

# **Approval of the 2025 Elk Valley Water Quality Plan under EMA Section 90.2 as the amended Elk Valley Area Based Management Plan**

## **REASONS FOR DECISION**

July 30, 2025

### **Nature and Scope of Decision**

On July 8, 2025, the ministry submitted the 2025 Elk Valley Water Quality Plan (2025 EVWQP) for my approval as minister responsible for the Environmental Management Act (EMA), as an amendment to the Elk Valley Area Based Management Plan (ABMP) in fulfillment of requirements set out in Order M232 for Amendment #1.

EMA Section 90.2 establishes that the minister may approve an amendment to an area based management plan. I understand that approval of an area based management plan does not authorize the discharge of waste under the EMA, but rather if required by the minister, statutory decision makers must consider it in making decisions.

This document discusses the key considerations that informed my decision, including how I considered a few important issues which I understand to be in non-consensus with one or more parties that provided input to the plan.

### **Context**

The Elk Valley Water Quality Plan is an area based management plan (ABMP) under the Environmental Management Act (EMA). It provides a strategy to improve and manage water quality in the Elk Valley while mining continues. It has been adopted as an official ministry policy.

The Elk Valley ABMP is the only area based management plan in British Columbia. The Elk Valley ABMP was approved by the minister in 2014 under the EMA. Despite clear indication in the ABMP that it was intended to be managed adaptively, and although updated implementation plans have been developed under the related EMA permit (107517) issued to EVR Operations Limited (EVR), the plan itself has never been amended. This has resulted in discrepancies between the ABMP and the EMA permit that is in place to support its implementation.

On July 9, 2024, Ministerial Order No. M232-2024 (Order M232) was issued under Section 90.2 of the EMA to update the ABMP. Order M232 required two amendments to the ABMP for the purposes of environmental management. The two amendments, Amendment #1 and Amendment #2, were to be developed in sequence.

Amendment #1 was driven by several factors. At a high level it was intended to:

- Establish the ministry as the author of the ABMP, given that it is a ministry policy applicable to all dischargers, rather than just EVR (formerly called Teck Coal Limited) who developed the 2014 Elk Valley Water Quality Plan.
- Set a clear foundation from which future amendments, including Amendment #2, could be advanced.
- Improve transparency and clarity regarding how the ABMP functions, aligns with the ministry's regulatory framework, and is implemented through statutory decisions.
- Articulate the ABMP's goals more clearly, ensure consistent application of regional tools to support implementation, and establish a process for future reviews to enable adaptive management and continuous improvement.

Amendment #2, which has not yet been initiated, will review the water quality target for selenium in Koocanusa Reservoir.

## Decision

After considering the information outlined below, I have decided to approve the 2025 EVWQP as the amended Elk Valley ABMP and have also given the plan further legal effect by requiring that it be considered by EMA statutory decision makers when making decisions related to waste management and environmental protection or rehabilitation in the Elk Valley.

## Key Considerations

1. If the ministry fulfilled its responsibilities

***I reviewed and considered how the ministry achieved its responsibilities as defined in Order M232. I determined that the ministry has led development and taken responsibility to prepare the amendment in accordance with the requirements of Order M232.***

Amendment #1 was completed on schedule and in accordance with the Terms of Reference (TOR) in Order M232. The ministry took responsibility to meet the legal due date by implementing a 12-month project work plan and schedule that was developed in consultation with Ktunaxa at the beginning of the project. The project schedule included six progressive stages of development, as shown in Table 1.

Table 1. Stages of Development of 2025 EVWQP

Stage of Development	Period	Duration (weeks)
Early Input	July to Sept 2024	9
Draft 1	Sept to Nov 2024	11
Draft 2	Nov 2024 to Jan 2025	10
Draft 3	Feb to April 2025	13
Public Comment Period	May 2025	4
Recommended Amendment	June to July 2025	5

The work plan and schedule were shared with the Advisory Committee (AC) (see Order M232 for membership details) at the start of the project, and then regularly with all AC parties throughout the project.

I note that the project work plan was carried out as planned; however, in February 2025, the Draft 3 stage of the schedule was extended to accommodate further potential engagement and consultation with Ktunaxa and the AC. This resulted in the Public Comment Period moving forward by 5 weeks and extended from the originally planned 2 weeks duration to 4 weeks. It is my conclusion that the schedule adjustment improved engagement opportunities for all parties. Furthermore, I do not believe there was a negative impact on final engagement with Ktunaxa, as B.C. continued to seek and advance consensus-seeking leadership-level dialogue with Ktunaxa as planned.

