Southeast Alaska
Conservation Council

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RE: Draft Record of Decision (ROD) Objection for the Plan of Operations Amendment 1 (POA1) for the Kensington Gold Mine on the Juneau Ranger District, Tongass National Forest

Dear Regional Forester Schmid,

The Southeast Alaska Conservation Council (SEACC) provided timely and specific Scoping comments on the Kensington Gold Mine POA1 Supplemental Environmental Impact Statement (SEIS). Along with Lynn Canal Conservation, Alaska Clean Water Advocacy, Audubon Alaska, Center for Biological Diversity, Alaska Rainforest Defenders, and Women's Earth and Climate Action Network, we jointly provided timely and specific comments on the Draft Supplemental Environmental Impact Statement (DSEIS).

SEACC is the lead entity in this objection: our lead objector is Executive Director Meredith Trainor, Meredith@seacc.org. SEACC's office telephone number is (907) 586-6942.

OBJECTION 1:
The Forest Service has failed to meet its NEPA requirements. As Lead Agency, the Forest Service has failed to ensure that mitigation procedures prescribed in the 2005 EIS are being employed by the mine to-date, which is relevant when considering whether the Forest Service's conclusions about the effectiveness of future mitigation procedures are reasonable, and whether additional impacts are reasonably foreseeable.[1]

[1] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 77 L. Ed. 2d 443 (1983) (explaining agency decisions that "entirely fail[ ] to consider an important aspect of the problem" are arbitrary and capricious); *Native Vill. of Point Hope v. Jewell*, 740 F.3d 489, 496 (9th Cir. 2014) (holding that NEPA requires agencies preparing an EIS to include information relevant to reasonably foreseeable significant adverse impacts that is essential to a reasoned choice among alternatives, or to comply with NEPA regulations for missing information).

Water quality and watershed health are issues of great significance to the project area and areas immediately adjacent to it, particularly Berners Bay. The health of the affected watersheds directly and indirectly affects a critical ecological area and all associated resources, including fish and fish habitat. As our previous comments state, the performance of the applicant and their ability to meet the limitations designed to protect the surrounding environment and other users of the forest, and the ability of the State of Alaska to ensure compliance, is relevant to the reasonableness of all forward-looking statements contained in the DSEIS and to whether additional environmental impacts are reasonably foreseeable.[2]

- TLMP requires the Forest Service to "avoid irreversible or serious and adverse effects on . . . water resources," and to maintain water quality to protect existing uses. [3]
- ANILCA and TLMP also require the Forest Service to maintain the present and continued productivity of anadromous fish and other foodfish habitat to the maximum extent feasible.[4]

Proposed Remedies:

- The Forest Service should revise the EIS to appropriately incorporate evidence about the applicant's past compliance with environmental monitoring and mitigation requirements in the mine's permits, as well as the State of Alaska's resources to enforce compliance and its history of enforcement or lack thereof. The EIS should incorporate this history and the State's resources into its conclusions about the project's reasonably foreseeable environmental effects and about whether mitigation measures are likely to succeed.
- The Forest Service should reconsider the selection of the proposed alternative and choose an alternative that causes less foreseeable environmental harm, such as the dry-stack tailings storage alternative previously approved for this mine.
- The Forest Service should implement an annual Best Management Practices monitoring inspection, similar to the 2014 Tongass National Forest Monitoring and Evaluation Report: Kensington Gold Mine, Juneau Ranger District, Tongass National Forest, September 10 and 11, 2014[5], for the operational life of the mine, using its own scientists and staff, and disclose the results of those monitoring reports to the public, instead of relying on monitoring reports generated by the mine. This inspection should be performed prior to Kensington Mine's annual meeting, and results should be provided and presented as part of that meeting's agenda each year.

