Donlin Information Packet

1. Letter to Governor Dunleavy from YK Tribes (Jan. 30, 2019)
2. Calista Women’s Letter to Calista Board of Directors (Feb. 6, 2019)
3. Peter Evon, Local Tribal Governments’ Concern Around Donlin Gold is Ignored (Feb. 13, 2019)
4. Donlin Permits Fact Sheet
5. YK Tribes’ Informal Review Request of DEC’s Waste Management Permit (Feb. 7, 2019); DEC’s Decision to Grant the Request in Part (Feb. 14, 2019)
6. YK Tribes’ Appeal of DNR’s Reclamation Plan Approval from YK Tribes (Feb. 7, 2019)
7. YK Tribes’ Informal Review Request of DEC’s 401 Certificate (Sept. 28, 2018); DEC’s Decision Remanding the Certificate (Oct. 19, 2018)
8. Tribes/Tribal Organizations’ Resolutions Opposing the Donlin Mine
VIA EMAIL
michael.dunleavy@alaska.gov - Governor
jason.brune@alaska.gov - DEC commissioner
doug.vincent-lang@alaska.gov - ADF&G Commissioner
cori.feige@alaska.gov - DNR Commissioner

c:
Senator.Lyman.Hoffman@akleg.gov
Representative.John.Lincoln@akleg.gov
Representative.Tiffany.Zulkosky@akleg.gov

Re: Request for Ongoing Consultation on Donlin Gold Project, POA-1995-120
Crooked Creek and Notice of Any Forthcoming Permits

January 30, 2019

Dear Governor Dunleavy and Commissioners Brune, Feige, and Vincent-Lang:

We are pleased to welcome the new administration and we look forward to working with you on matters of interest to our communities. One such matter is the Donlin Gold Project. We would like to reiterate our ask for an ongoing relationship of government-to-government consultation between your agencies and our sovereign Tribes of the Yukon-Kuskokwim Delta Region about this Project. We again ask for opportunities to meet with you to discuss our concerns, to have ongoing communication about forthcoming permits so that we may provide more effective input, and to receive meaningful notice about all public processes in which our members can engage. Thus far your administration has issued or proposed to issue dozens of permits for the Donlin project without consultation.

Our sovereign governments have a trust responsibility for the health and welfare of our citizens, lands, and self-governance. There is nothing more important to our Yukon-Kuskokwim communities than maintaining our traditional-cultural subsistence way of life that has sustained us through millennia. This way of life depends integrally upon the salmon and smelt of the Yukon-Kuskokwim River and its tributaries. However, the proposed Donlin Gold Project, located upstream from our communities, has the potential to impact the lives of those in the region for generations to come. Large influxes of workers from outside the region and increased traffic along the Kuskokwim River threaten to drastically alter our way of life by introducing safety concerns and increased competition for subsistence resources. Furthermore, the amount of subsistence resources that are available and safe to consume is threatened. The Final Environmental Impact Statement (FEIS) issued by the U.S. Army Corps of Engineers for the
Donlin Gold Project concluded, based on extensive study, that operation of the Donlin Mine will cause stream water quality violations for mercury, temperature, and arsenic. The FEIS also states that operation of the mine will impair fish habitat, reduce streamflow, and damage rainbow smelt spawning areas from the mine's proposed barge traffic.

We are concerned about this project and request that you meet with us to listen to these concerns and work with us to ensure our way of life will be protected. Yet, the FEIS and numerous State permits have been issued for this project without many of our communities being given meaningful notice or opportunity to participate in the processes. As there are still permits to be issued for this Project, we would like to begin an ongoing relationship of consultation by meeting you all. Accordingly, some of our Tribal representatives plan to travel to Juneau between February 27 to March 1. We request the opportunity to meet with you in Juneau during these days so that we may discuss the Donlin Gold Project.

In addition to ongoing communication going forward, we also request to receive notice and copies of any forthcoming permits to be issued by the State for this project, so that we have the opportunity to review and provide input before they are issued. Recently, your agencies have issued several highly technical permits with no advance notice and provided only 20 days to appeal. We wish to forge a more collaborative relationship regarding these matters that will affect our people for many generations to come.

Thank you for your time and consideration. We look forward to fostering a cooperative Tribal-State relationship, in this matter and others, and hope that we have the opportunity to meet with you in the coming weeks.

Sincerely,

[Signature]

Executive Director

2/21/2019

Orutsarmiut Native Council

Bethel, Ak
states that operation of the mine will impair fish habitat, reduce streamflow, and damage rainbow smelt spawning areas from the mine’s proposed barge traffic.

We are concerned about this project and request that you meet with us to listen to these concerns and work with us to ensure our way of life will be protected. Yet, the FEIS and numerous State permits have been issued for this project without many of our communities being given meaningful notice or opportunity to participate in the processes. As there are still permits to be issued for this Project, we would like to begin an ongoing relationship of consultation by meeting you all. Accordingly, some of our Tribal representatives plan to travel to Juneau between February 27 to March 1. We request the opportunity to meet with you in Juneau during these days so that we may discuss the Donlin Gold Project.

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Sincerely,

[Signature]

V. President

Native Village of Tanana

Box 77

Tanana, AK 99681
states that operation of the mine will impair fish habitat, reduce streamflow, and damage rainbow smelt spawning areas from the mine’s proposed barge traffic.

We are concerned about this project and request that you meet with us to listen to these concerns and work with us to ensure our way of life will be protected. Yet, the FEIS and numerous State permits have been issued for this project without many of our communities being given meaningful notice or opportunity to participate in the processes. As there are still permits to be issued for this Project, we would like to begin an ongoing relationship of consultation by meeting you all. Accordingly, some of our Tribal representatives plan to travel to Juneau between February 27 to March 1. We request the opportunity to meet with you in Juneau during these days so that we may discuss the Donlin Gold Project.

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Sincerely,

[Signatures]

Chefornak Traditional Council

Feb, 7, 2019

[Date]
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We are concerned about this project and request that you meet with us to listen to these concerns and work with us to ensure our way of life will be protected. Yet, the FEIS and numerous State permits have been issued for this project without many of our communities being given meaningful notice or opportunity to participate in the processes. As there are still permits to be issued for this Project, we would like to begin an ongoing relationship of consultation by meeting you all. Accordingly, some of our Tribal representatives plan to travel to Juneau between February 27 to March 1. We request the opportunity to meet with you in Juneau during these days so that we may discuss the Donlin Gold Project.

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Sincerely,

[Signature]

[Tribal Administrator]

[Native Village of Kwethluk]
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Sincerely,

Richard B. Slats
Chevak Traditional Council

[Signature]

For Roy Atchak

2nd Chief
states that operation of the mine will impair fish habitat, reduce streamflow, and damage rainbow salmon spawning areas from the mine's proposed barge traffic.

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Thank you for your time and consideration. We look forward to fostering a cooperative Tribal-State relationship, in this matter and others, and hope that we have the opportunity to meet with you in the coming weeks.

Sincerely,
February 6, 2019

Andrew Guy, CEO
Calista Board of Directors
5015 Business Park Boulevard, Suite 3000
Anchorage, Alaska 99503

Dear Andrew and Calista Board of Directors:

We are indigenous women of the Calista Region with strong physical, emotional, and spiritual ties to the people and the land. We are also Calista shareholders who are concerned with the development of the Donlin gold mine and how that will impact our salmon-spawning river. We are in fear of losing our way of life with what is proposed to be the largest open pit mine ever developed.

The Kuskokwim River is a lifeline for so many communities in this region, and it is our responsibility to protect and care for the river and surrounding lands and the food it provides. Almost every day of the year you can walk by the river in Bethel and see people fishing off the seawall, setting nets for lush and whitefish, and in the summer dipping for smelt. This food, gathered from all over the Y-K Delta, is shared with all of you and many others who live outside the region. Harvesting, preparing, and sharing these foods has been part of the Yup’ik way of life from time immemorial. We continue this tradition not only for our children’s survival, but for the survival of future generations as well. It is the responsibility of all of us to ensure that these traditions can be practiced decades from now. We know you love the region just as we do, and hope you understand why we are opposed to this development.

We understand the need for economic development in this region. We have family members living in villages where it’s hard to find steady paying jobs. We want economic opportunities for all of our families, but not opportunities that will put fish, moose, caribou, seal, walrus, berries, and birds at risk. We know it is a challenging task for Calista staff and board members to resolve economic issues in this region, but with more shareholder involvement we believe there are other solutions that will not put our subsistence way of life at risk. Many studies have shown how good our first foods are for us; it would be a huge disservice to future generations to deny them of their right to those foods. Our elders before us have sustained our way of life and stressed the importance of protecting it; it is now our turn as the upcoming generation of elders to ensure that our children have their traditional foods, which is an integral part of our culture.

We do not believe that enough information has been shared with communities about this project. The Calista Board must address what could or will happen to our waters and lands as a result of the development of this mine. Communities also need to know about potential failures of the tailings dam that would create a toxic environment for our people. How far will tailings move if there is an overflow of 10% of them when the mine is 5 years into operation, or 15 years into operation? What emergency communication is in place if there is a break in the dam? Can the tailings, if they reach the river, be cleaned up? We are also concerned that the mine is designed to flush contaminants from the Waste Rock into the open pit, forever, and that water will need to be
treated forever. We are concerned about whether we will have any say in decisions. We are concerned about how we will know if our foods are safe. We ask the Board to be open and honest about the hazards of this mine.

We are daughters, mothers, grandmothers, aunties, nieces, cousins, and wives. We know subsistence gathering is as important to you as it is to those of us who live in this region. We urge you to revisit the Donlin gold mine and put it to a vote of the shareholders. We look forward to working with you on this matter. Quyana for your time, and all the work you do for the people of this beautiful region.

Respectfully,

Beverly Kikikaaq, Hoffman, Bethel
Yuktaq Fannie Black, Bethel
Cakicaq Jean Simon, Bethel
Katie Nick, Russian Mission
Regina Randall, Holy Cross
Jean Mute, Bethel
Alissa Rodgers, Bethel
Sophie Anvil, Bethel
Olga Alexie, Mountain Village
Danielle K. Asiksik, Bethel
Elliemae Charles, Kipnuk
Carol Hunter, Bethel
Jessica Alexie, Quinhagak
Olga Engebreth, Bethel
Heather A. Henderson, Bethel
Josephine Andrew, Bethel
Sadie Lazano, Kqngiganak
Charlene Nicori, Quinhagak
Agnes Aloysius Hoffman, Upper Kalskag
Mary Brink, Kasigluk
Vera Wuya, Eek
Pauline A. Bially, Mountain Village
Fannie Smith, Quinhagak
Lillian Lliabon, Akiak
Monica Sheldon, Alakanuk
Mary E. Tunuchuk, Chefornak
Esther Green, Bethel
Dana Henry, Quinhagak
Eula David, Scammon Bay
Lynda Bender, Aniak
Mary Beaver, Kasigluk
Kristine Nicori, Quinhagak
Susie Mute, Kongiganak
Arlene Shimanak, Goodnews Bay
Greta Clark, Wasilla
Yvonne Jackson, Bethel
Emma Fullmoon, Quinhagak
Janessa Esquible, Bethel
Danielle M. Moss, Bethel
Melissa Nicori, Kwethluk
Lillie Stepan, Quinhagak
Staretta Abdiu-Lucas, Bethel
Anna May Tinker, Bethel
Pauline Echuck, Goodnews Bay
Jackie Nicori, Quinhagak
Elizabeth Martz, Bethel
Rainy Diehl, Aniak
Esther Donhauser Diehl, Stony River
Dana Diehl, Aniak
Deanna Price, Anchorage
Nikki Pollock, Bethel
Roberta Gregory, Bethel
Kathleen Kline Leu, Willow-Bethel
Aryak Lucy Andrew, Kwagillingok
Ruth Imagalrea, Hooper Bay
Andy Hunt, Mekoryuk
Maria Stepenback, Kwethluk-Anchorage
Dena M. Drake, Fort Yukon-Bethel
Mussy Chingliak, Bethel
Elizabeth “Dit” Hoffman, Bethel
Ella Kinegak, Bethel
Bertha “Bea” Kristovich, Bethel-Napaimute
Nita Rearden, Kotlik-Bethel-Homer
Aryak Kathleen Simon, Tuntutuliak
Shenai Simeon, Aniak
Alice Julius, Goodnews Bay
Akalleq Andrea Sanders, Anchorage
Lucy Simeon, Chuathbaluk
Sophie Evan, Napaskiak
Francine Kvamme, Aniak
Celeste Adkins, Aniak
Katie Rhoel, Bethel
Nikki Micheals, Toksook Bay
Selena Kalistook, Bethel
Melanie Fredericks, Bethel
Kelsey Ciugen Wallace, Bethel
Sabai Rhonda Simon, Tuntutuliak
Pauly Ayojak, Goodnews Bay
Fannie Moore, Quinhagak
Vivian Alikar-Glore, Toksook Bay
Maxine Corapi, Palmer
Marilyn Johnston, Bethel
Jonica Thomas, Bethel
Zoya Jenkins, Napaskiak
Valerie Thomas, Bethel
Pauline Thomas, Akiak
Verna Nicholai, Akiak
Katherine Egoak, Bethel
Miranda Strauss, Kongiganak
Arra Ina Marie Hunter, Bethel
Adrienne Welch, Bethel
Catellag Ardyce Turner, Bethel
Ally Amik, Bethel
Roxanne Evan, Aniak
Olinka Breaux, Bethel
Shiela Henrickson-Davis, Bethel
Tiffany Bender, Aniak
Dyane Green, Bethel
Debra Samson, Bethel
Sarah Engebreth, Bethel
Carey Atchak, Bethel
Casey Tugkar McDonald, Bethel-Anchorage
Kathleen Naneng, Bethel
Stephanie Butte, Bethel
Jackie Hoffman, Bethel
Eva Hoffman, Bethel
Dolly Angstman, Bethel
Melvina Kinegak, Bethel
Leandra Strauss, Kongiganak
Deborah Michael, Bethel
Marieann Norcross, Bethel
Denise Kinegak, Bethel
Genevieve Maczynski, Bethel
Carol Samuelson, Bethel
Mary Laraux, Bethel
Hazel Chaney, Bethel
Marjeannie Fisher, Bethel
Marie Kupanoak, Bethel
Alaina Ctibor, Anchorage
Nanugak Jean Ivon, Kongiganak
Ann Koester, Bethel
Loubova Powers, Sleetmute
Lorraine Mellick-Mihaljevic, Sleetmute-Lacey Washington
Anastasia Evangelista, Tacoma Washington - Sleetmute
Madison Mellick, Sleetmute
Melanie Ann Charles, Bethel - Anchorage
Chelsea Hoffman, Bethel
Leanna, Aanaq Isaac, Bethel
Molly Sakar, Crooked Creek - Anchorage
Kurin Miller-Lacey, Washington - Sleetmute
Marjorie Mellick, Sleetmute
MaryLee Willis-Stony River
Marie Yako, McGrath - Sleetmute
Olga Pepperling, Crooked Creek
Sandra Gregory, Sleetmute
Linda Evangelista, Kent, Washington - Sleetmute

Added after letter sent:

CC: Donlin Gold
    Elected Officials
    KYUK
    Delta Discovery
    Anchorage Daily News
Local Tribal Governments’ Concern Around Donlin Gold is Ignored

by Peter Evon

With the onslaught of state permits issued and proposed in recent weeks, it bears repeating that the Donlin project is not nearly as benign as incoming DNR Commissioner Corri Feige would have us believe. If it is constructed, the proposed Donlin gold mine will be one of the world’s largest open-pits. The project will dramatically change the Yukon Kuskokwim region, threatening the health and well-being of residents, communities, and wildlife for generations.

