



August 4, 2015

Response to State of Alaska White Paper on Transboundary Mines

Introduction

On July 31 the State of Alaska released a White Paper on Transboundary Mines as part of its information package for an August 6 Transboundary Partner Dialogue meeting. The White Paper lays out an approach for engaging with British Columbia (BC) on the issue of downstream effects in Southeast Alaska from transboundary mines in BC. Despite an overwhelming call from Alaska legislators, the Alaska congressional delegation, tribes, local governments, fishing and tourism businesses, conservation groups and individuals for engagement from the International Joint Commission under the authority of the Boundary Waters Treaty, the State's approach continues the status quo of relying on BC's mine review process to protect Alaskan interests. The participatory measures in the White Paper are largely dependent on the willingness of BC and provide Alaska with no specific power, authority or guarantees to ensure protection of Alaska's resources.

The Walker Administration's Transboundary Workgroup has not explained how this approach will: (a) prevent harm to Alaska (b) detect harm to Alaska's interests (c) deal with harm when it occurs and (d) provide funding for these efforts.

The White Paper fails to address the main issue Southeast Alaskans have been raising for years: Enforceable protections to ensure the long-term, cumulative effects of existing and future large scale mining and associated development activities in northwest BC will not harm Alaska's commercial, sport and customary and traditional fisheries, fish habitat, water quality and livelihoods in the Taku, Stikine and Unuk watersheds. There is neither mention of cumulative effects in the White Paper nor any proposal to analyze long-term impacts across the broad expanses of the Taku, Stikine and Unuk and determine ways to address them that can be enforced.

Background

The Taku, Stikine and Unuk watersheds span almost 30,000 square miles, or an area roughly the size of Maine, and are the cultural and economic lifeblood of Southeast Alaska. The Taku is usually the most productive salmon river in Southeast Alaska, with the Stikine a close second and the Unuk a major producer of king salmon and eulachon. Several large BC mines with potential to generate acid mine drainage and over five billion tons of toxic mine tailings are operating or in development in these watersheds. Most will have huge tailings dams to contain billions of tons of toxic tailings that require monitoring, and water treatment in perpetuity, which is not provided for in BC's permitting requirements. According to the [BC Ministry of Energy, Mines and Petroleum Resources](#) many more mine claims in this region are in various stages of exploration and development.

These rivers contribute significantly to the economy of Southeast Alaska:

- Southeast Alaska's salmon industry contributes about \$1 billion a year to the regional economy and employs about 7,200 people.

- Southeast Alaska’s tourism industry provides an estimated 10,000 jobs and injects an estimated \$1 billion annually to the regional economy.
- Southeast Alaska Native tribes depend on salmon, hooligan, moose and other resources that are threatened by upstream mining.

White Paper Approach Lacks Authority; Relies on Willingness of BC to Participate

The approach presented in the White Paper to “address the risk of pollution from mines and other development projects in British Columbia” can be summarized as follows:

- Increased information exchange between BC and Alaska agencies;
- Increased availability of public information;
- Increased opportunity for agency and public input into BC mine review processes;
- Increased Alaska involvement in monitoring mine projects;
- A joint water quality monitoring program for transboundary rivers;
- Procedures for the Transboundary Working Group headed by Lt. Gov. Mallott; and
- Seeking federal or private funding for these efforts

While none of these items are detrimental, they are wholly inadequate as a plan to address the risks to Alaska. Increasing information flow between agencies and to the public, increasing public comment opportunities and focusing on agency participation in BC mine review processes continues the status quo approach and does nothing to guarantee an increase in Alaska’s influence over if and how projects are developed. Public access to information is helpful but provides no guarantees of protection or authority. The rejection of Alaskan comments for a Panel Review of KSM and BC’s approval of the Tulsequah Chief hoverbarge plan over the objections of Alaskans demonstrates that the public comment process is not an effective way to protect our interests.

In May Lt. Gov. Mallott said [“any engagement we have with British Columbia cannot be out of courtesy on their part.”](#) Yet the participatory measures in the White Paper are largely dependent on the willingness of BC and provide Alaska with no specific power, authority or guarantees that issues will be addressed. Instead of Alaska as the downstream riparian state demanding an equal seat at the table with authority and guarantees, such as those provided by the Boundary Waters Treaty and IJC, the White Paper forces the State to participate on an unequal footing in a process that is solely controlled by BC and Canada.

The White paper presents no analysis of whether or not the BC mine review process has functioned to protect Alaska’s interests to date. The focus on the BC mine review process suggests the State is accepting that the only avenue for engagement with BC is through the BC permitting process and at only the technical level rather than an international political level. There is no analysis of other options such as those presented by the Boundary Waters Treaty and International Joint Commission. The White Paper notes “we must look to find additional funding sources” but ignores the fact that the IJC would bring its own financial resources.

BC Permitting Process Can’t Protect Alaska

The BC system is not designed to address the potential long-term threats to water quality, fisheries, wildlife and those who depend on these resources across the huge area of the Taku, Stikine and

Unuk. The BC process focuses on one mine at a time, is short-term and provides little broad, long-term cumulative effects analysis. The process is designed to permit mines, not to ask and answer questions related to whether development in major salmon watersheds is sustainable over the long-term. And importantly, there is little opportunity for meaningful Alaskan public input and no mandate for consultation with Alaskan Native tribes.

