

Governing Contamination in ʔamakís Ktunaxa: The Elk Valley Water Quality Plan, Managed Contamination and Regulatory Failure in Ktunaxa Territory

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Introduction

“We are not politicians but are continually subjected to the political will of the day, which determines if and how much, Ktunaxa Governments—Ktunaxa Peoples—are involved”.

Gwen Phillips, Senior Governance Lead, Ktunaxa Nation Council, September 2026

Teck Resources’ Elk Valley Water Quality Plan (EVWQP) is the principal governance framework used by the province of British Columbia, local government, and industry to manage ongoing mining-related contamination within the Elk Valley—a 220km metallurgical coal mining region in southeast B.C., which forms part of ʔamakís ktunaxa, the traditional territory of the Ktunaxa Nation. Because of this, EVWQP governance encompasses Ktunaxa—extended also to the interests and governance of an Indigenous people whose members have inhabited their homelands for over 10,000 years.

This paper asks how well the EVWQP functioned as a governance framework for Ktunaxa—specifically how well it accommodated Ktunaxa interests and governance. It argues that the plan was structurally inadequate in this capacity: constituting a system of managed contamination that legally sanctions ongoing pollution within provincially approved parameters; relying on a standard of regulatory quality the province has demonstrably failed to provide, all the while positioning Ktunaxa as consultees rather than decision-makers over their own territory. These three structural features are not incidental failures—they are interlocking features of a governance architecture whose combined effect situates the protection and interpretation of Ktunaxa stewardship interests in ʔamakís ktunaxa at the discretion of a provincial authority whose regulatory actions have repeatedly accommodated the continuation of mining.

This paper proceeds in two sections. Section 1 establishes the governance context—mining in the Elk Valley, Ktunaxa’s relationship to ʔamakís ktunaxa, and the constitutional and legislative architecture shaping how the plan functions for Ktunaxa. Section 2 opens by examining the scientific methodology underpinning the plan’s selenium benchmarks, illustrating how the plan’s governance architecture produced a compliance framework developed without substantive Ktunaxa input and against the available scientific consensus, before developing three interlocking structural sources of governance tension: an authorisation-not-prohibition regulatory model that legally sanctions ongoing contamination within provincially approved limits; an enforceability gap, wherein the province’s exclusive enforcement authority has been exercised through unprotective permit limits, discretionary enforcement, and disproportionately small penalties; and a consultation gap—not between what consultation delivered and what it was designed to deliver, but between what consultation as a constitutional instrument can confer and what Ktunaxa governance requires. The conclusion synthesises these findings and identifies directions for future research, including the governance implications of the plan’s 2025 amendment.

Methodology

This paper is a primarily case study analysis grounded in primary documentary and fieldwork evidence rather than theoretical engagement with existing academic literature. Where scholarly frameworks are deployed, they contextualise empirical findings rather than generate them. This paper's scientific engagement is limited to selenium—the most extensively documented and harmful contaminant in the Elk Valley—and its effects on aquatic ecosystems; other contaminants and governance dimensions, including nitrate, sulphate, cadmium, human health, groundwater, and socio-economic considerations, fall outside its scope.

The methodology combines documentary analysis of primary and secondary sources with original fieldwork findings that ground the analysis in first-hand Ktunaxa voices and perspectives. Fieldwork excerpts are presented alongside analysis where relevant throughout the paper rather than in a standalone section. Documentary sources include legislative instruments, court cases, regulatory permits, government audits and policy documents, scientific and technical reports, peer-reviewed literature, corporate filings, compliance databases, Ktunaxa public statements and documents, advocacy submissions, secondary academic literature, and non-public internal communications. Fieldwork was conducted 7-27 July 2026 in Cranbrook and Creston, B.C., with two additional post-fieldwork meetings conducted remotely on 8 August 2026. Eight participants were engaged, selected for their experience in Elk Valley governance and the EVWQP: Ktunaxa members (Jaime Vienneau, Codie Morigeau, Gwen Phillips, Jason Andrew), non-Ktunaxa staff of Ktunaxa organisations (Heather McMahon, Emma Thompson), and a regional environmental advocate (Simon Wiebe). Additional contributions were received through written correspondence with Christopher Horsethief, a research consultant to the Ktunaxa Nation Council, and a Ktunaxa member, cited where directly relevant.

Conversations with three participants were fully recorded; remaining conversations were captured through field notes including direct quotations transcribed by hand. Some evidence therefore rests on hand-transcribed quotations rather than verbatim transcripts, which represents the primary methodological limitation of the fieldwork dimension. This paper's reliance on publicly available documentary sources means non-public materials remain largely beyond its scope, and the mandated word limit has constrained analytical depth throughout.

Positionality

This research was conducted by a first-year undergraduate at Durham University approaching the subject as a non-Indigenous researcher. Analytical conclusions are drawn primarily from publicly available documentary evidence. Where fieldwork evidence is used, individual participant perspectives are not presented as institutional Ktunaxa positions unless explicitly attributed as such. Presentations of Ktunaxa philosophy and cultural practice are partial and contextual, reflecting what participants shared and what Ktunaxa sources publicly articulate, rather than a total account of Ktunaxa knowledge.

This research was conducted under ethical approval granted by the Ktunaxa Research Ethics Committee. All fieldwork participants and the Ktunaxa Nation Council (KNC) received a copy of this paper for review prior to submission. This paper's analytical framework operates within the ʔitqawxawigikimik framework—a commitment to research conducted with respect, reciprocity, and responsibility toward the Ktunaxa Nation and ʔamakís ktunaxa. Where it falls short of that standard, the shortcoming is the author's own.

1. GOVERNANCE CONTEXT

1.1 Mining in the Elk Valley

The Elk Valley is home to five major metallurgical coal mines comprising the valley's mining sector, which is of considerable economical value to both the region and province at large (Government of British Columbia 2024b). From 2008 to 2024, all five mines were operated by Teck Resources Limited, under their coal division Teck Coal, with the company having previously operated in the area under the Elk Valley Coal Partnership (Teck Resources Ltd. 2008; British Columbia Ministry of Environment and Climate Change Strategy 2024a). Mining in the Elk Valley utilizes a process called Mountaintop Removal (MTR), a destructive resource extraction method which uses explosives to remove mountain summits—providing access to deep coal seams below. MTR creates vast waste rock piles, which are deposited into surrounding valleys (British Columbia Ministry of Environment and Climate Change Strategy 2024a; U.S. Environmental Protection Agency 2018). These piles are highly susceptible to weathering, which converts naturally occurring selenium bound within rocks into bioavailable forms (Elk River Alliance n.d.). Rain and snowmelt flow through these piles, mobilising this selenium and transporting it into mine-affected tributaries, and eventually mainstem watersheds (Elk River Alliance n.d.). This is the principal mechanism by which mining in the Elk Valley releases selenium into surface and groundwater.

The scale of selenium contamination in the Elk Valley is vast—with demonstrable impacts downstream in the U.S. Studies indicate that 95% of selenium loads within Lake Koocanusa (a shared body of water between B.C. and Montana) originate from the Elk River, with selenium originally released in the Elk Valley detectable at least 575km downstream (McDonald 2009; Foster et al. 2024).

