



Photo by Peggy Fagerstrom

HAPPY NEW YEAR 2008—Nome welcomes the New Year with a wonderful fireworks display and a huge bonfire fed by wooden pallets at River Street beach.

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No employees means no DMV for Nome

Those in need of driver's license renewals asked to go online

By Diana Haecker

The Nome Division of Motor Vehicle office closed indefinitely last Friday. The office's only employee handed in her resignation a month ago and a replacement has yet to be found.

Nome area supervisor Debbie Smith told *The Nome Nugget* that the office is only temporarily closed. The closure comes as a surprise to Nomeites, as no public notice was given that the office would close effective Jan. 7. Smith said she posted

the closure on the DMV's website.

"Hopefully the closure won't be long," Smith said. Instead of making phone calls, she recommends to visit the DMV's website, www.alaska.gov/dmv, to take care of things that relate to licenses and renewals.

"If road tests line up, then we will send somebody up to Nome for a week to take care of things there," Smith said.

"Hopefully we find a replacement soon and that the office closure won't be for long," added Smith.

9th Circuit affirms Rock Creek permit

By Diana Haecker

The United States Court of Appeals for the 9th Circuit released a ruling Jan. 3, finding that the U.S. Army Corps of Engineers was not arbitrary or capricious in issuing a 404 permit that allows NovaGold/Alaska Gold Company's Rock Creek gold mine project to destroy more than 340 acres of wetlands.

The so-called section 404 Clean Water Act permit authorizes the Corps to issue permits for the discharge of dredged or fill material into the navigable waters of the United States, or in this case, into wetlands.

The gold mine, located seven miles north of Nome, is currently under construction.

The 29-page opinion paper written by circuit judge Ron Gould found that the Corps acted within the law on all issues brought forth by the plaintiffs, a Nome citizen group

and two individuals, Sue Steinacher and Jana Varrati.

The ruling comes after a year-and-a-half legal battle involving the Nome citizen group called Bering Strait Citizens for Responsible Resource Development and Varrati and Steinacher, who contested the validity of the permit issued by the Corps. The lawsuit was filed against the Corps initially, but Alaska Gold Company having a stake in the outcome, intervened and became co-defendant in the suit.

The plaintiffs voiced disappointment with the judge's decision. The plaintiffs' attorney, Vicki Clark with Trustees for Alaska, said, "The court's ruling is very disappointing. The federal laws protecting the public's right to a meaningful public process failed us in this case." The lawsuit contested that the Corps did

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Photo by Peggy Fagerstrom

A LITTLE HELP—Doug Deering helps son Sam make a basket during the annual Fun Nite at the Rec Center on New Year's Eve.

Comment period extended for Dry Creek mining permit

By Diana Haecker

The U.S. Army Corps of Engineers offered a 15-day extension to the Nome public to comment on Alaska Gold Company's exploration and pilot program project at Dry Creek.

Julie Woodke, a Corps hydrologist and regulatory specialist, e-mailed a notice stating that the comment period will be open until Jan. 17.

Alaska Gold proposes to drill up to 200 holes in the lower part of Dry Creek between

Icy View and the Nome Bypass Road. According to the exploration documents, AGC plans to drill during next fall and winter. The AGC also plans to take bulk samples from 15 test trenches. A pilot program would include a temporary diversion of Dry Creek and a 200- to 250-foot wide by 250-foot long pilot pit.

In May 2007, the Corps issued a so-called General Permit to AGC. The permit authorizes the company to place fill material into

waters, including wetlands, for the purpose of placer mining within Alaska. Placer mining is defined as the removal of gold or other precious metals from gravel.

According to the wording in the permit, the conditions of the general permit are intended to ensure that the impacts to the aquatic environment are minimal. "The goal is to promote re-establishment of normal aquatic ecosystem functions representative of the area in which the mining takes place," the

permit reads. Excessive erosion of soils into streams has been identified as one factor that makes it difficult to re-establish a productive aquatic ecosystem with a variety of plant and animal species.

Having the permit does not give a miner the go-ahead from the Corps, Woodke explained. "We verify if projects that are permitted under the General Permit meet the terms and condi-

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• Ruling

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a sufficient job informing the public about all environmental ramifications of the gold mine and its impact on the wetlands.

Steinacher expressed her deep disappointment, saying, "I feel we didn't lose on point of law, but on account of misperceptions presented to and by the judges." In particular, Steinacher felt that the Snake River Valley and the location surrounding the Rock Creek mine were not accurately described to two of the judges, who have never been to Nome. The third judge, Andrew Kleinfeld, had been to Nome and opined during a hearing in the matter that Nome and area is riddled with remnants of old equipment, tailings and other destruction associated with gold mining in the "old days."

"That location was portrayed as a moonscape of old mine tailings and gravel, but I don't feel this is accurate. To say that things will look better after mining than before has no bearing in reality," Steinacher said.

