



Fording River Extension Project (“FRX”)

DISPUTE RESOLUTION

FACILITATOR’S REPORT

BETWEEN

ʔakisqnuʔ First Nation, ʔaʔ am, Yaʔan nuʔkiy (Lower Kootenay Indian Band), Yaʔ it
ʔa·knuʔiʔit (Tobacco Plains Indian Band), each a Ktunaxa First Nation and the Ktunaxa
Nation Council Society (“**Ktunaxa**”)

AND

Environmental Assessment Office (“**EAO**”)

Facilitator: Aaron Bruce

Date: December 16, 2022

INTRODUCTION

Section 5 of the *Environmental Assessment Act* (2018) (the “Act”) includes provisions for a facilitated dispute resolution process within British Columbia’s environmental assessment process. Dispute resolution intends to help resolve substantial disagreements between participants at key stages of the assessment process. Participants may use the services of a qualified facilitator when they are unable to reach agreement or consensus on their own. Dispute resolution ends when the facilitator provides a dispute resolution report (the “Dispute Resolution Report”) to the participants and decision makers. The statutory decision maker may be the Chief Executive Assessment Officer (the “CEAO”) or the Minister(s), depending on the matter. The facilitator does not make decisions for the participants and the Dispute Resolution Report is non-binding on the decision-maker. In lieu of an anticipated Dispute Resolution Regulation, the facilitator is to utilize the Dispute Resolution Interim Approach as guidance in designing and implementing the dispute resolution process.

FACILITATOR’S APPROACH TO REPORT

My role was to support the Parties in seeking consensus on the Readiness Decision recommendation and to take a neutral position throughout the process. There was much discussion and materials submitted in this dispute resolution process and I could not include the details of all information in this report. This report reflects what I heard and is not intending to speak for any Party or any other participants. For this reason, I have included as appendices to this report some key documents that were submitted in the Dispute Resolution Process that may more accurately reflect the information shared in the Dispute Resolution Process from the perspective and detail of the party providing it. For further clarity, the focus of this report is not on what was exactly said by a party, but rather on the interactions between the Parties, the actions taken to seek consensus, and where facilitator intervention was required.

BACKGROUND

Under Section 16 of the *Act*, the CEAO must choose between one of four options: (a) allowing the project to proceed to an environmental assessment (EA); (b) referring the project to the Minister with a recommendation that the project be exempted from environmental assessment; (c) referring the project to the Minister with a recommendation that the Minister issue a termination order; or (d) requiring the proponent to submit a revised Detailed Project Description. This is referred to as the Readiness Decision.

Under Section 18 of the *Act*, if the EAO does not require a revised Detailed Project Description (“DPD”), or the CEAO does not refer a decision to the Minister for exemption or termination, the CEAO must either:

- a) Proceed with the EA; or
- b) Refer the project to the Minister with recommendation that an assessment body conduct the assessment under Section 24 of the Act which may include assessment by

commission, a hearing panel or by the CEO, an Indigenous nation or an individual appointed by the Minister via order.

On March 23, 2022, the EAO circulated its draft Readiness Decision Report with a preliminary recommendation (“Preliminary Recommendation”) to proceed to an EA under section 18(a) of the *Act*. The Ktunaxa disagreed with the Preliminary Recommendation and requested that the EAO make the recommendation to terminate the FRX Project under section 16(c).

On April 8, 2022, Ktunaxa initiated dispute resolution under section 5 of the *Act* (“Dispute Resolution Process”). More specifically, as stated in the Initiating Document for Dispute Resolution Under the Environmental Assessment Act (2018) (**Appendix “A”**), Ktunaxa “...does not agree with the Environmental Assessment Office’s preliminary determination that the FRX Project will not cause extraordinarily adverse effects on the environment generally or to the constitutionally protected Indigenous rights, including title, of the Ktunaxa Nation. Consistent with this view, the Ktunaxa Nation does not support the EAO’s proposed recommendation that the FRX Project proceed to the next phase of process planning for an environmental assessment pursuant to Section 19 of the Environmental Assessment Act (the “Act”).”

On May 18, 2022, I was retained by the Parties to facilitate the Dispute Resolution Process.

My first order of business was to develop with the Parties an Engagement Protocol, which would set out the procedural details agreed to by the Parties. Once the Engagement Protocol was agreed to and signed by the Parties, the Dispute Resolution Process would begin.

Prior to our first meeting to discuss an Engagement Protocol, Ktunaxa had submitted a proposal on its preferred dispute resolution process design and shortly after that first meeting the EAO responded to that proposal with its thoughts on dispute resolution process design. The Parties were not in alignment on process design and were more interested in continuing discussions from earlier unsuccessful attempts at consensus building at the expense of working through the development of the process design in a timely and efficient way.

As the Parties were engrained in their respective positions before the dispute resolution process had even started, I did a check-in on the readiness of the Parties to take part in the dispute resolution process. The Parties were cautiously optimistic that they could come to consensus on the Readiness Decision recommendation and had a strong interest to continue discussions to seek common understandings and clarity on positions. From my perspective, the Parties required further information from each other to potentially move toward consensus and there was a willingness to seek common ground. Therefore, I found that there was a readiness to talk and that a facilitated dispute resolution process was the correct forum to have these discussions.

The Engagement Protocol (**Appendix “B”**) clearly set out the process, the values and principles that would drive the process, the objective, the role of the facilitator, how other participants could participate, confidentiality, and administrative support. There was concern on Ktunaxa’s part on the 60-day timeline, but it agreed to the timeline on the condition there would be opportunities to extend timelines. The Engagement Protocol was signed by the Parties and the facilitator on July 7, 2022.

OTHER PARTIES

The Engagement Protocol listed other participants that may have participatory roles in the Dispute Resolution Process and how these participants may participate. The Impact Assessment Agency of Canada participated as an observer at each facilitated session, the CEAO participated in the meeting on the land with Ktunaxa members, Confederated Salish & Kootenai Tribes (CSKT) and Kootenai Tribes of Idaho (KTOI) participated in facilitated sessions as observers with the opportunity to provide comments, and Teck did not participate in facilitated sessions but were kept informed through the process by the facilitator and had the opportunity to provide comments on submissions made in the process.

SUMMARY OF FACILITATED PROCESS

Facilitated Sessions #1 & #2

The first facilitated sessions took place on July 7th and 8th in Cranbrook. The intent for the first day was for the Parties to come to agreement on the facts and the issues and the second day would be dedicated to seeking consensus based on the issues agreed to.

On the first day, Ktunaxa raised with the EAO a lack of confidence in the environmental assessment (“EA”) process, concern with Teck’s performance on existing projects within its territory and its lack of confidence in Teck to improve its performance on the proposed FRX project, and concern that recognition of Ktunaxa governance and rights has not been respected and that UNDRIP standards are not being met by the EAO. Generally, Ktunaxa expressed frustration with the EAO and Teck for not hearing their concerns over the years and not recognizing its jurisdiction to make decisions on projects in its territory. However, it also made clear that it is not against mining projects in its territory, but that the FRX project as proposed has significant issues in terms of impacts on Ktunaxa and Ktunaxa rights. Ktunaxa explained that based on its concerns with the FRX proposal it had requested Teck to revise its project proposal or propose a different project, but Teck refused.

EAO acknowledged the trust deficit but maintained that the new *Act* provides tools to do things differently than in the past and an EA is the best way to determine whether the project has extraordinarily adverse effects (“EAE”) or not.

The objective of the Dispute Resolution Process is to reach consensus on the Readiness Decision recommendation. In seeking consensus, the Parties agreed on the following issues to be discussed:

- 1) What is EAE? What are the indicia?
- 2) What is the information base?
- 3) What are the other opportunities for addressing Ktunaxa’s rights and interests?

The parties explained to the other how it defined EAE and how the EAE standard is to be met. Ktunaxa argued that there was enough available information to demonstrate that there would be EAEs both generally and on Ktunaxa and Ktunaxa rights. From Ktunaxa’s perspective when the

EAO was making its determination on whether the FRX project had EAEs, it should have considered information beyond what is found in the DPD and that there is publicly available information that should have been considered in this case. As a specific example, Ktunaxa explained that there is information regarding selenium concentration found in the National Pollution Inventory that would demonstrate EAE on water quality. Also, and importantly, Ktunaxa pointed out that Ktunaxa knowledge of the project area has not been considered in the EAE determination.

The EAO explained that the questions and factors that it considers when determining EAE are found in the Readiness Decision Policy:

- 1) Will an EA, including technical studies and the development of mitigation measures, potentially inform whether this project could be acceptable?
- 2) Can an EA be designed to sufficiently assess the potential extraordinarily adverse effect?
- 3) Are there opportunities for the proponent to revise their Detailed Project Description to address the potential extraordinarily adverse effect?

The EAO further explained that in considering EAE in making its Preliminary Recommendation, it answered 'yes' to all three questions. Ktunaxa expressed concern that question 1) presupposes that an EA will add to the understanding of effects and mitigation. From Ktunaxa's perspective, the question should not be can we ask more questions, but will more studies change the outcome? It is a threshold issue. Ktunaxa maintained its position that enough is known about the environmental effects of the project to conclude EAE.

EAO responded that from its perspective it does not have conclusive evidence that the effects would be EAE and an EA is the appropriate forum to assess whether there are EAEs and whether these can be mitigated or not. The Readiness Decision process cannot be a "mini-EA".

The Parties then attempted to find alignment on what is an EAE. EAO explained that it did not have a standard definition and viewed EAE as a magnitude of effect that would be higher than significant, which is considered with respect to the existing record of whether there are existing significant adverse effects.

When asked how Ktunaxa view EAE, the Ktunaxa explained that it sees the *Act* as holding space for two equally valid ways of knowing – western science technical studies and effects to a Nation and its rights should equally inform EAE. It is not just about technical analysis but an Indigenous perspective. It sees the intent of the standard to terminate projects that have effects that are head and shoulders above other similar projects.

At this point in the session, with both Parties going back and forth on EAE, Ktunaxa leadership spoke up out of frustration. Leadership's perspective was that this conversation is more than a battle of technical analysis. Ktunaxa do not need a technical analysis to understand the impacts from previous mining projects as they know that they can't drink the water, can't fish, or consume fish and hunting and trapping activities are no longer possible because of the changes

in the landscape. The impacts on the land and water have been traumatizing to Ktunaxa people. For Ktunaxa people who are on the land and waters regularly it is obvious that the FRX project will add to the impacts existing projects already have on Ktunaxa way of life. There was frustration that Ktunaxa's voice is not being considered as a decision-maker when from Ktunaxa's perspective the proposed FRX project will change the existence of the Ktunaxa people.

I had intervened after this heartfelt speech. The observation I had made was that the issue in the Dispute Resolution Process is technical in nature, but the underlying issue is a broader jurisdictional issue that may not be resolved in the Dispute Resolution Process. Ktunaxa seem to be very frustrated that the province of British Columbia acknowledges Ktunaxa rights and jurisdiction on paper, but does not recognize its knowledge or decision-making as legitimate in processes such as an EA. There is a power imbalance that needs to be balanced for this dispute to be resolved to the satisfaction of the Ktunaxa.

After hearing both Parties perspectives on what is an EAE and how an EAE determined, it was quite clear the Parties would likely not come to a consensus decision on the Readiness Decision recommendation. The positions had not changed since the pre-facilitation stage, and both were trying to convince the other of the best approach to consider EAE. I did a check-in with the Parties to determine whether the Dispute Resolution Process is the best forum to resolve this issue. In other words, are the Parties able to change the conversation from 'this is the way to consider EAE' to can we develop a joint approach to consider EAE. Also, whether this is a broader jurisdictional issue that needs to be resolved through a different process.

The parties acknowledged that they would likely not come to consensus on the Readiness Decision recommendation in the Dispute Resolution Process. However, they saw value in continuing discussions to provide the opportunity for Ktunaxa's perspectives to be included in the Dispute Resolution Report and the Readiness Decision recommendation report for the CEAO to consider when making the Readiness Decision. Despite seeing value in continuing discussions to provide this information to the CEAO, Ktunaxa explained that the flaw with this approach is that there does not appear to be a measurable threshold for EAE and therefore its not clear how Ktunaxa's perspectives will inform the CEAO to decide to terminate or not.

The Parties concluded that the EAE discussion is exhausted for the time being, but that Ktunaxa would draft a recommendation report from its perspective and would schedule a meeting on the land with the CEAO to provide the CEAO the opportunity to see the land base and hear from the perspective of Ktunaxa knowledge holders.

The EAO raised that another opportunity that could be discussed is a revised Readiness Decision recommendation requiring Teck to revise its DPD to include the Ktunaxa perspective on EAE, mitigations, and alternatives. Ktunaxa agreed to consider the proposal but could not answer on the day. The Parties decided to move on to discussions regarding other opportunities for addressing Ktunaxa rights and interests. The Parties were unsure whether they required dispute

resolution to have these discussions and whether I had a role in those discussions moving forward. The Parties informed me that they would provide direction to me at the second facilitated session to be held the following day.

In the second facilitated session the parties decided that they would not terminate the dispute resolution process and that I would have a role in supporting their discussions on the EAO proposal for a revised recommendation. However, Ktunaxa were not able to discuss the revised proposal on the day and the Parties decided to use the time scheduled to discuss other opportunities to address Ktunaxa rights and interests.

Ktunaxa raised that for Ktunaxa to participate in an EA process it would require decision-making ability and the focus of discussion centred on the section 7 consent agreement under the Declaration on the Rights of Indigenous Peoples Act (“DRIPA”). EAO raised that there are other tools under the Act such as a section 41 agreement regarding the substitution of an Indigenous nation’s assessment or to conduct a cooperative assessment with the EAO and a process under section 19(4) whereby Ktunaxa could carry out a portion of the assessment that affects it and its rights. Ktunaxa’s interest was to enter a section 7 consent agreement and the EAO explained that it would facilitate the introduction of Ktunaxa’s interest to the Ministry of Indigenous Relations and Reconciliation to seek discussion on a section 7 consent agreement.

Facilitated Session #3

Ktunaxa submitted to the EAO and facilitator the Ktunaxa Submission on the Readiness Decision Recommendation for the Fording River Extension Project Recommendation on August 11, 2022 (“Ktunaxa Recommendation”) (**Appendix “C”**).

The third facilitated session took place on August 15, 2022, and was conducted virtually.

As there was little time between the Ktunaxa Recommendation being received by the EAO, the session was broken into three parts. The first part was for Ktunaxa to present the Ktunaxa Recommendation, the second part was for the EAO to caucus to discuss the Ktunaxa presentation, and the third part was to be a facilitated session to seek consensus. A 2-hour caucus was scheduled to allow the EAO to meet internally to discuss the presentation in preparation for the facilitated session in the afternoon.

After the caucus, the EAO acknowledged that it needed more time to consider the Ktunaxa Recommendation and was not able to participate in the facilitated session. The Parties agreed that they would need to defer the facilitation for a time where EAO has fully considered the Ktunaxa Recommendation and in a position to discuss its views on whether the Ktunaxa Recommendation may change the preliminary Readiness Decision recommendation. Following this session I requested an extension of the timelines, which was granted by the CEO.

Facilitated Session #4

The meeting on the land was held on August 24th and 25th and the Meeting on the Land Summary (**Appendix “D”**) was submitted to the EAO and facilitator on October 17, 2022. These were key pieces of information required to continue the Dispute Resolution Process.

The fourth facilitated session took place on November 9, 2022, and was conducted in-person in Cranbrook, but I had to attend virtually as did some other participants. This facilitated session was intended to be the last session to seek consensus.

The EAO had prepared a power point presentation to guide the facilitated session (**Appendix**). The EAO introduced the presentation by stating that the slides were outlining a concept for discussion purposes and that the wording in the presentation was not intended to be the exact wording used in its Readiness Decision recommendation report.

The EAO presentation started with what it heard from Ktunaxa through the Ktunaxa Recommendation and its attendance with Ktunaxa leadership and knowledge holders on the land where the proposed project would be developed.

Although written by the EAO, Ktunaxa seemed to be in general agreement on how the Ktunaxa concerns were characterized, but with some discussion on providing further detail to reflect the Ktunaxa perspective. Ktunaxa had some concern with the EAO’s characterization of recognizing Ktunaxa jurisdiction as it did not want the EAO to assert something it was not able to genuinely do. It had to be more than just words and not a watered-down version of jurisdiction. There was also concern from some Ktunaxa representatives that there needs to be a better understanding of the governance system of Ktunaxa and recognition of the community that has jurisdiction over the project area. Ktunaxa explained that it would provide EAO with information to address this issue.

In the second part of the presentation, the EAO set out where it saw alignment with Ktunaxa. Ktunaxa was cautiously in agreement with the list of issues EAO viewed as common ground but explained that the wording did not go far enough in some cases and further clarification was needed for it to better understand others.

EAO provided its perspectives on where it was at in developing a recommendation:

- EA is the appropriate place to assess and characterize effects.
- It hasn’t concluded with certainty that the project will cause EAE with information provided to date.
- More information on alternatives and mitigation measures will inform the next Readiness Decision and consideration on whether the Project will cause EAE.

After painting the picture, the EAO presented its thoughts for a revised Readiness Decision recommendation. The EAO proposed conceptually that a potential opportunity for the Parties to attempt to address Ktunaxa’s interests and concerns while meeting EAO perspectives would be

for Teck to revise its current DPD to include information on alternatives and mitigations, work with Ktunaxa to identify mitigations for impacts on Ktunaxa and its rights and maintain an opportunity for termination if Teck does not identify plausible mitigations for impacts on Ktunaxa and Ktunaxa rights. The Readiness Decision process would start anew once the DPD is submitted.

Ktunaxa made clear that it was not in agreement with the revised recommendation to have Teck revise its DPD. It still took the position that the project as proposed should be terminated. Notwithstanding its position on the outcome, Ktunaxa wanted to engage in discussion on what the process could look like regarding the revised DPD.

Overall, the discussion was positive with little intervention by the facilitator. Much of the discussion was regarding wording and the potential for Ktunaxa to add to the requirements for the DPD process. Ktunaxa was not able to agree to the proposal in whole or in part and explained that it would need to go back to its leadership to get direction. Therefore, consensus was not reached.

The EAO understood Ktunaxa's position in terms of mandate and suggested that the parties attempt one more facilitated session to work toward consensus. Ktunaxa agreed with the approach and noted that it would be attempting to update leadership prior to the next facilitated session to get direction. EAO committed to draft a revised Readiness Decision Recommendation Report that would include the comments it heard from Ktunaxa at the meeting and would form the basis for discussion at the next facilitated session. Another time extension was required and the CEO granted it.

Facilitated Session #5

The fifth facilitated session took place on December 5, 2022, in Cranbrook and was intended to be the final facilitated session.

The EAO had provided Ktunaxa with the revised draft Readiness Decision recommendation report in advance of the session to help Ktunaxa to prepare for discussion. Ktunaxa opened the session by acknowledging the EAO's efforts to bring the Parties closer to consensus with the revised report. It explained that there was some general alignment with the EAO's requirements and conditions in its recommendation. However, Ktunaxa did not see alignment on the EAO's approach to determining an EAE and considered this issue as not resolved. It also made clear it did not have a mandate from its leadership to agree to anything other than termination.

Based on its previous review of the draft recommendation, Ktunaxa raised questions seeking clarification on some of the conditions and requirements. The discussion was positive and at the end of the session a summary of key issues the Parties were generally aligned on was agreed to (main bullets below). On December 9, 2022 Ktunaxa followed up with the EAO and the facilitator to provide further clarification on the issues where alignment was found (sub-bullets below):

- The FRX Project may cause EAE to the environment, Ktunaxa and Ktunaxa rights.
 - While Ktunaxa believe that determination [to terminate] can be made now, Ktunaxa view the EAO's conclusion that it is concerned there is a "substantial possibility of the Project causing EAE" as bringing the parties far closer together on this issue.
- The criteria for evaluating EAE.
 - Ktunaxa generally agree with the criteria stated at p. 24 of the draft Readiness Decision report as well as the concept of considering comparable projects stated at pp. 25 - 26.
- The need for an EAE evaluation to consider information beyond the DPD where that information has been provided by Ktunaxa through the DR process or comes from technical reviewers (i.e. the Provincial agency technical review memos).
- Mitigation measures must be plausible and supported by information to show they will be reasonably effective in avoiding EAE.
 - Ktunaxa agree with this statement, with the clarification that Ktunaxa view "plausible" as including a requirement that the mitigation measures be based on sound science, data, technical assessment and Ktunaxa knowledge and experience.
- Mitigation measures relied on by Teck for past EA's have in some cases not been implemented in a timely manner, not performed as predicted and been based on incorrect predictions of mitigation efficacy.
 - This is a relevant factor when considering the likelihood of proposed mitigation measures adequately addressing the potential for the FRX Project to cause EAE.

Based on the discussions, during the meeting the EAO was attempting to make changes to the wording to better reflect Ktunaxa's perspectives in the report and explained that it would send the revised draft to Ktunaxa prior to submitting the report to the CEO for decision. Ktunaxa appreciated the work EAO was doing and explained that it would provide the EAO with a letter that would further clarify Ktunaxa perspectives on the EAO's proposed recommendation.

The Parties then engaged in discussion on what the revised Readiness Decision recommendation process with Teck could look like. Ktunaxa explained that it has reservations in participating in such a process based on past negative experiences with Teck and wanted comfort that Teck

would seriously consider its perspectives and that this would not be ‘business as usual’. The Parties discussed requirements for the process and seemed to come to general agreement on what some mechanisms could be to support good faith discussions, but further discussion would be required in terms of how the process would be managed.

The Parties also discussed other opportunities to address impacts on Ktunaxa and Ktunaxa rights. Ktunaxa made clear that if the FRX project proceeds to an EA that a condition of Ktunaxa participation will be a DRIPA section 7 consent agreement.

The session ended very amicably with both Parties acknowledging how far they have come since the start of the Dispute Resolution Process and that the Dispute Resolution Process was helpful in finding a path forward.

CONCLUSIONS

The Parties did not come to consensus on the Readiness Decision recommendation for the following reasons:

- Ktunaxa continue to view termination of the FRX Project as the appropriate step at this stage in the EA.
- Ktunaxa believe that the EAO has information of sufficient certainty to support a termination determination.
- Ktunaxa firmly believe that the information of impacts to Ktunaxa and Ktunaxa rights demonstrates that FRX will cause EAE to Ktunaxa.
- Ktunaxa do not fully agree with the EAO’s approach to evaluating EAE; in particular, it believes that the EAO sets an unreasonably high standard of requiring evidence that shows it is beyond a “reasonable doubt” that the project will cause EAE.

Despite lack of consensus on the EAO’s recommendation to request Teck to revise the DPD, Ktunaxa generally agreed with and supported the approach the EAO is recommending, including the draft conditions or directions to Teck. Ktunaxa conditioned its support of the approach on the understanding that a future termination recommendation remains an option, based on the outcomes of the revised DPD work.

Lastly, Ktunaxa have notified the EAO that a condition to Ktunaxa continuing to consider the FRX Project or other coal mining development is the negotiation of a consent-based decision-making agreement supported by section 7 of DRIPA.

FINAL REMARKS

Although the Parties did not reach consensus, I believe that the Parties reached a greater understanding of each others’ perspectives which should be viewed as a successful outcome of the Dispute Resolution Process. With submission of this report to the Parties, the Dispute Resolution Process is now complete.

APPENDIX "A"

Initiating Document for Dispute Resolution Under the Environmental Assessment Act (2018)



Ktunaxa Nation Council
7468 Mission Road
Cranbrook, BC V1C 7E5
tel: 250-489-2464
fax: 250-489-2438

visit us at:
www.ktunaxa.org

April 8, 2022

Via email: Todd.Goodsell@gov.bc.ca

Todd Goodsell, A/Executive Project Director
Environmental Assessment Office
836 Yates St
Victoria, BC V8W 1L8

Dear Todd:

RE: Readiness Decision - Teck Fording River Extension Project (Castle)

Further to your email of April 4, 2022, please find enclosed a completed document initiating dispute resolution regarding the draft Readiness Decision Report for the Teck Fording River Extension Project dated March 23, 2022 (the "Draft Readiness Decision" for the "FRX Project"). As previously discussed and set out in that notice, the Ktunaxa Nation Council (the "KNC") on behalf of the Ktunaxa Nation does not agree with the Environmental Assessment Office's (the "EAO's") preliminary determination that the FRX Project will not cause extraordinary adverse effects on the environment generally or to the constitutionally protected Indigenous rights, including title, of the Ktunaxa Nation. Consistent with this view, the Ktunaxa Nation does not support the EAO's proposed recommendation that the FRX Project proceed to the next phase of process planning for an environmental assessment pursuant to section 19 of the Environmental Assessment Act (the "Act").

We note that the draft Readiness Decision states "In lieu of additional rationale from the KNC regarding the potential for extraordinarily adverse effects the EAO does not recommend termination". We confirm that the dispute resolution process will be the venue in which the KNC can provide additional information to support its view that the FRX Project will cause extraordinary adverse effects. We will wait for further definition of the scope, timing and format of that process before providing that further information.

We also wish to confirm that the dispute resolution process will be a co-designed and co-managed process that fully integrates and respects the Indigenous perspective, rights and governance authority of the Ktunaxa Nation. Section 2(2)(b)(ii) of the Act vests your office with the responsibility of advancing reconciliation by, among other things, "supporting the implementation of [UNDRIP]", "recognizing the inherent jurisdiction of Indigenous

Nations” and “collaborating with Indigenous Nations in relation to reviewable projects”. In our view the fulfillment of these purposes requires the EAO to jointly develop the dispute resolution process with the KNC in a consent-based manner that recognizes the inherent jurisdiction of the Ktunaxa Nation over the lands and resources of ʔamakʔis Ktunaxa, and respects and integrates Ktunaxa laws, customs and perspectives. While we will review the draft dispute resolution guidelines prepared by the EAO, we expect the EAO to work with us on a collaborative basis unfettered by guidelines or process rules developed without our input.

Without limiting our future views, at this point in time we have identified the following issues to be addressed as part of the process design:

- Selection of a facilitator. We do not have a candidate to propose at this time; however, we are doing further research and will advise if we identify a candidate(s). We look forward to any suggestions from the EAO.
- Sharing of information and transparency. The dispute resolution process must include full and transparent information sharing so we can appreciate the basis for the EAO’s preliminary determination.
- Timelines. We will need to ensure that the timelines for dispute resolution allow for the KNC to prepare additional information and review and consider information provided by the EAO. The timelines will also need to reflect and accommodate Ktunaxa governance processes.
- Clear definition of the standard. We have not received any formal guidance from the EAO on how it interprets and applies the extraordinary adverse effects standard. Achieving a shared understanding of what the standard means should be an important part of the process.
- Process format and stages. We have some initial thoughts on how to collaboratively build a shared understanding on key issues related to the extraordinary adverse effects standard, and will be happy to share those thoughts at a future meeting.

In closing, we confirm that the FRX Project environmental assessment process is on hold, pending resolution of the dispute resolution process. We will wait for further correspondence from the EAO regarding next steps, and look forward to advancing this important process in a collaborative, consent-based manner.

Vickie Thomas

Vickie Thomas (Apr 8, 2022 10:43 MDT)

Vickie Thomas

Director, Lands and Resources

Initiating Document for Dispute Resolution under the *Environmental Assessment Act (2018)*

This document commences a referral for dispute resolution under the *Environmental Assessment Act (2018)* (the Act). Under [section 5](#) of the Act, dispute resolution is intended to help resolve substantial disagreements between eligible participants at key stages of the EA process. Participants may use the services of a qualified facilitator when they are unable to reach agreement or consensus on their own.

The Dispute Resolution Interim Approach outlines a framework to support an interim approach to DR that the EAO develops with Indigenous nations on a project-specific basis before a regulation is enacted. Before completing the Initiating Document, it is recommended to review the matters that may be referred to a facilitator under the section 5(2) of the Act and further outlined in the Interim Approach.

Please submit this document to: **TBD**

1. PARTICIPANT

Provide the name and contact information of the Indigenous nation.

Name

Vickie Thomas, Director, Lands and Resources, Ktunaxa Nation Council

Mailing Address

7825 Mission Road

City

Cranbrook

Province/Territory

British Columbia

Postal

V1C7E5

Email

vthomas@ktunaxa.org

Phone

(250)-489-2464; ext 4034

2. CONTACT INFORMATION

Provide the name and information of the primary contact person.

Primary Contact Name

Erin Robertson, Team Lead, Mining Oversight

Primary Contact Department

Lands and Resources, Ktunaxa Nation Council

Contact Phone Number

(250)-420-7309

Contact Email

erobertson@ktunaxa.org

Alternative Contact Name

Alternative Contact Department

Contact Phone Number

Contact Email

3. DISPUTE RESOLUTION MATTER

Select one of the following:

Early Engagement

- Participation of an Indigenous nation as a participating Indigenous nation in the assessment (s.14(1), including amendments and extensions)
- A pending determination that there is no reasonable possibility of an Indigenous nation or its rights being adversely affected by the project (s.14(2), including amendments and extensions))

Readiness Decision

- A pending decision by the minister, on recommendation by the CEAO, to terminate or exempt a project from assessment (s.17)
- A pending decision by the CEAO to proceed with the assessment (s.18)

Process Planning

- A pending decision to issue a Process Order (s.19)

Effects Assessment

- The content of the draft Assessment Report and/or the draft environmental assessment (EA) certificate (s.28)

Recommendation

- The recommendation about the pending decision of the ministers on whether to issue an EA certificate (s.29)

Decision

- The pending decision of ministers on whether to issue an EA certificate to address issues not captured in the Assessment Report or EA certificate (s.29)

The matter is being referred to dispute resolution in relation to which reviewable project undergoing an environmental assessment under the Act:

Teck Coal Limited's Fording River Extension Project (Castle)

4. DESCRIPTION OF DISPUTE

Provide a description of the dispute for the participant's perspective as well as any interests in the outcome of the dispute.

Please see attached cover letter.

The Ktunaxa Nation Council (the "KNC") on behalf of the Ktunaxa Nation does not agree with the Environmental Assessment Office's (the "EAO's") preliminary determination that the FRX Project will not cause extraordinary adverse effects on the environment generally or to the constitutionally protected Indigenous rights, including title, of the Ktunaxa Nation. Consistent with this view, the Ktunaxa Nation does not support the EAO's proposed recommendation that the FRX Project proceed to the next phase of process planning for an environmental assessment pursuant to section 19 of the Environmental Assessment Act (the "Act").

5. OPTIONAL – FACILITATOR RECOMMENDATION

If the participant would like to propose an individual to serve as the facilitator, please provide the person’s name and contact details below. If listing multiple names, please list in preferential order.

The KNC does not have a candidate to propose at this time; however, we are doing further research and will advise if we identify a candidate(s). We look forward to any suggestions from the EAO.

APPENDIX "B"

Dispute Resolution Engagement Protocol

Fording River Extension Project Dispute Resolution Engagement Protocol

Between:

ʔakisqnuʔ First Nation, ʔaʔ am, Yaʔan nuʔkiy (Lower Kootenay Indian Band),
Yaʔ it ʔa·knuqʔiʔit (Tobacco Plains Indian Band), (each a “Ktunaxa First Nation”) and
the Ktunaxa Nation Council Society (the “KNCS”), together the “Ktunaxa”

And:

Environmental Assessment Office (“EAO”)

Preamble

- A. On April 8, 2022, the KNCS on behalf of Ktunaxa initiated dispute resolution under Section 5 of the Environmental Assessment Act (2018) (“Act”) in respect of a preliminary recommendation to the Chief Executive Assessment Officer (“CEAO”) to proceed with an environmental assessment of the Teck Coal Fording River Extension (FRX) project under section 18 of the Act (“Readiness Decision”).
- B. The Ktunaxa First Nations each assert, exercise, and declare Aboriginal titles and rights to their unceded lands, and have authorized the KNCS to act on their individual and collective behalf in administering this dispute resolution process, subject to the right of each of the Ktunaxa First Nations to participate in the dispute resolution process as and when appropriate.
- C. Nothing in this protocol or dispute resolution process derogates from, limits or otherwise affects the aboriginal title and rights of any Ktunaxa First Nation or the Ktunaxa Nation and does not affect the position of any party with respect to the section 35 Aboriginal rights holding entity or entities.
- D. The parties recognize that this Dispute Resolution process is the first conducted under the Environmental Assessment Act (2018) and will be completed in absence of regulation referenced by section 5 of the Act. In the absence of a regulation and policies to provide the parties guidance for the dispute resolution process, an interim approach (“Interim Approach”) to dispute resolution has been developed by the EAO. Under the Interim Approach the parties with the assistance of the facilitator are required to develop an engagement protocol (“Engagement Protocol”) that will outline the rules of engagement to guide the process. While this process may inform future dispute resolution processes, guidance and regulation, it is not intended to set precedent for future processes.
- E. The parties intend to co-design and co-manage the dispute resolution process under this Engagement Protocol and will be guided by the values, principles, customs, laws, and policies of each party to the dispute.