## 2. If the process for consultation was met

I reviewed and considered the consultation aspects of the amendment process. The ministry consulted Ktunaxa, stakeholders, and the public, to gather input and consider diverse perspectives in developing recommendations for Amendment #1. Order M232 established specific process requirements for consultation with Ktunaxa, committees including the AC, and the public.

The ministry led a multi-stage, structured consultation process during Amendment #1 which included early engagement with Ktunaxa in accordance with an Engagement Plan, followed by broader consultation to seek input from the AC during each of the Early Input and Draft 1, 2 and 3 stages of development, and then engagement with the public. The consultation process and timelines were communicated up front to all parties.

The following three sub-sections summarize key consultation process outcomes.

## 2.1 Consultation with Ktunaxa

***The Ktunaxa consultation requirements of Order M232 have been fulfilled.***

***The ministry followed the B.C.-Ktunaxa First Nation Governments (KFNGs) Engagement Plan with its commitments to engage deeply and seek consensus with Ktunaxa at all milestones, while also being flexible in response to requests from Ktunaxa where reasonable and feasible. The ministry has sought to incorporate Ktunaxa interests and perspectives into the 2025 EVWQP and to seek consensus with KFNGs on the development of final recommendations.***

***I have concluded that consultation with Ktunaxa was reasonable, thorough, appropriate in the circumstances, and carried out in good faith.***

The ABMP applies to an area that overlaps the traditional territory of the Ktunaxa. The Ktunaxa is an Indigenous rights holding collective whose territory overlaps the area that falls within the ABMP (called “the Designated Area”). The Ktunaxa is made up of four Ktunaxa First Nation Governments (“the KFNGs”): ʔaąam, ʔakisq̓nuk First Nation, yaqan nuʔkiy First Nation, and, Yaq̓it ʔa·knuq̓iʔit First Nation. The KFNG’s are represented from time to time by the Ktunaxa Nation Council Society (KNCS). Order M232 requires consultation and engagement with Ktunaxa to be completed in accordance with the B.C.-KFNGs Engagement Plan that was negotiated and signed off by the Province, Yaq̓it ʔa·knuq̓iʔit First Nation, and KNCS (representing ʔaąam, ʔakisq̓nuk First Nation, and yaqan nuʔkiy First Nation) on June 14, 2024, prior to the Minister’s issuance of Order M232.

Consultation with Ktunaxa included engagement via committees as well as directly with representatives from the KFNGs. Fifteen representatives from the four KFNGs and five representatives from KNCS participated in all three committees that supported the development of the 2025 EVWQP:

- Leadership level: Governments Steering Committee under the Engagement Plan (GSC),
- Strategic level: Strategic Advisory Committee under Order M232 (SAC), and,
- Policy and technical committee: AC under Order M232.

Participation at the technical (AC) and strategic (SAC) levels in the amendment process was intended to facilitate collaboration on recommendations, while leadership (GSC) level dialogue was intended to provide strategic direction and support consensus-seeking and issue resolution for the amendment process.

The consultation process followed the Engagement Plan and the project schedule, except for the minor changes noted above to accommodate further engagement and consultation. Between July 9, 2024, and July 8, 2025, B.C.’s engagement with Ktunaxa through committees, and through collective and individual engagements, involved extensive and responsive information sharing. Through the process, eight progressive drafts of the amendment were shared with KFNGs and

the KNCS for input and 237 comments were received. B.C. responded to input from the various Ktunaxa representatives, and sought deeper engagement and consensus where needed.

In addition to the policy and technical engagements, B.C. met with KFNGs and KNCS at the strategic and leadership level through four meetings of the GSC, as well as individually with KFNGs for government-to-government meetings to engage in dialogue about the amendment.

I understand that the KFNGs have different overall perspectives regarding the process. In March 2025, I received a letter from Nasu?kins (chiefs) of ?a?am, ?akisqnu First Nation and yaqan nu?kiy First Nation expressing concerns about the ABMP process and indicating interest in a consent agreement or different way to be involved in ABMP-related work. Subsequent engagements were hosted by B.C. to improve understanding and explore how to best address the interests and concerns in the letter, and I remain hopeful that continued dialogue between our governments will shape how we work together on future ABMP-related work and other priorities of mutual interest.

