



TRUSTEES FOR ALASKA

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Alaska's non-profit public interest environmental law firm

October 2011 Legal Brief

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Dear Friend,

Trustees for Alaska works strategically to address some of the most important environmental issues affecting Alaska. We represent a wide range of clients from native villages, community and citizen groups, local and national conservation groups, statewide coalitions, hunting and fishing groups, as well as individual Alaskans. Please read on to learn more about our current work and to [Donate Now](#).

Sincerely,

Trish Rolfe
Executive Director

Support Trustees for Alaska

Trustees for Alaska is the only Alaska-based non-profit public interest law firm providing legal counsel to protect and sustain Alaska's natural environment. We provide legal counsel to diverse constituencies on the major environmental policy issues facing Alaska.

Our work is far from over -- and relies on donations from foundations and individuals who care about protecting Alaska's special places. Support us today! Your contribution of \$50, \$75 or \$100 is an investment in Alaska's future.

You can make a contribution now by clicking on the Donate Now button on our website. Thank you!

Bristol Bay Residents Disappointed by Pebble Court Decision, Consider Appeal

A superior court judge ruled that the Alaska Constitution does not require the State to provide public notice or issue a best interest finding prior to allowing exploration and temporary water use



activities at the Pebble Project. Nunamta Aulukestai, Vic Fisher, Bella Hammond, Violet Willson and Rick Delkittie brought the lawsuit and were represented by Trustees for Alaska.

After two years of investigating and litigating the exploration and temporary water use permits for the Pebble Project, plaintiffs introduced numerous witnesses and hundreds of exhibits demonstrating the harm to the resources in the region from Pebble's exploration, including hundreds of boreholes, thousands of seismic explosions, dozens of test pits, more than 40,000 helicopter trips in just the last 8 years, the presence of several hundred employees in the region each summer, and numerous fuel spills. The Alaska Department of Natural Resources (DNR) also allowed millions of gallons of water to be pumped from ponds and streams between 1988 and 2007 without any permits at all, and then, without public notice, issued temporary water use permits which allowed pumping from anadromous and resident fish streams without analysis of environmental impact.

In the decision, Judge Aarseth did not find these claims to be a constitutional violation and ruled that the area wildlife and subsistence have not been impacted even though local subsistence and sport users testified that helicopter activity has driven caribou from the Pebble Project area.

On the positive side, the judge ruled that the natural resources provisions of the Alaska Constitution apply to mining activities on State land, notwithstanding the Legislature's attempt to provide a blanket exemption. Another positive result of the lawsuit was that the plaintiffs exposed Pebble water use violations that DNR had not discovered. The State had failed to investigate the hydrology or presence of fish in the water sources. During the briefing in the lawsuit, plaintiffs informed the Court that the drillholes at the Pebble Project sites were not near the water use violations where a penalty of \$45,000 was assessed. A Water Management Plan was also developed and better fish screens were required to protect fish.

The plaintiffs are likely to appeal because the people in the Bristol Bay region have for years wanted the chance to have notice and voice their concerns about Pebble to state regulators. They want an opportunity to comment and a rational, science-based look at the totality of the impacts, including impacts at the exploration stage before -- not after -- damage has been done.

by Nancy Wainwright, Senior Staff Attorney

In an Effort to Protect Salmon Streams Trustees for Alaska Threatens to Sue the State of Alaska for Missing Deadline on Unsuitable Lands Petition for Chuitna Watershed



On September 1, 2011, Trustees for Alaska gave 60 day's notice of intent to sue to the Alaska Department of Natural Resources (DNR) for its failure to decide the pending Unsuitable Lands Petition (ULP) to designate the Chuitna River and its tributaries as

unsuitable for surface coal mining. The Petition was filed in January of 2010 on behalf of the Chuitna Citizens Coalition and Cook Inletkeeper. DNR missed the statutorily mandated deadline -- April 19, 2011 -- to issue a decision.

The Chuitna River is one of the most important salmon-producing rivers in Cook Inlet. It produces five species of Pacific salmon and supports vital subsistence, commercial and sport fisheries. The Native Village of Tyonek and the small community of Beluga, both isolated from the rest of Alaska's road system, are near the mouth of the Chuitna River and depend upon the river's abundant fish and wildlife habitat to maintain their local subsistence way-of-life.

