



SALMON BEYOND BORDERS
DEFENDING OUR RIVERS, JOBS, AND WAY OF LIFE.
www.salmonbeyondborders.org

MEMORANDUM

To: Members of the City and Borough of Juneau Assembly (BoroughAssembly@juneau.org)

CC: Rorie Watt, City and Borough of Juneau Manager (Rorie.Watt@juneau.org)

From: Heather Hardcastle, Salmon Beyond Borders (heather@salmonstate.org)

Date: October 16, 2017

**Re: Response to Mr. Mike Satre's Sept. 18th email to the CBJ Assembly – "Resolution 2807:
Transboundary Mining"**

Hello Mayor Koelsch and members of the City and Borough of Juneau Assembly,

I was born and raised in Juneau, I co-own and operate with my family the Juneau-based salmon direct marketing business, Taku River Reds, and have directed the Salmon Beyond Borders campaign for the last 3 ½ years. Salmon Beyond Borders is a campaign driven by sport and commercial fishermen, community leaders, tourism and recreation business owners, and concerned citizens to defend and sustain our transboundary rivers, jobs, and way of life. My comments in this letter are on behalf of Salmon Beyond Borders.

Several months ago, Salmon Beyond Borders suggested the CBJ Assembly, as well as the Assemblies at the Ketchikan Gateway Borough, the City and Borough of Sitka, the City and Borough of Wrangell, and the Petersburg Borough, consider resubmitting updated resolutions to the U.S. Department of State regarding the transboundary mining issue. Although dozens of Alaska municipalities, Tribes, Tribal entities, commercial fishing organizations, and businesses, as well as the Alaska congressional delegation, have requested the U.S. Department of State to take action under the U.S.-Canada Boundary Waters Treaty and secure binding protections for Alaska interests, the Department of State has yet to do so. No international enforceable measures are in currently in place to protect Alaska resources and way of life despite the fact Alaskans assume virtually all risks of upstream Canadian mines in British Columbia (B.C.), and receive no benefits.

On February 2, 2015, the CBJ Assembly unanimously passed Resolution 2710, and urged Secretary of State John Kerry to utilize any and all powers under the Boundary Waters Treaty to ensure Alaskans are not negatively impacted by upstream Canadian large-scale mining projects in shared U.S.-Canada watersheds. Resolution 2807, "A Resolution of the City and Borough of Juneau in Support of the Enforcement of the Boundary Waters Treaty in the Southeast Alaska/Northwest British Columbia Transboundary Region," is similar to Resolution 2710 but also notes the mines that have begun operations since the passage of the previous resolution by the CBJ Assembly. The Red Chris mine opened in the Stikine watershed on Feb. 3, 2015, and the Brucejack mine opened in the Unuk watershed on June 20, 2017. The updated resolution also acknowledges that Lt. Governor Mallott and B.C. Ministers Bennett and Polak signed the Alaska-B.C. Statement of Cooperation on Protection of Transboundary Waters on October 6, 2016, that this is an important step, but that this state-provincial agreement cannot lead to *binding* protections for Alaskans downstream of Canadian large-scale mines in transboundary

watersheds. Finally, the updated Resolution 2807 does not specifically call for the transboundary issue to be referred to the International Joint Commission (IJC) as Resolution 2710 did. Referring the matter to the IJC is just one way the Department of State can take action under the applicable Boundary Waters Treaty.

At the CBJ Assembly Sept. 18th meeting, Deputy Mayor Jerry Nankervis requested that Resolution 2807 be removed from the Consent Agenda and referred to committee for further discussion. At that point, I was able to speak in favor of Resolution 2807 but did not know why the deputy mayor had requested the resolution be removed from the Consent Agenda. It was after I spoke that Deputy Mayor Nankervis elaborated on the concerns “a gentleman in the community” had raised about the resolution in an email to him prior to the meeting. The deputy mayor did not refer to the specifics of this email, and did not state who had sent him a letter earlier that day. After some discussion, the Assembly voted to refer Resolution 2807 to the Committee of the Whole.

A Sept. 19th KTOO piece published the email that Mr. Mike Satre, government and community relations manager at Hecla Greens Creek Mining Company and vice president of the Alaska Miners Association, had sent to all members of the CBJ Assembly and to CBJ Manager Rorie Watt before the Assembly meeting the night before. Resolution 2807 has not yet been placed on the agenda for an upcoming Committee of the Whole (COW) meeting but Salmon Beyond Borders wishes to forward to the CBJ Assembly our response to the points made by Mr. Satre in his email well before this COW meeting.

