



November 23, 2022

The Right Hon. Justin Trudeau, P.C., M.P.
Prime Minister of Canada
House of Commons
Ottawa, Ontario K1A 0A6

The Right Hon. Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

Re: Request from the Indigenous Governments of the Transboundary Ktunaxa Nation for a Reference to the International Joint Commission on the Transboundary Kootenay/Kootenai Watershed

Dear Prime Minister Trudeau and President Biden,

We write to you as one on behalf of the leadership of the Confederated Salish and Kootenai Tribes (CSKT), the Kootenai Tribe of Idaho (KToI), the Yaqan nukʔiy (Lower Kootenay), the Yaqit ʔa·knuqliʔit (Tobacco Plains) First Nation, the ʔakisq̓nuk First Nation and ʔaqam. Together, we are the Tribal and First Nation governments of the transboundary Ktunaxa Nation, who have lived on these lands since long before the existence of Canada, the United States, or the border between them.

We are writing to you to request that you act immediately, in solidarity with our governments, to refer the issue of mining impacts on transboundary waters in the Kootenai(y) River to the International Joint Commission (IJC). We first made this request, as a united transboundary Nation, to your respective governments in October 2012. This year marks the tenth anniversary of our unanswered request and again we write to remind you of your commitments to Indigenous governments and that you adhere to the Boundary Waters Treaty of 1909. Canada's obligations under the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the United States commitment to Nation-to-

Nation engagement and Environmental Justice for Indigenous Peoples are being flagrantly disregarded.

The International Joint Commission was created by the Boundary Waters Treaty of 1909 to protect “waters flowing across the international boundary”. A decade ago, our governments alerted you to the issue of mining contamination impacting shared waters across Canada and the United States, and our entire transboundary territory in the Elk/Koocanusa/Kootenai(y) watershed. Today, we are witnessing a violation of Article IV of the Boundary Waters Treaty, which states that “boundary waters and waters flowing across the international boundary shall not be polluted on either side to the injury of health or property on the other.”

In the decade that has passed since our initial request, contamination flowing from the Elk Valley Coal mines in Southeast British Columbia has increased to record levels throughout the Ktunaxa Territory, including Ktunaxa waters in the Elk Valley, in Tribal and US Territory in Koocanusa Reservoir and the Kootenai River in Idaho, and can even be detected at increasing concentrations where the Kootenai(y) flows into the Columbia River. Specifically, the data show selenium and nitrate contaminants from the mines are impacting water quality, fish, and Ktunaxa resources hundreds of kilometers from their source in the Elk Valley, and that these effects are seen throughout Ktunaxa lands and Tribal Territory. Ten years ago, there may not have been sufficient data to take immediate action; however the lack of data can no longer be used as an excuse for inaction. The scientific evidence of severe impacts to Ktunaxa Territory is clear, and inaction is unacceptable.

The united request from our governments for an IJC reference on the Elk/Kootenai(y) sits before your administrations to address the legacy, on-going, and future impacts of mining in this entire watershed, which we recognize will burden many generations to come. Despite your commitments and obligations, our governments have been excluded from the decision-making table while the Province of British Columbia has colluded with industry to prevent Indigenous governance of our lands, waters, and resources. It is a fact, as revealed in recent intergovernmental correspondence, that British Columbia has lobbied your governments to prohibit impartial, credible, and independent science, and has obstructed a just and transparent process, and thereby thwarted meaningful action on this issue.

To correct the record on the misinformation circulated to defeat our request, there must be an equitable and just process, inclusive of the transboundary Ktunaxa Nation, that honors our right to self-determination and self-governance, and relies upon transparent, independent science. No such process currently exists. The provincial-led regulatory framework for the Elk Valley failed to achieve its objectives of stabilizing and decreasing contaminants leaching from the mines, and has damaged trust and working relationships between government entities working on this issue. The Province of British Columbia has failed in their commitment to set a protective water quality threshold for selenium at the international boundary, as they had committed to do with Montana by the end of 2020. The failure of the provincial government to live up to their commitments to the state of Montana have resulted in Canada violating the Boundary Waters Treaty of 1909, as

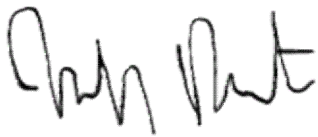
selenium is now exceeding the Montana/U.S. Environmental Protection Agency standard in Kootenai Reservoir at the international boundary.

On this ten-year anniversary of our original request to your governments, we bring this request before you again, to work directly with our governments of the transboundary Ktunaxa Nation on a reference to the International Joint Commission, to achieve an equitable, just, inclusive and scientifically credible approach to mining pollution across the Kootenai(y) watershed. We await your timely responses. We have waited ten years already, and cannot wait ten, or even one year more before this issue is meaningfully addressed. The time to act is now.

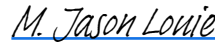
Sincerely,



Tom McDonald, Chairman
Confederated Salish and Kootenai Tribes



Jennifer Porter, Chairwoman
Kootenai Tribe of Idaho



[M. Jason Louie \(Nov 23, 2022 09:21 MST\)](#)

Jason Louie
Nasu?kin, Yaqaan nuk?iy



[Heidi Gravelle \(Nov 23, 2022 10:03 MST\)](#)

Heidi Gravelle
Nasu?kin, Yaqit ?a·knuqti'it



[Donald Sam \(Nov 24, 2022 09:39 MST\)](#)

Don Sam
Nasu?kin, ?akisq̓nuk



[Joe Pierre \(Nov 22, 2022 18:43 MST\)](#)

Joe Pierre
Nasu?kin, ?aqam

CC:

Mélanie Joly, Minister, Foreign Affairs Canada
Steven Guilbeaut, Minister, Environment and Climate Change Canada
Antony Blinken, Secretary of State, US Department of State
Rachel Poynter, Dep. Assistant Secretary for Mexico and Canada, US Department of State
Jennifer Savage, Director of Canadian Affairs, US Department of State
Michael Regan, Administrator, US Environmental Protection Agency
Jane Nishida, Assistant Administrator, EPA Office of International and Tribal Affairs
Pierre Beland, Canadian Chair and Commissioner International Joint Commission
Merrell-Ann Phaire, Canadian Commissioner International Joint Commission
Henry Lickers, Canadian Commissioner International Joint Commission
Robert Sisson, US Commissioner International Joint Commission
Lance Yohe, US Commissioner International Joint Commission
Cheryl Casimer, Political Executive, First Nations Summit
Robert Phillips, Political Executive, First Nations Summit
Hugh Braker, Political Executive, First Nations Summit
Regional Chief Terry Teegee, British Columbia Assembly of First Nations
Grand Chief Stewart Phillip, President, Union or British Columbia Indian Chiefs