Despite following the agreed upon Engagement Plan and allowing opportunity for deeper engagement at all levels, I am aware that ?a?am remains unsatisfied with the process, outcomes and quality of engagement. I received another letter from ?a?am on July 8, 2025, requesting that I either reject or withhold my approval of the 2025 EVWQP to allow a formal government-to-government process to meaningfully advance shared decision making. I am also in receipt of a letter from Ya?it ?a?knuq?it First Nation dated July 15, 2025, indicating their satisfaction with the 2025 EVWQP. The letter expresses appreciation for being involved in the development of the amendment and acknowledges that the process was a positive step towards having a stronger voice in their territory. On July 18, 2025, I received a letter from yaqan nu?kiy First Nation expressing similar perspectives as Ya?it ?a?knuq?it First Nation.

## 2.2 Consultation with Committees

### ***I have determined that consultation with committees has fulfilled the requirements of Order M232.***

As required by Order M232, the AC was established to provide technical and policy input to the development of recommendations for Amendment #1. The AC provided input during the Early Input and Draft 1, 2, and 3 stages of development from July 2024 to April 2025, and participated in multi-day AC meetings supported by an independent facilitator. The ministry provided responses to all input received from the AC and there are no outstanding items.

A Strategic Advisory Committee (SAC) was chaired by the Order Manager and was established to provide strategic advice as needed for Amendment #1. The SAC included representatives from B.C., KFNGs and EVR (who is the author of the 2014 plan and holder of substantial waste

discharge authorizations directly related to the ABMP). The SAC met approximately monthly over the project.

### 2.3 Consultation with the Public

***I am satisfied that the public consultation process has fulfilled the requirements of Order M232.***

After draft recommendations were developed with input from KFNGs and the AC, the draft 2025 EVWQP and supporting materials were published to the ministry's Elk Valley Water Quality Hub website for a four-week Public Comment Period from May 5 to 30, 2025. The ministry also sent notices to interested parties, hosted virtual engagements, and published a local newspaper advertisement informing the public about the Public Comment Period. The timing of the Public Comment Period was adjusted to accommodate the extension to the Draft 3 stage of development, and to provide an additional two weeks for public review and input. In total, 31 submissions were received from individuals, local government, non-governmental organizations, and U.S. agencies and governments.

#### 3. If input received during consultation and engagement was adequately addressed

***I have found in-scope input provided through the consultation processes has been considered and incorporated into the 2025 EVWQP. The revisions that resulted from the input contribute to enhancing the overall clarity, transparency and quality of the 2025 EVWQP. Further, I am confident that the framework included in the 2025 EVWQP provides a process for future amendment to support adaptive management and continuous improvement.***

In contemplating my decision, I considered not only whether the process and consultation were sufficient in enabling KFNGs, the AC and public to participate in review and contribute to development of recommendations for the 2025 EVWQP, but whether these contributions were adequately considered and incorporated as appropriate.

### 3.1 In-Scope Input

Policy and technical input were received at each stage in the process from Ktunaxa during early engagement, and then from the AC which included Ktunaxa representatives and others. A total of 409 comments were received and responded to. The ministry carefully considered and thoroughly assessed how best to incorporate input received. Many in-scope comments were simple or straightforward to resolve and consensus was achieved with revisions being made to

the draft amendment to incorporate the input. Some issues raised required additional consultation and engagement before consensus was reached.

### 3.2 Out-of-Scope Input

I understand some of the input received was out of scope for Amendment #1 and/or Order M232. This input could potentially be considered in future ABMP amendments, especially since the 2025 EVWQP now provides a framework for future review.

In addition, some input was beyond the scope of the EMA or the ABMP. However, in many cases B.C. identified opportunities to advance or address these interests through other forums or ministries, including through B.C.'s multi-ministry Southeast Initiatives Secretariat (SEIS). In July 2024, the SEIS was created to implement a coordinated and cross-ministry strategy to improve environmental quality, support healing of the land, and advance towards models of shared decision making. Progressing issues under SEIS will allow B.C. to leverage the expertise and regulatory tools of multiple agencies to advance complex issues in Southeastern B.C.

