KTUNAXA NATION

Honourable George Heyman
Minister of Environment and Climate Change Strategy
Room 112, Parliament Buildings
Victoria, BC
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Canada

Governor Steve Bullock
PO Box 200801
Helena MT 59620-0801
United States of America

Governor C.L. "Butch" Otter
P.O. Box 83720
Boise, ID 83720
United States of America

Dear Hon. George Heyman, Gov. Bullock and Gov. Otter,

We are writing to your offices as the Councils of the Ktunaxa Nation, a transboundary Nation whose Territory extends north and south of the Canada-U.S.A. border. You will recall that we have previously submitted letters to your offices in 2017 (attached for your reference) related to our joint concerns about Koocanusa Reservoir, and the scope of the Lake Koocanusa Monitoring and Research Working Group (LKMRWG), including the lack of meaningful participation of the Ktunaxa Nation Council, Confederated Salish and Kootenai Tribes, and the Kootenai Tribe of Idaho, the focus of setting a water quality target for only one contaminant (selenium), and the limited geographical area under consideration.

We are reaching out at this time to share new concerns about the health and protection of the fish species that live in Koocanusa Reservoir and downstream in the Kootenai

watershed. Based on the amount of selenium in tissues of multiple species, the uncertainties around impacts to those species based on selenium in their tissues, and the number of years still before a site-specific target is in place for Koocanusa, we believe that a more conservative approach is required to protect the aquatic ecosystem throughout the Reservoir on both sides of the border. It is our recommendation that a lower selenium criteria should be established on an interim basis until the longer-term target is set in 2020.

Please refer to the attached technical memo which outlines our concerns and recommendation in greater detail.

Thank you for your attention to this important matter, we look forward to further discussion and resolution.

Chairperson, Ktunaxa Nation Council
7825 Mission Rd, Cranbrook BC, V1C 7E5

Chairperson, Kootenai Tribe of Idaho
PO Box 1269, Bonner's Ferry, ID 83805

Chairperson, Confederated Salish and Kootenai Tribe
PO Box 278, Pablo, MT 59778

Cc

The Hon. Chrystia Freeland, Canadian Minister of Foreign Affairs
Caroline Caza, Regional Director General for Environment and Climate Change Canada
Greg Lemermeyer, Deputy Director, Global Affairs Canada
Mark Zacharias, Deputy Minister, BC ENV
The Hon. John Horgan, Premier of British Columbia
Anthony Danks, Executive Director, Strategic Policy Branch, BC ENV
Sheldon Reddekopp, Environmental Protection Division, BC ENV
Doug Hill, Executive Director, BC ENV
Mr. Wayne Stetski, MP – Kootenay-Columbia
Christian Baxter, Director of Environmental Performance, Teck Resources Limited

The Hon. Steve Bullock, Governor of Montana
The Hon. Mike Cooney, Lieutenant Governor for the State of Montana

Tom Lopach, Chief of Staff for Governor of Montana
The Hon. Jon Tester, US Senator for Montana
The Hon. Steve Daines, US Senator for Montana
Terri Mavencamp, Water Standards, Water Quality Bureau, Montana DEQ
Tom Livers, Director of the Department of Environmental Quality
Martha Williams, Montana Department of Fish, Wildlife and Parks
Eric Urban, Water Quality Planning Bureau Chief, Montana DEQ
Patrick Holmes, Natural Resource Advisor for the Governor of Montana
Tom Livers, Director of the Montana Department of Environmental Quality
Myla Kelly, Water Quality Standards and Modeling Manager, MT Dept of Environmental Quality

The Hon. C.L "Butch" Otter, Governor for the State of Idaho
The Hon. Brad Little, Lieutenant Governor for the State of Idaho
The Hon. Michael Crapo, US Senator for Idaho
The Hon. James Risch, US Senator for Idaho
The Hon. Raul Labrador, US House of Representatives, Idaho
John Tippets, Director, Idaho Department of Environmental Quality
Virgil Moore, Director, Idaho Department of Fish and Game

The Hon. Mike Pompeo, US Secretary of State
The Hon. Catherine McCabe, Acting Administrator, US EPA
Doug Benevento, Regional Administrator, Region 8, US EPA
Chris Hladlick, Regional Administrator 10, US EPA
Jane Nishida, Acting Assistant Administrator, Office of International and Tribal Affairs, US EPA
The Hon. Ryan Zinke, US Department of the Interior

In April of 2013 the British Columbia Minister of Environment issued Ministerial Order No. M113 (the Order), which initiated the development of the Elk Valley Water Quality Plan (the Plan). The Order included the long-term water quality concentration target of 2 µg/L for selenium at the Koocanusa Reservoir, downstream of the Elk River. Following the acceptance of the Plan, Environmental Management Act Permit 107517 was issued, with an immediate implementation of a water quality site performance objective of 2 µg/L selenium at the Reservoir.

