

WATER POLLUTION CONTROL ADVISORY COUNCIL

FRIDAY, SEPTEMBER 11, 2020, 10:00 A. M.

ZOOM / TELEPHONE MEETING

MINUTES

Meeting called to order by Trevor Selch, Chairman.

He introduced the council members and stated there is a quorum present.

PRESENT:

Jason Mercer (alternate)

Mark Fix

Bob Zimmer

Eric Campbell

Stevie Neuman

Earl Salley

Mike Wendland

Adam Sigler

Trevor Selch

ABSENT:

Karen Bucklin Sanchez

Craig Workman

Agenda was accepted with a Motion by Mike Wendland Second by Bob Zimmer.

Minutes from the July 10th meeting were approved with edits. Motion by Mike Wendland. Second by Mark Fix. Minutes were approved unanimously with edits.

Trevor Selch moved to the action item for this meeting which will be a presentation by Myla Kelly and Lauren Sullivan to present the criteria for Lake Kooconusa and Kootenai River. Trevor Selch explained, when the presentation is complete, he will look for questions from the council and discussion. At that point, he will look for a motion and a seconded motion to be on the table and then open it up for public comment section. Darryl Barton will help administer that public comment section. If you would like to make a comment or a statement, please type your comment in the comment section on the Zoom meeting. Those people joining by landline, will be heard from after the others in the comment section. Comments will be restricted to two-to-three minutes due to number of comments and time restraints.

Presentation by Myla Kelly and Lauren Sullivan, from the Water Quality Standards & Modeling Section, "Establishing Selenium Standards for Lake Kooconusa and Kootenai River that Protect Aquatic Life."

Myla stated that the purpose of their presentation today is establishing protective Selenium standards in Lake Kooconusa and the Kootenai River. Myla will talk about process, background and framework and Lauren will provide the technical aspects of the WQ standards.

Key elements:

1. Montana has been delegated, authority under the Clean Water Act, to establish water quality standards for the protection of beneficial or designated uses (aquatic life, human health, agriculture, industry). The standards that have been delegated authority to establish reflect the

limit of what concentration of a pollutant can be in that water body where the beneficial use is still protected. She stressed this is very important. The beneficial use that Myla and Lauren will be talking about today is for the protection of aquatic life.

2. Montana's Board of Environmental Review has the authority to adopt water quality standards and WPCAC, as the advisory council, we go to in advance before moving forward to the Board of Environmental Review, to request initiation or rule making. WPCAC functions very well as an advisory capacity and provides guidance on and in advance of that rulemaking process that takes place with the initiation of rulemaking from the Board of Environmental Review.
3. EPA develops nationally recommended water quality standards for all kinds of pollutants. They have a nationally recommended water quality standard for selenium, and they updated that criteria in 2016. Montana's current selenium standards date back to the 1987 EPA guidance. We have not updated our selenium criteria for Montana to the 2016 guidance, so our current criteria on the books reflects the 1987 EPA guidance. The new guidance that EPA provided in 2016, recommends adoption of site-specific selenium standards wherever possible.

DEQ and British Columbia Environments goal is to co-develop this site-specific water quality standard. Myla stressed that this is unique, because it has been integrally linked with British Columbia, because Lake Koocanusa is a trans-boundary water body, and it is important to both British Columbia and Montana, to establish a protective criterion for the water body itself. British Columbia is currently undergoing their standards setting process as well. Montana and British Columbia have worked together to establish what the correct protective aquatic life standard is.

Myla described the background on the extent of the selenium standards setting process of the trans-boundary water quality standards for Lake Koocanusa and Kootenai River. Please refer to the slide: **Addressing Selenium: Timeline** in the presentation.

