

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES

April 6, 2017

10:03 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Zach Fansler
Representative Jonathan Kreiss-Tomkins
Representative Geran Tarr
Representative Mike Chenault
Representative David Eastman
Representative Mark Neuman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 9

Urging the United States government to continue to work with the government of Canada to investigate the long-term, region-wide downstream effects of proposed and existing industrial development and to develop measures to ensure that state resources are not harmed by upstream development in British Columbia.

- MOVED CSHJR 9(FSH) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 9

SHORT TITLE: CANADIAN MINES ON TRANSBOUNDARY RIVERS

SPONSOR(S): REPRESENTATIVE(S) ORTIZ

01/30/17	(H)	READ THE FIRST TIME - REFERRALS
01/30/17	(H)	FSH, RES
03/16/17	(H)	FSH AT 10:00 AM GRUENBERG 120
03/16/17	(H)	-- MEETING CANCELED --
03/28/17	(H)	FSH AT 10:00 AM GRUENBERG 120
03/28/17	(H)	<Bill Hearing Canceled>
03/30/17	(H)	FSH AT 10:00 AM GRUENBERG 120
03/30/17	(H)	-- MEETING CANCELED --
04/06/17	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE DAN ORTIZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented the proposed committee substitute (CS) for HJR 9

CAROLINE HAMP, Staff
Representative Dan Ortiz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided the changes proposed in the committee substitute (CS) for HJR 9, on behalf of Representative Ortiz, prime sponsor.

CHRIS ZIMMER, Campaign Director
Rivers Without Borders
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

FREDERICK OLSON, JR., Tribal Vice President
Organized Village of Kasaan
Chair, United Tribal Transboundary Mining Work Group
Kasaan, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

DAVID CHAMBERS, PhD, President
Center for Science in Public Participation
Bozeman, Montana

POSITION STATEMENT: Testified in support of HJR 9.

LINDSEY BLOOM, Project Manager
Salmon Habitat Information Program
United Fishermen of Alaska (UFA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

KRISTEN SHELTON WALKER, Project Manager
McDowell Group
Juneau, Alaska

POSITION STATEMENT: Provided highlights from a transboundary study during the hearing on HJR 9.

HEATHER HARDCASTLE
Salmon Beyond Borders
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

MIKE SATRE, Vice President
Alaska Miners Association
Juneau, Alaska

POSITION STATEMENT: Testified with opposition to HJR 9.

MICHELLE HALE, Director
Division of Water
Department of Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HJR 9.

KAREN MATTHIAS, Executive Director
Council of Alaska Producers (CAP)
Anchorage, Alaska

POSITION STATEMENT: Testified with opposition to HJR 9.

DEANTHA CROCKETT
Alaska Miners Association (AMA)
Anchorage, Alaska

POSITION STATEMENT: Testified with opposition to HJR 9.

JILL WEITZ
Salmon Beyond Borders
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

MELANIE BROWN, Organizer
Salmon Beyond Borders
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 9.

DAVID SCHADE, Manager
Water Resources Section
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HJR 9.

ACTION NARRATIVE

[10:03:15 AM](#)

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:03 a.m. Representatives Stutes, Chenault, Fansler, Tarr, and Neuman were present at the call to order. Representatives Eastman and Kreiss-Tomkins arrived as the meeting was in progress.

HJR 9-CANADIAN MINES ON TRANSBOUNDARY RIVERS

[10:03:54 AM](#)

CHAIR STUTES announced that the only order of business would be HOUSE JOINT RESOLUTION NO. 9, Urging the United States government to continue to work with the government of Canada to investigate the long-term, region-wide downstream effects of proposed and existing industrial development and to develop measures to ensure that state resources are not harmed by upstream development in British Columbia.

[10:04:12 AM](#)

REPRESENTATIVE FANSLER moved to adopt the proposed committee substitute (CS) for HJR 9, Version 30-LS030\D, Nauman, 2/14/17, as the working document.

[10:04:38 AM](#)

CHAIR STUTES objected for discussion.

[10:04:43 AM](#)

REPRESENTATIVE DAN ORTIZ, Alaska State Legislature, presented the proposed committee substitute (CS) for HJR 9, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

House Joint Resolution 9 declares the Alaska State Legislature's support for measures the U.S. Congress and the U.S. State Department can take to ensure that Alaskans have their voice heard in relationship to transboundary mining issues.

As British Columbia continues to expand their mining industry, Alaskans deserve to know how mining development affects our transboundary rivers, and if necessary, to have mechanisms and precautions to protect our watersheds.

HJR 9 urges the federal government to continue working with the Canadian government to investigate downstream effects of industrial development and to develop measures to ensure the safety of our state resources.

We have heard support for this issue from all sides: thousands of Alaskans have expressed their concern for our watersheds, our Governor and Lt. Governor have been vocal on the issue, and now Senators Murkowski and Sullivan are pushing for reform at the federal level. It is time for the Alaska Legislature to join their ranks.

