Métis Harvesting Rights.*⁸

⁶ *R. v. Goodon*, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007. .

⁷ Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Metispolicy_en.pdf

⁸ MMF-Manitoba Harvesting Points of Agreement (September 29, 2012), ss. 3, 6-7.



In 2013, the SCC recognized the "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada." It went on to grant the MMF standing as the "body representing the collective Métis interest" in the *MMF Case*.⁹ Additionally, in 2016, the *MMF-Canada Framework Agreement* stated:

the Supreme Court of Canada recognized that the claim of the Manitoba Métis Community was "not a series of claims for individual relief" but a "collective claim for declaratory relief for the purposes of reconciliation between the descendants of the Métis people of the Red River Valley and Canada" and went on to grant the MMF standing by concluding "[t]his collective claim merits allowing the body representing the collective Métis interest to come before the court.

*[and that] Canada is committed to working, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.*¹⁰

The MMF signed the *Manitoba Métis Self-Government Recognition and Implementation Agreement* (MMSGRIA) on July 6, 2021. This marked a major step forward in reconciliation between the Red River Métis and Canada. The MMSGRIA, among other things, immediately recognized the MMF as the National Government of the Red River Métis and sets out a path forward towards the completion of a Modern Treaty. This means, consistent with the direction of our Citizens, we have removed the arbitrary borders that are not of our design or of our choosing. Thousands of Citizens who reside beyond the borders of Manitoba, inside and outside of Canada have chosen to take their Citizenship with the Red River Métis. This means we represent more than 125,000 Citizens and Harvesters and we have a regional, provincial, national, and international mandate, which is a responsibility we take seriously.

Our Modern Treaty was ratified by thousands of Red River Métis Citizens in June and builds upon the important work of the MMSGRIA. The conclusion of a Modern Treaty, which is already close to completion, and its implementation legislation will enable our people to finally renew our solemn partnership with Canada through our democratically elected representative, the MMF Government.

⁹ *MMF Case*, *supra* note 6 at para 44.

¹⁰ *MMF-Canada Framework Agreement on Advancing Reconciliation*, November 15, 2016, Preamble.



3.0 Whiteshell Laboratories Licence Renewal

3.1 Consent-based Management and Decision-Making

Decisions about the fate of WL including operations must align in principle and spirit with consent-based management and decision-making. WL and other nuclear legacy liabilities occupy unique space with respect to development in Canada as a result of it being part of land reclamation efforts, and by maintaining uncommon public-private ownership and management structure. WL does not face the same challenges that greenfield sites may, in needing to obtain a social licence to proceed with activities. It would be reasonable to state that the MMF supports the need for decommissioning of WL and proceed with reclamation/rehabilitation work. However, we do not agree with proposed approaches for how decommissioning and reclamation/rehabilitation should be conducted.

It is the expectation of the MMF that CNL in decommissioning WL, like any other form of development within the National Homeland of the Red River Metis, will work with the MMF to ensure Red River Metis rights, interests, and values are reflected. All major decision-making, including those which will influence end state land use and conditioning, meet this standard, as while CNL operationally is comprised of private organizations (the Canadian National Energy Alliance) who *should* seek to meet this standard, CNL as an entity is contracted to manage and operate AECL sites and facilities. Further, AECL as the owner of the WL facilities, and CNSC along with other federal organizations such as Natural Resources Canada, who serve to provide regulatory oversight, are Crown Agencies or Departments, maintain a duty under the *United Nations Declaration on the Rights of Indigenous Peoples Act*, to uphold this standard.

With respect to decision-making on the fate of WL, the MMF is of the position that decisions must be guided by values and principles by which the MMF's support is obtained and would apply to the conditions and limitations on any permit/licencing issued by the CNSC.

3.2 Land Use End State Planning and Decision Making

The MMF takes exception to the development of the LUES Plan and its application with respect to other decommissioning plans. Specifically, the LUES Plan should serve as a guidance document for all other decommissioning and demolition plans, as it sets the overall end-state plan for WL. Therefore, all activities described within other sections of the decommissioning and demolition plans must be compatible with achieving the end land state vision as described by the LUES Plan.