"I am surprised and saddened that the judges thought the Corps did it's job," Varrati said.

Corps' spokeswoman Pat Richardson commented, "We are very pleased with the decision. We had a defensible Permit Decision Document, and we're happy that the court thought so too."

NovaGold's president Rick van Nieuwenhuyse told *The Nome Nugget* in an interview, "We are very pleased that the court found in our favor. This was hands-down a 100 percent win for NovaGold." He added that he'd be looking forward to working with the citizen group in the future. "I encourage them to participate in a dialogue concerning our development of mines and continued clean-up operations in the Nome area," he said.

History

A first lawsuit was filed in the fall of 2006 against the Corps. Based on the allegations, the Corps voluntarily withdrew the permit to begin a three-month internal review of the process that led to issuing the permit in late August 2006. The pending lawsuit became void since there was no permit to contest.

In March 2007, the Corps reinstated the 404 wetlands permit with a few modifications and the admission of Col. Kevin Wilson that mistakes had been made. Since the permit review was entirely internal and didn't allow for a public process or comment period, the same plaintiffs filed a second lawsuit in the U.S. District Court in Anchorage. The plaintiffs, through their legal counsel, Trustees for Alaska, asked for a stay to halt all construction at the mine until a decision had been made. District Court Judge Ralph Beistline did not grant the preliminary injunction and dismissed the entire lawsuit. The plaintiffs then ap-

pealed Beistline's decision and filed an appeal at the U.S. Court of Appeals for the 9th Circuit.

Last week, the ruling was issued, and the opinion paper written by circuit Judge Ron Gould was made public.

Judges' findings

The three-judge panel consisting of Betty Fletcher, Kleinfeld and Ronald Gould heard oral arguments in the case on Sept. 26, 2006, in Seattle.

The plaintiffs alleged that the Corps violated the Clean Water Act and the National Environmental Policy Act when they granted the 404 permit. "We conclude that the Corps complied with the requirements of the CWA and NEPA and affirm the judgement of the district court," wrote Gould.

The judges noted that AGC's plans to restore Big Hurrah Creek to its natural path—after it had been diverted and littered with tailings in the Gold Rush period—and to infuse the Nome economy with renewed mine development, weighed into their decision.

"The Corps and AGC hope for an economic advantage and environmental improvement as a result," wrote Gould. "AGC observes that Nome has unemployment rates over twice the state average and that the region currently offers limited opportunities for economic development, and the Corps considered the region's economic conditions when assessing the permit."

A check with the Nome Job Center last Friday revealed that there are currently 102 jobs open in Nome. The unemployment rate for November 2007 was 10.1 percent; statewide the number was at 6.2 percent. In 2006, the unemployment numbers for November were comparable: in Nome 10 percent, statewide, 6.3 percent. Often argued that Nome is a mining town, new realities point to the fact that Nome's biggest employer in Nome is Norton Sound Health Corp., employing more than 500 people regionwide.

During the September hearing, the plaintiffs' lawyers argued that the Corps has not chosen the least damaging alternative, did not engage in a meaningful discussion of alternatives and did not circulate a draft Environmental Assessment on which the public could comment.

Judge Gould responded in the opinion paper that the Corps did consider 24 other alternatives, and that mitigation measures tacked onto the permit will result in the reclamation of 106 acres of previously disturbed wetlands in Big Hurrah and the creation of 70 acres of new wetlands. Subtract that from the 346.5 acres destroyed at Rock Creek, the actual net loss would only be 170.5 acres.

The judge remarked that the Corps did the right thing considering the promised economic benefit in the Permit Evaluation and Decision

Document. "In addition to the significant environmental considerations included in the PEDD, the Corps also properly considered the significant economic benefits that are expected to result from the project. Given the relatively poor condition of the local economy in relation to the state overall, we agree that these benefits are weighty in this case," Gould wrote.

The judges also agreed with the Corps and AGC when they quoted the United States Fish and Wildlife Services' evaluation that the wetlands lost in the project are not rare, but rather the common habitat. "Accordingly the Corps concluded that the project will likely have no impact on the greater ecosystem beyond the project site," wrote Gould.

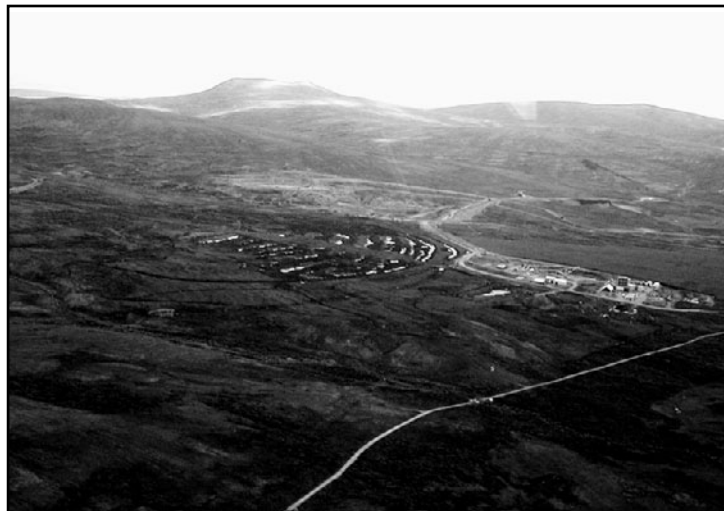
One of the plaintiffs' main objections was that the Corps should have prepared an Environmental Impact Statement for the Rock Creek Mine project and that a draft form of the Environmental Assessment, which served as the basis for the Corps' Finding of No Significant Impact, was never presented to the public. This point addressed requirements under NEPA.