[10:07:58 AM](#)

CAROLINE HAMP, Staff, Representative Dan Ortiz, Alaska State Legislature, provided the proposed, Version D changes, which read as follows [original punctuation provided]:

Page 1, Line 14

Insert "and operating" to clarify that the effected mines include both operating and proposed mines

Page 2, Line 1

Insert "Brucejack Mine" to update the list of proposed mines

Page 2, Line 2

Delete "headwaters of the" and insert "Watershed" as a technical clarification

Page 2, Line 11

Insert "2016 B.C. Auditor General's Report" as additional resource and proof

Page 2, Line 16

Insert a Whereas Clause regarding the Statement of Cooperation on Protection of Transboundary Waters signed by the State of Alaska and the Province of British Columbia on October 6, 2016 as an additional resource and reference

Page 2, Line 20

Insert a Whereas Clause regarding the Boundary Waters Treaty of 1909 as an additional resource and reference

[10:09:25 AM](#)

CHAIR STUTES removed her objection, and without further objection, Version D was before the committee.

10:10:50 AM

CHRIS ZIMMER, Campaign Director, Rivers Without Borders, stated support for HJR 9, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

This is not an environmental issue. It is one of protecting Alaska jobs and resources from a cross border threat. In contrast to other resource issues in Southeast Alaska, this has united people across the region, not divided them.

2. Let's look at the transboundary issue through the lens of Tulsequah Chief

Alaska fishermen and leaders began raising water quality and fisheries concerns related to the Tulsequah Chief mine nearly 20 years ago, calling for federal intervention through the Boundary Waters Treaty (BWT) and the associated International Joint Commission (IJC).

The History:

Abandoned in 1957 without any reclamation. Two companies have tried to re-open the mine, with each going bankrupt, one in 2009 and one in 2016

Repeated inspections found acid mine drainage into salmon habitat in violation of mine permits, water quality standards and the Canadian Fisheries Act. Yet little was done to stop the pollution.

BC repeatedly said its mine permitting process would halt the pollution, it did not.

Now, instead of enforcing the law and being a responsible upstream neighbor, BC is A) still counting on some new company to buy the mine and then be responsible for cleanup and B) claiming the situation is not an "emergency." So we have an ongoing discharge of toxic acid mine drainage into salmon habitat, which violates BC water quality standards, Canadian

Fisheries Act, BC mine permits, possibly BWT, and no clear commitment to clean it up. Re-opening the mine is not a cleanup plan; it is a recipe for another bankruptcy and further inaction from BC.

Alaskans were encouraged by Minister Bennett's reaction to his visit to the Tulsequah Chief in August 2015, after which he pledged to fix the problem sooner rather than later. However, he has backtracked on that commitment. Bennett has downplayed the pollution, claiming there was "no contamination in the river" despite direct evidence to the contrary. He admitted the mine discharge "exceeds water quality standards" but said the situation was not an "emergency."

Bennett ignores the fact that very low levels of heavy metals (a few ppb) in acid mine drainage can degrade a salmon's ability to smell, locate spawning grounds, find food, and detect predators, and inhibit growth, breathing and heart function.

If B.C. isn't going to enforce water quality standards then what good are the standards? Is the new standard no action unless there is an emergency? Isn't it then too late? If B.C. can't (or won't) solve the pollution problem here at this relatively small mine, what can we expect at much larger mines such as KSM in the Unuk and Red Chris in the Stikine?

3. Implications for overall Transboundary region

Insufficient bonding

Polluter pays doesn't work when company goes bankrupt and bond is inadequate

Weak enforcement

Trust but verify, we need more than just a handshake agreement, we need binding and enforceable protections

The SOC process is doing little to pressure BC into cleaning up the mine. SOC provides no meaningful recourse for Alaska. TCM is example of what to expect in future if approach is solely based on SC.

This should be a lesson and a warning to us...and a reason to be very vigilant across the transboundary.

4. Joint state/federal approach under authority of Boundary Waters Treaty

We in Alaska are responsible for protecting our own interests. 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 utilizing the BWT, 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 nonbinding and unfunded SOC. Why would we not want to use the most powerful tools to protect our resources and jobs?

[10:15:07 AM](#)

FREDERICK OLSON, JR., Tribal Vice President, Organized Village of Kasaan, Chair, United Tribal Transboundary Mining Work Group, stated support for HJR 9, drawing attention to submitted testimony in the committee packet; a resolution from the village of Kasaan. An international issue needs international resolutions, he said. The CS provides additional encompassing language that is important. He emphasized the need to urge involvement of the federal government, and said that on behalf of Alaska's tribal interests, it would be good to include the Boundary Waters Treaty (BWT) of 1909. He suggested the addition of a "Whereas" to include BWT Article 4, which addresses harm or potential harm that one country might do to another. The committee could go further to include BWT Article 9, which states that from time to time the treaty could be revisited, an opportunity that has never been exercised. It is an important option that should be looked at and which could make the resolution stronger, he opined. However, the resolution does ask for the federal involvement that has been sought, and he thanked the committee for introducing the measure.

[10:21:42 AM](#)

DAVID CHAMBERS, PhD, President, Center for Science in Public Participation, stated support for HJR 9. He referred to the committee handout, titled, "Deficiencies in Post-Mt Polley Reclamation Changes: BC Financial Surety for Mines; BC Mine Reclamation Code Changes," to review how these focus points have been addressed since the Mt. Polley mine disaster of 2014. He reported that British Columbia (BC), Canada, has an outstanding, unfunded total reclamation liability for existing mines of \$1.2 billion. These actual closure reclamation funds have not been collected and only a discounted total is in the bank. The lack of surety represents a risk for Alaska being downstream from a BC mining failure. The government of BC would need to provide the balance of closure funds needed, or allow the environmental impacts to continue, unmitigated. He said, "This [amount] doesn't speak to compensating businesses, or individuals, or organizations, or companies that might be hurt from a mine failure or closure situation." The province has expressed a desire to reduce, but not eliminate, this liability over the next eight years. Further, BC intends to continue to utilize a risk-based approach, which means that mining companies aren't required to have the entire amount of the surety necessary for closure and that part of the surety is provided via corporate guarantee, which equals a piece of paper promising to close the mine properly. He stressed that BC retains no financial surety for a catastrophic failure such as occurred at Mt Polley. One of the things that the Mt. Polley Expert Panel predicted is that BC will experience 2 mine failures every 10 years, pending significant policy changes.