The EVWQP itself emerges from a cumulative history of environmental concern surrounding selenium in the Elk Valley. Since 1995 it was understood that coal mining was mobilizing selenium into the Fording River (*R. v. Teck Coal Limited* 2021), a tributary of the Elk River, which itself flows through the valley—with a later study in 1998, commissioned by B.C., reporting selenium levels above known toxic-effect thresholds in Elk Valley waterways (Macdonald and Strosher 1998). Prior to 2009, Teck was aware that selenium could be environmentally harmful (*R. v. Teck Coal Limited* 2021).

On 15 April 2013, B.C.'s Minister of the Environment issued Ministerial Order M113 to Teck Resources—mandating them to create what would become the EVWQP to address water quality in the region. Within the order, the Minister cites the concentration of selenium among other contaminants “which may exceed provincial Water Quality Guidelines, and may be causing impairment of ecosystem health, and are from numerous sources related to mining activity in the area” (British Columbia Minister of Environment 2013; British Columbia Ministry of Environment and Climate Change Strategy 2025). In response, Teck submitted their EVWQP on 22 July 2014, approved by the Minister of Environment on 18 November 2014 (British Columbia Ministry of Environment 2025). Upon approval, the EVWQP became the primary framework through which the province and industry govern contamination in the Elk Valley.

1.2 Ktunaxa in the Elk Valley

The Ktunaxa Nation are the Canadian portion of Ktunaxa; an Indigenous community across Canada and the U.S. who have continuously inhabited their homelands for over 10,000 years (Ktunaxa Nation 2025). The Ktunaxa Nation consists of four First Nation communities—ʔaąam, ʔakisq̓nuk, yaqan nuʔkiy, yaq̓it ʔa·knuq̓i'it—collectively represented by KNC (Ktunaxa Nation 2025). Ktunaxa also exist in the U.S.,

through the Confederated Salish and Kootenai Tribes and Kootenai Tribe of Idaho, who the Ktunaxa Nation affirm an enduring connection to (Ktunaxa Nation 2025).

The Ktunaxa Nation (hereafter Ktunaxa) are uniquely affected by the environmental effects of mining in the Elk Valley due to their cultural and spiritual relationship to ʔamakʷis ktunaxa, particularly their stewardship duty—a spiritual covenant given to them by the creator, grounded in the Ktunaxa creation story (Ktunaxa Nation Council n.d.). Ktunaxa stewardship is holistic, encompassing all living things, a concept expressed in the philosophical tenet ʔa·kxamʷis ɥapi qapins—all living things connected (Ktunaxa Nation Council 2025; Ktunaxa Nation 2016). The Ktunaxa Nation 2025 Land Declaration articulates this relationship: "Yaqał H̄ankath̄iḱti na ʔamak – Our people care for the land, the land cares for our people – is our stewardship responsibility", and "as anything that affects one affects everything else, including ourselves," (Ktunaxa Nation 2025). This stewardship commitment is not a historical claim but an active, ongoing obligation—one which is owed to future generations (Heim et al. 2023; Ktunaxa Nation 2025).

During fieldwork, KNC Senior Governance Lead Gwen Phillips commented on this relationship, stating "we don't own the land, the land owns us". She further articulated her understanding of ʔa·kxamʷis ɥapi qapsins and this holistic relationship through a vision: she described being a singular drop of water falling into the Elk River, at which point she became part of the unified, flowing mass of all water in the Elk River. She flowed down the river, within the mass, eventually forming into a fish, then a deer, then an elk, then into grass. (Gwen Phillips, interview by author, Cranbrook, B.C., 17 July 2026).

The lived-in meaning of ʔa·kxamʷis ɥapi qapins was also articulated by Ktunaxa Elders in research conducted by Codie Morigeau, Director of Governance at ʔaḱam, for her master's thesis on Ktunaxa governance capacity in relation to Ktunaxa traditional knowledge. The Elders stated "So, ceremony is, I don't know if we could have such a broad sort of saying as ceremony is definitely something that we practice in our own beliefs around ʔakxam' is q' api qapsin—that everything has a spirit. Whether it is a human being or the river that I am looking at as I sit here talking with everybody. Or the trees outside, or the rocks, the air, you know I see the mountains in the distance. Everything has a spirit, everything has a life, and it all depends on each other." (Morigeau 2020).

Water itself is implicitly important to Ktunaxa on a spiritual and cultural basis, with KNC publicly stating: "the value and significance of wuʔu [the water] to the Ktunaxa Nation and in qukin ʔamakʷis must not be understated" (Ktunaxa Nation Council 2021a). Many cultural practices are also water-based, including fishing (Permit 107517 Environmental Monitoring Committee 2022), tying water to cultural expression. Gwen Phillips further contextualised water's spiritual importance to Ktunaxa, commenting "we [Ktunaxa] use water in so many of our ceremonies" (Gwen Phillips, interview by author, Cranbrook, B.C., 17 July 2026).

Elk Valley waterways and surrounding watersheds also host several culturally important species of fish identified to Ktunaxa, including Westslope Cutthroat Trout and Bull Trout (Ktunaxa Nation Council 2022a), species among the most sensitive to selenium within the Elk Valley (Montana Department of Environmental Quality 2022).

The Ktunaxa Nation has publicly expressed concern regarding the effects of Elk Valley coal mining and associated water-quality contamination on aquatic ecosystems, including fish. KNC has characterised existing industrial impacts to the watershed as significant and ongoing and has emphasised a responsibility to protect aquatic life and restore the health of Elk Valley waters (Permit 107517 Environmental Monitoring Committee 2022). Ktunaxa are affected by selenium contamination in the Elk Valley in a way no other community is and are therefore affected by the governance of the EVWQP in kind.

1.3 Legislative Architecture and Indigenous Governance

The EVWQP operates within a constitutional and legislative network that fundamentally shapes how it operates as a governance framework, and thus where its limitations for Ktunaxa may be found. The EVWQP is an Area-Based Management Plan (ABMP), formally a statutory planning mechanism under division 2, § 89–91 of the Environmental Management Act (SBC 2003, c 53) (EMA), the purpose of which is to allow the province to manage environmental pollution in a designated geographical area (Government of British Columbia 2026a). As per Order M113, Teck were given responsibility for developing the plan, meaning that the EVWQP effectively functions as an industry-derived solution to the contamination within the Elk Valley—with the stated aim of addressing “increasing selenium and nitrate water concentrations within the Valley and assess and track levels of cadmium and sulphate in waters, while at the same time allowing for continued sustainable mining in the Valley” (Teck Resources Limited 2014a).

The EMA itself is the principal legislation used to govern environmental contamination in B.C., constituting the legal spine of the EVWQP, and defining its underlying legal character. The EMA’s approach to environmental contamination operates on what this paper conceptualises as an authorisation-not-prohibition model, whereby according to section 6(5) environmental contamination is permitted within defined parameters approved by the province, affirmed through a permit issued to the regulated party—in this instance Teck. Upon approval of the EVWQP Teck was issued permit 107517 under the EMA, authorizing them to continue mining operations subject to stipulated conditions within the permit—including defined parameters for selenium, among other contaminants. This system underpins what the EVWQP represents, and thus how it governs—establishing the plan not as a prevention strategy but a managed contamination framework; one in which pollution is legally sanctioned within provincially approved limits; the governance implications of which are developed within section 2 of this paper.

