



A GLENCORE COMPANY

22 April 2026

Minister Julie Dabrusin
Minister of Environment, Climate Change and Nature
c/o Impact Assessment Agency of Canada
1800-1138 Melville Street
Vancouver, British Columbia V6E 4S3

**RE: Fording River Extension Project (FRX Project)
Response to Requests for Referral to a Review Panel**

Dear Minister Dabrusin:

EVR Operations Limited (EVR) is the proponent of the FRX Project. That project is subject to an assessment under BC's *Environmental Assessment Act* that commenced in April 2020 and an assessment under the *Impact Assessment Act* (IAA) that commenced in May 2021.

Between March 23 and April 15, 2026, four groups¹ wrote requesting that the Minister refer the federal assessment of the FRX Project to a review panel pursuant to Section 36. That section provides as follows:

36 (1) Within 45 days after the day on which the notice of the commencement of the impact assessment of a designated project is posted on the Internet site, the Minister may, if he or she is of the opinion that it is in the public interest, refer the impact assessment to a review panel.

The notice of commencement was issued on March 9, 2026. The deadline for the Minister's decision is no later than April 24, 2026. For the reasons discussed below, EVR asks the Minister to conclude that it is not in the public interest to refer the assessment to a review panel, and to decline to do so.

¹ Two Canadian environmental organizations, Wildsight and the Alberta Wildlife Association; a group that describes itself as "Canadian and U.S.-based organizations and businesses"; and the Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT)

The authority of the Minister

In determining whether referral is in the public interest, the Minister *must* consider four factors:

- (a) the extent to which the effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project may cause are adverse;
- (b) public concerns related to those effects;
- (c) opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it; and
- (d) any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

However, the Minister's consideration is not limited to those factors.² The decision is ultimately a public interest determination. The discretion is broad and highly discretionary, and the Minister may take into account other factors they believe are relevant to the public interest, including expediency and the impact of further delay.³

The Status of the Assessment of the FRX Project

As noted above, the federal assessment of the FRX Project commenced has been ongoing for almost five years. Any referral to a review panel would result in further delays and jeopardize the start of the FRX Project.

Key stages are summarized in Appendix A to this letter

Referral is not in the public interest

The four groups have not shown that referral is in the public interest

The four groups assert various reasons as justification for referral. However, these reasons have been consistently asserted and are already being examined within the current assessment process. The groups do not provide new, Project-specific information suggesting that the circumstances have changed or that the existing assessment processes are insufficient. In fact, the existing coordinated federal-provincial assessment framework is specifically designed to assess the considerations urged by the requesting parties, including the potential for cumulative effects and transboundary impacts, as well as consideration of Indigenous rights. The ongoing processes already ensure a comprehensive, integrated and transparent review. Referral to a review panel would therefore duplicate and extend processes that are already underway. Such duplication and delay is counter to the public interest.

² *Interlake Reserves Tribal Council v. Canada (Environment and Climate Change)*, 2019 FC 1067, at paras 63, 66

³ *Interlake Reserves Tribal Council v. Canada (Environment and Climate Change)*, 2019 FC 1067, at paras 66

The groups' coordinated submissions substantially overlap. Accordingly, EVR's responses are provided by topic.

Rights of Ktunaxa Nation

CSKT asserts potential impact on the exercise of the rights of Ktunaxa Nation, and Wildsight refers to a letter from Ktunaxa Nation Council in 2025. However, neither acknowledges the Ktunaxa engagement that has been undertaken to date nor the fact that the assessment process that is now underway was fashioned through engagement with Ktunaxa Nation.

Watershed and potential cross-border impacts

All groups express concern about potential watershed impacts and assume transboundary impacts on the Kootenai/y River. The questions of potential transboundary impact is in part why the Minister designated the FRX Project. Accordingly, these questions are being assessed. None of the groups can demonstrate that a review panel assessment is required to ensure that this is done.