There are also social and cultural impacts that come with the boom bust economic reality of mining finite resources at this scale and the tremendous influx of population in our region, which will have complex impacts that Commissioner Feige chooses to ignore.
In her recent opinion article that Commissioner Feige published to promote the project, she touted local consultation with, and buy-in from, our communities on the Kuskokwim River. To that point let us assure you that the views on this project delivered by corporate employees of the Kuskokwim and Calista corporations are in no way representative of the majority of the people of the region I have been hearing from every day. In fact my tribe, along with 12 others have adopted resolutions of formal opposition to the Donlin project.

Our position of opposition was taken looking to our friends near other large mines around Alaska as examples of what to expect should a large mine be permitted here. There, tribal citizens are often dealing with the immense challenge of how to deal with contamination that has been deemed worth the economic benefit for relatively few local jobs and huge profits immediately shipped overseas.

Even within the borders of the Capital City, the State of Alaska has long been uninterested in addressing the real impacts of an ore spill at the Greens Creek dock in 1989 or ongoing fugitive lead-laden dust being spread to the forest and waterways where local clams now have 3-6 times the lead as before mining according to the DNR website. A seal was recently harvested near the mine with some of the highest levels of mercury contamination ever recorded in Alaska, well above a safe level for human consumption. Now the mine successfully lobbied the Board of Game to limit public access to a popular deer hunting spot close to Juneau.

Donlin's proposed reclamation and closure plan is of great concern to us. I would like to see a plan that protects our descendants who will have to live with the consequences of this closure plan for all time. To close this mine, Donlin is proposing a mountain of mining waste and a pit lake of two square miles that will be polluted forever, requiring water treatment forever—and that is if everything goes according to plan. If things go wrong, as is normally the case for large mines, the consequences could be much worse for our communities, for our children, and for their children.

Pollutants and impacts from Donlin will affect our communities, culture, and the food and water upon which or people depend for our health and our customary and traditional way of life. Donlin would have a footprint of about 25 square miles. The open pit would be over two miles long, almost 2,000 feet wide and nearly 2,000 feet deep.
– a 40 million gallon tank farm for diesel fuel is the energy needed for mining operations would be supplied via a 315 mile pipeline from Cook Inlet. The pipeline would cross streams for anadromous and resident fish species at 77 locations. Waste materials from the mine, called tailings, would be stored in a manmade pond held back by a 450-foot high dam.

What we're asking for is an honest assessment of the Donlin mine, one that truly takes into account the risks to our land and our people. So far, we have been given a fast-tracked process along with broad and vague assurances from an ever-changing cast of politicians. While politicians come and go like the weather we will be the ones who have to pick up the pieces when the storm has passed. The local people deserve for our voice to be heard and welcome additional opportunity for dialogue with the new state administration.

Peter Evon is originally from Akiachak on the Kuskokwim River approximately 20 miles north of Bethel. He and his wife Katherine Evon have five children, ages two to 11. Evon grew up subsistence hunting and fishing and serves as Executive Director of the Bethel Orutsararmiut Traditional Native Council. He has previously been the Environmental Director for Akiachak Native Community before moving to Bethel several years ago. He has the experience of understanding the impacts from both the village and hub community of Bethel's viewpoint having lived and subsisted in both areas.

Speak Your Mind *

Name *

First

Last

Email *

Phone Number (without spaces)
DONLIN PERMITS FACT SHEET

FEDERAL PERMITS

Army Corps of Engineers
- **Clean Water Act Section 404 Permit:**
  - Needed to place fill in waters at the mine site and along transportation corridor
  - Issued August 13, 2018 (via Joint Record of Decision with BLM)
  - Environmental Impact Statement made as part of this process to provide information about project and analyze human and environmental impacts
    - Issued April 2018
    - Comments submitted by many stakeholders
    - Earthjustice reviewing for potential legal issues

Bureau of Land Management
- **Pipeline Right-of-Way:**
  - Needed for access to construct and maintain pipeline through federal lands
  - Issued (via Joint Record of Decision with Corps) August 13, 2018
  - Environmental Impact Statement for 404 Permit covers the pipeline impacts as well

STATE PERMITS

Alaska Department of Fish & Game
- **Title 16 Permits:** issued for mine site August 30, 2018; not yet issued for pipeline
  - Needed for activity in fish habitat
  - Request for reconsideration from ONC and YKRA submitted October 9, 2018

Alaska Department of Environmental Conservation
- **Air Quality Control Permit:** issued June 30, 2017
  - Needed for emissions to air from mine site

  - **Alaska Pollutant Discharge Elimination System Permit:** issued July 18, 2018
    - Needed for discharges from wastewater treatment plant to Crooked Creek

  - **401 Certification:** issued August 10, 2018
    - State must certify that it has reasonable assurance operation of the mine will not cause violation of water quality standards
    - Appealed by five Tribes and YKRA; sent back to agency for review (no new decision yet)

  - **Waste Management Permit:** issued January 18, 2019
    - Covers waste storage and treatment facilities at mine site
    - Appealed by 14 Tribes (informal review granted on first issue, no decision on second)
Alaska Department of Natural Resources

- **Reclamation Plan Approval**: issued January 18, 2019
  - Covers Donlin’s plan for closing the mine, including how it will pay for closure costs
  - Appealed by 14 Tribes on February 7, 2019 (no decision yet)

- **Supporting Facilities and Infrastructure Leases**: comments due March 29
  - Needed for mine-related roads, ports, airstrips, etc. located on state lands
  - Will include Best Interest Findings and State Land Use Authorizations

- **Pipeline Right-of-Way**: comments due March 22
  - Needed to construct and maintain pipeline through state lands

- **Kuskokwim Area Plan**: comments due March 29
  - Needed to develop state lands not previously designated for development

- **Dam Safety Permit**: not yet issued
  - Needed to ensure safety of tailings facility dam

- **Water Use Authorization**: not yet issued
  - Needed to use impound, withdraw, or divert waters
February 7, 2019

BY ELECTRONIC MAIL
Andrew Sayers-Fay, Director
Division of Water
Alaska Department of Environmental Conservation
555 Cordova St.
Anchorage, AK 99501
E: Andrew.sayers-fay@alaska.gov

Re: Request for informal review of decision to issue Waste Management Permit for Donlin Gold, LLC’s Donlin Gold Project

Dear Director Sayers-Fay:

Pursuant to 18 AAC 15.185, Earthjustice hereby requests informal review of the Alaska Department of Environmental Conservation’s (DEC) January 18, 2019 decision to issue a Waste Management Permit (WMP) to Donlin Gold, LLC (Donlin) for the Donlin Gold Project (“the Project”). Earthjustice submits this request on behalf of Orutsararmiut Native Council, Akiak Native Community, Chefornak Traditional Council, Chevak Traditional Council, Chuloonawick Native Village, Native Village of Eek, Kasigluk Traditional Council, Kongiganak Traditional Council, Organized Village of Kwigillingok, Native Village of Nightmute, Sleetmute Traditional Council, Tuluksak Native Community, and Native Village of Tununak (“the Tribes”). Earthjustice submitted comments on the proposed permit¹ and is entitled to request informal review on behalf of these Tribes, which are all parties that stand to be affected by this decision, as described below.

As required by 18 AAC 15.185(a)(1) and 18 AAC 15.200(c)(2), the requester’s contact information is:

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I. THE TRIBES’ INTEREST IN THE PERMIT DECISION.

A. Nature and Scope of Interests.

Orutsararmiut Native Council, Akiak Native Community, Chefornak Traditional Council, Chevak Traditional Council, Chuloonawick Native Village, Native Village of Eek, Kasigluk Traditional Council, Kongiganak Traditional Council, Organized Village of Kwethluk, Native Village of Kwигillingok, Native Village of Nightmute, Sleetmute Traditional Council, Tuluksak Native Community, and Native Village of Tununak are federally recognized sovereign tribal governments, responsible for the health, safety, and well-being of their citizens, and are located in the Kuskokwim and Yukon River region. The proposed Project is located on Crooked Creek, which flows directly into the Kuskokwim River. The Tribes’ ancestors historically lived, traveled, fished, and traded along the Kuskokwim River, and the Tribes’ present members continue to do so. The members of the Tribes rely on the Kuskokwim River and surrounding lands of the Yukon-Kuskokwim region for nutritional, economic, social, spiritual, and cultural purposes. The Tribes value their long traditions of fishing and harvesting from the region’s lands and waters. Of particular importance are the salmon and rainbow smelt that return annually to the Kuskokwim River to spawn. The many communities in the Yukon-Kuskokwim region harvest and use these and other subsistence species in various ways. The combined harvests of the Tribes in the Kuskokwim watershed alone total well over four million pounds of edible resources every year.²

² See generally U.S. Army Corps of Engineers (Corps), Donlin Gold Project, Final Environmental Impact Statement at 3.21-22 to 3.21-23 (Tbl. 3.21-1), 3.21-32 to 3.21-33 (Tbl. 3.21-3), 3.21-67 to 3.21-68 (Tbl. 3.21-9), 3.21-83 to 3.21-84 (Tbl. 3.21-12) (Apr. 2018) (FEIS).
On July 13, 2018, the Yukon-Kuskokwim River Alliance on behalf of several tribes—including Orutsararmiut and Kwigillingok—sent a letter to the Governor, the Lieutenant Governor, the Commissioner of DEC, and others in the previous administration requesting DEC and other state officials engage in meaningful consultation with the Tribes before issuing any further permits for the Project. The Tribes have been dismayed to see DEC and other agencies continue to issue new permits and authorizations, including the WMP, with no formal consultation and no advance notice to tribes. The Tribes request that you and other leaders in the new administration use this opportunity to withdraw the WMP, engage in meaningful consultation with the Tribes, and address their concerns.

B. How and the Extent to Which Interests Would Be Affected.

The Permit will adversely affect the health, welfare, and cultural practices, including subsistence practices, of tribal residents of the Kuskokwim and Yukon River watersheds. Clean water and intact aquatic habitats are essential to the way of life for the Tribes and communities all along the rivers.

The Tribes’ ability to engage in traditional fishing and other subsistence practices would be directly and adversely affected by the Project. As issued, the WMP appears to exempt the entire mine site—including the creek drainages occupied by the permitted facilities—from compliance with State of Alaska water quality standards. Specifically, the exclusion of the entire mine site, including the underlying groundwater, from compliance with state water quality standards threatens contamination to surface waters within the mine site, including Anaconda Creek and American Creek, which are tributaries to Crooked Creek. Crooked Creek is a tributary of the Kuskokwim River and a corridor traveled by fish to reach productive areas such as Bell Creek and Getmuna Creek. The FEIS acknowledges that “salmon may be nearly or completely extirpated from Crooked Creek by hydrological changes from mine development, operation, and closure.” Habitat in other stream segments in the Crooked Creek drainage would be altered or destroyed.

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4 FEIS at 3.5-5.
5 Id. at 3.13-9, Fig. 3.13-1.
6 Id. at 3.21-140 (quoting App. N at 15).
7 Id. at 3.21-158.
The treatment works, as permitted, threaten to allow violations of Alaska water quality standards, including degradation of aquatic habitat, without the ability for the state to enforce them. These violations could, among other things, affect the salmon and other subsistence resources relied upon by the Tribes and other residents. This would constitute a direct and adverse impact to their strong interest in maintaining clean water and aquatic habitat to protect their closely held traditions and subsistence practices.

II. CONTESTED TERMS AND ISSUES OF THE PERMIT.

A. DEC’s Definition of Treatment Works Including the Entire Mine Site Violates AS 46.03.100.

The WMP issued by DEC to authorize Donlin’s solid and liquid waste material violates AS 46.03.100 because it appears to define the entire mine site as “treatment works,” which would be exempt from State of Alaska water quality standards.

Facilities meeting the state’s definition of “treatment works” do not have to comply with state water quality standards.\(^8\) The statute defines “treatment works” as “a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste, or other wastes.”\(^9\) The statute explicitly ties the definition of a treatment works to something “installed,” making clear that any natural attenuation processes do not qualify as treatment works. It also limits the definition of treatment works to works installed particularly “for the purpose of” waste management.\(^10\)

In contravention of this statutory definition, DEC appears to define the entire Donlin mine site as a treatment works. The WMP states: “The mine facilities, including the Lewis and ACMA mine pits, the [Tailings Storage Facility], the Lower and Upper [Contact Water Dams], and groundwater underlying the mine site are parts of the

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8 18 AAC 70.010(c). The definition of treatment works used in AS 46.03.900 is used in this chapter of the Alaska Administrative Code as well. 18 AAC 70.990(63).
9 AS 46.03.900(33) (emphasis added).
10 The careful limitation of the exception for treatment works is reflected in the regulation as well: “except that the water quality criteria and limits set by or under this chapter must be met in adjacent surface water and groundwater at and beyond the boundary of the treatment works.” 18 AAC 70.010(c).
wastewater treatment works.” ¹¹ The inclusion of mine facilities generally and the groundwater in the definition of treatment works is a drastic, unexplained change from the definition offered in the draft WMP issued for public comment.¹² Therefore, the Tribes were not given the opportunity to be consulted or to provide comment on this issue.

Throughout the WMP, DEC appears to use the terms “facility” and “facilities” to refer to the mine site as a whole, rather than to any specific treatment works within the mine site, and does not otherwise define the terms so as to specify any limit to the meaning.¹³ This is plainly an overbroad application of treatment works because the mine site as a whole would not be installed for the purpose of waste management—it would be installed to mine gold. To correct this, the WMP should specify which features of the mine site are in fact treatment works and delineate the precise boundaries of those works, such that only those facilities actually installed for the purpose of waste management are exempted from compliance with water quality standards.

Including groundwater in the definition of “treatment works” violates AS 46.03.100 and is a departure from the definition provided therein. The Tribes are unaware of groundwater being permitted as a treatment works in any other large mine in Alaska. Groundwater occurs naturally at the site and therefore will not be “installed,” let alone “installed for the purpose” of any waste treatment. By including groundwater and the rest of the mine site in the definition of treatment works and eliminating any requirement to comply with water quality standards, DEC is allowing serious potential environmental harm and violation of the requirement that facilities receiving waste not cause violations of water quality standards.¹⁴

Instead of artificially deeming the groundwater to be part of the treatment works, which the statute prohibits, DEC should require a liner under any waste storage

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¹³ See, e.g., WMP at 6 (“Ensure to the extent practicable that surface water runoff from outside the facility does not flow onto the facility. . . . Ensure that the site is managed in such a way as to prevent attracting wildlife to the facility.”); id. at 8 (“Ensure waste, leachate, or eroded soil from the facility does not cause an offsite exceedance of the WQS set out in 18 AAC 70.”).
¹⁴ 18 AAC 60.215(a)(3).
sites with the potential to contaminate groundwater. In fact, this was explicitly recommended by the U.S. Environmental Protection Agency (EPA) during the FEIS process. Requiring liners under the waste storage sites would protect groundwater quality, as intended by the statute. The statute does not allow DEC to simply expand the boundaries of the treatment works in order to encompass all the affected waters and eliminate the need to comply with the state’s water quality standards. Instead, DEC must protect the water by adhering to the statute and requiring compliance with water quality standards, exempting only those precisely defined facilities actually installed for the purpose of waste management.

