

The Myth of the “Rigorous Permitting Process”

The following testimony by Lance Trasky, former Alaska Department of Fish and Game Habitat Division Regional Supervisor for Bristol Bay, dispels the myth of the rigorous permitting process and is required reading for all Alaskans concerned with the future of the Bristol Bay salmon fishery. This testimony, reprinted here by permission of the author is proof that the permitting process is broken and in dire need of improvement.

December 4, 2006

Board of Fish:
Alaska Department of Fish and Game
Boards Support Section
P.O. Box 115526
Juneau, Alaska 99811-5526

ATTN: BOF Comments

Re: Proposal 121 – Comments and Recommendations

Dear Chairman Morris and Members of the Alaska Board of Fisheries:

1. I am Lance Trasky and I reside in Anchorage. I am a fisheries and habitat biologist with over 34 years of experience in fisheries research and in regulating activities that impact fisheries habitat. For 26 years I was the ADF&G Habitat Division Regional Supervisor for Region II which includes the majority of the major fish producing regions of the state including Bristol Bay. I reviewed and permitted thousands of projects ranging from coal mines to stream bank restoration. I also was the Alaska Department of Fish and Game (ADF&G) lead on many state and federal resource plans including the cooperative State Federal Bristol Bay Land Use Plan. A short resume of my experience and accomplishments is included in my packet. I am here today to urge the Board to expand 121 and establish a much larger fish and game refuge area in the Nushagak and Kvichak River drainages which would establish standards for mining and other habitat disrupting activities.
2. The reason you should expand Proposal 121 is that if mine permitting is allowed to proceed under current state and federal standards and permitting processes the

very large scale mining of sulfide based copper ore in the Nushagak and Kvichak drainages will physically destroy thousands of acres of very high quality spawning and rearing habitat and over time will almost certainly seriously degrade fisheries habitat and fisheries production in downstream portions of these drainages. Additional impacts will occur in the road and electrical transmission corridors, at the site where power is generated and the ore is processed, and at the port area. Unless stricter standards and more balanced processes are adopted, such as through a refuge, these impacts will outlive many generations of Alaskans. I strongly believe that new standards need to be established to regulate mining of sulfide ore in the Nushagak and Kvichak drainages, outside of the existing regulatory process, which I feel is badly compromised.

3. The primary argument that claim holders, their employees and Murkowski administration proponents of mega scale strip mining in Bristol Bay have used to counter very real concerns about the impacts of large scale copper mining in the Nushagak and Kvichak drainages is that the state has a large mine process that will insure mining permits will insure that “no net loss of fish” will occur. Why do they want you to wait and let this process to take its course? Because the Murkowski administration has stacked the process in their favor. I will summarize eight facts or reasons why this is so.

First, as one of his first acts Governor Murkowski transferred the authority to protect anadromous fish and maintain fish passage under the Anadromous Fish Act and the Fishways Act from the Department of Fish and Game to the Department of Natural Resources by executive order. Overnight the mandate went from ADF&G’s statutory responsibility to ‘protect, preserve, maintain, and where possible extend the fish and wildlife resources of the state in the interest of the economy and well being of the state’, to facilitating the issuance of permits to applicants. The few habitat biologists who did this work were transferred to ADNR. Some have left when other job opportunities at ADF&G became available, and inexperienced replacements have been hired. The result is that Department of Fish and Games no longer has staff who have expertise and years of experience in assessing the impacts of large projects on fish and wildlife and harvest, and ADF&G’s fish and wildlife. I do not believe that either ADF&G or ADNR have staff that has the expertise to evaluate the extremely complex chemical, hydrological and physical impacts associated with a landscape scale mine. Although, ADF&G has many good scientists and dedicated biologists their role has largely been reduced to providing ADNR decision makers with information on the location and abundance of the resources that will be impacted by the mine.

Second, the Governor dismantled the Alaska Coastal Management Program by eliminating the guidelines and habitat standards which required that federal and state permits be consistent with a high level of protection to fish and wildlife habitat and resources. He also stripped local governments of their opportunity to veto projects which harm local interests. He eliminated the Office of

Governmental Coordination which consolidated agency comments of federal permits and actions and mediated disputes between agencies. He transferred the administration of what little remains of the Coastal Management Program to the Department of Natural Resources.

Third, the next step in consolidating all of the authority and responsibility to regulate activities impacting fish and wildlife resources within the Department of Natural Resources was to get the Commissioner of Fish and Game to sign a memorandum of understanding transferring ADF&G's authority under the federal Fish and Wildlife Coordination Act to ADNR. As some of you may know the Fish and Wildlife Coordination Act was created by Congress because of concerns that the Corps of Engineers was issuing wetlands fill permits that were destroying the nation's productive wetlands and fish streams. The FWCA requires that all permits applications under the Corps Section 10, 404 and 401 permit programs and EPA Clean Water Act be submitted to the states fish and wildlife agency for review and that their comments be incorporated unless there is an overriding federal interest. Under the MOU, ADNR's Commissioner now makes the decisions on what is best for fish and wetlands.