No matter how rigorous a process is on paper, the real test is how that process is carried out and what the real world results are. Some recent examples provide cause for concern:

- The Mount Polley tailings dam was permitted by BC to last essentially forever and yet it failed in less than 20 years.
- The White Paper states “Under conditions of their EAC, Chieftain must address the existing acid rock drainage from the old mine workings in conjunction with developing the new mine workings.” But the Paper fails to mention that little effort has been made to stop the pollution from the Tulsequah Chief and it continues to this day.
- The Red Chris tailings dams were approved by BC, yet a recent independent review found numerous problems with the design.
- Despite strong opposition BC permitted a hoverbarge access plan for the Tulsequah Chief.
- KSM was approved with a plan for only 250 years of water treatment, despite the strong likelihood it will be needed in perpetuity.
- Despite requests for a Panel Review of the KSM mine proposal from a variety of Alaskans, the Canadian government denied the requests without explanation.
- The Mount Polley review panel recommended against the continued use of watered tailings impoundments, yet only three days after this report was released, BC gave a permit to Imperial Metals for a similar tailings facility at the Red Chris mine.

A New Approach Needed with BC

Common sense would indicate that we in Alaska are responsible for protecting our own interests, and we should not rely on BC, Canada or mining companies. The buck stops with the Governor’s office in ensuring that our fisheries, water quality, wildlife and livelihoods continue to be productive. That responsibility cannot be passed to BC. Instead of expecting that BC 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 BC.

There are extensive processes governing the harvest of fish in the region, such as the Pacific Salmon Treaty and the associated Pacific Salmon Commission, but there is no similar entity or process designed to address fish habitat issues across the broad international transboundary region; clearly, there is a need for one. Among the questions we would like to see answered are:

- Is BC carrying out its mining plans in the transboundary region in a way that will not harm downstream Alaska interests and that complies with the Boundary Waters Treaty?
- Can BC assure us that the long-term cumulative impacts of creating a large, new mining district in the headwaters of major transboundary rivers will be done in a way that protects Alaska’s interests in fish and clean water?
- What financial assurances are needed to ensure proper long-term monitoring, accident cleanup and compensation for damages?
- If the answers are uncertain, what measures are needed to protect downstream interests?

- How will BC ensure compliance with the Boundary Waters Treaty, which forbids the pollution of waters flowing between the two countries?

The BC permitting process is not designed to answer these questions.

IJC or Similar Alternative Mechanism

The Boundary Waters Treaty (BWT) states “the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.” The International Joint Commission (IJC)—a body created by the BWT to prevent and resolve transboundary disputes—is tailor-made to provide a forum for Alaska and B.C. to examine whether current and proposed development in the transboundary region has the potential to violate Article IV.

Article IV is not discretionary. It is an undertaking of the signatories to the BWT regardless of whether or not the IJC is given a reference to study an issue and provide recommendations. Even without an IJC the State of Alaska must demand that BC demonstrate how its aggressive mining development will not violate Article IV. How will the Governor’s office comprehensively address Alaska concerns about the potential impacts of the mines, singly and in combination, on Alaskan downstream resources in a forum that gives Alaska “an equal seat at the table?” In other words, Alaska is allowed to make its concerns known as the downstream riparian state protected under Article IV of the BWT and not merely as part of B.C.’s environmental assessment and procedures.

What If The “Shoe Were On The Other Foot?”

In looking to strike a fair agreement with BC Alaska can look to what BC might be asking for if it found its natural resources at risk through planned development in a bordering state. There is in fact, an excellent example of what the current BC government demanded in exactly such a case. There is a remarkable disparity in what BC expects of Alaska with regard to mine development in transboundary watersheds compared to what BC expects from Alberta and the federal government in exchange for its approval of the Northern Gateway pipelines, which will extend to the BC port of Kitimat. Since BC will bear the brunt of any environmental impacts, BC will not agree to the pipeline unless a number of very stringent conditions are met, including:

- Extensive public consultation. There have been 53 public hearings and meetings, with 49 having been conducted in BC and only 4 in Alberta. Meanwhile not a single public hearing has been held in Alaska on the proposed mines.
- BC is insisting upon “world-leading” oil spill protections. Meanwhile, BC is not applying the Best Available tailings technologies recommended by the Mount Polley Review Panel at mines like Red Chris and KSM
- New regulations will increase pipeline inspections by 50% and require pipeline companies to keep \$1 billion on hand to deal with potential spills. Yet, Alaska is offered no details on how impacts to Alaskan waters would be cleaned up and compensated.
- While BC’s demands are being addressed, there is no pipeline construction taking place; meanwhile, BC mine development in watersheds shared by Alaska is proceeding at breakneck speed, often with no consultation with Alaska at all.

For more information: Chris Zimmer, Zimmer@riverswithoutborders.org, 907/586-2166