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Alaska's non-profit public interest environmental law firm

July 2012 Legal Brief

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Dear Friend,

I want to personally thank you for your tremendous support of Trustees for Alaska by sharing the latest edition of our electronic newsletter, *Legal Brief*.

As you read on you will learn about our latest battles on behalf of Alaska's unique and diverse ecosystems, spectacular fish and wildlife populations, and the special communities we represent. That's why I am writing you to ask for your continued support today.

With nearly 40 years of administrative and litigation experience and expertise, not only in Federal statutes and regulations, but also in Alaska's unique legal framework, Trustees for Alaska continues to address the issues related to restoring and protecting the ecosystems of Alaska.

As always, we offer many ways to give. In addition to making a one-time gift, you can increase the value of your gift by joining our monthly giving program. By choosing the monthly giving option you will reduce mail costs so more of your gift goes directly to protecting the environmental and social health of Alaska. Both options are available on our website www.trustees.org — click on **Donate Now** — it's now easier than ever!

I can assure you that we will use your dollars wisely — right here in Alaska — to fight for the protection of the resources that are a part of every American's natural heritage. That's our promise to you.

Sincerely,

Trish Rolfe, Executive Director

P.S. Important News: Trustees for Alaska's 2012 Matching Gift Challenge is on through August 31st! Act now to double the impact of your support at this critical time. Help us by making your tax-deductible gift today! Thank you.

LATEST DECISION IN PEBBLE CASE REGARDING FEES AND COSTS GOES TO THE ALASKA SUPREME COURT



Trustees for Alaska has sought a petition for review in the Alaska Supreme Court of Judge Aarseth's recent order allowing wide-range discovery regarding sources of funding for Nunamta Auluke-

stai's and four individual Plaintiffs' 2009 challenge to the issuance of exploration and temporary water use permits to Pebble Limited Partnership (Pebble) without public notice or a public interest analysis. The Plaintiffs are deeply troubled by the court's ruling that departs significantly from established Alaska law concerning attorney's fees. Nunamta is also concerned by the implications to other constitutional public interest litigants.

As previously reported, there is a statutory protection from attorneys' fees when plaintiffs bring a non-frivolous constitutional claim and they lack economic incentive to bring the case. Nevertheless, the State and Pebble have asked the superior court to award almost \$1 million in fees and costs against the Plaintiffs in this case.

Despite ruling that the claims in the case were not frivolous and that the Plaintiffs had brought a good-faith Constitutional case, the trial court determined that there was substantial financial support from some source to fund the litigation and that "those contributors may have had an economic incentive to fund this litigation." In a subsequent scheduling conference and Prehearing Order, the court laid out a months-long discovery process allowing parties to serve written discovery and take depositions. This discovery is to be followed by a three-day evidentiary hearing.

The court's discovery process flies in the face of the Alaska Supreme Court's long-standing public interest litigant case law: that plaintiffs without direct or substantial economic incentive seeking to enforce strong public policies (in this case, the State Constitution) are public interest litigants immune from fee awards. The impact to the Plaintiffs and other public interest litigants will be substantial if the State and Pebble are permitted to explore the alleged "economic incentives" of members of Nunamta, those who may have made donations to defray litigation expenses, or even the attorneys, Trustees for Alaska. Other public interest litigants are being deterred by the prospect of such costly post-trial fee discovery. Six organizations and an individual who have brought similar cases in the past submitted affidavits that this process is creating a chilling effect on the constitutional right to access the court, which the Alaska Supreme Court has long been concerned about. By seeking fees in such an "exempt" case, it appears that the State and Pebble wish to make an example of the Plaintiffs in the case and deter other legal challenges to the Pebble Project.

The petition for review is being supported by four "friends of the court:" Alaska Conservation Foundation; Planned Parenthood of the Northwest; Native American Rights Fund and the Council on Foundations. The Alaska Supreme Court will decide whether to review the case after the State and Pebble respond.

The Plaintiffs' appeal of Judge Aarseth's post-trial decision on the merits is pending in the Alaska Supreme Court. The appeal raises several issues, including a claim that the superior court applied an incorrect legal standard. The State filed a cross-appeal, challenging the superior court's pre-trial decisions denying the State's motion to dismiss and motion for summary judgment in which the court upheld Nunamta's right to bring the lawsuit. Trustees for Alaska's opening brief in that appeal is currently due August 20, 2012.

