



Southeast Alaska Conservation Council

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Reference # POA-1990-592-M6

August 3rd, 2009

Colonel Reinhard W. Koenig, District Commander
c/o Richard Jackson
Regulatory Division (1145), CEPOA-RD
Post Office Box 6898
Elmendorf AFB, Alaska 99506-0898

Dear Colonel Koenig and Mr. Jackson:

Thank you for the opportunity to comment on the Kensington Gold Project's permit for tailings waste disposal (Reference # POA-1990-592-M6). The Southeast Alaska Conservation Council (SEACC) is a coalition of 15 volunteer citizen organizations based in 12 Southeast Alaskan communities. SEACC's membership includes commercial fishermen, Alaska Natives, small-scale timber operators and value-added wood product manufacturers, tourism and recreation business owners, hunters and guides, and Alaskans from many other walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for the balanced, sustainable use of our region's resources.

Since exploration began in the 1980's, SEACC has been engaged in the planning and permitting of the Kensington Gold Project because of the outstanding biological diversity, rich cultural and historic significance, diverse recreation opportunities, and scenic beauty of near by Berners Bay. The debate over the Kensington Mine is not if the mine will occur, but how it will dispose of its chemically processed tailings waste. Nor is the controversy over the Kensington Mine a "Jobs versus Environment" debate. There are environmentally acceptable alternatives for the Kensington mine, such as the paste tailings plan, that we support and will provide needed local jobs. SEACC recognizes the importance of the jobs the Kensington Mine will bring to Juneau area.

SEACC supports the paste tailings alternative for the Kensington Gold Project. We urge you to modify the permit to require the use of the proposed paste tailings facility near Comet Beach rather than the Lower Slate Lake tailings disposal plan. We believe the paste tailings plan strikes a responsible balance between environmental protection and resource development. Since extensive work has already been done reviewing the plan, we support fast-tracking the approval of a paste tailings facility at Comet Beach to help provide these jobs as quickly as possible.

ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Point Baker • CHICHAGOF CONSERVATION COUNCIL, Tenakee •
CUSTOMARY & TRADITIONAL GATHERING COUNCIL OF KAKE • FRIENDS OF BERNERS BAY, Juneau • FRIENDS OF GLACIER BAY, Gustavus •
JUNEAU AUDUBON SOCIETY • JUNEAU ALASKA YOUTH FOR ENVIRONMENTAL ACTION • LYNN CANAL CONSERVATION, Haines •
NARROWS CONSERVATION COALITION, Petersburg • LISIANSKI INLET RESOURCE COUNCIL, Pelican • PRINCE OF WALES CONSERVATION LEAGUE, Craig •
SITKA CONSERVATION SOCIETY • TAKU CONSERVATION SOCIETY, Juneau • WRANGELL RESOURCE COUNCIL
•YAKUTAT RESOURCE CONSERVATION COUNCIL

Paste tailing strikes a balance between development and environmental protection.

SEACC has consistently made good faith efforts to work with the mine proponent to find solutions to conflicts and protect Berners Bay. During exploration in the 1980s, SEACC worked with the mine proponent to find ways to reduce the impact of helicopter traffic on mountain goats. During the mid 1990s, SEACC was closely engaged in the planning of the dry stack tailings disposal plan. Coeur obtained all necessary permits from federal, state, and local authorities in 1998, and SEACC did not challenge the dry stack tailings plan in court. Coeur chose not to pursue the project due to low gold prices. More recently, SEACC worked with Coeur to develop the paste tailings alternative.

After the 9th Circuit Court's May of 2007 ruling that the Lower Slate Lake tailings disposal plan violated the Clean Water Act, SEACC publicly offered to work with Coeur to come up with an alternative tailings disposal plan. This effort was moderated and supported by the City and Borough of Juneau. It was Coeur that proposed the use of a paste tailings facility, and in a Power Point presentation on October 15th, 2007 Coeur characterized paste tailings as "the way forward," citing the numerous advantages: ¹

- *Higher density / reduced volume*
- *Reduced disturbance area*
- *Enhanced water recovery*
- *Reduced embankment borrow materials*
- *Ease of operations*
- *Ease of Closure*

In addition, Coeur verbally told SEACC that one of the major benefits it saw in paste tailings was its economic advantage over dry stack tailings. Paste tailings disposal is less expensive because it requires less dewatering of the tailings slurry, reducing fuel costs, it also requires less labor to manage the tailings. It is worth noting that the nearby Greens Creek Mine effectively and profitably utilizes the more expensive dry stack method,² and the Coeur itself once advocated the dry stack method.³ In addition, Coeur verbally told SEACC that the ease of operations that paste tailings provides is a distinct benefit. The Kensington will use a paste tailings backfill process for approximately 40% of the tailings waste regardless of the type of above ground facility utilized.⁴ This creates a scenario where Coeur can utilize existing technology planned for the mine for on-land waste disposal. All the tailings slurry can be pumped into the underground tunnel. The slurry to be turned into paste backfill can be diverted to an underground paste plant, while the tailings to be deposited on the surface can be pumped through the mine and downhill to the above ground facility near Comet. As demonstrated by Coeur's previous support for the paste plan, it is feasible and will provide as many jobs as the Slate Lake Plan.

