



DEC 20 2021

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Dear Chair Teneese and Council Representatives:

Thank you for your letter of August 13, 2021, to my predecessor the Honourable Jonathan Wilkinson. Following the federal election, I was appointed Minister of Environment and Climate Change on October 26, 2021. Upon reviewing my portfolio, I have become aware of the ongoing issues in the Elk Valley / Qukin ?amak?is and the related concerns of the Ktunaxa Nation Council. I take these concerns seriously, and apologize for the delay in response as I have taken on my new responsibilities.

I strongly value the Government of Canada's relationship with the Ktunaxa Nation Council. As part of this relationship, I understand that the Impact Assessment Agency of Canada (the Agency) has been working collaboratively with the Ktunaxa Nation Council for several years on ongoing environmental and impact assessments within Qukin ?amak?is. In April, you advised that Ktunaxa Nation Council has been working on internal governance processes and was pausing engagement with the Agency until further notice. The Government of Canada remains committed to our ongoing relationship and is ready to work closely with you to address your concerns related to legacy and ongoing mining impacts.

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In your letter, you requested a suspension of the assessments of new and expanding coal mines in Qukin ʔamakʔis, including for the Fording River Extension, Michel Coal, Crown Mountain, and Tent Mountain projects. While I acknowledge and appreciate the concerns you have noted, there are no provisions in the *Impact Assessment Act* or the *Canadian Environmental Assessment Act, 2012* for me or the Agency to suspend the processes for reasons that are beyond the scope of the assessment of an individual project. That said, should a proponent wish to proceed through the assessment process, I will take into account the cumulative effects of that project, including the impacts of legacy and current operations on Ktunaxa people and your Section 35 rights, with the concerns you raised, when making a decision on whether that project should proceed.

Participation of Indigenous peoples in impact assessment aligns with the Government of Canada's commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples* and supports the Government of Canada's aims to secure free, prior, and informed consent for decisions that affect Indigenous peoples' rights and interests. I recognize that this is challenging work and I would like to acknowledge the efforts that all parties, especially Ktunaxa Nation Council, have made to date in approaching this work in a constructive manner. Each of the assessments of current projects within Qukin ʔamakʔis is coordinated with the Province of British Columbia, and the Agency hopes to continue building our collaborative approach to consultation and engagement with you throughout the assessments.

Beyond the assessments undertaken by the Agency, there are several other activities being undertaken by our government that may help address some of your concerns. As you know, Environment and Climate Change Canada is developing Coal Mining Effluent Regulations under the *Fisheries Act*. These regulations will reduce the risks to fish and fish habitat by limiting levels of harmful substances in coal mining effluent. Once in place, the regulations will apply to the 28 existing coal mines in Canada and to all future coal mine expansions and new coal mine projects. It will be applicable to all existing and proposed coal mines in Qukin ʔamakʔis.

Further, on March 26, 2021, the B.C court ordered Teck Coal Limited to pay \$60 million in fines and monetary penalties after a guilty plea was entered on two counts of unlawfully depositing a deleterious substance into water frequented by fish, contrary to section 36(3) of the *Fisheries Act*. In addition to the penalty, the company must also comply with a *Fisheries Act* direction. The measures required by the direction are aimed at preventing the discharge of deleterious substances and mitigating the adverse effects of selenium and calcite deposits to help protect the Westslope Cutthroat Trout population in the upper

Fording River. Of this \$60 million in fines and monetary penalties, the court ordered \$58 million to be paid to the Environmental Damages Fund, by March 26, 2022. The Environmental Damages Fund is administered by Environment and Climate Change Canada to direct funds received from court orders to priority projects that will benefit Canada's natural environment. I understand my officials have reached out to members of the Ktunaxa Nation Council to explore potential projects of interest and priority within Qukin ?amak?is.

In May 2021, selenium and its compounds were added to the List of Toxic Substances in Schedule 1 under the *Canadian Environmental Protection Act, 1999*. The 2017 screening assessment that led to this addition identified coal mines as posing a risk to the aquatic environment due to releases of selenium. This risk is an important driver for the federal Coal Mining Effluent Regulations under development.

Thank you for taking the time to write and bring these important concerns to my attention. I would welcome an opportunity to meet with Ktunaxa Nation Council leadership to discuss the important concerns you have identified and to determine a path forward to address these issues. Agency staff will continue to provide opportunities to your Lands and Resources Sector staff for collaboration to better understand your concerns and to ensure robust environmental and impact assessments currently underway of coal mining projects within Qukin ?amak?is.

Sincerely,

<Original signed by>

The Honourable Steven Guilbeault, P.C., M.P. (he/him/il/lui)