



Executive Council

Central Council Tlingit & Haida Indian Tribes of Alaska

June 8-9, 2017 – 10 AM (Alaska Standard Time)

SPECIAL IN PERSON MEETING

MINUTES Day 1

CALL TO ORDER

President Peterson assumed chair without objection and called the meeting to order at 10:00 AM.

ROLL CALL

Richard Peterson, President	Present
Rob Sanderson, Jr., 1st Vice President	Present
Will Micklin, 2 nd Vice President	Present
Ralph Wolfe, 3 rd Vice President	Present
Jackie Pata, 4 th Vice President	Present at 10:14 AM
Marvin Adams, 5 th Vice President	Present
Edward K. Thomas, Jr., 6 th Vice President	Present
Keenan Sanderson, Emerging Leader	Present

INVOCATION

1st Vice President Rob Sanderson, Jr. provided the invocation.

ADOPTION OF THE AGENDA

Items added to the agenda:

1. Emerging Leader Swearing In
2. Discussion of the Elizabeth Peratrovich Hall Rental Rates
3. Cultural Heritage & Education Department
4. Executive Council Guidelines

M/S 1st Vice President Rob Sanderson, Jr. moved to approve the agenda with the above additions and to relax the agenda. M/C

The newly elected Emerging Leader Keenan Sanderson was sworn in by the chair.

PUBLIC COMMENT

Don Bremner and Paul Marks II offered public comment regarding the rental rates of the Elizabeth Peratrovich Hall. Mr. Marks and Mr. Bremner are in the planning stages of a traditional tribal wedding of Paul Marks II and Mr. Bremner's daughter, Alison Bremner. Mr. Marks and Mr. Bremner suggested the rates are too high, and a discount should be in place for tribal citizen use of the hall for traditional ceremonies and events. The amount billed is \$2,371.00 for a day and a half use of the full hall; if a 50% discount were applied the amount billed would be \$1,185.50 which was suggested to be a more affordable cost.

M/S 5th Vice President Marvin Adams moved to approve a 50% discount for the Marks/Bremner Wedding. M/C

REPORTS

The chair requested the written reports be approved as written due to time constraints. No objection, so moved.

President's Report

The President gave a verbal report on his recent activities and events, including: BIA budget concerns, attendance at the transboundary stakeholders' event, GTAC update, and advising the Executive Council that the City and Borough of Juneau made a positive vote for the Tlingit & Haida fee-to-trust application. He also reported meeting with Department of the Interior Secretary Ryan Zinke and the congressional delegation, and participating in a joint meeting between Tlingit Haida Regional Housing Authority and the Tribe. Discussion followed.

The President announced the resignation of Grace Singh as Government Affairs Liaison due to a job opportunity as Executive Director with a political 501(c)4 group.

General Counsel Report

A written report was submitted for review.

Government Affairs Liaison Report

A written report was submitted for review.

Chief Operating Officer (COO) Report

A written report was submitted for review.

Chief Financial Officer (CFO) Report

A written report was submitted for review.

DISCUSSION ITEMS

Status of Youth Conference

Grace Singh reported the Tribe was applying an Administration for Native Americans (ANA) grant for culture camp activities. She believes such funding would be a great opportunity to

support a future youth conference. Tina DeAsis-Wright, Youth Development Coordinator at the Tribe, is putting together a youth group for Juneau and will be a valuable collaborator for this particular project.

Executive Order on Restructuring the Department of the Interior

4th Vice President Jackie Pata would like to support the Tribe in providing comments to the Department of the Interior (DOI) in response to the Executive Order on the proposed restructure of DOI, to ensure the Tribe is engaged on this important issue.

Proposed Budget Potential Impacts

4th Vice President Jackie Pata encouraged the Tribe to engage in the budget process, and specifically to support brainstorming to ask questions of the Department of Interior about the impacts the President's proposed budget may have on Indian Country. She believes that it is important to identify now the areas where the impact may be negative, so those areas can be highlighted in the budget process.

Health Care Proposals and Alaska Tribal Positions

4th Vice President Jackie Pata reported that Indian Country has concerns with the current health care proposal. Senator Lisa Murkowski has been visiting places and sharing the Alaska health care model. Discussion ensued on the Alaska health care model and how it relates to tribes.

BREAK

The chair called for a break at 11:55 AM. No objection, so moved.

EXECUTIVE SESSION

The chair called to enter Executive Session at 3:20 PM. No objection, so moved.

Executive Session adjourned.

RECESS

The chair called to recess at 3:58 PM. No objection, so moved.



Executive Council

Central Council Tlingit & Haida Indian Tribes of Alaska
June 8-9, 2017 – 10 AM (Alaska Standard Time)
SPECIAL IN PERSON MEETING
MINUTES Day 2

RESUME

The chair called the meeting to order at 10:21 AM.

EXECUTIVE SESSION

The chair called to enter Executive Session at 10:22 AM. No objection, so moved.

Executive Session adjourned.

DISCUSSION ITEMS CONTINUED

Housing Update

4th Vice President Jackie Pata announced that Keith Gregory of Chicago will serve as the new CEO of Tlingit Haida Regional Housing Authority. He will take office on June 19, 2017.

Transboundary Mining

2nd Vice President Will Micklin reported that the State convened a meeting regarding the statement of cooperation between Alaska and British Columbia on the issue of transboundary mining. He continued that the current draft statement now permits tribes and first nations to be signatories to the statement, among other changes. In addition, he advised the Executive Council that the Tribe is working to prepare a proposal, acceptable to Alaska's congressional delegation, for funding transboundary related environmental work and future policy work. (*See Appendix A, B, C and D*)

Southeast Village Homeless Shelters

5th Vice President Marvin Adams requested to table this agenda item to a later time. No objection, so moved.

Constitution Committee for 2018 Tribal Assembly

2nd Vice President Will Micklin asked for guidance for resuming the work of the Constitutional Committee since the Committee's proposal was not fully considered during the 82nd Tribal Assembly, and the proposal was tabled for further consideration in the 83rd Tribal Assembly.

President Peterson instructed 2nd Vice President Will Micklin to resume regular meetings with the Committee.

Infrastructure and Energy Projects

2nd Vice President Will Micklin reported on the several regulatory reform and reform of administrative processes proposed for infrastructure, energy and general development projects. He requests that the Tribe engage in these various initiatives to offer specific comments to the Administration about the effect of these proposed changes on Tlingit & Haida and southeast Alaska. He suggests that such comments also address the proposed eliminations of federal funding for some of this work. Discussion ensued and addressed the next agenda item, the Indian Asset Reform Act, Indian Traders Act etc.

Proposals for the Alaska Delegation

2nd Vice President Will Micklin raised for discussion what issues the Tribe should present to the Alaska delegation for and strategize possible action. He proposed for consideration an amendment to the Indian Land Buy-Back program, specifically to expand authority to include Alaska, and also the issue regarding Title IV-E foster care reimbursements for out-of-state cases, that was recently interpreted in a way that greatly decreases the funding coming to Tlingit & Haida. Finally, he also noted that the Marine Mammal Protection Act (MMPA) requires attention, though the improvement would not require statutory amendment, rather it needs only the administrative attention of the Anchorage office to permit lineal descendants to hunt consistent with the MMPA. Discussion ensued.

Alcohol Ordinance, Section 17 Corporation Charters, Political Subdivision Application

2nd Vice President Will Micklin announced that the Tribe is working on an alcohol ordinance for submission to the Department of the Interior. He also advised the Executive Council that the Tribe should consider establishing new section 17 corporations and new political subdivisions, as part of its broader strategy of economic development and to support any future fee to trust applications.

FTT, Reservation Proclamation

2nd Vice President Will Micklin requested that the Executive Council discuss the Tribe's reservation proclamation request and related fee to trust applications at a future Executive Council meeting. He would like to ensure that any potential conflicts with IRA tribes related to the fee to trust process are discussed in advanced and the Tribe has a unified and coherent response to any questions on that subject.