- 2010 – memorandum kicked-off coordinated efforts to address regional trans-boundary water quality issues, including in the Elk Valley in British Columbia.
- 2012 – Lake Koocanusa listed as threatened by the state of Montana on our impaired waters list, referred to as our 303D List. It was listed as threatened for impaired by Selenium, because of the increasing trends that were of concern of Selenium in the reservoir.
- 2013 – British Columbia Ministerial order to remediate water quality effects of past mining activities and guide the environmental management of future mining activities in the Elk Valley, including Lake Koocanusa.
- 2015 – Lake Koocanusa monitoring research working group was established. It is a bi-national working group established to understand the issues we wanted to work with and were important to the protection of Lake Koocanusa and the Kootenai River. Its members are comprised of an engaged working group of broad ranging entities (state, tribal, federal, industry, etc.)
- 2015 – the group recommended prioritizing Selenium and establish what the water protection standard is. The Selenium Technical Subcommittee was formed. It is comprised of the top technical experts in Selenium in Canada and the USA.

- 2016 – EPA updated national Selenium criteria and site-specific conditions, when feasible, for establishing Selenium criteria.

Myla Kelly gave an overview of the proposed standards. She explained, to reflect biological uptake through diet, the predominant pathway for Selenium toxicity, DEQ is proposing the following standards:

Lake Koochanusa Standards

Fish Tissue (mg/kg dry weight (dw))
 Egg ovary - 15.1
 Muscle - 11.3
 Whole body - 8.5

With a site-specific selenium criterion of 0.8 µg/L designed to ensure the tissue criteria are met.

Kootenai River Standards

Fish Tissue (mg/kg dry weight (dw))
 Egg ovary - 15.1
 Muscle - 11.3
 Whole body - 8.5
 Water column - 3.1 µg/L

Myla explained there has been multiple years of data collection and a peer reviewed modeling report that has been completed by the United States Geological Survey. We also have selenium technical subcommittee recommendations, that were provided through a recommendation process through in-person meetings and written recommendations. British Columbia and DEQ co-developed and agreed upon scenarios and a protective water column Selenium value. Each of these milestones are significant, in-and-of themselves. Myla stated, she would like to really emphasize that for over a decade, there has been uncertainty about what the standards should be to protect aquatic life in Lake Koochanusa. So, after all the ensuing work, extensive levels of collaboration, years of data collection, a multitude of public meetings, countless technical meetings and discussions, research and modeling, all to answer this one simple question...what is the Selenium standard, and we have arrived at that answer. It is a huge achievement! Uncertainty sows' concerns...and an established protective standard, takes that uncertainty away and we are ready to move on to rulemaking, which incorporates additional public comment opportunities.

Lauren Sullivan explained the science behind establishing Selenium standards that protect aquatic life in Lake Koochanusa and the Kootenai River (see PowerPoint slide presentation).

Myla Kelly explained the Rulemaking Timeline below:

- September 11: Water Pollution Advisory Council (WPCAC)
- September 24: Board of Environmental Review (BER)
 - Request initiation for rulemaking
- October 9 - November 23: Public Comment Period
- November 5: Public Hearing
- Dec 11: Board of Environmental Review (BER)
 - Request adoption of rule

Trevor Selch opened the floor to any council members that have questions, or comments for Myla or Lauren on the presentation.

