

# Cassels

August 5, 2022

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Attention: The Honourable Steven Guilbeault  
Minister of Environment and Climate Change (“**Minister**”)

Dear Minister:

**Re: Federal Designation Request for Proposed Patterson Lake South Project**

## I. Introduction

1. I am writing on behalf of Métis Nation Saskatchewan (“**MN-S**”), in respect of the seven Métis Locals of MN-S Northern Region 2 - Clearwater Clear Lake (“**NR2**”), to request that the Minister designate the Patterson Lake South Project (“**Project**”) for a federal impact assessment pursuant to Section 9(1) of the *Impact Assessment Act*, SC 2019, c 28, s 1 (“**Act**”).<sup>1</sup>
2. The Project is a uranium mine development that Fission Uranium Corp. (“**Proponent**”) is proposing to construct and operate at and under Patterson Lake in Northern Saskatchewan, approximately 160 km north of La Loche. The Project is currently undergoing a provincial environmental impact assessment under the *Environmental Assessment Act*, SS 1979-80 c E-10.1.<sup>2</sup> The Project, as proposed, will sit across the mid-point of Patterson Lake from NexGen’s Rook 1 Project (“**Rook 1 Project**”). The Rook 1 Project is currently undergoing a review by the Canadian Nuclear Safety Commission pursuant to the *Canadian Environmental Assessment Act, 2012*.
3. Patterson Lake holds a rich history for Métis. It lies within the Métis Homeland and sits at the heart of the Métis of Northwest Saskatchewan Land Claim (court file #002A0029) (“**Land Claim**”), which is expressly addressed under the “Framework Agreement for Advancing Reconciliation” dated July 20, 2018 and signed by Canada and MN-S.

<sup>1</sup> *Impact Assessment Act*, SC 2019, c 28, s 1, s 9 [Act].

<sup>2</sup> *Environmental Assessment Act*, SS 1979-80 c E-10.1.

4. MN-S submits that the Minister should exercise his discretion to designate the Project for a federal impact assessment under Section 9 of the *Act* on the basis that the Project:
  - (a) is proposed to be located in an environmentally sensitive area;
  - (b) is anticipated to adversely impact areas within federal jurisdiction, including Indigenous peoples and lands, species at risk, fish and fish habitats;
  - (c) is anticipated to significantly and adversely impact the ability for Métis people to exercise their rights and may compromise the integrity of their Land Claim;
  - (d) presents a risk to the human and socio-economic health of Métis and other Indigenous peoples, both in and around the Project location, and through the transportation corridor which passes through a number of majority-Métis communities;
  - (e) will contribute to the cumulative impacts of other developments in an around Patterson Lake, an area of cultural significance to MN-S; and
  - (f) will create adverse impacts that will not be adequately or fully addressed through the provincial environmental assessment process.

## **II. The Project Should be Designated for a Federal Impact Assessment**

### **A. *The Project Presents Material Risk to Areas within Federal Jurisdiction***

5. The Project is proposed to be located within areas identified as environmentally sensitive and of significant importance to the Métis. The Project is anticipated to cause adverse effects to various environmental matters within federal jurisdiction, including species at risk, fish and fish habitats.
6. NR2 and MN-S are particularly concerned regarding the potential release of uranium and other materials into the natural environment, and the effects of development and mining operations on fish and protected species in and around Patterson Lake.
7. The Project facilities will be located near the shores of Patterson Lake; however, the uranium ore body itself lies across the mid-point of the lake, and ore will be extracted through facilities stretching under the lake. These activities along and under Patterson Lake, in addition to the effects of the proposed Rook 1 Project (situated across the lake), present risks to water, fish and fish habitats.
8. The Project is located within the territory of the Boreal Shield Woodland Caribou, which are designated as a threatened species, and the presence of caribou in the area has been well documented.<sup>3</sup> The Project Description also identifies other species of concern which have been observed.<sup>4</sup>

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<sup>3</sup> Fission Project Description, November 22, 2021 at section 3.5.6. Link at paragraph 26, below.

<sup>4</sup> *Ibid* at table 3.6.

9. As the Proponent is completing the early stages of project design, and provincial environmental assessment has yet to be completed to determine the specific impact of the Project on the environment, MN-S requests that the Minister consider the precautionary principle noted as Principle 4 in the Sustainability Guide and mandated in Section 6(2) of the *Act*.<sup>5</sup>