BUSINESS (ACTION) ITEMS

Resolutions

M/S 3rd Vice President Ralph Wolfe moved to adopt EC 17-01 *Amendments to the Investment Policy Statement* as amended. Amendment: 6th Vice President Edward K. Thomas, Jr. moved to replace "ETF" to "Exchange Traded Fund"; no objection, so moved. Vote on main motion: M/C

Donation Request: G'ana'k'w Canoe Family

M/S 1st Vice President Rob Sanderson moved to approve a donation of \$2,000 for the G'ana'k'w Canoe Family. M/C

Cultural Department

M/S 5th Vice President Marvin Adams moved to approve the Cultural Education Department. M/C

OLD BUSINESS ITEMS

Tabled Resolutions

M/S 1st Vice President Rob Sanderson moved to approve EC 17-26 *Reinstate Culture Committee as a Standing Committee*, for discussion purposes only. Discussion followed. M/S 2nd Vice President Will Micklin moved to table EC 17-26 *Reinstate Culture Committee as a Standing Committee*. M/C

The chair called to table EC 17-28 *Request to Change Opening Day for Goat Hunting Season* until information could be provided by the Haines community. No objection, so moved.

The chair called to table EC 17-38 *Authorization for the President or Chief Operating Officer to Authorize Grant Applications under Certain Conditions* until the following week and go to priority poll via email, if necessary. No objection, so moved.

Emerging Leader Guidelines

M/S 4th Vice President Jackie Pata moved to approve Miciansa Hutcherson to receive her scholarship funds directly and to amend the policy to allow Emerging Leaders, who are not enrolled in a school, to have the option to receive their stipend directly. 1 abstention, M/C.

AFN/NCAI Planning

The chair requested the Executive Council consider the schedule of the two events and decide which event they will attend. The Office of the President will coordinate travel, Executive Council members to advise about their preference shortly.

BREAK

The chair called for a break at 3:08 PM. No objection, so moved.

EXECUTIVE SESSION

The chair called to enter Executive Session at 3:20 PM. No objection, so moved.

Executive Session adjourned.

477 ALL STAFF MEETING

The Executive Council attended the welcoming portion of the 477 All Staff Meeting located at the VTRC on June 9th.

GOOD OF THE ORDER

The Executive Council wished Grace Singh well in her new job opportunity and welcomed the new Emerging Leader Keenan Sanderson.

ADJOURN

The chair called to adjourn at 4:10 PM. No objection, so moved.

APPENDIX A

CCTHITA TRANSBOUNDARY MINING ACTION PLAN UPDATE

June 2, 2017

CCTHITA Priority Goals – Transboundary Mining

(1) Participate directly in relations with the State of Alaska and US Federal Government in discussions with the Dominion of Canada and British Columbia and Yukon governments, through the State of Alaska – Province of British Columbia MOU-SOC to date, and going forward a replacement Memorandum of Agreement and appendices.

(2) Support the authorization, funding and implementation with tribal participation of a long-term environmental study of the transboundary effects of mining activities in the Yakutat Bay to Portland Canal ecosystems, watersheds, aquifers and basins.

(3) Support transboundary mining regulations and polluter pays policies in the transboundary region compliant with US environmental statutes and in accordance with the Boundary Waters Treaty of 1909.

(4) Support a reference to the International Joint Commission under Article IX or X of the Boundary Waters Treaty of 1909 pursuant to its Article IV.

Current Status of Priority Goals

The Central Council of Tlingit and Haida Indian Tribes of Alaska is calling upon other US Tribes, Canadian First Nations, the State of Alaska and US Federal Government, and the Dominion of Canada federal government and provincial governments of British Columbia, Yukon and Ontario to immediately support an IJC reference charged jointly by the US and Canadian governments pursuant to Boundary Waters Treaty of 1909 under Article IX for an assessment and determination of Transboundary-wide water quality for the transboundary river ecosystems, watersheds, basins and aquifers for development activities with transboundary effect.

The report of the Province of British Columbia Auditor General, Ms. Bellringer, of May 2016 recommended immediate action by the British Columbia Ministry of Energy and Mines and Ministry of Environment to implement and enforce regulations adequate to the environmental risk of BC mining activities. The Union of British Columbia Indian Chiefs issued a report in May 2016 on mining liability, including recommendations for requiring companies to provide full financial security for estimated reclamation, to demonstrate they have the necessary coverage in place to cover accidents such as tailings dam collapses like the one at Mount Polley, and to establish an industry fund to cover the cost of dealing with closed and abandoned mines so taxpayers are not left to pay costs for environmental harm.

The UBCIC recommended important actions for approval and completion by BC if it is to permit, regulate and enforce requirements on mines as a responsible government. Responsible development in the transboundary region, including mining, must engage US Tribes and Canada First Nations as governments and as communities, and must work with our Indigenous governments to implement environmental studies and project monitor necessary to establish and fund responsible development and responsive government.

The UBCIC recommendations included, as follows:

- A fundamental cost of doing business is compliance with reasonable environmental standards that are overseen by robust regulations, and that meet the strict no pollution standard of the Boundary Waters Treaty. Other industries employ insurance and surety bonds as a routine and fundamental cost of doing business. No business should earn excessive profits at the expense of the government funded by the people or at the expense of residents' health diminished by environmental pollutants.

- Taxpayers should not be put at financial risk by assuming the cost of mine accidents, pollution, or closures where regulations allow companies to underfund mine remediation or disaster costs. Regulations must ensure mine owners have sufficient financial resources to pay for environmental damage and injury.
- The financial practice in government regulation is based on polluter-pay principles, but, there must be an effective system of financial assurances to hold parties liable. The costs of clean-up, compensation, remediation and/or reclamation must not fall solely to the taxpayer while allowing the mine owners to escape with excessive profit. Poor regulation and insufficient liability encourages mine owners to assume more risk and thus increases the risk of disasters. When mine owners are held financially responsible for environmental impacts, safer mining activities result.
- Also needed is an industry-funded pool to cover catastrophic events if a polluter is unable to pay. A claims process, independent from the mining company, should be devised to protect impacted residents.

BC Minister of Energy and Mines Bill Bennett accepted 42 of the 43 recommendations, except for creation of an independent mining compliance office, and he agreed that the province's compliance and enforcement regime needed improvement. Bennett has also committed to acting on many recommendations that followed the collapse of the Mount Polley tailings dam in August 2014 — a disaster that spilled millions of liters of sludge and mine waste into Quesnel lake and surrounding waterways in central B.C. Minister Bennett has not taken a position on the USBIC report and recommendations.

The Province of British Columbia and the State of Alaska entered into a Memorandum of Agreement in November 2015 and a Statement of Cooperation in October 2016. The Statement of Cooperation implements section 2 of the MOU, which recognized and formalized the mutual commitment of Alaska and British Columbia to protect and enhance the shared environment, including trans-boundary rivers, watersheds and fisheries, for the benefit of both jurisdictions.

Meanwhile, the Tulsequah Chief mine continues to discharge pollutants into the headwaters of the Taku River as rusty, acidic water, threatening one of Alaska's major salmon producing rivers.

British Columbia Auditor General Report

In May 2016 the Auditor General for the Province of British Columbia published, "*An Audit of Compliance and Enforcement of the Mining Sector*". This report was conducted to determine whether the regulatory compliance and enforcement activities of the Ministry of Energy and Mines (MEM) and the Ministry of Environment (MoE) pertaining to mining are protecting the province from significant environmental risks. The Auditor "*found almost every one of her expectations for a robust compliance and enforcement program within the MEM and the MoE were not met. [She] found major gaps in resources, planning and tools. As a result, monitoring and inspections of mines were inadequate to ensure mine operators complied with requirements. The ministries have not publicly disclosed the limitations with their compliance and enforcement programs, increasing environmental risks, and government's ability to protect the environment.*"

The Auditor was "*disappointed in the resistance to this overall recommendation as it is consistent with many other jurisdictions' response to similar incidences.*"

British Columbia Financial Assurance Regime is Non-Existent

The financial assurances regime for mine site reclamation in British Columbia is woefully inadequate, while a regime to ensure mine owners have sufficient financial resources to pay for environmental damage and third party losses from unintended mine accidents is non-existent.

The Tulsequah Chief Mine on the headwaters of the Taku River has been discharging pollutants into the Taku River for over 50 years. As reported by KTOO Public Media on September 15, 2015, the province's policy is to rely on the mine operator to clean up the mine from operating revenues. However, the latest owner, Chieftan Metals, filed for receivership in September 2016¹. In October 2016 the BC Ministry of Energy and Mines awarded a contract to SLR Consulting to assess the mine. As of yet, no progress towards ending the pollutant discharge or reclaiming the mine has been achieved. The lack of a clear solution for the Tulsequah Chief mine polluting of the transboundary Taku River is consistent with the KTOO Public Media report of September 2015 that "Reclamation is not a step British Columbia is likely to take."