3.2.1 Lack of End-State Objectives

Contrary to CNL's assertion that "based on outcomes of public and Indigenous engagement, the LUES plan will be updated", CNL has not provided opportunity for the public or Red River Métis Citizens to voice their views on the end state goal (e.g., the foundational principles of the LUES Plan) in the development of the LUES. Rather, CNL has presented the MMF a nearly complete draft LUES Plan and is simply soliciting engagement regarding reclamation prescriptions and other relatively minor details, constrained by a plan in which WR-1 and other wastes are disposed of in situ. As a result, rather than developing a shared vision for WL land use and end state, CNL is simply dictating a plan based on their preferred decommissioning pathway, thereby resulting in end state being defined by decommissioning activities rather than decommissioning activities being limited to what may achieve the desired end state. This will continue to result in an end state and decommissioning strategy that is not supported by the MMF, as it will result in a forever loss of function and corresponding perceptions impacting land use and the rights of the Red River Métis.

3.2.2 Consideration of Affected and Unaffected Lands

The LUES Plan focuses on the physical, chemical, and biological state of the Whiteshell Laboratory lands, with little consideration for the interactions between biological components such as plants and animals and human historic, current, or future states on the land. As a result, The LUES Plan is missing a critical consideration when planning for end state and speaks to a lack of end state objectives. The lack of consideration for human and biological factors in the Plan is also a product of the definition used for "affected lands" and "unaffected lands". Importantly, affected lands must capture all lands that are or are perceived to be influenced by WL (or its activities), which includes physical, chemical, and radioactive factors, but must also consider biological/ecological, human health, cultural, social, and psychological factors. This expanded view of what constitutes affected lands is necessary, as biological/ecological, human health, cultural, social and psychological factors will dictate future human and biological interactions, equal to physical, chemical, and radioactive factors.

3.2.3 Characterization of Engagement and Outstanding Concerns

The MMF is concerned by how CNL has framed engagement to date. Within the LUES Plan, CNL fails to state that perhaps the most important outstanding concern raised by the Red River Métis and others, is the opposition to in situ decommissioning and disposal of radioactive material in place. CNL presents this concern as a lack of understanding or knowledge on the part of the Red River Métis, First Nations, and others. However, the MMF's concern speaks more directly to the vision that the MMF and others hold for the end state of WL lands. Within the LUES Plan, CNL must recognize the MMF's concerns with in-situ decommissioning and disposal which continues to act in opposition to the rights, interests, and vision of the Red River Métis for end state of WL lands.



3.2.4 Implications for Decommissioning and Disposal Decision-Making

Decisions regarding decommissioning that will ultimately influence land use end state must be driven by the LUES Plan. However, CNL is approaching decommissioning decision-making independently from the LUES Plan. An excellent example of this gap is demonstrated in CNL's options identified for the disposal of Low-Level Waste Trenches. For these trenches, CNL identifies three potential options for disposal:

1. In situ disposal of the trenches' waste as stated in the 2002 Comprehensive Study Report;
2. Removal of the dry active waste with the clay cap and liner materials remaining in situ for natural attenuation: The dry active waste would be sorted and processed (compaction or incineration) and shipped for off-site processing and/or interim storage; and
3. Full removal of all dry active waste and affected clay material (caps and liners): The dry active waste and affected clay material would be sorted and processed (compaction or incineration) and shipped for off-site processing and/or interim storage.

While each of these three options provide a technically feasible disposal solution, Option 1 would leave low level waste in situ, potentially impairing land use end state. Option 3 however, would result in the removal of all low-level waste, with the result being an unrestricted land use end state. The MMF points to this example as while we recognize that decommissioning and disposal strategies must remain safe and technically feasible, alignment with the land use end state must be the main determining factor in selecting a preferred option.