[2] 36 CFR § 228.8(b)(c).
[3] TLMP at 4-61 (SW3.I.A and I.A.2).
[4] TLMP at 3-125 Objectives.
[5] 2014 Tongass National Forest Monitoring and Evaluation Report: Kensington Gold Mine, Juneau Ranger District, Tongass National Forest, September 10 and 11, 2014

- A groundwater monitoring plan for all affected project area watersheds should be created and implemented immediately. In the FSEIS, it is stated that "ambient shallow groundwater monitoring is not required" as part of Kensington's water quality monitoring permits.[6] In fact, the only baseline groundwater data that is currently available for the mine area derives from 14 monitoring wells, "most" in the Sherman Creek area.[7] Groundwater monitoring will enable the Forest Service to better disclose and track mine performance with regard to environmental impacts, and will better protect the precious watershed resources associated with the ongoing operation and proposed expansion. We ask that this program be developed and implemented before the mine is allowed to expand so that baseline data can be recorded, which will enable the Forest Service to apply a contextual, cumulative and scientific approach to this project throughout the life of the mine and beyond.

Supporting rationale for the reviewing officer to consider:

SEACC contends that the Forest Service has improperly dismissed Kensington Mine's numerous water quality permit violations and failure to adhere to Best Management Practices (BMPs), and has not accurately disclosed already-existing environmental damage associated with the mine, stemming from its early operation through 2019. Among these more than 200 violations and failures: outfall effluent exceedances, acid leaching, and multiple fuel spills, one of them of at least 600 gallons. These issues have resulted in fines from the Environmental Protection Agency totaling over half a million dollars.[8] As a result of these violations, water quality, watershed health and essential fish habitat have already likely been negatively impacted by the mine's operation. Repeated assurances by the Forest Service that any environmental impacts due to these failures have been "minor and temporary"[9] are not credible, in part because no groundwater monitoring is taking place despite numerous comments echoing SEACC's request that such a program be employed.[10] Also, the mine has acknowledged water quality changes due to incidences cited within the FSEIS, such as a "white precipitate" found on stream rocks below an outfall discharge.[11] Despite the fact that this substance is apparently still evident and appears to be affecting the aquatic life below the outfall, no documented attempt to correct it has been made. Regardless of the general admission that water quality in the project area has degraded, the repeated assertion is that the degradation is of little consequence:

[6] FSEIS § 3.3.2.1 at p.21.
[7] FSEIS 2004 at p. 3-24.
[8] FSEIS § 3.3.2.1, Tables 3.3-1 and 2; Gestring, B. "Alaska Metal Mines: The track record of impacts to land and water from the failure to capture and treat mine pollution." March 2020, p. 6-8, https://www.earthworks.org/cms/assets/uploads/2020/03/AK-MINE-POLLUTION-REPORT-2020.pdf.
[9] FSEIS 2021, §3.3.3.1; § 2.7.2, Table 2.7-3.
[10] FSEIS 2021, Appendix A, p.A-35-36.
[11] FSEIS 2021, p. 3-65.

"Tailing disposal was initiated in June of 2010 and water treatment was initiated in December of 2010. Elevated sulfate concentrations in the TTF were noted in the spring of 2011 and have shown an increasing trend rising from approximately 300 mg/L in 2011 to approximately 500 mg/L in 2019 (Coeur Alaska, 2020e). The most likely cause of elevated sulfate levels in the TTF is the oxidation of sulfides in the process circuit (Coeur Alaska, 2020f) and an exceedance of the effluent limitation at Outfall 002 for sulfate occurred in July of 2017 (Table 3.3-2)…Elevated levels of nitrate in Sherman Creek, and nitrate, sulfate, and total dissolved solids in Ophir Creek during low-flow winter months are likely sourced to runoff or seepage from the Comet WRS pile…Under all alternatives, minor impacts to ambient water quality could continue." [12]

As the mine's history clearly shows, impacts to water quality *will* continue. Whether or not they are "minor" is contested, and the agency has not adequately justified its conclusions to that effect. The continued lack of groundwater monitoring will ensure that possible changes in water quality are not being tracked, making it difficult to impossible to notice, analyze, and respond to mitigate such impacts.

The Forest Service is negligent in their repeated deference to the State of Alaska as the compliance agency each time compliance issues were raised by several commenters[13] throughout the scoping and SEIS process. While Alaska Department of Environmental Conservation (ADEC) is responsible for water quality permit compliance, the Forest Service is ultimately responsible for enforcing the mitigation procedures prescribed in the decision document as the Lead Agency, preparer of this FSEIS, and public lands manager. As our previous comments state, if another agency cannot meet its regulatory responsibilities, the Forest Service is ultimately responsible for ensuring that federal and state regulations are implemented on National Forest System lands.[14] At a minimum, it is arbitrary for the Forest Service's analysis of the project's reasonably foreseeable environmental effects to assume compliance and proper enforcement in the face of a history of noncompliance and poor enforcement.