B. DEC Should Not Permit Wet Tailings Because It Puts Human and Environmental Health in Great Danger.

The State of Alaska is committed to a policy “to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.” Furthermore, the state is committed to carrying out this policy beyond its own direct actions, and instead, “[i]t is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.”

The WMP authorizes the use of a wet tailings storage facility, despite the many human and environmental dangers posed by using this method of storage for over 400 million cubic meters of tailings. The modeling done for dam failure at the Donlin site

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15 U.S. Environmental Protection Agency, Donlin PDEIS – Agency and Applicant Comments Elevated to the Corps, at 3 (July 30, 2015) (“We recommend . . . all [Waste Rock Facilities] containing acid-generating rock be lined to prevent infiltration into groundwater.”); id. at 26 (“We recommend installing an impermeable lining to all contaminated water storage facilities. The liner should prevent seepage of contaminated water to groundwater. Prevention of groundwater pollution should take precedence to treatment of contaminated groundwater wherever possible.”) (attached); U.S. Environmental Protection Agency, Donlin Gold Project Scoping Comments, EPA Region 10 Project No.12-0057-COE, at 7 (Mar. 29, 2013) (attached).

16 AS 46.03.010(a).

17 AS 46.03.010(b).
has been very limited, and the potential failure scenarios should be studied much more because failure is often catastrophic:

ADNR considers the TSF to be Hazard Class I, which means there is a probable loss of one or more lives if failure were to occur; a potentially significant danger to public health; and probable losses or damage not limited to the owner of the dam. There is also probable loss of or significant damage to waters identified under 11 AAC 195.010(a) as important for spawning, rearing, or migration of anadromous fish.

In fact, just days after the WMP was issued, these dangers were exhibited when a wet tailings facility failed in Brazil, flooding the downstream lands, killing at least 65 people, and causing extensive damage. This facility held less than three percent of the amount of tailings Donlin plans to store. Similarly, the Mount Polley tailings facility was much smaller than the planned Donlin facility, but its 2014 failure nonetheless caused extensive damage to surrounding areas.

Following the Mount Polley tailings facility failure, a panel of experts determined the best available technology for tailings storage in order “to reduce the number of tailings dams subject to failure.” That panel concluded that those best technologies included “filtered, unsaturated, compacted tailings and reduction in the use of water covers in a closure setting,” and that “[t]here are no overriding technical impediments to more widespread adoption of filtered tailings technology.”

Despite experts clearly warning against the use of wet tailings storage and repeated examples of the dangers of the method, DEC has not acted to prevent Donlin

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18 The FEIS only modeled a 0.5% release scenario for the tailings facility. FEIS at 3.24-50 (stating that the spill modeled was a 2.6 million cubic yard release); FEIS at 2-32 (stating that the tailings storage facility will have a 335,000 acre-foot capacity, which is 540.5 million cubic yards or 413.2 cubic meters).
19 FEIS at 3.24-8.
21 _Id._ (noting that the failed dam held 11.7 cubic meters of waste).
23 _Id._ at iv. Filtered tailings are also known as dry stack tailings. _Id._ at 122.
24 _Id._ at 122.
from subjecting residents of the Yukon-Kuskokwim region to this threat. The Tribes and many other concerned and interested Alaskans have raised concerns about this decision and its potentially drastic, devastating consequences. It is unclear how DEC and its fellow State of Alaska agencies can uphold their statutory obligation to “conserve, improve, and protect” the environment and the people by permitting this type of storage. We ask that DEC reconsider its decision to permit this type of storage and require the use of a dry tailings storage facility instead.

III. CONCLUSION.

For the foregoing reasons, the Tribes request that you grant informal review, vacate the Permit, and remand with instructions to your staff to (1) define the precise boundaries of treatment works, limited to those facilities installed for the purpose of waste management; and (2) analyze and require dry stack tailings storage.

Respectfully submitted,

[Signature]

Olivia Glasscock
Thomas S. Waldo
EARTHJUSTICE

Attorneys for Orutsararmiut Native Council; Akiak Native Community; Chefornak Traditional Council; Chevak Traditional Council; Chuloonawick Native Village; Native Village of Eek; Kasigluk Traditional Council; Kongiganak Traditional Council; Organized Village of Kwethluk; Native Village of Kwigillingok; Native Village of Nightmute; Sleetmute Traditional Council; Tuluksak Native Community; and Native Village of Tununak
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TABLE OF ATTACHMENTS


U.S. Environmental Protection Agency, Donlin Gold Project Scoping Comments, EPA Region 10 Project No.12-0057-COE (Mar. 29, 2013)

U.S. Environmental Protection Agency, Donlin PDEIS – Agency and Applicant Comments Elevated to the Corps (July 30, 2015)
February 14, 2019

Thomas S. Waldo
EARTHJUSTICE
325 4th Street
Juneau, AK 99801

Olivia Glasscock
EARTHJUSTICE
325 4th Street
Juneau, AK 99801

Re: Request for informal review of decision to issue Waste Management Permit 2017DB0001 for Donlin Gold, LLC’s Donlin Gold Project

Dear Mr. Waldo and Ms. Glasscock:

Pursuant to the Alaska Administrative Code (AAC) at 18 AAC 15.185, you submitted a timely request for informal review on February 7, 2018 that was received electronically on the same day. Your first review request was that issuance of the waste management permit (WMP) violates Alaska Statute (AS) 46.03.100 because it appears to define the entire mine site as “treatment works.” Your first issue merits informal review and a final decision on this matter shall be issued not later than 20 days from receipt of your request.

Your second review request was that the WMP should not authorize the use of a wet tailings storage facility because of the risk of dam failure and should require the use of a dry tailings storage facility instead. Review of dam safety is the regulatory responsibility of the Department of Natural Resources through authorities such as AS 46.17 and Article 3 of 11 AAC. The Department of Environmental Conservation authorities for this permit pertain to waste management and disposal under AS 46.03.100. Your second issue does not merit informal review. Consistent with 18 AAC 15.185(b), I am advising you of the right to seek an adjudicatory hearing on this second issue under 18 AAC 15.200 or AS 44.62 not later than 30 days from this decision.

Sincerely,
Andrew Sayers-Fay
Director

Cc: Dan Graham, Donlin Gold, LLC
6
February 7, 2019

BY HAND DELIVERY AND ELECTRONIC MAIL

Corri A. Feige, Commissioner
Alaska Department of Natural Resources
550 W. 7th Avenue, Ste. 1400
Anchorage, AK 99501
E: dnr.appeals@alaska.gov


Dear Commissioner Feige:

Pursuant to 11 AAC 02, Earthjustice, on behalf of its clients, hereby appeals the Donlin Gold Project Reclamation Plan Approval, No. A20196226, issued on January 18, 2019. Earthjustice represents the following Tribes in this matter: Orutsararmiut Native Council, Akiak Native Community, Chefornak Traditional Council, Chevak Traditional Council, Chuloonawick Native Village, Native Village of Eek, Kasigluk Traditional Council, Kongiganak Traditional Council, Organized Village of Kwethluk, Native Village of Kwigillingok, Native Village of Nightmute, Sleetmute Traditional Council, Tuluksak Native Community, and Native Village of Tununak (collectively “the Tribes”). The ground for this appeal is that water treatment in perpetuity as approved in the reclamation plan does not leave the site in a “stable condition” as required by Alaska’s reclamation statute, AS 27.19.020.

A. Introduction.

The Tribes are federally recognized sovereign tribal governments in the Yukon-Kuskokwim region, responsible for the health, safety, and well-being of their citizens. The proposed Donlin Gold Project is located on Crooked Creek, which flows directly into the Kuskokwim River. The Tribes’ ancestors historically lived, traveled, fished, and traded along the Kuskokwim River, and the Tribes’ present members continue to do so. The members of the Tribes rely on the Kuskokwim River and surrounding lands of the Yukon-Kuskokwim region for nutritional, economic, social, spiritual, and cultural purposes. The Tribes value their long traditions of fishing and harvesting from the...
region’s lands and waters. Of particular importance are the salmon and rainbow smelt that annually return to the Kuskokwim River to spawn. The communities of the Yukon-Kuskokwim region harvest and use these and other subsistence species in various ways. The combined harvests of the Kuskokwim River communities alone total well over four million pounds of edible resources every year.\(^1\)

On July 13, 2018, the Yukon-Kuskokwim River Alliance on behalf of several Tribes sent a letter to the Governor, the Lieutenant Governor, the Commissioner of the Alaska Department of Natural Resources (DNR), and others in the previous administration requesting that DNR and other state officials engage in meaningful consultation with Tribes before issuing any further permits for the Project.\(^2\) The Tribes have been dismayed to see DNR and other agencies continue to issue new permits and authorizations, including the reclamation plan approval, with no formal consultation and no advance notice to Tribes. The Tribes request that you and other leaders in the new administration use this opportunity to withdraw the reclamation plan approval, engage in meaningful consultation with the Tribes, and address their concerns.

B. Water treatment in perpetuity does not comply with Alaska’s reclamation law.

The Tribes appeal the reclamation plan approval because it relies on water treatment in perpetuity. At closure, the open mine pit would slowly fill with water, eventually forming a lake covering nearly two square miles. The lake would never meet Alaska state water quality standards for pH, aluminum, antimony, arsenic, cadmium, copper, iron, lead, manganese, molybdenum, selenium, and mercury. The violations are large, exceeding standards in some scenarios by one or more orders of magnitude.\(^3\) The U.S. Fish & Wildlife Service has expressed particular concern about the high levels of arsenic, mercury, and selenium that would remain in the pit lake.

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\(^1\) See generally U.S. Army Corps of Engineers (Army Corps), Donlin Gold Project, Final Environmental Impact Statement Vol. V at 3.21-22 to 3.21-23 (Table 3.21-1), 3.21-32 to 3.21-33 (Table 3.21-3), 3.21-67 to 3.21-68 (Table 3.21-9), 3.21-83 to 3.21-84 (Table 3.21-12) (Apr. 2018) (FEIS).


\(^3\) FEIS Vol. III at 3.7-138, 3.7-140 (Table 3.7-36). These are the page numbers in the hard copy version of the FEIS. The page numbers in the electronic version are FEIS at 3.7-123, 3.7-125 (Table 3.7-36).
forever. To prevent pollution of Crooked Creek and the Kuskokwim River, the reclamation plan requires construction of a water treatment plant that human beings would have to maintain and operate for all time. It would also require pumping water from the lake in perpetuity “to ensure pit water lake levels do not overtop the banks of the pit lake.”

The Donlin Gold Project would be the first new mine since the 1990 adoption of Alaska’s reclamation law, AS 27.19, to allow water treatment in perpetuity. Other mines for which perpetual water treatment is required began operations before Alaska had a reclamation statute. Thus, the Donlin reclamation plan approval sets a precedent that threatens to normalize an inherently unstable method of reclamation.

This plan for pumping and water treatment in perpetuity violates Alaska reclamation law. The statute requires reclaiming a mine “to leave the site in a stable condition.” “Stable condition,” in turn, “means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.”

The reclamation plan violates this standard for at least two reasons.

First, the pit lake is never reclaimed. It will never meet standards established for the protection of drinking water, aquatic life, and human health, among other uses. Thus, the plan fails to reestablish important renewable resources for a substantial body of water. For this reason alone, DNR should deny approval of the reclamation plan.

Second, for the waters downstream from the mine, resources will not be reclaimed by “natural processes,” as required by the statute. Rather, the plan relies on

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5 FEIS Vol. I at 2-43; see also FEIS Vol. III at 3.7-177 to 3.7-178 (online version at 3.7-162 to 3.7-163); SRK Consulting, Inc., Donlin Plan of Operations, Reclamation and Closure Plan at 4-18 to 4-19, App. B at 10 (Dec. 2018) (Donlin Plan of Operations).
6 AS 27.19.020.
7 AS 27.19.100(7).
8 FEIS Vol. III at 3.7-140 to 3.7-141 (Table 3.7-36, footnotes) (electronic version at 3.7-125 to 3.7-126 (Table 3.7-36).
9 AS 27.19.100(7).
permanent pumping and permanent water treatment. This will require active human and mechanical intervention for as far in the future as the models could foresee. Those responsible will have to bring people, equipment, and fuel to the site for the maintenance and operation of these facilities, and have sufficient funding to do so, for all time. These are not “natural processes.” This plan is inherently unstable, contravening the most basic requirement of the reclamation statute—“to leave the site in a stable condition.”10 This means the humans should be able to walk away from the site after reclamation and have it remain stable.

The only explanation for approving the plan despite its inherent instability is in the “Response to Comments” document, which misapplies both the facts and the statute. After reciting the terms of AS 27.19.020 and .100(7) as quoted above, the document’s entire explanation is as follows: “The statute, definition, and reclamation of ‘the physical environment’ addresses topological stability from runoff, erosion and slope failure or site topography, whereas long-term management concerns such as water treatment addresses the chemical environment or water quality.”11

It is not clear exactly what DNR staff meant by this cryptic explanation, but it seems to suggest that the reclamation statute addresses only topological stability and not water quality. This is plainly wrong. There are at least two problems with this explanation.

First, the reclamation plan does not ensure topological stability. The pit lake must be pumped out forever “to ensure pit water lake levels do not overtop the banks of the pit lake.”12 Thus, the lake itself is not topologically stable, but requires permanent pumping.

Second, even if the lake were topologically stable, it is not plausible to interpret the statute to exclude protection of water quality. Water is part of the “physical environment.” Indeed, the title of the bill enacting this statute was “AN ACT relating to the reclamation of land and water.”13 Water is indisputably a “renewable resource,” the term used in AS 27.19.100(7), as are the fish and other aquatic species that live in the water. This is not only the common usage of those terms, it is the usage employed in

10 AS 27.19.020.
12 FEIS Vol. I at 2-43; see also FEIS Vol. III at 3.7-177 to 3.7-178 (online version at 3.7-175 to 3.7-176); Donlin Plan of Operations at 4-18 to 4-19, App. B at 10.
13 1990 Alaska Sess. Laws Ch. 92.
other legislation.14 There is simply no basis for the attempt to separate water quality from the physical environment as suggested in the Response to Comments document.

If the intent of the Response to Comments document is to suggest that the wastewater discharge requirements applied by the Department of Environmental Conservation (DEC) displace the reclamation standard, it is simply wrong as a matter of statutory interpretation. DEC is responsible for issuing permits for wastewater discharges to ensure compliance with effluent limitations, new source performance standards, and water quality standards.15 These requirements do not obviate the need for DNR to ensure compliance with the reclamation requirements of AS 27.19.020. The statutes do not conflict with each other, and there is no indication that the legislature intended an implied exception for water treatment plants when it enacted the reclamation statute in 1990. To the contrary, as discussed above, the legislature saw water quality as an integral part of the physical environment subject to reclamation. A mine must comply with both the wastewater discharge permitting requirements of AS 46.03 and the reclamation requirements of AS 27.19. Thus, even if a water treatment plant to be operated at a mine site in perpetuity were projected to meet the discharge standards of AS 46.03, it would not meet the mining reclamation standard of AS 27.19.020. That standard requires a mine, after closure, to reclaim the site to a stable condition using natural processes, not a permanent water treatment plant.

