



VIA EMAIL ONLY  
([byron.mallott@alaska.gov](mailto:byron.mallott@alaska.gov))

June 18, 2018

Byron Mallott  
Office of the Lt. Governor  
P.O. Box 110001  
Juneau, AK 99811-0001

Re: Canyon Creek Coal Exploration

Dear Lt. Governor Mallott:

Thank you for your leadership to help create and implement the Alaska Climate Change Strategy and the Climate Action Leadership Team.

For the past 25 years, Inletkeeper has been intimately engaged in the climate change discussion in Alaska. During that time, we have seen time and again the political and bureaucratic roadblocks raised to prevent meaningful progress toward addressing Alaska's growing climate change problem.

Attached please find comments we submitted today regarding coal exploration near Skwentna in southcentral Alaska. We're sending them to you because Alaska cannot continue to develop its coal resources – while simultaneously expanding its oil and gas resources – and expect to retain any semblance of hope we can address climate change in a meaningful way.

Coal produces more greenhouse gas emissions than any traditional fuel source. To date, coal does not have a significant foothold in Alaska, and it makes little sense to perpetuate a system that recognizes coal as a viable commodity for in-state use or export. Accordingly, we believe the State of Alaska should buyback the Canyon Creek leases, and cease any new coal leasing, exploration or development.

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As you know, we have a long way to go in our fight to address climate change. And while ending Alaska's coal program is but one of many steps needed, we need concrete action immediately if we hope to transition our people and our economies to a more sustainable future.

Inletkeeper's original research show Alaska's streams now routinely violate the temperature standards set by the Alaska Department of Environmental Conservation to protect spawning and rearing salmon. In addition to these problems in our coastal watersheds, the recent collapse of the Copper River sockeye run – attributed to the “warm blob” in the Gulf of Alaska – highlights the problems with climate change in our marine systems.

Time is, of course, of the essence. The longer we do nothing, the worse the problem will become. And the longer it takes to diversify our economy with cleaner energy sources, the deeper and more entrenched our reliance on fossil fuels will become.

Thank you for your attention to this important issue, and please do not hesitate to contact me with any questions at 907.299.3277 or [bob@inletkeeper.org](mailto:bob@inletkeeper.org)

Yours for Cook Inlet,

A handwritten signature in black ink, appearing to read "Bob Shavelson". The signature is fluid and cursive, with the first name "Bob" being particularly prominent.

Bob Shavelson  
Inletkeeper

Cc: Nikoosh Carlo, CALT ([nikoosh.carlo@alaska.gov](mailto:nikoosh.carlo@alaska.gov))



VIA EMAIL ONLY  
(russell.kirkham@alaska.gov)

June 18, 2018

Russell Kirkham  
Coal Regulatory Program Manager  
Alaska Department of Natural Resources  
550 West 7th Avenue, Suite 920  
Anchorage, Alaska 99501-3577

RE: CANYON CREEK COAL EXPLORATION COMMENTS

Dear Mr. Kirkham:

**A. Introduction:**

Cook Inletkeeper is a member-supported nonprofit organization formed by engaged Alaskans in 1995 to protect the Cook Inlet watershed and the life it sustains. Please accept these comments on behalf of Inletkeeper and its 8000+ members and supporters around the Cook Inlet region. As discussed more thoroughly below, Inletkeeper regards climate change as the greatest threat to Alaska's socioeconomic fabric, and because low grade coal is one of the worst greenhouse gas producers, we believe the State of Alaska should immediately cease all efforts to bring new coal resources online.

**B. Inletkeeper has tangible, long-standing interests in the Canyon Creek Area which will be adversely affected by exploration drilling and related activities**

Inletkeeper and its members will be adversely affected by the proposed coal exploration project. The area supports important fish and wildlife populations, including but not limited to wild salmon, brown bears, and moose, and Inletkeeper members use and enjoy the Canyon Creek area for recreational, fishing and hunting pursuits. These uses will be adversely affected by the industrial activity that coal exploration entails, including noise, fuel spills, lighting, drilling mud disposal and other related impacts. Additionally, Inletkeeper conducts scientific research

on the salmon-bearing systems in the Susitna Drainage, and well-drilling and other industrial activities associated with coal exploration will invariably affect surface and ground water hydrological conditions in the lease area. These impacts will adversely affect the accuracy and reliability of Inletkeeper's data-collecting efforts, and harm Inletkeeper's original science focused on the intersection of climate change and salmon health.