Also influential is Canada’s Indigenous governance environment, within which the EVWQP operates—dictating how Teck and the province engaged with and consulted Ktunaxa during the EVWQP’s development. In the context of the EVWQP, this duty is largely characterised by two landmark Supreme Court decisions from 2004: *Haida Nation v British Columbia (Minister of Forests)* [2004] 3 SCR 511 and *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)* [2004] 3 SCR 550.

Together these cases established that the Crown must consult Indigenous peoples before making decisions that may adversely affect asserted or established Aboriginal rights or title — a duty grounded in section 35 of the Constitution Act 1982 and the honour of the Crown, triggered by Crown knowledge of a credible Indigenous claim and contemplated conduct that might adversely affect it. The duty applies to statutory decision-making processes including environmental approvals and permits, and requires meaningful rather than perfunctory engagement. Crucially, it is procedural not substantive — it requires genuine consultation and where appropriate accommodation, but does not confer a veto or shared decision-making authority, with the Crown retaining ultimate statutory authority (*Haida Nation v. British Columbia* 2004; *Taku River Tlingit First Nation v. British Columbia* 2004)."

This constitutional and legislative architecture underpins two specific governance limitations for Ktunaxa within the EVWQP. First, an enforceability gap—the plan’s legal architecture concentrates enforcement authority with the province while providing Ktunaxa with no formal mechanism to trigger or compel an enforcement response. Second, a consultation gap—wherein the consultation delivered during the plan’s development, while technically extensive, operated within a framework that fell short of the decision-making authority Ktunaxa governance requires. Both are developed in section 2.

2. GOVERNANCE LIMITATIONS

2.1 Scientific Architecture as Limiting

The scientific foundation of the EVWQP's governance of selenium, specifically its water-quality benchmarks, presents a source of governance tension—informing a compliance architecture which may not be suitably protective of the environment, and which was developed in the absence of Ktunaxa input.

Selenium principally causes harm in aquatic ecosystems through bioaccumulation, concentrating progressively across trophic levels until reaching a toxicological endpoint in fish eggs and ovaries, where it can transfer into embryos causing structural birth defects and early-life mortality (Stewart et al. 2010; Chapman et al. 2010). Lemly (2002) documented this mechanism at Belews Lake, North Carolina, where selenium caused the collapse of 19 of 20 fish species over six years—crucially without visible adult fish mortality, with populations appearing stable while harm accumulated irreversibly into reproductive tissue. Environment and Climate Change Canada has since confirmed actual deleterious effects on fish and fish habitats within the Elk Valley itself (British Columbia Ministry of Environment and Climate Change Strategy 2023).

The scientific literature establishes that water-column measurements alone significantly understate biological risk—with fish tissue concentrations providing a more direct indicator of selenium exposure and potential toxic effects, a finding affirmed by B.C.'s own 2014 selenium guidance and the U.S. EPA's freshwater selenium criterion (British Columbia Ministry of Environment 2014; United States Environmental Protection Agency 2016). Emma Thompson, a water quality biologist at KNC with prior experience as a consultant under Teck, noted that tissue and water-column methodologies work in combination rather than opposition, and highlighted the additional value of Benthic Invertebrate Tissue sampling in capturing selenium exposure across multiple life stages and species that adult tissue sampling alone cannot reflect (Emma Thompson, interview by author, Cranbrook, B.C., 24 July 2026). The analytical concern is not that water-column measurements are a useless metric, but that deploying them in isolation—relegating tissue concentration and BIT to the plan's monitoring framework rather than its compliance architecture—produces a metric for legal accountability whose connection to selenium's primary harm pathway is demonstrably weaker than a combined approach offers.

Against this scientific backdrop, Teck's chosen methodology warrants scrutiny. To derive water-column benchmarks, Teck commissioned an external consultancy firm, Golder Associates, to develop a predictive bioaccumulation model translating water-column concentrations into predicted tissue concentrations. Despite selecting the most conservative model formulation, Golder Associates anchored the derivation in an industry-commissioned tissue threshold of 20 µg/g dry weight—nearly double B.C.'s own regulatory standard of 11 µg/g (Golder Associates 2014; DeForest et al. 2012). Furthermore, at the invertebrate-to-egg stage (where the model aims to predict the transfer of selenium from invertebrates to fish eggs) below approximately 7mg/kg dry weight invertebrate selenium, egg selenium becomes unresponsive to changes in dietary or water concentration—a decoupling problem which means that the model is least informative precisely where regulatory assurance is most needed. Emma Thompson described the model as "preliminary" and based on "more assumptions than necessary", raising specific concerns about the invertebrate-to-fish-egg step (Emma Thompson, interview by author, Cranbrook, B.C., 24 July 2026). In their own 2020 Annual Information Form, Teck acknowledged that "there can be no assurance that the water quality targets set out in our valley-wide water quality management plan will prove to be suitably protective of the environment" (Teck Resources Limited 2021).

Teck's chosen methodology cannot be attributed to scientific uncertainty, as the literature establishing water-column inadequacy predates the EVWQP (Lemly 2002; Hamilton 2002; Stewart et al. 2010; Chapman et al. 2010). Teck's technical appendices acknowledge this—with the EVWQP's Benchmark Derivation Report stating that deriving benchmarks "required consideration of not only aqueous selenium concentrations, but also their relationship to tissue concentrations" (Golder Associates 2014). Within Chapter 8, the plan's primary scientific discussion, Teck cites Stewart et al. (2010), Chapman et al. (2010), and B.C.'s own 2014 selenium guidance for broad descriptive claims about bioaccumulation and species variability, while omitting each source's finding that tissue-based assessment is the more reliable and direct indicator of selenium risk—confirming that the choice to rely on water-column measurement was made with awareness of the available alternatives.

The implications of this methodology are substantial, informing directly how the province tracked Teck's compliance—the Golder Associates benchmarks became official Site Performance Objectives in Permit 107517, which substantially informed compliance point limits set by the province for ten mine-affected locations across the Elk Valley (British Columbia Ministry of Environment and Climate Change Strategy 2026). Though Ktunaxa were present in later scientific review, as explored in the subsequent analysis, their input was not visibly present within the above scientific methodology—meaning the scientific framework defining acceptable selenium levels in Ktunaxa territory was derived through a process to which Ktunaxa contribution was absent at its most consequential stage.

Gwen Phillips, Senior Governance Lead at KNC, captured the epistemological dimension of this absence from the foundational scientific process, commenting on the broader absence of Ktunaxa input at the foundations of decision-making: 'you don't know what's around the corner... we can't know what we don't know until we're willing to look' (Gwen Phillips, interview by author, Cranbrook, B.C., 17 July 2026). That observation articulates precisely what the preceding analysis demonstrates technically—the compliance architecture is least informative precisely at the point where the consequences of not knowing are most severe and was constructed without the foundational input of those whose territory and stewardship responsibilities it governs. The following section examines whether the province, having inherited this compliance architecture, took adequate measures to ensure its limits were suitably protective.

