



Chickaloon Village

Traditional Council
(*Nay'dini'aa Na'*)

September 19, 2011

Gary Harrison,
Traditional Chief

Doug Wade,
Chairman/Elder

Rick Harrison,
Vice-Chairman

Penny Westing,
Secretary

Albert Harrison,
Treasurer/Elder

Jess Lanman,
Elder Member

Burt Shaginoff,
Elder Member

Larry Wade,
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Submitted via electronic mail

RE: Preliminary Decision to Approve Minor Permit Application for Usibelli Coal Mine, Inc. Wishbone Hill Mining and Processing Operations, Air Quality Control Minor Permit AQ1227MSS03

Dear Ms. Bablinskas,

The Governing body of the federally-recognized Chickaloon Native Village ("CNV"), the Chickaloon Village Traditional Council ("CVTC") (hereinafter also referred to as "the Village," "the Tribe," "Chickaloon Tribe," or "Chickaloon"), with the all of the inherent powers of a sovereign, Athabascan Nation, submits these comments regarding the Alaska Department of Environmental Conservation's ("DEC") Preliminary Decision to Approve Minor Permit Application for Usibelli Coal Mine, Inc. Wishbone Hill Mining and Processing Operations, Air Quality Control Minor Permit AQ1227MSS03 ("Proposed Permit"). CVTC respectfully objects to the Proposed Permit and to DEC's decision-making process and analysis.

CVTC joins, repeats, adopts and incorporates by reference Sections I-II(f), II(h)-III, and V-VI of the technical comments submitted by Trustees for Alaska on behalf of the Castle Mountain Coalition (CMC) and the Sierra Club (hereinafter "CMC Comments").

The Proposed Permit, and DEC's failure to meaningfully consult and obtain the consent of CVTC regarding the impacts of the permit to our health and welfare and cultural and spiritual practices, constitutes an ongoing violation of fundamental human rights of the Tribe, including the right to meaningful consultation and the right to Free, Prior and Informed Consent under the United Nation's Declaration on the Rights of Indigenous Peoples (the "Declaration") (see below). In addition, because the proposed permit would create an unreasonable risk to the health and welfare of Tribal citizens and would allow activity that would unreasonably interfere with CVTC's enjoyment of life and inherent rights, the application should be rejected outright.

The Proposed Permit would impermissibly burden the Tribe's spiritual and cultural practices including subsistence practices, cultural activities and ceremonies within and in close proximity to the permit area that will be directly affected by fugitive dust, coal dust, and toxic emissions. Clean air is absolutely required for the

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Chickaloon Native Village's spiritual, physical, and mental well being and survival. Water and air are so indispensable to CNV's way of life and religious practices that there is a family clan named for each one. These clan names illustrate how deeply tied these essential elements are to Tribal identity and spiritual practices. Interference with Tribal atmospheric resources caused by the potentially dangerously high levels of emissions allowed by the Proposed Permit and the failure to adequately control harmful dust would not only violate the Clean Air Act ("CAA"), but would allow Usibelli Coal Mine, Inc. to create a nuisance capable of interfering with the Tribe's cultural and spiritual practices, essentially violating the fundamental human rights of the Tribe and violating DEC's mandate to protect Tribal citizens' health and enjoyment of life.

DEC's response to CVTC's comments, Response to Comments for Minor Permit, AQ1227MSS02 (Aug. 18, 2011) at 37-42 ("Response"), to Usibelli Coal Mine, Inc.'s (now-withdrawn and resubmitted as AQ12227MSS03) essentially similar application, show a lack of respect for our basic human rights including our right to continue and practice our way of life and our cultural and spiritual practices. DEC's disregard for a separate sovereign's fundamental right to Free, Prior and Informed Consent, evidences a lack of comity and lack of basic understanding of the State's human rights obligations, and its obligations to our citizens under the CAA itself. We urge DEC to reject its previous Response and immediately undertake to resolve these fundamental human rights issues.

