

APPENDIX I to the Memorandum of Understanding and Cooperation between the State of Alaska and the Province of British Columbia executed November 25, 2015 by the Honorable Bill Walker, Governor of Alaska and the Honorable Christy Clark, Premier of British Columbia.

Statement of Cooperation on

PROTECTION OF TRANSBOUNDARY WATERS

Between

The State of Alaska Departments of Environmental Conservation, Fish and Game and Natural Resources

And

The Province of British Columbia Ministries of Environment, and Energy and Mines

Recitals:

- A. The State of Alaska and Province of British Columbia have entered into a Memorandum of Understanding and Cooperation (MOU) that among other provisions calls for the collaboration of the agencies identified above in the protection of Transboundary Waters and the fisheries they support. The undersigned are entering into this Statement of Cooperation (SOC) to implement Section II. 1. ("Establishing a Bilateral Working Group on the Protection of Transboundary Waters") of the MOU.
- B. Given the level of public interest in mining activity in the region, the primary focus of the Bilateral Working Group (BWG) formed pursuant to Section 1 of the SOC will initially be on concerns relating to existing or proposed mine development, operations and closure, and long term maintenance that hold the potential to cause significant degradation of water quality or of the fisheries they support. The primary geographical area of initial focus will be the Alsek, Stikine, Taku and Unuk watersheds and marine waters where fisheries could be impacted by pollution of these watersheds.
- C. In implementing the SOC, it is intended that the agencies represented on the BWG will build on the existing collaboration and good working relationships they have enjoyed for many years, strive to enhance their engagement with the Nisga'a Nation, First Nations, Tribes, communities, organizations and residents in the region, and collaborate with their respective federal government.
- D. In entering into and performing this SOC the parties do not intend to constrain or discourage in any way the collaboration and networking that is already taking place among different organizations and people in the Transboundary Region; rather it is a goal of the parties to the SOC to help facilitate this constructive dialog and the cooperative and mutually beneficial relations it engenders.
- E. British Columbia acknowledges that it has entered into the Nisga'a Final Agreement (NFA) and other agreements with the Nisga'a Nation which contain unique provisions relevant to the Transboundary Region, and where applicable, will be considered by British Columbia in the implementation of the SOC.

Statement of Cooperation:

The undersigned enter into this Statement of Cooperation as Follows:

1. **Bilateral Working Group:** A Bilateral Working Group (BWG) is established consisting of the commissioners of the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources and the deputy ministers of the British Columbia Ministries of Energy and Mines and Environment to:
 - a. Establish and oversee a Technical Working Group on Monitoring as described in Section 2.
 - b. Establish and maintain reciprocal procedures that facilitate the invitation and ongoing involvement of interested state and provincial agencies and ministries, federal agencies, the Nisga'a Nation, First Nations, Tribes, organizations and other interested parties in Environmental Assessments and Permitting Processes, triggered under provincial or state law, or under federal law, as described in Section 3.
 - c. Establish and maintain procedures to regularly report to each other and engage in discussions on the environmental performance of operating and closed mines and other commercial developments that have ongoing wastewater discharges or impoundments that could pose a significant risk to Transboundary Waters and the fisheries they support, as described in Section 4.
 - d. Facilitate opportunities for information sharing and constructive dialog among members of the BWG, and with the Nisga'a Nation, First Nations, Tribes, federal agencies, local governments, organizations and other interested parties, on broader concerns as described in Sections 5 and 6.
 - e. Carry out the terms of the SOC, recognizing the limits of current agency budgets, competing demands for agency resources, and legal limits on the authority of each agency.
 - f. Continue to look for collaborative means to further the objectives of this SOC.

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.
 - a. A TWG-M comprised of experts nominated from agencies and ministries of the parties, whose appointment to the TWG-M shall be confirmed by the BWG, shall develop recommendations for the BWG regarding the scope, elements and funding of a defined coordinated monitoring effort. The members of the TWG-M will actively engage with federal agencies, Tribes, the Nisga'a Nation, First Nations, local governments, industry members, organizations and others in developing their recommendations to the BWG. This may include one or more public workshops in Alaska and British Columbia.
 - b. The TWG-M shall also make recommendations to the BWG on ways to help assure the trustworthiness of data, import or link to trustworthy data sets

collected or stored by others, and how best to package and present data and related information to the Nisga'a Nation, First Nations, Tribes, federal agencies and the public.