1. *Richins, Rick & Knight Piesold. 2007. Kensington Project Paste Tailing Facility Alternatives Review Meeting. Power Point. October 15, 2007 in Juneau, Alaska.*

2. *USDA Forest Service. 2003. Greens Creek Tailings Disposal Final Environmental Impact Statement.*

3. *USDA Forest Service. 1997. Final Supplemental Environmental Impact statement for the Kensington Gold Project.*

4. *USDA Forest Service. 2004. Final Supplemental Environmental Impact Statement Kensington Gold Project.*

SEACC could support the paste tailings alternative because its environmental impacts would be significantly less than that of the Lower Slate Lake plan and similar to that of a dry stack tailings disposal method. SEACC worked side-by-side with Coeur to identify the best location for a tailings facility and the least damaging operation plan. We successfully worked out and agreed to these details with Coeur. Coeur and SEACC then went to the regulatory agencies with the paste tailings concept and permitting began in January of 2008. SEACC remained engaged in the permitting process and continued to support the paste tailings plan until Coeur unexpectedly abandoned the process on September 23, 2008, after the Supreme Court agreed to hear its petition challenging the reversal of the permit issued for the Lower Slate Lake plan.

When it announced it was backing out of the permitting process, Coeur claimed that it did so because EPA had requested information that would cause significant delays in the permitting process. Caught by surprise, SEACC immediately asked Coeur and EPA to meet to resolve any misunderstanding. The EPA was willing to meet, but Coeur was not. Documents provided SEACC by EPA in response to our October 9th, 2008 Freedom of Information Act show Coeur's claims that EPA's requests were going to cause significant delays were baseless. All the regulatory agencies agreed that the paste plan could have been fully permitted by December of 2008.

SEACC met with Coeur in December of 2008, and again tried to get Coeur to meet with EPA. Coeur refused. SEACC told Coeur that we were willing to help jump start the permitting process for the paste tailings plan. We expressed our readiness to put pressure on EPA, help expedite any remaining permitting, and come out in stronger support for the paste plan. Coeur did not want to pursue these options. Further, Coeur could not identify any insurmountable issue associated with the paste plan or any of EPA's questions. As a result, we strongly believe the Coeur's decision to pull out of the paste tailings plan was solely to see what the US Supreme Court would rule.

If providing jobs was the main objective of Coeur, people would be working at the Kensington Mine right now. Construction of the paste tailings plan could be nearing completion at this time, with a full workforce at the mine.

Paste Tailings Disposal is environmentally preferable.

The topography and land around the Kensington Gold Project is generally steep with numerous streams, lakes, and water bodies, making it challenging to find an appropriate site for a tailings storage facility. The location of the proposed paste tailings facility, the same location as the 1997 dry stack tailings plan, is the most ideal location for a tailings disposal facility in the vicinity of the Kensington Gold Project. The proposed location for the paste tailings facility is flat and contains no major water bodies. Also, the paste facility would be located on the Lynn Canal side of Lionshead Mountain, not the Berners Bay side. These features are important because the presence of water can unintentionally transport or erode the tailings, causing pollution to flow downstream. Facilities built on steep hillsides are more challenging to engineer and maintain over the long term. If a catastrophic event caused the paste facility to slump or move, the tailings would not be

transported far distances or into Berners Bay. Conversely, Lower Slate Lake flows into Slate Creek, a salmon stream, and then into Berners Bay, an EPA designated Aquatic Resource of National Significance. Unanticipated pollution from the Lower Slate Lake facility will flow directly into important aquatic habitat and a catastrophic failure of the Lower Slate Lake tailings dam would cause devastating harm to Berners Bay's incredible marine resources.

