

**Request for Review Submitted to Canada's National Contact Point
Pursuant to the OECD Guidelines for Multinational Enterprises**

Specific Instance Regarding:

**Seabridge Gold Inc.'s Business Conduct as to the Kerr-Sulphurets-Mitchell Mine in British
Columbia within the Unuk River Watershed**

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Submitted to:

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Pursuant to the Organization for Economic Cooperation and Development's *Guidelines for Multinational Enterprises* ("OECD Guidelines"), the Southeast Alaska Conservation Council ("SEACC") submits this request for review to Canada's National Contact Point ("NCP") regarding the conduct of Seabridge Gold Inc. ("Seabridge Gold") related to the development of its Kerr-Sulphurets-Mitchell Mine Project (KSM) in the coastal mountains of northwestern British Columbia. The planned Mine Site is in a number of BC watersheds, including Sulphurets Creek, a main tributary of the Unuk River, which flows into Alaska. The mine's proposed tailings dump is in upper tributaries of the Bell-Irving River, which flows into the Nass River and empties into the Pacific Ocean on the British Columbia coast.¹

The KSM deposit is sulfide-rich, with high potential for acid rock drainage and metal leaching that would degrade both ground and surface waters and harm downstream fisheries. The KSM Mine also poses serious threats to wildlife and communities through the loss of pristine habitat from infrastructure development.

Seabridge Gold is headquartered in Toronto and was incorporated in British Columbia in 1979.² The company operates and owns assets in Canada (British Columbia and Northwest Territories) and the United States (Oregon and Nevada).

Seabridge Gold owns 100% of its primary assets: the KSM project and the Courageous Lake project, both of which are located in Canada. Seabridge Gold also holds non-core assets in Oregon (Grassy Mountain project and Quartz Mountain project), Nevada (collectively "Nevada projects"), and British Columbia (Red Mountain project).³ Rudi P. Fronk is the Chairman and Chief Executive Officer of Seabridge Gold, and Jay S. Layman is the Director, President, and Chief Operating Officer.

Seabridge Gold's office is located at: 106 Front Street East, Suite 400, Toronto, Ontario M5A 1E1, Canada.

Their listed contact information is: (416) 367-9292, info@seabridgegold.net.

The KSM project's community office is located at: 1235 Main Street, P.O. Box 2536, Smithers, BC V0J 2N0, Canada.

Their listed contact information is: (250) 846-4704, ksm_community@seabridgegold.net.

Seabridge Gold actions have excluded SEACC and its membership from the decision-making and information-sharing processes for the KSM Mine. SEACC asserts that Seabridge

¹ Seabridge Gold Inc., Application for an Environmental Assessment Certificate/Environmental Impact Statement, Vol. 2, Ch 4 (Project Description 1 of 10) at 4-2 (July 2013)(hereinafter "KSM Environmental Analysis"), available at http://a100.gov.bc.ca/appsdata/epic/html/depoly/epic_project_doc_list_322_r_app.html.

² *Id.*, Ch 1 Proponent Description) §1.1 at 1-1).

³ See Seabridge Gold Inc., Turning Cash into Gold: Annual Report 2015 42-45 (2015), available at http://seabridgegold.net/pdf/2015_Ann_Rep.pdf.

Gold has not exercised due diligence to prevent, mitigate, and account for actual and potential environmental harms from the KSM. Seabridge Gold's conduct regarding the KSM Mine has and will continue to harm SEACC and its membership.

SEACC is an Alaskan non-profit corporation and a registered 501(c)(3) organization headquartered in Juneau, Alaska. SEACC is dedicated to the conservation of natural resources, including watersheds and fisheries, in Southeast Alaska and elsewhere while providing for balanced, sustainable use of the region's resources. SEACC's purpose is to ensure the retention and protection of a substantial portion of the region in a minimally changed condition, while encouraging sustainable communities, human enjoyment, and use of these remarkable resources.

SEACC is a member-based organization with nearly 750 dues-paying members, including Alaskans who participate in the commercial, recreational, and subsistence (customary and traditional) uses of fish and wildlife. SEACC members regularly use the waters of the Unuk River watershed and its other resources to satisfy many interests, including the harvest of fish for subsistence, recreational, and commercial purposes, and the aesthetic enjoyment of the watershed and the region.

Safeguarding the clean water and healthy fisheries our members use and depend on is essential to achieving SEACC's goal of protecting Southeast Alaska's natural resources over the long-term. The impacts threatened by upstream mines to the health and vitality of these transboundary river resources and the people who depend on them concerns SEACC. Mining operations of sulfide-rich deposits has high potential to produce acid mine drainage and toxic heavy metals, and the potential for catastrophic dam failures, such as occurred at the Mount Polley mine. These outcomes threaten Alaska's valuable salmon fisheries, tourism industry, and the customary and traditional practices of Alaska Native tribes, all of which SEACC's members rely upon.

SEACC, representing its membership, became actively involved in raising these concerns where possible to Seabridge Gold. SEACC seeks genuine, timely, and meaningful disclosure and engagement concerning foreseeable environmental harms and violations of human rights. SEACC is an appropriate stakeholder to bring this request because of our interest in the health of the Unuk River watershed in which the KSM Mine Site is located. SEACC alleges that Seabridge Gold's actions constitute non-observance of the *OECD Guidelines for Multinational Enterprises*.

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This request for review to the Canadian NCP charges violations by Seabridge Gold Inc. of the OECD Guidelines during development of the Kerr-Sulphurets-Mitchell Mine. We seek recommendations from the Canadian NCP on how to bring operations of this multinational enterprise into accordance with the Guidelines and promote observance of the Guidelines among all multinational mining enterprises operating in the transboundary British Columbia/Alaska region. SEACC requests the Canadian NCP facilitate dialogue or provide for mediation between SEACC and Seabridge Gold Inc. to resolve our issues of concern.

I. Introduction

The Kerr-Sulphurets-Mitchell (“KSM”) project is a proposed open pit and underground copper, gold, silver, and molybdenum mine in northwestern British Columbia (“BC”) near the headwaters of the Unuk River within 19 miles of the Alaskan border.⁴ The KSM project calls for an ore extraction rate of approximately 130,000 tons per day with a lifespan of about 52 years.⁵ The KSM mine will be one of the largest open-pit mines in the world, processing 2.15 billion tons of ore.⁶ The mine site will also include “[w]aste rock storage dumps, an ore grinding circuit, water storage dam, water treatment plant, selenium treatment plant, several small hydroelectric projects, diversion tunnels, access roads, camp facilities, explosives factory and magazine, and supporting infrastructure.”⁷ Based on an updated Preliminary Feasibility Study (PFS), Seabridge Gold now envisages a much larger operation than the one evaluated in the KSM Environmental

⁴ Seabridge Gold Inc., KSM Backgrounder, available at http://seabridgegold.net/pdf/KSM_fact_sheet.pdf.

⁵ Canadian Environmental Assessment Agency, KSM (Kerr-Sulphurets-Mitchell) Project: Comprehensive Study Report, Executive Summary at III (July 2014), available at http://ksmproject.com/wp-content/uploads/2014/07/34-081-CEAA_KSM_EN_R4_X4.pdf (hereinafter “CEAA Comprehensive Study”).

⁶ Seabridge Gold, KSM Backgrounder, *supra* note 4, at 2.

⁷ CEAA Comprehensive Study, *supra* note 5, at 1.

Analysis, increasing the ore extracted by nearly 25 percent, to 170,000 tons per day and potentially reducing the volume of waste rock produced significantly.⁸

The KSM Mine Site is near the headwaters of Sulphurets Creek, which flows into the Unuk River. The Unuk River flows southwest into Alaska, meeting the ocean in Behm Canal northeast of Ketchikan, Alaska. The Unuk River is one of Southeast Alaska's top king salmon producers.⁹ Its eulachon run serves as an important customary and traditional fishery.¹⁰ The U.S. portion of the Unuk watershed comprises part of the Misty Fjords National Monument, a vast, unspoiled coastal ecosystem containing exceptional ecological, geological, scenic, and historical values unique in North America.¹¹ "The first inhabitants of Misty Fjords may have settled in the area as long as 10,000 years ago."¹² Today, fishing and tourism industries, customary and subsistence users, and community members rely upon the health and vitality of the Unuk watershed and benefit from its aesthetic and spiritual values.

KSM related activities in the upper tributaries to the Nass River could harm the Alaska District 1 drift net fishery for Nass River sockeye salmon at the Tree Point gillnet fishery. Regulation of this fishery occurs under a 10-year annex negotiated under the U.S./Canada Pacific Salmon Treaty.¹³

The KSM deposit is sulfide-rich and possesses potential for acid rock drainage and resulting mobilization of heavy metals.¹⁴ Oxidation of sulfide minerals, such as occurs during the process of excavation, can produce acid rock drainage.¹⁵ Acid rock drainage leads to metal

⁸ See Toronto, Oct. 06, 2016 (Globe Newswire), New Study Finds Significant Further Gains for Seabridge Gold's KSM Project, available at <https://globenewswire.com/news-release/2016/10/06/877492/0/en/New-Study-Finds-Significant-Further-Gains-for-Seabridge-Gold-s-KSM-Project.html?print=1>.

⁹ See Alaska Dept. of Fish and Game (ADF&G), *Chinook News*, Winter 2015, Issue No.2 at 12 (available at https://www.adfg.alaska.gov/static/home/library/pdfs/chinooknews/cn_winter2015_n2.pdf); see also Kissner, Paul D. & Dennis J. Hubbert, ADF&G, AFS-41-13 *Annual Performance Report for A Study of Chinook Salmon in Southeast Alaska* at 86 (1986)(available at [http://www.adfg.alaska.gov/FedAidPDFs/FREDf-10-1\(27\)AFS-41-13.pdf](http://www.adfg.alaska.gov/FedAidPDFs/FREDf-10-1(27)AFS-41-13.pdf)) (accessed Nov. 16, 2016) ("The Unuk River (Figure 4) is the largest chinook salmon system in Behm Canal, and only three major transboundary rivers, the Taku, Stikine, and Alsek, have larger chinook runs in southeastern Alaska.").

¹⁰ Letter from Soderlund, Director, Alaska Operations Office, U.S. Environmental Protection Agency A to Vinette, BC Ministry of Environment, Enclosure at 4 (Nov. 2013)(available at http://a100.gov.bc.ca/appsdata/epic/documents/p322/1384369303573_f31f4694870e0943af8a2c283d06257293bf7e6483d0ca185e8ccc1170fb9ed2.pdf) (hereinafter "U.S. EPA KSM Comments 2013").

¹¹ First established as a National Monument by President Jimmy Carter's Proclamation 4623, Dec. 1, 1978, 93 Stat. 1466, Congress subsequently designated the Misty Fjord National Monument Wilderness in Section 703(a)(5) of the 1980 Alaska Lands Act, Pub. Law. 96-487, 94 STAT 2371, 2419 (Dec. 2, 1980)([16 U.S.C 1132 note \(2015\)](#)).

¹² See Presidential Proclamation 4623, Dec. 1, 1978, 93 STAT. 1466, 1467 (attached *infra* App. IV.D.1).

¹³ See Alaska Dept. of Fish and Game, 2016 Southeast Alaska Drift Gillnet Fishery Management Plan, Regional Information Report No. J16-03 at 6 (April 2016)(available at <http://www.adfg.alaska.gov/fedaidpdfs/rir.lj.2016.03.pdf>) (accessed Nov. 1, 2016).

¹⁴ KSM Environmental Analysis, *supra* note 1, Volume 2, Ch 4 at 4-22 and Ch 8, §8.1.4 at 8-6.

¹⁵ *Id.*, Vol. 3, Ch 10 at 10-1.

leaching.¹⁶ Baseline concentrations of metals and selenium are already high in the surrounding watersheds and expected to increase.¹⁷ Project related mining activity “could further increase metal concentrations in fish tissue in both Sulphurets Creek and the Unuk, which may in turn affect fish health over various life stages, most notably egg and smolt survival.”¹⁸ “[T]he majority of the KSM Project rock is potentially acid generating (PAG), particularly in the vicinity of the ore deposits. Substantial volumes of non-ore (waste) PAG rock must be mined in order to access the ore.”¹⁹ Of the total waste rock by weight, 71 percent will be potentially acid generating (PAG) waste rock, and another 15 percent will have uncertain PAG. Over the life of the mine, KSM will generate nearly 2.5 billion tons of PAG waste rock.²⁰ Necessary water treatment will be at 119,000 gallons per minute for 250 years.²¹ Under the “expected case” post-closure scenario, Seabridge Gold Mine predicts water quality exceedances for copper, mercury, silver, vanadium and zinc in the Unuk River at the Alaskan border.²²

Seabridge Gold proposes to develop rock storage facilities, water treatment plants, and a water storage facility in Sulphurets Creek, a tributary of the Unuk River. Releases from the water storage facility will flow down the Unuk River and discharge into Burroughs Bay, Alaska.²³ The facility will have irreversible impacts on the water quality required by freshwater species:

Concentrations of iron, copper, cadmium, and aluminum are forecast to exceed guidelines for freshwater life by 500-fold or more.... The duration of the residual effect will be greater than 50 years ... Remediation to baseline conditions is not expected to be feasible due to ... continuous loading. Therefore, the reversibility is regarded as irreversible.²⁴

The KSM project is 100% owned by Seabridge Gold Inc.²⁵ The Province of British Columbia approved the KSM Mine’s provincial EA on July 30, 2014.²⁶ On December 19, 2014,

¹⁶ KSM Environmental Analysis, *supra* note 1, at § 10.1.1.

