

# United States Senate

WASHINGTON, DC 20510

July 29, 2009

Colonel Reinhard Koenig  
Commander, Alaska District  
U.S. Army Corps of Engineers  
Post Office Box 6898  
Elmendorf AFB, AK 99506

Dear Colonel Koenig:

After nearly two decades of agency review and legal challenges and \$350 million invested in construction and development costs, last month's Supreme Court decision in *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council* upheld the Corps' authority to grant Kensington Mine's Section 404 permit. In the wake of the Supreme Court's ruling and without objection, the Ninth Circuit Court of Appeals lifted the injunction it had put in place to prohibit construction of a mine tailings facility at Lower Slate Lake – the last component needed for the mine to be operational. All that remains now is for the Corps to modify the construction time period and correct minor discrepancies to the previously authorized permit and plans. We ask that you do so without further delay.

This would be a foregone conclusion except that now, after all parties thought the mine would begin operation, Region X of the Environmental Protection Agency (EPA) has sent a request for more time to evaluate yet another option for the disposal of mine tailings. The environmentally preferred alternative for disposal that was considered by the Supreme Court was selected in a 2004 Supplemental Environmental Impact Statement. It was defended in briefs signed by two different Solicitors General AND the Acting General Counsel of EPA in the Supreme Court. At mine closure, the selected alternative will result in an improvement of habitat for fish and other aquatic life and a long-term wetland loss of less than half an acre. Conversely, the proposal now advocated by the EPA would result in a long-term wetland loss of 102 acres and an eight-story high tailings pile.

While it is clear that this is an important economic project that will almost immediately create over 300 badly needed jobs in Southeast Alaska, many to be filled by Alaska Natives, this is not a case of asking the Corps to choose between the environment and jobs. Instead, we are asking the Corps to proceed with the environmentally preferred alternative, which happily is also the best economic course. This is the alternative which has been adjudicated by the Supreme Court and it is the alternative which will finally allow the mine to proceed. What we are asking is for the Corps to reject more delay and reject a path that would expose the mine to a fresh round of legal challenges.

We have signed this letter because of the far-reaching implications that decisions related to Kensington Mine could have – not just in Alaska, but throughout the United States. At the heart of the debate is whether a project that has complied with all environmental laws, that has gone out of its way to institute training and local hire of Native Americans, and has withstood years of legal challenge and won in the Supreme Court, can now be killed through additional bureaucratic delays. Accordingly we ask the Corps to modify the construction time period under the existing valid permit and ensure that Kensington Mine is allowed to begin operations as soon as possible.

Sincerely,

Joe Neuharth

Paul By

Jan O'Neil

Sam Franklin

Mike Cropp

John LaFol

John Bannister

R. Brunner

Janet K. Skaka

Michael B. King

John

Murray