



First Nations and Tribes Confounded by Canada’s Resistance to Obvious Solution on the Kootenai Watershed Pollution Crisis

Indigenous leaders from both sides of the border call for immediate IJC reference

Trudeau risks century-old treaty to appease British Columbia

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Representatives from the transboundary Ktunaxa Nation call on Canada to set aside delay tactics and immediately honor the Nation’s outstanding request to refer ongoing and legacy mining pollution in the Kootenai/ay watershed to the International Joint Commission (IJC). Despite Prime Minister Trudeau’s stated commitment to address the Kootenai/ay pollution issue through an agreement in principle with the U.S. by this summer, Canada continues to stonewall an IJC reference. This resistance to the clear process established under the Boundary Waters Treaty of 1909 to address transboundary water pollution issues exactly like that in the Kootenai/ay remains confounding.

The transboundary Ktunaxa Nation’s renewed request follows bilateral talks between Canada and the United States two weeks ago in Washington, D.C., where Ktunaxa representatives traveled across the country to deliver a clear, continued, and united message to both the Canadian and U.S. officials, that the solution in the Kootenai/ay watershed must include an IJC reference. Trudeau stated cryptically the day after these talks that “processes ... are being followed right now that have a better chance of getting to a resolution” than a reference.

“We are completely baffled by Prime Minister Trudeau’s remarks,” says Chairman Tom McDonald of the Confederated Salish and Kootenai Tribes, one of the six governments of the Ktunaxa Nation. “Canada and the U.S. created the IJC over a hundred years ago, under the Boundary Waters Treaty, to address transboundary water issues exactly like this one. There is no legitimate reason to avoid the tried and tested IJC process—it is transparent, inclusive, accountable, and enforceable. We welcome further efforts *in addition* to the IJC, but we are skeptical that Canada’s insistence on an *alternative* is a delay tactic designed to produce a watered-down IJC process.”

The Kootenai/ay watershed is a massive river system that flows through the traditional territory of the Ktunaxa Nation, from British Columbia downstream into Montana, Idaho, and back into British Columbia. For decades, open-pit coal mining in British Columbia has contaminated these waters with increasing levels of selenium, resulting in violation of the Boundary Waters Treaty between Canada and the United States.

For over a decade, the Ktunaxa Nation has called for a transparent and credible process to address legacy, ongoing, and increasing pollution in the Kootenai/ay watershed through an IJC reference. This request is supported by the United States and all of the sitting Commissioners of the IJC. In a recent demonstration of solidarity, last month, numerous First Nations and Tribes across what is now known as British Columbia, Montana, Idaho, Washington, and Alaska, also voiced their support for the reference in a letter to Canadian leaders.

Canada and the United States were expected to commit to the IJC reference a year ago, but at the eleventh hour, Global Affairs Canada walked away. Freedom of Information documents later revealed that Canada's last-minute reversal followed intense interference by the Province of British Columbia and the mining industry to defeat the joint reference and override Canada's obligations and commitments to the Boundary Waters Treaty and Indigenous peoples. Following this shocking turn, the Biden-Harris Administration reaffirmed its support for a joint reference and its commitment to respecting Tribal priorities and sovereignty.

In March of this year, Prime Minister Trudeau and President Biden committed to "reach an agreement in principle by this summer to reduce and mitigate the impacts of water pollution in the Elk-Kootenai watershed in partnership with Tribal Nations and Indigenous Peoples, in order to protect the people and species that depend on this vital river system." It remains unclear whether this soft commitment will result in an IJC reference and a substantive plan to address the pollution crisis, or whether it will be just another empty promise. Trudeau's recent remarks on Canada's unwillingness to seriously engage with the transboundary Ktunaxa Nation's decade-long request for an IJC reference certainly puts Canada's commitment to "partnership with Tribal Nations and Indigenous Peoples" into question.

"Canada must stop allowing British Columbia to stonewall the IJC reference, especially as more and more information comes to light about the close relationship between B.C. and the mining industry," says Vice Chairman Gary Aitken Jr. from the Kootenai Tribe of Idaho, another Ktunaxa government. "In refusing to engage the IJC, Canada is allowing the B.C. provincial government and mining industry to effectively nullify the 114 year-old treaty. Meanwhile, our rivers are dying."

"We've been clear that the path forward for the Kootenay must include an IJC reference. The independent, credible, and scientific process the IJC provides will give us certainty on understanding the complex system and its stressors. The transparency and unbiased process should serve to motivate and drive the parallel action that is needed at the international and federal level," says Ktunaxa Nation Chair Kathryn Teneese. "The duty of honoring the crown rests with Canada. That duty comes with legal responsibilities that are currently being overlooked. It is time for Canada to meet its obligations under the Canadian Constitution, Boundary Waters Treaty, and United Nations Declaration on the Rights of Indigenous Peoples

by recognizing Ktunaxa jurisdiction and working with our governments to ensure that the Kootenay watershed is restored and protected for generations to come.”

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