



Photo by Nils Hahn

TERMINATION DUST — A long stretch of 125 frost-free days spoiled Nomeites with warm temperatures and plentiful berries. The seasonal color changes in nature are punctuated by the first fine snow dust on high peaks in the Kigluaiks, inland from Nome.

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Photo by Diana Haecker

GRACEFUL — Margaret Opie with the Barrow Suurimmaanchuat Dancers entertains the Nome crowd at the Bering Strait Regional conference dance nights last week.

WHO wins mayoral race

Election Results will go here!

AGC's Dry Creek exploration project given the green light

By Diana Haecker

The Department of Natural Resources office of project management and permitting gave the green light last Monday to Alaska Gold Company's proposed Dry Creek placer gold mine exploration and pilot program project.

Sadie Wright, Alaska Coastal Management Program project specialist informed AGC on October 1 that she found the project consistent with the ACMP and the Nome Coastal District's enforceable policies. Wright proposed to limit the hours of operation to 6 a.m. to 10 p.m. and to attach four conditions to the Fish Habitat permit.

After a public meeting on August 27 called by various offices within the state Department of Natural Resources and attended by a representative from the Army Corps of Engineers as well as Alaska Gold Company representatives, a public comment period generated 25 comments of concerns from 10 Nome residents.

AGC proposed a placer mining exploration project and a pilot program at Dry Creek. The exploration entails drilling up to 200 holes on 16 to 18 lines, 500 feet apart. After drilling, the project description reads, up to 15 sites will be selected for bulk sampling by digging small pits and processing large samples.

The pilot program then includes building a stream bypass and processing 25,000 cubic yards of gravel from a mine pit. The combined area disturbed due to the exploration and the pilot project would be 6.24 acres.

Wright proposed four conditions attached to a fish habitat permit that Alaska Gold has to secure from the Office of Habitat Management and Permitting.

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Ninth Circuit Court of Appeals hears Rock Creek case

By Diana Haecker

A panel of three judges with the US Court of Appeals for the Ninth Circuit heard oral arguments last week in Seattle regarding the Bering Strait Citizens for Responsible Resource Development's appeal contesting the validity of the Army Corps of Engineers wetlands permit for the Rock Creek mine near Nome.

The Nome-based citizen's group as well as two individual plaintiffs, Nomeites Sue Steinacher and Jana Varrati, re-filed a lawsuit against the U.S. Army Corps of Engineers in April 2007 after the Corps had voluntarily retracted the original wetlands permit issued in August 2006. A three-month internal Corps investigation resulted in a new and revised permit

to allow the destruction of 340 acres of wetlands at Rock Creek to construct and operate Alaska Gold Company's Rock Creek gold mine.

BSC-RRD takes issue with the re-issuance of the permit without any public involvement and refiled a lawsuit, which was dismissed by District Court Judge Ralph Beistline in June 2007.

BSC-RRD, Varrati and Steinacher's

lawyers, Trustees for Alaska, appealed Beistline's judgment and took it to the next level, the 9th Circuit Court of Appeals.

A panel of judges, rather than one individual judge, are now to decide whether or not the case has a merit and if the Corps followed the National

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BLM takes comment on Seward-Kobuk land use

By Sandra L. Medearis

The federal Bureau of Land Management has completed a plan for managing Seward Peninsula land user's back yard, part of an area that affects the coastal area from north of Point Lay down to Shaktoolik and all the Seward Peninsula extending east to include the Nulato Hills.

The Kobuk-Seward Peninsula final proposed management backed by an environmental impact survey fills three volumes

and covers 12 million acres of private and public land, 6.6 million of which are selected by the State or Alaska Natives. The plan intends to set goals and ease conflicts among hunters, resource developers and recreation users, all the while taking note of subsistence use, transportation and access. Planners considered four options, including no action, and selected one that takes a middle road between wide-open mining and restrictive conservation. All areas would be des-

ignated "limited" in access by ATVs. Off-highway vehicles under 2,000 pounds gross generally would not be excluded, but regulated in certain areas of concern.

What's next? A 30-day protest period commenced Sept 28. The protest is open to those who participated in the planning and would be adversely affected by the outcome. These com-

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• Rock Creek

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Environmental Protection Act as well as the Clean Water Act in issuing the permits that allow Alaska Gold Company to build the first hard rock mine in the Nome area and fill 340 acres of wetlands and tundra with a mill site and vast waste rock and tailings storage facilities.

Defendants in the case are the Army Corps of Engineers. Alaska Gold Company intervened in the lawsuit and is involved as a co-defendant.

The hearing last week lasted one hour and gave each side about 20 minutes to present their cases.

Trustee lawyer Brian Litmans began his 20-minute presentation, being frequently interrupted by Judge Andrew Kleinfeld of Fairbanks, who insisted that the area the mining occurs in had been mined for 100 years since the Nome Gold Rush and that AGC proposed to reclaim areas that haven't been reclaimed in a century. While Judge Kleinfeld quoted AGC's fish habitat restoration plans and discussed the history of gold mining in and around Nome, Judge Ronald Gould inquired about procedural questions.