¹⁷ CEAA Comprehensive Study, *supra* note 5, § 5.5 at 31.

¹⁸ *Id.*

¹⁹ KSM Environmental Analysis, *supra* note 1, Vol. 2 Project Description 1 of 10, at 4-22.

²⁰ *Id.* at Table 4.5-1 (2,467,368,000 tons of PAG rock over life of mine).

²¹ *Id.*, Vol.11, Appendix 4-J at v (“Water treatment capacity of 6.0 m³/s (open pit phases until Year 26) and 7.5 m³/s (underground phases after Year 26) is provided by a High Density Sludge water treatment plant (WTP) to allow staged seasonal discharge to match stream flow conditions.”). A capacity of 7.5 m³/s equals 118,877 gallons/minute. The CEAA’s Comprehensive Study description of the treatment horizon planned for the KSM mine, *supra* note 5, Table 2.2.1 at 8.

²² KSM Environmental Analysis, *supra* note 1, Vol. 3, Ch 14, § 14.7.3.2 (Potential Residual Effects due to Effluent Quality), Table 14.7-38.

²³ *C.f.* CEAA Comprehensive Study, *supra* note 5, § 5.13 at 60 (discussing effects of potential accidents and malfunction from leaks, flooding, or dam failure of Water Storage Facility at KSM Mine Site).

²⁴ KSM Environmental Analysis, *supra* note 1, Vol. 3, Ch 12 Groundwater Quality 2 of 2, § 12.8.2.1 at 12-77.

²⁵ Seabridge Gold, KSM Backgrounder, *supra* note 4, at 1.

²⁶ Environmental Assessment Certificate # M14-01 (July 30, 2014), available at http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_document_322_37853.html.

the Government of Canada approved its federal EA.²⁷ Initial permitting for the mine’s access roads, site preparation, and temporary facilities was completed in 2014. Permitting for construction and operation of the mine and major facilities has not begun. Without explanation or response to concerns raised by the State of Alaska and NGOs, including SEACC, Environment Canada, Natural Resources Canada, and Fisheries and Oceans Canada denied our request for an independent Federal Panel review and pronounced perfunctorily that the KSM Mine “[wa]s not likely to cause significant adverse environmental effects.²⁸ The Environmental Assessment Office ignored efforts by Alaskan NGOs, including SEACC, to participate in the permitting process and failed to include our comments in the project record.²⁹ Neither Seabridge Gold, nor the provincial or federal governments, provided Alaskan stakeholders with meaningful or adequate opportunity to participate in these permitting processes. SEACC and its affected membership remain gravely concerned about the potential environmental impacts of the KSM Mine.

SEACC finds little comfort in the completion of either the initial national or provincial review processes.³⁰ The B.C. Auditor General recently concluded that compliance and enforcement activities by both the Ministry of Energy and Mines (“MEM”) and the Ministry of Environment (“MoE”) were “inadequate to protect the province from significant environmental risks.”³¹ “Neither ministry uses a permitting approach that reduces the likelihood that taxpayers will have to pay costs associated with the environmental impacts of mining activities.”³² Specifically, “MEM is not holding an adequate amount of security to cover the estimated environmental liabilities at major mines.”³³ Where treatment is necessary for upwards of 250 years, and where foreseeable environmental harms are not addressed during the mine’s operations, there is significant and substantiated fear that Seabridge Gold cannot cover present and future environmental liabilities.

²⁷ Canadian Environmental Assessment Agency, Environmental Assessment Decision Statement: KSM (Kerr-Sulphurets-Mitchell) Project, British Columbia (Dec. 19, 2014), <http://www.ceaa.gc.ca/050/document-eng.cfm?document=100529>.

²⁸ Decision to Proceed (Jan. 8, 2015); available at: <http://www.ceaa-acee.gc.ca/050/document-eng.cfm?document=100883>. See *infra* App. IV.D.2 (SEACC Comments on KSM Joint Comprehensive Review and Request for Federal Panel Review (Aug. 20, 2014)(hereinafter “SEACC’s Request for Federal Panel Review”)); see also App. IV.D.3 (Comments of Central Council of Tlingit and Haida Tribes of Alaska on KSM Environmental Analysis (Oct. 21, 2013)); App. IV.D.4 (Comments of United Tribal Transboundary Mining Working Group on KSM Comprehensive Study Report and Request for Panel Review (Aug. 20, 2014)).

²⁹ Record available at: http://a100.gov.bc.ca/appsdata/epic/html/epic_deploy/epic_project_doc_index_322.html.

³⁰ See Office of the Auditor General of British Columbia, An Audit of the Environmental Assessment Office’s Oversight of Certified Projects at 5 (July 2011), available at http://www.bcauditor.com/sites/default/files/publications/2011/report_4/report/OAGBC-Environmental-Assessment-Office.pdf. This audit found the Environmental Assessment Office did not provide the public with information sufficient to assure accountability.

³¹ British Columbia Auditor General, An Audit of Compliance and Enforcement of the Mining Sector at 6, 40 (May 2016), available at <http://www.bcauditor.com/pubs/2016/audit-compliance-and-enforcement-mining-sector> (hereinafter “B.C. Auditor General, 2016 Mining Sector Audit”).

³² *Id.* at 6.

³³ *Id.*

SEACC and its members have consistently raised concerns about the risk of this project to the environment and the individuals and communities who rely on natural resources in the transboundary Unuk River watershed. However, Seabridge Gold has never addressed our concerns. Therefore, SEACC seeks the assistance of the Canadian NCP to promote Seabridge Gold's adherence to the OECD Guidelines and facilitate dialogue between representatives of SEACC and Seabridge Gold to address our concerns. Facilitated dialogue now could provide productive and timely outcomes for concerned stakeholders before Seabridge Gold collects its construction and operating permits.

II. Non-Observance of OECD Guidelines

A. Disclosure

The *Guidelines* seek to promote responsible business conduct by multinational enterprises' ("MNEs") and positive contributions from MNEs to economic, environmental and social progress. One way they do so is by encouraging MNEs to disclose information regarding their business practices and policies. Though disclosure is often limited to disseminating information about publicly-traded companies to shareholders regarding finance, structure, governance, performance, and ownership, the *Guidelines* go further by promoting information sharing from all MNEs (whether publicly traded or not) regarding their activities and policies that impact the environment and society. In the Commentary on Disclosure, the *OECD Guidelines* emphasize, "[c]lear and complete information on enterprises is important to a variety of users [including] local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information."³⁴

In light of the recommendations and principles set forth by the Disclosure chapter, Seabridge Gold's actions constitute non-observance with the following *Guidelines*:

Chapter III – Disclosure

(1): Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

³⁴ Organization for Economic Cooperation and Development, *OECD Guidelines for Multinational Enterprises*, Part I, Ch. III, para. 28 at 28 (2011) [hereinafter "*OECD Guidelines*"].

(2): Disclosure policies of enterprises should include, but not be limited to, material information on: ... f) foreseeable risk factors [and] g) issues regarding workers and other stakeholders³⁵

Giving context to these guidelines, the Commentary on Disclosure states: “The *Guidelines* also encourage . . . disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting.”³⁶ Illustrating the scope of expected communication between MNEs and the public regarding environmental risk and accountability, the Commentary further emphasizes “disclosure - or communication . . . [of] material foreseeable risk factors . . . should be disclosed.”³⁷

The following specific instances illustrate Seabridge Gold’s non-observance of *OECD Guidelines* III.(1) and (2):

1. Seabridge Gold failed to fully disclose its plans, and likelihood of success, to avoid, mitigate, or prevent all environmental concerns identified by SEACC;
2. Comments submitted by SEACC to the Ministry of Environment and CEAA during the environmental review process were not acknowledged or made part of the public record;
3. Seabridge Gold’s failure to collect and disclose verifiable baseline ambient water quality data throughout the entire affected watershed.

Remedies Requested:

1. Timely, accurate, and full disclosure of all steps taken to avoid and mitigate environmental harms including project design, monitoring programs, probability of success, and consideration of alternatives to proposed mitigation measures where “adaptive management” is anticipated.
2. Address steps Seabridge Gold will take to identify and disclose liability mechanisms for reparation of environmental damage, including restitution, restoration, and compensation.

B. Engagement

The *OECD Guidelines* aim “to strengthen the basis of mutual confidence between enterprises and the societies in which they operate”³⁸ by requiring MNEs to “[d]evelop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.”³⁹ Open, meaningful, and timely engagement between companies and their stakeholders may achieve and strengthen mutual trust and confidence. MNEs should ensure such engagement

³⁵ *OECD Guidelines*, *supra* note 34, Ch. III, para. 2 at 27 (emphasis added).

³⁶ *Id.* at Ch. III, para. 33 at 29.

³⁷ *Id.*, Ch. III, para. 32 at 29.

³⁸ *Id.*, Part 1 Preface, para.1 at 13.

³⁹ *Id.* at Ch. II, para. 7 at 19.

fosters the timely sharing of material information and results in a meaningful response to concerns presented by stakeholders.

To help achieve this goal, the *OECD Guidelines* set forth expectations for the quality of engagement and “social dialogue” with stakeholders necessary to achieve responsible business conduct.⁴⁰ The engagement guidelines build upon the recommendations for disclosure and encourage MNEs to inform stakeholders about the company’s activities with sufficient detail to promote informed deliberation and identification of concerns regarding the proposed activities. Such timely and meaningful engagement would also provide an opportunity for the company to address these concerns fully prior to a commitment of resources.

In light of the recommendations and principles set forth by the *OECD Guidelines* for open, meaningful, and timely engagement, SEACC alleges non-conformance of the following paragraphs of Chapter II and IV by Seabridge Gold:

Chapter II – General Policies

(A)(14): Enterprises should ... engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.⁴¹

Chapter VI – Environment

(2)(b): Enterprises should...engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.⁴²

The *Guidelines*, in defining what the above engagement should entail, explain:

“Stakeholder engagement involves interactive processes of engagement with relevant stakeholders, through for example, meetings, hearings or consultation proceedings. Effective stakeholder engagement is characterized [sic] by two-way communication and depends on the good faith of the participants on both sides. This engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land or water, which could significantly affect local communities.”⁴³

The following specific instances show Seabridge Gold’s non-observance of *OECD Guidelines* II.A.14 and VI.2.b:

⁴⁰ *OECD Guidelines*, *supra* note 34, Preface to Part I, para. 7 at 15.

⁴¹ *Id.*, Ch. II., para. 14, at 20.

⁴² *Id.*, Ch. VI., para. 2.b, at 42.

⁴³ *Id.*, Ch. II, Commentary on General Policies, para. 25 at 25.

1. Seabridge Gold did not provide for open, meaningful, and timely engagement with SEACC. Therefore, it did not provide an adequate venue for SEACC to voice their concerns over the KSM mine. Consequently, instead of facilitating timely review of identified concerns with the KSM mine, Seabridge Gold used public meetings held in Southeast Alaska as opportunities to convince SEACC, our members, and other Alaskan stakeholders about what a great mine project it had designed.
2. Seabridge Gold has not meaningfully taken into account the significant issues and concerns raised by SEACC or other Alaskan stakeholders, but rather met only the bare minimum national and provincial legal requirements of engagement with Alaskan agencies.⁴⁴
3. Public meetings held in Ketchikan, Craig, and Klawock attended by SEACC members failed to acknowledge or address expressed concerns. Seabridge Gold ignored follow-up requests from these meetings.
4. On 11 October 2011, Seabridge Gold hosted a meeting with stakeholders in Ketchikan, Alaska, during which Seabridge representative Brent Murphy, Vice President of Environmental Affairs, presented a PowerPoint aimed at investor outreach instead of engagement with concerned downstream stakeholders. This attempt at engagement failed to take into account the concerns of Alaskan stakeholders or offer any substantive response to concerns over potential impacts to salmon, wildlife, or water quality. Without offering any supporting data or analysis, Seabridge Gold claimed that construction and operation of the mine would actually improve the water quality in the Unuk River.⁴⁵ Such an unsupported statement undermined the growth of mutual confidence between the parties.
5. Seabridge Gold has not offered to meet with representatives of all Southeast Tribes or their Tribal citizens, some of whom are also members of SEACC, directly counter to the recommendation for engagement with all relevant stakeholders set forth in the *OECD Guidelines*.
6. Based on an updated Preliminary Feasibility Study (PFS), Seabridge Gold now envisages a much larger operation than the one evaluated in the KSM Environmental Analysis, increasing the amount of ore extracted by nearly 25 percent, to 170,000 tons per day and potentially reducing the volume of waste rock produced significantly.⁴⁶ Since this announcement, Seabridge Gold has not attempted to inform Alaskan stakeholders about this updated information.

