



1689 C Street, #219
Anchorage, AK 99501-5131
Tel: (907) 272-0707
Fax: (907) 274-7125

RECEIVED
JAN 05 2011

Tyonek Native Corporation
Madison Branch:
229 Palmer Road
Madison, AL 35758
Tel: (256) 258-6200
Fax: (256) 258-6260

January 5, 2011

Chuitna River Watershed Lands Unsuitable Petition
Attn: Russell Kirkham, Coal Regulatory Program
Department of Natural Resources
Division of Mining, Land & Water
550 West 7th Avenue, Suite 920
Anchorage, Alaska 99501-3650

Re: Tyonek Native Corporation Intervention in and Opposition to Petition to Designate Lands
Unsuitable for Coal Mining for Chuitna River Watershed

Dear Mr. Kirkham:

Pursuant to AS 27.21.260(b) and 11 AAC 90.705(e) Tyonek Native Corporation (“TNC”) hereby intervenes in the Department’s proceeding involving the *Petition to Designate the Streambeds of Anadromous Water Bodies and Riparian Areas within the Chuit¹ River Watershed, Alaska, as Unsuitable for Surface Coal Mining Pursuant to AS 27.21.260* dated January 21, 2010 (“Petition”) filed by Trustees for Alaska on behalf of the Chuitna Citizens Coalition and Cook Inletkeeper (“Petitioners”).

As discussed below, TNC has critical interests in this proceeding. TNC opposes the Petition and asks that it be denied. The Petition requests that the Department find that the streambeds of anadromous water bodies and riparian areas in the Chuitna River watershed are unsuitable for coal mining. It effectively seeks to end most development of the coal reserves in the region where TNC’s lands are located and mostly TNC shareholders reside. Such a determination would frustrate TNC’s efforts to increase local employment opportunities for its shareholders, who are the Native people and the majority of the population of the region. Developing the region’s substantial coal resources is critical to economic growth. TNC supports responsible development of coal which balances the goals of economic growth and environmental protection. The Petitioners’ concerns are properly addressed through the permit process.

¹ While the Petition uses the term Chuit River, this letter refers to it as the Chuitna River.

I. INTERVENOR'S CONTACT INFORMATION

Ms. Michaelene Stephan, President
Tyonek Native Corporation
1689 C Street, Suite 219
Anchorage, Alaska 99501
Phone (907) 272-0707

II. INTERVENOR'S INTEREST

TNC is the village corporation owned by the Alaska Natives of Tyonek and the surrounding region. TNC is a substantial landowner in the area surrounding the Village of Tyonek and in the Chuitna River watershed. In these capacities, TNC has significant interests in the matters presented in the Petition. A finding of unsuitability for coal mining would adversely affect TNC's interests.

TNC was established in 1973 pursuant to the Alaska Native Claims Settlement Act ("ANCSA"). About 200 of TNC's approximately 800 shareholders live in the Village of Tyonek, located on the western shore of Cook Inlet and in the Chuitna River watershed. TNC shareholders undoubtedly comprise the majority of the population in the region.² TNC's shareholders are Dena'ina Athabascan people, the majority of whom are known as Tebughna or "Beach People." Many of TNC's shareholders living outside of the Village desire to return to Tyonek if jobs become available. TNC also provides benefits to its shareholders through dividends, higher educational scholarships, internships, life insurance, and financial and in-kind contributions to village-based programs and church.

TNC owns the surface estate of approximately 200,000 acres in the southcentral region and specifically 47,000 acres in the area of the Village of Tyonek and in surrounding areas. TNC also owns substantial lands within the Chuitna River watershed and along eight miles of the Chuitna River. Attached as Exhibit 1 is a map showing TNC lands indicated in grey. The boundaries of the former Tyonek (also known as the Moquawkie) Indian Reservation established pursuant to Executive Order No. 2141 (February 27, 1915) include portions of the Chuitna River watershed.

There is substantial need for economic development in the Tyonek region. According to the 2000 census the unemployment rate at that time was 27.27 percent, although 55.56 percent of all adults were not in the work force.³ Per capita income was \$11,261, about half of the statewide figure,⁴ and nearly 14 percent of residents were living below the poverty level.⁵ According to the State Department of Labor and Workforce Development in 2009 there were 39 claimants for unemployment benefits, or 31 percent of 126 working age residents of Tyonek.⁶

² According to the 2000 census the population in Tyonek was 95.3 percent Alaska Native. *See* www.commerce.state.ak.us/dca/commdb/CIS.cfm?Comm_Boro_name=Tyonek.