The magnitude of the United State's transboundary region's exposure to risk of pollutants from Canadian mining activities and the cost burden upon the US States and Tribes is extensive, as revealed in the publication of the Union of British Columbia Indian Chiefs, "Towards Financial Responsibility in British Columbia's Mining Industry" from May 2016².

The Union of British Columbia Indian Chiefs (UBCIC) concluded³ "the BC government is enabling a dangerous disregard for environmental monitoring, reporting and protection among mining companies by letting them off the hook for the full costs of environmental reclamation – leaving [Canadian] taxpayers liable for more than \$1.5 billion..."

The UBCIC found that other Canadian provinces, such as Quebec, and the United States' State of Alaska, insist on full funding of project reclamation from mining, which "creates a powerful incentive for companies to focus on safety and best practices...By failing to follow suit, BC has reduced this incentive and placed taxpayers at huge financial risk."

The British Columbia Auditor General, Carol Bellringer, issued a May 2016 report, "An Audit of Compliance and Enforcement of the Mining Sector"⁴, that was conducted to determine whether the regulatory compliance and enforcement activities of the Ministry of Energy and Mines (MEM) and the Ministry of Environment (MoE), pertaining to mining, are protecting the province from significant environmental risks. The BC Auditor General concluded she "found almost every one of our expectations for a robust compliance and enforcement program within the MEM and the MoE were not met. We found major gaps in resources, planning and tools. As a result, monitoring and inspections of mines were inadequate to ensure mine operators complied with requirements." The report concluded environmental risks were increased by the BC government's inability to protect the environment due to "the lack of enforcement capacity and muddled political direction of the ministries of mines and energy and of the

¹ <http://www.desmog.ca/2016/09/08/owner-acid-leaking-tulsequah-chief-mine-goes-receivership>; <http://www.cbc.ca/news/canada/north/tulsequah-chief-mine-bankrupt-receivership-1.3758668>; <http://vancouver.sun.com/business/local-business/tulsequah-chief-owner-pushed-into-receivership-environmental-issues-remain>.

² https://d3n8a8pro7vhmx.cloudfront.net/ubcic/pages/1290/attachments/original/1463347826/Toward_Financial_Responsibility.pdf

³ http://www.ubcic.bc.ca/bc_riskymining

⁴ <https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC%20Mining%20Report%20FINAL.pdf>

environment, and the failure to ensure all mines are safe and held accountable...” The BC government accepted the BC Auditor General’s report in full and committed to act on all 43 recommendations.⁵

The BC Auditor General’s report and the UBCIC analysis shines a bright light on the failure of the British Columbia province’s environment monitoring of mines and failure to ensure companies are liable for the cost of accidents and remediation.

The lack of financial liability for BC mines allows mining owners to external the cost of responsible mining and environmental safeguards onto the US, State of Alaska and tribal governments and provides incentive for the mine owners to irresponsibly operate mines through risky practices rather than more costly best practices because they can escape being held financially responsible for mediation, reclamation, or redress. Mine operators are more likely to cut corners on safety measures and environmental protections in order to increase their profits, which leads to continual discharge of pollutants in the transboundary ecosystem, to more accidents, and to more severe consequences for residents of the transboundary region.

BC regulatory malpractice and lack of liability for mine owners is incredibly irresponsible and, as identified in the Auditor General’s report, leaves BC taxpayers liable for potential costs in excess of \$1.3 billion in site reclamation costs as of March 2014 and a further \$275 million for reclaiming abandoned mines. However, these cost estimates do not include the costs to the United States or the health care costs for residents of the transboundary region whose health is impacted by the pollutants.

While the Tulsequah Chief mine’s continued discharge of pollutants is under evaluation, the mine owner in receivership disclaims all responsibility for remediation, and British Columbia has no mechanism to require redress.

Boundary Waters Treaty No Appreciable Harm Rule

IJC Application of the BWT No Appreciable Harm Rule; Strict No Injury Rule

The Boundary Waters Treaty of 1909 does not provide for the principle of equitable utilization, and instead requires application of the no appreciable harm rule. While there is little to no baseline scientific data to evidence the levels of pollutants discharged into the transboundary rivers, basins, aquifers and ecosystems in the transboundary region of southeast Alaska, other areas previously assessed for similar mining activities in a BWT transboundary area serves as an example, which is the *Flathead River*.

The Flathead River flows from south-eastern British Columbia into north-western Montana. When a company proposed to establish a coal mine on Cabin Creek, a tributary of the Flathead River in British Columbia, there were objections to the project, and the Canadian and US governments referred the matter to the International Joint Commission (IJC), under article IX of the Boundary Waters Treaty for study. In December 1988 the IJC submitted its report and recommendations to the governments.⁶

Relying on the technical assessment of a Study Board established by it, the IJC recommended that the governments not approve the projected mine. While noting that the available data were incomplete, it felt confident in holding that the operation of the mine would violate the no injurious pollution rule of article IV of the Boundary Waters Treaty, or at least that it carried the risk of that violation.⁷ In particular, the IJC

⁵ <https://news.gov.bc.ca/releases/2016MEM0008-000710>.

⁶ International Joint Commission, *Impacts of Proposed Coal Mine in the Flathead River Basin* (December 1988).

⁷ *Ibid.*, 9.

concluded that damage would inevitably occur to the habitat, which would cause a significant loss of fish population. And this loss, it said, ‘would be such as to cause reduction in the quantity and quality of the sport fishing activity in the United States and create a negative impact on the associated economic infrastructure since the affected fish population migrate for much of their adult lives to United States waters.’⁸ The IJC, however, indicated that its conclusion was ‘not based on the dollar losses..., although...there will be demonstrable and sustained economic loss to a number of interests dependent on this fishery’, but on the ground that ‘a reduction of the fish population...would undoubtedly be an injury of most serious consequence to the integrity of the fishery itself, and thus to that property interest in the public domain on the other side of the border.’⁹ This conclusion was dictated by the strict no injury rule of article IV.

The governing rule of the BTW and its Article IV does not provide for consideration of equitable utilization. However, the IJC in its final recommendations to the governments requested that they ‘consider, with the appropriate jurisdictions, opportunities for defining and implementing compatible, equitable and sustainable development activities and management strategies in the upper Flathead River basin.’¹⁰ However, the fact of the matter is that the IJC was precluded by the no injury rule of article IV from itself attempting to reach an equitable and reasonable balancing of the conflicting interests of the parties.

The impact of a rejection of the project on the economy of British Columbia and Canada is not a factor when data shows mining activities’ pollutants cause appreciable injury to southeast Alaska interests.

While the decision of the IJC in December 1988, “Impacts of a Proposed Coal Mine in the Flathead River Basin”, established evidence that the fish population would be reduced, the IJC did not attempt to show that the fishery would suffer any long-term or irreversible damage. However, such evidence subsequently became available that documented significant, long-term injury from pollution in the May 2013 Final Report by the University of Montana, “Transboundary Flathead River: Water Quality and Aquatic Life Use”¹¹ and the November 2008 report by Mr. Rich Moy, “Transboundary Impacts of Energy Development in the B.C. Flathead”¹² that documented significant environmental pollution in the U.S. transboundary region due to Canadian mining activities.

The 2013 report found “nitrate and total nitrogen concentrations were significantly elevated (1000x) at sites downstream of existing coal mining in the Elk Basin compared to what was observed either among all Flathead Basin sites or samples from Elk Basin sites above coal mines. Sulfate concentrations were also significantly elevated (40-50x) in Elk Basin sites below coal mining. ... Similarly to sulfate, selenium concentrations were elevated to 7-10x above naturally occurring levels observed among Flathead Basin streams and rivers sites and Elk Basin sites above the coal mining. ... elevated concentrations of cadmium in Corbin Creek and in Michel Creek below Corbin... We found significant impact to both the algae and macroinvertebrate communities in tributary streams below mining in the Elk River Basin.”

⁸ Ibid., 8.

⁹ Ibid., 9.

¹⁰ Ibid., 11; see also Ibid., 9.

