

## **Testimony from Chris Zimmer, Rivers Without Borders, in support of HJR9**

I am Chris Zimmer, Alaska Campaign Director for Rivers Without Borders. I have been working in Juneau on transboundary river issues for the past 16 years. I want to support HJR 9, CANADIAN MINES ON TRANSBOUNDARY RIVERS, and thank Representatives Ortiz, Kreiss-Tomkins, Tuck, Tarr, and Parish for sponsoring its introduction. Direct engagement between the U.S. and Canadian federal governments on this issue is absolutely necessary and long overdue.

I find it disappointing that such a resolution is needed. Commercial fishermen and local leaders began calling for federal intervention through the Boundary Waters Treaty (BWT) and the associated International Joint Commission (IJC) for the Taku watershed nearly 20 years ago. More recently, [thousands of Alaskans](#), including leaders, fishermen and fishing groups, tribes, and citizens, have expressed a strong lack of confidence in the way mining is managed in northwest British Columbia (B.C.) and are demanding stronger measures to protect our water quality, salmon and jobs.<sup>1</sup> Poll results show strong public support in Alaska and B.C. for an international solution in the transboundary region and grave concerns about acid mine drainage and tailings dam disasters. Yet, neither the U.S. federal government nor the State of Alaska is supporting such a solution or working closely together. Given the significant threats to our water quality and fisheries posed by upstream development in B.C., why are leaders not using all available tools to protect Southeast Alaska's interests from a foreign threat?

### **1. Southeast Alaska Values at Risk**

The Taku, Stikine and Unuk are world-class transboundary rivers that originate in northwest B.C. and flow into Southeast Alaska. The three watersheds span almost 30,000 square miles, an area roughly the size of Maine, and are the cultural and economic lifeblood of Southeast Alaska. The Taku is usually the most productive salmon river in Southeast Alaska, with the Stikine a close second and the Unuk a major producer of king salmon and eulachon.

Combined, the Taku, Stikine, and Unuk River Watersheds account for [\\$48 million in economic activity annually](#). This includes \$34 million in direct spending, 400 jobs, and almost \$20 million in labor income. With appropriate management, Southeast Alaska's transboundary watersheds can generate economic benefits in perpetuity. One measure of that perpetual benefit, the present value of the three watersheds combined, when considering a 30-year horizon, totals just under \$1 billion.<sup>2</sup>

These values are dependent on clean water, healthy salmon and game populations, and maintaining productive habitat. Alaska has generally been a good manager of our portions of transboundary rivers. But we need B.C. to do the same, which is not happening.

### **2. The Threats**

At least ten large-scale open-pit and underground mines are in some stage of proposal, permitting or operation in the B.C. headwaters of or close to the transboundary Taku, Stikine and Unuk Rivers. And more mines are sure to come. These mines, during construction and operation and long after closure, pose threats to water quality, salmon and wildlife, and those who depend on these resources. Many will

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<sup>1</sup> <http://www.salmonbeyondborders.org/resolutions--letters-of-support.html>

<sup>2</sup> [Economic Impact Analysis Southeast Alaska Transboundary Watersheds](#), McDowell Group, October 2016

have huge tailings dams to contain billions of tons of toxic tailings that will need monitoring, maintenance and water treatment in perpetuity, which is not provided for. After the tailing dam failure at the Mount Polley Mine, the design and performance of tailings dams is in question. There is no mechanism in place guaranteeing the long-term monitoring and maintenance of these tailing facilities. There is no mechanism for Alaskans to obtain compensation in the event of an industrial accident in B.C. damaging Alaska water quality, fish or customary and traditional interests.

Tens of thousands of Alaskans and a growing number of Canadians fear that the sheer scale and number of these mining projects will result in irreparable harm to our way of life, clean water, fisheries, culture, and jobs in these shared transboundary watersheds. And we have no enforceable way to address these threats.

### 3. B.C. Processes Inadequate

B.C., and to a large extent many Alaska and U.S. officials, believe the B.C. mine review and regulatory processes are adequate to protect Alaska's interests. However, the B.C. system is not designed to address the potential long-term threats to water quality, fisheries, wildlife and those who depend on these resources across the transboundary region. Regardless of how well they are implemented the B.C. processes cannot:

- Provide a mechanism or funds to ensure proper cleanup of events like the catastrophic 2014 Mount Polley mine tailings dam failure and compensation to people affected by such events;
- Ensure the federal Boundary Waters Treaty will be honored, specifically articles IV and IX;<sup>3</sup>
- Assess the long-term cumulative impacts from existing and future B.C. mining projects; or
- Fund and implement a robust monitoring and maintenance network to operate in perpetuity.

