

# Trustees for Alaska



Environmental Advocate

Spring 2009

## Bristol Bay Residents Ask Supreme Court to Uphold Dumping Ban on Toxic Mine Wastes

Decision Will Determine Whether Pebble Mine Can Legally Pollute the Headwaters of the World's Largest Sockeye Salmon Fishery



Trustees for Alaska, representing Native villages and commercial and sport fishermen in the Bristol Bay area, filed an *amicus curiae*, or “friend of the court” brief calling on the United States Supreme Court to uphold a lower court decision banning the discharge of toxic mine wastes directly into federally-regulated waters.

The case before the Supreme Court is an appeal of a Ninth Circuit Court of Appeals decision involving the Kensington Mine, a gold mine in Southeast Alaska approved by the U.S. Army Corps of Engineers. The Ninth Circuit ruled that the Corps of Engineers violated the Clean Water Act when it issued a permit to Kensington’s operators to discharge chemical-laden wastewater directly into near-by Lower Slate Lake, knowing that the deadly stew would kill all fish and virtually everything else in the 23-acre lake. The Ninth Circuit held that dumping toxic mine wastes into U.S. waters comes under the jurisdiction of the Environmental Protection Agency, which flatly prohibits such discharges.

The brief 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. The importance of this decision cannot be overstated. Bristol Bay is a rare natural

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# Dispatch: From the Arctic



## With Global Warming at Stake, Two Villages Take a Dim View of Coal

It is hard to focus on global warming when gusts off the Chukchi Sea are driving the wind-chill to 50 below and our Inupiat Eskimo hosts are politely reminding us that under these conditions exposed flesh can freeze in under five minutes.

But it's hard *not* to think about global warming when the talk shifts to coal. That's right: Coal. Here in the Arctic. In vast, unimaginable quantities. Enough to make Alaska the Saudi Arabia of coal. Enough to stoke Asian power plants for decades – and doom worldwide efforts to cut greenhouse gas emissions and slow global warming.

Legal Director Vicki Clark, senior staff attorney Nancy Wainwright, and I have come to Point Lay, at the invitation of the Tribal Council, to talk about environmental issues facing this tiny (pop. 250) traditional village, which clings to the ice-bound shoreline as have a succession of indigenous habitations in an unbroken chain spanning millennia. As they have for thousands of years, people here harvest a rich bounty of bowhead and beluga whales, bearded seals, fish, caribou, birds, eggs, and berries and regard themselves as caretakers of the land and the waters which provide their sustenance.

Now, that way of life is under siege. BHP Billiton – the world's largest mining company – is in the middle of a five-year exploration of the largest coal resource in the United States. Beds of high-value, low sulfur coal extend over 30,000 square miles, spanning lands owned by the Arctic Slope Regional Corporation and much of the National Petroleum Reserve-Alaska (NPR-A). The area is estimated to contain at least a third of the remaining coal in the United States – 4 trillion tons, one-ninth of the world's known coal reserves. That's about the proportion that Saudi Arabia contributes to world oil markets. BHP Billiton's exploration camp for the company's Western Arctic Coal Project – focused on extracting the first 200 million tons – is 35 miles south of Point Lay.

Already, the exploration activities – which include drilling, use of heavy equipment, and helicopter overflights – appear to residents to have spooked migrating caribou, a mainstay of the local subsistence diet. "Point Lay is a goldmine for birds, animals, and fish," one resident tells us. "When it comes to our subsistence lifestyle, we need to fight!"

We will hear, a few days later, the same fierce protectiveness of the natural order of things when we meet with the Tribal Council of Point Hope, which brackets BHP's ex-

## Arctic Coal

ploration area 135 miles to the southwest of Point Lay.

“The animals are who we are,” Point Hope Mayor Steve Oomittuk tells us, as he proudly drives us on a tour of the village in his red pick-up, stopping to point out the traditional cemetery marked by whalebones arcing skyward from the snow-covered tundra. “They are our food, our clothing, our culture. They’re why we’re here.”

