

June 16, 2021

To:

Honourable Marc Garneau, Canadian Minister of Foreign Affairs (marc.garneau@parl.gc.ca)

Honourable Jonathan Wilkinson, Canadian Minister of Environment and Climate Change  
(ec.ministre-minister.ec@canada.ca)

The Hon. Antony Blinken, U.S. Secretary of State

U.S. Environmental Protection Agency Administrator Michael Regan (Regan.Michael@epa.gov)

cc:

Evelyne Coulombe, Executive Director, U.S. Transboundary Affairs, Global Affairs Canada  
(EXTOTT-NGB@international.gc.ca)

Michael Flores, Deputy Director, Canada Desk, Department of State (FloresM@state.gov)

Dan Kachur, Office of Canadian Affairs, Department of State (KachurD@state.gov)

IJC Commissioner and Canadian Chair Pierre Béland (belandp@ottawa.ijc.org)

IJC Commissioner and American Chair Jane Corwin (corwinj@washington.ijc.org)

IJC Canadian Commissioner Merrell-Ann Phare (pharema@ottawa.ijc.org)

IJC Canadian Commissioner Henry Lickers (lickersh@ottawa.ijc.org)

IJC US Commissioner Robert Sisson (SissonR@washington.ijc)

IJC US Commissioner Lance Yohe (yohel@washington.ijc.org)

Dear Ministers Garneau and Wilkinson, Secretary Blinken and Administrator Regan,

We are writing to request an International Joint Commission reference on the matter of water pollution due to coal mining in the transboundary Elk and Kootenai/y River basin.

We, a group of 20 Canadian non-governmental organizations, believe that Canada is in violation of the Boundary Waters Treaty in the transboundary Elk and Kootenay Rivers, given that waters flowing across the international boundary in Kooconusa Reservoir from B.C. into Montana regularly exceed the US EPA/State of Montana water quality standard for selenium (waters average 1.0 µg/L; EPA/MT criteria is 0.8 µg/L).

Rising levels of selenium were first identified in the Elk River in the early 1990s and in 1998 the Elk Valley Selenium Task Force was formed to investigate selenium pollution. More than two decades later, selenium levels continue to rise and have increased more than 500% in the past 30 years.

We are concerned that fish have been found in Kooconusa Reservoir and the Kootenai River in Idaho that exceed the EPA Aquatic Life Ambient Water Quality Criterion for Selenium and/or B.C.'s Ambient Water Quality Guidelines for Selenium. Mining laws and regulations in British Columbia have failed to protect waters on either side of the border from pollution. B.C. regulations lack a legally-enforceable pollution limit for Lake Kooconusa, and the B.C.

environmental assessment process has failed to protect transboundary waters because it does not fully consider cumulative, long-term impacts of coal mining on the watershed scale, and excludes assessment of impacts in international, U.S. and tribal territory waters. Teck Coal Ltd., the operator of the four existing mines in the Elk Valley, was recently handed the largest environmental fine in Canadian history for water pollution offences in 2012, yet selenium levels have continued to climb. The nature of selenium pollution is that it leaches from mining waste rock and flows downstream throughout the watershed. As more waste rock is generated, selenium levels increase. Selenium continues to flow from waste rock dumps for centuries and thus selenium levels found today will continue into the future long after the mines stop operating. The current water treatment measures being undertaken are not designed to solve the problem; they may simply reduce the impact during the relatively short time they are in operation.

Despite selenium levels above the EPA/Montana standard, B.C. continues to consider proposals for new mines and allow the continual expansion of existing mines in transboundary watersheds. Currently, four new open pit coal mines in the B.C. portion of the Elk-Kootenai River system are undergoing review – including Teck’s Castle proposal that would be the largest coal mine in Canada. These mines would add to the significant adverse effects on transboundary watersheds by adding billions of tons of mining waste rock to the already critical situation in the Elk-Kootenay watershed.