[10:26:42 AM](#)

DR. CHAMBERS reported that BC has posed the need accept the corporate guarantees in order to remain competitive. However, in reality it creates a competitive advantage for mining companies that operate in the province. Alaska requires a 100 percent guarantee. Further, much of the world is moving toward requiring a 100 percent reclamation surety, at the time of mining, he said, and offered findings from informal research that he conducted, to wit:

Canadian Provinces:

Alberta - risk based; unfunded liability of \$19.3 billion

Manitoba - based on financial strength

Nova Scotia - minister has wide discretion

Ontario - based on financial strength

Saskatchewan - corporate guarantees

Quebec - 100% 2-yr payment period
Yukon - 100%
Nunavut - 100% (DIAND)
Northwest Territories - 100% (DIAND)

Australia:

Western Australia - rehabilitation fund contribution,
optional bond
Victoria - risk based, moving to 100%
Northern Territories - 100%
New South Wales - coal (no info available)
Queensland - minister has wide discretion
South Australia - rehabilitation fund contribution,
optional bond
Tasmania - minister has wide discretion

US:

BLM/USFS - 100%
Most states - 100%
Alaska & Nevada - can use corporate guarantees

DR. CHAMBERS opined that corporate guarantees are not an assurance to the public, are considered unacceptable, and are being phased out in most locales. Quoting from the Mt. Polley Expert Panel report regarding dam safety, he said, "Safety attributes should be evaluated separately from economic considerations, and cost should not be the determining factor." The system being used in BC allows cost to be the determining factor, particularly in the construction of dams, he said.

[10:30:10 AM](#)

DR. CHAMBERS stressed that BC has not prioritized safety, as evidenced by the prevalent use of cheaper center-line dams, versus more effective downstream dams, which cost slightly more. Emphasis has not been placed on dry closures and the wet closures have a history of failure. Hence, failures on the scale of Mt. Polley can be expected or recur, due to the continued use of wet closures, he predicted. The Mt. Polley Expert Panel recommended the elimination of surface water from the impoundment, but code has not been revised to minimize water in the tailings enclosure. All of the BC sulfide-mines currently operating, or proposed, in the transboundary region utilize wet closures, he emphasized. The code guidance document has not been changed regardless of the multitude of public

comments that were lodged with province officials, nor in response to the Mt. Polley Expert Panel recommendations. The Red Chris mine received a final operating permit, on 2/28/17, under the identical code. The Red Chris mine is run by the same company as Mt. Polley and will be designed in the same manner. The tailings dam will be constructed with the same engineering design, and the financial surety received was only \$12 million, which he estimated to be four times under actual closure costs. Thus, a discount has been extended to allow the same company to operate that has had a dam fail, and the BC government stating that it "is worth the risk to the public." Additionally, the KSM mine has been proposed and permitted. He reported that the Environmental Impact Statement (EIS) for the KSM project indicates that the copper and lead level discharges could exceed allowable levels where the Unuk River enters Alaska. The action effectively makes the entire Canadian aspect of the Unuk River a mixing zone for copper and lead, he underscored. The mine will require post-closure treatment of 171 million gallons of water per day, which would cost approximately \$1.2 billion. He summarized that the BC practice of allowing companies to operate based on corporate guarantees, to issue permits for dams built as wet closures, and by prioritizing costs considerations over safety, is business as usual for the province, and contrary to the recommendations from the Mt. Polley Expert Panel report, which states, "The Panel firmly rejects any notion that business as usual can continue."

[10:37:15 AM](#)

REPRESENTATIVE TARR referred to the \$1.2 billion unfunded, reclamation costs for the Mt. Polley disaster that will be paid out over the next eight years to mitigate the damage, and asked about further environmental damage that may occur during that time period, by not addressing the problem more quickly.

DR. CHAMBERS clarified that the \$1.2 billion represents the gap in the amount calculated, for reclamation closure for all of the mines in BC, and the amount that has actually been banked for that purpose. He explained that the money available for a failure at a given mine are the funds specifically held for that mine. For example, if the Red Chris mine goes bankrupt and the province closes it, the province would be required to fund the closure at the cost of an additional \$12-\$48 million, as Red Chris has only been required to deposit \$12 million in the bank. Alaska, however, requires all of the money necessary for

closure. Thus, the Red Dog mine has a current closure surety of over \$500 million.

[10:39:55 AM](#)

LINDSEY BLOOM, Project Manager, Salmon Habitat Information Program, United Fishermen of Alaska (UFA), stated support for HJR 9, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

United Fishermen of Alaska (UFA) is a statewide commercial fishing trade association composed of 35 commercial fishing organizations representing fishermen who participate in fisheries in both state and federal waters.

Our southeast members and member groups include troll, gillnet, seine and non-salmon fishermen who are all highly concerned about the threat of impacts from large-scale mineral development upstream.