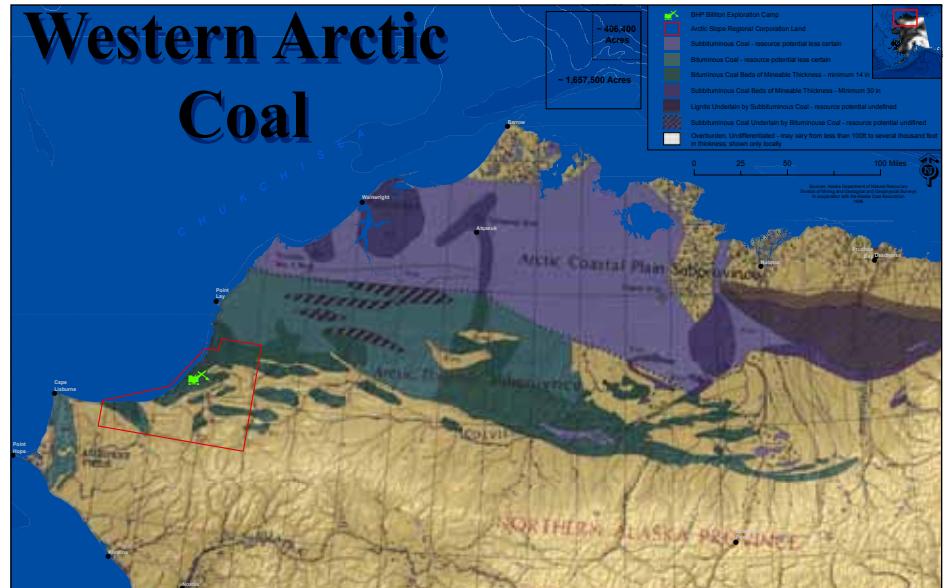
Mayor Oomittuk sweeps his arm in the direction of pre-historic town sites dating back thousands of years. Long before Shell, Conoco, and BP arrived, he tells us, the population vastly exceeded today’s 850 Inupiat Eskimos. In the 1800’s, when a different kind of oil lit the world’s lamps, commercial whalers prospected the Chukchi Sea and came upon vast numbers of bowhead whales, capable of providing 100 barrels of oil compared to a mere 30 to 40 barrels from gray and



Whale bones mark ceremonial site © Steve Cotton

sperm whales. The whalers hunted bowheads to the brink of extinction, spread disease that decimated the local human population, then left when petroleum was discovered in Pennsylvania and the price of whale oil plummeted. This area has already seen, and been ravaged by, an energy boom.

When we meet with the



One-ninth of the world’s coal is in Alaska’s Arctic. The world’s largest mining company is currently exploring the area outlined in red, just south of the traditional Native village of Point Lay. Courtesy of Alaska Center for the Environment’s GIS Mapping Center

Point Hope Tribal Council later in the evening, concerns over the coal project are every bit as deep as those we heard in Point Lay. Village residents have been promised that coal extraction will provide jobs for 40 years. But the promise of 40 years of employment, it seems, doesn’t carry much weight in a community whose artifacts and cultural traditions date back 4,000 years or more. “We want our children and grandchildren to be able to eat the same animals our ancestors did,” one elder declares. Adds another member of the Council, “Our subsistence lifestyle is critical. Once disturbed, there’s no going back.”

Trustees for Alaska is uniquely positioned to assist these villages as they face the prospect of massive industrialization in this remote area. For 35 years, our lawyers have fought these fights throughout the State, employing not only litigation but all of the creative advocacy tools that a “full-service” law firm offers its clients. And, working with Native communities on a host of environmental issues, we are committed to ensuring that their

interests in environmental and cultural preservation are heard and respected. (Coal is only one of a long list of environmental concerns facing Point Hope and Point Lay. For example, both villages are troubled by toxic waste dumps left behind at abandoned military installations, under disposal “plans” which relied on “permanent” storage in the now-melting permafrost.)

At the conclusion of our 2½-hour community meeting in Point Lay, there is some talk about the Tribal Council putting in writing its request for assistance from Trustees for Alaska. The Council’s young secretary, Sophie Henry, who has been taking notes of the meeting, promptly turns the page of her notebook, scribbles furiously, and then with a broad grin holds the book aloft with both hands, so that we and everyone in the audience can read it. In inch-tall letters, she has printed, “PLEASE HELP US.” We’ll try, Sophie.

*Steve Cotton*

Stephen E. Cotton  
Acting Executive Director

# Ten Year Battle Proves Victorious – Cook Inlet Belugas Gain Listing!

Cook Inlet's beluga whales were listed as an endangered species in October 2008. There are only about 375 of the small white whales left in Cook Inlet. The listing decision gained national attention for both its political and its environmental implications. Lost in most of the media coverage, however, was the fact that Trustees for Alaska – which has advocated for protecting the whales for nearly ten years – filed the petition which gave rise to the listing decision by the National Marine Fisheries Service.

Local residents and tourists alike have long delighted in seeing the whales not far from shore at a number of easily accessible lookout spots, including the aptly-named Beluga Point not far from Anchorage. Spotting them has become more difficult in recent years because of the population's sharp decline.

