

**PROVINCE OF BRITISH COLUMBIA**

**ORDER OF THE MINISTER OF ENVIRONMENT AND  
CLIMATE CHANGE STRATEGY**

*Environmental Management Act*

Ministerial Order No. M232

Whereas historical and current mining activity in the Elk Valley has led to elevated concentrations of selenium, nitrate, cadmium and sulphate in the Elk River watershed, and has accelerated the accumulation of calcite in some of these watercourses, which may be contributing to the impairment of ecosystem health; and

Whereas the regional economy is heavily dependent on mining and related activities; and

Whereas the Minister of Environment and Climate Change Strategy considers that an area based management plan for the Elk Valley remains advisable for the purposes of environmental management to address water quality and calcite accumulation and to support statutory decision-making; and

Whereas in April 2013, under Section 89 of the Environmental Management Act, the Minister of Environment issued Ministerial Order No. M113 (the “Order M113”), requiring Teck Coal Limited (“Teck”) to prepare an area based management plan for the Elk River watershed and the Canadian portion of Koocanusa Reservoir (also known by the name Lake Kooconusa); and

July 9, 2024

*Date*



*Minister of Environment and Climate Change Strategy*

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*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: Environmental Management Act, Section 90.2

Other: \_\_\_\_\_

Whereas the resulting Elk Valley area based management plan titled “Elk Valley Water Quality Plan” (the “Plan”) was approved by the Minister of Environment in November 2014; and

Whereas the Minister of Environment and Climate Change Strategy considers that to improve the Ministry of Environment and Climate Change Strategy’s ability to make decisions, adaptively manage and reduce the water quality impacts from mining, while mining continues, amendments to the Plan are advisable for the purposes of environmental management; and

Whereas the Declaration on the Rights of Indigenous Peoples Act establishes the United Nations Declaration on the Rights of Indigenous Peoples as the Province of British Columbia’s framework for reconciliation;

Now therefore:

I, George Heyman, Minister of Environment and Climate Change Strategy, order that:

In accordance with Section 90.2 of the Environmental Management Act, the process for the amendments to the Plan (the “Plan Amendments”) is established in accordance with the details set out in Schedules A, B, C, D and E, attached to and forming part of this Order.

## **SCHEDULE A**

### **RESPONSIBILITIES AND TIMELINE FOR THE DEVELOPMENT OF PLAN AMENDMENTS**

In accordance with Section 90.2 of the Environmental Management Act:

1. The Ministry of Environment and Climate Change Strategy (ENV) is responsible for preparing the Plan Amendments in two phases.
2. The Terms of Reference for Phase 1 of the Plan Amendments is set out in Schedule B.
3. ENV must prepare a detailed Terms of Reference for Phase 2 of the Plan Amendments. The Terms of Reference for Phase 2 must include all of the following and must meet the requirements in Schedule C:
  - a. The purpose of the Koochanusa Reservoir selenium target review;
  - b. The issues to be addressed in Phase 2 of the Plan Amendments; and,
  - c. The process for First Nations, public, and stakeholder consultation.
4. ENV must establish advisory committees to advise on strategic, technical and policy matters in accordance with Schedules B and C.
5. ENV must complete Phase 1 of the Plan Amendments and submit it for approval to the Minister of Environment and Climate Change Strategy within 12 months of the date of this Order.
6. ENV must submit the Terms of Reference for Phase 2 of the Plan Amendments for approval to the Minister of Environment and Climate Change Strategy within 12 months of the date of this Order.
7. Unless otherwise directed by the Minister of Environment and Climate Change Strategy, ENV must complete Phase 2 of the Plan Amendments and submit it for approval to the Minister of Environment and Climate Change Strategy within 15 months of the date of approval of the Terms of Reference for Phase 2 of the Plan Amendments.

## **SCHEDULE B**

### **TERMS OF REFERENCE FOR PHASE 1 OF THE PLAN AMENDMENTS**

This Terms of Reference outlines the purpose, scope and process for development of Phase 1 of the Plan Amendments.

