Consent and consultation: Case study of the Cree Nation's stand against uranium

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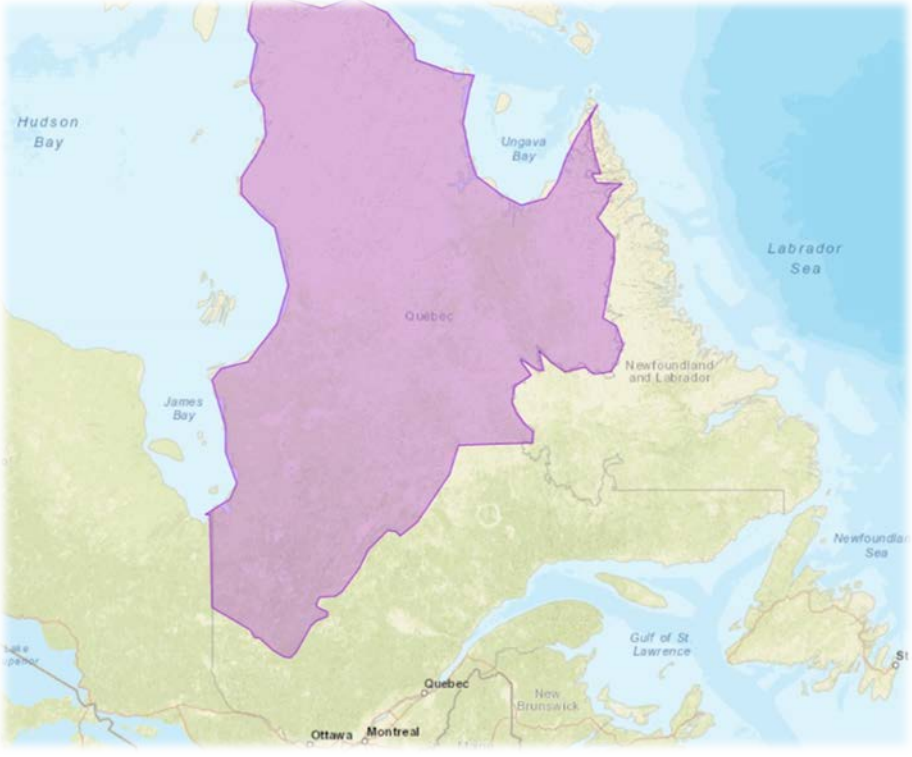
James Bay & Northern Quebec Agreement

- Along with the Inuit of Nunavik, the James Bay Crees signed the JBNQA in 1975, with the governments of Québec and Canada as well as Hydro-Québec.
- The JBNQA is Canada's first modern treaty.