### **C. Comments:**

#### **1. The leases and any coal exploration permit flowing from them are unconstitutional**

As a threshold issue, the state's coal leases to No. 8888 Corporation for the Canyon Creek area are unconstitutional because the Alaska statutes and regulations governing exploration rights in coal leases violate Article VIII, Section 12 of the Alaska Constitution. That provision authorizes leases for coal and other minerals, and states, "Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas . . . may be authorized by law." Alaska Const. art. VIII, § 12 (emphasis added). The framers of the Constitution were wary of granting broad, exclusive exploration rights that would commit and tie up valuable state resources on an open-ended timeline. Instead, they intended that exclusive rights of exploration be granted only sparingly, "for very limited times," "for the short period of the permit." 4 Proceedings of the Alaska Constitutional Convention 2556 (Jan. 18, 1956) (statement of Delegate Boswell). DNR's coal leases to No. 8888 Corporation, however, allow exploration and other coal work to occur for an "indeterminate period." As a result, the leases are invalid, and the state must revise its statutes and rules, as well as the Canyon Creek Best Interest Finding, before any coal exploration permit can pass constitutional muster.

#### **2. Discrepancies regarding exploration impacts & reclamation costs**

The applicant's coal exploration application contains inconsistencies which must be clarified before a permit may issue. For example, the application states "no significant ground disturbance is expected under the exploration program." (Flatlands Energy Corporation, Coal Exploration Application, May 9, 2018, I-3). Yet in the Notice of Intent to Explore & Exploration Application submitted to DNR, the applicant states that exploration activities will "substantially disturb the natural surface of the land." (*Id.*, at III-3). The applicant then compounds this contradiction by stating if "there are inadequate drill cuttings [to plug the well bore], the project will obtain fine-grained material from adjacent to the drill site." (*Id.*, at III-11). As a result, DNR must get better clarity from the applicant regarding its anticipated impacts to lands and waters, including wetlands, in the project area.

Additionally, the applicant improperly assesses the amount required to bond the costs the state may incur if the applicant fails to perform required reclamation. In its defense of the bond amount, the applicant writes in its application:

“The reclamation bond will cover the cost of DNR completing the planned reclamation, should the applicant not reclaim the site. *Reclamation of each well site will be accomplished before the drill and crew leave that site.* Therefore, the greatest amount of potential disturbance that would be required to be reclaimed would be a single drill site and the removal of three water quality monitoring wells.” (*emphasis added*)(*Id.*, at III-7).

The applicant then provides a cost break-down for reclamation of a single well bore equal to \$17,160. Yet the application requests permission to drill up to 20 holes, and it’s irrelevant whether the applicant believes “[r]eclamation of each well site will be accomplished before the drill and crew leave the site.” Alaska law states “[t]he amount of the bond *must be sufficient to assure the completion of the reclamation plan* by the commissioner in the event of forfeiture...” AS 27.21.160 (*emphasis added*). Accordingly, the applicant must post a bond for the entire project’s reclamation, including but not limited to reclamation work for 20 well bores – which would equal \$343,200 if DNR accepts the applicant’s estimated cost for reclaiming a single well. Based on the remote nature of the project area, and the attendant costs to conduct reclamation work in such areas, it’s likely the actual reclamation costs for the project will be higher. Therefore, DNR must revise the proposed bond amount in the event the applicant is unable or unwilling to conduct or complete reclamation work, otherwise the state will be stuck with those costs. Additionally, the state must establish the form of the bond payment (i.e., surety, collateral, escrow, etc.).

### **3. The application misrepresents its potential impacts to ground and surface waters**

The application states emphatically “[n]o activities within this exploration application will affect the prevailing hydrologic balance in any manner.” (*Id.*, at III-12). It then goes on to concede it may take up to 25% of any flowing waterbodies, including anadromous streams, in the project area to facilitate drilling operations (*Id.*). The applicant further states it need not apply for a water right or temporary water use authorization because its daily consumption will not exceed the regulatory threshold of 5,000 gallons per day. However, the application notes the drill rig will require 15 gallons of water per minute, and if it runs for 6 hours day, it will exceed the regulatory threshold. As a result, DNR must more closely analyze the water use needs for the project, and determine if the project will comply with 11 AAC 93.035.