¹¹ http://static1.1.sqspcdn.com/static/f/808688/22286791/1364323681743/HauerSexton2013_TransbdyFlatheadRiver_WQ-Aquatics.pdf?token=j9KZzvHbORbCZ1GxWVKYctVQW0Q%3D

¹² http://leg.mt.gov/content/committees/interim/2007_2008/environmental_quality_council/mee<ngs/minutes/eqc01152008_ex07.pdf

The 2008 report found in “Comparing Water Quality of Michel Creek & Flathead River: Sulfates 18X higher (91.3 mg/L vs. 5.1 mg/L); Nitrates 650X higher (2.6 mg/L vs. 0.004 mg/L); Selenium 57X higher (17.3 mg/L vs. 0.3 mg/L). This report found:

- Coal Bed Methane (CBM) land use disturbances will impact security areas and connectivity zones for critical wildlife species such as grizzly bear, wolverines and lynx.
- CBM wastewater produced from the Elk Valley coalfield (just north of the Crowsnest Coalfield and part of the same geological formation as the Flathead) has the following characteristics:
 - High concentrations of Barium, Copper and Iron, relative to the receiving watershed.
 - All of these metals pose a clear threat to the water quality and associated transboundary fisheries of the Flathead River.
 - Stormcat [a mine] has been surface discharging since 2001 and have exceeded the Provinces guidelines for Barium and Copper and have killed 100% of rainbow trout in their bioassay toxicity tests, due to toxic levels of ammonium in the treated wastewater.
- In the 1980s, the Flathead Basin banned phosphate detergents to protect water quality of the basins lakes and streams.
- The phosphate ban, better municipal treatment in the Flathead and around Flathead Lake and the effects of Mysis Shrimp have cause primary production of algae in Flathead Lake to level off for the past decade, but nutrient loading is still too high.
- Much of the time, phosphate is the limiting factor for greening of Flathead Lake.
- With increased phosphate releases from the mine site, the North Fork Flathead, Flathead River and Lake will likely increase in algae blooms.

The 2008 report’s most evocative statement was its “bottom line”, that is “when the first mine goes in, we will see a domino effect and all the mines proposed in the B.C. Flathead will be built.”

The 2013 report emphasized efforts toward development of a comprehensive conservation plan integrating Transboundary Flathead aquatic habitat conservation and conservation of fish and wildlife habitat and corridors. These efforts are now meaningful for the transboundary mining issues impacting the southeast Alaska transboundary region due to the 1988 IJC Flathead River decision on British Columbia mining policy.

The province of British Columbia is reluctant to consent to an IJC reference for its mining industry because the 1988 IJC Flathead River decision determined the BC mining activities in the Flathead River region would likely cause degradation and irretrievable losses, thus there was no possibility of proceeding with mining in the Flathead watershed without creating an unacceptable direct impact on US resources. The BC government is aware of the 2008 and 2013 environmental reports that confirmed the injury to the US due to pre-existing mining activities. The BC government is reticent to accept IJC jurisdiction for mining activities impacting southeast Alaska that would likely return a similar decision as that of the 1988 Flathead River decision.

The Dominion of Canada federal ministries and Environment Canada are more favorable to appropriate, reasonable and effective mining regulations and strict liability than is the BC government, however, the provincial ministries are the decision-makers rather than the federal ministries in the Dominion of Canada form of government. While the opposition of the province cannot be set aside by the Canadian federal ministries, an approach that would likely be difficult for the provinces to oppose and available to the federal ministries to champion is the initiative proposed in consequence to the 1988 IJC Flathead River decision, which is development of a comprehensive conservation plan integrating Transboundary aquatic habitat conservation and conservation of fish and wildlife habitat and corridors.

A Transboundary-Wide Water Quality IJC Reference

The US and Canada are parties to the [1909 Boundary Waters Treaty](#) (Boundary Waters Treaty), which established the [International Joint Commission](#) to manage the shared US. - Canadian waterways, including transboundary rivers crossing the common international border between southeast Alaska and the British Columbia and Yukon Provinces.

The International Joint Commission

The goals of the International Joint Commission are to prevent and resolve disputes between the United States and Canada under the 1909 Boundary Waters Treaty and to pursue the common good of both countries as an independent and objective advisor to the two governments. The International Joint Commission rules upon applications for approval of projects affecting boundary or Transboundary waters and may regulate the operation of these projects; it assists the two countries in the protection of the Transboundary environment, including the implementation of the *Great Lakes Water Quality Agreement* and the improvement of transboundary air quality; and it alerts the governments to emerging issues along the boundary that may give rise to bilateral disputes.¹³

The International Joint Commission has three main Responsibilities:

- 1) The Commission issues Orders of Approval in response to Applications for the use, obstruction or diversion of waters that flow along, and in certain cases across, the boundary if such uses affect the natural water levels or flows on the other side.
- 2) Commission also undertakes investigations of specific issues, or monitors situations, when requested by Governments. Implementation of Commission recommendations made under such References is at the discretion of the two Governments.
- 3) The Treaty also provides for the Governments to refer matters to the Commission for binding decision (but to this date this provision has not been used).⁶

The original emphasis for the Treaty, as described within the document, appears to be directed to the use of the Great Lakes, the Niagara River, the St. Mary and Milk Rivers; however, the emphasis may now needs to be directed to the southeast Alaska / British Columbia-Yukon and the Wisconsin-Michigan / Ontario transboundary regions. This emphasis would be made possible by an IJC reference proposed for a study of the water-quality issues and impacts of industry along the entire transboundary region, which would not emphasize the southeast Alaska impacts from BC, and thereby avoid BC opposition, but instead focus on water quality issues across the entire boundary. Nevertheless, the International Joint Commission priority for the Alaska/BC-Yukon transboundary and the Wisconsin-Michigan / Ontario regions would likely emerge from the Transboundary-wide reference as the first controversies to be addressed by the IJC.

An example of an IJC reference charged jointly by the US and Canadian governments pursuant to Boundary Waters Treaty Article IX for the Transboundary-wide water quality issues would be to:

“examine into and report upon the water quality and quantity of the Transboundary regions, relating to the transboundary water quality and quantity implications of the proposed development on transboundary waters, their basins, watersheds, aquifers and ecosystems, in provinces and states of priority import, and to make recommendations which should assist Governments in ensuring that the provisions of Article IV of the said treaty are honored.”

The Boundary Waters Treaty Article IV provides in its entirety

¹³ International Joint Commission: http://www.InternationalJointCommission.org/en/home/main_accueil.htm

“[Canada and the US] agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that 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.*” [emphasis added]

The IJC would be requested to appoint several technical committees under a Transboundary River International Study Board, whose reports would include:

“IJC recommendations that, in order that Governments can ensure that the provisions of Article IV of the Boundary Waters Treaty are honored in the matter of the priority ecosystems established under the reference:

(1) development proposals as presently defined and understood to be approved or not according to the findings of the reports;

(2) development proposals to receive regulatory approval in the future or not unless and until it can be demonstrated that:

(a) the potential transboundary impacts identified in the report of the Transboundary River International Study Board [including a [Mine Development Committee Technical Report](#)] have been determined with reasonable certainty and would not occur or could be fully mitigated in an effective and assured manner; and,

(b) the potential impacts on the Indigenous governments (US Tribes and Canada First Nations) traditional and customary fishing, hunting and gathering rights under inherent sovereign authority, sport and recreational fish populations and habitat in the transboundary river ecosystem would not occur or could be fully mitigated in an effective and assured manner.

(3) the US and State, Canada and Provincial, US Tribes and First Nations Governments consider, with the appropriate inherent jurisdictions, opportunities for defining and implementing compatible, equitable and sustainable development activities and management strategies in the transboundary river basin, aquifer and ecosystem.”

Once the IJC reference is charged jointly by the US and Canadian governments pursuant to Boundary Waters Treaty Article IX, the southeast Alaska / BC-Yukon studies would be authorized by the Transboundary River International Study Board and the Mine Development Committee as a first priority to:

“examine into and report upon the water quality and quantity of the Alsek, Taku, Stikine, and Unuk Rivers, relating to the transboundary water quality and quantity implications of the proposed mine development on the ecosystem of these transboundary rivers in British Columbia including its basins, watersheds and aquifers, and to make recommendations which

should assist Governments in ensuring that the provisions of Article IV of the said treaty are honored.”