Below is Mr. Satre’s email, with the specific responses of Salmon Beyond Borders in *blue*. Thank you for taking the time to review this email, as we hope we can clarify fact from fiction, and can clarify why it is so important that leaders at every level – local, state, and congressional – call on the U.S. Department of State to engage in the international transboundary issue and pursue binding protections for Alaskans and U.S. interests. Thank you for your consideration and please know I welcome your questions and comments. This matter is a critically important one facing our community, our region, and our state.

Sincerely,

Heather Hardcastle

Salmon Beyond Borders

201 Main St., Suite 202

Juneau, AK 99801

From: Mike Satre <3satres@gmail.com>

Date: September 18, 2017 at 11:38:58 AM

To: BoroughAssembly@juneau.org

Cc: Rorie.Watt@juneau.org

Subject: Resolution 2807: Transboundary Mining

Mayor Koelsch and members of the City and Borough of Juneau Assembly,

I respectfully ask that you remove Resolution 2807 from tonight’s consent agenda and refer it to a committee for further review. (I am travelling on business today and cannot be there at the meeting to ask for this in person.)

The CBJ has previously passed a resolution on transboundary mining concerns that was rife with inaccuracies and this new resolution does nothing to fix them. Passing this resolution tonight simply perpetuates anti-mining sentiment without doing anything to address any real or perceived issues related to industrial development in British Columbia.

Mr. Satre does not elaborate on what he refers to as “ inaccuracies ” in the transboundary resolution the CBJ Assembly unanimously passed in 2015 (Resolution 2710) so we can’t respond to that assertion. Mr. Satre seems to think that B.C. industrial development is the business of Alaska, and that Alaska should be a defender of B.C. mining. Salmon Beyond Borders takes the position that what B.C. does within its own territory--including mining--is its business, not ours. However, when that development occurs within shared watersheds and could dramatically and negatively affect Alaska

jobs, economy, and overall quality of life, then this development is not only a legitimate concern for Alaska citizens, but creates an obligation on the part of the state and federal governments to do everything in their power to protect Alaskan interests.

By way of background, I have over twenty years of experience in the mining industry and have been involved in transboundary mining discussions for a number of years. I have been a member of Lt. Governor Mallott's ad-hoc citizens working group on transboundary issues and involved in the review and implementation of the Statement of Cooperation and Memorandum of Understanding with British Columbia.

A number of us involved in the Salmon Beyond Borders campaign are also members of the citizens advisory group that Mr. Satre references, although this group has not convened in more than one year. However, Salmon Beyond Borders has reviewed and commented numerous times on the Memorandum of Understanding between the State of Alaska and the Province of B.C. (MoU), and the Alaska-B.C. Statement of Cooperation on Protection of Transboundary Waters (SoC). Several of us at Salmon Beyond Borders have met numerous times with state, provincial, legislative, congressional, parliamentary, and U.S. and Canadian federal decision makers on the transboundary mining issue. These meetings have included multiple conversations with those formerly and currently at the U.S. Department of State, and have centered on the U.S.-Canada Boundary Waters Treaty of 1909.

I believe that Alaskans have every right to raise concerns regarding upstream development, especially when "upstream" is located in another country and can certainly appreciate the public sentiment that has led to this resolution. *We appreciate this statement.*

Unfortunately this resolution disregards the significant efforts made by the Walker/Mallott administration to foster collaboration and encourage responsible development balanced with protections for the water and habitat in the transboundary. This is the only realistic manner by which our regulatory agencies can have meaningful engagement in the permitting process of a foreign country. *This is simply untrue, as we further demonstrate below. Neither the MoU nor the SoC contain any provisions that would protect Alaskan interests by way of enforceable measures. If the B.C. government and the mining industry really believe that transboundary mines will be operated safely and responsibly, and will not pollute Alaskan waters, they should welcome the opportunity to work with the State of Alaska AND with the respective U.S. and Canadian federal governments to develop and secure such enforceable protections. We must also add that Mr. Satre's suggestion that B.C. mining embodies "responsible development" is at odds with the 2016 findings of B.C.'s own Auditor General:*

"Almost all of our expectations for a robust compliance and enforcement program were not met. The compliance and enforcement activities of both the Ministry of Energy and Mines and the Ministry of Environment are not set up to protect the province from environmental risks."

Indeed, B.C.'s idea of "responsible development" includes six decades of pollution in the Taku River watershed from the Tulsequah Chief mine, in violation of B.C. and Canadian law, and potentially in violation of the Boundary Waters Treaty.