The Proposed Permit Violates the Clean Air Act

The Proposed Permit undermines the very purpose of the Clean Air Act. Congress declared that one of the primary purposes of the CAA is "to ***protect and enhance the quality*** of the Nation's air resources so as to ***promote the public health and welfare*** and the productive capacity of its population." 42 U.S.C. § 7401(b)(1) (emphasis added). Allowing an industrial strip coal mining operation in the heart of a Tribal community and residential area, and in an area that includes critical salmon and moose habitat, that lies within a short distance of schools, homes, elders facilities, prisons, youth camps, and critical cultural resources, utterly fails DEC's mandate to protect the public health and welfare. Rather than protecting and enhancing air quality, the Proposed Permit will increase Matanuska Valley air pollution with the introduction of coal dust—recognized by the EPA as containing mercury and other deadly toxins—as well as methane (see CMC Comments), diesel exhaust including carbon monoxide and other toxic emissions from mining vehicles and hauling trucks.

When creating the Clean Air Act, more than 40 years ago, Congress found "that the growth in the amount and complexity of air pollution brought about by urbanization, ***industrial development***, and the increasing use of motor vehicles, has resulted in ***mounting dangers to the public health and welfare***, including...damage to and the deterioration of property..." 42 U.S.C. § 7401(a)(2) ("Findings") (emphasis added). There is also no question that the Proposed Permit will result in "mounting danger to the public health and welfare" to Tribal citizens and community members living nearest to the project. Allowing the introduction of a 900 hp generator, numerous constantly running and mining vehicles, in addition to fugitive dust from stockpiled and mined coal in the dry and windy conditions of the Matanuska River Valley will damage and deteriorate Tribal property in close proximity to and bordering the proposed mine. This blowing dust will increase sediments and toxins in Moose

Creek and impact salmon populations that are just beginning to rebound from previous damage caused by early 1900's coal mining. DEC's projections that such dust and emissions will not cause a violation beyond the permit boundary are simply not reasonable or credible. The testimony of Dr. Erin McArthur to the Health Impact Assessment (HIA) ordered by the Department of Natural Resources (DNR) for Wishbone Hill makes clear that coal dust and emissions from mining operations at Wishbone Hill will create an unreasonable and imminent health risk to our community.

Neither the State, nor the Federal government, nor any of the previous private operators of Matanuska area mines have ever taken remedial measures for the damage that coal mining has caused to the Tribe and its way of life. There has never been acknowledgement of this damage, nor has there ever been the slightest show of remorse or apology. Contrary to DEC's dismissive Response to comments (Response at 38,d "This comment deals with past actions at other projects and is not relevant to the permitting action for the project under review"), these past failures have a direct bearing on current and future health of our community. Mental and physical health problems from past mining practices and impacts are ongoing and exacerbated by DEC's preliminary approval of Usibelli's application. If a coal mine of this magnitude can be placed in such close proximity to our schools, elders facilities, and homes, what community in Alaska is safe? To date, DEC's response to comments and failure to consult with CVTC evidences little to no concern for these serious and ongoing health issues coal mining has created in our community and violates DEC's mandate to protect our health and enjoyment of life. If DEC does not take its responsibility seriously, it should immediately relinquish permitting authority to the U.S. Environmental Protection Agency (EPA).

Usibelli's Access Plan Fails to protect Tribal Cultural and Spiritual Practices of the permit area

The Proposed Permit's access plan fails to protect Tribal use and access to the permit area for critical cultural and spiritual activities. Because neither DEC nor Usibelli consulted with CVTC, there has been no consideration of protected Tribal uses of the permit area, and no consideration of how those uses will be protected by the access plan. DEC should reject the proposed permit until and unless Tribal spiritual and cultural practices that take place within the permit area are taken into account and protected. Furthermore, Usibelli Coal Mine, Inc. has not demonstrated, and DEC has not required Usibelli to demonstrate that it can protect Tribal uses from hazardous emissions, including toxic blasting emissions and dangerous ambient air conditions caused by mining activity. Until meaningful consultation with CVTC is undertaken, DEC should reject the permit in its entirety.

