



December 10, 2014

TO: Executive Committee

FROM: John Shurts

SUBJECT: Yukon River Watershed Plan/Implementation in Alaska:
Model Ordinance for consideration by Tribal governments that would endorse the Watershed Plan and adopt the specific water quality objectives and standards

At the Watershed Council's Summit in Mayo, Yukon, in August 2013, representatives from the First Nations and Tribes of the Council approved the Yukon River Watershed Plan. The purpose of the Watershed Plan is to protect and improve the water quality in the Yukon River and its tributaries, to assure that the Yukon River will continue to sustain the coming generations of all the people, fish, wildlife and plants of the Yukon. The plan combines modern science and policy with the traditional knowledge of the indigenous governments and people of the Yukon River. The centerpiece of the plan is a set of specific, enforceable water quality objectives and standards to protect the quality, quantity and flow of the water in the river.

After the Watershed Council representatives approved the Watershed Plan, they directed the Watershed Council staff and its legal advisers to "continue working on the water quality planning and governance effort under the on-going direction of the Executive Committee." This work is to include "continuing to consult with ... and familiarize the Yukon communities about the Water Quality Plan." More important, the Watershed Council representatives agreed to:

- "Recommend the Water Quality Plan for consideration by the individual First Nation and Tribal governments for the purpose of (a) endorsement of the plan and (b) additional authorization to the Watershed Council to engage in discussion about improved governance with the other sovereign governments in the basin. To be completed by the 2015 Summit, with a ceremony at that Summit."

Attached to this memorandum is a model Ordinance for consideration by the Alaskan Tribal governments of the Yukon River watershed. The model Ordinance provides a vehicle for each Tribe to consider using its legislative powers to further the protection of water quality by endorsing the Watershed Plan and approving the specific water quality objectives and standards in the plan. The model Ordinance attached here is a revised and extended version of the model Ordinance attached to the Watershed Plan itself. Also attached after the model Ordinance is a short set of talking points for the Tribal governments and communities to accompany and explain the purpose for the model Ordinance.

Action by the individual Tribes and First Nations to endorse the Watershed Plan and approve the water quality objectives and standards is an important part of the Watershed Council's long-term strategy to improve the protection of water quality in the Yukon River. It is also an important step along the road to improving the role of the Tribes and First Nations as sovereign governments in the governance of the river, individually and collectively. On the United States' side of the international border, U.S. law does not yet recognize that the Alaskan Tribal governments have direct governing authority over the river and its water. United States and Alaska law does, however, recognize the authority of these Tribal governments to enact laws governing the health, safety, and welfare of their citizens. *See, for example, John v. Baker* (Alaska Supreme Court 1999). Nothing is more important to the health, safety and welfare of the citizens of these Tribes than the quality of the water that the people live along, drink from, and gain their subsistence from. Our recommendation continues to be that the Alaskan Tribal governments act under this authority and endorse by Ordinance the baseline water quality objectives and standards in the Watershed Plan, and then also authorize further executive actions and discussions with regard to implementation and governance.¹ The Watershed Council is a collective association of the Tribal and First Nations governments, but not a sovereign government itself – we need the actual governments to endorse the path taken by the Watershed Council to be able to work further on implementation strategies, including discussions on cooperative implementation with the other governments in the river basin.

Every Tribal government has a distinct approach to legislation – its own understanding of its authority to legislate and its own legislative forms and procedures. So the staff recognizes that even if individual governments are willing to consider such legislation, the model Ordinance may need to be tailored by each government to its own legislative forms and authorities. It may also be appropriate for individual governments to act by Resolution and not be Ordinance. The model Ordinance can be adapted easily into a resolution. The point of the model Ordinance is to provide a recommendation as to the substantive content of the legislation, not the precise form.

