



Byron Mallott
LIEUTENANT GOVERNOR
TRANSBOUNDARY RELATIONS

NOTES from the Public Workshop on Accomplishments in the First Six Months of the Signing of the Statement of Cooperation (SOC) on Protection of Transboundary Waters and Plans for Future Work Under the SOC

Convened by the Lieutenant Governor in Juneau, Alaska, on May 25, 2017

1) WELCOME and OPENING REMARKS

Albert Kookesh — Mr. Kookesh welcomed all participants to the workshop.

President Richard Peterson (Central Council) — President Peterson welcomed all participants to the Elizabeth Peratrovich Hall at Central Council Tlingit Haida Indian Tribes of Alaska and provided opening remarks.

- Transboundary Rivers feed lives and livelihoods and support the way of life of indigenous peoples and others in Southeast Alaska.
- This way of life is being threatened. The Mt. Polley dam failure devastated an ecosystem. We don't want that happening in Alaska.
- We aren't against mining, as it helps support some communities and jobs, but mining companies must have plans in place that are sound and they must be accountable.

Lieutenant Governor Byron Mallott — The Lieutenant Governor welcomed all participants and provided opening remarks, describing the range of engagements Governor Walker and he continue to have with senior U.S. federal officials and with senior Canadian officials to advance Alaska's interest in protecting Transboundary Waters.

- Senators Murkowski and Sullivan are both engaged in addressing Transboundary Water concerns; Senator Sullivan is arranging a trip to Ottawa for the Senator and Lieutenant Governor Mallott to meet with senior Canadian officials.
- Governor Walker met with the Canadian Foreign Minister in March at the Senior Arctic Officials meeting in Fairbanks. Among other things, they discussed Canada's progress in revamping its Canadian Environmental Assessment Act process and the possibility that the federal government there might take a larger role in the environmental assessment, permitting, and oversight of Canadian mines than in the past.
- The Lieutenant Governor is seeking to have Minister Catherine McKenna (Ministry of Environment and Climate Change) visit Alaska and see the beauty and bounty of the rivers Alaskans are seeking to protect.
- With the change in the U.S. federal administration, the state will be working with a number of new officials in Washington, D.C. The state has begun briefings of the new officials and has been touching base with officials still in place who we worked with in the past. The

direction the new administration may take is still coming into focus; the State will continue to engage.

- We are also paying close attention to the outcome of the recent provincial election in British Columbia (BC), which could result in changes in leadership there.
- Although there is uncertainty regarding the outcome of the BC election, the work under the SOC continues to advance.
- The Lieutenant Governor is scheduled to go to Whitehorse to meet with the Canadian Minister for Fisheries and Oceans. While in Whitehorse, he will also meet with officials from the government of the Yukon Territory. He looks forward to learning more about how the new territorial government has been collaborating with First Nations including in regards to the environmental assessment and permitting of proposed mineral developments in the territory.
- There continues to be much discussion among the Canadian, U.S., and Alaska officials regarding Transboundary Water concerns. What role the International Joint Commission (IJC) could play is still not in focus.

(Note: There was the opportunity for questions and discussion with the all participants at the workshop after each presentation, starting with the Lieutenant Governor's opening remarks. Many of the comments related to possible action by the U.S. federal government to impose enforceable measures on Canadian mines, perhaps using the IJC and other provisions of the Boundary Waters Treaty (1909) between the U.S. and Canada. For conciseness, these statements and any discussion that followed, regardless of where they came up during the workshop, are summarized under section 6 (Public Discussion) below. Where questions or discussion dealt with specific topics on the agenda, they appear under the heading for that topic.)