The Response to Comments document does not claim that water treatment in perpetuity is the only feasible option, nor could it. Some Alaska mines—such as Red Dog and Greens Creek—began operating before the 1990 enactment of AS 27.19, Alaska’s reclamation statute. Because they started operations before Alaska had a reclamation standard, it may be infeasible at this point in time to close those mines in any effective way other than through perpetual water treatment. At Donlin, though, DNR still has the option of denying approval of the reclamation plan before mining starts.

It appears that neither Donlin Gold nor DNR has conducted a feasibility analysis for a mining plan that would leave the site in a stable condition through natural processes, i.e., without reliance on water treatment in perpetuity. In the absence of such an

14 See 1992 Second Special Session Laws Amended Ch. 1, § 1(a)(1) (describing people dependent on “the wild renewable resources produced by Alaska’s land and water; the harvest and use of fish and game for personal and group consumption is an integral part of those relationships.”), quoted in Payton v. State, 938 P.2d 1036, 1043 n.5 (Alaska 1997).
15 See generally AS 46.03.
analysis, DNR would not be able to rely on a claim that it is infeasible to mine the Donlin deposit in a manner that meets the statutory standard. Note that if Donlin were to claim infeasibility, the legislature was clear that this would mean technical infeasibility, not merely economic infeasibility. Following committee discussion of the difference between technical and economic feasibility, the full House adopted a letter of intent stating that “‘feasible’ means technically capable of being accomplished in a successful manner within a reasonable period of time.”

C. Conclusion.

For the foregoing reasons, the Tribes request that you vacate the reclamation plan approval and remand the matter to the Division of Mining, Land & Water with instructions to require a new reclamation plan from Donlin and to approve such a plan only if it would leave the site in a stable condition through natural process, without resort to water treatment in perpetuity. If there are any changes to the approved reclamation plan or in the rationale for it, the Tribes request a renewed public process, including meaningful government-to-government consultation with the affected Tribes of the Yukon-Kuskokwim region.

It is apparent on the face of the decision and the record that the Donlin reclamation plan does not meet the standards required by law. For this reason, the Tribes do not seek a hearing to resolve any disputed facts. Rather, they request you decide this appeal on the existing record. If you find any deficiencies in the record, the matter should be remanded to staff.

Pursuant to 11 AAC 02.030(a)(12), this matter is related to numerous other applications from Donlin Gold for operation of this mine as described on DNR’s website.

Please address any communications regarding this appeal to the undersigned counsel. You may reach Thomas Waldo at twaldo@earthjustice.org, (907) 500-7123, and Olivia Glasscock at oglasscock@earthjustice.org, (907) 500-7134.

Thank you for your careful consideration of this important matter.

Sincerely,

Thomas S. Waldo
Olivia Glasscock
EARTHJUSTICE

Attorneys for Orutsararmiut Native Council; Akiak Native Community; Chefornak Traditional Council; Chevak Traditional Council; Chuloonawick Native Village; Native Village of Eek; Kasigluk Traditional Council; Kongiganak Traditional Council; Organized Village of Kwethluk; Native Village of Kwigillingok; Native Village of Nightmute; Sleetmute Traditional Council; Tuluksak Native Community; and Native Village of Tununak
TABLE OF ATTACHMENTS

Alaska House of Representatives, 16th Leg., 2d Sess., House Journal (May 6, 1990) (excerpts)

Alaska House of Representatives, 16th Leg., 2d Sess., House Journal (May 8, 1990) (excerpts)

Alaska House of Representatives, 16th Leg., 2d Sess., House Minutes, Tape HRC 90-332, Side A (May 5, 1990) (excerpts)


September 28, 2018

SUBMITTED VIA ELECTRONIC MAIL

Andrew Sayers-Fay, Director
Division of Water
Alaska Department of Environmental Conservation
555 Cordova St.
Anchorage, AK 99501
E: andrew.sayers-fay@alaska.gov

Re: Amended request for informal review of decision to issue Certificate of Reasonable Assurance to Donlin Gold, LLC’s Donlin Gold Project

Dear Director Sayers-Fay:

Pursuant to 18 AAC 15.185, Earthjustice hereby requests informal review of the Alaska Department of Environmental Conservation’s (ADEC) August 10, 2018 decision to issue a Certificate of Reasonable Assurance (Certificate) to Donlin Gold, LLC (Donlin) for the Donlin Gold Project (Project). Earthjustice submitted a timely initial request for informal review to ADEC on August 30, 2018 and raised the issue that ADEC had not completed the statutorily required antidegradation analysis in its Certificate, among other issues. Director Sayers-Fay subsequently provided Earthjustice with ADEC’s Antidegradation Analysis, which was not publically available previously. Director Sayers-Fay also provided Earthjustice 20 days to review the Antidegradation Analysis and to submit an amended request for informal review, if necessary.

Earthjustice submits this amended request on behalf of: Orutsararmiut Native Council; Akiak Native Community IRA Council; Organized Village of Kwethluk, Kwethluk IRA Council; Native Village of Kwigillingok; Chuloonawick Native Village; and Yukon Kuskokwim River Alliance. Earthjustice submitted comments on the proposed permit and is entitled to request informal review on behalf of these Tribes and organizations.

As required by 18 AAC 15.185(a)(1) and 18 AAC 15.200(c)(2), the requester’s contact information is:

2 ADEC, Informal Review Request Response (Sept. 11, 2018).
I. THE REQUESTER’S INTEREST IN THE CERTIFICATE DECISION.

A. Nature and Scope of Interests.

Orutsararmiut Native Council, Akiak Native Community IRA Council, Organized Village of Kwethluk, Native Village of Kwigillingok, and Chuloonawick Native Village are federally recognized sovereign tribal governments, responsible for the health, safety, and well-being of their citizens, located in the Kuskokwim and Yukon River watersheds. The proposed Project is located on Crooked Creek, which flows directly into the Kuskokwim River. The Tribes’ ancestors historically lived, traveled, fished, and traded along the Kuskokwim River, and the Tribes’ present members continue to do so. The members of the Tribes rely on the Kuskokwim River and surrounding lands of the Yukon-Kuskokwim region for nutritional, economic, social, spiritual, and cultural purposes. The Tribes value their long traditions of fishing and harvesting from the region’s lands and waters. Of particular importance are the salmon and rainbow smelt that annually return to the Kuskokwim River to spawn. The many communities along the Kuskokwim River harvest and use these and other subsistence species in various ways, and their combined harvests total well over a million pounds of edible resources every year.4

This request is also submitted on behalf of the Yukon Kuskokwim River Alliance, which is made up of tribal and non-tribal members who live in the Yukon-Kuskokwim Delta and focus on environmental justice work. The Alliance’s tribal members include Native Village of Eek, Native Village of Napakiak, Native Village of Nunapitchuk, Native Village of Kwigillingok, Native Village of Kongiganak, Tuluksak Native Community, Orutsararmiut Native Village (Bethel), and Chuloonawick Native Village (Emmonak). The Alliance is working together to preserve natural systems and protect cultural heritage for the tribal members of the Yukon-

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4 U.S. Army Corps of Engineers (Army Corps), Donlin Gold Project, Final Environmental Impact Statement at 3.21-19 to 3.21-91 (Apr. 2018) (FEIS). In this request, all citations to the FEIS are to the version posted on Donlin’s website at http://www.donlingoldeis.com/. Note that the pagination in the online version does not always match the pagination in the hard copy version.
Kuskokwim Delta. People who share this belief have united together to preserve and protect the land, water, and resources of the Yukon and Kuskokwim region, sustain the subsistence way of healthy living, and protect the fish, waterfowl, and animals of the water and land against large-scale mines, like the Donlin Project.

On July 13, 2018, the Alliance on behalf of several Tribes sent a letter to the Governor, the Lieutenant Governor, the Commissioner of ADEC, and others requesting that ADEC and other state officials engage in meaningful consultation with the Tribes before issuing any further permits for the Project. In follow-up discussions with staff, the Alliance specifically raised concerns about the water quality certification at issue here. The Alliance and the Tribes were dismayed to see ADEC issue the Certificate with no formal consultation and no advance notice to the Alliance or Tribes. The Alliance and the Tribes request that you use this opportunity to withdraw the Certificate, engage in meaningful consultation with the Tribes, and address their concerns.

B. How and the Extent to Which Interests Would Be Affected.

The Certificate will adversely affect the health, welfare, and cultural practices, including subsistence practices, of Tribal and non-Tribal residents of the Kuskokwim and Yukon River watersheds. Clean water and intact aquatic habitats are essential to the way of life for Tribes and communities all along the rivers.

The Tribes and Alliance’s ability to engage in traditional fishing and other subsistence practices would be directly and adversely affected by the Project. Specifically, the operation of the mine would likely lead to violations of Alaska state water quality standards for mercury, temperature, and arsenic within Crooked Creek, which is a tributary of the Kuskokwim River and a corridor traveled by fish to reach productive areas such as Bell Creek and Getmuna Creek. The FEIS acknowledges that “salmon may be nearly or completely extirpated from Crooked Creek by hydrological changes from mine development, operation, and closure.”

Habitat in other stream segments in the Crooked Creek drainage would be altered or destroyed. Furthermore, in the Section 810 Analysis included in the FEIS, the Bureau of Land Management concluded that “barging impacts may cause large reductions in the abundance and availability of fish resources important to subsistence users.” The FEIS acknowledges these impacts would persist throughout the life of the mine. The barge traffic would increase all the way from the ocean to the mine site, directly affecting the Tribes and other communities along much of the Kuskokwim River.

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5 FEIS at 3.21-140 (quoting App. N at 15).
6 Id. at 3.21-158.
7 Id. at 3.21-140 (quoting App. N at 17).
8 Id. at 3.21-175.
9 Id. at 2-8, 3.21-174.
The violation of Alaska state water quality standards and degradation of aquatic habitat would, among other things, affect the salmon and rainbow smelt relied upon by the Tribes and other residents. This would constitute a direct and adverse impact to their strong interest in maintaining clean water and intact aquatic habitat to protect their closely held traditions and subsistence practices.

II. CONTESTED TERMS AND ISSUES OF THE CERTIFICATE.

The Certificate fails to demonstrate reasonable assurance that construction and operation of the Project will comply with Alaska state water quality standards as required by section 401 of the Clean Water Act and by regulations of the U.S. Environmental Protection Agency (EPA) and ADEC.\(^{10}\) EPA regulations require Donlin to receive certification from ADEC that there is “reasonable assurance” that the entire “activity” associated with the certification will not violate water quality standards.\(^{11}\) The statute and regulations place an independent burden on ADEC to make these findings.\(^{12}\) The following subsections identify the contested issues of material fact and law proposed for review and explain how the decision to issue the Certificate was in error with respect to each contested issue.

A. The Proposed Mitigation and Monitoring Requirements Do Not Provide Reasonable Assurance that Habitat Will Not Be Degraded.

ADEC’s regulations require that “the department will make an antidegradation analysis and findings for discharges subject to authorization by the department under…33 U.S.C. 1341 (Clean Water Act, sec. 401) water quality certifications.”\(^{13}\) The antidegradation policy—which applies to all waters of the state—requires that “existing water uses and the level of water quality necessary to protect existing uses must be maintained and protected.”\(^{14}\) The regulations presume the default protection level for all parameters to be “Tier 2,” i.e., waters that do not presently exceed water quality standards.\(^{15}\) Where, as here, the activity will cause a reduction in the quality of these waters, ADEC must make several explicit findings, including that “the resulting water quality will be adequate to fully protect existing uses of the water.”\(^{16}\)

ADEC does not demonstrate any reasonable assurance that the existing use of the water for “growth and propagation of fish, shellfish, other aquatic life, and wildlife” will be protected

\(^{10}\) 33 U.S.C. § 1341(a)(1); 40 C.F.R. § 121.2(a); 18 AAC 70.016(a)(1)(B).
\(^{11}\) 40 C.F.R. § 121.2(a)(3).
\(^{12}\) 18 AAC 70.016(a)(1)(B).
\(^{13}\) Id.
\(^{14}\) 18 AAC 70.015(a)(1).
\(^{15}\) 18 AAC 70.016(c)(1).
\(^{16}\) 18 AAC 70.015(a)(2)(C) (emphasis added); see also 40 C.F.R. § 131.12(a)(2) (“In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully.”).
as the antidegradation policy requires.\textsuperscript{17} ADEC relies heavily on monitoring and mitigation measures required in various permits as support for its Certificate.\textsuperscript{18} ADEC also relies on the FEIS for analysis in its Antidegradation Analysis and Response to Comments.\textsuperscript{19} However, the FEIS states that despite the monitoring and mitigation measures included in the Project, the waters and uses thereof will be degraded: “These measures, including any potential impacts associated with these measures, are part of the proposed action and other alternatives, and were considered during the [National Environmental Policy Act] impact analysis.”\textsuperscript{20}

For example, despite the mitigation measures in the Project, stream diversion and dewatering will decrease groundwater discharges to and streamflow in parts of the Crooked Creek as well as in nearby tributaries.\textsuperscript{21} These changes to water levels can cause adverse impacts to availability of spawning areas and viability of incubating eggs, especially during low flow conditions, thereby degrading the water to the point of habitat loss.\textsuperscript{22}

Similarly, barge traffic along the Kuskokwim River is likely to impair existing use by rainbow smelt as spawning habitat. The tugs and barges are expected to cause scouring in the river, which could displace, injure, or kill rainbow smelt eggs.\textsuperscript{23} The scouring from increased traffic could affect the reproduction, feeding, or survival—with potential population-level impacts—of anadromous and resident fish and other aquatic life.\textsuperscript{24} Barge traffic may also result in propeller-induced injuries or mortalities to fish, especially in confined segments of the Kuskokwim River.\textsuperscript{25}

The Certificate does not address how there could be any reasonable assurance the Project will fully protect existing uses despite the FEIS statements to the contrary. Instead, the Certificate offers the following: “To the extent practicable, the proposed project has been designed and modified to avoid impacts to waters of the U.S. and important cultural resources and wildlife habitats.”\textsuperscript{26} Furthermore, as ADEC concedes in its Response to Comments, the

\textsuperscript{17} 18 AAC 70.020(a)(1)(C).
\textsuperscript{18} ADEC, Certificate of Reasonable Assurance at 3-4 (Aug. 10, 2018).
\textsuperscript{19} ADEC, Antidegradation Analysis – Donlin Project, POA1995-120 at 4-7 (Aug. 10, 2018)
(Antidegradation Analysis); ADEC, Department of Environmental Conservation Response to Comments For Donlin Gold Mine, POA-1995-120 at 5-12 (Aug. 10, 2018) (Response to Comments).
\textsuperscript{20} FEIS at 5-5 to 5-6; see also \textit{id.} at 3.13-159 (“Effects determinations take into account impact reducing design features . . . proposed by Donlin Gold and also the Standard Permit Conditions and [best management practices] . . . that would be implemented.”), 3.7-191 (same).
\textsuperscript{21} \textit{Id.} at 3.13-78.
\textsuperscript{22} \textit{Id.} at 3.13-89 to 3.13-90.
\textsuperscript{23} \textit{Id.} at 3.13-125.
\textsuperscript{24} \textit{Id.} at 3.13-131.
\textsuperscript{25} \textit{Id.} at 3.13-131 to 3.13-134.
\textsuperscript{26} Certificate at 1.
alternative selected in the FEIS already “incorporates all practicable avoidance and minimization measures.”

