

The TRUST
LAND OFFICE

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January 5, 2011

Russell Kirkham, Geologist IV
Alaska Department of Natural Resources
Division of Mining, Land and Water
550 W. 7th Avenue, Suite 920
Anchorage, Alaska 99502

Re: Petition Filed by Trustees for Alaska on January 21, 2010 to Designate the Streambeds of Anadromous Water Bodies and Riparian Areas within the Chuit River Watershed as Unsuitable for Surface Coal Mining Pursuant to AS 27.21.260

Dear Mr. Kirkham:

Pursuant to AS 27.21.260(b), 11 AAC 90.903(c), and 11 AAC 90.705(e), the Trust Land Office (TLO) on behalf of the Alaska Mental Health Trust Authority (The Trust) hereby requests to intervene in the proceeding initiated by Trustees for Alaska (Trustees) to designate the streambeds of anadromous water bodies and riparian areas within the Chuit River Watershed as unsuitable for surface coal mining. The Trust is the predominant landowner within the Chuit River Watershed, and lessor of the coal resources located within the areas subject to the petition. As the owner of the coal resources proposed for development pursuant to the existing coal leases held by PacRim Coal, LP (PRC) in the subject area, The Trust has a significant stake in the outcome of the petition proceeding. A brief history of The Trust's purpose and ownership in the Chuitna area follows.

Trust Interest

In July of 1956, Congress passed Alaska's Mental Health Enabling Act (P.L. 84-830), which provided that the then Territory of Alaska, select and administer as a public trust one million acres of land. Income and proceeds from this trust land were to be applied to meet the necessary expenses of the mental health programs of Alaska. The land in the Chuit River drainage, which now includes the PRC leases, was patented to the state under the Mental Health Enabling Act in February 1966. In 1978, the legislature redesignated mental health trust land as general grant land and provided an alternative funding mechanism for mental health programs. However, the appropriations authorized in this legislation were never made. In 1982, mental health advocates sued the state (*Weiss v. State*, 939 P.2d 380 (Alaska 1997)) to return these lands to their former trust status and to gain monetary compensation for The Trust.

In October 1985, the Alaska Supreme court invalidated the 1978 legislation and returned original mental health trust lands to trust status and ordered compensation for lands which had been alienated. However, a number of issues remained that the Supreme Court did not resolve, and the

case was remanded to the Superior Court for eventual clarification of the remaining issues. The 1994 Mental Health Settlement Agreement and associated legislation mandated the reconstitution of all available original Trust land and the conveyance of that land (and other substitute land) to the Alaska Mental Health Trust Authority (The Trust). For various reasons, the land encumbered by the PRC leases, although original Trust land, was not conveyed to The Trust at that time. Recently, as a result of negotiations pertaining to the satisfaction of the remaining Trust entitlement under the federal Enabling Act, this land was conveyed back into Trust ownership.

The Trust Land Office was established in 1994 in compliance with the Settlement Act. The TLO's primary responsibility is to maximize revenue from Trust land over time and to protect and enhance the value of Trust land (11 AAC 99.020(c)) on behalf of Trust beneficiaries. The TLO can collect two types of revenue on behalf of The Trust under the PRC coal leases – annual lease rents and royalties. The annual lease rentals are merely a holding cost to provide time for the lessee to explore for and develop the resource, if located in commercially viable quantities. The ultimate goal for issuing any coal or mineral lease is to obtain royalty payments for the value of the resource, and to provide a long-term revenue stream for beneficiary programs for years to come.

If coal production was to occur at Chuitna, it could amount to significant revenue for The Trust over time. At \$20/ton (a conservative estimate) the 12 million ton/year forecast for this mine would generate a 5% royalty to The Trust or \$300 million over the life of the mine (25 years). Trust royalty revenues are termed "Principal" and are deposited into the Mental Health Trust Fund, which is managed by the Alaska Permanent Fund Corporation on behalf of The Mental Health Trust Authority. The income generated by the Fund makes up a significant portion of the Trust Authority's annual budget which funds the state's Comprehensive Mental Health Program. The Trust's FY11 budget exceeds \$24 million.