- c. Given the cost of data collection, the constrained budgets of agencies and the geographical extent of the Transboundary Region, the TWG-M shall look for areas of collaboration and means to avoid duplication of effort. As part of this undertaking, they will look for beneficial opportunities to use common or comparable protocols, analytical methods and reporting formats. The TWG-M may include recommendations on how to phase or prioritize work to best allocate available fiscal resources.
- d. The TWG-M may also make recommendations on the formation of one or more groups, which could include non-public members, to work on particular projects. Potential areas of collaboration include working with the Nisga'a Nation, First Nations and Tribes to enhance the collection, documentation and sharing of traditional ecological knowledge, baseline water quality data and other information relating to Transboundary Waters and the fisheries they support.
- e. The TWG-M may include as part of their recommendations to the BWG a proposed "Action Plan" with proposed actions, timelines and deliverables.
- f. It is the intent of the BWG that the TWG-M provide its preliminary draft description of the proposed monitoring and reporting program (Program Description) as described in the MOU along with proposed two-year Work Plan and any related recommendations it has to the BWG within six months of the effective date of this SOC. The BWG, with the continued assistance of the TWG-M, plans to develop the final Program Description, which once accepted by the BWG, shall be attached as "Attachment 1" to the SOC and become a part of it. It may then be modified from time-to-time by the BWG.

3. Participation in the Environmental Assessment and Permitting Processes Relating to Particular Mines and Other Developments: The BWG will look for opportunities to build on and enhance the existing collaboration between technical staff from the state's Departments of Natural Resources, Fish and Game and Environmental Conservation and technical staff from the Ministries of Energy and Mines and the Environment in the permitting and environmental assessments of proposed projects.

- a. While continuing the existing collaboration, the BWG members plan to develop a written description of reciprocal procedures the parties will use to facilitate the invitation and on-going involvement of the government representatives and their designated scientists in the processes described in subsections i-iii below. This may include a more detailed list of projects that one party would like to receive notice of and identify the agencies or offices that should receive that notice. Once this description is approved by all of the members of the BWG, it will be attached as "Attachment 2" to this SOC and become a part of it.
 - i. Environmental Assessments;
 - ii. Permitting Processes;
 - iii. Where appropriate and in furtherance of the objectives of the SOC, analogous processes triggered under federal law where British Columbia or Alaska is engaged in that federal process.

- b. As the BWG looks at the best ways to enhance their existing collaboration they will consider, among other options:
 - i. Participation of a representative of an agency from the British Columbia or Alaska government as a member, observer or commenting stakeholder in meetings of an inter-agency workgroup convened by the other jurisdiction; and
 - ii. Procedures for assuring that comments submitted by an agency from the British Columbia or Alaska government are duly considered and responded to by the reviewing or authorizing agency, or the proponent if required, from the other jurisdiction.

The parties shall also work to enhance and develop opportunities for interested Tribes, the Nisga'a Nation, First Nations, local governments, organizations, and the general public to easily access useful information about mining and other significant development projects in Transboundary Waters and to provide their input into provincial and state authorization processes before they are complete. Among other potential means to accomplish this, it is envisioned there will be public open houses in Alaska during the Environmental Assessment process on particular proposed projects. As allowed by law, the parties shall also look for opportunities to hold public hearings in the other jurisdiction where there is significant public interest or for other opportunities to solicit public comment.

- 4. Reporting on Ongoing Discharges, Operational Oversight, and Closure: The parties intend to:
 - a. Identify and share reports with each other, in a timely manner without violating any legal requirements, that provide reliable information on the on-going compliance of a mine with the terms of its permits and other government authorizations that are intended to protect Transboundary Waters;
 - b. Notify in a timely manner the other party to the MOU, to the extent permitted by law, of:
 - i. Discovery of a deficiency in the design, placement, construction or maintenance or performance of a tailing dam, or other structure designed to store mine tailings and waste water, that the discovering party believes poses risk of significant degradation to Transboundary Waters;
 - ii. Compliance actions taken against a company operating in the Transboundary Region that fails to meet the conditions and requirements prescribed in an environmental assessment certificate or permit, including information that becomes available during the course of the compliance action and relates to the fiscal health of the companies involved; or
 - iii. The imminent threat or actual release of pollutants from a mine or former mine, or other commercial development, that the discovering party believes could have a significant adverse impact on Transboundary Waters.
 - c. The parties may include more specific provisions in Attachment 2 to this SOC regarding the content, timing and other aspects of the notices to be provided under this Section 4.