In conclusion, our recommendation is that the Executive Committee continue to recommend to the individual Alaskan Tribal governments the consideration and adoption of legislation to endorse the Yukon River Watershed Plan and adopt the plan's baseline water quality objectives and standards. And that the Executive Committee direct the staff and its advisers to work with the Tribal governments and communities in 2015 to secure action by as many Tribal governments as possible by the time of the Watershed Council's 2015 Summit in Minto, Alaska, and to continue this effort beyond the Summit.

¹ We are working on a parallel approach with the First Nations governments on the Canadian side of the Yukon border. The Yukon and British Columbia First Nations clearly have the authority and rights (by agreement and by court decisions) to govern land and water for the purposes of water quality. To give specific content to these general water rights and authorities, we are recommending a legislative approach involving a model Water Quality Act as a vehicle to adopt the specific water quality objectives and standards.

Yukon River Inter-Tribal Watershed Council

December 2014

MODEL ORDINANCE for ALASKA TRIBES in the YUKON RIVER BASIN

PROTECTING WATER QUALITY: TO FURTHER THE HEALTH, SAFETY AND WELFARE OF THE PEOPLE OF [TRIBE] THROUGH THE ADOPTION OF SPECIFIC WATER QUALITY OBJECTIVES AND STANDARDS FOR THE YUKON RIVER AND ITS TRIBUTARIES

Section 1 Purpose

Section 2 Authority

Section 3 Water Quality Objectives and Standards from the Yukon River Watershed Plan approved by the Yukon River Inter-Tribal Watershed Council in 2013

Section 4 Water Quality Objectives

Section 5 Water Quality Standards

Section 6 Implementation, including Cooperative Agreements

Section 1 Purpose

The purpose of this Ordinance is to adopt water quality objectives and standards for the waters of the Yukon River and associated implementation procedures, in order to protect the health, safety, and well being of the people of [Tribe]. The land, water and air where the people of the [Tribe] live are sacred, and we are committed to their protection and preservation for this and future generations. The water quality objectives and standards are intended to improve and protect the chemical, physical, biological and cultural integrity of the waters of the Yukon River and its tributaries so as to promote the health, safety, welfare and well-being of the people of the Yukon basin and to provide the necessary conditions for healthy, productive, and abundant populations of fish, wildlife and plants dependent on the water of the river.

Section 2 Authority

The [Tribe] adopts, implements and enforces the provisions of this Ordinance under its inherent sovereignty and under the governmental authority recognized by the U.S. government and the State of Alaska to protect the health, safety and welfare of [Tribe] and its members. The Tribal Council exercises its authority to adopt this Ordinance under the Constitution and Code of [Note: This sentence is a placeholder for inserting whatever is the specific authority/procedures the particular Tribe has for adopting ordinances.]

Section 3 Water Quality Objectives and Standards from the Yukon River Watershed Plan approved by the Yukon River Inter-Tribal Watershed Council in 2013

It is the policy of the [Tribe] that the water quality in the waters of the Yukon River and its tributaries be monitored, protected, regulated and maintained at the highest possible standards for drinking water quality, for the use of people for all economic, cultural, spiritual and recreational purposes, and for the protection and health of the plants, fish and wildlife that the people of [Tribe] depend on to live. The Yukon River Inter-Tribal Watershed Council is an international inter-tribal organization formed in 1997 and comprised of representatives from the governments of 72 First Nations and Alaskan Tribes in the Yukon River Basin, from the headwaters to the mouth, including the government of [Tribe]. The mission of the Watershed Council is to assist the First Nations and Tribes in protecting and improving the water quality of the Yukon River and its tributaries. In August 2013 the Watershed Council approved the Yukon River Watershed Plan with the vision of ensuring Yukon River water of such quality that it sustains the health of the people and communities of the basin and the fish, wildlife and plants important to the ways of life of the people. The Watershed Plan includes specific, measureable objectives and standards to protect the quality, quantity and flow of the water in the Yukon River and its tributaries, to ensure that the Yukon River will continue to sustain the coming generations of all the people, fish, wildlife and plants of the Yukon. The Watershed Council's Watershed Plan is attached as an appendix to this Ordinance. By adopting this Water Quality Ordinance, [Tribe] adopts the water quality objectives and standards in the Watershed Plan as the law of the [Tribe], with the intent that these objectives and standards be implemented, applied and enforced to protect the quality of the waters of the Yukon River and its tributaries and thus preserve the health, safety and welfare of the people of [Tribe]. These water quality objectives and standards will remain the law of [Tribe] unless and until superseded by further legislation of [Tribe].