As required by the Order, Phase 1 of the Plan Amendments will be prepared by the Ministry of Environment and Climate Change Strategy (ENV) in accordance with this Terms of Reference.

As required by the Order, Phase 1 of the Plan Amendments will be submitted to the Minister of Environment and Climate Change Strategy for approval within 12 months of the date of the Order.

#### **1.0 Background**

The 2014 Elk Valley Water Quality Plan (the “Plan”) is an area based management plan developed under Section 89 of the Environmental Management Act (EMA) to improve water quality and support continued mining. The Plan was prepared by Teck Coal Limited (“Teck”) under Ministerial Order No. M113 issued in April 2013. Order M113 established the Designated Area (Schedule E of the Order). The purpose of the Plan, as defined in Order M113, was:

“in order to remediate water quality effects of past activities and to guide future development in the Plan area, the purpose of the Plan is to describe the operational actions which will be taken by Teck to:

1. immediately begin to stabilize water quality concentrations of selenium, cadmium, nitrate, and sulphate, and the rate of accumulation of calcite in the Designated Area;
2. in the medium-term, reduce the rate of accumulation of calcite and set targets to demonstrate progressive reduction in water quality concentrations of selenium, cadmium, nitrate and sulphate in the Designated Area; and
3. in the longer term, further reduce:
  - a. concentrations of selenium, cadmium, nitrate, and sulphate in the Designated Area to acceptable contaminant levels as identified in section B below, and
  - b. control the rate of calcite accumulation to acceptable levels as identified in section B below.”

Order M113 also defined the following environmental management objectives and outcomes for the Designated Area:

- protection of aquatic ecosystem health;
- management of bioaccumulation of contaminants in the receiving environment (including fish tissue);
- protection of human health, and
- protection of groundwater.

The Minister of Environment approved the Plan on November 18, 2014. On November 19, 2014, the Ministry of Environment’s statutory decision maker issued permit 107517 to Teck under Section 14 of the EMA to turn the Plan’s commitments into legal requirements.

The Plan and its ministerial approval inform statutory decisions under the EMA in the Designated Area of the Elk Valley.

## **2.0 Purpose of the Plan and Phase 1 of the Plan Amendments**

### **2.1 Purpose of the Plan**

The purpose of the amended Plan will be as follows:

“The purpose of the Plan is for the Ministry of Environment and Climate Change Strategy to establish environmental outcomes and objectives, including targets for selenium, nitrate, sulphate, cadmium, and calcite, in the Designated Area that will:

- remediate the effects from past activities that are impacting the Elk River watershed by improving water quality; and,
- guide the regulation of effluent discharges into the Designated Area from current and future mining and other dischargers.”

The substance of the environmental management outcomes and objectives for the Designated Area established by Order M113 will be carried forward, and the language will be clarified in Phase 1 of the Plan Amendments.

### **2.2 Purpose of Phase 1 of the Plan Amendments**

The purpose of Phase 1 of the Plan Amendments is to establish a Government of British Columbia led framework that will inform decision-making and clarify regulatory requirements in a designated area that includes multiple dischargers, and a context of evolving science and information, and adaptive management.

Phase 1 of the Plan Amendments will describe how the Ministry of Environment and Climate Change Strategy (ENV) will adjust the Plan to reflect new information, and how water quality targets and the Plan apply to dischargers introducing effluent into the environment in the Designated Area (“Dischargers”). Phase 1 of the Plan Amendments will also provide greater clarity regarding the purpose of the Plan, and environmental outcomes and objectives.

## **3.0 Issues to be Addressed in Phase 1 of the Plan Amendments**

Since the Plan’s approval in 2014, much of the science and foundational information in the Plan has changed or requires updating.

In addition, new proponents, new projects, and major expansions by Teck are being proposed in the Designated Area.

Phase 1 of the Plan Amendments must address the following issues:

### 3.1 Regulatory Oversight

The Plan Amendments will confirm ENV's responsibility for overseeing implementation of the Plan through issuance of authorizations under the EMA, and an adaptive management approach that includes amendments to authorizations and the Plan.