3.3 Long Term Engagement and Relationship Building

It is disappointing that circumstances led to the MMF ending its support of the 2023 Multi-Year Memorandum of Agreement. However, there are many important aspects of that agreement surrounding appropriate engagement pathways, information sharing, and environmental monitoring events that must continue. Included in the ongoing engagement between CNL and the MMF is acknowledgement of the MMF's concerns and lack of consent for in-situ decommissioning methodologies for the disposal of WR-1. The MMF recognizes that the proposed in-situ decommissioning methodology is not within the scope of this licence renewal proceeding. Nonetheless, the MMF considers CNL's approach of minimizing and dismissing the MMF's concerns throughout the EA process concerning in-situ decommissioning, as an example of how CNL continuously fails to appropriately characterize the needs of the MMF in their decision making and operational function.



3.3.1 CNL-MMF Multi-Year Memorandum of Agreement

It is important for CNSC to recognize CNL's representation of the MMF's engagement within the context which they exist. The MMF and CNL signed a multi-year memorandum of agreement (MOA), which was designed to advance the relationship between the MMF and CNL. However, as demonstrated by the MMF's withdrawal of support for this MOA, CNL has failed to maintain the confidence of the MMF in ensuring that its interests will be appropriately represented and considered by CNL.

Additionally, CNL have hand-picked engagement activities to shine a light on CNL's efforts. While the MMF does agree that these efforts (with the exception of the signing of the 2023 MOA), have led to improvements in the relationship between CNL and the MMF, what is absent from this record is the many instances where the MMF's concerns have been dismissed by CNL, or CNL has otherwise engaged poorly with the MMF. This is perhaps best exemplified by CNL's invitation for the MMF to participate in End Land Use Planning exercises. Through this process, CNL engaged the MMF to comment and provide input into their End Land Use Plan, which focused on revegetation prescriptions for end land use, rather than beginning with efforts to establish what end land use should look like, through a shared visioning exercise.

3.3.2 Capacity Building and Collaborative Environmental Monitoring

In Section 5.9.2 *Past Performance* of the written submission from CNL, CNL states that WL is advancing reconciliation with Indigenous communities by inviting representatives to observe and witness various Environmental Protection Program work. This work is implemented to monitor environmental condition and includes the examination of effluent quality, samples for laboratory analysis and those related to traditionally harvested and other foods. Additionally, CNL has begun to work with the MMF to develop environmental monitoring programming with the goal of furthering the scope and range of CNL's Environmental Protection Program. With the termination of memorandum of agreement between the MMF and CNL in early 2024, joint monitoring collaboration has been put on hold. The MMF finds CNL's commitment to building capacity for Indigenous-led environmental monitoring both important in continuing to foster relationships, and to building confidence in CNL's environmental program (and subsequent results). Through the next phase of licencing for WL, the MMF would like to see the continued expansion of Indigenous-led monitoring as a licence condition, ensuring that the MMF is positioned to work in collaboration with CNL to collect environmental information and data that is relevant to the rights, interests, values, and concerns of Red River Métis Citizens impacted or affected by this project. This includes the MMF's inclusion in providing oversight on monitoring of the biophysical environment, as well as equivalent monitoring of psycho-social factors including wellbeing, relatedness to the land (and waters) near WL, and behavioural modification as a result of real or perceived risks.



3.4 Culture Prioritizing Safety and Security

Through the duration of the existing licencing period, CNL has endured several challenges including health and safety issues related to the COVID pandemic, worker safety, and compliance setback in the Fire Protection Program. Subsequent stand down to address issues as noted in the *Executive Summary* of the written submission from CNL “have created negative impacts on staff morale, which can be a leading indicator for events”. Our primary concern is that without addressing root culture issues, WL may continue a repeating loop of non-compliance and safety issues.

