



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

Record of Decision

DEC 19-H111

In the Matter of

Applicant Denison Mines Corporation

Subject Decision on the scope of an environmental
assessment of the proposed Wheeler River
Project

Date of
Decision December 20, 2019

RECORD OF DECISION – DEC 19-H111

Project Proponent: Denison Mines Corporation

Address/Location: 1100 – 40 University Avenue, Toronto, ON, M5J 1T1

Purpose: Decision on the scope of an environmental assessment of the proposed Wheeler River Project

Project description received: February 19, 2019

Date of decision: December 20, 2019

Location: Canadian Nuclear Safety Commission
280 Slater St., Ottawa, Ontario

Panel of Commission: R. Velshi, President

Decision on the scoping of an environmental assessment under the *Canadian Environmental Assessment Act, 2012*

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1.0 INTRODUCTION

1. On February 19, 2019, Denison Mines Corp. (Denison) submitted a description of its Wheeler River Project (the project) to the Canadian Nuclear Safety Commission¹ (CNSC). Denison has proposed a new *in situ* recovery (ISR) uranium mining and processing operation to be located in the southeastern Athabasca Basin, near Russell Lake in northern Saskatchewan. The proposed project would include underground and surface facilities to support the ISR mining and processing of uranium ore, with an annual production of up to 5,400 tonnes of triuranium octoxide (U₃O₈) over an operating period of 20 years.
2. Pursuant to section 15 of the *Canadian Environmental Assessment Act, 2012*² (CEAA 2012), which was in effect at the time the project description was submitted, the CNSC as the Responsible Authority (RA) for the proposed project, was obliged to consider the application of CEAA 2012 in respect of the project.
3. The Wheeler River Project meets the definition of a “designated project” that is included in the “Physical Activities” list, as defined in section 31 of the *Regulations Designating Physical Activities*³ made under CEAA 2012, requiring that an EA be carried out for the project. CNSC staff posted a Notice of Commencement of an EA (NOC) on the Canadian Impact Assessment Registry on May 31, 2019, as per section 17 of CEAA 2012, thus commencing the EA.
4. The *Impact Assessment Act*⁴ (IAA) came into force on August 28, 2019. Its transitional provision stipulates, however, that any EA of a designated project by the CNSC commenced under CEAA 2012 in respect of which no decision statement had been issued before the IAA came into force, is to be continued under the CEAA 2012. In accordance with the transitional provision, this EA shall continue under CEAA 2012. On August 29, 2019, the CNSC issued a letter to advise Denison Mines Corp. of this fact, and the letter was posted on the Canadian Impact Assessment Registry.⁵
5. Prior to the EA being carried out, the Commission must determine the scope of the factors to be considered in the EA, under the applicable provisions of CEAA 2012.

¹ The *Canadian Nuclear Safety Commission* is referred to as the “CNSC” when referring to the organization and its staff in general, and as the “Commission” when referring to the tribunal component.

² S.C. 2012, c. 19, s. 52.

³ SOR/2012-147

⁴ S.C. 2019, c. 28, s. 1

⁵ *Notice of Commencement of an Environmental Assessment – Wheeler River Project*, <https://acce-ceaa.gc.ca/050/evaluations/document/130097?culture=en-CA> (accessed 13 December 2019), Impact Assessment Agency, issued on May 31, 2019.

Panel

6. Pursuant to section 22 of the NSCA, the President established herself to preside as a Panel of the Commission to consider this matter. The Commission considered written submissions from CNSC staff (CMD 19-H111 and CMD 19-H111.A).

2.0 DECISION

7. Based on its consideration of the matter, as described in more detail in the following sections of this *Record of Decision*, the Commission,

pursuant to section 19 of the *Canadian Environmental Assessment Act, 2012*, determines the scope of the factors for the environmental assessment of the Wheeler River Project proposed by Denison Mines Corp. to include the factors mandated in paragraphs 19(1)(a) to (h) of the *Canadian Environmental Assessment Act, 2012*, with no additional factors.

8. The Commission accepts CNSC staff's submission that, in accordance with subsection 19(3) of CEAA 2012, Indigenous traditional knowledge and community knowledge shall inform the EA for the Wheeler River Project.
9. The Commission understands that Denison will prepare an environmental impact statement (EIS) for the proposed project, as provided for by the CNSC's *Generic Guidelines for the Preparation of an Environmental Impact Statement pursuant to the Canadian Environmental Assessment Act, 2012*⁶ (the EIS Guidelines).
10. The Commission directs CNSC staff to report to the Commission on any issues arising during the conduct of the EA that could warrant the Commission to reconsider the above scoping decision.