The beleaguered belugas have not endeared themselves to local politicians, mining interests, or the oil industry. Indeed, the Palin Administration's opposition to the listing was prominently featured in national coverage of the listing decision. And her attorney general promptly announced plans to file suit challenging the listing.

Damn-the-consequences proponents of development on Cook Inlet oppose the listing because federal agencies must now consult, evaluate, and avoid activities that jeopardize the belugas' continued existence. For example, consultation and evaluation requirements will apply to the following large projects in Cook Inlet:

- The other "Bridge to Nowhere," a proposal backed by Gov. Palin to



Beluga Whale © kevinschafer.com

construct a two-mile bridge from Anchorage, across the Inlet's Knik Arm to – well, nowhere. The bridge, which will not significantly cut commuting time to Wasilla, is estimated to cost more than \$1 billion. It would also impair habitat that is likely to prove important to the now-protected belugas. In separate proceedings, Trustees for Alaska has assisted bridge opponents in prying open the records of secret meetings by the Knik Arm Bridge and Toll Authority, the agency that wants to build the bridge. (see page nine)

- The Chuitna Coal Mine, a proposed 5,000 acre open-pit mine on the west side of Cook Inlet. The strip mine could yield up to 300 million metric tons of coal over 25 years. Backers propose to build a port, and a 10,000-foot dock into Cook Inlet, with a 500,000 ton coal stockpile. The mine and its infrastructure are likely to degrade water quality and whale habitat. Trustees for Alaska has been providing legal assistance to a coalition of communities and conservation groups who oppose this mine.

- Anchorage's Pt. Woronzof

wastewater treatment facility, which now dumps 58 million gallons a day of primary-treated sewage into Cook Inlet. Incredibly, Anchorage is still permitted by the federal government to discharge what amounts to raw sewage, with only the solids removed, into Cook In-

let. Trustees for Alaska has advised groups supporting an upgrade of the Pt. Woronzof facility.

- Under lax federal permitting standards, 19 on- and offshore oil and gas facilities in Cook Inlet pour 279 tons of oil and grease annually, along with toxic metals, into the water, polluting habitat which may be crucial for the whales (and potentially rendering fish and shellfish in Cook Inlet unfit for human consumption). Trustees for Alaska has challenged EPA's decision to reissue a discharge permit to the operators of the facilities (see page seven).

- Anchorage's huge, \$1 billion port expansion project in the middle of prime beluga and salmon habitat. On behalf of Cook Inletkeeper, Trustees for Alaska filed an administrative challenge to the Army Corps' permit for this multi-year pork barrel project for which there has been no identified public need and for which the funding has come from federal earmarks.

Senior Attorney Mike Frank drafted the beluga listing petition and has been instrumental in the long fight to save the whales. ■

There are only about 375 of the small white whales left in Cook Inlet



Six Mile Lake and the village of Nondalton near Pebble Mine © Erin McKittrick/aktrekking.com

## Bristol Bay

*continued from front page*

treasure that generates profitable and sustainable industries, integral to both Alaska's economy and Alaska Natives' traditional hunting and fishing grounds.

Prior to drafting this brief, those of us working on it traveled to Native villages near the proposed Pebble Mine to hear first-hand the deeply-held fears that residents express about what the mine would do to their subsistence way of life.

The Pebble deposit contains an estimated 73 billion pounds of copper and 86 million ounces of gold. The developers have proposed an open pit that would cover more than two square miles and descend 1600 feet, which would make the mine the largest of its kind in North America, and the second largest in the world. So what do you do with 2.5 billion tons of toxic tailings from this massive crater? If the Kensington decision goes the wrong way, the tailings could be dumped directly into nearby lakes and streams. But even if the Court bars direct dumping, Bristol Bay could remain in peril. Pebble's operators have also proposed to create their own Dead Sea of fish-killing slurry 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. A watery Damocles Sword would loom over the headwaters of the world's largest commercial salmon fishery, home to all five species of Pacific salmon including the world's largest sockeye salmon run and Alaska's largest king run. One-third of America's catch of sockeye salmon are spawned in the pristine waters downstream from Pebble.

The underlying issue in the case seems so clear that the outcome ought not to be in doubt. EPA has long banned the discharge of toxic wastewater into lakes and streams. But, under the Bush Administration, the Army Corps asserted that, when solids are mixed into the waste stream, the poisonous brew should be relabeled as benign "fill material" which the Corps regulates, and the EPA's ban on this type of killer outflow should be disregarded.

The Supreme Court held oral arguments on January 12, 2009. Whether the Court buys the Corps' attempt to "rebrand" toxic mining discharges as "fill" won't be known until later this year. Whatever the outcome, Trustees for Alaska will continue to work on behalf of those who would be most deeply affected should Pebble Mine move forward. The brief was filed on behalf of:

- Nondalton Tribal Council. Non-

dalton 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 populated by 480 Yup'ik Eskimos.