**B. The Project Presents a Material Risk to Métis People, Métis Rights and Métis Health**

10. In accordance with Section 9(2) of the *Act*, before making a decision on whether to designate a given project, the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada - including Indigenous women - recognized and affirmed by Section 35 of the *Constitution Act, 1982*.<sup>6</sup>
11. The Project is located in an area rich in current and historic Métis use, and sits in the heart of the Métis Land Claim. A recent traditional land use study undertaken in respect of the Rook 1 Project highlighted Métis use of Patterson Lake and the surrounding area. The area around Patterson Lake hosts moose, caribou, and fish, the harvesting of which is important to Métis people and Métis culture. While land use in the area has been adversely impacted by mineral exploration and development activities and the loss of cabins from forest fires, NR2 leadership has expressed that there is a strong desire among Métis Citizens to once-more rebuild cabins in the Patterson Lake area.
12. The Métis live with the long legacy of uranium mining across northern Saskatchewan, which contains dozens of sites and mining operations which were “abandoned with little consideration to environmental protection or aesthetics.”<sup>7</sup> As part of the traditional land use study prepared in respect of the Rook 1 Project, Métis Citizens in Northern Region II identified their concerns with the impacts of uranium mining on the environment and human health from the now-closed Cluff Lake mine, including the movement of yellow-cake through their communities and reports of these materials being released into their environment. Métis continue to live with the fear that the Cluff Lake mine poisoned their communities and the environment.
13. The Project presents material risk to Métis Citizens and their Section 35 *Constitution Act, 1982* Aboriginal rights. The Project will alter Métis lands, put Métis wildlife resources at risk, permanently store mine waste within the heart of the Métis Land Claim, and further erode the natural wealth of the Métis Homeland. The Project also risks further alienating Métis Citizens from their lands while the Project is operating. Concerns regarding mine waste storage and the safety of eating local species may lead to permanent fear and stigma regarding the Patterson Lake area. Métis concerns may be further compounded should both the Project and the Rook 1 Project proceed.

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<sup>5</sup> Impact Assessment Agency of Canada, *Guidance for Considering the Extent to which a Project Contributes to Sustainability under the Impact Assessment Act*, available online: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/guidance.html>.

<sup>6</sup> *Constitution Act, 1982*, RSC 1985, App II, No 44, Sched B, Pt II, s 35.

<sup>7</sup> <https://www.src.sk.ca/project-cleans/mine-and-mill-sites>

14. The seven Métis communities in NR2 are vulnerable to adverse impacts from increased activity through their communities as a result of the Project. In order to reach the Project, the Proponent will need to transport goods, people and equipment directly through a number of Métis communities. Uranium ore will need to pass through these communities when returning south.<sup>8</sup> As the closest major community, La Loche will be a natural staging ground for the Project and for Project suppliers.
15. The seven Métis communities in NR2 continue to struggle with the legacy of unchecked resource development, residential schools, and historic policies which limited Métis' connection to their lands, their languages, and their customs. Métis communities in NR2 suffer from poor socio-economic circumstances and high rates of addiction and health challenges. In 2016, the predominantly-Métis community of La Loche suffered one of the worst school shootings in Canadian history. Direct and indirect effects of the Project and associated activities in and through NR2 will add socio-economic pressures on these Métis communities and may have disproportionate impacts on vulnerable Métis populations.

**C. Involvement of the Impact Assessment Agency Is Necessary**

**i. A Federal Review is Justifiable Having Consideration to the Existing Threshold Guidance**

16. Pursuant to Section 20 of the *Physical Activities Regulations*, SOR/2019-285, a uranium mine with an ore production capacity of 2,500 t/day is a designated project within the meaning of the *Act*.
17. MN-S submits that the impacts of the Project mining an average of 1,000 t/day (note that this is the average, not the capacity)<sup>9</sup> raises the same concerns with regard to impacts on the environment and Métis Citizens as a 2,500 t/day uranium project:
  - (a) The very-high grades of ore mined at the Project mean that the net uranium produced by the Project may exceed what would be expected from a mine with ore mining capacity of 2,500 t/day, and risks specifically associated with the production, handling, treatment, containment, transportation, and residual waste amounts of uranium may be similar to, or exceed, those of lower grade mines which exceed 2,500 t/day of ore production.
  - (b) While the Project's ore production capacity may be less than 2,500 t/day, many of the effects on Métis will not materially change due to the lower production volume. The impact on water, fish, and animals are of concern regardless of the Project's ore output, and the risk of contamination to Métis lands, food and people persist even where the ore production capacity falls below 2,500 t/day. Similarly, the risks of permanently storing toxic and radioactive materials within Métis lands persists across a variety of mine output volumes.

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<sup>8</sup> The Proponent's regulatory materials do not appear to include a description of how uranium product will be transported from the Project.

<sup>9</sup> Fission Uranium Corp. Terms of Reference: PLD Project. Link at paragraph 26, below.

18. In considering the threshold, the Minister should also consider the cumulative effects of NexGen's Rook 1 Project, which is located in very close proximity to the Project, and which is currently planned to have a maximum throughput of 1,300 t/day.<sup>10</sup> Given their common location, there is broad speculation that the Rook 1 Project and the Project will ultimately be developed together,<sup>11</sup> potentially resulting in combined effects on Patterson Lake and the local environment in excess of those associated with a uranium mine with a production capacity of 2,500 t/day.
19. In considering whether to assess the Project, the Minister should also consider that the Project contains subcomponents that may trigger or warrant designation under the *Act*, including a proposed airstrip that appears to be in excess of 1,600 m in length.<sup>12</sup>