Principles and Values to Guide Process

- 1. The process will be guided by the following principles and values:
 - a. **Recognition:** each party recognizes that the other party has jurisdiction and decision-making authority over the lands and waters proposed to be used for the Project,

Fording River Extension Project Dispute Resolution Engagement Protocol

including Ktunaxa law and responsibilities, including the principle of *ʔa-kxam̓is ǵapi qapsin* (All Living Things), and also BC's laws and responsibilities, including under the Environmental Assessment Act (2018) and the Declaration on the Rights of Indigenous Peoples Act (DRIPA 2019), and to that end, the parties wish to build government to government cohesion, alignment and consistency in decision-making.

- b. **Reconciliation:** an understanding of the history of Ktunaxa and BC relations will form the background for the discussions in the dispute resolution process and how the parties can work together to build a positive relationship based on respect and recognition. The parties will seek to advance reconciliation by implementing the *United Nations Declaration on the Rights of Indigenous Peoples*.
- c. **Respect:** the parties will engage in a respectful manner including respecting the co-existence of Indigenous and western knowledge and taking all steps possible to ensure the process feels safe to all.
- d. **Collaboration:** a collaborative approach to the discussions and decisions will be undertaken by the parties including a focus on resolving conflicts and challenges where they exist, while maintaining consensus where it exists.
- e. **Creativity/Flexibility:** an openness to looking at different ways to meet objectives and resolve issues.
- f. **Transparency:** full and transparent information sharing where confidentiality does not restrict such sharing.
- g. **Procedural Fairness:** the parties acknowledge that the EAO has an obligation to administer its processes in a procedurally fair manner, particularly as it relates to the proponent Teck, and will work together to ensure that such obligations are fulfilled through the processes described below.
- h. **Good Faith:** the parties will enter the dispute resolution process with the intention of working toward resolution of the issues and meeting the Objective and will not behave unreasonably to delay, frustrate, or control the process.

Objective

- 2. The objective of this dispute resolution process is to seek consensus on a recommendation to the Chief Executive Assessment Officer ("CEAO") and Ktunaxa leadership on the Readiness Decision ("Objective"). Although this is the Objective, the parties acknowledge that consensus may not be the outcome.

Process

- 3. In attempting to meet the Objective, the parties agree to follow the following process:

Fording River Extension Project Dispute Resolution Engagement Protocol

- a. Identification of, and agreement on, the issues to be discussed.
- b. Identification of all options to be considered in the resolution of the issues.
- c. Analyze all options and whether any of these will lead to a consensus recommendation on the Readiness Decision.
- d. The facilitator will draft a report (“Facilitators Report”) to be considered by the CEO and Ktunaxa leadership when making their respective decisions on the Readiness Decision.

Role of Facilitator

4. The role of the facilitator is to:
 - a. guide the discussions between the parties and support the parties through the process;
 - b. make recommendations, if needed and appropriate, but the facilitator will not be a decision-maker in the process; and,
 - c. draft the Facilitator’s Report summarizing the dispute resolution process and documenting the outcomes of the process including any points of consensus or any points of disagreement and any recommendations the facilitator may make.
5. The parties will generally communicate with the facilitator jointly except where a party provides notice to the other party that it will be communicating with the facilitator independent of the other party. The party seeking independent and bilateral communication will identify any information that should not be shared with the other party
6. The facilitator will provide updates on the dispute resolution process to Teck upon agreement of the parties on timing and content of the update.

Timelines

7. The signing of this Engagement Protocol will initiate an initial 60-day timeline for the parties to attempt to complete this dispute resolution process.
8. The parties agree that there may be circumstances where the parties and facilitator require more time for the facilitation process and will collaborate and cooperate on making a request to extend the timeline. The 60-day timeline may be extended by the CEO upon request by the facilitator and under the following circumstances:
 - a. the parties are making good progress toward consensus and are unlikely to succeed within the 60-day timeline; or
 - b. extenuating circumstances that impair or delay a participant or the facilitator from participating in the facilitation.
9. The CEO uses their discretion in determining whether to allow extensions for the dispute resolution process and may request that the facilitator provide a report to conclude the dispute resolution process at the expiry of the original time limit or grant the extension.
10. In the event the parties are not able to reach agreement on a request for a timeline extension, either party may make that request directly to the CEO.

Fording River Extension Project Dispute Resolution Engagement Protocol

Other Participants

11. By agreement of the parties, the facilitator may invite other participants to this dispute resolution process but who will not become parties to the dispute. The following participants may be invited to participate with respective conditions of participation:
 - a. **Teck:** upon agreement between Ktunaxa and EAO, Teck may be invited at certain times during the dispute resolution process to observe the discussions between Ktunaxa and EAO and with agreement of the parties Teck may have the opportunity to participate in the discussions or comment on relevant discussion materials and to provide further information to the parties and facilitator. At a minimum Teck will be provided an opportunity to review and comment on the facilitator's draft report, prior to completion of the dispute resolution process and referral of the final report to the CEAO. Additional opportunities to review and comment on information and issues raised during the facilitation process may be necessary to allow the parties to reach consensus and shall be permitted by agreement between the parties to this agreement.
 - b. **Chief Executive Assessment Officer:** if Ktunaxa request that the CEAO take part in the dispute resolution process, the CEAO must take part in the process. The level of participation by the CEAO will be determined through agreement between the parties and dependent upon the procedural details described in Schedule A.
 - c. **Impact Assessment Agency of Canada:** may participate as an observer throughout the dispute resolution process based on its interest in the outcome of the dispute resolution process.
 - d. **Confederated Salish and Kootenai Tribes and Kootenai Tribe of Idaho:** upon agreement between the parties, Indigenous groups located in the United States of America may participate as observers at certain times during the dispute resolution process to share relevant Indigenous knowledge.

Confidentiality

12. The parties acknowledge that information that they exchange or provide during this process is presumptively non-confidential and may be publicly disclosed, whether pursuant to the *Freedom of Information and Protection of Privacy Act* or otherwise, subject to the following exceptions:
 - a. where the information is "Indigenous Knowledge" provided in confidence by Ktunaxa, in which case the provisions of section 75 of the Act will apply to that information;
 - b. where a party, acting reasonably, designates information as confidential, in which case the parties and the facilitator will take all reasonable measures to prevent the disclosure of that information, subject to any statutory or other legal obligations; and
 - c. where the parties agree that any portion of their discussions, or information exchanged during the discussions, is explicitly without prejudice and may not be disclosed or relied upon by either party to the prejudice of the other party, whether through court proceedings or otherwise.

Fording River Extension Project Dispute Resolution Engagement Protocol

13. To ensure the free and frank discussion and evaluation of options during the course of the dispute resolution process, the parties will not publicly attribute concerns, proposals or other comments expressed by a party or its representatives during the process to a party or representative.
14. The Facilitators Report will be publicly available, but if there is information in the Facilitators Report that has been agreed by the parties to remain confidential, such as Indigenous knowledge, this information will be removed from the Facilitators Report and put into a confidential memorandum for the respective decision-makers to consider. In such a case, a redacted Facilitators Report would be made publicly available.

Decision-making

15. Each party has its own authorities and decision-making process. The parties will consider the timelines set for this dispute resolution process when scheduling their required decision-making processes.

Funding

16. The EAO will provide funding to contribute to the costs of Ktunaxa participation in this dispute resolution process. A capacity funding grant from the EAO will be provided to KNCS once the workplan in Schedule A has been established and agreed to.

Non-Binding

17. The parties understand that this dispute resolution process and the outcomes of this dispute resolution process are non-binding on any decision maker and participation in the dispute resolution process does not limit any claims any of the parties may bring against any other party in a court of law regarding the subject matter of this dispute resolution process.

Termination of Dispute Resolution

18. The facilitator may terminate the facilitation when:
 - a. a party is not prepared to participate meaningfully in the facilitation to the extent that consensus is highly unlikely;
 - b. Ktunaxa or EAO withdraws from the facilitation; or
 - c. the proposed FRX project is withdrawn from the assessment process;
19. The facilitator will communicate clearly and promptly to the parties that facilitation has terminated and will complete a report for the statutory decision maker describing the steps taken leading up to termination and outlining the reasons for it.

Administration

20. To support the facilitator, the EAO will provide administrative support by sending meeting invitations (virtual and in person as required) to the parties.
21. To support the facilitator, Ktunaxa will organize any in-person meetings or site visits to take place in Ktunaxa territory.

**Fording River Extension Project Dispute Resolution
Engagement Protocol**

22. An agenda will be developed by the facilitator and sent to the parties 24-hours prior to each meeting and the agenda will be reviewed and approved by the parties at the start of each meeting.
23. To support the facilitator, the EAO will provide a note-taker for the meetings and the notes will be shared with the parties and facilitator within 3 days of the meeting taking place and the parties and the facilitator will review the meeting notes and provide comments on the notes, if any, with the objective of finalizing the notes at the next meeting of the parties.
24. Meetings may be audio recorded (and potentially video recorded if a video meeting) for the purposes of drafting meeting notes accurately and for the facilitator to review for his duties as facilitator. Any audio recordings (or video recordings) will be confidential and destroyed once not required for the dispute resolution process. A party may request that audio and video recording are turned off for certain information sharing moments, including the sharing of Indigenous knowledge.
25. The parties will mutually develop with the facilitator a meeting schedule for the dispute resolution process to ensure the process can be managed in a timely manner. The meeting schedule will be attached as Schedule "A" to this Protocol.

The parties agree to the dispute resolution process set out in this Engagement Protocol as of July 7, 2022.

SIGNED BY:

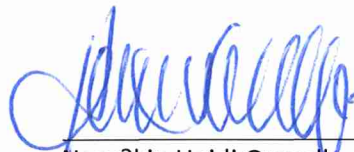
On behalf of ʔakisqnuʔ First Nation:

Donald Sam

Donald Sam (Jul 12, 2022 14:33 MDT)

Nasuʔkin Donald Sam

On behalf of Yaqit ʔa·knuqʔit (Tobacco Plains Indian Band):



Nasuʔkin Heidi Gravelle

On behalf of ʔaq am:

Joe Pierre

Joe Pierre (Jul 13, 2022 10:15 MDT)

Nasuʔkin Joe Pierre Jr.

On behalf of Lower Kootenay Indian Band (Yaqan nuʔkiy):

M. Jason Louie

M. Jason Louie (Jul 14, 2022 16:52 PDT)

Nasuʔkin Michael "Jason" Louie

Fording River Extension Project Dispute Resolution
Engagement Protocol

On behalf of Ktunaxa Nation Council:

Kathryn Teneese

Kathryn Teneese (Jul 12, 2022 10:39 MDT)

Kathryn Teneese – Chair

On behalf of the Environmental Assessment
Office:

Facilitator:



Todd Goodsell, Acting Executive Project Director



Aaron Bruce

**Fording River Extension Project Dispute Resolution
Engagement Protocol**

SCHEDULE "A"

Meeting Number	Meeting Purpose	Meeting Dates	Proposed Location	Additional Participants
1	Issues Identification and Framing	July 7 - 8	Cranbrook	Agency
2	Issues Resolution Options	July 13 - 14	Fernie	Agency
3	Community Engagement - Meeting on the land	July 19 - 20	Yaqit ?a·knuqʔi 'it	Agency
4	Issues Resolution Options	TBD – July or August	Virtual	Agency
5	Finalize Outcomes and Report Review	TBD - August	Virtual	Agency
6	Finalize Outcomes and Report Review (if needed)	TBD - August	Virtual	Agency
7	Finalize Outcomes and Report Review (if needed)	TBD - August	Virtual	Agency

APPENDIX "C"

Ktunaxa Submission on the Readiness Decision Recommendation for the Fording River
Extension Project Recommendation on August 11, 2022

Ktunaxa Submission on the Readiness Decision Recommendation for the Fording River Extension Project

August 11, 2022



Photo 1 (top): High elevation grasslands on Turnbull Mountain facing Fording River Operations
Photo 2 (bottom): High elevation grasslands on Castle Mountain

This document provides the Environmental Assessment Office (EAO) and the Chief Executive Assessment Officer (CEAO) with the Ktunaxa perspective on the appropriate pathway forward under section 16 of the *Environmental Assessment Act* (2018) (the Act) for the Readiness Decision regarding Teck’s Fording River Extension Project (the FRX Project or the Project). Ktunaxa believe that enough is known about the adverse effects the FRX Project will have on the environment, Ktunaxa First Nations and Ktunaxa rights to conclude that the Project will cause extraordinarily adverse effects (EAE). Ktunaxa accordingly support a recommendation to the Minister that the environmental assessment (EA) for the FRX Project be terminated pursuant to section 17 of the Act.

This information is provided in the interest of seeking to build understanding and, ideally, consensus between Ktunaxa and the EAO on the Readiness Decision. Ktunaxa expect that the EAO will continue to engage in the dispute resolution (DR) process, as contemplated by the Engagement Protocol, in order to better understand the Ktunaxa perspective and seek points of consensus.

A. Summary of Ktunaxa perspective

Ktunaxa firmly believe that there is sufficient reliable, readily available information from which to conclude that the FRX Project will cause extraordinarily adverse effects. This information, which is detailed below and in the appendices to this document, demonstrates the following:

- 1) The FRX Project is the largest coal mine project ever proposed within the Elk Valley and is situated in the most impacted area of the region.** FRX has the largest footprint, strip ratio, total waste rock volume, life of mine and total and annual production in comparison to existing or proposed coal mine projects in the Elk Valley. It is also located in the Upper Fording, which is identified by the Elk Valley Cumulative Effects Management Framework (EV CEMF) as the “highest hazard” area within the region.
- 2) The FRX Project will cause unmitigable, significant adverse effects to Ktunaxa First Nations, Ktunaxa cultural practices and stewardship authority, and Ktunaxa rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*.** Ktunaxa leadership, and specifically Yaqit ʔa-knuqʔit First Nation, have been clear that Ktunaxa stewardship values are not being protected in the Elk Valley. Recent provincially approved EAs in the Fording River watershed, including the Line Creek Operations Phase II (2013) and Fording River Operation Swift Project (FRO Swift; 2015), confirm that Ktunaxa rights and interests, including knowledge and use, have already been severely impacted by mining in the area. Ktunaxa use and occupancy mapping from 2014 shows that the remaining, relatively intact high elevation slopes and ridges that would be impacted by the Project are uniquely important to Ktunaxa cultural practice in the area, including use of trails, preferred habitation areas, and preferred harvesting areas in one of the only intact drainages in the region where Ktunaxa can still follow the footsteps of their ancestors. The FRX project is located in one of the last corridors between the industrial operations of Fording River Operations, Line Creek Operations Phase 2, and

Greenhills Operations. Ktunaxa cultural rights, including knowledge transmission and stewardship, have already been displaced by more than 50 years (two generations) of mining in the Upper Fording and resulting impacts to Ktunaxa rights and cultural practice, particularly as exercised by Yaqit ʔa·knuqʔi 'it, are already high magnitude and permanent. The Project will expand the area of displacement and extend operations by another 50 years to more than four generations, meaning that the chain of Ktunaxa knowledge transmission regarding the area could be severed entirely. Efforts to mitigate impacts to Ktunaxa rights, including knowledge and use, are partial and have had limited success. Teck has not demonstrated an ability to manage its mining impacts or successfully restore mine areas in a timely manner to a self-sustaining and ecologically and culturally functional condition. As a result, the majority of Project impacts to Ktunaxa rights and interests, in particular as they relate to Yaqit ʔa·knuqʔi 'it, must be considered permanent and not mitigable. The FRX Project will significantly worsen existing negative impacts that Yaqit ʔa·knuqʔi 'it has already been facing for many years.

- 3) **The FRX Project will cause very significant adverse effects to numerous valued components that cannot be effectively mitigated or offset.** These effects include:
- a. *Endangered high elevation grasslands and ridges that depend on specific climatic, slope, and soil conditions that cannot be reliably restored to a self-sustaining ecologically and culturally effective condition after disturbance.* Even if success at culturally and ecologically effective restoration of high elevation grasslands can be demonstrated, the Detailed Project Description (DPD) makes clear that the time lag between disturbance and restoration (more than 50 years) would result in high magnitude and permanent impacts to regionally important habitat and movement corridors, particularly for kwiʔqʔi (Rocky Mountain bighorn sheep), as well as associated Ktunaxa knowledge and cultural practice. Given the unique location of Castle mountain, its important ecological and cultural role, and the rarity of similar large areas of intact high elevation grassland in the region, Ktunaxa do not consider like-for-like offsets providing adequate additionality to be possible.
 - b. *Impacts to water quality, aquatic habitat and unique fish populations in the Upper Fording River, Chauncey Creek and downstream to the Elk and Kootenay Rivers.* FRO is currently, by a wide margin, the largest selenium polluter to water in Canada. The Project would extend the life of this mine for another 50 years. Extremely high levels of contaminants, including selenium, nitrate and other pollutants leaching from mining waste rock, already enter the Fording and Elk Rivers. These contaminants result in regular exceedances of provincial drinking water guidelines, water quality limits and objectives and aquatic health benchmarks and resulted in the largest *Fisheries Act* fine in Canadian history. Teck's water treatment program to date only removes approximately 5-10% of the annual load of selenium and nitrate released by the mine sites. Habitat destruction due to mining contributed to a recent population collapse of listed westslope cutthroat trout in the Upper Fording. High levels of contaminants extend more than 100km downstream to the Kooconusa Reservoir (and are even

detectable 300 km downstream to Creston), displacing Ktunaxa fishing and water use, impacting Ktunaxa communities and rights in the United States, and challenging Canada's international obligations. The Project will substantially increase (by about 25%) the total amount of permitted waste rock (Elk Valley wide), making this already extraordinary situation worse. Based on the DPD, the Project will place a large portion of waste rock within the Kilmarnock watershed and contribute more load to the unconfined Kilmarnock groundwater aquifer, which is currently a load source to the Fording River. Offsetting impacts to fish habitat is not considered feasible due to the already significant loss of fish habitat in the upper Fording River from current and legacy mine development and the lack of like-for-like opportunities. Based on the DPD, Project impacts would impact Chauncey Creek, one of two remaining unimpacted tributaries in the Upper Fording River that has been identified as high priority for protection by government and industry scientists. FRX will reduce the catchment area of Chauncey Creek drainage, reducing flow and introducing fly rock and other impacts into a relatively unimpacted drainage that is critical for westslope cutthroat trout recovery.

- 4) **Teck has not demonstrated the capacity or willingness to accurately predict, control, manage and mitigate the adverse effects of coal mining in the Elk Valley through meeting their legal requirements.** The EAO's evaluation of the likelihood of the FRX Project causing EAE must take into account Teck's record in assessing, mitigating and reducing the adverse effects of its current operations and meeting their legal requirements. Ktunaxa's experience with past EAs (in particular the Dry Creek LCO EA) is that Teck's predictive modeling fails to accurately predict the timing, intensity and scope of adverse effects, particularly to the aquatic environment. Teck also has a record of failing to achieve existing permitting conditions, regulatory standards and reclamation that restores ecosystems to their natural state. In addition, Teck has failed to adaptively manage their impacts and the Province has not been able to successfully enforce EAC or permit conditions intended to mitigate impacts to Ktunaxa and the environment. This has resulted in the environmental conditions of the Elk Valley continuing to deteriorate, despite years of research and monitoring. Ktunaxa accordingly do not have confidence in Teck's ability to adequately mitigate the FRX Project's effects.

Ktunaxa emphasize the unique circumstances of the FRX Project. It is a massive mine expansion that far exceeds the footprint and lifespan of other coal mines, situated in the most heavily impacted mining region in BC. Ktunaxa, the EAO and the Province have over a decade of experience in working to manage and reduce the existing cumulative effects of Teck's operations. This experience includes repeated failures of the EA process to properly characterize the scope, intensity and timeframe of adverse effects; Teck's failure to implement promised water treatment technologies that were incorporated into environmental assessment certificate (EAC) conditions; multiple and continuing instances of regulatory non-compliance;

and the continued deterioration of the aquatic and terrestrial habitat upon which the practice of Ktunaxa culture and rights depends.

Given this experience, the unique setting of the Elk Valley, and the scale and timespan of the FRX Project, the EAO is in a position to conclude that the FRX Project as proposed in the DPD will cause extraordinarily adverse effects to the environment, Ktunaxa First Nations and Ktunaxa rights. ***The Readiness Decision report should accordingly recommend to the Minister that the EA be terminated.***

B. The Ktunaxa understanding of section 16(2)(c)(i) and EAE

A detailed explanation of Ktunaxa's understanding of the purpose of section 16(2)(c)(i) and the EAO's responsibility in evaluating the FRX Project for extraordinarily adverse effects is contained in Appendix 1. Ktunaxa believe that the parties are closer to a shared understanding of the factors that inform an EAE evaluation than we were at the start of the DR process. In our first meetings, the EAO expressed a limited understanding of its task under section 16(2)(c)(i). The EAO expressed that the information it considered was limited to the DPD, and at the DR sessions on July 7 and 8 the EAO articulated the "test" under section 16(2)(c)(i) as limited to the three factors listed at page 8 of the Readiness Decision Policy. Since those meetings, the EAO provided further clarity on its approach to the EAE evaluation in Mr. Shepherd's letter dated July 20, 2022. That letter advised that the EAO is open to considering relevant information that is in addition to the DPD. The letter identified three further factors that the CEAO may consider:

- Whether the CEAO is of the view that there is no value in carrying out an EA because the Project will clearly have unmitigable adverse effects, such that the CEAO is satisfied they would likely recommend that no EA Certificate be issued for the project if the project proceeds through environmental assessment to a decision under Section 29.
- How extreme the effects are generally, or on a specific Indigenous nation or its constitutionally protected rights, as compared to other projects of a similar type and size.
- How extreme cumulative effects are generally as evidenced by existing conditions which impact an Indigenous nation or its constitutionally protected rights.

Mr. Shepherd also stated that the EAO's evaluation of extraordinarily adverse effects must be focused on effects that are unmitigable.

There are several points of alignment between Mr. Shepherd's letter and the Ktunaxa perspective. Ktunaxa believe that the EAO is required to consider relevant, reliable and available information beyond the DPD, for several reasons. The DPD does not contain any information on effects assessment, thus making it difficult (if not impossible) for the EAO to conduct a reasoned evaluation of the Project's potential for EAE. Section 2 of the Act also requires the EAO to consider best available information in decision-making. Finally, the EAO

specifically sought input from the Technical Advisory Committee on the Readiness Decision, and received highly relevant substantive input from both Provincial Agencies and Indigenous Nations. It would be inconsistent with section 2 for the EAO to disregard that information simply because it is not in the DPD.

Ktunaxa also see points of similarity in our respective approaches to evaluating EAE. We agree that the intensity of effects on the environment and Indigenous Nations must be considered, and that comparing the FRX Project to other similar projects is a good measure of whether those effects are “extraordinary” (see section C below). Ktunaxa also agree that cumulative effects must be taken into account, particularly in the unique context of the Elk Valley.

We take a slightly different view on the requirement that an adverse effect must be unmitigable in order to qualify as EAE. To the extent this means that a significant adverse effect that is known to be unmitigable qualifies as an extraordinarily adverse effect, we agree. As noted below, the technical reviewer from the Minister of Lands, Water and Resource Stewardship confirms that this is in fact the case for high elevation grasslands. However, Ktunaxa are concerned that the EAO’s assessment of the potential mitigation of significant adverse effects must be based on science, data and sound technical assessment, not assumptions. To date, the EAO has not shared any information with Ktunaxa regarding the particular adverse effects it considered when evaluating the FRX Project for EAE, or the specific mitigation measures the EAO may have relied on in concluding that those effects can be managed to below a level of extraordinary. A reasoned analysis of both points is required in order to support a valid exercise of the EAO’s decision-making power under section 16.

Based on the foregoing, Ktunaxa believe that a meaningful evaluation under section 16(2)(c)(i) of the potential for the FRX Project to cause extraordinarily adverse effects should address the following factors (see Appendix 1 for further details in support of this approach):

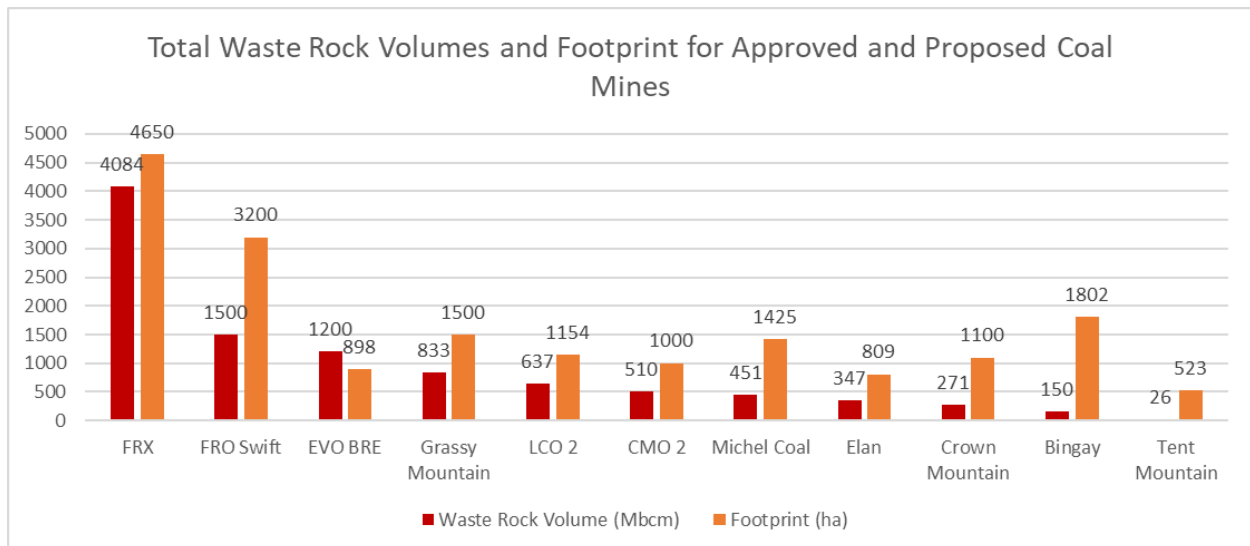
- The scale, footprint, lifespan and waste rock production volumes of the FRX Project as compared to other coal mines in the region.
- The additive effect of adverse impacts from the FRX Project to existing cumulative effects within the region.
- The likelihood of the FRX Project causing significant, multi-generational impacts to Ktunaxa First Nations, including Ktunaxa culture, knowledge transmission, stewardship practices and authority and rights.
- The likelihood of the FRX Project causing significant, multi-generational impacts to the environment that are non-mitigable or impossible to mitigate within the Project’s operational lifespan.
- Evidence of Teck’s failure to implement previous mitigation measures, or failure to implement such measures in a timely manner that achieves their intended mitigation objectives, as well as Teck’s record of non-compliance under the *Environmental Management Act* and *Fisheries Act*.

- The extent to which the FRX Project is consistent with the EAO’s obligation under section 2(2)(ii) to support reconciliation with Ktunaxa by, among other things, supporting the implementation of the *UN Declaration on the Rights of Indigenous Peoples* and recognizing and respecting Ktunaxa jurisdiction.
- The extent to which the FRX Project is consistent with the EAO’s obligation under section 2(2)(i) to promote sustainability by protecting the environment and fostering a sound economy.

An evaluation of these factors does not require an EA. The DPD and existing information derived from previous project EAs and ongoing cumulative effects mitigation programs (which is cited below and in the attached Appendices) is sufficient to reliably characterize the FRX Project’s likelihood of causing EAE. Ktunaxa believe that, based on that information, a consideration of each of the factors listed above supports the conclusion that the FRX Project will cause EAE and should accordingly be terminated from the EA process.

C. The FRX Project is extraordinary as compared to similar projects

As noted above, one important consideration in evaluating EAE is how the FRX Project compares to other similar projects. A detailed analysis of FRX’s comparative size (footprint), lifespan, total and annual production, strip-ratio and total waste rock volumes is contained in Appendix 2. In summary, FRX is far and away the biggest mining project with the largest footprint and lifespan in or near the Elk Valley. As illustrated by the following table, FRX will have a much larger footprint and total waste rock volume than any other mine that is currently operating or proposed in the region. FRX’s footprint dwarfs all other mines. For example, it is 2,848 ha larger than the Bingay Project, and a massive 4,127 ha larger than Tent Mountain project.



Waste rock production is a key indicator of environmental impact due to the leaching of pollutants, including selenium, into the aquatic environment. FRX will produce a total of 4,084 Mbcm of waste rock over its lifespan, which is 2.7 times more than the FRO Swift project and 157 times more than the proposed Tent Mountain project. These numbers indicate that FRX Project will, by itself, produce more waste rock than all of the recently approved EAs in the Elk Valley (LCO Phase II, FRO Swift and EVO BRE), and a waste rock volume that is comparable to all of the waste rock deposited in the Elk Valley prior to the coming into effect of the Elk Valley Water Quality Plan (EVWQP).

Project lifespan is another key consideration. FRX is projected to operate for 50 years. Fording Swift, in contrast, has half that projected lifespan, and Crown Mountain is projected to operate for only 16 years. The lifespan of the FRX Project means that the landscape it consumes will not be restored within the next two generations, if such restoration is even possible, and the aquatic impacts from the Project will be felt for decades if not centuries.

By any measure, the FRX Project is “extraordinary” as compared to similar projects in and near the Elk Valley region.

D. The FRX Project will cause extraordinarily adverse effects to Ktunaxa First Nations and Ktunaxa Rights

The EAO has advised that, as part of this DR process, it will consider information from Ktunaxa on the adverse impacts to Ktunaxa and Ktunaxa rights from the FRX Project. Given the tight timeframes for this process and the small capacity funding provided by the EAO, our ability to gather that information has been limited. What is shared here is therefore only a partial picture of the impacts the Project will have to Ktunaxa and Ktunaxa rights. Despite those constraints, Ktunaxa leadership and knowledge holders confirm that the FRX Project will have significant, unmitigable impacts to Ktunaxa cultural values – including stewardship authority and traditions, language and cultural transmission - and rights in the Upper Fording area.

At our meeting of July 7 – 8, 2022 Nasuʔkin Gravelle of Yaqit ʔa·knuqʔi ‘it provided opening remarks framing the ability to protect and maintain relationships with the land, water, and animals as a fundamental right, responsibility and sacred Ktunaxa covenant or law, referred to in Ktunaxa as ʔa·kxam̓is q̓api qapsin – all living things.

It’s our covenant with the Creator to ensure that we protect and preserve as much as possible and begin that reconciliation process with the land, at the grass roots, as a process on the ground... We know, and we’re committed to do right by the land. That’s our covenant. That’s why we exist.

Yaqit ʔa·knuqʔi ‘it is located immediately downstream of the Elk River’s confluence with the Kootenay River. Nasuʔkin Gravelle highlighted the special importance of the Elk Valley and Qukin ʔamakʔis to Yaqit ʔa·knuqʔi ‘it, and the importance of seeing demonstrated action and

positive change to address impacts. She highlighted the opportunity that dispute resolution holds, and the kinds of impacts Yaqit ʔa-knuqʔi 'it faces already as a result of industrial mining in the Elk Valley.

