

## Transboundary Overview: Challenges from Mining in British Columbia to U.S. Interests

### Overview

British Columbia has a checkered history when it comes to honoring its pollution obligations to downstream US states. The most egregious example, but certainly not the only one, was that of the Trail Smelter, located in Trail, BC where BC was forced to compensate Washington State farmers for substantial crop losses resulting from the transport of sulphur dioxide from smelting operations. But the resolution required years of international effort on the part of Washington State, British Columbia, the US and Canadian federal governments, the International Joint Commission and, eventually, engagement of an international tribunal to mediate the dispute.

There have been numerous other BC-US transboundary issues that continue to negatively affect the economic and environmental interests of Washington and the other bordering states of Alaska, Montana and Idaho.

- In Alaska, existing and proposed mega-mines at the headwaters of three of the most productive Alaska salmon rivers threaten already fragile salmon stocks, thus jeopardizing the economy of Southeast Alaska and a way of life for Alaskan tribes in Southeast.
- In Montana, highly polluting coal mines north of the border are causing dangerous selenium levels in Lake Koochanusa, a transboundary lake, resulting in numerous complaints from the US to its counterparts in Canada. Existing and proposed mining activities in BC threaten Montana resources, and have been an ongoing concern of the state and the US federal government.
- In Idaho, the potential for mining related issues similar to those in other border states resulted in Idaho's two US Senators signing a powerful letter of concern (attached) sent to BC Premier John Horgan by all eight US Senators from the four states.

### The State of Mining in British Columbia

In 2016 the well-respected and independent government overseer, the Auditor General (AG) of British Columbia<sup>i</sup> issued a damning report<sup>ii</sup> on mining in the province. The report sounded an alarm for British Columbians and Americans in states that are downstream. Three important report conclusions are worthy of note:

- **Regulatory compliance and enforcement activities of BC's Ministry of Energy and Mines (MEM) and its Ministry of Environment (MoE), pertaining to mining, do not protect the province from significant environmental risks.** The report also found virtually all expectations for a robust compliance and enforcement program were not met. The report included many startling examples. Little has changed since the issuance of the report.
- **Permit exceedances to a boundary water are potential violations of the Boundary Waters Treaty.** The report concluded that BC mining activities exceeded its permit limit for selenium at Lake Koochanusa, a boundary water, and could be a violation of the 1909 Boundary Waters Treaty between Canada and the United States. The Treaty forbids the pollution of water bodies on either side of the border. Since the AG's report, evidence of selenium pollution to Lake Koochanusa is more alarming and US-Canada discussions continue.
- **The mining ministry is not holding an adequate amount of security to cover the estimated environmental liabilities at major mines.** The ministry has estimated the total liability for all mines at more than \$2.1 billion, yet has obtained financial securities for less than half that amount (\$0.9 billion).

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### **The Mount Polley Disaster**

An example of the consequences of lax BC mining compliance and enforcement is the disastrous mining accident at Mt. Polley<sup>iii</sup>, and lack of any consequences for that disaster. The following points are noteworthy:

- **No charges have ever been filed against the company or any individual**, and BC taxpayers are to date on the hook for \$40 million in cleanup costs, an amount that will likely increase.
- **There will be two failures of BC tailings dams every 10 years, and six every 30<sup>iv</sup>** on average according to the independent expert engineering board inquiry launched by the province after the disaster.<sup>v</sup>

### **Implications for US interests**

US states abutting BC are vulnerable to the lax regulatory and enforcement mechanisms for mining in BC.

More specifically:

- **There are no enforceable protections for US downstream interests.** In the event of a catastrophic, and likely inevitable Mt. Polley type event on a transboundary river, commercial fishers, agricultural interests and overall economic and important human health protections downstream are at risk.
- **Existing Memoranda of Understandings with BC do not have the force of law.** Agreements on the transboundary issues with border states have no enforceability, and explicitly state as much.
- **BC failed to clean up acid mine drainage polluted the Taku River which flows into Alaska.** For the past 60 years the Tulsequah Chief mine has leached acid mine drainage into a transboundary watershed.
- **It is clear that existing mines already pose dangers to US states, including Washington State,** and that transboundary pollution has already occurred in some instances. However, many more are planned or proposed, including one on the headwaters of the Skagit River and at several other sites along the Washington State/BC boundary<sup>vi</sup>.

### **What Can be Done to Protect US Interests?**

The current BC government is proposing reforms to its antiquated Mines Act, and has invited public comment on the proposals.

An additional positive step is BC's stated intention to support free, prior and informed consent of First Nations for any projects in traditional First Nations territories. This could greatly increase the extent of BC First Nations influence on the front end of mining proposal consideration. Canadian First Nations have recently been engaging Washington State tribes, and tribes in other border states on mining related issues, thus giving US tribes some early input on mining issues that potentially affect resources on the US side.

**However, there is no provision in the proposals to develop enforceable protections, including stronger financial assurances, necessary to protect downstream US interests in the event of an inevitable Mt. Polley type of disaster on a transboundary river.** US federal and state legislators could:

- Individually or collectively communicate concerns to Premier Horgan in a letter similar to that already sent by the eight US senators. Importantly Members could ask that enforceable protections and financial assurances to protect US downstream interests in Washington and the other border states similar to those in Alaska, where mining companies are required to 100% upfront before a mine is permitted to operate<sup>vii</sup>.
- Individually or collectively write to the Secretary of State in support of the Alaska Congressional delegations ask that the State Department impress upon their Canadian counterparts the critical need for negotiating binding protections, joint water quality monitoring, and financial assurances to protect Americans downstream of large-scale Canadian mines.

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## Footnotes and Links

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<sup>i</sup> The Auditor General is an independent Officer of the British Columbia Legislature, appointed by the elected members of the BC Legislative Assembly.

<sup>ii</sup> <https://www.bcauditor.com/pubs/2016/audit-compliance-and-enforcement-mining-sector>

<sup>iii</sup> On August 4, 2015, there was a breach of the Imperial Metals-owned Mount Polley copper and gold mine tailings pond, in the Cariboo Region of British Columbia. The spill is one of the biggest environmental disasters in modern Canadian history, and one of the largest in the world. An estimated 25 million cubic meters of wastewater and tailings were released. Records filed with Environment Canada in 2013 stated "...326 tons of nickel, over 400 tons of arsenic, 177 tons of lead and 18,400 tons of copper and its compounds placed in the tailings pond" escaped into the surrounding environment.

<sup>iv</sup> At present there are 123 active tailings dams in BC. A number of these are on transboundary rivers, including a massive and problem laden one on the Similkameen River, a river basin shared between Washington State and BC. <https://www.mountpolleyreviewpanel.ca>

<sup>v</sup> On January 30, 2015, the independent review panel delivered its final report and recommendations "Independent Expert Engineering Investigation and Review Mount Polley Tailings Storage Facility Breach" to the British Columbia Minister of Energy and Mines, the Williams Lake Indian Band and the Soda Creek Indian Band. <https://www.mountpolleyreviewpanel.ca>

<sup>vi</sup> Many argue this is a violation of the Boundary Waters Treaty, which includes the binding provision that "...waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other."

<sup>vii</sup> Canadian mining giant Teck Resources was required to pay full security for an estimated \$560 million in reclamation costs for its Alaskan mine. Contrast this with Teck's five B.C. mines, which have been plagued with selenium pollution problems and have unsecured reclamation costs of \$700 million dollars.

## Attachments

### **Letters from Senators and to State Department from Alaska Delegation (Will get, cite by date and include copies)**

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