In short, therefore, despite all the practicable mitigation measures already incorporated in the Project, the FEIS predicts adverse impacts that will not fully protect existing uses or otherwise comply with water quality standards. The Certificate is contrary to the very evidence on which ADEC relies.

In both its Antidegradation Analysis and Response to Comments, ADEC cites Title 16 fish habitat permits issued by the Alaska Department of Fish and Game and water use permits issued by the Department of Natural Resources, including monitoring requirements of those permits, as providing reasonable assurance that existing uses will be protected. Neither of those permits provides that assurance, because neither of them is subject to a requirement that existing uses be “fully” protected as required by the antidegradation policy. In fact, the Title 16 permit issued for American Creek states the project “as proposed will have adverse effects on anadromous fish or their habitats and will obstruct the free passage of fish” and that other Title 16 permits issued to Donlin are merely meant to offset these adverse effects, or to “partially mitigate losses and potential losses of fish habitat.” These findings by the Department of Fish and Game show fish habitat will not be fully protected by Title 16 permits. ADEC is the only agency subject to the requirement that existing uses be “fully” protected, and the agency must ensure it is met in certifying compliance with state water quality standards.

ADEC’s Antidegradation Analysis and Response to Comments also cites required compensatory mitigation as a justification for habitat loss. This response misses the mark for two reasons. First, the compensatory mitigation plan was designed to compensate only for those wetlands and streams permanently filled by mine construction and operation. It does not attempt to compensate for the degradation of existing uses in the remaining downstream waters of Crooked Creek and the Kuskokwim River. The compensatory mitigation plan does nothing to address these waters. Second, even if the compensatory mitigation plan applied to Crooked Creek and the Kuskokwim River, it would not protect existing uses fully. The compensatory mitigation plan attempts to compensate for loss of waters at the mine site almost entirely by protecting waters in the Chuitna River watershed, which is hundreds of miles away and does not help the Kuskokwim watershed at all. Even assuming this meets the Army Corps’ requirements for compensatory mitigation, it does not fully protect existing uses in Crooked Creek and the Kuskokwim River, as required by ADEC regulations.

27 Response to Comments at 2.
28 Antidegradation Analysis at 6; Response to Comments at 7-8, 9.
29 Alaska Dep’t of Fish & Game, Fish Habitat Permit FH18-III-0191 at 3-4 (Aug. 30, 2018).
30 Alaska Dep’t of Fish & Game, Fish Habitat Permit FH18-III-0192 at 1 (Aug. 30, 2018).
31 Antidegradation Analysis at 6; Response to Comments at 8-9.
33 ROD at 6-6.
B. There Is No Reasonable Assurance that the Project Will Comply with State Water Quality Criteria.

The Certificate does not demonstrate reasonable assurance that mine construction and operation will not violate numeric state water quality standards for mercury, arsenic, or temperature.

The FEIS indicates that mining operations will result in mercury emissions from numerous sources including: volatilization of minerals in the open pit mine, ore, waste rock, and tailings storage facility; fugitive dust produced by ore processing, wind over the tailings storage facility, and mining operations such as drilling, blasting loading, ore crushing, wind erosion, and road use; and point source airborne emissions from ore processing. These various sources of mercury emissions could cause increased mercury deposition in nearby watersheds by about 40 percent. In combination with naturally elevated levels of mercury in surrounding waters, these emissions associated with the operation of the mine “would result in additional inputs of mercury to surface water from both atmospheric and aqueous sources, which would likely cause an increase in exceedances of the 12 ng/L chronic criterion.” The Certificate does not address this issue or provide any information related to how these predicted exceedances would be prevented.

Similarly, there is no reasonable assurance that Alaska’s arsenic standards will not be violated. The FEIS concludes that “arsenic leaching from overburden excavated from the pit area could exceed Alaska Water Quality Standards.” These violations would pose a direct threat to surface waters: “There is also a possibility of contaminated groundwater migration from the South Overburden Stockpile towards Crooked Creek.” Again, the Certificate does not address this issue or provide any information related to how these predicted exceedances would be prevented.

Finally, there is no reasonable assurance that temperature standards will not be violated. Alaska’s water quality criteria include temperature standards, with stricter temperature standards for fish migration, spawning, rearing, and egg & fry incubation areas. The FEIS states that groundwater that would normally flow to Crooked Creek will be diverted as part of the pit dewatering process and that during the summer, this reduction in groundwater input “could cause stream temperatures in reaches near the mine to be close to or above the State of

34 FEIS at 3.8-41 to 3.8-42.
35 Id. at 3.7-151.
36 Id.
37 Id. at 3.7-98.
38 Id. at 3.7-2.
39 18 AAC 70.020(b), Tbl. at (10)(A)(iii), (10)(C).
Alaska’s water quality temperature standard...for egg/fry incubation and spawning and...migration and rearing.\textsuperscript{40}

Despite ADEC’s statements in the Antidegradation Analysis and Response to Comments,\textsuperscript{41} it is not sufficient that the point source or general storm water discharge permits issued under the Alaska Pollutant Discharge Elimination System (APDES) requires compliance with water quality standards. The individual APDES permit only covers particular point source discharges and the general APDES permit authorization only covers storm water discharges. The mercury, arsenic, and temperature violations described in the FEIS do not result from any point source or storm water discharges covered by the APDES permits. Rather, as explained above, mercury violations will result from atmospheric deposition, arsenic violations will result from groundwater leaching from the overburden stockpile, and temperature violations will result from dewatering processes. ADEC is required to provide reasonable assurance that the entire “activity” associated with the Project will not violate Alaska water quality standards, which includes those violations resulting from runoff or discharges not covered by the APDES permits.\textsuperscript{42}

III. CONCLUSION.

For the foregoing reasons, we request that you review and vacate the Certificate. The FEIS makes clear that, even with all practicable monitoring and mitigation measures, there can be no reasonable assurance of compliance with Alaska’s antidegradation policy and other state water quality standards. We request that you vacate the Certificate and remand with instructions to your staff to deny Donlin’s request.

\begin{footnotes}
\item[40] FEIS at 3.13-112.
\item[41] Antidegradation Analysis at 5; Response to Comments at 7-8.
\item[42] See 40 C.F.R. § 121.2(a)(3); PUD No. 1 of Jefferson Cty. v. Wash. Dep’t of Ecology, 511 U.S. 700, 712 (1994) (finding that to issue a § 401 certification, the state must certify that the project’s “activities—not merely discharges—must comply with state water quality standards”); Islander E. Pipeline Co. v. McCarthy, 525 F.3d 141, 154-64 (2d Cir. 2008), cert. denied, 555 U.S. 1046 (2008) (upholding an agency’s denial of a water quality certification for a natural gas pipeline proposed for Long Island Sound based on anchor strikes and cable sweeps, engineered backfill, and sedimentation and drilling fluid releases).
\end{footnotes}
Respectfully submitted,

Colin O’Brien
EARTHJUSTICE

Olivia Glasscock
EARTHJUSTICE
Attorneys for Orutsararmiut Native Council; Akiak Native Community IRA Council; Organized Village of Kwethluk, Kwethluk IRA Council; Native Village of Kwigillingok; Chuloonawick Native Village; and Yukon Kuskokwim River Alliance
LIST OF PARTIES REPRESENTED BY THE REQUESTER

AKIAK NATIVE COMMUNITY IRA COUNCIL
P.O. Box 52127
Akiak, AK 99552

CHULOONAWICK NATIVE VILLAGE
P.O. Box 245
Emmonak, AK 99581

NATIVE VILLAGE OF KWIGILLINGOK
Kwigillingok IRA Council
P.O. Box 90
Kwigillingok, AK 99622

ORGANIZED VILLAGE OF KWETHLUK,
KWETHLUK IRA COUNCIL
P.O. Box 130
 Kwethluk, AK 99621

ORUTSARARMIUT NATIVE COUNCIL
P.O. Box 927
Bethel, AK 99559

YUKON KUSKOKWIM RIVER ALLIANCE
P.O. Box 2405
Bethel, AK 99559
October 19, 2018

Colin O’Brien
EARTHJUSTICE
50 California Street, Suite 500
San Francisco, CA 94111

Olivia Glasscock
EARTHJUSTICE
325 4th Street
Juneau, AK 99801

Re: Decision on request for informal review of decision to issue a Certificate of Reasonable Assurance (Certificate) to Donlin Gold, LLC, Donlin Gold Mine, POA-1995-120 Crooked Creek

Dear: Mr. O’Brien and Ms. Glasscock:

I have completed my review of your September 28, 2018 amended request for informal review of the Division of Water Wastewater Discharge Authorization Program’s decision to issue Certificate of Reasonable Assurance to Donlin Gold, LLC, Donlin Gold Mine, POA-1995-120 Crooked Creek. Your original informal review request (August 28, 2018) and your amended request have both been deemed timely consistent with 18 AAC 15.185 and prior correspondence.

Your amended request asked to review and vacate the decision to issue the Certificate by asserting:

1) The Certificate fails to demonstrate reasonable assurance that construction and operation of the Project will comply with Alaska state water quality standards as required by section 401 of the Clean Water Act and by regulations of the U.S. Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (ADEC);

2) ADEC is required to provide reasonable assurance that the entire “activity” associated with the Project will not violate Alaska water quality standards, which includes those violations resulting from runoff or discharges not covered by the APDES permits;

3) ADEC does not demonstrate any reasonable assurance that the existing use of the water for “growth and propagation of fish, shellfish, other aquatic life, and wildlife” will be fully protected as the antidegradation policy requires despite the proposed mitigation and monitoring requirements; and

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1 33 U.S.C. § 1341(a)(1); 40 C.F.R. § 121.2(a); 18 AAC 70.016(a)(1)(B).
2 See 40 C.F.R. § 121.2(a)(3); PUD No. 1 of Jefferson Cty. v. Wash. Dep’t of Ecology, 511 U.S. 700, 712 (1994) (finding that to issue a § 401 certification, the state must certify that the project’s “activities—not merely discharges—must comply with state water quality standards”); Islander E. Pipeline Co. v. McCarthy, 525 F.3d 141, 154-64 (2d Cir. 2008), cert. denied, 555 U.S. 1046 (2008) (upholding an agency’s denial of a water quality certification for a natural gas pipeline proposed for Long Island Sound based on anchor strikes and cable sweeps, engineered backfill, and sedimentation and drilling fluid releases)
4) The Certificate does not demonstrate reasonable assurance that mine construction and operation will not violate numeric state water quality standards for mercury, arsenic, or temperature.

The enclosed Informal Review Analysis and Decision (Informal Decision) dated October 19, 2018 provides an evaluation of each of the issues you raise. Based on the findings in the enclosed, I deny the request to vacate the permit on the grounds that it was issued in violation of applicable law; however, I remand the Certificate to the Division of Water Wastewater Discharge Authorization Program in order to address the issues identified in the enclosed Informal Decision.

Consistent with 18 AAC 15.185(d)(2), I am advising you of the right to seek an informal review or an adjudicatory hearing under 18 AAC 15.200 or Alaska Statute 44.62 not later than 30 days after division staff issues a final decision on remand.

Sincerely,

Andrew Sayers-Fay
Director

Enclosure: Informal Review Analysis and Decision, October 19, 2018

cc: Dan Graham, Donlin Gold
INFORMAL REVIEW ANALYSIS AND DECISION
October 19, 2018

Request for Informal Review to Vacate the Decision to Issue a Certificate of Reasonable Assurance (Certificate) to Donlin Gold, LLC, Donlin Gold Mine, POA-1995-120 Crooked Creek and Remand to Staff to Deny Donlin, LLC’s Request

REVIEW ISSUE 1
The Certificate fails to demonstrate reasonable assurance that construction and operation of the project will comply with Alaska state water quality standards as required by §401 of the Clean Water Act (CWA) and by regulations of the U.S. Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (DEC or Department);

1.1 Background
The Clean Water Act §401 is codified in Title 33 of the United States Code (U.S.C.) in §1341 with implementation regulations in 40 C.F.R. Part 121. Alaska water quality standards (WQS) are identified in Title 18 of the Alaska Administrative Code (AAC), chapter 70 (18 AAC 70). In order for these standards to apply under the Clean Water Act, they must be previously approved by EPA pursuant to Clean Water Act §303(c)(3) and Title 40 of the Code of Federal Regulations (C.F.R.) Part 131. Some sections of earlier regulations remain in effect for Clean Water Act purposes. The 2017 Comparison of State and Federally Approved WQS for use with CWA programs provides additional information about this topic and is available on the department website at http://dec.alaska.gov/water/wqsar/wqs/pdfs/2017-final-comparison-of-state-and-federal-standards.pdf.

Requestors assert that the Certificate must address construction and operation of the Donlin Gold Project when determining compliance with Alaska water quality standards.


1.2 Analysis
The Clean Water Act allows consideration of both construction and operation of a proposed activity in a §401 certificate. Title 33 U.S.C. 1341(a)(3) anticipates that operation will be evaluated when considering certificate for construction because changes in the construction or operation of the facility since the construction certification was issued will prevent the construction certificate from fulfilling the requirement for an operation certificate.

1 33 U.S.C. 1341(a)(1); 40 C.F.R. 121.2(a); 18 AAC 70.016(a)(1)(B).
2 All citations to the FEIS are to the version posted on Donlin’s website at http://www.donlingoldeis.com/. Note that the pagination in the online version does not always match the pagination in the hard copy version.
The State is not required to consider operation for a construction certificate. On page 14 of its 2010 handbook “Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool For States and Tribes,” EPA provides the following recommendation:

“To ensure that adequate consideration is given to water quality impacts of facility operation, as well as to minimize the need for such after-the-fact suspensions (which are solely at the discretion of the Federal agency), states should review all such impacts at the time of initial certification, and include conditions in their certifications to address them as appropriate.” [emphasis added]

If the State does not consider operation in a §401 construction certificate, three outcomes may occur. First, if a federal license or permit is required for construction but not operation, the licensee or permittee shall provide the State of Alaska (State) an opportunity to review operation. If, after reviewing the manner of operation, the State determines there is a reasonable assurance of violation(s), the State becomes dependent on the federal agency to suspend the license or permit. In this case, the State can only react after-the-fact if water quality violation(s) occur. Reacting after-the-fact may limit or preclude the ability to recover from any water quality impacts that have occurred.

Second, if the State waives the §401 certificate for a construction application, it is not clear if the licensee or permittee is required to grant the State the opportunity to review the manner of operation since the §401 certificate may not be deemed to have been “obtained” pursuant to 33 U.S.C. 1341(a)(1). In this case, the State may never have the opportunity to request suspension.

Third, if a Clean Water Act §401 certificate is granted for construction, and a federal license or permit is required for operation, then the §401 certificate for construction shall serve as the necessary 401 certificate for operation, unless the State:

“notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements.”

These limitations in time (60 days), scope (six specified sections), and cause (four post-construction changes) are more stringent than the limitations if operation is considered as part of the construction certificate. In the latter case, the time limit for action is up to one year, the scope also includes any other appropriate requirement of State law, consideration of facility changes is not applicable, and there is the ability to condition the certificate with any necessary effluent limitations, other limitations, and monitoring requirements that shall become a condition on any Federal license or permit.