#### 4. If there are remaining non-consensus issues

***While there remain some areas of non-consensus, including a possible perception that not fully addressing some out-of-scope matters may equate to non-consensus, I have determined that in almost all circumstances, the 2025 EVWQP is an improvement over the 2014 EVWQP regarding these subjects. I found that consultation with Ktunaxa was extensive and consensus-seeking; B.C. engaged deeply with KFNGs and was genuine in attempts to reach consensus with the KFNGs on all issues within the scope of Amendment #1. Further, I am confident that B.C. has the structures in place to continue advancing important issues at forums with multi-agency support, and to make continued progress on topics that are perceived to be not fully addressed in Amendment #1.***

I am aware of four specific topics which have not been addressed to the full satisfaction of Ktunaxa. ʔaḡam in particular has flagged these non-consensus areas as possible reasons to reject the plan. Other KFNGs have recognized the need for continued work on these topics outside the ABMP or through future amendments. I considered the input, documentation and advice provided to me on these specific non-consensus items when making my decision to approve the 2025 EVWQP. Approval of the 2025 EVWQP should not preclude the ongoing work needed to address these items.

#### 4.1 Calcite Target

The 2025 EVWQP incorporates findings from a 2024 calcite review undertaken by ministry staff with input from experts in other ministries, KNCS, Yaq̓it ʔa·knuq̓i'it First Nation, the federal Department of Fisheries and Oceans and EVR. The review recommended an updated calcite target using a better metric for the purposes of environmental management. The updated calcite target is incorporated in the 2025 EVWQP as a recommended amendment of the ABMP.

I understand the following concerns were raised:

- A perspective not shared by B.C. or EVR, that the 2014 EVWQP committed to reaching background conditions by 2030, something which is not necessarily envisioned in the 2025 EVWQP under the updated target.
- Opposition to not incorporating specific timelines to achieve the long-term calcite target, as were developed and implemented into EVR's Permit 107517 in 2014. Instead, the 2025 EVWQP relies on details and timelines to be informed by further assessments of individual streams carried out through permitting decisions.
- Desire for heightened regulatory oversight on calcite through more prescriptive permit requirements.
- Concern that amending the calcite provisions in the ABMP may affect enforcement of calcite provisions in Permit 107517, which align with the 2014 ABMP and not the 2025 ABMP.
- Desire for the ABMP amendment to be put on hold and for the calcite topic to be addressed through a permit amendment process prior to updating calcite information in the ABMP.

Despite these concerns, I maintain my decision to approve the 2025 EVWQP, including updates to the calcite target, for the following reasons:

- The 2014 ABMP calcite target was an interim target, intended to be adaptively managed since it was an emerging issue and available science was limited at that time. Our collective understanding about calcite has improved substantially over the past 10+ years since development of the 2014 ABMP. The ministry's 2024 calcite review assessed best available science and reviewed the 2014 calcite target, with input from numerous organizations with expertise on this topic. There was widespread support to adjust the measurement metric to something more biologically relevant and appropriate. The review also concluded that full achievement of the calcite target may require in-stream work that could potentially cause more harm than benefit (e.g., excavation of streambeds and removal of substrate is disruptive to aquatic life and may also impact riparian habitat). The review recommended that the updated target be applied immediately in areas with little to no calcite; however, in areas where calcite levels already exceed the target, stream-specific assessments should be conducted to determine if current technologies can reasonably be used to achieve the target without posing unacceptable risks or impacts, and if so, in what timeframe. As such, timelines to achieve the updated



target would be stream-specific and dependent on the results of assessments carried out under EMA permits.

- Incorporating the updated calcite target into the 2025 EVWQP now will keep the ABMP relevant and effective for the purposes of environmental management of calcite, as opposed to retaining the out-of-date information and science in the 2014 ABMP. This ensures the amendment will provide up-to-date guidance to decision makers to improve calcite management in the Elk Valley.
- The ABMP is a policy and is not directly enforceable on its own, and I don't believe that enforcement implications pertaining to permit requirements, especially those known to be dated, should prevent the improvement of policy direction through application of newer and more relevant science. I also recognize that the ABMP may inform future amendments and the setting of requirements in EMA Permit 107517 and it is appropriate for these efforts to be undertaken in consideration of the best available information to support environmental protection.
- As new information becomes available, calcite management provisions in the ABMP could be reviewed again in accordance with the review process included in the 2025 EVWQP and the adaptive approach envisioned in 2014.
- B.C. has been and continues to be available, willing and committed to meaningful engagement and finding an agreeable path forward for any outstanding concerns or issues from Ktunaxa.