Land Use History

The subject area was recognized in territorial days for the coal resources that occur here and was therefore included in the land trust provided for by the Mental Health Enabling Act of 1956, as referenced above. Coal leases now referred to as the PRC leases were issued by the state beginning in 1967. The Chuit River watershed is located within the area now covered by the Kenai Area Plan. Area planning is a DNR management tool that involves a planning process to determine the use and management of State land in a particular area. The area was originally included in the Susitna Area Plan, which was adopted in 1985, but this was superseded by the Kenai Area Plan for this management region in 2000. Both of these state management plans recognize the potential for coal development in this area, have as a primary goal the development of the coal resources, and recognize that any coal exploration and development in this area, as in any area of the state, will be regulated under the strict guidelines of the Alaska Surface Mining Control and Reclamation Act (ASMCR), federal clean air and water laws, and a variety of other state, federal, and local laws.

DNR's first step in the planning process for state land is to comprehensively catalog resources. The catalogued resources are then reviewed by government agencies and the public for an

hierarchical ranking of importance. These resources were evaluated over a three year period that included four rounds of public comments and numerous public meetings in various communities, including Tyonek and Beluga. Some petitioners attended the Beluga meeting on September 13, 1984. The Kenai Area Plan was developed over eight years, included public meetings in six different communities, numerous public work sessions, and the collection of public comments which included submittals by Cook Inlet Keeper and Alaska Center for the Environment.

Although DNR land plans do not apply to Trust land, the appropriate agencies, after significant public input, concluded that the highest value resource and use for the Chuitna lands was for coal development. The plans specifically addressed the issue of developing coal resources within the petitioned area. The public process clearly established the value of the coal resources in this area and the state's objective to develop the resource. The coal leases issued to PRC authorize a land use that is recognized by and fully compatible with the state management plans that were written for this area. The land that could be affected by the Land Unsuitable to Mine petition was specifically conveyed to The Trust for its potential coal and mineral value. The current petitioners should not be allowed to use the petition process to undermine a lengthy public process that has long been recognized or a land use that has been authorized through a leasing process that is currently progressing through a permit process. To do so would be inconsistent with AS 27.21.260(a)(1)¹. Further, to forego the potential to develop this resource would clearly violate the intent of the interrelated trust management principles provided under 11 AAC 99.020(c)² and the intent of the settlement in *Weiss v. State*.

Allegations of Fact

This petition seeks to designate the streambeds of anadromous streams and their riparian areas in the Chuit River watershed as being unsuitable to mine. However, any disturbance to anadromous streams, as currently proposed by PRC, is limited to a section of approximately 11 acres of a small stream within the proposed mine area (logical mining unit 1 or LUM-1) designated as stream 2003.

Yet, petitioners make numerous allegations describing adverse impacts that might occur as though the petition pertained to the land within the entire watershed which covers approximately 95,000 acres. These allegations are based on outdated information, disregard many of the findings previously made by DNR in their permit decision in 1988 and the EPA's findings in their 1990 Environmental Impact Statement (EIS), and presume that performance standards as outlined in the statutes and regulations that make up the Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) will not be met.

¹ AS 27.21.260. Areas Unsuitable For Surface Coal Mining.

(a) The commissioner shall use competent and scientifically sound data and information in order to make objective decisions as to which areas of land are unsuitable for all or certain types of surface coal operations. The decisions shall

(1) reflect the planning activities of federal, state, and municipal governments

² See page 4.

The petitioners state unequivocally, based on opinions expressed by certain authors, that reclamation of the streambeds and riparian areas of the Chuit River watershed “is not technologically feasible.” This statement is made despite the fact that no such finding was made by DNR or the EPA in its 1990 EIS. They allege, among other things, that (1) “surface coal mining operations could not avoid long-term adverse changes to the area’s hydrologic balance; (2) that post-mining reclamation would not be capable of restoring groundwater recharge capacity in the area; (3) that post-mining reclamation of streams diverted for coal mining would not be capable of restoring aquatic productivity to pre-mining levels; and (4) coal mining operations would not be capable of minimizing changes in water quality and quantity and hydrology so as to avoid adverse effects to the post-mining land use of high quality fish and wildlife habitat.” All of these allegations are speculation and presume that the performance standards established in ASCMCRA will not be met. A petition cannot be based on preventable impacts. It must be assumed that a mine will be operated using contemporary mining practices and that the applicable regulatory standards established by ASCMCRA will be followed. If the standards cannot be met, a permit will not be issued and the mine will not be allowed to operate.

