



September 1, 2022

Sent via email

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Ministers and Provincial representatives, Je aa haanach'e:

RE: Glencore - Sukunka Coal Mine Project- Environmental Assessment Office

West Moberly First Nations (West Moberly) writes this letter to submit its comments and concerns regarding the Sukunka coal mine project (Sukunka Project) proposed by Glencore. West Moberly, along with Saulteau First Nations and Doig River First Nations, comprising the First Nations Independent Technical Review committee (FNITR), and with McLeod Lake Indian Band, participated in the review of the Environmental Assessment Certificate Application Glencore submitted for its proposed Sukunka Project.

Glencore is proposing to develop and operate the Sukunka Project, an open pit mine that would produce up to 3 million tonnes per year of metallurgical coal, for over 20 years, on Treaty 8 territory in Northern BC.

From West Moberly's review of the existing reports and data, and based on West Moberly's own information on the impacts of the proposed Sukunka Project on West Moberly's rights, interests, and ways of life, West Moberly continues to be opposed to the Sukunka Project. West Moberly is of the view that Glencore's proposed Sukunka Project should not proceed and recommends that the Ministers deny Glencore's application.

In addition, West Moberly does not recognize or accept the approach that the Environmental Assessment Office (EAC) has taken when assessing the impacts of the Sukunka Project to West Moberly and its members' rights and interests. The province has a fiduciary duty under Treaty 8, Section 35 of the *Constitution Act*, and the United Nations *Declaration on the Rights of Indigenous Peoples*

(UNDRIP, and specifically articles 7-8, 11-13,20, 23-26,32,34,37), not to take any action that would interfere with West Moberly's rights including, among other things, its members' food security, territory, and the ability to enjoy those rights and way-of-life without forced interference.

This was reinforced by Justice Burke in *Yahey v British Columbia*. At Para 175 Justice Burke states that:

Treaty 8 guarantees the Indigenous signatories and adherents the right to continue a way of life based on hunting, fishing and trapping, and promises that this way of life will not be forcibly interfered with.

Inherent in the promise that there will be no forced interference with this way of life is that the Crown will not significantly affect or destroy the basic elements or features needed for that way of life to continue.

And at para 215-217:

Way of life is about means of survival, as well as socialization methods, legal systems, trading patterns, cultural and spiritual beliefs and practices, patterns of land use, and ways of generating and passing on knowledge. To the Indigenous people who entered into Treaty 8, the meaningful exercise of these rights reflects how they live their lives, in their way, on their lands. These rights must be considered in a broader, more contextual way. Based on the evidence in this case, they are rights that are exercised at particular places, at particular times, in relation to particular species, and that are connected to a larger way of life. For the exercise of these rights to be meaningful, protection must also include recognition that the rights to hunt, fish and trap are, in essence, rights to maintain a culture and identity.

Any action to be taken or approved by the Crown that may interfere with Treaty 8 First Nations' rights carries an obligation that the Crown consult the impacted First Nations communities to ensure that such rights are not unfairly or improperly encroached upon. Such a process shall not simply be seen to consider the views of the impacted First Nation.

West Moberly has taken part in extensive discussions with the FNITR, EAO and Glencore to review the application and its impacts on the Treaty 8 First Nations. West Moberly representatives have repeatedly informed the EAO that the direct and cumulative effects of the Sukunka Project on West Moberly's Treaty Rights will be significant. The EAO has heard how the Sukunka Project will have long-term detrimental effects on West Moberly's overall communal health, wellbeing, food security and safety that cannot be mitigated. Notwithstanding these discussions, the EAO's report describes the impact to many of the West Moberly Treaty Rights as "moderate" and characterizes West Moberly's conclusions as "concerns". Such characterizations minimize the reality of West Moberly's circumstances and demonstrate a lack of understanding, belief, or respect in West Moberly's knowledge and views with respect to the community's territory and way of life. Most importantly, it defies the intention behind the duty to consult and the principles of UNDRIP.

The proposed Sukunka Project will seriously infringe upon everything that is salient to the West Moberly way of life. Some of the project's impacts are tied to biophysical markers, like Caribou

populations and water quality; however, it is difficult to demonstrate the full extent of the impacts under the current process which focuses on biophysical impacts only. The impacts to West Moberly's rights are multifaceted and include socio-cultural, spiritual, and core identity factors that are not properly considered under the current assessment process and perhaps not well-enough understood by the EAO.

The method the EAO has used to assess the impact of the Sukunka Project on West Moberly's Treaty Rights and general livelihood are based on the 2012 *Canadian Environmental Assessment Act* standards. This approach to assessment was updated under the 2019 legislation, both provincially and federally, and was also identified by Justice Burke in *Yahey* as inadequate to properly assess the cumulative effect of industrial development on Treaty Rights. Notwithstanding these findings, the current process is still being conducted under the 2012 legislation and is plagued by the restrictions of that legislation. In order to fully and fairly assess the impact to First Nation rights, the evaluator must have an intimate and comprehensive understanding of the culture, traditions, values, mindset and perspectives of the lives it will be impacting. Without this level of nuance, no decision maker can properly assess the actual needs, rights and reality of a First Nation community.

West Moberly has not been asked but would welcome the opportunity, if funded, to conduct its own impact assessment to demonstrate the basis for its position that the Sukunka Project and the cumulative effects of this project combined with those projects already in existence, will significantly impact West Moberly's Treaty Rights and livelihood. The information provided below was researched and observed by West Moberly representatives and serves as the basis for West Moberly's opinion in this process.

