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Alaska's non-profit public interest environmental law

April 2010 Legal Brief

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Update: EPA Withdraws Challenged Red Dog Permit Limits

Last month Trustees for Alaska filed an appeal of the EPA Clean Water Act permit for the Red Dog Mine that significantly related toxic release limits for lead, zinc, and cyanide, as well as total dissolved solids and ammonia.

On March 17, 2010, the EPA formally withdrew the five challenged effluent limits of the new water pollution discharge permit for the Red Dog Mine. With those limits withdrawn, Red Dog must comply with the more stringent limits in its previous permit, which Teck Alaska, Inc., the mine operator, claims it cannot meet.

This initial victory in the appeal validates the claims that EPA cannot allow unjustified relaxation of permit limits. Trustees for Alaska will, however, continue the appeal to ensure that the proper process is followed and that pollution at Red Dog is kept to a minimum.

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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 some of our current work.

Pebble Limited Partnership Violates Water Use Permits

In February the Alaska Department of Natural Resources (DNR) settled with Pebble Limited Partnership for 45 violations to its temporary water use permits, in which they agreed to pay \$45,000 in penalties. DNR stated that the settlement followed an investigation that began after the Pebble Partnership reported using water from unauthorized locations in November.



What DNR and Pebble did not reveal to the press was that Trustees for Alaska had informed DNR in March, September and October that illegal water use was occurring during Pebble's exploration activities. Trustees for Alaska provided the information as part of our constitutional lawsuit against DNR brought on behalf of Nunamta Aulukestai; Ricky Delkittie, Sr.; Violet Willson; Bella Hammond; and Victor Fischer. Yet, DNR took no action at the time to investigate or prosecute those violations reported by the citizens of the region who depend upon that same water for subsistence.

DNR also failed to reveal that Pebble and its predecessors had illegally used water for many years. Hundreds of millions of gallons of water were used at the Pebble Project from 1988-2006, with no water use permits at all and no DNR oversight or investigation. State agencies began making site visits to inspect Pebble's operations in 2007, yet DNR, the Alaska Department of Environmental Conservation, and the Alaska Department of Fish and Game did not document or even investigate Pebble's illegal water use violations during their inspections because they were focused on other matters.

Recently, John Shively, CEO of the Pebble Limited Partnership, gave a talk to the Resource Development Council. In that presentation, Mr. Shively singled out Trustees for Alaska as one of the leading threats to resource development in Alaska, highlighting some of our recent cases, including the constitutional challenge involving Pebble. He also complained about the stranglehold that regulations have on development.

Despite Mr. Shively's dissatisfaction with the regulatory situation, the Alaska Board of Fisheries has asked the Alaska Legislature to conduct an independent and comprehensive review of State permitting processes, standards and regulations and to safeguard subsistence, personal use, short-hunting and fishing on State lands in the Bristol Bay region. The review is under serious consideration by the Legislature. Such a review should shine a light on the inadequacies of the permitting process.

As it stands, the public cannot trust DNR to do its job to protect the public's resources. The State claims that they can protect the salmon resources of Bristol Bay, but Pebble's permit violations may never have been discovered if not for the lawsuit filed by Trustees for Alaska. The public's resources deserve better, and Trustees for Alaska will continue to fight to protect those resources.

monthly program designed for people interested in supporting the ongoing work of Trustees for Alaska in its efforts to protect and sustain Alaska's environment throughout the year. Through our Monthly Giving Program you can:

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- Provide regular & predictable funds -- putting your gift to work immediately to help protect Alaska's environment!

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Please consider making a 2010 gift to Trustees for Alaska now via our secure website -- every bit will help Trustees for Alaska fight and win Alaska's tough conservation battles this year!

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Alaska Department of Environmental Conservation Denies Petition to List the Kaktuli River as an Outstanding National Resource Water



In February of 2010, Trout Unlimited, SnoPac Products Inc., Alaska Independent Fishermen's Marketing Association, Renewable Resources Coalition, Alaska Alpine Adventures, Nunamta Aulukestai and Nushagak-Mulchatna Wood-Tikchik Land Trust, with assistance from Trustees for Alaska, nominated the Kaktuli River as an Outstanding National Resource Water (ONRW).