2) REVIEW AGENDA

Larry Hartig (DEC Commissioner and member of the Bilateral Working Group under the SOC) — The goals of the workshop today are to provide participants with a good understanding of the actions taken to implement the SOC. The SOC was signed a little over six months ago. We are also very interested in getting your recommendations on where we need to go from here. This includes getting your thoughts on four draft documents the Bilateral Working Group (three Alaska commissioners and two BC deputy minister who are leading the implementation of the SOC) will be reviewing at their next meeting. These drafts, once finalized, will help guide work under the SOC:

- The Communication Plan describes the tools and venues Alaska and BC will use to provide reliable data and other useful information to the Tribes and public regarding mines in the Transboundary Region. As part of this discussion we will be talking about the Interactive Map of the Transboundary Region prepared by DNR. This map shows the locations of major watersheds, mines, and other key landscape features. There are links on the map that provide further data and information about mine projects and links to other informative websites.
- The Program Description for the Alaska / BC Joint Water Monitoring Project.
- The two-year Work Plan describes work planned over the next two years under the Joint Water Monitoring Project.

- The Reciprocal Procedures describes the plan Alaska and BC will use to exchange data, information, and comments, including as part of the environmental assessment and permitting processes in Canada.

These drafts were prepared jointly by Alaska and British Columbia. The drafts are posted on the Lieutenant Governor’s website, and hard copies are available at the workshop. There will be presentations on each draft document, followed by time for questions and discussions. Comments may also be submitted to us in writing or electronically. Per the Public Notice posted to the Statewide Online Public Notices website (<https://aws.state.ak.us/OnlinePublicNotices>) on May 15, feedback may be received by June 30. The next BWG meeting probably won’t be until July or August, perhaps later, depending on whether there are changes in BC leadership as a result of their recent election.

The agenda for this afternoon includes time for a discussion of the broader concerns Alaska might want to raise with BC under Section 5 of the SOC. That section provides a process for raising and addressing concerns that go beyond a single mining project, such as the concern whether BC is exercising sufficient oversight of tailing dams in general or whether BC’s provisions for financial assurances for long-term water management and water treatment are sufficient.

3) STATUS REPORT ON SOC ACTIVITIES and REVIEW OF DRAFT DOCUMENTS

a) Draft Communication Plan – David Rogers (Director of Habitat, ADF&G)

The Communication Plan will guide how information will be shared under the SOC with Tribes and the public. It is being developed jointly by Alaska and BC. It is still in draft, and we are looking for feedback from you on how to improve it. Prime objectives of the SOC are transparency and open dialog. The Communication Plan should facilitate this, using a number of different means, including:

- Webpages: Alaska and BC will maintain webpages. The Alaska webpage will probably be on the Lieutenant Governor’s website and might include a “suggestion box.”
- Public meetings/workshops: we are still determining how often – could include guests coming to Alaska from Canada.
- Distribution lists: Alaska will maintain a distribution list to help ensure that Alaskans interested in getting information on Transboundary and SOC activities are contacted with updates.
- Joint Alaska-BC Newsletter: BC is taking the lead in developing a draft newsletter. One goal of newsletter will be to provide updates on SOC activities and notify the interested public of upcoming events.

Comments:

Chris Zimmer (Rivers Without Borders) — We already have access to most of the publically available information; what we really need is recourse. What happened to the citizens’ advisory group (CAG) formed six months ago?

Response: Implementing the Communication Plan should facilitate the public’s access to relevant information on Transboundary Waters and Mines by providing a single site that links to other sites and contains recent postings by agencies.

Response: The idea of forming a CAG is still on the table as an option. If that is what the group wants, it can be explored.

Patty McGrath (EPA) — When will the draft documents (Communication Plan, etc.) be finalized?

Response: We hope to have them all ready to finalize at the next BWG meeting, which probably won't happen before July or August. If we receive comments on the drafts by June 30, there probably will be ample time to review and consider the comments before finalizing the documents.

Patty McGrath — Is BC willing to come to Alaska to make presentations?

Response: Yes, they have come to Juneau several times over the last two years to participate in meetings, make presentations, and answer questions. They plan to continue to do this under the SOC.

Individual commenter — Local paper should be making announcements. It needs to be in newspapers and on radio.

