

The Ktunaxa Nation Rights and Interests Assessment

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Case Studies and Experiences in Indigenous-led Impact Assessment



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The case studies in this series look at some of the ways that Indigenous Nations and organizations in Canada have implemented their own environmental impact assessment processes. The series provides examples, experiences, and information that can help Nations interested in developing their own assessment process. The cases illustrate how Indigenous-led impact assessment has been designed to reflect the distinct location, histories, natural resource issues, and governance approaches of a Nation.

The Nation

The **Ktunaxa Nation Council (KNC)** is an Indigenous governance group (tribal council) of the Ktunaxa Nation, consisting of four communities, including ʔakisq̓ nuk (Columbia Lake) First Nation, Yaqaᑎ Nukiy (Lower Kootenay) First Nation, ʔaᑕ am (St. Mary's) First Nation, and Yaᑕ it ʔa·knuᑕi'it (Tobacco Plains) First Nation. The Ktunaxa territories encompass what is often called the Kootenay region, in Southeastern British Columbia. The Ktunaxa Nation's traditional territories also included parts of Alberta, and the US states of Montana, Washington, and Idaho.

The Fording River Operations Swift Coal Mine Expansion

In 2011, **Teck Resources Limited (Teck)** applied to expand their current production at the Fording River Operations Coal Mine¹, which had previously been active since 1971. The area permitted for mining was 1,600 ha. With the **Fording River Operations (FRO) Swift Coal Mine Expansion** proposal, an additional 1,200 ha of new operating areas would be opened for the mine expansion and would include supplemental mining infrastructure. The project expansion would maintain the current production capacity of coal extraction at approximately 10 million metric tonnes annually until 2040.

Due to the size and production capacity of the proposal, it was subject to a provincial **environmental impact assessment (EIA)** under the **British Columbia (BC) Environmental Assessment Act, 2002**.

¹ The Fording River Operations is a metallurgical coal mine- meaning it is a steelmaking coal operation.

Cover photo credit: Dr. Clayton Lamb

Developing the Ktunaxa Nation Rights and Interests Assessment

The Ktunaxa Nation's territories have undergone significant land-use changes since colonial contact. Much of this is due to natural resource developments. These changes and the associated assessment/regulatory processes have in part led to the Ktunaxa Nation's expression of concerns in regard to: the amount and scale of resource development within their territories; the physical footprint of project developments; an increased presence of industry related contaminants in waterways within the Elk River watershed; lack of Indigenous participation in provincial/federal EIA processes; and an inadequate consideration of cumulative impacts when making decisions to approve such developments.

Through a series of regional and provincial agreements with the BC provincial government and proponents, the Ktunaxa Nation has worked to address some of the challenges associated with the history of resource development within their territories.

Teck Resources Limited (Teck) is among the most prominent of industry proponents within the Ktunaxa territories. Currently, Teck operates four metallurgical coal operations in the Qukin ʔamakʔis (Elk Valley - a region within Ktunaxa territories), which include Fording River Operations (FRO), Elkview Operations, Greenhills Operations, and Line Creek Operations. In addition, Coal Mountain Operations is currently in the reclamation and closure phase. For the past decade, the Ktunaxa Nation and Teck have been working to improve relations through the production of economic, environmental, social, and cultural plans that aim to reduce impacts, while enhancing Ktunaxa interests and benefits. For example, in 2007 Teck and the Nation signed a **Working Protocol Agreement** (which outlines communication and cooperation protocols) - including collaboration on project-based assessments.

The Ktunaxa Nation has previously led components of proponent EIA applications through the submission of

'Section C' - a component that focuses on Ktunaxa rights and interests within proponent's project applications².

For the FRO Swift Coal Mine Expansion proposal, the development of **Section C: Ktunaxa Nation Rights and Interests Assessment (KNRIA)**

was completed collaboratively with the proponent (Teck), with technical support (i.e., baseline data collection, assessment, and technical writing) from consultants to assess Ktunaxa Nation rights and interests within Teck's Environmental Assessment Certificate Application.

Although the Nation and Teck take a collaborative approach, the creation of 'Section C' does not suggest or lead to the Ktunaxa Nation's consent to or support for a project.

Instead, 'Section C' is the assessment of Ktunaxa Nation concerns and Aboriginal³ interests potentially impacted by the associated projects, and proposed methods to mitigate those impacts directly from the Ktunaxa perspective.

Implementing the Ktunaxa Nation Rights and Interests Assessment

For the FRO Swift Coal Mine Expansion assessment, the Ktunaxa Nation Rights and Interests Assessment included 4 main steps (Figure 1). Among these steps was the identification of **valued components**⁴ (VCs) (Figure 2).