³ *See id.*

⁴ According to the U.S. census in 1999 the per capita income in Alaska was \$22,660. <http://quickfacts.census.gov/qfd/states/02000.html>.

⁵ *See* www.commerce.state.ak.us/dca/commdb/CIS.cfm?Comm_Boro_name=Tyonek.

⁶ *See* http://labor.alaska.gov/research/alari/2_12_329.htm.

As discussed in Section III.B below, TNC and its shareholders have a substantial interest in economic growth in the area which depends on development of the region's abundant coal reserves. TNC has entered into contracts with PacRim Coal, LP ("PacRim") related to the Chuitna Coal Project ("Project") which would likely be frustrated if the Petition is granted. TNC has made substantial infrastructure investments in anticipation of the Chuitna Coal Project and other development projects in the region which would likely be wasted if the Petition is granted. TNC also has the ability to benefit from coal development on TNC lands which an unsuitability for coal mining designation would likely prevent.

III. ALLEGATIONS OF FACT AND SUPPORTING EVIDENCE

a. TNC Supports Responsible Coal Mining and the Chuitna Coal Project.

TNC supports responsible coal mining that balances economic benefits with environmental protection. TNC has long recognized that the region surrounding the Village of Tyonek is rich in coal and other natural resources that have the potential to drive economic growth for TNC shareholders and other local residents. For many years now, TNC has been actively managing its lands to further conservation of the natural wildlife resources while planning for future energy development projects. As a result, TNC supports development of the coal and other natural resources provided that such development (a) does not unduly damage local habitat and environment, (b) is consistent with the property rights of TNC, the Native Village of Tyonek, and Native allottees, (c) adequately compensates TNC for use of its property, (d) provides TNC fair contracting opportunities, and (e) provides employment opportunities for TNC shareholders.

Consistent with these policies TNC has engaged in dialogue with PacRim regarding the Project, including discussion of PacRim's plans for mitigation of environmental impacts. TNC has also negotiated agreements with PacRim regarding the Project. As part of this dialogue, TNC has carefully reviewed PacRim's draft development plans and provided suggestions to address TNC concerns about environmental impacts.

PacRim has agreed to changes to its plans under development for mitigation and restoration as a result of TNC's suggestions. For example, PacRim agreed to a much more expensive elevated conveyor system rather than conventional ground-based conveyors between the mine and the coast so as to protect the integrity of TNC lands. PacRim is considering the ARED system,⁷ which is based on Native methods, in its fish restoration plan.

TNC engineers and management reviewed PacRim's water management plan and fish enhancement plan, and, with the changes suggested by TNC, found them acceptable subject to review and approval by state and federal regulators. Accordingly, TNC supports the Project subject to completion of the federal and state permitting processes. TNC expects to remain engaged in dialogue with PacRim as it continues its planning and to participate in the permitting processes related to the Project.

⁷ See www.ared.org.

b. Granting the Petition Would Frustrate Economic Development and TNC's Contractual Benefits and Infrastructure Investments.

TNC's balanced approach to coal mining is consistent with the intent of ASCMCRA which is "to assure that reclamation of land on which surface coal mining takes place is accomplished as contemporaneously as practicable with the surface coal mining, recognizing that *the responsible extraction of coal by responsible mining operators is an essential and beneficial economic activity.*"⁸ Another objective of the statute is "to strike a balance between protection of the environment and other uses of the land and the need for coal as an essential source of energy."⁹ As the Commissioner found in 2007, ASCMRA, and its federal equivalent, SMCRA, "reflect the goal of allowing, where possible, multiple uses of coal bearing lands, and that balanced consideration would be given to regulated coal mining operations and other uses/resources."¹⁰

Balancing the need for economic growth with environmental protection concerns is also a part of the unsuitability for coal mining designation procedure. Before designating an area as unsuitable for surface coal mining, the Commissioner is required to prepare a "detailed statement of the potential coal resources of the area, the demand for coal resources, and *the impact of the designation on the environment, the economy, and the supply of coal.*"¹¹ The Commission is thus required to consider TNC's economic interests and the adverse impacts of granting the Petition on such interests.

