

## MEETING NOTE

**DATE:** May 8, 2023

**PREPARED FOR:** Honourable Nathan Cullen, Minister of Water, Land and Resource Stewardship

**REGARDING:** Meeting with Honourable Steven Guilbeault, Minister of Environment and Climate Change Canada, regarding Elk Valley transboundary waters.

### STRATEGIC CONSIDERATION AND MESSAGES:

- British Columbia (BC) continues to work with all parties to improve water quality in the Elk River Valley, without requiring the involvement of the International Joint Commission (IJC).
- The US Department of State continues to seek a joint reference on the Koocanusa reservoir to the IJC under the Canada-US Boundary Waters Treaty, and have shared draft language with Global Affairs Canada. The Ktunaxa Nations and State of Montana are both presently in support of the reference.
- Environment and Climate Change Canada (ECCC) is proposing a federal Alternative Approach as a more efficient and effective alternative to an IJC reference. The approach lays out a path to meet the commitments outlined in a March 24 joint statement from President Biden and Prime Minister Trudeau for a collective response to improve water quality in the Elk River Valley.

### SUMMARY:

- BC is undertaking a comprehensive approach to meaningfully address the water quality issues in the Elk River valley, including the Ministry of Environment and Climate Change Strategy initiating a process to review and update the Area-Based Management Plan (ABMP); strengthening regulatory requirements for Elk Valley mining operations, increasing transparency of data and information on water quality, monitoring and regulatory programs in the region; providing input into the federal government's proposed Coal Mining Effluent Regulation; and enhancing transboundary governance, coordination, and information sharing.
- BC continues to work closely with the Ktunaxa First Nations in Canada, in response to requests for their greater involvement in some of the important work in the territory.
- A draft and Selenium Water Quality Objective (WQO) for Koocanusa Reservoir, which was developed by BC and Ktunaxa Nation Council, will be released for public comment as a first stage in the ABMP amendment process.
- U.S. agencies and Tribes, along with the federal government and industry, will be invited to participate in a multi-stakeholder technical advisory committee that will guide the ABMP amendment process.
- BC will continue to work with ECCC to provide input and support the federal Alternative Approach to an IJC reference to achieve the desired shared outcomes of improved water quality in the transboundary waters.

**Attachment(s):** Attachment 1 ENV Meeting Note (May 1, 2023): Southeast (SE) BC Alternative Process – Environment and Climate Change Canada.

**PREPARED BY:**

**REVIEWED BY:**

---



Sean Moore  
Director, Watershed Science and  
Assessment  
Water Protection and Sustainability  
(778) 698-9286

	Initials	Date
DM	LH	May 17, 2023
ADM	JM	May 9, 2023
Program Dir/Mgr.	TZ	May 8, 2023

## MEETING NOTE

**MEETING DATE:** May 1, 2023

**PREPARED FOR:** Kevin Jardine, Deputy Minister, Ministry of Environment and Climate Change Strategy

**TOPIC:** Southeast BC Alternative Process – Environment and Climate Change Canada (ECCC)

**ATTENDEES:** Chris Forbes, Deputy Minister, ECCC

Paul Halucha, Associate Deputy Minister, ECCC

Anna Classen, Regional Director General, West and North, ECCC

Laurel Nash, ADM, Environmental Protection Division, ENV

Anthony Danks, Executive Director, Strategic Policy Branch, ENV

A.J. Downie, Director, SE Coal Mining Team, ENV

### KEY MESSAGES:

#### International Joint Commission (IJC)

- The Province continues to work with all parties to improve water quality in the Elk River Valley without the involvement of the International Joint Commission (IJC).
- The March 24 joint statement from the President and Prime Minister confirms our desire for a collective approach to improve water quality in the Elk River Valley and does not reference the need for an IJC.

s.16

- Over the past number of years, we have engaged extensively with rights holders and stakeholders to fully understand their concerns and interests, to ensure provincial actions are responsive to these.

This document may contain information that is protected by solicitor client privilege. Prior to any disclosure of this document outside of government, including in response to a request under the *Freedom of Information and Protection of Privacy Act*, the ministry in possession of this document must consult with the lawyer responsible for the matter to determine whether information contained in this document is subject to solicitor client privilege.

- The Province is undertaking a comprehensive approach which includes:
  - strengthening regulatory requirements for Elk Valley mining operations including updating permits to ensure that requirements are clear, enforceable and protective of the environment, and demonstrating provincial leadership in making amendments to the Area-Based Management Plan (ABMP) which will include completion of a new selenium water quality objective (WQO) for Koocanusa Reservoir;
  - increasing transparency of data and information on water quality, monitoring and regulatory programs in Southeast B.C. through the successful launch of a new Elk Valley Water Quality Hub website and planned ongoing refinements and additions;
  - providing input into the federal government's proposed Coal Mining Effluent Regulation; and
  - enhancing transboundary governance, coordination, and information sharing.
- The Province will make further improvements and enhancements to these initiatives should issues be identified that are not currently captured.

