



Ktunaxa Nation Council
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April 8, 2022

Via email: Todd.Goodsell@gov.bc.ca

Todd Goodsell, A/Executive Project Director
Environmental Assessment Office
836 Yates St
Victoria, BC V8W 1L8

Dear Todd:

RE: Readiness Decision - Teck Fording River Extension Project (Castle)

Further to your email of April 4, 2022, please find enclosed a completed document initiating dispute resolution regarding the draft Readiness Decision Report for the Teck Fording River Extension Project dated March 23, 2022 (the "Draft Readiness Decision" for the "FRX Project"). As previously discussed and set out in that notice, the Ktunaxa Nation Council (the "KNC") on behalf of the Ktunaxa Nation does not agree with the Environmental Assessment Office's (the "EAO's") preliminary determination that the FRX Project will not cause extraordinary adverse effects on the environment generally or to the constitutionally protected Indigenous rights, including title, of the Ktunaxa Nation. Consistent with this view, the Ktunaxa Nation does not support the EAO's proposed recommendation that the FRX Project proceed to the next phase of process planning for an environmental assessment pursuant to section 19 of the Environmental Assessment Act (the "Act").

We note that the draft Readiness Decision states "In lieu of additional rationale from the KNC regarding the potential for extraordinarily adverse effects the EAO does not recommend termination". We confirm that the dispute resolution process will be the venue in which the KNC can provide additional information to support its view that the FRX Project will cause extraordinary adverse effects. We will wait for further definition of the scope, timing and format of that process before providing that further information.

We also wish to confirm that the dispute resolution process will be a co-designed and co-managed process that fully integrates and respects the Indigenous perspective, rights and governance authority of the Ktunaxa Nation. Section 2(2)(b)(ii) of the Act vests your office with the responsibility of advancing reconciliation by, among other things, "supporting the implementation of [UNDRIP]", "recognizing the inherent jurisdiction of Indigenous

Takisqnuuk

Lower Kootenay

St. Mary's

Tobacco Plains

Nations” and “collaborating with Indigenous Nations in relation to reviewable projects”. In our view the fulfillment of these purposes requires the EAO to jointly develop the dispute resolution process with the KNC in a consent-based manner that recognizes the inherent jurisdiction of the Ktunaxa Nation over the lands and resources of ʔamakʔis Ktunaxa, and respects and integrates Ktunaxa laws, customs and perspectives. While we will review the draft dispute resolution guidelines prepared by the EAO, we expect the EAO to work with us on a collaborative basis unfettered by guidelines or process rules developed without our input.

Without limiting our future views, at this point in time we have identified the following issues to be addressed as part of the process design:

- Selection of a facilitator. We do not have a candidate to propose at this time; however, we are doing further research and will advise if we identify a candidate(s). We look forward to any suggestions from the EAO.
- Sharing of information and transparency. The dispute resolution process must include full and transparent information sharing so we can appreciate the basis for the EAO’s preliminary determination.
- Timelines. We will need to ensure that the timelines for dispute resolution allow for the KNC to prepare additional information and review and consider information provided by the EAO. The timelines will also need to reflect and accommodate Ktunaxa governance processes.
- Clear definition of the standard. We have not received any formal guidance from the EAO on how it interprets and applies the extraordinary adverse effects standard. Achieving a shared understanding of what the standard means should be an important part of the process.
- Process format and stages. We have some initial thoughts on how to collaboratively build a shared understanding on key issues related to the extraordinary adverse effects standard, and will be happy to share those thoughts at a future meeting.

In closing, we confirm that the FRX Project environmental assessment process is on hold, pending resolution of the dispute resolution process. We will wait for further correspondence from the EAO regarding next steps, and look forward to advancing this important process in a collaborative, consent-based manner.

Vickie Thomas

Vickie Thomas (Apr 8, 2022 10:43 MDT)

Vickie Thomas

Director, Lands and Resources

Initiating Document for Dispute Resolution under the *Environmental Assessment Act (2018)*

This document commences a referral for dispute resolution under the *Environmental Assessment Act* (2018) (the Act). Under [section 5](#) of the Act, dispute resolution is intended to help resolve substantial disagreements between eligible participants at key stages of the EA process. Participants may use the services of a qualified facilitator when they are unable to reach agreement or consensus on their own.

The Dispute Resolution Interim Approach outlines a framework to support an interim approach to DR that the EAO develops with Indigenous nations on a project-specific basis before a regulation is enacted. Before completing the Initiating Document, it is recommended to review the matters that may be referred to a facilitator under the section 5(2) of the Act and further outlined in the Interim Approach.

Please submit this document to: **TBD**

1. PARTICIPANT

Provide the name and contact information of the Indigenous nation.

Name

Vickie Thomas, Director, Lands and Resources, Ktunaxa Nation Council

Mailing Address

7825 Mission Road

City

Cranbrook

Province/Territory

British Columbia

Postal

V1C7E5

Email

vthomas@ktunaxa.org

Phone

(250)-489-2464; ext 4034

2. CONTACT INFORMATION

Provide the name and information of the primary contact person.

Primary Contact Name

Erin Robertson, Team Lead, Mining Oversight

Primary Contact Department

Lands and Resources, Ktunaxa Nation Council

Contact Phone Number

(250)-420-7309

Contact Email

erobertson@ktunaxa.org

Alternative Contact Name**Alternative Contact Department****Contact Phone Number****Contact Email**

3. DISPUTE RESOLUTION MATTER

Select one of the following:

Early Engagement

- ☐ Participation of an Indigenous nation as a participating Indigenous nation in the assessment (s.14(1), including amendments and extensions)
- ☐ A pending determination that there is no reasonable possibility of an Indigenous nation or its rights being adversely affected by the project (s.14(2), including amendments and extensions))

Readiness Decision

- ☐ A pending decision by the minister, on recommendation by the CEAO, to terminate or exempt a project from assessment (s.17)
- ☒ A pending decision by the CEAO to proceed with the assessment (s.18)

Process Planning

- ☐ A pending decision to issue a Process Order (s.19)

Effects Assessment

- ☐ The content of the draft Assessment Report and/or the draft environmental assessment (EA) certificate (s.28)

Recommendation

- ☐ The recommendation about the pending decision of the ministers on whether to issue an EA certificate (s.29)

Decision

- ☐ The pending decision of ministers on whether to issue an EA certificate to address issues not captured in the Assessment Report or EA certificate (s.29)

The matter is being referred to dispute resolution in relation to which reviewable project undergoing an environmental assessment under the Act:

Teck Coal Limited's Fording River Extension Project (Castle)

4. DESCRIPTION OF DISPUTE

Provide a description of the dispute for the participant's perspective as well as any interests in the outcome of the dispute.

Please see attached cover letter.

The Ktunaxa Nation Council (the "KNC") on behalf of the Ktunaxa Nation does not agree with the Environmental Assessment Office's (the "EAO's") preliminary determination that the FRX Project will not cause extraordinary adverse effects on the environment generally or to the constitutionally protected Indigenous rights, including title, of the Ktunaxa Nation. Consistent with this view, the Ktunaxa Nation does not support the EAO's proposed recommendation that the FRX Project proceed to the next phase of process planning for an environmental assessment pursuant to section 19 of the Environmental Assessment Act (the "Act").

5. OPTIONAL – FACILITATOR RECOMMENDATION

If the participant would like to propose an individual to serve as the facilitator, please provide the person's name and contact details below. If listing multiple names, please list in preferential order.

The KNC does not have a candidate to propose at this time; however, we are doing further research and will advise if we identify a candidate(s). We look forward to any suggestions from the EAO.