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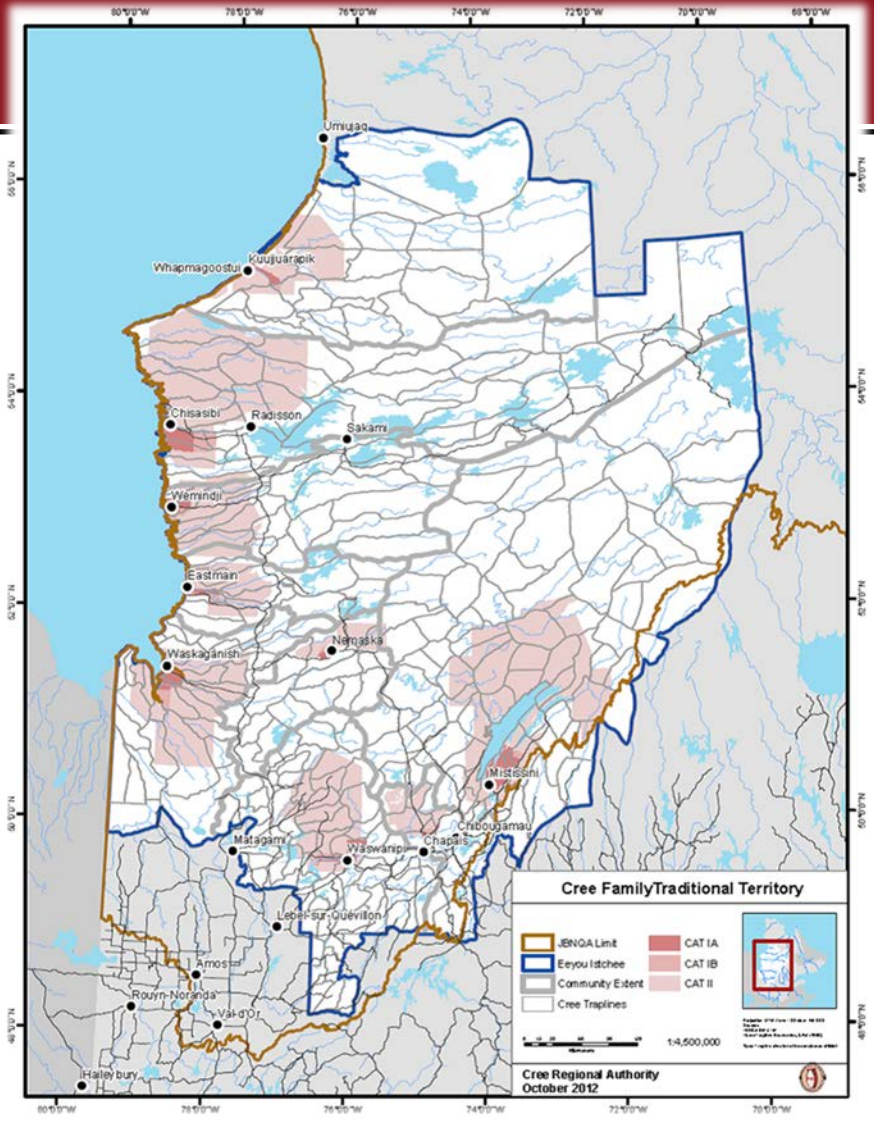
Eeyou Istchee

JBNQA created a unique land regime governing Eeyou Istchee, with protection of Cree hunting rights and hunting territories, and a special process for social and environmental impact review of proposed development projects



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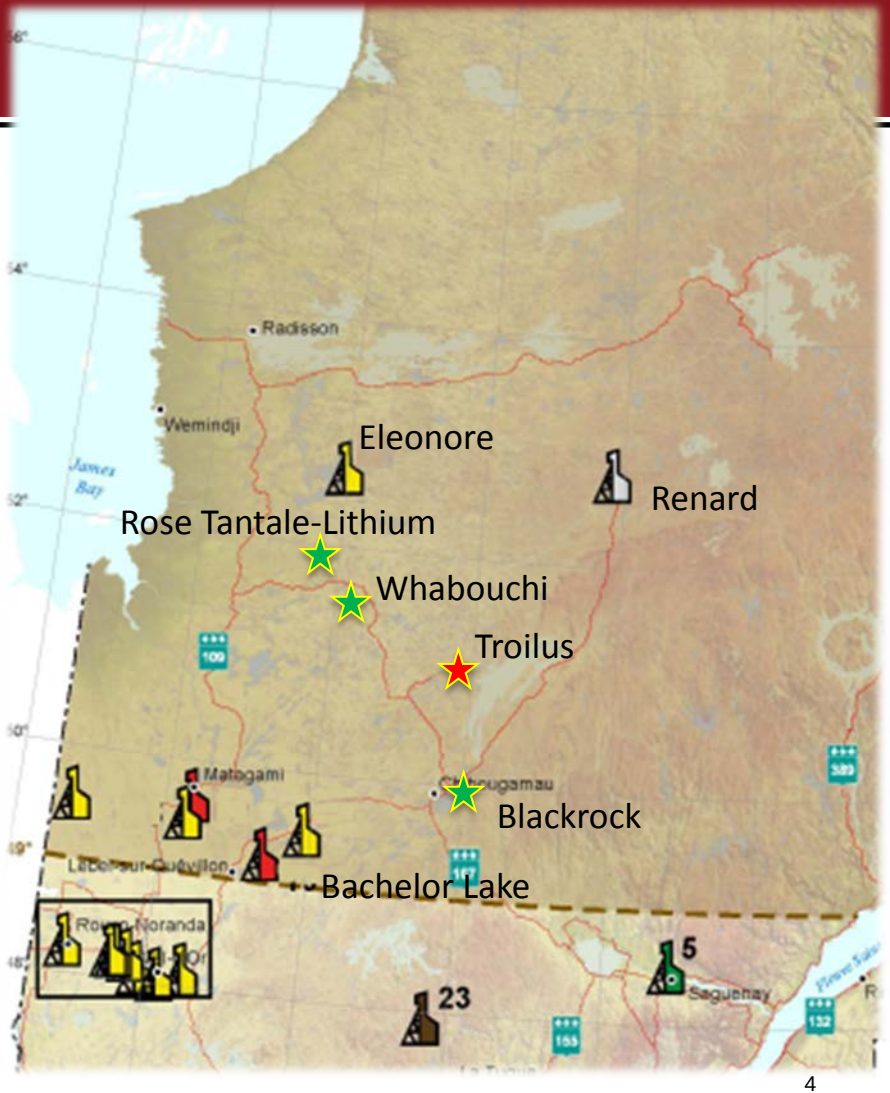
Mining in Eeyou Istchee