Guy Archibald (SEACC) — Incorporate NGOs into the process. Some want to be a part of a CAG.

b) Interactive Map of Transboundary Region – Ed Fogels (Deputy Commissioner, DNR)

- DEC, DNR, and ADF&G are working together in developing an interactive map the public can easily use to access information about active mines and mine projects in the Transboundary Region.
- A “beta prototype” of the map is on DNR’s Office of Project Management and Permitting website. We plan to move it to the Lieutenant Governor’s website.
- It is an ESRI-based map. Watersheds that flow from BC into AK are each highlighted on the map.
- There will be links to project-related information that may include inspection reports, notices of non-compliance, state comment letters, or other information about the status of mines.

Comments:

Chris Zimmer — Wants a link to the Environmental Assessment Office (EAO) site.

Response: The EAO, an office within the Ministry of Environment and Climate Change Strategy, is the lead agency for administering the Environmental Assessment Process. Their home page is at <http://www.eao.gov.bc.ca/>

Guy Archibald — Add BC hydro projects

Rob Sanderson (Central Council) — Encourages the state to do a better job at reaching out to get the right people at this meeting

c) Joint Water Quality Monitoring Program, Draft Program Description and Draft Two-Year Work Plan – Terri Lomax (Program Manager, Water Quality Monitoring Program, Water Division, DEC)

- Terri is the Alaska lead on the Technical Working Group on Monitoring (TWG-M). ADF&G and DNR also have representatives on the TWG-M. Terri gave an overview of the work done to date, including past public meetings and meetings with federal agencies used to help develop the draft program description and identify possible funding and other assistance.
- She noted great communication and interaction between Alaska and BC.
- An inventory of current and historical water quality/quantity information is being prepared. It will be used to help identify priorities for future monitoring work. (DEC issued a grant to SEACC for preparation of an inventory of historic water quality data sets.)
- Terri gave an overview of program elements, such as reconnaissance surveys, sediments surveys, information on biological indicators, gathering of traditional ecological knowledge, and industry monitoring data. (DEC signed an MOU several weeks ago with CCTHITA regarding a traditional ecological knowledge survey.)
- She said she will be tapping other programs, such as AKMAP, DEC Division of Environmental Health's Fish Monitoring Program, CCTHITA Transboundary Monitoring Project, and USGS Gage monitoring for assistance.
- BC contributions include supplemental activities to build on existing programs and partnerships.
- The program will include regular reporting and public sharing of info as directed by the Communications Plan under the SOC.
- The draft preliminary program recommends a mid-point review to summarize and evaluate the monitoring results. The mid-point review makes sure our key interests are being addressed.

Comments:

Jill Weitz (Salmon Beyond Borders) — Have there been citizen science or volunteer collaborations?

Response: Not true citizen volunteers. We are working closely with USFS and ADF&G. We have definitely reached out to others who are also working in the area, including CCTHIA. We will be looking for other collaborations.

Guy Archibald — Is anyone looking at funding the gaps?

Response: Looking into a grant from EPA to expand on current work. DEC's Fish Tissue Monitoring Program is funded for Fiscal Year 2018 (through June 30, 2018), and we anticipate it will continue to be funded. We are looking for additional funding opportunities.

Guy Archibald— Is there any funding for performing a baseline water quality assessment?

Response: Our AKMAP program is federally funded and set up to do baseline monitoring and reporting as part of a national program. We are looking at ways to build on it in SE Alaska using the SOC.

Fred Olsen (United Tribal Transboundary Mining Work Group) — I encourage you to do studies of the Alsek River because baseline data needs to be done before development occurs there. Though there is no development there now, there could be in the future.

Guy Archibald — Part of the SOC defines significant harm, but I don't see any planning for active monitoring in the two-year plan. Is this going to be incorporated into the monitoring plan at a later time?