Litmans presented the case saying that the plaintiffs believe the Corps has not chosen the least damaging practical alternative, did not engage in a meaningful discussion of the alternatives and did not circulate a draft Environmental Assessment for the public to comment on. Also, the Trustees said that the re-issuance of the 404 wetlands permit took place without any public involvement. "We feel there was no public process, there was no time for the public to comment on the EA, let alone an EA to be circulated and all that in the light that the Corps has acknowledged deficiencies in the 2006 EA," argued Litmans.

Ryan Nelson, the Army Corps' lawyer began his argument that there have been 60 meetings over a three-year period and numerous revisions of AGC's permit proposal prior to its initial issuance in August 2006. He said that the mining takes place on private and leased land from the area's Native Corporations and that the land was specifically set aside for resource development.

Nelson also said that 81 percent of the wetlands at issue have already been destroyed. "What remains is the 170 acres that are part of the mitigation measures to be taken," said Nelson. Judge Gould asked Nelson to give him his best argument why the EA has not been circulated in draft form. Nelson said, "That's the red herring in this case. No court has ever held that a draft EA has to be circulated."

Senior Judge Betty Fletcher asked Nelson again if there had been adequate comments before the re-issuance of the new permit. Nelson answered that the plaintiffs themselves had commented with a 18-page response to the permit application but failed to say that this comment was as a response to the 2006 public comment period before the wetlands permit was issued. Judge Fletcher picked up on the error and asked for clarification again, "This is after the permit was withdrawn and before the new one came out?"

Nelson answered then that he wasn't exactly sure at what point the comments were submitted. In the Corps' opinion, NEPA requirements are filled when the "material is out there". "There is no question that the documents were available," concluded Nelson.

Judge Fletcher then said that it is concerning her that the Corps has not considered various technological alternatives that may cost the company more but lessen the environmental impact. Fletcher said that with current higher prices of gold, it may be practicable to use more expensive measures to deal with the tailings such as dry stacking as opposed to depositing paste tailings as fill on tundra. When Fletcher asked if there was an alternative to not do the project at all and if this was looked at, Nelson rebutted, saying, "If this court wants to come in and say, 'we never allow gold mining in Alaska,' well, that's one thing, but I don't think the court is entitled to do that."

Judge Kleinfeld added, "This is not mining in wilderness, this is mining on previously mined land. Is there a reclamation that leaves the land worse, the same or better off in terms of the environment?"

The Corps' lawyer answered, "The

Army Corps found that the property would be better off." Nelson said that AGC's mitigation plan is to clean up the mess left by previous dredging and mining activities in Big Hurrah creek. "They will clean it all up and restore it to its pristine condition as it once was," Nelson said. "Without the mitigation measures this [permit] would've probably not been approved, but the mitigation measures were strong and significant."

He added that 106 acres of wetlands would be created that have not existed before.

During rebuttal, Trustees lawyer Litmans said that it was important to note that the destruction of wetlands is taking place at Rock Creek and that the majority of mitigation is slated for Big Hurrah, an area 50 miles away from Rock Creek and that the permits as criticized by the EPA — therefore has no site-specific mitigation plans.

Michael Grisham, lawyer for AGC then made a statement saying that an Environmental Impact Statement is not necessary, "because we know what impacts will be." He also maintained that this is not a controversial project in the Nome community, but that it is not hard to find plaintiffs to oppose a project like this in any community.

Grisham also argued that an EIS would be a massive undertaking, which required a dedicated Army Corps team to devote a year or more



Photo by Diana Haecker

ROCK CREEK — Attorneys for Bering Strait Citizens for Responsible Resource Development, the Army Corps of Engineers and Alaska Gold presented their case at a hearing last week in the Ninth Circuit Court of Appeals. The panel now decides whether or not the Corps lawfully permitted the destruction of wetlands at Rock Creek.

solely to the task and that it also would mean an enormous expenditure on part of Alaska Gold.

Judge Fletcher said that this is not a proper consideration. "Either the project has a significant impact which requires an EIS or it doesn't." Grisham dissented saying that her take on an EIS isn't true and that the end result mattered.

Also discussed were cumulative impacts, meaning what cumulative impact other similar gold mine operations and the Rock Creek project would have on Nome. As there are only placer gold

mines — not comparable to the hard rock, industrial mine going up in Rock Creek right now — operated in Nome, the matter remained unresolved during the oral argument. Grisham referred to the impact on Nome's port saying it is negligible since AGC is not going to barge out massive amounts of gold. However, it was failed to mention that the port sees heavy use not in what leaves, but what arrives. Materials, including explosives and chemicals needed to process the gold, come through Nome's port on a large scale.

With every shipment of dangerous cargo, Nome Volunteer firefighters have to stand by with charged hoses and oversee the off-loading of goods from the barges.

The hearing now leaves it up to the panel to consider whether or not the Army Corps adhered to NEPA and Clean Water Act laws in issuing the Rock Creek permit. If they find that the Corps acted within the laws, AGC can proceed building the mine. If the plaintiffs prevail, the Army Corps permit is void.



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