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Judge Finds ADEC Certification of Donlin Gold's Water Quality Invalid & Orders Certificate Rescinded

Department of Environmental Conservation told to rescind certification of Federal wetlands permit for Donlin Gold Mine because the project will violate Alaska's environmental standards & will not adequately protect salmon habitat

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(Bethel, AK) In a 78-page decision, handed down late Monday afternoon, Alaska Administrative Law Judge Z. Kent Sullivan issued notice of his findings in favor of Orutsararmiut Native Council that Alaska Department of Environmental Conservation was wrong to issue a Clean Water Act Section 401 Certificate to Donlin Gold because the project would not meet the State of Alaska's water quality standards. Judge Sullivan's findings are a recommended ruling. DEC Commissioner Jason Brune will have 45 days to decide whether to adopt the ruling.

According to the Clean Water Act, the Army Corps of Engineers is required to obtain a 401 certificate from the state as part of the permitting process for the Donlin project. The Final Environmental Impact Statement (FEIS) for the Donlin Gold Project concluded, based on extensive study, that operation of the Donlin Mine would lead to violations of numerous state water quality standards for mercury and water temperature. Judge Sullivan's findings concur with the FEIS, his conclusions include;

- 1) "In this instance, reasonable assurance has not been demonstrated. It cannot be said that construction and operation of the project will result in reasonable certainty that Alaska's water quality standards for mercury or temperature will be met. It also cannot be said that construction and operation of the project is reasonably certain to protect existing uses".
- 2) "As to mercury, the Division has failed to apply the correct standard. When the correct standard is applied, state water quality standards for mercury will undeniably be exceeded by the project in numerous locations, in many instances by a significant degree".
- 3) "As to temperature, as the FEIS properly concludes, water temperatures in the main stem of Crooked Creek are likely to be impacted by the removal of riparian buffers, wetlands and mine operations, including pit dewatering and the resulting cone of depression. All of these will combine to increase temperatures and, as a result, it cannot

be said that construction and operation of the project is reasonably certain to avoid exceedance of state water quality standards for temperature”.

- 4) “when the area of impact from the project is scrutinized, it is obvious that the overwhelming majority of the salmon productivity from that segment of the main stem of Crooked Creek will be eliminated. In the absence of mitigation or other compensatory measures, it cannot be said under these circumstances that the protection of existing uses is reasonably certain to occur”.

“Orutsararmiut Native Council Executive Director Mark Springer noted, “This decision by Judge Sullivan demonstrates that the concerns of the People of the Kuskokwim River surrounding development of the Donlin Prospect were, and are legitimate. We knew from the beginning that DEC erred in their hasty issuance of the 401 Certificate, and we encourage Commissioner Brune and the Administration to take to heart the conclusions contained in this Proposed Decision, and ensure protection of salmon streams otherwise slated for destruction as well as the additional, noted, long term environmental impacts on the Kuskokwim River drainage and the communities within it.”

“Sovereign Tribal governments have a responsibility for the health and welfare of their citizens, lands, and self-governance. There is nothing more important to Kuskokwim communities and their people than maintaining the subsistence way of life that has sustained them through millennia. This way of life depends integrally upon the salmon and smelt of the Kuskokwim River and its tributaries. The Donlin prospect which is located upstream from these communities, if developed, would be a direct threat to water quality, to the many fish that traverse these waters, and to the Kuskokwim way of life.” Springer added.

“With the decision that DEC cannot assure water quality standards will be met, the Commissioner should adopt the recommended ruling, vacate the certificate, and notify the Army Corps that the project is no longer certified by the state of Alaska and the 404 permit should be revoked.” said Olivia Glasscock, Earthjustice attorney representing Orutsararmiut Native Council.

Within a year of former President Donald Trump's inauguration, the Army Corps of Engineers issued a joint Record of Decision with the Bureau of Land Management authorizing the key Clean Water Act permit required for the Donlin Gold project. That approval was granted despite the fact that the Environmental Impact Statement revealed major environmental impacts including the destruction of salmon spawning habitats and releases of mercury into the air and water far in excess of Alaska's standards. For example, according to the Final Environmental Impact Statement issued by the Army Corps, it is anticipated that if the mine is developed there will be a 40% increase in mercury deposition to surface waters near the mine. Additionally, the Fish Habitat permits issued by the Alaska Department of Fish and Game without public notice or process authorize Donlin to permanently eliminate stream reaches that support Chinook, Coho, Sockeye and Chum salmon or as the permits themselves state: result in “altered or eliminated” habitat, “fish passage... would be eliminated,” and would reduce or eliminate flow of water from headwaters to the mouth of these streams.

13 Tribal Governments, the Yukon Kuskokwim Health Corporation, and the Association of Village Council Presidents were joined by the National Congress of American Indians in passing resolutions of opposition to the Donlin project.

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