Despite the Chuitna's designation by the State of Alaska as a "River of Statewide Significance," it continues to be threatened by proposed coal development, which would obliterate over eleven miles of one of the Chuitna River's most productive tributaries, dump over seven million gallons of polluted water per day into the Chuitna River, forever alter the landscape and local ecology, and contribute to the ever-increasing threats from climate change. If developed, the Chuitna Coal Strip Mine would be the first large-scale mine of any type permitted directly through waters identified by the State as important to salmon, and set a horrible precedent for the destruction of salmon streams throughout the State.

At the first of two public hearings in early 2011, 52 people in Kenai testified in support of the Petition while only one, the project manager for Texas-based leaseholder PacRim Coal, LP, spoke in favor of coal mining. At the second hearing, the vast majority of people in Tyonek spoke against the project. Despite this public outcry, the State continues to delay the process and miss mandated deadlines. Trustees for Alaska worked with a hydrogeologist to prepare an expert report and a conceptual model in support of the Petition that was submitted to DNR.

On April 20, 2011, a day after the agency's decision on the Petition, Trustees for Alaska received a letter from the DNR Commissioner seeking to further delay the decision. The letter provided notice of DNR's intent to provide the Commissioner's final decision by June 3, 2011, 45 days after deadline. Despite DNR's unilateral extension of the statutory deadline, it has yet to provide a decision on the Petition.

Compelled by the already lengthy delay and the ongoing activities to permit a strip mine in the Petition area -- where Trustees for Alaska and its clients are working to protect the Chuitna River, tributaries, and their important fish and wildlife habitat -- Trustees for Alaska notified the DNR Commissioner that if he does not issue a decision by October 31, 2011, we will be forced to seek a court order requiring DNR to comply with the law.

For more information about the proposed Chuitna Coal Mine, please [click here](#).
by Valerie Brown, Senior Staff Attorney

Rock Creek Mine: A Mine that was Never Meant to Be

Recently, Nova Gold, the owner of the defunct Rock Creek mine, finally decided to permanently close the gate and reclaim the mine (at the cost of \$28 million



dollars). Rock Creek has been in temporary closure since late 2008. Back in 2008, Nova Gold stated that due to "unanticipated



mechanical problems including an electrical failure with the milling circuit and ... ongoing concerns with the efficiency of the crushing and recovery circuit," it would temporarily close the mine. What Nova Gold failed to highlight was the major ongoing problems it was having managing the flow of ground and surface water into its tailings facility. During construction of the mine, the water management system had multiple failures: Nova Gold's inability to manage its storm water resulted in a fine from the Environmental Protection Agency (EPA) of over \$800,000 and the influx of ground and surface water to the tailings impoundment compromised the structural integrity of the tailings dam.

In 2006, Trustees for Alaska filed a lawsuit on behalf of the Bering Strait Citizens for Responsible Resource Development, challenging the permit for this mine. The case alleged that the company had failed to fully analyze the impacts from a ground water table that was close to the surface. Nova Gold and the permitting agency -- the U.S. Army Corps of Engineers (Corps) -- rushed to get this project online, despite concerns raised by our clients and the EPA. Now, five years later, Nova Gold has decided to shut the facility down for good, indicating that it faced more than just "electrical problems." The Corps relied upon the analysis of the mining engineers without responding to the concerns raised by the public and EPA. And look where that got us -- a mine that never operated but had considerable negative impacts on the surrounding land, water and community. While we may have lost our case in court, it is clear that the permitting system failed our clients who now must live with the remnants of a mine that never operated. This blight on the beautiful Name foothills in the Snake River Valley will serve to remind all Alaskans that the public and the permitting agencies can't just trust the mining engineers when they say there will be no problems as well as highlight the need for a critical, independent review of all aspects of mine projects around the state because they each present individual challenges. For the attorneys at Trustees for Alaska, it will serve as a strong reminder of why we work with communities to address these important issues.

by Brian Litmans, Senior Staff Attorney

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