In July of 2014, British Columbia and Montana began to establish a process by which the long-term water quality target for selenium in the Koocanusa Reservoir would be amended should it be shown that 2 µg/L is not protective of aquatic ecosystem health. In addition, the process should allow for discussions on the assimilative capacity of Koocanusa Reservoir. Development of an amended water quality target for selenium in Koocanusa Reservoir would be established through the Lake Koocanusa Monitoring and Research Working Group (LKMRWG). Specifically, in reference letter 208250 from the Deputy Minister of MoE to MT DEQ and US EPA, the Deputy Minister committed to "amend the long term selenium target of 2 ug/L in Lake Koocanusa, should sound science and the results of the processes above identify a more appropriate target that is suitable protective of aquatic ecosystem health."

Data provided by Teck between 2014 and 2016 show that, despite meeting the long-term water quality objective established in the Order (of 2 µg/L selenium), exceedances of tissue-based environmental benchmarks (specifically developed to be protective of aquatic life) in fish species sampled from the Canadian portion of Koocanusa have occurred, including:

- Mean concentrations in muscle samples from largescale sucker, mountain whitefish, northern pikeminnow, peamouth chub, and yellow perch collected downstream of the Elk River confluence exceed the British Columbia muscle tissue based guideline (4 µg/g dry weight);

- Individual muscle samples in additional species: bull trout, burbot, and redside shiner exceed the British Columbia muscle tissue based guideline (4 ug/g dry weight);

- Individual whole-body tissue samples in the two tested species, peamouth chub and redside shiner, exceed the British Columbia whole-body based guideline (4 ug/g dry weight); and,

- Individual egg/ovary tissue samples in northern pikeminnow, peamouth chub, rainbow trout, and redside shiner exceed: (i) the British Columbia egg/ovary based guideline (11 ug/g dry weight); (ii) the United States Environmental Protection Agency (USEPA) egg/ovary guideline (15.1 ug/g dry weight); and (iii) the Level 1

benchmark for reproductive effects, developed by Teck in the Plan (18 ug/g dry weight).

Similarly, data provided by Montana Fish, Wildlife, and Parks from sampling efforts in 2013 have shown concentrations in egg/ovaries of peamouth chub above the USEPA egg/ovary guideline (15.1 ug/g dry weight).

Importantly, concentrations of selenium in fish tissues have exceeded provincial and federal environmental benchmarks while aqueous selenium concentrations were below the site performance objective of 2 µg/L. Measured concentrations of total selenium downstream of the Elk River confluence in Koocanusa Reservoir ranged between roughly 0.6 and 1.3 µg/L (noting that winter samples, which are likely to be higher, are not taken due to unsafe conditions).

It must be acknowledged that the sensitivity of the tested species discussed above to selenium burden (i.e., tissue accumulation) is largely unknown. However, these data demonstrate that current conditions in the reservoir (i.e., aqueous concentrations of total selenium below the long-term target) have resulted in selenium burdens in fish at levels that pose risk to aquatic health through reproductive effects. Furthermore, it is critical to note that white sturgeon, a species endemic to the Kootenai River, is the most sensitive species tested to selenium burden (USEPA 2016), and this species is found downstream of Libby Dam.

We must commend the efforts of the selenium technical sub-committee of the Lake Koocanusa Monitoring and Research Working Group to develop a more appropriate target for selenium in Koocanusa Reservoir. However, it is expected that promulgation of such a target is still at least two years away. Although the process was initiated in 2014, the LKMRWG in 2017 forecasted that adoption of a site-specifc selenium objective/criteria for Koocanusa Reservoir would be in 2020. We remain concerned that contaminant trends have continued to increase since the commitment to reviewing this criteria, that the implementation of mitigation (active wastewater treatment) as laid out in the Elk Valley Water Quality Plan is now two years behind schedule, and that fish tissue data to date are indicating that 2 ug/L will not be protective of fish and aquatic life in the reservoir. We are further concerned that the timeframe for the development and implementation of mitigation actions to meet a new target is unknown.

Based on this information, the Ktunaxa Nation Council, Confederated Salish and Kootenai Tribes, and the Kootenai Tribes of Idaho urge that an interim objective/criteria of 1.5 µg/L for dissolved selenium be adopted for the Koocanusa Reservoir until the site specific target is completed. This concentration is consistent with the monthly average exposure water quality criteria developed by USEPA (2016). To support achieving this objective/criteria in the reservoir, we are further recommending to the Province of British Columbia that Teck be required to initiate mitigation planning and implementation to

reduce further loading of selenium into Koocanusa Reservoir in order to achieve the interim objective and prevent further degradation of the aquatic environment.