5. **Engagement of the Parties on Broader Concerns:** There are existing concerns and concerns that could arise in the future that relate to more than one mine or other commercial development in the Transboundary Region.

a. Existing concerns which Alaska seeks to address under the SOC are:

- i. The risk that a deficiency in the design, placement, construction or maintenance of an earthen tailings dam, or other structure designed to store mine tailings and waste water, could lead to a catastrophic failure that would result in significant degradation of Transboundary Waters; and
- ii. Financial impacts to individuals or communities as a result of a mine-related incident.

b. Existing concerns which British Columbia seeks to address under the SOC are:

- i. Concerns that British Columbia is not addressing the allowable margin of risk around the design, construction and management of tailings storage facilities by introducing new regulations and safety standards for tailings storage facilities, including a review of the Health, Safety and Reclamation Code for Mines; and
- ii. Concerns that British Columbia does not have in place robust regulatory processes for natural resource projects, including environmental assessments, permitting, compliance and enforcement; and
- iii. Greater understanding of Canadian common law and constitutional law requirements to consult and accommodate the Nisga'a Nation, and First Nations.

c. The parties may develop a joint statement of the issue(s) relating to each of the existing concerns described in 5.a. or b. above. Each statement of an issue may then be used to develop a report on the measures the jurisdiction being asked to address the issue has in place or is planning to put in place that is expected to address the issue. This could include how the jurisdiction plans to address any related recommendations or findings from third party reviews of the issue. The parties may then develop additional recommendations for addressing the issue for consideration of the jurisdiction addressing the issue.

d. Any member of the BWG may, in a written request to all of the members of the BWG, ask that they agree to attempt to address a specific concern not otherwise being addressed under 5.a. - c. or other section of this SOC. The written request should identify the concern with specificity and identify any means the requesting BWG member believes should be used to address the concern under the SOC. This could include, by way of example, convening a special workgroup, collaborating on a special study or demonstration project or a technology conference.

6. **Communications:** A key goal of this SOC is transparency and dialog with the Tribes, the Nisga'a Nation, First Nations, federal and local governments, organizations and other interested parties. The BWG intends to prepare a Communication Plan that describes with reasonable specificity how the BWG and its respective agencies, and technical and work

groups established under the SOC, might enhance communication with the Nisga'a Nation, First Nations, Tribes, communities, organizations, residents in the region and with federal agencies regarding work performed by the parties. Subject to any legal restrictions, the BWG intends to consider ways to:

- a. Better inform Tribes, the Nisga'a Nation, First Nations and the public regarding the steps for particular projects off Nisga'a Lands in entering the Environmental Assessment process and opportunities for Tribes, the Nisga'a Nation, First Nations and the public to engage through public workshops (including in Alaska) and otherwise;
- b. Better inform Tribes, the Nisga'a Nation, First Nations and the public regarding the steps for particular projects off Nisga'a Lands in the Permitting Process and opportunities for Tribal, the Nisga'a Nation, First Nations and the public to engage;
- c. Provide easier access by the Tribes, the Nisga'a Nation, First Nations and the public to useful information relating to proposed mines and other significant commercial development, including comments and recommendations submitted by Alaska agencies as part of their participation in these processes;
- d. Provide in a timely manner, early on, meaningful information on potential future mine and other significant developments that might be considered under the SOC;
- e. Provide in a timely manner relevant information on the ongoing compliance of a mine, during the operation, shutdown, closure and reclamation phases of its life, with the terms of its permits, authorizing documents, approved plans and other legal requirements; and immediate notice of any catastrophic or other unanticipated event relating to a transboundary mine or other commercial development that could have significant environmental impacts downstream of the site of the event.