⁴⁴ Seabridge Gold appears to treat meetings with U.S. and Alaskan agencies as adequate engagement with downstream stakeholders, *see* Seabridge Gold Inc., Seabridge Gold Meetings and Correspondence with Alaskan and U.S. Regulators (Aug. 2015), available at http://ksmproject.com/wp-content/uploads/2015/08/20150423_Seabridge-Gold_US-Consultation.pdf.

⁴⁵ *See* <http://www.desmog.ca/2015/10/09/new-b-c-5-4-billion-gold-and-copper-mine-will-improve-water-quality-river-says-company>

⁴⁶ *See* Toronto, Oct. 06, 2016 (Globe Newswire), New Study Finds Significant Further Gains for Seabridge Gold's KSM Project, available at <https://globenewswire.com/news-release/2016/10/06/877492/0/en/New-Study-Finds-Significant-Further-Gains-for-Seabridge-Gold-s-KSM-Project.html?print=1>.

Remedies Requested:

1. Full and timely consideration of the concerns raised by stakeholders, as is further required by the due diligence requirements of the *Guidelines*.
2. Provision of a forum for hearing and addressing SEACC's concerns, and the concerns of their members, in a respectful and meaningful manner. This remedy could be achieved through facilitated dialogue or mediation provided through the good offices of the Canadian NCP.
3. A commitment from Seabridge Gold that it will not develop the KSM mine or related infrastructure further, until such a time as meaningful engagement has occurred and restoration of mutual trust and confidence between stakeholders and Seabridge Gold achieved. Seabridge Gold must also commit to take into account concerns from all stakeholders in conducting due diligence for potential impacts to environmental and human rights.
4. A signed commitment from Seabridge Gold that it will implement the *OECD Guidelines* in future developments in good faith and incorporate said changes into their respective company policies.
5. Development of a dispute resolution and damage payment mechanism for downstream Alaskan interests.

C. Due Diligence with Regard to Environment and Human Rights

The *OECD Guidelines* encourage MNEs to “[c]ontribute to economic, environmental and social progress with a view to achieving sustainable development,” and to “[r]espect the internationally recognized human rights of those affected by their activities.”⁴⁷ The *Guidelines* recognize that in order to achieve these goals, further guidance beyond domestic law is often necessary. In fact, the 2011 update to the *Guidelines* included a new human rights chapter the adhering governments intended to implement the United Nations “Protect, Respect and Remedy Framework.”⁴⁸ Although not legally binding, Canada’s endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in May 2016,⁴⁹ breathes life into Canada’s existing legal and policy framework for protecting indigenous rights and reflects Canada’s intent to expand the principles of due diligence and avoidance of harm underlying the *OECD Guidelines* beyond domestic legal requirements.⁵⁰

In conformance with the *Guidelines*, MNEs should carry out risk-based due diligence in regards to the effect of the enterprise’s activities on the human rights of all affected stakeholders,

⁴⁷ *OECD Guidelines*, *supra* note 34, Part I, Ch. II, paras. 1, 2, at 19.

⁴⁸ *Id.*, Foreword at 3.

⁴⁹ See CBCNews, *Canada officially adopts UN declaration on rights of Indigenous Peoples* (available at <http://www.cbc.ca/news/indigenous/canada-adopting-implementing-un-rights-declaration-1.3575272>).

⁵⁰ See e.g., *OECD Guidelines*, *supra* note 34, Ch. IV, Commentary on Human Rights, para. 37- 40 at 32.

regardless of national boundaries, and prevent violations of human rights.⁵¹ MNEs must respect internationally recognized human rights, including, but not limited to, the UN Declaration on the Rights of Indigenous Peoples.⁵² Due diligence under the *Guidelines* requires full consideration of all actual and potential environmental harms, as well as the formation of all necessary avoidance, mitigation, and remediation plans to minimize serious and irreversible harm. Compliance also requires MNEs to provide stakeholders and the public with timely information regarding the risks of an enterprise's activities causing or contributing harm to the environment and public health, as discussed in previous sections.

While SEACC does not presume to speak on behalf of any Alaskan tribe, development and operations of the KSM Mine will harm some of our members who are also tribal citizens. Human rights due diligence "entails assessing actual and potential human rights impacts, integrating and acting upon those findings, and tracking responses as well as communicating how impacts are addressed."⁵³

Contrary to the recommendations and principles set forth by the General Policies, Human Rights, and Environment chapters, Seabridge Gold's actions are in non-conformance with the following paragraphs of the *OECD Guidelines*:

Chapter II – General Policies

(10): Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts..., and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.⁵⁴

Chapter IV - Human Rights

(1): Respect human rights, which means avoiding infringement on the human rights of others and address any adverse human rights impacts with which they are involved.

(2): Within the context of its own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

(3): Seek ways to prevent or mitigate adverse human rights impacts directly linked to its business operations, products or services by a business relationship, even if it does not contribute to those impacts.

⁵¹ *OECD Guidelines*, *supra* note 34, Ch. II.A.2 at 19; Ch. IV, Commentary on Human Rights, para. 45 at 34.

⁵² *Id.*, at Ch. IV.1-6 at 31; U.N. Declaration on the Rights of Indigenous Peoples, Resolution 61/295 at 8, 11 (adopted by General Assembly on Sept. 13, 2007) available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

⁵³ *OECD Guidelines*, *supra* note 34, at Ch. IV, para. 45 at 34.

⁵⁴ *OECD Guidelines*, *supra* note 34, Ch. II.A.10 at 20.

(4): Have a policy commitment to respect human rights.

(5): Carry out human rights due diligence as appropriate to its size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

(6): Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts when it has caused or contributed to these impacts.⁵⁵

Chapter VI - Environment

(1)(a): Establish and maintain a system of environmental management appropriate to the enterprise, including...collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;

(2)(a): Provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;

(2)(b): Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

(5): Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.⁵⁶

The following specific instances illustrate Seabridge Gold's non-observance of *OECD Guidelines* II.10., IV.2 and 5, and VI.2.a and 2.b:

1. Seabridge Gold and the Canadian Environmental Assessment Agency failed to respond to comments made by Alaskan NGOs and Tribes, including SEACC, during their environmental review process. This lack of response and failure to consider these significant issues exhibits a lack of due diligence to meaningfully consider foreseeable environmental impacts constitutes non-conformance of *Guidelines* We detail some of these specific concerns below; more detail is contained in the attached 2014 comment letter from SEACC.⁵⁷
2. Seabridge Gold has not demonstrated a commitment to avoid causing or contributing to adverse human rights impacts caused by the risk KSM poses to the human rights of

⁵⁵ *OECD Guidelines*, *supra* note 34, Ch. IV.1-6 at 31.

⁵⁶ *Id.*, Ch. VI.1.a-b, 2.a-b. and 5 at 42-43.

⁵⁷ *See infra* App. IV.D.2. (SEACC's Request for Federal Panel Review).

SEACC members to clean water, healthy resources, traditional and subsistence fisheries, etc.

3. Seabridge Gold has failed to mitigate for expected water quality exceedances in downstream Alaska waters for copper, aluminum, nickel, and selenium.⁵⁸ These exceedances will result, in part, from the mobilization of soils with high metal concentrations during de-watering activities or the release of pond storage water.⁵⁹ The company has not demonstrated its ability to treat these water quality exceedances.
4. Seabridge Gold did not adequately consider the probability that the sulfur and iron reducing bacteria will colonize the water storage pond and complicate water treatment efforts.
5. Seabridge Gold did not adequately consider the potential production of methylmercury within the water storage facility, and its detrimental impacts on downstream fisheries. Seabridge Gold dismissed concerns raised by EPA about the potential of high sulfate levels in the water storage facility to produce sulfate-reducing bacteria that could methylate inorganic mercury into a form of mercury that bioaccumulates in fish without offering any scientific support for its position.⁶⁰
6. Seabridge Gold failed to consider fully the broader impacts from the mobilization of metals and low pH water resulting from the oxidation of minerals when the predicted water table drawdowns occur beyond the mine footprint.⁶¹
7. Seabridge Gold ignored the recommendations of the Mt Polley investigation report by the expert panel calling for the end of watered tailings facilities in British Columbia.⁶²
8. Seabridge Gold did not clearly consider the impact on and loss of vital fish habitat due to the construction of road and bridge infrastructure on a watershed-wide scale.⁶³
9. Seabridge Gold did not discuss potential impacts to the culturally and ecologically important species, the eulachon.⁶⁴
10. Seabridge Gold failed to consider cumulative impacts of the KSM Mine in conjunction with other mining and development projects in the Unuk and neighboring watersheds that

⁵⁸ Letter from Kyle Moselle, Large Project Coordinator, KSM Working Group, Alaska Department of Natural Resources, to Nicole Vinette, Environmental Assessment Office, British Columbia at 2 (Jan. 24, 2014), *available at* <http://dnr.alaska.gov/commis/opmp/Canadian%20Mines/Attachments/KSM%20Working%20Group-SOA%20Comments-1-24-14-c.pdf> [hereinafter “State of Alaska KSM Working Group Comments”].

⁵⁹ See U.S. EPA KSM Comments 2013, *supra* note 10, enclosure at 2.

⁶⁰ See Letter from Soderlund, Director, Alaska Operations Office, U.S. Environmental Protection Agency to Vinette, Project Assessment Officer, BC Ministry of Environment, Enclosure 2 (Jan. 23, 2014)(*available at* http://a100.gov.bc.ca/appsdata/epic/documents/p322/1384369303573_f31f4694870e0943af8a2c283d06257293bf7e6483d0ca185e8ccc1170fb9ed2.pdf) (hereinafter “U.S. EPA KSM Comments 2014”).

⁶¹ *Id.*

⁶² KSM Environmental Analysis, *supra* note 1, at 4-194 to 4-200.

⁶³ State of Alaska KSM Working Group Comments, *supra* note 58 at 1.

⁶⁴ U.S. EPA KSM Comment 2013, *supra* note 10, enclosure at 4: *see also* Comments of Central Council Tlingit and Haida Indian Tribes of Alaska, *infra* App. IV.D.3 at 1.

pose environmental threats to the pristine ecosystems and waters of British Columbia and Southeast Alaska.⁶⁵

11. Seabridge Gold did not disclose the potential harm from proposed mixing zones on salmon streams, including the increase of excessive levels of toxic compounds for aquatic organisms.
12. Seabridge Gold failed to consider its capacity to cope with environmental mitigation and controls if it experiences future financial downturns. By Seabridge Gold's own estimation, mitigation for the operations of the KSM mine could be required for at least 250 years. As EPA explained:

If an evaluation is based only on complete and successful closure of the mine, important downstream risks could be missed. It is not uncommon for mines to close either temporarily or permanently, prior to completion of the planned mitigation activities or other controls. If metals prices drop or the mine becomes uneconomic for some other reason before waste materials are placed in their final locations, is there a contingency to fund remaining reclamation work and ongoing wastewater treatment? If not, what effects could be seen downstream in US waters?⁶⁶

13. A 2011 report issued by the Office of the Auditor General of British Columbia amplifies EPA's concern. That report found that the Environmental Assessment Office of British Columbia is not providing the proper oversight of mitigation efforts, compounding the risk of inadequate environmental due diligence and lack of adaptive mitigation plans. The report concludes:

When major projects such as mines, dams or tourist destination resorts are undertaken in the province, British Columbians expect that any potentially significant adverse effects (whether environmental, economic, social, heritage and/or health related) will be avoided or mitigated. The Environmental Assessment Office is expected to provide sound oversight of such projects. However, this has not been happening.

The audit found that the Environmental Assessment Office cannot assure British Columbians that mitigation efforts are having the intended effects because adequate monitoring is not occurring and follow-up evaluations are not being conducted. We also found that information currently being provided to the public is not sufficient to ensure accountability.⁶⁷

⁶⁵ Letter from Dr. Jim Pojar et al., to Premier Christy Clark, Premier of British Columbia (Nov. 15, 2011), *available at* <http://riverswithoutborders.org/wp-content/uploads/2011/11/Letter-of-Concern-about-Proposed-Development-in-the-Transboundary-Watersheds.pdf> [hereinafter Scientists' Letter of Concern about Proposed Development in the Transboundary Watersheds]; U.S. EPA KSM Comments 2013, *supra* note 10, Enclosure page 4.