The Cree Nation has extensive experience with mining projects in Eeyou Istchee, and has entered into many agreements with proponents for mining and exploration projects.



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Cree Nation Mining Policy (2010)

"*We are not 'anti-development', but rather, we are prepared to support and participate in resource development within our Traditional Territory provided that* ***our rights are respected****,* ***appropriate measures are taken to protect the environment****, and* ***benefits flow to our communities***."

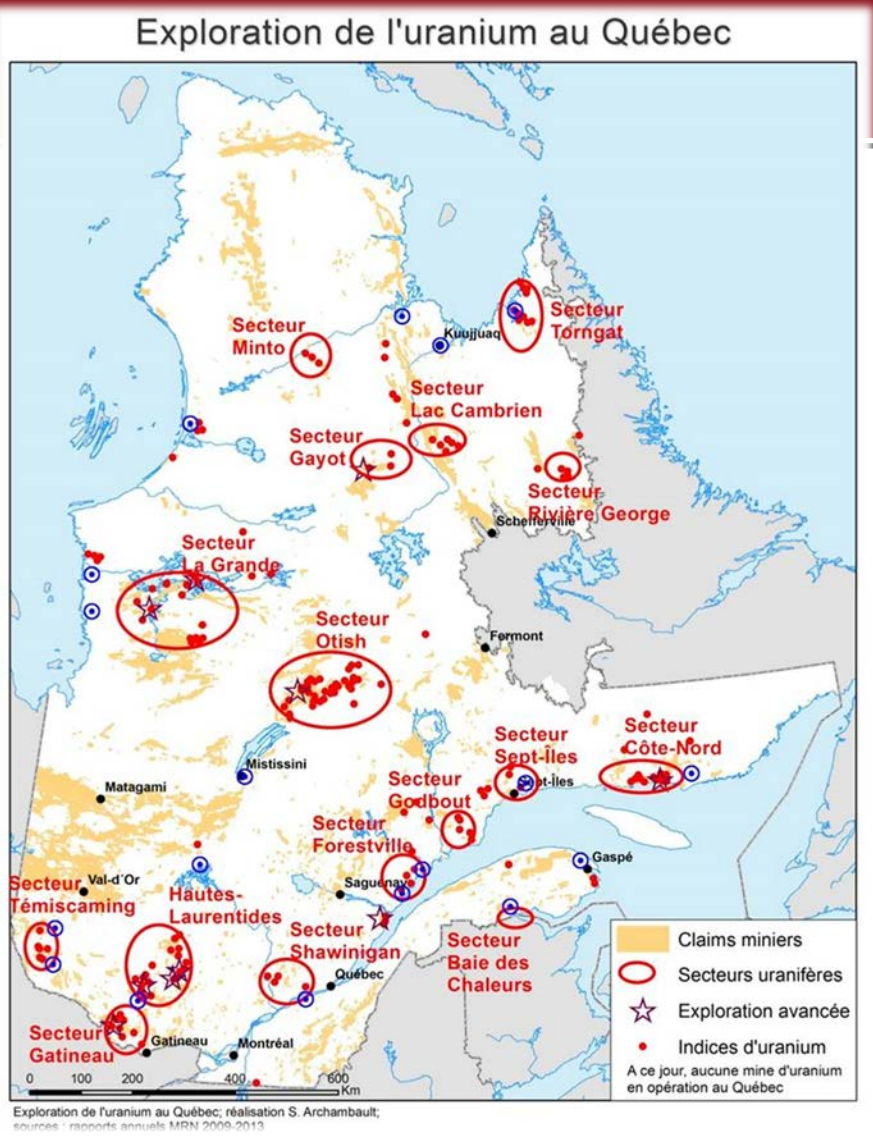
"*No mining development will occur within Eeyou Istchee unless* ***there are agreements with our communities.*** *Those agreements will need to address a wide range of social, economic and environmental concerns on the part of our communities. Through these agreements we will ensure that mining development is in keeping with our traditional approach to sustainable development.*"

