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To: OfficeofthePremier, Office PREM:EX

Cc: Bell, Pat AL:EX; Penner, Barry ENV:EX; Minister, SG SG:EX; Neufeld, Richard P EMPR:EX; Krueger, Kevin SMIN:EX; Koutougos, Angela PREM:EX

Subject: Flathead River Basin

Sensitivity: Confidential

To: Premier Gordon Campbell
Province of British Columbia
Parliament Buildings
Victoria, B.C.

04 October 2007

Dear Premier Campbell:

I have been teaching environmental conflict resolution, negotiations and international water law at the University of British Columbia for over two decades. I continue to be an advisor on these issues to a wide range of organizations ranging from the World Bank to the Mekong River Commission to the Nile Basin Organization to the Columbia Basin Trust. You may recall that I also once worked with your political staff to help write what eventually became your Living Rivers Strategy.

I write to you now with great alarm regarding current threats to the headwaters of the Flathead River watershed. In my opinion, if the proposed Cline coal mine and British Petroleum coal bed methane exploration and development should proceed the Government of British Columbia could well be navigating its citizens into an international legal battle that B.C. cannot possibly win.

Under both international treaty law and customary international law, you will be potentially vulnerable to exorbitant penalties and lengthy legal proceedings should the Flathead River or its tributaries become tainted with industrial pollution, contaminants

or harmful increases in sedimentation. This follows from the extreme environmental sensitivity and international protected status of the Waterton-Glacier International Peace Park. Waterton-Glacier's status as a World Heritage Site and the naming of both parks as United Nations Biosphere Reserves further confirm both the environmental sensitivity and political importance of this area. As you may know, recent research has also shown that the international Peace Park should probably be expanded into BC in order to protect wildlife and Canadian waters in the Flathead Valley.

Among the reasons why you will be seen to be in violation of customary international law should you allow the proposed activities in the Flathead to proceed are the following: First, we have thus far failed to meet our international legal obligations to conduct a complete and comprehensive environmental impact assessment for both the exploration and the development of the proposed projects. Second, we have thus far failed to meet our international legal obligations to provide the United States with prior notification of, and full technical data and information, concerning the proposed projects. Third, we have an obligation under customary international law not to use or permit the use of our territory for activities that would result in serious risk of harm including environmental harm in the United States. Fourth, we are arguably in violation of customary international law by proposing to use an international drainage basin in an inequitable and unreasonable manner if the developments proceed. Fifth, allowing the proposed developments to proceed despite adverse environmental implications would be contrary to generally accepted and/or emerging principles of sustainable development and responsibility to future generations.

Further or alternatively, our violation of international treaty law in relation to the proposed coal bed methane and coal exploration and exploitation in the Flathead River basin stems from the Boundary

Waters Treaty of 1909 between Canada and the United States. The International Joint Commission (IJC) established by that Treaty has determined once already in relation to the Flathead River that where a proposed development creates a serious transboundary environmental risk, the existence of that risk should alone be sufficient to prevent the proposed development from proceeding.

For all these reasons, British Columbia needs to tread carefully around any industrial proposals that could seriously risk and/or negatively impact the ecological integrity of the Flathead River headwaters or watershed.

Any international court or tribunal that might have occasion to adjudicate these matters will also likely take into consideration the fact that the British Columbia government either knew or should have known of the serious environmental risk of allowing industrial activity to proceed in such an environmentally sensitive area and use this when assessing compensation.

It is therefore in the best interest of the BC government to instruct the government of Canada to refer these matters to the IJC for resolution where by custom such matters only proceed when both Canada and the USA acquiesce.

I would be pleased to elaborate on any of the above points with you or your staff at your convenience.

Yours faithfully,

Richard Kyle Paisley

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