Bob Zimmer asked for clarification on the process of today's meeting and asked is it to recommend to the Board of Environmental Review to consider these standards in their rulemaking? Trevor Selch responded yes; it is to look for a motion to submit these proposed standards to the Board of Environmental Review for rulemaking. Bob Zimmer responded that he does not see any issue with the standards as they are presented. He stated his concern moving forward primarily would comply and, in the ability, to adjust these standards going forward. He asked if that is considered in the BER review of this. He stated he would be concerned about the reactivity and sensitivity of modeling and monitoring to the future health of aquatic life and how we would react to that if we needed to lower the standards and how we would enforce that from a Montana DEQ standpoint. Myla Kelly replied that one thing to remember with any of our water quality standards is that there is a required triannual review every 3-years. Standards are reviewed and opened for public comment. We also look at the science and ensure our standards are complimentary to the best available science. Another part of the process, going forward, is to access any new data that could be used for inputs to the model. From a standards perspective, that is how we would address that uncertainty. Bob Zimmer asked what is the sensitivity in terms of looking at triannual review, and how likely are we to see population crashes, and do we see species that are location-dependent that may be susceptible to higher levels of Selenium in certain parts of the lake? It sounds like this Rule and criteria are lake-wide average and depth average, along with the four criteria/modeling inputs, which one may be the trigger to adjust either compliance or the triannual review for standards? Myla Kelly responded and said a subsequent step to the establishment of these standards will be to develop monitoring assessment methodology for the lake. There is a lot of extensive and valid monitoring going on, which will continue, as there is great interest in the monitoring of the lake. The Geological Survey has established at least one semi-permanent platform at the international boundary, and one possibly will be in the Kootenai River, below the dam. Trevor Selch asked Myla if she would like to mention the language about "stable-state" and whether we would be using the water concentration versus the fish tissue concentration as far as the compliance point. Myla Kelly replied that one of the critical aspects of the criteria is when the system is not in steady state, when there are changes, with respect to the Selenium sources, both in concentration and load. When the system is not in steady state, it is important to be looking at both the water column values and fish tissue values with equal weight. Lauren Sullivan stated that if the system is in steady-state, the fish tissue standards take precedence as they are more indicative of the toxicological effects of Selenium, but if the system is not in steady-state, such as Lake Koocanusa, the Selenium is still working its way into those fish tissues. This could take months or years to occur, so given the uncertainty of this "lag time" both the water column, and the fish tissue standards, would be explicable to Lake Koocanusa, so neither would take precedence over one another.

Adam Sigler stated that it is good there is a robust plan in place for monitoring, because there is a clear increase in the concentration in the river upstream, but maybe a more ambiguous pattern downstream and so understanding how those are related over time will be very insightful and will require strong monitoring. He commented on the six-page document, on page 4, second paragraph, that is headed to the BER: "steady-state is referring to conditions whereby there are no occurrences of new activities" he went on to say that he thought that was interesting wording, and what is a new activity? The pathway by which the Selenium gets into the river is going to have a lag-time with travel through ground water,

so it seems that an activity could be not-that-new, and still contributing to an increase in stream Selenium concentrations. He reiterated that his comment is on the nuance of the wording of what a “new activity” is.

Mark Fix asked if the Fish and Game are requiring checking all the fish caught for Selenium concentrations? Trevor Selch replied, no. Our sampling tissue concentrations occur in the spring and the fall with our standard netting. The crews up in the Libby office, that sample Lake Kocanusa, set nets in May and again in September, so we coordinate with them for taking fish tissues out of the nets at those times. Mark Fix asked, is that up to the working group to figure out ways to decrease the discharges? Myla Kelly replied, Teck is actively pursuing research and development on Selenium treatment technologies, and not just one type of treatment technology. They do have a treatment facility that is active in one area and they are scaling that up to apply it in another area. They also have additional research and development that they are working through, for saturated rock fills and other different types of technology. It has been taken very seriously and pursued by the industry. She said she wanted to provide that assurance. In the future, after the monitoring and assessment methodology is completed and after we have a monitoring plan establishment in place, if there is a determination that the waterbody is impaired for Selenium, then there will be subsequent steps, but it won't be part of the Lake Kocanusa monitoring and research group. It would be a transboundary issue and it would be bigger than that group, or a different group, would address that. Ann Schmit, with the EPA in Denver, Oresponded and said they have been working very closely with the Montana DEQ through this process. She stated there is language in the boundary waters treaty that speaks to the movement of pollutants from one country to another, and there have been ongoing active conversations for approximately 2-years between the Department of State, Global Affairs Canada, EPA and Environment and Climate Change Canada about this issue, so it is at that level of bilateral conversation and those lines of communication are established and ongoing.