No matter how rigorous a process is on paper, the real test is how that process is carried out and what the real world results are. Some recent examples provide cause for concern:

- A 2016 [B.C. Auditor General's scathing review](#) of B.C.'s mine regulatory processes found, "almost every one of our expectations for a robust compliance and enforcement program within the [Ministry of Energy and Mines] and the [Ministry of Environment] were not met";<sup>4</sup>
- A [report by the Union of B.C. Indian Chiefs](#) found significant weaknesses in B.C.'s financial assurances regime for mine reclamation and noted an inadequate mine bonding process has resulted in \$1.3 billion in unfunded mine reclamation needs;<sup>5</sup>
- Recommendations made by the Mount Polley Expert Panel that reported on the failures leading up to the catastrophic tailings dam break at this mine in 2014 have not been implemented by the B.C. government. This is especially concerning given the [expert findings that tailings dam failures are increasing](#) in frequency and magnitude;<sup>6</sup>
- The abandoned Tulsequah Chief mine in the transboundary Taku watershed has been leaking acid mine drainage since 1957, without any significant efforts by B.C. to stop the pollution,

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<sup>3</sup> [http://www.ijc.org/en/\\_BWT](http://www.ijc.org/en/_BWT)

<sup>4</sup> <http://www.B.C.auditor.com/pubs/2016/audit-compliance-and-enforcement-mining-sector>

<sup>5</sup> [https://d3n8a8pro7vhmx.cloudfront.net/uB.C.ic/pages/1290/attachments/original/1463347826/Toward\\_Financial\\_Responsibility.pdf](https://d3n8a8pro7vhmx.cloudfront.net/uB.C.ic/pages/1290/attachments/original/1463347826/Toward_Financial_Responsibility.pdf)

<sup>6</sup> <https://www.mountpolleyreviewpanel.ca/> and REPORT ON "7" RECOMMENDATIONS TO THE B.C. GOVERNMENT RESULTING FROM THE MT POLLEY TAILINGS DAM FAILURE David M Chambers, Ph.D., P. Geop, Center for Science in Public Participation, August 15, 2016

which is in violation of the Canadian federal Fisheries Act, B.C. mine permits and an agreement with the Taku River Tlingit First Nation;

- B.C. permitted a hoverbarge access plan for the Tulsequah Chief despite strong opposition from Alaskans;
- The proposed Kerr-Sulphurets-Mitchell mine, one of the most ambitious open-pit mine projects ever attempted, was subject to only a screening level review and not a more rigorous panel level review, even after numerous requests to the Canadian federal government from the U.S. Environmental Protection Agency, Alaskan citizens and community leaders, and B.C. citizens for the most stringent environmental assessment of this project;
- The current mine plan allows Imperial Metals' Red Chris mine to use unsafe dam designs, which were specifically recommended against by the Mount Polley independent review; and
- There are no funds to compensate those harmed by a tailings dam failure, such as occurred at the Mount Polley mine in August 2014, or ongoing pollution, such as at the Tulsequah Chief.

#### **4. Federal Engagement is Needed**

There is an international border, several sovereign governments, and international treaties in play, thus this is inherently a federal issue. The BWT states “the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.” The IJC—a body created by the BWT to resolve transboundary disputes—is tailor-made to provide a forum for Alaska and B.C. to examine whether current and proposed development in the transboundary region has the potential to violate Article IV. The BWT has productively guided U.S.-Canada cooperation and provided solutions to transboundary issues for over 100 years. In the example of Montana’s concerns about upstream coal mining in B.C., the state did not make progress until it joined with the U.S. federal government and engaged with Canada under the BWT.

There are extensive state/federal processes governing the harvest of fish in the region, such as the Pacific Salmon Treaty and the associated Pacific Salmon Commission but there is no similar entity or process designed to address mining and fish habitat issues across the broad international transboundary region; clearly, there is a need for one.

The size of the region, its value, and the threats posed to it are beyond the ability of the State of Alaska to address on its own with B.C. Alaska lacks the financial resources to engage in transboundary issues in the manner they deserve. DNR staff told the Taku River Task Force, established by the Juneau legislative delegation, on January 5, 2012, that DNR “does not have dedicated funding for Canadian mine project coordination.” Federal financial and human resources can be used to help defray some of the costs associated with transboundary watershed monitoring, assist in cumulative effects analyses, help identify best practices and best technologies, and outline dispute settlement and mitigation options.

Alaska and B.C. lack the authority and mechanisms to create an international system of financial assurances. In the wake of catastrophic tailings dam failure at Mount, it is essential that financial guarantees are developed that ensure losses to downstream U.S. interests are compensated in a disaster.

The IJC is the best mechanism to address transboundary concerns. However, whether or not this matter is referred to the IJC soon, we urge the State of Alaska to work directly with the U.S. federal government to engage B.C. and Canada in a process that would:

- Comprehensively address Alaska concerns about the short and long-term potential impacts of the B.C. mines, singly and in combination, on Alaskan downstream resources in a forum that gives Alaska “an equal seat at the table.” In other words, Alaska is allowed to make its concerns known as the downstream riparian state protected under Article IV of the BWT and not merely as part of B.C.’s environmental assessment processes;
- Ensure Best Available technologies and Practices are employed in the construction and operation of the mines;
- Fund and implement independent baseline water quality data collection and analyses;
- Fund and implement a system for long-term water quality monitoring;
- Create a financial assurances regime to ensure full clean up and full compensation to affected parties after a pollution event;
- Ensure adequate bonding prior to mine development;
- Meaningful inclusion of Indigenous governments on both sides of the border;
- Include increased opportunities for public hearings and general public involvement;
- Analysis by independent scientists of the long-term cumulative effects across the transboundary from B.C.’s mining activities; and
- Independent scientific analysis to determine if B.C. is carrying out its mining plans in a way that complies with the Boundary Waters Treaty.