- 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 130 people on the Nushagak River, 12 miles downriver from New Stuyahok.

- Curyung Tribal Council. The Curyung Village Tribe is a federally-recognized tribal community of approximately 1,400 people located in Dillingham.

- Nunamta Aulukestau, "Caretakers of Our Lands," an association of eight Bristol Bay Native village corporations. It is dedicated to responsible land use planning and management.

- Naknek Family Fisheries, a Native-owned seafood processing company in Naknek, at the north-eastern 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 and fishermen's livelihoods.

- Bristol Bay Driftnetters' Association, whose mission is to advocate for fish resources and promote 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 commercial fisherman, Alaska Natives, and sportfish lodge owners.

*By Brian Litmans*

Trustees for Alaska

## Haste Makes for Troubles Foretold: The Latest on Rock Creek Mine

When I became a staff attorney at Trustees for Alaska in April of 2007, I joined the legal team working on a lawsuit challenging the Army Corps of Engineers permit for the Rock Creek Mine, a gold mine near Nome. The suit had been brought in 2006 on behalf of Berling Strait Citizens for Responsible Resource Development (BSCRRD) and two Nome residents. After two years of litigation, we suffered a disappointing loss on appeal before the Ninth Circuit.

In oral arguments in Seattle in 2007, Judge Andrew Kleinfeld peppered me with hostile questions. Having been a resident of Fairbanks, Judge Kleinfeld painted for the benefit of his colleagues on the bench an unrealistic scene of the lands around Nome, suggesting that they had been heavily scarred from placer mining a century ago but

were now – due to the noble efforts of Rock Creek Mine operator NovaGold – much improved. Despite our assertions to the contrary, the court found that the permit adequately protected the environment and that the supporting environmental analysis addressed all required factors and provided sufficient public review.

Fast-forward to late November, when NovaGold issued a notice that it was shutting down the Rock Creek Mine indefinitely. While the

news was unexpected, the underlying reasons for the shutdown were foreseeable – and foreseen. Since the court judgment in 2007, NovaGold has been plagued with problem after problem. Its operations continued to degrade the landscape and watershed of the Snake River Valley.

On repeated visits throughout 2007 and 2008, Alaska Department of Environmental Conservation found numerous violations of water quality standards in creeks affected by the mine's activities. Notices of violations were issued. Requirements were set out to bring

found that the dam was seeping at several locations. The amount of water behind the unlined dam was greater than anticipated because groundwater was entering the tailings pond from below. DNR noted that the excessive seepage called into question both the effectiveness of the tailings storage system, as well as the stability of the tailings dam. In December of 2008, after NovaGold's shut-down announcement, DNR ordered the company to either repair or decommission the dam.

The Rock Creek Mine debacle is a significant reminder of the dangers posed by large-scale, chemical-intensive, open pit mining, particularly in sensitive environments like Alaska's.

It is fortunate that Rock Creek was not fully operational and using cyanide, which would have infused the wastewater seeping through the dam and into the watershed. But as we had pointed out in the lawsuit, this project was rushed through public review and given a permit just two months after the public got notice of the proposal. A closer review might have prevented this ill-designed project from moving forward and wreaking havoc.

Alaska faces a growing number of proposals for large mining projects. When they come up for agency review, we will be there to argue that oversight agencies open the floodgates to serious consequences if they shortcut public review, accept inadequate environmental assessments, and rubber-stamp the empty promises of developers. Rock Creek Mine will be Exhibit A.

*By Brian Litmans,  
Staff Attorney*



Storm water runoff pouring through these culverts near Rock Creek Mine makes clear the source of excessive turbidity in Lindblom Creek © Derrick Leedy

NovaGold back into compliance. Each and every time, NovaGold failed to rectify the problems.

Uncontrolled stormwater runoff turned creeks into turbid storm drains. And NovaGold ran into another significant problem, one that had been raised by Trustees for Alaska and BSCRRD. The high groundwater table in the project area affects surface waters. Rock Creek Mine's tailings are stored behind an earthen dam. In 2008, the Department of Natural Resources (DNR)

# Villages, Fishermen and Cook Inletkeeper Challenge EPA for Allowing Toxic Discharges

## Trustees for Alaska Asks Ninth Circuit Court of Appeals to Overturn Permit for Oil Companies

Trustees for Alaska, representing coastal Native villages, commercial fishermen, and Cook Inletkeeper, charged in court in December that the Environmental Protection Agency repeatedly manipulated and sometimes falsified pollution data to support its decision to allow the operators of 19 aging oil and gas facilities to dump increasing amounts of polluted wastewater into Cook Inlet.

