



Hon. Hilary Clinton
U.S. Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520
USA

Hon. John Baird
Canadian Minister of Foreign Affairs
Foreign Affairs and International Trade Canada
125 Sussex Drive
Ottawa, ON, Canada
K1A 0G2

October 11, 2012

Dear Ms. Clinton and Mr. Baird,

The Councils of the Confederated Salish and Kootenai (CSKT), Ktunaxa Nation, and Kootenai Tribe of Idaho (KTOI) are pleased to have jointly and independently agreed to request that the governments of the United States and Canada refer the matter of impaired water quality in the Elk and Kootenay (Kootenai) River basins to the International Joint Commission (IJC), pursuant to Article IX of the Boundary Waters Treaty of 1909. Specifically, we ask that you direct the IJC to examine into and report upon the water quality and quantity of the Elk and Kootenay (Kootenai) River watersheds, relating to the transboundary water quality and quantity and transboundary wildlife implications of existing, expanded, and proposed coal mining and other developments in the Elk Basin watershed, in British Columbia and draining through the Kootenay River (and Koocanusa Reservoir) into the United States, and to make recommendations which would assist Governments in ensuring that the provisions of Article IV of the said treaty are honored and upheld.

Teck Coal Company operates five active coal mines in the Elk River watershed and disposes large amounts of waste rock into mountain valleys. Environmental assessment processes are in place for expansions of two of these mines, and we understand that plans are being developed for expansions of the other three mines and possibly new mines as well. Natural processes leach selenium and other contaminants from the coal waste rock into surface and ground waters. Water contaminated by selenium and other toxins leaches into tributaries to the Elk River which flows naturally into Lake Koocanusa, a reservoir bisected by the US-Canadian border and flowing into the Kootenai (Kootenay) River in the US and subsequently back into Canada.

By the nature of the watershed and the coal mines' impacts, cumulative impacts are a particular concern because contaminants from all of the mines (and possibly other sources) is degrading water quality and threatens fish populations. Current selenium levels approach and/or exceed B.C and Montana water quality standards. At the Line Creek Mine, selenium standards greatly exceed B.C's guidelines, suggesting that BC's standards are non-enforceable, making IJC participation even more important.

By degrading water quality, mine/selenium contamination threatens fish in the US and Canadian waters of the Elk River and Kootenai/y River watersheds that are of particular cultural, historic, and subsistence importance to our communities. Notably, in 2012 the State of Montana listed Lake Koocanusa as "threatened" on its list of water quality impaired waters under Section 303(d) of the U.S. Clean Water Act because of increasing selenium levels. Further, bull trout, already listed as Threatened under the US Endangered Species Act, suffer impaired spawning and recruitment (Lake Koocanusa has been designated as bull trout "critical habitat"). Further still, westslope cutthroat trout, which are a "species of special concern" in Montana and Canada, are also threatened by selenium contamination.

Teck Coal has suggested selenium reduction measures but in the face of past contamination, present independent and cumulative degradation, and future mine permitting requests and active proposals, these proposals are not likely adequate to avoid exceeding Montana water quality standards. Moreover, proposed expansion at the Line Creek Mine is likely to occur in the next months - before Teck Coal's selenium reduction measures are fully drafted, let alone implemented or functionally beneficial.

Cumulative impacts from the five active mines and reasonably foreseeable impacts from their expansion and a sixth, new mine are causing water quality degradation that violates or will likely violate BC, Montana and U.S. water quality standards and impact Tribal (US) and First Nations (Canada) cultural, historic, treaty, and other interests relating to fish and water quality. Indeed, there are potential human health concerns for First Nations and Tribal members who harvest consume large quantities of fish, in accordance with their aboriginal and treaty rights.

In light of the above, the Tribal Governments request that the Commission examine into and report upon the following matters regarding the Elk Basin Watershed:

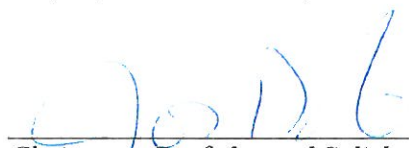
1. The present state of water quality and quantity at the border (including fluctuations) and the current water uses (including water dependent uses such as recreation) in the Elk and transboundary Kootenay/Kootenai Watersheds;
2. The nature, location and significance of fisheries currently dependent on the waters of the Elk and transboundary Kootenai/y Watersheds;
3. The cumulative effects on present water quality and quantity at the border and consequent effects on current water uses (including water dependent uses such as recreation) which would result from the expansion of one, two, three, four, and five existing mines and the permitting, construction, operation and post-mine reclamation of mines pursued for permitting; and

4. Such other matters as the Commission may deem appropriate and relevant to water quality and quantity at the border (including downstream effects in the United States) as occasioned by proposed coal mine expansions.

In the conduct of its investigation and the preparation of its report, the Commission is requested to make full use of information and technical data heretofore available or which may become available in either country during the course of its investigations. In addition, the Commission is requested to utilize the services of specially qualified persons and other resources in Canada and the United States. The Commission is requested to develop, as early as practicable, a work program under this reference for the information of Governments.

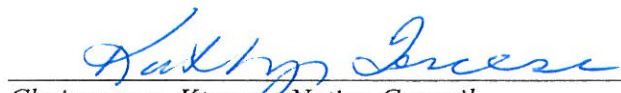
The Tribal Governments request that the Commission proceed with the activities under this reference as expeditiously as practicable, including appropriate interim protective actions, and report to Tribal and federal Governments no later than 18 months from this date. The Commission is requested to issue interim reports as appropriate.

Respectfully submitted by



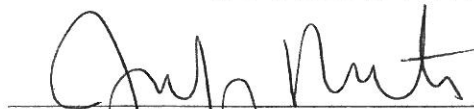
Chairman, Confederated Salish and Kootenai Tribes
P.O. Box 278, Pablo, MT 59778

10/11/12
Date



Chairperson, Ktunaxa Nation Council
7468 Mission Rd., Cranbrook, B.C. V1C 7E5

2012/10/12
Date



Chairperson, Kootenai Tribe of Idaho
P.O. Box 1269, Bonners Ferry, ID 83805

10/12/12
Date

cc:

Joseph Comuzzi, Chair
International Joint Commission
100 Metcalfe Street, 16th Floor
Ottawa, Ontario
K1P 5M1
Canada

Lana Pollack, Chair
International Joint Commission
2001 S Street N.W., 2nd Floor
Washington, D.C. 20440 USA