Now, more than ever, the Forest Service should be striving to minimize the adverse effects of mining on water sources, rather than allowing industry to continue to add cumulative adverse effect to these critical habitats. Similar recommendations have been made by the National Oceanic and Atmospheric Administration and National Marine Fisheries Service.[15] In the project area, pink, coho, and chum salmon exist in several of the affected watersheds.[16] The three major drainage areas associated with the mine (Sherman, Slate, and Johnson Creeks) all include

[12] FSEIS 3.3.3.1, p. 3-28.
[13] FSEIS 2021, Appendix A, pp. 5-9.
[14] SEACC Comments on SDEIS January 4, 2021 *(Id.).*
[15] Limpinsel, D.E, Eagleton, M.Pl, and Hanson, J.L., 2017. Impacts to Essential Fish Habitat from Non-Fishing Activities in Alaska. EFH 5 Year Review: 2010 through 2015. U.S. Dep. Commerce, NOAA Tech. Memo. NMFS-F/AKR-14, p. 71.
[16] FSEIS Table 3.5-1

important habitat for salmon and other native species. Under the proposed action, significant loss to stream and spawning habitat will occur, increasing the losses that the operation has already caused.[17] As NEPA, TLMP, and ANILCA all require,[18] we request that the Forest Service examine these issues using a cumulative effects framework, properly weighing the impact of additional loss of essential fish habitat as climate change increasingly and concurrently continues to affect Southeast Alaska's most vital resources: salmon and clean water.

SEACC's submitted comments specifically discuss Kensington Mine's repeated water quality violations, the alteration or absence of baseline water quality standards through the life of the project, the degradation and loss of essential fish habitat, specific water quality changes observed through the life of the mine to date, and the lack of effective monitoring and enforcement. In our comments, we present historical evidence to support these statements, including the lack of enforcement and inspections, lack of compliance with State 401 certifications, and lack of water quality data and trends evaluation.[19]

New Information that Came to Light After the Opportunities for Comment:
We would like to make note here of a Forest Service Monitoring Report which took place in 2014, "2014 Tongass National Forest Monitoring and Evaluation Report: Kensington Gold Mine, Juneau Ranger District, Tongass National Forest, September 10 and 11, 2014.[20]" In our review for this objection, we found no reference, link, or mention of this report in any of the DSEIS or FSEIS documentation. The report was prepared by Forest Service hydrologists, fisheries scientists, and others. It delineates multiple failures by the mine with regard to adherence to Best Management Practices through 2014. SEACC believes that this information is relevant to our objection grounds in that it provides recent historical context for Kensington's failure to protect the environment, as anticipated by previous NEPA processes, and required by their permits. We do not understand why this Best Management Practices Report was not used and cited in development of this SEIS. The Forest Service should revise the SEIS to incorporate this document and its implications for reasonably foreseeable effects and mitigation strategies. It clearly, and with photographic evidence, shows multiple water pollution violations, serious acid rock drainage problems, and dumping of waste rock to Johnson Creek.

OBJECTION 2:
Secondly, SEACC objects to the Forest Service's selected alternative based on the lack of thorough and adequate consideration and evaluation of the potential impacts of climate change on the proposed action, specifically with regard to dam failure risk and the potential for changing water temperatures to affect multiple aspects of the project.

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[17] FSEIS § 3.5.3.2, p.3-67-69.
[18] 2016 TLMP, §4, p. 4-63; 40 CFR §1508.8; ANILCA §505(a).