2.2 Authorisation-Not-Prohibition

The authorisation-not-prohibition model places a pivotal duty on the regulating party—in this case the province—to ensure strong regulation. In terms of Elk Valley governance, B.C. assumes responsibility for drawing the boundaries within which industry operates and establishing the consequences for when industry falls outside those parameters. Given that Ktunaxa do not exercise the provincial statutory powers through which industrial discharges are authorised and enforced, their ability to fulfil their stewardship responsibilities through binding regulation of industry is substantially dependent upon provincial decision-making. The authorisation model therefore creates what may be understood as a functional good-faith requirement: the province as regulator must exercise that authority in a manner capable of protecting the environment—where it fails to do so, the model ceases to provide Ktunaxa with an effective regulatory mechanism through which their stewardship interests can be protected, becoming a governance limitation for the EVWQP, which operates within it. The EMA—the legal spine of the EVWQP—states its purpose as the 'management, protection and enhancement of the environment' under section 5, establishing the standard against which the province's regulatory conduct may be assessed.

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those parameters. Given that Ktunaxa do not exercise the provincial statutory powers through which industrial discharges are authorised and enforced, their ability to fulfil their stewardship responsibilities through binding regulation of industry is substantially dependent upon provincial decision-making. The authorisation model therefore creates what may be understood as a functional good-faith requirement: the province as regulator must exercise that authority in a manner capable of protecting the environment—where it fails to do so, the model ceases to provide Ktunaxa with an effective regulatory mechanism through which their stewardship interests can be protected, becoming a governance limitation for the EVWQP, which operates within the model.

The documentary record supports a conclusion that the province demonstrably failed in this capacity by regulating in a manner un conducive with environmental protection. This is apparent in Permit 107517, which directly translated Teck-derived selenium figures into SPOs—a core compliance metric used to assess whether downstream locations are at protective selenium concentrations. Of the 7 selenium SPOs within Permit 107517, only one adhered to the province’s 2 µg/L aquatic-life guideline at Lake Koocanusa at 2 µg/L.

The permit’s compliance point limits offer a similar picture. Designed to track Teck’s compliance by assessing the levels of selenium at specific mine-affected tributaries, the province drew on Teck’s own SPO figures (British Columbia Ministry of Environment and Climate Change Strategy 2026). Of the 10 selenium Compliance Point limits within Permit 107517, none fall within the province’s own 2 µg/L freshwater aquatic-life guideline (British Columbia Ministry of Environment 2014; British Columbia Ministry of Environment 2018). The lowest compliance point limit was 8 µg/L which is four times provincial guidance. The next lowest limit was 19 µg/L, nearly ten times the provincial guidance. The highest compliance point limit was 61 µg/L – roughly thirty times the provincial guidance.

It is important to note site-specific water quality objectives are distinct from general provincial guidelines, being designed to reflect local conditions (Government of British Columbia 2026b; Government of British Columbia 2026c). However, in the case of the Elk Valley limits Teck themselves have stated that the short-term SPOs and Compliance Limits were established according to what was “technically and financially achievable”, while the province acknowledges that EVWQP targets “allow for higher amounts of certain mining-related substances in some parts of the watershed” (B.C. Ministry of Environment and Climate Change Strategy 2026; Teck Coal Limited 2019). This suggests that the basis of these permitted levels was not maximizing environmental protection, rather operational constraints—the fact that only a singular figure within the permit was within the province’s generic guidance raises serious questions around how protective these permits are.

During fieldwork Emma Thompson offered her own technical outlook, commenting that Permit 107517’s selenium limits were “not protective” of the environment, adding that industry in the Elk Valley receive “a little extra leeway in their permits” (Emma Thompson, Interview by author, Cranbrook, B.C., 24 July 2026). This sentiment is echoed by environmental advocacy groups in the. In a 2021 submission requesting a formal federal inquiry into regulatory failure in the Elk Valley, Wildsight (represented by the University of Victoria Environmental Law Centre) argued that B.C. permitted selenium concentrations that were themselves insufficiently protective of the environment (Langelier et al. 2021). The submission characterised the EVWQP and Permit 107517 as regulatory “half-measures”, contending that the province had allowed continuing contamination despite Order M113’s stated objective of stabilising and reducing selenium concentrations (Langelier et al. 2021). While the submission represents an advocacy position, rather than an independent regulatory finding, its critique closely echoes the concerns raised by the Auditor General regarding permissive limits and the failure of the regulatory regime to ensure timely reductions in selenium.

B.C.'s Auditor General raised similar concerns surrounding the adequacy of the province's actions in ensuring environmental protection. In her 2016 review of compliance in the mining sector, Auditor General Carol Bellringer characterised the Permit 107517's permitted selenium levels as "inconsistent" with the precautionary principle, an established environmental and public-risk governance principle, defined within the audit: "when human activities may lead to unacceptable harm that is scientifically plausible but uncertain, the precautionary principle states that actions should be taken to avoid or diminish the harm". She stated that the Elk Valley's "proposed targets over the next seven years show a reduction in selenium but are still significantly higher than current concentrations creating a high risk of further environmental impacts". She further stated that "The Area-Based Management Permit [Permit 107517] was meant to reflect the ministerial order of stabilizing and reducing selenium. We therefore expected the levels of selenium set in the permit to reflect the order. Instead, we found that the permit levels of selenium for most areas exceed the known historical levels in the Elk Valley" (Office of the Auditor General of British Columbia 2016). Characterising MoE's overall regulatory approach within the Elk Valley, she stated "The lack of sufficient and effective regulatory oversight and action by the Ministry of Environment (MoE) to address known environmental issues has allowed degradation of water quality in the Elk Valley" (Office of the Auditor General of British Columbia 2016).

The protectiveness of permitted selenium levels even attracted transboundary scrutiny. Teck's records show that during the plan's developmental stages, Montana and U.S. officials through official consultation channels commented on the 2 µg/L target for Lake Koocanusa, stating: "Teck needs to explain how a selenium target of 2 µg/L in Lake Koocanusa is compliant with the Order requirement to, 'immediately begin to stabilize water quality concentrations of selenium, cadmium, nitrate, and sulphate, and the rate of formation of calcite in the designated area'. Those officials asserted that "at a minimum" the plan's executive summary alongside Chapter 2 documented that there had not been "scientific consensus amongst members of the TAC about the proposed target for Lake Koocanusa (2 µg/L Se)." (Teck Resources Limited 2014b).

Based on the available documentary record, B.C. appears to have demonstrably failed in this functional good-faith requirement—permitting unprotective levels of selenium in the Elk Valley. This may be contextualized within B.C.'s broader provincial policy—which clearly indicates an orientation towards supporting the continuation of mining in the valley. Within a 2023 FOI request the province states that it "continues to be creative and support the ongoing work in the Elk Valley to achieve the goal of sustained mining to support economic interests", further stating "bold action and acceptance of risk is required to find a path forward that will enable the extension of mining activities" (British Columbia Ministry of Energy, Mines and Low Carbon Innovation 2023). This orientation is further contextualised within the Elk Valley's economic stake—contributing 85% of Canada's metallurgical coal output, and alone constituting 59% of B.C.'s entire mining industry (Government of British Columbia 2024b).