This resolution urges the United States federal government to investigate the long-term, region-wide downstream effects of proposed and existing B.C. industrial development in these transboundary watersheds, as well as to develop with the Canadian federal government enforceable measures and financial assurances to protect Alaskans' livelihoods and way of life from the potential negative impacts of large-scale transboundary mining.

We remain convinced that a binding agreement between the United States and Canada is the only way to ensure Alaska's interests are adequately protected.

Impacts to water quality, which is an all too common side-effect of large scale hard-rock mining projects, could hurt fisheries and fishing jobs in Alaska. Canadians and mining companies are receiving all of the economic benefits from these projects while Alaskans, and particularly fishermen, are left to carry the downstream impacts and risks.

Commercial Fishing in Southeast Alaska is worth \$1 billion per year

In conclusion, I want to acknowledge the responsiveness and leadership that has been shown on this issue from Rep. Ortiz, Rep. Stutes and other members of the Alaska legislature. Also, the Alaska delegation in DC. Senator Murkowski in particular who has brought this issue before the State Department and most recently Canada's Prime Minister Trudeau. Passage of HJR if passed shows the kind of leadership Alaskans are looking for from this body and will go a long way to shore up the efforts of our representatives at the Federal Level. I encourage this committee to move HJR 9 today so that its message to the Federal Government will be heard loud and clear in the near future. Time is of the essence on this issue.

[10:42:59 AM](#)

REPRESENTATIVE TARR asked whether concern needs to be afforded other fish species, outside of salmon.

MS. BLOOM offered that water quality in estuary zones is important and deferred further response to a biologist.

[10:44:27 AM](#)

KIRSTEN SHELTON WALKER, Project Manager, McDowell Group, directed attention to the committee handout, titled, "Economic Impacts of Southeast Alaska Transboundary Watersheds," April 6, 2017, and said that Salmon State contracted with the group to analyze the economic impacts of three transboundary watersheds of the Taku, Stikine, and Unuk rivers. A request for a preliminary analysis of the Nass and Skeena rivers was also part of the request. Although neither the Nass nor the Skeena rivers flow into Alaskan waters, the fish pass through during their migration. The economic impacts of the watersheds were determined by reviewing the following points: jobs and labor income for employees of watershed-related businesses; indirect impacts, such as spending by watershed-related businesses; induced impacts, which includes spending in communities and statewide by employees; visitor spending; tax benefits of properties located in the watershed; and the present value of the perpetual benefits from the renewable resources. She said the economics of a healthy river system will generate jobs that include the following sectors: commercial fishing, sport fishing, personal use, hunting and trapping, visitor industry, and recreation activity. Unmeasurable, intangible benefits also

exist that can't be statistically included in the study, she stressed. In the interest of time, she offered to provide a broad-brush report on the findings that are further detailed in the complete report. She summarized the Taku river watershed findings as: \$32.9 million total economic spending; \$12.8 million labor income; and 260 annual jobs. If the current activities are continued at the present level for the next 30 years, a projected economic value of \$650 million will be realized. She summarized the Stikine river watershed findings as: \$13 million total economic spending; \$6 million labor income; and 117 annual jobs. The projected, 30 year economic value for this system is \$250 million. She summarized the Unuk river watershed findings as: \$2.5 million total economic spending; \$1.2 million labor income; 24 annual jobs; and a projected 30 year economic value of \$50 million. A combined summary of all the systems shows an average total of 400 jobs supported, and an economic impact total of approximately \$48 million. The projection for the present economic value, extrapolated to 50 years, indicates that an economic value of over \$1.2 billion will be realized. She stressed that these are valuable watersheds and can provide benefits to the state in perpetuity.

[10:49:00 AM](#)

REPRESENTATIVE NEUMAN noted that the economic values being reported have a focus on tourism, and fisheries. He asked whether the economics of the mining industry were taken into account.

MS. WALKER reported that no mines were operating in southeast, at the time of the study.

[10:49:47 AM](#)

REPRESENTATIVE TARR asked what seafood species were reported on to arrive at the exvessel value.

MS. WALKER answered that all species within the watershed were considered but not beyond the mouth of a given river.

[10:50:26 AM](#)

HEATHER HARDCASTLE, Salmon Beyond Borders, stated support for HJR 9, and said the campaign is driven by a multitude of concerned entities, which include: fishermen, community leaders, tourism and recreation business owners, and concerned

citizens. Salmon Beyond Borders was established three a half years ago to work towards seeking solutions to the brewing, international, transboundary situation, with a focus on the Stikine, Taku, and Unuk river watersheds. By supporting HJR 9, the committee will join tens of thousands of Alaskans who are asking for an international mechanism to protect their way of life, and ensure the resource viability of the watersheds. Alaska's congressional delegation is fully supportive and have expressed interest in receiving a resolution, such as HJR 9, to aide their efforts in establishing protections for these shared interests. The Salmon Beyond Borders group recently joined with a delegation from Montana to visit officials in Washington D.C., she reported. The stories that Montana shared were compelling and landed with a "thud," before the Alaska Congressional Delegation, as well as the State Department. She explained that Montana has the same transboundary issues as Alaska and has been working with Canada, for a lengthy period of time, to protect its shared waterways from the upstream, detrimental effects caused by BC coal mines. The transboundary Flathead river watershed is still intact, having received International Joint Commission attention beginning in the 1980's. However, the neighboring Elk and Kootenai river watersheds, are severely impaired and compromised for use by Montana residents. Although Montana has been working for many years to have the federal government push for protections, the effort has been to no avail. A state/provincial memorandum of understanding (MOU) has been the only agreement in place. Today, the Canadian aspect of the Elk River is hosting fish kills, and deformed fish, and the Kootenai River [aka Kootenay River] enters Montana in violation of state selenium water quality standards. The state faces having an impaired watershed forever, she reported. Ms. Hardcastle referred to the committee packet and the document titled, "Summary of Brief; Canadian Mines on Transboundary Rivers, The Need for Financial Assurances; prepared by Robyn Allan, Independent Economist, in support of House Joint Resolution 9, March 16, 2017," paraphrasing from page 1, paragraphs 4-6, and page 4, the closing paragraph, which read as follows [original punctuation provided]:

[page 1]

The environmental assessment, monitoring, compliance, and financial assurances regime in British Columbia is dysfunctional.

