



P.O. Box 927 Bethel, AK 99559
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October 9, 2018

Sam Cotten
Commissioner
Alaska Department of Fish and Game
1255 W. 8th Street
Juneau, Alaska 99802
Email: dfg.commissioner@alaska.gov

**Re: Request for Reconsideration of 13 Fish Habitat Permits Issued to Donlin Gold LLC,
and Request for Meeting**

Dear Commissioner Cotten:

Orutsararmiut Native Council (ONC), Yukon Kuskokwim River Alliance (YKR Alliance) hereby request reconsideration of the Alaska Department of Fish and Game (ADFG) August 30, 2018 decision to issue thirteen (13) Title 16 Fish Habitat permits to Donlin Gold, LLC (Donlin) for the Donlin Gold Project.^[1]

Orutsararmiut Native Council is a federally recognized sovereign tribal government, responsible for the health, safety, and well-being of its citizens, located in the Kuskokwim River watershed. The proposed Project is located on Crooked Creek, which flows directly into the Kuskokwim River. The Tribe's ancestors historically lived, traveled, fished, and traded along the Kuskokwim River, and the Tribe's present members continue to do so. The members of the Tribe rely on the Kuskokwim River and surrounding lands of the Yukon-Kuskokwim region for nutritional, economic, social, spiritual, and cultural purposes. The Tribe values its long traditions of fishing and harvesting from the region's lands and waters. Of particular importance are the salmon and rainbow smelt that annually return to the Kuskokwim River to spawn. The many communities along the Kuskokwim River harvest and use these and other subsistence species in various ways, and their combined harvests total well over a million pounds of edible resources every year.

This request is also submitted on behalf of the Yukon Kuskokwim River Alliance, which is made up of tribal and non-tribal members who live in the Yukon-Kuskokwim Delta and focus on environmental justice work. The Alliance's tribal members include Native Village of Eek, Native Village of Napakiak, Native Village of Nunapitchuk, Native Village of Kwigillingok, Native Village of Kongiganak, Tuluksak Native Community, Orutsararmiut Native Village (Bethel), and Chuloonawick Native Village (Emmonak). The Alliance is working together to preserve natural systems and protect cultural heritage for the tribal members of the Yukon- Kuskokwim Delta. People who share this belief have united together to preserve and protect the land, water, and resources of the Yukon and Kuskokwim region, sustain the subsistence way of healthy living, and protect the fish, waterfowl, and animals of the water and land against large-scale mines, like the Donlin Project.



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On July 13, 2018, the YKR Alliance, on behalf of Tribes from the Yukon-Kuskokwim region requested ADFG engage in meaningful consultation with the Tribes prior to the issuance of any permits by the department. The YKR Alliance, ONC, and many others were discouraged to learn that ADFG issued Fish Habitat permits to Donlin with no public notice or consultation as requested. ONC, YKR Alliance request that you reconsider the issuance of these permits, withdraw those Fish Habitat permits issued, and engage in meaningful consultation with the tribes prior to issuance of any Title 16 permits.

I. Fish Habitat Permits Issued Are Contrary to the Public Interest and “proper protection” under Title 16

Fish Habitat permits issued to Donlin will adversely impact the traditional way of life, cultural practices, health, and subsistence use of fish by residents of both the Yukon and Kuskokwim River watersheds. Members of ONC, YKR Alliance and many others use the lands and waters in and around the project area for fishing, hunting, and other subsistence practices. Of particular concern, are those Fish Habitat permits issued by ADFG for the open pit and waste rock facility in American Creek, the tailings dam facility in Anaconda Creek, and the wastewater treatment plant outfall in Crooked Creek.^[2] These three of the thirteen permits issued will 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.^[3] Additionally, these streams, and downstream waterbodies such as Crooked Creek and the Kuskokwim River, will experience adverse impacts to Fish Habitat through significantly reduced flow of water. For one, “flow in American Creek... will decrease significantly beginning two years before gold production, and will decrease to no flow by Year 5 of gold production.”^[4] Additionally, “pit dewatering is modeled to create a cone of depression with an area of potential drawdown that reaches upstream along Crooked Creek to the Snow Gulch headwaters, downstream along Crooked Creek to Anaconda Creek headwaters, and across Crooked Creek to the northeast of the Ultimate Pit.”^[5] This cone of depression will result in “reduce[d] Crooked Creek flows during summer and winter,” “reduction in flow from Anaconda Creek, and Lewis, Queen and Omega gulches, and removal of flow from American Creek.”^[6] This reduction in flow may have lasting adverse impacts to fish due to permanent alteration of downstream habitat in Crooked Creek.

The issuance of these permits, allowing destruction of fish habitat in waterbodies listed in the anadromous waters catalog fails to demonstrate how the department is ensuring the “proper protection” of fish habitat as is required under Title 16.^[7] These permits do not protect identified important fish habitat, rather, they allow for the permanent elimination of habitat used by coho salmon for migration, over wintering, and rearing. Therefore, ONC, YKR Alliance request ADFG rescind these Fish Habitat permits issued for the tailings storage facility, waste rock facility, open pit, and wastewater treatment plan outfall. ONC, YKR Alliance and many others also request the department suspend the other ten Fish Habitat permits issued to Donlin until the department conducts meaningful consultation with the Tribes and considers the potential



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permanent and temporary adverse impacts of the project activities on the anadromous fish habitat both at the site of the activity and downstream.

II. Mitigation Measures not sufficient to offset destruction of Fish Habitat

Those fish habitat permits issued to Donlin for “provisions for restoration of aquatic habitats in Ruby, Queen, and Snow Gulches”^[8] with the intention to “offset habitat loss in American Creek” is not sufficient to properly protect important fish habitat in the project area. ADFG imposes mitigation measures on applicants for “any adverse effects upon fish or wildlife, or their habitat.”^[9] ADFG is required to employ mitigation measures in order of priority from avoiding the impact to “compensate for the impact by replacing or providing substitute resources for the environment,” with replacement being the last priority for mitigation.^[10] Donlin project will permanently impact or destroy 2,053 acres of wetlands and 29.7 miles of streams directly from fill.^[11] These direct impacts do not include the downstream impacts to Crooked Creek, its tributaries, and Kuskokwim River fish habitat from reduction of flow during summer and winter. Through the issuance of Fish Habitat permits issued to Donlin, ADFG has allowed the compensation of these 2,053 acres of wetlands and 29.7 miles of streams permanently destroyed with the mere reclamation and rehabilitation of 17 acres of pond habitat and 1.5 miles of stream. These mitigation measures to replace permanent habitat loss from the project’s tailings dam facility, waste rock facility, open pit, and wastewater treatment plant outfall as well as the adverse impacts reduced and/or eliminated flow with the reclamation of pond and stream habitat in areas that do not currently support anadromous fish and at a fraction of the habitat lost is not adequate. ORNC, YKR Alliance, request that ADFG withdraw these applications and engage in meaningful tribal consultation and consider the direct and indirect effects as well as the short and long term impacts of Donlin’s proposed activities prior to issuance of any Fish Habitat permits.

III. Request for meeting

ORNC, YKR Alliance, request renew their prior request for ADFG to engage in meaningful tribal consultation prior to issuance of any state permits. Additionally, the undersigned request a meeting with Commissioner Sam Cotton to discuss those concerns laid out in this letter. Thank you for your time and consideration in this request.

Sincerely,

Orutsararmiut Native Council
Peter Evon, Executive Director
Mary Matthias, Natural Resource Director
Walter Jim, Tribal President