⁶⁶ U.S. EPA KSM Comments 2013, *supra* note 10, Enclosure page 3.

⁶⁷ Office of the Auditor General of British Columbia, An Audit of the Environmental Assessment Office's Oversight of Certified Projects at 5 (July 2011), *available at* http://www.bcauditor.com/sites/default/files/publications/2011/report_4/report/OAGBC-Environmental-Assessment-Office.pdf.

Remedies Requested:

1. Adequate consideration and due diligence of the aforementioned foreseeable environmental impacts, especially the addition of consideration of downstream impacts on Alaskan ecosystems and fisheries, as delineated above and in comments from the U.S. Environmental Protection Agency, concerned scientists, and SEACC.
2. Collection and full disclosure of adequate baseline ambient water quality data throughout the entire affected watershed.
3. Development of an adaptive management plan that will properly monitor and mitigate downstream impacts through future uncertain and imperfect economic conditions, subject to peer review. Incorporation of the above due diligence requirements, as outlined by the *Guidelines*, into Seabridge Gold's Best Management Practices.
4. Creation of a funding source (i.e., bonds) that will provide for sufficient environmental monitoring and remediation, as well as full compensation for actual losses throughout the entire affected watershed, after the mine has closed.
5. Preparation of a risk analysis of the KSM water storage facility including reasonably foreseeable environmental impacts and disclosure of associated analyses. Measures taken to minimize the indicated risks.
6. Timely, accurate, and full disclosure of all steps taken to avoid impacts to the human rights of Alaskan stakeholders and potential environmental harms including project design, monitoring programs, probability of success and consideration of alternatives to proposed mitigation measures where "adaptive management" is anticipated.
7. Development of a mechanism for dispute resolution and damage payment for downstream, Alaskan interests that the activities at the KSM Mine may harm.
8. Full compliance with OECD Guidelines and U.N. Declaration on the Rights of Indigenous Peoples.

III. Conclusion and Summary of Remedies Sought

This complaint raises serious concerns regarding Seabridge Gold's failure to abide by the *OECD Guidelines* regarding disclosure, engagement, and due diligence. SEACC respectfully requests the assistance of the Canadian NCP with facilitating meaningful dialogue or mediation with Seabridge Gold to solve these problems. SEACC is willing to participate in such dialogue in good faith to arrive at a comprehensive agreement between the parties involved.. In summary, SEACC hopes to achieve the following through the NCP process:

Disclosure

1. Timely, accurate, and full disclosure of all steps taken to avoid and mitigate environmental harms including project design, monitoring programs, probability of success, and consideration of alternatives to proposed mitigation measures where "adaptive management" is anticipated.

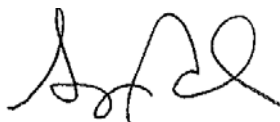
Engagement

1. Full and timely consideration of the concerns raised by stakeholders.
2. Providing a forum for hearing and addressing SEACC's concerns, and the concerns of their members, in a respectful and meaningful manner. This remedy could be achieved through facilitated dialogue or mediation provided through the good offices of the Canadian NCP.
3. Seabridge Gold's commitment to halt further development of the KSM mine, or related infrastructure, until after meaningful engagement occurs and restoration of mutual trust and confidence between stakeholders and Seabridge Gold. We also seek a commitment from Seabridge Gold to take into account concerns from all stakeholders in conducting due diligence for potential impacts to the environment and human rights.
4. A signed statement by Seabridge Gold that they will implement the *OECD Guidelines* in future developments and incorporate said changes into their respective company policies.
5. Development of a dispute resolution and damage payment mechanism for downstream Alaskan interests.

Environment

1. Adequate consideration and due diligence of the aforementioned foreseeable environmental impacts, especially the addition of consideration of downstream impacts on Alaskan ecosystems and fisheries, as delineated above and in comments from the U.S. Environmental Protection Agency, concerned scientists, and SEACC.
2. Collection and full disclosure of adequate baseline ambient water quality data throughout the entire affected watershed.
3. Development of an adaptive management plan that will properly monitor and mitigate downstream impacts through future uncertain and imperfect economic conditions, subject to peer review. Incorporation of the above due diligence requirements, as outlined by the *Guidelines*, into Seabridge Gold's Best Management Practices.
4. Creation of a funding source (i.e., bonds) that will provide for sufficient environmental monitoring and remediation, as well as full compensation for actual losses throughout the entire affected watershed, after the mine has closed.
5. Compliance with the recommendations of the Mt. Polley Expert Panel Investigation and the recommendations from the recent BC Auditor General's Report.

Best Regards,



Guy Archibald, Mining and Clean Water Coordinator
Southeast Alaska Conservation Council

IV. Appendices

A. Other Venues Where Issues Have Been Raised

SEACC and others have directly raised the concerns stated herein with Seabridge Gold or Canadian and American authorities. Other fora in which these issues have been raised, and the results of those discussions are below:

April 28, 2016 Prince of Wales Mining Symposium. Brent Murphy, Seabridge Gold, provided the general audience with an update on activities and took questions. Lasted for less than 1 hour after which Mr. Murphy immediately left.

March 25, 2014 SE Alaska Tribal Summit. Brent Murphy addressed the general audience for 1 hour. Mr. Murphy accused SEACC of spreading false information. He stated “[w]e have satisfied all of Alaska’s concerns” and “[the State of Alaska has] no more concerns.”

Communications with the State of Alaska on Draft Statement of Cooperation

December 11, 2015

September 23, 2016

October 6, 2016 – State of Alaska and British Columbia officials sign a statement of cooperation regarding transboundary mines which threaten Alaska fisheries. Although improved from earlier drafts, the agreement “is not strong enough.”⁶⁸

Communications with U.S. Department of State

Communications with Alaska Congressional Delegation

Presentations at:

- International Union for Conservation of Nature’s World Conservation Congress, Hawaii 2016, [Saving SE Alaska’s Rainforest Way of Life](#).⁶⁹
- BIA Providers Conference, Alaska Forum on the Environment, 2015 Tribal Lands and Environmental Forum.
- Formation and support of United Tribal Transboundary Mining Work Group in 2014.
- Central Council Tlingit and Haida Indian Tribes of Alaska met with senior officials of from the U.S. Department of State and Environmental Protection

⁶⁸ Ed Schoenfeld, Coast Alaska News, *British Columbia, Alaska sign transboundary mine agreement* (Oct. 7, 2016)(available at <http://www.alaskapublic.org/2016/10/07/british-columbia-alaska-sign-transboundary-mine-agreement/>).

⁶⁹ Accessed Nov. 15, 2016. Notifier attaches a pdf of this link in App. IV.D.5 because of hyperlink’s slow speed.

Agency in August of 2016 to address the Tribes serious concerns with the transboundary mines.⁷⁰

- The General Assembly of the National Council of American Indians adopted Resolution #ANC-14-019 calling for direct engagement with the Canadian government to safeguard Southeast Alaska waters and communities at the 2014 Mid-Year Session of the Council in Anchorage, Alaska.⁷¹
- At the Grand Camp convention for the Alaska Native Brotherhood and Alaska Native Sisterhood at Petersburg, Alaska in October 2014, the Grand Camp resolved to refer the issue of Transboundary development and downstream concerns to the International Joint Commission.⁷²

Pelley Petition -- On June 27, 2016, SEACC joined other Alaska Native and environmental groups in a petition to the U.S. Secretary of Interior to launch a formal investigation into whether pollution from mines in British Columbia is causing downstream problems for fisheries and wildlife in Southeast Alaska. SEACC attaches a copy of the Petition with this Request for Review.

B. List of Other Applicable or Relevant Law

Pelly Amendment to the Fishermen's Protective Act of 1967.⁷³

The Anadromous Stocks Conservation Convention is an international agreement to which the Pelly Amendment is applicable. The Convention is a multilateral agreement, ratified in 1992 by Canada, Japan, the Russian Federation, and the United States.

The Western Hemisphere Convention is an international agreement to which the Pelly Amendment is applicable. The Convention is a multilateral agreement, negotiated under the auspices of the Organization of American States, and ratified by 15 states.⁷⁴

*UN Declaration on the Rights of Indigenous Peoples*⁷⁵

⁷⁰ See Central Council Press Release (Aug. 12, 2016)(available at http://www.cchita.org/info/press/releases/2016releases/PR_08122016_DOSandEPATopOfficialsVisitSEAKonTransboundary.pdf).

⁷¹ See NCAI Resolution #ANC-14-013 (available at: http://www.ncai.org/attachments/Resolution_xJJgGaaQEqLnRGUTbsBLyRoeseEGOAPKffOZUIRGpByHlzyOuXuANC-14-013.pdf) (attached *infra* App. IV.D.6).

⁷² See ANB/ANS Grand Camp Resolution No. 14-18, Supporting IJC involvement in the Transboundary Region (attached *infra* App. IV.D.7).

⁷³ 22 U.S.C. § 1978.

⁷⁴ Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, art. XII, Oct. 12, 1940, 56 Stat.1354, 161 U.N.T.S. 193.

⁷⁵ U.N. Declaration on the Rights of Indigenous Peoples, *supra* note 52.

Article 20: (1) Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. (2) Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 29: Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

Presidential Proclamation 4623, Dec. 1, 1978, 93 STAT. 1466 (designating Misty Fjord National Monument, codified at [54 U.S.C. 320301 note \(2015\)](#)).

U.S. Congressional designation of Misty Fjord National Monument Wilderness, Section 703(a)(5) of the 1980 Alaska Lands Act, Pub. Law. 96-487, 94 STAT 2371, 2419 (Dec. 2, 1980)(codified as [16 U.S.C 1132 note \(2015\)](#)).

C. Substantiating Documents

Canadian Environmental Assessment Agency, KSM (Kerr-Sulphurets-Mitchell) Project: Comprehensive Study Report III (July 2014), *available at* http://ksmproject.com/wp-content/uploads/2014/07/34-081-CEAA_KSM_EN_R4_X4.pdf.

Letter from Dianne Soderlund, Director, Alaska Operations Office, U.S. Environmental Protection Agency, to Nicole Vinette, Project Assessment Officer, British Columbia Ministry of Environment, Environmental Assessment Office (Nov. 7, 2013), *available at* https://a100.gov.bc.ca/appsdata/epic/documents/p322/1384369303573_f31f4694870e0943af8a2c283d06257293bf7e6483d0ca185e8ccc1170fb9ed2.pdf.

Letter from Guy Archibald, SEACC, to Canadian Environmental Assessment Agency (Aug. 20, 2014).⁷⁶

Letter from Central Council Tlingit and Haida Indian Tribes of Alaska to CAEE (Oct. 21, 2013).⁷⁷

Letter from Dr. Jim Pojar et al., to Premier Christy Clark, Premier of British Columbia (Nov. 15, 2011), *available at* <http://riverswithoutborders.org/wp-content/uploads/2011/11/Letter-of-Concern-about-Proposed-Development-in-the-Transboundary-Watersheds.pdf>.

⁷⁶ Attached to this Request, *infra* Appendix IV.D.2.

⁷⁷ Attached to this Request, *infra* Appendix IV.D.3.

Letter from Kyle Moselle, Large Project Coordinator, KSM Working Group, Alaska Department of Natural Resources, to Nicole Vinette, Environmental Assessment Office, British Columbia (Jan. 24, 2014), *available at* <http://dnr.alaska.gov/commis/opmp/Canadian%20Mines/Attachments/KSM%20Working%20Group-SOA%20Comments-1-24-14-c.pdf>.

Office of the Auditor General of British Columbia, An Audit of Compliance and Enforcement of the Mining Sector 6 (May 2016), *available at* http://www.bcauditor.com/sites/default/files/publications/reports/FINAL_CE_Mining.pdf.

Office of the Auditor General of British Columbia, An Audit of the Environmental Assessment Office's Oversight of Certified Projects 5 (July 2011), *available at* http://www.bcauditor.com/sites/default/files/publications/2011/report_4/report/OAGBC-Environmental-Assessment-Office.pdf.

Seabridge Gold Inc., Application for an Environmental Assessment Certificate/Environmental Impact Statement 1-24 (July 2013), *available at* http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_project_doc_index_322.html.

Pelly Petition, *available at* <http://earthjustice.org/news/press/2016/alaskan-and-canadian-groups-petition-secretary-of-the-interior-to-investigate-mines-in-british-columbia>.

Resolutions from Tribal and Native Organizations:

- Alaska Native Brotherhood/Alaska Native Sisterhood Grand Camp Resolution No. 14-18⁷⁸
- National Congress of American Indians, Resolution #ANC-14-013.⁷⁹

United Tribal Transboundary Mining Working Group comments on KSM Comprehensive Study Report and Request for Panel Review (Aug. 20, 2014).⁸⁰

D. Attached Documents

1. *Presidential Proclamation 4623, Dec. 1, 1978, 93 STAT. 1466.*
2. *SEACC Request for KSM Joint Comprehensive Review.*
3. *Letter from Central Council Tlingit and Haida Tribes of Alaska to Canadian Environmental Assessment Agency on KSM Project.*

⁷⁸ Attached to this Request, Appendix IV.D.7.