With respect to allegation number 4 above, petitioners have presumed, and based much of their arguments attempting to support their petition, on the assumption that a post-mining land use of fish and wildlife habitat is the preferred use. As was mentioned previously, the primary responsibility of the TLO is to maximize revenue from Trust land over time and to protect and enhance the value of Trust land on behalf of Trust beneficiaries. Trust land management principles, as defined in 11 AAC 99.020(c), are:

- Maximization of long-term revenue from trust land;
- Protection of the corpus;
- Protection and enhancement of the long-term productivity of trust land;
- Encouragement of a diversity of revenue-producing uses of trust land; and
- Management of trust land prudently, efficiently, and with accountability to The Trust and its beneficiaries.

While fish and wildlife habitat may be an ancillary use of this land, the TLO is obligated to consider any viable use of this land in the future that could be produce benefits to The Trust and its beneficiaries. The TLO fully anticipates having input into the reclamation plan to enhance the value of this land for future uses. The provisions of 11 AAC 90.087 and 11 AAC 90.481 address post mining land use and provide that consideration be given to making the proposed operation consistent with surface owner plans and creating conditions that are capable of supporting higher and better land uses.

The petition includes many other unsubstantiated allegations. The only proposed alteration to an anadromous stream bed by PRC affects stream 2003. Even so, the petitioners contend that this 11 acre disturbance will: “result in significant damage to important cultural values inherent in subsistence, the local way of life, commercial fishing, and sport fishing; would harm the beleaguered Cook Inlet beluga whale; would result in significant damage to important aesthetic values; will affect renewable resource land in which the operation could result in substantial loss of reduction of long-range productivity of water supply or food or fiber products; and will affect areas of unstable geology and other natural hazards in which the operation could substantially

endanger life and property.” None of these allegations are backed up with supportable science or fact.

LUM-1, which is the area where the proposed disturbance to stream 2003 will occur, is remote and inaccessible without written authority from the TLO. It is not available for subsistence use because it is inaccessible and is not public land. There are no known cultural resources in this area. The area is not located within any residential viewshed. It is over ten miles away from Beluga, where some of the petitioners reside or own property. It is not anymore unstable geologically than other areas of the state that are currently being mined. It has no outstanding natural hazards. The area surrounding Beluga is not pristine as petitioners contend, having been developed primarily as a result of oil and gas development in the area along with the associated power plant. It is crossed by roads, power lines, pipelines, and seismic trails. Material sites have been developed to support infrastructure development. Virtually all the infrastructure used by the residents of the area was developed as a result of resource exploration and development, including oil and gas, timber, and coal. The area is served by two airports with six scheduled flights per day with up to three planes each, plus other air traffic associated with the oil field and other activities in the area. The residents primarily live in a subdivision consisting of nearly 100 lots, 2-3 acres in size, which is situated about a mile south of the Beluga Airport, between that strip and the Tyonek Airstrip. The Tyonek Native Corporation has recently proposed a 700 lot subdivision north of the village of Tyonek for its shareholders.

Conclusion

In conclusion, it is clear that many of the allegations made in the petition are based on speculation by the petitioners and the assumption that mining would not follow contemporary mining practices or be done according to standards established by ASCMCRA. The petition raises issues that, at this point in the process, are more appropriately addressed during the permitting phase of the project. Both the applicant and any other interested parties will be able to submit details, both pro and con, during this permitting phase. All of the information can then be studied and compared systematically at that time.

The TLO, as intervener on behalf of the Alaska Mental Health Trust Authority, requests that the petition be rejected. To allow it to go forward would significantly affect the ability of The Trust and its lessee to develop this resource and would result in a major negative economic impact to The Trust and its beneficiaries.

The TLO and The Trust, as land owner, reserve all of its rights arising from any authority concerning the petition, reserves its right to further address the issues raised herein or issues not yet raised, and reserves its right to supplement this letter with new information as it becomes available.

Sincerely,



Gregory L. Jones
Executive Director

Intervener Contact Information

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