- Cree Nation Mining Policy

Uranium exploration in Eeyou Istchee

In 2007-2012, there was a boom in uranium exploration projects in Quebec

- **A large proportion of these projects were within Eeyou Istchee.**



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Strateco's Matoush project

The most advanced uranium project in Quebec was Strateco Resource's Matoush advanced exploration project, located on the family hunting territories of the Cree community of Mistissini

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Regulatory and impact assessment processes applicable to a uranium project in Eeyou Istchee JBNQA territory

- Multiple parallel regulatory processes applied to the Matoush project:
  - Permit from the Canadian Nuclear Safety Commission
  - Approval from the federal Minister of the Environment under the *Canadian Environmental Assessment Act*
  - Under the JBNQA, authorization from the Federal Administrator
  - Under the JBNQA and the Quebec *Environment Quality Act*, authorizations from the Provincial Administrator and the Quebec Minister of the Environment

Social and environmental protection regime under Section 22 of the JBNQA

- First environmental assessment process in North America
- Federal and provincial review committees (COFEX & COMEX), with Cree representatives
- Guiding principles of this regime include:
  - Protection of the hunting, fishing and trapping rights of Native people;
  - Minimizing the impacts on Native people by developmental activity;
  - Protection of Native people, societies, communities, economies;
  - Protection of wildlife resources, physical and biotic environment, and ecological systems in the Territory;
  - Involvement of the Cree people in the application of the regime;
  - Rights and interests of non-Native people;
  - Right to develop by persons acting lawfully in the Territory;

Timeline for the Matoush project

- 2008: Strateco commences the permitting process for the Matoush project, prepares environmental assessment report
- May & November 2010: Public hearings for CEAA, JBNQA and EQA permitting processes held in Mistissini and Chibougamau
- December 2010 & January 2011: Cree Nation of Mistissini rejects Matoush project, requests that permitting process be halted to permit further consultation and education, passes resolution requesting a moratorium on uranium exploration and mining projects on Mistissini territory

Timeline for the Matoush project cont'd

- May 2011: Federal Review Panel releases its report on the Matoush Project:

  "In view of the nature of the project—which differs from other types of mining projects underway on JBNQA territory—[the Federal Review Panel] is of the opinion that ***an endorsement of the project by local communities is a key factor****"*