Finally, the application states the applicant has applied for a Fish Passage Permit and a Fish Habitat Permit from the Alaska Department of Fish & Game. Because those permits do not require public notice and comment, however, Alaskans cannot understand the full range of potential fish and water impacts likely to flow from the proposed activity. Accordingly, DNR should make issuance of the fish passage and fish habitat permits a condition precedent to the exploration permit, and it should revise and re-issue the exploration permit public notice so the

general public can meaningfully comment on the public trust resources protected by Article VIII of the Alaska Constitution.

**4. Coal development is contrary to the best interests of Alaska, and the state should immediately rescind the Canyon Creek leases**

Inletkeeper could not locate the state's Best Interest Finding (BIF) for the Canyon Creek coal leases on the DNR website, and had to obtain a copy through a Public Records Act request, which made the commenting process for this permit difficult, and which likely dissuaded many members of the general public from commenting.

Nonetheless, in the BIF, DNR takes what's known as the "ostrich approach" to climate change, noting: "Global warming...is beyond the scope of this decision." (DNR, Final Finding & Decision, Competitive Coal Lease Sale in the Canyon Creek Area, Alaska (ADL 55937), p.122). DNR provides no legal basis for this position in the BIF, but in the response to comments on the BIF, DNR hides behind AS 38.05.035(e) & (h) to rationalize this glaring oversight.

Inletkeeper asserts DNR has abused its discretion in failing to consider climate change on a large coal sale – and now, subsequent exploration – when making the Best Interest Finding. It's clear to anyone paying attention to climate change that Alaska is experiencing unprecedented changes which are expected to worsen over the next several decades. These changes strike at the very core of Alaska's socioeconomic fabric, and unless they are addressed, Alaska will experience growing biological, social and economic dislocations across the state. While our state's receding glaciers, melting permafrost, eroding coastlines, disappearing sea ice, insect infestations and warming salmon streams have been well documented, today we are faced with salmon restrictions and closures attributed to warming ocean temperatures (i.e., the "warm blob") in the Gulf of Alaska. Additionally, Alaska continues to aggressively push for new fossil fuel development in Cook Inlet and the Arctic, and the AKLNG Pipeline remains a top priority for the Administration.

Alaska cannot have its cake and eat it too; it cannot continue to exploit fossil fuels and expect to mitigate the significant known harms caused by climate change. While Alaska must embrace robust adaptation strategies to address the inevitable impacts of ongoing climate change, we must lead by example to stop making the problem worse. That means undoing the subsidies tied to fossil fuel development, and creating policies and incentives to develop our world-class renewable energy resources to drive innovation, create lasting jobs, reduce fuels costs and diversify our economy.

Toward that end, Inletkeeper calls on DNR to deny the Canyon Creek coal exploration permit, and to buyback the underlying leases. We also call on the State of Alaska to immediately cease

all new coal leasing, exploration and/or development work. Otherwise, efforts by the state's Climate Action Leadership Team will be nothing more than window dressing.

#### **D. Conclusion**

Coal is an energy source of the past. Alaska is blessed with world-class renewable energy resources, and in the Cook Inlet area alone, we have ample wind, solar, hydro and geothermal resources to drive sustainable economies well into the next century.

Alaska must stop talking out of both sides of its mouth when it comes to climate change. We cannot at once develop coal and address climate change; they are mutually exclusive. We commend Governor Walker and Lt. Governor Mallott for their roles establishing the Climate Action Leadership Team. Now we have to act on what we know about coal and climate, and put Alaska on a sustainable path toward a brighter economic future.

Thank you for your attention to these comments, and please feel free to contact me with any questions at 907.299.3277 or bob@inletkeeper.org.

Yours for Cook Inlet,

A handwritten signature in black ink, appearing to read "Bob Shavelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bob Shavelson  
Inletkeeper

Cc: (VIA EMAIL ONLY)  
Byron Mallott, Lt. Governor, State of Alaska  
Nikoosh Carlo, Senior Climate Advisor, State of Alaska