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3 33 U.S.C. 1341(a)(4)
4 33 U.S.C 1341(d)
5 33 U.S.C. 1341(a)(3)
6 33 U.S.C. 1341(a)(3)
7 33 U.S.C. 1341(a)(1)
8 33 U.S.C. 1341(d)
9 Ibid.
1.3 Conclusion
The scope of the §401 certificate, including whether there is consideration of construction and/or operation, should at a minimum be consistent with the §404 permit issued by the Army Corps. The Army Corps permit’s scope of the proposed activity covers the construction and operation of the Donlin Gold Project.

1.4 Decision on Review Issue 1
The Certificate and supporting decision documents are remanded to program staff to clarify the scope of the proposed activity under consideration and make a finding on whether the Certificate will, or already does, consider operation in addition to construction for the proposed activity. This consideration shall be informed by the direction provided for the remaining review issues.

REVIEW ISSUE 2
DEC is required to provide reasonable assurance that the entire “activity” associated with the project will not violate Alaska water quality standards, which includes those violations resulting from runoff or discharges not covered by the Alaska Pollutant Discharge Elimination System (APDES) permits;¹⁰

2.1 Background
Point source discharges, dredge and fill discharges, and nonpoint source discharges can all affect compliance with Alaska water quality standards. Point source discharges in Alaska are regulated under Clean Water Act §402 and by APDES permits issued by DEC or National Pollutant Discharge Elimination System permits by EPA. Dredge and fill discharges are regulated under Clean Water Act §404.

PUD No. 1 of Jefferson Country and City of Tacoma, Petitioners v. Washington Department of Ecology et al. (PUD No. 1 decision) is a Supreme Court decision in 1994 that has bearing on the scope and conditions of a 401 certification. The decision states in relevant part:

“Section 401(d) thus allows the State to impose “other limitations” on the project in general to assure compliance with various provisions of the Clean Water Act and with “any other appropriate requirement of State law.” Although the dissent asserts that this interpretation of §401(d) renders §401(a)(1) superfluous, infra, at 4, we see no such anomaly. Section 401(a)(1) identifies the category of activities subject to certification - namely those with discharges. And §401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.

Our view of the statute is consistent with EPA's regulations implementing §401. The regulations expressly interpret §401 as requiring the State to find that “there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards.” 40 CFR §121.2(a)(3) (1992) (emphasis added). See also EPA, Wetlands and 401 Certification (Apr. 1989) (“In 401(d), the Congress has given the States the authority to place any conditions on a water quality certification that are necessary to assure that the applicant will comply with effluent limitations, water quality standards, . . . and with ‘any other appropriate requirement of State law.’”).

¹⁰ See 40 C.F.R. § 121.2(a)(3); PUD No. 1 of Jefferson Cty. v. Wash. Dep’t of Ecology, 511 U.S. 700, 712 (1994) (finding that to issue a § 401 certification, the state must certify that the project’s “activities—not merely discharges—must comply with state water quality standards”); Islander E. Pipeline Co. v. McCarthy, 525 F.3d 141, 154-64 (2d Cir. 2008), cert. denied, 555 U.S. 1046 (2008) (upholding an agency’s denial of a water quality certification for a natural gas pipeline proposed for Long Island Sound based on anchor strikes and cable sweeps, engineered backfill, and sedimentation and drilling fluid releases)
EPA’s conclusion that activities—not merely discharges—must comply with state water quality standards is a reasonable interpretation of §401, and is entitled to deference.”

2.2 Analysis
The PUD No. 1 decision interprets §401(d) “as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.” [emphasis added]

The decision does not require additional conditions and limitations. It allows the State to do so if found necessary.

In the Response to Comments document program staff state: “Subsequently, the §401 Certificate of Reasonable Assurance, is limited to and certifies that the direct activities authorized in the §404 permit will not violate the water quality standards, or other applicable authorities, of a state. The §401 Certification is not required to address issues outside of the scope of the §404 permit which will be addressed by other agencies and permitting programs.”

For the Donlin Gold Project, nonpoint source discharges, air pollution deposition, and water diversions are project activities that could affect Alaska water quality standards. DEC under the Clean Water Act monitors, determines impairments, develops waterbody recovery plans, and funds recovery activities to address nonpoint source discharges. Direct regulation of nonpoint sources is left to states and is not part of the Clean Water Act’s authority. Air pollution deposition is regulated by DEC under the Clean Air Act. Water diversions are regulated by the Alaska Department of Natural Resources, Division of Mining, Land, and Water (DNR–MLW).

2.3 Conclusion
As identified for Review Issue 1, the scope of the Certificate shall be the construction and operation of the Donlin Gold Project. In light of the PUD No. 1 decision, construction and operation runoff or discharges, not covered by the APDES permits, are within the scope of the project activity to be evaluated in the §401 Certificate. The limitation of review to “the direct activities authorized in the §404 permit” may miss violations of “the water quality standards, or other applicable authorities, of a state” that are within the scope of review but are not otherwise considered “by other agencies and permitting programs.”

Evaluation of activities with the potential to affect compliance with water quality standards necessarily includes an evaluation of other State and federal authorities to determine what supersedes, overlaps, or is left unconsidered among the various regulatory requirements. Gaps in regulatory coverage may require conditions in a §401 certificate to provide a reasonable assurance that Alaska water quality standards will be met.

2.4 Decision on Review Issue 2
The Certificate and supporting decision documents are remanded to program staff to determine whether there is reasonable assurance that runoff or discharges from construction not covered by APDES permits will not violate Alaska water quality standards. The authorities and requirements of different regulatory programs will need to be considered. Program staff are advised to consult, as needed, with counterparts in other regulatory agencies.

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11 Department of Environmental Conservation Response to Comments For Donlin Gold Mine POA-1995-120, August 9, 2018
12 RTC, Section 2.2, page 5
REVIEW ISSUE 3
ADEC does not demonstrate any reasonable assurance that the existing use of the water for “growth and propagation of fish, shellfish, other aquatic life, and wildlife” will be fully protected as the antidegradation policy requires despite the proposed mitigation and monitoring requirements.

Review Issue 3A. The Army Corps FEIS indicates stream diversion and dewatering will decrease groundwater discharges and streamflow in parts of Crooked Creek as well as in nearby tributaries. These changes to water levels can cause adverse impacts to availability of spawning areas and viability of incubating eggs, especially during low flow conditions, thereby degrading the water to the point of habitat loss.

3.1 Background
DNR–MLW and DEC coordinate outside the §401 process in regards to water use permits. DNR–MLW is responsible for managing water rights in the State and has the authority to render a decision on whether establishment of a minimum instream flow is necessary to comply with the Anadromous Fish Act (AS 16.05.871-901) and the Fish Passage Act (AS 16.05.841). DEC has the authority to determine whether Alaska water quality standards (18 AAC 70) are met, including protection of the designated and existing uses for “growth and propagation of fish, shellfish, other aquatic life, and wildlife.”

Donlin Gold has stated they recognize the concerns regarding predicted flow losses in Crooked Creek and they have engaged the appropriate State agencies to work within the State permit process to address this issue.

Subsequent to the issuance of the Certificate and the Army Corps §404 permit, a number (13) of Fish Habitat Permits have been issued for the Donlin Gold Project. FH18-III-0191 includes provision for the development of the Aquatic Resources Monitoring Plan (ARMP). FH18-III-0192 and FH18-III-0193 have been issued for restoration of aquatic habitats in Ruby, Queen, and Snow Gulches which have been disturbed by historic placer mining. The restoration of these aquatic habitats is intended to offset habitat losses in American Creek.

3.2 Analysis
Since stream flow changes will occur slowly over an extended period of time and unknowns exist, the Alaska Department of Fish and Game (ADF&G) has recommended Donlin Gold incorporate the establishment of a field monitoring program into their ADF&G application with provisions for making adaptive changes as needed to ensure the proper protection of aquatic resources in Crooked Creek (See Final EIS Section 5.2, Table 5.2-1, Design Feature #A33, Crooked Creek Substrate Freezing Monitoring and Subsequent Mitigation Plan).

3.3 Conclusion
The suitability of the Crooked Creek Substrate Freezing Monitoring and Subsequent Mitigation Plan as a consideration of reasonable assurance cannot be made without first having a proper consideration of potential impacts to designated and existing uses. If this monitoring program, or any other mitigation measure, is a necessary component to determine there is reasonable assurance to comply with Alaska water

13 FEIS at 3.13-78.
14 Id. at 3.13-89 to 3.13-90.
15 FH18-III-0191
16 FH18-III-0192
17 FH18-III-0193
quality standards and there is no binding commitment to take such mitigation measures, then the Certificate should be appropriately conditioned.

There is a need for program staff to determine whether existing uses are fully protected per the antidegradation policy and implementation regulations in Alaska water quality standards (18 AAC 70.015 and 70.016). Neither the Response to Comments document or the Antidegradation Analysis address this question directly. Revisit in light of recently issued ADF&G permits to evaluate protection for applicable designated and existing uses for “growth and propagation of fish, shellfish, other aquatic life, and wildlife.”

3.4 Decision on Review Issue 3A
Remand to program staff for consideration of whether the decrease in groundwater discharges and streamflow and resultant changes to water levels in parts of Crooked Creek as well as in nearby tributaries are fully protective for existing uses of the water(s). Consider whether necessary mitigation measures are binding or need to become conditions of the Certificate. Upon review staff shall update the Antidegradation Analysis, Response to Comment document, and Certificate, as necessary.

Review Issue 3B. The FEIS indicates barge traffic along the Kuskokwim River is likely to impair existing use by rainbow smelt as spawning habitat. The tugs and barges are expected to cause scouring in the river, which could displace, injure, or kill rainbow smelt eggs. The scouring from increased traffic could affect the reproduction, feeding, or survival—with potential population-level impacts—of anadromous and resident fish and other aquatic life. Barge traffic may also result in propeller-induced injuries or mortalities to fish, especially in confined segments of the Kuskokwim River.

3.5 Background
The Kuskokwim River is a navigable river whose villages have been serviced by barges for more than fifty years, and provides an indicator that barge on the Kuskokwim River could be undertaken in a manner that is fully protective of aquatic resources.

As mentioned in the Response to Comments Section 4.2, Donlin Gold recognizes the concerns that have been expressed regarding rainbow smelt and, accordingly, is committed to developing and implementing a rainbow smelt monitoring program to establish additional baseline data for a better understanding of the species’ occurrence and the character, use, and distribution of spawning habitat along the Kuskokwim River.

As discussed in the FEIS, Donlin Gold has committed to and is in the process of forming the Donlin Advisory and Technical Review Oversight Committee (DATROC), which includes participation by Donlin Gold’s Native corporation partners, Calista Corporation and The Kuskokwim Corporation (TKC). In addition, there will be two advisory subcommittees, the Barge Subcommittee and Subsistence Subcommittee, which would act in parallel to address two separate aspects of mitigation (barging and subsistence).

3.6 Analysis
The Response to Comments document states: “Impacts to water quality during construction of the Transportation Corridor and Pipeline components will also be subject to APDES permits.” There is no evidence that program staff considered the potential operational impacts of barge traffic on the Kuskokwim River which is an element of the Transportation Corridor and essential to the proposed project activity.

18 Memorandum on Antidegradation Analysis – Donlin Project, POA-1995-120, August 8, 2018
19 Id. at 3.13-125.
20 Id. at 3.13-131.
21 Id. at 3.13-131 to 3.13-134.
22 FEIS, 3.13-160
23 RTC, Section 4.2, page 8
3.7 Conclusion
The suitability of the Rainbow Smelt Monitoring Program as a consideration of reasonable assurance cannot be made without first having a proper consideration of potential impacts to designated and existing uses. If this monitoring program, or any other mitigation measure, is a necessary component to determine there is reasonable assurance to comply with Alaska water quality standards and there is no binding commitment to take such mitigation measures, then the Certificate should be appropriately conditioned.

There is a need for program staff to determine whether existing uses are fully protected per the antidegradation policy and implementation regulations in Alaska water quality standards (18 AAC 70.015 and 70.016). Neither the Response to Comments document or the Antidegradation Analysis address this question directly.

3.8 Decision on Review Issue 3B
Remand to program staff for consideration of whether the potential operational impacts of barge traffic on the Kuskokwim River will be fully protective for the designated and existing uses for the growth and propagation of rainbow smelt, anadromous and resident fish and other aquatic life. Consider whether necessary mitigation measures are binding or need to become conditions of the Certificate. Upon review staff shall update the Antidegradation Analysis, Response to Comment document, and Certificate as necessary.

REVIEW ISSUE 4
The Certificate does not demonstrate reasonable assurance that mine construction and operation will not violate numeric state water quality standards for mercury, arsenic, or temperature.

Review Issue 4A. The FEIS indicates that mining operation will result in mercury emissions from numerous sources that could cause increased mercury deposition in nearby watersheds by about 40 percent.\(^{24}\) In combination with naturally elevated levels of mercury in surrounding waters, these emissions associated with the operation of the mine “would result in additional inputs of mercury to surface water from both atmospheric and aqueous sources, which would likely cause an increase in exceedances of the 12 ng/L chronic criterion.”\(^{25}\)

4.1 Background
The pollution effects of atmospheric deposition are expressly considered and regulated under the Clean Air Act. For example, see 42 U.S.C. 7403(e)(4) which requires EPA to evaluate “the effects of air pollution on water quality” and 42 U.S.C. 7651(a)-(o) (Acid Deposition Control) where EPA sets regulations on the air pollution sources of acid rain.

4.2 Analysis
The FEIS considered the issue of mercury via atmospheric deposition. Courts have previously determined that air emissions are best regulated under the Clean Air Act and its accompanying regulations, and not under the Clean Water Act, despite potential impacts to water quality.\(^{26}\)

\(^{24}\) Id. at 3.7-151.

\(^{25}\) Id. at 3.7-151.

\(^{26}\) See Chemical Weapons Working Group, Inc. v. U.S. Dep’t of Army, 111 F.3d 1485 (10th Cir. 1997) (finding that stack emissions were beyond the reach of the Clean Water Act and construction would create a regulatory conflict between the Clean Water Act and Clean Air Action.
4.3 Conclusion
This issue is not within the proper scope of a Clean Water Act §401 certificate. No changes are necessary to the 401 Certificate for this issue.

4.4 Decision on Review Issue 4A
Remand to program staff to update the Response to Comments document.

Review Issue 4B. The FEIS concludes that “arsenic leaching from overburden excavated from the pit area could exceed Alaska Water Quality Standards.” These violations would pose a direct threat to surface waters: “There is also a possibility of contaminated groundwater migration from the South Overburden Stockpile towards Crooked Creek.”

4.5 Background
The FEIS evaluated this issue and concluded that the impacts on Crooked Creek may be minimal or nonexistent as a result of natural attenuation processes on dissolved constituents, such as sorption onto aquifer materials, chemical precipitation of dissolved constituents, dilution, and dispersion.

4.6 Analysis
The only discussion of this topic is in the Response to Comments, Section 4.2 which only considers discharges that are subject to APDES permits. There is no evidence in the Certificate and supporting documents that program staff considered the issue of arsenic from groundwater leaching from the overburden stockpile.

