



October 8, 2020

Dear Honorable Members of the Water Policy Interim Committee:

The Councils of the Confederated Salish and Kootenai Tribes and Kootenai Tribe of Idaho (“Councils” or “Tribes”) submit these comments to support the Montana Department of Environmental Quality’s (“MDEQ”) processes and outcomes that have led to the recommendation of site-specific criteria of 0.8 ug/L for Lake Koocanusa. The Tribes also support comprehensive monitoring to confirm that the number is protective over time for all species of fish in the reservoir. The site-specific criteria are consistent with numbers arrived at by British Columbia and Montana. We support the rule-making adoption process for a site-specific criterion of 0.8 ug/L. After five (5) years British Columbia and Montana arrived at very similar numbers. The British Columbia co-chairs recommended 0.9 ug/L.

Water quality in Lake Koocanusa is an issue that affects the Tribes’ natural and cultural resources and practices. We share these interests in water quality with the peoples of Montana and Idaho, as well as those downriver from us in British Columbia. The bull trout, burbot, westslope cutthroat trout and endangered Kootenai River white sturgeon important to all our constituents rely on water quality in Lake Koocanusa and the Kootenai River.

For this reason, the Tribes, State of Montana, State of Idaho, Province of British Columbia, and the United States Federal government have been actively working for years toward ensuring contamination from coal mines in British Columbia is addressed, especially with regard to contamination that flows across the international boundary into Lake Koocanusa. The coal mining companies have also been part of these discussions.

However, despite the Province of British Columbia’s 2013 Ministerial Order No. M113 recognizing evidence of “increasing concentrations of contaminants, such as selenium..., in water and/or biota, which may exceed provincial Water Quality Guidelines, and may be causing impairment of ecosystem health” and requiring the mining companies to “stabilize and reverse increasing trends in water contaminant concentrations”, selenium inputs from the Elk Valley mines into Koocanusa Reservoir demonstrate a clear, increasing trend. Selenium leaching from the mines is resulting in degradation of water quality and presenting unacceptable impairment to our shared natural resources.

The best available science collected in a collaborative effort across State, Federal, Provincial and industry, including the 2020 USGS model and report, demonstrates that there are historical, on-going and projected future inputs of selenium into Lake Kootenusa. Moreover, the Province of British Columbia and coal mining companies are currently planning to expand the biggest mine and create three new mines, even while exceeding healthy levels of selenium in fish.

It is the responsibility of the State of Montana to adopt selenium criterion that is sufficiently protective to ensure the immediate and long-term protection and restoration of Lake Kootenusa, and downstream uses in the Kootenai River in Montana and Idaho, from the ecological impacts of selenium contamination.

The State of Montana is not alone in this effort. We note that the State of Idaho is proceeding with listing the Kootenai River as impaired due to selenium thresholds being exceeded in several species of fish in the Kootenai. The State of Idaho is also pursuing a site-specific water quality criterion for the Kootenai River, because fish tissue already exceeds selenium thresholds even while well below the water quality thresholds for the River.

The U.S. members of the International Joint Commission have also expressed concerns about selenium pollution caused by the mines. In their 20 June 2018 letter, the U.S. Commissioners wrote that “[i]n addition to documented short-term impacts, it is well understood that high concentrations of selenium will have long lasting impacts on water quality, fish, other aquatic species, wildlife and human health in southeast BC and northwestern Montana communities.”<sup>1</sup> The International Joint Commission remains concerned about this issue and is receiving a briefing from the U.S. State Department and Global Affairs Canada about transboundary contamination issues specifically relating to the Elk/Kootenai River watershed. A review of the numerous comment letters from State, Tribal, First Nation and Federal governments in support of a site-specific selenium criteria for Lake Kootenusa indicate widespread acceptance that a protective selenium criterion is in order and justified. The Tribes’ and others have also submitted scientific evidence showing selenium contamination is already impacting fish in Lake Kootenusa and the Kootenai River.

The evidence is clear that despite *years* of working to address water quality in Lake Kootenusa, the lack of site-specific selenium criterion has negatively impacted our ability to address the continuing contamination from B.C. mines.

Once the State of Montana adopts the criterion, however, the full force of the United States Federal government can be brought under the Boundary Waters Treaty to force the Government of Canada to take steps to rein in the pollution. There is no other way, except to adopt site-specific criterion, for the United States to hold the foreign mining companies accountable.

The Tribes appreciate the coordination with the State of Montana and the incredible work we have done together to protect Montana waters and the fish important to us all. The Tribes respectfully urge the Water Policy Interim Committee to respect the years of effort MDEQ has

---

<sup>1</sup> The IJC Letter also states: “This issue is not new to the IJC” and references a 1985 Flathead reference letter that resulted in recommendations ultimately rejected by the B.C. and Canadian governments.

placed in developing this criterion, follow the science and vote to allow the Board of Environmental Review to consider the issue at its December 2020 meeting.

Thank you and we look forward to continuing our work together.

Sincerely,



Shelly Fyant  
Tribal Council Chairwoman  
Confederated Salish and Kootenai Tribes  
PO Box 278  
Pablo, MT 59855  
(406) 675-2700  
[Shelly.Fyant@cskt.org](mailto:Shelly.Fyant@cskt.org)

 on behalf of

Gary Aitken Jr.  
Chairman, Tribal Council  
Kootenai Tribes of Idaho  
PO BOX 1269  
Bonners Ferry, ID 83805  
(208) 267-3519  
[garyjr@kootenai.org](mailto:garyjr@kootenai.org)