The environment and the public on both sides of the Canadian and US borders face serious long term risk, loss and cost.

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

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

[page 2]

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.

[10:56:56 AM](#)

REPRESENTATIVE NEUMAN asked what information is available showing that the Canadian DEC actions are ineffective.

MS. HARDCASTLE pointed out that several statements have been issued, addressing vital aspects of the mining sector, including a compelling report from the BC Auditor General, 5/20/16, which is included in the committee packet. The auditor's report is scathing, as the review of every measure of success, productivity, compliance, and enforcement, resulted in a failing grade.

REPRESENTATIVE NEUMAN commented that it would be interesting to hear what Alaska's DEC has to say about the transboundary watersheds, the agencies consideration of the water quality, management of the systems, and how interaction with Canada is handled.

CHAIR STUTES opened public testimony.

[10:59:30 AM](#)

MIKE SATRE, Vice President, Alaska Miners Association, testified with opposition to HJR 9, paraphrasing from a prepared

statement, which read as follows [original punctuation provided]:

I was born and raised here in Southeast Alaska and Juneau is my home. I am the manager of government and community relations at the Hecla Greens Creek Mine, am the president of the Council of Alaska Producers and VP of the Alaska Miners Association. I have been a member of Lt. Governor Mallott's ad-hoc citizens working group on Transboundary issues representing the Alaska Miners Association and am here on the behalf of AMA today.

Industrial development in the transboundary is not experiencing unprecedented or rapid expansion however we do support the rights of Alaskans to raise concerns regarding upstream development, especially when "upstream" is located in another country.

Unfortunately this resolution disregards the significant efforts made by the Walker/Mallott administration to foster collaboration and encourage responsible development balanced with water and habitat protections. The mining industry has fully supported these efforts as they are the only realistic manner by which our regulatory agencies can have meaningful engagement in the permitting process of a foreign country. BC and Montana have successfully managed transboundary issues in the Flathead River Basin through a MOU since 2010 and there is no reason we can't have the same success.

We would encourage the committee to add language to the resolution that supports the MOU and SOC that are currently in place. By not supporting the administration in their efforts, the Legislature would be sending a clear message to British Columbia that we do not want to engage.

We would also like to address the fallacy in asking for federal engagement on this issue. It seems like there is hardly a day that goes by here in the capital that there isn't a resolution or floor speech that complains bitterly of "federal overreach" and lauds the ability of Alaskans to solve our own problems...but suddenly, when it comes to this issue this is not the case.

Not only is federal intervention not needed here, but quite frankly the Legislature should realize the futility of invoking the Boundary Waters treaty and the International Joint Commission. The Boundary waters treaty specifically excludes from its authority those waters that cross borders...the treaty is meant for waters that lay parallel to borders such as the Great Lakes. There is a caveat that neither country shall pollute waters flowing into the other so there is already a legal mechanism for an aggrieved party on either side of the border to seek compensation should a problem occur.

That being said, even if the Boundary Waters treaty is invoked, and an IJC reference from both countries proceeds, it will take years, even decades for any recommendation to be made. And the recommendation is just that...a non-binding recommendation that would still require approval and implementation by both countries. So, by involving the federal government, Alaska would potentially have to wait for decades for a non-binding result, instead of utilizing a state to province agreement that is already in place. This makes no sense. This is why we have to support the Lt. Governor and the process outlined in the MOU/SOC.

It is important that the Legislature make its opinion known on issues like transboundary development. It is important that legacy problems like Tulsequah Chief are dealt with immediately. However, the new version of HJR9 has multiple problems and needs significant amendments before it moves forwards. The Council of Alaska Producers and the Alaska Miners Association will be submitting detailed amendments to this resolution in the hopes that we can all support this moving forward.

[11:03:18 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked about the legal mechanism being referred to.

MR. SATRE responded that the Boundary Waters Treaty, Article 4, states that waters that flow across a border shall not be polluted. Thus, there is a treaty mechanism for aggrieved parties to seek relieve.

[11:04:09 AM](#)

REPRESENTATIVE TARR noted the lack of financial resources for Alaska to deal with any situation that may transgress the boundary waters, and stressed that the congressional delegation is supportive of federal involvement.

MR. SATRE said that the disagreement is how the congressional delegation should be engaged. There are reimbursable service agreements that can be worked with, via BC officials as described in the Statement of Cooperation (SOC). He stressed that a viable process exists.

[11:06:14 AM](#)

REPRESENTATIVE NEUMAN asked whether the Alaska mining industry support other associated industries, as well as overlap with Canadian mining companies, and whether there is an economic interplay to consider.

MR. SATRE responded that there are two producing mines in the Juneau area, and it could be helpful to look for benefits and trade opportunities across the border. He suggested the congressional delegation could prove helpful in such an endeavor.

