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January 5, 2011

Mr. Daniel S. Sullivan, Commissioner
Alaska Department of Natural Resources
550 W. 7th Ave., Ste. 1400
Anchorage, AK 99501

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RE: Petition to Designate the Streambeds of Anadromous Water Bodies and Riparian Areas within the Chuit River Watershed, Alaska, as Unsuitable for Surface Coal Mining Pursuant to AS 27.21.260

Dear Commissioner Sullivan:

Pursuant to AS 27.21.260(b) and 11 AAC 90.705(e), PacRim Coal LP ("PRC") hereby intervenes in the proceeding initiated by Trustees for Alaska ("Trustees") to designate specified lands within the Chuit River watershed as unsuitable for surface coal mining ("Petition"). The Petition was filed by Trustees with Alaska Department of Natural Resources ("DNR") on January 21, 2010. PRC is the holder of coal leases within the area subject to the Petition. PRC has a significant stake in the outcome of the Petition proceeding insofar as PRC's proposed development of coal under its leases is the acknowledged basis for the Petition. Designation of the Petitioned lands as unsuitable for mining would adversely affect PRC's interests and the significant financial investment made in the project dating back to 1968.

Allegations of Fact and Supporting Evidence

The Petition alleges in Part I that DNR must designate specified lands as unsuitable for mining because reclamation in accordance with Alaska Surface Coal Mine Control and Reclamation Act ("ASCMCRA") is not technologically feasible. To the contrary, the lands identified in the Petition should not be designated as unsuitable for mining because reclamation is, in fact, technologically feasible. This is a point that has already been considered by DNR – and the courts – in the context of challenges to the existing ASCMCRA permit.

The lands identified in the Petition are a subset of those covered under a permit issued by DNR to Diamond Shamrock Chuitna Coal Joint Venture ("Diamond"). After considering Diamond's 27-volume ASCMCRA application, DNR issued a final decision granting the permit on June 28, 1988. The Diamond ASCMCRA permit application included reclamation in some of the areas subject to the Petition. The permit was appealed and ultimately addressed by the Alaska Supreme Court in *Trustees for Alaska v. Gorsuch*, 835 P.2d 1239 (Alaska 1992). Trustees challenged the permit's wetlands restoration plan. It is significant that the Court rejected

Trustee's claim that the wetlands restoration plan was insufficient to restore disturbed areas to a condition capable of supporting fish and wildlife. *Id.* at 1248-49. This affirmative finding by DNR and the Alaska Supreme Court is supported by publicly available evidence, including, but not limited to, the following:

- **The final June 28, 1988 decision of DNR to issue an ASCMCRA permit to the Diamond Shamrock Chuitna Coal Joint Venture ("Diamond ASCMCRA Permit").**¹ The permit's reclamation plan was reviewed in detail and deemed complete and technically adequate in meeting the required reclamation (11 AAC 90.081, 083, 085 and 087) and performance standards (Article 11) under the ASCMCRA regulations. Although the permit was remanded by the Alaska Supreme Court to address issues unrelated to reclamation, the remand does not affect the validity of the underlying determination by DNR -- and the courts -- that reclamation in the LMU-1 watershed, which includes areas covered by the Petition, can restore disturbed areas to a condition capable of supporting pre-mining land use.
- **The 1990 Diamond Chuitna Coal Project Final Environmental Impact Statement ("EIS").**² Although the Diamond ASCMCRA Permit is the primary document from the 1990-era that addresses the feasibility of reclamation, the U.S. EPA prepared an EIS in 1990 analyzing various alternatives and impacts associated with the project as then-proposed. Notably, EPA and other agencies issued final permit decisions approving the project, most notably NPDES permits issued by the EPA approving the mine water discharge as well as a series of Fish Habitat Permits from ADF&G approving in-stream mining in Stream 2003 (Middle Creek) and sedimentation pond construction in the stream valleys. These permits were never appealed and in some cases were extended for a second permit term.

Nowhere does the EIS support the contention that the LMU-1 area will not, after reclamation, support the pre-mining land use. In many instances, the EIS addresses various potential impacts and assesses whether, and to what extent, these impacts may occur. Trustees selectively cite -- and mischaracterize -- these references to suggest that the EIS itself supports their position that reclamation in accordance with ASCMCRA is not technologically feasible. We provide three (3) such examples (of many) here:

1. The Petition overstates the EIS's conclusion regarding impacts to groundwater.
 - Petitioners cite to page 5-16 of the 1990 EIS for support of the following statement:

¹ The ASCMCRA application submitted by Diamond is in DNR's records and comprised of 27 volumes. PRC requests that deem the ASCMCRA permit and the corresponding hearing record from the administrative appeal be incorporated by reference and included in the administrative record in this proceeding. If requested by DNR, PRC will provide copies of these materials to DNR for inclusion in the administrative record in this proceeding.

²The EIS is available at:

[http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/Chuitna+Coal/\\$FILE/0FEIS_DCCPrj_Vol1.pdf](http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/Chuitna+Coal/$FILE/0FEIS_DCCPrj_Vol1.pdf) 1990 EIS

According to analysis within the 1990 EIS, “[i]mpacts to ground-water regime as a result of mining operations would be substantial and would affect recharge and discharge relationships; quantity, quality, and direction of groundwater flows; and quantity and quality of surface water.”

Petition at page 25.

- What petitioners notably fail to acknowledge is that the EIS actually limits the above statement by concluding that “however, with proper planning, the impacts can be *minimized*.”

1990 EIS at 5-16 (emphasis added).

2. The Petition misstates the findings of the 1990 EIS regarding the former mine plan’s impact on stream flows in the Chuitna River.

