

Submitted via online portal and electronic mail

Aug 30, 2022

[Biden-Harris Fundamental Principles of Domestic Mining Reform \(February 22, 2022\)](#)

[Minerals Security Partnership \(launched June 2022\)](#)

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Re: Uphold U.S.-Canada Boundary Waters Treaty on Request for Information, Recommendations For Improving Federal Hardrock Mining Regulations, Laws, And Permitting Processes; Docket No. DOI- 2022-0003

**UPHOLD U.S.-CANADA BOUNDARY WATERS TREATY AND SECURE ENFORCEABLE PROTECTIONS
& RESPONSIBLE MINING STANDARDS FOR U.S.-B.C. TRANSBOUNDARY SALMONID RIVERS**

In response to the Interagency Working Group’s Request for Information, Recommendations for Improving Federal Hardrock Mining Regulation, Laws, and Permitting Processes (Docket No. DOI-2022-0003), we, the below signed, submit the following comments regarding our shared concerns over the risks posed to our water quality, communities, and economies by British Columbia, Canada’s gold-copper and coal mines and mine waste dams, and the toxicants like selenium they produce, in shared United States-British Columbia “transboundary” watersheds. For decades, British Columbia (B.C.) and Canada have obstructed international collaboration to prevent B.C. mines from polluting waters of the four downstream U.S. states where we reside - Alaska, Washington, Idaho, and Montana. Given the unique focus of the U.S. and Canada to work together on critical minerals, it is imperative that the U.S. and Canada simultaneously uphold the principles and intent of the U.S-Canada Boundary Waters Treaty of 1909, in these shared transboundary waters.

As part of domestic mining reform, and as President Biden outlined in his fundamental principles, we call on the Biden Administration to ensure that countries from which the U.S. sources metals adhere to the same responsible mining standards as the U.S. **In particular, we**

call on the Biden Administration to uphold the Boundary Waters Treaty and immediately pause all new mineral purchasing agreements with Canada until the International Joint Commission (IJC) and an International Watershed Initiative (IWI/Watershed Boards) are in place for all affected transboundary rivers in Alaska, Washington, Idaho, and Montana, including the Taku, Stikine, Unuk-Nass, Similkameen and Elk-Kootenai Rivers. This step is the single-most impactful action President Biden can take right now for fish, wildlife, water quality, vast, intact landscapes, Indigenous sovereignty, and community leadership.

Over a century ago, the IJC was created by the U.S. and Canada to prevent and resolve transboundary water and pollution disputes, and is the international forum in which the critically needed community- and Indigenous-led watershed protections can be developed. We applaud the Biden Administration for uniting with the Transboundary Ktunaxa Nation in calling for an IJC reference for the transboundary Elk-Kootenai River (BC-MT-ID). We urge the Administration to continue standing with the transboundary Ktunaxa governments and ensure that Canada jointly refers this and all U.S.-B.C. transboundary river systems to the IJC, prior to agreeing to new mineral purchasing agreements with Canada. Decades of experience with unresolved mining impacts in these transboundary watersheds serve as a lesson to the U.S. that overarching, IJC-supported watershed boards are critical to ensuring responsible mineral development in these rivers.

British Columbia (B.C.) and Canada are not examples of world-class mining districts with responsible regulatory oversight. In fact, right now, Canada is ignoring formal requests from the Transboundary Ktunaxa Nation and the United States to uphold the Boundary Waters Treaty and refer the transboundary Elk-Kootenai River pollution dispute to the IJC, despite the river being heavily contaminated by selenium and other pollutants from Teck Coal mines on the B.C. side of the border.

Tribal and First Nations governments, decision makers, communities, scientists, and tens of thousands of everyday citizens throughout the U.S. and Canada have long called on the U.S. and Canadian federal governments to ensure the globally-significant transboundary U.S.-B.C. salmonid rivers are protected from B.C. gold-copper and coal mine contamination. ***All jurisdictions in all U.S.-B.C. watersheds (including the Canadian federal government, First Nations, Tribes, U.S. States and U.S. federal government) need to sit at multinational tables to develop binding, enforceable watershed-scale protections for globally significant salmonid rivers. Special places deserve special protections.***

In our comments and list of links to key documents below, we outline the risks and impacts of under-regulated B.C. mining to U.S. rivers, jobs, and ways of life. We also describe the specific U.S.-B.C. boundary-wide and place-based solutions of Alaska, Washington, Idaho, and Montana to this urgent situation.