3.0 ISSUES AND COMMISSION FINDINGS

11. In consideration of this matter, the Commission examined the completeness and adequacy of the information submitted by CNSC staff as presented in CMD 19-H111 and CMD 19-111.A. The Commission notes that CNSC staff included in its submission the detailed description of the Wheeler River Project that was submitted by Denison in February 2019, a disposition table of the questions and comments resulting from the Indigenous and public consultation on the project description, and the CEAA 2012 process map.

⁶ *Generic Guidelines for the Preparation of an Environmental Impact Statement Pursuant to the Canadian Environmental Assessment Act*, CNSC, May 2016.

3.1 Application of the *Canadian Environmental Assessment Act, 2012*

12. The Commission notes that Denison submitted its description for the Wheeler River Project to the CNSC on February 19, 2019, at which time CEAA 2012 and its regulations provided the requirements for EA for nuclear projects. The IAA came into force on August 28, 2019. As this project had commenced under CEAA 2012 following the submission of the project description in February 2019, in accordance with the transitional provision provided for by section 182 of the IAA, this project is to continue under CEAA 2012.
13. The Commission notes that the CNSC's EIS Guidelines apply to all "designated projects" under CEAA 2012 and, therefore, apply to this project. The Commission recognizes that the EIS Guidelines provide proponents with the information required for the preparation of their technical studies related to the proposed project.
14. CNSC staff informed the Commission in its CMD that, pursuant to section 20 of CEAA 2012, the relevant federal authorities were informed about the proposed project in order to confirm their future participation in the EA process. CNSC staff submitted that the following five federal authorities have confirmed their participation in and would provide the expertise relevant to the proposed project:
 - Environment and Climate Change Canada
 - Health Canada
 - Natural Resources Canada
 - Parks Canada and
 - Transport Canada
15. The Commission notes that this project is also subject to the EA requirements of the Government of Saskatchewan under *The Environmental Assessment Act* (EAA).⁷ CNSC staff submitted that Denison's project description had been written to meet the requirements of both the federal project description under CEAA 2012 and the provincial technical proposal under the EAA. CNSC staff also submitted that both the federal and provincial EAs will be coordinated to the extent possible, noting that the provincial EA process involves key steps that are similar to those of the CEAA 2012 process, and that Denison would submit a single EIS to meet the requirements of both the federal and provincial EA processes.

⁷ Statutes of Saskatchewan (S.S.), c. E-10.1

3.2 Consultations on the Scope of the EA

3.2.1. Indigenous Consultation and Engagement

16. The Commission recognizes that the common law duty to consult with Indigenous peoples applies when the Crown contemplates actions that may adversely affect potential or established Indigenous and/or treaty rights, and that cooperation with Canada's Indigenous peoples with respect to EA is one of the purposes of the CEAA 2012. The CNSC ensures that all of its EA and licensing decisions uphold the honour of the Crown and consider Indigenous peoples' potential or established Indigenous and/or treaty rights pursuant to section 35 of the *Constitution Act, 1982*.⁸
17. CNSC staff submitted that it had identified Indigenous groups and organizations with potential interest in the Wheeler River Project, had provided each identified group with the NOC and had solicited comments on Denison's project description as part of the 30-day comment period. CNSC staff reported that the identified Indigenous groups and organizations with potential interest in the project include
 - English River First Nation (Treaty 10)
 - Hatchet Lake First Nation (Treaty 10)
 - Black Lake Denesuline First Nation (Treaty 8)
 - Fond-du-Lac Denesuline First Nation (Treaty 8)
 - Métis Nation-Saskatchewan Northern Region 1
 - Kineepik Métis Local Pinehouse #9 (Métis Northern Region 3)
 - Buffalo River Dene Nation (Treaty 10)
 - Birch Narrows Dene Nation (Treaty 10)
 - Ya'thi Néné Lands and Resource Office (represents the Athabasca Basin communities: Hatchet Lake First Nation, Black Lake Denesuline First Nation, Fond-du-Lac Denesuline First Nation)
 - Prince Albert Grand Council
 - Meadow Lake Tribal Council
18. The Commission notes that CNSC staff's *Preliminary Indigenous Consultation Report: Wheeler River Project*⁹ details Indigenous and treaty rights in relation to the proposed project. The Commission's consideration of the comments received on Denison's project description by way of the 30-day review period is found in the next section of this *Record of Decision*.
19. CNSC staff submitted that CNSC staff and Denison had offered to meet with Indigenous groups and organizations that had expressed an interest in the project and provided details of a meeting that was carried out in Prince Albert, Saskatchewan, with leadership from northern Saskatchewan Indigenous groups. CNSC staff also submitted that, throughout the project, it would continue to build relationships with Indigenous groups and

⁸ *Constitution Act, 1982*, Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.)