In a brief filed in the Ninth Circuit Court of Appeals, Trustees for Alaska argued that President Bush's EPA Administrator, Stephen L. Johnson, violated the Clean Water Act in June of 2007 when he reissued a permit allowing Union Oil Company of California (Unocal) and other operators to dump, among other toxic pollutants, 279 tons of oil and grease into Cook Inlet every year.

Unocal's Trading Bay Production Facility discharges about 95% of the pollution coming from the Cook Inlet facilities.

"The EPA is bending the rules to let the oil companies extract every last penny of profit from these aging facilities," said Trustees for Alaska attorney, Justin Massey, who drafted the brief, "and Cook Inlet is paying the price."

"Chevron raked in record profits in 2008 and they shouldn't treat Cook Inlet fisheries as their private dumping grounds," said Bob Shavelson, Executive Director of

Cook Inletkeeper, an environmental organization.

The facilities began pumping oil and discharging pollution in the 1960s. Most of the pollution comes from millions of gallons of seawater that is injected into the subterranean oil reservoir to maintain pressure but becomes contaminated in the process. As oil and gas are pumped to the surface, they are separated from the seawater, which is left with a toxic mixture of oil, grease, heavy metals, and other pollutants. At

offshore wells elsewhere in Alaska and throughout the country, EPA requires operators to reinject this toxic soup back into the reservoir, achieving "zero discharge" of pol-

*"The EPA is bending the rules to let the oil companies extract every last penny of profit."*



Oil Platforms in Cook Inlet © U.S. Fish and Wildlife Service

lution. Only in Cook Inlet does EPA allow the contaminated brew to be dumped directly into coastal waters.

As the oil reservoirs beneath the Inlet have been pumped nearly dry, more and more seawater is required to keep up the pressure – and more pollution is being dumped into Cook Inlet. The filing by Trustees

for Alaska cites EPA documents showing that the waste stream has doubled since 1999, and is projected to grow to nearly 10 million gallons per day during the 5-year life of the challenged permit.

To accommodate the growing torrents of pollution, EPA has relied on vastly larger "mixing zones" – areas at the end of each discharge pipe where high concentrations of pollution are allowed. The theory is that by the time the contamination reaches the edge of a "mixing zone," enough dilution has occurred to render the water outside the mixing zone clean enough to comply with water quality standards.

The new mixing zones are as much as 10 times larger than those approved by EPA in 1999 – extending more than 2 miles from an outfall in any direction.

"Instead of telling the operators to recycle their wastewater – like they do everywhere else in the U.S. – EPA has labeled more and more of Cook Inlet as a waste dump for the exclusive use of these oil companies," said Massey.

Trustees for Alaska's court filing charges that allowing the increased pollution violates "anti-backsliding" provisions of the Clean Water Act, which is aimed at reducing and eventually eliminating water pollution. The brief also charges that EPA cooked the books when it assembled the technical justification for the permit. For example, the brief says:

• Although required to use "all available information" to evaluate pollution levels from current

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## Toxic Discharges in Cook Inlet

*(continued from page seven)*

discharges, EPA ignored “hundreds of effluent samples,” including three years of the most recent data.

- EPA in at least one instance “fabricated” a pollution concentration, inflating a copper concentration by a factor of 10. The inflated concentration was one justification for relaxing pollution limits and expanding the mixing zones.

- EPA used a “fictional scenario” to model the discharge plume from the Trading Bay Production Facility, the source of most of the pollution governed by the permit. The Trading Bay facility has two discharge outlets. EPA – confronted by its own computer model demonstrating that pollutants sank to the bottom and put bottom-dwelling organisms and the rest of the food chain at risk – “simply changed the outfall configuration [on the computer model] to a single-port outfall with a smaller port than the size of the two actual ports, thereby changing the trajectory of the discharge, increasing its velocity, and making the bottom contact and its attendant environmental risks disappear.”

- EPA repeatedly manipulated the data it entered into its computer model, entering six platforms’ above-water outfalls as underwater discharges, modeling toxic discharges as non-toxic, and even relying on an imaginary 48-hour tidal cycle for Cook Inlet – that is, telling the computer that tides in Cook Inlet go in and out once every two days, instead of twice a day.

- EPA “fabricated or omitted” values that were essential to calcu-

lating appropriate pollution limits. The brief alleges that EPA made “deliberate errors” in the computer modeling and setting the permit limits.

Trustees for Alaska filed the challenge on behalf of Cook Inletkeeper, Cook Inlet Fishermen’s Fund, United Cook Inlet Drift Association, the Native Village of Nanwalek and the Native Village of Port Graham.

