



# United Tribal Transboundary Mining Work Group

protecting tribal lands and waterways for future generations

The Honorable Bill Walker  
Governor of the State of Alaska  
**Office of the Governor**  
**P.O. Box 110001**  
**Juneau, AK 99811-0001**

September 23, 2016

The Honorable Byron Mallott  
Lieutenant Governor of the State of Alaska  
Office of the Lieutenant Governor  
P.O. Box 110001  
Juneau, AK 99811-0001

**Sent via Email**

**Re: Comments on Changes to the Draft Alaska-British Columbia Statement of Cooperation on Protection of Transboundary Waters**

Dear Governor Walker and Lieutenant Governor Mallott:

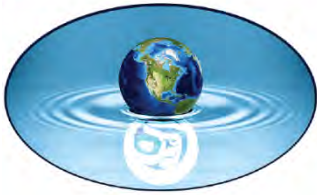
The United Tribal Transboundary Mining Work Group (UTTMWG) is a consortium of 15 federally recognized Indian Tribes that reside in southeast Alaska and live on these rivers. Our cultural identity and health of our communities is directly tied to the health of these rivers. They are the life blood of our people.

Although we have participated in the public process and have submitted comments on a previous draft, we were disappointed that we did not receive direct notice of this draft or were specifically asked to comment. There seems to be a discrepancy between your office's public comments on the recognition of the sovereign status of our governments and your actions. We have received a copy of this latest draft through a third party and will take this opportunity to comment.

## General Comments

We read the Draft SOC as a tool that strengthens the commitments and on-going dialogue that originated in the Technical Advisory meetings between British Columbia (BC) and Alaska agencies several years ago. The Draft SOC also contains an agreement for notice of unexpected conditions in the international rivers due to mining activities, monitoring, and public access to information.

As an agreement between a state and a province, the Draft SOC carries no force of law nor constitutes a legally binding contract. The Draft SOC also makes no commitment as to the procurement or expenditure of any funding to carry out the particulars of the SOC. This SOC does not and should not be viewed as precluding any involvement or action on part of the U.S federal government nor does it modify or relieve enforcement of the 1909 Boundary Waters Treaty. Enforceable protections designed to protect Alaska's waters, fisheries, indigenous cultures, and economy must come through an agreement directly between the U.S and Canadian federal governments.



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We see that British Columbia (BC) has added many references to reflect its agreement with the Nisga'a people. BC has an agreement with the Nisga'a on access to water, fish, and other things related to the Nass River and their territory. This is a formal agreement. Even though the State of Alaska does not have such a formal agreement with the Tribal Nations within its territory, the verbal commitment to respect the sovereign status of the Tribes does indeed come with the obligation to protect the land and waters that underpins sovereign status otherwise these are just more undefined words.

We must express our disappointment that we have not been consulted nor included in all the Work Group sessions despite repeated promises to do so. We understand your view that to allow a Tribal representative to attend opens the door to transparency requirements under the law that may disclose information not attended for the general public, but this has not been backed up by any written opinion from the Alaska Department of Law or Attorney General's Office.

We again request that a representative of the Federally recognized Tribes be seated as a full participant on the Boundary Waters Work Group.

## Specific Comments

Engagement with Federal Agencies at 10. The 1909 Boundary Waters Treaty cannot be ignored. The agencies signing this agreement are agencies under their respective federal governments and these governments are bound under the Boundary Waters Treaty. These agencies must act and act now to jointly pursue a reference under this treaty to invoke an International Joint Commission to oversee these watersheds. We have been told repeatedly that the state of Alaska is actively seeking to engage the federal agencies and government including exploring the opportunities under the Boundary Waters Treaty. The language currently in the Draft SOC does not reflect this commitment.

The International Joint Commission has been used for over 100 years and in many regions. It will give the Sovereign Tribes that rely on these rivers a forum to pursue and protect their interests. The Boundary Waters Treaty requires a reference from both federal governments, so it is critical that Alaska and BC agree to cooperate towards that goal.

We request the language be changed to reflect what we have been repeatedly told. "Both parties will seek to explore options under the Boundary Waters Treaty of 1909 that are designed to provide governance and avoid disputes arising in these transboundary basins."

Under Definitions at f. "Significant degradation"; this term is used in 6 places in the Draft SOC. It is defined as a level of contamination such that Alaska's waters can no longer support their designated uses such as aquatic life and drinking water. The clean water resources of the state are owned and for the benefit of its citizens. The sovereign status of the Tribal Nations depends on the water and



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land to be in a condition that supports our lives, economy and health. The State of Alaska does not have the right to give away water quality to a foreign government let alone their agencies.

Central Council Tlingit and Haida Indian Tribes of Alaska have made the effort to gather baseline information as to the chemical conditions of these rivers. Baseline water quality is referenced in the Draft SOC twice, but the current definition of significant degradation ignores this and is incompatible with these references. Baseline chemical information is useless unless it is used as the basis for determining degradation and significance. Please change the definition of “significant degradation” to *be any measureable change in water chemistry over the levels established as a baseline*. Measureable can be defined *as 6 consecutive data points over the baseline level* as is currently the statistical standard used to define a trend.

We request that you incorporate our valid changes in this Statement of Cooperation. We appreciate the opportunity to continue to work with you on this document, and look forward to meeting with you in person to discuss the SOC and other related matters.

Sincerely,

Frederick Olsen, Jr.  
Chairman, United Tribal Transboundary Mining Work Group

