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June 23, 2020

The Honourable Jonathan Wilkinson  
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And to:

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**Re: Request for Fording River Operations, Castle Mine Project to undergo a Federal Impact Assessment**

Kiʔsuk kyukyit,

The purpose of this letter is to request, on behalf of the Ktunaxa Nation Council (KNC), that the Minister of Environment and Climate Change (the Minister) designate the proposed Teck Coal Limited (Teck) Fording River Operations' Castle mine expansion (the Project) as reviewable under section 9(1) of the *Impact Assessment Act* (the Act). The KNC is the governing body of the Ktunaxa Nation in Canada.

This letter is also intended to respond to the Impact Assessment Agency of Canada's letter dated May 27, 2020 addressed to the KNC, by indicating our support for the request made by the Confederated Salish and Kootenai Tribal Council and the Kootenai Tribe of Idaho on May 21, 2020 that the Project be designated by the Minister.

In summary, the KNC is requesting that the proposed Project be designated because of the Project's potential to cause or contribute to significant adverse impacts on matters within federal jurisdiction, and its impact on the Ktunaxa Nation. The location of the proposed Project is in an area that is of central importance to the Ktunaxa Nation, where the Nation has

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*Lower Kootenay*

*Tobacco Plains*

Indigenous title, rights, and interests that are recognized and affirmed by the *Constitution Act, 1982*, and where Ktunaxa Citizens are engaged in the ongoing practice of Ktunaxa rights through use of the lands and resources.

As described further below, in making this request, we note that:

1. Ongoing impacts in the Elk Valley from the five existing coal mines and three proposed new coal mines, as well as impacts from other development, have already been shown to be at significant and unsustainable levels, including impacts on fish and fish habitat, release of contaminants into the environment, impacts to Ktunaxa title and rights, and other impacts.
2. The majority of Teck's existing mine (Fording River), which the Project relies on and is an extension of, predates federal environmental assessment legislation. As such, the mine operations as a whole have never undergone a thorough federal review of their impact on areas within federal jurisdiction. The proposed Project relies on ongoing use of this infrastructure and would extend the use of this infrastructure for multiple generations (several decades). Taken together with the Project, Teck's Fording River mine would clearly trigger federal involvement. Even in isolation, the KNC understands that the Project is the largest coal mine Project to ever undergo, or be considered for, an environmental or impact assessment in ʔamakʔis Ktunaxa (Ktunaxa territory).

Due to the location, size and lifespan of the proposed Project, the KNC considers that it will have serious adverse impacts on the Ktunaxa Nation's Indigenous title, rights and interests, as well as other impacts within federal jurisdiction. As such, the KNC considers it critical that the federal government become fully engaged in the review and assessment of the Project by designating it as reviewable under the Act.

### **The Proposed Project**

As described in the proponent's Initial Project Description (IPD) dated April 8, 2020, the Project is located within the East Kootenay Region of Southeastern BC. The Project is on the eastern slopes of Qukin ʔamakʔis (Raven's Land), also known as the Elk Valley, just north east of Elkford, BC. To the north of the Project area is the currently operating Teck Coal Fording River Mine. The Project area is bounded by the Fording River to the west and Chauncey Creek to the south. The Fording River is a fifth order tributary to the Elk River. The municipality of Elkford is located adjacent to the Elk River and is approximately 115km north of Canada's southern border, where lands and waters have already been seriously impacted by open pit coal mine facilities in the area.

### **Rationale for Designation**

While Teck's IPD states that the footprint of the Project falls below the numeric percentage threshold for coal mine expansions set by the *Physical Activities Regulations* (i.e. "if the

expansion would result in an increase in the area of mining operations of 50% or more and the total coal production capacity would be 5,000 t/day or more after the expansion”), this is in large part because it is being measured against the substantial scale of the existing Fording River mine. Furthermore, if you compare the footprint of the Project to the current disturbance area of the existing Fording River mine (vs. the “permitted area” described in the provincial Mine’s Act C-3 Permit), the expansion amounts to a 51% increase (vs. 36.5%) (see *Teck’s Fording River Operations Annual Mine Permit Report for 2019*). There are much smaller coal mines in the area that are currently undergoing a federal assessment.

As well, the Project is intended to replace the current source of coal for the Fording River mine in order to maintain the current production levels of 10 million t/year or 27,400 t/day. This production level is over five times the 5,000 t/day production threshold for assessing both a new mine or a mine expansion.