- Petitioners assert a 17% reduction in stream flow was estimated in the EIS for the Chuit River during low flow periods. Petition at page 31.

- However, the complete quote in the EIS is as follows:

As indicated in Table 5-7, minimum flow in the Chuitna River immediately below the mouth of Lone Creek could be reduced by up to 17% during low flow periods in the later years of mining. *This reduction would represent an extreme worst case situation and would be unlikely during mining because of the addition of return water to the Chuitna drainage from the various mine area drainage systems.*

1990 EIS at p 5-30 (emphasis added).

3. The Petition misstates the findings of the 1990 EIS regarding the former mine plan’s impact on stream flows in Lone Creek.

- Petitioners assert a 25% reduction in stream flow was estimated in the EIS for Lone Creek during low flow periods.

Petition at page 31.

- However, the 1990 EIS actually states:

As indicated in Table 5-7, minimum flows could be reduced during low flow periods (late summer and later winter) by up to 25 percent within the portion of Lone Creek east of the mine. *As flows increase downstream, impact would be proportionally less. The above calculations of flow reduction assume no transfer of pit drainage to Lone Creek. During the first 10 years of mining, Diamond Alaska plans to release much of its pit drainage into Lone Creek; therefore net flow would actually increase at least temporarily.* The up to 25 percent reduction would still occur in the event of pump

failure or in the event that pit water freezes and cannot be pumped.

1990 EIS 5-30 (emphasis added).

- **Updated Studies and Information.** The existing ASCMCRA permit has been subject to an amendment and revision process to address various issues, including those issues identified by the Court in the remand of *Trustees for Alaska v. Gorsuch*. PRC has compiled numerous supplemental reports, information, and studies to further the baseline understanding beyond what was approved in 1988 in support of mining operations to be conducted in LMU-1. These additional studies provide scientific data and information based on actual on-site studies and field work, provide the basis for project designs and support PRC's position that reclamation is technologically feasible. These additional studies include, but are not limited, to the following:

1. *Surface Water Baseline Report (RTi, 2009) – includes up to 15 years of supplemental surface water data to the previous baseline studies.*
2. *Groundwater Baseline Report (RTi, 2010) – includes up to 3 years of supplemental groundwater data to the previous baseline studies.*
3. *Groundwater Model (Arcadis, 2007) – a new, 3D model was created using the water and geologic baseline data. The model is based on the popular, industry accepted MODFLOW code created by USGS. This model has undergone initial review by the agencies and has been accepted in principle with some potential modifications pending.*
4. *Chuitna Coal Project Mine Site Lakes Preliminary Water Quality Assessment Summary Report (PRC, 2010) – additional field work to further the understanding of the site lakes located within the project area.*
5. *Vegetation Report for Vegetation and Wetlands with Appendicies (HDR, 2007) – provides an updated, detailed inventory of vegetation and wetlands present in and around the proposed mine area.*
6. *Chuitna Coal Project Wetland Functional Assessment Report (HDR, 2008) – provides the pre-mine functional assessment of area wetlands.*
7. *Movement and Abundance of Freshwater fish in the Chuit River drainage (LGL, 2008, 2009, 2010) – 3 years of extensive monitoring work conducted to establish pre-mine fish populations in and around the proposed project area. This helps establish the metrics for monitoring and mitigating potential minesite impacts to the freshwater fish populations.*

Based on (1) the past work conducted by PRC and the predecessor companies, (2) the federal and state agency approvals of previous plans for conducting coal mine operations in the Chuitna basin, and (3) the current revisions being made to further the protection of the freshwater fish populations in and around the proposed mine project, PRC asserts that mitigation and reclamation of the lands subject to the Petition is indeed technologically feasible. Thus, designating all of the lands subject to the Petition as Lands Unsuitable for Mining does not meet the regulatory test and the designation should not be granted.

Further, PRC asserts that the current petition is an abuse of the regulations and is an attempt to usurp the pending full review of the revised project documents under ASCMCRA. The current proposal and any future mine operation proposals in the basin would have to undergo the

cumulative impact assessment required in the ASCMCRA regulations. Those requirements along with the various other agency permits required for a mine operation provide adequate opportunities for public input and legal protection of the area fish and wildlife resources. That is the proper venue for mine proposal review and not the LUM regulations contained in 11 AAC 701 through 715.

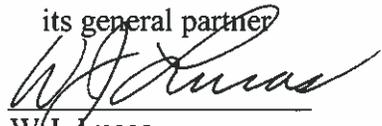
Please be advised that PacRim maintains its position that the area designated as Logical Mining Unit 1, or LMU-1, is not subject to consideration for designation as land unsuitable for surface coal mining, based upon permitting activity for this area in relation to Diamond Shamrock Chuitna Coal Joint Venture's 1985 ASCMCRA permit application³. PacRim reserves all other rights with respect to any further proceedings on the Petition.

PRC's failure to address a statement, allegation, or evidence raised in the Petition should not be interpreted as any agreement, acquiescence, or acceptance of such. PRC reserves (a) all of its rights arising under any authority concerning the Petition and PRC's leases; and, (b) the right to make further submissions or otherwise address issues raised herein or issues not yet raised in future proceedings.

Thank you for consideration of PRC's input on the Petition. Should you have any questions, please contact Joe Lucas at (907) 276-6868. Legal questions should be directed to our counsel, Eric Fjelstad, at Perkins Coie at (907) 263-6973.

PacRim Coal, LP.

By: PacRim Coal-GP, LLC,
its general partner

By: 

W.J. Lucas

Title: Vice President

cc: ✓ Russell Kirkham
Dan Graham
Eric Fjelstad

³ See letter from PRC to DNR Commissioner Irwin dated February 18, 2010.