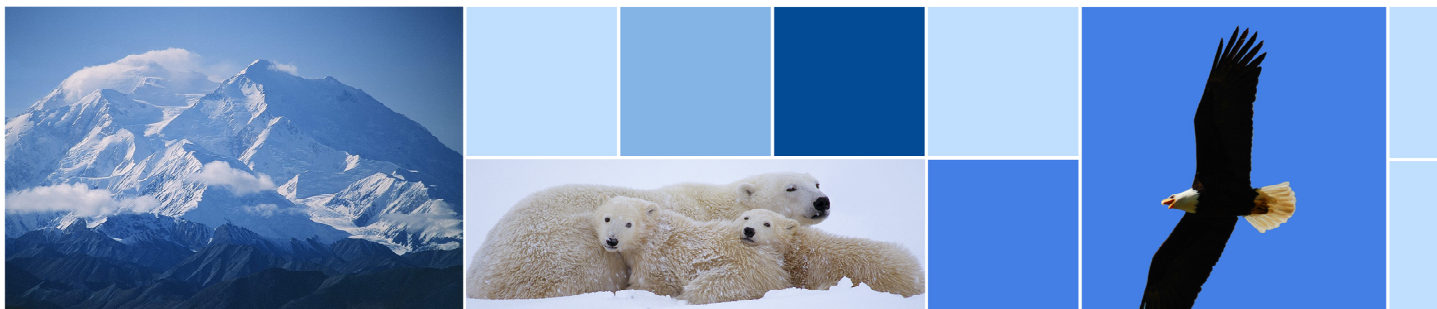


Trustees for Alaska

A Nonprofit Public Interest Law Firm Providing Counsel to Protect and Sustain Alaska's Environment



One of the hallmarks of Trustees for Alaska is our capacity – honed over the course of 35 years on the frontlines of environmental advocacy – to respond to a wide range of threats from one end of this vast state to the other. We are unique in our ability to provide free legal representation on so many Alaskan environmental issues.

In This Issue:

Trustees for Alaska Seeks Injunction Against Pebble Mine Exploration

Legal Briefs

July 31, 2009



Drilling Fluids Buried in Sumps, June 2008

Source: Department of Natural Resources/State of Alaska

Trustees for Alaska this week filed a landmark lawsuit in Anchorage Superior Court to stop exploration activities for the proposed Pebble Mine.

The suit asserts that the Alaska Department of Natural Resources (DNR) repeatedly violated the Alaska Constitution in granting permits for mine exploration without considering the public interest in the region's salmon, wildlife, and subsistence resources.

The plaintiffs – including a Native organization representing eight village corporations, Native residents of villages near the site of the proposed mine, former Alaska First Lady Bella Hammond, and one of the two surviving drafters of Alaska's Constitution, Vic Fischer – are asking the court to order a halt to exploration until a final decision is reached in the case.

Pebble is a proposed copper and gold mine on state-owned land adjacent to Lake Clark National Park in the Bristol Bay region. It would be one of the largest mines of its kind in the world, and the largest in North America. People who live in the region are overwhelmingly opposed to the project, which would be located in the headwaters of one of the world's most productive salmon fisheries. One proposal put forth by developers calls for the billions of tons of toxic mine tailings that would be produced by the mine to be stored in a man-made lake behind massive earthen dams – one of them 740 feet high – that together would be larger than China's Three Gorges dam.

"It is beyond belief to me that a mining effort is happening in this area," Hammond stated in her declaration that was filed as part of the suit. She is the widow of former Gov. Jay Hammond and a long-time resident of the region.

This suit is a direct legal challenge to the proposed mine, and Wednesday's press conference to announce its filing generated a media storm throughout the State and beyond.

“DNR has neglected its legal and moral obligation to protect Bristol Bay’s subsistence resources,” said Bobby Andrew, spokesman for Nunamta Aulukestai, a lead plaintiff. “Exploration is having a serious impact on water and wildlife, yet the agency continues to rubber stamp permits and ignore the public interest.”

The lawsuit asserts that DNR has violated multiple sections of Article VIII of the Alaska Constitution in repeatedly issuing exploration permits without public notice and without analyzing whether exploration or the mine itself are in the public interest.

Plaintiffs have asked the court for a preliminary injunction prohibiting the State from granting or extending permits for exploration and water use on mining claims held by the Pebble Limited Partnership, effectively stopping further exploration until the court makes a final decision – or until the State Legislature enacts a new regulatory framework for onshore mining exploration. The injunction would not apply to mining activities elsewhere in the state. Plaintiffs have also asked the court to void all exploration permits already issued by DNR to the Pebble Limited Partnership, Pebble East Corp., and Pebble West Corp.

Trustees for Alaska filed the six-count civil action on behalf of Nunamta Aulukestai, an organization comprising eight Native village corporations, including Ekwok, Koliganek, New Stuyahok, Clarks Point, Aleknagik, Togiak, Manakotak and Dillingham. Joining in the suit as co-plaintiffs are Nondalton resident Ricky Delkittie, Sr., Naknek resident Violet Willson, Hammond, and Fischer.



Topography Depression Filled with Discharged Drilling Fluid, July 2007
Source: Department of Natural Resources/State of Alaska



Mud Overflow from Tanks into Pits, October 2008
Source: Department of Natural Resources/State of Alaska

Referring to records maintained by DNR and their own observations, Plaintiffs cite extensive adverse impacts to state land and water in the Pebble area resulting from 21 years of exploration activity, including hundreds of boreholes that have been drilled as much as a mile deep, thousands of seismic explosions, dozens of test pits, and numerous fuel spills. The Plaintiffs also cite adverse effects on wildlife populations from hundreds of helicopter flights through areas on which residents depend for subsistence hunting.

In addition, the Plaintiffs charge that DNR for 19 years allowed significant withdrawals of water from ponds and streams in the area without even requiring a permit, and then in 2007 – without public notice – issued so-called “temporary” water use permits, allowing pumping, from ponds and fish-bearing streams without analysis of environmental impacts.

"This kind of activity is being treated for as if there's just some guy out there with a mule, a pick ax and a shovel turning over a little bit of rock and looking for a nugget. But this is in essence industrial-scale activity," said Steve Cotton, executive director of the Trustees for Alaska, in announcing the suit.

Beyond the Pebble Project preliminary injunction, the Plaintiffs are also seeking a declaratory judgment that the State of Alaska, through DNR, has violated Article VIII of the Alaska Constitution in administering and managing state lands and waters for upland hardrock mining exploration.

“People in the Bristol Bay region have for years wanted the chance to voice their concerns about Pebble to State regulators,” said Trustees for Alaska Legal Director Victoria Clark. “They want a rational, science-based look at the totality of the impacts, including the exploration impacts and whether the project should even move forward, before – not after – the damage has been done.”

Senior Attorney Nancy Wainwright is lead counsel on the case. Acting Executive Director Steve Cotton and Legal Director Vicki Clark are co-counsels.