#### 4.2 Management of Tributary Streams

A request was made for tributary management provisions that had been put into EMA Permit 107517 in 2014, to be brought into the ABMP through Amendment #1. This was not done. Despite this request, I maintain my decision to approve the 2025 EVWQP, including its clarifying language around the management of tributary streams, for the following reasons:

- During implementation of the 2014 ABMP and through dialogue with Ktunaxa representatives, it has become clear that the Ktunaxa have a broad range of interests for improved tributary management. Many of the tributary management provisions that were included in EMA Permit 107517 in 2014 following negotiations with Ktunaxa are outside the scope of what is regulated by EMA. Given that the main purpose of the ABMP is to guide EMA statutory decision makers, the focus of the 2025 EVWQP should relate to matters falling within the Act; non-EMA provisions should not be brought into the ABMP.
- The 2025 EVWQP includes guidance for better protection and management of tributary streams within the scope of the EMA, such as water quality, and this is an improvement over what was included in the 2014 EVWQP. The 2025 EVWQP brings improved and additional focus on limiting impacts to water quality in unimpacted tributary streams.

- The 2025 EVWQP also recognizes the importance of more broadly protecting and rehabilitating mine-impacted tributaries and can guide how the ministry works with other ministries on stewardship initiatives.
- The ministry is already working with other natural resource sector ministries in B.C. on a comprehensive cross-ministry approach for tributary stewardship and is planning for commitments to be implemented through the Cumulative Effects Management Framework. This approach will ensure B.C. is leveraging the appropriate expertise and regulatory tools to better address Ktunaxa concerns about impacts to tributary streams.
- The ministry has communicated this intent to KFNGs and has taken actions towards exploring an agreeable path forward for Ktunaxa's concerns regarding tributaries. B.C. continues to be available for this discussion.

#### 4.3 Regional Water Quality Model Ownership

At times during the amendment development process, there were suggestions that B.C. should own and control a regional water quality model if it is intended to be used as a regional tool by all dischargers. This was thoughtfully considered but not deemed necessary, feasible or desirable at this time. I agree with this approach and maintain my decision to approve the 2025 EVWQP for the following reasons:

- The ABMP amendment process resulted in improved consistency in modelling through new provisions for the ministry to coordinate the use of EVR's Regional Water Quality Model (RWQM) by all dischargers.
- Reliance on proponent-developed models is consistent with the ministry's regulatory approach and ensures that proponents bear the cost of developing models, are accountable for decisions made using the models, and the ministry's ability to regulate and enforce penalties on dischargers based on model-informed decisions is not compromised. The quality of these models is controlled through reporting and rigorous scrutiny of model reports under regulatory processes.
- The 2025 EVWQP provides guidance around the consistent development of site-specific models by each discharger and integrating these site models into the RWQM.
- The 2025 EVWQP also recognizes the need to continuously improve including with respect to transparency and stakeholder confidence in EVR's model, and it provides for establishment of working groups to support this.
- This approach could be revisited in the future if needed, especially if there are multiple dischargers relying on the regional model.

#### 4.4 Ktunaxa-specific content such as language and values

There were differing perspectives and advice around the amount of Ktunaxa-specific content that should be included in the 2025 EVWQP. In my opinion, the ministry carefully sought to balance the views shared by the KFNGs and KNCS on whether and how Ktunaxa-specific content should or should not be included in the 2025 EVWQP.

The 2025 EVWQP includes a vision for the Elk Valley Designated Area that was developed in collaboration with two of the KFNGs (ʔaᑭam and Yaᑭit ʔa·knuᑭi'it First Nation) and the KNCS, and with input from yaqan nuʔkiy First Nation. Ktunaxa language, including the description of the Ktunaxa's role as stewards of the land, water and all living things, provides important context to the plan's audience surrounding Ktunaxa perspectives and for the plan's goals. I understand this was sourced from previously published materials and was reviewed by a Ktunaxa person for appropriateness in this context.