[11:07:43 AM](#)

REPRESENTATIVE EASTMAN asked whether the congressional and state approaches could be pursued simultaneously.

MR. SATRE deferred further comment to the applicable state agencies.

[11:09:04 AM](#)

REPRESENTATIVE NEUMAN restated his question regarding the department's ability to monitor the water quality of the southeast watersheds, and whether the agency has any current concerns regarding pollutants in the tributaries coming into Alaska.

[11:09:42 AM](#)

MICHELLE HALE, Director, Division of Water, Department of Conservation (DEC), said the agency has a limited ability to

monitor the southeast watersheds, and the Alaska Monitoring and Assessment Program (AKMAP) will focus on this area for the next five years. However, the funding for the program is tenuous and partnerships are being formed with Native organizations and federal agencies in order to build a comprehensive database. The agency is working in concert with BC counterparts to comply with the SOC.

REPRESENTATIVE NEUMAN pointed out that testimony has been offered highlighting the existence of pollutants in the waters and asked whether she's familiar with any mining effluents, in the named watersheds.

MS. HALE responded that permits authorize pollutants to be discharged, with specific dilution expectations that are handled via mixing zone requirements, which must be met. Certainly polluted waters exist, and some are considered impaired. Abandoned mine pollution is occurring in the state, as well as entering from the Canadian, Tulsequah Chief mine flowing into the BC aspect of the Taku River. The department is continually monitoring the Alaska aspect to identify pollutant levels.

REPRESENTATIVE NEUMAN asked if the department enjoys a good working relationship with Canada.

MS. HALE opined that DEC has a very good working relationship with Canadian counterparts.

REPRESENTATIVE NEUMAN asked what level of confidence the director holds regarding the levels of protection provided by the Canadian Government.

MS. HALE said an adequate framework appears to be in place but it is something that will require an ongoing conversation.

[11:16:41 AM](#)

REPRESENTATIVE TARR acknowledged that it is helpful to have a good and open working relationship, as described; however, that doesn't create anything binding and there is nothing that the state can do to force the BC provincial government to take specific measures. She asked if the federal government would be required to possibly intervene and work with the Canadian government, given the rise of an actionable situation.

MS. HALE agreed that the understanding being worked under is not binding, and deferred further comment.

[11:18:15 AM](#)

KAREN MATTHIAS, Executive Director, Council of Alaska Producers (CAP), stated opposition to HJR 9, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I'm the Executive Director of the Council of Alaska Producers (CAP), a state-wide business association that represents the large metal mines and some advanced projects in Alaska. Among other things, the CAP promotes economic opportunity and environmentally sound mining practices. I also represent CAP on the Lt. Governor's citizens working group on transboundary issues. Thank you for the opportunity to testify on HJR9.

Recognizing the need to protect and enhance the shared environment, CAP fully supports collaboration and dialogue between the State of Alaska and the Province of British Columbia on development in British Columbia along rivers that flow from Canada into Alaska. This collaboration is the most appropriate means of ensuring that the interests of both jurisdictions and their citizens are understood and protected

For more than two years, Lt. Governor Mallott has shown great leadership in deepening the existing levels of communication and cooperation between the State of Alaska and the Province of British Columbia on this issue. This work has included an unprecedented level of outreach to stakeholder groups.

The 2015 Memorandum of Understanding and Cooperation between the State of Alaska and the Province of British Columbia and the 2016 Statement of Cooperation on Protection of Transboundary Waters are both the results of this effort and the starting point for greater collaboration between the province and the state. In fact, the technical work has already begun.

The Technical Working Group has been tasked with establishing a reliable and adequate process for the collecting and distributing of baseline and project-specific water quality data and actively engaging with all stakeholders in developing this process. I would

encourage you to ask for an update from DEC, DNR and DF&G on this important work.

The State of Alaska and the Province of British Columbia are the jurisdictions responsible for managing natural resources under the laws of the United States and Canada, respectively. As such, the state and province are the appropriate governmental entities to address transboundary natural resource issues. Seeking federal involvement through the Boundary Waters Treaty would be contrary to the primary jurisdiction of Alaska and British Columbia over natural resources and would unnecessarily burden the cooperative relationship formalized in the Memorandum of Understanding and the Statement of Cooperation.

I urge you not to pass this resolution as currently drafted and instead consider amendments that would recognize the value of the Statement of Cooperation, the work of the technical groups and the efforts of the Lt. Governor and the State of Alaska to ensure that our state regulators can have meaningful access and input into the regulatory process in British Columbia.

[11:21:16 AM](#)

DEANTHA CROCKETT, Alaska Miners Association (AMA), testified with opposition to HJR 9, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

I will note that AMA has a letter on the record in response to the first version of HJR9 that points to the collaboration between the State of Alaska and the Province of British Columbia lead by Lt. Governor Mallott. We point to the Memorandum of Understanding (MOU) and the Statement of Cooperation (SOC) agreed upon by both the State and Province, and the technical work that has already begun to further this collaboration. At that time we suggested the resolution reflect those important advancements in addressing any concerns regarding Transboundary mining.

However, when Version D of this resolution was released, it included new language that insists on federal government intervention in the current collaboration being led by the Lt. Governor. It is surprising to us that the Legislature would be eager to request federal overreach into the proper management of Alaska's natural resources and regulatory management of those resources. The Legislature should support the efforts on behalf of the Lt. Governor, and support the regulatory mission of our agencies charged with oversight of development and resources, rather than encouraging federal intervention and potentially compromising the cooperative relationship formalized in the Alaska/British Columbia agreements.