⁹ *Preliminary Indigenous Consultation Report: Wheeler River Project*, CNSC, July 2019.

communities through meetings and the provision of timely information and project updates, to ensure that the Crown's duty to consult with Indigenous peoples is fulfilled.

20. The Commission considered the Indigenous engagement activities that had been conducted to date by Denison. CNSC staff submitted that it was satisfied with the preliminary Indigenous engagement activities carried out by Denison and that, in accordance with REGDOC-3.2.2, *Indigenous Engagement*,¹⁰ Denison had submitted its preliminary Indigenous Engagement Report on May 15, 2019. CNSC staff further submitted that this report outlined the Indigenous groups with which Denison would engage during the proposed project, Denison's planned Indigenous engagement activities and the concerns that had been raised to date by the identified Indigenous groups.
21. CNSC staff submitted that Denison had organized site visits and meetings with the identified Indigenous groups and organizations in order to introduce the Wheeler River Project and to discuss any potential impacts on Indigenous or treaty rights, land use or other concerns about the project. CNSC staff noted that, during those meetings, Denison also provided clarification regarding the project and solicited early feedback on the project engineering and design.
22. CNSC staff reported that, throughout the EA process for the Wheeler River Project, it would verify Denison's compliance with REGDOC-3.2.2 and CEAA 2012, including the gathering of any relevant Indigenous knowledge and traditional land use information from identified Indigenous groups to inform the EA.
23. The Commission is satisfied with the efforts made by CNSC staff to date in respect of Indigenous consultation. The Commission expects that CNSC staff will continue to provide the identified Indigenous groups with timely project updates, information and an opportunity to discuss any concerns at key points during the EA process, including the review of Denison's EIS, CNSC staff's EA Report, and other project-related documentation.
24. The Commission is satisfied with the preliminary Indigenous engagement activities carried out by Denison for this project. The Commission expects Denison to continue to provide updates on the progress of its engagement plan in future iterations of the Indigenous Engagement Report for the project. The Commission directs CNSC staff to continue to monitor Denison's progress throughout the regulatory review process to ensure compliance with REGDOC-3.2.2 and CEAA 2012 requirements.

3.2.2 Indigenous and Public Participation, and Participant Funding

25. The Commission recognizes that section 24 of CEAA 2012 requires that the public be provided with an opportunity to participate in an EA. CNSC staff submitted that the first public and Indigenous participation opportunity that the CNSC offered was a 30-day review of the Wheeler River Project description and that, in response, one submission had

¹⁰ CNSC Regulatory Document, REGDOC-3.2.2, *Indigenous Engagement*, version 1.1, 2019.

been received from the Ya'thi Néné Land and Resource Office (Ya'thi Néné). No submissions were received from other members of the public.

26. The Commission notes that Appendix C of CMD 19-H111 includes a detailed disposition table of the comments submitted by the Ya'thi Néné and CNSC staff's responses. CNSC staff reported that the submission from the Ya'thi Néné encompassed questions and comments regarding the importance of the protection of ecological systems, environmental monitoring, traditional land use, engagement efforts and the EA process. CNSC staff further reported that the disposition table had been shared with the Ya'thi Néné, and that it is posted on the Canadian Impact Assessment Registry.¹¹
27. Pursuant to section 58 of CEEA 2012, an RA must establish a participant funding program (PFP). Pursuant to paragraph 21(1)(b) of the NSCA, the CNSC has the authority to provide participant funding through its own PFP in order to enhance Indigenous and public participation in the regulatory review of a project, and to bring value-added information to the Commission. In respect of the Wheeler River Project, this would include the EA process itself. Participant funding through the CNSC's PFP is awarded based on recommendations from an independent funding review committee.
28. CNSC staff reported that the CNSC planned to award participant funding in respect of the proposed Wheeler River Project and proposed that the funding be offered in two phases, consisting of \$150,000 for each phase. CNSC staff submitted that the planned first phase of funding would be for the review of the draft EIS, while the second phase would be for the remainder of the Wheeler River Project regulatory process, including a public hearing for the regulatory approval of the EA.
29. CNSC staff submitted that it had sought input from Indigenous groups and the public on how they would like to be engaged during the EA process. Although no comments had been received in this regard, CNSC staff submitted that it was committed to ongoing consultation and engagement with Indigenous groups and the public throughout the EA process.
30. The Commission is satisfied with the efforts made by CNSC staff in regard to the comment period for the project description. The Commission recognizes that future Indigenous and public participation opportunities for this project will include a public comment period on Denison's draft EIS, on CNSC staff's EA Report and the CNSC's public hearing process in respect of the EA decision. The Commission notes that the availability of participant funding for this project would be announced by the CNSC following this decision.