⁷⁹ Attached to this Request, Appendix IV.D.6.

⁸⁰ See *infra* Appendix IV.D.4.

4. United Tribal Transboundary Mine Work Group on Comprehensive Study Report and Request for Public Review.

5. Saving Southeast Alaska's Rainforest Way of Life.

6. National Congress of American Indians, Resolution # ANC-14-013.

7. Alaska Native Brotherhood/Alaska Native Sisterhood Grand Camp Resolution No. 14-18.

care and management of the objects to be protected. Lands, including submerged lands, and waters within these boundaries not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

All lands, including submerged lands, and all waters within the boundaries of this monument are hereby appropriated and withdrawn from entry, location, selection, sale or other disposition under the public land laws, other than exchange. There is also reserved all water necessary to the proper care and management of those objects protected by this monument and for the proper administration of the monument in accordance with applicable laws.

The establishment of this monument is subject to valid existing rights, including, but not limited to, valid selections under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), and under or confirmed in the Alaska Statehood Act (48 U.S.C. Note preceding Section 21).

Nothing in this Proclamation shall be deemed to revoke any existing withdrawal, reservation or appropriation, including any withdrawal under Section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)); however, the national monument shall be the dominant reservation. Nothing in this Proclamation is intended to modify or revoke the terms of the Memorandum of Understanding dated September 1, 1972, entered into between the State of Alaska and the United States as part of the negotiated settlement of *Alaska v. Morton*, Civil No. A-48-72 (D. Alaska, Complaint filed April 10, 1972).

The Secretary of the Interior shall promulgate such regulations as are appropriate, including regulation of the opportunity to engage in a subsistence lifestyle by local residents. The Secretary may close the national monument, or any portion thereof, to subsistence uses of a particular fish, wildlife or plant population if necessary for reasons of public safety, administration, or to ensure the natural stability or continued viability of such population.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of December, in the year of our Lord nineteen hundred and seventy-eight, and of the Independence of the United States of America the two hundred and third.

IMMY CARTER

Proclamation 4623

December 1, 1978

Misty Fjords National Monument

By the President of the United States of America

A Proclamation

Misty Fjords is an unspoiled coastal ecosystem containing significant scientific and historical features unique in North America. It is an essentially untouched two million-acre area in the Coast Mountains of Southeast Alaska within which are found nearly all of the important geological and ecological characteristics of the region, including the complete range of coastal to interior climates and ecosystems in a remarkably compact area.

Among the objects of geologic importance are extraordinarily deep and long fjords with sea cliffs rising thousands of feet. Active glaciers along the Canadian border are remnants of the massive ice bodies that covered the region as recently as about 10,000 years ago, at the end of the Pleistocene epoch. However, there have

been periodic glacial advances and retreats in more recent historic periods. Some of the area has been free from glaciation for only a short period of time, creating the unusual scientific phenomenon of recent plant succession on newly-exposed land with the accompanying animal species. The Behm Canal, the major inlet at the heart of the area, is more than fifty miles long and extraordinary among natural canals for its length and depth.

The watershed of the Unuk River, which comprises the northern portion of the Misty Fiords area, has its headwaters in Canada. It is steeply mountainous and glaciated and contains the full range of ecosystems and climates from interior to coastal. Mineral springs and lava flows add to the uniqueness of the area and its value for scientific investigation. South of the Unuk, the Chickamin River System and the Le Due River originate in active glaciers and terminate in Behm Canal. Further south, Rudyard Bay Fiords and Walker Cove are surrounded by high, cold lakes and mountains extending eastward to Canada.

First inhabitants of Misty Fiords may have settled in the area as long ago as 10,000 years. The area contains cultural sites and objects of historical significance, including traditional native hunting and fishing grounds. Later historical evidence includes a mid-1800's military post-port entry on Tongass Island and a salmon cannery in Behm Canal established in the late 1800's.

Misty Fiords is unique in that the area includes wildlife representative of nearly every ecosystem in Southeast Alaska, most notably bald eagles, brown and black bears, moose, wolves, mountain goats and Sitka black-tailed deer. Numerous other bird species nest and feed in the area, notably falcons and waterfowl. Misty Fiords is a major producer of all five species of Pacific salmon and is especially important for king salmon. Numerous other saltwater, freshwater and anadromous fish species and shellfish are plentiful in this area, which is an extraordinarily fertile interface of marine and freshwater environments. Unusual plantlife includes Pacific silver and subalpine fir trees near the northern limit of their range. The area includes an unusual variety of virgin forests, ranging from coastal spruce-hemlock to alpine forests.

As an intact coastal ecosystem, Misty Fiords possesses a collective array of objects of outstanding value for continuing scientific study. The boundaries of the area follow watershed perimeters and include the smallest area compatible with protection of this unique ecosystem and the remarkable geologic and biological objects and features it contains.

Hunting and fishing shall continue to be regulated, permitted and controlled in accord with the statutory authorities applicable to the monument area.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, at his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the government of the United States to be National Monuments, and to reserve as part thereof parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906, (16 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Misty Fiords National Monument all lands, including submerged lands, and waters owned or controlled by the United States within the boundaries of the area described on the document entitled "Misty fiords National Monument (Copper River Meridian)... attached to and forming a part of this Proclamation." The area reserved consists of approximately 2,285,000 acres, and is the smallest area compatible with the proper care and management of the objects to be protected. Lands,

¹The title and position of the bounds and map or printed in the Federal Register of December 5, 1971 (H. R. 57089)

including submerged lands, and waters within these boundaries not owned by the United States shall be reserved as a part of the Monument upon acquisition of title thereto by the United States.

All lands, including submerged lands, and all waters within the boundaries of this Monument are hereby appropriated and withdrawn from entry, location, selection, sale or other disposition" under the public land laws, other than exchange. There is also reserved all water necessary for the proper care and management of those objects protected by this Monument and for the proper administration of the Monument in accordance with applicable laws.

The establishment of this Monument is subject to valid existing rights, including, but not limited to, valid selection under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), and under or confirmed in the Alaska Statehood Act (43 U.S.C. Note preceding Section 21).

Nothing in this Proclamation shall be deemed to revoke any existing withdrawal, reservation or appropriation, including any withdrawal under section 17 (d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616 (d)(1)); however, the National Monument shall be the dominant reservation. Nothing in this Proclamation is intended to modify or revoke the terms of the Memorandum of Understanding dated September 1, 1972, entered into between the State of Alaska and the United States as part of the negotiated settlement of *Alaska v. Morton*, Civil No. A-48-72 (D. Alaska, Complaint filed April 10, 1972).

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy or *remove* any feature of this Monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of December, in the year of our Lord nineteen hundred and seventy-eight, and of the Independence of the United States of America the two hundred and third.

JIMMY CARTER

Proclamation 4624

December 1, 1978

Noatak National Monument

By the President of the United States Of America

A Proclamation

The Noatak River basin is the largest mountain-ringed river basin in the Nation still virtually unaffected by technological human activity. This basin has been designated as a Biosphere Reserve under the United Nations' auspices, in recognition of its international importance for scientific study and research.

The area includes landforms and ecological variations of scientific interest. The Grand Canyon of the Noatak River is a dissected valley 65 miles long. The area contains the northwesternmost fringe of boreal forest in North America, and is a transition zone and migration route for plants and animals between subarctic and arctic environments. The diversity of the flora is among the greatest anywhere in the earth's northern latitudes.

The Noatak Valley area contains a rich variety of birdlife including several Asian species. The area is crossed twice a year by two-thirds of the Western Arctic caribou herd, and is prime habitat for the barren ground grizzly bear, moose, and several predator species.



Southeast Alaska Conservation Council

224 Gold Street Juneau, AK 99801

Phone: (907) 586-6942 Fax: (907) 463-3312 www.seacc.org

Canadian Environmental Assessment Agency
410-701 Georgia Street West
Vancouver, British Columbia V7Y 1C6

August 20, 2014

Sent Via Email: KSM.Project@ceaa-acee.gc.ca

Re: ksm.project@ceaa1acee.gc.ca

Please accept the following comments from the Southeast Alaska Conservation Council (SEACC) on the Kerr-Sulphurets-Mitchell (KSM) joint comprehensive review.

SEACC is a member-based organization with nearly 1,000 members, including Alaskans who participate in the commercial, recreational, and customary and traditional use of fish and wildlife, own tourism and recreation businesses; and run small sawmills. Members of SEACC regularly use the transboundary waters shared with British Columbia to satisfy a variety of interests, such as the harvest of marine resources for customary and traditional use (subsistence), recreational, and commercial purposes, as well as the aesthetic enjoyment of our abundant coastal resources in general.

We make these comments to ensure that SEACC and its members continue to benefit from the use and enjoyment of the region's tremendous resources. These transboundary rivers contribute to a \$2 billion commercial fishing and tourism industry that is dependent on clean rivers.

I. Gaps in the KSM Assessment that Require Additional Information

The KSM Mine as designed will be one of the largest open-pit mines ever constructed in the world. As such, its design has pushed engineering and safety factors beyond the experience of technology and operations management. For example, "The heights of the north and south slopes, (of the Mitchell pit) when existing topography is included in the height estimates, are beyond the current experience of the open pit mining industry. It is understood that this holds true even for the lower pit walls that are proposed with block caving incorporated into the mine plan". Letter dated October 8, 2013 to Kim Bellefontaine, Manager, Environmental Geoscience and Permitting, Ministry Energy and Mining.

Even one small aspect of this huge project, the road access, will be unable to employ mitigation adequately. "Never the less, it is impossible to fully mitigate all impacts. KSM roads will result in increased risk and negative effects to wildlife, terrestrial and aquatic resources in the project area. Risks and impacts that cannot be fully mitigated include, but are not limited to: loss of habitat, disturbance and displacement, habitat fragmentation, introduction of invasive species, and sedimentation". Letter dated

January 24, 2014 to Chris Hamilton, Project Assessment Manager Environmental Assessment Office from Ecosystem Section of the Resource Management Division of Ministry of FLNRO on the KSM Project.

It is beyond the scope of this analysis to define all areas lacking adequate risk analysis, appropriate mitigation, and contingency plans in case of failure. Below are a few areas where the lack of readily available information requires another level of review.

Lack of Analysis of Identifiable Risks

The annual precipitation in the area of the project is high, ranging between 4.6 to 7.9 feet. The Tailings facility alone is expected to accumulate a water surplus of 8.12 cubic feet per second, or about 260 million cubic feet a year despite an extensive perimeter diversion tunnel.

On the mine side, collected contact water is expected to require treatment at a rate of 1.5 to 2.4 billion cubic feet a year despite 13.5 miles of diversion tunnels and ditches for glacial melt and run-off water. Since the waste rock pile is largely PAG and will not be covered at closure, the water treatment plant will remain in operation to treat ARD indefinitely. These systems will be required to perform at unprecedented volumes for many hundreds of years. Performance of these facilities depends on maintaining the integrity of the many miles of diversion tunnels and ditches. No seismic performance analysis was conducted for these diversion tunnels, ditches, and pipelines. An earthquake (or even rock slide) blocking any of these structures would quickly lead to accumulation of water and rapidly threaten the containment structures themselves.

In addition, many sections of open diversion ditches intersect rock slide areas and avalanche zones. The Snowfield landslide directly above the Mitchell pit is an active rock deformation (moving at 10-50 cm/year) landslide in the order of 2 billion cubic feet of material. The diversion tunnel associated with the Mitchell pit below this slide is expected to carry 3,200 cubic feet of water per second. This volume of water unable to leave the pit from a blocked diversion tunnel could affect pit wall stability leading to failure.

The same situation occurs above the Kerr Pit. Section 3.6.5 of Appendix 9-A describes the Ted Morris Landslide as “considered active and is considered to have the potential for rapid failure.”

Planned mitigation measures include sizing ditches for snow removal, burying perforated piping in ditch bottoms for continued drainage after rock slides, and heating above ground pipe sections in the winter to prevent freezing. The consequences of failure (assumed to be high for geohazards damming diversion channels in the EA) of any one of these mitigation measures and the consequent impacts for water storage and treatment have not been analyzed in the EA and therefore, no contingency plans have been developed.

Further analysis is warranted to identify risks and design mitigation. Secondary containment or diversion for the large amounts of water need to be developed and incorporated into the mine plan and permit requirements.

Seismic Analysis Lacks Consideration of Multiple and Concurrent Events.