The Change in Power Source from Generator to Overhead Power Requires More Analysis and Consultation with CVTC

Although Usibelli Coal Mine, Inc. now claims that power will be provided via overhead lines, no permits for such a change in power source have been applied for nor issued, and no consultation regarding the impacts from such a change has been undertaken with CVTC. This major change in Usibelli Coal Mine, Inc.'s plan of operations has the potential to impact several sacred sites eligible for inclusion in the National Register under the National Historic Preservation Act. When state agencies and private developers' fail to consult with Tribes, the disturbance of Tribal sacred and

cultural sites is considered intentional and in both Washington State and California has lead to several multi-million dollar class action lawsuits and liability for state and local agencies permitting such activity. Usibelli Coal Mine, Inc.'s application does not address—and DEC's proposed permit does not analyze—how the change in power source will affect air pollution in power-producing communities. Again, DEC fails to consider the cumulative health impacts to Alaska communities including climate change and erosion caused by this proposal.

The Proposed Permit Fails to Take Into Account Major Stationary Sources of Pollutants in the form of Continuously Burning Coal Seams within the Wishbone Hill Permit Area

The Proposed Permit also fails to take into account air pollution from the burning of coal seams *in the Wishbone Hill Permit Area*, as a result of previous mining operations. Air pollution from these burning seams, *along Moose Creek* are visible from miles away and often hang over Moose Creek creating dangerous air conditions for people and animals alike. DEC's Response to Comment, mistakenly responded only to the burning seams in the Jonesville permit area. But, considering the substantial State resources expended in fighting these ongoing fires *within the Wishbone Hill Permit area*, this mistake is difficult to understand. If DEC had meaningfully consulted with CVTC, we could have provided direct evidence of the toxic smog these burns continue to cause along Moose Creek. DEC is fully aware that exposed seams on steep slopes create an unacceptable risk of coal seam fires, a risk that is not just a small probability, but a fact of life in the Wishbone Hill area since neither DEC, nor any other division of the State of Alaska has been able to extinguish the burning seams which have continued burning for more than 25 years.

Whether lightening started these fires or careless mining practices, DEC's failure to require Usibelli Coal Mine, Inc. to include these pollutant sources *in the Wishbone Hill Permit Area* in the permit data and Technical Analysis Report (TAR) and DEC's failure to require that Usibelli Coal Mine, Inc. adequately plan and model for increases in future burning seams in the permit area in the future, renders the permit invalid. As it is required to by law, DEC should require landowners under its jurisdiction, *including Usibelli Coal Mine, Inc.*, to immediately and permanently put out the toxic coal seam fires before it considers permitting further mining activities. It should also require Usibelli Coal Mine, Inc. to provide air quality monitoring and data at and near the burn sites.

The Proposed Permit Violates State law

The Department's interpretation of 11 AAC 50.110 (see Response at 36) would allow for industrial mining in any area previously mined, with no consideration of significant changes in mining techniques, residential growth, or habitat, and with no consideration of the previous mining activity's health impacts on a community. In fact, the Department's interpretation renders the regulation completely meaningless. We urge DEC to reject this interpretation of 11 AAC 50.110.

Additionally, by pointing to mining activity in 1932, the Department ignores the fact that CVTC has occupied and this area since time immemorial. We were here before the coal miners came, this is our homeland and we will be here when they leave. We know what the impacts of coal mining are, because we are first hand witnesses. To

suggest that these impacts are somehow made “reasonable” because coal was mined (on a very low scale) in the prior century shows the DEC has completely and utterly failed to listen and communicate with anyone other than Usibelli Coal Mine, Inc.

We have consistently demonstrated that the Proposed Permit would unreasonably interfere with our way of life and enjoyment of life in violation of State law. In no other place in Alaska has a mine been permitted to operate, let alone a coal mine with little to no dust control measures (relying only on “snow cover” and dangerous salts or “caking agents” which create hazardous run-off for fish and wildlife), within such close proximity to a school, homes, a correctional facility, and critical salmon and moose habitat. It is simply not reasonable to foist this proposal on our community.