- Federal Review Panel recommends to the Federal Administrator that further information be requested from the proponent, including regarding "information, discussion and communication processes with the community of Mistissini"

Timeline for the Matoush project cont'd

- Federal Review Panel:

  *"Subject to compliance with these conditions by the proponent and **in the case where social acceptability conditions for the project have improved**, FRP-S is satisfied that the project, following the implementation of the measures and conditions summarized below, is not likely to cause significant adverse environmental and social effects that would infringe on the principle of protecting the way of life of the Cree."*

- July 2011: Federal Administrator accepts Federal Review Panel's recommendation, requests further information from Strateco

Timeline for the Matoush project cont'd

- August 2011: COMEX (provincial review committee) report provided to Provincial Administrator; COMEX recommends approval of the project, subject to certain conditions

  Condition 1: Social Acceptability

  *"…The proponent must **obtain the Crees' consent**, through the Mistissini Band Council, **with regard to the project's social acceptability**, and must enter into a written agreement to that effect with the Band Council or another body designated by the Band Council. A copy of the agreement must be sent to the Provincial Administrator and to COMEX for information purposes before excavation of the ramp begins."*

Timeline for the Matoush project cont'd

- December 2011: Strateco and Mistissini enter into a "Communications and Information Agreement" (CIA)
  - CIA includes clause stating that the agreement does not constitute consent to the project on the part of Mistissini
- February 2012: Federal Administrator and federal Minister of the Environment issue authorizations for the Matoush project to proceed
  - Federal Administrator declines to follow further recommendation of Federal Review Panel, which had advised that her decision should be deferred to permit implementation of the CIA
  - Federal Administrator advises of her conclusion that "consultation" opportunities had been adequate

Timeline for the Matoush project cont'd

- June 2012: CNSC holds public hearings in Mistissini and Chibougamau
- August 2012: Cree Nation declares a permanent moratorium on all uranium development activities in Eeyou Istchee.
- October 2012: CNSC issues licence for the Matoush project
  - In its decision, the CNSC noted the problem of the absence of social acceptability of the project: "*While social acceptability could not provide a basis [for the CNSC] to grant or refuse a licence, it remains a matter that Strateco should address. The Commission exhorts Strateco to take all necessary measures to address acceptability considerations of the project at the local and regional levels.*"

The Cree Nation's position regarding uranium development in Eeyou Istchee

The Cree Nation is opposed to uranium development on Cree territory, and we will defend our land.

- www.standagainsturanium.com

Quebec Minister of Environment refuses to authorize the Matoush project

"The absence of social acceptability on the part of the Cree community, the population directly affected by your Project, is obvious and determinative… Under these circumstances, your Project has not obtained social acceptability and therefore does not accord sufficient importance to the principles enumerated in… the Environmental Quality Act*, particularly with regard to the protection of the social environment and the protection of Aboriginals, their societies, their communities and their economy."*

- Quebec Environment Minister's decision, November 2013

Strateco Resources v. Quebec

- Strateco sued the Quebec government for approx. $200 million – the total amount it had spent to develop the project, plus $10 million in punitive damages
- The Cree Nation intervened in the case
- Trial occurred before Justice Denis Jacques of the Superior Court of Quebec in January and February 2017
- Justice Jacques issued his judgment in June 2017, dismissing Strateco's claim (2017 QCCS 2679)
- Strateco is now pursuing an appeal to the Quebec Court of Appeal

Strateco Resources v. Quebec cont'd

- Social acceptability – a process or a result?
- Strateco argued that in refusing to authorize the Matoush project on the basis of an absence of social acceptability, the Minister acted illegally, failed to follow the requirements of the Environment Quality Act and the JBNQA, and abdicated his role by granting a veto right to the Cree Nation
- Justice Jacques disagreed:
  - Social acceptability must be taken into account when considering authorization of a development project within Eeyou Istchee
  - The Minister's decision to refuse to authorize the Matoush project on the basis of an absence of social acceptability was lawful, and was not an abdication of his role

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