[19] SEACC, *supra* at p.8, 10, 18 & 19.
[20] Tongass National Forest Monitoring and Evaluation Report: Kensington Gold Mine, Juneau Ranger District, Tongass National Forest, September 10 and 11, 2014

- The Forest Service must recognize the potential that components of this proposal could be adversely affected by predicted changes in climate and therefore the Agency must provide thorough qualitative analysis to help inform project decisions.[21]
- NEPA requires federal land managers to conduct environmental analyses in order to evaluate the short and long-term implications of the project and cumulative actions to the extent that such implications are known or reasonably foreseeable.[22]

Proposed Remedies:

- Revise the EIS to incorporate substantive studies regarding anticipated changes to Southeast Alaska's climate over the next 30 years, analyzing how those changes could impact proposed and likely mine expansion and infrastructure and their reasonably foreseeable environmental impacts. Include studies of similar mine dam failures due to overtopping as a result of periodic flood events.
- Include a thorough study of how warming water temperatures in affected watersheds could affect water treatment, eutrophic conditions and other water quality elements.

Supporting rationale for the reviewing officer to consider:

While we appreciate that the Forest Service marginally increased its examination of the potential impacts of Climate Change on the Proposed Action between the Draft SEIS and the Final SEIS, the analysis in the FSEIS still is not adequate. FSEIS Table 3.1-1, "Resource Issues Considered but Not Analyzed in Detail" acknowledges that the Forest Service has not considered climate change in detail relevant to this project, yet it also acknowledges that most studies show that a "warmer, wetter" climate will prevail. This probability is of high significance when discussing a project which, in the event of a weather event causing water management infrastructure failure, will have catastrophic environmental effects. Yet, relying upon a single study, the Forest Service maintains that the mine's proposed infrastructure design is adequate to withstand future storm events:

> *"…Chen et al (2017) finds that infrastructures designed based on current standards will not encounter ''PMP storms'' under the future climate and that the risk of future*

[21] USDA, Climate Change Considerations in Project Level NEPA Analysis (January 13, 2009) at 6-7.
[22] FSH § 1909.15; 40 C.F.R. § 1502.16(2019)(requiring an EIS to discuss a project's direct and indirect effects and their significance); *id.* § 1508.8 (2019) (defining effects to include direct, indirect, and cumulative effects); *see also* 40 C.F.R. § 1502.15 (requiring agencies to acknowledge "reasonably foreseeable environmental trends" in EISs); Council on Environmental Quality, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* at 9 (Aug. 1, 2016) (under review Feb. 19, 2021 for revision and update) ("Consistent with NEPA, Federal agencies should . . . take into account the ways in which a changing climate may impact the proposed action and any alternative actions, change the action's environmental effects over the lifetime of those effects, and alter the environmental implications of such actions.").

extreme precipitation exceeding the historical design standards is still very low even when considering the uncertainties in future precipitation increases.[23]

As the September 10, 2017 and December 2, 2020 regional storm events (and subsequent infrastructure exceedance at Kensington) referenced in previous comments show,[24] it is crucial that the element of climate change be taken more seriously in one of the wettest environments in North America, especially when making decisions on a project which depends completely on proper water management and treatment to avoid adverse environmental impacts. According to one study cited in the FSEIS, the likelihood of short duration but extreme precipitation events is more likely in the immediate future[25]; these are the types of events that have begun taking place in Southeast Alaska with increasing regularity. SEACC submits that existing water management infrastructure relevant to the mine has not been effective or properly maintained at various points in time, and that the risks inherent in and associated with a warmer, wetter climate have not been thoroughly addressed or considered for this project.

Another point we raised during the comment period was how water temperature changes (due to climate change) may affect elements of the project and proposed alternative, such as efficacy of water treatment, eutrophic conditions in the affected watersheds, and general effects on aquatic life.[26] The Forest Service has not addressed this potential issue in a substantive way in the SEIS or DROD.

SEACC submitted comments on the lack of consideration of the implications of climate change during scoping and after the SDEIS was circulated. We also made specific comments regarding changing water temperatures and how they may affect the efficacy of water treatment currently and after closure.[27]

OBJECTION 3:

Finally, SEACC objects to the Forest Service's decision to select the action alternative which, by its own admission, has the single highest potential for adverse environmental impact in the event of a dam breach:

"As discussed under Water Quality above, the Proposed Action has the potential for the largest adverse effect on marine resources of the Action Alternatives should a dam breach occur, and the Filtered Tailings Facility Alternative the least because the quantity and likely distribution of tailings entering the marine environment are related to the amount of both tailings and water stored above the dam at the time of any dam breach."[28]

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[23] FSEIS 2021, §3.12.3.1.
[24] FSEIS 2021, Appendix A, p. 17 & 49.
[25] FSEIS 2021, Table 3.12-1.
[26] SEACC, *supra*, at p. 29.
[27] *Id*
[28] FSEIS 2021, §3.5.3.2, p.75.