CNL has implemented a series of procedures and processes to meet the requirements of REGDOCS 2.1.2, *Safety Culture* as well as CSA N286.12 (R2022) *Management System Requirements for Nuclear Facilities*. This management system is intended to continually assess performance through the following mechanisms:

- Safety and security culture assessments and the annual monitoring of CNL, as well as individual sites such as WL, against the maturity model indicators;
- Nuclear Performance Assurance Review Board, which reviews the performance of CNL’s nuclear facilities and Safety and Control Areas (SCAs) quarterly;
- Corrective Action Review Board, which reviews the status of the Problem Identification and Resolution Program, its outcomes, and the results of nuclear oversight audits;
- Contractor Assurance System, which is used to integrate various performance measures and indicators to provide an evaluation of CNL performance; and
- Facility authorities / Chief Nuclear Officer monthly meeting reviews of nuclear facilities safety performance.

CNL further has implemented a system of Improvement Actions (ImpActs), in which events of non-compliance or other concern are recorded on a progressive scale of urgency/importance. Generally, this system has demonstrated that the significant proportion of ImpActs are identified when they are of relatively low concern (e.g., Level 3 or Level 4). However, as outlined below in Sections 3.4.1, 3.4.2, and 3.4.3 of this intervention, this process still allows for serious issues to arise. In considering these issues, CNL has demonstrated the challenges it has faced in committing to a safety culture at WL. The MMF recognizes that where issues have been identified, CNL has robust mechanisms in place to determine the root cause and implement programming aimed at addressing issues. However, issues related to fire protection preparedness, defence posturing (site security), and worker safety, demonstrates the gaps in CNL's ability to proactively address issues from occurring in the first place. CNL has been fortunate in that issues which have arisen generally have had minimal consequence, however we fear that the culture of relaxed oversight could have significant consequences in the future given the nature of WL.



In Section 5.1.3 *Future Plans* of the written submission from CNL, CNL describes their future plans for their management system which includes oversight for issue identification and resolution. Specifically, CNL states “The CNL management system enables continued safe operational practices at CNL throughout the next licence period. Canadian Nuclear Laboratories will continue to apply the management system, adapting as required to changing conditions and regulatory requirements.” However, CNL fails to comment or make any form of recommendation or plan on how the system can evolve to better learn from challenges faced under the current licencing period.

In understanding how to improve issues identification, the MMF emphasizes the need for CNL to not only conduct post-event root cause analyses, but also implement processes that can proactively identify circumstances or environments which can foster the development of issues. Further, we encourage CNL to examine the various systems in place to detect issues and understand why issues such as those described in Sections 3.4.1, 3.4.2, and 3.4.3 of this intervention, were not identified as issues when they posed relatively little concern to the overall operational function, health, and safety at WL.

3.4.1 Security

As noted by both CNL and the CNSC, through the course of the existing licence term, CNL struggled to maintain a satisfactory compliance rating for security. Issues were first identified in 2017, which led to the issuance of Order in Council (Order #9336), requiring CNL to demonstrate that they are capable of making an effective intervention to stop an adversary from committing theft or sabotage at WL.

As noted in the MMF’s Intervention on Regulatory Oversight Reports for CNL facilities in 2019¹¹ and 2021¹², the MMF is concerned by two factors. First was WL being able to reach a level of non-compliance given the importance site security plays in keeping the public safe. We recognize that with evolving threats, there is a need to ensure that security positioning to respond appropriately within the context of WL. As a result, the MMF found it disappointing that CNL, with oversight from CNSC, was not able to proactively assess threats and adequately adjust its defence posturing at WL, leading to the initial evaluation of “below expectation” for compliance. The second component of WL’s non-compliance that the MMF finds troubling is that security remained below expectation from 2018 – 2021, indicating that CNL was not able to commit to resolving this issue in a timely manner, and drawing into question CNSC’s ability as a regulator to compel CNL to rectify the situation.

