

Dear Representative Ortiz and Members of the House Special Committee on Fisheries, Resources:

I am Brian Lynch, a retired biologist with over thirty years experience with Alaska Department of Fish and Game in Southeast Alaska, am a former Executive Director of Petersburg Vessel Owners Association and a 35-year resident of Petersburg. I also currently work part-time for Rivers Without Borders. I want to express my support for your introduction of **HJR 9, CANADIAN MINES ON TRANSBOUNDARY RIVERS** and thank Representatives Ortiz, Kreiss-Tomkins, Tuck, Tarr, and Parish for sponsoring this resolution. The need for direct engagement between the U.S. and Canadian federal governments on this issue is absolutely necessary.

The transboundary rivers, the Taku, Stikine and Unuk, cross an international boundary and are subject to provisions of the Boundary Waters Treaty of 1909 (BWT) which makes this an inherently federal and international issue. The BWT expressly requires both countries to prevent damage to the other country's resources. Either nation can ask for an International Joint Commission (IJC) reference to solve watershed disputes. In this case I believe an IJC should be considered to 1) investigate potential mining impacts on a mine by mine case and, more importantly, the cumulative effects of the mining activity over the long term; 2) make recommendations to resolve potential problems, and 3) ensure financial assurances exist to pay for accidents and cleanup and to compensate affected individuals and communities. For almost two decades, conservation groups and commercial fishermen have called for IJC involvement on the Taku River. Review by the IJC is the most effective way to ensure the health and sustainability of salmon fisheries are not jeopardized across the transboundary region.

I would like to urge you to revise HJR 9 to specifically call for IJC involvement. I also advocate that the resolution specifically call on the State of Alaska to support IJC involvement and to formally request assistance from the U.S. State Department.

Notwithstanding the Statement of Cooperation (SOC) between the State of Alaska and the British Columbia (B.C.) provincial government that was signed on October 7, 2016, international regulatory action undertaken between the U.S. and Canadian federal governments is the only legally binding course that can be taken to address concerns that Canadian mining activity will not harm water quality and fisheries in these transboundary rivers. An IJC would bring more resources to the issue than any state/province agreement(s) and its decisions would carry more weight. This may also be the best or only way to provide for financial assurances if mining related environmental problems do arise, and provide for either nation to seek damages against the other for provable economic impacts.

Given the State's current budget crisis, federal engagement would bring in both money and technical expertise to provide for more rigorous review of mining projects and more extensive baseline and on-going water quality testing. In addition, federal engagement would also bring in more involvement in Canadian permitting processes from U.S. agencies and formal State Department consultation with the Canadian government.

Although the State of Alaska has committed to providing funding for implementation of the provisions of the SOC, projected budgets for the three affected State resource management and regulatory agencies could be impacted to the point where normal, existing agency functions will be seriously constrained or eliminated. Focusing on the SOC will not bring in federal resources at a time that Alaska has less money than ever to provide the funding necessary to get the job done.

The ongoing acid mine drainage (AMD) at the Tulsequah Chief mine provides a clear example of why federal engagement is needed. AMD with its complement of toxic heavy metals has been leaking from the Tulsequah Chief mine into the Tulsequah River, the largest tributary to the Taku, for 60 years. This now-abandoned mine sits right on the banks of the Tulsequah River, about 13 river miles upstream of the Alaska/B.C. border and 40 miles northeast of Juneau. While the AMD leaking from the Tulsequah Chief mine has not yet resulted in the contamination of salmon or other seafood harvested from the Taku River it does violate the Canadian Fisheries Act, mine permits, an agreement with the Taku River Tlingit First Nation, and likely the Boundary Waters Treaty as well. At a minimum, the AMD is degrading water quality, possibly harming salmon habitat and may be resulting in sub-lethal harm to juvenile salmon, which may be affecting their survival. If the AMD is not stopped, the image of Alaska's clean water and pristine habitat and the purity of its seafood could be also be tainted and marketing efforts harmed.

Despite numerous inspections and cleanup orders B.C. has done little to halt the ongoing AMD pollution. While the SOC has resulted in improved communications with B.C. and a site visit by Lt. Governor Mallott and B.C. Minister Bill Bennett in August 2015 has resulted in more attention to the AMD problem, the State has not been aggressive in pressuring B.C. to stop the AMD that has been polluting the Tulsequah River for six decades.

