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Todd Goodsell  
A/Executive Project Director  
Environmental Assessment Office  
Government of British Columbia

*sent via email; July 22, 2020*

**Regarding:** Teck Fording River Operations expansion, Castle Project Initial Project Description

Ki?suk kyukyit,

The Ktunaxa Nation Council (KNC) has received and reviewed the Initial Project Description (IPD) prepared by Teck Coal Limited (Teck) for the proposed Castle Project (the Project). This letter highlights the KNC's high level concerns with the Project in addition to the identification of information gaps in the existing IPD, and areas where the KNC needs additional clarity or commitment from the proponent in order to make a fully informed decision regarding whether to proceed with an environmental assessment (EA) of the Project at the Readiness Decision stage under section 16(1) of British Columbia's 2018 *Environmental Assessment Act* (2018 BC EAA). By highlighting these areas now, the KNC hopes to inform Teck's Detailed Project Description (DPD) which will in turn inform the KNC's determination regarding the Readiness Decision. The identified information gaps should not be taken as an exhaustive list of requirements for the Readiness Decision but rather KNC's initial perspective which will evolve as KNC proceeds through the early engagement phase.

In general, the KNC is extremely concerned with the proposed Project. The Project is in an area where evidence of Ktunaxa title and rights is clear and well documented. The Project is a significant expansion to one of the largest existing mine areas in BC. Rather than see the Fording River Operation (FRO) wind-down and move into reclamation and restoration, the Project would permit removal of another mountain and further impact multiple generations of Ktunaxa citizens. Based on the IPD, the adverse cultural and environmental impacts of the Project, may cause extraordinarily adverse effects on the Ktunaxa Nation and Ktunaxa Indigenous rights recognized by the United Nations Declaration on the Rights of Indigenous Peoples (2007), and recognized and affirmed by section 35 of the *Constitution Act, 1982*. These Project impacts will be in addition to, and act cumulatively with, ongoing effects from existing and past developments in the area.

Because the Readiness Decision is informed by the potential for extraordinarily adverse effects on an Indigenous nation or their Indigenous rights, it is imperative that the KNC have more information on the Project design and mitigation measures to inform that critical step in the 2018 BC EAA process.

*ʔak̓isq̓nuk*

*ʔaq̓am*

*Lower Kootenay*

*Tobacco Plains*

With extensive past experience in coal mine EAs (expansions and “green field” projects), the KNC is acutely aware of potential issues related to the Project. While acknowledging the IPD is a less-detailed interim step before the DPD, the KNC is seeking further clarity regarding key concerns relevant to the KNC Readiness Decision. In many places, the information in the IPD related to these concerns is vague, unclear and/or lacking. Identifying and addressing these issues from the start will result in a more effective and efficient process.

The KNC’s response to the IPD is organized into the following themes:

- A) Ktunaxa Rights and Use of Land and Resources
- B) Project Scope, Rationale and Relationship to Existing Permits and Regulators
- C) Regional Environmental Challenges and Sustainability
- D) Innovation and Best Available Technology

Attached to this letter (Appendix A) is also some preliminary KNC input regarding Valued Components for consideration within the draft DPD, as well as for later stages of the process (should an EA proceed). Appendix B is a table of nearly 100 detailed review comments on the IPD from KNC staff and consultants.

#### **A) Ktunaxa Rights and Use of Land and Resources**

As the proponent, and BC, are well aware, the Project is located within the Elk Valley and the Ktunaxa land district of Qukin ʔamakʔis, a core area of ʔamakʔis Ktunaxa that is actively used, occupied, and cared for by the Ktunaxa Nation. Ktunaxa Nation title, rights, and interests recognized and affirmed under section 35 of the *Constitution Act, 1982* in Qukin ʔamakʔis are well-documented and recognized by other governments and the area is relied on by Ktunaxa citizens for a wide range of practices. While the area is also currently seriously impacted by industrial coal mining and other developments, Ktunaxa citizens continue to actively use the Project area to the extent they are able.

Based on Ktunaxa knowledge, the proposed Project footprint includes unique, regionally important, and largely intact environmental features, including critical sheep and ungulate habitat. The proposed Project footprint also includes related and preferred areas for practice of Ktunaxa rights including hunting, habitation and transportation (foot and horse trails). These activities within the Project footprint connect to a broader Ktunaxa cultural landscape that includes nearby mountain passes and that support deep past, current, and future Ktunaxa connections with lands and resources.

Disturbance caused by the existing coal mines has resulted in the displacement of Ktunaxa practices including into the Project area, and intensifies the importance of the Project area for Ktunaxa use and stewardship. At present, the KNC believes that the potential Project effects on

Ktunaxa title, rights and interests could be extraordinary - and at a minimum will likely be significant. Furthermore, the potential impacts may not be mitigatable or easily offset.

Through other regional work, the KNC has established both formal and informal planning goals and objectives for the Project area. The Project would extend the spatial and temporal disruption of Ktunaxa practices in Qukin ʔamakʔis for generations to come. The KNC requires additional detail from the proponent to understand if the Project is consistent, or could be made consistent, with Ktunaxa goals, values and objectives. This includes but is not limited to the following:

- Greater clarity and commitments regarding anticipated environmental performance of the Project and the current and future environmental performance of existing operations (i.e. Coal Mountain, Elkview, Line Creek, Greenhills and Fording River Operations),
- Tangible action and evidence that demonstrates the healing of the land prior to additional impacts occurring. This includes improvements to water quality and significant progress on reclamation and restoration efforts.