... we want to keep an optimistic viewpoint that this [dispute resolution] is the right step forward, that this is something different that can have positive outcomes in the favour of the land and water and ecosystem...Words on paper, for Indigenous people, mean nothing. We are action people. Our entire livelihood and survival is from action. We have the opportunity here for real, transformative action. That's why we are here today and committed to this process. But it can't just be paper. ...There are ways of doing things that keep the next 50 years, the next generations, at the forefront, but that's not how things have been done in the past, not at all...We know we can't drink out of our rivers because of the mines. We can't do activities, like fishing in the Elk River, that we did as children, because we know we can't eat it. We can't do those activities with our children and grandchildren. Our way of life, our cultural practices, our survival, is impacted on a daily basis...My grandmother – she just passed away a year ago at 98. She took a trip up to the mountains and the Elk Valley was unrecognizable to her. When we take our elders to the mine sites, it is complete and utter devastation to them. It is unrecognizable and traumatizing. Traumatizing to the core.

Regarding the existence of extraordinarily adverse effects in the Elk Valley, Nasuʔkin Gravelle was very clear, inviting BC decision makers to visit and see for themselves the extraordinarily adverse effects of coal mines in the upper Fording:

The change in the ecosystems we have experienced in the Elk Valley are extraordinary, insurmountable, and farther than that... Whatever the maximum level word is, for massive detrimental impacts, that's what it is.

You don't have to be an expert. Go see for yourself, talk to our people. You would have to be a monster to not see it... It affects our social wellbeing, mental wellbeing, spiritual wellbeing, physical wellbeing. Ultimately, as decision makers, we need to play a major role, not be a backdrop or a side note. It needs to be meaningful.

Nasuʔkin Gravelle's words are echoed in past Ktunaxa submissions and by other land users and knowledge holders from Yaqit ʔa-knuqʔi 'it. The 2015 Ktunaxa Nation Community Report includes a powerful statement of the Ktunaxa relationship to the land:

My understanding of water and land is that water is the blood of the land. The hills, the mountains, the valley bottoms, it's all living, even stone and water and air. So when it comes to strip mining, it's like taking a knife and cutting my arm. And it bleeds... That mountain range that people call Rocky Mountains is a being ... his head is down at the south and his feet are up north, and it's a being. When people are digging into it, think

of yourself lying there and people picking into your body. The water to me is a living being unto itself, whether it's vapour, surface, falling from the sky, or underground.

In preparation for this submission, one land user with extensive water monitoring experience compared his experience in a relatively unimpacted valley, the Flathead, to his experience in the Elk Valley. In his experience, impacts and mitigations on the Elk River have resulted in the Elk River being treated more like a 'sewer system' than a river, with collection points, treatment points, and exceptionally high levels of contaminants being permitted in order to allow mining to continue.

Kyle Shottanana, an elected councillor for Yaqit ?a-knuq?i 'it, echoed Nasu?kin Gravelle's comments, highlighting the permanent impacts the Project would have on the Ktunaxa relationship with the upper Fording and Elk Rivers for his children and grandchildren:

We keep going to Teck, over and over, from a leadership standpoint, telling them... the levels of toxins that are in that river are way too high and they need to be addressed before anything else can be done. Chief Heidi talks about reconciliation with the land. [A] big part of reconciliation is healing. And a big part of healing is time... from a Ktunaxa perspective, how we would manage the land is that we will give that land time to rest so that it would rejuvenate itself, and heal itself, build itself back up. But would you look and see what Teck is doing in the Fording River and their attempts at an expansion? It's not an expansion - it's a whole other mine that has a life expectancy of another 50 years, which will outlast any of the other mines that are coming in. In order for that land to heal [from existing impacts] they'd have to stop now, and it would take probably, at a minimum, 200 years for that land to heal... That's not only me, my kids, or my kids' kids - that's how many generations? Those generations will not have a chance to experience that land the way that our ancestors experienced it...

... [If] we lose that land, we lose the education we pass on to our children, that was passed on to us from our elders. We lose that university that teaches our children the things that we know... That will be taken away for not only us but the future generations as well.

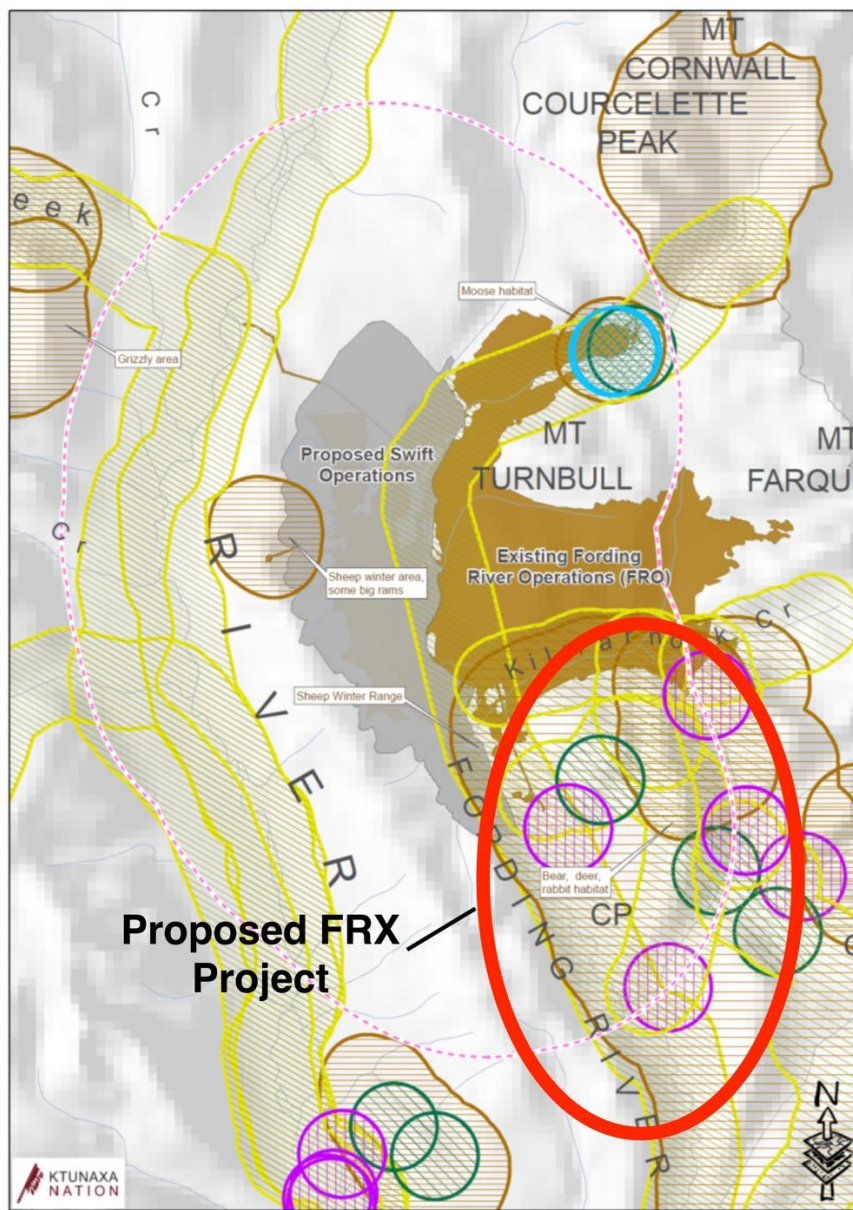
...when we talk about Ktunaxa, and we talk about our uniqueness, you know, our language identifies us. Our river system, the Kootenay River, how unique that is. As we dig deeper and deeper ... when our elders spoke a long time ago, it meant more than what we see today. We just see what is in front of us and what we can reach and touch - - but our elders were able to see past that, see farther, see deeper. And that's how they spoke when they spoke of ?a-kxa?nis qapi qapsin - All Living Things. Everything has purpose, everything has a spirit. That's what we forget - that uniqueness. And the thing about uniqueness - you can't copy it. You can't replicate it again. So once it's gone, it is gone."

In 2014, as part of the FRO Swift Project, mapping of Ktunaxa use and occupancy in the upper Fording, including the area of the FRX Project, was provided as part of the Application. Figure C3.2-3 from the FRO Swift application is reproduced below, with the approximate area of the FRX Project shown in red. The figure shows a clustering of reported Ktunaxa use, including preferred camping areas, harvest areas, trails and environmental features along the Chauncey Creek, and extending into the Project area. This map highlights the unique importance of the Project area for Ktunaxa land users, and for learning and teaching place-based knowledge to younger generations. The impacts of the original Fording River mine displaced Ktunaxa use, likely contributing to increased reliance on Castle Mountain and the FRX Project area. The clustering of values along the Elk River south and west of the Project is associated with an important historic Ktunaxa village area at Round Prairie. Values mapped in the 2014 were reported by respected elders and knowledge holders from Yaqit ʔa·knuqʔi 'it as well as from other Ktunaxa First Nations, with important ancestral trails passing through the Project area extending south to the area of Yaqit ʔa·knuqʔi 'it, as well as west to Whiteswan Lake, and east to the eastern slopes of the Rockies.

Figure C3.2-2, also from the FRO Swift application, shows the concentration of reported Ktunaxa use in the area of the Project within the context of the wider Elk Valley. It shows extensive Ktunaxa fishing and habitation use, including use of surface water for drinking, downstream along the Fording and Elk rivers. As reported in the 2014 assessment, Ktunaxa confidence in harvesting of water and fish from the Elk River has been severely impacted by existing mining and other impacts in the watershed.

**Teck Coal Limited - Fording River Operations Swift Project
Environmental Assessment Certificate Application**

Figure C3.2-3 Reported Ktunaxa Site-Specific Values within the FRO Swift Project LSA



Reported Ktunaxa Site Specific Values within Ktunaxa FRO Swift Project Local Study Area by Activity Class

Legend:

- Ktunaxa Local Study Area (5km)
- Proposed Swift Operations
- Existing Fording Operations
- Cultural / Spiritual
- Environmental
- Habitat
- Subsistence
- Transportation

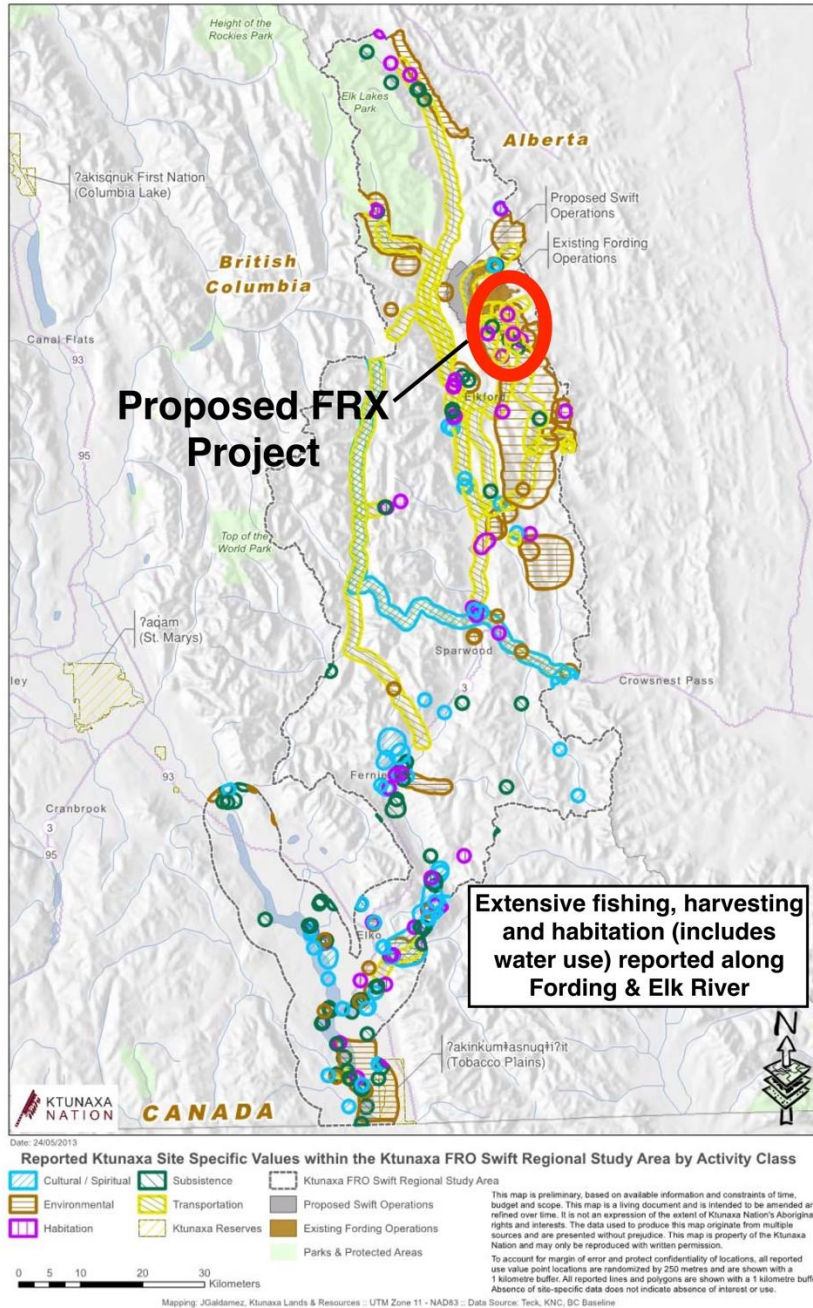
This map is preliminary, based on available information and constraints of time, budget and scope. This map is a living document and is intended to be amended and refined over time. It is not an expression of the extent of Ktunaxa Nation's Aboriginal rights and interests. The data used to produce this map originate from multiple sources and are presented without prejudice. This map is property of the Ktunaxa Nation and may only be reproduced with written permission.

To account for margin of error and protect confidentiality of locations, all reported use value point locations are randomized by 250 metres and are shown with a 1 kilometre buffer. All reported lines and polygons are shown with a 1 kilometre buffer. Absence of site-specific data does not indicate absence of interest or use.

Mapmaker: Jason Guldhammer / Ktunaxa Lands & Resources - UTM Zone 11 - NAD83 - Data Source: Teck KNC, RC Baseline

**Teck Coal Limited - Fording River Operations Swift Project
 Environmental Assessment Certificate Application**

Figure C3.2-2 Reported Ktunaxa Site-Specific Values within the FRO Swift Project RSA by Activity Class



The 2014 Ktunaxa assessment in Section C of the FRO Swift application makes clear that industrial impacts to Ktunaxa rights and use in the Fording and portions of the Elk Valley are already significant and adverse, and any further impacts in the area will also be significant. Given this baseline of existing significant adverse effects to Ktunaxa, and taking into account the size, waste rock production and lifespan of the FRX Project as described in the DPD, the FRX Project will result in extraordinarily adverse effects to the rights of Ktunaxa First Nations, as affirmed by section 35 of the *Constitution Act, 1982* and recognized and protected by the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). These include:

- 1) Further displacement of Ktunaxa from an entire mountain that is over 2,000 ha of the lands and waters of Qukin ʔamakʔis and significant additional loss of lands and waters to support the exercise of Ktunaxa hunting, fishing, harvesting and plant and mineral gathering rights.
- 2) Further contamination of downstream waters that render those waters undrinkable for Ktunaxa and seriously infringe Ktunaxa’s right to harvest and rely on the fish which bio-accumulate those contaminants.
- 3) Interference with and infringement of Ktunaxa stewardship and governance rights, including the rights to protect and determine the use of lands and resources in accordance with the Ktunaxa value of ʔa·kxaʔnis ǰapi qapsin – all living things.
- 4) Interference with and infringement of Ktunaxa’s right to maintain a healthy culture through the exercise of rights and cultural practices within the Project area, including the elimination of the ability of Ktunaxa to use the FRX Project area for purposes of knowledge and language transmission between generations;
- 5) Interference with and infringement of Ktunaxa’s right to ownership of and control of mineral resources, including the right to determine how those resources will be used and the right to benefit from their use.
- 6) Interference with and infringement of Ktunaxa’s relationship with the land, which is central to Ktunaxa identity, culture and way of being.

All of these effects will be endured by Ktunaxa over multiple generations. The mine will operate for over 50 years, and will leave a legacy of scarred landscapes and water contamination that will last far into the future. These effects to current and next generations cannot be “mitigated” by promises of future restoration or plans to operate water treatment facilities for decades to come. They are irreparable and unmitigable.

E. The FRX Project will cause extraordinarily adverse effects to terrestrial valued components

Ktunaxa believe that there is sufficient information concerning the FRX Project's impacts to terrestrial valued components to support a conclusion that the Project will cause extraordinarily adverse effects to key valued components. Appendix 4 provides more detail on this point. Before providing an overview of that information, Ktunaxa have a preliminary concern regarding the extent to which the EAO has in fact engaged in a meaningful evaluation of information regarding adverse effects under s. 16(2)(c)(i), up to this point in the process.

The EAO stated that it limited its consideration to the DPD when evaluating the Readiness Decision options. As the DPD does not provide an effects assessment, this would indicate that the EAO made a preliminary determination on extraordinarily adverse effects without considering any information about the FRX Project's environmental effects. The EAO has also advised that it does not itself carry out a technical assessment of the project, and relies on Provincial agencies (among other participants) for that work. In light of this, and given that Ktunaxa have been raising the issue of extraordinarily adverse effects for some time, Ktunaxa would have expected the EAO to specifically request input from Provincial agencies on the issue of extraordinarily adverse effects, before preparing the draft Readiness Decision report. However, we have no information to show that the EAO did so. The EAO circulated the draft Readiness Decision report to EA participants, including Provincial agencies, on March 23, 2022. That email does not request any information regarding environmental effects, nor does it ask the agencies to consider whether the project may cause extraordinarily adverse effects. As far as Ktunaxa are aware, the EAO never specifically asked Provincial agencies for their views on that issue.

The technical memos and comments provided by Ministry of Forests (MOF), Lands, Water and Resource Stewardship (LWRS) and Ministry of Environment (ENV) do in fact contain information on adverse effects, which substantially supports the Ktunaxa's concerns about the FRX Project. In particular, the reviewers for LWRS and MOF provided expert advice to the EAO that the FRX Project will cause unmitigable significant adverse effects to high elevation grasslands, and in turn, bighorn sheep:

FRX will have an additional significant negative impact on remaining high elevation grasslands in the Elk Valley, and impacts associated with direct loss of high elevation grasslands will not be mitigatable (*E. Cameron memo, July 22, 2022*)

Large scale removal of native winter ranges would likely result in a bighorn sheep population decline (Poole 2013) as this grassland ecosystem is irreplaceable and highly selected by sheep (Poole et al. 2018). (*I. Teske memo, July 19, 2022*)

These statements conform to the EAO's explanation of the criteria for establishing extraordinarily adverse effect as stated in Mr. Shepherd's letter. The effects to grasslands are described as certain or likely, significant, and non-mitigable. Yet, after over two months of engagement with Ktunaxa in this DR process, the EAO has not yet explained how it addressed

this information (along with the rest of the information from the technical memos), nor how it reached a conclusion of no extraordinarily adverse effects given this information from the technical reviewers it relies on.

The impression left with Ktunaxa is that the EAO has not yet done an evidence-based evaluation of the central question under section 16(2)(c)(i). The EAO instead assumed that FRX “deserves an assessment”, and defaulted to a recommendation that the Project continue to an EA without serious examination of the issues raised by Ktunaxa (including CSKT and KTOI), Provincial agency comments or available information regarding regional cumulative effects. Given Ktunaxa’s history of raising EAE as a concern for this Project, it is Ktunaxa’s expectation that the draft Readiness Report would have provided a transparent, evidence-based rationale of EAO’s assessment and conclusion on EAE. Yet that information is absent, indicating that the EAO has yet to engage in a meaningful assessment of an issue of central importance to the legislative scheme and Ktunaxa.

Appendix 4 is a table collating readily available review information regarding the FRX Project’s terrestrial impacts. This information demonstrates that:

- 1) **The FRX Project will cause significant, unmitigable adverse impacts to red and blue listed high elevation grasslands (HEG).** FRX will destroy 18% of remaining HEG in the Elk Valley, and contribute to the permanent loss of 44% of HEG as compared to a 1950’s baseline. These losses are permanent and irreplaceable. There is no evidence that HEG can be successfully re-established through post-mine reclamation.
- 2) **The FRX Project will cause the permanent loss of 18% of the HEG winter range for bighorn sheep.** Winter range is the most important habitat type for blue-listed bighorn sheep. 30% of winter habitat has already been lost in the Elk Valley. The FRX Project will permanently destroy a further 18% of the remaining habitat, thus contributing to population declines in this blue-listed species.
- 3) **The FRX Project will cause the loss of a further 2,330 ha of terrestrial habitat and significantly increase Teck’s inventory of un-reclaimed lands.** Teck’s Biodiversity Management Plan Workbooks indicate the loss of about 14,000 “quality hectares” to coal mining, of which only approximately 1,000 (or 7%) has been reclaimed and of the 25 ecosystem types identified, Teck has to date only reclaimed 8 of the ecosystem types. The FRX Project will contribute a massive 2,330 ha of further habitat loss to this reclamation liability and a permanent loss of biodiversity.
- 4) **The FRX Project will generate extraordinarily high volumes of waste rock.** Teck’s operations in the Elk Valley have generated approximately 8 billion banked cubic meters (bcm) of waste rock to date. If approved, the FRX Project will contribute a further 4.1 billion bcm, which would represent more than 25% of the total permitted waste rock volume for all mines in the Elk Valley. This massive volume of rock will permanently

destroy terrestrial and aquatic habitat and contribute to excessive contaminant loads in the Fording River and downstream watersheds.

- 5) **The FRX Project will contribute to the extraordinarily high reclamation liability.** The Elk Valley coal mines have an estimated liability of \$1,708,810,000. Teck currently has a bond of \$1,193,310,000 in place. Compared to the other 96 bonded mine sites in BC, the Elk Valley coal mines represent 50% of the total liability of mines in BC and are responsible for 45% of BC's provincial short fall in bonding requirements. Given FRX's significant footprint and waste rock volumes, it is reasonable to expect that FRX would significantly increase the liability estimate and bond requirement.

This information demonstrates that the FRX Project will cause extremely significant, long-term adverse effects to terrestrial valued components that are rare and/or already seriously compromised.

F. The FRX Project will cause extraordinarily adverse effects to aquatic habitat and water quality

Ktunaxa also believe that there is sufficient information concerning the FRX Project's impacts to aquatic valued components to support a conclusion that the Project will cause extraordinarily adverse effects. See Appendix 5 for a detailed summary of this information. The technical memo provided by Ministry of Forests (MOF) on fish and fish habitat contains information on adverse effects that substantially supports the Ktunaxa's concerns about the significant and unmitigable impacts from FRX Project including, but not limited to, discussion on existing significant environmental impacts and unproven mitigation measures with respect to calcite management and recognition that the Upper Fording River population of West Slope Cutthroat Trout is not meeting the Provincial Management Plan (J. MacLeod memo, March 31, 2022). It is not clear to Ktunaxa how this and other expert opinions were considered by EAO when drafting a Readiness Decision recommendation.

Appendix 5 is a table collating readily available review information regarding the FRX Project's terrestrial impacts. This information demonstrates that:

- 1) **The FRX Project will significantly contribute to unmitigable impacts to water quality.** If approved, the FRX Project will contribute a further 4.1 billion bcm, which would represent more than 25% of the total permitted waste rock volume for all mines in the Elk Valley and 50% of the waste rock that is currently placed. This significant increase in waste rock would be a major source of additional loading of constituents (including selenium and nitrate) and will cause additional impacts to both surface water and ground water quality likely extending the need for treatment for hundreds of years beyond what is already required. FRO is already the largest polluter of selenium to water in Canada by a significant margin – the addition of FRX would increase that margin significantly. Of the current selenium and nitrate loads released annually, Teck's

water treatment facilities (which Teck claims is the largest water quality management program of its kind anywhere in the world) have only removed 5 to 10% of the selenium loading per year. This shows that Teck has yet to demonstrate that they can effectively mitigate impacts to water quality. The placement of waste rock within the Kilmarnock watershed will contribute more load to the unconfined Kilmarnock ground water aquifer, which is already carrying high contaminant load to the Fording River.

- 2) **The FRX Project will cause additional impacts to an area that has already been subject to the largest fine under the Fisheries Act - \$60M CAD - due to selenium and calcite contamination.** On March 26, 2021, Teck pleaded guilty to charges by Canada (ECCC) under the *Fisheries Act* that waste rock from the Fording River and Greenhills mines have, and continue to, leach deleterious substances, selenium and calcite, into the upper Fording River and its tributaries, and that all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat had not been taken. Teck has publicly reported to their shareholders that they “cannot operate the Elk Valley Mines in compliance with the *Fisheries Act* and its current associated regulations” and has recognized that the provincial ABMP may not be protective of the environment.
- 3) **The FRX Project will cause additional unmitigable impacts to tributaries.** FRX will impact the Chauncey drainage and impact one of the last two remaining tributaries (out of twelve) within the upper Fording River that have not been impacted by mining. Chauncey was identified as a top priority for protection by government and industry scientists and developing a mine on top of it in the adjacent watershed will not maintain its current condition. The FRX Project also proposes to spoil in the Kilmarnock drainage which would impact the current Kilmarnock Clean Water Diversion (mitigation requirement of the ABMP) by further infilling the 57 km of remaining isolated tributary headwaters that is still considered fish habitat despite the recent extirpation of the isolated WCT population in Upper Kilmarnock.
- 4) **The FRX Project will not support Westslope Cutthroat Trout Recovery.** Abundances of SARA listed, high conservation value (genetically pure) Westslope Cutthroat Trout declined significantly between fall 2017 and fall 2019 in the Upper Fording River. The effects from the Project will not support WCT recovery and will further exacerbate the already poor habitat conditions, including impacts to water quality, decreasing flow further (decreased catchment area of the Chauncey drainage and groundwater diversions into the pit) and will likely affect one of the core overwintering areas for this population (the S6 oxbow pools, directly adjacent to Castle Mountain and Chauncey Creek) which is considered critical habitat for the recovery of the population.
- 5) **The FRX Project will contribute to impacts to drinking water and ?a-kpižis (Ktunaxa favourite food).** Impacts to both surface water and ground water quality from coal mining have resulted in surface and ground water that exceeds drinking water quality guidelines – including the BC selenium drinking water quality guideline (10 ug/L). For

selenium, surface water exceedances span from the Upper Fording River down the Fording River to the Elk River and all the way down to Fernie ranging from 208 ug/L at FR4 Fording River compliance point in February 2021 to 10 ug/L in the Elk River at Elko Reservoir. The draft 2022 human health risk assessment (HHRA) concluded that ʔa-kpiʔis (Ktunaxa favourite food) from the Elk Valley is higher than “market basket” (store bought foods) and reference area foods (foods harvested from areas outside the Elk Valley). Sukiʔ ʔiknaʔa (eating good) is unique to the Ktunaxa People, consistent with Ktunaxa cultural practices. Preferred consumption rates are estimated quantities required to enable sukiʔ ʔiknaʔa. At preferred rates, the draft HHRA concluded that Ktunaxa are at an increased risk in the Elk Valley due to selenium exposure with cumulative selenium hazard Indices that are up to 4x higher than reference condition. The significant additional waste rock will increase the risk to the human health caused by selenium (and other contaminant) exposure and further impact the cultural practice of sukiʔ ʔiknaʔa.

- 6) **The FRX Project will be regulated to a lesser standard than other mines in British Columbia and coal mines Canada.** The Elk Valley coal mines do not meet the BC ENV Technical guidance document - Development and Use of Initial Dilution Zones in Effluent Discharge Authorizations and Teck has publicly reported to their shareholders that they cannot operate the Elk Valley Mines in compliance with the *Fisheries Act* and its current associated regulations. Both BC and Canada acknowledge that there is no feasible way to control the effluent from the Elk Valley coal mines by regulating coal mine effluent through “non-point sources” vs. final discharge points/points of control. The Elk Valley coal mines are the only mines/industrial facilities in BC operating under an Area Based Management Plan and the proposed federal Coal Mining Effluent Regulation has created an “alternative approach” just for the existing Elk Valley coal mines – all other coal mines in Canada will be held to a higher standard. Not only do both of these approaches regulate in the receiving environment, they also allow “pollute up to” thresholds that represent effect levels, not environmental protection. Instead of a new being held to a higher standard (as a new mine), the FRX Project will fall under provincial and federal regulatory regimes that fail to protect the environment.
- 7) **The FRX Project will further limit Teck’s ability to meet existing and future permit limits and Canada’s ability to avoid violations of the 1909 Boundary Waters Treaty.** Teck has failed to meet the Permit 107517 limits for selenium and nitrate since 2015 at the Fording River Compliance Point and the Line Creek Compliance Point. These failures have, over time, culminated in exceedances of the Fording River and Koochanusa Reservoir Order stations and the 2021 US EPA site specific water quality criteria of 0.8ug/L selenium for Koochanusa. Teck has stated in their financial reports that the selenium standard may not be achievable with existing technology. Based on the significant waste rock volumes, FRX will further significantly hinder Teck’s ability to meet these requirements and standards.

This information demonstrates that the FRX Project will cause extremely significant, long-term adverse effects to aquatic valued components that are already seriously compromised.

F. Conclusion

The FRX Project is a uniquely large mine proposed within a region that is already uniquely impacted. The EAO and Ktunaxa have the benefit of years of work in assessing existing coal mines, monitoring and measuring current environmental impacts, and identifying shortcomings in the assessment and mitigation tools which have been used to date. This information, combined with the information in the DPD, enables the EAO and Ktunaxa to reliably predict that the FRX Project will result in significant adverse cumulative impacts that are far greater in scope, intensity and duration than any comparable project. These impacts will be very high in magnitude and will extend well beyond the mine footprint, especially along the Fording and Elk Rivers but also further downstream to the Koochanusa Reservoir and ultimately Kootenay Lake. Based on an anticipated active mine life of approximately 50 years, and considering the already seriously impacted context and limited progress in addressing restoration shortfalls at existing mine sites, many of the Project impacts to Ktunaxa rights and the aquatic and terrestrial environment are unmitigable. Residual adverse effects would act cumulatively with existing impacts already permitted in the area, further contributing to the degradation of Ktunaxa cultural values and rights and the environment upon which Ktunaxa depend.

Ktunaxa believe that, based on the information currently available to the EAO, it can reasonably conclude that further consideration and possible future approval of the FRX Project is inconsistent with the EAO's statutory obligations under section 2. The Project does not promote sustainability as defined in section 2(2)(i). There is no way that the FRX Project can be approved in a manner consistent with "protecting the environment"; the Project simply has too big a footprint and too major an impact to an already seriously impacted area. The FRX Project does not contribute to "fostering a sound economy"; there is nothing "sound" about a Project that will generate short-term profits and employment while leaving a multi-generational legacy of pollution and habitat loss. Water treatment from existing mines is already expected to be required in perpetuity and the existing bonding requirements for the Elk Valley are the largest in BC and currently have in excess of a \$500M shortfall and are likely significantly underestimated. The 2022 IPA reports that 20 mitigations (treatment facilities) will be required to meet existing permit requirements to 2053. Teck currently has three facilities in operation with one scheduled to enter commissioning soon. Teck states that they have spent more than \$1.2 billion (so far) to implement the EVWQP and plans to invest a further \$750 million – which seems like a large underestimation considering only 3 of 20 mitigation measures are constructed and in operation. The discrepancy in costs associated with water treatment alone vastly overshadow short-term economic benefits.



Ktunaxa Nation Council
7825 Mission Road
Cranbrook, BC V1C 7E5
tel: (250) 489-2464
fax: (250) 489-2438

visit us at:
www.ktunaxa.org

The Project is also plainly inconsistent with the EAO's obligation to support reconciliation with Ktunaxa pursuant to section 2(2)(ii). Ktunaxa have repeatedly and clearly informed the EAO that the Project is not supported by Ktunaxa, and is fundamentally inconsistent with Ktunaxa laws, values, jurisdiction and rights. A decision by the EAO to nonetheless continue with the EA of the FRX Project in the face of this opposition contradicts *UNDRIP* and undermines, rather than supports, reconciliation.

