



TRUSTEES FOR ALASKA

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Alaska's non-profit public interest environmental law firm

May 2012 Legal Brief

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The State and Pebble Limited Partnership Seek Nearly \$1 Million in Attorneys' Fees and Costs for Lawsuit Challenging Exploration and Water Use

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 Trustees for Alaska and how to support our important work.

Sincerely,

Trish Rolfe
Executive Director

Trustees for Alaska filed a landmark lawsuit in July of 2009 challenging the constitutionality of the Alaska Department of Natural Resources' issuance of exploration and temporary water use permits for the proposed Pebble Mine without public notice or a public interest analysis, as required by Article VIII

of the Alaska Constitution. The proposed Pebble Mine poses a lethal threat to Bristol Bay's priceless salmon fishery and the region's Native subsistence culture, which has supported the villages for millennia.

A two-week trial was held in December of 2010 before Superior Court Judge Eric A. Aarseth. The judge requested that the parties submit proposed findings of fact and conclusions of law after the trial was over. Trustees for Alaska's Proposed Findings of Fact and Conclusions of Law may be viewed on our website: www.trustees.org.



Trustees for Alaska Welcomes New Staff

Elizabeth (Beth) Bray joined Trustees for Alaska in the winter of 2012. Beth is a 2007 graduate of the University of Michigan Law School, where she was a Dean's Public Service Fellow. While at law school, Beth participated in a semester-long practicum with the National Wildlife Federation, interned for a summer with Trustees for Alaska, and was a contributing member of the Michigan Journal of International Law. Prior to attending law school, Beth was an AmeriCorps VISTA Volunteer for two years in Glennallen, Alaska, concentrating on community and economic development projects, and was also a crew chief for a conservation youth corps in Arizona. After law school, Beth clerked for two years for the Honorable Mark Recktenwald, currently Chief Justice of the Hawai'i Supreme Court, and also worked in commercial litigation, where she had the opportunity of participating in several *pro bono* projects for the American Civil Liberties Union.

Despite the significant and compelling evidence of the actual and potential impacts at the Pebble Project, in September of 2011, Judge Aarseth ruled that the Alaska Constitution does not require the State to provide public notice or issue a public interest finding prior to allowing the intensive use of State land and water resources that has occurred for over two decades at the Pebble site. The judge held that Nunamta Aulukestai and the other plaintiffs had to demonstrate long-term or permanent harm to resources in order to obtain notice of Pebble exploration and water use activities on state land, or any state analysis of the impacts from those activities before they occurred.

The Plaintiffs appealed the decision to the Alaska Supreme Court, on several grounds including a claim that Judge Aarseth applied an incorrect legal standard. The State filed a cross-appeal, challenging the superior court's 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.

Surprisingly -- and despite the statutory protection from attorneys' fees provided when plaintiffs bring a non-frivolous constitutional claim and they lack economic incentive to bring the case -- the State and PLP have requested \$767,122.56 in attorneys' fees and \$196,355.43 in costs, for a total of \$963,477.99. Alaska is unique in that it has the only "loser pays" attorneys' fees rule in the Nation, but the Alaska Legislature adopted an exception to shield plaintiffs bringing constitutional claims, such as the plaintiffs in this case. By seeking fees in such an "exempt" case, it appears that the State and PLP wish to make an example of the plaintiffs in the case and deter other legal challenges to the Pebble project. Plaintiffs have strongly opposed the motions for attorneys' fees and costs, including providing testimony from other plaintiffs like the Alaska Civil Liberties Union, Native American Rights Fund, Northern Alaska Environmental Center, and the individuals plaintiffs regarding the deterrent effect of such an award. Whatever Judge Aarseth's decision is on the fee issue, it is also likely to be appealed to the Alaska Supreme Court. The Alaska Supreme Court has previously indicated that if such high fee awards are a deterrent to access to court, such fees and costs would not be allowed because it violates due process.

Alaskan Hardrock Mining Map

The folks at [Ground Truth Trekking](#) (GTT) just released a nifty interactive map called [Alaskan Hardrock Mining Exploration](#), showing the locations of active hardrock mines and hardrock mining prospects in Alaska.

