Documents: Global Affairs Canada shelves a joint international initiative to address Kootenay watershed selenium contamination

Canada’s failure to respect binding international law and address pollution is a serious concern to all who call the Kootenay watershed their home

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ʔa-kisk̓ɑʔqiʔit (Cranbrook, B.C.):

The Ktunaxa Nation Council Society (KNC) recently received documents under the Freedom of Information and Protection of Privacy Act (FOIPPA) which show the Province of B.C. may have pressured Canada to drop its support for a joint US-Canada study into pollution in the Kootenay Watershed. The documents are posted on the Provincial website.

In April of 2022, Global Affairs Canada notified KNC that it would no longer support a ‘reference’ to the International Joint Commission (IJC) to study and seek solutions to the transboundary selenium contamination due to mining activities in the Elk Valley in British Columbia.

The IJC is an independent Canadian-U.S. body that mediates transboundary water disputes. It is guided by the Boundary Waters Treaty, signed by Canada and the United States in 1909.

The released documents reveal that officials from the highest levels of the Federal and provincial governments engaged in discussions about the reference which excluded Ktunaxa and ignored Ktunaxa title, rights and governance authority.

In the context of continued pollution, the abandonment of the IJC reference for the Kootenay watershed by Canada came as a shock to the Ktunaxa First Nations and sister tribes in the U.S., the Confederated Salish and Kootenai Tribes (CSKT) and Kootenai Tribe of Idaho (KTOI).

The failure of Canada to live up to and respect binding international law is a serious concern to all who call the Kootenay watershed their home.

Global Affairs Canada (GAC) had been working with US Department of State on a concept paper to support the possible joint reference which was intended to be shared at the April, 2022 bilateral meeting. GAC refused to share the draft paper and other critically important information with the Ktunaxa First Nations, while sharing information with B.C. directly and allowing the province to access Federal decision makers. This is a breach of the federal government’s duty to consult.

Despite both Canada and B.C. having committed to fully implementing the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the released documents fail to demonstrate, or even acknowledge, these commitments. UNDRIP includes the recognition of the rights and jurisdictions of Indigenous Peoples, and the obligation of governments to obtain their free, prior and informed consent before making decisions or taking actions that affect their rights and lands.
BACKGROUND

For decades the Province of B.C. has approved coal mine developments in the Elk Valley which have been shown to impair the water quality of the Kootenay watershed.

Leadership of the Ktunaxa First Nations have expressed concerns about the cumulative effects of industrial activities in the watershed and the failure of provincial and Federal regulatory regimes to mitigate the impacts.

Ten years ago the joint councils of the KNC, Confederated Salish and Kootenai Tribes (CSKT) and Kootenai Tribe of Idaho (KTOI) first requested Federal action through a reference to the IJC regarding concerns for the Kootenay watershed and ʔa·kxa̓mís ḡapi qapsin (All Living Things) within it.

This spring selenium levels at the international boundary peaked at 2.4 micrograms per litre, which is three times Montana’s site-specific selenium standard of 0.8 micrograms per litre.

Exceedances of this magnitude pose risk to aquatic life. In light of these risks, there is a long-standing need for Federal involvement in the non-partisan search for solutions.

The Ktunaxa First Nations and the KNC continue to support the requests made by Montana Department of Environmental Quality, CSKT and KTOI, and the US Environmental Protection Agency and US Geological Survey to have an IJC reference that evaluates and makes independent, scientifically based recommendations on the transboundary selenium contamination in this watershed.

While there has been unprecedented support from the IJC commissioners and from US Department of State, the Canadian government remains non-committal on meeting its obligations and commitments to ensure that the waters of the Kootenay watershed are healthy for the generations to come.

The Ktunaxa First Nations stand united with the Kootenai Tribe of Idaho and Confederated Salish and Kootenai Tribes in the Ktunaxa principle of reciprocal stewardship of ʔa·kxa̓mís ḡapi qapsin and a one-river approach, irrespective of any imposed international boundary.

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To review the released documents:

For more information regarding the IJC see:

https://www.state.gov/support-for-international-joint-commission-recommendations-to-address-transboundary-pollution-from-mining/