



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

BACKGROUND

Location: The Elk Valley is a 202km² mountainous stretch in British Columbia Canada, home to a robust mining industry

People The region forms part of ʔamakís Ktunaxa—the traditional territory of the Ktunaxa Nation, and Indigenous Peoples in Canada and the US

Problem: Since the 1990s, concerns have been aside around mining-related contamination in Elk Valley Waterways and it's harmful effects on the environment. Ktunaxa are particularly affected by this due to their unique cultural and spiritual relationship to the land.

Response: In 2013, the province of British Columbia ordered the owner of the mines, Teck Resources, to create a plan to address contamination in the valley—that plan was the EVWQP; the principal governance framework used by the province and industry

This paper asks how well that plan accommodated Ktunaxa governance.

METHODOLOGY

Mixed-methodology: combining documentary analysis of primary and secondary sources with original qualitative fieldwork conducted in Cranbrook and Creston, BC, July 2026.

Documentary Analysis: legislative instruments, court cases, regulatory permits, government audits, scientific and technical reports, peer-reviewed literature, corporate filings, compliance databases, Ktunaxa public documents, advocacy submissions, and non-public internal communications.

Participant integration: fieldwork findings integrated throughout the paper's analytical sections rather than presented in a standalone section, corroborating and contextualising documentary findings with Ktunaxa voices and perspectives.

Scope: analysis limited to the 2014 EVWQP and its governance of selenium contamination and effects on aquatic ecosystems; broader aspects of the plan fall outside this paper's scope.

“They don’t respect our sovereignty”

Gwen Phillips, Senior Governance Lead
Ktunaxa Nation Council

“Pollution of who we are”

FINDINGS

The Authorisation-Not-Prohibition Model: Rather than prohibiting contamination, BC's Environmental Management Act legally sanctions its release within provincially approved limits. The EVWQP operates within this framework, meaning it was never designed to stop contamination, only to manage it. Every compliance limit within Permit 107517 exceeds BC's own freshwater selenium guideline, some by a factor of thirty.

Enforcement Gap: Enforcement authority is concentrated exclusively with the province, leaving Ktunaxa with no formal mechanism to trigger or compel an enforcement response. Original analysis of 2024 compliance data reveals ongoing exceedances, compliance partially achieved through seasonal dilution rather than source reduction, and a penalty record whose median fine represents just 0.0018% of Teck's median annual profit insufficient to deter non-compliance.

Consultation Gap: Ktunaxa participated substantively in the EVWQP's development—contributing technically, influencing provisions, and securing meaningful accommodations. Yet no publicly available instrument established a Ktunaxa right to veto, co-approve, or require changes to the plan. The gap is not between what consultation delivered and what it was designed to deliver—it is between what consultation as a constitutional instrument can confer, and what Ktunaxa governance requires.

IMPLICATIONS

Immediate Context: This research contributes to understanding where the EVWQP's limitations lay for Ktunaxa. As the EVWQP is still in use, and remains the principal governing framework in the Elk Valley—having been amended in 2025 by the province—this research provides valuable insight into an ongoing governance dynamic for an affected community.

This project was designated by the Ktunaxa Nation Council as supportive of the Ktunaxa Vision: “Strong, healthy citizens and communities, speaking our languages and celebrating who we are and our history in our ancestral homelands, working together, managing our lands and resources, within a self-sufficient, self-governing Nation.”

Broader Applications: These findings directly connect to broader governance dynamics within B.C. and Canada—making findings relevant on a large scale. Contamination in the Elk Valley directly affects the US, who maintain their own Ktunaxa community, making findings applicable for understanding this governance dynamic on a transboundary-level.

REFERENCES: Analysis draws on primary documentary sources including Permit 107517, the BC Auditor General's 2016 mining compliance audit, BC government FOI disclosures, and original analysis of 2024 EnMoDS compliance data. Fieldwork conducted July 2026, Cranbrook and Creston, BC, under Ktunaxa Research Ethics Committee approval.