VCs were created through a collaborative and community-based process. Once preliminary VCs were established, they were reviewed

and confirmed by **Ktunaxa Nation Council (KNC)** staff and verified with knowledge holders.

Four of six VCs were organized by the KNC governance sectors, which include the 'Traditional Knowledge and Language Sector', 'Economic Sector', 'Social Sector', and 'Lands and Resources Sector'.

In addition to the VCs organized by KNC governance sectors, 'Water' and 'Cumulative Effects' were added as additional VCs to coincide with each KNC governance sector.

To assess the anticipated effects of the project on the VCs, indicators which make up each VC were used to identify, measure, and gauge the potential positive and negative impacts (Figure 2).

FIGURE 1: Steps of the Ktunaxa Nation Rights and Interests Assessment

<p>Step 1: Identification of Valued Components</p>	<p>Through a community-based process, six valued components and corresponding indicators were established (figure 2).</p>
<p>Step 2: Outlining Spatial Boundaries for Baseline Data Collection</p>	<p>The spatial boundaries for data collection included a local study area and regional study area. The local study area was defined as a 5km buffer zone around the project's operational boundary. The regional study area was defined by culturally relevant areas throughout the region where cumulative impacts can be expected.</p>
<p>Step 3: Baseline Data Collection and Assessment of Impacts on Valued Components</p>	<p>Baseline data collection for the assessment of impacts on valued components within the local study area and regional study area were determined by a list of common data sources for all valued components and valued component specific source documents. For example, archival and ethnographic material, internal documents, professional assessments, past studies, and primary interviews with Ktunaxa Nation staff, elders, knowledge holders, community members, etc.</p>
<p>Step 4: Produce a Summary of Potential Effects, Mitigations, and Actions</p>	<p>Once baseline data collection was completed, relevant issues, concerns, and potential impacts were identified for the project- a mitigations table was designed to reduce the impact of potential negative effects, by including 'measures' to increase the impact of potential positive effects.</p>

² When proposing a project that may potentially impact Indigenous rights and title, proponents are responsible for including a section within their EIA applications assessing the potential adverse effects on Indigenous interests, and, to the extent appropriate, ways to avoid, mitigate, or otherwise accommodate such potential adverse effects.

³ Aboriginal is a term sometimes used to describe First Nations, Inuit, and Metis people, Nations, and groups when referring to the constitutionally protected Aboriginal and Treaty rights or policies, regulations, or laws used by provincial or federal governments.

⁴ **Valued components can include aspects of the environment, society, culture, rights, economy, etc., that are of significance. In EIA, valued components are commonly used to assess the effects of a proposed activity, including anticipated impacts.**

FIGURE 2: Ktunaxa Rights and Interests Assessment Valued Components and Associated Indicators

Social Sector
Indicators: Housing, transportation, social services, and ecological approach to human health and confidence in wild foods.
Economic Sector
Indicators: Jobs and employment, business and development, Ktunaxa rights-based economy, and training and education.
Lands and Resources Sector
Indicators: Biodiversity, connectivity, quantity and quality of habitat (for rare species, ungulates, large carnivores, and fish), plant abundance, ecosystems of cultural importance, ecosystem health, soil productivity, slope stability, and archaeology.
Water
Indicators: Included throughout each sector level.
Cumulative Effects
Indicators: Included throughout each sector level

Once baseline data collection was completed for each VC, and the relevant issues, concerns, and potential effects were identified for the project, a **mitigations table** was designed to reduce potential negative effects and include ‘measures’ to increase the impact of potential positive effects. Examples of measures included within the mitigation table are:

- Education and Training: Identification of existing training programs throughout the Kootenay region and across Canada that could be delivered locally to assist in Ktunaxa training.
- Ongoing Access and Use: Identify annual opportunities for Ktunaxa Access to Teck properties to practice Ktunaxa culture and rights-based activities (i.e., culture camps, treks, hunting, fishing, and gathering).
- Water, wild foods, and confidence: Teck and KNC collaboratively develop a Ktunaxa Elk Valley Wild Foods Program. This included project monitoring; contaminants mitigations and compensations to address impacts to Ktunaxa culture; communication tools to address wild food safety throughout the Elk Valley; and the incorporation of

Ktunaxa knowledge and participation in monitoring the health of resources.

- Compliance monitoring: Within six months of EIA certification, through Impact Benefit Agreements (IBA) or other agreements, Teck would provide funds for Ktunaxa to confirm compliance and management plans.