Based on the unique characteristics of this Project, the level of existing knowledge from past assessment in the Upper Fording system, and the current lack of demonstrated mitigation and restoration success in the Elk Valley, we can reliably predict that the FRX Project, as described in the DPD, will result in extraordinarily adverse effects. The Project is not compatible with the EAO's statutory objectives under section 2 and, as such, Ktunaxa support a recommendation under section 16(2)(c)(i) of the Act that the EA be terminated.

ʔakisʔnuk

ʔaqam

ʔaqan Nuʔkiy

ʔaqit ʔaʔnuʔʔit

Appendix 1 - The Ktunaxa understanding of section 16(2)(c)(i) and EAE

1. The implications of the new Act

Ktunaxa understand section 16 of the Act as introducing an important new decision-making phase to the EA process. Under the previous *Environmental Assessment Act* (2002), the Executive Director's options under s. 10 were limited to exempting a project from EA or requiring an EA. There was no "off ramp" for projects that, due to their unique attributes, were known to cause very significant impacts to the environment or Indigenous Peoples. The EAO had no option but to proceed with an EA of those projects, even if it was apparent from the outset that they would cause unacceptable impacts.

Section 16(2)(c)(i) changes that *status quo*. The legislature has now provided the EAO with the power to recommend terminating the EA process due to a project's extraordinarily adverse effects on the environment and/or Indigenous Peoples. The purpose of this new section seems clear: where a project is, by its design and circumstances, clearly inconsistent with the statutory purposes and objectives of the Act, it should be rejected at an early stage. This avoids the wasted investment of years of effort, time and resources in assessing a project that is clearly incompatible with the purposes and objectives of the Act.

Details of the Ktunaxa perspective on the criteria and information the EAO should consider under s. 16(2)(c)(i) are set out below. As a preliminary comment, Ktunaxa note that the EAO's evaluation under that section must be informed by its purposes and obligations as described in section 2 of the Act. These include:

- The EAO must use "the best available science, Indigenous knowledge and local knowledge" when considering whether a project will have extraordinarily adverse effects;
- The EAO must support reconciliation with Indigenous Peoples by, among other things: supporting the implementation of the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP); recognizing the inherent jurisdiction of Indigenous Peoples; collaborating with Indigenous Peoples in EA's consistent with UNDRIP; and recognizing Indigenous People's rights.

Ktunaxa emphasize these two elements of section 2 due to information shared by the EAO during this dispute resolution process (DR) about its approach to the Readiness Decision report. We have heard the EAO emphasize that the primary information source it considered was the Detailed Project Description (DPD). With respect, this takes too narrow a view of the EAO's responsibility when considering whether a project meets the EAE threshold. Section 2 indicates that, where relevant and reliable information concerning a project's effects is available from sources outside the DPD, the EAO must take that information into account when making a readiness determination.

The EAO must as well expand its view beyond technical, western science-based information concerning a project's effects, and consider what is known about a project's effects on the rights of Indigenous Peoples as affirmed through UNDRIP. These include: UNDRIP Articles 11 - 13 (right to practice of culture, language, spiritual traditions and knowledge transmission); 25 (right to maintain spiritual relationship with territory); 26 (right to use and control of territory); and 32 (right to determine priorities and strategies for how lands are used). The EAO's evaluation of extraordinarily adverse effects must therefore be informed by the Ktunaxa perspective on how the FRX Project will affect its rights, jurisdictions, cultural and spiritual well-being, and relationship with ʔamakʔis Ktunaxa, as affirmed by UNDRIP and incorporated into the Act by section 2.

2. What constitutes extraordinarily adverse effects

Ktunaxa have heard the EAO say that it does not wish to set a precedent for this or other EAs by attempting to define what extraordinarily adverse effects means. While we respect the EAO's need to not limit or fetter how it approaches future project reviews, Ktunaxa believe that some shared articulation of what extraordinarily adverse effects means in the context of the FRX project is necessary. Otherwise Ktunaxa and the EAO will be looking at the same issue through quite different lenses, and with quite different standards in mind.

The Act provides guidance as to the types of effects that should be considered in evaluating EAE. While section 25 defines factors that must be considered during an EA, Ktunaxa view the list of potential effects it lists as nonetheless providing guidance on the types of effects to be considered under section 16(2)(c)(i)(B), as it would be incongruous for the legislature to intend the EAO to have regard for different types of effects at different stages of the process. An important qualification to this statement is that, as noted in Mr. Shepherd's letter of July 20, 2022, the EAO's focus at the Readiness Decision stage is on adverse effects only. Potential positive economic effects of the FRX Project are excluded from the Readiness Decision consideration.

Section 25 requires that an EA consider, among other things:

- effects of a project on Indigenous nations and rights recognized and affirmed by section 35 of the [Constitution Act, 1982](#) (see also 16(2)(c)(i)(B));
- environmental, economic, social, cultural and health effects and adverse cumulative effects;
- effects on biophysical factors that support ecosystem function; and
- effects on current and future generations.

Note that section 16(2)(c)(i)(B) differentiates between effects on Indigenous nations and effects on their section 35 rights (see also section 25(1)). This implies that the EAO must consider and give weight to information regarding the effects FRX will have on Ktunaxa cultural and social wellbeing, sense of place, transfer of knowledge and other values, even if those practices have not yet been legally recognized as "rights" protected by section 35.

In contrast, the Act provides no guidance on what “extraordinarily” means when used in s. 16(2)(c)(i). Dictionary definitions indicate that for something to be “extraordinary”, it does not have to be an extreme or radical departure from normal standards. Rather, “extraordinary” means above and beyond what is ordinary:

[The Law Dictionary \(including Blacks Law Dictionary\)](#)

“Out of the ordinary; exceeding the usual, average, or normal measure or degree.”

[Cambridge Dictionary](#) – “very; more than usual”

Ktunaxa have heard the EAO attribute a slightly different meaning to “extraordinarily” as requiring evidence of effects that are greater than significant and “blatantly obvious on the face of the project”. Ktunaxa agree that the standard of “extraordinarily”, when used in the context of the Act and EA practice, likely means something more than significant. However, the ordinary and legal meaning of extraordinary, as noted above, indicates that while an extraordinarily adverse effect may need to be greater than significant, it does not have to be at an extreme or radically intense level. An effect that is significant and exceeds what would usually be expected for a similar project meets the standard of “extraordinarily adverse”. We note that this description is consistent with the second factor listed in Mr. Shepherd’s letter, which states that the EAO must consider “how extreme the effects are generally, or on a specific Indigenous nation or its constitutionally protected rights, as compared to other projects of a similar type and size”.

EA practice documents indicate that the following criteria should be considered to evaluate and measure a project’s effects:

- Magnitude
- Geographic extent
- Timing
- Frequency
- Duration
- Reversibility

[\(Determining Whether a Designated Project is Likely to Cause Significant Adverse Environmental Effects under CEAA 2012\)](#)

In the Elk Valley, the additional factor of existing cumulative effects to the environment, Ktunaxa and Ktunaxa rights is also of central importance. If FRX was a green field project occurring in an area untouched by coal mining, it is possible that Ktunaxa would not have initiated dispute resolution. However, the reality is that FRX is proposed for an area that is already heavily impacted by Teck’s existing mining operations, to the point that regulatory thresholds are consistently exceeded, Ktunaxa rights are already severely infringed, and Ktunaxa cultural practices have been eliminated from huge parts of Qukin ʔamakʔis (the

Ktunaxa Land district of Raven's Land and also known as the Elk Valley) – particularly the Upper Fording area that is impacted by three of Teck's coal mines (Fording River, Greenhills and Line Creek Operations). The potential for the FRX Project to cause extraordinarily adverse effects must therefore be evaluated in the context of an ecological setting that is already deeply compromised by Teck's existing operations. This approach appears consistent with the third bulleted factor in Mr. Shepherd's letter of July 22.

There is one point of apparent divergence between Ktunaxa and the EAO in how to evaluate EAE. Mr. Shepherd's letter states that an adverse effect must be unmitigable in order to be considered extraordinary. To the extent this means that non-mitigable significant effects would qualify as extraordinarily adverse effects, we agree. The FRX Project meets this standard for impacts to high elevation grasslands, water quality and westslope cutthroat trout (see Appendices 4 and 5), and impacts to Ktunaxa rights, including knowledge and use (see Appendix 3 and main submission). However, Ktunaxa do not believe that the EAO must have evidence that an adverse effect is demonstrably unmitigable in order to meet the extraordinarily adverse effect threshold, for several reasons:

- The EAO has repeatedly emphasized that it has focused on the information contained in the DPD. The DPD does not identify, assess or evaluate the efficacy of mitigation or offset measures. Given this, it is difficult to see how the EAO could have reached a reasoned conclusion on whether effects are capable of mitigation. Making assumptions about the potential availability of mitigation measures is not enough; reliable information based upon data, science and demonstrated success is required. In the absence of that information, the EAO cannot simply proceed on the optimistic assumption that adverse effects can be solved by unidentified future measures.
- This is particularly so given the evidence that Teck's current mitigation measures and plans have consistently failed to achieve their goals (see below). Instead of assuming that Teck can mitigate all the impacts from FRX, the EAO must have regard for Teck's record of non-compliance and failure to meet EAC conditions, regulatory thresholds, guidelines and water quality targets. This is fundamental to Nasu?kin Gravelle's insistence at our July 7, 2022 meeting that Ktunaxa leadership need to see demonstrated action, not just commitments on paper. Teck's regulatory track record supports the EAO taking a precautionary approach, consistent with professional EA standards, and requiring a high standard of proof before concluding that effects of the FRX project are mitigable to below the standard of significance.
- Effects from FRX to Ktunaxa culture, connection to the land and ability to continue to exercise Ktunaxa stewardship responsibilities and practices cannot be mitigated to a level of insignificance. While partial mitigation may be possible, more than a decade of effort in the Elk Valley has had very limited success. Where impact duration occurs beyond two generations – as is the case with the FRX Project - effects on Indigenous culture and knowledge transmission should be considered permanent. This is consistent with Ktunaxa perspectives that nothing can replace the elimination of almost all of the

Upper Fording from the landscape that supports Ktunaxa culture and rights, or the elimination over multiple generations of the ability of Ktunaxa people to safely drink

- Mitigation measures that require decades to restore environmental damage do not address near and medium-term significant effects, as experienced by current and next generation Ktunaxa. The promise that endangered rare high elevation grasslands may be somehow restored (although not yet proven to be possible) sixty years from now, for example, does not render the loss of those grasslands over a multi-generational timeframe non-significant.
- Ktunaxa do not accept that the destruction of rare high elevation grasslands and the loss of critical high elevation bighorn sheep winter range in the Upper Fording can be mitigated by offsets. The EAO has no information to indicate that Teck can or will be able to offset these impacts. Any conclusion that the extraordinary adverse effects the FRX Project will cause to those two valued components can be offset would therefore amount to little more than an assumption that is contradicted by Teck's record (as detailed in the Appendix 4). Of equal importance, if the offset calculation method used in the Province's Habitat Offset Tool is applied to FRX, it generates an offset ratio of 20:1 for high elevation grasslands. There is not enough of that habitat type remaining in the entire Elk Valley for Teck to be able to meet this offset requirement. Offsets that still result in a significant "net loss" are not effective mitigation.

Ktunaxa accordingly suggest that the EAO must exercise care in evaluating whether an effect is unmitigable. It would not be appropriate for the Readiness Decision to be based on assumptions regarding possible future mitigation measures that are not supported by any information from the DPD, and are in fact contradicted by experience and other available information sources. The CEO's recommendation under section 16 must reflect a reasoned evaluation of reliable information sources, which in this case indicate that the FRX Project will have numerous, long-term significant effects that cannot be feasibly mitigated or offset.

Based on the foregoing, Ktunaxa view the following factors as relevant to a meaningful evaluation under section 16(2)(c)(i) of the potential for the FRX Project to cause extraordinarily adverse effects:

- The scale, footprint, lifespan and waste rock production volumes of the FRX Project as compared to other coal mines in the region.
- The additive effect of adverse impacts from the FRX Project to existing cumulative effects within the region.
- The likelihood of the FRX Project causing significant, multi-generational impacts to Ktunaxa First Nations, including Ktunaxa culture, knowledge transmission, stewardship practices and authority and rights.
- The likelihood of the FRX Project causing significant, multi-generational impacts to the environment that are non-mitigable or impossible to mitigate within the Project's operational lifespan.
- Evidence of Teck's failure to implement previous mitigation measures, or failure to implement such measures in a timely manner that achieves their intended mitigation

objectives, as well as Teck's record of non-compliance under the *Environmental Management Act* and *Fisheries Act*.

- The extent to which the FRX Project is consistent with the EAO's obligation under section 2(2)(ii) to support reconciliation with Ktunaxa by, among other things, supporting the implementation of the *UN Declaration on the Rights of Indigenous Peoples* and recognizing and respecting Ktunaxa jurisdiction.
- The extent to which the FRX Project is consistent with the EAO's obligation under section 2(2)(i) to promote sustainability by protecting the environment and fostering a sound economy.

An evaluation of these factors does not require an EA. The DPD and existing information derived from previous project EAs and ongoing cumulative effects mitigation programs (which is cited below and in the attached Appendices) is sufficient to reliably characterize the FRX Project's likelihood of causing EAE. Ktunaxa believe that, based on that information, a consideration of each of the factors listed above supports the conclusion that the FRX Project will cause EAE and should accordingly not proceed to a full EA.

3. What information needs to be considered

Ktunaxa have heard divergent messages from the EAO on the scope of the information it has considered to date in reaching its draft Readiness Decision recommendation. Early in the DR process the EAO emphasized that it viewed the Readiness Decision as restricted to a review of the detailed project description (DPD). The EAO subsequently appeared to modify that view at the July 7 – 8 meetings by acknowledging that it received and considered input from participants on the technical review team, including technical memos from Provincial agencies (which were only provided to Ktunaxa on July 21, 2022). It also noted that it must take into account information received from Ktunaxa through this DR process. Mr. Shepherd's July 22 letter further indicates that the EAO may - but not necessarily will - consider currently available information regarding the FRX Project's adverse effects.

This appears to be a point of potentially significant difference between the parties. Ktunaxa view the EAO's position that it is restricted to a review of the DPD as inconsistent with the EAO's obligations under the Act, and so narrow as to effectively negate the purpose and intent of s. 16(2)(c)(i). Ktunaxa also view the EAO's subsequent acknowledgment that it has considered technical memos from Provincial agencies about the Project's effects, as part of the Readiness Decision stage, as implicitly recognizing that an evaluation of extraordinarily adverse effects cannot be limited to the DPD alone.

Evaluating whether the FRX project will have extraordinarily adverse effects requires the EAO to consider information regarding what the Project is, and what effects it is likely to have. The first issue depends on the DPD. It is the full scope of the FRX Project defined by Teck through its DPD that must be evaluated, not a potentially reduced or adjusted version of that project. The second issue cannot be addressed on the basis of the DPD alone because that document is

not intended to provide information on environmental effects. This is confirmed by the DPD itself, which states under the heading “Purpose of the Detailed Project Description”:

“[this] Detailed Project Description is not intended to and does not provide an assessment of potential impacts of the Project, nor does it describe all of the measures that may be required to mitigate potential impacts.”

Limiting the information the EAO considers under s. 16(2)(c)(i) to the DPD would therefore have the questionable effect of ensuring the EAO evaluates the potential for extraordinary adverse effects from the FRX Project by examining a document that intentionally omits information on adverse effects. This cannot be the legislative intent behind introducing s. 16(2)(c)(i) into the Act, nor would it be consistent with the EAO’s obligation under section 2 of the Act to take into account best available information. From the Ktunaxa perspective, it is clear that more information than the DPD is needed to meaningfully evaluation the FRX project’s potential to cause extraordinarily adverse effects. The task before the EAO and Ktunaxa is to identify and define the scope of that information, taking into account the fact that the project has not yet gone through a full effects assessment.

Ktunaxa view multiple information sources as relevant and necessary to building a shared understanding of the FRX project’s potential to cause extraordinary adverse effects:

- 1) The DPD, which defines the project.
- 2) Information concerning the existing impacts to Ktunaxa culture, traditional practices and rights from Teck’s coal mines and the additional effects the FRX project will cause.
- 3) Existing information derived from past EAs and Provincial regulatory processes, including but not limited to the Cumulative Effects Management Framework (CEMF), Area Based Management Plan (ABMP) and permit applications that characterize existing impacts and mitigation measures and support an evaluation of the FRX project’s impacts.
- 4) Comments from the Technical Advisory Committee for the FRX Project on the draft Readiness Decision report.

Appendix 2 - FRX Project in Comparison with Other Permitted and Proposed Mines

Quikin ʔamakʔis and the surrounding area (including the neighboring Crow's Nest Pass area in Alberta) is well known for its coal deposits – with several existing (5) and proposed mines or expansions (6) in the region (not including the recently rejected Grassy Mountain Project). A map showing these projects is presented in Figure 1. Within this context, the FRX Project is by far the largest project ever proposed in this coal-mining region. This is in comparison to both projects that have already completed the EA process (Table 1) and those that are still in (or beginning) the EA process (Table 2). Across all the comparisons, the FRX Project is the largest project by a significant margin with respect to footprint (145% to 889% greater), life of mine (147% to 417% greater), total and annual production rates (211% to 2769% greater and 129% and 900% greater respectively), strip-ratio (104% to 387% greater) and total waste rock volumes (272% to 3582% greater). For an “apples to apples comparison”, project characteristics for projects that have been issued EACs and are in operation (Line Creek Phase II, Fording Swift and Elkview Baldy Ridge Extension), are as described in the EA process (vs. current operational status). Figure 2 presents the project foot print and waste rock volumes for all of the coal-mining projects (in descending order according to waste rock volumes. Of the metrics presented, footprint and waste rock volumes are likely the best “on the surface” indicators of project size and potential impact and this figure illustrates the massive scale of the FRX Project relative to other coal mine projects in the region. As shown in Figure 2, the second largest project in the region (compared to FRX) is Fording Swift – also an expansion to the Fording River Operation that was issued an EAC in 2015.

In addition to the uniquely large size of FRX, it's important to note the geographic location of the FRX Project. The Upper Fording River (UFR) is the most impacted area of the Elk Valley and is currently affected by three mine operations – Fording River Operations (FRO), Greenhills Operations (GHO) and Line Creek Operations (LCO). As shown in Figure 1, FRO and GHO have developed to the extent that they are directly adjacent to one another with plans to process FRO reserves at GHO (DPD – Table 3.1-1 Alternatives to the Project) – effectively creating a super-mine with cumulative impacts that must be considered collectively. FRX will exacerbate this impact by developing one of the few undeveloped areas within the UFR – an area that provides a critical habitat and movement corridor for wildlife, and a refuge for Ktunaxa cultural practice in the area. As part of the Elk Valley Cumulative Effects Assessment and Management Report (December, 2018), a Combined Valued Component Analysis was conducted to evaluate the cumulative response of all VC indicators by scaling all indicators from zero to one, where zero was no hazard and one was high hazard. The results revealed that the highest hazard area is within the UFR – which includes the location of FRX (Figure 28, page 51 – represented here as Figure 3 with dark blue representing high hazard). The report states:

The combined indicator is presented in Figure 28, demonstrating that the highest hazard for all VCs is currently located in AWs [assessment watersheds] where mining has occurred and along the valley bottoms. These areas currently experience the highest amounts of land use in the study area. This map supports decision makers to prioritize management/mitigation actions by showing the worst of the worst AWs. Also, it may point to AWs where to minimize/avoid further development.

- Elk Valley Cumulative Effects Assessment and Management Report (December, 2018)



Ktunaxa Nation Council
7825 Mission Road
Cranbrook, BC V1C 7E5
tel: (250) 489-2464
fax: (250) 489-2438

visit us at:
www.ktunaxa.org

Instead of utilizing CEMF as a planning tool to inform future development, Teck has proposed the largest coal mine project in the history of the Elk Valley within the “worst of the worst” areas of the Elk Valley. KNC has updated and validated this analysis based on the latest information and the Combined Valued Component Analysis still shows the UFR as the “hot spot” of the Elk Valley (Figure 4; with the darkest red representing high hazard on a scale from zero (no hazard) to 1 (high hazard)).

Figure 1: Map of Existing and Proposed Coal Mines within Qukin ʔamakʔis and Surrounding Area

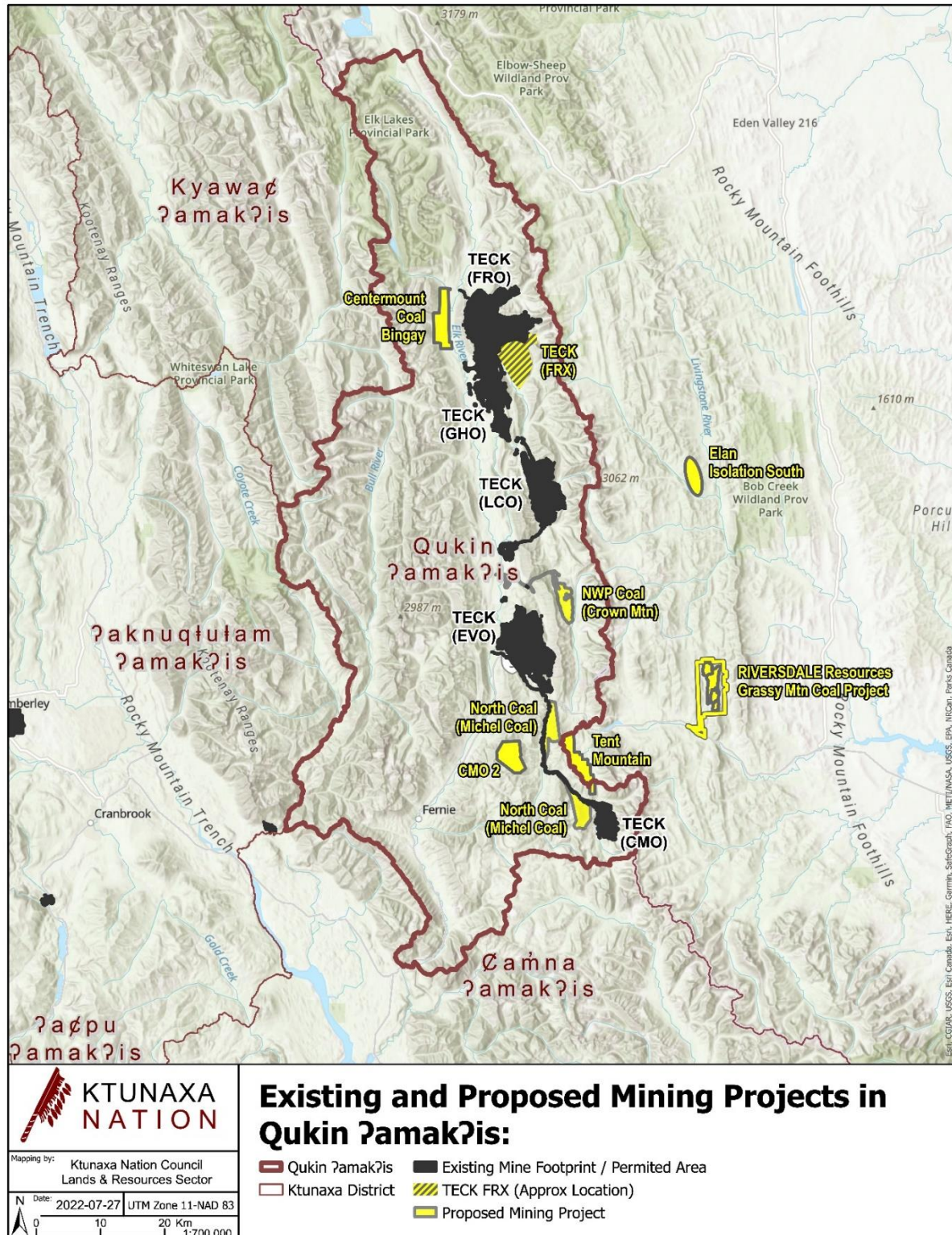


Table 1: Comparison of the Fording River Extension Project with other coal-mining projects that have completed the EA process*

Project Name	Fording River Extension	Line Creek Phase II	Fording Swift	Baldy Ridge Extension	Grassy Mountain
Company	Teck Coal	Teck Coal	Teck Coal	Teck Coal	Benga Mining Ltd.
Footprint (ha)	2330 new + 2320 existing Total = 4650	Total = 1154	1400 new + 1800 existing Total = 3200	Total = 898	1125 new + 375 existing Total = 1500 ha
Life of Mine (Operations)	50	18	25	23	20 - 25
Total Production and Annual Rate (Mmtcc [†])	Total: 360 Annual: 9	Total: 59 Annual 3.5	Total: 170 Annual 6.8 [‡]	Total: 153 Annual: 7	Total: 83 Annual: 4
Average Strip Ratio (waste rock : coal)	12	10.8 [§]	8.8 ^{**}	7.8	9.0
Total Waste Rock Production (Mbcm ^{**})	4084	637	1500	1200	833 ^{**}
EA Status	Readiness Decision	Approved	Approved	Approved	Rejected

* Table 1 References:

Fording River Extension:

- British Columbia Environmental Assessment Office. 2015. Fording River Operations Swift Project: Assessment Report. Available at: <<https://projects.eao.gov.bc.ca/api/public/document/58868f5ee036fb010576818c/download/TAB%202%20-%20Environmental%20Assessment%20Report.pdf>>

Line Creek Phase II:

- British Columbia Environmental Assessment Office. 2013. Line Creek Operations Phase II: Assessment Report. Available at <<https://projects.eao.gov.bc.ca/api/public/document/5e7a580dbd1578001a11bad0/download/Assessment%20Report%20and%20Appendices%20for%20the%20Line%20Creek%20Operations%20Phase%20II%20Project%20dated%20August%2030%2C%202013.pdf>>

Fording Swift:

- British Columbia Environmental Assessment Office. 2015. Fording River Operations Swift Project: Assessment Report. Available at: <<https://projects.eao.gov.bc.ca/api/public/document/58868f5ee036fb010576818c/download/TAB%202%20-%20Environmental%20Assessment%20Report.pdf>>

Baldy Ridge Extension:

- British Columbia Environmental Assessment Office. 2016. Baldy River Extension Project: Recommendations of the Executive Director. Available at: <<https://projects.eao.gov.bc.ca/api/public/document/588698b4e036fb010576929f/download/Recommendations%20of%20the%20Executive%20Director%20dated%20Aug%2012%2C%202016.pdf>>
- British Columbia Environmental Assessment Office. 2016. Baldy Ridge Extension Project: Technical Report. Available at <<https://projects.eao.gov.bc.ca/api/public/document/588698b4e036fb010576929e/download/Technical%20Report%20dated%20Aug%2012%2C%202016.pdf>>

Grassy Mountain:

- Benga Mining Limited & Riversdale Resources, 2016. Benga Mining Limited Grassy Mountain Coal Project Section C: Project Description. Available at: <<https://iaac-aeic.gc.ca/050/documents/p80101/115590E.pdf>>

[†] Mmtcc = million metric tonnes of clean coal

[‡] Calculated value.

[§] Calculated value.

^{**} Calculated value.

^{**} Mbcm = million banked cubic metres

^{**} Calculated value.

Table 2: Comparison of the Fording River Extension Project with other coal-mining projects that are still within (or about to begin) the EA process^{85§}

Project Name	Fording River Extension	Michel Coal	Crown Mountain	Bingay	Coal Mountain II	Tent Mountain	Elan
Company	Teck Coal	North Coal	NWP Coal Canada Ltd.	Centermount Coal Ltd.	Teck Coal	Montem Resources Ltd.	Atrum Coal Ltd.
Footprint (ha)	2330 new + 2320 existing Total = ~4650	1424	~1100	1802	Total = 1000	150 new + 373 existing Total = 523	809
Life of Mine (Operations)	40+	25	16	12 - 14	34	14	21
Total Production and Annual Rate (Mmtcc ⁹)	Total: 360 Annual: 9	Total: 87.4 Annual: 2.3 to 4	Total: 56 Annual: 3.7 mil	Total: 13 Annual: 1	Total: 76.5 Annual 2.25	Total 13 Annual: 1.1	Total: 112 Annual: 6
Average Strip Ratio (waste rock:coal)	12	5.6	4.84	11.5	7.1	8.8	3.1
Total Waste Rock Production (Mbcm ¹⁰)	4084	451	271 ¹¹	150	510	114 ¹²	347 ¹³

^{85§} See next page for full table references.

⁸Table 2 References:

Fording River Extension:

- Teck Resources. 2021. Fording River Extension Project: Detailed Project Description. Available at <https://www.projects.eao.gov.bc.ca/api/public/document/6109b6765f5fad002270449e/download/02_Teck_FRX_Final_DPD_Version2.0.pdf>

Michel Coal:

- North Coal Limited. 2020. RE: Michel Coal Project Update Addendum to Revised Project Description August 2018 – Tent Mountain Deposit. Available at <<https://projects.eao.gov.bc.ca/api/public/document/5feb9fc1ec05430021581265/download/Michel%20Coal%20Tent%20Mtn%20Final%2003.03.20.pdf>>
- Michel Coal Waste Rock Volumes and strip ratio: Bill Arling personal communication. July 26, 2022.

Crown Mountain:

- NWP Coal Canada Ltd. 2014. Crown Mountain Coking Coal Project: Project Description. Available at: <<https://projects.eao.gov.bc.ca/api/public/document/5886a90be036fb01057693ea/download/Project%20Description%20for%20the%20proposed%20Crown%20Mountain%20Coking%20Coal%20Project%20submitted%20by%20NWP%20Coal%20Canada%20Ltd.%2C%20November%202014.pdf>>

Bingay:

- Centermount Coal Ltd.. 2017. Bingay MainCoal Project: Updated Project Description – Update. Available at: <<https://projects.eao.gov.bc.ca/api/public/document/599df2b336f6f70019f62204/download/Bingay%20PD%20Revised%20August%2016%202017.pdf>>

Coal Mountain II:

- Government of British Columbia. N.D. *Coal Mountain Phase 2: Project Details*. EAO's Project Information Centre (EPIC). Available at: <<https://projects.eao.gov.bc.ca/p/588511f8aaecd9001b828a03/project-details>>
- Teck Coal Limited. 2014. Coal Mountain Phase 2 Project Description. Available at: <<https://projects.eao.gov.bc.ca/api/public/document/5886a8d4e036fb01057693e0/download/Project%20Description%20for%20the%20proposed%20Coal%20Mountain%20Phase%202%20Project%20submitted%20by%20Teck%20Coal%20Limited%20September%202014.pdf>>

Tent Mountain:

- Montem Resources Alberta Operations Limited. 2021. Tent Mountain Mine Redevelopment Project: Initial Project Description. Available at <<https://iaac-aeic.gc.ca/050/documents/p81436/142154E.pdf>>
- SRK Consulting (Canada) Inc. 2020. Technical Assessment Report for the Tent Mountain Mine Re-start Project, British Columbia, Canada. Prepared for Montem Resources Ltd. Available at <https://montem-resources.com/wp-content/uploads/2020/09/Tent_Mtn_Technical_Assessment_Report_2CM044.003_20200819_updated_revised.._min.pdf>

Elan:

- Atrum Coal Ltd. 2020. Elan Project Updated Scoping Study. Available at <https://www.atrumcoal.com/wp-content/uploads/2020/12/ATU_ELAN_PROJECT_UPDATED_SCOPING_STUDY.pdf> Atrum Coal Ltd. 2022. Project Information. Elan. Available at <<https://elancoalproject.ca/project-information/>>

⁹ Mmtcc = million metric tonnes of clean coal

¹⁰ Mbcm = million banked cubic metres

¹¹ Calculated value.

¹² Calculated value.

¹³ Calculated value.