4.7 Conclusion
Program staff need to review and make findings on this issue.

4.8 Decision on Review Issue 4B
Remand to program staff to determine whether this issue is properly within the scope of this Certificate and, if so, review the potential for arsenic leaching from overburden excavated from the pit area to contaminate groundwater and impact Crooked Creek. Remand to program staff to determine whether there is a reasonable assurance that construction and operation of the proposed activity will not violate numeric state water quality standards for arsenic.

Review Issue 4C. The FEIS states that groundwater that would normally flow to Crooked Creek will be diverted as part of the pit dewatering process and that during the summer, this reduction in groundwater input “could cause stream temperatures in reaches near the mine to be close to or above the State of Alaska’s water quality temperature standard…for egg/fry incubation and spawning and…migration and rearing.”

4.9 Background
The FEIS in its evaluation of discharges of treated water to Crooked Creek concluded that based on available data, stream temperature downstream of the Mine Site is anticipated to remain relatively constant during construction (ARCADIS 2013a). Existing surface water temperatures downstream of the Mine Site vary between 0°C and 9.16°C depending on the time of year, and construction activities are not expected to have any substantial impacts on surface water temperatures (ARCADIS 2013a). The FEIS additionally recognized and evaluated water temperature impacts from the Donlin Project as it relates to fish and aquatic resources,

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27 *Id.* at 3.7-98.
28 *Id.* at 3.7-2.
29 FEIS 3.6-42
30 *Id.* at 3.13-112.
31 FEIS, 3.7-145

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noting that “[a]lthough Crooked Creek flows would be reduced due to flow diversions from the upper and lower contact water ponds and Snow Gulch for process water, the net heat energy per unit volume of water is expected to remain relatively unchanged.32

4.10 Analysis
The only discussion of this topic is in the Response to Comments, Section 4.2 which only considers discharges that are subject to APDES permits. There is no evidence in the Certificate and supporting documents that program staff considered the issue of flow changes potentially causing exceedances of Alaska water quality criteria for temperature.

4.11 Conclusion
Program staff need to review and make findings on this issue.

4.12 Decision on Review Issue 4C
Remand to program staff to determine whether there is a reasonable assurance that construction and operation of the proposed activity will not violate numeric state water quality standards for temperature.

32 FEIS, 3.13-99
Tribes/Tribal Organizations with Resolutions Opposing the Donlin Mine

Chefornak Traditional Council – see http://www.kyuk.org/post/chefornak-opposes-donlin-mine


Chuloonawick Native Village – Resolution 18-04 (June 2018)


Native Village of Eek – Resolution 18-07 (July 2018)

Native Village of Kongiganak – see http://www.kyuk.org/post/chefornak-opposes-donlin-mine

Native Village of Kwigillingok – Resolution #07-565-18 (July 2018)

Native Village of Napakiak – Resolution No. 2018-13 (July 2018)

Native Village of Tununak – see http://www.kyuk.org/post/chefornak-opposes-donlin-mine

Negtemiut Tribal Council – Resolution 16-05-23 (Apr. 2016)

Nunapitchuk IRA Council / Native Village of Nunapitchuk – Resolution 18-06-02 (July 2018)

Orutsaramiut Native Council – see http://www.kyuk.org/post/chefornak-opposes-donlin-mine

Tuluksak Native Community – Resolution No. 18-17-01 (July 2018)

RESOLUTION 2018-08-14a
A Resolution Opposing Donlin Gold’s Development, Requesting the Army Corp of Engineers to Cease and Desist the Environmental Impact Statement (EIS) due to Inadequate Consultation of the Final EIS to the affected Tribes in the Yukon Kuskokwim Delta and Calling on the other tribes of the YK Delta to Take Stand

Whereas, the Chevak Traditional Council (Council) a governing body for the Chevak Native Village (Chevak) a sovereign entity and a federally recognized Tribe; and

Whereas, the Council represents the interests of the Kashunamiat for their Health, Safety and Welfare; and

Whereas, the five member governing body of the Council is fully authorized to act for and on behalf of it’s tribal members arising under the Self-Determining Act of 1975, Public Law 93-638 as amended, 25 U.S.C. Et. Seq.; and

Whereas, Chevak has participated in the draft Environmental Impact Statement Informational Process in the neighboring village in April 2015 and became aware of the Donlin’s Proposal for the development of an Open Pit Mine in Southwest Alaska; and

Whereas, Chevak represents the Cup’ik People of the Kashunamiat and the wellbeing of their lives, and recognizes that subsistence hunting and fishing practices is of paramount importance; and

Whereas, the people of the Yukon Kuskokwim are reliant of their hunting and fishing for sustenance and have done so for generations; the wellbeing of the Yukon Kuskokwim People is of an utmost concern to the Kashunamiat; and

Whereas, the Open Pit mines have history of devastating and annihilating ecosystems and have posed extreme health, safety and welfare hardships to the people in and around these mines; and

Whereas, Chevak wishes for their future generations to inherit their inherent rights to live their hunting and fishing subsistence rights and those of the future generation of the Yukon Kuskokwim People; and
Whereas, the future of the Kashunamiut and the Yukon Kuskokwim generations far outweigh the Development of Open Pit Mines in Southwest Alaska and the irreversible risks they pose to life around them; and

Whereas, Chevak and possibly other tribes were not given an adequate time to comment on the Final Environmental Impact Statement (EIS) because there was a period of “quite” before the Final EIS announcement; and

Whereas, the period of “quite” did not represent Chevak’s approval or endorsement until the Final EIS which was 10,668 pages came out with 30 days for comment and this may have posed undermining Chevak’s authority to review and make informed comments on the Final EIS.

Now Therefore Be it Resolved; that Chevak Native Village opposes the Development of the Donlin Gold and all of it’s Operations for reasons of: the irreversible risks on the ecosystems and the environment along the Kuskokwim, and expressly for the Yukon Kuskokwim Peoples’ future generation and finally to preserve the clean waters of the Kuskokwim and the Bering Sea Coast; and

Be it Further Resolved; that Chevak stands with the Tribes that are opposing the Donlin Gold Development; and

Be it Further Resolved; that the Army Corp of Engineers cease and desist the Environmental Impact Statement Process because Chevak and tribes were not afforded adequate time to read and comment on the 10,668 pages of the Final Donlin Gold Environmental Impact Statement 2018; and

Be it Finally Resolved; Chevak is calling on the Tribes in the Yukon Kuskokwim Delta that take Stand of their Position(s) one way or another on the Donlin Gold Development and the Army Corp of Engineers lack of Consultation on the Final Environmental Impact Statement.

Certification
This resolution was adopted by Chevak Native Village’s governing body on  

August 08, 2018, and the vote was: 5 in favor, 0 against, and 0 abstaining.

Tribal Chief

Attest; Secretary
RESOLUTION IN THE OPPOSITION OF THE DONLIN GOLD MINING
RESOLUTION NO. 18-04

WHEREAS, We, the Federally Recognized Tribe of Chuloonawick Native Village of Emmonak, the founding aboriginal tribal people on the Kuskokwim River Drainage, and are fully committed to the protection of our cultural heritage, traditional values, subsistence priorities and economic values, environment, and fisheries and;

WHEREAS, We proclaim that our fisheries, animals, birds, and environment are essential to our cultural, nutritional, economical, and spiritual well-being and way of life; we commit to conserve, restore, and provide for our traditional hunting and fishing grounds based on indigenous knowledge systems and scientific principals in perpetuity and;

WHEREAS, We join the tribes of the Yukon-Kuskokwim River Alliance to assert our authority to continue practicing conservation, restoration, and equitable subsistence practices. To this end, we oppose development of the Donlin Gold Mine and;

WHEREAS, Opposition to the Donlin Gold Mine is based on the inevitable destruction of our traditional and cultural heritage practices of subsistence gathering on those lands affected by Donlin Gold Mine. It poses a threat to our environment and fisheries of the Yukon and Kuskokwim River that provide nutritional value to over 56 villages that store-bought food cannot provide. The discharge of toxics into Crocked Creek and the pit lake’s required water treatment in perpetuity leaving grounds once rich with life left for dead. That loss will be left in the hands of our children, and our children’s children and;

WHEREAS, We cannot support this future destruction, despite promises of environmentally safe protocols and procedures. Until it is proven safe industrial mining and development with guaranteed restoration within 20-30 years of development is possible worldwide our tribe cannot commit to operation of Donlin Gold Mine and;

NOW THEREFORE, BE IT RESOLVED, The Native Village of Chuloonawick, the federally recognized tribe of Emmonak, opposes Donlin Gold Mine, for the risk of losing all that we value through the protection and preservation of our cultural heritage, traditional values, and subsistence way of life. The risk is too great for our tribe to approve Donlin Gold Mine at this time and;

BE IT FURTHER RESOLVED, By the passage of this resolution, we the Native Village of Chuloonawick, the federally recognized tribe of Emmonak, supports the Yukon-Kuskokwim River Alliance and Donlin Gold Working Group in efforts to protect and preserve the Yukon Kuskokwim River Drainage Delta.

CERTIFICATION:

Michael A. Jimmy, President

Date 6/27/2018

Roberta R. Murphy, Secretary

Date 6/27/2018
RESOLUTION 18-12

WHEREAS: The Kasigluk Traditional Council of the Tribal Village of Kasigluk are recognized by the Federal Government under P.L. 93-638 as a governing body of the Native village.

WHEREAS: The Kasigluk Traditional Council are maintaining the welfare of the residents and Community of Kasigluk through public services paid for by the local Governing body; and

WHEREAS: The Kasigluk Traditional Council’s responsibility is to protect the environment and the Traditional ways of life through subsistence use areas, and

WHEREAS: The Kasigluk Tribal Members have long used the rivers and will also be used by our future generations, the rivers and the lands, all along the Kuskokwim, down to the coastal region for subsistence hunting, fishing, and gathering, and

WHEREAS: Not only Kasigluk Tribal Members, but the other tribes all along the Kuskokwim have used the lands and the rivers as means of gathering food. We share the lands and and the rivers as means of subsistence hunting, fishing, and gathering. The Kasigluk Traditional Council maintains that these lands, rivers, and streams will be used by our future generations, and

WHEREAS: The Kasigluk Traditional Council agrees that if Donlin Gold is developed, there will be probability of devastated impact on the environment, water, fish, and wildlife. The spawning areas of our fish and the calving grounds of our wildlife will be at risk. The risks of health for our Tribal Members will be at risk and the tributaries of the Kuskokwim, and

NOW THEREFORE BE IT RESOLVED: The Kasigluk Traditional Council is against Donlin Gold mining.

CERTIFICATION

I certify that the foregoing resolution was adopted at a convened meeting of the Kasigluk Traditional Council on 22nd of August, 2018. Was passed by a vote of 5 in favor and 0 opposed. Dated this 22nd of August, 2018.

Mildred M. Nicholas Secretary
Matthew Active, Member
Native Village of Eek

Resolution 18-07

RESOLUTION IN THE OPPOSITION OF THE DONLIN GOLD MINING

WHEREAS, We, the Federally Recognized Tribe of Native Village of Eek are the founding aboriginal tribal people on the Kuskokwim River Drainage, and are fully committed to the protection of our cultural heritage, traditional values, subsistence priorities and economic values, environment, fisheries and;

WHEREAS, We proclaim that our fisheries, animals, birds, and environment are essential to our cultural, nutritional, economical, and spiritual well-being and way of life; we commit to conserve, restore, and provide for our traditional hunting and fishing grounds based on indigenous knowledge systems and scientific principals in perpetuity and;

WHEREAS, We join the tribes of the Yukon-Kuskokwim River Alliance to assert our authority to continue to practicing conservation, restoration, and equitable subsistence practices. To this end, we oppose development of the Donlin Gold Mine and;

WHEREAS, Opposition to the Donlin Gold Mine is based on the inevitable destruction of our traditional and cultural heritage practices of subsistence gathering on those lands affected by Donlin Gold Mine. It poses a threat to our environment and fisheries of the Yukon and Kuskokwim River that provide nutritional value to over 56 villages that store-bought food cannot provide. The discharge of toxics into Crooked Creek and the pit lake’s required water treatment in perpetuity leaving grounds once rich with life left for dead. That loss will be left in the hands of our children, and our children’s children and;

WHEREAS, We cannot support this future destruction, despite promises of environmentally safe protocols and procedures. Until it is proven safe industrial mining and development with guaranteed restoration within 20 -30 years of development is possible worldwide our tribe cannot commit to operation of Donlin Gold Mine and;

NOW THEREFORE BE IT RESOLVED, The Native Village of Eek, the federally recognized tribe of Eek, opposes Donlin Gold Mine, for the risk of losing all that we value through the protection and preservation of our cultural heritage, traditional values, and subsistence way of life. The risk is far too great for our tribe to approve Donlin Gold Mine at this time and;

BE IT FURTHER RESOLVED, By the passage of this resolution, we the Native Village of Eek, the federally recognized tribe of Eek, supports the Yukon-Kuskokwim River Alliance and Donlin Gold Working Group in efforts to protect and preserve the Yukon Kuskokwim River Drainage Delta.