The Alek, Taku, Stikine, and Unuk River basins straddles British Columbia and southeast Alaska. The IJC would appoint technical committees under the Transboundary River International Study Board, with the purpose to report that:

“The IJC recommends that, in order that Governments can ensure that the provisions of Article IV of the Boundary Waters Treaty are honored in the matter of the proposed mines within the transboundary region ecosystem, watersheds, aquifers and basins in British Columbia and the States of Wisconsin and Michigan:

(1) the mine proposal as presently defined and understood to be approved or not according to the finding of the reports;

(2) the mine proposals not receive regulatory approval in the future unless and until it can be demonstrated that:

(a) the potential transboundary impacts identified in the reports of the Transboundary River International Study Board [including the [Mine Development Committee Technical Reports](#)] have been determined with reasonable certainty and would not occur or could be fully mitigated in an effective and assured manner; and,

(b) the potential impacts on the Indigenous governments (US Tribes and Canada First Nations) traditional and customary fishing, hunting and gathering rights under inherent sovereign authority, sport and recreational fish populations and habitat in the transboundary river ecosystem would not occur or could be fully mitigated in an effective and assured manner.

(3) the US and State, Canada and Provincial, US Tribes and First Nations Governments consider, with the appropriate inherent jurisdictions, opportunities for defining and implementing compatible, equitable and sustainable development activities and management strategies in the transboundary river basin, aquifer and ecosystem.”

Action Plan

Include in the Transition Plan to the Trump administration, supported by the Obama administration through the White House and US Department of State and US EPA, and supported by the Alaska Congressional delegation and the State of Alaska, and the Central Council and other tribes, the specific requests for:

(a) replace the State of Alaska – Province of British Columbia Memorandum of Understanding (MOIU) and Statement of Cooperation (SOC) with a Memorandum of Agreement (MOA) and appendices modeled on the State of Washington – Province of British Columbia MOA dated 1992 and amended in 1996, 2003 and 2007;

(b) a Transboundary-wide reference to the IJC for a water quality study of the impacts of development pursuant to the BWT;

(b) authorization and funding for an environmental study of the impacts of transboundary mining on the transboundary region ecosystem, watersheds, basins, and aquifers for the transboundary region from Yakutat Bay to the Portland Canal for a minimum ten year period, including authorization for self-determination agreements permitting the Central Council to contract or compact for delivering study activities; and

(c) direct participation by Central Council and other tribes and First Nations in transboundary discussions between the United States and State of Alaska and the Dominion of Canada and the British Columbia and Yukon provinces.

[end]

APPENDIX 1

UBCIC SUMMARY OF FINDINGS AND RECOMMENDATIONS

FINDINGS:

1. Contaminated orphaned and abandoned mining sites: BC has a legacy of contaminated sites for which no responsible party can be found, and the liability for remediating these sites is growing. The estimated cost to clean up mining sites that the province has assumed responsibility for, and undertaken assessment of, is \$275 million. This is a direct burden on the public treasury. There are many sites for which assessments have yet to be undertaken and thus the actual public liability is much greater.

2. Operating and closed mine sites the province does not own but that require reclamation, many with recognized contamination: As at March 31, 2014, the Ministry of Energy and Mines had an unfunded liability for site reclamation of \$1.3 billion. The unfunded liability has increased since, but the figures are no longer made publicly available. Further, the province relies on reclamation estimates prepared by mine operators and thus the estimates may not accurately reflect reasonable reclamation costs.

3. Environmental risk of unexpected events: The number and growing size of tailings storage facilities throughout the province presents an increasing risk and cost to the public and the environment. There is no requirement in BC that mining companies undertake an environmental risk assessment that examines the risk and related environmental cost of possible accidents at their mine sites. Neither is there a requirement that companies provide proof to regulators that access to sufficient financial resources, including insurance, exists to meet obligations if an environmental harm event occurs.

Although the Province of BC ascribes to the Polluter Pay Principle, without an effective system of financial assurances that fully holds parties liable for the costs they create, British Columbian residents, First Nations and the environment will continue to bear an undue—and growing—burden for mining related environmental risk and its resulting harm.

The province's failure to ensure that whenever polluters pollute, polluters pay, represents an obvious cost to taxpayers because taxpayers end up bearing the burden instead. If the cost does not fall to taxpayers then it falls to society along with much of the clean up, compensation, remediation and/or reclamation going unattended.

There are hidden risks and costs to the Provincial government's unwillingness to ensure that its legislative and regulatory regime guarantees that those who cause the harm efficiently and effectively bear its costs. Best practices reduce long-run environmental costs but generally require greater upfront investment. Mining companies, by definition, are focused on delivering short-term returns to shareholders. So although mining companies benefit from the certainty of a strong regulatory regime based on the Polluter Pay Principle as it assists them in making better investment decisions, when they understand they can avoid all, or part, of the financial accountability enacted in legislation—when they know that the Polluter Pay

Principle will not be enforced—the absence of precautionary regulatory requirements makes it unlikely that operators embrace best practices since there is little incentive to do so. This creates systemic risk and leads to delays or avoidance of reclamation and an increased frequency and increased overall cost of unanticipated environmental harm events.

In contrast, when a mining operator is unequivocally held financially responsible for its environmental impacts, positive outcomes result. These positive outcomes accrue to industry, the economy, government, society, and the environment. When companies are required before the fact to prove they can fully meet their obligations:

1. these entities are incentivised to adopt best applicable practices and best available technologies;
2. mine operators release less hazardous waste than when financial requirements are not in place and monitored;
3. fewer accidents occur, and the consequence of those that happen are reduced;
4. fewer bankruptcies and corporate reorganizations—costly to creditors, workers, communities, shareholders and the economy—occur;
5. clean up, remediation, reclamation and compensation is undertaken in a timely manner which reduces ultimate harm and cost; and
6. costs are borne by those responsible, not by those who are not.

The purpose of the Union of British Columbia Indian Chiefs' report was to identify the weaknesses in British Columbia's Environmental Financial Assurances regime and recommend solutions to the serious shortcomings identified. The report's recommendations were intended to ensure the environment is protected from harm to the greatest extent possible while supporting industrial development such that it would be "the mine owner—not the public or the environment—that bears the cost and responsibility for returning the natural environment to its pre-disturbed, or acceptable alternative use, state."

RECOMMENDATIONS:

1. Require Full Security for Mine Site Reclamation Costs

Require that mining companies post full security for mine site reclamation costs. For new mines full security to be posted at time of permit issuance; for mines that are operating, under care and maintenance or are closed, the province should require that companies post full security within three to five years.

2. Introduce Financial Assurances for Unexpected Environmental Harm Events

Require companies to hold sufficient financial assurances to meet the costs of likely environmental damage and third-party losses that arise due to mine related accidents. Establish a limit of liability where fault does not need to be proven, and require unlimited liability above the liability limit when fault or negligence exists. The level of sufficient financial assurances to be determined through risk assessment and to include insurance and other hard security instruments such as bonds or cash. Companies should provide proof on an annual basis that required financial resources are available.

3. Establish an Industry-Funded Pool Levy a charge against volume of production from operating mines and make the fund available: a. at a fee for smaller mining companies that cannot access financial assurances through the banking sector; b. if actual reclamation costs at a mine site exceed estimated costs and a mine owner was unable to pay; and/or c. if an unexpected event, such as a tailings pond breach, exceeds the financial assurances required for such a loss (exceeds the limits of liability), no party were found to be at fault, or the polluter is unable to pay.
4. Establish a Claims Settlement Process Create a claims process for compensable damage which is arms length from the mine operator and includes a process for review of disputes regarding claims adjudication which is outside the courts.
5. Introduce Transparency and Accountability Require, on an annual basis, that site reclamation plans, reclamation cost estimates, and related security, by mine and in aggregate be publically reported. Make publicly available on an annual basis proof of security provided for unexpected environmental harm events by mine.

APPENDIX B

ENVIRONMENTAL COOPERATION AGREEMENT

Between the United States of America, Dominion of Canada, State of Washington, Province of British Columbia, Province of Yukon, Central Council Tlingit and Haida, Metlakatla Indian Community, Ketchikan Indian Community, Wrangell Cooperative Association, Douglas Indian Association, Yakutat Indian Tribe, Nisga'a Nislms Government, Taku River Tlingit First Nation, Haida Nation, Lax Kwa'alaams First Nation, Metlakatla First Nation, Champagne and Nishihik First Nation.