Figure 2: Total Waste Rock Volumes and Footprint for Approved and Proposed Coal Mines

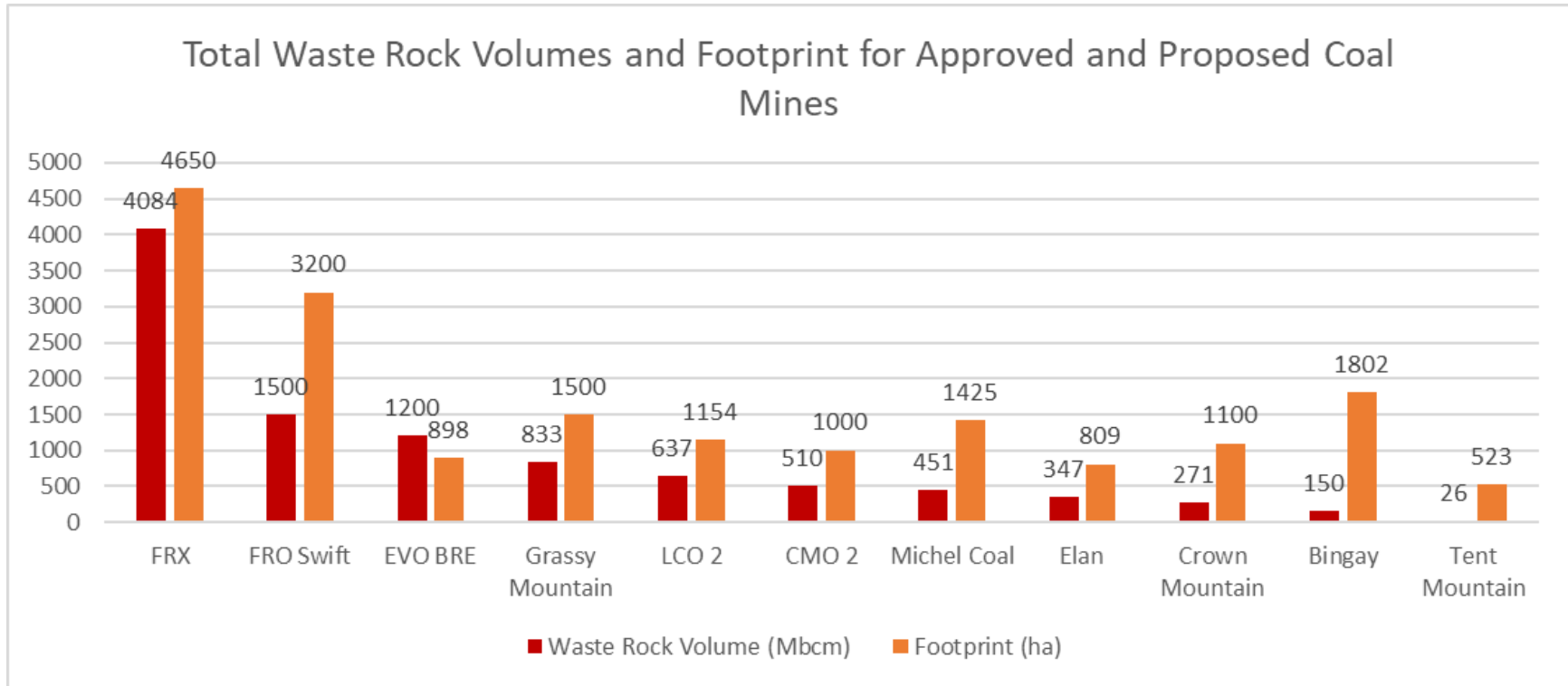


Figure 3: Reproduction of Figure 28 in the Elk Valley Cumulative Effects Assessment and Management Report (December 2018) Page 51 https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/cumulative-effects/final_elk_valley_ceam_12122018.pdf

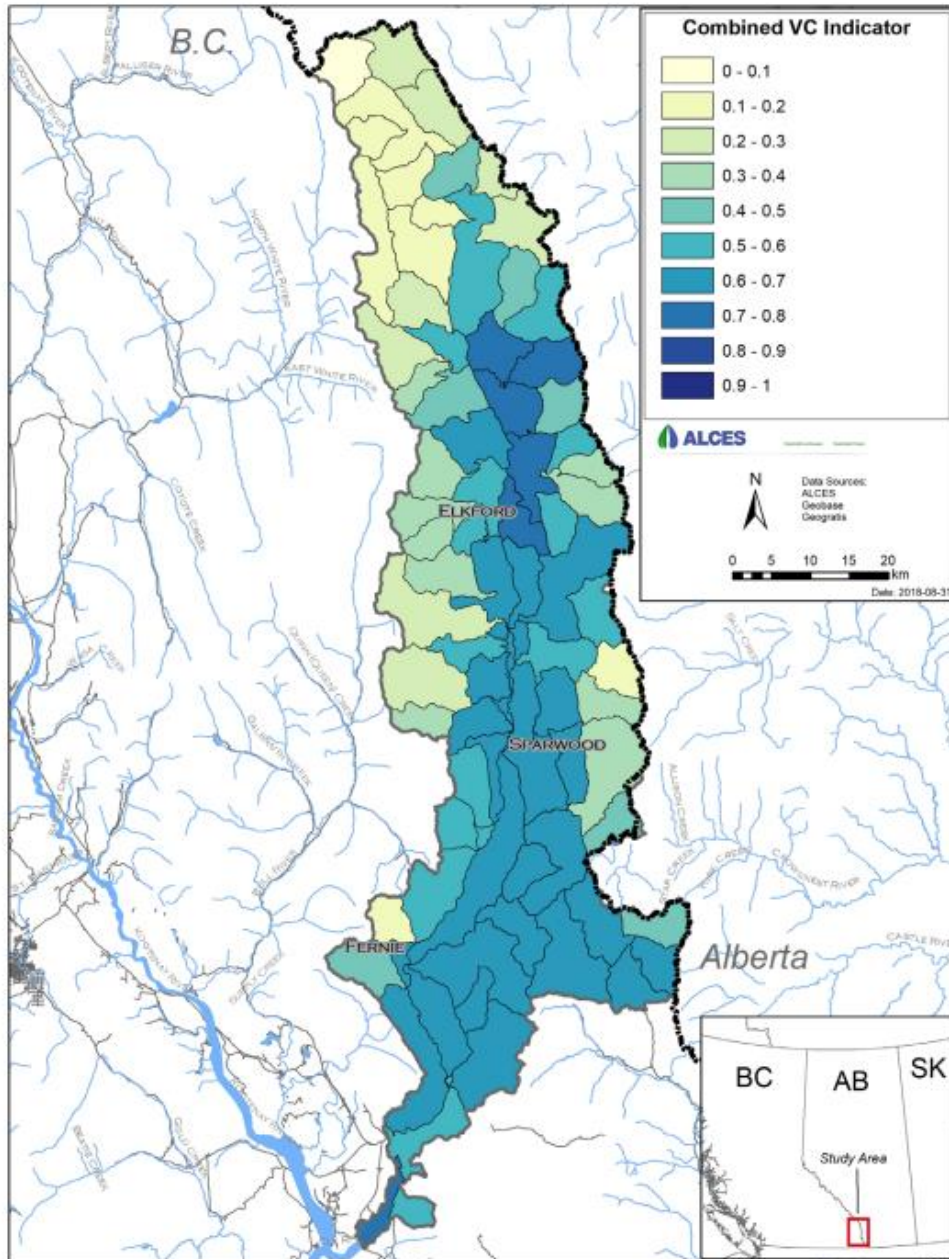
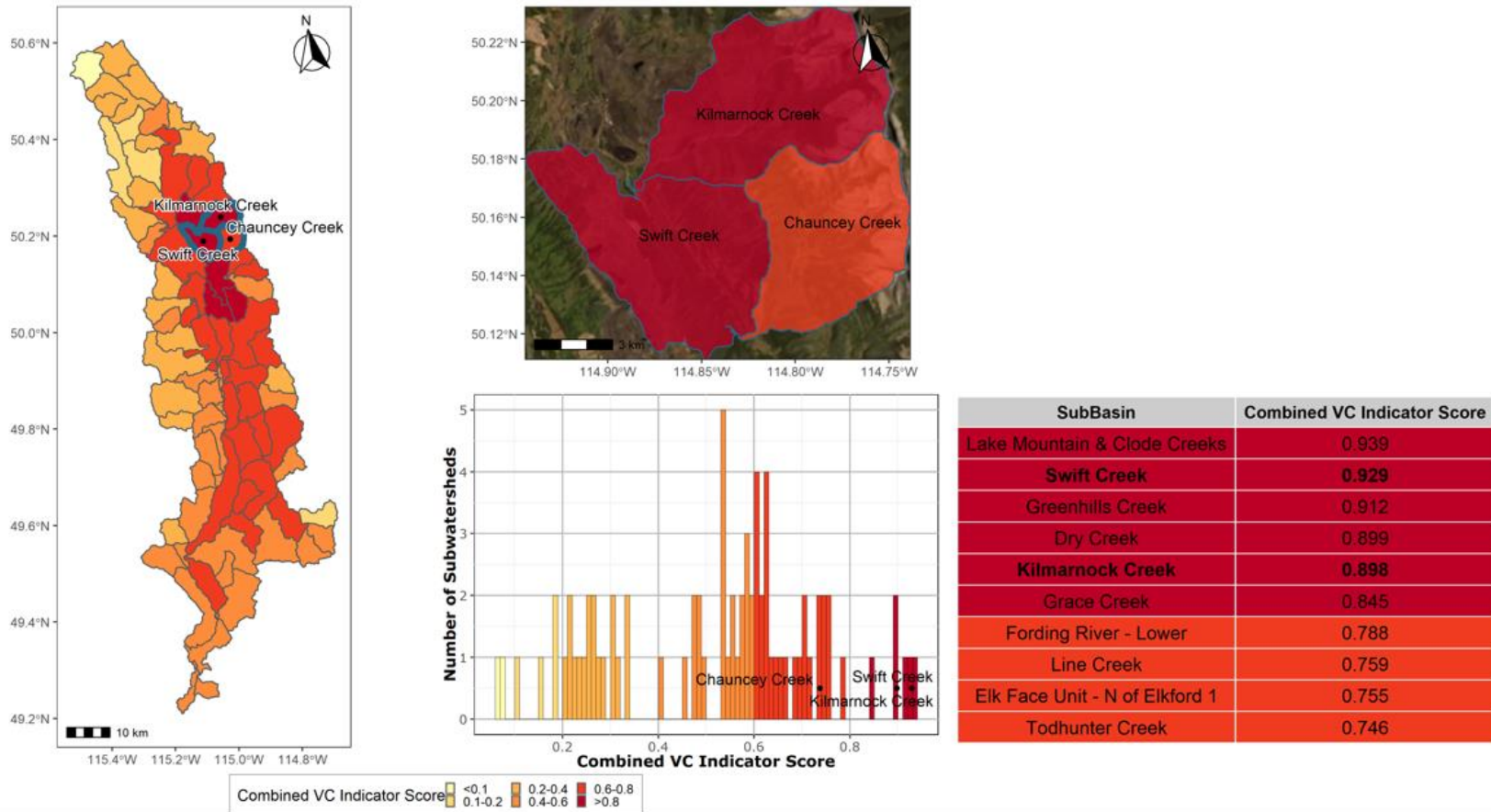


Figure 28. A combined indicator of all VCs for 78 AWs in the Elk Valley. No thresholds of hazard are available for this combined indicator.

Figure 4: Combined Indicator for all VCs (MacHydro July, 2022)

Combined VC – Current Condition



Appendix 3: Summary of Unmitigable Effects to Ktunaxa Culture from Existing Coal Mines and Contribution of the Fording River Extension Project

Impact	Existing Condition/Cumulative Effects	Contribution of FRX	References
Unmitigable Impacts to preferred Ktunaxa transportation routes, hunting areas, and documented habitation areas on Castle Mountain along Chauncey and Kilmarnock creeks, including hunting trails and long-distance trail connectivity from Whiteswan Lake to the Eastern Slopes (tangible cultural heritage).	As noted in the FRO Swift application, a unique density of preferred Ktunaxa transportation routes exist on Castle Mountain, and along Chauncey and Kilmarnock creeks, including hunting trails and long-distance trails from Qa'intak (Whiteswan Lake) to the Eastern Slopes, and associated cultural use and harvesting areas. Other values in the watershed have already been heavily impacted, including destruction of Ktunaxa places and trails through mining and valley in-fill. Impacts in the upper Fording have been ongoing for more than 50 years (2 generations) and are considered permanent. Trails have been relocated higher up on the south side of Kilmarnock, and require Teck escort. Pre-existing trails, camp areas, and harvesting areas along Chauncey and on Castle are of increased importance as a result. Chauncey trails are largely intact, with some sense of place (sound, visual, and contextual) impacts related to logging regrowth, but with limited sensory impact from coal mining. Use values in the area were reported by multiple Ktunaxa knowledge holders from multiple Ktunaxa First Nations.	<p>The FRX project will lead to elimination of 2330 hectares (2D) of additional habitat and will include destruction or disturbance of more than 10 linear km of existing documented Ktunaxa trail and travel route. Preferred camp and harvest locations along Chauncey, one of the few remaining largely intact watersheds in the upper Fording, will be subject to adjacent blasting and industrialization with sensory impacts extending throughout the valley. Sensory disruption from operational FRX activities (blasting and heavy machinery operation) will impact both sides of the Chauncey drainage.</p> <p>Teck has not demonstrated an ability to reclaim and restore to a culturally and ecologically effective standard where Ktunaxa use can be considered likely to return, equivalent to pre-disturbance, after mining. Impact duration will be greater than 50 years and should be considered permanent.</p> <p>Due to the level of existing impacts and absence of similar habitat in the upper Fording, like for like offsetting is not a feasible option.</p>	2014 FRO Swift Application, Section C3
Unmitigable impacts to Ktunaxa Knowledge and Language, including transmission of place-specific knowledge and future Ktunaxa relationships with the land (intangible cultural heritage)	The FRO Swift application found that additional mining impacts in the FRO area would have serious and significant adverse effects on transmission of knowledge and cultural practice of rights in the surrounding area: "Considering the already significantly impacted context within which Project effects will take place, and absent expressed Ktunaxa free, prior and informed consent, the residual effects of the Project on Ktunaxa rights and interests... including tangible and intangible cultural resources and relationship to lands and waters are anticipated to be adverse and significant. If the Project is built, Ktunaxa citizens will be less likely to hunt, fish, visit and practice rights in areas near the Project and downstream along the Fording and Elk Rivers."	<p>The FRX project will lead to destruction of an important and largely intact high elevation cultural landscape, loss of which will impair or eliminate the ability of Ktunaxa knowledge holders to maintain, build, and pass on place and resource specific knowledge, including knowledge of high elevation hunting and travel, harvest and processing of sheep, and associated cultural practice.</p> <p>Ktunaxa knowledge holders from Yaqit ʔa-knuqʔi 'it and other Ktunaxa First Nations have indicated that impacts in the Elk Valley have already been so extensive that maintaining Ktunaxa knowledge and relationships related to the area, which are fundamental to Ktunaxa identity and governance, is already severely challenged. Remaining relatively intact areas, including the FRX Project area, are extremely important as a result. Much of the upper Fording River area as already been lost due to mining: "we cannot do what makes us Ktunaxa in the Fording River Valley anymore, not hunting, no berry harvesting, no fishing." Loss of the Project area will eliminate one of the last and best places for practice of Ktunaxa high-elevation rights in the</p>	2014 FRO Swift Application, Section C3
Unmitigable impacts to Ktunaxa ability to harvest and practice rights dependent on high elevation grasslands (HEG)	<p>Castle mountain provides high-value high elevation grasslands (HEG) that provide unique and preferred hunting areas for Ktunaxa harvest, including sheep, deer and elk. Castle mountain provides a unique combination of accessible and high-quality habitat that sustains reliable densities of animals. Alternative equivalent and preferred hunting areas do not exist nearby.</p> <p>According to MLWRS's exceptions mapping, an estimated 1644 ha of HEG ecosystems in the Elk Valley have already been permanently lost, including large areas that were once part of the FRO mine. Little or none of this habitat has been restored to an equivalent standard of cultural and ecological effectiveness.</p>	The Project would permanently destroy unique and preferred high elevation hunting and harvesting areas that are not replaceable and cannot be feasibly restored.	<p>Cameron, 2022. FRX Readiness Decision – Concerns related to historic loss and present condition of high elevation grasslands in the Elk Valley. EMLI April 22, 2022 letter to Teck RE: Fording Extension Notice of Departure – CX-5-022</p> <p>2014 FRO Swift Application, Section C3 and C6</p>

<p>Unmitigable Impacts to Ktunaxa confidence in wild foods, including fish and surface drinking water.</p>	<p>As noted in the FRO Swift Application, as well as other recent EA records, selenium and other metal levels in surface water in the Elk Valley is already beyond safe drinking water standards, and displacement of Ktunaxa practice of harvesting and livelihood rights, including reliance on surface water, is already taking place for many land users.</p> <p>The FRO Swift Application, Section C, found significant adverse residual effects and that Ktunaxa “practices reliant on fish and fishing downstream of the Project are likely to be particularly impacted.” C2.2 of the FRO Swift Application indicates: Water in the Elk Valley is understood by Ktunaxa knowledge holders and experts to already be passed a threshold of significant effect to cultural rights and interests as a result of current and past mining activities. As such, anthropogenic changes to water and water flow are of critical concern ... and any incremental adverse Project-related residual effect post-mitigation should be considered significant.” (c2-8)</p>	<p>The Project will intensify already serious impacts on Ktunaxa confidence in harvesting and eating culturally important ʔa·kpiʔis (Ktunaxa “favourite food”) in the Elk Valley, and will result in an additional 50+ years of direct project effects, as well as long term contaminant loading from an extraordinary amount of waste rock, into an already heavily contaminated watershed. Given limited success of existing efforts at mitigation, Project impacts to the confidence of Ktunaxa families in ʔa·kpiʔis, and reliance on the upper Fording and Elk Valley for water while on the land, and Sukiʔ ʔiknaʔa (eating good) , consistent with Ktunaxa cultural practices, are considered un-mitigable.</p>	<p>2014 FRO Swift Application, Section C3 and C5</p>
<p>Unmitigable impacts to commercially valuable and non-renewable subsurface Ktunaxa resources (marketable coal)</p>	<p>Ktunaxa nations maintain commercial rights associated with subsurface resources, including coal in the Elk Valley.</p>	<p>Project would permanently remove large quantities of non-renewable commercial coal from Ktunaxa lands.</p>	<p>FRO Swift Application, section C4; BRE Application, section C.</p>

Appendix 4: Summary of Unmitigable Effects to the Terrestrial Environment from Existing Coal Mines and Contribution of the Fording River Extension Project

Impact	Existing Condition/Cumulative Effects	Contribution of FRX	References
Unmitigable loss of terrestrial habitat and biodiversity overall	<p>Notwithstanding KNC's concerns on Teck's approach to managing biodiversity, Teck's 2019 Biodiversity Management Plan Workbooks document that an equivalent total of ~14,000 "quality hectares" have inherently been lost to Teck's coal mines. Of this, ~1000 quality hectares are considered (by Teck) as reclaimed, which represents only 7% of the total impacted area.</p> <p>This demonstrates to Ktunaxa that even in Teck's view, reclamation has either yet to occur or be successful for over 90% of the area impacted by mining to date.</p> <p>The 2019 Workbooks also documents the specific ecosystem types that have been impacted and any reclamation done to offset impacts. Of the 25 ecosystem types identified, Teck has only reclaimed 8 of the ecosystem types. For example, no alpine, avalanche, krummholz or wetlands ecosystems have been successfully reclaimed. This demonstrates a lack of feasibility to reclaim areas that are reflective of the original habitats that were destroyed and maintain biodiversity.</p>	<p>The FRX project will lead to an additional 2330 hectares (2D) of additional habitat and temporally delay reclamation of previously disturbed areas of the Fording River Operation (up to 2320 hectares of existing disturbance will be part of the FRX project).</p> <p>Addition of FRX Project will contribute to Teck's current inability to reclaim impacts from their mining operations and mitigate for the loss of biodiversity.</p>	2019 Teck Biodiversity Management Plan Workbooks
Unmitigable loss of red and blue listed high elevation grasslands (HEG)	<p>There are 5 high elevation grassland (HEG) types in the Elk Valley that are red- or blue-listed within British Columbia due to their rarity and high threats from permanent conversion to coal mines and mine infrastructure. The rough fescue type (Gg16, red-listed in 2021, 1280 ha in 2021) and the Idaho fescue type (Gg14, red-listed in 2021, 420 ha in 2021) are restricted to the Kootenays and cover less than 0.01% of British Columbia's land base and 0.5% of the Elk Valley CEMF area. They are not known to occur elsewhere in British Columbia. Almost all significantly sized occurrences of the rough fescue type (Gg16) occur within the east side of the Elk Valley.</p> <p>According to MLWRS's exceptions mapping, an estimated 1644 ha of HEG ecosystems in the Elk Valley have already been permanently lost as a direct result of mine construction at five Teck mining operations. Since 1950, approximately 32% of Gg16 area (~591ha) has been permanently lost to mining developments at Fording River, Line Creek, Elkview, and Greenhills coal mines and 15% of Gg14 area (~72.92ha) has been permanently lost to the same projects. These losses do not include mining exploration roads, which are additional permanent losses of Gg14 and Gg16, which account for an additional approximate 2% loss of Gg16 and 14.</p> <p>These very significant losses, coupled with degradation and overgrazing have resulted in HEG ecosystems approaching and/or exceeding established thresholds for ecological sustainability, irrespective of which risk framework is applied (for example, ≥50% impacted is cited by the IUCN as a threshold for unsustainable ecosystem loss/impact).</p> <p>These HEGs represent critical habitat and winter range for a variety of Species at Risk (SAR), including Bighorn sheep (provincially blue-listed), Grizzly bear (COSEWIC Special Concern; SARA Schedule 1; provincially blue-listed), Wolverine (COSEWIC Special Concern; SARA Schedule 1), Mountain goat (provincially blue-listed), Whitebark pine (COSEWIC Endangered; SARA Schedule 1; provincially blue-listed), and Limber pine (COSEWIC Endangered; provincially blue-listed). These</p>	<p>If extirpated Gg16 is excluded from area calculations, 18% of remaining Gg16 is located on FRX. Proceeding with FRX is forecasted to result in permanent loss of 44% of the total Gg16 from the 1950's baseline. This total loss does not include mining exploration roads, or any other permitted or planned mining projects in the Elk Valley, so permanent losses will be higher. When comparing these losses to draft CEMF objectives, development of FRX would result in Gg16 exceeding the 40% loss benchmark and moving from high hazard to very high hazard.</p> <p>Five percent of the total remaining Gg14 area is within the proposed FRX, representing a forecasted permanent loss of 20% from 1950's baselines. This total loss does not include mining exploration roads, or any other permitted or planned mining projects in the Elk Valley, and so permanent losses will be higher. When comparing these losses to draft CEMF objectives, development of FRX would result in Gg14 impacts moving from a low to medium hazard.</p> <p>Losses of HEGs resulting from mountaintop removal are considered permanent and irreplaceable. Cameron has noted that reclamation of mining exploration roads within Gg16 habitats has proven to be unsuccessful. Unavoidable site/soil alterations coupled with simplified reclamation prescriptions have contributed to resulting "homogenized" vegetation communities that lack the structure, diversity, and functionality of native HEGs. The MLWRS has deemed these "reclaimed" sites as fundamentally different from the HEGs sites lost, and hence not "countable" as reclaimed HEG ecosystems.</p> <p>Based on the massive reclamation deficit in the Elk Valley, even if major technological advances in reclamation science and effectiveness were developed in the future (making it possible to partially reclaim some HEG sites in the very long term), the protracted duration and prohibitive effort and expense required to do so would accrue too late for dependent SAR populations already of high conservation concern and in steep decline at present.</p> <p>Due to accelerating climate change impacts, the feasibility to successfully reclaim HEG ecosystems in future is considered to be even more unlikely, because of increases and/or extremes in seasonal temperature, drought, wildfires, flooding, windstorms, etc. Unpredictable weather events will further reduce the probability of successful vegetation regeneration and/or reclamation success in a more uncertain future, due to predicted broad scale changes to drainage/seepage patterns, with increases in terrain instability, sloughing, wind, erosion, sedimentation, compaction, rutting, riling, and invasive weed establishment and spread.</p>	<p>Cameron, 2022. FRX Readiness Decision – Concerns related to historic loss and present condition of high elevation grasslands in the Elk Valley.</p> <p>Historic HEG Ecosystem Mapping in the Elk Valley (see MLWRS power point presentation provided to KNC);</p> <p>EMLI April 22, 2022 letter to Teck RE: Fording Extension Notice of Departure – CX-5-022</p> <p>Draft CEMF High Elevation Grassland</p>

	<p>species, in addition to a range of other animal and plant SAR and biodiversity components, are of high cultural significance to Ktunaxa and are integral components of All Living Things (ʔa-kxam̓is q̓api qapsin) for which Ktunaxa hold a stewardship responsibility.</p> <p>BC and KNC have been working on draft objectives for HEG ecosystems under the CEMF framework. One draft objective for each grassland community is for loss to not exceed 40% of historic area. With hazard benchmarks of low for >10%, medium for >20%, high for >30% and very high for >40%. That puts the existing condition for Gg16 and Gg14 at a high hazard and low hazard respectively.</p>	<p>The inability to successful reclaim HEG is further supported by EMLI recently rejecting a Notice of Departure for the Multi-Year Area Based FRX Exploration Permit. Teck proposed additional impacts to HEG and information provided by KNC and Cameron informed the decision to not approve the departure due to not being consistent with Condition 13.c. regarding Reclamation Standards.</p> <p>Given the lack of feasibility to recreate HEG (particularly Gg16 & Gg14), one may question if offsets are a viable mitigation option. Unfortunately, due to the rarity of the HEG ecosystems (particularly Gg16 & Gg14), offsets such as conservation of remaining HEG would not result in a net gain of HEG and are hence are not a viable offset to keep losses below the draft CEMF objective of remaining below 40% loss.</p>	Objectives (July 2022)
Unmitigable impacts to blue listed Bighorn Sheep	<p>Winter range is the most important habitat type for blue-listed bighorn sheep in the Elk Valley. Coal mining activity results in permanent loss of natural high elevation winter ranges for bighorn sheep. Properly functioning high quality winter ranges are vitally important for continued survival of bighorn sheep in the Elk Valley. High quality winter ranges comprise only 2.7% of the Elk Valley from Henretta to Elkview, which emphasizes the limited amount of occupied winter ranges in the area.</p> <p>Cumulative effects analysis has provided data on habitat loss. From 1980s to 2015, Rank 4 (highly preferred – natural grasslands) bighorn sheep winter range habitat declined overall by 30% due to loss or alteration along the East side of the Elk Valley. Loss was most severe in the Fording and Ewin Creek subpopulations resulting in a High Hazard rating. Rank 4 habitat is irreplaceable.</p>	<p>Large scale removal of native winter ranges would likely result in a bighorn sheep population decline as this grassland ecosystem is irreplaceable and highly selected by sheep.</p> <p>Sheep wintering on Castle, Todhunter, and Imperial Ridges move mainly among these 3 ranges. Castle comprises approximately 18% of the prime high elevation grassland winter range within the east side of the Elk Valley and 60% of the Castle-Todhunter-Imperial complex. Therefore, permanent loss of Castle winter range due to coal mining activities would result in sheep being displaced and concentrated on the 2 smaller remaining ridges. This would ultimately result in decreased habitat condition due to overgrazing by both bighorn sheep and elk. Portions of this complex are currently experiencing overgrazing habitat conditions.</p> <p>An update and scenario analysis was conducted to assess hazard of bighorn sheep in the Elk Valley in 2021. Rank 3 and 4 winter range habitat was assessed as very high hazard in the Fording and Ewin Creek subpopulations. All rank winter range habitat went from a current condition of moderate hazard for Fording subpopulation and low hazard for Ewin to very high and moderate hazard, respectively, with the proposed FRX included in the modelling.</p> <p>Irreplaceable losses to winter range and rank 4 habitat will lead to unmitigable impacts to big horn sheep that currently utilize Castle Mountain.</p>	<p>Teske, 2022. FRX Readiness Decision – Concerns related to bighorn sheep high elevation grassland winter range loss due to proposed coal mining development.</p>
Unmitigable impacts to Grizzly Bear	<p>Grizzly bear habitat indicator (avalanche chutes, alpine habitat) declines since 1950 are most apparent in the Fording and east Elk LUs. Overall habitat suitability is most impacted by road density (particularly at lower elevations) and associated impacts on connectivity and human-bear encounters. It is notable that this same unit also has the highest female/total mortality of any unit in the Kootenay region, which have exceeded policy thresholds (1.8% of the female population/ and 6% of total population) for the past decade. This apparent elevated risk to Grizzly bears in the Elk Valley associated with elevated road densities, habitat fragmentation, and increased human-bear encounters is linked to cumulative resource development activities such as mining, forestry, recreation, linear corridors, etc.).</p>	<p>FRX will further exacerbate apparent elevated population mortality risks in the Elk Valley. Grizzly Bear collar data collected since 2015 shows activity on and adjacent to the proposed FRX. Since 2015 hair sample data has identified 29 individuals within the Upper Fording area. Hair sample data above Chauncey Creek shows use by 25 individual bears. Data confirms relatively high GB density around the proposed FRX footprint, suggesting that habitat suitability is high. However, some of the bears detected in that area were located further north over that time period, suggesting that they are currently finding their way around the current Fording footprint, as opposed to moving directly through it.</p> <p>The Fording mine represents an obvious current blockage to connectivity on the east side of the EV. The mine footprint extends almost to the “green zone” along the foot of the Rockies, leaving negligible undisturbed area for animals to move north-south. FRX mine expansion will remove a significant amount of highly suitable habitat, and further compromise grizzly bear movement and connectivity depending on how far further east the footprint extends.</p>	<p>Elk Valley CEMF Report 2018</p> <p>https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework/regional-assessments/kootenay-boundary/elk-valley-cemf</p>
Extraordinarily high Waste Rock Volumes	<p>Decades of mountain top removal and valley infilling has removed large areas of the Elk Valley, especially in the upper Fording. Teck mines in the Elk Valley have generated approximately 8 billion banked cubic meters (bcm) of waste rock and are permitted and projected (without FRX) to produce a total of 11 billion bcm by 2040.</p> <p>In addition to habitat loss, waste rock is the main source and cause of impact to surface and ground water quality (including high levels of selenium, nitrate, and sulphate)</p>	<p>FRX is expected to produce 4.1 billion cubic meters of waste rock over the life of the Project (Teck DPD, 2021) – which will be more than ¼ of the total permitted waste rock. If FRX is approved and developed and the existing operations continue development as planned, deposited waste rock volumes will approximately double the current volumes.</p> <p>Additional waste rock from FRX will result in additional habitat loss and increased loadings of selenium and nitrate (and other constituents) in the Fording River and downstream watersheds.</p>	<p>Teck Detailed Project Description (2021). Section 3.4 pg 3-67 – 3-68</p> <p>2022 IPA Appendix A Site Conditions</p>



Ktunaxa Nation Council
 7825 Mission Road
 Cranbrook, BC V1C 7E5
 tel: (250) 489-2464
 fax: (250) 489-2438

visit us at:
www.ktunaxa.org

Extraordinarily high bonding requirements	The Elk Valley Coal Mines have an estimated liability of \$1,708,810,000. Teck currently has a bond of \$1,193,310,000 in place (a shortcoming and liability of \$515,500,000 remains outstanding). Compared to the other 96 bonded mine sites in BC, the Elk Valley Coal Mines represent 50% of the total liability of mines in BC and are responsible for 45% of BC's provincial short fall in bonding requirements.	Given FRX's significant footprint and waste rock volumes (largest proposed coal mine Project in the history of the Elk Valley), it is reasonable to expect that FRX would significantly increase the liability estimate and bond requirement.	Chief Inspector of Mines 2020/2021 Annual Report
---	--	---	--

Appendix 5: Summary of Unmitigable Effects to the Aquatic Environment from Existing Coal Mines and Contribution of the Fording River Extension Project