Response: We have monitoring stations that are set up to meet the goals of AKMAP, which includes periodically coming back to areas of the state to update the previous assessment work. There currently aren't any long-term monitoring stations planned on the Alaska-side of the border.

Response: This is a two-year plan, starting with the resources we have and the priorities we see today. We will be working with the Canadians to better understand the long-term monitoring stations they have established or plan to establish on their side of the border and closer to potential discharges. This will help us identify what we might need on our side of the border.

Guy Archibald — AKMAP is the overall health assessment. Is there any effort to find funding for stations in Alaska to monitor discharges from Canadian mines and mesh it all together?

Response: EPA recently convened a meeting of federal agencies and DEC to discuss what federal resources might be used to expand water monitoring in Southeast Alaska. There is interest in a coordinated water monitoring program as envisioned by the SOC. DEC is also looking at how to coordinate the work our Fish Tissue Monitoring Program does in SE Alaska with the work of the TWG-M. We will be working with the Canadians to incorporate the data collected on their side of the border and reporting on it under the SOC. Collaboration on the collection of data is critical given DEC has taken a 36% cut in the Unrestricted General Funds in its operating budget.

Brian Lynch (Rivers Without Borders) — Sub-lethal exposures to pollution should also be monitored. This appears to be missing in your plans. We have anecdotal information on stress in coho salmon in the Tulsequah River drainage. I feel you're putting too much focus on whole body metals concentrations.

Response: We recognize the need to monitor for sub-lethal exposures too, and we are looking for additional funding for this.

Mark Vinsel (United Fishermen of Alaska) — Do the plans include any assessment of spawning habitat? Sediment loads could ruin habitat.

Response: That's not currently proposed; those are very expensive detailed surveys.

Jill Weitz — Have we used the Dolly Varden study?

Response: The TWG-M is working closely with ADF&G to get their input on biological and other monitoring.

Individual commenter — Suggested that the “all watersheds” spreadsheet add in “Tribes” everywhere throughout the entire document.

Fred Olsen — With regard to the discussion about the Alsek and the recent *Washington Post* article about a glacier receding and this leading to meltwater now flowing into a different watershed, this underscores the point that climate change is developing. The Nass River needs to be included in the monitoring program because if the Nass River is ruined by the KSM, then we won't get hooligan grease and that will affect everyone. How come that river isn't being protected or monitored in any way? The federal government needs to get involved.

Heather Hardcastle (Salmon Beyond Borders) — There is lots of frustration in the room. This room is not the place to discuss the overarching issues of politics. Heather announced to the audience that Senator Murkowski wants to receive appropriation requests in the next few weeks. Adequate funding is needed for baseline monitoring and transboundary monitoring. Alaska needs to join the delegation in demanding the State Department stand up to Canada. We need to clearly articulate to Murkowski about the need for funding.

Philip Johnson (U.S. Department of the Interior) — The Bureau of Indian Affairs is funding Central Council to do monitoring. The USGS is sampling on the Unuk River and paying attention to Transboundary water quality concerns.

d) Draft Reciprocal Procedures – Kyle Moselle (Large Mine Project Manager, DNR)

- Alaska and BC have been exchanging information and comments on proposed mining projects in the Transboundary Region for over a decade but until now there was no written process for this.
- The draft reciprocal procedures build on past practices and sets new practices out in writing for everyone to see.
- They include the ability to develop project-specific procedures as needed, such as if there is ever a mine project in Alaska that could impact waters in BC.

Comments:

Patty McGrath — There are similar reciprocal procedures with the Feds. Encourage Canadians to have downstream meeting and include Tribal governments. We are having broader level conversations with Canadians about environmental

review procedures, and we have asked they take transboundary impacts into review. Semi-annual meetings occur with other IJC issues. Preparation meetings also talk about transboundary issues. Issues are heard by IJC, but can't act until the State Department requests it. Any project that might have transboundary effects go to the highest level of review under the Canadian Environmental Assessment Act (CEAA).