### 3.2 Dischargers in the Designated Area

The Plan Amendments will confirm the regulatory context for the Plan and will clarify how the Plan applies to Dischargers in the Designated Area.

The Plan Amendments will confirm how water quality targets apply to Dischargers in the Designated Area.

The Plan Amendments will outline guidelines to manage discharges among multiple Dischargers.

The amended Plan will outline a process for ensuring consistent use of regional data, monitoring programs and tools by multiple parties.

### 3.3 New Information

The Plan Amendments will establish processes and guidelines to improve Plan adaptability in response to new information.

The Plan Amendments will provide a process for how substances, stations and/or targets may be added, amended, removed and/or reviewed, and how key mitigation plans and mitigation strategies may be updated.

### 3.4 Keeping the Plan Up to Date

The Plan Amendments will outline how the Plan may be amended in the future.

### 3.5 Elk Valley Water Quality Plan

The Plan Amendments will clarify how the approved 2014 Elk Valley Water Quality Plan relates to the amended Plan.

## **4.0 Responsibilities**

ENV is responsible for drafting Phase 1 of the Plan Amendments under the supervision of the Order Manager appointed under this section 4.0 and directions of the Minister.

The Order Manager is the Director of the Southeast Coal Mining Team in ENV. If the Director is unavailable, the Deputy Minister of ENV may appoint another person as the Order Manager.

The Order Manager is responsible for overseeing the work of ENV in relation to Phase 1 of the Plan Amendments, managing the process for development of Plan Amendments including consultation, tracking fulfillment of any directions provided by the Minister, and facilitating the delivery of recommendations for Plan Amendments to the Minister for approval under Section 90.2(3) of the EMA.

## **5.0 Process for Consultation**

ENV will engage with Ktunaxa on the Plan Amendments in accordance with the Province of British Columbia - Ktunaxa First Nation Governments Engagement Plan for Amendments to the Elk Valley Area Based Management Plan, June 14, 2024.

ENV will chair and consider input from an Advisory Committee when developing recommendations for Phase 1 of the Plan Amendments, as described in Section 5.1 of Schedule B.

ENV will publish a copy of draft Plan Amendments, and establish a process for public and stakeholder input on the draft amendments.

ENV may hold meetings with, or request information from, relevant organizations or individuals on an as-needed basis to inform the Plan Amendments.

ENV will consider input received through consultation in developing and preparing the Plan Amendments.

### **5.1 Advisory Committee (AC)**

The Order Manager will establish an AC to provide technical and policy input from First Nations and stakeholders in Phase 1 of the Plan Amendments. The AC will review the recommendations for Plan Amendments before they are published for public comment. The AC is to consist of one representative, and one alternate, from each of the following organizations:

- (a) British Columbia, Ministry of Environment and Climate Change Strategy;
- (b) British Columbia, Ministry of Energy, Mines, and Low Carbon Innovation;
- (c) Yaqit ʔa·knuqliʔit First Nation;
- (d) Other Ktunaxa First Nation Governments in Canada, represented by the Ktunaxa Nation Council Society (KNC) or as otherwise indicated by the Ktunaxa First Nation Governments;
- (e) the Government of Canada, represented by Environment and Climate Change Canada;
- (f) Teck Coal Limited;

- (g) Montem Resources Alberta Operations Limited;
- (h) North Coal Limited; and,
- (i) NWP Coal Canada Limited.

Within 14 days following the issuance of this Order, each organization listed in subsections (a) to (i) in this Section will provide to the Order Manager the name of their representative on the AC and the name of one alternate representative.

The alternate representative may accompany the appointed representative to meetings of the AC. The alternate representative may attend AC meetings on behalf of the appointed representative if the representative is unable to attend one or more of the meetings of the AC.

If any listed organization fails to nominate a representative within the time specified, the AC will consist of the representatives that have been nominated. After 14 days following the issuance of this Order, the appointment of a representative to the AC for an organization listed in subsections (a) to (i) in this Section may be permitted by the Order Manager.

