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PRESS RELEASE

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Bristol Bay Residents Ask Supreme Court To Uphold Ban on Dumping Toxic Mine Wastes into U.S. Waters

The Kensington Mine Decision Will Determine Whether Pebble Mine's Wastes Can Legally Be Dumped into the Headwaters of the World's Largest Sockeye Salmon Fishery

Lawyers for Native villages and commercial and sport fishermen in the Bristol Bay area today asked the United States Supreme Court to uphold a lower court decision banning the discharge of toxic mine wastes directly into federally regulated waters.

Public interest lawyers from Anchorage-based Trustees for Alaska, which represents several Bristol Bay communities and fishing interests concerned about the proposed Pebble Mine, filed a friend-of-the-court brief in Washington, D.C., calling on the Supreme Court to affirm last year's Ninth Circuit Court of Appeals decision in the Kensington Mine case.

The Ninth Circuit ruled that the U.S. Army Corps of Engineers violated the Clean Water Act when it issued a permit to operators of the Kensington Gold Mine in Southeast Alaska to discharge chemical-laden wastewater directly into near-by Lower Slate Lake, knowing that the effect would be to kill all fish and virtually everything else in the 23-acre lake. The court held that dumping toxic mine wastes into U.S. waters is under the jurisdiction of the Environmental Protection Agency, which prohibits such discharges. Coeur Alaska, the Kensington Mine operator, appealed the decision to the Supreme Court, and today's brief was filed in connection with that appeal.

The brief filed today points out that overturning the Kensington decision would open the way for operators of the vastly larger Pebble Mine to dump wastes into streams and lakes of the Bristol Bay watershed, potentially devastating one of Alaska's – and the nation's – most productive fisheries.

"Bristol Bay is a rare natural treasure that generates profitable and sustainable industries, integral both to Alaska's economy and Alaska Natives' traditional hunting and fishing grounds," the brief declares.

"The Pebble Mine's unprecedented size and complexity brings unprecedented risk to Bristol Bay's renewable resources, and underscores the need to continue to enforce EPA's zero-discharge performance standard" for mines like Kensington and Pebble. "Should Pebble mine be allowed to bypass that standard and obtain [an Army Corps] permit to discharge froth-flotation

wastewater and tailings as ‘fill material’ directly into the lakes and headwater streams of the Bristol Bay watershed, the risks posed to the unique fish and wildlife resources of Bristol Bay, and all those who depend on them, would be substantial.”

The brief argues that “using the waters of the United States as dumping grounds for toxic mining wastes is antithetical to the fundamental purposes of the Clean Water Act, which are to reduce and eliminate (not create) water pollution and to clean up (not contaminate) the nation’s aquatic ecosystems.”

“This case is not about what the Pebble Mine operators may or may not say they will do to protect the fish,” said Trustees for Alaska Legal Director Vicki Clark. “It’s about the legal standards mine operators must observe when clean water - and the survival of entire communities and industries - is at stake.”

The brief was filed on behalf of:

- Nondalton Tribal Council. Nondalton is an Athabascan village of about 200 people located about 15 miles from the Pebble deposit, on the shore of Six Mile Lake.
- New Stuyahok Traditional Council. New Stuyahok, the first village downstream from the proposed Pebble Mine on the Nushagak River, is a Yup'ik Eskimo of about 480 people.
- Koliganek Village Council. Koliganek is a Yup'ik Eskimo village of about 187 people on the Nushagak River, 65 miles from Bristol Bay.
- Ekwok Tribal Council. Ekwok is a Yup'ik Eskimo village of about 130 people on the Nushagak River, about 12 miles downriver from New Stuyahok.
- Curyung Tribal Council. The Curyung Village Tribe is a federally-recognized tribal community of approximately 1400 people located in Dillingham.
- Nunamta Aulukestai, “Caretakers of Our Lands,” an association of eight Bristol Bay Native village corporations – Ekwok, Koliganek, New Stuyahok, Saguyak, Aleknagik, Togiak, Manokotak, and Curyung. It is dedicated to responsible land use planning and management.
- Naknek Family Fisheries, a Native-owned seafood processing company in Naknek, at the northeastern end of Bristol Bay.
- Alaska Independent Fishermen’s Marketing Association, comprised of and funded by fishermen members for the purpose of protecting and promoting Bristol Bay’s salmon resources and fishermen’s livelihoods.
- Bristol Bay Driftnetters’ Association, whose mission is to enhance the drift net fishery in Bristol Bay by advocating for fish resources and promoting awareness of policy issues that affect the well-being and business of drift net fishermen.

- Renewable Resources Coalition, a non-profit trade organization which unites a diverse membership of commercial fishermen, Alaska Natives, and sportfish lodge owners.

The brief was written by Trustees for Alaska staff attorney Brian Litmans and Legal Director Vicki Clark along with attorneys from the Washington, D.C. law firm of Wilmer Cutler Pickering Hale and Dorr LLP.

The Supreme Court will hear oral argument on the Kensington case in January. A decision is expected in mid-2009.