Many of the structures associated with the KSM as designed will have to be operated and maintained forever. Many of the documented failures of similar structures at other projects were found to be due to

cumulative damage from multiple, sub-critical events such as earthquakes, frost heave, and seepage. Lessons learned from other mine structure failures show that concurrent events such as simultaneous earthquakes, landslides and extreme weather often lead to failure. Other hazards that can, and often do occur in the area of the KSM include debris flows, rock falls, jokulhlaups, slope sagging, periodic large landslides and avalanches. All of these hazards are more probable and often occur concurrently with seismic and climate events.

Relying on assumptions about the specific hazards of single events rather than taking the more conservative perspective about worst probable concurrent events during the life of these structures (millennia) leads to overconfident predictions, inadequate mitigation and lack of secondary containment structures. “I have written that I believe those who focus on single causes of failure are deluded. There is no single reason for failure of a mine geowaste facility.”¹

Further analysis is required to identify the probability of concurrent events and appropriate mitigation and contingency plans developed.

No Mandate for Proponent to Maintain Engineering and Operation Skills during Life-of-Mine.

The mining industry is under constant pressure to control costs. The largest cost burden for mining companies is manpower. The result is often shedding of manpower to the point where companies no longer have sufficient engineering or operational experience on site for continued operation during the build-outs of dams and other structures². Reliance on outside contractors exacerbates this problem as evident in the recent Mount Polley disaster that occurred August 4, 2014. The main contractor for the design and operation of the tailings structure ended its relationship with the mine operator on February 10, 2011. The tailings dam failed on August 4th, 2014. The contractor stated that “[S]ignificant engineering and design changes were made subsequent to our involvement, such that the tailings storage facility can no longer be considered a Knight Piésold Ltd. Design”. See: Statement by Knight Piésold Ltd. August 8, 2014.

The possibility of encountering a down-turn of metal prices, increased costs of financing or lower than expected ore grade is very high over the life of this project. Further review is required to assure that staffing levels and levels of expertise are maintained by the proponent for the life of the project.

Inadequate, less than Conservative Maximum Probable Flood Analysis

Structures such as the water storage dam, tailings management diversion ditches and the Mitchell diversion tunnel, to name a few, are designed to safely handle a 200 year peak flow probable maximum flood. All of these structures are intended to be used in perpetuity (millennia). For instance, the Water Storage Facility is designed to store a maximum of 63Mm³ of contact water, the volume predicted to occur during a 200-year wet year.

Probable Maximum Flood (PMF), and other hypothetical floods of very low probability, are used for purposes of project design and evaluation. An extreme flood is viewed as an event resulting from very unusual rainfall or snowmelt (or both together), that in statistical terms is likely to have a return period of

¹ Slimes Dam-aka Tailings Storage Facility-Failure and what it meant to my mining mindset, April 19 2011. Jack Caldwell, [Http://ithingmining.com](http://ithingmining.com).

² See: Tailings Dams, Risk of Dangerous Occurrences, Lessons Learnt from Practical Experiences, Bulletin 121, International Commission on Large Dams 2001 at p.53.

500 years or more and whose reliable estimation is beyond the capacity of conventional flood frequency analysis³. Emphasis added.

The first edition of Dam Safety Guidelines by the Canadian Dam Association (CDA 1999) classifies dams into four Consequence Categories according to the perceived consequences of failure – Very High, High, Low and Very Low. The Water Storage Dam for KSM is classified as “Very High” consequence in accordance with CDA, Dam Safety Guidelines; however, in view of the extended life of the facility, the consequence rating has been upgraded to “Extreme”.

For the three highest categories, criteria for the reservoir Inflow Design Flood (IDF) are as follows:

Very High: the PMF is mandatory.

High: the IDF may be selected between the PMF and the 1000-year flood.

Low: the IDF may be selected between the 1000-year and the 100-year floods.

Selection of an IDF for the High and Low categories therefore implies a need to estimate the 1000-year flood – and in the case of the High category, perhaps events of even longer return period. For the High category, statistical estimation of floods of greater than 1000-year return period is sometimes avoided by adopting an arbitrary fraction of the PMF, for example 0.75 or 0.5.

Given the expected life of these structures and the extreme consequences of failure, the assignment of an arbitrary fraction return period for a maximum flood event is unwarranted and almost guarantees that the design criteria will be exceeded by a flood event not just once but several times during the life cycle of the structure and that failure will occur.⁴

Further review is warranted to assure that the design of these structures is adequate to withstand a 1000 year maximum probable flood event.

The Viability of the Selenium Treatment

The Draft Assessment Report of the KSM Environmental Assessment certificate prepared by the Environmental Assessment Office states on page 76:

While there are a number of successful pilot projects underway and full scale SeTPs are currently being planned, the type of selenium treatment systems proposed by the Proponent are not currently proven. As such they are considered largely conceptual systems which have not been demonstrated to work on a scale proposed by the Proponent. As a result, the viability of large scale ion-exchange selenium treatment systems should be considered an uncertainty with the proposed Project, especially given the reliance on these treatment systems to meet downstream water quality targets.

EAO recognizes that the Proponent has committed to having a fully operable, full scale SeTP in place by year five of operations. Should an EA Certificate be issued that would be a legally

³ See: Long Term Risks of Tailings Dam Failure Chambers and Higman October, 2011

⁴ The 1999 CDA guidelines appear inconsistent between flood and earthquake criteria. The highest earthquake criterion – the Maximum Credible Earthquake – is implied to have a return period of 10,000 years. On the other hand, the return period of the PMF is usually considered to be at least 100,000 years.

binding condition. EAO also notes that this condition could be met using more traditional biological treatment systems as opposed to ion exchange technology.

Biological treatment is more challenging in the area given the large amounts of sludge that are produced, the temperatures required for effective treatment, and the treatment target of 1 µg/L. Nonetheless, this factor does increase the certainty relating to selenium treatment.

The Kemess Mine, also located in British Columbia, faced an “unexpected” issue with selenium two year’s into the mine project. The B.C. Ministry of the Environment and Kemess undertook extensive investigations, studies and remedial measures to address the issue of selenium flowing into fish bearing waters. Kemess “successfully grappled with its water management challenges” by requesting site specific selenium criteria allowing the mine to exceed water quality criteria for its discharge thus avoiding the need to remove selenium down to the aquatic life criteria minimum levels. See: *Mine Waste Management in Wet, Mountainous Terrain: Some British Columbia Perspectives*.⁵

To date, the technology for the removal of selenium is still unproven. Conceptually, a combined system using Reverse Osmosis (RO) to concentrate the stream followed by biological reduction may prove to be the best solution for completely converting selenium to a solid form for disposal has been shown to work. See: *Evaluation of Treatment Techniques for Selenium Removal*. Smith et.al. 2005.

RO is not under consideration for the KSM project because of the cost. As in U.S., the feasibility of alternative systems is partially based on the economics of the project. Viable, protective alternatives are often rejected due to their impact on the proponent’s ability to generate profit rather than protecting off site resources from impacts of the discharge. If less than the most effective identified technology is chosen due to economic considerations and proves to be unable to perform in this environment, the proponent may seek site specific exemptions to avoid the need to protect the water quality. This is unacceptable on a transboundary river.

Additional information is necessary on technology and costs to assure downstream fisheries resources are protected. Mandates are required to assure that the most effective proven technology is employed at this project and that all discharges are below the appropriate water quality criteria for the protection of aquatic and human health.

Inadequate Earthquake Modeling

Water Storage Facility

As stated above, the WSF is designed to store a maximum of 63Mm³ of contact water, the volume predicted to occur during the 200-year wet year. The Water Storage Dam is classified as “Very High” consequence in accordance with CDA, Dam Safety Guidelines. However, in view of the extended life of the facility, the consequence rating has been upgraded to “Extreme”.

The dam is designed to meet or exceed the required minimum static Factor of Safety (FOS) and to resist the maximum credible earthquake design ground acceleration of 0.14g (equivalent to 1:10,000-year return period earthquake), satisfying requirements of the CDA Dam Safety Guidelines.

Tailings Facility

The North, Saddle (Stage 1) and Southeast dams at the tailings facility are designed to withstand a maximum considered earthquake ground acceleration of 0.14g while the Splitter and Saddle (after Stage

⁵ Proceedings Tailings and Mine Waste 2011 Vancouver Conference November 6 to 9, 2011

1) were designed to withstand the 1:2475 year design earthquake with ground acceleration of 0.08g. All dams have been designed according to CDA (2007) criteria with a static FOS > 1.5, a pseudo-static FOS > 1.0 and a post-earthquake FOS > 1.2.

The North, Saddle dam, and Southeast dams have been classified as “Extreme” consequence based on CDA (2007) guidelines and designed accordingly based on CDA design criteria. The Splitter Dam and Saddle Dam (after Stage 1) have been classified as “High” consequence.

All large, permanent, dams and waste rock dumps should be analyzed for potential seismic failure using a dynamic model, not a pseudo-static analysis⁶. During the San Fernando Earthquake of 1971, the Upper San Fernando Dam, despite a large pseudo-static factor of safety, failed. In 1973, a dynamic analysis of the embankment and computed displacements was performed that closely agreed with the observed deformations. See: Seismic Slope Stability and Analysis of the Upper San Fernando Dam, James Dismuke, 2002.

Dynamic analysis of seismic slope analysis of tailings dams is essential. Available literature indicates that significant numbers of earthen tailings dams have failed during earthquakes because of slope failure. To reduce this problem, a dynamic analysis must be performed before constructing the tailings dam.

Further review is necessary to assure that dynamic seismic modeling is performed on these structures and that the necessary design changes are incorporated into the requirements. These structures will need to last in perpetuity, so there is a very high probability that an earthquake exceeding the current design factor of safety will occur.

SEACC requests that a Federal Panel be convened to review these aspects of the EA and Assessment. There are many gaps in the analysis for this project where readily available information should be applied to assure the maximum protection of downstream resources. These resources have a long history of sustainable productivity and value that far exceeds even the most optimistic predictions of this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy Archibald', with a stylized, cursive script.

Guy Archibald
SEACC Mining and Clean Water Coordinator

⁶ Pseudo-Static and Pseudo-Dynamic Stability Analysis of Tailings Dam Under Seismic Conditions, Proceedings of the National Academy of Sciences, India Section A: Physical Sciences. March 2013, Volume 83, Issue 1, pp63-71. February, 2013.



CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
EDWARD K. THOMAS BUILDING
9097 Glacier Highway
Juneau, Alaska 99801 - 6922

October 21, 2013

KSM Project
Canadian Environmental Assessment Agency
410-710 West Georgia Street
Vancouver, BC V7Y 1C6

Re: Comments on Seabridge Gold's Kerr-Sulpherts-Mitchell (KSM) Mine project

Central Council of the Tlingit & Haida Indian Tribes of Alaska (CCTHITA) urges the British Columbian provincial and Canadian federal review agencies to not advance Seabridge Gold's Kerr-Sulpherts-Mitchell (KSM) mine proposal. CCTHITA is a sovereign government that represents over 28,000 tribal citizens worldwide; over 10,000 which reside in Southeast Alaska. Our tribal citizens depend on the nourishment that the land provides us for work, food, cultural traditions, and spiritual existence. CCTHITA advocates for protecting our ancestral territories by participating in actions that may impact these lands, waters, and natural resources we depend on. We therefore cannot ignore the KSM Mine project, located on the sacred headwaters of the Unuk River which flows into the pristine Misty Fjords National Monument near Ketchikan in Southeast Alaska, a place of significance to Alaskans and visitors alike. We are concerned about how this project will pollute the Unuk River and its tributaries. The Unuk River provides spawning habitat for all five species of Pacific salmon and as well as steelhead, cutthroat and rainbow trout, and char and whitefish. It also provides an important subsistence hooligan fishery. Further, the Unuk River produces one of Southeast Alaska's largest king salmon runs. The impact on the salmon and other key species that nourishes our communities and non-human communities alike, that fuels our commercial and traditional economies, and that sustains us as a cultural entity is too much to risk.

We request that the comment deadline be extended by six months and for public hearings and official tribal consultations to be held in Southeast Alaska prior to any decisions made because 1) a 45-day public comment period is not enough time to analyze a 30,000 page environmental assessment; 2) the location of the KSM deposit has the potential to create acid mine drainage which is known to cause irreparable harm to water quality; 3) the water treatment technology is untested and unproven which cannot guarantee there will be strong enough protections for our current and future generations that depend on pristine water quality and 4) there are not cumulative impact studies that considers the impact of all proposed development in the region.

45-day public comment and review period is not enough time to analyze a 30,000 page environmental assessment

Despite the effects the downstream Alaskan communities will endure as the result of development in British Columbia, there has been no transparent dialogue or information sharing

between Canada and the United States, let alone with Alaskan Tribal governments, the State of Alaska, municipalities, or the Alaskan public. We request that the comment period be extended by at least six months to allow for a comprehensive review of the information, as 45-days is not a sufficient amount of time to analyze the available data. The impacts this project could have on our communities are too great to give such little time and consideration.