#### **Area-Based Management Plan (ABMP) and Selenium Water Quality Objective (WQO)**

- The Ministry of Environment and Climate Change Strategy (ENV) has initiated the process to review and update the ABMP to address some of the challenges that have been identified through its early years of implementation and to ensure it remains relevant and reflective of the current situation. Work is now underway to retain a facilitator to assist us in scoping the amendment process and engagement strategy.
- The Province has been taking time to review this proposed project with the Ktunaxa First Nations in Canada, in response to requests for their greater involvement in some of the important work in the territory. This dialogue will continue the week of May 8<sup>th</sup>; we have follow-up meetings scheduled with at least two of the Ktunaxa Nations and have extended invitations to the other two nations and Ktunaxa Nation Council (KNC) leadership and staff.
- A draft selenium WQO for Koocanusa Reservoir, which was developed by ENV and KNC, will be a released for public comment as a first stage in this amendment process.
- U.S. agencies and Tribes, along with the federal government and industry, will be invited to participate in a multi-stakeholder technical advisory committee that will guide the ABMP amendment process.

#### **KEY FACTS:**

##### **International Joint Commission (IJC)**

This document may contain information that is protected by solicitor client privilege. Prior to any disclosure of this document outside of government, including in response to a request under the *Freedom of Information and Protection of Privacy Act*, the ministry in possession of this document must consult with the lawyer responsible for the matter to determine whether information contained in this document is subject to solicitor client privilege.

- Over the past several decades metallurgical coal mining by Teck Coal Ltd. (and predecessors) in south-east B.C. (Elk Valley) has resulted in elevated levels of selenium (Se) and other mine-related contaminants in the Elk River watershed and Koocanusa Reservoir, which flows into Montana and Idaho.
- Concerns over selenium levels in the Elk River, Koocanusa reservoir, and the downstream Kootenai River have been raised by US state and federal agencies, stakeholders, and Indigenous Nations on both sides of the international border. There have been requests for an IJC reference on this issue.
- The IJC was created through the Boundary Waters Treaty of 1909. It was established to approve projects that affect water levels and flows across the boundary and to investigate transboundary issues and recommend solutions. The IJC was established by both countries because they recognized that each country is affected by the other's actions in lake and river systems along the border.

s.13; s.16

- Prime Minister Justin Trudeau wrote to former Premier John Horgan on November 9, 2022 directing our two governments to work together with the Ktunaxa to find solutions.
- On March 24, a joint statement from the US President and the Canadian Prime Minister said: "Canada and the United States also intend to reach an agreement in principle by this summer to reduce and mitigate the impacts of water pollution in the Elk-Kootenay watershed, in partnership with Tribal Nations and Indigenous Peoples, and in order to protect the people and species that depend on this vital river system."

s.16

#### **Area-Based Management Plan (ABMP) and Selenium Water Quality Objective (WQO)**

- In 2013 and in response to growing water quality issues and concerns, a Ministerial Order under the *Environmental Management Act* required Teck to develop an ABMP to stabilize and reverse the trend of increasing water contaminants in the Elk River watershed.
- Since ABMP implementation began in 2014, Teck has invested heavily in the development of new treatment and other strategies to improve water quality (almost \$2B). Three major water treatment facilities are now operating with a fourth nearing completion and expected to come online this year.

This document may contain information that is protected by solicitor client privilege. Prior to any disclosure of this document outside of government, including in response to a request under the *Freedom of Information and Protection of Privacy Act*, the ministry in possession of this document must consult with the lawyer responsible for the matter to determine whether information contained in this document is subject to solicitor client privilege.

- Record amounts of selenium and nitrate are now being removed from the watershed, and water quality is starting to stabilize downstream of treatment facilities.
- Given the emerging nature of the issues, there have been challenges and delays in achieving some of the water quality targets identified in the ABMP and new information has been learned about both the problem and the potential solutions.
- Updates to the ABMP are required to ensure it is reflective of the current situation, and responsive to new information and technological advancements. The province is now planning out an amendment process and efforts are underway to retain a facilitator to support the process.
- A draft selenium WQO for Koocanusa Reservoir has been co-developed by ENV and KNC. The draft WQO objective will be released as a first step in the ABMP amendment process. It is generally aligned with the current Montana selenium standard.
- When adopted, the selenium WQO would not be directly enforceable, but will inform a reassessment of the ABMP's selenium target.
- There is lots of pressure from the KNC, and US agencies and stakeholders, for B.C. to finish this work which has been carried out over many years as part of a larger bi-national collaborative process.

**Assistant Deputy Minister:**  
*Laurel Nash*  
*Environmental Protection*  
 250-953-4004

**Alternate contact for content:**  
*Anthony Danks, ED*  
*Strategic Policy*  
 778-698-4409

**Prepared by:**  
*Anthony Danks, ED*  
*Strategic Policy*  
 778-698-4409

This document may contain information that is protected by solicitor client privilege. Prior to any disclosure of this document outside of government, including in response to a request under the *Freedom of Information and Protection of Privacy Act*, the ministry in possession of this document must consult with the lawyer responsible for the matter to determine whether information contained in this document is subject to solicitor client privilege.