Gould wrote that the law currently does not make clear whether NEPA requires the circulation of a draft EA. "The regulations don't answer the question," Gould found. The law requires agencies to make diligent efforts to involve the public in preparing and implementing NEPA procedures, but does not require the circulation of draft EAs. Other 9th Circuit cases didn't set a precedent and the 9th Circuit has "not established a minimum level of public comment and participation..." said Gould, adding that this case would present an opportunity for the court to squarely address the issue.

The judges adopted a rule from the district court examining the Sierra Nevada Forest Protection Campaign, saying, "An agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process." The judges felt that the Corps satisfied this rule.

The judges measured this by the high number of favorable comments submitted by Nome businesses partnering with AGC and other NovaGold business partners. Gould wrote, "Information about the project was widely disseminated throughout the community and environmental information was reasonably and thoroughly tendered to the public. Indeed, in response, the Corps received a high level of public comment from the Nome community, most of it favoring the project."

The judges conclude that the quality of the Corps' dissemination of environmental information to the public and its consideration of public comment, before issuing its EA, was



Nome Nugget file photo

ROCK CREEK MINE—A trio of Court of Appeals Judges for the 9th Circuit has found the Army Corps of Engineers' issuance of a wetlands permit to comply with both the Clean Water Act and the National Environmental Protection Act. A Nome citizens' group had challenged the permit's legality regarding Alaska Gold Company's Rock Creek gold mine near Nome.

reasonable and adequate.

The EA was only available upon request by this reporter weeks after the Corps issued the FONSI in August 2006. The EA wasn't posted online or mailed out to the community. Don Rice, the Corps' project manager told *The Nome Nugget* in an interview in September 2006 that the FONSI decision was based on one public hearing held in June 2006 and that he felt that the majority present was lending support to the project.

Despite 15 letters of concern, a citizen protest at the road dedication ceremony with then-Gov. Frank Murkowski, a letter by the Environmental Protection Agency asking for an EIS, the Corps didn't see any red flags and gave the 404 permit a green light.

The judges found that the Corps took the NEPA-required "hard look" at the project, that impacts to wildlife would be minimal, and that the project met air and water quality conditions.

In closing, Gould wrote, "We cannot avoid perceiving that the project in its required mitigation favorably affects parts of the Nome area that suffered environmental damage from previously unconstrained resource development. On balance, we conclude that the Rock Creek Mine project has no significant detrimental effect on the environment in and near Nome. Accordingly, the Corps was not required to prepare an EIS based on the issues raised by BSC or by the EPA."

What's next?

As of press time, the plaintiffs were evaluating the decision and any options to move forward, said Trustees for Alaska lawyer Clark Steinacher said in an interview with *The Nome Nugget* that citizens need to take an active role in monitoring that promises are kept and permit

stipulations are adhered to. "We as citizens must insist that the government monitors and provides oversight to the permits they issued. The public should be mindful and watchful and willing to report potential violations," Steinacher said. She added that she had encountered increasing support for the lawsuit in the community and said, "We have been supported by members of the Native communities and even active placer miners have expressed their concerns and support of our suit." According to Steinacher, all legal fees associated with the lawsuit were raised locally, within the Nome community.

NovaGold president van Nieuwenhuyse said, "I hope that BSC would embrace dialogue in the future instead of bringing frivolous lawsuits. We always had good public relations, and I'm especially proud of our track record in communication."

Meanwhile, construction at the mine continues, but is winding down. A change in leadership also took place as general manager Doug Nicholson was moved to work at NovaGold's Donlin Creek project. Mine manager Warren Woods worked in the interim as both general manager and mine manager. Woods quit his job in the middle of December and left Nome Jan. 3 to take a job with a new company in northern Nevada, closer to his home and family.

Jim Mallory, the new general manager and mine manager, came to town last week. Mallory used to work at NovaGold's Galore Creek project, which was suspended as a re-evaluation of the project revealed that the costs would exceed \$5 billion to build the shared NovaGold and TeckCominco project.

According to van Nieuwenhuyse, the handover from construction crews to operation crews is taking place at Rock Creek. "We should be up in full production by the second quarter of 2008," he said.

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