We also request that public hearings take place in Southeast Alaska, including official consultation meetings with the Southeast Alaskan Tribes. As a recognized tribal government, CCTHITA has the authority to participate on a Nation-to-Nation basis with both the United States Federal government and the Canadian Federal Government to assure that our resources and values are protected. Consultation meetings are a necessary step to ensure the safety and well-being of our tribal citizens.

The location of the KSM mine has the potential to create acid mine drainage (AMD) which is known to cause irreparable harm to water quality

Water is the foundational element of all life and provides essential habitat for salmon – a keystone species that nourishes many human and non-human communities alike. We must ensure proper stewardship of all water bodies, including the Unuk River, in order to protect the health and cultural existence of our tribal citizens and ensure the welfare of our future generations. The KSM mine is located in known sulfide deposits, which has a high possibility of creating acid mine drainage (AMD), a highly toxic substance that will have detrimental impacts on salmon and other resources. AMD is difficult to address once the process has started. Take, for example, the Tulsequah Chief mine located on another significant transboundary river, the Taku. Tulsequah Chief mine has been discharging AMD and heavy metals since the 1950s into the Taku River. Given this high possibility of AMD generation from the KSM mine, paired with the current lack of monitoring and permitting compliance enforcement in British Columbia of other past and present development projects like the Tulsequah Chief mine, we are deeply concerned about the impacts on the Unuk River.

The proposed water treatment technology is untested and unproven which cannot guarantee there will be strong protections of the water quality for present and future generations

CCTHITA has a responsibility to protect our ancestral lands and waters, not only in honor of our ancestors but for the benefit of our future generations. Given the colossal size and magnitude of the KSM project and the consequences we will face if mine operations go wrong (whether human induced or natural), we need stronger guarantees that salmon and water quality will not be harmed. The proposed project is one of the largest in the world and the current analysis is based on limited information and assumptions on untested technology. Seabridge's analysis assumes the technology will work and does not analyze what they propose to do if the system fails. We cannot be assured that the company has the know-how or financial resources needed to treat and protect the water for any given amount of time, let alone the 200 years they have planned for. This leaves too much uncertainty on the impacts the proposed mine will have on our current and future generations.

In addition, the proposed tailings area is located in some of the best Canadian salmon habitat which helps nourish our communities in Southeast Alaska. We cannot know with confidence that the salmon and all the communities that depend on these salmon will be safe if/when the tailings dam breaks. The current environmental assessment does not mention how Seabridge will clean up the toxins that would be released into the Unuk River watershed, should the tailings dam break. In addition, Seabridge did not address how they plan to store the dry sludge.

The information provided on the untested technology is based on overly optimistic assumptions from the company. Given the massive size of this project, we urge the reviewing agencies to not give this project the green light based on assumptions and insufficient analysis.

There are not cumulative impact studies that considers the impact of all proposed development activities in the region

The size of the proposed KSM Mine is unprecedented in size and scale and is based on untested technology which makes this project riddled with liabilities and uncertainty. And yet the KSM mine is not the only proposed development in the region. We encourage the reviewing agencies to consider every and all on-going development projects in the area and how those projects will cumulatively affect all the communities, values, and resources in the region.

Conclusion

Southeast Alaska and our tribal citizens have nothing to gain and everything to lose if anything at the proposed KSM mine fails. Our cultural foundation and laws are based on relationships – to each other and to our surroundings. We have a responsibility to acknowledge these relationships and ensure that we do not off-set the delicate balance in that relationship with our natural community. Based on the reasons stated above in this comment letter, we do not feel as though the project will respect the relationship we have to our land and natural surroundings that provide for our communities, nor does the proposed project offer the protections needed to ensure our communities will not be detrimentally impacted by the mine. We therefore request for a six-month extension on the comment period and for consultation meetings with the Alaska Tribes and public hearings to take place in Southeast Alaska to adequately address our concerns.

Thank you for the opportunity to comment. We look forward to the official consultations and learning more about the project in the near future.

Sincerely,


for Edward K. Thomas
President

cc:

Mark Begich, United States Senator
Lisa Murkowski, United States Senator

Don Young, United States Representative
Dennis Egan, Alaska State Senator
Bert Stedman, Alaska State Senator
Beth Kerttula, Alaska State Representative
Cathy Munoz, Alaska State Representative
Sheila Cameron, Alaska Department of Fish & Game
Jackie Timothy, Alaska Department of Fish & Game
Steve McGroaty, Alaska Department of Natural Resources
Tom Crafford, Alaska Department of Natural Resources
Andrea Meyer, Alaska Department of Natural Resources
Kyle Moselle, Alaska Department of Natural Resources
Allan Nakanishi, Alaska Department of Environmental Conservation
Pamela Bergmann, United States Department of Interior
Jeffery DeFreest, United States Forest Service
Cindi Godsey, United States Environmental Protection Agency
Cindy Hartmann, National Marine Fisheries Service
Deborah Rudis, United States Fish & Wildlife Service
Jenna Purl, United States State Department
Irene Dundas, Ketchikan Indian Community
Tim Gillen, Wrangell Cooperative Association
Tina Sakamoto, Petersburg Indian Association
Clarence "Butch" Laiti, Douglas Indian Association



United Tribal Transboundary Mining Work Group

protecting tribal lands and waterways for future generations

August 20, 14

KSM (Kerr-Sulphurets-Mitchell) Project
Canadian Environmental Assessment Agency
410-701 Georgia Street West
Vancouver, British Columbia V7Y 1C6

Re: Comments on the proposed Kerr-Sulphurets-Mitchell (KSM) Project Comprehensive Study Report and our Request for a Panel Review

Thank you for the opportunity to comment on the Comprehensive Study Report for the proposed Kerr-Sulphurets-Mitchell (KSM) Project. The United Tribal Transboundary Mining Work Group is a coalition of Southeast Alaskan federally recognized tribal governments working to protect our ancestral lands and waters, which historically includes all of Southeast Alaska and parts of British Columbia and the Yukon Territory. We are gravely concerned about the KSM project's potential impacts on our communities, salmon, and way of life.

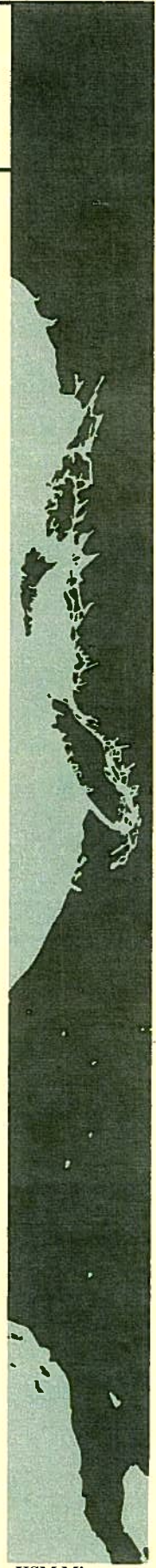
We therefore request that the federal analysis of the KSM Project be elevated to a Panel Review because 1) the massive scale, longevity and untested, conceptual mitigation measures put downstream water quality, salmon, and communities at risk; 2) smaller scale projects in British Columbia have been subject to Panel Reviews, including the Prosperity, New Prosperity and, Kemess North mines; 3) polluting the transboundary Unuk River would be a violation of the Boundary Waters Treaty, 4) there are too many uncertainties posed by the assessment that needs to be further addressed; and 5) Seabridge Gold has not consulted with Southeast Alaskan Tribes.

The massive scale and longevity of the untested, conceptual mitigation measures puts downstream water quality, salmon, and communities at risk

Our tribal citizens depend on clean water and healthy salmon runs in the watersheds located on the Alaska/Canada border. The proposed KSM mine is in the headwaters of the Unuk River in British Columbia. The Unuk River is one of Southeast Alaska's top king salmon producing rivers and also provides an important eulachon run. These species are important for customary and traditional practices that sustain our cultures and nourish our communities. If our waters and fish are impaired, so are the livelihoods and cultural existence of the downstream communities.

Untested models

Many of the proposal's components are based on untested, conceptual models and not on actual field testing or empirical data. The complex water management system is unprecedented in size and operating lifetime. No example of water treatment at this level



currently exists; therefore the long term performance is speculative. The assessment and determination of effects to downstream fish habitat are based on only 5 years of water data presented without any error or probability analysis. Estimates based on this data cannot adequately predict the impacts over the 250 year life of the KSM project. Reliance on this limited data more than likely leads to overconfidence in estimating impacts and the project's ability to mitigate those impacts.

In addition, Seabridge Gold's predictions on effects to water quality, fish and fish habitat must rely on the water treatment, drainage and power systems operating continuously and without fail for at least 250 years. This is an unrealistic assumption given the remote nature and complexity of the site and operation. The Mount Polley Mine disaster is a recent example of underestimating the potential for accidents.

Seabridge Gold's management plan also relies on a prediction that contamination "will be confined to the immediately vicinity" of the mine. Large mines of this type have shown that it is difficult, particularly for complex groundwater systems and areas of heavy rainfall, to restrict contamination to the mine site. Further, the ore body is considered entirely acid generating which is known to be inherently difficult to control. Acid drainage has negative effects on water quality, and is toxic to salmon and other species we depend on for our customary and traditional fishing.

Lack of specific responses and lack of insurance to major accidents

The contingency plans and accident scenarios need better evaluation and the unspecified "adaptive management" measures need to be described with measurable targets for evaluating performance. The assessment further relies on minimizing the effects through monitoring and to mitigate effects that are unavoidable. Rigorous post-closure monitoring may be impractical and costly. In addition, the proposal does not document the effectiveness of its proposed mitigation techniques.

As highlighted by the Mount Polley Mine disaster, Imperial Metals, the owner of the Mt. Polley Mine, did not have a cohesive emergency plan in place and does not have adequate insurance to cover the costs for its tailings dam failure. We are not confident that Seabridge has prepared for covering the costs of any major accidents. Seabridge has not indicated that there is a funding mechanism in place for water quality treatment or permanent monitoring. This leaves much uncertainty on the impacts the proposed mine will have on our current and future generations.

We believe these issues need to be further addressed by a Panel Review like they have been for smaller mines.

Smaller scale proposed mining projects, such as the Prosperity and New Prosperity Mine, in British Columbia have received a Panel Review

Panel Reviews had been established for the Prosperity and New Prosperity Mine due to concerns about water quality, fish and fish habitat, bears, and Aboriginal rights and title. The KSM proposal contains similar issues at a much larger scale.

The BC Ministry of Energy and Mines stated in the New Prosperity Mine review that “Water treatment is a primary mitigation strategy for this project and it should be demonstrated to be feasible at the EA phase, especially since it is key to conclusions on project related effects.” Seabridge has not demonstrated the feasibility of its water treatment system. In addition, Seabridge has not shown that the tailings dams would remain stable over the long term. For example, the assessment focuses on the failure analysis for the water storage and tailings dams. All large, permanent dams and waste rock dumps should be analyzed for potential seismic risk.

Polluting the Unuk River would be a violation to the Boundary Waters Treaty

Article IV of the Boundary Waters Treaty states that “It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.”

The Assessment does not analyze the risks and probability of any potential violations of the Boundary Waters Treaty despite the project’s size, magnitude, and high potential for polluting the Unuk River and downstream Alaskan communities. The dam breach study performed for the Water Storage Dam above the Unuk River only looked at the effects of flooding and not the effects of chemical contamination.

There are too uncertainties posed by the assessment that needs to be further addressed

There are a variety of uncertainties that require further information and consideration that warrant a Panel Review. Below are a few key examples.

Need for more sampling from the Unuk River watershed

Fish population estimates, spawning surveys, and habitat mapping were more extensively sampled in the Bell-Irving River watersheds than for the Unuk River. Additional sampling and studies for the Unuk River must be conducted.

Untested/unproven selenium treatment

In addition, the proposed selenium treatment method is not proven. Seabridge’s says they can prove the treatment method within five years. The likelihood of this treatment method succeeding should be independently assessed.

More temperature analysis

Temperature has also been underemphasized in the Assessment and was only measured continuously in only two locations. Temperature is one of the most important parameters that impact life history, growth, survival and other attributed of aquatic biota.

Mixing zone analysis on effects to aquatic life

The mixing zone also did not receive any analysis for its effects on aquatic life and thus there was no proposed mitigation for its effects.

United Tribal Transboundary Mining Workgroup

Seabridge Gold has not consulted with Alaskan tribes

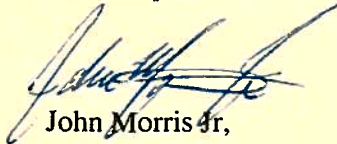
Neither Seabridge Gold nor British Columbia have consulted with the Southeast Alaskan tribal governments or have conducted meaningful communications with us in regards to the proposed KSM project. Southeast Alaska and our tribal citizens have nothing to gain and everything to lose if anything at the proposed KSM Mine were to fail or not go as planned. Consultation meetings are a necessary step to ensure the safety and well-being of our tribal citizens and we therefore request that those consultations take place.