Impact	Existing Condition/Cumulative Effects	Contribution of FRX	References
Unmitigable Impacts to Surface and Ground Water Quality – Contaminant Loadings	<p><u>Selenium Loadings</u> According to the National Pollutant Release Inventory (NPRI) for 2021, Teck Coal’s Elk Valley Mines release the 1st, 2nd, 4th, 7th and 16th highest selenium pollutant releases to water in Canada (out of 110 operations that release to water). The operational mines are the highest releases, with the 16th attributed to the recently closed (but still leaching selenium) operation. Fording River Operations is the #1 highest selenium release to water in Canada at 5388 kg in 2021 – with Teck Coal’s Elk Valley mines totalling approximately 10,000 kg Se/year to Elk Valley waters. Since 2016, approximately 500 to 1000 kg/year (5-10%) is removed by treatment. This proves that Teck has yet to demonstrate the successful removal of selenium loadings that are released each year.</p> <p><u>Nitrate Loadings</u> According to the National Pollutant Release Inventory (NPRI) for 2021, Teck Coal’s Elk Valley Mines released 1,964 tonnes (1,964,000 kg) of nitrate to water in 2021. During this same time period, Teck Coal reports the removal of approximately 91,000 kg (5%) through treatment. Fording River Operations contributed 1,057,000 kg of the nitrate to Elk Valley waters in 2021.</p> <p><u>Unaccounted for selenium and nitrate loads from current Elk Valley waste rock</u> Teck’s 2022 Regional Water Quality Model (RWQM) removes 15% of the load at three respective locations above FRX – one in the Clode aquifer and two in the Kilmarnock aquifer (both located within the area impacted by Fording River Operations). Both of these aquifers are recognized to be contributing to degraded water quality in the Fording River. Should the instream sinks investigations prove that loads are being delayed (through groundwater) rather than naturally attenuated, an additional 45% increase in load may result (beyond predictions of Teck’s model) in the Fording River. Teck does not currently capture or treat groundwater and is relying on surface water improvements to diffuse to and dilute current mine impacted groundwater.</p> <p><u>Unmitigable effects</u> To date, Teck has only proven that they can remove approximately 5 to 10% of the selenium and nitrate released a year. This demonstrates that the loadings from the waste rock are unmitigable.</p> <p>The recent Grassy Mountain federal Environmental Assessment resulted in the rejection of the project due to significant adverse environmental effects (including to water quality). The Joint Review Panel noted the “Experience in the nearby Elk Valley in British Columbia illustrates the challenges and potential costs of dealing with the water quality issues that this project may face.” The report also noted that “Members of the public drew similarities between the project and mining operations in the Elk Valley, particularly with respect to the potential for downstream selenium contamination and uncertainty regarding the effectiveness of Benga’s proposed mitigation measures.”</p>	<p>Waste rock is the main source of contaminant loading from coal mining. FRX is expected to produce 4.1 billion cubic meters of waste rock over the life of the Project, which represents approximately half of the amount of waste rock that is currently placed in the Elk Valley and approximately one quarter of the total permitted waste rock (Elk Valley wide) if FRX is approved. This significant increase in waste rock would be a major source of additional loading of constituents (including selenium and nitrate) and will cause additional impacts to both surface water and ground water quality.</p> <p>The placement of waste rock within the Kilmarnock watershed will contribute more load to the Kilmarnock ground water aquifer which is already carrying high contaminant load and is unconfined (high surface water ground water interactions leading to further contaminate loading of the Fording River).</p>	<p>https://pollution-waste.canada.ca/national-release-inventory/?fromYear=2021&toYear=2021&substance=14207&direction=descending&order=releaseToWater&length=10&page=1</p> <p>March 31 2022 Annual Water Treatment Performance Report</p> <p>July 31 2022 IPA</p> <p>https://iaac-aeic.gc.ca/050/documents/p80101/139408E.pdf</p>
Unmitigable Impacts to Water Quality - Aquatic Biota	<p>Water quality in the Elk Valley has exceeded provincial and federal water quality guidelines for decades. The recognition of the continually increasing trends of selenium, nitrate, sulphate and calcite led to the issuing of a Ministerial Order to require the stabilization and reduction of these mine related contaminants. This led to an Area Based Management Plan (ABMP) which was developed, approved and made BC policy. This plan, the province’s first and only ABMP, was the basis for the valley wide permit which authorized water quality limits at certain locations over time. Recognition of decades of unmitigated mine impacts in water quality required the setting of “protection goals” for aquatic health that were essentially the formal requirements to move from the moderate or high-level impacts down to low level impacts and to reverse the increasing trends. Under the ABMP the permit authorized these effect levels with the goal of stabilizing and reducing levels of contaminants down to a less than or equal to 10% effect (at the population level) within the mainstem Fording and Elk Rivers.</p> <p>The overwhelming number of water quality non-compliances since the permit was issued in November 2014 have led to subsequent ecological thresholds exceedances, as specified in the ABMP (“benchmarks” developed during the EVWQP). For selenium, the ABMP anticipated protection of aquatic life at 4/7 of the Order stations immediately (2014) and 3/7 by Dec 31, 2023. It was anticipated that under the ABMP Level 1 benchmarks (low level 10% effects) would be achieved, with a few places at certain times approaching Level 2 (moderate level 20% effects). This has not been the case, and the Fording River above Josephine Falls (Management Unit 1 of the ABMP) has exceeded Level 2 benchmarks (translating to an expected 20% effect</p>	<p>The significant increase in waste rock is a major source of additional loadings of constituents (including selenium) and would cause additional impacts to aquatic biota.</p>	<p>Environment and Climate Change Canada, Published March 26, 2021 <https://www.canada.ca/en/environment-climate-change/news/2021/03/teck-coal-limited-to-pay-60-million-under-the-fisheries-act-and-must-comply-with-a-direction-requiring-pollution-reduction-measures.html></p> <p>2014 BC Ambient Water Quality Guidelines for Selenium</p> <p>Teck Resources Limited 2020 "Annual Information Form"</p>

	<p>on sensitive aquatic species at the population level) for selenium on multiple occasions and nitrate exceedance have also exceeded Level 2 benchmarks for fish and Level 3 (which translates to an expected ~50% effect on sensitive aquatic species at the population level) for benthic invertebrates.</p> <p>Selenium toxicity in fish results in many adverse effects including reductions in growth; behavioural changes; increased deformity; and increased mortality in early life stages. In the aquatic environment, selenium accumulates in sediments and biota, and can continue to cycle and persist for many years. For birds that feed in aquatic environments, the most sensitive toxicity endpoint is reduced egg hatchability followed by deformity in offspring. As is often the case in selenium toxicity, the adult organism may appear unaffected; however, overall reproductive success and productivity may be negatively impacted.</p> <p>On March 26, 2021, Teck pleaded guilty to charges by Canada (ECCC) under the <i>Fisheries Act</i> that waste rock from the Fording River and Greenhills mines have, and continue to, leach deleterious substances, selenium and calcite, into the upper Fording River and its tributaries, and that all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat had not been taken. Emphasis on the failure of the ABMP to be appropriately conservative in the protection of the Westslope Cutthroat Trout population through the permitted levels was noted by expert witnesses from both the prosecution and the defense through the released public documents. Teck was ordered to pay a total of \$60 million in fines and monetary orders, the largest monetary penalty in Canadian history. This penalty was applied to a single year (2012) and only a portion of the watershed (the Fording River above LCO Dry creek) of Teck’s mining operations and their resulting impacts.</p> <p>Teck has publicly reported to their shareholders that they “cannot operate the Elk Valley Mines in compliance with the <i>Fisheries Act</i> and its current associated regulations” and has recognized that the ABMP may not be protective of the environment. In their 2020 Annual Information form they reported: “The Elk Valley Water Quality Plan is intended to provide a regulatory framework for permitting current and future projects and for managing the cumulative effects of new projects. The plan contemplates ongoing monitoring of the receiving environment, and adjustment of water quality targets if unacceptable environmental impacts are identified. There can be no assurance that the water quality targets set out in our valley-wide water quality management plan will prove to be suitably protective of the environment, that our planned mitigation efforts will be sufficient to meet those targets or that ongoing monitoring will not disclose unanticipated environmental effects of our operations that will require additional mitigation.”</p>		
<p>Unmitigable Physical Impacts to Tributaries</p>	<p><u>Physical Destruction and/or Degradation</u></p> <p>The Elk Valley Coal Mines rely on a “mountain top removal” or “valley fill” mining method which has resulted in significant and unmitigable impacts to tributaries and aquatic habitat through infilling of valleys with waste rock. It is not feasible to remove waste rock once a valley has been infilled/buried – so any tributary habitat infilled is irrevocably destroyed. Mountain top mining/valley fill began in the early 1970s, and by 2011, 4.5 bcm had already been placed when it was recognized by the province, the federal government (DFO), and Teck that the majority of destroyed or damaged fish habitat had not been appropriately assessed or offset, leading to the signing of the 2011 MOA.</p> <p>The infilling of tributaries has resulted in more than 114 km of tributaries being buried in the Fording River system, and has isolated or disconnected from the Fording River a further estimated 100 km. Teck’s Westslope Cutthroat Trout Evaluation of Cause report indicates that only approximately 100 km of fish habitat (1/3 of what was historically available) remains in the Fording River tributaries to support the recovery of the high conservation value WCT.</p> <p>Currently, 10 of 12 (83%) of the tributaries connected to the Fording River above Josephine Falls (MU1) have been destroyed by infill or seriously compromised due to mining.</p> <ul style="list-style-type: none"> • 6 of 12 tributaries infilled • 10 of 12 tributaries have impacted water quality due to partial infilling or contact with waste rock • 2 of 12 tributaries are unimpacted by mining (Chauncey and Ewin) <p>Under the conditionally accepted Tributary Management Plan (2017 TMP) the top 2 tributaries ranked for permanent protection of their existing state (i.e., reference condition) at both the management unit (Fording River) and the regional level were Ewin and Chauncey. These rankings were determined based on biological merits by technical staff at the province (ENV, FLNRORD), KNC, Teck, and an independent scientist through the Environmental Monitoring Committee. The protection and management of tributaries was an accommodation made to the Ktunaxa nation through EMA permit 107517 and the approval of the ABMP. The province has since identified that this permit condition is unenforceable and the intent of the condition cannot be met.</p> <p><u>Physical Deposits – Calcite</u></p>	<p>The FRX project proposes to spoil in the Kilmarnock drainage which would impact the current Kilmarnock Clean Water Diversion (mitigation requirement of the ABMP) by further infilling the 57 km of remaining isolated tributary headwaters that is still considered fish habitat despite the recent extirpation of the isolated WCT population in Upper Kilmarnock.</p> <p>FRX will contribute to more calcite formation.</p> <p>FRX will impact the Chauncey drainage and impact 1 of the last 2 remaining tributaries that have not been impacted by mining. Chauncey was identified for protection and developing a mine on top of it in the adjacent watershed will not maintain its current condition.</p> <p>Impacts to Chauncey include fly rock into the Chauncey drainage and a decreased the catchment area/height of land. The FRX pit will go below the Fording River elevation and will divert base flows away from the</p>	<p>Memorandum of Agreement for the Management of Select Coal Mining Impacts on Fish and Fish Habitat within the Elk Valley, BC. March 2011.</p> <p>2017 Tributary Management Plan (March 2018)</p> <p>EMA permit 107517</p> <p>DPD – Section 7.1.2</p> <p>FRX Readiness Decision – Concerns related to existing fish habitat conditions in the Upper Fording River watershed. Josef MacLeod, 2022</p> <p>Teck WCRT Evaluation of Cause Reports, 2021. https://www.teck.com/media/Upper-Fording-River-Evaluation-of-Cause-Report-December-2021.pdf</p> <p>Administrative Penalty 2018-17 package</p>

	<p>Calcite precipitation is another mine related contaminant that has led to physical impacts to streambeds that are unmitigable. The deposit of calcite downstream of waste rock leads to the precipitation and accumulation of calcium carbonate on substrates, which in many cases has led to a concretion of the streambed. Recent studies show that even at low levels, calcite concretion negatively impacts benthic invertebrate community structure (reducing sensitive taxa and high value prey items) and fish spawning (where low levels of calcite reduces spawning by more than 10%).</p> <p>In their Opportunity to be Heard (OTBH) submission on toxicity failures (permit 107517 non-compliances) related to calcite deposition, Teck acknowledged impairments to aquatic habitats from calcite. Also in the OTBH, Teck acknowledges that calcite has been observed and investigated since 2004. That there is no current management plan to meet 2024 and 2029 SPOs after 18 years of investigations is of great concern and suggests calcite is not mitigatable. The 2021 Calcite Monitoring Program reported 31.5km of total stream length that exceed the 2024 Site Performance Objective (SPO).</p> <p>Concerns raised by provincial scientists are echoed by KNC, where “Teck’s only proposed calcite removal strategy (physical excavation) has not been piloted in field studies and remains unproven as an effective remediation option. Prevention techniques exist but have not been fully implemented to halt new calcite deposition. The scale of the need is already significant; to meet the 2024 SPOs, Teck may need to implement remediation works for approximately 90 km of affected stream (as of 2019 measures). These remediation efforts require temporarily disruptive works such as tributary diversion, dewatering, and salvaging that, if performed in a compressed timeline on the scale required, will likely further destabilize already impaired habitats and pose an elevated risk to a fish. Risks both from currently impaired habitat, future changes and with remediation required are especially high in the upper Fording River where adult WCT populations have shown significant declines, and recovery without additional effects could take 10-15 years. Current level of impacts to fish habitat in the Upper Fording River valley are already significant.” (MacLeod, 2022)</p>	<p>Fording River and/or Chauncey Creek. Water quality will degrade due to direct (fly rock) or indirect (road building, groundwater pathways) impacts of FRX.</p>	<p>2021 Calcite Monitoring Program</p>
<p>Unmitigable Impacts to Westslope Cutthroat Trout</p>	<p>Abundances of SARA listed high conservation value (genetically pure) Westslope Cutthroat Trout declined significantly between fall 2017 and fall 2019 in both the Upper Fording River and in Harmer Creek.</p> <p>For the Upper Fording, the Evaluation of Cause (EoC) concluded "the interaction of extreme ice conditions (due to extreme, prolonged, cold air temperatures; seasonal, winter low flows; and low winter snowpack), sparse overwintering habitats and restrictive fish passage conditions during the preceding migration period in fall 2018. While stressors such as cold weather are natural, mining development has altered the availability of overwintering habitats in portions of the river and has exacerbated the challenges to fish passage through water use, channel widening and aggradation." In summary, the aquatic habitat in the Upper Fording is so deteriorated from multiple stressors and cumulative effects, that it caused the collapse of the high conservation value WCT population. "This collapse demonstrates that this population’s ability to persist in this landscape has been severely compromised by mining activity." MacLeod</p> <p>Teck is also about to be out of compliance on their Regional Fish and Fish Habitat Management Plan (one of the WCT mitigations that Teck points to in the DPD). The plan was an EoC condition of LCO Phase II EAC. The plan remained in draft since 2015. The condition required the plan to be updated every 5 years (i.e. in 2020) but it has not been. EAO has issued an order to address this non-compliance.</p> <p>MacLeod has noted that the Provincial Management Plan for West Slope Cutthroat Trout objectives are not currently met within the Upper Fording River and that currently, recreational fishing has been prohibited due to concerns with the low population size of west slope cutthroat Trout in the Upper Fording River.</p> <p>BC and KNC are currently working on an Upper Fording River WCT Recovery Plan that has yet to be finalized.</p>	<p>Existing cumulative effects on West Slope Cutthroat Trout are currently significant and there is a risk that the Project (FRX) may result in increased significant environmental impacts (MacLeod).</p> <p>The effects from the project do not support WCT recovery and will further exasperate the already poor habitat conditions, including impacts to water quality, decreasing flow further (decreased catchment area of the Chauncey drainage and groundwater diversions into the pit) and likely affect one of the core overwintering areas for this population (the S6 oxbow pools, directly adjacent to Castle Mountain and Chauncey Creek).</p>	<p>Teck Evaluation of Cause Reports, 2021.</p> <p>EAO inspection report LCO https://www.projects.eao.gov.bc.ca/api/public/document/62bdd23f1fc84600227e566d/download/LCO-Phase%20%20-%202021-04-27%20Inspection%20Record%20IR2021-017_FINAL.pdf</p> <p>FRX Readiness Decision – Concerns related to existing fish habitat conditions in the Upper Fording River watershed. Josef MacLeod, 2022</p>
<p>Unmitigable Impacts to water flows/water quantity</p>	<p>The EoC determined that the decline to WCT “was caused by the interaction of extreme ice conditions (due to extreme, prolonged, cold air temperatures; seasonal, winter low flows; and low winter snowpack), sparse overwintering habitats and restrictive fish passage conditions during the preceding migration period in fall 2018. While stressors such as cold weather are natural, mining development has altered the availability of overwintering habitats in portions of the river and has exacerbated the challenges to fish passage through water use, channel widening and aggradation”.</p> <p>Pits intercept, redirect, and accumulate groundwater and surface water thereby reducing the base flow of the receiving surface waters. The EoC states, “the cumulative effects of water withdrawals and pit development on groundwater flows and down gradient surface water flows are a key uncertainty “. Teck does not have an understanding of how their pit development and other water management structures affect localized flows and fish passage in the Fording River and does not manage the water diverted into pits (pit seepage), ditches, or sediment ponds to ensure that clean water is returned to the Fording River immediately upstream of the diversions.</p>	<p>Impacts to Chauncey catchment area and Kilmarnock (via additional waste rock placement) – will likely alter flows – potential mitigation measures also impact water</p> <p>The FRX pit will go below the Fording River and Chauncey Creek elevation and will divert base flows away from the Fording River and/or Chauncey Creek.</p>	<p>WCT EoC; Cope et al. 2016; 2020 and 2021 FRO Annual Hydrology and Flow Compliance Monitoring Reports.</p>

	<p>The loss of flow is further exacerbated by water use in the system. The Fording River is already over-allocated for water during flow sensitive months. Flows in the Fording River are close to (or below the) Environmental Flow Needs flows in the FRO consumptive water use licenses and FRO continues to use water for consumptive use during those periods of extreme low flow from shallow groundwater wells in the Fording floodplain or “non-EFN” points of diversions. These non-EFN points of diversion were not thoroughly reviewed by hydrogeologists or specialists during the water license setting process. The authorized points of diversion were set based on operational needs, not environmental ones and are not scientifically defensible. Any diversions from groundwater that is upstream of overwintering habitat will impact the habitat as groundwater inputs drive winter base flows.</p> <p>Similar to the lack of control of effluent for water quality is the lack of protection of environmental flow needs for water quantity.</p>	<p>The project lies along extremely important overwintering and spawning habitat in the Upper Fording that is known to be influenced by groundwater. This is one of the last remaining intact overwintering habitats in the Upper Fording River. Any impacts to groundwater through loss of flows or declining groundwater quality will impact the population.</p> <p>Further deposit of waste rock in Kilmarnock will increase groundwater loading and planned excavation for the project is below the elevation of the Fording River, which will alter groundwater flows and may lead to groundwater inputs into Chauncey Creek, the Fording River, or loss of base flows in Chauncey creek as the surrounding geography is changed.</p> <p>Teck is also proposing an offsetting project for the loss of Swift Creek (an impact from the operation of the AWTF-S) in the Fording River floodplain upstream of Chauncey Creek, immediately adjacent to the FRX project. The proposed offsetting project relies solely on groundwater flow to create additional wetland/tributary habitat.</p> <p>The system also does not have any capacity for additional water use from the project. There is simply not enough flow in the Fording River.</p>	
<p>Unmitigable Impacts to surface and ground Water Quality - Human Health</p>	<p>Impacts to both surface water and ground water quality from coal mining have resulted in surface and ground water that exceeds various drinking water quality guidelines – including the BC selenium drinking water quality guideline (10 ug/L).</p> <p>For selenium, surface water exceedances span from the Upper Fording River down the Fording River to the Elk River and all the way down to Fernie ranging from 208 ug/L at FR4 Fording River compliance point in February 2021 to 10 ug/L in the Elk River at Elko Reservoir.</p> <p>Household drinking water systems in the Elk Valley depend on groundwater wells, not surface water. Teck conducts a Regional Drinking Water Monitoring Program through which Elk Valley residents can volunteer to have their water tested. There have been exceedances of drinking water quality guidelines in several private wells over time, which is concerning given the underestimation of understanding due to the voluntary nature of the program. Given that uncertainty, proximity of impacted wells to other wells is not inferred and only impacted wells are tracked.</p> <p>The District of Sparwood had to decommission and replace their Town Well 3 in the Elk River valley bottom aquifer downstream of Michel Creek due to seasonal exceedances of the BC DWQG for selenium due to mine impacted water quality in the Elk River.</p> <p>In 2021 the Selenium concentrations in the Fernie James White Park wells ranged from 4.9 to 9.9 ug/L Se. (1). Any further increase in the selenium loading to the Elk River valley bottom aquifer may put the Fernie water supply at risk. Current Se concentration in the Elkford water supply well is also above 5 ug/L, higher than the surface water concentration in the Elk and downstream of a large (in terms of percentage of load) sink in the RWQM which may indicate a impacted groundwater pathway.</p>	<p>The increase in waste rock is a major source of additional loadings of constituents (including selenium) and will undoubtedly cause additional impacts to both surface water and ground water quality.</p>	<p>Ramboll, 2021. Draft Human Health Risk Assessment Supporting the Elk Valley Water Quality Plan. Prepared for Teck Coal. October 2021.</p> <p>Appendix C, Table C-2b Teck Detailed Project Description (2021). Section 3.4 pg 3-67 – 3-68</p> <p>2022 IPA Appendix A Site Conditions</p>

<p>Unmitigatable impacts to ʔa-kpiʔis (Ktunaxa “favourite food”) - Human Health</p>	<p>The draft 2022 human health risk assessment concluded that ʔa-kpiʔis (Ktunaxa “favourite food”) from the elk valley is higher than “market basket” and reference area foods. Sukiʔ ʔiknaʔa (eating good) is unique to the Ktunaxa People, consistent with Ktunaxa cultural practices. Preferred consumption rates are estimated quantities required to enable sukiʔ ʔiknaʔa.</p> <p>At preferred rates the HHRA concluded that Ktunaxa are at an increased risk in the Elk Valley due to selenium exposure with cumulative selenium Hazard Indices that are up to 4x higher than reference condition.</p>	<p>The increase in waste rock is a major source of additional loadings of constituents (including selenium) and will undoubtedly cause additional risks to human health caused by selenium (and other contaminant) exposure.</p>	<p>2022 Ramboll, (draft) Human Health Risk Assessment for Permit 107517</p> <p>Teck Detailed Project Description (2021). Section 3.4 pg 3-67 – 3-68</p>
<p>Unmitigable Impacts to Water Quality - Failure of effective regulatory oversight</p>	<p>Failure to regulate effluent</p> <p>The practice of authorizing infilling valleys and tributaries and the use of entire watersheds as “waste rock storage facilities” has led to uncontrolled leaching of contaminants and an inability to control effluent. The scale, volume and placement of waste rock from coal mining activities has led to unmitigable impacts to water quality due to the inability to control mine effluent through a final point of control, as is the standard practice for mine operations nationally. Evidence of this exceptional situation is the Elk Valley Mines being held to a lesser standard than other mines within British Columbia through the ABMP/EVWQP the only Area Based Management Plan in BC and it’s subsequent EMA permit 107517) as well as Canada’s proposed “Alternative Approach” (vs. the “General Approach” for all other coal mines in Canada) under the draft Coal Mining Effluent Regulations).</p> <p>Both BC and Canada acknowledge that there is no feasible way to control the effluent from the Elk Valley Coal Mines by regulating coal mine effluent through “non-point sources” vs. final discharge points/points of control. Not only do both of these approaches regulate in the receiving environment, they also allow “pollute up to” thresholds that represent effect levels, not environmental protection. This regulatory approach suggests that while other proponents and industries are required to meet water quality guidelines (ecologically protective standards that often have a safety factor applied to ensure protection) the Elk Valley Mines are authorized to release contaminants at rates as high as 65 times that (which they have been unable to comply with). For example, the Elk Valley Coal Mines do not meet the ENV Technical guidance document - Development and Use of Initial Dilution Zones in Effluent Discharge Authorizations and Teck has publicly reported to their shareholders that they “cannot operate the Elk Valley Mines in compliance with the Fisheries Act and its current associated regulations” and has recognized that the ABMP may not be protective of the environment.</p> <p>Rather than the compliance being measured at “end of pipe” final points of control as is typically required in effluent management, the ABMP’s compliance points (and Order stations) are locations within the receiving environment that captures “all or most of the point and non-point discharges from the mine site” upstream. By setting limits in the receiving environment, non-compliances are of high ecological significance; however, the regulatory regime is not set up to enforce these non-compliances in a timely and effective way to protect the environment. Administrative penalties by BC ENV on non-compliances for selenium and nitrate exceedances, and multiyear delays on required mitigations are still underway (since January 2019 deadlines).</p> <p>Failure to meet intent of accommodations made to the Ktunaxa Nation</p> <p>The conditional acceptance of the ABMP and the subsequent EMA permit 107517 (as well as the EMLI C permits) included accommodations such as the inclusion of tributary protection and management condition, the requirement for a human health risk assessment, the requirement to assess a site-specific protective standard for Kooanusana, and dual regulator approach (ENV and EMLI) to ensure that water quality mitigations were implemented and that the intent to stabilize and reduce contaminant trends was stabilized and reversed. As Teck has failed to meet these permit requirements, so has BC failed to enforce their own conditions. Since the approval of the ABMP 8 years ago, Teck has not been appropriately regulated, bonded, and government has not demonstrated the ability to protect the environment through this plan. Both ENV and EMLI are actively updating permits to reduce their liability with ensuring compliance with mitigation plans.</p> <p>Penalties have been to date a cost savings to Teck Coal -(i.e. paying 1 million for being late vs 33+ million plus to run for three years). Required mitigations (EMLI) such as the Kilmarnock clean water diversion was destroyed in 2013, was required as part of the approved mitigation plan in 2014, but Teck chose not to conduct any repairs or additional work until 2019. EMLI issued their first administrative penalty to Teck Coal (ever) in 2021, with a second in 2022 (total of \$360K) - both related to safety. Prior to 2015, the maximum penalty issues from BC ENV to Teck Coal was \$575. Since the issuance of the valley wide permit, Teck Coal has paid \$670.4K to BC ENV C&E.</p>	<p>FRX would fall under the ABMP/EVWQP and permit 107517 and would likely be held to the “Alternative Approach” under CMER due to the fact that some waste rock will be deposited within the existing FRO footprint. Therefore, even though FRX will be a “new development” it will still likely be held to the lesser standard of the “Alternative Approach”.</p> <p>Extending mining 50 years, extends the amount of time until reclamation several decades beyond that, and extends the amount of time that the water requires treatment for hundreds of years.</p>	<p>https://www2.gov.bc.ca/assets/gov/environment/waste-management/industrial-waste/industrial-waste/mining-smelt-energy/guidance-documents/tg11_development_and_use_of_idz.pdf</p> <p>https://www.canada.ca/content/dam/eccc/documents/pdf/managing-pollution/sources-industry/cmer-remc/CMER-Discussion-Documents.pdf</p> <p>https://mines.nrs.gov.bc.ca/enforcement-actions/administrative-penalties</p> <p>Elk Valley Water Quality Compliance Summary 2022 Q1 (June 21, 2022)</p> <p>Teck Resources Limited 2020 "Annual Information Form"</p>
<p>Unmitigable Impacts to Water Quality – Non-Compliances</p>	<p>Provincial Non-Compliances (Environmental Management Act Permit 107517)</p> <p>Teck has failed to meet the Permit 107517 limits for selenium and nitrate since 2015 at the Fording River Compliance Point and the Line Creek Compliance Point. These failures have, over time, culminated in exceedances of the Fording River Order station and the Kooanusana Reservoir Order station (the most downstream location in the Area Based Management Plan). Since the Permit was issued the FRO Compliance Point has been out of compliance 25-75% of the year (depending on year):</p>	<p>Waste rock is the main source of contaminant loading from coal mining. FRX is expected to produce 4.1 billion cubic meters of waste rock over the life of the Project, which represents approximately half of the amount of waste rock that is</p>	<p>Draft 2022 IPA</p> <p>April 7, 2022 Teck letter to KNC – update on Readiness.</p>

	FORDING RIVER COMPLIANCE POINT NON-COMPLIANCES									
Year	Number of Monthly Average Selenium Exceedances	Number of Monthly Average Nitrate Exceedances	Number of Monthly Average Sulphate Exceedances							
2015	3		2	<p>currently placed in the Elk Valley and approximately one quarter of the total permitted waste rock (Elk Valley wide) if FRX is approved.</p> <p>This significant increase in waste rock would be a major source of additional loading of mine contaminants (including selenium and nitrate) and will cause additional impacts to both surface water and ground water quality, further limiting Teck's ability to meet existing and future permit limits. Recognizing that water quality at the international boundary is currently resulting in Canada violating the 1909 Boundary Waters Treaty (based on 8 billion cubic meters of placed waste rock) and Teck cannot currently meet this criteria (nor indicate when they could achieve it by) the approval of FRX would increase the magnitude and duration of the Boundary Waters Treaty violation.</p>			<p>https://www.teck.com/media/Q4-Financial-Report-2022.pdf</p> <p>BC ENV PAF 2019-06 and 2019-22 and 2021-25</p> <p>107517 Annual Water Quality Report (2019-2021)</p> <p>Teck Q4 2021 Financial Report</p> <p>EMA permit 107517</p>			
2016	3	2	2							
2017	5		2							
2018	7	3	6							
2019	4	2	4							
2020	7	2	1							
2021	9	10								
<p>In addition to the compliance point exceedances, in 2021 the Fording River Order Station had 6 monthly average selenium exceedances and 5 monthly average nitrate exceedances. The Kooconusa Order station had 2 monthly average selenium exceedances. Order stations were set in the permit with the intent of protecting the aquatic ecosystem units in the long term (Dec 31, 2023 for Fording River and 2014 for Kooconusa) and the compliance limits were back calculated to ensure that the Order Station SPOs would be met while the ABMP was implemented.</p>				<p>This significant increase in waste rock would be a major source of additional loading of mine contaminants (including selenium and nitrate) and will cause additional impacts to both surface water and ground water quality. Recognizing that water quality at the international boundary is currently resulting in Canada violating the 1909 Boundary Waters Treaty (based on 8 billion cubic meters of placed waste rock) and Teck cannot currently meet this criterion (nor indicate when they could achieve it by) the approval of FRX would increase the magnitude and duration of the Boundary Waters Treaty violation.</p>			<p>CSKT/KTOI Readiness Report Letter. 2022</p> <p>April 7, 2022 Teck letter to KNC – update on Readiness.</p>			
<p>In addition to projecting non-compliance with the provincial permit for selenium concentrations at the Kooconusa Reservoir Order Station until 2028 (at the currently permitted limit of 2 ug/L.), Teck is aware that the province and KNC have a draft selenium water quality objective of 0.85 ug/L, and the release of this objective will require the reassessment/reduction of the Kooconusa permit limit. This objective is based on the most sensitive use of the waterbody, which in this case is the protection of Ktunaxa fish consumption.</p>										
<p>The regional nature of non-compliance with the valley wide permit is significant. In their 2021 Annual Water Quality Report, Teck Coal reports 142 exceedances of discharge limits and site performance objectives at nine locations.</p>										
<p>The 2022 IPA reports that 20 mitigations (treatment facilities) will be required to meet existing permit requirements to 2053. Since the Initial Implementation Plan was approved in 2014, the required mine impacted water to be treated has increased from 130 million liters per day to 206 million liters per day (in order to achieve compliance with the current permit limits). While Teck currently has 47.5 million liters/day of treatment capacity with the addition of FRO-S AWTF, average treatment volumes in 2022 have been 20-27 million liters/day (January to July). According to Teck, "this is the largest water quality management program of its kind anywhere in the world" with more than \$1.2 billion spent (so far) to implement the EVWQP and plans to invest a further \$750 million.</p>										
<p>Unmitigable Impacts to Water Quality – Boundary Waters Treaty Violations</p>	<p>International exceedances and implications</p> <p>A site-specific water quality criterion of 0.8 ug/L selenium for Kooconusa Reservoir was set for Montana by US EPA at the International Boundary in February 2021. Current selenium concentrations indicate that Canada is in violation of the Boundary Waters Treaty of 1909, which states that "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other." This violation has led to the transboundary Ktunaxa Nation requesting a federal referral to the International Joint Commission in 2021. Teck has publicly stated that the Montana water quality standard may not be achievable with existing technology. This suggests that despite the massive cost and size of the current and planned mitigation measures (the largest in the world to Teck's knowledge), Teck's current authorization will not meet the US EPA standard with existing technology and Canada will be in violation of the 1909 Boundary Waters Treaty.</p> <p>The current selenium concentrations in the Kootenai River in Idaho (downstream of Kooconusa Reservoir) have also triggered impairment listings from the Idaho Department of Environmental Quality. The Kootenai River from the Idaho/Montana border to Deep Creek has data been listed as 'impaired for selenium' based on recent data. Based on the current data for selenium in both fish tissue and water column concentrations in Kooconusa Reservoir at the international boundary, "The CSKT and KTOI firmly believe the approval of the Fording River Extension Project will cause irreparable harm to the Kootenai Basin ecosystem." Increasing selenium trends persist more than 300 km downstream in the Kootenay River at Creston.</p>			<p>This significant increase in waste rock would be a major source of additional loading of mine contaminants (including selenium and nitrate) and will cause additional impacts to both surface water and ground water quality. Recognizing that water quality at the international boundary is currently resulting in Canada violating the 1909 Boundary Waters Treaty (based on 8 billion cubic meters of placed waste rock) and Teck cannot currently meet this criterion (nor indicate when they could achieve it by) the approval of FRX would increase the magnitude and duration of the Boundary Waters Treaty violation.</p>						

APPENDIX "D"

Summary: Meeting on the Land

FRX DISPUTE RESOLUTION

SUMMARY: MEETINGS ON THE LAND



PREPARED BY

Prepared by Ktunaxa Nation Council
and Reciprocity Research Inc.