In making my decision to approve the 2025 EVWQP I considered how Ktunaxa-specific content was included. Including Ktunaxa-specific content and Ktunaxa language in the 2025 EVWQP is a start, and is supported by multiple KFNGs. It creates an example for additional content when Ktunaxa feel it is appropriate.

#### 5. If Issues Identified in Order M232 were Addressed

***In contemplating my decision, I reviewed the issues to be addressed in the Terms of Reference for Amendment #1. I have found that the 2025 EVWQP addresses the scope, issues and requirements specified in Order M232.***

The scope for Amendment #1 was primarily focused on restructuring and clarifying existing information, and enhancing transparency in how it is applied within B.C.'s regulatory framework.

The 2025 EVWQP has successfully taken the 2014 EVWQP developed by EVR and updated it into a ministry-authored plan to inform decision-making for all effluent discharges in the Elk Valley. The 2025 EVWQP clarifies regulatory requirements for all dischargers, affirms the ministry's responsible regulatory oversight in the Elk Valley, and describes how the ABMP may be reviewed and updated going forward. It also improves the environmental management of calcite by incorporating up-to-date science.

The 2025 EVWQP also includes new guidance and raises the profile of human health, groundwater, selenium bioaccumulation, and tributary streams, by including these as areas of focus for decision makers. The new guidance addresses protection of unimpacted tributaries, thus improving clarity by focusing on the scope of EMA, which is important for the ABMP. Also new is information confirming the use of regional tools, including the Regional Water Quality

Model (RWQM). The ministry will facilitate the use of the RWQM for all dischargers, and a draft Memorandum of Understanding is being developed by B.C. and EVR to formalize commitments made in the 2025 EVQWP and ensure availability of EVR's model for ABMP implementation.

## **Conclusion**

This decision was complex. I reviewed and considered a large volume of relevant information and relied upon the ministry for advice. I outlined my considerations under the five headings outlined above, but this was not a linear process. After reviewing and considering the relevant information, it is my opinion that the proposed 2025 EVWQP meets the requirements of Order M232 and I have decided to approve the 2025 EVWQP as the amended Elk Valley ABMP.

My decision is based on the following key considerations:

- The ministry has led development and taken responsibility to prepare the amendment in accordance with the directions and scope provided, and the process has followed the consultation requirements of Order M232.
- Consultation with the AC and the public is satisfactory and complete.
- Consultation with Ktunaxa, through a combination of engagement with the KFNGs and KNCS, has been extensive and consensus-seeking. Although some areas of non-consensus remain with some KFNGs, B.C. has addressed requirements for consultation and engagement with Ktunaxa. Two KFNGs have provided me with letters of support for the 2025 EVWQP.
- The issues to be addressed in Order M232 are fulfilled.

The 2025 EVWQP improves upon the 2014 EVWQP by informing decision-making for effluent dischargers in the Elk Valley, by clarifying regulatory requirements for all dischargers, by affirming the ministry's responsible regulatory oversight in the Elk Valley and by describing how the Plan may adapt going forward.

I recognize that despite extensive consultation with Ktunaxa, some important areas of non-consensus remain with certain parties, and/or requests have been made for additional work in the future. I have asked ministry staff to continue working through the Southeast Initiatives Secretariat model, including on issues identified during consultation and engagement that were out of scope for Amendment #1 and/or where non-consensus remains. Non-consensus with certain parties in some areas does not preclude the ministry from ongoing continuous improvement.

In weighing my decision to approve the 2025 EVWQP I also considered the alternatives, such as rejecting the 2025 EVWQP or delaying my decision on the plan, and what such a decision would accomplish. With mining ongoing in the Elk Valley, new and expanded mining proposals under consideration, and with continued advancements in science, I see inherent risk in prolonging

the time that ministry staff spend making decisions based on outdated policy and science. Effective environmental management policy must be iterative, adaptable and forward looking to remain relevant. I maintain my opinion that the recommended 2025 EVWQP improves significantly upon previous work and is an important step forward for environmental management in the Elk Valley.

A handwritten signature in black ink, reading "Tamara Davidson". The signature is written in a cursive, flowing style. The first name "Tamara" is written in a larger, more prominent script, and the last name "Davidson" is written in a smaller, more compact script.

Tamara Davidson

Minister of Environment and Parks