West Moberly is of the view that the habitats of ungulates such as moose, elk, deer and caribou are at risk, even without the Sukunka Project. The mitigation and adaptive management measures proposed by Glencore will not counter the effects of an additional mine in the region; the most recent research shows that this project will have dire consequences for the Quintette caribou population, and the long-term impact to the other ungulate populations is unknown.

There is already an abundance of information demonstrating the delicate existence of the Quintette Caribou herd, and the efforts by the Treaty 8 First Nations and government to protect this herd. The construction of this mine will cause further disturbance to the herd's habitat, and, according to the best available science, will almost certainly lead to the local extinction of the Quintette herd. That the Sukunka Project is even being considered is at odds with the current policy and goals of the Province to protect, preserve, and revitalize caribou habitat and populations.

Under the Province's own Regional Strategic Environmental Assessment process (RSEA), West Moberly's understanding is that the results of the environmental livelihoods study determine that if the Sukunka Project is certified, West Moberly members will no longer be able hunt moose, and other ungulates within their preferred ungulate hunting areas and will be unable to hunt in a way that meaningfully reflects West Moberly's cultural practices. Already, data from these RSEA reports are showing, among other things:

- Moose populations within the South Peace wildlife management units are declining.

- Recreational hunters harvest a much higher number of moose than members of the three FNs.
- Motorized recreational use of the preferred hunting areas has grown to a level that makes it impossible for FN members to hunt in culturally appropriate manners.

This is in addition to West Moberly's knowledge that the RSEA reports and data are incomplete, and likely do not reflect the full range and areas of rights and cultural practices interfered with by the cumulative impacts of resource development in Treaty 8.

The risk this poses for West Moberly is significant as the inability to hunt these animals has, and will continue to, cause West Moberly members to look off-reserve for food alternatives. This diet change is not only detrimental to members' physical health, but also impacts the financial security and livelihood of the community as it is forced to import and purchase processed foods. Food, and food practices, including hunting and trapping are an essential part of West Moberly culture, tradition and values. The Sukunka Project, if constructed, will only amplify current problems caused by industrial development and ultimately will infringe on West Moberly's ability to exercise its right to hunt, as enshrined in Treaty 8.

Historically, the West Moberly and their ancestors depended on the fishery during times when the ungulate populations were distressed. We are living in one of those times. Despite our increased need to access the fishery, the impacts of hydroelectric development on the Upper Peace/Williston watershed, among other industrial developments in the territory, have impacted both the fishery, the water, and the ability of West Moberly members to harvest fish in a safe and culturally appropriate manner. Key fisheries within West Moberly territory have been contaminated by methylmercury and selenium, and the Sukunka River is viewed by West Moberly as one of the last remaining safe areas to fish. Ensuring the safety and quality of the river is therefore critical to the West Moberly's Treaty Right to fish, to access safe and clean drinking water on their lands, and to maintain the health of their community, particularly children and women of child-bearing age. Any detrimental impact to the Sukunka River caused by the proposed Sukunka Project is an infringement on the West Moberly's way of life.

The protection measures proposed by Glencore and the EAO demonstrate a diminished concern or understanding of these impacts. Based on the best available science, West Moberly understands that the current proposed 'standards' for water quality from the Sukunka Project would likely lead to contamination of the waterway and contamination of fish stocks. This would have multiple negative impacts on West Moberly. First, water contaminated with certain levels of selenium is unsafe for human consumption. Second, water contaminated with selenium will contaminate the fishery. Contaminated fisheries will have negative effects of fish reproduction and fish stocks, and it will also lead to human health and safety concerns, due to increased selenium levels in fish tissue. In addition, and importantly, the negative impact to West Moberly is the interference with West Moberly's ability to fish in a culturally meaningful way. Once fish contamination is known by members, they will no longer harvest, prepare, and eat fish from a contaminated water source. The best available science requires that selenium levels in the water column of effluent being discharged into fish-bearing waters shall not exceed 2.0ug/L. West Moberly also holds the position that levels should not exceed 4.0ug/gram for selenium concentrations in fish tissue of the fish species which are preferred by the West Moberly community. At this stage, Glencore has not proven an ability to ensure that the Sukunka

Project can meet those standards, and the Sukunka Project therefore poses a serious risk to human health and safety, in addition to its impact to Treaty Rights, due to its impact on water quality in the Sukunka River.

Food gathering and other forms of cultural use of the land are also an essential part of the West Moberly community's way of life. West Moberly has commenced additional research into the scope and historical, current, and future use of the land, and while there is still additional work to be done, West Moberly is very concerned that the Sukunka Project will have significant impacts to these cultural uses. The disturbance caused by increased road traffic and the mine itself will hinder West Moberly members' ability to exercise their rights to use the land in a safe and meaningful way.

The proposed Sukunka Project would have an irreversible impact on West Moberly's rights and way of life. The "assessments" related to Treaty Rights, as conducted in the EAO report, and based on information from Glencore, are not credible, valid, or objective. They were not prepared with any consultation with West Moberly. The values and information used in the EAO's characterization of impacts to Treaty Rights do not, to our knowledge, include any of West Moberly's traditional, cultural, or current knowledge. Including Glencore's "assessment" in the EAO's determination of impacts to Treaty Rights is offensive. Any assessment completed by a party without actual knowledge of the West Moberly traditional values and customs, and one that has commercial rights at stake in the results of the assessment, should be considered invalid.

West Moberly remains opposed to this project. Should additional assessments of the impacts to Treaty Rights be added to the EAO processes, West Moberly requests that its own assessment of the impact on its Treaty Rights be supplemented for the EAO and Glencore's.

Please contact Tamara Dokkie, Lands Use Manager, at tamara.dokkie@westmo.org if you have any questions regarding this letter.

Wuujo aasanaláá



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West Moberly First Nations

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