Human Rights Obligations of the State of Alaska Violated by the Proposed Permit

DEC fails to understand its basic human rights obligations, and its dismissive response to comments shows that it is, in fact, intent on violating our citizens’ human rights rather than protecting them. The State of Alaska, as a political subdivision of the United States, may not chose to adhere to a lower human rights standards than its parent State. Rather, the State is obligated to seek “the promotion of universal respect for and observance of human rights and fundamental freedoms.” Universal Declaration of Human Rights Preamble (1948). As a binding international instrument, the Universal Declaration is the “highest law in the land,” and enforceable against the United States, and its political subdivisions, including the State of Alaska. We urge DEC to reject its previous approach to human rights and immediately engage in meaningful consultation with CVTC.

Contrary to DEC’s response to comment (see Response at 41), the Declaration on the Rights of Indigenous Peoples has now been signed by President Obama, who has promised to see that its mandates are fulfilled.

Moreover, the United States is committed to serving as a model in the international community **in promoting and protecting the collective rights of indigenous peoples as well as the human rights of all individuals**. The United States underlines its support for the Declaration’s recognition in the preamble **that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess certain additional, collective rights**. The United States reads all of the provisions of the Declaration in light of this understanding of human rights and collective rights. (Emphasis added).¹

DEC’s claim that the United States claims the Declaration is “not legally binding” is taken out of context and ignores the rest of the sentence from which it quotes: “The United States **supports** the Declaration, which—while not legally binding or a statement of current international law—**has both moral and political force**.” By selectively quoting the Untied States’ signing statement (a statement which has no

¹ The United States became a signatory to the Declaration in 2010. United States Department of State Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples; Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples II. The Declaration and U.S. Initiatives on Native American Issues, Undated.

force of law nor binding effect), DEC therefore implies that it intends to act amorally and politically in order to deny CVTC its fundamental human rights. Furthermore, DEC failed to respond to our comment that the Declaration represents the “minimum standards” which the State of Alaska may treat our citizens and government, which is in fact an accurate representation of the state of international human rights law regarding the Declaration, not a selective, half-reading of a non-binding, aspirational signing statement. We repeat our previously submitted comments and incorporate by reference our entire comments submitted in regard to Air Quality Control Minor Permit AQ1227MSS02.

The Proposed Permit violates basic and fundamental human rights and therefore requires DEC rejection of the permit as written—until and unless the State provides adequate remedy. As a political subdivision of the United States, the State of Alaska shares the same responsibility to protect its citizens and the Indigenous Peoples of Alaska as the Federal government. The Federal government because of its special government-to-government relationship with Indian Tribes always retains trust obligations and fiduciary duties. But, when the State of Alaska wields delegated federal power, as it does in issuing some Clean Air Act permits, it must exercise corresponding duties of care in the protection of citizens' best interests. By failing to secure the Free, Prior and Informed consent of CVTC, by failing to meaningfully and beneficially consult, and by failing to adequately protect the health, welfare, and cultural, spiritual, and religious practices of CNV, the State has fallen short of these duties and DEC should immediately undertake actions to fulfill its human rights obligations.

In order to meet its human rights obligations, the State of Alaska and DEC should immediately take steps to increase respect and incorporate Tribal self-determination into its permitting processes. In its 2006 examination of the United States under the International Covenant on Civil and Political Rights (ICCPR) the Human Rights Committee (HRC) recommended that the United States should take further steps in order to secure the rights of all indigenous peoples under articles 1 and 27 of the Covenant to give them greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.”²

ICCPR Article 1 refers to the right of all peoples, including Indigenous Peoples to Self Determination. Article 1 (in common) also requires that, “In no case may a people be deprived of their own means of subsistence.” Both of these human rights obligations are particularly relevant to the air quality issues raised by the Proposed Permit. Article 27 recognizes the right to practice language, culture and religion. The HRC has determined that for Indigenous Peoples, their right to practice culture includes the right to control land and natural resources as elements necessary to the maintenance of their cultures (HRC General Recommendation 23.7). This right requires that it not be denied, and that positive measures of protection, as well as measures to ensure the effective participation of communities in decisions affecting them be taken. The State of Alaska and DEC have failed to ensure such participation in developing and considering the Proposed Permit and should immediately take steps to remedy this failure.