WHEREAS the Province of British Columbia and the State of Washington are committed to ensuring a consistent and high-level of environmental quality for their citizens; and

WHEREAS environmental concerns and impacts respect neither physical or political boundaries, and all governments recognize the necessity for joint action on issues of mutual interest; and

WHEREAS the Ministries of the Province and the Executive Departments of Washington wish to share information and to cooperate on environmental matters, are prepared to work together with respect to their responsibilities, and wish to enter into specific cooperation arrangements; and

WHEREAS the increased complexity of environmental issues, particularly their interjurisdictional impacts, requires coordinated responses from all governments.

NOW, THEREFORE, the Province of British Columbia and the State of Washington agree to establish and coordinate mutual efforts to ensure the protection, preservation and enhancement of our shared environment for the benefit of future generations;

The parties also agree to develop an action plan, which shall form part of these efforts, reflecting mutual priorities and to enter into specific arrangements necessary to address environmental problems.

DATED AT _____ , _____ , _____

This __ __ **day of** _____ , **AD 201**_ .

Signatories:

_____, Prime Minister
Dominion of Canada

_____, President
United States of America

_____, Prime Minister
Dominion of Canada

_____, President
United States of America

_____, President
Nisga'a Lisims Government

_____, President
Central Council Tlingit and Haida

_____, Spokesperson
Taku River Tlingit First Nation

_____, President
Metlakatla Indian Community

_____, Chief
Haida Nation

_____, President
Ketchikan Indian Community

_____, Chief
Metlakatla First Nation

_____, President
Wrangell Cooperative Association

_____, Chief
Lax Kw'alaams First Nation

_____, President
Douglas Indian Association

**BRITISH COLUMBIA-YUKON, DOMINION OF CANADA/
CANADA FIRST NATIONS/
WASHINGTON, UNITED STATES OF AMERICA/
SOUTHEAST ALASKA TRIBAL GOVERNMENTS
ENVIRONMENTAL INITIATIVE**

Terms of Reference

Mandate/Purpose:

The Initiative's mandate is derived from the Environmental Cooperation Agreement between the various jurisdictions entered into in ____ 2017. The Initiative's purpose is to ensure coordinated action and information-sharing on environmental matters of mutual concern.

Members: Premier, British Columbia
Minister, BC Ministry of Energy and Mines
Minister, BC Ministry of Environment
Premier, Yukon
Minister, Yukon Ministry of Energy and Mines
Minister, Yukon Ministry of Environment
Prime Minister, Dominion of Canada
Minister, Environment Canada
President, Nisga'a Lislim
Spokesperson, Taku River Tlingit First Nation
Chief, Champagne and Aishihik First Nations
Chief, Haida Nation
Chief, Lax Kw'alaams First Nation
Chief, Metlakatla First Nation

President, United States of America
United States Environmental Protection Agency
United States Department of State
Governor, State of Alaska
Director, Alaska Department of Natural Resources
President, Central Council Tlingit and Haida
President, Ketchikan Indian Community
President, Wrangell Cooperative Association
President, Metlakatla Indian Community
President, Yakutat Indian Tribe
President, Douglas Indian Association

Observers: Regional Director General, Pacific and Yukon Region, Environment Canada
Director, Global Affairs Canada

Director, Office of Canadian Affairs, US Department of State
Administrator, Region 10, US Environmental Protection Agency

Support:

Administrative support will be provided by Environment Canada and Global Affairs Canada, and US EPA and US Department of State who will be jointly responsible to prepare agendas, ensure appropriate attendance at Initiative meetings and coordinate follow-up action.

Procedures:

- The Initiative will generally meet twice each year, or as necessary.
- The Initiative may establish sub-committees to deal with specific matters.
- The Initiative may, by formal agreement, establish Task Forces to address issues of special or major significance.
- An Annual Report will be made to the various heads of governments.

**BRITISH COLUMBIA-YUKON, DOMINION OF CANADA/
CANADA FIRST NATIONS/
WASHINGTON, UNITED STATES OF AMERICA/
SOUTHEAST ALASKA TRIBAL GOVERNMENTS
ENVIRONMENTAL INITIATIVE**

**Preliminary Action Plan/Work
Priorities**

The Dominion of Canada British Columbia and Yukon Provinces and First Nations and the United States of America State of Washington and southeast Alaska Tribal Governments commitment to cooperative efforts on environmental matters has resulted in the identification of the following priority issues for action:

1. Transboundary Rivers Ecosystem Water Quality Initiative

Transboundary rivers (Alsek River, Taku River, Stikine River, Unuk River) ecosystem water quality is considered to be a high priority issue and requires immediate joint attention.

Concerted efforts are underway by all governments to identify and remedy pollution problems in the Transboundary rivers ecosystem. Coordination of these programs will enhance their environmental benefits.

2. Aquifer Water Quality

Aquifer Water Quality is considered to be a high priority issue by all parties and requires immediate joint attention.

A task force involving affected interest groups will examine the issues and ensure necessary action is taken to control sources and protect water quality.

3. Fisheries

Fisheries is considered to be a high priority issue and requires continued joint attention.

Recent low levels of escapement and returns to salmon fisheries, low levels of herring fisheries, low levels of eulachon fisheries, and adverse impacts of acidification and sea otters in Alaska's and British Columbia's/Yukon's transboundary rivers and waters between Yakutat Bay and Portland Canal is an

environmental and economic threat to all parties. Continued attention is needed to ensure implementation of the recommendations of a Task Force that identified actions needed to avert recurrence of such problems.

4. Regional Aquifer/Ground Water Management

Regional aquifer/ground water quality management is considered to be a high priority issue in the transboundary rivers (Alsek River, Taku River, Stikine River, Unuk River) watershed and requires timely joint attention.

5. Pollution with Transboundary Affect

Issues such as potential for transboundary flows of pollutants from mining activities should be addressed in an integrated manner through regional implementation of this agreement and the Boundary Waters Treaty of 1909.

6. Coordinated Groundwater Consumptive Use

Management of the aquifer/groundwater consumptive use in the transboundary rivers (Alsek River, Taku River, Stikine River, Unuk River) area is considered to be a high priority issue and requires immediate joint attention.

The aquifers are of particular concern as a result of domestic use on both sides of the border. Improved coordination of the activities of all parties to address both aquifer/groundwater quantity and quality will encourage more effective resolution.

7. Solid, Hazardous and Mining Waste Cooperation with Potential Transboundary Affect

Waste management with potential for transboundary affect is considered to be an emerging risk and should be the subject of information exchange and further discussion. The transboundary impacts of waste management practices and contaminated mining sites should be examined through mechanisms such as a Memorandum of Understanding on Hazardous Waste Management with Transboundary Affect.

8. Transboundary Watershed Resource Management

Transboundary watershed management in general, including watersheds of the Transboundary Rivers of Alsek, Taku, Stikine and Unuk, is considered to be an emerging issue and should be the subject of information exchange and further discussion.

Increased water use in response to growing needs necessitates protection of

Transboundary watersheds and instream flows; this requires sound data and thorough field investigations. Joint efforts can ensure efficiency and maximum productivity for all governments.

9. Wetlands Protection

The protection of wetlands and wildlife habitat is considered to be an issue of ongoing interest to all parties. The exchange of information on wetland and habitat protection programs will form the basis for initial cooperation on this issue.

10. Strict Liability and Channeling

Strict liability for owners and operators of mining activities with the potential for hazardous affects and injurious consequences out of acts not prohibited by state or international law is considered to be an issue of ongoing interest to all parties.

The scope of the subject is the definition of transboundary damage, including the physical relationship between the activity and the damage, the requirement of human causality, the threshold criterion, and the transboundary movement of harmful effects. The efforts will discern between accidental damage, non-accidental damage, and damage to the transboundary area.

Issues and problems with substantive rules and principles will be analyzed, including: the issue of channeling for liability and insurance; recoverable damage for loss of life and personal injury; property damage; the costs of preventative measures, response, and reinstatement.

11. Strict Liability and Channeling; State Responsibility

Of interest to all parties are the necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control. These measures should include the imposition of liability on the operator or, where appropriate, other person or entity. Such liability should not require proof of fault, with any conditions, limitations or exceptions to such liability consistent with principles agreed upon by the parties.