The Lower Slate Lake tailings facility and associated infrastructure would destroy approximately 97.2-118.4 acres of U.S waters, depending on if diversion ditches are to be built around the lake.⁴ This includes a 23 acre fish bearing lake and 1,400 feet of stream.⁴ It would involve the construction of a 500ft long and 90ft tall dam.⁴ There would be approximately 135-143 acres of wetlands that will need to be filled for the dry stack tailings facility or the paste tailings facility and associated infrastructure.⁵ Although there may be slightly more wetlands degraded by an on-land tailings disposal facility, the majority of the affected wetlands are forested wetlands and muskeg.⁵ These wetlands no doubt have value, but these types of wetlands are more common and less ecologically valuable than the lacustrine and emergent palustrine wetlands/lake habitat that would be affected by the Lower Slate Lake plan. It is also worth noting that a significant portion of the forested wetlands where the paste tailings facility would be located were logged during the early 1900s. The claim made by Coeur and mine proponents that the relatively low value wetlands near Comet Beach are more environmentally sensitive than Lower Slate Lake, Slate Creek, East Fork of Slate Creek, and the surrounding wetlands, does not pass a reasonable examination of the facts.

The paste tailings facility itself would cover around 105 acres, including 69 acres of tailings disposal and 36 acres that consist of the water management systems, paste plant, and topsoil stockpiles.⁵ The embankment height would be approximately 75 feet after 10 years of mine life.⁵ Claims that the paste tailings facility would be "larger than the pentagon" or "hundreds of feet high" are not based on the facts; these claims use the figures for a dry stack tailings disposal plan designed in 1997 for approximately 6 times more tailings waste than what is currently predicted to be produced. This amount of tailings would overflow the capacity of Lower Slate Lake.

An additional benefit of the paste tailings plan is that there would be ample room for expansion with little additional disturbance. Past designs for the Kensington have called for the milling of significantly more ore than what is now proposed, indicating that the Kensington may expand operations well beyond the planned 10 year mine life. This is common for mines in Alaska. For example, several years ago the Greens Creek Mine expanded operations to create additional tailings storage capacity. It has been noted that the milling rate for the Kensington was reduced from 2,000 tpd to 1,250 tpd,⁵ and some have claimed that this is an insignificant change because it simply means the life of the mine will be expanded to compensate for the reduced milling rate. We agree that the life of mine is likely to be extended, but the evidence suggests that the mine life could be extended significantly beyond the 4.5 million tons of tailings planned for. After all, the

5. *USDA Forest Service. 2008. Draft Environmental Assessment for Kensington Gold Project.*

1997 Kensington mine design called for the disposal of 20 million tons of tailings.³ The Lower Slate Lake option provides little room for expansion without the use of an additional lake, Upper Slate Lake, as a tailings facility. Expansion of the paste tailings facility could be accomplished more simply, by raising the height of the embankment.

During the 2004 NEPA review, The Environmental Protection Agency favored a dry stack facility because of the significant adverse effects the Lower Slate Lake plan would have on the aquatic resources and degradation of the waters of the United States.⁶ More recently, the Environmental Protection Agency has supported the Corps modifying the Kensington Mine's permits to that of a paste tailings facility at Comet Beach rather than the Lower Slate Lake Plan.⁷ We ask that the Corps work with EPA to move the paste tailings plant forward expeditiously.

The Lower Slate Lake Tailings Disposal Plan poses a significant threat to aquatic habitat and Berners Bay.

The Lower Slate Lake plan would result in unnecessary degradation of the aquatic environment. This tailings disposal option would destroy 97.2 acres of waters of the US, including a 23 acre fish bearing lake and 1,400 feet of stream.⁴ It would involve the construction of a 500ft long and 90ft tall dam.⁴

The chemicals and metals in 4.5 million tons of the tailings from the Kensington Mine would make the discharge into Lower Slate Lake a toxic discharge, both from a legal and practical standpoint.⁸ The tailings effluent will have a pH similar to ammonia, over 10, and contain concentrations of several metals, including aluminum, copper, lead, and mercury.⁴ The effluent will contain a high level of suspended solids that will essentially smother all life in the lake.⁸

In addition, it is unknown if the lake can be restored. Restoration of any water body is a difficult task, particularly when dealing with chemically processed tailings. For the Kensington, scientists tested to see if aquatic life could live on the tailings sediment with two organisms. One organism had very low survival rates and the other survived but had significantly reduced reproductive rates; the results showed the tailings were toxic and may not provide suitable habitat for aquatic organisms.⁴ Coeur tried to get around this fact by creating a plan to "cap" the tailings with clean material, but it is unknown if this would allow the lake to recover. In a letter to the Corps dated August 20th, 2004, the EPA wrote:

The only question is whether the artificial lake will be able to support a similar ecosystem after closure and reclamation. The answer to that question is uncertain, but the weight of the evidence suggests that restoring and "improving" the lake would take decades, not years.