Such a dynamic creates an inherent regulatory conflict of interest—wherein the entity responsible for regulating the industry responsible for contamination economically benefits from said industry. This was a dynamic Bellringer directly critiqued in the case of the Ministry of Energy and Mines (MEM)—commenting that their role in promoting mining development was "diametrically opposed" to their compliance and enforcement responsibilities, creating an "irreconcilable conflict". Though Bellringer directs this observation towards MEM specifically, the inherent conflict she identifies is not ministerial in origin—it reflects a broader tension implicit to province as a political entity, and its simultaneous role as both promoter and regulator of resource extraction, a tension that is not exclusive to any single ministry precisely because it derives from the province's own competing institutional commitments.

Nevertheless, this can be identified within MoE itself—specifically within a 2013 mine expansion in the Elk Valley at Line Creek. Bellringer states: "MoE staff, with input from external experts, concluded that the

selenium levels in the proposed Line Creek Expansion Permit were not likely protective of the environment. The statutory decision-maker could not approve the permit. Subsequently, the permit was granted by Cabinet. This was the first time that Cabinet used this approval process. The rationale for the decision was not publicly disclosed.” (Office of the Auditor General of British Columbia 2016). While the basis of this decision was not publicly disclosed, MoE records directly state that, concerning Line Creek expansions, decisions would be made in “consideration of balancing the ongoing health of the watershed while allowing for continued sustainable mining activities”, noting this as a key message, and further adding that “The regional economy of the Elk Valley and surrounding areas is heavily dependent on mining and related activities” (British Columbia Ministry of Environment 2013). While the rationale for the cabinet override was never publicly disclosed, its occurrence within a regulatory environment in which the province has explicitly committed to sustaining mining activity, specifically within the case of Line Creek expansions, raises serious questions about the weight afforded to environmental protection when it conflicts with the continuation of mining. For Ktunaxa, to whom environmental protection within the Elk Valley is not merely desirable but fundamental to their relationship to ʔamakis ktunaxa and identity, such a dynamic constitutes no less than regulatory failure.

This dynamic was independently characterised by both Ktunaxa governance professionals and regional environmental scientists during fieldwork. Commenting on provincial regulation in relation to the economic value of Elk Valley Mining, Codie Morigeau commented: “It’s easier to not appease us...than it is to not appease...the hand that feeds them” (Codie Morigeau, Interview by author, Cranbrook, B.C., 21 July 2026). When asked to comment on whether he believed the province to be governing neutrally in the Elk Valley, balancing environmental protection with economic interests, Wildsight’s Mining Impacts and Policy Lead Simon Wiebe stated “I don’t think from any perspective you could see them as being neutral...you can never have a discussion with the province where they say yeah we don’t really want Fording River extension to go ahead, it’s too disruptive”. (Simon Wiebe, Interview by author, Creston, B.C., 16 July 2026).

This does not mean that the province explicitly supports contamination in the Elk Valley, or that Teck possessed the unfettered right to pollute, rather it illustrates how this approach to contamination becomes a limitation for EVWQP governance. Within a model where environmental contamination is approached through management rather than prohibition, the provincial authority responsible for regulating contamination has shown demonstrable support for the industry creating contamination. The consequences of this dynamic are clear in the EVWQP, wherein permitted selenium levels are not environmentally protective. While problematic from an environmental perspective, from a Ktunaxa stance it is critical—though their stewardship responsibilities remain continuous, the statutory power to constrain industrial pollution rests largely with a provincial government whose regulatory choices have repeatedly accommodated the continuation of the very industry threatening their way of life; a dynamic whose shortcomings also emerge in the province’s approach to enforcement.

2.3 Enforcement Gap

In a dynamic such as that of the Elk Valley’s, strong regulation requires strong enforcement. Where a regulated party breaches permit conditions, enforcement must be sufficiently certain and adequately severe to deter future non-compliance—a requirement that becomes more critical when the regulatory limits being enforced are themselves, as established, not fully protective of the environment. An enforcement regime that responds to non-compliance with punitive measures disproportionate to the regulated party’s scale does not fulfil this deterrence function, regardless of how consistently those penalties are applied.

As the statutory basis of the plan, the EMA dictates how the province responds to non-compliance within EVWQP governance—specifically in terms of breaches to Permit 107517. When permit conditions are breached, the province has access to a range of enforcement measures; including orders to prevent, control or abate pollution, permit amendments, administrative penalties, suspension or cancellation of a permit, and referral for investigation or prosecution. Crucially, these measures are not automatic consequences of non-compliance, as the EMA does not require a particular enforcement response to every permit exceedance, and (subject to procedural and limitation periods applying once particular enforcement mechanisms are pursued) does not impose a general deadline within which the province must take enforcement action following an exceedance. The province therefore retains substantial discretion over whether, when, and through which mechanism it responds to permit non-compliance.

Ktunaxa do not themselves possess authority under the EMA to initiate enforcement proceedings or a statutory right to compel the province to impose a particular enforcement response following a permit breach. They do, however, retain a limited avenue of recourse through the Environmental Appeal Board. S. 99 of the EMA defines the categories of appealable decisions, while s.100 permits a “person aggrieved” by a decision of a director or district director to appeal. These decisions include making an order or imposing a requirement; exercising a statutory power other than delegation; issuing, amending, renewing, suspending, refusing, cancelling, or refusing to amend a permit; adding requirements or conditions to a permit or order; determining to impose an administrative penalty; and determining that the terms of an administrative-penalty agreement have not been performed. To bring such an appeal, Ktunaxa must establish that the decision will or may prejudicially affect their interests, directly or indirectly, and the appeal must ordinarily be commenced within 30 days after notice of the decision is given. Ktunaxa therefore remain largely reactive within the EMA framework: although certain affirmative decisions of a director may be appealed, the Act provides no general mechanism through which they can compel the province to initiate enforcement following a permit breach. Given this, enforcement around the EVWQP exists within a similar dynamic as regulation—wherein the province assumes large responsibility, making decisions at the most critical enforcement juncture.

Original analysis of the province’s enforcement against Teck following the EVWQP’s adoption supports a conclusion that the province did not deploy sufficiently strong enforcement. Although the EMA provides B.C. with a variety of escalating responses as outlined above, the principal serious sanction deployed against Teck was the administrative monetary penalty—instituting a direct monetary consequence. Analysis within a 2017-2024 timeframe (a timeframe selected to allow sufficient time for the EVWQP’s regulatory framework to take effect following its 2014 adoption, and concluding at EVR’s assumption of mine operations from Teck in 2024) from B.C.’s Natural Resource Compliance and Enforcement Database information shows that Teck received 21 administrative monetary penalties (AMPs) under the authority of the EMA between 2017 and 2024 (Government of British Columbia n.d.).

The lowest singular AMP was C\$8,000, and the highest C\$15,480,000, with a median AMP value of \$31,000 (Government of British Columbia n.d.). Calculated as a percentage of Teck’s median annual profit attributable to shareholders across the same period (approximately C\$1.7245B, derived from Teck’s annual reports) the median AMP represented approximately 0.0018% of profits (Teck Resources Limited 2024; Teck Resources Limited 2022; Teck Resources Limited 2020; Teck Resources Limited 2017). The largest singular penalty of C\$15,480,000 in 2023 represented just 0.645% of Teck’s profit attributable to shareholder value that year (Government of British Columbia n.d.; Teck Resources Limited 2024). Considering the heavily skewed distribution of AMP values, with the C\$15.48 million penalty far exceeding the next-highest AMP of C\$864,000, the median provides a more representative indication of the typical monetary penalty imposed.