*By Steve Cotton,  
Acting Executive Director*

## Challenging EPA’s Decision to Hand Over Discharge System to State of Alaska

Trustees for Alaska, on behalf of Native villages along Bristol Bay and the Lower Kuskowim and several conservation organizations, has challenged the Environmental Protection Agency’s decision to delegate the National Pollutant Discharge Elimination System (NPDES) permitting program to the State of Alaska.

As the cornerstone of the Clean Water Act, the NPDES program regulates the discharge of pollutants to navigable waters. Until now, EPA administered the NPDES permit program in Alaska. However, any state may apply to take over the permitting authority from EPA if it can develop a program that meets Federal requirements. Last October, EPA approved the State of Alaska’s application and gave it the authority to issue and enforce NPDES permits under the Clean Water Act.

Native villages and conservation groups are concerned that

Alaska’s enforcement regime fails to measure up to the Federal requirements that are currently in place. Specifically, the State’s program has fewer enforcement options than EPA, and concerned citizens will face restrictions that reduce their opportunity to be heard.

Native tribes are additionally concerned that since Alaska does not recognize tribal sovereignty, transferring the Clean Water Act enforcement to the state will diminish the tribes’ capacity to influence decisions vital to the survival of Bush villages and subsistence cultures.

The challenge was filed on behalf of Akiak Native Community, Nunamta Aulukestai (an association of eight Bristol Bay Native village corporations), Nondalton Tribal Council, Curyung Tribal Council (in Dillingham), Cook Inletkeeper, Alaska Center for the Environment, Alaska Community Action on Toxics, Center for Biological Diversity, and Center for Water Advocacy. Trustees for Alaska will file an opening brief in April.

*By Emily Anderson,  
Staff Attorney*

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***“Giving the NPDES program to the State of Alaska is a mistake. The State does not treat Alaska Tribes as governments, which means we have no voice in determining issues. EPA has a government-to-government relationship with the tribal governments, and that means we have a voice in the process.”***

**Mike Williams  
Alaska Inter-Tribal Council Chairman**



# Villages Want an Answer: Is the Red Dog Mine Hazardous to Our Health?

The Red Dog Mine's colorful canine moniker conjures images of a bearded grubstaker with a mule, pickaxe, and tail-wagging hound.

Forget it. Red Dog is the world's largest zinc mine, a half-square-mile open pit in Alaska's Northwest Arctic from which Teck Cominco Alaska, subsidiary of Canada's largest mining company, drills and blasts and grinds and processes 3 million metric tons of zinc and lead ore a year. The corporation trucks more than a million metric tons of concentrate from the mine through the Cape Krusenstern National Monument over a 52-mile gravel road to the shores of the Chukchi Sea, and ships it to markets in Asia and Europe. The mine generated an estimated \$1 billion in revenues last year.

The 20-year-old mine, located in the DeLong Mountains of Alaska's Brooks Range, 100 miles north of the Arctic Circle, is both an economic engine and an environmental nightmare. It is the region's largest employer, whose 475 employees constitute a self-contained community larger than eight of the eleven Native communities dotting the Northwest Arctic Borough. Jobs are scarce in the Northwest Arctic, and gas was going for \$10.99 a gallon last fall in Noatak, the village nearest the mine. Teck's payments in lieu of taxes to the Borough make

up about 2/3 of the Borough's annual revenue – enough to cover the Borough's share of educating a total of 2,000 kids in ten remote Native villages and Kotzebue (pop. 3,200) scattered over a school district the size of the state of Indiana.

But along with money, the mine also generates pollution. There's the "fugitive dust" from mining operations and from those trucks barreling down that gravel road. And there's the wastewater pouring from the tailings that are impounded at Red Dog Creek. In fact, the mine ranks as the nation's top emitter of toxics. The dis-

**The mine may be to blame for higher-than-normal cancer rates and what residents perceive as a significant increase in liver and kidney disease and birth defects.**

charges and dust get into the waterbodies, soils, vegetation and wetlands, posing a possible threat to subsistence resources – including caribou, beluga and berries – upon which residents depend. This is an area where, in a recent survey, 70 per cent of the village households reported getting more than half their diet from subsistence foods, and 95 per cent said they got at least some of their diet from subsistence food-gathering.

What most worries some village residents is their concern that the mine may be to blame for higher-than-normal cancer rates and what residents perceive as a significant increase in liver and kidney disease and birth defects.

Those concerns have come

into sharp focus as the mine operators ask for federal and state permits to extend their operations.

