ATTORNEYS
Heather R. Kendall-Miller
Natalie A. Landreth
Erin C. Dougherty

Native American Rights Fund

801 B Street, Suite 401, Anchorage, AK 99501 (907) 276-0680 FAX (907) 276-2466

EXECUTIVE DIRECTOR
John E. Echohawk

MAIN OFFICE
1506 Broadway
Boulder, CO 80302-6926
(303) 447-8760
FAX (303) 443-7776

WASHINGTON OFFICE
1712 N Street N.W.
Washington, D.C. 20036-2976
(202) 785-4166
FAX (202) 822-0068

WEBSITE ADDRESS
www.narf.org

October 26, 2012

Kim Elton, Senior Advisor for Alaska Affairs
Office of the Secretary, Department of the Interior
1849 C Street, NW, Room 6323
Washington, D.C. 20249

Re: Ch'u'itna Coal Development Project

Dear Kim,

Thank you for making time to meet with Vice-President Randy Standifer, Rob Rosenfeld, and myself on October 3, 2012 to discuss the Native Village of Tyonek's (NVT) concerns regarding the Ch'u'itna Coal Development Project and the devastating impacts the Project will have on subsistence resources.

Background

The NVT IRA Council is a federally-recognized tribe of Dena'ina Athabaskans that refer to themselves as Tubughna or "Beach People." The Tebughna have thrived off the marine environment, rivers, and lands while residing along the beaches of the Cook Inlet for thousands of years. The Tyonek village is situated on the upper Cook Inlet, across from Anchorage in south-central Alaska. Tyonek and its immediate surrounding areas contain a rich and diverse ecosystem including a wide variety of plant life and aquatic and land animals, including moose, migratory shorebirds, beluga whale, and Chinook salmon in the Chuit River watershed and in the Cook Inlet. The Tubughna depend upon these habitats and natural resources for subsistence survival, as roughly one-half of the residents acquire the majority of the meat, fish and birds they consume annually from the local land or water.

PacRim, a Delaware corporation, is seeking state and federal permits to operate the Chuitna strip mine with the potential to remove 700 million metric tons of coal within a 5,050 acre footprint over a 25 year period. PacRim Coal has acquired lease rights to land owned by the Mental Health Trust and the State of Alaska near the Chuit River and Tyonek, and has requested a permit from the Army Corps of Engineers to mine coal from the area. The project, if implemented, would require dredging twenty-eight miles of riverbed at a depth of approximately 350 feet. This would also require support systems for the operation, such as a mining road, a conveyor belt, and a port facility in order to transport the extracted coal.

In early 2006, the EPA received a new source NPDES permit application for discharges of treated wastewater associated with the Chuitna Coal Project. As a new source NPDES permit, the EPA was required to comply with the procedural provisions of the National Environmental Policy Act (NEPA) and all applicable environmental laws and regulations prior to taking final action on the permit application. Since the proposed project will result in significant adverse environmental impacts, the EPA determined that a Supplemental Environmental Impact Statement (SEIS) would be required (an EIS was originally prepared for the project in the late 1980's, however, the project did not proceed to construction and development). In late 2006 the EPA assumed lead federal agency status for development of the SEIS and ensuring compliance with all applicable environmental laws and regulations, including Section 106 of the National Historic Preservation Act. Due to the permitting responsibilities associated with the project or special expertise in resource areas, the U.S. Army Corps of Engineers (ACOE), the State of Alaska Department of Natural Resources, the U.S. Fish and Wildlife Service, and the Native Village of Tyonek (NVT) agreed to participate in the development of the SEIS as cooperating agencies.

Project Description

Project descriptions are outlined in several documents including the Environmental Protections Agency's Scoping Document in 2006 and the Fresh Water Aquatic Biology Study Program in 2007. To summarize, "the applicant predicts a minimum 25 year mine life based on the proven reserves in one of three mining areas with the 20,571 acre coal lease area." The first of three mine areas discussed here encompasses just over 5,000 acres within the Chuitna River Drainage containing tributaries numbered 2002, 2003, and 2004.

The Chuitna River and its tributaries 2002 through 2004 historically support populations of all five species of Pacific salmon, though coho *(Oncorhynchus kitsutch),* Chinook *(Oncorhynchus tshawytscha*) and pink *(Oncorhynchus gorbuscha)* salmon were the most abundant species in recent surveys.

A substantial portion (up to 40%) of tributary 2003 would be directly removed by mining. This portion comprises headwaters for the remaining (60%) downstream reach, and discharge of the entire tributary contributes to Chutina River base flows. Hydrologic models indicate tributary 2002 may experience decreased instream flows as a result of ground and surface water removal or climate variability as mining operations move east. Hydrolic models also predict that tributary 2004 to the west (higher elevation) will experience no effect from the mining operation and associated ground and surface water removals would reach within 1000 feet of either tributary 2002 or 2004.

As a mitigating effort to maintain instream flows to the un-mined portion of tributary 2003, and to compensate for possible reductions in tributary 2002 and the associated mainstream Chuitna River, a water management plan has been devised by the applicant to store pumped groundwater Reserves from pre-mined areas back into tributaries through a series of infiltration and/or sedimentation ponds.