Heather Hardcastle — We want a complimentary federal process, nation to nation.

4) Status Report on Transboundary Mine Projects – Kyle Moselle (Large Mine Project Manager, DNR)

- Tulsequah
 - Past producing underground copper, lead, zinc, silver, gold mine located about 10 river miles from border in the Taku Watershed
 - In receivership
 - Acid Mine Drainage (AMD) persists
 - B.C. has seized the bond (about \$1.4 million CAD)
 - B.C. has funded additional environmental sampling
 - Updated Aquatic Ecological Risk Assessment is pending (State will review once published)
 - B.C. is developing a reclamation and closure plan

- Red Chris is the only currently operating mine (began in 2015)
 - Open pit copper and gold mine located about 150 river-miles from border in the Stikine Watershed
 - Current mine life to 2043
 - Production (2016) was approximately 27.6 million tons mined and 9.6 million tons milled
 - South Tailings Dam
 - Operation permit (Feb. 2017)
 - Construction permit (Aug. 2016)
 - Effluent permit (Oct. 2016)
 - Mine Plan and Reclamation Program
 - Updated/approved (Feb. 2017)

- The Brucejack Mine
 - Underground gold mine located about 28 river-miles from border in the Unuk Watershed
 - Construction completed in 2017 with a current mine life to 2035
 - Production
 - Expected to start 2017
 - About 2,800 tons per day milled
 - Tailings
 - Paste backfill underground
 - Placed in Brucejack Lake
 - No Dams

- KSM
 - Proposed open pit copper and gold mine located about 20 river-miles from border in the Unuk Watershed
 - Production (proposed)
 - 130,000 tons per day anticipated over a 52 year mine life
 - Environmental Assessments
 - BC approval (July 2014)
 - Federal Canadian approval (Dec. 2014)
 - Permitting
 - Initial permitting is complete for access and temporary facilities
 - Additional permits needed for mill, dams, water treatment plant, and mine operations
 - Exploration
 - Deep Kerr adit approved (Aug/Oct. 2016)

- Red Mountain
 - Proposed underground gold and silver mine located about 13 miles from Hyder, AK in the Bitter Creek Watershed, which drains to Portland Canal
 - Portland Canal is bisected by the U.S./Canadian boarder
 - Production (proposed)
 - 1,000 tons per day anticipated for 9 months per year over a 5-7 year mine life
 - Environmental Assessment
 - Anticipated to start in 2017

Comments:

Individual commenter — Can we influence BC to open Tulsequah closure plan for comment?

Response: We aren't aware of any public comment period that BC has for this, but encourage folks to send comments to BC anyway.

5) Proposed Plans for the rest of 2017 — Larry Hartig (Commissioner, DEC)

- SOC is one tool for addressing Transboundary water quality concerns. We want to make the best use we can of it. The intent is the SOC will continue well into the future, giving Alaska and BC a workable forum for addressing water quality concerns. The SOC is just one tool; it doesn't preclude the state from pursuing other alternatives at any time in the future, including support to a referral of any concern to the IJC. We want to make as much progress as we can under the SOC. If we can't resolve a particular concern under the SOC, it should at least define the problem better and make it more likely that it will be taken up and resolved at a federal level, whether through the Boundary Waters Treaty or otherwise.
- During the first six months of work under the SOC, we have been getting our teams set up, drafts of the Communication Plan and other key documents prepared, and otherwise laying the foundation for future collaboration. We have been reaching out to federal agencies, Tribes, and stakeholders. We had also been continuing the exchange of information and comments on specific mine projects.

- Once any changeovers in BC leadership occur following the recent election there, we plan to start using section 5 of the SOC to address broader concerns with BC. Some of these concerns, like financial assurances, are already listed under section 5.
- We will also be looking for ways to extend our existing collaborations with federal agencies, Tribes, and NGOs. This could include the establishment of specific workgroups.
- The SOC signed by Governor Walker and BC Premier Christy Clark includes other areas of potential collaboration, one of which might be of interest to this audience. This is collaborating with BC to reduce the risk of pollution of Transboundary Waters from marine transportation accidents. We have already been having dialog with BC officials on this topic.