The Order Manager may invite additional organizations and/or individuals to any meeting or to participate in particular elements of the review and input process as deemed appropriate. Meeting regularity, frequency, and duration will be determined by the Order Manager.

The term of the AC commences on the date the Order is issued and expires on submission of Phase 1 of the Plan Amendments to the Minister for approval.

## 5.2 Strategic Advisory Committee (SAC)

The chair of the SAC will be the Order Manager.

The Order Manager will establish a SAC to provide strategic advice as needed to inform the development of recommendations for the Plan Amendments. The Order Manager may bring unresolved strategic-level issues from other committees or meetings to the SAC for discussion and advice. The SAC is not a decision-making body.

The SAC's role is to help address issues and challenges and provide guidance on the development of recommendations for Plan Amendments to meet the directions and requirements in the Order.

The SAC is to consist of one senior representative, and one alternate, from each of the following members of the SAC:

- (a) the Ministry of Environment and Climate Change Strategy;
- (b) Yaqit ?a·knuq̄h̄it First Nation;



- (c) Other Ktunaxa First Nation Governments in Canada, represented by the Ktunaxa Nation Council Society (KNC) or as otherwise indicated by the Ktunaxa First Nation Governments; and,
- (d) Teck Coal Limited.

For clarity, Ktunaxa First Nation Governments including Yaqit ʔa·knuq̓iʔit First Nation are invited to participate on the SAC in recognition of B.C.'s commitment to advance reconciliation by engaging deeply with and seeking consensus with Ktunaxa First Nation Governments.

For clarity, Teck is invited to participate on the SAC in recognition of being the author of the area based management plan approved in 2014 and titled the Elk Valley Water Quality Plan, and as Teck holds significant waste discharge authorizations relevant to the Plan in the Designated Area.

Within 14 days following the issuance of this Order, each member listed in subsections (a) to (d) in this Section will provide to the Order Manager the name of their representative on the SAC and the name of one alternate representative.

Alternate representatives may attend SAC meetings if the appointed representative is unable to attend one or more of the meetings of the SAC.

If any member of the SAC fails to nominate a representative within the time specified, the SAC will consist of those members who have nominated a representative. After 14 days following the issuance of this Order, the appointment of a representative to the SAC for a member listed in subsections (a) to (d) in this Section may be permitted by the Order Manager.

The Order Manager may invite additional organizations and/or individuals to participate in any meeting. Meeting regularity, frequency, and duration will be determined by the Order Manager.

The term of the SAC commences on the date the Order is issued and expires on submission of Phase 2 of the Plan Amendments to the Minister for approval.

### 5.3 Independent Facilitator

ENV will appoint an independent facilitator to support the amendment process, including but not necessarily limited to, facilitating meetings of the AC.

The independent facilitator will provide notice of meetings to advisory committee members, receive and distribute meeting information to advisory committee members, and prepare agendas and meeting notes of advisory committee meetings.

## **6.0 Time Limit for Development of Phase 1 of the Plan Amendments**

Phase 1 of the Plan Amendments will be completed and submitted for approval to the Minister within 12 months of the date of the Order.

The key milestones in development of Phase 1 of the Plan Amendments and the target dates for achieving those milestones are as follows:

<b>Key Milestone</b>	<b>Targeted Timeline For Completion Following Issuance of Order</b>
Draft Recommendations for Phase 1 of Plan Amendments	6 months
Recommendations for Phase 1 of Plan Amendments Submitted to Minister for Approval	12 months

The Order Manager is responsible for keeping the Plan Amendments on schedule.

## **7.0 Coordination with Other Management Plans**

ENV will identify relevant existing or proposed management plans in relation to the Designated Area and ENV will coordinate with the responsible persons for those plans.