FORDING RIVER EXTENSION PROJECT READINESS DECISION DISPUTE RESOLUTION: SUMMARY OF MEETINGS ON THE LAND

October 17, 2022

Prepared and authored by:

Ashleigh Morris (BSc, BIT), Craig Candler (PhD cultural anthropology) and Erin Robertson (MSc, RPBio, PMP).

Submitted to:

Todd Goodsell
Project Assessment Director
British Columbia's Environmental Assessment Office

Aaron Bruce
Aaron Bruce Law
FRX Dispute Resolution Facilitator

Acknowledgements:

Thanks, and acknowledgements go to Yaqit ʔa·knuqʔit for hosting the August 24 and 25 meetings. Thanks also go to all Ktunaxa leadership, citizens, elders, knowledge holders, land users and staff who contributed. The Project is located within Qukin ʔamakʔis, a land district within ʔamakʔis Ktunaxa.

Participants in the August 24 and 25 meetings provided verbal consent for recording in notes and using images and video. Contact Erin Robertson at KNCS for further information – erobertson@ktunaxa.org.

INTRODUCTION AND BACKGROUND

This report summarizes meetings on the land held between the BC Environmental Assessment Office and Ktunaxa as part of the Dispute Resolution (DR) process for the Teck Fording River Extension Project (FRX, the Project). Ktunaxa initiated the DR process on the 8th of April 2022, in response to the BC Environmental Assessment Office's (EAO) draft Readiness Decision Report for the FRX Project, dated March 23, 2022 (the "Draft Readiness Decision"). Ktunaxa (as defined by ʔakisqnuḱ First Nation, ʔaḱ am, Yaḱan nuʔkiy (Lower Kootenay Indian Band), Yaḱit ʔa·knuḱi'it (Tobacco Plains Indian Band), (each a "Ktunaxa First Nation") and the Ktunaxa Nation Council Society (the "KNCS")) and the EAO ("the Parties") negotiated and signed a Dispute Resolution Engagement Protocol on July 7th, 2022, initiating an initial 60-day dispute resolution period.

As part of the dispute resolution process, the Parties have participated in several facilitated meetings to seek consensus on the Readiness Decision. Meetings were held in person on July 7 and July 8, 2022 in Cranbrook, BC, followed by a virtual meeting on August 15, 2022. The Ktunaxa Nation Council and Ktunaxa Nations, including Yaḱit ʔa·knuḱi'it, provided a written submission, *Ktunaxa Submission on the Readiness Decision Recommendation for the Fording River Extension Project*, dated August 11, 2022. This submission outlined Ktunaxa perspectives regarding extraordinarily adverse effects of the Project. It was provided by the KNCS to BC, and to the Proponent, Teck.

On the land meetings between Ktunaxa and EAO were identified early as a critical component of the DR process. In order to develop common understandings, Ktunaxa leadership considered it essential to have decision makers spend time together in the places that would be impacted, considering both the personal relationship and responsibility Ktunaxa maintain with their homelands, and extensive industrial impacts already on the landscape. The first day of meetings were hosted in the offices of the Yaḱit ʔa·knuḱi'it First Nation at Yaḱit ʔa·knuḱi'it. The second day involved a helicopter tour of the Elk Valley, which included time in the area of the proposed Fording River Expansion Project (FRX, the Project). This summary report provides documentation of the meetings and is provided as part of the dispute resolution process to inform the Parties, the facilitator, and support the Readiness Decision.

MEETINGS ON THE LAND

24 AUGUST 2022: Meeting at Yaḱit ʔa·knuḱi'it

On the 24th of August, beginning at 1:30 pm, the Parties (Ktunaxa and BC EAO) met at the Yaḱit ʔa·knuḱi'it band office. Ktunaxa representatives included Nasuʔkin Heidi

Gravelle (Yaqit ?a·knuqii'it) councillors from Yaqit ?a·knuqii'it and ?aqam council, members from Yaqit ?a·knuqii'it First Nation, and KNCS technical staff and consultants. Due to other commitments, leadership from Yaqan Nu?kiy and ?akisqnuuk were unable to be present.

The intention of the meeting at Yaqit ?a·knuqii'it was to have decision makers meet together and hear directly from Ktunaxa citizens regarding Ktunaxa and Yaqit ?a·knuqii'it knowledge and experience with ongoing coal mining in the Elk Valley, including concerns and impacts related to the proposed FRX Project. Information regarding the Dispute Resolution process to date was also shared. The Parties discussed the FRX environmental assessment process, existing conditions in the Elk Valley, how these are impacting Ktunaxa and Ktunaxa First Nations, and the submission from Ktunaxa describing the rationale for extraordinarily adverse effects of the Project. For additional detail, see the agenda (Appendix 1), meeting notes (Appendix 2), Ktunaxa presentation (Appendix 3), and EAO presentation (Appendix 4). Meetings and discussion continued until approximately 6:30 pm.

As part of presentations and discussion, Ktunaxa confirmed that information raised and presented in the meetings is based on previously submitted materials on the public record, including previous environmental assessments for nearby projects, and related regulatory processes, as well as the Ktunaxa EAE submission (dated August 11, 2022). Material regarding Ktunaxa use and occupancy provided through the 2014 FRO Swift application is especially relevant.

25 AUGUST 2022: Elk Valley on the Land Meetings

The parties met again on August 25, 2022 (see Appendix 5 for attendees). The meetings began at Fernie Ascent Helicopter base, continuing with a helicopter overflight of the Elk Valley, including mines currently operated by Teck, and landing at two locations: Castle Mountain, within the footprint of the proposed FRX Project, and Turnbull Mountain, a location that provides additional views of Fording River Operations (FRO) and Greenhills Operations (GHO). Teck provided financial support through helicopter time. Both locations are located within Qukin ?amak?is, a land district within ?amak?is Ktunaxa.

While there were some visibility issues early in the morning, the overall weather conditions were excellent. Due to the number of participants, the availability of a single helicopter, and to minimize costs, one group flew from Fernie, while a second group drove to a pick-up location near Castle Mountain at the Greenhill's landing area. The on the land meetings allowed decision makers and support staff to develop an improved awareness of Ktunaxa perspectives and experience, and the context within the proposed Project effects would occur. The on the land meetings included time on Castle Mountain and on Turnbull Mountain. While on the land, meeting participants discussed Ktunaxa knowledge and experience related to extraordinarily adverse effects in the context of existing conditions and how the FRX Project, as detailed in the DPD, would

have serious impacts, contribute to cumulative effects in the region, and introduce unique place-specific impacts on Ktunaxa and Ktunaxa rights. Over the day, a drone and digital camera were used to document video and imagery of the on the land meetings.

Flyover of Elk Valley and Teck Operations

The flyover from Fernie to Castle Mountain included an aerial overview of existing coal mine operations at Elkview, Line Creek, Greenhills, and Fording River. On the flight, Ktunaxa knowledge holder and Yaqit ?a·knuqfi'it Councillor, Kyle Shottanana, shared part of the Ktunaxa creation story that provides a foundation for Ktunaxa understanding of the Rocky Mountains as a living being, and Ktunaxa responsibilities to the land and ?a·kxam̓is q̓api qapsin (all living things). The pilot provided basic information on the features visible during the fly over, including the Elk River and its tributaries, as well as Teck mining operations. In flying over Castle Mountain, the pilot also pointed out drill pads and road networks associated with ongoing Teck exploratory work, as well as rock dumps and the location of recently built water treatment infrastructure.

Ktunaxa discussion included:

- concerns regarding the unique importance of high elevation grasslands in the area of Castle Mountain to animal movement;
- increasingly high levels of selenium and other contaminants downstream of Teck operations;
- limited effect of current best practices and partial mitigation; and
- slow progress in reclamation and restoration.

For Ktunaxa elders and families, industrial impacts have rendered large portions of the Elk Valley unrecognizable, displacing place-specific Ktunaxa knowledge and use and impacting or severing Ktunaxa sense of place, as well as the ability of wildlife, including Elk, Sheep, and Grizzly Bear, to maintain seasonal relationships and regular movement patterns over large areas.

Stop 1 – Castle Mountain

While the first group was shuttled from Fernie Ascent Helicopter Base, the second group drove in three vehicles to the Greenhills staging area for helicopter pick up. Both groups then met at Stop 1, Castle Mountain. The landing area was on the north ridge of the mountain, within the proposed Project footprint, in an area of largely intact high elevation grassland that also allows views of existing Teck operations to the north, including areas of the heavily impacted Kilmarnock watershed that are also part of the Detailed Project Description. Participants spent close to two hours, including a lunch break, in very good condition high elevation grasslands. Ktunaxa shared stories and experiences related to Castle Mountain and the surrounding area, discussed high

elevation grasslands, limited success with mitigation and restoration, and ongoing impacts relevant to the Ktunaxa perspective that, based on the DPD, extraordinarily adverse effects will occur as a result of the Project.

Ktunaxa leaders indicated that industrial displacement of Ktunaxa people from the land is similar to removing the ability of Ktunaxa youth to go to university. It removes the ability of younger generations to learn from elders and knowledge holders through practice on the land, and from developing expertise and connection to lands and waters that is central to Ktunaxa cultural practice and identity. Because of the unique location, accessibility via trails along Chauncey Creek, and condition of high elevation grasslands on Castle Mountain, and because of already high levels of disturbance or destruction elsewhere, the Project location is especially important to Ktunaxa use and knowledge transfer. Once the transmission of knowledge between generations is blocked, it is extremely difficult to re-establish. Ktunaxa elders and land users know that existing mining operations have already seriously damaged Ktunaxa knowledge systems by displacing people and cultural practices from the lands and waters that give them meaning and FRX will exacerbate these damages further. When engaging Ktunaxa on the DR process, one land user from Yaqit ʔa·knuq̓iʔ articulated this point very well: *“We have already lost most of the Fording River Valley due to mining and if this one [i.e. FRX] goes through we are basically losing the whole valley. By losing, I mean we cannot do what makes us Ktunaxa in the Fording River Valley anymore, no hunting, no berry harvesting, no fishing...”*

Ktunaxa leadership and technical support discussed:

- A concentrated network of Ktunaxa trails, camps, hunting areas, and other use areas mapped and documented as part of past assessment work undertaken and submitted for the adjacent FRO Swift project (2014). Many of these are located within the footprint of the proposed FRX Project, and despite impacts from adjacent mining, are still actively used for hunting, and teaching younger generations.
- While all places within ʔamakʔis Ktunaxa are unique and support Ktunaxa ways of knowing and being, Castle Mountain is exceptionally unique as an accessible area of remaining high quality high elevation grassland that sustains reliably high and harvestable populations of bighorn sheep, elk and other important species that are culturally known and preferred. This is why the area has such a concentration of Ktunaxa cultural use.
- Ktunaxa oral histories and place-specific knowledge includes knowledge of wind patterns and animal movement used in hunting and harvesting in the Chauncey valley and on Castle Mountain, and historical knowledge of trail corridors along Chauncey Creek, Kilmarnock Creek, the Fording and Elk Rivers, connecting major Ktunaxa village areas along the nearby Elk River and to the west and south with passes to the eastern slopes of the Rocky Mountains, east of the Project.
- Ktunaxa see the land like their schools and university – taking away Castle Mountain is like taking away Ktunaxa schools. Ktunaxa knowledge transfer is

place based – that is teachings are always unique to the place they are being taught. Ktunaxa learn and teach songs that are unique to the place. When that place (i.e., Castle Mountain) is gone - so are the songs.

- It takes exceptional effort and dedication for remaining active Ktunaxa land users to continue hunting and harvesting, and practice cultural relationships to the Castle area in the presence of existing industrial mining impacts. Many Ktunaxa families and land users have already been displaced from the Fording River valley. Remaining Ktunaxa knowledge and cultural practice in the area is already 'on the edge' of being lost.
- While impacts to Ktunaxa rights and practice are most concentrated in the upper Fording, contaminants in water, including calcite, selenium and other metals, are already having an extremely serious impact on Ktunaxa cultural practice downstream along the Fording and Elk Rivers, extending to the Koochanusa reservoir. These impacts are displacing Ktunaxa rights and cultural practice over a wide area, including impacts to Ktunaxa families and governments south of the Canada-US border. Many Ktunaxa families have indicated they have lost confidence in water and fish from the area and will no longer eat fish from the Elk River.
- Once a place like Castle Mountain is destroyed, it cannot be replaced. Once it is gone, it is gone forever. While some kind of restoration may be possible, it will never be the same. None of the reclamation in the Elk Valley has returned the landscape to its original state. Due to the nature of mountain top removal coal mining, it is never possible for it to be the same. Many of the impacts that would result from the activities proposed in the DPD would not be mitigatable.
- The impact of opening Castle Mountain to industrial mining on the scale proposed in the DPD is certain and extremely easy to predict with an example of the "after" effect immediately visible to the north. The intact high elevation grasslands currently sustained by the mountain would be turned into the same kind of open-pit coal mine, with associated waste rock areas, visible from Castle Mountain today.
- If the Project does not proceed, Castle Mountain, and its grasslands and ridges, will remain relatively intact as an anchor for sustaining ongoing Ktunaxa use and cultural practice in the area, while adjacent areas of the Fording River mine are restored and, given time, heal – although never to their original state. With adequate time and effort, disturbed areas will hopefully return to a condition in the far future that is ecologically and culturally suitable for Ktunaxa practice and stewardship. Ktunaxa expect it will take at least another 200 years for restoration to occur.
- If the Project does proceed at the scale described in the DPD, severe impacts on the ability of Ktunaxa to continue to practice rights, including stewardship and knowledge transmission, on Castle Mountain are certain. The area will be rendered unsuitable for Ktunaxa use. The industrial transformation of the upper Fording River, from a precious cultural resource to an environmental liability that is unrecognizable to Ktunaxa elders, will expand. Another 'Ktunaxa University' will be turned into a 'black hole' - similar to those surrounding it, eliminating one of last remaining areas of rich, accessible, and abundant mountain grasslands in

the region, and the sheep, elk, wildlife, vegetation, and Ktunaxa hunting and cultural practice supported by it.

- Ktunaxa land users and families most closely connected to the Elk Valley feel very strongly about the importance of maintaining the continuity of Ktunaxa connection and stewardship in Qukin ʔamakʔis. This continuity is already seriously threatened by existing mines. Ktunaxa land users talked about being ready to take direct action to stop further disturbance if Ktunaxa stewardship decisions are not respected.
- The temporal importance of disturbance must be considered alongside the spatial area – where Project effects extend beyond two human generations (about 45 years), impacts should be considered permanent because opportunity for place-based knowledge transmission across multiple generations will be eliminated. The Project proposes more than 50 years of active mining, in a regional area where Ktunaxa land users are already facing the impacts of the past 50 years of open-pit mining.
- Mitigation and restoration efforts have been slow and have not demonstrated reliable and substantial success. This is true for both terrestrial impacts, impacts to water, and cultural impacts. While habitat offsetting may be viable in some cases, the combination of unique habitat, and culturally known and preferred areas, that exist on Castle Mountain do not exist in other places. Based on best available knowledge, Ktunaxa knowledge holders report that we have already lost too much - like-for-like offsetting opportunities do not exist in the Elk Valley to address the magnitude of habitat destruction proposed in the DPD. Offsetting is simply not possible.
- From Castle Mountain, knowledge holders pointed out the location of various nearby Teck Operations and features: Fording River, Greenhills, roads and exploration, water treatment facilities.
- Within the Ktunaxa legal tradition, decision-makers are guided by serious responsibilities to the land, to future generations, and to ʔa·kxaʔnis ʔapi qapsin (all living things). While Teck is making efforts to repair the damage already done, the Ktunaxa perspective on Teck's efforts is that they have demonstrated that the technical ability to mitigate and restore is very limited, even with large investment of funds. This limited ability to mitigate applies to terrestrial impacts, aquatic impacts, and cultural impacts. There has not been adequate demonstrated success to warrant consideration of the very large, very long-term mining Project proposed in the DPD.
- Ktunaxa responsibilities and decisions related to the land are connected to the Ktunaxa creation story. Within the creation story, Ktunaxa people, and ʔa·kxaʔnis ʔapi qapsin (all living things), are given, through a covenant of mutual relationship, rights and responsibilities for the land and for each other. For Ktunaxa knowledge holders, mining involves uncovering and breaking down the bones of Naʔmuqʔin, the giant being that forms the Rocky Mountains themselves, and that gave names to the Ktunaxa landscape. One knowledge holder indicated, "I can stomach the impacts from forestry or roads, but the mining is too much – it's unacceptable – makes the land unusable."

- The Ktunaxa legal principle of ʔa·kxam̓is ǰapi qapsin, (all living things), provides an ethic of only taking what we need and always giving back more than we take. When we take too much, or do not give back, we put our future, and future generations, at risk. This is consistent with sustainability principles in environmental assessment. In the case of the upper Fording River, it is clear that we have already taken too much, and we have not yet done what is needed to give back to the land and water. It will likely take us hundreds of years to do so. Within this context, based on our best available information, and given the scale and duration of mining proposed in the DPD, from the Ktunaxa perspective, we already know, with certainty, that the Project will result in extraordinarily adverse effects on the land, the water, and on our ability to be Ktunaxa and practice our way of life in the places and in the way we have always been taught.
- As proposed, the DPD is incompatible with Ktunaxa stewardship responsibilities, and with the Ktunaxa covenant to take care of ʔa·kxam̓is ǰapi qapsin, (all living things).
- Past work by Teck demonstrates that, even with huge investment, reliable and adequate mitigation and restoration is not yet achievable. The past decade of effort, and commitments under past environmental assessments, have demonstrated that Teck cannot even clean up the mess they have already created. Ktunaxa experience has demonstrated just how challenging and difficult it is to clean up and repair impacts from mountain top removal mining - even with massive investment.
- As indicated by Nasuʔkin Heidi Gravelle, Yaǰit ʔa·knuq̓iʔitYaǰit ʔa·knuq̓iʔit, just like children who need to clean up after themselves before starting a new game, we need to show that we can, and have, cleaned up after ourselves before we can consider a mine as large, and impacts as as permanent, as what is proposed in the DPD. To do otherwise is to contemplate a form of genocide, and ecocide, deeper than what we've yet to experience as Ktunaxa people.



Image 1: View of Castle Mountain, within the proposed Teck FRX Project footprint, facing north.



Image 2: Nasu?kin Heidi Gravelle and Councillor Kyle Shottanana, Yaqit ?a·knuqti'it, overlook Teck Fording River Operations from Castle Mountain.



Image 3: Descending Castle Mountain, with views of the Fording River Valley to the south.



Image 4: Resting on Castle Mountain.



Image 5: Standing on Castle Mountain, views of Teck Fording River Operations to the north

Site 2 – Turnbull Mountain

Groups were again shuttled to meet at Turnbull Mountain, where another vantage point of Teck operations was provided. At this site, discussion surrounded impacts to grasslands on Turnbull Mountain, mine practices and mitigation efforts, and approaches to managing waste rock. Participants discussed the FRO and Swift operations visible from Turnbull, and direct and indirect impacts from the mine, including sensory disturbance, changing wind patterns, increased wind erosion, and overgrazing as a result of reduced habitat availability. The group discussed mitigation and restoration efforts, mine practices, spoils, and approaches to managing waste rock. A debrief and talking circle was conducted to share and reflect on experiences from the day before closing the meeting, with closing comments from Ktunaxa and BC participants.



Image 6: View of Stop 2, Turnbull Mountain, looking north-east.



Image 7: On Turnbull Mountain with view of Teck Fording River Operations to the southwest.



Image 8: Standing on Turnbull Mountain.



Image 9: Debrief on Turnbull Mountain.

Conclusion

This summary report provides documentation of on the land meetings and is provided as part of the dispute resolution process to inform the Parties, the facilitator, and support the readiness decision. The meeting of decision makers on the land through the dispute resolution process was intended to support a common base of experience and understanding from which both Ktunaxa and BC decision-makers can make better decisions, and develop consensus on the path forward for the Project, as described in the DPD. This report is provided to support this process, and to supplement existing Ktunaxa submissions made as part of past regulatory processes, or submitted as part of the dispute resolution process, remain the primary sources of information regarding issues discussed during on the land meetings. Where additional clarity or detail is required, please contact Erin Robertson – erin.robertson@ktunaxa.org.

Appendix 1: Agenda - Yaqit ʔa·knuqʔi'it 24th August, 2022

Fording River Extension Project Readiness Decision Dispute Resolution

Meeting between Ktunaxa and British Columbia's Environmental Assessment Office

August 24, 2022 1:30pm to 4:45pm

Yaqit ʔa·knuqʔi'it Gymnasium – 5500 Village Loop Rd, Grasmere BC

Time	Agenda Item	Lead
1:30pm	Welcome and Opening Remarks	Nasuʔkin Gravelle & Councillor Shottanana Elenore Arend (CEAO - BC)
1:40pm	Introductions	Everyone
2:00pm	EAO Presentation <ul style="list-style-type: none"> EA Process and Readiness Decision and Dispute Resolution EAO Readiness Decision Recommendation for FRX 	Todd Goodsell (BC)
2:30pm	BREAK	Everyone
2:45pm	Ktunaxa Presentation – <ul style="list-style-type: none"> Summary of Ktunaxa Readiness Decision Recommendation Submission for FRX 	Nasuʔkin Gravelle, Erin Robertson, Craig Candler
3:45pm	Open Dialogue and Next Steps	Everyone
4:15pm	Overview of Day 2 – Logistics etc.	Ash Morris
4:30pm	Closing Remarks	Nasuʔkin Gravelle Elenore Arend (BC)
4:45pm	Meeting Adjourned	Everyone

Appendix 2: Meeting Notes - Yaqit ʔa·knuqʔi'it 24th August, 2022

EAO-Ktunaxa Dispute Resolution (DR) Meeting Notes

24 August 2022

Yaqit ʔa·knuqʔi'it (1:30pm – 6:30pm)

Attendees:

1	Nasuʔkin Heidi Gravelle	Yaqit ʔa·knuqʔi'it
2	Councillor Avery Gravelle	Yaqit ʔa·knuqʔi'it & KNCS Lands Resource Council
3	Councillor Garrett Gravelle	Yaqit ʔa·knuqʔi'it
4	Councillor Kyle Shottanana	Yaqit ʔa·knuqʔi'it
5	Councillor Jason Andrew	ʔaqam & KNCS Lands Resource Council
6	Councillor Vickie Thomas	ʔaqam/KNCS
7	Erin Robertson	KNCS
8	Craig Candler	Reciprocity/KNCS
9	Ash Morris	Reciprocity/KNCS
10	Elenore Arend	EAO
11	Mike Shepherd	EAO
12	Todd Goodsell	EAO
13	Rachel Pennell	EAO
14	Becky Black	EAO/AG
15	Juanita Eugene	ʔaqam
16	Dustinaya Duteau	KNCS
17	Robert Williams	ʔaqam/KNCS
18	Ralph Gravelle	Yaqit ʔa·knuqʔi'it
19	Jason Gravelle	Yaqit ʔa·knuqʔi'it
20	Johnny Gravelle	Yaqit ʔa·knuqʔi'it

21	Caroline/Evelyn Basil	Yaqit ?a·knuqhi'it
22	Sonja Morigeau	?aqam/KNCS
23	Gary Phillips	Yaqit ?a·knuqhi'it
24	Wally Gravelle	Yaqit ?a·knuqhi'it
25	Eric Gravelle	Yaqit ?a·knuqhi'it
26	Adam Hunter	Yaqit ?a·knuqhi'it
27	Tom Phillips	Yaqit ?a·knuqhi'it
28	Tania Brewer	CAO Yaqit ?a·knuqhi'it

Regrets: Peter Boldt (EAO), Janet Shaw (IAAC)

Key Terms and Abbreviations:

KNCS	Ktunaxa Nation Council Society
Yaqit ?a·knuqhi'it	Ktunaxa First Nation, Tobacco Plains Indian Band
?aqam	Ktunaxa First Nation, ?aqam
Yaqaan Nu?kiy	Ktunaxa First Nation, Lower Kootenay Band
?akisqnuuk	Ktunaxa First Nation, ?akisqnuuk First Nation
EAO	Environmental Assessment Office
EA	Environmental Assessment
DPD	Detailed Project Description
FRX	Fording River Extension
EAC	Environmental Assessment Certificate
EAA	BC Environmental Assessment Act (2018)
BC	British Columbia
DR	Dispute Resolution
EAE	Extraordinarily Adverse Effects
FRO	Fording River Operations
BRE	Baldy Ridge Extension

Meeting Notes for August 24, 2022:

Recorded by Ash Morris

Meeting Commence 1:30pm

Opening prayer and remarks from EAO and Ktunaxa:

- Prayer and smudge - Councillor Kyle Shottanana (Yaqit ʔa·knuqʔit)
- Opening remarks Elenore Arend (EAO)
- Opening remarks Nasuʔkin Heidi Gravelle (Yaqit ʔa·knuqʔit)

Nasuʔkin Heidi Gravelle (Yaqit ʔa·knuqʔit):

- Raises concerns for the FRX Project.
- Perspective on termination of Project.
- Provides overview of meeting – asks EAO to hear perspectives of Yaqit ʔa·knuqʔit members.

Craig Candler (KNCS /Reciprocity):

- Provides brief overview of the new environmental process and dispute resolution; change in legislation for BC
- Readiness Decision: happens before EA happens. Decision on whether or not we should do another EA
- Recognize this is a new experience, even for EAO.

EAO Presentation on Readiness Decision Process, BC EAA (2018), and FRX:

Elenore Arend (EAO):

- Provides information on the new BC Environmental Assessment Act that came into effect in 2018.
- The new BC EAA has new components, one of which is early engagement.
- Dispute resolution provision in the act as we [BC] have been unable to achieve consensus.

Todd Goodsell (EAO):

- Overview of BC EAA and readiness decision based on slide deck.
- Provides brief overview of FRX Project, Teck submitted Detailed Project Description for the Fording River Extension Project on 29 July, 2022. This ended the provincial Early Engagement phase, and initiated the Readiness Decision.
- EA Readiness Decision allows the province to understand what process is needed.
- EA Readiness Decision is typically 60 days; some projects take longer.
- Todd shows figure of Environmental Assessment Process (2018)
- At each stage of process there is opportunity to seek consensus.

- Highlights process change before issuing EAC, opportunity to provide Notice of Consent, Lack of Consent.
- We are still at an early stage of project. Notes this decision is not whether a certificate [Environmental Certificate] should be issued, the Readiness Decision determines whether an Environmental Assessment should move forward.

Concerns from multiple Yaqit ?a·knuqti'it members, Ktunaxa leadership and staff:

- Water quality and impacts to the Elk River – Ktunaxa people are experiencing these, impacts are clear.
- Ktunaxa displacement from lands by existing projects, and impacts to future Ktunaxa generations.
- Contaminants and impacts to Kilmarnock Creek and Elk River.
- Large size of mine, long life of mine.
- Ktunaxa is unique; language is land; land is unique. Our land is our university and our education. When the land is gone, you cannot put it back.
- Rarity of high elevation grasslands and losses already experienced.
- Existing information on effects of coal mines in the Elk Valley.
- Ktunaxa decision makers and BC decision makers need to be in the room and hear us.

Elenore Arend (EAO):

- Notes not many projects have gone through this new BC Act.
- Highlights the EA process is lengthy, just at the beginning.
- Elenore clarifies that she will make the decision for the project to move forward through an EA or not.
- The final decision at the end of an EA is made by two ministers at BC Government. There is opportunity for decision makers and First Nation decision makers to sit down.

Todd Goodsell (EAO):

- EAO reached out to Indigenous communities to support drafting BC policies, received a lot of feedback, including from Ktunaxa
- Notes important to hear Ktunaxa voice, that is why EAO is here today.

Mike Shepherd (EAO):

- Acknowledges not disputing Ktunaxa's claims – Ktunaxa information will be considered.
- Part of EAO role is to ensure all information is put forward to decision makers.

Concerns from Yaqit ?a·knuqti'it members, Ktunaxa leadership and staff:

- Mining in Elk Valley provides taxes to BC government so BC government has a vested interest in approving.
- Levels of selenium.
- Reconciliation with the land is healing, that takes time. The land needs to rest and heal.
- FRX is the largest mine ever proposed in the Elk Valley.

- Classifies there is a decision to be made in the next few weeks on whether this project moves forward to an EA.
- Wildlife interactions with current operations in the Elk Valley. Impacts from all aspects of mining affect our wildlife health and affect our people
- Notes some decision makers (EMLI) have declined amendments to exploration permits for new roads due to impacts in the Elk Valley and grasslands in particular.
- Water quality and exceeding Montana selenium standard.
- Slow pace of reclamation.

Short Break

EAO continues presentation:

Todd Goodsell (EAO):

- Continues providing information on readiness decision phase.
- Extraordinarily Adverse Effects (EAE) definition is always unique; many factors contribute to it including is it reversible, magnitude etc.
- EAE is only used at this stage of the process.
- Provides overview of EAO Readiness Decision Options for FRX.
- Provides overview of next steps in Readiness Decision and Readiness Decision Recommendation Report.
- Provides overview of dispute resolution process status and current outcomes.
- EAO is likely to extend the dispute resolution process to allow for additional consensus seeking led by the facilitator, and allow for EAO to consider the Ktunaxa submission and potential revisions to draft recommendation report.
- Also will allow Teck to respond to the Ktunaxa submission.
- Facilitator's report will be available ~ likely by end of September
- EAO will revise the recommendation report based on the submissions.

Concerns from Yaqit ?a·knuq'iit members, Ktunaxa leadership and staff:

- Want to see demonstration that land can be adequately reclaimed in existing disturbed areas before new projects put forward.
- Mining and forestry impacts to riparian zones.
- Ktunaxa title and territory.
- Concerns raised on waste rock and overburden piles.
- Concerns over removal of habitat, especially for fish, and high elevation grassland, and impacts to ecosystems and wildlife.
- Concerns over coal mining mountain removal and impacts to weather and wind patterns – clarified that these were identified and previously submitted in FRO-Swift and BRE.
- No new information provided – issues have already been raised, but not addressed, through past EAs

Ktunaxa Presentation

- Provides overview of Ktunaxa's submission to the EAO based on slides.
- Overview of Ktunaxa perspective on EAE.
- Removal of Ktunaxa generations from the land.
- Total waste rock volumes and footprint for approved and proposed projects.
- Concerns over the location of FRX in the Elk Valley; location is sensitive and impacted.
- Castle Mountain is currently a key part of one of the most intact watersheds on the Fording River.
- FRX will cause EAE to Ktunaxa First Nations and Ktunaxa rights – overview of information provided in Ktunaxa submission to EAO.
- Highlights Ktunaxa issues identified in submission within 2014 Fording River Operations – Swift.
- Overview of Ktunaxa submission on FRX EAE to terrestrial environment.
- Overview of Ktunaxa submission on FRX EAE to aquatic environment
- Overview of Ktunaxa submission on FRX EAE to Ktunaxa rights and cultural practice.