It may be argued that consistent administration of penalties over this period reflects active enforcement on the part of the province, rather than regulatory absence. However, the frequency of enforcement action does not by itself establish that the sanctions imposed carried substantial punitive or deterrent weight. Measured against Teck's corporate profitability, the typical administrative penalty was extremely small. While corporate profit is not by itself a complete measure of deterrent effect, the scale of these penalties raises a substantial question as to whether AMPs could exert meaningful punitive or deterrent pressure on a company of Teck's size.

Simon Wiebe characterised this monetary enforcement in starker terms, arguing that it constitutes "a cheap mining permit" when spread across multiple years of violations, and measured against annual profits. (Interview by author, Creston, B.C., 16 July 2026). Codie Morigeau similarly criticised the economic effect of provincial enforcement: "Teck was receiving such small fines, ridiculously small fines ... it's easier to pay the fine than it is to do the work that needs to be done to prevent the damage that's being done." Referring subsequently to a substantially larger C\$60,000,000 monetary penalty issued to Teck—initiated by federal rather than provincial authorities—Codie commented: "British Columbia would never penalise them [Teck]" (Codie Morigeau, interview by author, Cranbrook, B.C., 21 July 2026). This characterisation is echoed by KNC themselves, who in a 2022 submission stated: "Penalties have been to date a cost savings to Teck Coal" (Ktunaxa Nation Council 2022c).

Bellringer also questioned the adequacy of provincial enforcement in her aforementioned 2016 audit: "To meet the provincial goals for new mines and mine expansions, MEM and MoE are focusing on permit applications. As a result, there are few resources dedicated to the regulatory activities of monitoring, compliance, and enforcement". She further highlighted "significant deficiencies" in MOE's enforcement responses, resulting in "delayed or unsuccessful enforcement" (Office of the Auditor General of British Columbia 2016).

It is against this backdrop of demonstrably weak provincial enforcement and limited EMA recourse that Ktunaxa have pursued parallel recourse—the most prominent example being the decade long IJC reference, jointly pursued by Ktunaxa in both Canada and the U.S. Originally requested in 2012, the reference was not adopted until 2024, over a decade later, following Global Affairs Canada withdrawing, to which KNC responded with "disappointment and outrage" (Ktunaxa Nation Council 2022b).

Codie Morigeau contextualised this reference, sharing her thoughts on its rationale: "a lot of why we did the IJC is because of the government, like B.C., Elk Valley feeds the province in terms of revenues and how they run themselves, right, so of course Teck is going to get a lot of things that they want out of that and B.C.'s going to give it to them" (Interview by author, Cranbrook, B.C., 21 July 2026). In a 2021 letter to the B.C. and Canadian Ministers of Environment and Climate Change, KNC themselves similarly expressed dissatisfaction with existing regulation and enforcement, stating that "existing regulatory regimes and measures to mitigate and reduce those impacts have proved to be largely ineffective in their implementation" (Ktunaxa Nation Council 2021b).

Fieldwork also revealed the considerable financial, legal, and institutional burden placed upon Ktunaxa in their pursuit of formal avenues of recourse—against the backdrop of a large resource asymmetry between Ktunaxa, a comparatively small Indigenous Nation, and the substantially larger entities of province and Teck, with materially greater resources. Heather McMahon commented on precisely this dynamic, discussing "the legal cost of going after a company who has never ending pockets or going after the province", asking "would you want to sink your war chest into fighting someone with that deep of pockets" (Heather McMahon, interview by author, Cranbrook, B.C., 21 July 2026). Codie Morigeau shared her experience of pursuing recourse: "OK we'll try this, OK we'll try this... let's keep pushing the IJC, let's keep working on the ABMP, let's keep working on the environmental [assessment]... we're kind of hitting brick

walls....they just tie us up so much that we don't make any progress, but we also waste all that capacity, whether financial or human, and nothing else gets to advance.” (Codie Morigeau, interview by author, Cranbrook, B.C., 21 July 2026).

While Ktunaxa may possess options in terms of legal recourse, many of which may confer genuine opportunities to challenge or scrutinise provincial decision-making, these do not eliminate this asymmetry identified above, nor does it resolve the enforcement gap. Rather, exercising these avenues requires Ktunaxa to commit their own financial, legal, and institutional capacity to initiating, pursuing, and sustaining challenges to regulatory decisions over which they exercise no equivalent statutory control—depriving other vital areas of resources. The failure of B.C. to act effectively to ensure environmental protection at the critical enforcement point leaves Ktunaxa bearing the resource cost of challenging the decisions of entities with substantially greater capacity to sustain that challenge. For an Indigenous people whose stewardship responsibilities within ʔamakʷis ktunaxa remain continuous and whose governance capacity is finite, this resource burden is not incidental, rather it reflects a structural consequence of an enforcement architecture that places the weight of accountability on those with the least power to enforce it.

The resulting enforcement gap identified here does not arise from any singular deficiency but from the intersection of several compounding weaknesses—unprotective permit limits, discretionary provincial enforcement, penalties incommensurate with the regulated party's scale, and no formal Ktunaxa mechanism to compel enforcement or remediation. All of this operating within a regulatory and enforcement regime in which the effectiveness of environmental protection, and therefore the protection of Ktunaxa stewardship interests, remains contingent on the political will of the province to enforce—a province that has showed a demonstrable commitment to sustaining the very industry creating contamination to the detriment of environmental protection—all the while Ktunaxa are absent from the regulatory juncture where decision-making matters the most. “That is where I would tell you that I think the EVWQP has failed, is B.C. does not have the political will to actually meaningfully enforce” (Heather McMahon, interview by author, Cranbrook, B.C., 21 July 2026).

2.4 Consultation Gap

The principal limitation of Ktunaxa consultation during development of the EVWQP was not an absence of participation, or even substantive influence, but the distinction between influence over decision-making and authority within the decision itself. This paper conceptualises this distinction as a consultation gap—the institutional distance between meaningful consultative influence and the exercise of governmental decision-making authority.

Order M113 established an institutional structure in which Teck was responsible for not only the plan's preparation but engaging with and consulting Ktunaxa—with the provincial Minister retaining ultimate approval authority. Within this structure, the largest consultation platform was the Technical Advisory Committee; a nine-member body established to provide technical advice during the plan's development. Teck was required to consider and document all TAC advice, but the Order did not require it to accept individual recommendations. As such, KNC possessed a formal position within the committee tasked with technical overview of the plan, however this did not translate to binding authority over the plan.

Far from a perfunctory channel, the TAC provided KNC with substantive opportunities for technical participation. Between 26 September 2013 and 10 July 2014, the TAC held 7 formal meetings, producing significant output which led to Teck officially incorporating into the plan “close to 600” pieces of advice—ranging from minor drafting changes to substantive monitoring/methodological changes (Teck Resources

Limited 2014b). It should be noted that, despite Teck reporting close to 600 pieces of TAC advice being incorporated into the plan, which appears to demonstrate considerable responsiveness, the aggregate figure does not distinguish between minor textual revisions and changes affecting substantive environmental management.