These measures should also include the requirement on the operator or, where appropriate, other person or entity, to establish and maintain financial security such as insurance, bonds or other financial guarantees to cover claims of compensation. In appropriate cases, these measures should include the requirement for the establishment of industry-wide funds at the national level.

States shall provide their domestic judicial and administrative bodies with the necessary jurisdiction and competence and ensure that these bodies have prompt, adequate and effective remedies available in the event of transboundary damage

caused by hazardous activities located within their territory or otherwise under their jurisdiction or control.

12. State Responsibility

State responsibility for the potential for hazardous affects and injurious consequences out of acts not prohibited by state or international law is considered to be an issue of ongoing interest to all parties.

The scope of the subject is the definition of attribution for state responsibility, enforcement of channeling in liability and insurance pursuant to strict liability, recoverable damage and procedures, and state responsibility where channeling is insufficient.

Legal issues relating to damage to the Transboundary area are priorities, including: erga omnes obligations and the question of standing, elements of harm, and institutional and financial mechanisms.

13. IJC Reference

The parties agree to discuss an International Joint Commission (IJC) reference under Article X of the Boundary Waters Treaty of 1909 to identify and address whether an IJC reference is an appropriate and effective measure to ensure that the States are responsible for infringements of their obligations of prevention under domestic and international law.

14. Other Issues

The parties agree to use the Initiative to identify and address issues of concern, and will assist each other in dealing with the agencies and departments of their respective governments. Potential issues for discussion include: earthquake and emergency preparedness and State of Environment reporting.

APPENDIX C

APPENDIX 1 to _____, 2017
BRITISH COLUMBIA/ALASKA
FIRST NATIONS / ALASKA TRIBES
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF AGREEMENT
Related to
REFERRAL OF WATER RIGHT APPLICATIONS

Between the State of Alaska
as represented by the Department of Natural Resources, herein called “Department”

and the

Province of British Columbia
as represented by the Minister of Environment and Minister of Energy and Mines, herein
called “the Ministry”

and the

Canada First Nations of British Columbia
as represented by

and the

Tribes of southeast Alaska
as represented by the President of the Central Council of Tlingit and Haida Indian Tribes of
Alaska

_____, 2017

RECITALS

WHEREAS, the Environmental Cooperation Agreement of ____ _ 2017, between the Province of British Columbia, the State of Alaska, _____ First Nation, and Central Council of Tlingit and Haida Indian Tribes of Alaska, proposed consultation and information sharing between the governments on environmental matters of mutual concern, including water resource management issues such as water resource allocation;

WHEREAS, the Memorandum of Understanding of ____ __, 2017 between the governments provides for the development of subject-specific Memoranda as Appendices to the Memorandum of Understanding;

WHEREAS, jurisdiction over water resource allocation of waters of the governments rests, respectively, with the Province, the State, First Nations and Tribes, subject to the exercise of any existing applicable state and aboriginal and treaty rights, in the case of the Province with First Nations as recognized and affirmed in Section 35 of the Canadian Constitution Act of 1982, and in the case of the State with Native Tribes as recognized by the United States Constitution, the Congress of the United States and by the State of Alaska;

WHEREAS, in the exercise of that jurisdiction particular regulatory schemes have been put in place in the Province, the State, First Nations and Tribes, and these schemes are administered by the appropriate government with applicable jurisdiction;

WHEREAS, a Memorandum of Agreement was considered to be the most effective means to provide for consultation and information sharing between the governments on water resource allocation by officials of those agencies, where such allocation has the potential for significantly impacting water quantity across the border of the states and First Nation and Tribal territories.

THEREFORE, the respective governments enter into this Memorandum of Agreement, hereafter called the MOA.

IT IS THE PURPOSE OF THIS MOA TO:

- 1) Define the respective roles and responsibilities of the respective governments to provide for timely prior consultation on water quantity allocation permits, and
- 2) Specify procedures, schedules, and appropriate contacts within each governmental agency to facilitate the timely sharing of the above information.

IT IS MUTUALLY AGREED THAT:

1. Statement of Work

1.1 The respective governments agree, in order to provide for timely consultation between them prior to water resource allocation by officials of those governmental agencies where, in the judgement of the administrating agency, such allocation may have the potential for significantly impacting water quantity on the other side of the state border, to:

- (a) provide information to the other parties in accordance with the Scope of Work, which is attached to this MOA and forms part of it, and
- (b) consult with the other party on any licence or permit application for water quantity allocation which if granted, could potentially significantly impact water quantity on the other side of the state border.

2. Term

2.1 This MOA will take effect commencing on the date this MOA is signed by the respective parties and will remain in effect for a period of ten (10) years, when it shall be subject to review and renegotiation, unless it is terminated earlier by either of the parties.

3. Termination

3.1 Any party may terminate this MOA by giving thirty (30) days written notice of termination to the other parties.

4. General

4.1 This MOA is not intended to constitute a contractually binding relationship between the parties.

WITNESS THEREOF, the parties execute this agreement.

A duly authorized representative of the
of the Minister of Environment,
_____ , on behalf of Her Majesty the Queen,
Alaska:
in Right of the Province of British Columbia:

A duly authorized representative
Director of the
_____ for the State of
Alaska:
A duly authorized representative
President, on behalf of the
Central Council.

SCOPE OF WORK

PRIOR CONSULTATION AND INFORMATION SHARING REGARDING WATER RIGHTS ALLOCATION

I. Coordination and Cooperation

Water quantity allocation is a cross-border issue. Because water resource development on either side of the border can have a significant impact on water availability on the other side, it is imperative that the respective governments:

(a) coordinate reviews to facilitate decision-making on applications involving water rights allocation, where the water allocation applied for has the potential for significantly impacting water quantity across the state border, and

(b) cooperate in sharing relevant water quantity information necessary to provide management of those water resources.

II. Elements of Consultation

In addition to the referral procedures normally followed, the BC Ministry of Environment and Ministry of Energy and Mines will send all surface water, ground water, and reservoir applications for permit and applications for change of water right to the State of Alaska and CCHITA when the point of withdrawal, point of diversion, or place of use specified in the application is within or on the exterior boundaries of the Transboundary Rivers and ecosystem and aquifers as outlined in the attached plan (___ : ___ scale). The State of Alaska will send all surface water, ground water, and reservoir applications for permit and applications for change of water rights to the Ministry of Environment and Ministry of Energy and Mines a copy of the application form and a copy of the appropriate USGS quadrangle sheet or Metsker map, indicating the location of major project features such as points of diversion, nature of the works proposed, and other information normally submitted with the application. All applications will be sent to the designated governmental officials.

In addition to the referral procedures normally followed, the Ministry will send to the State of Alaska and CCTHITA all surface water licence applications and water licence amendment applications when the point of withdrawal, point of diversion, or place of use identified in the application is within or on the exterior boundaries of the Transboundary Rivers and ecosystem and aquifers as outlined in the attached plan (___ : ___ scale). The Ministry will provide the State of Alaska and CCTHITA a copy of the application form and a copy of the appropriate NTS, BCGS or cadastral map, indicating the location of major project features such as points of diversion, nature of the works proposed, and other information normally submitted with the application. All applications will be sent to the designated governmental officials.

Applications which meet the requirements identified above will be transmitted by the Ministry or Department to its counterpart and First Nation or CCTHITA at the same time that notice for comment is provided to other interested parties. Upon receipt of the application, the Ministry and Department, First Nations and CCTHITA will have 30 days for review and comment. If necessary, the Ministry and Department, First Nation or CCTHITA may request additional time for review and comment on any application.

Comments from the Ministry and Department, First Nations and CCTHITA should be substantive in nature; i.e., they should relate specifically to impairment of the aquifer's safe sustaining yield, impairment of existing rights, or to fish and wildlife biology or habitat impacts. Current information, based on a field investigation, is preferred. Projected effects should be quantified to the extent possible. If either agencies' staff does not fully understand the reviewer's comments, he or she should contact the reviewing agency for clarification. When findings significantly deviate from the substantive comments provided by the reviewing agency, a copy of the findings will be provided to the reviewing agency.