## **SCHEDULE C**

### **REQUIREMENTS FOR PHASE 2 OF THE PLAN AMENDMENTS**

At a minimum, the following must be included in the Terms of Reference for Phase 2 of the Plan Amendments:

#### **1.0 Purpose of the Plan and Phase 2 of the Plan Amendments**

##### **1.1 Purpose of the Plan**

The overall purpose of the Plan, outcomes for the Designated Area that are to be achieved through the Plan, and environmental management objectives, will be carried forward from Phase 1 of the Plan Amendments and will not be changed.

##### **1.2 Purpose of Phase 2 of the Plan Amendments**

The current water quality target for selenium in Koocanusa Reservoir was established in 2013 through Order M113 using the approved B.C. water quality guideline for the protection of aquatic life. At the time, this was the best available information to inform a water quality target to protect known values and uses of the reservoir.

Since 2014, a substantial amount of new scientific information has been collected and developed in the reservoir. This includes but is not limited to:

- Water quality sample results collected in accordance with Permit 107517 monitoring requirements.
- Biological data and related data collected in accordance with approved study designs for aquatic effects monitoring in the reservoir, as required by Permit 107517.
- Reports and studies carried out in accordance with Permit 107517.
- Compilation of current conditions data assembled by ENV and KNC to support development of a proposed selenium Water Quality Objective.
- Selenium bioaccumulation model developed by the United States Geological Survey (USGS) through the selenium technical sub-committee of the Lake Koocanusa Monitoring and Research Working Group.

The purpose of Phase 2 of the Plan Amendments is to review the Plan's existing selenium water quality target for the Canadian portion of Koocanusa Reservoir based on consideration of the best available information, and to recommend any amendments to the Plan's existing target if indicated through the review.

## **2.0 Issues to be Addressed in Phase 2 of the Plan Amendments**

There is a need to review the current selenium water quality target for Koocanusa Reservoir in the Plan to ensure the Plan and decisions informed by the Plan support progress towards achievement of the outcomes for the Designated Area and protection of designated uses of the reservoir.

To inform a review of the current selenium target in Koocanusa Reservoir, Phase 2 of the Plan Amendments must address and is not limited to the following issues:

### **2.1 Target Methodology**

The Terms of Reference will propose methods to develop, assess and compare options for selenium targets to protect Koocanusa Reservoir.

### **2.2 Target Criteria**

The Terms of Reference will identify criteria to evaluate alternative options for selenium targets relevant to Koocanusa Reservoir.

### **2.3 Target Recommendation**

The Terms of Reference will outline how a selenium target recommendation will be arrived at, including with consideration of input from an Advisory Committee and possibly advice and/or recommendations from Independent Technical Expert(s).

### **2.4 Outcomes to be Achieved**

The selenium target for Koocanusa Reservoir will apply to the Canadian portion of the reservoir and should achieve the following outcomes:

- support protection of relevant uses of the water body, including but not limited to aquatic life, human health, recreation, wildlife and agriculture;
- include one or more numerical target(s) using one or more media,
- be accompanied by recommended monitoring and calculation methods for determining attainment, and
- be demonstrated to be achievable through an implementation framework with timelines to achieve the target(s).

## **3.0 Responsibilities**

The Terms of Reference will provide that ENV is responsible for drafting Phase 2 of the Plan Amendments under the supervision of the Order Manager appointed under Section 4.0 of Schedule B of the Order.

## 4.0 Process for Consultation

The Terms of Reference must:

- Establish a process for public and stakeholder consultation regarding Phase 2 of the Plan Amendments.
- Provide for engagement with Ktunaxa First Nation Governments in Canada on Phase 2 of the Plan Amendments in accordance with the Province of British Columbia - Ktunaxa First Nations Governments Engagement Plan for Amendments to the Elk Valley Area Based Management Plan, June 14, 2024.
- Provide for input from an Advisory Committee when developing Phase 2 of the Plan Amendments, as described in Section 4.1.

The process for consultation must at a minimum contain the elements described below.