² Human Rights Committee, Concluding Observations, United States of America, Eighty-seventh session, 10-28 July 2006, UN Doc. CCPR/C/USA/CO/3, 15 September 2006 Para. 37.

The Committee on the Elimination of Racial Discrimination (“CERD”; or “the Committee”) has come to the similar conclusions and made similar recommendations. In their examination of the United States under the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in 2008, the Committee voiced its concern “... about reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention (arts. 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).”

“The Committee recommends that the State party take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedure, – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention. The Committee further recommends that the State party recognize the right of Native Americans to participate in decisions affecting them, and *consult and cooperate* in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans.”³

In an Urgent Action/Early Warning decision⁴ the CERD made recommendations to the United States regarding the Western Shoshone’s rights to their lands and resources, specifically calling upon the United States to “freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers and desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples.” In its 2008 examination of the United States the CERD regretted the lack of compliance with its decision: “The Committee reiterates its Decision 1 (68) in its entirety, and urges the State party to implement all the recommendations contained therein.” (At fn, 3, Para. 19). It should also be noted that the CERD, in its 2008 Concluding Observations, noting the negative position of the United States on the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295) (“UN Resolution” or “Resolution”)⁵ recommended that the UN Declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.⁶

The UN Declaration establishes “that its recitation of fundamental rights constitute the minimal standards for the survival, dignity, and well-being, of the Indigenous Peoples of the world.”⁷ These rights are not only in the individual but also

³ Committee on the Elimination of Racial Discrimination Seventy-second session Geneva, 18 February - 7 March 2008, Concluding observations, United States of America, UN Doc. CERD/C/USA/CO/6, 8 May 2008, para. 29.

⁴ United States of America, DECISION 1 (68), CERD/C/USA/DEC/1, 11 April 2006 (Early Warning & Urgent Action Procedure) para. 10 (a).

⁵ Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples II. The Declaration and U.S. Initiatives on Native American Issues, Undated.

⁶ *Id.*

⁷ Nicholas A. Robinson, “*Minimum Standards:*” *The UN Declaration on the Rights of Indigenous Peoples*, 28 Pace Env’t. L. Rev. 346, 351 (2010) (quoting UN Declaration at art. 43) (emphasis in original).

“a community right in the Indigenous Nation and community and tribe.”⁸ “The U.N. Declaration does an extraordinary service *by obliging all governments to rethink how they respect these basic rights.*”⁹ CVTC respectfully requests that DEC and the State of Alaska reevaluate the Proposed Permit in light of its obligations under the Declaration and other relevant human rights instruments.

Failure to obtain the Free Prior and Informed Consent of CVTC

The State of Alaska has failed to obtain any measure of consent from CVTC regarding the permitting of Usibelli Coal Mine, Inc.’s proposed Wishbone Hill development. In fact, the Proposed Permit makes no mention of CVTC, the Tribe, Tribal jurisdiction, Tribal governance, nor any acknowledgement that the State of Alaska does not possess full, certain and exclusive jurisdiction over the entire Matanuska watershed. Alaska does not possess such jurisdiction and has failed to secure the consent of a separate sovereign, CVTC, before approving a project with cumulative and direct effects on that jurisdiction’s territory and people. In fact, even within the permit area, DEC fails to recognize Federal and Tribal interests in land, air and water resources. Contrary to Usibelli Coal Mine, Inc.’s claims (and DEC’s repetition of this false claim), this project does not concern only private and State lands, but rather includes Federal and Tribal lands and interests as well. These interests entitle us to the right to Free, Prior and Informed Consent, which we have not waived and will not waive.

The right of Indigenous Peoples to Free, Prior and Informed Consent is found in several Articles of the UN Declaration: with regard to displacement (Art. 10); with regard to legislation and regulation that may affect them (Art. 19); with regard to reparations for the loss of traditional lands, territories and resources, taken without their free, prior and informed consent (Art. 28); with regard to storage or disposal of hazardous materials on their lands, affecting their right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (Art. 29); and most relevant to the right to clean air, Art. 32:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. (Emphasis added).

