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Alaska Native group and two Bristol Bay residents challenge decision denying them the right to appeal Pebble permit

Native spokesman: End the rubber-stamping of permits without public notice or input

ANCHORAGE, Alaska — An Alaska Native organization and two Bristol Bay residents today appealed in Alaska Superior Court a decision by the Alaska Department of Natural Resources' commissioner rejecting their challenge of an exploration permit for the proposed Pebble Mine issued earlier this year.

Nunamta Aulukestai, an association of eight Bristol Bay Native village corporations, along with Nondalton resident Rick Delkittie and former Alaska First Lady Bella Hammond, say Commissioner Thomas Irwin violated their constitutional right to due process by conducting an illegal permitting process that allows significant impacts to public subsistence resources without a valid opportunity for public participation.

Trustees for Alaska, a nonprofit law firm, is representing Nunamta Aulukestai, Delkittie and Mrs. Hammond. For a copy of today's appeal contact Vicki Clark, Trustees for Alaska, (907) 276-4244 ext. 110 or by e-mail at vclark@trustees.org.

"The Department of Natural Resources routinely rubber-stamps permits without public input or notice and at the expense of people who depend on subsistence resources that would be damaged by Pebble mine exploration and development," said Bobby Andrew, a spokesman for Nunamta Aulukestai. "The State has a moral and legal obligation to listen to the public when making decisions that affect the public's natural and subsistence resources. Our lives and livelihoods are too important for the State to deny us that."

Today's legal action stems from a November decision by Commissioner Tom Irwin to reject Delkittie and Nunamta's challenge of the agency's February issuance of a mining exploration permit to the Pebble Limited Partnership, the group behind the proposed Pebble Mine project. Irwin said he rejected their March administrative appeal because Nunamta and Delkittie, who lives in the community closest to the proposed Pebble Mine site, were not "affected" or "aggrieved" by the agency's decision to grant the permit.

The decision meant that they did not have legal "standing" to file an appeal even though the livelihoods of residents in the eight villages of Nunamta Aulukestai, Delkittie and Mrs. Hammond face significant risk from the proposed Pebble Mine, which would be located in the headwaters of key salmon-spawning rivers in Bristol Bay.

"What is evident in the Commissioner's decision is that there is no way for the public to raise their concerns before the development permits are basically a done deal and put out for public comment," said Vicki Clark, a Trustees for Alaska attorney on the case. "The process is a sham, and the rights of the public, not just the mining company need to be upheld."

In the appeal filed today in Alaska Superior Court, Nunamta Aulukestai, Delkittie and Mrs. Hammond argue that the department's administrative process for the Pebble permit and Irwin's rejection of their appeal violated their right to due process on several grounds. Those include allegations that the Department of Natural Resources failed to give Alaskans adequate notice (not even mentioning that the project was the proposed Pebble Mine) and opportunity to comment on the permit, that it failed to consider the timely filed appeal and that it failed to allow submission of additional information on the consequences of what could happen to impacted Bristol Bay residents if the permit was approved.

Mrs. Hammond voiced her concerns about the lack of information and secretive way the project has been done to Commissioner Irwin several years ago and suggested changes that would keep the public informed. "I have not subsequently received any written information by mail or public notice about the exploration activities at the Pebble Project," she said.

Nunamta Aulukestai, Delkittie and Mrs. Hammond also say their rights were violated by Irwin's claim they didn't have legal standing to appeal the department's decision to issue the Pebble permit. In his November decision, Irwin faulted them for not identifying how they were affected by the agency's decision even though no such requirement exists in state statutes or regulations. Commissioner Irwin also failed to identify any criteria required for determining who has standing in his November decision to reject the appeal.

"For the commissioner to dismiss our appeal for 'lack of standing,' especially when his justification for that claim is not supported by state law or departmental regulations, is shocking," Andrew said. "Our lives are intertwined with the permitting decisions made by the State Department of Natural Resources officials. We have a right, under the State Constitution, to provide substantial comment and input, and we are saddened that the State is trying to deny us that opportunity."

Today's administrative appeal comes as the group and several other Alaska residents push forward with a lawsuit against the Department of Natural Resources for granting permits for Pebble mine exploration that violated provisions of Article VIII of the Alaska Constitution which protect the State's natural resources. The lawsuit asserts that the agency failed to consider the public's interest in sustaining the region's rich salmon, wildlife, and subsistence resources, which are negatively affected by exploration activities. Today's appeal in effect adds a due process claim to the residents' challenge of the exploration permits.

In the ongoing lawsuit, the presiding judge late last month rejected the State's motion to dismiss the case but denied a motion for a preliminary injunction to stop mining exploration at the Pebble Project. A Petition for Review on the preliminary injunction decision has been filed with the Alaska Supreme Court.

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