While B.C. has recently expressed intentions to clean up the mine site and stop the AMD from entering the river, the cleanup effort appears to have been negatively affected by the belief that no environmental harm is being caused by the AMD. In fact, B.C. Minister of Mines, Bill Bennett, has made several statements to that effect. In an August 8, 2015 interview with the Juneau Empire he stated: ***“I said I’m going to try to fix it, so I’m going to try to fix it. It’s a horribly difficult and complex issue for B.C., because the scientists on both sides of the border say there isn’t any environmental harm from what’s going into the Tulsequah River.”*** He reiterated that claim again on January 3 of this year in an interview with KTOO when he stated ***“Even though the water that’s been tested by both Alaska and British Columbia has shown no negative impacts on aquatic organisms...”*** and finally, as recently as March 5 in an interview with the Juneau Empire he remarked, ***“We’re operating right now on the basis of some research at the site, in the river by both Alaska and British Columbia and that research has indicated at this point and time that there is no contamination in the river.”*** The assertion that the AMD is causing no environmental harm is obviously unproven, while there is clear evidence that the AMD does pose significant risks to water quality, habitat and marketing efforts.

Minister Bennett's unproven assertions seem to be based, at least in part, on two reports on Dolly Varden whole body metals concentrations the ADF&G, Division of Habitat published. Neither of these reports supports a conclusion of no harm, as verified by the Division of Habitat in the Empire article, but, nonetheless, they are obviously being used by B.C. to forestall the cleanup

A particularly disturbing new twist to the assertion of no harm has only recently surfaced. The B.C. government is now waiting on a new Aquatic and Environmental Risk Assessment (ERA) to be released later this month or in April before they make any full commitment to clean-up the mine and only if there is no buyer for the mine. However, even that possibility is now in jeopardy according to Minister Bennett. As he stated in the March 5 *Empire* article: ***“if the ERA fails to reveal environmental harm, we will not spend tax dollars.”*** and ***“What I am saying to you is there is not currently an emergency that we are aware of. We are going to deal with this. We’re going to do our Ecological Risk Assessment in the spring, then we’ll make a determination whether there is environmental harm being done”***. Given that there are no legal definitions of “harm” and “environmental emergency” in B.C./Canadian environmental law, the determination of harm or an emergency is extremely vague and open ended and will be left entirely up to the B.C. government, which up to this point, has disregarded and dismissed all requests and demands to clean up the mine site and stop the AMD. That is an extremely distressing situation that will give the B.C. government a convenient excuse to avoid doing the right thing.

Contrast this approach with that taken in Montana starting in the 1980's to address pollution in Montana rivers downstream from BC coal mines. The State of Montana and the US federal government joined forces to achieve an IJC and an ongoing process to address Montana's concerns.

Although the ability to prove extensive harm to salmon production in the Taku River drainage from the Tulsequah Chief mine AMD may be difficult, the pollution and the mine site need to be cleaned up nonetheless. Letting this problem continue to fester is unacceptable. This is a situation that could and should be dealt with through the SOC but apparently has yet to be addressed through that process specifically under section 2. Technical Working Group on Monitoring (TWG-M) : *The parties recognize the importance of having a reliable and adequate process for the collection, summary and distribution of baseline, regional and project-specific water quality and related data that describes the quality and quantity of Transboundary Waters before, during and after mining and other industrial development, and to monitor the condition of fish and other aquatic life that might be impacted by pollutants in Transboundary Waters.* While the TWG-M may not have been able to provide input into the drafting of the ERA since the SOC was not signed until last October 7 and the letting out of the ERA contract occurred prior to that date, at a minimum they should have been provided the opportunity for review and comment on the final assessment report (which we have not yet seen).

B.C.'s mining must be carried out in a way that protects water quality and does not threaten our downstream economy and livelihoods. The fact that it has taken six decades and heavy pressure to convince B.C. to follow its own laws at the relatively small Tulsequah Chief mine gives me little confidence that we won't see more and worse problems at the much larger B.C. mines that are operating or under development in the watersheds of the transboundary rivers flowing into Southeast Alaska.

The valuable resources of our transboundary rivers are under threat by large scale mining activity in the B.C. portions of these river's watersheds and they need protection. Because these rivers cross an international boundary, Alaska alone cannot provide those protections. Federal involvement is necessary to legally establish meaningful, enforceable rules and commitments to protect Alaska's interests and provide financial assurances to mitigate any losses that may occur as a result of the massive mining development in transboundary watersheds. There has been a clear mandate from citizens, tribes, community leaders, and businesses across Southeast Alaska for federal engagement including an IJC reference. I am frankly baffled as to why the State is not seeking federal help and using all possible tools to protect our transboundary rivers. I again urge and will continue to urge the State of Alaska to seek federal help and an IJC reference. And regardless of the State's action on this, I also urge the U.S. federal government to communicate concerns to the Canadian federal government along with the invitation to join in an IJC or similar process.

Again, thank you for introducing and allowing me to testify on HJR 9. If I can provide you with any more information, please don't hesitate to contact me.

Sincerely,

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