Trevor Selch asked the council members if anyone else had questions or comments for Myla or Lauren? No one responded. He explained that he is looking for a motion from the council, and if seconded, then there will be more discussion and then open the floor for public comments.

Mark Fix stated, “I would move that we take this forward to the Board of Environmental Review.”

Bob Zimmerman seconded.

Trevor Selch asked if there was any more discussion from the council on the motion on the table? There was none.

Trevor Selch opened it up for **public comment**, and he asked folks to try and keep it as brief as possible in a 2-to-3-minute range. He stated that he would begin with the folks on-line and move to the people on the phone.

David Hadden commented, *“Thank you for a very good presentation. I think the science is solid and the proposed criteria is conservative and appropriate. This recommendation should go to the BER for adoption this year. Thank you for your service to Montana.”* He also stated he would like to keep it appropriate and not political.

Erin Sexton a Senior Scientist with University of Montana, Flathead Lake Biological station. She has also represented the Confederate Salish and Kootenai Tribes for many years, with the Kocanusa process

and the development of the Elk Valley water quality plan, which was the predecessor to the Koochanusa working group. She started collection data in Elk River as a scientist at the biological station in 2006 and elevated levels of Selenium were found in the water quality and impacts to mayflies, stoneflies, and caddisflies in the Elk River in the early 2000's, so she stated she has a keen interest in this issue. She wants to support the adoption of a conservative criteria. She stated that we know that the Selenium trends are increasing into the reservoir and there are documented impacts to fish in the reservoir. She went on to say, we know that the EPA criteria of 1.5 is not protective of fish in the lake, and it is great to see near consensus by the entire committee to adopt a criterion around 0.8 or 0.9. She stated she wants to express support for moving forward.

Brad Smith is a representative of the Idaho Conservation League (ICL) in Northern Idaho. He stated he would like to thank everyone who has been involved in this effort. He would like to put in a "plug" for Idaho, as they are a downstream community, and their fate is tied to decisions and actions that occur in Montana and in BC. He would like to see the river, as it flows downstream into Idaho, to be safe and to protect our fisheries, protect our human drinking water sources. He would like to encourage the committee to approve the motion and encourage the Montana BER to initiate rulemaking. He went on to say that these mines will affect our river, Lake Koochanusa and our communities for perpetuity, and we need to be mindful of that, and to do what we can to protect water quality and urge the committee to advance this motion.

Stu Levit with CSKT. He would like to reiterate what Erin Sexton said and support DEQ and its process and request that the action moves forward. He went on to say, that the process has been robust, and a long-time ongoing, and it recognizes the separation between the science and the application and other political processes. There is a place for considering things other than the science, but this is based on the science. DEQ has worked extremely hard and done a very effective job on getting both public participation and science to support the decision and he would like to recommend and support them moving forward for further consideration by the BER.

Steve Gunderson, Montana State Representative, stated he would like to remind the panel that we were using best available science for the grizzly bear recovery and that has adversely impacted our economy in northwest Montana, and he thinks we should make absolute sure we're reviewing the science that we are using. He believes there is a rush to finalize and he thinks we need to slow it down and allow the next administration to make the decision, as he doesn't think it needs to be made a standard before the end of the year where there is going to be a transfer. He addressed Lauren Sullivan and stated he had noticed some of the slides had changed and requested those be sent out. Lauren replied that yes, she would right after this meeting. Questions he asked: why is the water treatment data being rejected? It is being taken seriously, so where is it at, and why has no one introduced it here? Is the USGS model solid data? There was uncertainty about the model in the workgroup attendees, and it was peer-reviewed only in 2010...wouldn't that need more peer-reviewing? Lastly, he stated he's hearing from Erin Sexton, that there's fish kills and mortality...he said, show me where the fish kills are in the Elk River, where the Selenium levels have been the highest, for the most amount of time.