I would encourage the Assembly, by referring this resolution to a 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 City and Borough of Juneau would be sending a clear message to British Columbia that we do not want to engage on this issue. *Resolution 2807 does mention the SoC in a WHEREAS clause, and refers to this state-provincial agreement as "important." This said, Salmon Beyond Borders maintains that relying only on the non-binding MoU and the SoC to protect Alaska's economic and cultural best interests is simply not enough to ensure Alaska resources, jobs, and way of life are not harmed by Canadian mining in shared watersheds. An international, federal agreement that ultimately comprises enforceable protections for Alaskans, and that is complementary to the MoU/SoC, is essential.*

I would also like to address the fallacy of asking the federal government to engage. Not only is federal intervention not needed here, but, quite frankly the proponents of this resolution are barking up the wrong tree by invoking the Boundary Waters treaty and the International Joint Commission. Only the federal governments have the power to create the enforceable protections that we seek, that Alaskans deserve and

that, we believe, our state government has the responsibility to encourage and fully support. 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. *This is demonstrably false. Article IV of the Boundary Waters Treaty states:*

"It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary (emphasis added) shall not be polluted on either side to the injury of health or property on the other."

Article IV has been the basis of numerous pollution-based references to the IJC in the last 100+ years, driven by the legally binding obligations of the United States and Canada under terms of the Boundary Waters Treaty. These studies have included, among others, transboundary concerns in the St. Croix River, the Red River, the Garrison Diversion project, the Poplar River, and the Flathead River. The latter study was a pollution-centered reference that focused on proposed B.C. mines that would have the potential to pollute U.S. waters bordering Glacier National Park in Montana.

There is a caveat that neither country shall pollute waters flowing into the other... "Caveat" is an odd word to use here. Article IV is an actual Article, the basis for legally-binding action by the U.S. and Canada under the Boundary Waters Treaty, as noted above--and a far cry from a mere "caveat." It is also the Article of the Boundary Waters Treaty that is the foundation of discussions and negotiations between and among federal and state governments, regardless of whether or not these matters are formally referred to the IJC. ...so there is already a legal mechanism for an aggrieved party on either side of the border to seek compensation should a problem occur.... Article IV most assuredly does not automatically provide or even suggest a legal mechanism "for an aggrieved party on either side of the border to seek compensation should a problem occur." The only way this could happen would be for the federal governments to act and agree on such financial assurances. The state cannot do this on its own. Again, if the B.C. government and the mining industry really believe that Alaskan interests will not be harmed by transboundary mines, they should be eager to agree to a set of international, binding protections for Alaskan interests.

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. *This is not necessarily the case as governments can and have in the past placed a mandatory timeframe on the IJC to produce a report and recommendations.* And the recommendation is just that...a non-binding recommendation that would still require approval and implementation by both countries. *The federal governments need not rely on the IJC for them to work with state and provincial governments--in this or any case--to develop a set of enforceable protections, consistent with the Boundary Waters Treaty, to protect downstream interests.* So, Alaska would potentially have to wait for decades for resolution, while in the meantime industrial development in BC would proceed without our State having any meaningful input into the process. This makes no sense. This is why we have to support the Lt. Governor and the process outlined in the MOU/SOC. *While we agree with those critics who believe they have been largely shut out of the process, we do see value in the MoU/SoC process. But the MoU and SoC are not designed to, nor can they ever, provide Alaskans the binding protections and financial assurances we believe are necessary and that the State of Alaska has an obligation to support in the name of the thousands of potentially affected Alaskans they are elected to represent.*

It is important that the Assembly make its opinion known on issues like transboundary development. *We agree and we thank the CBJ Assembly for submitting a resolution to the Department of State in 2015.* It is important that legacy problems like Tulsequah Chief are dealt with immediately. *Yes, and it is equally, and perhaps even more important to protect Alaska from a growing number of potential future pollution emanating from many other Canadian mines in the transboundary region.*

However, the proposed transboundary resolution has multiple problems and needs significant amendments before it moves forward.

Please remove this from the consent agenda and refer it to committee where subject matter experts, including those from the State of Alaska resource agencies, can testify as to what is actually happening in British Columbia.

In closing, we want to be clear that Salmon Beyond Borders is absolutely supportive of public process. We are not at all upset that Mr. Satre requested that Resolution 2807 be referred to committee for discussion among Assembly members before it returns to a full Assembly meeting where members of the public can provide testimony. We also appreciate this opportunity to remind the Assembly that, contrary to the assertions of some, the Boundary Waters Treaty DOES absolutely apply in this situation, and it is under this Treaty that both the United States and Canada have an obligation to ensure shared waters like the Alaska-B.C. transboundary rivers are not harmed. Moreover, the involvement of the U.S. federal government IS needed, for Alaskans do need and deserve binding protections and financial assurances that only a U.S.-Canada binding framework can deliver. Myself and many of other members of the community look forward to talking with you more about Resolution 2807 specifically, and about the transboundary mining issue generally, in the coming weeks. Thank you.

Thank you for your time and consideration.
Mike Satre
9356 Turn St.
Juneau, AK