Although not a formal federal trigger, the KNC views waste rock generation as perhaps a more appropriate measure of the impact from coal mines (such as in the Elk Valley) that utilize a “mountain top removal” or “valley fill” mining method. The IPD states that the amount of waste rock generated by the Project would be similar to what Teck has generated in its current mining operations at Fording River. The IPD also states that Fording River has produced 280 million metric tonnes (Mmtcc) of coal to date and that the conceptual foot print for the Project was based on a mine pit capable of producing a total of 350 Mmtcc. Assuming a similar strip ratio between the Project and current operations, the Project would generate approximately 125% of the waste rock currently associated with Fording River.

Despite significant investment of resources and technology, Teck’s existing coal mining operations in the Elk Valley have yet to demonstrate compliance with the Elk Valley Water Quality Plan, approved by the BC Government, and mitigation measures are behind schedule. Teck has announced that the Fording River South Active Water Treatment Facility (AWTF), which is three years behind schedule, will be the last full scale AWTF built and that future treatment facilities will be saturated rock fills (see <https://www.teck.com/media/Q1-2020-NR-Quarterly.pdf>) – a new technology that has remaining uncertainties and has only been permitted on a trial basis.

Finally, the KNC notes that the potential greenhouse gas emissions associated with the Project may hinder the Government of Canada’s ability to meet its commitments in respect of climate change. In 2017, the Fording River mine (at 521,744 tonnes CO<sup>2</sup> eq) was #107 out of the 1620 top emitters in Canada and #7 out of 191 in British Columbia (see <https://climate-change.canada.ca/facility-emissions/>). Given that the Project (if approved) will sustain current levels of production at Fording River, one can expect that Castle/Fording River would have similar emission levels once in operation.

As noted above, the Fording River mine operations as a whole have never undergone a federal review. The KNC is concerned that, without a federal impact assessment, issues of key Ktunaxa

and federal concern will not be fully addressed. Although the KNC is actively engaged both separately and jointly with BC and Teck on several stewardship initiatives in the Elk Valley regarding impacts from coal mining (the majority of which are related to areas within federal jurisdiction), these initiatives have yet to demonstrate on the ground improvements and therefore cannot be considered, at this point in time, to be effective mitigation measures.

Potential Project effects within federal jurisdictions or areas of interest, as set out in section 7 of the Act, include the following:

**1. Effects on the Ktunaxa Nation including Ktunaxa Indigenous title and rights, current use of lands and resources for traditional purposes, health, and other impacts**

Federal triggers: Section 6(1)g and 7(1)(c) of the Act.

The Project is located within lands and waters actively used, occupied, and cared for by the Ktunaxa Nation and is in an area of central importance to the Ktunaxa Nation, where the Nation has Indigenous title, rights, and interests, and Ktunaxa Citizens are engaged in the ongoing practice of Ktunaxa rights. The Project has potential to result in:

- a. Loss of opportunity to carry out cultural practices, including teaching, traditional use and harvesting activities, including fishing, hunting and gathering, in both the Project area and the surrounding area where Project effects may occur, including impacts to water quality due to development of the Project.
- b. Loss of access to, and sensory disturbance impacting, preferred places, preferred species and resources, and preferred practices central to Ktunaxa use, language and identity in the Elk Valley.
- c. Loss of Ktunaxa cultural, historical and archaeological sites due to land disturbance associated with mine development.

**2. Effects on Fish and Fish Habitat**

Federal triggers: Section 7(1)(a) of the Act; *Fisheries Act*, Section 35(2) and paragraphs 36(5)(a) to (e).

Several streams are located within the Project area, including fish bearing streams. The Fording River is adjacent to the Project and recognized as a river with respect to which there are high concerns for the genetically pure Westslope Cutthroat Trout population. Recent monitoring of the fish population found that there was significant decline in adults and juveniles (approximately 90% and 74% respectively) which led to the “A Call to Action” letter from KNC to the Department of Fisheries and Oceans on February 25, 2020. Potential impacts to fish and fish habitat include:

- a. Degradation or loss of fish habitat to Chauncey Creek and its tributary streams due to clearing of vegetation within riparian areas for the construction of new

roads and the upgrade of existing roads. This includes upgrades to several road crossings on tributary streams.