¹¹ Canadian Impact Assessment Registry – Wheeler River Project, <https://iaac-acic.gc.ca/050/evaluations/proj/80178> (accessed 13 December 2019).

3.3 Scope of the Environmental Assessment

31. As the RA for the proposed project and pursuant to paragraph 19(2)(a) of CEAA 2012, the CNSC is required to determine the scope of factors to be considered in an EA through its analysis of proponent submissions and in response to comments from Indigenous groups and the public. The Commission notes that Denison had identified the scope of the Wheeler River Project in its submitted project description and that the scope includes direct activities related to the mining and processing of uranium ore using the ISR mining method, as well as ancillary activities that support the project. CNSC staff submitted a detailed description of the primary project components and that it was of the satisfied that the project components and activities that Denison listed in its project description were appropriate.
32. CEAA 2012 mandates that the factors in paragraphs 19(1)(a) to (h) be considered in all EAs. CNSC staff submitted that the Wheeler River Project EA will consider community knowledge and Indigenous knowledge, where available and accessible, taking into account that the project is within Treaty 10 territory, Métis Nation Northern Region 1, as well as the traditional territories of many Indigenous groups, in accordance with subsection 19(3) of CEAA 2012.
33. CEAA 2012, paragraph 19(1)(i) provides that EAs must take into account “*the results of any relevant study conducted by a committee established under section 73 or 74 (of CEAA 2012).*” CNSC staff submitted that paragraph 19(1)(i) does not apply to the Wheeler River Project EA as there are no relevant regional studies conducted by a committee established by the Minister to consider.
34. CEAA 2012, paragraph 19(1)(j) provides that EAs must take into account “*any other matter relevant to the environmental assessment that the responsible authority, or — if the environmental assessment is referred to a review panel — the Minister, requires to be taken into account.*” CNSC staff reported that, based on its review of the proposed EA scope and on the comments about the project submitted by the Ya’thi Néné, the relevant EA factors are those set out in paragraphs 19(1)(a) to (h) of CEAA 2012. As such, CNSC staff was of the view that no additional factors needed to be included in the scope of factors for this EA.
35. CNSC staff submitted that, following the Commission’s decision in respect of the scope of factors to be considered for the Wheeler River EA, the Commission’s *Record of Decision* and the description of the factors to be taken into account in the EA will be posted on the Canadian Impact Assessment Registry, in accordance with paragraph 79(2)(b) of CEAA 2012. CNSC staff also submitted that the Commission’s decision in this matter would be provided to the identified list of Indigenous groups and the EA project distribution list.
36. CNSC staff reported that, following the Commission’s decision in this matter, Denison would prepare and EIS for the Wheeler River Project in accordance with the determined scope and the EIS Guidelines.
37. The Commission is satisfied with the information provided by CNSC staff in regard to

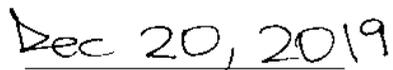
the scope of the factors to be considered for the Wheeler River Project EA.

4.0 CONCLUSION

38. The Commission has considered the information from CNSC staff as presented on the record.
39. The Commission, pursuant to section 19 of CEAA 2012, determines the scope of the factors for the EA for the Wheeler River Project proposed by Denison to include the factors mandated by paragraphs 19(1)(a) to (h) of the CEAA 2012, with no additional factors.
40. The Commission understands that, pursuant to subsection 19(3) of CEAA 2012 and taking into account that the proposed project is located within Treaty 10 territory, Métis Nation Northern Region 1, as well as the traditional territories of many Indigenous groups, the EA for the Wheeler River Project shall consider Indigenous traditional knowledge and community knowledge.
41. The Commission notes that Denison shall prepare an EIS for the proposed project in accordance with the EIS Guidelines, with the estimated timeline for Denison's submission of a draft EIS for the proposed project to be late fall of 2020.
42. The Commission directs CNSC staff to report to the Commission on any issues arising during the conduct of this EA that could warrant the Commission to reconsider the above scoping decision.



Rumina Velshi
President,
Canadian Nuclear Safety Commission



Date