Dear Colonel Brooks:

This letter is in further reference to Public Notice No. POA-2015-25, for the permit application by Armstrong Energy, LLC, to discharge fill material to construct the Nanushuk Project. The proposed project would discharge fill material to 271.6 acres of wetlands on the North Slope of Alaska to construct drilling pads, gravel roads, and associated infrastructure for the production and delivery of oil to the Trans-Alaska Pipeline System. The Environmental Protection Agency sent the Alaska District of the U.S. Army Corps of Engineers a letter regarding this Public Notice on November 13, 2017, outlining the impacts the EPA believes this project may have on the Colville River Delta, its associated tributaries and wetlands, and their adjacent wetland systems.

As expressed in our November 13th letter, the EPA understands and supports Alaska’s desire to develop its energy resources in a responsible way that addresses the needs of Alaskans while also safeguarding the State’s exceptional natural resources. We hope to continue working with the applicant and the Alaska District to develop a robust, defensible permit that meets the project purpose and objectives. At the same time, the EPA has seen no new information since our prior letter that would change our conclusion that the project as described in the Public Notice may not comply with the Clean Water Act Section 404(b)(1) Guidelines.

The Guidelines direct that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the discharge which would have less impact to waters of the United States. As described in more detail in our prior letter, it is not clear that the proposed project changes from the draft Environmental Impact Statement, as identified in the Public Notice, make the proposal the Least Environmentally Damaging Practicable Alternative. It is also not clear that all appropriate and practicable steps have been taken to ensure that impacts to aquatic resources have been avoided, minimized, and compensated for, consistent with the Guidelines. Similarly, the applicant’s contention that the impacts are not significant and do not require compensatory mitigation is not scientifically supportable and is contrary to the requirements of the Guidelines. The Guidelines direct that, unless impracticable, compensatory mitigation should be provided for all unavoidable impacts to aquatic resources.

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1 40 C.F.R. § 230.10(a).
3 See 40 C.F.R. §§ 230.10(a), 230.10(d), 230.91 – 230.98.
For these reasons, the EPA maintains the objections stated in our November 13th letter. Pursuant to Part IV, paragraph (3)(b) of the August 11, 1992 Clean Water Act Section 404(q) Memorandum of Agreement between the EPA and the Department of the Army, the EPA concludes that the proposed project will have substantial and unacceptable adverse effects on aquatic resources of national importance, specifically the Colville River basin and its contributing waterbodies.

Although these resources are clearly significant, it may be of use to the applicant to understand that the EPA's Aquatic Resource of National Importance determination does not preclude a favorable permit decision, nor does the designation of an area as an Aquatic Resource of National Importance prohibit or determine permitting outcomes for this project or any future projects. The requirement to identify an ARNI, which is specified in the MOA, is meant only to ensure that when the EPA requests enhanced coordination on a permit process with the Corps under §404(q), such a request is not made if the resources in question are ecologically unimportant or the impacts trivial. The designation has no other meaning within the 404 process or regulations.

We appreciate the Corps' previous coordination with us on the proposed project to date and look forward to working together collaboratively. We have, however, also expressed concerns about compensatory mitigation on this project and on other projects within the District, and continue to believe that a discussion of those issues would be of benefit to the program as well as providing greater certainty to applicants. In the interim, should the Corps decide to issue this proposed permit, I request that you notify the EPA pursuant to Part IV, paragraph (3)(c) of the MOA.

Thank you for the opportunity to review this project. The EPA greatly appreciates the attention that you and your staff have provided to this project. Should you have any questions about this letter, please do not hesitate to contact me or have your staff contact Mark Douglas of my staff, at (907) 271-1217 or douglas.mark@epa.gov.

Sincerely,

[Signature]
Chris Hladick
Regional Administrator

cc: Mr. David S. Hobbie, Regulatory Chief, USACE
    Mr. Stephen R. Sullivan, Deputy Regulatory Chief, USACE
    Ms. Ellen H. Lyons, Project Manager, USACE