OVERVIEW

Downstream U.S. communities in Alaska, Washington, Idaho, and Montana, Tribal and First Nations governments, and all eight U.S. senators from the states that border British Columbia,

have long sought relief from the inflow of Canadian mine waste, primarily through implementation of the U.S.-Canada Boundary Waters Treaty of 1909. A federal-to-federal solution has proven elusive, however, as B.C. has restricted negotiations to a state-by-state approach, effectively excluding both federal and Indigenous governments. These four states share the common problem of polluting B.C. mines jeopardizing downstream U.S. economies, water quality, fish, and way of life.

THE PROBLEM

British Columbia's persistent contamination of downstream U.S. waterways, coupled with the province's continued approval of large-scale substandard mining projects, represents a clear and ongoing violation of the Boundary Waters Treaty. Specifically, the failure of B.C. to protect international waters from upstream industry puts Canada in violation of Article IV: "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

Despite existing treaties and the many vested interests in our shared rivers, years of continued fines levied against Canadian interests by provincial regulators, and industry's consistent failure to meet pollution standards, B.C. continues to assess and approve new mining ventures and mine expansions near Canadian headwaters of shared rivers. The current B.C. and Canadian decision-making processes deny Tribal governments and U.S. stakeholders any significant role in determining the management and stewardship of these transboundary watersheds.

THE URGENT OPPORTUNITY

This international issue positions the Biden Administration to shape a bipartisan coalition that defends U.S. and Tribal interests by working collaboratively with the Trudeau Administration on a joint legacy to secure enforceable protections in our shared, iconic transboundary rivers.

The climate is changing and salmon runs, wildlife populations, and food security are plummeting. B.C.'s gold-copper and mountain-top-removal coal mines do not play a role in the regenerative future of the biodiverse, culturally rich U.S.-B.C. transboundary region. Even the great need for critical minerals to enable climate-friendly energy cannot justify the risks to communities and ecosystems posed by massive tailings dams at the headwaters of shared salmon rivers. We must insist on technologies and methods that balance mineral production with the long-term health of these rivers, and the people that rely upon them. The watersheds spanning the U.S.-B.C. border are critical landscapes to conserve to offset carbon emissions and to preserve critical biodiversity.

THE SOLUTIONS

As part of federal mining reform, we urge the Biden Administration to uphold the U.S.-Canada Boundary Waters Treaty of 1909 and immediately pause all new mineral purchasing agreements with Canada until the International Joint Commission (IJC) and an International Watershed Initiative (IWI/Watershed Boards) are in place for all affected transboundary rivers in Alaska, Washington, Idaho, and Montana, as detailed below.

The U.S. and Canada have an opportunity to preserve and/or restore the water quality and ecological integrity of U.S.-B.C. transboundary watersheds -- rich in Indigenous cultures, commerce, and biodiversity -- through the creation of a binding international framework, consistent with the Boundary Waters Treaty, with the International Joint Commission. To honor the state, provincial, federal and Indigenous governments in these waters, we require governance that is agreed upon and developed by U.S. and Canadian federal and Indigenous governments, as well as local communities. Weaker environmental regulations and standards in Canada, and in particular the Province of British Columbia, put the U.S. at a distinct disadvantage with respect to critical mineral development in transboundary waters. IWI/Watershed Boards under the International Joint Commission will ensure parity and consistency in protection of U.S., Canadian, and transboundary Indigenous territories in this important endeavor. The Boundary Waters Treaty provides an effective and historically tested means of preventing and resolving transboundary issues that have the potential for impacting American resources and jobs. The U.S. must request a binding international framework, consistent with the Boundary Waters Treaty, that ensures to the satisfaction of both the United States and Canada that shared resources are not harmed.

U.S.-B.C. Boundary-wide Solution:

Below are components of a binding international framework that congressional, federal, and Tribal leadership have long requested the U.S. Department of State to secure with Global Affairs Canada:

1. The situations in the Taku, Stikine, Unuk-Nass, Similkameen and Elk-Kootenai transboundary watersheds are referred to the International Joint Commission for review and recommendations (the request of multiple Tribes in Alaska, Montana, and Idaho).
 - A temporary suspension of all new mine permits in U.S.-B.C. transboundary watersheds until a framework is established; and
 - A financial liability is assigned to mining companies currently operating in U.S.-B.C. transboundary watersheds to ensure that reclamation, cleanup, remediation, and compensation is provided in a more timely and fulsome manner.
 - Unilateral references to the IJC are pursued by the U.S. Department of State in the case that bilateral references prove unsuccessful (as is currently being explored by the U.S. DoS in the transboundary Kootenai(y) watershed).
2. Full participation and access for Indigenous communities in B.C.'s mine approval process;
3. Full cumulative analysis of the historic, current and future impacts on transboundary systems;
4. Independent collection of 3-5 years of baseline/reference data on water, fish and wildlife;
5. Demonstrated mitigation technology that ensures U.S. resources will not be damaged;
6. Independent, fully funded and perpetual monitoring systems;
7. Full financial assurance ensuring the future cost of mine impacts (catastrophic and cumulative) will not be borne by downstream taxpayers, including an arbitration process for damage claims.