- b. Impacts to fish habitat and fish survival due to impacts on water quality through discharge and surface runoff from the open pit and rock storage area in Chauncey Creek and extending downstream into the Fording River. Currently, the active Fording River Operations has reported exceeding the legal limits set in BC's valley wide permit, under the Elk Valley Water Quality Plan, for the Fording River for selenium, sulphate, and nitrate. Water quality issues have also been noted in the larger Elk River, downstream of the proposed mine site, which is already significantly impacted by contaminants from five large open pit coal mines operated by Teck Coal Ltd. The KNC is extremely concerned regarding the future of fish populations in the Fording and Elk Rivers. The Project will extend the operating life of the Fording River mine by several decades. Special attention is warranted to ensure that the Project does not make the existing selenium and water quality situation worse.

### 3. Effects on Species at Risk

Federal triggers: Section 7(1)(a) of the Act; *Species at Risk Act* (S.C 2002, c.29), Section 79(1).

The Elk River is a vital waterway that is core habitat for the Westslope Cutthroat Trout (*Oncorhynchus clarkii lewisi*; that the Ktunaxa know as *qust'it*), which is a SARA listed fish species of special concern. The Elk River is subject to significant cumulative impacts from other mines and developments in the watershed, and flows directly into the Koochanusa Reservoir, thereby influencing transboundary waters. In the section of the Fording River where the Project is planned, the Westslope Cutthroat Trout population is considered to be of high conservation value due to its isolated status (the only fish species above Josephine Falls), genetically pure and extremely vulnerable to additional impacts.

Based on available information, other Schedule 1 listed species identified in the Project area include Badgers (Endangered), Olive-sided Flycatchers (Threatened), and Western Toads (Special concern). Potential Project impacts to these species and their habitat have not yet been fully assessed. These species and ecosystems are at risk and would benefit from Federal assessment and oversight, as would other species and ecosystems that are also at risk and likely to be impacted by the Project.

### 4. Effects on Migratory Birds

Federal triggers: Section 7(1)(a) of the Act; *Migratory Birds Convention Act, 1994*.

Based on information from adjacent areas, habitats and elevation range on and around Castle mountain, an estimated 60 forest and grassland bird species would be expected to breed locally. Many of these bird species, including raptors, Black-backed and Three-

toed Woodpeckers, Brown Creeper, Northern Flicker and Pacific Wren are protected under the *Migratory Birds Convention Act, 1994*. The Project is located within the internationally important Rocky Mountain Flyway. Based on data from nearby hawk-watch stations, at least 17 raptor species are known to move through this region seasonally during spring and fall migration, and some species remain and breed locally. The KNC believes that a federal assessment would help focus attention on identifying and assessing potential effects on migratory bird species and their habitat, as well as methods for managing such effects.

##### 5. Effects that cross international boundaries

Federal triggers: Section 7(1)(b) of the Act; *International Boundary Waters Treaty Act*.

The Kootenai Tribe of Idaho, the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, the State of Montana and the US EPA have all expressed concerns regarding water quality impairment caused by the accumulation of mine related contaminants in the waters and fish of the Kootenai Reservoir. Additional information regarding transboundary environmental concerns by Ktunaxa governments were provided through letters and memos sent to both the Canadian and US governments in April 2017. The reservoir is a transboundary waterbody between BC and Montana, with the northernmost point just downstream of the confluence of the Kootenay River and the Elk River (and its mine impacted tributaries, including the Fording River). An increasing selenium trend can be detected further downstream via the Kootenay River through Montana, and Idaho and all the way back up to the Yaqan Nukiy area (Creston, British Columbia). Other proposed coal mines have also triggered important transboundary issues related to water quality.

##### 6. Cumulative Effects

Federal triggers: Sections 6(1)m and 22(1)(a)(ii) of the Act.

The proposed Project will contribute further to the accumulation of effects in the valley, and on areas of shared federal and KNC concern. The Elk Valley and Elk River are subject to intense accumulation of effects due to the large number of coal mines in the watershed, with impacts already at or beyond sustainable and significant thresholds. For example, five of BC's 20 major "operating" mines are located in the Elk Valley (see <https://mines.nrs.gov.bc.ca/projects>). The KNC is also deeply concerned about habitat fragmentation and high road and stream crossing density in a valley that has so much historic and ongoing industrial development. The cumulative impact of the discharge of selenium and other contaminants from these mines on the Elk River watershed and downstream waterways is of particular concern to the KNC.

As well, looking at the Elk Valley from the perspective of greenhouse gas emissions, these five mines stood at #7 (Fording River), #9 (Greenhills), #10 (Elkview), #17 (Line

Creek) and #35 (Coal Mountain) out of 191 top greenhouse gas emitters in BC in 2017 (see <https://climate-change.canada.ca/facility-emissions/>).

We trust that this is sufficient information to support our request that the Project be designated as reviewable. Should you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,

<Original signed by>

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