The Plaintiffs in the lawsuit are Nunamta Aulukestai, a consortium of village corporations and Tribes in the region; Rick Delkittie, Sr., an Alaska Native and resident of Nondalton; Violet Willson, a resident of Naknek; former Alaska First Lady Bella Hammond; and Alaska Constitutional Convention Delegate and constitutional scholar, Victor Fischer.

by Vicki Clark, Legal Director

Welcome Brittany, Trustees for Alaska's New Office Manager

Brittany Hales joined Trustees for Alaska this summer. Born and raised in Alaska, her love of her home state and the natural environment and her passion for conservation led her to pursue a Bachelor of Arts degree in Environmental Policy and Planning at Alaska Pacific University. During her Junior Practicum at APU, Brittany interned with the Heritage Land Bank, putting her education to use in the field before graduating in 2010. Her Senior Project was a case study of recycling efforts in Alaska, sparked by the cessation of glass recycling in Anchorage. In her free time, Brittany enjoys everything that Alaskan summers have to offer; especially gardening and travel.



2012 Summer Interns: Jeff, Michelle, Jordan, Adam, Jaffer and Jared plus intern mascot, Yogi the Wonder Dog.

Trustees for Alaska Introduces Summer Interns

Jeff Aslan

Jeff Aslan joined us from Vermont Law School. Originally of Canton, Mass., in more recent years Jeff has split his time between Boulder/Denver, Colo. (for undergraduate studies and solar technology installation employment) and Boston (for energy efficiency policy work). Last summer, he interned with New England's progressive Conservation Law Foundation. Here at Trustees for Alaska, Jeff's efforts contributed to our caseload in coal (Wishbone Hill) and drilling (National Petroleum Reserve and Arctic National Wildlife Refuge). This work increased his awareness of the contentious side of the practice of environmental law in Alaska, the result of working with challenging opposing parties.

Jeff's time away from his desk was well spent traversing Alaska's trails and peaks (even working in some fishing, despite this summer's fishing woes). He also assisted in efforts to advance renewable energy projects in native villages, seeking to go to such places to gain a locals' perspective. At summer's end, Jeff returns for his third year in law school to work on energy regulation and policy. Upon graduation, he looks forward to continuing his renewable energy focus in Seattle.

by Adam Walters

Jaffer Khimani

Hailing from Basking-Ridge, a quaint village in New Jersey where George Washington is said to have picnicked under a white oak tree, Jaffer has led a rambling life -- studying at Ithaca College, ski-bumming in Colorado, studying at Vermont Law School, and most recently, voyaging to Alaska with his girlfriend and three dogs for eleven days. At Trustees for Alaska, Jaffer has focused on issues surrounding the proposed Pebble mine. In Alaska, he enjoys exploring the local wildlife while he is hiking and camping, checking out the local music scene, and playing ice hockey, a passion he has pursued since time immemorial. This fall, Jaffer will be an extern at the Public Defender Agency in Anchorage. After graduation this spring, Jaffer will be heading back to take the Alaska bar and start his practice wherever the wind takes him.

by Jeff Aslan

Keeping the Arctic National Wildlife Refuge Wild Forever

Few places, if any, contain the majestic arctic and sub-arctic landscapes, vibrant wildlife, subsistence resources, and cultural importance of the Arctic National Wildlife Refuge. The Arctic Refuge is our nation's wildest Refuge and the narrow Coastal Plain that borders the Beaufort Sea has been described as the most biologically productive part of the Refuge. Because of its ecological, subsistence and cultural importance, Trustees for Alaska has worked for decades to ensure that the Refuge -- in particular the non-Wilderness portion of the Coastal Plain -- is protected from oil and gas development. That work has taken many forms, including lawsuits, analysis of congressional bills that would open the Coastal Plain to oil and gas, and participating in the decision making processes of the U.S. Fish and Wildlife Service, the agency charged with managing the Arctic Refuge. We work very closely with a large coalition of Alaska Native and conservation organizations to advance the goal of protecting the Arctic Refuge and gaining Wilderness designation for the entire Coastal Plain.

To reaffirm our commitment and to experience this amazing place, Staff Attorney Brook Brisson, Board of Directors Members Bob Childers, Susan Hackley and James Spitzer, spent five days in the Wilderness of the Refuge earlier this summer, camping on the banks of the Kongakut River. The group saw caribou from the Porcupine Caribou Herd. This herd travels as many as 3,000 miles during its annual migration and moves to the Coastal Plain for calving and post-calving habitat. The group also saw grizzly bears, moose, Dall sheep and muskoxen, among other wildlife. The high peaks of the Brooks Range were visible each day, and the Kongakut River flowed strongly to the sea making for great trekking and the opportunity to really experience the beauty of the Refuge.