Outcomes of the Ktunaxa Nation Rights and Interests Assessment

In 2012, formal discussions and engagement activities were initiated between KNC and Teck for an **Impact and Benefits Agreement (IBA)** which would apply to the entire Elk Valley. At the time of submission for Teck’s Environmental Assessment Certificate Application for the FRO Swift Coal Mine Expansion, negotiations of the IBA between KNC and Teck were still taking place. ‘Section C’ (Ktunaxa Nation Rights and Interests Assessment) of Teck’s application explains that if the IBA is approved by KNC and Teck, it *“is anticipated to confirm mitigation and/or accommodation commitments made in this application, as well as other*

*commitments by Teck and KNC designed to address Ktunaxa rights and interests related to the project and to other Teck mining activities in the Elk Valley region*⁵.

Prior to the conclusion of negotiations between KNC and Teck for the Elk Valley IBA, the FRO Swift Coal Mine Expansion was granted a BC Environmental Assessment Certificate in 2015 following the consideration of the Environmental Assessment Office's assessment findings. The project has since proceeded into the expansion and operation phases.

In 2016, following other expansion proposals, Teck and the Ktunaxa Nation concluded negotiations for their IBA, which was developed as a comprehensive agreement which committed both parties to the continuance of sustainable mining in the Elk Valley.

The IBA formalized the collaborative relationship between KNC and Teck⁶; created a framework where issues and concerns can be addressed, provided 'valuable certainty' for projects in the Elk Valley; allowed planned mine extensions to be designated as 'Contributing Projects'; created certainty for the Nation that their key interests of land and water stewardship are considered; reclamation planning; business and employment development; cultural resource management would be addressed consistent with Ktunaxa values and KNC interests; and triggered the formation of an Environmental Working Group, Cultural Working Group, and Procurement and Employment Operational Working Group. Each working group will include equal representation from the Ktunaxa Nation and Teck who would work to determine the actions and processes for effectively implementing the agreement.

Lessons Learned from the Ktunaxa Nation Rights and Interests Assessment

The Ktunaxa Nation's collaborative relationship with the proponent Teck illustrates how consistent approaches to communication and engagement can be achieved with a regionally prominent proponent, which extends beyond a single project-based assessment. For example, Teck and KNC have a Working Protocol Agreement outlining requirements for communication and coordination, but also an Impact and Benefit Agreement which extends throughout the entire Elk Valley. These agreements have multiple functions which benefit both parties. For the Ktunaxa Nation, they can be certain that their assessments are considered as intended, but also that future development will have direct benefit for the Nation. For Teck, they can be confident that

the Ktunaxa Nation is committed to the continuance of sustainable mining in the Elk Valley.

Where to Learn More About the Ktunaxa Nation Rights and Interests Assessment

Ktunaxa Nation Website: <https://www.ktunaxa.org>

Firelight Group. (2014). Fording River Operations Swift Project Environmental Assessment Certificate Application. Section C: Ktunaxa Nation Interests. Retrieved from <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiW odCJholyAhUOpZ4KHc14D0MQFJAeg QlBxAD&url=https%3A%2F%2Fprojects.eao.gov.bc.ca%2Fapi%2Fdocument%2F58868f55e036fb01057680eb%2Ffetch&usg=AOvVaw3asVLGtFGLRjolosfRbTbh>

Case Study Development

This case study was constructed using a review of published (print and online) primary and secondary documents that are publicly available. This includes sources such as independently produced assessment reports by the Ktunaxa Nation and associates, EA reports, Crown consultation and accommodations reports, decision statements, and proponent project applications. A special thanks is owed to Nicole Kapell, who provided feedback, expertise, and guidance on the accuracy of this case.

Other case studies and resources in the series

Indigenous Led Impact Assessment, An Introduction

The Squamish Nation Process for the Woodfibre Liquefied Natural Gas Plant and Export Terminal Proposal

The Stk'emlu'psemc te Secwepemc Nation Assessment Process and the Ajax Mine Proposal

The Tsleil-Waututh Nation Assessment for the Trans Mountain Pipeline and Tanker Expansion Proposal

The Mikisew Cree First Nation Culture and Rights Assessment for the Frontier Oil Sands Mine Project

⁵ Firelight Group. (2014). Fording River Operations Swift Project Environmental Assessment Certificate Application. Section C: Ktunaxa Nation Interests.

⁶ 24 Ktunaxa Nation (KN) and Teck Coal Limited (Teck). (2016). The Ktunaxa Nation & Teck Impact Management and Benefits Agreement. Retrieved from <https://www.teck.com/media/IMBA-Fact-Sheet-Ktunaxa-Teck.pdf>



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