Ryland Nelson in the Elk Valley, responded and stated they have seen a complete collapse of the fishery in the upper Fording River where the Selenium levels are skyrocketing, so this is a very serious issue that is starting to move downstream from the mines and it is starting to show up in the Elk River. He stated that this is fact, it has happened, and they were told this was going to happen 10-years ago by the

science that we were going to see a collapse of this fishery and it is happening and this is a real issue. He said thank you to everyone for your leadership and on establishing these scientifically based standards.

Steve Gunderson asked Ryland Nelson if he could send him that data. Ryland Nelson responded and said that we could ask Teck or the BC government to provide that data of the complete fisheries collapse in these watersheds that are downstream of the mines. Steve Gunderson said he will be asking for that. He went on to say that Ryland Nelson mentioned the Fording River, what about the Elk River as that is where we are using our data from. Ryland Nelson replied, that there is also data from the Fording River that flows into the Elk River and there is more dilution in the Elk River, as we see those levels climb in the Elk River, as they have in the Fording River, we will see the same effects. Steve Gunderson commented from 1987 to 2016, that is 29-years, and now we are rushing to come up with a lower standard, in a very short time span. He thinks it needs to have the brakes put on and have more data come out of Lake Kootenai. Gunderson stated he believes we are rushing this to the point of derailing. He would like to see it slow down, and look at more data, conduct more testing, peer-review the USGS model, and make absolutely sure we are making decisions, and passing standards that we need to protect our fisheries. He asked, but are we going too far? Currently, there is no economic impact being looked at, and he wants that considered for those that live on the Kootenai River.

Myla Kelly responded and said the framework of the USGS model was peer-reviewed in 2010, and the model results for Lake Kootenai, which we were describing today, was peer-reviewed through an extensive, scientific, peer-review process, in 2020. Myla stated that there is a member of the USGS attending this call and can respond to that specifically and to what data was used for that model.

Travis Schmidt, USGS, clarified the 2010 model is a global model derived from data from ----- around the world and was a compendium of research incorporating comments from the top Selenium scientists, from around the world, through a rigorous process developing a better understanding of Selenium dynamics. While that is a peer-reviewed scientific piece to the literature, it goes beyond that, and that was a culmination of a much larger bodies contribution to the understanding of Selenium, but then also motivated governments, around the world, to start reevaluating how we observed Selenium criteria. He went on to say, specific to Lake Kootenai, there was a peer-reviewed framework published in 2017, and that was used as the framework by which the subsequent specific Kootenai paper model was developed from. That report was also peer-reviewed and published, along with the data, which was peer-reviewed, and published, and all is available to the public. He explained every aspect of those reports are available to the public and have been reviewed by other scientists in the field. He went on to say he would like to clarify one other point with regards to Selenium concentrations in the Elk River. Selenium concentrations in the Elk River are important for establishing the amount of Selenium in Lake Kootenai, but fundamentally Lake Kootenai processes Selenium in a fundamentally different way. That is why we have standards that are set for rivers, and standards that are set for lakes, so we would have the expectation that Selenium concentrations in a river are less bio-available than those in a lake. That is fundamentally the issue here. We might expect different outcomes in those types of ecosystems.

Trevor Selch addressed Representative Steve Gunderson and asked him if he had any other comments or questions. There was no response.

Lucky Sultz, with Flathead Valley Trout Unlimited, commented, *“We are very concerned with the health of downstream protected fish populations. We support moving forward toward adoption of the proposed criteria.”*

Clayton Elliot, with Montana TU, stated, they are very much in support of moving forward. The science is clear, and he appreciates the DEQ for their leadership, as well as so many scientists who have put so much time and energy into this. He went on to say, he thinks the issue is moving forward, and stated that is the question of the day, and he wanted to reiterate MT’s support for doing so. He closed by saying thank you for your time and leadership.