## **5. State of Alaska and U.S. Federal Government Approaches Inherently Flawed**

Despite a near-consensus in Southeast Alaska that federal engagement is needed and significant criticisms about why a State/Provincial approach cannot work on its own, the State of Alaska is focusing on a non-binding and unfunded Statement of Cooperation (SOC) signed with B.C. in October 2016 and has so far not specifically asked for federal engagement. The SOC is largely focused on more agency participation in the B.C. Environmental Assessment process, a process that is clearly flawed.

This is an international situation that warrants international agreements, consistent with the BWT, with enforceable protections for salmon, rivers, jobs, and ways of life. The development, management and protection of transboundary resources involve an international border and treaties that are beyond state and provincial authority and financial resources. The State/Provincial process cannot accomplish:

- A requirement for an assessment of the potential cumulative impacts from existing and proposed transboundary mining projects;
- The creation and funding of a monitoring and maintenance network to operate in perpetuity;
- Binding, enforceable measures such as the determination of a financial surety mechanism to guarantee any pollution is fully cleaned up and affected parties are compensated;
- The requirement and implementation of Best Available Practices and Technologies;
- A meaningful inclusion of Indigenous governments on both sides of the border; or
- Enhanced opportunities for public participation in both countries, including a meaningful “seat at the table” for decisions concerning development in shared watersheds.

While it is true that U.S. federal and Alaska state officials do participate in B.C. mine assessments, this engagement and the permitting, compliance, and enforcement process in B.C. are woefully inadequate to ensure that downstream water quality, fisheries and livelihoods of B.C. and Alaska residents are not harmed by B.C. mining activities. The bilateral U.S./Canada meetings, which occur twice per year, do not adequately address the numerous concerns across the broad transboundary region.

While we appreciate Lt. Governor Mallott's statements that the SOC does not prejudice the chance of IJC involvement, in fact that is what is happening. Letters from the State Department to Senator Sullivan and from Canadian Minister of Foreign Affairs Dion and Minister of Environment McKenna to MiningWatch Canada indicate federal agencies see this as a local issue for Alaska and B.C. to work out, in large part due to the SOC and to a lack of requests for federal engagement from the State of Alaska.

We strongly agree with Representative Ortiz's statement in a February 22 Juneau Empire oped, "a first order of business is for the state of Alaska to join with our congressional delegation, tribal governments, and tens of thousands of residents in asking the U.S. federal government to secure immediate and enforceable protections and financial assurances for Alaskans who depend on the rivers of Southeast."

## **6. A Combined State/Federal Approach is Needed**

Common sense would indicate that we in Alaska are responsible for protecting our own interests, and we should not rely on B.C., Canada or B.C. mining companies. Instead of expecting/hoping that B.C. will do the right thing, we must obtain real guarantees, enforceable policies, and other binding commitments to ensure our resources will not be threatened by upstream development in B.C.

A coordinated state/federal approach, is reasonable, has the support of thousands of Alaskans, including businesses, fishermen, leaders, tribes and our congressional delegation, and will better respond to concerns than an approach based solely on the SOC. Without adequate funding and a binding regulatory mechanism, the SOC is reduced to a largely technical exercise that fails to protect many of our legitimate interests. Such an approach also reinforces the status quo, in which Alaska's only mechanism to engage with B.C. is via the B.C. mine review process, a process that is not designed to protect Alaska's downstream interests and which foregoes the use of the most powerful tools we have, the BWT and IJC. The State of Alaska's current approach means that the basis for Alaska to engage with B.C. is a short-term, voluntary, and unfunded agreement. We suggest that the basis for Alaska to engage with B.C. and Canada should be the Boundary Waters Treaty. Specifically, we urge the State of Alaska to:

- As soon as possible join with the Alaska and Washington State congressional delegations and explicitly urge the U.S. State Department to as soon as possible use all possible measures to protect Alaska/U.S. interests in the transboundary region. The lack of this explicit request and the focus on the SOC is preventing State Department from making decisive asks of Canada.
- Urge the U.S. State Department to as soon as possible formally communicate with Canada the desire to invoke the Boundary Waters Treaty in the transboundary region.

## **7. Recommended Revisions to HJR9**

We have three specific suggestions to strengthen the resolution:

- Revise line 14 on page 1 with the following language in italics: "WHEREAS proposed and operating mines in the transboundary area include, *but are not limited to...*"
- In lines 23-25 on page 2 the resolution should specifically reference the value of an IJC; and
- Add a second "Be It Resolved" to specifically urge the State of Alaska to formally ask the U.S. federal government for assistance and to support action under the BWT.

Thank you very much for sponsoring this important resolution and for this opportunity to testify in support of HJR9. Please contact me at [Zimmer@riverswithoutborders.org](mailto:Zimmer@riverswithoutborders.org) if you have any questions.