Other alternatives were studied, suggested, and even formerly approved for this mine.[29] The rationale for selecting this choice is not clearly or adequately explained, and is particularly unsupportable because of the agency's failure to consider properly the effects of climate change on water management, storage, and treatment.

The Forest Service also fails to consider the cumulative effects of an extended mine life past 2033, although it seems apparent that the Proposed Alternative was crafted and selected based on exactly this likelihood. Our careful review has brought into clear focus a primary deficit of the 2021 SEIS and Draft decision document: the development of alternatives was based on the tailings disposal volume of a single site, Lower Slate Lake. The capacity of this single site, rather than the stated goal of a 10-year mine life extension, resulted in the SEIS eliminating available tailings and waste rock disposal alternatives such as the previously analyzed and selected Dry Tailings Facility (DTF) site near Comet Beach[30] from detailed study.

- NEPA requires federal land managers to conduct environmental analyses in order to evaluate the short and long-term implications of cumulative actions to the extent that such implications are known or reasonably foreseeable.[31]
- NEPA requires land managers to "identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment…Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.[32]

Proposed Remedies:

- Revise the EIS to include a cumulative effects analysis which accurately anticipates the logical next steps in tailings and waste rock storage should the mine continue to operate after 2033.
- Approve the dry-stack alternative (the Proposed Action and modification in Alternative D in the 1997 FSEIS) rather than the Proposed Alternative. We recommend that this plan include pumping (rather than trucking) of tailings slurry to the Comet Beach side. The 1997 dry-stack tailings facility was designed to accommodate all project waste rock and use of this approach at that location would

[29] SEIS 1997, §2.3.6, pp. 20-22; FSEIS 2004, §2.3.5, p. 23.
[30] ROD, FEIS 1997, Vol. 1, p. 3.
[31] FSH §1909.15; *supra* n.22
[32] 40 CFR §1500.2(e), (f) (2019); *see also City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975)("[T]he broader objectives of NEPA clearly encompass agency use of the environmental information developed in an EIS to minimize environmental damage to the greatest extent possible consistent with other important objectives. This is what NEPA is all about.") (citing 42 U.S.C. § 4331(a)).

provide an environmentally preferable alternative. This alternative would increase the mine's life and avoid the need for numerous additional authorizations.

- In the alternative, at a minimum, revise the EIS to analyze the dry stack alternative. If the Forest Service selects the Proposed Action even after analyzing the dry stack alternative, clarify the rationale for doing so and explain how this selection is consistent with the Forest Service's NEPA and NFMA obligations and the TLMP despite the increased risk that it poses in the event of a dam breach.

Supporting rationale for the reviewing officer to consider:

Although both un-selected alternatives meet a lower general threshold of environmental impact, a higher-risk, higher-impact alternative has been selected. The Proposed Alternative creates double the acres of lost wetlands when compared to other alternatives and facilitates the permanent degradation of 450' of stream spawning habitat, 1.8 miles of stream habitat permanently lost due to direct dumping of sediment, more acres of productive old growth lost, and expected reduced fish production[33]. Numerous substantive public comments challenging the selected alternative were submitted. In particular, essential fish habitat is of great concern; yet, the FSEIS claims that reducing impact to this key element didn't merit additional study:

> *"An alternative that would protect Essential Fish Habitat (EFH), aquatic habitat, and wetlands was suggested in public comments. However, an additional alternative to further reduce the potential impacts to EFH was not developed or studied in detail because impacts have already occurred or would be negligible from existing operations. These current operations would not change in the Proposed Action."* [34]

It is well-documented that effects to EFH from mining are not "negligible." "'Loss of stream habitat, in particular, is thought to be the single biggest cause of declines of anadromous salmonids in general.'"[35]

The waste rock storage (WRS) options that were studied in detail are far larger than the volume of waste rock storage previously authorized for the Kensington Gold Mine. The new or significantly-expanded WRS areas overhang three separate salmon streams, Johnson Creek, Slate Creek, and Sherman Creek. We are very concerned about the long-term effects of these WRS sites on Essential Fish Habitat.