7. The Nisga'a Nation

- a. The Parties acknowledge that prior to any decisions in respect of policies, procedures, or initiatives contemplated under this SOC that relate to existing or proposed mine development, operations and closure which could potentially impact Nisga'a rights or interests under the Nisga'a Final Agreement or any other agreement between the Nisga'a Nation and British Columbia which contain unique provisions in respect of the Transboundary Waters and the Transboundary Region, British Columbia will consult with the Nisga'a Nation in accordance with the Nisga'a Final Agreement, such other agreements and other procedures as agreed to by British Columbia and the Nisga'a Nation.
- b. The Parties acknowledge and understand that the SOC does not apply to any project or portion of a project located on Nisga'a Lands (as that term is defined in the Nisga'a Final Agreement and as depicted on the map attached hereto as Attachment "B") which require an environmental assessment or other permits pursuant to Nisga'a law.

8. Engagement with the Nisga'a Nation, First Nations and Tribes in the Transboundary Region:

- a. The parties intend, in their implementation of the SOC, to enhance their engagement with the Nisga'a Nation, First Nations and Tribes in the Transboundary Region. This may include, but is not limited to:
 - i. With the assistance and participation of the Nisga'a Nation, First Nations and Tribes, the collection, documentation and sharing of traditional ecological knowledge;
 - ii. The collection of water quality and other data relevant to the monitoring of the condition of Transboundary Waters and the fisheries they support;
 - iii. The establishment of one or more councils consisting of members designated by the Nisga'a Nation, First Nations and Tribes to engage with the BWG on matters relating to the implementation and performance of this SOC.

9. Engagement with Communities and the Public.

- a. It is a goal of the parties in performing work under this SOC to engage collaboratively with communities, organizations and individuals interested in protecting the quality of Transboundary Waters and the fisheries they support.
- b. The parties can engage with individuals from citizens' groups in British Columbia and Alaska to provide independent advice to an agency or company regarding one or more commercial operations and the resources they might impact in a particular geographical area. Citizens groups generally represent a broad cross section of stakeholders and help find collaborative solutions or outcomes. With this in mind, the parties plan to look for opportunities to facilitate:
 - i. Citizens from Alaska to work with citizens groups in British Columbia that have a scope of work that includes concerns of significant interest to Alaskans in the Transboundary Region;
 - ii. Citizens from British Columbia to work with citizen groups in Alaska that have a scope of work that includes concerns of significant interest to citizens of British Columbia in the Transboundary Region;
 - iii. Representatives from agencies, the Nisga'a Nation, First Nations, Tribes and organizations in one jurisdiction to attend meetings of citizen groups in the other jurisdiction to present helpful information and discuss concerns relating to Transboundary Waters and the fisheries they support.

10. Engagement with Federal Agencies: A number of the concerns the parties may seek to address under this SOC might involve the duties and authorities of one or more federal agency. In some instances a federal agency might have experience, expertise or resources that might be of assistance in addressing a concern that arises under the SOC. With this in mind, the parties intend to look for beneficial ways to engage with their respective federal agencies in addressing concerns and issues that arise under the SOC. This includes without limitation, inviting persons from federal agencies to work with the TWG-M and other technical and

special working groups and including provisions in the Communication Plan for providing information and invitations to meetings to interested federal agencies.

11. **Meetings of the BWG:** The BWG shall meet in person or by phone at the will of the group. It is envisioned the BWG will meet at least quarterly during the first year of this SOC and at least once a year in succeeding years. If a member of the BWG is unavailable to attend a meeting, she or he may designate to their deputy commissioner or assistant deputy minister authority to participate in that meeting on their behalf. Nothing in this SOC is meant to discourage members of the BWG from collaborating with each other on any matter without engaging other members of the BWG who might be less involved in that matter. Collaboration being a key goal of the SOC, the BWG intends to act with the consensus of all of its members.
12. **Oversight of the BWG:** The MOU provides that the Lieutenant Governor of Alaska, as chair of the Alaska Transboundary Working Group, and British Columbia's Minister of Environment and Minister of Energy and Mines shall provide oversight of the BWG.
 - a. The members of the BWG from each jurisdiction are responsible for providing to their respective senior leader(s) (Lieutenant Governor in Alaska and the Minister of Environment and Minister of Energy and Mines in British Columbia): 1) advance notice of meetings of the BWG and of its technical and other groups established by the BWG under this SOC; 2) drafts of the Communication Plan (described in Section 6 of the SOC); proposed goals, timelines and performance measures; and other documents prepared for or by the BWG that are important to the implementation of the MOU and 3) such other information as their senior leader(s) may desire.
 - b. If the BWG is unable to find consensus on a matter they are discussing, they may seek assistance from the Alaska Lieutenant Governor and British Columbia Minister of Environment and Minister of Energy and Mines.
13. **Funding:** The parties recognize the constraints contracting budgets put on them and the need to prioritize work under the SOC, build on existing collaborations, leverage existing partnerships and resources, and avoid unnecessary duplication.
14. **Definition of Terms:** The following terms are defined as follows for purpose of this SOC.
 - a. "Transboundary Water(s)" includes: any river, stream or other surface water that flows across the international borderline between Alaska and British Columbia, including all tributaries to these waters, and on which mining or other commercial development is being planned, is occurring or has occurred, that involves the risk of significant degradation of those waters or the fisheries they support; and, also includes all marine waters within the jurisdiction of Alaska south of sixty (60) degrees latitude or within the jurisdiction of British Columbia. Attached as Attachment "A" to this SOC is a map showing the location of the four major watersheds that cross the boundary between British Columbia and Alaska and the location of the sixty degree line of latitude.