¹¹Manitoba Métis Federation. 2020. Written Submission from the Manitoba Metis Federation. <https://api.cnsccsn.gc.ca/dms/digital-medias/CMD20-M22-5.pdf/object?subscription-key=3ff0910c6c54489abc34bc5b7d773be0>

¹² Manitoba Métis Federation. 2022. Written Submission from the Manitoba Metis Federation. <https://api.cnsccsn.gc.ca/dms/digital-medias/CMD22-M33-4.pdf/object>



The MMF is glad to see that as of 2023, WL has met CNSC's expectations for security compliance, however, point to this as an important example of CNL's challenges in proactively identifying significant issues and quickly addressing them by employing appropriate programming and resources.

3.4.2 Worker Safety

Exposure to radiation as it relates to health and safety has consistently demonstrated exemplary performance. This is made clear by not only the low overall level of exposure for employees and visitors to site, but also the consistently declining annual exposure levels observed over the course of the existing licence term.

Conventional health and safety have experienced setbacks in the last year, as not only is there a jump in the amount of time lost due to injury, but also a particular instance in which a worker received a low voltage shock as a result of inadequate identification of hazards in the work environment. Incidents such as this are not only important to examine in response, but CNL must work to proactively identify the potential for these issues.

3.4.3 Fire Protection Program

Perhaps most concerning in review of non-compliance issues through the duration of the existing licence period are the issues that were identified in association with CNL's Fire Protection Program. In April 2023, CNL identified deficiencies in CNL's training records, procedures for equipment inspection, testing and maintenance, as well as the use of incomplete or expired personal protective equipment¹³. An incident report issued on May 19, 2023¹⁴ noted further deficiencies including: several fire hydrants identified as unavailable (8 of 28), fixed suppression systems (sprinklers) had not been properly maintained and tested in WR-1, and emergency lighting in buildings had not been tested to National Fire Protection Association (NFPA) standards.

This is simply unacceptable to the MMF. The Fire Protection Program is one of the more important safety plans in place for WL, as it is designed to ensure that WL is able to respond effectively in the event of a fire. Fire poses a very real threat to WL, which is compounded by the facility's relatively rural location. CNL must continually maintain a position in which it is prepared to deal with fire originating from within the WL facility as well as externally (e.g., forest fire), until a time at which CNL's resources can be relieved. Resources from the Pinawa fire department may similarly be exhausted in the event of a complex fire and

¹³ Canadian Nuclear Safety Commission (CNSC). 2023. Notice of Violation (Corporation) 2023-AMP-04. <https://api.cnsccsn.gc.ca/dms/digital-medias/2023-10-13-AMP-CNL-eng.pdf/object>

¹⁴ CNSC. 2023. Reportable Event at Whiteshell Laboratories. <https://www.cnsccsn.gc.ca/eng/acts-and-regulations/event-reports-for-major-nuclear-facilities/event-reporting/cnsc-letter-to-cnl-may-2023/>



need to rely on support from specialized teams in Winnipeg. It is therefore essential that CNL be self-sufficient and prepared to respond.

While the poor maintenance of the Fire Protection Program is concerning from a practical perspective, it also draws into question CNL's ability to implement and maintain appropriate administrative oversight for health and safety programming at WL. Specifically, we are concerned that as CNL continues to work towards decommissioning of the WL facilities, including the proposed in situ decommissioning of WR-1, the implementation and maintenance of administrative or institutional controls and programming will become relied upon more to ensure on-site safety.

CNL envisions an end state for the WL site in which in situ decommissioning has left sections of the site requiring institutional controls, as well as various other forms of physical or regulatory barriers as a method of protecting the environment and health and safety of those who use the site. This plan will rely on CNL developing, implementing, and enforcing a plan to restrict activities on site. CNL's inability to maintain oversight over the Fire Protection Program under operating conditions, leads us to question whether CNL will be responsible and effective in maintaining appropriate oversight over institutional controls post-decommissioning, where operations will no longer be led on site.