Fourth, next step in the process to make it easier to trade fish habitat for mining was to change the Alaska Department of Environmental Conservation's (ADEC) regulation's to allow the discharge of harmful substances into salmon spawning areas. Although, the creation of so called mixing zones in spawning streams was strongly opposed by fishing organizations, the American Fisheries Society, conservation groups and the public because of concerns that it will result in the degradation of the states valuable fish resources, the ADEC changed the regulations to allow the discharge of substances shown to be harmful to fish and aquatic life into salmon spawning streams and lakes. The reason is that it is very costly to treat some types of industrial waste to levels where it is not harmful to fish and aquatic life, and these costs could make large scale mining of sulfide ore uneconomic. The ADEC is also attempting to take over administration of the Clean Water Act from EPA. Unfortunately ADEC's record in enforcing regulation on pipeline corrosion, and approving the Prince William Sound Oil Spill Plan a few months before the Exxon Valdez Oil spill does not bode well for fish habitat.

Fifth, a system has also been established whereby the mining company conducts or pays for baseline research to be used in the permitting the mine, and pays the salaries of all of the state employees reviewing large mining applications. ADNR controls the RSA process and decides which studies will be funded and how much funding other state agencies receive. Some may argue that this does not buy favorable action on permits, but it certainly buys access and oversight, because applicants review and approve spending. It also creates a system where staff whose jobs are dependent on this funding may lose their funding and jobs if the project doesn't proceed.

Sixth, in my discussions with ADF&G biologists it is clear that ADF&G, which is by state law supposed to be the states fisheries experts, does not have either the technical capability or the staff to review a world scale copper mine. A mega mine such as the proposed Pebble Copper mine is an incredible complex projects with many potential impacts on water quality and fish habitat, both on and off the mine site. These include but are not limited to construction of an access road which will cross hundreds of streams, a power plant which will have to generate enough power to light a large city, coal mining if a coal burning power plant is used, processing and transportation of millions of tons of acid generating heavy metals laden ore and concentrate, generating incredible amounts of sulfide laden dust, treatment of trillions of gallons of contaminated wastewater from the pit and milling operations, warehousing of trillions of tons of acid generating waste rock and tailings behind earth fill dams, and a giant pit which will probably leach polluted water into the ground and surface water for millennia. ADF&G needs to hire new fisheries biologists, biochemists, and engineers with extensive backgrounds in impacts from very large sulfide mines to review projects, but has no funding or support to do this.

Seventh, don't count on federal agencies to deny projects which are likely to be harmful to fish. Project review staffs at U.S. Fish and Wildlife Service have been drastically cut in recent years, and their ability to adequately review large mine projects has been greatly diminished. The Corps and EPA approved the disposal of mine tailing into a lake at the Kensington Mine near Juneau. Although this lake only has resident fish, the permitted disposal is significant because it sets precedence for the destruction of more important fish habitat such as Frying Pan Lake, and the headwaters of Tularik Creeks and the Kuktuli River. If a mine violates federal water quality statutes don't count on federal agencies to shut them down. Existing mines in Alaska such as the Red Dog mine have had hundreds of water quality violations, but continue to operate. It appears that once a mine has been permitted it isn't going to be shut down unless mining becomes unprofitable or the mining company goes out of business. Unhappiness with the process and with permits issued for the Kensington Mine and the Rock Creek Mine near Nome under the large mines process has caused local residents to file suite to overturn Corps of Engineer permits for these projects.

Eight, what this means is that all of the state authority to protect fish and wildlife under state statutes and to make recommendations on the issuance of federal permits is now in the hands of the Commissioner of the Department of Natural Resources. Based on the record I believe that this means there is a greater chance that a mega mine which will have very serious impacts on fish and wildlife resources will be approved. I cannot find any case where permits for any large mine have been denied, even where these mines have received serious opposition from some interests i.e. Kensington and Rock Creek. It is ironic that at the same time Wisconsin was outlawing the mining of sulfide ore and Montana was prohibiting cyanide heap leaching, the State of Alaska was dismantling the

regulatory framework that had been established to protect fish habitat at statehood and expediting the process to approve these types of mines.

These eight facts and reasons have two implications. First, the likelihood has increased that a very large scale mine with very serious impacts on fish and wildlife resources, habitat, and commercial, sport and subsistence fishing and marketing will be approved. Second, all state regulatory authority to protect fish and wildlife under state and federal statutes is now in the hands of the Commissioner of the Department of Natural Resources, except the authority of the Boards of Fish and Game to recommend a refuge to the legislature under AS. 16.05.251 and AS 16.05.255. The Board must act. The Boards sustainable salmon and trout policies, at AAC 39.222(d)(6) and 5AAC 75222(d)(6), provide that where actions are needed to regulate human activities that affect wild salmon and trout and their habitats that are outside the authority of the Department or the Board, the “board shall correspond with the relevant authority, including the Governor, relevant boards and commissions, commissioners and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.”

Thank you for the opportunity to comment.