Comments:

Brian Lynch — The seafood industry asked to bring up financial assurances through federal engagement. The Boundary Waters Treaty is the only way to have financial assurance through federal processes. IJC reference is warranted. The MOU/SOC is a good start but not enough.

6) Public Comments

Relating to involvement of the U.S. federal government or the IJC:

Chris Zimmer — The [water quality monitoring] plan seems to be suffering from a lack of recourse to address concerns.

Chris Zimmer — These are not enforceable protections. How do we hold them accountable? Seems like the State isn't using their resources. The approach just focuses on the SOC and doesn't make British Columbia do anything. What happens if monitoring finds problems? There's nothing to hold them accountable. This is just voluntary.

Will Patric (Rivers Without Borders) — Communication is critical. We are hearing almost entirely about information exchange and dialog, but there is no teeth in any of this. Getting federal engagement is an obvious natural approach that would support the concerns we all have. What are we waiting for? There's lots of talk about accommodating BC. We should be concerned about the watersheds instead. We need to transcend the politics of this.

Chris Zimmer — Focus on the environmental assessment doesn't allow to deal with existing mines and forces Alaska to use BC's process, which is another case for IJC. Any attempt to bring the Feds into Tulsequah? State/Federal coordination used to do a better job, and that needs to ramp up.

Heather Hardcastle — The Auditor General has said BC is failing and acknowledges there needs to be work at every level. The SOC/MOU is working as an obstruction to the IJC. There is too much trust, and we are too neighborly with BC. We need to stand up to BC. What are the potential cumulative effects? The SOC/MOU is good, but Alaska should ask for federal interaction. Both state/provincial and fed/fed are needed.

Fred Olsen — With no referees, there are no teeth. Where is the disagreement process outlined? We need the Feds.

Will Micklin (CCTHITA) — Consensual agreements are not contractually binding, but create collaboration. Monitoring should capture existing data, analyzed with a common set of protocols. We need to add strict liability and principles for state responsibility. Need to address: water quality/fisheries/ground water/solid waste/wetland protection from mining. Documents should be institutionalized to survive government shifts. BC has “heartburn” from Flathead and seems reluctant. Tribes need to build relations with First Nations. Budget is a big issue. Costs transferred to U.S. from BC practices. Politics should not get in the way of health and safety.

Individual Commenter — There appears to be parallels to a potential Exxon Valdez. Let’s encourage the plan for Alaska to take control of what we can. Need to prepare for two Mt. Polley events every 10 years.

Fred Olsen — No BC representation here. IJC is discussed a lot, but they aren’t here in reality. Tribes are important for the government to government relationship with the U.S. The Tribes’ goal is to protect the environment. The State is doing all it can, but we need the federal government.

Closing Remarks – Lieutenant Governor Mallott

- We know there are many in the room who would like to see the federal governments more involved, including a referral to the IJC. The State has gone to Washington, D.C. several times and talked with senior federal officials, and they haven’t been interested in involving the IJC. We must work within the process we have.
- We must work together with BC. They are going to continue to permit mines. We can’t force BC to do anything; they are a sovereign nation. We can influence them through dialog and collaboration. We are doing the best we can with our resources.
- We are working with the Canadian federal government, too. They may put pressure on BC.
- How do we address financial liability in the event of a major catastrophe? We don’t want this concern to slip away.
- The governments are still determining when, where, and how the IJC may be appropriate. Keeping in touch with the Canadian federal government is important. The SOC is part of the answer. The SOC is not the whole answer, but it allows us to be engaged collectively to strengthen our capacity.
- We will continue to seek more engagement with Tribes and First Nations.
- Do you believe it is worthwhile to meet like this again in six months?