Scott Maloney, VP of Environment from Teck Resources. He is based in Vancouver and works very closely with the teams in the Elk Valley. Teck Resources are an international mining company and have operations in the United States, Canada and South America. As far as the mines located in the Elk Valley, a mining crisis does release naturally occurring Selenium which can make its way into the water shed, and it is present in high enough concentrations that Selenium may adversely affect aquatic health. The Kootenai reservoir is located downstream of our mines and some of the Selenium is released. He stated, one important thing to note is that we recognize water quality challenges in the Elk Valley are related to a long history of mining in the region and we have been acting for many years to protect and preserve water quality and we are making significant progress on that. Montana Department of Environmental Quality has been involved in the water mitigation planning and implementation, and in 2013, DEQ was a member of the technical advisory committee that led to the comprehensive watershed management plan that we have in place now for the Elk Valley water quality plan. The plan was updated in 2019 to incorporate new data and modelling information, and DEQ was provided with that. The efforts of the Elk Valley water quality plan are illustrated by current treatment of 4.6 million gallons of water a day, with 12.5 million gallons scheduled to be online by 2021. By 2021, they will have increased the treatment capacity by approximately 2.5 times. Scott Maloney said it is an issue that they take extremely seriously, and they are investing a large amount of money. The Selenium levels have been trending downwards and they expect this to continue. This has been reflected in the data shared with DEQ and the monitoring research committee for the past several years. He stated they also have a robust research and development program and are partnered with Montana State University and the Montana-based environment to develop a new form of water treatment. The sedimentary rock fills are achieving complete removal of Selenium and nitrate. Maloney stated that their commitment to improving the water quality is real, and they have invested significant resources to realize this goal. For the past 5-years, they have been active participants in the Lake Kootenai monitoring and research working group, and the Selenium subcommittee, and they have contributed data and technical input towards the crisis to develop a science-based, site-specific Selenium criterion for the reservoir. Maloney stated their comments today are very much informed by that participation, and they do hope they are useful for your consideration for the proposed Rule. He continued that they have seen a decline in Westslope Cutthroat Trout in the upper Fording and they take that extremely seriously. They have 17 subject matter experts that are working closely on the data evaluation and they are working very closely with the provincial regulators, the Canada Nation Council in working through that process. All the data and information will be made public. They are concerned that the rule may not reflect consensus from experts. Maloney turned comment over to Marko Adzic, Teck Resources to discuss water quality.

Marko Adzic, Teck Resources Environmental Engineering. He referred to slide 10 of presentation. In terms of selenium concentration, it has been increasing since the 1980s. In 2013 there was an area-based

management plan developed as well as an Elk River plan. The selenium concentration has flattened and stabilized since 2013. There are challenges in Elk Valley, but they are addressing them. In terms of fish tissue there may be differences in data. Adzic has issue with data identified with ovary concentrations above EPA standards. The maturity of the ovaries may cause uncertainty with the data. Those data are not egg selenium concentration but of ovary. When you take those data out of the equation the concentrations are below EPA criteria, 15.1. The exception is redbreasted sunfish. Adzic agrees with data that show concentrations above the EPA criteria. None of the muscle or whole-body tissues were exceeded.

Trevor thanked Marko and addressed his comments.

Trevor Selch. I have been an observer on the selenium subcommittee for a number of years. On the topic of egg ovaries, the subcommittee agreed that the time of year for collection was acceptable and there were no issues with the data collected.

Marko Adzic. Dr. Kevin Brick made a presentation during one of the meetings regarding the northern pike minnow. There will be a future journal article. Within that presentation he identified that there is a relationship between the gonadosomatic index (GSI) and maturity. This is true of some fish species other than the northern pike minnow.

Trevor Selch. I do remember those discussions. GSI is unique among individual species.

Mike, Landowner on Kootenai River. Large insects in the water column have disappeared below the dam since the dam was built. I have lived on the river all my life. I am seeing things on the river that Teck may not be seeing with their research. Steve Gunderson lives around here, but I don't think he fishes or understands how this river has changed over the years. When you introduce selenium into the system it has negative impact. I don't want to listen to differences due to ovary studies. This is a river of changes and (selenium) is another step in the wrong direction.

