

Summary of Brief

Canadian Mines on Transboundary Rivers The Need for Financial Assurances

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in support of House Joint Resolution 9**

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A detailed brief has been prepared and submitted in support of the Alaska State Legislative Hearing on House Joint Resolution 9 (HJR 9). To assist the Committee the following is a summary of the conclusions from that brief.

Notwithstanding the recently signed Statement of Cooperation between the British Columbia and Alaska governments, the State of Alaska cannot rely upon the Province of British Columbia to adequately protect downstream interests threatened by upstream mining activity that has been, or will be, permitted and is regulated by the BC Ministry of Energy and Mines and the BC Ministry of Environment.

As recommended in HJR 9, the Canadian and US governments must work together to investigate the current and long-term impacts of mining in British Columbia and develop measures to ensure downstream resources are not harmed. In particular, a fulsome and effective financial assurances regime is needed in British Columbia to protect the environment, guarantee reclamation of mine sites, and in the event unintended major or catastrophic pollution occurs, ensure cleanup, remediation and financial compensation for those affected.

The environmental assessment, monitoring and compliance of British Columbia's mining sector is dysfunctional. It places the environment and the public on both sides of the Canadian and US borders at serious long term risk.

Assurances from the government of British Columbia that these risks are being addressed are effectively without substance.

The laudable goals of the recently signed Statement of Cooperation cannot be achieved under BC's current regulatory regime.

There exists an urgent need for a robust financial assurances framework in British Columbia.

Beyond a guarantee that the polluter will pay for harm the polluter creates, an effective financial assurances regime provides a myriad of benefits to the economy and society.

When companies are required to prove up front that they are fully capable of meeting their environmental impact obligations for reclamation and unintended environmental harm events:

1. companies are incentivized to adopt best available practices and best available technologies;
2. operators release less hazardous waste over the mine's life;
3. fewer accidents occur and the consequence of those that happen are reduced;
4. fewer bankruptcies occur; and
5. reclamation, clean-up, remediation and compensation is provided in a more timely and fulsome manner reducing ultimate harm and cost.

These additional benefits mean that financial assurances have an extremely important role to play in the broader goal of environmental protection. An effective financial assurances system protects the environment because it incentivizes pollution prevention. A robust financial assurances regime, therefore, is integral to any regulatory regime that seeks to protect the environment.

But in order that a financial assurances regime to work:

- i) reclamation estimates must be reliable;
- ii) reclamation liabilities must be fully funded; and
- iii) the risk of major or catastrophic events must be evaluated up front and the mine operator be required to prove access to financial resources to respond to, and compensate for, damage caused by such events.

BC's financial assurances regime fails on all accounts.

Mine reclamation liabilities in BC are underestimated and most mine operators are not required to provide full-funding for the reclamation obligations that are estimated.

For example, Teck Resources is the largest mining company in BC with 6 operating and 7 closed mines.

Teck also operates the Red Dog Mine in Alaska. Red Dog is expected to require water treatment in perpetuity. These costs are required to be incorporated in the reclamation estimate filed with the State of Alaska. Teck has fully funded its \$558 million reclamation liability obligation at Red Dog by posting a bond with the State.

The Province of BC estimates Teck's reclamation liability for its 13 mines at \$1.4 billion (Canadian), but requires only \$510 million (Canadian) in bonding. The \$1.4 billion (Canadian) reclamation estimate excludes significant requirements for ongoing water treatment such as those at Teck's coal mining sites in the Elk Valley. Teck's in perpetuity liabilities are likely underestimated by hundreds of millions of dollars.

When it comes to unintended events, such as the Mount Polley tailings breach, there is no requirement for mandatory financial assurances in BC. Protection of the public interest against mine related pollution events is left to the discretion of the mine operator.

The Province of BC only need adopt the Alaskan model for reclamation estimation and bonding to bring its reclamation system more in line with a comprehensive and robust approach. This can be done through government policy direction since estimation and funding requirements are at the discretion of the Chief Inspector of Mines.

Regarding mandated assurances for unintended environmental harm, the government of British Columbia has endorsed government of Canada programs which could readily be applied to BC's mining sector.

Regrettably, the Province of BC does not intend to enhance the requirements of its subpar system despite recommendations in recent reports released by the BC Auditor General and the Union of BC Indian Chiefs. Further action as contemplated in HJR 9 is required if BC is to address the serious shortcomings in its financial assurances regime and if the environment and the public on both sides of the border are to be protected.

There are six recommendations included in the brief prepared for the Committee, that, if followed, would provide a robust financial assurances regime in British Columbia that would protect the environment and, in the event of unintended environmental harm, properly compensate those impacted. These are:

1. the development of accurate reclamation estimates that include water treatment;
2. transparency and accountability in the preparation of reclamation cost estimates along with an opportunity for public review and comment of the proposed plan and costs;
3. full security posted to fund reclamation costs at time of permit;

4. financial assurances for unexpected environmental harm events for all mines (closed and operating) based on an independent risk assessment;
5. an industry funded pool for reclamation costs not met by mine operators and/or the costs and compensation related to unintended environmental accidents in the event the required mine operator financial assurances are insufficient; and
6. the establishment of a fair and fulsome claims settlement process.

The Province of British Columbia refuses to assume responsibility to adequately protect downstream interests threatened by upstream mining activity by introducing much needed reforms to the regulation of mining activities in the Province, particularly as they relate to the introduction of a fulsome and effective financial assurances regime. Therefore, House Joint Resolution 9 requesting that the Canadian and US governments work together to investigate the current and long-term impacts of mining in British Columbia and develop measures to ensure downstream resources are not harmed, is timely and necessary.