Historic impacts

The groups express concern about the existing state of the Fording and Elk Rivers and Kootenai/y River watershed. But, as the basis, Wildsight, for example, asserts that a technically and legally contested selenium standard promulgated by the State of Montana to try to prejudice BC regulatory action, and which is incoherent with both Montana's own state-wide standard and US federal standards, is exceeded in the US portion of Lake Koochanusa from time to time. Such a position is not a valid basis for asserted transboundary impact or referral. Similarly, the groups make firm assertions of scientific "fact" about the status of selenium in the watershed that are inaccurate, disputed or highly uncertain. Monitoring data (including data reviewed and synthesized by the province for the Canadian portion of the watershed) do not support such adverse categorical assertions advanced by the requesting parties regarding current conditions or trends. Rather, concentrations in Canada have responded favourably to ongoing treatment. In the US, data show concentrations have been stable or decreasing. The Minister should not accept the requesting groups' assertions as true, but in any event, it is unnecessary for the Minister to decide because the current state of the region is already a consideration in the assessment. The potential effects of the FRX Project can be reliably assessed regardless of any uncertainty – the parties requesting referral do not suggest otherwise.

Past enforcement

Several of the groups refer to enforcement actions associated with historical mining activities in the Elk Valley. These references do not support referral to a review panel. Enforcement actions, where they have occurred, reflect the operation of the existing regulatory framework, including monitoring, compliance oversight, and corrective measures. They do not demonstrate a failure of that framework, nor do they establish that additional procedural mechanisms, such as a review panel, are required to assess a proposed project. Moreover, the cited enforcement matters relate to historical or ongoing operations and do not provide Project-specific evidence regarding the potential effects of the FRX Project. The purpose of the impact assessment is to evaluate the Project's anticipated effects and proposed mitigation measures, not to adjudicate past compliance

matters. Accordingly, references to enforcement do not bear on the statutory question before the Minister, which is whether the Project's potential effects warrant referral to a review panel.

Boundary Waters Treaty

In discussing asserted concern about potential cross-border impacts, the groups refer to the *Boundary Waters Treaty*. However, the *Impact Assessment Act* (IAA) process is not a forum for determining Canada's obligations under that Treaty. Such questions, to the extent they arise, are addressed through established diplomatic and binational mechanisms, including processes involving the International Joint Commission (IJC).

The role of the impact assessment is instead to evaluate the potential effects of the Project within the statutory framework of the IAA, including any effects within federal jurisdiction, based on the available evidence. References to the Boundary Waters Treaty do not alter the applicable legal test for referral to a review panel.

To the extent the requesting parties rely on the Treaty to support their assertions, those references are premised on contested characterizations of existing conditions and do not provide project-specific evidence demonstrating that the FRX Project will cause adverse effects in the United States.

Referral to the IJC

One of the groups requesting referral points to the reference of the "selenium problem" to an international joint commission as "fuel for the fire" for referral to an "independent" review panel. The IJC is an advisory body that does not exercise statutory or enforcement authority. Its role is to provide recommendations to governments under the Boundary Waters Treaty in relation to broad, binational questions. Its involvement therefore complements, rather than replaces or necessitates, domestic regulatory processes. The IJC reference does not presuppose that transboundary effects are occurring or their attribution.

The existing impact assessment process is fully capable of evaluating the potential for the FRX Project to alter selenium levels. Referral to a review panel is not required to ensure that this is done. The fact that a question has been referred to an IJC does not change the conclusion that an Agency-led assessment will conduct a rigorous assessment that will generate the information required to make statutory decisions under the IAA. The fact that broader, basin-wide questions are already under consideration through an established binational mechanism reduces, rather than supports, any asserted need for an additional "independent" review panel under the IAA.

Public opposition: Two of the groups assert that the level of public opposition is "substantial." In determining whether it is in the public interest to refer a project to a review panel, the Minister must consider "(b) public concerns related to [effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project]." However, neither group suggests that opposition is more "substantial" than any similar project nor do they show that the concerns actually expressed by the public will not be properly addressed in an Agency-led assessment.

In summary, the reasons provided by the four groups do not establish that it is in the public interest to refer the assessment to a review panel.

The mandatory considerations

In making a determination, the Minister must consider four factors. Each is discussed below.

“the extent to which the effects within federal jurisdiction or the direct or incidental effects that the carrying out of the designated project may cause are adverse”

While the Project, like most major resource developments, has the potential to result in adverse effects, the relevant question is the extent and significance of those effects within federal jurisdiction. The parties seeking referral express concern about effects, but their comments are founded in large part on concerns about the existing state of the environment as they assert it to be. There is nothing to suggest that the magnitude of the potential effects of the FRX Project are such that review panel assessment is required.

“public concerns related to those effects”

The record demonstrates that members of the public are concerned. This is not surprising. However, there is no suggestion that an Agency-led assessment is not appropriate to address the concerns expressed.