Nevertheless, additional consultation channels were also established for Ktunaxa—including a dedicated multi-phase consultation process, alongside a tripartite steering committee between Ktunaxa, Teck, and the province, designed to provide “ongoing guidance and direction on the development of the Plan” (Teck Resources Limited 2014). The former involved direct Ktunaxa participation in multiple meetings with KNC and the broader Ktunaxa community alongside a water-treatment facility tour and funded technical representation—with Teck collecting comprehensive feedback from these meetings. The steering committee is not extensively documented within the publicly available record, which does not disclose its provisions, features, voting arrangements, consensus requirements or formal decision-making powers. As such, it should therefore be treated as evidence of potentially substantial influence, not assumed either to have been merely advisory or to have constituted formal co-decision-making.

Ktunaxa themselves indicated that these mechanisms combined produced more than mere procedural access, as indicated by contemporary Ktunaxa sources. KNC Chair Kathryn Tenesse, upon approval of the plan, stated that Ktunaxa government, staff, and consultants had worked closely with B.C. and Teck to “reach agreement on all aspects of this plan.” (Government of British Columbia 2014). Subsequent reporting on the plan’s approval by Canadian Mining and Energy records Bill Green, director of the Canadian Columbia River Inter-Tribal Fisheries Commission (an Indigenous technical and policy body that supports First Nations in the Canadian Columbia Basin on fisheries, water, and aquatic-resource management) describing KNC as participating in the process of reviewing the Elk Valley Water Quality Plan, making amendments to the plan and associated documents and identifying a lengthy list of conditions for approval of the plan: “The KNC has approved the Elk Valley Water Quality Plan, subject to the conditions outlined in the Environmental Management Act Valley Wide Permit, the letter of approval and the letter approving the Regional Aquatic Effects Monitoring Program” (Jessica Kirby 2015). Additionally, the KNC’s own 2015 Lands & Resources newsletter characterized KNC as a member of the team that developed the EVWQP and Valley Wide Permit, congratulating staff and leadership for their work.

Moreover, during the latter stages of development evidence suggests that Ktunaxa influence did produce genuine accommodation. In 2021 the KNC itself reported that Permit 107517 contained sections drafted to address “critical gaps in the EVWQP” (Ktunaxa Nation Council 2021). More importantly, KNC confirmed that those permit conditions were developed after “extensive engagement” with KNC and were intended, at least partly, to “mitigate and accommodate” impacts on Ktunaxa title and rights (Ktunaxa Nation Council 2022c). The provincial record corroborates this, specifically the 2016 Environmental Assessment Office record states that B.C. and KNC agreed to SEA “Level Three” deep consultation for development of Permit 107517 (Environmental Assessment Office 2015). Fieldwork further corroborates this, with Heather McMahon confirming substantial Ktunaxa input over Permit 107517 during its draft stages, albeit noting that of the considerable input given by Ktunaxa during development, only a narrow subset of contributions materialised within the permit. (Heather McMahon, interview by author, Cranbrook, B.C., 21 July 2026). It would therefore be inaccurate to characterise Ktunaxa consultation during the plan’s development, offered by both the province and Teck, as substantially hollow, or procedurally inadequate when contemporary Ktunaxa sources instead indicate meaningful participation in shaping the resulting regulatory framework.

However, an important qualification surrounding consultation and what it delivered lies in the fact that these channels were not automatically granted to Ktunaxa, rather they were the result of “decades of Ktunaxa led discussion and disagreements.” (Christopher Horsethief, personal communication, 4 September 2026). This is further corroborated by KNC records, which identify repeated objections during the 2009-12 Line

Creek environmental assessment process as contributing to assessment pauses and ultimately Order M113—demonstrating the measured results of sustained Ktunaxa pressure. Subsequent conditions in Permit 107517 were developed through extensive engagement to address gaps identified by KNC and to accommodate impacts on Ktunaxa title and rights (Ktunaxa Nation Council 2021). This embeds consultation and its results within a broader, cumulative history of Ktunaxa-led engagement and dispute—while consultation may have been extensive, its emergence from the sustained effort of Ktunaxa themselves, rather than its implicit presence, may be seen as a limitation in how effectively consultation accommodated Ktunaxa.

A further qualification exists in how KNC interpreted its own acceptance of the plan. Bill Green's comments describe "acceptance" subject to "the conditions outlined in the Environmental Management Act Valley Wide Permit [Permit 107517]" (Jessica Kirby 2015). In a later submission, KNC retrospectively reaffirmed its position as "conditional acceptance of the ABMP and the subsequent EMA permit 107517", identifying several accommodations within that conditional acceptance, including: "the inclusion of tributary protection and management condition, the requirement for a human health risk assessment, the requirement to assess a site-specific protective standard for Koocanusa, and dual regulator approach (ENV and EMLI) to ensure that water quality mitigations were implemented and that the intent to stabilize and reduce contaminant trends was stabilized and reversed" (Ktunaxa Nation Council 2022c). KNC subsequently argued that the intent of these accommodations had not been fulfilled, attributing this both to Teck's failure to meet permit requirements and to inadequate provincial enforcement (Ktunaxa Nation Council 2022c). KNC's acceptance was therefore tied both to the inclusion of these accommodations in the regulatory framework and to the expectation that they would subsequently be implemented and enforced.

Critically, meaningful influence, negotiated accommodation, and eventual conditional acceptance with the resulting package did not necessarily amount to shared governmental authority over the decision. At the level of formal authority established by Order M113, Teck remained responsible for preparing the Plan and the provincial Minister for approving it, while Ktunaxa participation operated in a consultative capacity. Though available consultation channels delivered a measurably high level of Ktunaxa influence over the plan's development, no publicly available instrument establishes a KNC veto, requirement for KNC consent, equal decision-making vote, formal power to compel amendments, or joint statutory approval authority.

Fieldwork further contextualised the gap between consultation's reach and its limits. In a post-fieldwork meeting Councillor Jason Andrew of ʔaḡam, who previously served as Chair of KNC governance sector, reported that "a lot of the submissions were things that were left outstanding". Andrew's retrospective opinion was distilled in starker terms, where he described the consultation process as "performative", also commenting that "The whole engagement process has been a farce" (Jason Andrew, virtual meeting, London, UK/ Cranbrook, B.C., 7 August 2026). While this does not erase KNC's documented influence, or its conditional acceptance in 2014, it demonstrates that institutional agreement with the resulting regulatory and statutory framework did not eliminate dissatisfaction with how Ktunaxa input was translated into decisions. Gwen Phillips offered her own critique, commenting that industry and the province are "not willing to hear your voice", and that "They [industry/ the province] don't recognize our sovereignty" (Gwen Phillips, Interview by author, Cranbrook, B.C., 17 July 2026). While these perspectives are not universal across all Ktunaxa members, they offer meaningful insight into how the consultation process was experienced by those most directly involved in governance.