CERTIFICATION:

This resolution was adopted at a meeting in which a quorum of the Native Village of Eek was pressed. Passed and approved on the 18 day July, 2018 with a vote of 4 YES 0 NO 0 Abstain 1 Absent

ATTEST:

[Signatures and Dates]

P.O. Box 089 · Eek, Alaska 99578-0089
Phone: (907) 536-5128 · Facsimile: (907) 536-5711
RESOLUTION IN THE OPPOSITION OF THE DONLIN GOLD MINING

RESOLUTION NO. 07-565-18

WHEREAS, We, the Federally Recognized Tribe of Native Village of Kwigillingok are the founding aboriginal tribal people on the Kuskokwim River Drainage, and are fully committed to the protection of our cultural heritage, traditional values, subsistence priorities and economic values, environment, and fisheries and;

WHEREAS, We proclaim that our fisheries, animals, birds, and environment are essential to our cultural, nutritional, economical, and spiritual well-being and way of life; we commit to conserve, restore, and provide for our traditional hunting and fishing grounds based on indigenous knowledge systems and scientific principals in perpetuity and;

WHEREAS, We join the tribes of the Yukon-Kuskokwim River Alliance to assert our authority to continue practicing conservation, restoration, and equitable subsistence practices. To this end, we oppose development of the Donlin Gold Mine and;

WHEREAS, Opposition to the Donlin Gold Mine is based on the inevitable destruction of our traditional and cultural heritage practices of subsistence gathering on those lands affected by Donlin Gold Mine. It poses a threat to our environment and fisheries of the Yukon and Kuskokwim River that provide nutritional value to over 56 villages that store-bought food cannot provide. The discharge of toxics into Crooked Creek and the pit lake’s required water treatment in perpetuity leaving grounds once rich with life left for dead. That loss will be left in the hands of our children, and our children’s children and;

WHEREAS, We cannot support this future destruction, despite promises of environmentally safe protocols and procedures. Until it is proven safe industrial mining and development with guaranteed restoration within 20-30 years of development is possible worldwide our tribe cannot commit to operation of Donlin Gold Mine and;

NOW THEREFORE BE IT RESOLVED, The Kwigillingok I.R.A. Council, the federally recognized tribe of Native Village of Kwigillingok, opposes the development of Donlin Gold Mine, for the risk of losing all that we value through the protection and preservation of our cultural heritage, traditional values, and subsistence way of life. The risk is too great for our tribe to approve the development of Donlin Gold Mine and;

BE IT FURTHER RESOLVED, By the passage of this resolution, Kwigillingok I.R.A. Council, the federally recognized tribe of Native Village of Kwigillingok, supports the Yukon-Kuskokwim River Alliance and Donlin Gold Working Group in efforts to protect and preserve the Yukon Kuskokwim River Drainage Delta.
Certification

The Resolution was passed and approved at a duly convened meeting of the Kwagillingok I.R.A. Council at which required voting quorum was present and voted 4 Yes, 0 No, 0 Abstaining. This 10th day of July 2018

Fred K. Phillip
President

Ethel Phillip
Secretary
RESOLUTION IN THE OPPOSITION OF THE DONLIN GOLD MINING

RESOLUTION NO. 2018-13

WHEREAS, We, the Federally Recognized Tribe of Native Village of Napakiak are the founding aboriginal tribal people on the Kuskokwim River Drainage, and are fully committed to the protection of our cultural heritage, traditional values, subsistence priorities and economic values, environment, and fisheries and;

WHEREAS, We proclaim that our fisheries, animals, birds, and environment are essential to our cultural, nutritional, economical, and spiritual well-being and way of life; we commit to conserve, restore, and provide for our traditional hunting and fishing grounds based on indigenous knowledge systems and scientific principals in perpetuity and;

WHEREAS, We join the tribes of the Yukon-Kuskokwim River Alliance to assert our authority to continue practicing conservation, restoration, and equitable subsistence practices. To this end, we oppose development of the Donlin Gold Mine and;

WHEREAS, Opposition to the Donlin Gold Mine is based on the inevitable destruction of our traditional and cultural heritage practices of subsistence gathering on those lands affected by Donlin Gold Mine. It poses a threat to our environment and fisheries of the Yukon and Kuskokwim River that provide nutritional value to over 56 villages that store-bought food cannot provide. The discharge of toxics into Crooked Creek and the pit lake’s required water treatment in perpetuity leaving grounds once rich with life left for dead. That loss will be left in the hands of our children, and our children’s children and;

WHEREAS, We cannot support this future destruction, despite promises of environmentally safe protocols and procedures. Until it is proven safe industrial mining and development with guaranteed restoration within 20-30 years of development is possible worldwide our tribe cannot commit to operation of Donlin Gold Mine and;

NOW THEREFORE BE IT RESOLVED, The Native Village of Napakiak, the federally recognized tribe of Napakiak, opposes Donlin Gold Mine, for the risk of losing all that we value through the protection and preservation of our cultural heritage, traditional values, and subsistence way of life. The risk is too great for our tribe to approve Donlin Gold Mine at this time and;

BE IT FURTHER RESOLVED, by the passage of this resolution, we the Native Village of Napakiak, the federally recognized tribe of Napakiak, supports the Yukon-Kuskokwim River Alliance and Donlin Gold Working Group in efforts to protect and preserve the Yukon Kuskokwim River Drainage Delta.

CERTIFICATION:

[Signature]
Officer/Chief/Chairman/Presidents

7-13-18
Date
RESOLUTION: 16-05-23

A RESOLUTION OF THE Yukon-Kuskokwim Health Corporation Full Board of Directors in Opposition to the Donlin Gold Mine Project.

WHEREAS: Negtemiut Tribal Council is the Tribal Government for Nightmute, AK.

WHEREAS: Nightmute Tribal Council supports the “YKHC Full Board Resolution in opposition to the Donlin Gold Mine Project.

Now Therefore it be resolved that the Negtemiut Tribal Council hereby opposes the development and operation for the Donlin Gold Creek Gold Mine due to the extreme hazards and excessive risks it would pose to the health and welfare of the people of the Yukon Kuskokwim Delta Region.

Adopted at a Duly constituted meeting and passed, which a quorum was present on April 25, 2016 5 In Favor 0 Opposed 0 Abstaining 2 Absent

Simeon Tulik
Tribal President

Bertha George
Tribal Secretary
Native Village of Nunapitchuk
Nunapitchuk IRA Council
P.O. Box 130
Nunapitchuk, AK 99641
Ph. (907)527-5705. Fax. (907)527-5711

RESOLUTION IN THE OPPOSITION OF THE DONLIN GOLD MINING
RESOLUTION NO. 18-06-02

WHEREAS, We, the Federally Recognized Tribe of Native Village of Nunapitchuk are the founding aboriginal tribal people on the Kuskokwim River Drainage, and are fully committed to the protection of our cultural heritage, traditional values, subsistence priorities and economic values, environment, and fisheries and;

WHEREAS, We proclaim that our fisheries, animals, birds, and environment are essential to our cultural, nutritional, economical, and spiritual well-being and way of life; we commit to conserve, restore, and provide for our traditional hunting and fishing grounds based on indigenous knowledge systems and scientific principals in perpetuity and;

WHEREAS, We join the tribes of the Yukon-Kuskokwim River Alliance to assert our authority to continue practicing conservation, restoration, and equitable subsistence practices. To this end, we oppose development of the Donlin Gold Mine and;

WHEREAS, Opposition to the Donlin Gold Mine is based on the inevitable destruction of our traditional and cultural heritage practices of subsistence gathering on those lands affected by Donlin Gold Mine. It poses a threat to our environment and fisheries of the Yukon and Kuskokwim River that provide nutritional value to over 56 villages that store-bought food cannot provide. The discharge of toxins into Crooked Creek and the pit lake’s required water treatment in perpetuity leaving grounds once rich with life left for dead. That loss will be left in the hands of our children, and our children’s children and;

WHEREAS, We cannot support this future destruction, despite promises of environmentally safe protocols and procedures. Until it is proven safe industrial mining and development with guaranteed restoration within 20-30 years of development is possible worldwide our tribe cannot commit to operation of Donlin Gold Mine and;

NOW THEREFORE BE IT RESOLVED, The Native Village of Nunapitchuk, the federally recognized tribe of Nunapitchuk, opposes Donlin Gold Mine, for the risk of losing all that we value through the protection and preservation of our cultural heritage, traditional values, and subsistence way of life. The risk is too great for our tribe to approve Donlin Gold Mine at this time and;

BE IT FURTHER RESOLVED, By the passage of this resolution, we the Native Village of Nunapitchuk, the federally recognized tribe of Nunapitchuk, supports the Yukon-Kuskokwim River Alliance and Donlin Gold Working Group in efforts to protect and preserve the Yukon Kuskokwim River Drainage Delta.

CERTIFICATION:
This issue, coming before a vote of the Nunapitchuk Tribal Council on this \( \text{10th} \) day of \( \text{July} \), 20\( \text{1} \)\( ^{\text{st}} \) was \( \text{passed} \) \( \checkmark \) failed by a vote of \( \text{5} \) in favor and \( \text{0} \) opposed.

Wassilie Pleasant/President

Bernice Sallison/Secretary
The Tuluksak Village Council passed Resolution No. 18-17-01: A RESOLUTION OF THE TULUKSAK NATIVE COMMUNITY, TULUKSAK VILLAGE COUNCIL AGAINST THE DONLIN GOLD MINE PROJECT, INCLUDING LAYOUT OF THE PROPOSED MINE SITE AND ITS PIPELINE GAS PROJECT.

WHEREAS, the Tuluksak Native Community is a Federally Recognized Indian Tribe organized under the Indian Reorganization Act, Amended Alaska Reorganization Act, with all powers and responsibilities inherent in a tribal sovereign government to protect and preserve Yuuyaraq Way of Life, and

WHEREAS, the Tuluksak Village Council is the five (5) duly-elected governing body of the Tuluksak Native Community, and

WHEREAS, it is very important to the Indigenous Tribes Yuuyaraq integrity, well-being, health, welfare, and food security to maintain its Way of Life, and

WHEREAS, the “Alaska Native Claims Settlement Act” (ANCSA), Public Law 92-203 and its amendments provided “No, ending of Federal, state, and Alaska Natives and Native Groups Special, Distinctive, Exceptional, Extraordinary, or Unique Relationship”, and

WHEREAS, the Federal Government and its Agencies have Trust Fiduciary Duties to protect, preserve and promote tribal self-government, self-sufficiency, and Yuuyaraq Way of Life, and

WHEREAS, Since Time Beyond Remembering Tribal Ciuliat’s (Ancestors) taught instruction in knowledge about Yuuyaraq natural laws of the Kuskokwim water and its tributary rivers, streams are connected to our Way of Life, and

WHEREAS, the Clean Water Act Section 404(c) authorizes US EPA to prohibit, restrict, or deny, reject and refuse the discharge of dredged or fill material at defined sites in Waters of the United States (also Wetlands) whenever it determines, after notice and opportunity for public hearing, that use of such sites for disposal would have an unacceptable adverse impact on one or more of the various resources including fisheries, wildlife, water supplies or surrounding areas.

NOW THEREFORE BE IT RESOLVED, that Tuluksak Native Community, Tuluksak Village Council hereby is against the development and operation of the Donlin Gold Project Mine due to the extreme ruin, destruction and danger it should pose to the Yuuyaraq health and welfare in the Indigenous Tribes and the people of the Yukon-Kuskokwim Delta Region, and

BE IT THEREFORE RESOLVED, that the Federal Government, US EPA, and State DEC deny, reject and refuse Donlin Gold Project Mine for the state water quality certification permit, also other one hundred plus (100 +) permits that it is requesting.

CERTIFICATION
Adopted and Approved at a duly convened meeting of the Tuluksak Native Community, Tuluksak Village Council at which a quorum was present on July 5, 2018 by a vote of 5 in favor, 0 opposed, and 0 abstaining, and 0 absent.
Signed and attested by: Middy Peter, Chief Tuluksak Village Council; and Kristy Napoka, Secretary, Tuluksak Village Council.
Resolution No. 16-04-04

A Resolution of the Yukon-Kuskokwim Health Corporation
Full Board of Directors in Opposition to the Donlin Gold Mine Project

WHEREAS: The Yukon-Kuskokwim Health Corporation is a tribal organization administering self-governance programs, services, functions and activities under the Indian Self-Determination and Education Assistance Act; and

WHEREAS: The Mission of the Yukon-Kuskokwim Health Corporation is “Working Together to Achieve Excellent Health”; and

WHEREAS: The Yukon-Kuskokwim Health Corporation provides health services to people in an area of Southwest Alaska comparable in size to the State of Oregon; and

WHEREAS: Many people living within the service area of the Yukon-Kuskokwim Health Corporation experience poverty and unemployment rates among the highest in the United States, according to the Labor Department’s Alaska’s Economic Trends October 2013 report; and

WHEREAS: The proposed Donlin Gold mine is expected to employ 3,000 persons during construction and up to 1,400 persons during operation with a large multimillion dollar annual payroll; and

WHEREAS: The Board of Directors recognize that although the mine will add jobs to the region, many locally hired persons that worked for the mine have relocated from their home village to more metropolitan cities with their earnings and Donlin provides transportation from residence to work for each job rotation; and

WHEREAS: The earnings of many present and former employees of the mine have gone to larger cities; and

WHEREAS: The relocation of the families of the mine workers has caused a drain of human resources in small villages in the region and that drain is expected to increase as the workforce of the mine increases; and

WHEREAS: The majority of people living within the service area of the Yukon-Kuskokwim Health Corporation depend upon the Kuskokwim River for their food supply and in many villages, their water supply as well; and

WHEREAS: The proposed Donlin Gold mine is located approximately 150 miles northeast of Bethel, Alaska, about 10 miles from the Kuskokwim River, a large salmon producing river; and
WHEREAS: The reported method of gold retrieval for this mine will involve blasting and crushing rock, then mixing the pulverized rock with cyanide and other chemicals; and

WHEREAS: The rock in the mine area contains mercury which will be released into the air through the mining process and the mercury will fall onto the streams and land and will contaminate fish, animals and ultimately people; and

WHEREAS: Studies are being done, but none can predict the effects of mercury, cyanide and other disruptions in the Yukon-Kuskokwim ecosystem in 100 years, when our grandchildren are living here; and

WHEREAS: The proposed project is expected to have the following components:
   a. A 315 mile, 14 inch natural gas pipeline coming across the Alaska Range;
   b. A new Barge Terminal facility in Bethel;
   c. A new 5-acre port on the Kuskokwim River near Angyaruaq or Jungjuk Creek;
   d. A new 30-mile road from the upriver port to the mine site;
   e. A 5,000 foot airstrip
   f. A 40,000,000 gallon diesel fuel tank farm;
   g. A Tailings pond for waste chemicals;
   h. A 2-mile long and 1-mile wide open pit; and
   i. A use of 10,000 acres of land;
   j. Increased Barge traffic on the River hauling fuel, chemicals (including cyanide), supplies, and equipment on the Kuskokwim River daily during the ice-free months.

WHEREAS: There have been examples of environmental disasters resulting from similar type large industrial sized mines that experienced unexpected failures of their safety measures; and

WHEREAS: A failure of the safety measures planned for the Donlin Gold Mine could cause catastrophic damage to the ecosystem of the Yukon-Kuskokwim Delta and would obliterate the subsistence way of life for the people served by the Yukon-Kuskokwim Health Corporation; and

WHEREAS: Such failure would devastate the fisheries on the Kuskokwim River and its tributaries, thus negatively impacting the health of the people of the region.

NOW THEREFORE BE IT RESOLVED that Yukon-Kuskokwim Health Corporation Full Board of Directors hereby opposes the development and operation of the Donlin Creek Gold Mine due to the extreme hazards and excessive risks it would pose to the health and welfare of the people of the Yukon-Kuskokwim Delta Region.
CERTIFICATION

Adopted at a duly convened meeting of the Board of Directors of the Yukon-Kuskokwim Health Corporation at which a quorum was present on April 22, 2016 by a vote of 19 in favor, 0 opposed, 0 abstaining, and 0 absent.

Attested:

Esai Twitchell, Chairman
YKHC Board of Directors

Patrick Tall, Secretary
YKHC Board of Directors
Chefornak Opposes Donlin Mine

By KRISTI SHALLENBERGER, ALASKA'S ENERGY DESK • AUG 9, 2018

Chefornak is the 10th tribe to pass an anti-Donlin resolution. Its council passed the measure opposing the proposed Donlin gold mine on Tuesday.

The Council's Executive Director, Bernadette Lewis, says that the council members brought up concerns about the mine’s impact to subsistence and health. Chefornak sits on the coast next to the Bering Sea, more than 200 miles west of the proposed site.

The mine could be one of the biggest gold mines in the world if completed, and many of its opponents worry that a mine accident could release mercury and cyanide into the Kuskokwim River, where a lot of food for the Yukon-Kuskokwim Delta comes from.

Donlin spokesman Kurt Parkan wrote in an email that “Donlin Gold and Calista's commitment, and the commitment of the government agencies issuing us permits, is that it be done safely.”

Nine other tribes have opposed the mine in addition to Chefornak. They are the Bethel ONC tribe, Eek, Tuluksak, Tununak, Nunapitchuk, Chuloonawick, Kwigillingok, Kongiganak, and Napakiak.

It’s unclear whether or not these resolutions will have an impact on an upcoming decision from the Army Corps of Engineers. The federal agency is scheduled to roll out its record of decision on the project next week, which will determine how the Donlin project proceeds.