This map illustrates the potential mining activity across Alaska, which you can read more about on GTT's website: www.groundtruthtrekking.org

Support Trustees for Alaska

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

The proposed Pebble Mine, in the headwaters of Bristol Bay, is aimed at exploiting an estimated total resource of 10.78 billion tons. The developers, a 50:50 partnership between Canadian junior mining company Northern Dynasty Minerals and London-based major mining company Anglo American called Pebble Limited Partnership (PLP), are actively engaged in exploration activities. The exploration activities began in 1989 and have increased significantly since 2002 with hundreds of boreholes, tens of thousands of helicopter trips, and the use of hundreds of millions of gallons of water from nearby lakes and streams. In 2006, the company submitted plans to store an estimated 2.5 billion tons of toxic tailings behind a pair of gargantuan dams -- one of them 750 feet high and the other 450 feet high -- which together would be larger than China's Three Gorges Dam. The plans proposed an open pit mine covering more than two square miles and descending 1,600 feet, which would make this mine the largest of its kind in North America and the second largest in the world. Exploration now shows a large underground deposit that would likely be mined by the block-caving method. This threat would loom over the world's largest commercial salmon fishery, home to five species of Pacific salmon, including the largest sockeye salmon run and Alaska's largest king salmon run. One-third of America's catch of sockeye salmon are spawned in the waters downstream from the Pebble site.

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 Nancy Wainwright, Senior Staff Attorney

Usibelli Coal Mining Without a Permit at Wishbone Hill?



Mining permits for the Wishbone Hill Mine, which is located in the Matanuska Valley, were originally issued in 1991. However, the mining company holding the permits did not begin operations within the three years required by statute, or within the two-year extension of time

granted by the Alaska Department of Natural Resources (DNR). As a result, the permits terminated in 1996, and subsequent mining activities are illegal, unpermitted mining operations.

Because of these illegal mining operations, on May 1, 2012, Trustees for Alaska filed a lawsuit against Usibelli Coal Mining, Inc., the mine operator, for conducting surface coal mining operations without a valid permit at the Wishbone Hill Mine. The suit was filed on behalf of seven non-profit organizations: the Castle Mountain Coalition, Friends of Mat-Su, Alaska Community Action on Toxics, Cook Inletkeeper, and the Sierra Club. Many of these groups also previously sent a letter to both DNR and the federal Office of Surface Mining explaining the illegality of the mining operations. Neither agency has yet acted to stop the illegal activities.

Usibelli began mining operations at Wishbone Hill in June of 2010 and continues to prepare to bring the mine fully on-line in the near future. Nearby residents are concerned, particularly because the information and baseline studies relied on by the permits are outdated and fail to recognize dramatic changes in the surrounding area, including significant residential development.

DNR has stated that the permit renewal process, which happens every five years, has ensured that the permits are up-to-date and protective of the environment and nearby residents. However, the agency renews mine permits as a matter of right and any opponent of a renewal has a very high burden to convince the State to deny the renewal request. New mining permits, however, put the burden on the mining company to demonstrate that its mine plan will comply with applicable laws and regulations, including requirements for up-to-date information and baseline studies.

The groups represented by Trustees for Alaska seek to stop Usibelli mining operations until it obtains a new, valid permit that ensures that the Matanuska

Valley and the nearby residents' livelihoods and homes are protected from illegal mining operations. The groups are also seeking a preliminary injunction to maintain the status quo while the case is being decided.

by Katie Strong, Staff Attorney

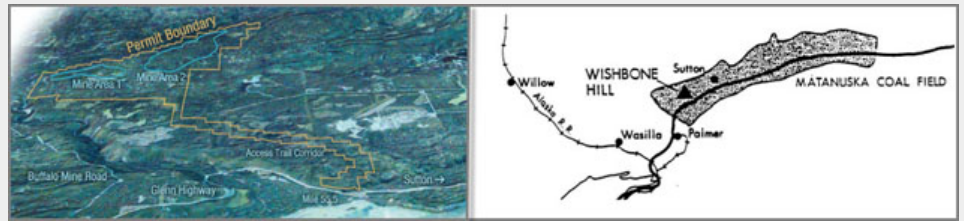


Photo Credits:

Pebble Site Reclamation (c) Rick Halford

Mat-Su River (c) Erin & Hig, Ground Truth Trekking

Wishbone Hill Area Map (c) DEC