6. Comes, Marcia (EPA) letter to Gallagher, Timothy (US ACOE). 8-20-2004.

7. Gearheard, Michael (EPA) letter to Koenig, Reinhard (USACOE). 7-14-09.

8. Army Corps of Engineer's Revised Record of Decision. 2006. Page 19

The 2004 Supplemental Environmental Impact Statement for the Kensington Gold Project (SEIS) did not analyze acid generating potential of rock within the construction zone of the Lower Slate Lake tailing facility, and during initial construction of the tailings facility acid generating rock was exposed. Since the fall of 2007, this rock has leaked acid mine drainage, exceeding water quality standards for low pH and high metal content.⁹ Coeur has attempted to isolate the acid generating material, but the acid mine drainage has yet to be fully resolved and violations of water quality standards are still occurring.^{9 & 10}

Coeur's claims that simply building the tailings dam will address the acid mine drainage issue are unsubstantiated. Documents provided by the U.S. Forest Service in response to Lynn Canal Conservation's May 2009 FOIA, indicate that Coeur has not yet fully characterized the extent of the acid producing rock. On March 19th of 2009 Coeur sent a letter to the US Forest Service requested permission to conduct test cores and pit samples because there was an outstanding need to identify the full extent of the acid producing material.¹¹ In addition, simply covering up the acid producing material does not mean that it will stop the seep. The majority of the identified acid producing material has already been placed in a lined and capped storage area, yet is still seeping acid mine drainage. Further, a recent (3/17/2009) site inspection report from the US Forest Service states that a monitoring site on Slate Creek beneath Lower Slate Lake has detected metals, such as Cadmium, above water quality standards and that Coeur's environmental staff do not believe that these elevated metals are associated with the acid mine drainage.¹⁰ This suggests that the pollution is occurring from another location; without knowing where the pollution problems are coming from it is difficult to properly design a tailings facility that will mitigate these issues.

Paste tailings plan is able to be permitted in reasonable timeframe.

SEACC has reviewed the Draft Environmental Assessment, dated August 20th 2008, for the Kensington Gold Project's paste tailings plan. Despite its draft form, we feel that this EA is sufficient to permit the paste tailings plan. We request that this EA be immediately released for public review, during which time the regulator agencies can discuss if any remaining alterations to the paste tailings plan need to be made. Based on our review, we believe that if alterations are going to be made, they will likely be small changes that don't require additional public notice. After reviewing public comments, we believe the Corps can issue a permit for the paste tailings plan within a timeframe that allows Coeur to begin construction of the paste tailings plan to meet its stated goal of producing gold by the second half of 2010.¹²

SEACC remains committed to working with Coeur and the regulatory agencies to work out any issues that may arise in the permitting of the paste tailings plan. We also remain open to other permitting options that may be more expeditious than the one suggested above.

9. *Environmental Protection Agency to Coeur Alaska. 2009. Notice of Violation.*

10. *Kovarik, Johanna (USDA Forest Service). Mine Inspection Report #065. 03-24-0*

11. *Gillespie, Clyde (Coeur Alaska) letter to Griffin, Pete (USDA Forest Service). 3-19-09.*

12. *Golden, Kate. 2009. 300 Jobs, and none too soon. Juneau Empire. 06-23-09.*

We believe that the paste tailings plan is still the fastest way to get the Kensington Mine up and running. The Lower Slate Lake plan is extremely controversial, and there is a continuing national debate on the issue of whether lakes and streams should be used as tailings waste dumps. The paste tailings plan is uncontroversial and can be permitted quickly.

Use of a lake as a mine waste dump is irresponsible and contrary to the intent of the Clean Water Act.

Before the passage of the Clean Water Act, mining companies would dump their waste where they pleased, often with devastating consequences for fish, wildlife, and human use. For example, Torch Lake in Michigan's Keweenaw Peninsula was used for the dumping of 200 million tons of tailings, waste rock, and smelter slag. The site is still polluted, despite a considerable amount of tax payer dollars going towards cleanup costs.

The Clean Water Act was intended to help restore and protect our nation's waterways and it contains explicit policy against discharges of this type: "It is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." 33 U.S.C. § 1251(a)(3).

We ask that the Corps work with the EPA to ensure that all discharges subject to effluent limitations comply with those limitations. To do this, we ask the Corps to support EPA's withdrawal of the May 17, 2004 "Regas Memo," and be replaced with a document that clearly states that all industrial sources of pollution subject to an effluent limitation must obtain an NPDES permit. In addition, we ask that the Corps initiate a rulemaking process to amend the 2002 fill rule to reinstate the longstanding rule that "fill material" permits may not be used for waste disposal.

Thank you for the opportunity to submit these comments. We urge you to modify the permit to require the use of the proposed paste tailings facility near Comet Beach rather than the Lower Slate Lake tailings disposal plan.

Sincerely,

A handwritten signature in black ink that reads "Rob Cadmus". The signature is written in a cursive, flowing style.

Rob Cadmus
Sustainability and Clean Water Director

cc: Michael F. Gearheard Acting Deputy Regional Administrator, Region 10 EPA