The EIS fails to properly disclose the reasons for such a significant increase in waste rock volume. The volume of waste rock involved suggests that the waste rock would result from the development of new ramps and raises targeting new ore bodies. It is unclear in the EIS whether

[33] FSEIS 2021, §2.7.2, Table 2.7-3.
[34] FSEIS 2021, § 2.5.5.
[35] Nehlsen et al. 1991, Reeves and Sedell 1992, as cited in Limpinsel, D.E, Eagleton, M.Pl, and Hanson, J.L., 2017. Impacts to Essential Fish Habitat from Non-Fishing Activities in Alaska. EFH 5 Year Review: 2010 through 2015. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-F/AKR-14, p. 69.

the host rock in these new development areas has been characterized in terms of their acid generating potential. In Table 3.2., Summary of Potential Acid Generation data for WRSs in the Stormwater Pollution Prevention Plan, 9 of 20 samples shown are net acid generating[36]. This implies that the potential for acid generation in waste rock has not been adequately considered in the EIS. The EIS needs to be revised to properly disclose the hazards of the additional waste rock, the WRS sites and approach.

The previously selected Dry-stack Tailings Facility (DTF) site does not drain to any salmon streams and is an environmentally preferable site for waste rock. The EIS does not include adequate alternatives for waste rock storage and should be revised. In light of the relative impacts to salmon-bearing watersheds, the decision not to include the DTF site in analysis as a waste rock and tailings storage area is arbitrary and capricious. SEACC previously commented on the need to include the previously authorized alternative of a dry stack tailings facility on the Comet Beach side of the project. The dry-stack tailings facility site on the Comet Beach side could accommodate all project waste rock and tailings, with room for expansion.

The rationale for choosing the Selected Alternative appears to be the mine proponent's preference and bottom line:

> *"Changing the tailings disposal now would require refining a new technique which could lead to accidents or mistakes that cause environmental harm. Both of the other action alternatives would require different equipment and expertise than what the mine has been using for over 10 years. Current operations are protective of the aquatic environment as well as other resources and I do not foresee that changing by authorizing the mine to continue operating another 10 years into the future."*[37]

This rationale that developing a "new technique" of tailings disposal associated with the lower-impact alternatives might lead to environmental harm ignores the fact that these techniques requiring "different equipment and expertise" are already in use in Southeast Alaska at nearby Greens Creek mine. The two mines are just 40 miles apart. Coeur Alaska could employ lessons that Hecla has already learned regarding its method of tailings disposal to its own advantage.

In terms of annual precipitation, both the average annual precipitation for Hecla Greens Creek and Kensington's dry-stack tailings locations were comparable (50.36" and approximately 47", respectively) as noted in previous EIS documents.[38] This data helps refute statements by Kensington engineers and spokesperson Mark Kiessling, who stated that essentially, the dry-

[36] Coeur Alaska, Inc., Revised Plan of Operations Amendment 1 (POA1) for the Kensington Gold Mine 2018, Appendix C: Stormwater Pollution Prevention Plan, p. 3-21.
[37] 2021 DROD p.5.
[38] 1997 Kensington FSEIS § 3.5.1., p. 3-6; 2003 Hecla Greens Creek FEIS § 3.3.3., Table 3-1, pp. 3-5.

stack method wouldn't work at Kensington because of high precipitation levels.[39] We note that precipitation at the proposed dry-stack tailings site is projected to be significantly lower than at the Filtered Tailings Facility or at Lower Slate Lake.