The MMF recognizes that on a surficial level, the relationship between the management of Fire Protection Program and future administrative or institution controls is fleeting. However, as the delivery and maintenance of administrative or institution controls remotely for generations to come is an essential component of preserving human and environmental health under a scenario in which in situ decommissioning is conducted, it is necessary that CNL demonstrate an ability to reliably maintain similar programming during this phase of the project.

3.5 2002 Comprehensive Study Report

WL still focuses on employing information from the 2002 Comprehensive Study Report (CSR). This report is now more than 20 years old, and the site has undergone significant changes as a result of decommissioning activities. The MMF has raised this issue in the past with CNL and the CNSC, as we are concerned that assumptions based on the CSR may no longer be valid. The MMF requests that CNL undertake appropriate assessment to determine whether the 2002 CSR remains valid. Where the CSR is not considered valid, we request that CNL be required to address gaps in a revised CSR



3.6 Decommissioning and Management of Radioactive Waste Material

3.6.1 Disposal of Radioactive Waste

Low Level Waste (LLW) and Intermediate Level Waste (ILW) which is generated at WL as part of decommissioning or demolition activities are packaged and transferred to Chalk River Laboratories (CRL) for interim storage. Volumes of both LLW and ILW were observed to generally decline over the course of the current licence period.

Table 1. Radioactive wastes transported to Chalk River Laboratories for disposition (adapted from the written submission from CNL).

Year	Low Level Waste (LLW) m ³	Intermediate Level Waste (ILW) m ³
2020	527.7	26.3
2021	921.00	3.2
2022	341.6	2.52
2023	87.0	0.0
2024 ^a	0.0	0.0

Note: ^a Waste transported as of May 2024.

The MMF seeks to ensure that it is not CNL's long-term intention to dispose of LLW or ILW in situ or otherwise at the WL permanently, in addition to what is being contemplated by the proposed in-situ decommissioning of WR-1. The MMF recognizes that there will be periods of higher and lower removal of radioactive waste from the site based on decommissioning activities, however, we seek to restate our position that radioactive waste should not be permanently disposed of at the WL facility.

3.6.2 Decommissioning of WR-1

It is acknowledged that the proposed in-situ decommissioning strategy for WR-1 is outside of the scope of these licence proceedings, however, we question the language that CNL uses when describing their plans to apply for an amendment to the Nuclear Research and Test Establishment Decommissioning Licence for WL, stating:

“The WR-1 Project’s draft Environmental Impact Statement (EIS) was submitted and has passed the CNSC’s completeness check and entered the final technical review stage. Canadian Nuclear Laboratories



is preparing revised responses to all outstanding information requests and comments from the Federal Provincial Indigenous Review Team. The submission of revised dispositions to comments is planned to be complete in the summer of 2024. Once responses meet reviewer expectations and the final EIS and supporting documents and documents required for licensing are deemed complete by CNSC staff, CNL will apply to amend the Nuclear Research and Test Establishment Decommissioning Licence for WL to the Commission for consideration a future public hearing.” (Section 4.1.2 Whiteshell Reactor – 1)

Based on this information, CNL does not specifically plan to wait until the Environmental Assessment Decision Statement approves the proposed decommissioning strategy for WR-1, which includes a determination of whether the proposed decommissioning strategy will have adverse environmental effects, including those which may adversely impact the rights of Red River Métis.

It is the position of the MMF that CNL must receive full authorization from the relevant authorities, along with the free, prior and informed consent from the MMF, prior to pursuing amendments to the proposed Nuclear Research and Test Establishment Decommissioning Licence, which would enable the implementation of in-situ decommissioning for WR-1.

3.7 Environmental Impacts and Concerns

3.7.1 Detection of Contaminants in the Environment

3.7.1.1 Waste Management Area Ditches

As noted in Section 4.1.5 *Waste Management* Areas of the written submission from CNL, elevated tritium levels above background concentrations in ditches of the waste management area and beyond, suggest that tritium is able to escape containment. Release of radioactive material, while perhaps not posing a direct impact on the biophysical environment, still must be subject to root cause analysis, minimizing or eliminating sources of release, and ensuring that sources may not pose a greater risk in the future.