Concluding remarks from Ktunaxa and EAO

- Closing comments from Nasu?kin Heidi Gravelle (Yaqit ?a·knuqti'it).
- Closing comments from Elenore Arend (EAO).

Meeting end 6:30pm

?akis?nuk

?aqam

?aqan Nu?kiy

Yaqit ?a·knuqti'it

Ktunaxa Submission on the Readiness Decision Recommendation for the Fording River Extension Project

*Presentation to Ktunaxa and British
Columbia's Environmental Assessment Office*

**Yaqit ʔa·knuqʔi 'it
August 24, 2022**

visit us at:
www.ktunaxa.org



Overview of Presentation

- » Background
- » Ktunaxa Perspective on “Extraordinarily Adverse Effects”
- » FRX is an Extraordinary Project
- » FRX will cause Extraordinarily Adverse Effects to:
 - » Ktunaxa First Nations and Ktunaxa Rights
 - » Terrestrial Environment
 - » Aquatic Environment
- » Summary



Background

- » **December 16, 2020** – KNCS staff sent letter to Teck with information requests to inform Ktunaxa Leadership's decision on "Readiness" with concerns around Extraordinarily Adverse Effects (EAE)
- » **March 3, 2021** – Ktunaxa Leadership request to Teck to suspend the FRX Project
- » **July 29, 2021** – Teck submits FRX Detailed Project Description (DPD)
- » **August 16, 2021** – Ktunaxa Leadership request to BC and Canada to suspend all coal mine Environmental Assessments in the Qukin ʔamakʔis



Background

- » **March 23, 2022** – BC issues draft "Readiness Decision" report with the recommendation for FRX to proceed to an Environmental Assessment
- » **April 8, 2022** – Ktunaxa initiates "Dispute Resolution" with British Columbia
- » **July 7, 2022** – Ktunaxa / BC sign Dispute Resolution Engagement Protocol – Meetings #1 and #2 (July 7th and 8th)
- » **July, 2022** – BC submits additional information regarding how EAE is defined (20th) and final BC Biologist submissions on adverse effects (27th)
- » **August 11, 2022** – Ktunaxa submits EAE Submission



Ktunaxa Perspective on “Extraordinarily Adverse Effects” (EAE)

- » The potential for FRX to cause EAE should factor in:
 - » Scale, footprint, lifespan and waste rock production volumes of the FRX Project as compared to other coal mines in the region
 - » Additive effect of adverse impacts from the FRX Project to existing cumulative effects
 - » Likelihood of the FRX Project causing significant, multi-generational impacts to Ktunaxa First Nations, including Ktunaxa culture, knowledge transmission, stewardship practices and authority and rights
 - » Likelihood of the FRX Project causing significant, multi-generational impacts to the environment that are non-mitigable or impossible to mitigate within the Project’s operational lifespan



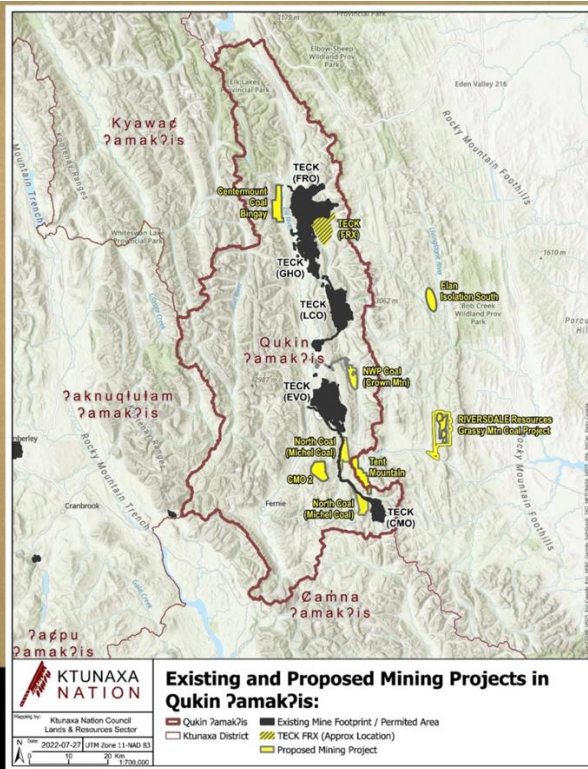
Ktunaxa Perspective on “Extraordinarily Adverse Effects” (EAE)

- » Teck’s failure to implement mitigation measures that achieves their intended mitigation objectives (including in a timely manner)
- » Teck’s record of non-compliance under the *Environmental Management Act* and *Fisheries Act*
- » The extent to which the FRX Project is consistent with the EAO’s obligation under section 2(2)(ii) to support reconciliation with Ktunaxa by, among other things, supporting the implementation of the *UN Declaration on the Rights of Indigenous Peoples* and recognizing and respecting Ktunaxa jurisdiction
- » The extent to which the FRX Project is consistent with the EAO’s obligation under section 2(2)(i) to promote sustainability by protecting the environment and fostering a sound economy



Ktunaxa Perspective on “Extraordinarily Adverse Effects” (EAE)

» Ktunaxa believe that an assessment of these factors supports the conclusion that the FRX Project will cause EAE and should accordingly be terminated from the EA process



FRX is an
Extraordinary
Project



ʔakisʔnuk

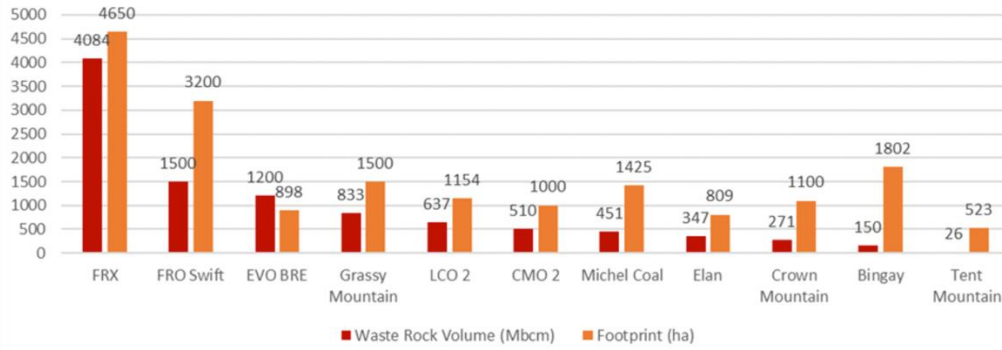
ʔaqam

ʔagan Nukʔiy

ʔaqit ʔa:knugʔit

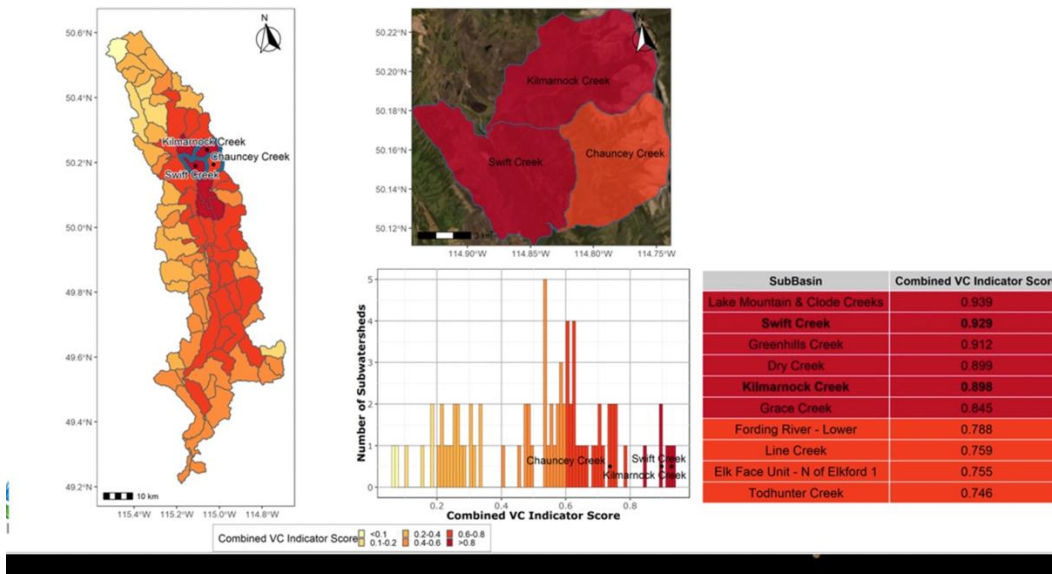
FRX is an Extraordinary Project

Total Waste Rock Volumes and Footprint for Approved and Proposed Coal Mines



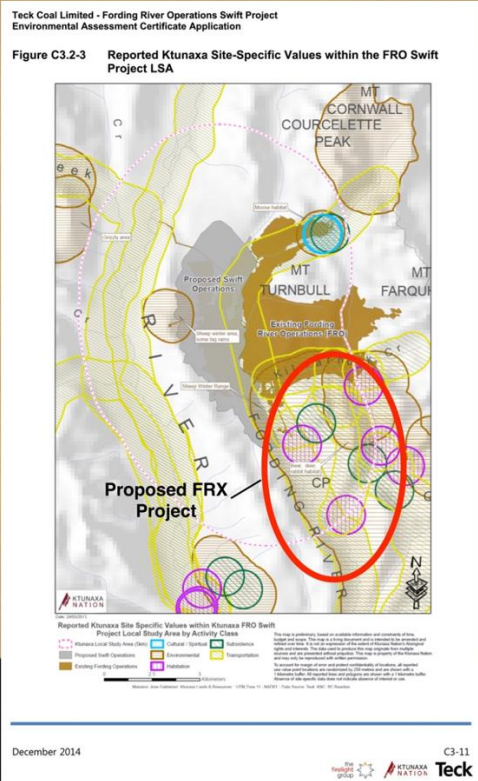
FRX is an Extraordinary Project

Combined VC – Current Condition



FRX will cause EAE to Ktunaxa First Nation and Ktunaxa Rights

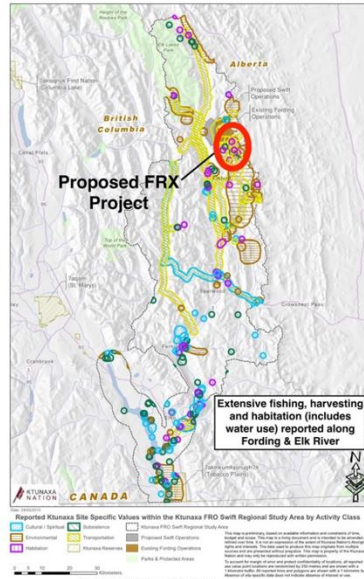
» FRX Project will have significant, unmitigable impacts to Ktunaxa cultural values – including stewardship authority and traditions, language and cultural transmission - and rights in the Upper Fording area



FRX will cause EAE to Ktunaxa First Nation and Ktunaxa Rights



Figure C3.2-2 Reported Ktunaxa Site-Specific Values within the FRO Swift Project RSA by Activity Class



December 2014

KTUNAXA NATION Teck C3-10

FRX will cause EAE to Ktunaxa First Nation and Ktunaxa Rights



FRX will cause EAE to Ktunaxa First Nation and Ktunaxa Rights

- » Further displacement of Ktunaxa from an entire mountain that is over 2,000 ha of the lands and waters of Qukin ʔamakʔis and significant additional loss of lands and waters to support the exercise of Ktunaxa hunting, fishing, harvesting and plant and mineral gathering rights.
- » Further contamination of downstream waters that render those waters undrinkable for Ktunaxa and seriously infringe Ktunaxa's right to harvest and rely on the fish which bio-accumulate those contaminants.
- » Interference with and infringement of Ktunaxa stewardship and governance rights, including the rights to protect and determine the use of lands and resources in accordance with the Ktunaxa value of ʔa-kxam'is ʔapi qapsin – all living things.



FRX will cause EAE to Ktunaxa First Nation and Ktunaxa Rights

- » 4) Interference with and infringement of Ktunaxa's right to maintain a healthy culture through the exercise of rights and cultural practices within the Project area, including the elimination of the ability of Ktunaxa to use the FRX Project area for purposes of knowledge and language transmission between generations;
- » Interference with and infringement of Ktunaxa's right to ownership of and control of mineral resources, including the right to determine how those resources will be used and the right to benefit from their use.
- » Interference with and infringement of Ktunaxa's relationship with the land, which is central to Ktunaxa identity, culture and way of being.



FRX will cause EAE to the Terrestrial Environment

- » The FRX Project will cause significant, unmitigable adverse impacts to red and blue listed high elevation grasslands (HEG)
- » The FRX Project will cause the permanent loss of 18% of the HEG winter range for bighorn sheep
- » The FRX Project will cause the loss of a further 2,330 ha of terrestrial habitat and significantly increase Teck's inventory of un-reclaimed land
- » The FRX Project will generate extraordinarily high volumes of waste rock.
- » The FRX Project will contribute to the extraordinarily high reclamation liability.



FRX will cause EAE to the Aquatic Environment

- » The FRX Project will significantly contribute to unmitigable impacts to water quality.
- » The FRX Project will cause additional impacts to fish and fish habitat to an area that has already been subject to the largest fine under the Fisheries Act - \$60M CAD - due to selenium and calcite contamination
- » The FRX Project will cause additional unmitigable impacts to tributaries



FRX will cause EAE to the Aquatic Environment

- » The FRX Project will not support Westslope Cutthroat Trout Recovery
- » The FRX Project will contribute to impacts to drinking water and ʔa·kpiʔis (Ktunaxa favourite food)
- » The FRX Project will be regulated to a lesser standard than other mines in British Columbia and coal mines Canada
- » The FRX Project will further limit Teck's ability to meet existing and future permit limits and Canada's ability to avoid violations of the 1909 Boundary Waters Treaty.



Summary – FRX will cause EAE

- » FRX is an extraordinary mine within a region that is already significantly impacted
- » Ktunaxa and BC have years of experience assessing existing coal mines and understand the shortcomings of assessment and mitigation measures
- » Ktunaxa can reliably predict that FRX will result in significant adverse cumulative impacts that are far greater than any comparable project – many of the Project impacts to Ktunaxa rights and the aquatic and terrestrial environment are unmitigable



Summary – FRX will cause EAE

- » Ktunaxa believe that further consideration and possible approval of the FRX Project is inconsistent with EAO's statutory obligations under section 2
 - » FRX does not promote sustainability
 - » FRX does not contribute to "fostering a sound economy" – short-term profits and employment while leaving a multi-generational legacy of pollution and habitat loss
 - » FRX does not support reconciliation – Ktunaxa have repeatedly and clearly informed that the Project is not supported
- » Ktunaxa believe that FRX will cause EAE and is not compatible with EAO's statutory objectives under section 2 and, as such, Ktunaxa support a termination recommendation



Thank you

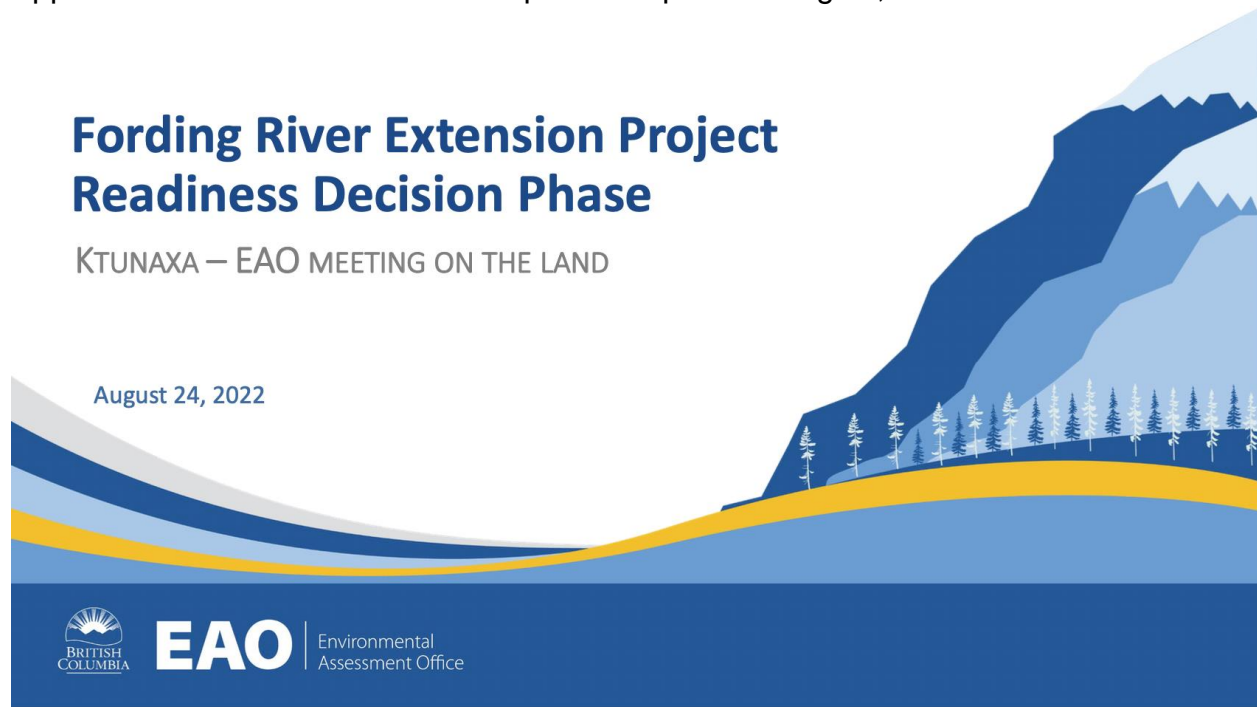


ʔakisqnuuk

ʔaqam

34 ʔagan Nukiy

ʔaqit ʔaknuqtit



Fording River Extension Project Readiness Decision Phase

KTUNAXA – EAO MEETING ON THE LAND

August 24, 2022

 **EAO** | Environmental Assessment Office

Fording River Extension Project Overview

- Teck Coal Limited (Teck) is proposing to construct and operate the Fording River Extension Project (FRX), an open pit coal mine located 15 kilometres northeast of Elkford, British Columbia (B.C.).
- FRX is a major expansion to Teck's existing Fording River Operations coal mine to allow for continued mining for several decades to sustain employment and economic benefits.
- Teck submitted their Detailed Project Description (DPD) on July 29, 2021 ending the provincial Early Engagement phase and beginning the Readiness Decision phase.



EAO | Environmental Assessment Office

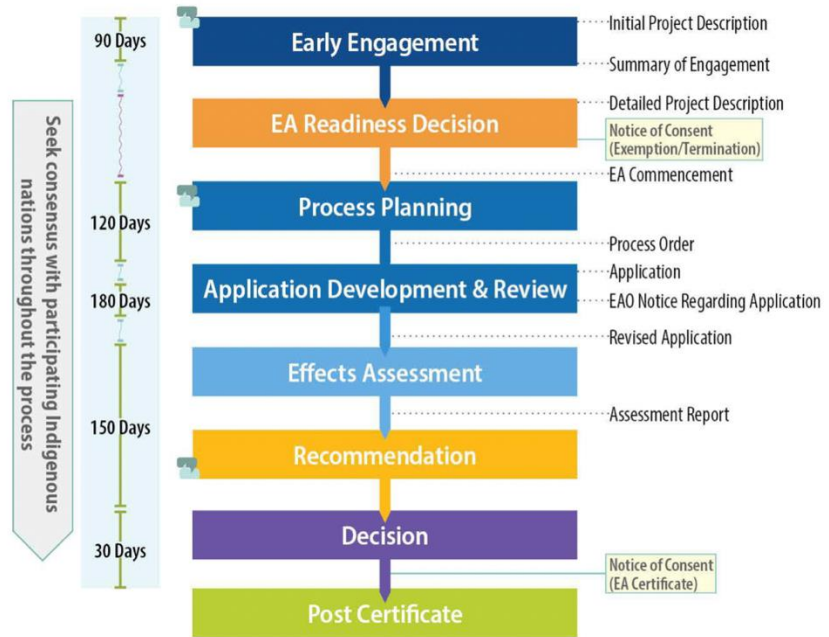
2

Environmental Assessment Process (2018)

SUMMARY OF THE PROCESS FROM EARLY ENGAGEMENT TO POST-CERTIFICATE

Timelines

- Legislated Time
- EAO Time
- Proponent Time
- Public Engagement & Comment Period



Readiness Decision Phase

WHAT: Early decision to answer if the Project may proceed to an EA

- Does the DPD contain enough information to identify interactions of the proposed Project with the environment, socio-economic values and Indigenous interests?
- Will the project result in Extraordinarily Adverse Effects?

WHO: the Chief Executive Assessment Officer (CEAO) makes the Readiness Decision with support from the EAO project team, participating Indigenous nations and Technical Advisors.

HOW: The CEAO will make the Readiness Decision after review of the Readiness Decision Recommendation Report and in the case of FRX the Dispute Resolution Facilitator’s report and submissions from Ktunaxa and Teck.

Detailed Project Description

- Identifies key issues and concerns
 - including identification of issues that may have been resolved and others that will need to be addressed during the EA
- Provides description of proposed works to identify potential interactions and lay the foundation to scope the assessment;
- Describes the outcomes of engagement undertaken to date;
- Updates information regarding the proposed project and identify how comments received on the IPD and draft DPD have been considered; and
- Provides information to support the EAO's Readiness Decision

EAO Readiness Decision Options for FRX

Option	Step 1 – the CEO may:	Step 2 – if the project is referred to Minister, the Minister may decide to:
Resubmit DPD	Require a revised DPD due to deficiencies	Not applicable
Conduct EA	Proceed to an EA	Not applicable
Termination	Refer to Minister and recommend termination	Terminate project from process
EA referral	Refer to Minister with a recommendation that an assessment body conduct the EA	Proceed to an EA by assessment body

Readiness Decision Recommendation Report

EAO document that provides:

1. Summary of Early Engagement Process
2. Readiness Decision Options considered
3. Input received from technical advisors
4. Outcomes of consensus-seeking with participating Indigenous nations
5. EAO's recommendation, with rationale, to the Chief Executive Assessment Officer

Readiness Decision Recommendation Report

- The EAO's **preliminary** recommendation = proceed to an EA
- Based on:
 - While Ktunaxa and others raised concerns regarding the potential for extraordinarily adverse effects there was high uncertainty regarding the extent of potential effects including if mitigations would be effective;
 - EAO's view that some concerns are better addressed via existing initiatives between BC and Ktunaxa; and,
 - That the EA would be the appropriate process to develop information to characterize effects and to inform recommendations to BC and KNC decision makers
- The draft recommendation report was issued in March
- Ktunaxa Nation Council initiated dispute resolution in April

Dispute Resolution Process Status and Current Outcomes

- KNC has provided an argument asserting that FRX will cause extraordinarily adverse effects on the environment, Ktunaxa First Nations and Ktunaxa rights.
- The EAO has agreed to extend the dispute resolution process to enable:
 - additional consensus seeking led by the facilitator
 - to allow for the EAO to consider the Ktunaxa submission and potential revisions to the draft recommendation report.
- Teck will also respond to the KNC submission.
- The facilitator's report is targeted for the end of September.
- The EAO will consider revisions to the recommendation report based on these submissions and tomorrow's meeting on the land.

Questions...Comments?





**KTUNAXA
NATION**

Ktunaxa Nation Council
7825 Mission Road
Cranbrook, BC V1C 7E5
tel: (250) 489-2464
fax: (250) 489-2438

visit us at:

www.ktunaxa.org

Appendix 5: Elk Valley Helicopter Tour 25th August, 2022 Attendees

1	Nasu?kin Heidi Gravelle	Ya?it ?a·knuq?i'it
2	Councillor Avery Gravelle	Ya?it ?a·knuq?i'it & KNCS Lands Resource Council
3	Councillor Garrett Gravelle	Ya?it ?a·knuq?i'it
4	Councillor Kyle Shottanana	Ya?it ?a·knuq?i'it
5	Councillor Jason Andrew	?aqam & KNCS Lands Resource Council
6	Councillor Vickie Thomas	?aqam/KNCS
7	Erin Robertson	KNCS
8	Craig Candler	Reciprocity/KNCS
9	Ash Morris	Reciprocity/KNCS
10	Elenore Arend	EAO
11	Mike Shepherd	EAO
12	Todd Goodsell	EAO
13	Rachel Pennell	EAO
14	Becky Black	EAO/AG
15	Dustinaya Duteau	KNCS
16	Katie von Gaza	MIRR
17	Pilot: Dave	Ascent Helicopters

Regrets: Peter Boldt (EAO), Janet Shaw (IAAC)

APPENDIX "E"

Fording River Extension Project Readiness Decision Recommendation:

Consensus Seeking with Ktunaxa Nation

November 9, 2022

Fording River Extension Project Readiness Decision Recommendation

CONSENSUS SEEKING WITH KTUNAXA NATION

November 9, 2022 – Cranbrook



EAO

Environmental
Assessment Office

Agenda

- Welcome and lunch
- Opening remarks
- Meeting Objectives
 - reach consensus on the readiness decision recommendation
 - provide the facilitator with sufficient input to complete the DR report
 - provide EAO with Ktunaxa input on recommendation considerations
- Consensus seeking
 - What we've heard
 - Perspectives
 - Revised recommendation
- Facilitator information needs
- Next steps

Dispute Resolution - What we've heard

Key Points from Ktunaxa

The FRX Project (as proposed):

- is the largest coal mine project ever proposed within the Elk Valley and is situated in the most impacted area of the region;
- will cause unmitigable, significant adverse effects to Ktunaxa First Nations, cultural practices and stewardship authority, and Ktunaxa rights;
- measures to mitigate and reduce predicted impacts have been neither sufficient nor reliably implemented;
- Castle Mountain is “exceptionally unique as an accessible area of remaining high quality high elevation grassland that sustains reliably high and harvestable populations of bighorn sheep, elk and other important species that are culturally known and preferred. This is why the area has such a concentration of Ktunaxa cultural use.”

Dispute Resolution - What we've heard

Key Points from Ktunaxa

The FRX Project (as proposed):

- Will result in severe impacts on the ability of Ktunaxa to continue to practice rights, including stewardship and knowledge transmission, on Castle Mountain are certain. The area will be rendered unsuitable for Ktunaxa use;
- ...The industrial transformation of the upper Fording River, from a precious cultural resource to an environmental liability that is unrecognizable to Ktunaxa elders, will expand;
- Another 'Ktunaxa University' will be turned into a 'black hole'; and
- "The very essence of what it means to be Ktunaxa will be compromised by this Project."

"...we expect the EAO and the Minister to pursue a collaborative process that respects and reflects Ktunaxa jurisdiction. We look forward to focusing our collective efforts on mining scenarios that are better aligned with Ktunaxa values, and with the interests of all BC citizens."

...“Teck would also be able to mitigate that prejudice, if it chooses, by opting to re-apply for a modified project that is more compatible with Ktunaxa rights and the already exhausted carrying capacity of the upper Fording River drainage.”

Ktunaxa Response to Teck’s Submission – Fording River Extension Project Dispute Resolution Process, November 3, 2022

Dispute Resolution – Common Ground

- It appears that both EAO and Ktunaxa share the following perspectives and objectives:
 - Existing cumulative effects are substantial;
 - Teck has not offered information regarding how impacts on Ktunaxa and Ktunaxa rights might be mitigated.
 - The current DPD is lacking in mitigation information to inform a readiness decision;
 - FRX, as proposed, has potential for extraordinarily adverse effects;
 - Recognize the importance of Ktunaxa values, laws, and sacred stewardship responsibilities;
 - Proceeding to an EA imposes a substantial burden on Ktunaxa;
 - A revised project may be acceptable **for assessment**;

Dispute Resolution – EAO's perspective

Key Points from EAO

- EA is the appropriate process to characterize and assess effects
- EAO has not concluded with certainty that the Project **will** cause extraordinarily adverse effects with information provided to date
 - The severity of effects on biophysical values is uncertain
 - Uncertainty regarding Teck's ability to mitigate impacts on Ktunaxa
- Additional information regarding project alternatives and mitigation measures will inform the next readiness decision and consideration of whether the project will cause extraordinarily adverse effects.

Path Forward: Revised Recommendation

Require the proponent to submit a revised detailed project description

- Revision of the DPD should meet these shared objectives:
 - Provide information on alternatives and mitigations to inform decision under s. 16.
 - Revisions premised on engagement with Ktunaxa, providing a venue for Teck and Ktunaxa to identify potential mitigations for impacts on Ktunaxa and Ktunaxa rights, including possible changes to project design, scope, etc.
 - Maintain open door for termination recommendation if Teck does not identify plausible mitigations to impacts on Ktunaxa and Ktunaxa rights.

Path Forward: Revised Recommendation (cont'd)

Require the proponent to submit a revised detailed project description

- Revision of the DPD should meet these shared objectives:
 - Provides an opportunity to collaboratively build a path forward together that restores the Ktunaxa Nation's confidence in Teck's ability to plan, predict and mitigate potential impacts to the Nation and their rights.
 - Affords Teck the opportunity to gather additional information on the feasibility and effectiveness of mitigations to demonstrate FRX will not result in Extraordinarily Adverse Effects
 - Teck can provide clear definitions with transparent weighting and criteria for assessing alternative means of carrying out a project

Path Forward: Revised Recommendation (cont'd)

Require the proponent to submit a revised detailed project description

- Why not recommend termination?
 - High potential for extraordinarily adverse effects does not meet threshold for satisfying CEAO that there will be extraordinarily adverse effects.
- Other factors that Ktunaxa may wish to consider
 - Potential for project revisions resulting from engagement on the DPD
 - Termination is referred to the Minister who can consider positive impacts and public interest
 - Likelihood of Teck seeking judicial review of termination recommendation

Path Forward: Revised Recommendation (cont'd)

Require the proponent to submit a revised detailed project description

- Specific requirements for revised DPD:
 - Revised identification of alternatives to project with transparent weighting and criteria and clearer definitions of alternatives
 - Identification of potential mitigations of impacts on Ktunaxa and Ktunaxa rights, beyond mitigations of biophysical impacts such as water treatment, reclamation and rehabilitation of HEGL
- The Readiness Decision phase will start anew once the DPD is submitted
- The recommendation to revise the DPD is premised on engagement between Teck and Ktunaxa

Path Forward: Revised Recommendation (cont'd)

Require the proponent to submit a revised detailed project description

- Potential outcomes for the next readiness decision
 - Preferred – Proceed to EA with Ktunaxa consensus
 - Termination Recommendation
 - if after good faith discussions with Ktunaxa no plausible mitigations are identified for impacts on Ktunaxa and Ktunaxa rights
 - Proceeding to an EA without Ktunaxa consensus
 - Dispute resolution

Path Forward: Process

For collaborative discussion:

- What is the best process whereby Teck could revise the DPD that is collaborative, timely, and completed in good faith?

Next Steps

- 1) DR Facilitator issues Final Dispute Resolution Report
- 2) EAO posts information received to date referenced in the draft RD report
 - EAO July 20 Letter re EAE factors
 - Ktunaxa Aug 11 EAE submission
 - CSKT/KTOI letter re EAE
 - FLNRORD Biologist memos
 - Teck Sept 9 response to EAE submission
 - Meeting on the Land Summary
 - Ktunaxa November 3 response to Teck submission
- 3) Complete Referral Package sent to participants for comment
- 4) EAO finalization of Referral Package and referral to the CEAO
- 5) Readiness Decision

Questions...Comments?



EAO

Environmental
Assessment Office