

## Opinion



**Paved paradise:** Forging Coal's 'Greenhills' Mountop removal coal mine, near Elkford, Elk Valley, B.C., beside the Flathead Valley. Photograph courtesy of Garth Lenz

# Canada-U.S. transborder political dispute looms over water pollution crisis in British Columbia's Elk Valley

The federal government needs to act now to address this issue. It must strengthen the regulations to better protect water quality and aquatic life in the Elk Valley, B.C., and it must also refer the matter to the International Joint Commission.

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**K**IMBERLEY, B.C.—Elk Valley, B.C., is in the heart of the Rocky Mountains, close to the Alberta and Montana borders. It hosts stunning views of rugged mountains and scenic rivers. It is also home to 80 per cent of Canada's annual metallurgical

coal exports, generated by Teck Resources Limited's four-open pit metallurgical coal mines. Metallurgical coal is used to make steel.

These mines use a technique almost indistinguishable from Appalachian mountain-top removal. The mining process involves blasting away mountain peaks to reach the coal and dumping the waste rock into large piles. Blasting devastates the surrounding landscape, while the resulting waste rock piles leach contaminants like selenium into downstream rivers and streams. High concentrations of selenium in water can impair reproduction and cause deformities in fish, threatening fish stocks and the people who rely on them.

It is not just local waterways that are affected. Streams and rivers carry selenium into Lake Koochanusa, crossing the U.S. border and flowing through Montana and Idaho, before re-entering Canada at the town of Creston, B.C. This is where this story becomes one of transboundary politics, as efforts are underway to study the causes, impacts, and remedial actions required to stop the growing pollution problem that will linger in the watershed for centuries to come.

A dispute is looming between Canada and the U.S., based on Canada's apprehension to form a joint agreement to deal with the problem. Global Affairs Canada

needs to refer the water pollution crisis officially to the International Joint Commission (IJC) and consider the first-ever Indigenous-led transboundary watershed board.

Calls for a reference to the IJC have been made by the Transboundary Ktunaxa National, consisting of the Ktunaxa Nation Council in Canada and the Confederated Salish & Kootenai Tribes, and the Kootenai Tribe of Idaho, in the U.S. This call has been echoed by all six commissioners on the IJC, the U.S. Department of State, the U.S. EPA, and the U.S. Geological Survey.

The IJC wrote to Prime Minister Justin Trudeau and U.S. President Joe Biden in May, warning that pollution was getting worse with no "significant binational co-operation." The Ktunaxa Nation Council issued a statement condemning Canada's failure to agree to the referral as flying in the face of the government's commitment to meaningfully engage with Indigenous peoples and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Now the White House has weighed in. A June 7 announcement by the U.S. Department of State reads: "A joint reference would respond to the need for impartial recommendations and transparent communication, build trust, and forge a common understanding of this issue among

local, Indigenous, state, provincial, and federal governments as well as stakeholders and the public in both countries. Support for a joint IJC reference reflects the Biden-Harris administration's commitment to protect public health; conserve our lands, waters, and biodiversity; and deliver environmental justice to communities overburdened by pollution."

One might think these are words Trudeau would embrace, given his oft-stated commitments to Indigenous rights and the environment. Yet Global Affairs Canada seems unimpressed. It even recently wrote to the Ktunaxa National Council it would not be proceeding with the referral, and while the government hastily backpedalled, support has yet to come. Concerns are mounting that Canada intends to ignore the request and the problem it seeks to address.

And there is a problem. The cross-border flow of selenium-contaminated water appears to violate the Boundary Waters Treaty, signed in 1909 by Canada and the U.S. It commits both countries to ensure that boundary waters and waters flowing across the border are not polluted on either side to the injury of health or property on the other.

While the Canadian government has been drafting the proposed Coal Mining Effluent Regulations (CMER) since 2017 to control selenium and other

pollutants discharged from coal mines, the proposed regulations would fall well short of protecting the environment in the Elk Valley. The levels proposed are higher than currently allowed under the Fisheries Act and B.C.'s guidelines for drinking water sources.

Water quality measurements in the Elk Valley have put selenium levels at 16.3 ug/L (micrograms per liter) in parts of the Elk River, exceeding the B.C. government's own water quality limits for drinking water and the protection of aquatic life. Montana and Idaho have passed regulations limiting selenium in Lake Koochanusa to 0.8 ug/L, with concentrations continuing to reach record highs.

The IJC, a binational organization set up under the Boundary Waters Treaty to investigate issues related to shared waterways, can research the problems, set standards, and make recommendations essential to solving complicated issues. Historically, however, it cannot act without a referral from both U.S. and Canadian governments.

The federal government needs to act now to address this issue. It must strengthen the CMER regulations to better protect water quality and aquatic life in the Elk Valley. And it must also refer the matter to the International Joint Commission. Doing so would not only demonstrate Canada's commitment to solving the transboundary water pollution crisis but also highlight the government's willingness to meaningfully implement the United Nations Declaration on the Rights of Indigenous Peoples.

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