#### **B) Project Jurisdiction, Scope, Rationale and Relationship to Existing Permits**

The Project proposes to open a largely undisturbed mountain to coal mining in an area where impacts on water, wildlife and the Ktunaxa Nation's rights have already exceeded thresholds of significance, and where additional impacts are also anticipated to exceed thresholds of significance. The KNC needs to be confident that concerns regarding the Project's impacts on key Ktunaxa rights and interests will be addressed. The KNC also requires clarity regarding federal engagement. The KNC has requested the Project be subject to federal review in a June 23, 2020 letter to the Impact Assessment Agency of Canada (IAAC)<sup>1</sup>. The letter also details a number of the KNC's current concerns with the Project.

The KNC is also seeking a better understanding of the justification for the Project, particularly in relation to existing and recently permitted expansions. The 2015 FRO Swift Project Description indicated the Swift expansion would produce 170 Mmtcc of coal, which is enough to maintain production rates with the existing plant for 23-25 years (2016 to 2040). Swift in combination with Eagle was supposed to carry FRO production past 2040. The KNC requires a clear and well-illustrated explanation for why the Project should be considered right now, given existing permits, and what aspects of existing permits can be expected to change if the Project proceeds. Significant changes to existing permits or EA certificates and interdependencies between projects may warrant other projects be reassessed with the proposed Project. For example, it's clear from the IPD that the Project relies on existing and future FRO infrastructure and will be utilizing existing waste rock disposal areas and mining areas for waste rock disposal.

<sup>1</sup> Available at <https://iaac-aeic.gc.ca/050/evaluations/document/135195>

### **C) Regional Environmental Challenges and Ktunaxa Stewardship/Sustainability**

Existing coal mines, mine exploration and other industrial and non-industrial activities have resulted in significant cumulative effects in the Elk Valley that are at unsustainable levels. There is no information offered on how the proposed Project will either improve or worsen the situation. A number of these issues are acknowledged in the IPD through the inclusion of Table 17 (Indigenous Interests) as well as in sections 6.1.2 and 6.1.3 (Regional Environmental Initiatives and Regional Environmental Challenges, respectively). For the KNC, regional environmental challenges are a major concern, and include, but are not limited to, the following (for clarity, references are made to the KNCs specific detailed comment tables which can be found in Appendix B):

- Water Quality/Water Quality Issues (comments 1, 9, 14, 15, 16, 28, 33, 35, 36, 41, 42, 43)
- Protection and rehabilitation of tributaries (comments 2, 3, 5, 6, 13, 29, 37, 38, 46, 47, 87)
- Westslope cutthroat trout and fish habitat (comments 5, 34, 39, 40, 48, 59, 60, 85, 87)
- Cumulative terrestrial effects (comments 30, 44, 84)
- Reclamation progress/deficit and outcomes (comments 4, 24, 26, 27, 45, 58, 84, 85, 89, 90)
- High Elevation Grasslands and Listed Grasslands/Brushlands (comments 30, 44, 50, 54, 58, 64, 70, 77, 81, 84, 85, 90)
- Whitebark Pine and Listed Plants (comments 44, 45, 50, 62, 71, 78, 79)
- Big Horn Sheep/Habitat (see comments 70, 80, 81)

KNC also requires additional information on:

- Greenhouse Gases (GHG) that Contribute to Climate Change (see comments 21,22, 23)
- Long Term Liability (see comment 27)

Overall, more information is needed to understand how the Project will influence the ability of the KNC to achieve its goals and objectives for the Elk Valley.

### **D) Innovation and Best Available Technology**

The KNC requires assurance that Teck is committed to moving beyond a ‘business as usual’ approach, and to implementing innovative and best available technology (BAT) consistent with a commitment to undertake all technically and financially feasible means to avoid further impacts. The KNC is encouraged to see that Sections 3.4.2.7 and 3.4.2.8 of the IPD (water quality source control and treatment) includes a statement that Teck will adopt or apply a “*a best achievable technology approach*” and will consider some new techniques (including long strike mining). That said, the KNC will need to understand how the proponent will evaluate ‘achievability’ vs. ‘available’ and the extent to which a BAT approach (focusing on best available technology) is committed to in all aspects (and phases) of the Project.

The IPD lacks mention of some known BAT technologies, including but not limited to:

- Coarser Coal technology (see comment 19)
- Clean water diversions (see comment 13)

We trust that this submission will assist Teck in initiating the preparation of a DPD sufficient for the purposes of the KNC's Readiness Decision regarding whether or not to proceed with an EA for the Project, and that further clarifications will hopefully emerge throughout the early engagement process. Please do not hesitate to contact us.

Sincerely,



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Team Lead, Mining Oversight, Lands and Resources  
Ktunaxa Nation Council

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- Appendix A: Preliminary KNC input on Valued Components
- Appendix B: KNC's Detailed comments on the IPD in tabular form.