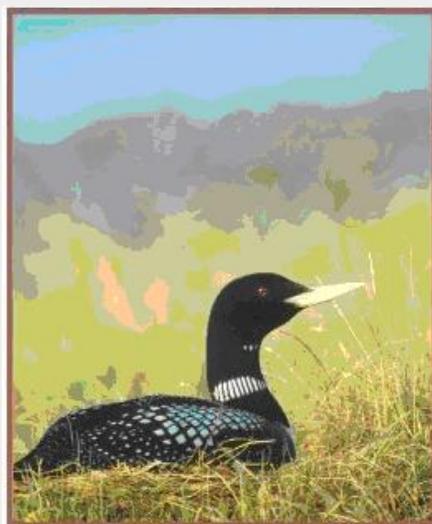
The Kaktuli River is located in Alaska's Bristol Bay watershed, which is home to the largest sockeye salmon fishery in the world. The Kaktuli is threatened by the proposed Pebble Mine, a copper and gold mine that is slated to be located in the headwaters of the Kaktuli. In order to ensure the natural values of the river -- subsistence and sport fishing in this instance -- are adequately protected, waterbodies designated as ONRWs under the Federal Clean Water Act cannot have their water quality degraded by wastewater discharges.

In March 2010, the Alaska Department of Environmental Conservation (DEC) denied the petition, finding that the time to review an ONRW petition is when there is a proposed water discharge permit at issue; i.e., when the Pebble developers formally ask to pollute it. DEC made this decision in spite of not having any regulations that require this process. The process frames the issue as pollution against clean water, and economics against the environment. In that scenario, the environment will inevitably lose.

Trustees for Alaska is disappointed in DEC's short-sighted decision and is evaluating how to move forward to protect this important salmon and trout river in Bristol Bay.

Corps of Engineers Denies Risky Permit in the Colville Delta, Which is Habitat for Hundreds of Thousands of Birds

A couple of years ago, the U.S. Army Corps of Engineers (Corps) proposed to issue a permit that would allow the construction of a bridge over the Nechelik Channel in the Colville River Delta in to the National Petroleum Reserve-Alaska (NPR-A), coupled with the construction of permanent gravel roads. This was a big concern because the U.S. Bureau of Land Management had previously promised that the NPR-A would remain roadless. As a result, Trustees for Alaska submitted comments on behalf of a number of conservation organizations opposing the project.



Because of this opposition, Kuukpik Corporation (the Native village corporation in Nuiqsut) and ConocoPhillips announced an agreement on the location for a bridge to carry an oil pipeline and a road across the Nigliq Channel of the Colville River. The project would hook the planned Alpine West satellite oil field in the northeast corner of the NPR-A into the Alpine oil field production facilities and further allow ConocoPhillips to build a road on the Kuukpik surface from Nuiqsut into NPR-A. But this proposal continued to generate concern.

In February, the Corps rejected the project, stating that it posed too much environmental risk and that other less environmentally damaging alternatives exist. The project would include a new drill pad and access roads in a very sensitive environment. The Nigliq Channel is a dynamic and major channel of the Colville Delta. The Colville Delta is an Aquatic Resource of National Importance and considered by the U.S. Fish and Wildlife Service to be the largest and most productive river delta in northern Alaska. The Colville Delta also is home to endangered species and is vital summer breeding habitat for hundreds of thousands of migratory shorebirds.

The Corps' well-reasoned decision was heralded by Trustees for Alaska and conservation groups that have been working on this issue for years.

Seeking Permits for the Shepard Point Oil Spill Response Facility and Road.....Again



The proposal to build a deep water access port at Shepard Point, near the Copper River Delta in Prince William Sound, is again creating controversy. Under new management and again presented as a project to build the Cordova Oil Spill Response Facility, the Native Village of Eyak recently submitted an

application for Clean Water Act permits to the U.S. Army Corps of Engineers (Corps). Among other things, the application requests permits to fill in wetlands to construct a 4.5-mile road across a number of avalanche paths and a roadless area, and to fill in intertidal habitat at Shepard Point to facilitate the construction of a deep water port.

Currently, the community of Cordova successfully implements an oil spill response strategy using existing infrastructure. Despite the desire to increase oil spill response capabilities in Cordova, community members have long been forced to oppose the development at Shepard Point because, while an oil spill response facility may enhance that effort, it will only do so if the location is easily accessible and if equipment can be readily deployed. The Shepard Point location offers neither attribute nor is a deep water port required to facilitate oil spill response. For these reasons, the project is about building a deep water access port to open the region to industrial tourism, logging and coal extraction, not about oil spill response.

On January 28, 2010, Trustees for Alaska, on behalf of the Eyak Preservation Council, Alaska Center for the Environment, Alaska Transportation Priorities Project, Alaska Wilderness League, and Cascadia Wildlands Project, submitted comments to the Army Corps of Engineers opposing the Clean Water Act permit application. We will continue to work with community members to advocate for an oil spill response facility location that makes environmental, economic, and strategic sense.

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