3.7.1.2 ILW Bunker

Tritium results at ILW Bunker 2 have increased to 7,738 Bq/L, greater than previously observed levels. ILW Bunker 3 tritium results remain elevated at 76,569 Bq/L, but lower than what was observed 2022. Levels at ILW Bunker 5 also demonstrate levels which are elevated from background with an observed maximum of 10,345 Bq/L. CNL asserts that there is no evidence that there is currently any *significant* [emphasis added] contaminant migration pathway from the ILW Bunkers. Results from wells farther from the bunkers show much lower levels of tritium.

While CNL is confident that there currently isn't a significant contaminant migration pathway from the ILW bunkers, detectable levels of strontium and tritium in waste management area ditches and beyond



the waste management area, though orders of magnitude lower than within the bunkers indicates that there is indeed a contaminant migration pathway. This is concerning as not only does it suggest contaminants are not completely contained by ILW Bunkers and infrastructure, but also that if not appropriately kept in check could grow to become a significant pathway in the future. Though CNL suggests that “levels of tritium leaving CNL property remain quite low”, it is concerning to the MMF, that WL still serves as a detectable source of tritium emissions to the uncontrolled environment.

3.7.2 Perceptions and Psycho-Social Impacts

The MMF acknowledges that while presence of radioactive contaminants in the uncontrolled environment remains elevated above background levels, they are below specific derived release levels¹⁵. The MMF notes that CNL’s plans to continue to work with the MMF, Red River Métis Citizens, and others to address the impacts to perceptions and psycho-social impacts are absent from CNL’s application for license renewal. However, nuclear projects carry a level of stigma that are generally not consistent with other types of development. Perceptions around environmental effects from WL (or perhaps any nuclear facility), whether founded in observations of biophysical detriment (e.g., observations of fish kills, health effects, or exceedances in regulatory guidelines), or anxiety or fear of risks that the potential radioactive material may hold, the behavioural modifications which stem from these perceptions are real. As a result, perceptions of WL now and into the future can influence how or when people exercise Aboriginal rights in the region (e.g., hunt, fish, gather), where they choose to live, where they source foods from, and other activities they may do in day-to-day life. For some, that may mean choosing different locations to conduct those activities, but for others, who may face constraints, relocating is not an option and as a result either prevents them from doing the activity all together or creates a scenario where they conduct that activity under a level of duress.

For Red River Métis Citizens impacted by WL, this is a fact of day-to-day life. WL was developed without any form of consultation with the Red River Métis. While the MMF does not seek to open the past failings of the Crown in fulfilling adequate consultation on this project in this instance, the reality is that WL represents an injury to the land and real biophysical and psycho-social impacts to Red River Métis Citizens. In considering these impacts, the MMF seeks commitment from both CNL and CNSC to work with the MMF to continue to address these impacts, and to develop programming that both recognizes these impacts and works to address them. We urge CNSC to ensure licence conditions include the development and implementation of programming aimed at the psycho-social impacts of WL, and the need to ensure that future WL planning recognizes the enduring impact and actively works to identify a future state where these effects are eliminated.

¹⁵ Canadian Nuclear Safety Commission. 2024. Environmental Protection Review Report: Whiteshell Laboratories.



4.0 Conclusions and Recommendations

Whiteshell Laboratories, this licence renewal, and the decommissioning project overall represents an important opportunity to right past wrongs. The MMF recognizes that the failings of the Crown in consulting the Red River Métis in the development of WL is not something that can be changed. However, in facing a future for WL that explores the fate for a contaminated site, CNL, AECL, and CNSC are faced with important decisions about a pathway forward. The MMF believes that in this moment, there is an opportunity for CNL, AECL, and CNSC, to hear the concerns of Indigenous voices, and ensure that WL moves along a path that respects the rights of affected Métis and First Nations, and reflects the importance of safety, financial prudence, and technical possibilities. To this end, the MMF feels strongly that in order to advance a mutual beneficial outcome, CNL, AECL, and CNSC must be willing to work together with the MMF and affected First Nations to define what the end goals for WL are. It is only through this approach that the future for WL be supported through the MMF's consent.

