

April 15, 2026

The Honourable Julie Dabrusin
Minister of Environment and Climate Change
c/o Impact Assessment Agency of Canada (IAAC)
160 Elgin Street, 22nd Floor
Ottawa, ON K1A 0H3
Sent via Email: fording@iaac-aeic.gc.ca, ministre-minister@ec.gc.ca

RE: Request for Referral to an Independent Review Panel – Fording River Extension Project (Reference No. 80702)

Dear Minister Dabrusin,

The undersigned Canadian and U.S.-based organizations and businesses formally request that you exercise your discretion under Section 36(1) of the Impact Assessment Act (IAA) of Canada to refer the Fording River Extension (FRX) coal strip mine project to an Independent Review Panel. Additionally, this letter incorporates by reference the formal request for an Independent Review Panel that was submitted to your office by Wildsight on March 23, discussed further below.

As you know, the pollution caused by the Elk Valley coal mines represents a significant and ongoing concern for residents and business owners of Montana and Idaho, who are experiencing continued, increasing, and unabated water quality impacts to our respective regions. The degradation of Montana and Idaho's water from the associated mines has the potential to seriously impact our economies, our outdoor way-of-life, and outdoor recreation opportunities. Because the FRX project has the potential to exacerbate the already serious pollution problem, it should be considered thoroughly and carefully. An independent referral to an Independent Review Panel will do just that – more robustly analyze the FRX Project and its implications for both Canada and the United States, and potentially recommend mitigation measures and alternatives to reduce the potential for increased pollution.

A recent study conducted by the U.S. Geological Survey (USGS) found that, over the past 38 years, selenium concentrations have more than quadrupled in the International Elk-Kootenai/y watershed, with levels regularly exceeding those considered safe for aquatic life and human health. The study noted that the increase in selenium concentrations is likely the largest ever recorded in a peer-reviewed study anywhere in the world. By the end of 2022, selenium concentrations jumped 551%.¹ Additionally, USGS data documenting the dramatic increase in pollution has been further corroborated by the Kootenai Tribe of Idaho's data as well as data gathered by the Province of British Columbia, which has led to major enforcement actions against the mine for water pollution.

¹ U.S. Geological Survey, Assessing the effects of mining on the Transboundary Koocanusa Reservoir (April 17, 2025).
[\[https://www.usgs.gov/centers/wyoming-montana-water-science-center/science/assessing-effects-mining-transboundary\]](https://www.usgs.gov/centers/wyoming-montana-water-science-center/science/assessing-effects-mining-transboundary).

The trajectory of selenium pollution in Montana and the International Elk-Kootenai/y watershed is unsustainable. Recognizing this, the State of Montana developed thoughtful and protective measures that are meant to protect the environmental and economic well-being of our state. Montana's standards were submitted to the U.S. Environmental Protection Agency for review and approval. The EPA subsequently determined that the selenium standards were "based on sound scientific rationale and ... contain sufficient parameters or constituents to protect the designated use" as required by 40 C.F.R. § 131.11.

Montana's clean water is our lifeblood. It's also a significant economic driver for our state, with recreation-related activities responsible for more than \$3.4 billion in economic output and providing 30,915 jobs across the state, according to a 2024 report by the U.S. Bureau of Economic Analysis. Boating and fishing was found to be Montana's second largest recreational activity, accounting for \$149 million in economic activity. We are very concerned about potentially compromising Montana and Idaho's water-based recreation by allowing even more pollution into Montana and Idaho's waters. Outfitters in Montana are already reporting potential selenium-caused deformities in our fishery, such as missing gill plates. Idaho has already designated the Kootenai River as impaired for selenium under the U.S. Clean Water Act, and Montana is likely to do the same. Conducting a detailed, transparent, and engaged Independent Review Panel process will help to establish, well in advance of any shovels in the ground, that the FRX expansion will not add to this growing crisis.

In considering whether our request for an Independent Review Panel is appropriate – we respectfully urge you to consider the transboundary nature of the pollution and the extent to which the effects of the FRX project will impact the shared, transboundary waters of Canada and the United States. Transboundary impacts are a key element in designating a project to an independent review panel. Selenium from FRX is likely to contribute to a "non-negligible adverse change to the marine environment that is caused by pollution and that would occur outside Canada" as well as a "non-negligible adverse change — that is caused by pollution — to boundary waters or international waters, as those terms are defined in subsection 2(1) of the Canada Water Act, or to interprovincial waters."² As noted above, selenium levels in Lake Koochanusa already frequently exceed Montana's site-specific standards of 0.8 µg/L, and the FRX Project will increase the total selenium load in the watershed. Selenium bioaccumulation at even relatively low concentrations has been shown to have impacts on fish and insect populations, and these impacts extend well past the Elk River watershed. In fact, USGS has documented selenium contamination as far as 360 miles downstream of the Elk Valley, at the confluence of the Columbia and Kootenai River.

The referral of the selenium pollution problem to an International Joint Commission (IJC) in order to study water pollution impacts and mitigation methods in the International Elk-Kootenai/y watershed only adds fuel to the fire that an Independent Review Panel is warranted. As you know, in 2024, the governments of Canada and the United States, in partnership with the Transboundary Ktunaxa Nation, established an IJC reference, first-of-its-kind in scope and Indigenous inclusion. This reflects a global recognition that the current regulatory oversight in British Columbia has been insufficient to protect international waters. However, the IJC investigation is far more comprehensive and focused on landscape-level impacts, whereas an Independent Review Panel referral would focus on the

² Impact Assessment Act, SC 2019, c 28, s 1 (Amended).

FRX expansion. Proper evaluation of whether a major mining expansion actively undermines Canada's commitments would be best performed by an Independent Review Panel, and would also benefit from the longer timeline allotted to review panels, given the IJC final report is still being written.

As mentioned, this request is in concert with the request filed by Wildsight on March 23. In that letter, Wildsight noted that the scale of public opposition to this project is substantial, touching on ecological, transboundary, and human health issues that cannot be adequately resolved through a standard review. B.C. has a track record of small fines for poor water quality and slow progress, while giving overly-generous discharge permits that are harmful to aquatic populations. This has been noticed by Montana and Idaho, which have developed site-specific selenium standards at the border. The public deserves a rigorous, independent cross-examination of these water quality promises, which are relevant to wildlife, local communities, and everyone and everything downstream.

We respectfully make this request in good faith as neighbors of shared waterways and landscapes, and hope that you will make a referral in the same. We look forward to your decision.

Sincerely,

American Packrafting Association
American Rivers
Backcountry Hunters & Anglers British Columbia Chapter
Backcountry Hunters & Anglers Idaho Chapter
Backcountry Hunters & Anglers Montana Chapter
Bow Valley Naturalist Society
Cabinet Resource Group
Clark Fork Coalition
Ecovision
Healing Waters Lodge
Idaho Conservation League
Idaho Panhandle Chapter of Trout Unlimited
Idaho Rivers United
Idaho State Council of Trout Unlimited
Kootenai Environmental Alliance
Kootenai Valley Trout Club
Lary's Fly Supply
Linehan Outfitting
MiningWatch Canada
Montana Audubon
Montana Conservation Voters
Montana Environmental Information Center
Montana Trout Unlimited

Montana Wildlife Federation
National Parks Conservation Association
Selkirk Conservation Alliance
Sierra Club Montana Chapter
Trout Unlimited
The Wilderness Society
Yaak Valley Forest Council
Yellow Dog Community and Conservation Foundation
Yellow Dog Fly Fishing
Yellowstone to Yukon Conservation Initiative
350 Montana