- b. "Transboundary Region" includes the areas in British Columbia that are drained by Transboundary Waters or that are part of the Southeast panhandle of Alaska south of sixty (60) degrees latitude.
- c. "Environmental Assessment" means any environmental review or assessment that:
 - i. Is required under federal, provincial or state law in advance of the consideration of a permit application or as part of the consideration of whether to issue a permit or other governmental authorization;
 - ii. Involves significant participation by one or more of the agencies represented on the BWG; and
 - iii. Pertains to a proposed mining or other commercial development that could, in its construction, operation, closure or reclamation, result in significant degradation of a Transboundary Water or the fisheries it supports.
- d. "Permitting Processes" means any governmental process conducted by a state or provincial agency that is required by law and involves the exercise of its regulatory authority to issue or approve a permit or authorization in response to a proposed mine or other commercial development that could in its construction, operation, closure or reclamation, result in significant degradation of a Transboundary Water or the fisheries it supports.
- e. "Fisheries" for purposes of this SOC, includes: areas where fish are harvested for commercial, subsistence, recreational and other purposes; fish populations harvested for these purposes; and the habitats that support those fish.
- f. "Significant degradation", for purposes of this SOC, means an addition of contaminants from one or more sources that lowers the quality of the receiving water such that the receiving water:
 - i. If within the jurisdiction of the state of Alaska, cannot support the designated uses of that water specified under AS 46.03.080 and 18 AAC 70.020, or
 - ii. If within the jurisdiction of the Province of British is considered pollution under the *Environmental Management Act*.

15. Interpretation: This SOC is to be interpreted consistent with the terms of the MOU.

16. Limitations: This SOC shall have no legal effect; impose no legally binding obligation enforceable in any court of law or other tribunal of any sort, nor create any funding expectation; nor shall either Alaska or British Columbia be responsible for the actions of third parties or associates. This SOC does not limit or change in any way the legal rights or obligations of either party, or any third party, may have under a treaty, contract or other agreement or law. This SOC does not narrow, expand or supersede any state or provincial law. By entering into this SOC or taking any action pursuant to this SOC, Alaska or British Columbia is not precluded from seeking or supporting at any time an alternative means for resolving a concern, including without limitation, a referral to the International Joint Commission pursuant to the Boundary Waters Treaty between the United States and Canada. Any decision or recommendation by the BWG or any committee they form pursuant to this SOC shall not be legally binding on either party or their agencies.

17. Notices: Except as may be otherwise provided in Attachments 1 or 2 to this SOC, notices that are to be provided by one party to the other may be made in writing or by email.

18. Term and Amendment: This Statement of Cooperation is effective when signed by the Lieutenant Governor of Alaska, British Columbia's Minister of Environment and Minister of Energy and Mines. It may be amended at any time by agreement among all of the signatories and may be terminated by any of them by written notice to the others.

AGREED as to form and content and signed and dated in two (2) duplicate originals in Juneau, Alaska and Victoria, British Columbia this ____ day of ____ 2016.

Byron Mallott
Lieutenant Governor, Alaska
United States

Mary Polak
Minister of Environment
British Columbia, Canada

Bill Bennett
Minister of Energy and Mines,
British Columbia, Canada