Trustees for Alaska is as committed as ever to protecting the Arctic Refuge. And it needs it. There are multiple bills in Congress right now that would open the Coastal Plain to oil and gas development and the political pressure from drilling proponents is not expected to let up any time soon. Also, the U.S. Fish and Wildlife Service is currently going through a comprehensive planning process for the entire Arctic Refuge, and for the first time, conducted a Wilderness review of the entire Coastal Plain. As that plan is finalized, we hope to see a recommendation from the agency to designate the entire Coastal Plain as Wilderness. That designation is long overdue, but in all likelihood, it will be challenged by drilling proponents.

by Brook Brisson, Staff Attorney



Staff Attorney Brook Brisson, Board of Directors Members Bob Childers, Susan Hackley, and James Spitzer explore the wilds of the Arctic National Refuge in June under sunny skies.

Jordan Schoonover

Jordan is a native of New Mexico, a graduate of Colby College and a rising second year law student at Lewis & Clark Law School. Prior to attending law school, she worked as a botanist surveying plants in Alaska. As an intern, Jordan has worked on various aspects of the effort to oppose the Chitna Coal Mine, as well as other fish, wildlife and habitat issues. When asked about her hobbies: "I love adventurous hikes, identifying plants and taking advantage of all that Alaska has to offer." Most recently, Jordan hiked to historic Crow Pass and climbed Crow Glacier with her friends and fellow interns. She feels her experience at Trustees for Alaska has been engaging, informative, and has furthered her passion for environmental law. If Jordan were an animal, she would be a moose.

by Jaffer Khimani

Michelle Sinnott

Michelle hails from Middle-of-Nowhere, Virginia. She currently studies at Vermont Law School where she will be starting her third year in the fall. Michelle is passionate about animal law and has been a successful member of Vermont's animal law moot court team. This summer, Michelle was instrumental in researching, writing and editing briefs for two coal cases. She is revered by interns and attorneys alike for her research skills.

Before coming to Alaska, Michelle resolved to embrace the Alaskan experience whole-heartedly, and that is exactly what she has done. She spends her weekends hiking, biking and backpacking with her roommates and fellow interns, and she spends her evenings demonstrating that vegan cooking can be easy and delicious. Her vegan jerky was a particular favorite on the trail and has won over many die-hard Alaskan meat-eaters.

by Jordan Schoonover

Jared Sternberg

Jared came to Alaska from "The Big Easy," where he is a rising third year law student at Tulane. He's not shy and if you ask him about his adventures in life you get quite the story. Jared has interned with an indigenous rights lawyer in Puerto Cabezas, Nicaragua. Not to mention, he lived with the Achuar tribe in the Amazon to help develop ecotourism. Meanwhile, here in Alaska Jared is busy writing his current adventure. He spends his time at the office working on issues related to beluga whales and coal. On the weekends he is always out hiking in his water resistant tennis shoes. While he's not quite sure where the wind will take him in the future, he's ready to embrace anything that involves protecting the environment and wildlife.

by Michelle Sinnott

Adam Walters

Adam Michael Walters grew up in Randolph, New York. He attended Canisius College while waiting tables and opening corks. Like a fine wine, he matured over time, studying Spanish and International relations. After graduation, where he learned about social implications (of climate change) he went to Peru. A Fulbright fellow, no one dare call him yellow, as he embraced upon a path where he knew what to do. Here at Trustees, he brings coal to its knees, learning about the pro-development mentality. On the weekends, with his good friends, he hikes the land like his favorite animal, a donkey. Far from an ass, he carries everyone's food up the pass, on journeys with the man and machine. A legend (like Bruce) he speaks only the truth and he has learned more about the gay Alaskan scene. He takes spills on his bike; gets yelled at all the like, as he rides in the streets downtown. In the intern house, he is certainly no louse, as helps everyone to CALM DOWN. He likes to save power, and all food he devours, and if you screw up don't worry he'll tell ya. Adam is biding time, counting minutes and hours, oh the internet he'll scour, until he may return to Alaska.

by Jared Sternberg

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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 \$100, \$75 or \$50 is an investment in Alaska's future. Thank you!



Trustees for Alaska Staff: Beth Bray, Brian Litmans, Brook Brisson, Valerie Brown, Katie Strong, Karen Joynt, Tracy Lohman, Trish Rolfe, Brittany Hales, Vicki Clark and Nancy Wainwright plus Pogo, Tiya, Loki and Shilo (some of our office dogs).



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