“opportunities for cooperation with any jurisdiction that has powers, duties or functions in relation to an assessment of the environmental effects of the designated project or any part of it”

Referral to a review panel is not required to secure an opportunity to cooperate with British Columbia. The Agency and British Columbia’s EAO are already cooperating in accordance with the Impact Assessment Cooperation Agreement and the FRX Project-specific Cooperation Plan.

Conversely, this factor weighs against referral because doing so would make it more difficult for the assessment agencies to continue coordinating the separate statutory assessment procedures.

“any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982.”

In the Joint Assessment and Engagement Plan, EAO and the Agency state the following:

“Recognizing that each Indigenous Nation is unique, the EAO and IAAC will work with all potentially affected Indigenous Nations to understand how their distinct rights, interests, and relationship to their territory might interact with the proposed Project. Indigenous interests are described as interests related to an Indigenous Nation and their rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*, including Treaty rights and Aboriginal rights and title that may be impacted by the Project.”

There has been no suggestion by any party that this objective will not be achieved in an Agency-led assessment.

Referral will delay the assessment and harm the public interest

Given that the statutory deadline for referring the assessment to review panel will expire on April 24, 2026, the requests are being made late in the day. In other assessments the Minister has recognized the need for certainty and has made the decision to refer assessments to a review panel at an early stage⁴. Parliament has recently affirmed the public interest in expeditious regulatory review.⁵

The assessment of the FRX Project has been ongoing for five years. Referring the assessment to a review panel at this late stage will result in additional unnecessary process, inevitable delay, and increased regulatory uncertainty. This will come at a cost not only to EVR, but also to the Indigenous groups who have committed time and resources over a period of years to advance the assessment to the point where it can proceed under a plan that is not contested – they too will be faced with additional process, cost, and uncertainty. Ultimately the public interest would be harmed as a result.

Closing

At a late date, four groups ask the Minister to refer the assessment of the FRX Project to a review panel. In doing so, they give no new information nor assert that their concerns are not or will not be adequately considered through the ongoing assessment process. The grounds they provide do not demonstrate that referral is in the public interest. Conversely, referral will result in added process, cost, and delay, and harm the public interest. For these reasons, EVR respectfully urges the Minister to decline these request.

Sincerely,

<Original signed by>

Mike Carrucan, CEO

⁴ For example, see the Suncor Base Mine Expansion Project; GCT Deltaport Expansion – Berth Four Project,

⁵ See for example, the recital to the *Building Canada Act* S.C. 2025, c. 2, s. 4

Appendix A - The Status of the Assessment of the FRX Project

2020 to present: EVR and Teck Coal Limited continue to advance the assessment of FRX Project. In doing so, EVR and Teck engaged with provincial and federal assessment authorities, provincial and federal ministries, and Indigenous groups. The Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT) has participated in the process as have US federal and state agencies. Members of the public have commented at various stages.

April 2020: An initial project description is provided in the provincial assessment of the FRX Project.

19 August 2020: The Minister of Environment issues an order under section 9(1) designating the FRX project (then known as the Castle Project).

October 2020: An initial project description is submitted to the Agency. That description demonstrates that the FRX Project does not trigger assessment under the *Physical Activities Regulations*.⁶

March 2022: BC EAO issues draft Readiness Decision Recommendation Report, and dispute resolution process is initiated.

February 2023: BC EAO issues a Readiness Decision requiring EVR to undertake certain steps and submit a revised Detailed Project Description (DPD).

February 2023 – October 2025: EVR engages with Ktunaxa Nation and Yaq'it ?a·knuqti 'it. Engagement with KNC and Yaq'it ?a·knuqti 'it occurred via seven workshops and small group meetings. Workshops focused on alternatives to the Project, alternative means of carrying out the Project and mitigation measures. Planning for the workshops was done collaboratively by a small planning group made up of employees from KNC, Yaq'it ?a·knuqti 'it and EVR. Project engagement was co-designed with Yaq'it ?a·knuqti 'it and KNC. Feedback was subsequently incorporated into project revisions and the Revised DPD.

October 2025: Revised DPD is submitted.

March 2026: Notice of Commencement of an Impact Assessment, Cooperation Plan, Joint Detailed Permitting Plan, Joint Assessment and Engagement Plan, are issued.

⁶ SOR/2019-283