**ii. A Federal Review is Necessary**

20. A federal review of the Project, as a designated project, is necessary in order to ensure that areas of the environment under federal jurisdiction are considered, that Métis concerns are understood and addressed, that the purposes of Section 35 of the *Constitution Act, 1982* are advanced, and that socio-economic impacts on Métis people and communities, including Métis women specifically, are appropriately considered.
21. MN-S is concerned that the Government of Saskatchewan's approach to consultation is deficient and expressly limits the ability of the provincial Crown to consider and discharge the Crown's duty to consult. The Government of Saskatchewan, by policy, will not consider or engage with respect to claims of Aboriginal title by *any First Nation or Métis* peoples. Similarly, the Government of Saskatchewan will not consider any claims of commercial harvesting rights (rights which are fundamentally tied to the history of the Métis).<sup>13</sup> There is no ambiguity in Saskatchewan's position; Saskatchewan is actively seeking to defend these positions in court in 2022.
22. MN-S submits that Canada's agreement with MN-S to address the Métis Land Claim is relevant to the Minister's decision to designate the Project. The Government of Saskatchewan has been clear that it will not consider Aboriginal title in the context of Project consultation. Without the Project being subject to a full review by Canada, Canada's commitments to the Métis with respect to the Land Claim are at risk of being rendered meaningless if Métis concerns and interests are not considered and addressed.

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<sup>10</sup> Rook 1 Project, Saskatchewan Canada, Environmental Impact Statement Master Executive Summary (April 2022) at page 31

<sup>11</sup> For example, see <https://www.bnnbloomberg.ca/market-call-tonight/rick-rule-discusses-fission-uranium-and-nexgen~1533493>

<sup>12</sup> *Physical Activities Regulations* Section 46(1). Figure 2.9 of the Fission Project Description dated November 22, 2021 does not include a scale, however one is provided on Figure 18-1 of the Technical Report on the Pre-Feasibility Study on the Patterson Lake South Property Using Underground Mining Methods, Northern Saskatchewan, Canada Effective Date September 19, 2019, filed on SEDAR.com on November 7, 2021.

<sup>13</sup> Government of Saskatchewan, First Nation and Metis Consultation Policy Framework, June 2010, at pages 6, 7.

23. The Government of Saskatchewan also has a track record of avoiding engagement with MN-S, and instead seeking to limit engagement to only Métis locals who lack the resources to meaningfully advocate for their rights. The Government of Saskatchewan's consultation policy expressly prohibits consultation with MN-S except where Métis local presidents provide their delegation.<sup>14</sup> Even though MN-S has obtained and shared this delegation (under protest as it is inconsistent with the *Métis Constitution*), the Government of Saskatchewan has continued to avoid engagement with MN-S across a number of files. MN-S notes that, consistent with its concerns, the Project Terms of Reference make reference to Métis Locals but do not reference MN-S as a party to engage for the purpose of consultation.<sup>15</sup> In contrast to the position of the Government of Saskatchewan, the Government of Canada has recognized that MN-S represents the Métis of Saskatchewan<sup>16</sup> and actively consults with MN-S across a number of files.
24. While the *Act* provides discretion for the Minister to designate the Project, MN-S submits that the exercise of the Minister's discretion must be informed by the constitutional principle of the honour of the Crown and must give appropriate consideration to:
- (a) the commitments Canada has made to MN-S and Métis people;
  - (b) the fact that the provincial environmental assessment of the Project will not consider important Métis rights and interests; and
  - (c) the fact that the Government of Saskatchewan may continue to avoid engaging with MN-S.
25. MN-S further submits that Canada's commitment to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP") provides further support for designating the Project under the *Act*, in particular because the Project will result in the disposal of hazardous materials on Métis lands and territories without Métis consent, in direct contravention of UNDRIP Article 29.

### III. Project and Other Materials

26. MN-S provides the following Government of Saskatchewan web links with respect to key documentation:
- (a) Project Description:  
<https://publications.saskatchewan.ca/api/v1/products/115606/formats/131270/download>
  - (b) Terms of Reference:  
<https://publications.saskatchewan.ca/api/v1/products/118449/formats/136140/download>
  - (c) Government of Saskatchewan, First Nation and Métis Consultation Policy Framework, June 2010:  
<https://www.saskatchewan.ca/-/media/news-archive/2010/june/15/province-releases-consultation-policy-framework/cpf-final.pdf>

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<sup>14</sup> *Ibid*, at page 11.

<sup>15</sup> Fission Uranium Corp. Terms of Reference: PLD Project Table 3. Link at paragraph 26, below.

<sup>16</sup> Metis Government Recognition and Self-Government Agreement between Metis Nation – Saskatchewan and Canada, dated June 27, 2019, section 3.01(a).

#### **IV. Conclusion**

27. On the basis of the foregoing, MN-S respectfully requests that the Minister exercise his discretion under Section 9 of the *Act* and designate the Project for a federal impact assessment.

Your office is invited to direct any questions or communication to my attention.

Yours sincerely,

Cassels Brock & Blackwell LLP

<original signed by>

Arend J.A. Hoekstra

cc: President Glen McCallum, Métis Nation - Saskatchewan  
Leonard Montgrand, Regional Director - MN-S Northern Region II Clearwater Clear  
Lake Matt Vermette, Chief Operating Officer - Métis Nation - Saskatchewan