The main deposit at Red Dog will be completely mined in 2011. Teck is now seeking approval to expand the mine to a neighboring ore body called the "Aqqaluk Deposit," which has the potential to yield an additional 79 million metric tons of ore, extending the life of the mine an additional 20 years, until 2031. The expansion triggers requirements for a Supplemental Environmental Impact Statement under

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## Knik Arm Bridge: Bridge to Nowhere on Thin Ice

On November 20, 2008, the Knik Arm Bridge and Toll Authority committed to publish for public review and comment the final draft request for proposals to privately finance the Knik Arm Bridge, if KABATA moves forward with the project. This commitment resolves an appeal filed by Trustees for Alaska under the Alaska Open Meeting Act on behalf of Alaska Center for the Environment and the Government Hill Community Council, seeking records of secret meetings at which the KABATA Board discussed a draft RFP that would have required Alaskans to pay the "private" partners if Bridge revenue fell short of KABATA's optimistic projections. As a result of the settlement, KABATA will now have to show that the Bridge—if KABATA ever tries to build it—will serve the best interest of Alaskans.

## FOUNDATION SUPPORT

Trustees for Alaska would like to thank the following foundations for their generous grants. Because of their faithful and continued support, and because of donations from countless individuals, Trustees for Alaska remains on the front lines of environmental battles throughout the state, providing strategic advice and legal counsel to the conservation community and Native villages.

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## Red Dog Raises Questions

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the National Environmental Policy Act (NEPA), as well as a revised permit to discharge wastewater that will result from mining the Aqqaluk Deposit over the next five years (in addition to the old deposit until it gives out in a year or two). The State is also required to certify that the wastewater discharges won't violate federally mandated "anti-backsliding" and "antidegradation" requirements – a problem for Alaska, because the State has never adopted procedures to implement its antidegradation policy and meet federal standards.

In two traditional villages that are feeling the effect of mine operations, residents asked Trustees for Alaska for help in putting their concerns in front of the U.S. Environmental Protection Agency and Alaska's Department of Environmental Conservation. The requests for assistance came during emotional meetings in each of these coastal villages, where residents recounted their worries about the mine's effects on their health and their subsistence way of life. The villages are Kivalina, a community of about 400 which lies downstream from the mine, and Point Hope, a North Slope Borough village of about 850, which lies 70 miles to the

northwest. Point Hope residents are particularly dismayed that in addition to the effects on human health, contamination from the mine may affect migrating caribou as well as belugas swimming through polluted waters off-shore.

Based on the concerns voiced at the village meetings, and an analysis of the 650-page Draft Supplemental Environmental Impact Statement (dSEIS) published by EPA, Senior Attorney Nancy Wainwright and Legal Director Vicki Clark drafted formal comments on behalf of the tribal councils of each village. Pointing to "ex-

**In addition to human health effects, contamination from the mine may affect migrating caribou and beluga swimming through polluted waters off-shore.**

tremely alarming" data on a "significant increase in cancer rates, above the national average in the areas of colon and rectal cancer, stomach cancer, lung and bronchus cancer," the comment letters challenge the dSEIS's failure "to perform

an adequate environmental review of the existing and projected health impacts of the mine."

The letters warn that "public health concerns must be a foremost consideration in the decision of whether to approve the extension of the mine and must be adequately analyzed to fulfill the requirements of NEPA."

The 11-page letters lay out numerous other legal deficiencies in the dSEIS and the draft permit, giving voice to two villages whose concerns have for too long been ignored. ■

## Staff Goodbyes

### Mike Frank

Mike Frank leaves Trustees for Alaska after ten years in the vanguard of legal efforts to protect Alaska's environment. Mike for the last decade has provided sage legal advice and vigorous representation to virtually every Trustees for Alaska client on one issue or another. His most recent victories include the listing of the Cook Inlet beluga whale as an endangered species, and an injunction against the Palin Administration's plan to pay a \$150 apiece bounty for left forelegs of slain wolves (a ghoulish proposal prominently featured in the Defenders of Wildlife Action Fund's "Eye on Palin" campaign, for which Ashley Judd is the national spokesperson). These victories are in many ways a signature of Mike's (and Trustees') steadfast efforts: His clients (including, in the wolf case, Defenders of Wildlife) made the headlines, while Mike was undertaking the gritty legal work that underpinned their win. Mike will be sorely missed by his colleagues, but his contribution to safeguarding Alaska's environment will long endure. Mike's next objective: to relax and enjoy that spectacular wilderness he has worked so hard to preserve.

### Justin Massey

After working as a staff attorney for Trustees for Alaska for 4 ½ years, Justin is moving to Sacramento, California to join the law firm of Miller, Axline, & Sawyer

as an associate attorney. Thank you, Justin, for your years of service to Trustees for Alaska and our clients, and for your dedication to conservation in Alaska. We wish you well as you embark on your new journey.