The Lt. Governor's efforts to establish the Transboundary Working Group has resulted in significant achievements such as the State participation on the Mine Review Committee for the Brucejack Gold Project and the KSM Project. These kind of results demonstrate that the State of Alaska and the Province of British Columbia are working effectively to address their common interests in protecting the waters and fisheries that are vital to the citizens of both jurisdictions.

We should ensure that we aren't doing anything to compromise the State of Alaska's ongoing collaborative efforts to protect our resources. Asking for federal involvement is not only unnecessary, but it cedes Alaska's rightful authority to manage its resources to the federal government. AMA encourages you to vote no on HJR9, and instead focus energies on supporting Lt. Governor Mallott in collaborating with our neighbors.

[11:23:50 AM](#)

JILL WEITZ, Salmon Beyond Borders, stated support for HJR 9 and said that, regarding the Boundary Waters Treaty, it does in fact apply to waters crossing the border and can be used as a preventative tool to establish financial securities for projects encompassing more than mining failures or abandoned mines. She reported that while in Juneau, to meet with Governor Bill Walker, the BC Energy Minister, Bill Bennett, suggested that the federal government would need to be involved in order to secure financial assurances. Although the SOC is helpful, it doesn't

establish binding protections. However, it does clarify that neither the state nor the province will allocate funds towards the efforts of baseline, water quality studies or securement of long term monitoring. Additionally, the DEC technical working group has estimated that it will take about five years to gather the data necessary to establish a meaningful, water quality baseline.

[11:26:06 AM](#)

REPRESENTATIVE KREISS-TOMKINS referred to the Boundary Waters Treaty to ask what steps are required from the federal government to bring it into play, particularly as necessary to address the current pollution being emitted from the Tulsequah Chief Mine.

MS. WEITZ responded that the treaty can be initiated by the actions of one of the countries, by bringing an International Joint Conference (IJC) reference issue to the table. It should be noted that, in practice, the treaty has only been successful when both countries agreed on the need to review an issue. The resolution is a prime example of what the Alaska Congressional Delegation is required to bring to the table in order to elevate the issue to a level that will be recognized by the Canadian government as requiring consideration.

[11:28:26 AM](#)

MELANIE BROWN, Organizer, Salmon Beyond Borders, stated support for HJR 9, and said the MOU and SOC are good intentions. However, the MOU and SOC process that Montana invoked with BC was also well intended; however, the agreement did not prevent selenium from flowing downstream and causing generations of malformed fish that will continue into the foreseeable future. Too much stock cannot be placed on the MOU and SOC, she stressed.

CHAIR STUTES closed public testimony.

[11:32:11 AM](#)

REPRESENTATIVE NEUMAN said many of the statements in the committee packet are from organizations reporting that bi-lateral agreements with BC aren't working. He asked what degree of accord Alaska department officials are achieving through working with their BC counterparts.

11:33:35 AM

DAVID SCHADE, Manager, Water Resources Section, Division of Mining, Land and Water, Department of Natural Resources (DNR), reported that disputes are handled via the State Department, thus, conflicts are routinely elevated to the federal level. However, the agency does have the ability to engage in protecting Alaska border issues. The department has technical staff that works directly with BC counterparts. He provided an example of requesting a water analysis of the Stikine River and the cooperation that took place around the task.

11:37:06 AM

REPRESENTATIVE ORTIZ commended the accord reached in arriving at the MOU and SOC; however, the resolution is necessary to provide binding protections on a level required to safeguard the interests of the state.

11:38:58 AM

REPRESENTATIVE EASTMAN noted that the process may need to be changed, and questioned what outcome is being sought.

REPRESENTATIVE ORTIZ said that the MOU and SOC should be continued without reduction or reversal. He provided an example to indicate what more is needed, recalling that a gentleman asked what Alaska could do if an event occurred in BC that would have a negative impact on the traditional, cultural activities tied to the three rivers in question. Under the current situation, there is nothing that could be done. The intent of the resolution is to put into place actionable steps that can be taken to protect the watersheds, and establish financial safeguards, as well.

11:41:46 AM

REPRESENTATIVE CHENAULT moved Amendment 1, labeled 30-LS0303\D.1, Nauman, 3/17/17, which read as follows:

Page 1, line 4, following "**Columbia**":
Insert "**; and urging the United States government to continue to work with the government of Canada to support the efforts of the state and British Columbia to collaborate on proposed and existing industrial upstream development in British Columbia**"

Page 2, following line 17:

Insert new resolution sections to read:

"WHEREAS, on November 25, 2015, Governor Bill Walker and British Columbia Premier Christy Clark signed a Memorandum of Understanding and Cooperation recognizing and formalizing "the mutual commitment of Alaska and British Columbia to sustaining our environment for the benefit of all, including transboundary rivers, watersheds, and fisheries"; and

WHEREAS, in the Memorandum of Understanding and Cooperation, the state and British Columbia agreed "to establish and oversee a joint process to develop and implement a joint water quality monitoring program for transboundary waters, ensuring that data are publicly available"; and

WHEREAS, on October 6, 2016, Lieutenant Governor Byron Mallott signed a Statement of Cooperation on Protection of Transboundary Waters, in which a bilateral working group consisting of the commissioners of environmental conservation, fish and game, and natural resources and British Columbia's deputy ministers of energy and mines and environment was established; and

