

Final Report - Megan Strachan, Legal Intern at the *Yukon River Inter-Tribal Watershed Council*

This summer I had the incredible opportunity to spend three months in Alaska working for the Yukon River Inter-Tribal Watershed Council [YRITWC]. This internship allowed me to focus on First Nations rights in the Yukon Territory, specifically looking at how these rights can be interpreted in the context of water allocation, usage, quality and governance. This formed my main research task for the summer, though I worked on several other related projects.

YRITWC is a unique international, inter-tribal treaty organization, consisting of 70 First Nation tribes throughout the Yukon River Watershed, including tribes in Alaska, Yukon Territory and British Columbia. YRITWC aims to preserve and protect the Yukon River through coordinating, facilitating, and providing a forum for these tribes to come together and work collectively and individually to realize this common goal. Additionally, YRITWC provides training and education on a range of issues, from water quality testing to alternative energy to back-hauling hazardous materials out of these communities. Every two years, Tribal/First Nations leadership gathers in a community in the watershed to share information, give feedback to YRITWC and participate in presentations.

First Nations leadership requested information about water rights, and in response to these inquiries a full day's presentation and discussion was dedicated to this difficult topic: what do "water rights" mean legally, practically and potentially on both sides of the border? I worked closely with a team of lawyers based in the lower 48 and Canada (the YRITWC does not have in-house legal counsel) and my research focused on water rights in the context of the Yukon Territory. I contributed an extensive memo to the legal team which outlined the general Canadian scheme of Aboriginal rights, focussing on treaty rights as these are most significant in the Yukon. The vast majority of the Yukon First Nations have Final Agreements which are modern land claims treaties and are constitutionally protected. I researched the content of those agreements, as well as the accompanying Self-Government Agreements. I investigated the relationship between the territorial government, First Nation governments and federal government, trying to discern what these relationships and different spheres of jurisdiction mean for water management and governance in the Yukon. I did extensive research into the environmental assessment and permitting processes that grew out of the First Nations treaty negotiations, namely, the Yukon Environment and Socio-Economic Assessment Board (YESAB) and the Yukon Water Board. Both of these bodies give unique opportunities for First Nations participation and representation (such as the inclusion of traditional knowledge in the YESAB assessment process), and overlap with the constitutional duty to consult. In fact, there was a recent Yukon Supreme Court judgment that set out the existence and content of the constitutional duty to consult when activities affect the traditional territory of a Yukon First Nation with a Final Agreement.

Much of this research provided an essential background and foundation for the legal team, as all but one of the lawyers working on this project are based in the lower 48 and had little knowledge of Canadian Aboriginal law or the unique Yukon context. It was extremely gratifying to be able to take part in conference calls and field questions from established Indigenous law experts who looked to my research to fill in the gaps in their knowledge or to me to clarify points of law for them. Our collective research culminated in the presentation at the Summit, and the leadership has left a mandate to continue to work with water rights and will vote on a resolution on this topic at the winter Executive Council meeting. We have left the leadership with information to take back to their tribal councils, and this educational process will hopefully lead to an assertion and definition of Tribal/First Nation water rights.

The Summit itself was a learning experience for me - I even experienced some culture shock! It was strange that my culture shock, if you could call it that, occurred during the last week of my internship with YRITWC. It was a completely new experience for me, watching and listening to the Tribal/First Nations leadership discuss the issues - it is a completely different decision making and leadership model from what I am accustomed to. No one is told to hold their comments until the end of a presentation, no

one is told that they are off topic, no one is cut off when their comment gets too long for the facilitators taste, and a simple majority does not suffice to get something done. The Executive Council only works by consensus, and everyone has a chance at the microphone - or 2 or 3 chances, to raise any issue they choose. As I continued to listen I tried to figure out how this model works - above all, it seemed as though the passion of the people for their environment allowed it to work. The deep respect that exists for the river and its ecosystem is reflected in the way that the representatives of its people treat each other, even when they disagree. This respect, this commitment to listen to everyone, is what allows consensus to function.

I also was able to spend 4 days in Ruby, Alaska, a small village in the interior of Alaska that is only accessible by boat or plane. Experiencing village life alongside the Summit led to many more educational moments like the one I describe above. I could not possibly detail what being in Ruby and at the Summit has meant for me, though I will say that it provided, along with the Healing Journey which I will talk about next, context (though that word seems much too weak and common for what it truly gave me) for the work of the YRITWC and my research over the summer. There is nothing more validating - but also overwhelming as I realized how much more work there is to be done - then seeing what is at stake if the Yukon River is not protected. I experienced it firsthand - it wasn't a statistic being read from a website, or a picture, it was meeting the people of the river, seeing the awesome beauty of that ecosystem that made the work I did this summer real.

This began before the Summit, on an 8 day canoe trip along the Yukon River called the Healing Journey, that started this profound appreciation for the River, its resources, and the people who depend on it. We began our trip only 60 miles below the Arctic Circle and travelled downriver 140 miles to the Native village of Tanana. We stopped in several fish camps on the way and talked with Alaskan Natives about the changes in the River, what they hope to see in the future for the River, and how the salmon were running that year. We also dragged a scientific probe behind one of the canoes and took water quality samples every 30 miles. The Healing Journey is an initiative that has gained international attention and has been duplicated on other continents as a method of collecting scientific data, reconnecting with the environment, and also gathering and sharing traditional knowledge alongside the scientific.

In addition to contributing to the Yukon side of the research for the Summit, I also authored two documents that were included in the leadership package at the Summit. I researched and wrote an update on the Minto Mine in the Yukon, a mine that had previously been discharging water high in copper into the watershed. High levels of copper in the water can adversely affect juvenile salmon, and the First Nations in the area wanted to know what the current status of the mine was, and what its current water license would allow them to discharge. I also co-authored an update on the United Nations Declaration on the Rights of Indigenous Peoples, and what it could mean for Indigenous peoples on both sides of the border now that Canada and the United States have endorsed the Declaration.

As a side project, unrelated to the Summit, I wrote an internal report that is now incorporated into YRITWC's orientation materials. It is designed as a primer to the legal, administrative, and governance structure in Yukon Territory for future and current staff to help expand capacity on the Canadian side of the border and the knowledge of the staff on Yukon issues. This brief includes resources where staff can go for more information on the various administrative and governance bodies in the Yukon, as well as information on where to find copies of the Final Agreements, Self Government Agreements, and other legislative instruments.

Finally, the other intern and I compiled an annotative bibliography of all of the resources used by ourselves and the legal team in producing the water rights presentation. This will serve as a resource for YRITWC staff in the future and also provide a foundation for future work on water rights, should a resolution pass at the winter Executive Council meeting to move forward with expanding this avenue of watershed protection.

I can truly say that I had a remarkable experience this summer - I sharpened my legal research skills, I gained a deep knowledge of First Nations' right in the Yukon Territory and Canada as a whole, I also achieved some comparative insight into the differences between Yukon and Alaska's water governance scheme and how this effects tribes/First Nations and watershed management. Beyond all of this substantive knowledge, I had the opportunity to go into several villages, to spend a week canoeing on the Yukon River, and to watch the leadership's traditional decision making model in action. This internship became about far more than legal research, it was a holistic experience where I gained an appreciation for the work of the YRITWC and also a sense of how much work is yet to be done. I am thrilled to have played some small part in aiding the YRITWC to fulfill its mandate.