An unsuitability designation as requested in the Petition would have devastating consequences for TNC's contractual opportunities, infrastructure investments and efforts to achieve economic development for its shareholders, including employment opportunities and to provide additional benefits for TNC shareholders.

1) Granting the Petition would deprive TNC of substantial benefits from the Chuitna Coal Project.

TNC has negotiated agreements with PacRim related to the Project. Through these agreements TNC anticipates substantial economic benefits from the Project and related activities. Those benefits include: (1) direct compensation through annual easement fees, aggregate sales and infrastructure improvements on TNC lands, (2) contracting rights for Tyonek Contractors, LLC, a wholly-owned subsidiary of TNC, in connection with construction of various aspects of the Project, (3) employment opportunities for an estimated 200 TNC shareholders in connection with construction, and (4) employment opportunities for TNC shareholders in connection with mining operations. The easement and other agreements provide that details about their terms are confidential.

⁸ AS 27.21.010(b)(5) (emphasis supplied).

⁹ AS 27.21.010(b)(7).

¹⁰ STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, OFFICE OF THE COMMISSIONER, *Re: Petition to Designate the Chuitna Watershed as Unsuitable for Coal Mining* 13 (July 16, 2007) [hereinafter "2007 Decision"].

¹¹ AS 27.21.260(e).

If the Petition were granted, it would likely prevent the Chuitna Coal Project from proceeding, and TNC would lose the above-described benefits for its shareholders.

2) Granting the Petition would jeopardize the substantial infrastructure investments that TNC has made in order to support and secure economic benefits from coal and other future development.

TNC has expended substantial resources in anticipation of future economic activity related to the Project and other development projects in the region. First, TNC set aside 1,000 acres at North Foreland as an industrial park intended to support future economic development in the area, including the Project. Second, TNC has invested significant time and resources to partner with companies that can process the coal into value-added products within TNC's designated industrial park. One example is the Accelergy Coal-To-Liquids Project, which would provide TNC direct revenues, contracting and joint venture opportunities worth hundreds of millions of dollars, as well as hundreds of additional shareholder job opportunities. TNC has already finalized agreements for the contract opportunities and for shareholder education for specialized jobs.

Third, TNC has developed a subdivision, known as *Nakacheba*, on its lands with the intent of granting a 1½-acre lot to each TNC shareholder. The subdivision will be used to house the increased shareholder population in the area anticipated as a result of the employment opportunities associated with the Project and other development projects. TNC has already secured preliminary plat approval for this subdivision and has invested hundreds of thousands of dollars in surveying and engineering costs.

If the Petition were granted, much of the economic activity upon which TNC's investments described above are predicated would likely not occur, and therefore TNC's investments would be wasted.

3) Granting the Petition would adversely affect TNC's potential economic opportunities associated with development of coal on its lands.

As the owner of surface rights of 47,000 acres of land in the area, TNC can expect to benefit economically if the subsurface rights owner, Cook Inlet Region, Inc. (CIRI), develops coal under TNC lands. Such development would likely provide contracting opportunities to TNC and its subsidiaries as well as employment opportunities for TNC shareholders. Development of the Project and the associated mining infrastructure will greatly increase the economic feasibility of CIRI proceeding with coal development from its subsurface estate. Furthermore, as TNC shareholders are also shareholders in CIRI, they would receive benefits from CIRI as a result of such development. Granting the Petition would hamper or eliminate CIRI's ability to develop its coal reserves in the Chuitna River watershed, thus denying TNC and its shareholders these potential opportunities and benefits.

Finally, TNC would be unable to provide its shareholders additional benefits from revenues earned for coal-related activity if the Petition is granted.

c. The Petition Contains Substantial Defects.

The Petition contains substantial defects which undercut its evidentiary basis. First, certain sections are substantively indistinguishable from the prior petition which the Commissioner found lacked merit and was incomplete. Second, the Petition fails to adequately establish a nexus between the adverse impacts alleged and the Petitioners' asserted interests.

1) The majority of the Petition is unchanged from 2007 petition and thus does not support the allegations in the Petition.

