

To the Montana Water Policy Interim Committee:

My name is Michael Jamison, and I have been working on transboundary water issues between British Columbia and Montana for many years. I live primarily in the transboundary Flathead River watershed and seasonally in the transboundary Elk-Kootenai watershed, and currently work for the National Parks Conservation Association.

I urge WPIC members to defend Montana interests – including our industries, our economies, our communities and our fisheries – by empowering the Department of Environmental Quality to complete the rule-making process for adopting a selenium water quality standard in Koocanusa Reservoir.

Canada has a very different system for permitting, monitoring and regulating mine operations, and many Canadian projects in U.S. headwaters would quite simply never be allowed in Montana. The Canadian reliance on the industry itself to conduct scientific and environmental review is just one example, though there are many.

I recall well the negotiations regarding a proposed mine in the Canadian Flathead River Valley, when British Columbia's regulators announced there were no fish in the river near the planned mine site. That information, they said, was the result of much study by the mining company. Of course, there were fish in the river there, and when U.S. researchers conducted their own survey they found that about half of all bull trout on the Montana side of the border were spawning in precisely the waters that Canadian mine companies had said contained no fish.

Our history with British Columbia is rife with examples such as this, as the province and its industry have sought at every turn to maintain the status quo in which they treat Montana waters as discharge zones and settling ponds. They sow uncertainty at every turn, even when our science is sound and peer-reviewed, and they employ delay tactics that have for too long stymied protection of our own interests.

The DEQ rule-making process has been long-term, transparent, robust and of the highest integrity, and has been informed by science that is setting a global standard. We cannot allow foreign corporate interests to yet again derail our resolve to safeguard Montana's communities.

The federal agencies have, of course, set a national standard for selenium. They also have required states to establish site-specific standards for waterways with known selenium contamination. Those site-specific reviews are required precisely because selenium's impacts can vary greatly based on local conditions such as river flow rate, seasonal runoff and the specific fish species present. Just as a speed limit of 75 might be appropriate on an Interstate but not on a residential street, so might a selenium limit of .8 be appropriate in Koocanusa but not in the downstream Kootenai River. A site-specific criteria is recommended precisely because the impacts are so tightly tied to local conditions.

We know that the waste rock already on the ground from existing B.C. mines will continue to leach selenium and other contaminants into Montana's waters for many centuries to come. The industry and the province have no long-term plan for mitigating this pollution source over the next 500-700 years. And yet they are currently seeking to build what arguably will be Canada's largest coal mine, squarely in these same Montana headwaters. Despite the known problem, and despite the lack of a proven mitigation strategy, they continue to dig the hole deeper. Without adequate downstream water quality standards, that new mine will be built (as will others currently being considered) and Montana's water quality fate will be sealed for centuries to come.

The company at the source of all this contamination has had repeated violations of B.C. pollution limits, though the province has declined to levy meaningful penalties. Now, that same company is under federal investigation under the Canadian Fisheries Act for selenium pollution violations, with potential federal charges pending any time now. We need to protect our interests, and not rely on this Canadian company to do it for us.

The waste rock from this company's mines already has been leaching selenium into the watershed for decades, causing fish deformities and other negative effects. At high concentrations, selenium is fatal for viable fish eggs; British Columbia's waterways immediately downstream of the mines already have experienced a near total collapse of the fishery (~90% collapse).

The facts are perhaps inopportune and unwelcome, but they are not difficult to understand and they cannot be avoided. Despite attempts to "muddy" these waters with vague concerns about potential downstream economic effects of a new standard, there are things we know demonstrably.

There are exactly zero Montana mines in the Kootenai Reservoir watershed. And there are exactly zero plans for any future Montana mines in the Kootenai Reservoir watershed. And there are exactly zero known selenium deposits at any existing or proposed Montana mines anywhere in Lincoln County.

Likewise, there is exactly zero potential known negative impact to Montana industry or economy of adopting this standard. In fact, if Montana does not adopt a strong standard for all contaminants in Kootenai it actually puts at risk future industry options on our side of the border. A river can only withstand so much contamination, and by allowing Canada to "use up" the entire pollution allotment we limit our own ability to develop resources. We must keep the waters available for Montana uses.

Additionally, this is not only about Montana. The Kootenai River flows west into Idaho, where downstream interests already are urging Montana to take immediate action. The many years of study that have brought us to this point are also years that British Columbia's selenium has continued to flow through Montana and into Idaho, and downstream communities are tiring of our delay. We, as an upstream neighbor, have obligations (legal and otherwise) to our downstream states.

When we started this process, both the Montana and British Columbia governments committed to a timeline of completion by end of 2020. It has been transparent and open to the public at all stages, with the salient scientific findings published in peer-reviewed public journals. It also has been a highly collaborative effort, including not just U.S. interests but also B.C. regulators and Canadian scientists. The fact that technical advisors from both sides of the border have recommended essentially the same selenium limit, in order to protect the fishery, points to the integrity of the science.

In fact, the state of Montana, the US EPA, the USGS, the province of British Columbia, the Confederated Salish and Kootenai Tribes, the Kootenai Tribe of Idaho and the Ktunaxa Nation of Canada all have concluded that a limit of between .6 and .9 micrograms per liter is required to protect the fishery. Montana's proposal of .8 falls right in the middle of that very narrow range.

Montana should not rely on British Columbia to protect Montana property and resources. That is our job. History has shown we cannot rely on Canada to enforce protection of our interests, and without a selenium standard we cannot enforce it on our own. Once a standard is set, however, several

enforcement options become available, including the Boundary Waters Treaty and International Joint Commission, as well as the Clean Water Act and other diplomatic avenues.

It is absolutely true that Canadian industry has invested heavily in technology that attempts to reduce selenium levels. It also is true that the technologies have not yet proved adequate to the job. And it is also true that neither of those two facts are relevant to the process of setting a selenium standard.

The question is not whether a foreign company can invest enough millions over enough centuries to mitigate the damage. The question is, at what level does selenium negatively impact the fishery. That is strictly a matter of science. We know that at a specific level, fish are born without gill plates. We know that at a certain level, fish are born with spinal deformities. We know that at a certain level, fish eggs fail to be viable and the fishery collapses. Those are incontrovertible numbers, and have been determined over years of study and research. That is where we set the criteria – to not exceed those hard numbers.

Whether the Canadian mining industry can meet those numbers is another question entirely, and is not relevant to the setting of a protective standard. I sincerely hope British Columbia's industry can reduce selenium beneath the threshold, but whether or not it can does not change the threshold. Therefore, all the talk of large investments and the promise of new technology is frankly irrelevant to this process. If Canada's industry can, in fact, reduce selenium below the limit then it has nothing to worry about with the establishment of this standard. If not, then we have a serious problem that will persist over centuries, and approving more mines will only make matters that much worse for Montana's future.

After all these years of international scientific review, after all the public meetings and briefings to local officials, after all the technical committee reports and peer-reviewed articles, after all the minutes of all the meetings and all the notes from all the scientific discussions, after all the thousands of hours of good-faith review and research, it is time to move forward with the criteria process, on schedule and as planned, and without further delay.

It is not surprising that B.C. and its industry would seek delay. It is beyond surprising that Montana would ever consider such a delay. We are not, and nor should we be, a settling pond for Canadian industry. We elect state leaders to protect state interests, not to bow to foreign influence.

I strongly urge members of the committee to respect the tremendous effort that has gone into this process, and to empower DEQ and its many scientific partners to continue its work with state, federal and tribal technicians to set a protective standard for selenium in Koocanusa Reservoir.

Thank you,

/s/ Michael Jamison

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