DEC may not simply ignore our fundamental right to consent, simply because it does not understand its human rights obligations. Declaring that Tribal consultation defects are cured because individuals have an opportunity to comment through DEC’s permitting process is NOT meaningful consultation, and is not cooperation “in good faith.” DEC’s response (Response at 40 “The Department has provided an opportunity for the Chickaloon Village residents to participate in the permitting by including their comments on the proposed permit.”) is evidence that DEC and the State are not cooperating in good faith, and instead willfully undermining and attacking Tribal

⁸ *Id.* at 351-52.

⁹ *Id.* (emphasis added).

sovereignty and self-determination.

The State and DEC must not only provide individual citizens with an opportunity to meaningfully participate, but must also engage with our sovereign government on a good faith basis. As the Special Rapporteur on Indigenous Peoples, James Anaya has recently informed the United States regarding development activity at the San Francisco Peaks in Arizona, consultation must be meaningful and not merely a one-way providing of information:

Under the cited human rights treaties, to which the United States is a party, and the Declaration on the Rights of Indigenous Peoples, which the United States has endorsed, consultations should take place with the objective of achieving agreement or consent by indigenous peoples to decisions that may directly affect them in significant ways, such as decisions affecting their sacred sites. *Simply providing indigenous peoples with information about a proposed decision and gathering and taking into account their points of view is not sufficient in this context. Consultation must occur through procedures of dialogue aimed at arriving at a consensus.* Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Annex X at 48 (Aug. 22, 2011)(emphasis added).¹⁰

DEC Fails to Meaningfully Consult Regarding the Health Impacts of the Proposed Permit

The Proposed Permit would allow emissions and fugitive dust, including toxic coal dust within a close proximity to Tribal fee and restricted lands and protectable interests including a Tribal school, Native Allotments, rights of way, roads, trails, and Tribal salmon restoration projects. Coal dust is a recognized source of mercury and other toxins, and the Matanuska River Valley, with its increasingly dry and windy climate is an especially poor candidate for coal mining, storing and hauling. Additionally, the wasteful burning of coal contributes to climate change, which disproportionately affects Alaska Native Villages. Many Alaska Native Villages faces erosion problems as a result of climate change. As the world endeavors to wean itself from fossil fuels and their destructive impacts on our atmosphere and planet, the State of Alaska should do the same and commit to ending coal's contribution to the irreversible effects of climate change.

Yet, no consultation (or even a conversation) has taken place regarding these cumulative, direct and indirect impacts to Tribal health and welfare. Tribal citizens, especially Tribal children will bear most of the externalities and costs of local and global atmospheric pollution from coal mining and burning, with little or no benefits. The failure to consult with CVTC about these impacts undermines the principal and policy goals of self-determination and self-governance, which the State should support and engender.

The State of Alaska and DEC as a matter of practice, have not meaningfully consulted in good faith with Alaska Native Tribes concerning mining and large-scale

¹⁰ http://www.nnhrc.navajo-nsn.gov/pressReleases/2011/091411%20Rpt%20by%20the%20SR%20James%20Anaya_A_HRC_18_35.pdf

development projects on Traditional Tribal lands, even though many of these sacred areas are of great cultural and spiritual significance to Native Peoples. The failure to meaningfully and beneficially consult with CVTC on the Proposed Permit, impermissibly allowing Usibelli Coal Mine, Inc. to desecrate sacred areas and degrade the air quality and viewshed—vital and necessary for cultural and religious practices, violates the basic human rights of the Chickaloon Village in favor of private corporate interests. The balancing required by article 18 of the ICCPR on the right to religious practice has never been undertaken by the State or DEC, and the Proposed Permit gives no indication that it will do so in the future.

Both the Human Rights Committee and the CERD Committee, as cited above, have reminded the United States and its political subdivisions—of which the State of Alaska is one—of their obligation to consult in good faith with Indigenous Peoples in matters that concern their resources, including their right to atmospheric resources and its subsistence, spiritual and cultural dimensions.

DEC should withdraw the Proposed Permit, and immediately engage in, and require Usibelli Coal Mine, Inc. to engage, in full and meaningful consultation with CVTC regarding the impacts of the Wishbone Hill proposal.

May Creator Guide Our Footsteps,



Doug Wade
Chairman

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