This is the Petitioners' second attempt at securing a designation of the Chuitna River watershed as unsuitable for surface coal mining. In 2007 the Trustees for Alaska ("TFA") on behalf of the Petitioners advancing the present Petition and others petitioned to have all lands of the Chuitna River watershed deemed unsuitable for surface coal mining. In a July 16, 2007 decision the Department of Natural Resources ("DNR") Commissioner Tom Irwin rejected the 2007 petition on procedural and substantive grounds.¹²

The present Petition is narrower than the 2007 petition in that it seeks a determination with respect to "lands that comprise the streambeds of anadromous water bodies" and "lands that comprise riparian areas" in the Chuitna River watershed. Also, in Section I the Petitioners present additional information which they assert supports the Petition. Apart from the narrower scope and the additional information, the present Petition is nearly identical to the 2007 petition that the Commissioner denied on procedural and substantive grounds.

Sections II, III and IV of the present Petition addressing AS 27.21.260(c)(2)(B), (C) and (D) do not differ substantively from the 2007 petition and include no new evidentiary support. Aside from minor editorial changes and an update regarding the current conservation status of the Cook Inlet beluga whale, the present Petition advances the same arguments, essentially verbatim, that the Commissioner rejected in 2007.¹³ Because the Petition contains no new facts to support these arguments, the Commissioner should therefore find that the evidence does not support the allegations presented in the Petition.

¹² See generally 2007 Decision. TFA requested reconsideration which the Commissioner denied. TFA subsequently appealed to the Alaska Superior Court but then reached a settlement with DNR that resulted in TFA dropping its appeal.

¹³ For example, Section II of the 2007 petition, pp. 25-36 and Section II of the present Petition, pp. 33-45, contain the exact same arguments, sources, and citations, nearly verbatim. The present Petition does not include new information or argument other than the notation of the beluga whale's changed conservation status. Part III, p. 36-37 of the 2007 petition and Part III, p. 45-46 of the present Petition are essentially word-for-word identical. Aside from noting that an event that occurred in 2009, Part IV, pp. 46-48 of the present Petition is identical to Part IV, pp. 37-39 of the 2007 petition. The Commissioner rejected Parts II, III and IV of the 2007 petition on substantive and procedural grounds. See 2007 Decision at 9-12.

2) The Petition fails to identify a nexus between its allegations and any specific injury to its asserted interests.

The Commissioner repeatedly found that the 2007 petition failed “to sufficiently describe how any of the allegations and any particular type of coal mining activities that might occur on the petitioned lands would adversely affect petitioners’ various interests.”¹⁴ The present Petition suffers the same defect. The new facts supporting the Petition do not explain the effect of surface coal mining on the petitioners’ asserted interests. The Petition does not describe *specifically how* the adverse effects which Petitioners allege might occur from surface coal mining would harm the Petitioners’ asserted interests.

For example, the Petition does not provide facts demonstrating the nexus between the alleged harm caused by surface coal mining in the Chuitna watershed and petitioner Terry Jorgensen’s asserted interest in operating a set-net site on Three-Mile Beach at Ladd Landing. TFA’s petition only seeks to designate “the lands that comprise the streambeds of anadromous water bodies and lands that comprise riparian areas within the Chuitna watershed” as unsuitable for coal mining. Three-Mile Beach is not within these specific watershed areas. Nor does the Petition show that any salmon returning to the Chuitna River would travel as far as Mr. Jorgensen’s set-net site, which is located a mile north of the confluence of the Chuitna River and Cook Inlet. As a result, the Petition lacks sufficient facts to demonstrate the required link between the adverse impacts alleged and Mr. Jorgensen’s claimed interests.

IV. CONCLUSION

For the reasons discussed above, the Petition should be denied. A denial will not prevent Petitioners from presenting their concerns in connection with the permitting process.