### 4.1 Advisory Committee (AC)

The Order Manager will establish an AC to provide input to development of recommendations for Plan Amendments. The AC is to consist of one representative, and one alternate, from each of the following organizations:

- (a) British Columbia, Ministry of Environment and Climate Change Strategy;
- (b) British Columbia, Ministry of Energy, Mines, and Low Carbon Innovation;
- (c) Yaqit ʔa·knuqʔit First Nation;
- (d) Other Ktunaxa First Nation Governments in Canada, represented by the Ktunaxa Nation Council Society (KNC) or as otherwise indicated by the Ktunaxa First Nation Governments;
- (e) the Government of Canada, represented by Environment and Climate Change Canada;
- (f) Teck Coal Limited;
- (g) the United States Federal Government;
- (h) Montana State Government;
- (i) Idaho State Government;
- (j) the United States Confederated Salish and Kootenai Tribe; and,
- (k) the United States Kootenai Tribe of Idaho.

The Terms of Reference for Phase 2 may include additional organizations to be represented on the AC.

Within 14 days following the Minister's approval of the Terms of Reference for Phase 2 of the Plan Amendments, each AC member including those listed in subsections (a) to (k) in this Section will provide to the Order Manager the name of their representative on the AC and the name of one alternate representative.

The alternate representative may accompany the appointed representative to meetings of the AC. The alternate representative may attend AC meetings on behalf of the appointed representative if the representative is unable to attend one or more of the meetings of the AC.

If any listed organization fails to nominate a representative within the time specified, the AC will consist of the representatives that have been nominated. After 14 days following the Minister's approval of the Terms of Reference for Phase 2 of the Plan Amendments, the appointment of a representative to the AC for an organization listed in subsections (a) to (k) in this Section may be permitted by the Order Manager.

The Order Manager may invite additional organizations and/or individuals to any meeting or to participate in particular elements of the review and input process as deemed appropriate. Meeting regularity, frequency, and duration will be determined by the Order Manager.

#### 4.2 Strategic Advisory Committee (SAC)

The SAC is defined in Section 5.2 of Schedule B of the Order and will continue its functions in relation to Phase 2 of the Plan of Amendments.

#### 4.3 Independent Technical Experts

The Order Manager may appoint Independent Technical Experts to support Phase 2 of the Plan Amendments.

If appointed, Independent Technical Experts will provide oversight through independent technical input on methods, criteria and recommendations for the selenium target for Koochanusa Reservoir.

The Independent Technical Experts may also be asked to review other data, assessments and recommendations assembled by ENV.

One or more experts, including but not limited to, from the following fields may be selected:

- Aquatic selenium toxicology in aquatic environments
- Water and/or wastewater treatment
- Selenium source control and treatment/removal
- Water quality modelling
- Socio-economic analysis

ENV will consult with Ktunaxa First Nation Governments and Teck Coal Limited on the expertise and qualifications required for the Independent Technical Experts. Where consensus cannot be reached, the Order Manager may appoint any Independent Technical Experts.

Independent Technical Experts will be procured through British Columbia's standardized procurement process.

#### 4.4 Independent Facilitator

The independent facilitator is defined in Section 5.3 of Schedule B of the Order and applies to Phase 2 of the Plan Amendments.

### **5.0 Time Limit for Completing Phase 2 of the Plan Amendments**

The Terms of Reference for Phase 2 of the Plan Amendments should propose a schedule of key milestones and target dates for achieving those milestones in a timely manner.

### **6.0 Coordination with Other Management Plans**

ENV must identify relevant existing or proposed management plans in relation to the Designated Area. The Terms of Reference for Phase 2 of the Plan Amendments must outline how other management plans will be integrated and coordinated with Phase 2 of the Plan Amendments.

## **SCHEDULE D**

### **FINANCIAL STRUCTURE**

Any costs associated with participating in the development of the Plan Amendments or associated committees, including responding to information requests by ENV, will be the responsibility of the participating organization.



## SCHEDULE E

### AREA BASED MANAGEMENT PLAN DESIGNATED AREA DESCRIPTION AND MAP

The Designated Area for the Plan is the same as in Order M113 issued in April 2013.