Based on the reasons stated above, we request that the federal analysis of the proposed KSM Mine be evaluated to a Panel Review.

Respectfully,



Rob Sanderson Jr,
Co-chairperson



John Morris Jr,
Co-chairperson

CC:

Alaska Governor Sean Parnell
Alaska Department of Fish & Game
Alaska Department of Natural Resources
Alaska Department of Environmental Conservation
Southeast Alaska Legislative Delegation
Alaska Congressional Delegation
United States Department of State
United States Department of Interior
United States Environmental Protection Agency
United States Department of Agriculture
United States National Oceanic & Atmospheric Administration
International Joint Commission

Saving SE Alaska's Rainforest Way of Life

We, the United Tribal Transboundary Mining Work Group, a coalition of 15 federally-recognized Tribes in Southeast Alaska, work to protect our ancestral lands and waters. We have lived in our so-called transboundary area between Alaska and Canada for thousands of years. We want our Traditional experience and cultural values included at the decision table, especially regarding several large scale mines. We seek a new way for resource extraction in the future. Business as usual cannot continue.

[Full description](#)

[Partners](#)

[Contacter par e-mail](#)

All updates

[John Morris, Sr.](#)

Speaker profile - 20 July 2016 - 3:04am



John C. Morris, Sr., was born January 7, 1940 in Douglas, Alaska. His father and mother were Charles and Florence Morris of Douglas. His father was Raven-Frog moiety, and his mother was Eagle-Wolf moiety. He is a direct descendant of Chief Anaklahash of the Auke Kwan. His grandfather, Jimmy Fox, was chief of the Taku Kwan until July 4, 1947, when he passed. The position was then given to his father, Charles Morris, who held that position until 1962.

[Rob Sanderson, Jr.](#)

Speaker profile - 20 July 2016 - 2:56am



Robert (Rob) A. Sanderson, Jr. (Gu'usuwaa) is Haida of the Eagle moiety, Stuts Clan. He was born in Ketchikan, Alaska to Romay D. (Edenshaw) Sanderson and Robert A. Sanderson, Sr. and was raised in Hydaburg, Alaska. His maternal grandparents are the late James and Bertha (Lee) Edenshaw; paternal grandparents are the late Edward and Helen B. Sanderson; and biological paternal grandfather is the late Robert A. Cogo, Sr.

[Carrie James](#)

Speaker profile - 4 June 2016 - 6:10am



Carrie L. James I grew up living a Traditional Way of Life. I am passing on my knowledge of our Traditional Foods and Way of Life to my children. I am an advocate for our traditional/indigenous rights and for protecting our way of living, protecting our streams, and our environment. Without protection of our environment our Traditional Way of Living is at risk.

[Brandon Thynes](#)

Speaker profile - 4 June 2016 - 5:48am

Born October 12, 1977, to Lloyd



and Yvonne Thynes of Petersburg. Brandon has worked 24 years on or around the immaculate waterways of Southeast Alaska as a fisherman.

[Frederick Olsen, Jr.](#)

Speaker profile - 2 June 2016 - 10:08pm



K'yuuhlgaansii hin uu dii kya'ang. My name is Frederick Otilius Olsen, Jr. I am of the Sgajuuga.ahl Clan--Haida eagle moiety with beaver, frog, and sculpin crests. My name in the Haida language is K'yuuhlgaansii ("Place of one's own").

[Michael Baines](#)

Speaker profile - 2 June 2016 - 9:22pm



A lifelong Sitkan, Michael Baines attended Sitka schools and then attended UCLA, graduating with a degree with a major in Mathematics and Applied Science (math and physics). Mike has dedicated eight years of service on Sitka Tribe of Alaska Tribal Council, serving three years as vice chairman, and is currently half way through a two-year term as chairman. He has served on many tribal committees, including Education Committee, Boys and Girls Club Steering Committee, the Customary, Cultural &

Session partners



Salmon State



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[Full description](#)

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All updates

[Lawrence Armour](#)

Speaker profile - 31 May 2016 - 11:38pm



Lawrence Armour was born in Ketchikan, Alaska on August 24th, 1982 and raised in Klawock on Prince of Wales Island. He is a Veteran of the US Navy Submarine Service and is currently the Tribal Administrator for the Klawock Cooperative Association.

[Daniel Klanott](#)

Speaker profile - 31 May 2016 - 9:48pm



Born in Haines, Alaska on August 12, 1979 and raised in Klukwan, Alaska. My name is Daniel H. Klanott and I am Gaanaxteidi. My Tlingit name is Lei. Naa. I am a Raven from the Whale House in Klukwan.

[Raymond Sensmeier](#)

Speaker profile - 31 May 2016 - 9:44pm



Raymond Sensmeier is a member of the Yakutat Tlingit Tribal Council. His Tlingit name is Gee nee nak' and he is of Raven moiety. He is from

the Kwáashk'(i) Kwáan (humpback salmon) clan from the Copper River People, House of the Dis Hit Taan (House of the Half Moon People). Raymond is grandchild of the Brown Bear, Teikweidi'. His father is Cherokee, and Irish.

[Clinton Cook, Sr.](#)

Speaker profile - 29 May 2016 - 3:01am



My name is Ga'gwaath . My name in the Haida language means Canoe Boy. Living in Southeast and raising my family here, I have been teaching my children our traditional way of life and the values of our culture, and preserving our environment. As Chairman of the Board of Commissioners for the Tlingit & Haida Regional Housing Authority; the Tribal President of the Craig Tribal Association, a federally recognized tribe; and a customary and traditional use fisherman, I see the value in work

[Sylvia Banie](#)

Speaker profile - 12 May 2016 - 8:03pm



My name is Sylvia Banie. I am the daughter of Martin Perez Sr. and Amy Perez. I am a Tlingit/Seneca Native. My Tlingit name is Cheesh. My heritage is from the upper Unuk River to the Cape Fox Village in Alaska. And from New York. I am the Vice president of the Organized Village of Saxman. I was born in Ketchikan, Alaska and have lived in my village of Saxman all my life.

[Mount Polley Mine Tailings Pond Breach](#)

Video - 12 May 2016 - 1:49am

British Columbia, August 2014: When a dam containing 10 million cubic meters of contaminated waste water from the Mount Polley Mine collapsed, the traditional lands of the Cariboo region were damaged irreparably. We cannot let this happen again.

Mount Polley Mine Trailings Pond Breach

Session partners



Salmon State



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[Full description](#)

[Partners](#)

[Contacter par e-mail](#)

All updates

["Water is Life" by Inside Passage Waterkeeper](#)

Video - 10 May 2016 - 12:40am

Travel along the Stikine River where the rhythm of life is dominated by the cycle of salmon, just as it has been for thousands of years.



Water is Life

from [Inside Passage Waterkeeper](#)

10:23

[Water is Life](#) from [Inside Passage Waterkeeper](#) on [Vimeo](#)

Session partners



Salmon State





NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ANC-14-013

TITLE: Negative Effects of Canadian Transboundary Mining

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SOUTHERN PLAINS
Stephen Smith
Kiowa Tribe of Oklahoma

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Arlan Melendez
Reno Sparks Indian Colony

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
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202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, British Columbia (BC) is in the midst of a major mining boom in the transboundary region at the head waters of some of the following major Alaskan rivers: Taku, Stikine, and Unuk; and

WHEREAS, Southeast Alaska communities are downstream from major mining projects and are experiencing negative impacts and risks directly resulting from these mining projects and have no economic benefit from the projects; and

WHEREAS, this development is happening under Canadian laws and regulations that have been significantly weakened over the past few years; and

WHEREAS, Canadian and BC mine permitting processes do not have the equivalent to Alaskan regulations with reference to water and salmon protections; and

WHEREAS, concerns are focused on potential damage to water quality, salmon, eulachon (hooligan), wildlife, recreation, livelihood, and customary or traditional activities; and

WHEREAS, this issue is raising major concerns from tribes, fisherman, local business, and community leaders; and

WHEREAS, tribes in Southeast Alaska, conservation groups, commercial fishermen, and community leaders are working to educate citizens and leaders about the threats posed by transboundary mines and what can be done to help protect Alaskan waters, fish, and way of life; and

WHEREAS, the proposed mines include Tulsequah Chief in the Stikine Region in BC on the Taku River, Galore Creek Mine in Kitimat-Sitimat-Stikine, BC, Red Chris Property in Iskut, BC, Schaft Creek Mine in Kitimat-Stikine D, BC, and the Kerr-Sulphurets-Mitchell (KSM) project in Kitimat-Stikine, BC.

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby requests that Congress, the White House, and the Department of State engage directly with the Canadian government on British Columbia's proposed mines to protect the health and productivity of Southeast Alaska's waters and lands downstream from proposed mines to ensure they are not damaged by development upstream; and

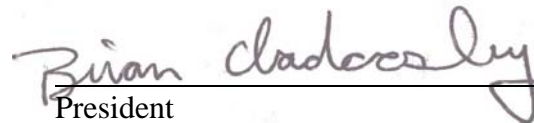
BE IT FURTHER RESOLVED, that affected tribal governments be consulted with and represented in any policy discussion related to impact to United States waters and communities pursuant to the Executive Order 13175 and the Declaration of the Rights of Indigenous Peoples; and

BE IT FURTHER RESOLVED, that NCAI shall coordinate with the Assembly of First Nations and other tribal organizations on the efforts to protect Southeast Alaska from the negative impacts of transboundary mining; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.


President

ATTEST:


Recording Secretary



**Alaska Native Brotherhood & Alaska Native
Sisterhood
Grand Camp**



RESOLUTION No. 14-18

**Title: Supporting International Joint Commission Involvement in the
Alaska/British Columbia Transboundary Region**

WHEREAS, the Transboundary rivers of British Columbia and the Yukon region bound Southeast Alaska and include the Taku, Stikine, Unuk and Alsek rivers, of tremendous and unique ecological, subsistence, cultural and recreational value. The clean water and intact habitat of these river systems make them some of the most productive wild salmon rivers on the west coast of North America; and

WHEREAS, with the BC Northwest Power Line bringing in power, these rivers and their tributaries are facing a significant increase in new, large scale development and industrialization that will transform the area and impact these rivers. Several open-pit mine projects, in known acid-generating ore bodies, along with associated waste rock piles, tailing dams, energy projects and roads, all threaten the productivity of the rivers and the health of the region. Major threats to water quality, salmon and wildlife include accidents and spills, tailing dam breaches, long-term acid mine drainage, and habitat fragmentation; and

WHEREAS, the proposed mines include Tulsequah Chief in the Taku watershed; Galore Creek, Red Chris and Schaft Creek in the Stikine watershed; and the Kerr-Sulphurets-Mitchell (KSM) project in the headwaters of the Unuk River; and

WHEREAS, the environmental laws and permitting processes in BC and Canada have been weakened over the past decade. The ongoing acid mine drainage from the Tulsequah Chief mine and the tailings dam failure at the Mt. Polley mine demonstrate weaknesses in monitoring and enforcement; and

WHEREAS, Alaskan Native Tribes, B.C. First Nations, fishermen, subsistence and recreational users, local communities, elected leaders and conservation groups on both sides of the Canadian/U.S. border have all raised concerns about the pace and scope of the proposed industrial development in British Columbia and the potential for harm to water quality, fish and wildlife, cultural practices and local economies; and

WHEREAS, nothing is more fundamental than the food we eat and nothing is more important than the salmon, hooligan, deer, moose and other food we harvest from the land; and

WHEREAS, the Canadian and BC permitting processes have not been adequate to address our concerns; and

WHEREAS, the Boundary Waters Treaty states “waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other” and provides a mechanism to address Transboundary river concerns known as the International Joint Commission.

NOW THEREFORE BE IT RESOLVED, that the Alaska Native Brotherhood and the Alaska Native Sisterhood in Grand Camp assembled in Petersburg, Alaska between October 8 through October 11, 2014 respectfully requests the United States through the State Department work with the government of Canada to refer the issue of Transboundary development and downstream concerns to the International Joint Commission and to utilize any and all powers under the Boundary Water Treaty to ensure that our resources are not harmed by upstream development; and

BE IT FURTHER RESOLVED, that the Alaska Native Brotherhood and Alaska Native Sisterhood, urge the State Department, all federal and State of Alaska agencies to consult with affected Tribal governments as required by law including Executive Order 13175.



William E. Martin
ANB Grand President



Freda M. Westman
ANS Grand President

ATTEST: I certify that this resolution was adopted by the ANB/ANS Grand Camp in convention at Petersburg, Alaska, during the week of October 8 through October 11, 2014.



Colette Buchanan
ANB Grand Secretary