Sincerely,

TYONEK NATIVE CORPORATION



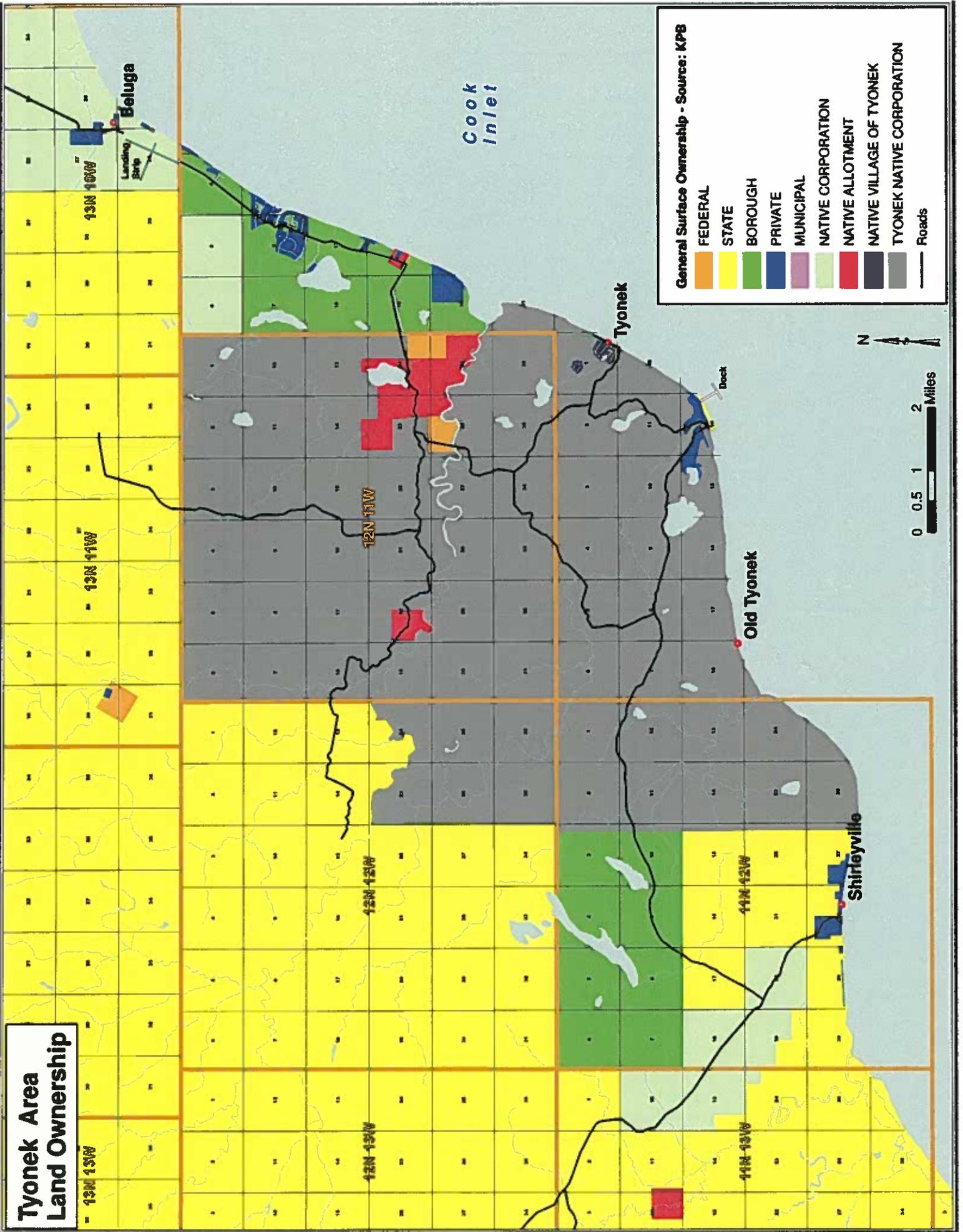
Michaelene Stephan
President

¹⁴ *Id.* at 6; *see also id.* at 11-14.

**Tyonek Native Corporation Intervention in and Opposition to
Petition to Designate Lands Unsuitable for Coal Mining for Chuitna River Watershed**

Exhibit 1

Tyonek Area Land Ownership



General Surface Ownership - Source: KPS

- FEDERAL
- STATE
- BOROUGH
- PRIVATE
- MUNICIPAL
- NATIVE CORPORATION
- NATIVE ALLOTMENT
- NATIVE VILLAGE OF TYONEK
- TYONEK NATIVE CORPORATION
- Roads



13N 10W

13N 11W

13N 12W

13N 13W

12N 11W

13N 12W

13N 13W

14N 12W

14N 13W

Beluga

Cook Inlet

Tyonek

Old Tyonek

Shirleyville

Dock

Landing Strip