Place-based Solutions:

Below are what state-specific coalitions are requesting of the U.S. Department of State, in addition to the collective requests above:

1. On the border of Montana, Idaho, and B.C.: A water quality reference to the IJC to address the need for transparent and objective science, an investigation of impacts and an analysis of compensatory mitigation, industry accountability and biological offsets* for legacy and on-going damages in U.S. and Tribal territory, from Teck Coal’s Elk Valley industrial mining complex. The operating mines are in on-going violation of water quality thresholds in B.C., and currently exceed Montana and Idaho water quality standards for selenium, where contaminated water crosses the U.S./Canada boundary in the Koochanusa/Kootenai watershed. The constituent governments of the transboundary Ktunaxa Nation have already requested a suspension of all mine permitting in the Elk Valley until legacy damages are addressed.

2. On the border of Washington and B.C.: Washington Tribal participation in the proposed expansion of the existing Copper Mountain mine in the headwaters of the Similkameen River and an IJC reference and creation of an IWI/Watershed Board for the Similkameen River.

3. On the border of Alaska and B.C.: A permanent ban on earthen tailings dams, and a temporary pause on all new mine permits, in the Taku, Stikine, and Unuk-Nass watersheds, pending the establishment of an international framework, led by Indigenous and federal governments, as well as impacted communities, that ensures shared waters, productive salmon habitat, jobs, and ways of life are maintained—as requested by Alaska municipalities and Tribes. This framework could be created by a reference to the IJC, to establish International Watershed Initiatives/Watershed Boards that enforce the Boundary Waters Treaty. *****Please also see Salmon Beyond Borders’ comment letter – “Secure Binding Multinational Watershed Protections in Alaska-British Columbia Wild Salmon Strongholds”***

Protecting and restoring the wild, biodiverse transboundary watersheds that Alaska, Washington, Idaho, and Montana share with British Columbia are key global climate solutions. Thus, decisions around Canadian extractive mining activity along our shared borders should reflect this. All efforts to ensure the supply of critical minerals in key U.S.-Canada watersheds must engage the expertise and guidance of the International Joint Commission to ensure the long-term stewardship of our shared transboundary waters.

We appreciate the opportunity to submit these comments to the Interagency Working Group on Mining Regulations, Laws, and Permitting.

Sincerely,

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KEY RESOURCES - Reports, Letters, Resolutions, and Media

U.S.-B.C. Boundary-wide Resources

--[Mount Polley Independent Expert Investigation and Review Report](#) - January 30, 2015

--[Mine Tailings Storage: Safety Is No Accident, Roche, C., Thygesen, K., Baker, E. 2017. A UNEP Rapid Response Assessment. United Nations Environment Programme and GRID-Arendal](#) - 2017

--[In the Dark Shadow of the Supercycle Tailings Failure: Risk & Public Liability Reach All Time Highs, Bowker, L.M. and Chambers, D.M., *Environments*](#) - October 2017

--[National Congress of American Indians Resolution Calling for Action under Boundary Waters Treaty to Protect Transboundary Tribes from Upstream Transboundary Mining Activities](#) - June 2018

--[Multi-State U.S. Senator Delegation Letter to B.C. Premier Horgan](#) - June 13, 2019

--[Canada's mines pose transboundary risks, Sexton *et al.*, *Science*](#) - April 2020

--[Glacial retreat creating new Pacific salmon habitat in western North America, Pitman *et al.*, *Nature*](#) - December 2021

--[Defusing British Columbia's Ticking Timebombs: U.S. Downstream Tribes and Stakeholders Step Up Pressure - A Timeline by B.C. Mining Law Reform](#) - December 2021

--[Safety First: Guidelines for Responsible Mine Tailings Management, a Report by Jan Morrill and Jan Morrill of Earthworks](#) - May 2022

--[Invertebrate metal accumulation and toxicity from sediments affected by the Mount Polley mine disaster, Gregory G. Pyle *et al.*, *Environmental Science and Pollution Research*](#) - May 2022