III. Information Sharing

Subject to applicable public disclosure, freedom of information, and protection of privacy laws, the Ministry and Department, First Nations and CCTHITA commit to freely sharing and exchanging information on water licences/permits and water licence/permit applications under consideration.

Subject to applicable public disclosure, freedom of information, and protection of privacy laws, the Ministry and Department, First Nations and CCTHITA commit to freely sharing and exchanging information on regional studies pertaining to water availability and development of water resources within or on the boundaries of the Transboundary Rivers ecosystem and aquifer.

APPENDIX D

APPENDIX 2 to _____, 2017
BRITISH COLUMBIA/ALASKA
FIRST NATIONS / ALASKA TRIBES
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF AGREEMENT
Related to
THE ENVIRONMENTAL PROCESS

Between the State of Alaska
as represented by the Department of Natural Resources, herein called “the Department”

and the

Province of British Columbia
as represented by the Minister of Environment, Minister of Energy and Mines, and Office
of Environmental Assessment, herein called “the Ministry”

and the

Canada First Nations of British Columbia
as represented by:

and the

Tribes of southeast Alaska
as represented by:

The President of the Central Council of Tlingit and Haida Indian Tribes of Alaska

_____, 2017

RECITALS

WHEREAS

- A. The Environmental Cooperation Agreement of _____, 2017 between the Province of British Columbia the State of Alaska, the _____ First Nation, and the Central Council of Tlingit and Haida Indian Tribes of Alaska, directed the parties to coordinated action and information sharing between the respective governments on environmental matters of mutual concern;
- B. The Memorandum of Understanding of _____, 2017, between the State of Alaska Department of Natural Resources (Department) and the British Columbia Ministry of Environment and Ministry of Energy and Mines and Office of Environmental Assessment (Ministry) committed the Province and the State to make efforts to share information, consult with the governments party to this agreement, and coordinate their work on environmental issues that affect resources and residents in the Transboundary region, and to include the regional office of the other jurisdiction in the distribution of environmental assessments for certain major projects;
- C. The State of Alaska, the Province of British Columbia, the _____ First Nation and CCTHITA recognize each other's authority and responsibilities to conduct or require, where appropriate, an environmental assessment/environmental review (EA/ER) of project proposals within their jurisdiction, and their mutual responsibilities;
- D. The State of Alaska, the Province of British Columbia, the _____ First Nation and CCTHITA each have established processes for the EA/ER of certain projects within their respective jurisdictions;
- E. The Province of British Columbia, as represented by the Environmental Assessment Office (EAO), and the State of Alaska, as represented by the Department of Natural Resources, the _____ First Nation, and the CCTHITA, support a Memorandum of Understanding between the parties specific to inter-jurisdictional cooperation on information sharing about the practice of EA/ER in each jurisdiction, and notification and information exchange related to major project proposals in the vicinity of the other jurisdiction;
- F. In the State of Alaska Department is a lead agency for the EA/ER of some major projects; however, EAs/ERs may be led by another state agency or a local government authority, and the Department does not coordinate EAs/ERs led by another agency or a local government authority;
- G. In the Province of British Columbia, the EAO directs the EA/ER of major projects.
- H. The Memorandum of Understanding was first signed off by the parties on _____, 2017.
- I. The environmental assessment process is herein described.

THEREFORE, THE MINISTRY AND DEPARTMENT MUTUALLY UNDERTAKE AS FOLLOWS

IT IS THE PURPOSE OF THIS MEMORANDUM OF UNDERSTANDING (MOU) TO:

1. Facilitate information sharing and mutual understanding of the EA/ER laws, policies and processes of each jurisdiction and facilitate full knowledge of changes; and
2. Facilitate notification and information exchange regarding major project proposals that are in the vicinity of the other jurisdiction.

THIS MOU APPLIES TO THE FOLLOWING MAJOR PROJECTS THAT ARE IN THE VICINITY OF THE OTHER JURISDICTION:

1. A major project proposal in British Columbia is considered to be in the vicinity of the State of Alaska if it is located 100 kilometres or less from the border between the two jurisdictions;
2. A major project proposal in the State of Alaska is considered to be in the vicinity of British Columbia if it is located in southeast Alaska between Yakutat Bay and the Portland Canal.

IT IS MUTUALLY AGREED THAT:

1. Definitions

IN THIS MEMORANDUM OF UNDERSTANDING (MOU)

- 1.1 “major project” means, for a project located in British Columbia, a reviewable project as defined in section 1 of the British Columbia *Environmental Assessment Act* (EA Act) and *Canadian Environmental Assessment Act of 2012* as amended (CEAA 2012), and for a project located in the State of Alaska, a project subject to state jurisdiction under the State law and the *National Environmental Policy Act* (NEPA) as applicable for which a Determination of Significance has been made thereby requiring an environmental impact statement;
- 1.2 “parties” means the State of Alaska represented by the Department of Natural Resources (Department) and the Province of British Columbia represented by the Environmental Assessment Office (EAO).

2. Mutual Understanding of the EA/ER Laws, Policies and Processes

- 2.1 Each party will provide the other with information on its EA/ER process for major projects within its jurisdiction to facilitate mutual understanding of the EA/ER laws, policies and processes of each jurisdiction;
- 2.2 Each party will provide the other with information in a timely manner on any changes to the EA/ER laws, policies and processes of its jurisdiction that may affect the other jurisdiction.

3. Notification of Major Project Proposals and Information Exchange

3.1 Each party will provide notification to the other party of major project proposals that are in the vicinity of the other jurisdiction as follows:

- (i) Ecology will provide notification about major project proposals that are in the vicinity of British Columbia by:
 - on a weekly basis, forwarding to the EAO a list of all project proposals that are located in the vicinity of British Columbia for which a Determination of Significance/Scoping Notice has been issued; and
 - posting information on the SEPA Register on Ecology's website in a form that is specifically sorted to identify projects that are located in the vicinity of British Columbia; and
 - when Ecology is the lead agency for the proposal, providing written notice to the EAO as early as possible but no later than the time when a Determination of Significance/Scoping Notice is issued;
- (ii) EAO will provide notification about major project proposals that are in the vicinity of the State of Alaska by:
 - providing written notice to Ecology as early as possible in the EA/ER process following issuance of an order under Section 10 of the British Columbia *Environmental Assessment Act* specifying that an environmental assessment certificate is required for the project, and
 - ensuring information about major project proposals in the vicinity of Washington State is posted on the EAO website;

3.2 Each party will provide information on the EA/ER of a major project proposal in its jurisdiction, including information on opportunities to provide comment on the proposal, upon request from the other party;

3.3 The parties will work together to develop mechanisms for notifying and consulting with members of the public who may have an interest in a major project proposal.

4. Consideration of Comments

4.1 Each party will consider any comments received from the other jurisdiction about the potential effects of a major project proposal that is in the vicinity of the other jurisdiction prior to making any decisions regarding project approval;

4.2 For a major project proposal located in the State of Alaska, comments will be submitted directly to the designated lead agency for the EA/ER of that proposal;

4.3 For a major project proposal located in British Columbia, comments will be submitted directly to the EAO.

5. Coordination with Other Arrangements

5.1 In implementing this MOU, existing bilateral arrangements related to joint management of the shared environment will be considered in order to support coordination and consistency with those other arrangements.

6. Dispute Resolution

6.1 In the spirit of cooperation and the efficient use of public resources, the parties will make reasonable efforts to resolve disputes arising in relation to this MOU at the lowest possible staff level through implementation planning, cooperation and consultation. Issues will be elevated to more senior management levels within each jurisdiction as needed to achieve timely resolution;

6.2 In the event of a dispute arising in relation to the technical aspects of the EA/ER of a specific major project, the parties will inform senior management levels in a timely manner and obtain direction on resolving the dispute.

7. Administration

7.1 The parties may continue existing administrative arrangements or enter into new administrative arrangements in order to implement their commitments under this MOU.

8. Term of this MOU

8.1 This MOU shall be effective when signed by both parties. It may be amended at any time by concurrence of the parties and may also be terminated by either party upon thirty (30) days written notice to the other.

Dated at _____ Dated at _____
_____ This ___ day of _____, 201_ This ___ day
of ___, 201_

Original Signed by _____ Original Signed by _____
[Name] **[Name]**
Minister and Executive Director Director
British Columbia Environmental Assessment State of Alaska Department of
Natural Resources