Section 4 Water Quality Objectives

The following water quality objectives, derived from the Yukon River Watershed Plan identified in Section 3 above, describe the conditions of the river necessary to realize the purposes of this Ordinance and the policy of [Tribe] with regard to water quality:

- a) The Yukon River will be of such quality as to support and sustain the traditional and subsistence uses of the people of the First Nations and Tribes of the Yukon, including customary commercial uses.
- b) The Yukon River will be substantially unaltered from natural conditions in terms of quantity, quality and rate of flow, including seasonal and daily rates of flow and flow patterns, within normal environmental variation over time.
- c) The quality of the Yukon River will be consistent with, and support and sustain over time, the habitat characteristics and ecological functions necessary for abundant, productive and diverse populations of fish, wildlife and plants important to the Tribes and First Nations of the Yukon.

- d) The quality of the Yukon River will be consistent with, and support and sustain over time, the health of all the people, communities, and nations who drink or come into contact with the waters of the Yukon River.

Section 5 Water Quality Standards

The water quality standards adopted in this Ordinance are found at pages 7 to 26 of the attached Watershed Plan, incorporated here by reference. These are specific, measurable water quality standards designed to protect and improve the quality, quantity and flows of the river as necessary to achieve the objectives in Section 4 above, the purposes of this Ordinance, and the policy of [Tribe].

Section 6 Implementation, including Cooperative Agreements

[The Tribe's Executive Officers] are authorized to take such actions as necessary to help implement, enforce, and monitor the water quality objectives and standards approved in this Ordinance. This may include, among other activities:

- a) developing and implementing a strategic plan to implement, enforce and monitor the water quality objectives and standards approved in this Ordinance;
- b) developing a budget and seeking and expending funds for implementation, enforcement and monitoring;
- c) entering into discussions with representatives of the other governments of the Yukon River Basin about implementing, enforcing and monitoring the water quality objectives and standards approved in this Ordinance and in general about cooperating in the management of the waters of the Yukon River Basin to protect and improve the water quality consistent with the purposes of this Ordinance and the policy of [Tribe];
- d) entering into cooperative agreements on behalf of [Tribe], by itself or in combination with other Alaskan Tribes and First Nations of the Yukon River Basin, with any agency of the government of the United States or Alaska; other indigenous nations in the Yukon River Basin; Native organizations such as the Yukon River Inter-Tribal Watershed Council, Native corporations, or non-governmental organizations to protect and improve the quality of the waters of the Yukon River basin consistent with the purpose, objectives and standards of this Ordinance.

Yukon River Inter-Tribal Watershed Council

December 2014

Talking Points on: Model Water Quality Ordinance recommended to the individual Alaskan Tribal governments of the Yukon River Basin

Summary: Representatives from Alaskan Tribes and First Nations in the Yukon River Basin approved the Yukon River Watershed Plan at the Yukon River Inter-Tribal Watershed Council's August 2013 Summit in Mayo, Yukon. The purpose of the Watershed Plan is to protect and improve water quality throughout the Yukon River, from the headwaters to the mouth. The key to the Watershed Plan is a set of specific objectives for Yukon River water quality, objectives then matched by a set of specific, measurable standards to protect the quality, quantity and flow of the water in the river.

Legislative action by the Tribes and First Nations to endorse the Watershed Plan and incorporate the water quality objectives and standards into Tribal and First Nations law is a critical step in the implementation of the Watershed Plan and the protection of the water quality of the Yukon River. To that end, the Watershed Council is recommending to the Alaskan Tribal governments a model water quality Ordinance for consideration and adoption.