Nearly six years ago, B.C. and Montana began a cooperative process to set a shared selenium limit for transboundary Lake Kooconusa. Now, Montana has adopted a 0.8 µg/L selenium standard for the Lake, based on data and modelling from that process. Meanwhile, B.C. has failed to move forward on the parallel limit that they previously committed to and has indicated they will not be adopting an enforceable limit for selenium in Lake Kooconusa. During this lengthy process, long-term selenium pollution levels have only increased as mining continues. It is clear that the B.C.-Montana process has failed and federal intervention is needed.

This is clearly a multi-national issue that requires a comprehensive multi-national solution, considering both national governments and affected Tribes and First Nations. We request that you pursue a joint water quality reference to the International Joint Commission, under the Boundary Waters Treaty of 1909, for mine water pollution in the transboundary Elk-Kootenai River system. This would allow for a multi-national approach that would address the inadequacies of the present regulatory process, and include:

- Comprehensive assessment of mining impacts to transboundary waters, aquatic life and other wildlife and impacted communities
- Long-term monitoring of mining impacts in transboundary waters
- Development of enforceable standards that are protective of transboundary waters, fish, wildlife and communities
- Evaluation of whether Canada and the US are adhering to Article IV of the Boundary Waters Treaty, based on the above information

- Science-informed long-term mitigations for damages to waters, aquatic dependent wildlife, Indigenous lands and people, and stakeholder communities
- A watershed-scale approach to assessment of fish and habitat mitigation

Thank you for considering our request for an IJC Reference. Selenium levels have been rising in the Elk Kootenai/y basin for decades as a result of coal mining in the Elk Valley. There is no long-term solution in sight as impacts increase on both sides of the Canada-US Border. Now is the time for the IJC to step in to prevent future pollution of our shared waterway and to begin the process of sorting out how to clean up the existing mine pollution problem in the Kootenai/y.

Sincerely,

Robyn Duncan  
Executive Director  
Wildsight  
2 – 495 Wallinger Ave  
Kimberley, BC V1A 1Z6  
robyn@wildsight.ca

Gauri Sreenivasan  
Director of Policy and Campaigns  
Nature Canada  
gsreenivasan@naturecanada.ca

Tara Scurr  
Campaigner, Business & Human Rights  
Amnesty International Canada  
TScurr@amnesty.ca

Ugo Lapointe  
Co-manager, MiningWatch Canada  
Partner, BC Mining Law Reform Network  
ugo@miningwatch.ca

Montana Burgess  
Executive Director  
West Kootenay EcoSociety  
montana@ecosociety.ca

Camille LeBlanc (she/her)  
Program Manager  
Friends of Kootenay Lake Stewardship  
Society  
info@friendsofkootenaylake.ca

Mark Worthing  
Coastal Projects Lead  
Sierra Club BC  
mark@sierraclub.bc.ca

Anna Johnston  
Staff Lawyer  
West Coast Environmental Law Association  
ajohnston@wcel.org

Annita Mcphee  
Executive Director  
Canadian Parks and Wilderness Society,  
British Columbia  
annita@cpawsbc.org

Katie Morrison  
Conservation Director  
Canadian Parks and Wilderness Society,  
Southern Alberta  
kmorrison@cpaws.org

Harry Crosby  
Board Chair  
BC Nature  
Harry\_crosby@telus.net

Coree Tull (she/her)  
Co-Director Campaigns and Organizing  
Canadian Freshwater Alliance, a project of  
Make Way  
coree@freshwateralliance.ca

Aaron Hill  
Executive Director  
Watershed Watch Salmon Society  
aaron@watershedwatch.ca

Stan Tomandl  
Chair  
The Friends of the Stikine Society  
stikine@islandnet.com

Gina Morris  
Spokesperson  
Kamloops Moms For Clean Air  
gwriterm@hotmail.com

Nikki Skuce  
Director  
Northern Confluence Initiative  
nikki@northernconfluence.ca

Greg Knox  
Executive Director  
SkeenaWild Conservation Trust  
gregk@skeenawild.org

Steve Gray  
Director  
Mining Justice Action Committee  
miningjusticeactioncommittee@lists.riseup.net

Leroy McFarlane  
President  
Campbell River Environmental Committee  
gwl250@telus.net

William C. Patric  
Director  
Rivers Without Borders Canada  
will@riverswithoutborders.org