

TO: The Honorable Bill Walker, Governor of the State of Alaska and The Honorable Byron Mallott, Lieutenant Governor of the State of Alaska

FROM: Erin Sexton – Aquatic Ecologist, University of Montana, Dave Hadden – Executive Director, Headwaters Montana, and Michael Jamison – Crown of the Continent Senior Program Manager, National Parks Conservation Association

DATE: June 29, 2017

RE: Montana’s experience - A guide to protecting Alaska’s transboundary future

CC: The Honorable Lisa Murkowski, Alaska U.S. Senator, The Honorable Dan Sullivan, Alaska U.S. Senator, and The Honorable Don Young, Alaska U.S. Congressman

MEMORANDUM

We met with Mr. Albert Kookesh in Lt. Governor Mallott’s office on May 5, 2017, when we were in Juneau to participate in the Transboundary Water Quality Monitoring Workshop with scientists, Tribal staff and leadership, State of Alaska agency staff, and NGO leaders from Alaska, Montana, and British Columbia. We promised Mr. Kookesh we would send a formal memorandum to you to convey in writing what we related verbally to him that day (in March 2017, we also spoke in person with the Alaska congressional delegation about the same topics while in Washington, D.C.).

In this memorandum, we describe the situation in shared Montana (MT)/British Columbia (B.C.) watersheds, and humbly share our strong recommendations with you as the State of Alaska looks to soon fully implement the Alaska-B.C. Statement of Cooperation on Protection of Transboundary Waters with the province.

The MT/B.C. MOU, signed in 2010, establishes the following:

- A joint commitment to work on issues of transboundary importance, specifically with respect to fish, water, wildlife and climate change.
- A commitment to ‘consult’ one another on projects of ‘transboundary importance.’
- A statement of intent to cooperate across the border without reference to regulatory compliance or legally binding mechanisms.

Since the signing of the MT/B.C. MOU:

- Mine contaminants (selenium, cadmium, nitrates and sulphates) are crossing from B.C. into Montana waters in the Elk-Kootenai River transboundary watershed.
- Technology to treat mine wastewater has failed.
- B.C. has, despite documented pollution and the lack of technology to mitigate pollution, permitted four massive mine expansions in the Elk Valley in the past three years.

While the MT/B.C. MOU does not preclude federal processes, Boundary Water Treaty intervention, or International Joint Commission (IJC) involvement, the very existence of the MOU has had the real-world effect of supplanting federal efforts. Thus, Montana is the story of two transboundary rivers, one a historic success and one an ongoing failure.

The failure story is the Elk-Kootenai River system, which has a 100-year legacy of open-pit coal mines in its B.C. headwaters. Waste rock from those mines has severely degraded B.C. waters, and toxins are now affecting water quality and fishery health on the Montana side of the international line. Pollutants are expected to leach for the next 1,000 years. A \$100 million investment in water treatment technology has failed to improve the situation in the Elk River, and plans for a \$600 million treatment system are now on hold. Despite this, however, B.C. has permitted four mine expansions in the Elk River in the last three years.

Perhaps most disturbing is the fact that B.C. regulators and mine officials have known of the pollution problem in the Elk River for decades. Selenium levels first exceeded provincial water quality standards in 1991, and the province has been documenting the trend of increasing contamination in Montana headwaters since 1984. Yet, the province and the company did not address this issue until 2014, and only after this information became publicly known. The research of Montana scientists—using \$3M in U.S. federal funds secured by the Montana congressional delegation in 2008 to study the Flathead and Elk watersheds—revealed how the water quality data collected by B.C. and its mining companies in these rivers was deeply flawed.

Additionally, and importantly, the MT/B.C. MOU does not include Tribes and First Nations as participants. As a result, the Tribes and First Nations have rescinded endorsement of any outcomes of the MT/B.C. MOU process, and are insisting on a separate, federal-led process, with tribes/First Nation leadership. Both the Elk-Kootenai and Flathead River systems are home to transboundary peoples including the Ktunaxa Nation, for whom bull trout are central to culture and tradition, just as salmon are to the people of southeastern Alaska. These powerful and important voices are only heard at the table when the discussion is elevated to the federal level.

Meanwhile, in stark contrast, is the success story in the transboundary Flathead River, where B.C. at one time proposed a host of coal, gold, and phosphate mines in addition to coalbed methane fields. The discussions regarding the Flathead pre-dated the MT/B.C. MOU, and centered on the Boundary Waters Treaty between the United States and Canada. The IJC reviewed the B.C. industry proposals, concluding that the mines would likely violate Article IV of the Boundary Waters Treaty: “...waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.” Subsequent analysis by the UNESCO World Heritage Committee fully concurred. These international involvements led directly to permanent protection of these transboundary headwaters.

The difference in outcomes in the two Montana-B.C. transboundary rivers, the Elk-Kootenai and Flathead, is clear: when transboundary rivers are managed solely through a state/province MOU, British Columbia’s interests take clear precedent; when transboundary rivers are managed not only through state/province agreements, but hand-in-hand with federal/international protocols, the interests of downstream stakeholders are balanced well against the interests of upstream industry.

Montana and Alaska have much in common, including our upstream neighbors in B.C, our state/provincial MOUs, our globally significant U.S./Canada gravel-bed rivers, and our downstream interests. Furthermore, the wastewater treatment technology that has failed on the

Montana border in the Elk-Kootenai watershed is the very same technology that Seabridge Gold has recommended for lowering selenium levels from the KSM mine in the B.C. headwaters of the Unuk River. British Columbia's failure to regulate and remove pollutants already has resulted in spinal and skeletal deformities to their own protected species, and we are now seeing rapidly increasing concentrations of mine-related toxins across all species of fish in Montana. Simply put, the MOU between Montana and B.C. has failed to guarantee the safety of transboundary waters, and it has failed to curb continued mine development in the headwaters of shared watersheds.

We strongly urge the State of Alaska to join with the Alaska congressional delegation and send a written request to the U.S. State Department. Before finalizing the Alaska-B.C. Statement of Cooperation on Protection of Transboundary Waters, the State of Alaska has a small window of opportunity to do what the State of Montana did in the 1970s and 1980s for the iconic Flathead River system: Demand that the U.S. federal government pursue international protections for U.S. downstream interests threatened by proposed Canadian mining activity upstream. Furthermore, we recommend the State of Alaska and the Alaska congressional delegation push for the following from the U.S. federal government:

- 1) Time and resources to conduct U.S.-led scientific research and baseline data collection, in the form of a 3-5-year moratorium on new projects and federal funds for science;**
- 2) Stronger B.C. standards for review and approval for projects in shared U.S./Canada watersheds, including full bonding requirements (for pollution cleanup, compensation of affected parties, and mine reclamation);**
- 3) Compensatory mitigation, in the form of new B.C. habitat protections, that provide biological offsets for headwaters degraded by industry.**

Please do not hesitate to contact any one of us at any time. Thank you for your time and thank you for your work to protect the U.S. interests that are currently threatened in the Alaska portions of U.S./Canada transboundary waters.