Trevor Selch. I appreciate that Mike. I am asking people to limit comments to the motion on the table.

Ian Schmidt, EPA. EPA supports the state moving forward at this time, using the existing science that was so clearly explained by Lauren, to establish site-specific selenium criteria on Lake Kootenai and the Kootenai River. We will be reviewing any submission from Montana DEQ when it comes to EPA for consistency with the Clean Water Act and implementing regulations. The standards adoption process laid out in the Clean Water Act is designed to set protective standards based on existing science. States will review standards every three years, consider new science and submit to EPA.

Alan Gerstenecker, retired newspaper editor in Libby. I started writing about the selenium issue about 3 years ago. I was at a town hall meeting when Aaron Sexton made a presentation and I interviewed Trevor. I am concerned as a 10-year Libby resident who has been living under EPA pollution, vermiculite and asbestos poisoning. I am concerned as a member of TU and a river guide for Dave Blackburn about the conditions of the river. 18 months ago, I fished the Elk River. The trout were smaller, and I noticed the lack of full-sized gill covers. This is real. You are the scientists and biologists I can only tell you from a layman's vision that this is very serious. I support the 0.8 micrograms per liter measurement at the border and the 3.1 micrograms per liter downstream. There is a resource for the Kootenai Indians, sturgeon (I am concerned about). I think this is a fantastic thing you folks are doing. As someone who is retired, I spend 4 days a week on Kootenai on my boat. Please for future generation take care of this wonderful resource.

Ryland Nelson, Fernie B.C. fisherman and business owner. We are seeing the collapse of our fisheries on the Elk River. Teck has not worked to reduce selenium. It is encouraging to see that this panel is moving forward using the best available science to establish limits to protect shared waters.

William Barquin, Kootenai Tribe of Idaho. Concur with CSKT comments on downstream impacts to the Kootenai River fishery that we are actively trying to restore and recover. We look forward to working with our government partners and others to continue to address water quality.

Lars Sander-Green, Friends of the Wild Side. Conservation group B.C. We have heard a lot about water treatment, and we are all hoping that Teck's treatment works out, but we have been hearing Teck's promises on this for many years. The 2014 water treatment facility has not worked out as they hoped. It is just one promise after another. What we are not seeing is a reduction. I was puzzled to hear from Teck about flattening selenium levels. It is certainly not what we are seeing in the Kooconusa Reservoir. There is a lot more mining being planned for the Elk Valley that is going to send more selenium downstream. Not only from Teck but from three other companies. We think it is really important to have a conservative standard at the border so we can take that into account in Canada. Teck is planning 12 water treatment plants over the next 20 years that will treat to 1.5, which is a far cry from the 0.8 that we are talking about here. So, we cannot rely on Teck's treatment plants to get us to that level. Teck is talking about \$72 million needed per year for water treatment. B.C. will not be able to afford this. We are concerned about the white sturgeon, an endangered species, that inhabits both sides of the border.

Trevor notes that we are receiving comments. Comments must be regarding the motion on the table that is in reference to site specific selenium criteria for Lake Kooconusa.

Josh Letcher, Lincoln County Commissioner. I am worried about the unintended consequences I understand that Teck needs to be compliant and they have been loose in their compliance so far, so we need to impose stricter restrictions. The main concern is the levels in the Elk River. Lake Kooconusa is somewhat increasing but that is because the Elk River is somewhat increasing. We are moving our target downstream when we should really move our target further upstream. I think Teck is doing a pretty good job trying to reduce that with their water treatment plants and their rock fills. What I worry about in moving it downstream is what are the unintended consequences of future development of Lincoln County. I guess we can focus on the fish and that is your task, but I can't just focus on the fish and not jobs. If we are already over the 0.8 does that eliminate any future development? If it does, we need to stay at the standard that we are already at. He mentioned the possibility of forest fires increasing selenium in the environment. Maybe we should focus on Teck and not create unintended consequences of lower standards for us downstream.

