A JOINT LETTER

From Six Federally-recognized Tribes
in the Kvichak and Nushagak River Drainages of Southwest Alaska

March 28, 2013

Bob Perciasepe, Acting Administrator
U.S. Environmental Protection Agency, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dennis J. McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Tribes urge EPA to complete watershed assessment and commence 404(c) process promptly.

Dear Mr. Perciasepe and Mr. McLerran:

In May 2010, our six federally recognized tribes invoked their government-to-government relationship with the United States to request that EPA commence a public process under Section 404(c) of the Clean Water Act to prohibit, or restrict, discharges of dredged or fill material into waters of the United States in the Kvichak and Nushagak drainages of Southwest Alaska, wherever those discharges would result from potential mining of metallic sulfide deposits in those drainages and would cause unacceptable adverse effects on fish, wildlife, fisheries, subsistence and public uses that are subject to protection under Section 404(c).

In February 2011, EPA responded. It commenced a scientific Watershed Assessment of the potential impacts, so as to inform its future decisions with respect to use of Section 404(c).

Now, we urge that EPA release the next draft Assessment promptly, so that the public comment period can be closed before the end of May, when subsistence and commercial fishing activities will be in full swing. Then, we request that EPA complete the final Assessment immediately; because the Assessment can serve as a basis for finding that unacceptable adverse effects could occur to resources and uses protected by § 404(c) and initiating a § 404(c) process, we urge EPA to issue a notice of a proposed determination to Army Corps of Engineers, as required by § 404 regulations. In fact, the Assessment process has amply demonstrated that such effects will occur under the "no failure" and "failure" scenarios of the Assessment.

For three reasons, EPA's prospective notice to the Corps should propose a simple, straightforward, express prohibition of § 404 discharges associated with potential mining of metallic sulfide deposits in these drainages. First, EPA's assessment process has demonstrated that unacceptable adverse effects will occur under the "no-failure scenario." It assumes that a mine will work perfectly forever during construction, operation and post-closure. Under this scenario, the unacceptable adverse effects, which include loss of many miles of salmon habitat,

EPA-2963-0000469

cannot be avoided by creating some "higher standard." Therefore, a simple, straightforward, express prohibition is consistent with the ample evidence of unacceptable adverse effects under the "no-failure scenario."

Second, when issues are complicated, government needs to be clear. Doing so best serves the public. A simple, straightforward, express prohibition is clear. Equally, it will be clear if a future federal administration seeks to tamper with, avoid, modify or revoke a simple, straightforward, express prohibition. However, the same cannot be said for technically complicated "higher standards." So again, a simple, straightforward, express prohibition of discharges associated with metallic sulfide mining in these drainages is the best approach.

Third, a simple, straightforward, express prohibition best serves the two purposes for advance determinations stated by EPA when it adopted § 404(c) regulations in 1979. Those purposes are: (1) to promote comprehensive, rather than piecemeal, conservation of wetlands, waters and the interests associated with them, such as fisheries, and (2) to facilitate planning by development interests and reduce their risks that they will expend funds pursuing unacceptable projects. Both purposes are served here by a simple, straightforward, express prohibition of discharges associated with metallic sulfide mining in the Kvichak and Nushagak drainages.

Finally, thank you for the efforts of EPA staff and contractors and their many visits to our communities and villages. They seem to understand that our livelihoods and culture are at stake for generations to come. Moving forward with § 404(c) will be government at its best.

Sincerely yours,

Luki Akelkok, President
Ekwok Village Council
P.O. Box 70
Ekwok, Alaska 99580

Thomas Tilden, President
Curyung Tribal Council
P.O. Box 216, 531 D Street
Dillingham, Alaska 99576

William Evanoff, Acting President
Nondalton Tribal Council
P.O. Box 49
Nondalton, Alaska 99640

Ida Apokedak, President
Levelock Village Council
P.O. Box 70
Levelock, Alaska 99625

Dennis Andrew, President
New Stuyahok Traditional Council
P.O. Box 49
New Stuyahok, Alaska 99636

Herman Nelson, Sr., President
New Koliganek Village Council
P.O. Box 5057
Koliganik, Alaska 99576

cc: Nancy Sutley, Chair, Presidents' Council on Environmental Quality

EPA-2963-0000470