> *Average annual precipitation at the mouth of Sherman Creek is assumed to be approximately 47 inches, which is the value recorded at the Eldred Rock station… Precipitation at the proposed DTF site, the western margin of which is at an elevation of approximately 250 feet, is expected to be slightly higher, but not significantly greater, than that estimated for Eldred Rock.*[40]

Furthermore, even if it were true that "[c]urrent operations are protective of the aquatic environment and other resources,"[41] that fact is not relevant in assessing whether the EIS for the proposed expansion is sufficient, or whether this substantial expansion of the mine and its footprint is consistent with the Forest Service's resource protection obligations. The Forest Service's reliance on an unquantified risk of accidents or mistakes as a reason for rejecting the dry-stack alternative is also arbitrary, given that the agency refused to consider the mine's history of accidents, mistakes, and noncompliance even in the presence of current waste disposal methods. The agency should compare these risks so that it and the public can make an informed choice between these alternatives.[42]

Finally, as SEACC's comments and several others reflect, it is not credible to claim that, with the ore deposit information available and the nearly double waste rock storage capacity being requested as compared to the 2004 EIS, [43] the Kensington Gold Mine will cease to operate in 10 years' time. The "new technique," such as the dry-stack tailings disposal method formerly proposed in the 1997 FSEIS document, would then need to be employed by Kensington to facilitate any further growth and expansion because no additional capacity of Lower Slate Lake for tailings disposal would be available. We also note that the previously selected Alternative D would have used all available project waste rock in construction of the dry-stack tailings.[44] SEACC argues that this method of tailings disposal and associated new infrastructure should be developed and used *now*, rather than delay and allow for 4 million more tons of wet tailings waste to be added to the aquatic environment above Berners Bay. In the 1997 document, the dry-stack tailings alternative is described as being created to modify the 1992 Plan of Operations in order to "enhance to project's constructability, operability, reclamation, and long-term post-closure monitoring and maintenance, as well as to *minimize potential impacts*

[39] Resneck, J. "Federal fisheries officials raise concern over Kensington Mine expansion." *CoastAlaska.* July 24, 2021. https://www.alaskapublic.org/2021/07/24/federal-fisheries-officials-raise-concern-over-kensington-mine-expansion/.

[40] Kensington Gold Project, FSEIS, 1997, p3-6.
[41] 2021 DROD p.5.
[42] 40 C.F.R. § 1502.14 (2019).
[43] FSEIS Sec. 2.2.1, p 2-19.
[44] ROD FEIS, 1997, Vol. 1, p.3.

*to water quality (*emphasis added)*.*"[45] The Forest Service should return to that goal instead of allowing Kensington to expand in a manner that further harms water quality and associated resources. At a minimum, the Forest Service must explain how it has reached a radically different conclusion about the merits of a dry-stack tailings alternative.[46]

SEACC previously commented on mine life, the alternatives studied, and suggested a less environmentally harmful alternative, based partially on the Proposed Action from the 1997 SEIS.[47] The environmentally superior alternative is clearly the No Action Alternative. Selection of the No Action Alternative would avoid all of the additional risks and impacts of the action alternatives.

In the absence of a decision to select the environmentally preferable No Action Alternative, the previously selected dry stack tailings and waste rock storage alternative near Comet Beach provides significant environmental advantages and advances the proposed plan of operations amendment while implementing best management practices, mitigating potential harm caused to water quality, and anticipating potential implications of a changing climate.

Thank you for considering our comments and objection. We request a meeting with the reviewing officer to discuss the issues raised in our objection and how those issues might be resolved.

SIGNATURES

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[46] *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 966 (9th Cir. 2015) (where an agency's choice "'rests upon factual findings that contradict those which underlay its prior policy,' [it] must include 'a reasoned explanation for disregarding facts and circumstances that underlay or were engendered by the prior policy.'") (quoting *FCC v. Fox Television Stations*, 556 U.S. 502, 515-16 (2009)).
[47] *Id.* pp. 3, 5, 15, 30-31.

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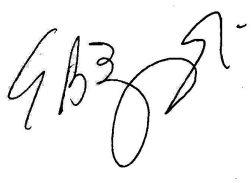

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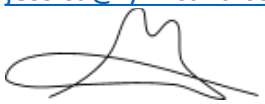

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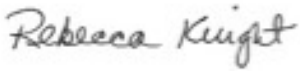

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ATTACHMENTS

City of Davis v Coleman
Earthworks, "Alaska Metal Mines: The track record…"
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