Myla Kelly in response to Josh. Our regulatory authority is just for Montana. Our purpose today is to show the data and the criteria that we are moving forward with. If you have questions about that Lauren and myself would be happy to answer your questions. Our permitting Bureau Chief, Jon Kenning may be able to address your first question about implications to your county.

Jon Kenning, DEQ Water Protection Bureau Chief. We do look at selenium in permit limits. Right now, we don't have any that have selenium permit limits. We will continue to monitor that as we go forward.

Michael Jameson, National Parks Conservation Association. I want to thank Teck for their work and processes. I hope their R and D work will result in selenium reduction. Maybe Teck will be able to meet

the standard someday. I certainly hope so. Their success or failure in terms of technology is irrelevant to setting a protective standard. Industry injecting uncertainty into a scientific process is not new. We've been there before. Just as Teck has invested heavily in mitigating selenium, a tremendous community of scientists has also invested heavily in understanding this river system and how selenium works in this fishery. The communities, as Mr. Gunderson and Mr. Letcher both correctly pointed out, rely not just on the quality of the river and the fishery, but also the economics of the industries. Our industries in Montana will not be served by functioning as a settling pond for Canadian mines. The more protective the limit at the border the more room Montana industries will have for its own addition of pollutants. Not setting a scientific standard may open Montana up for Clean Water Act litigation. I am supportive of the 0.8 standard and Teck's commitment to R and D. This is a whole new set of rules governed by Montana to protect Montana interests as opposed to British Columbia protecting our interests for us.

Shawna Kelsey, "I would like to echo Alan's comments. As a concerned citizen of Lincoln County, and Troy City Council person, I appreciate the effort to address this issue, reducing the Selenium levels in the Kootenai/Koocanusa and protecting the watershed into the future."

Trevor Selch opened it to anyone else on the phone that would like to comment.

Josh Letcher, asked, if we create the standard, at 0.8 at the international border, are we allowed to enforce things on Teck, or can we only enforce within Montana? Myla Kelly responded, that our regulatory authority exists only for Montana. Josh replied, creating the lower standard is only going to be enforceable within businesses in Lincoln County and not within businesses of B.C.? Ann Schmit responded by reiterating that the boundary waters treaty is the binational tool that we have for dialogue and manage pollution coming across the border in either direction. From our perspective, having a rigorous protective standard in place is helpful in that conversation in those interactions.

Comment: While the state of Montana does not have the authority to enforce regulations internationally, our federal government certainly does, is the whole point of the boundary waters treaty and the international joint commission and other bodies of international water law. Without a standard, set by the state of Montana, the federal government does not have the power to enforce anything on Teck. With the standard, through the boundary waters treaty, the international joint commission, and international water law, we do have the power to enforce across the boundary.

Trevor Selch asked if there were any other comments from anyone on the phone. There was none. Trevor stated that there is a seconded motion on the table. Mark Fix was asked to paraphrase the motion: **"I made a motion to move this along to the Board of Environmental Review, this whole thing that has been presented."** Trevor stated that Bob Zimmerman seconded.

Trevor Selch recused himself from the vote and asked Darryl Barton to mark that he abstained from the vote. The motion was carried to move this along to the BER.

Trevor Selch opened the floor to any general public comments. There was none.

Darryl Barton commented on upcoming agenda items for the next meeting:

- Hannah Riedl will give an update on algae activity over last summer.
- Myla Kelly will provide an update on the status of the Lake Koocanusa site-specific rulemaking.

Motion to adjourn made by Earl Salley at 12:15 and seconded by Adam Ziegler.

Meeting adjourned at 12:15 pm.

Respectfully submitted by:

Theresa Froehlich