In considering the focus for CNL over the duration of the proposed licencing, the MMF supports CNL in its efforts to continue to evolve procedures and processes to continue to reduce emissions of all contaminant forms to the environment. However, in recognizing the challenges that CNL have faced over the current licencing period, the MMF expects that CNL will work to proactively anticipate and identify issues and implement timely resolution, ensuring the safety and security of WL, the environment and those that surround it.

Through this intervention, the MMF have identify several key actions and recommendations to be considered as part of this licencing process, as well as through the duration of the proposed licence as it comes into effect.

- In developing End State Land Use Plans, CNL must commit to working with the MMF to co-define foundational goals and values, to inform plan development.
- Decommissioning and disposal strategies must be informed and align with technical feasibility, principles of As Low as Reasonably Achievable (ALARA), and end state land use goals and values.
- CNL, AECL, and CNSC must commit to employing the principles of free, prior, and informed consent as it relates to long-term decision-making affecting the rights of the Red River Métis.
- CNL must commit to not only implementing programming aimed at improving the overall safety culture at WL, but activity monitoring the effectiveness of programming to ensure that it results in operational improvement for WL.
- CNL, in representing engagement with the MMF to regulators and others, must fairly describe both the opportunities and challenges which are identified by the as they relate to WL future planning.



5.0 References

- [1] Manitoba Métis Federation. 2007. Resolution 8. https://www.mmf.mb.ca/wcm-docs/docs/departments-engagement_and_consultation/resolution_8___1_.pdf
- [2] Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, [2013] 1 SCR 623 (“MMF Case”). The Supreme Court of Canada recognized that this outstanding promise represents “a constitutional grievance going back almost a century and a half.
- [6] R. v. Goodon, 2008 MBPC 59 para 52. Note that the number of MMF Citizens (40,000) identified by the Court was as of 2007.
- [7] Manitoba Métis Policy, September 2010 at 4, 12, online (PDF): http://www.gov.mb.ca/imr/ir/major-initiatives/pubs/Metispolicy_en.pdf
- [8] MMF-Manitoba Harvesting Points of Agreement (September 29, 2012), ss. 3, 6-7.
- [9] MMF Case, supra note 6 at para 44.
- [10] MMF-Canada Framework Agreement on Advancing Reconciliation, November 15, 2016, Preamble.
- [11] Department of Justice Canada. 2023. United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan. <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/index.html>
- [12] Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5 (CanLII), <https://canlii.ca/t/k2qhn>
- [13] Manitoba Métis Federation. 2020. Written Submission from the Manitoba Metis Federation. <https://api.cnsccsn.gc.ca/dms/digital-medias/CMD20-M22-5.pdf/object?subscription-key=3ff0910c6c54489abc34bc5b7d773be0>
- [14] Manitoba Métis Federation. 2022. Written Submission from the Manitoba Metis Federation. <https://api.cnsccsn.gc.ca/dms/digital-medias/CMD22-M33-4.pdf/object>
- [15] Canadian Nuclear Safety Commission (CNSC). 2023. Notice of Violation (Corporation) 2023-AMP-04. <https://api.cnsccsn.gc.ca/dms/digital-medias/2023-10-13-AMP-CNL-eng.pdf/object>
- [16] CNSC. 2023. Reportable Event at Whiteshell Laboratories. <https://www.cnsccsn.gc.ca/eng/acts-and-regulations/event-reports-for-major-nuclear-facilities/event-reporting/cnsc-letter-to-cnlmay-2023/>
- [17] Canadian Nuclear Safety Commission. 2024. Environmental Protection Review Report: Whiteshell Laboratories.



Appendix A: Whiteshell Laboratories Restoration Land Use and End State Plan – WL-508350-PLA- 001 Rev. D5