(1) Yukon River Inter-Tribal Watershed Council:

- 72 Alaskan Tribes and First Nations are members, with offices and technical staff in Anchorage, Fairbanks and Whitehorse. Organized in 1997.
- Mission to protect and improve water quality in the Yukon River, to achieve a 50-year vision of a Yukon River clean enough from which to drink.

(2) Yukon River Watershed Plan: Watershed Plan asserts the sovereign rights of the Alaskan Tribes and First Nations to participate in governing the Yukon River to protect our people, communities and way of life. Highlights include:

- **Vision** for the Yukon River Watershed: Yukon River water of such quality that it sustains the health of the people, communities, fish, wildlife and plants important to the ways of life of the people.
- **Objectives:** Consistent with the Plan's Vision. The main objective is to have water quality, water quantity and river flows that remain **substantially unaltered from natural conditions**, so as to:
 - Sustain the health of all the people and communities who drink or come into contact with any water in the Yukon watershed.
 - Sustain the habitat conditions and ecological functions necessary for productive fish and wildlife populations in the Yukon River Basin.
 - Sustain the traditional and subsistence uses of the watershed by the people of the Yukon River.
- **Water Quality Standards:**
 - Specific, measurable water quality standards designed to protect and improve the water quality, water quantity and flows necessary to achieve the plan's Vision and Objectives.
 - Standards for the entire river, from the headwaters to the mouth, mainstem and tributaries, to protect human health and aquatic life.
 - Standards combine the best of modern science and policy and the traditional knowledge of the indigenous people of the Yukon.
 - Based in the most protective standards of Tribes and States in the Pacific Northwest and the guidelines of the U.S. Environmental Protection Agency and the Canadian Council of Ministers of Environment.
 - Based also in the Watershed Council's extensive compilation of water quality monitoring information, the technical expertise of the staffs of the Council and of the First Nations and Alaska Tribes, and the traditional knowledge of the people and communities.

(3) Watershed Plan Implementation, including model Ordinance for consideration by individual Alaskan Tribal governments:

- Implementation will not happen just by the fact of the Watershed Council's approval of the Watershed Plan! Needs to be part of a long-term, consistent, patient effort to improve governance of the river to protect water quality, including the role of the Alaskan Tribes and First Nations in that governance. Plan implementation thus includes an expectation of the right to participate in watershed governance as sovereign governments and full partners with federal, state and territorial governments.
- With the adoption of the plan, the Watershed Council leaders, staff, and advisers and representatives of its member Tribes and First Nations began discussions with the other sovereign governments in the Yukon River watershed about implementation of the plan and about water quality generally, including cooperative management of the basin's water resources.
- Action by the individual Alaskan Tribes of the Yukon to endorse the Watershed Plan and approve the water quality objectives and standards is an important part of the long-term strategy to improve the protection of water quality in and the governance of the Yukon River. The Watershed Council is a collective association of the Tribal and First Nations governments, not a sovereign government itself. We need the actual tribal governments to endorse the path taken by the Watershed Council to be able to work further on implementation strategies, including discussions on cooperative implementation with the other governments in the river basin.
- Alaskan Tribal governments have the authority to enact laws governing the health, safety, and welfare of their citizens. Nothing is more important to the health, safety and welfare of the citizens of these Tribes than the quality of the water that the people live along, drink from, and gain their subsistence from. Thus, the Watershed Council's recommendation is that the Alaskan Tribal governments act under this authority and endorse by legislation the Watershed Plan and its baseline water quality objectives and standards.
- That is the purpose for the **model Ordinance** on water quality that accompanies these talking points. The point of the model Ordinance is to provide a recommendation as to the substantive content of the legislation, not the precise form. It may be tailored by each government to its own legislative forms and authorities. The model Ordinance may also be adapted easily into a resolution, of that is the preferred form of action by a government in this instance.