In terms of governance analysis, the distinction between substantive accommodation and meaningful decision-making authority is crucial and may contextualise the dissatisfaction towards consultation expressed during fieldwork. Ktunaxa have publicly sought to move beyond a consultative role in Elk Valley resource governance toward meaningful government-to-government shared decision-making, a position

not just evident within contemporary sources, but apparent before the plan's adoption. In December 2013, Kathryn Teneese described Ktunaxa and B.C. as continuing to move toward "shared decision-making" over lands and resources (British Columbia Ministry of Aboriginal Relations and Reconciliation and Ktunaxa Nation Council 2013). This aspiration exists within a broader pre-existing Ktunaxa assertion of territorial jurisdiction: the 2010 Qat'muk declaration, released by KNC in response to a proposed land-development on the sacred Qat'muk site, affirms "inherent and pre-existing sovereignty over our land and our lives thereon" (Ktunaxa Nation 2010). Later KNC sources make the distinction exceptionally explicit—in 2021 KNC stated that its government/industry agreements create processes for engagement, but should not be understood as predetermining outcomes, and do not derogate from Ktunaxa self-government (Ktunaxa Nation Council 2021). It then asserted Ktunaxa's right to establish priorities and "be decision makers" concerning development and use of Ktunaxa lands and resources (Ktunaxa Nation Council 2021). During fieldwork, Jaime Vienneau, Director of Lands and Resources at KNC, echoed this position, stating "Ktunaxa's desire is to be a decision maker for all matters relating to impacts to ʔamakʔis Ktunaxa". (Jaime Vienneau, interview by author, Cranbrook, B.C., 14 July 2026). The distinction between consultation and authority, therefore, is not imposed retrospectively by this paper; it reflects a distinction articulated by Ktunaxa themselves between engagement mechanisms and the Nation's asserted governmental jurisdiction.

Coulthard's (2014) critique of the liberal "politics of recognition" offers a useful theoretical lens for understanding the distinction identified, and why substantive engagement and accommodation can occur while failing to resolve the consultation gap. Coulthard argues that contemporary Canadian settler-colonial governance has shifted from the more overt structures of domination towards governance through state recognition and accommodation, while leaving more fundamental distributions of land and self-determining authority substantially intact (Coulthard 2014).

Coulthard's concern is therefore not simply whether Indigenous peoples are recognised and accommodated, but whether such recognition alters the foundational political relationship in which the settler state retains the authority to determine the terms and scope of Indigenous participation. Drawing on Fanon (1952), Coulthard argues that recognition in this form remains structurally asymmetrical insofar as its terms continue to be determined by the dominant settler state, rather than a genuinely reciprocal political relationship. Though directed towards the broader structure of contemporary Canadian settler colonialism, the dynamic he identifies parallels the EVWQP. Ktunaxa participation was extensive, with demonstrable effects. However, engagement occurred within a framework wherein Teck retained preparatory responsibility for the plan, and the province ultimate statutory authority (Coulthard 2014).

Internal communications between KNC and MoE from 2024, disclosed during fieldwork, emphasize this dynamic and KNC's continued dissatisfaction with it. In communications around the draft order and engagement plan for the ABMP amendment process, KNC stated that "the plan continues to reflect an approach to engaging with Ktunaxa that is rooted in Haida-based consultation, rather than a true recognition and implementation of Ktunaxa rights, title and jurisdiction" (KNC and MoE, internal communications, Cranbrook, B.C., 24 June 2024). This highlights precisely the dynamic which Coulthard critiques—one in which an Indigenous Nation can be recognised and accommodated by the state yet remain within a consultative framework in which influence does not translate into equivalent governmental decision-making authority and the province retains final statutory authority.

The EVWQP therefore cannot be totalised as either procedural exclusion, or genuine co-governance. Ktunaxa participation was extensive, technically sophisticated, and influential. Yet, the consultation delivered and the outcomes it yielded, no matter how substantial, were not only hard won by sustained efforts from Ktunaxa, but ultimately occurred within an institutional framework within which Teck remained responsible for preparing the plan and the province for approving it. While the EVWQP process

demonstrates substantial Ktunaxa influence, that influence operated through consultative, collaborative, and negotiated mechanisms rather than through a publicly documented Ktunaxa right to exercise shared statutory authority over the Plan. “True government-to-government approaches begin with recognition of each other's authority” (Gwen Phillips, written feedback to author, September 2026).

Conclusion

The EVWQP presents a more nuanced picture than straightforward success or regulatory failure. Its development involved substantive Ktunaxa participation, genuine technical engagement, and negotiated regulatory accommodation that produced some palpable concessions. Ktunaxa were not outright excluded from the EVWQP's development, and the plan in many ways reflects a serious institutional attempt to manage a contamination crisis of significant scale and complexity within the precise dynamic of Indigenous governance.

Yet, in asking how well the EVWQP functioned as a governance framework for Ktunaxa, this paper's analysis demonstrates that there are clear limitations, which prevent the EVWQP from functioning as an adequate framework for Ktunaxa. These limitations are not incidental but systemic, as, though a standalone governance structure, the EVWQP connects to and reflects a broader governance approach—one whose limitations for Ktunaxa emerged clearly within this specific case study.

The nature of B.C.'s response to contamination is one which selectively permits pollution instead of preventing it at the source—allowing the very industry creating the issue to continue operating and entrusting the province with the pivotal duty to regulate and enforce. The preceding analysis has shown the quality of provincial regulation and enforcement surrounding the EVWQP to be found wanting—constituting a system wherein environmental contamination is authorised to continue, all the while the regulation and enforcement intended to mitigate harm is demonstrably lacking. Critically, these gaps exist within a broader political and consultation system which, even when capable of facilitating procedurally substantive engagement, positions Ktunaxa outside of the decision-making frame which they aspire to occupy, and where the most impactful decisions are made.

While industry earns its place within any critical scope examining Elk Valley governance, it is essential to recognise that Teck operates within the regulatory boundaries established by the province. Similarly, while Teck were responsible for consulting Ktunaxa during the plan's development, it was the province and the broader political system within which the province operates that determined the character of that consultation duty. Teck, industry at large, and even Ktunaxa to a partial extent are subject to the political will and authority of the province—who inform every level of governance in the Elk Valley. Therefore, the limitations identified here are best understood not as exclusive to a singular corporate entity or water-quality plan, but as structural features of the regulatory and governance regime at the level of the province itself.

While this paper's scientific and technical engagement primarily focus on selenium, the analytical conclusions drawn here concern governance themes that extend across all aspects of the plan. However, as this paper does not substantially engage with all aspects of the plan, it should not be understood as a comprehensive or diagnostic analysis of all aspects of the EVWQP, rather a targeted analysis of the governance spine of the plan.

This paper's scope is necessarily limited to the 2014 EVWQP and its development process. However, the plan itself remains in effect as a governance framework—recently transferred into full provincial ownership,

with a 2025 amendment issued, and a further amendment underway at the time of this paper's authorship. As such, the most significant direction for future research orients around analysing the renewed adequacy of this framework against the backdrop of contemporary regulatory and legislative climate; shaped by B.C.'s 2019 Declaration on the Rights of Indigenous Peoples Act, whose consent obligations represent a substantially different legal standard than existed at the time of the plan's original development.

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