WHEREAS, in the October 6, 2016, Statement of Cooperation, a technical working group on monitoring, consisting of water quality experts from resource regulatory agencies in the state and British Columbia was established to develop procedures for reporting between the two jurisdictions; and

WHEREAS the terms of the Memorandum of Understanding and Statement of Cooperation are currently being implemented, and significant progress is being made toward enhanced collaboration and effective input by the state into British Columbia's regulatory processes; and"

Page 3, line 5, following "Columbia":

Insert "; and be it

FURTHER RESOLVED that the Alaska State Legislature strongly urges the United States government to continue to work with the government of Canada to support the efforts of the state and British Columbia to collaborate on proposed and existing industrial upstream development in British Columbia"

[11:41:57 AM](#)

CHAIR STUTES objected for discussion.

REPRESENTATIVE CHENAULT explained Amendment 1, paraphrasing from a prepared statement, which read as follows [original punctuation provided]:

The State of Alaska has consistently and assertively resisted overreach into the proper management of Alaska's natural resources and regulatory management of those resources.

In response to events in Canada and concerns expressed by Alaskans, Lt. Governor Mallott established the Transboundary Working Group to improve the States' involvement in activities proposed in B.C. that could impact Alaska waters and fish.

Lt. Gov. Mallott contacted B.C. Minister of Mines Bennett, who came to Alaska to meet with a variety of individuals, groups, and Alaska officials. As a result of these meetings, the State and the Province developed a Memorandum of Understanding, signed in November 2015.

A Statement of Cooperation on the Protection of Transboundary Waters implementing the MOU was signed by Alaska and British Columbia in October 2016. As contemplated by the Statement of Cooperation, a Bi-Lateral Working Group has been formed and the Technical Working Group on water monitoring has developed a plan for monitoring water quality in the Transboundary rivers.

In January 2017, Minister Bennett reported that the Province had begun work at the Tulsequah Chief Mine; storing and properly securing all chemicals identified on site in December 2016. Minister Bennett also reported that all the field work necessary to prepare an Aquatic Ecological Risk Assessment had been completed and that a draft report was expected in early 2017. The assessment will determine whether or to what extent mine effluent may be impacting environment and provide a foundation for next steps.

These results demonstrate that the State of Alaska and the Province of British Columbia are working effectively to address their common interests in

protecting the waters and fisheries that are vital to the citizens of both jurisdictions.

Article IV of the Boundary Waters Treaty of 1909 provides that "neither country will pollute boundary waters, or waters that flow across the boundary, to an extent that would cause injury to health or property in the other country." Alaskans have a commitment that Canada will not allow activity in Canada to pollute waters that flow into Alaska and cause injury to Alaskans health or property.

We should be supporting the State and the Province by making sure they have what they need to accomplish the objectives of the MOU and Statement of Cooperation.

We should also ensure that we aren't doing anything to compromise the State of Alaska's ongoing collaborative efforts to protect our resources. Asking for Federal involvement not only is not necessary, but it cedes Alaska's rightful authority to manage its resources to the federal government.

[11:44:01 AM](#)

REPRESENTATIVE CHENAULT pointed out that the governor's office has not provided comments on the resolution. There may be things that the federal government may need to address, but relinquishing state power is a cause for concern, he opined.

[11:45:01 AM](#)

REPRESENTATIVE TARR said that there is nothing in the resolution that would intercede what is being done under the MOU and SOC. She stated opposition to Amendment 1.

[11:45:47 AM](#)

REPRESENTATIVE KREISS-TOMKINS concurred with Representative Tarr's comments, and expressed opposition to Amendment 1.

[11:46:34 AM](#)

REPRESENTATIVE NEUMAN stated support for Amendment 1, and said it sounds as though Alaska is working well with the Canadian Government, and the effort should continue. The MOU and SOC are

recent documents and should be given a chance to work, he opined.

[11:47:24 AM](#)

CHAIR STUTES stated opposition to Amendment 1 and stressed the need to have an avenue to enforce the responsibilities that are held, and relied upon, by the Canadian Government. The Alaska Congressional Delegation has asked for this resolution and for a show of state support.

[11:48:35 AM](#)

REPRESENTATIVE EASTMAN opined that a contrast exists and one country can't force another country to do something. Diplomacy mechanisms are the only way to solve disputes. He expressed support for continuing the status quo in working with the Canadian Government via the MOU and SOC.

[11:52:07 AM](#)

A roll call vote was taken. Representatives Chenault, Neuman, and Eastman voted in favor of Amendment 1. Representatives Tarr, Fansler, Kreiss-Tomkins, and Stutes voted against it. Therefore, Amendment 1 failed by a vote of 3-4.

[11:52:56 AM](#)

REPRESENTATIVE FANSLER moved to report the proposed CS for HJR 9, Version 30-LS030\D, Nauman, 2/14/17 out of committee with individual recommendations and the accompanying fiscal notes.

[11:53:09 AM](#)

REPRESENTATIVE EASTMAN objected.

[11:53:12 AM](#)

A roll call vote was taken. Representatives Tarr, Fansler, Kreiss-Tomkins, and Stutes voted in favor of the proposed CS. Representatives Chenault, Neuman, and Eastman voted against it. Therefore, CSHJR 9(FSH), was reported out of the House Special Committee on Fisheries by a vote of 4-3.

[11:54:06 AM](#)

CHAIR STUTES thanked the participants.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:54.