An aquatic and terrestrial restoration plan has also been devised to return the mined portion of tributary 2003 to the original topography. To summarize, all topsoils and overburden would be excavated. Final excavation would duplicate as closely as possible all pre-mine stream channels, meander, and pool/riffle sequences. In the final phases, stream banks and bottoms, and wetlands, riparian and hyporeic ecological processes would be restored using current restoration techniques and examples referenced by the applicant.

The Chuitna coal mine would be the first project in Alaskan history to mine completely through 13.8 miles of wild salmon stream. Not surprisingly, a door-to-door poll of the 200 residents of the Native Village of Tyonek revealed that 98% of Villagers oppose the Chuitna coal mine.

NVT Challenges in Being a Co-operating Agency

NVT has adopted a formal resolution stating its opposition to the mine but has also chosen to participate as a Cooperating Agency in the development of the SEIS to be able to access information regarding methodologies and alternatives. This has been extremely difficult as the Corp is reluctant to share information with the Tribe as it has not hidden the fact that it is opposed to the mine development.

After retaining the Native American Rights Fund (NARF) to assist NVT, a request was made to the Corp to have access to the various reports done to date by PacRim's contractor, Stephen Braun and Associates (SB&A), on cultural resources in the project area. The Corp initially refused to release these reports to NARF and it was only after a series of demand letters were sent to the former Colonel that the SB&A Reports were released.

The SB&A Reports indicate that field surveys and testing between 2006 and 2009 within the Ladd Landing Development area where the port facility will be built identified Dena'ina cultural features, including 56 house pits, cache pits, fire-cracked rock, wood and charcoal, and hundreds of surface depressions. The cultural features in the Ladd Landing Development area represent the largest and most significant Dena'ina expanse of occupation found to date. In 2007 the archaeological features at the Ladd Landing Development area were found eligible for listing on the National Register of Historic Places as an archaeological district. The construction of the Ladd Landing Development facilities – as originally proposed – would have altered and/or destroyed numerous cultural features within the Ch'u'itnu Archaeological District. Therefore, on March 10, 2008, the EPA made a determination of historic properties affected, 36 CFR 800.4(d)(2), for the Ladd Landing Development area – including the Coal Export Terminal and Logistics Center – because the undertaking would directly or indirectly alter one or more of the characteristics of the district in a manner that would diminish the integrity of its design, setting, feeling, workmanship, and/or association. 36 CFR 800.5(a)(1). The Alaska State Historic Preservation Officer (SHPO) concurred with this determination.

Review of the SB&A Reports by experts retained by NVT indicated that the work done to date has only evaluated the District's significance based on events primarily associated with Euro-American history. SRB&A did note, however, that the District could be associated with prehistoric patterns of Native subsistence but apparently felt the evidence at hand did not support

a determination of eligibility.

NVT has formally requested that more field research be done on subsistence practices and trends over time and that this information is necessary for establishing the final importance of the property. NVT has also insisted that more work be done to determine direct and indirect impacts on grave sites in the area.

In making this formal request, NVT first consulted with staff at the National Park Service who agreed to review and evaluate the SRB&A Reports. This request was based on the fact that the Department of the Interior has responsibility for most of our nationally owned public lands and natural and cultural resources. This includes preserving the environmental and cultural values of our national parks and historical places. After reviewing the Reports and work done to date by SRB&A, NPS agreed that there were significant data gaps that needed to be filled before the Corp could agree that its obligations under Section 106 had been met.

NVT and its experts, including the cultural resource personnel from the NPS, met with the Corp twice to make a formal request that additional work be conducted. We were told that additional concerns regarding subsistence and gravesites could be addressed in a Programmatic Agreement (PA) that would be forthcoming. This is an unsatisfactory answer because NVT is not a required signatory to the PA and would have little influence in assuring adequate mitigation to cultural resources that have yet to be identified.

During our visit to Washington, D.C., we met with Mr. John Fowler, Executive Director, of the Advisory Council on Historic Preservation and his staff. After a briefing on the 106 issues associated with the proposed mine and the Corps' attempt to push through a PA before important work is completed, Mr. Fowler and all present agreed that ACHP would write a letter to the Corps requiring the following:

- The Area of Potential Effect be determined before a mitigation discussion ensues
- The actual boundary of the archeological district be determined
- Indirect and Direct impacts be determined
- Criteria A be fully assessed
- The 8.9 mile proposed conveyor route be assessed for the presence of cultural sites
- Gravesites be identified
- Ethnographic gaps be determined
- All information gaps are addressed before a Programmatic Agreement is drafted and presented.
- And that PAC RIM Coal pay for all of the above work
- That meaningful consultation with NVT occur

NVT is currently awaiting the ACHP letter and has been told that it will be forthcoming in the next week.

More recently, NVT received a letter from the Corps' Regulatory Division that threatened to remove NVT from acting as a Cooperating Agency on the basis that it violated the terms of the MOU by hiring experts to advice and give comments on the Draft Functional Wetlands

Assessment Methodology. NVT has disputed this assertion and has requested that the issue be elevated to the Corps District Commander for resolution as provided under Section V.1. of the MOU. I have forwarded to you all correspondence on this topic to date and will continue to update you as we get clarification from the Corp on how the dispute will be resolved.

Thank you for your time and attention to this matter. NVT greatly appreciates your involvement and will continue to give you updates on developments.

Very warmly yours,

Heather Kendall Miller