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To: HJ 37 Subcommittee, WPIC/EQC,
Dir. Dorrington, Mr. Mike Freeman, Nat. Res. Advisor

From: Jon Metropoulos and Vicki Marquis, Holland and Hart

Enclosed you will find a draft work plan Teck developed using its in-house expertise and in close consultation with its attorneys, led by Vicki Marquis of Holland and Hart, Billings. They were intimately involved during the final stages of the drawn out bilateral process between Montana and British Columbia, conducted from 2016 to 2020, that was truncated when Montana promulgated a site-specific selenium standard for Lake Koocanusa in December 2020.

In response to questions and suggestions of “affected stakeholders,” the 2021 Legislature, in adopting HJ 37, which is under your direction, required the establishment of a collaborative process with DEQ to “analyze the data and processes referenced in and used to support” promulgation of the Lake Koocanusa site-specific standard and “offer recommendations on what changes, if any, are needed” to the site-specific standard.

Teck representatives met with DEQ Director Chris Dorrington recently to discuss the features of the HJ 37 study and what it should include to ensure a robust, objective response to the Legislature’s directive. At that meeting, November 30, Teck provided this draft work plan to the Director and his legal advisor, water quality division administrator, and deputy director. In all candor, the meeting did not result in as much substantive discussion as it might have, but it was a start, in Teck’s opinion, of an ongoing process of communication in good faith whereby both the DEQ and Teck can provide their expertise, their perspectives, and analysis, leading, it is hoped, to an end-product useful to the subcommittee and the Legislature.

We look forward to working closely with both DEQ and this subcommittee as this process develops. It is our expectation, derived from the meeting with DEQ, that we will hear back soon about this proposed work plan, and that work can begin in earnest in the New Year.

Thanks for your attention and for your service on this important subcommittee.

LAKE KOOCANUSA SELENIUM WATER QUALITY STANDARD INTERIM STUDY WORK PLAN

Priority Work

1. Fish Tissue Data

a. Priority Tasks:

- i. Compile the existing fish tissue data in accordance with the current rule and EPA guidance, specifically incorporating EPA's guidance regarding the use of composite samples of 3-10 individual samples and the need to use egg ovary data from mature (gravid) fish.
- ii. Analyze the compiled data in comparison to EPA guidance and in consideration of species-specific No Observed Effects Levels.
- iii. Analyze the compiled data in comparison to recent selenium water quality data for Lake Koochanusa (2013 to present) and recent fish tissue data for White Sturgeon immediately downstream from Lake Koochanusa.

b. Other Tasks:

- i. Draft and finalize an assessment methodology for Water Quality Assessments based on fish tissues samples.

c. Deliverables:

After reviewing the data compilation and analysis resulting from the priority tasks, the EQC will make findings, conclusions, comments and recommendations, including findings and conclusions relating to harm, the level of protection needed to address such harm, and any additional rulemaking and/or implementation of ARM 17.30.632, if and as appropriate.

2. Selenium Contributions to Lake Koochanusa

a. Priority Tasks:

- i. Compile data and estimate background and naturally-occurring contributions of selenium to Lake Koochanusa, including selenium from tributaries and from bank sloughing and other processes occurring in Lake Koochanusa.
- ii. Examine and describe how fluctuating lake levels and operation of the Libby Dam affect selenium levels in Lake Koochanusa and immediately downstream of Lake Koochanusa.

b. Other Tasks:

- i. Use the information gleaned from the priority tasks to inform the assessment methodology to be used in Water Quality Assessments for Lake Koochanusa.
- ii. Use the information gleaned from the priority tasks to inform the peer review of the model, as it is applied to Lake Koochanusa.
- iii. Use the information gleaned from the priority tasks, as well as EPA guidance, to review and recommend alterations as necessary, to the regulatory definition of "steady state."

c. Deliverables:

- i. After reviewing the data compilation and estimate of background and naturally-occurring contributions of selenium from the priority tasks, the EQC will make findings, conclusions, comments and recommendations

relating to the natural condition of selenium in Lake Koocanusa and additional rulemaking and/or implementation of ARM 17.30.632, if and as appropriate.

- ii. After reviewing the examination and description of how operation of the Libby Dam affects selenium levels from the priority tasks, the EQC will make findings, conclusions, comments and recommendations relating to how operation of the Libby Dam affects selenium levels in Lake Koocanusa and recommendations for additional rulemaking and/or implementation of ARM 17.30.632, if and as appropriate.

3. **Peer Review of the Model, as it is Applied to Lake Koocanusa**

a. **Priority Tasks:**

- i. Ensure the model as it is applied to Lake Koocanusa is peer reviewed, including but not limited to, review of the model inputs for whole body Selenium levels, K_d values, and bio-availability factors.
- ii. Ensure the model as it is applied to Lake Koocanusa is peer reviewed to determine whether and how the model should consider the operation of the Libby Dam.
- iii. Ensure the model as it is applied to Lake Koocanusa is peer reviewed to ensure it is validated.

- b. **Deliverables:** After reviewing the peer review of the model resulting from the priority tasks, the EQC will make findings, conclusions, comments and recommendations relating to the model as applied to Lake Koocanusa and recommendations for additional rulemaking and/or implementation of ARM 17.30.632, if and as appropriate.

4. **Consider Implications of the Standard**

a. **Priority Tasks:**

- i. Review and consider implications of listing Lake Koocanusa as an “impaired” water body, informed by the results of the first three work items and by review of the current “threatened” listing.
- ii. Review and consider implications of regulating Lake Koocanusa with a standard that appears to be more stringent than standards for similar water bodies throughout the United States.

- b. **Deliverables:** After reviewing the results of the first three work items, the EQC will make findings, conclusions, comments, and/or recommendations on whether an “impairment” listing for Lake Koocanusa is appropriate or not and whether the first three work items support a standard that is more stringent than others for freshwater lakes in the United States.

Other: To the extent that priority and/or other work tasks result in recommendations for additional rulemaking, EQC should provide recommendations on a rulemaking process that is consistent with the WQA and other water quality standard rulemakings and includes robust public review and input on technical support documents such as modeling, Water Quality Assessment methodologies, derivation documents, implementation plans, and other supporting documents and studies.