--[Risks of mining to salmonid-bearing watersheds, Sergeant *et al.*, *Science Advances*](#) - July 2022

--[British Columbia Mine Tailings Map + The Risk of Tailings Dam Failure in British Columbia, Steve Emerman, Ph.D.](#) - July 2022

Montana / Idaho-B.C. Resources

–[Selenium in the Kootenai River Basin, Montana and Idaho, United States, and British Columbia, Canada by U.S. Geological Survey](#) - May 2022

–[IJC Letter to President Biden and Prime Minister Trudeau re: Elk-Kootenai River](#) - May 2022

–[Transboundary Ktunaxa Nation, US: Calling on Canada to Address Transboundary Water Pollution That Crosses the Line](#) - June 2022

--[Biden Administration Press Release Announcing Support for Elk-Kootenai River IJC Reference](#) – June 2022

–[Thomas Axworthy Opinion Piece Calling out Canada for not Supporting an IJC Reference for the Elk-Kootenai River, as requested by Transboundary Ktunaxa Nation and the U.S.,The Hill Times](#) - July 2022

–[“Conservation groups woo Teck support in cross-border diplomacy,” by Derrick Penner, Vancouver Sun](#) - August 28, 2022

Washington-B.C. Resources

–[Letter from 25 Washington State legislators to B.C. Premier John Horgan re: need for robust financial assurance at B.C. mines along WA-B.C. transboundary rivers](#) - March 2021

–[Report on the probability of failure of tailings dams at B.C.’s Copper Mountain mine, Steve Emerman, Ph.D. and Copper Mountain Mine Tailings Dam Breach Simulation by Lynker Technologies](#) - August 2022

Alaska-B.C. Resources

–[U.S. Department of State Letter to the Canadian Embassy, Requesting an IJC Reference for the Taku River](#) - August 1998

–[KSM Project Assessment Report, British Columbia Environmental Assessment Office](#) - June 2014

–[Central Council of Tlingit and Haida Indian Tribes of Alaska Resolution Requesting IJC Involvement in the Taku, Stikine, and Unuk Rivers](#) - September 2014 (*one example of the several dozens of resolutions passed by Alaska Tribes and municipalities with this request from 2014-2022*)

- [National Congress of American Indians Resolution Requesting IJC Involvement in the Taku, Stikine, and Unuk Rivers](#) - October 2014
- [Memo to U.S. Secretary of State John Kerry from Salmon Beyond Borders](#) - April 2016 (*includes calls for action from Tribes, fishermen, and almost 20,000 Americans*)
- [City and Borough of Juneau Resolution Requesting IJC Involvement in the Taku, Stikine, and Unuk Rivers](#) - February 2015 (*one example of the several dozens of resolutions passed by Alaska Tribes, municipalities, and commercial fishing groups with this request from 2014-2022*)
- [Senators Cantwell and Murray Letter to U.S. Dept. of State, Requesting an IJC reference for the Taku, Stikine, and Unuk Rivers](#) – April 2016
- [B.C. Mining Law Reform Network member letter to Prime Minister Trudeau requesting IJC reference for Taku, Stikine, and Unuk](#) – April 2016
- [“In Photos: The Canadian Mining Boom You’ve Never Seen Before,” Garth Lenz, *The Narwhal*](#) - October 3, 2017
- [Alaska Congressional Delegation and Alaska Governor Walker Letter to U.S. Dept. of State Requesting Binding Protections for the Taku, Stikine and Unuk Rivers](#) - October 2018
- [Renewable energy production will exacerbate threats to biodiversity, Sonter *et al.*, *Nature*](#) - September 2020
- [“A massive landslide sends a wake-up to B.C.’s mining sector: melting glaciers in B.C.’s ‘Golden Triangle’ expose huge deposits. And pose huge risks,” Christopher Pollon, *The Tyee*](#) - August 2021
- [Massive Proposed KSM Mine Threatens Alaska-British Columbia Salmon River, an analysis by Rivers Without Borders](#) - Fall 2021
- [Resolution passed by the City and Borough of Wrangell to protect the Stikine River and the ecosystem, Indigenous people, communities, residents, and economies dependent on its health](#) - October 2021 [News coverage here](#) (*one of nine municipal resolutions passed with two asks in the transboundary Taku, Stikine, and Unuk watersheds: (1) an immediate, permanent ban on earthen tailings dams, and (2) an immediate and temporary pause on all new mine permits, pending the establishment of an international framework, led by Indigenous and federal governments, and impacted communities*)