Justin Massey

### We also bid farewell to former Board Members Steve Bickerstaff and Scott Taylor

Both Steve and Scott have resigned from the Board of Directors after years of dedicated service. Steve was instrumental in drafting new by-laws for the organization, while Scott, as chair of the Board's Human Resource Committee, crafted and guided the implementation of up-to-date personnel policies for a growing staff. Thank you, Steve and Scott, for giving generously of your time, your wisdom, and your expertise throughout the years. Trustees for Alaska is forever in your debt. ■

## Ways to Support Trustees for Alaska

Trustees for Alaska is a 501(c)(3) non-profit organization. All contributions are tax deductible to the fullest extent of the law.

### Monetary:

- Give online via our secure website: [www.trustees.org](http://www.trustees.org)
- Participate in our monthly credit card program (Consider \$10/month)
- Mail a check in the enclosed envelope
- Donate stocks
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  - Combined Federal Campaign (CFC): If you are a federal worker, consult your National CFC Guide to designate Trustees for Alaska
  - Alaska Community Share:
    - Log on to [www.alaskacommunityshare.org](http://www.alaskacommunityshare.org)
- Suggest a donation to Trustees as an alternative to gift giving for birthday, holiday, wedding, memorial, or other special occasions
- Designate Trustees for Alaska as a beneficiary in your will or in a policy

### Sweat Equity:

- Donate airline miles to help us reduce our travel costs
- Donate photographs or other art for our office or newsletter
- Send us your email address to receive Trustees for Alaska's monthly updates so you can stay informed
- Volunteer! Whether you want to help with our newsletter, rearrange our office according to the ancient art of feng shui, or have other talents to offer, give us a call!

If you would like more information about giving, please contact Tracy Lohman, our development director.



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# Staff Hellos

## Steve Cotton

Former board member Steve Cotton has stepped away from his duties on the Board to serve as acting executive director of Trustees for Alaska.

Steve brings over thirty years of legal and administrative experience to Trustees for Alaska. As lead attorney in the “Molly Hootch case” – renowned in Alaska for securing high schools for more than 100 Native communities across the State – he traveled repeatedly to sixty-five of the most remote villages to meet with residents and represent their interests. He is a graduate of Harvard College and Harvard Law School, and served as the deputy director of the Harvard Center for Law & Education, first assistant inspector general of Massachusetts, and general counsel of the Massachusetts Convention Center Authority.

## Nancy Wainwright

Nancy joined the staff of Trustees for Alaska in November 2008 as our newest senior staff attorney. Nancy came to Trustees for Alaska from a private law practice which focused

on environmental issues, including coastal zone management, natural resource law, land use, state and federal oil and gas matters, and oil spill contingency planning.

Nancy has represented local governments, tribal governments, fishing groups, and environmental organizations. She currently serves on the Board of Directors for Cook Inletkeeper. Nancy is a graduate of the University of California Hastings College of the Law in San Francisco. At Trustees for Alaska, Nancy has quickly immersed herself in issues relating to the Pebble Mine and the Western Arctic Coal Project.

## Emily Anderson

Prior to joining Trustees for Alaska last spring as a staff attorney, Emily served as a Superior Court law clerk for Judge Kari Kristiansen in Palmer, Alaska. Emily also worked with Prince William Soundkeeper and Cordova District Fishermen United on “The Whole Truth” campaign to raise national awareness of the 19-year legal battle waged by fisherman and Alaska Natives to redress the harms caused by the Exxon Valdez oil spill. Emily earned a law degree and a Masters of Studies

in Environmental Law from Vermont Law School. Emily’s work at Trustees for Alaska focuses on the Arctic National Wildlife Refuge and on water quality issues, such as toxic discharges from oil and gas facilities in Cook Inlet and the Bush Administration’s 11th-hour delegation to the Palin Administration of authority to grant Clean Water Act permits in Alaska.

## Tamar Shai & Karen Nash Joynt

Trustees for Alaska is fortunate to have two new paralegals.

Tamar received her MS in Global Studies from Rutgers University’s Center for Global Change and Governance in 2000, concentrating on International Human Rights Law and then served as a Peace Corps volunteer in the Republic of Georgia. She joined the staff in April, 2008.

Karen became our newest paralegal after completing an internship at Trustees for Alaska last fall and earning her Paralegal Certificate from the University of Alaska, Anchorage. Karen completed her MA in Library Science at the University of Arizona and worked as a library media specialist until 2002.

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Trustees for Alaska

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