

# RESOURCE *review*

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## EPA's Bristol Bay watershed assessment challenged

The State of Alaska has charged that the Environmental Protection Agency's (EPA) ongoing assessment of the Bristol Bay watershed is unlawful, preemptive, and premature.

Alaska Attorney General Michael Geraghty has asked the EPA to cease its work on the Bristol Bay Watershed Assessment and refrain from exercising its Section 404(c) authority under the Clean Water Act (CWA) until a permit application has been submitted for a large-scale mining project and other regulatory reviews are conducted.

In a letter to Region 10 Administrator Dennis McLerran, the attorney general raised substantial legal and process concerns the state has with the EPA's work on the watershed assessment. The EPA initiated the assessment to inform its decision-making on a May 2010 petition it received asking the agency to invoke its Clean Water Act Section 404(c) authority. The petition asks the EPA to prohibit the disposal of fill into watersheds near Bristol Bay in which large mine development may occur in the future.

EPA's exercise of its 404(c) authority has the potential to extinguish both the State's mineral rights under the Statehood Compact and the mineral interests held by locators and lessees, Geraghty said. "The State will explore all available legal options in response to an exercise by EPA of its Section 404(c) authority, including remedy from the federal government for breach of the Statehood Act," he warned. "EPA's actions in using the watershed assessment to address the pending petition are unlawfully preemptive, premature, arbitrary, capricious, and vague."

"Neither a petition process nor EPA's process for developing a response are described in the CWA or its associated regulations," Geraghty said. "EPA's watershed assessment effort reaches well beyond any process or authority contemplated by the CWA."

The assessment encompasses approximately 15 million acres of largely state-owned land, an area comparable in size to West Virginia. Much of that land, including the area of the proposed Pebble prospect, is designated for mining under the current state land management regime.

Geraghty said the State has a vital interest in assuring that an action affecting natural resources and an area of this magnitude is consistent with law.

EPA has stated it intends to release a draft assessment in April 2012, and a final by fall 2012.

"This aggressive schedule further undercuts the reliability of this premature assessment, when compared to the intensive, multi-year NEPA review schedules that are required to address specifically-proposed projects," Geraghty said. "EPA's entire Section 404(c) process may be completed in as little as 111 days. This rushed process

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Governor Sean Parnell and former Governor Tony Knowles spoke at the Make It Meaningful Rally in Anchorage, which drew a crowd of more than 1,100.

## Alaskans rally for meaningful oil tax reform

More than 1,400 Alaskans turned out in statewide rallies in late March to show their support for strengthening the state's economy by stimulating more oil production.

The Make it Meaningful: Rally for Reform was held to encourage state legislators to make real, impactful changes to Alaska's oil tax structure in order to boost production and the private sector economy.

A collation of 19 diverse organizations, representing tens of thousands of Alaskans, hosted the rallies.

Speakers addressing the Anchorage rally included Governor Sean Parnell; former Governor Tony Knowles; Barbara Huff, Alaska Teamsters Local 959; Cordelia Kellie, Arctic Slope Regional

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The Resource Review is the official periodic publication of the Resource Development Council (RDC), Alaska's largest privately funded nonprofit economic development organization working to develop Alaska's natural resources in a responsible manner and to create a broad-based, diversified economy.

Past issues of the Resource Review (1978-2011) are available at [akrdc.org](http://akrdc.org).





# Defending the integrity of permitting processes in Alaska

One of RDC's top legislative priorities is to "Encourage the state to promote and defend the integrity of Alaska's permitting process and advocate for predictable, timely, and efficient state and federal permitting processes based on sound science and economic feasibility."

Lately, defending the integrity of permitting process has been front and center. Two ongoing departures from our normal permitting processes, one proposed by legislation in Juneau and one at the federal level, both revolve around a large and controversial mining prospect in Western Alaska: Pebble. Irrespective of the Pebble project, both these approaches are highlighting the risk that our permitting systems and processes are being inappropriately politicized. This trend does not bode well for any of other resource, community, or infrastructure development projects in Alaska.

Our permitting systems, while not perfect, are structured under the premise that to protect public, social, economic and environmental interests, we need to make informed permitting decisions. Such decisions are to be based on sound science and rational public policy, as well as project specific proposals for activities advanced by permit applicants.

In the Alaska legislature, SB152, sponsored by Senator Hollis French, turns decades of permitting processes and the clear division of power between the legislature and the executive branch on its ear. This bill calls for the legislature to approve authorizations, licenses, permits,

or plans of operations for large mines in the Bristol Bay Watershed (Pebble). It is hard to imagine the legislature has the time, resources, and capacity to adjudicate on complex permitting issues. And exactly where does that leave our permitting agencies – the departments of Natural Resources, Fish and Game, and Environmental Conservation with their trained professional staffs and objective evaluation of permit applications on the merits, absent political interference?

While annoying, SB152 is unlikely to become law. Of bigger concern is the EPA embarking on a study of the Bristol Bay watershed, citing its 404(c) authority, to make broad land use determinations for State and private lands in advance of permit applications. Details of this federal overreach and its implications for other projects in Alaska have been well articulated in a letter from Alaska Attorney General, Michael Geraghty, to EPA Region X administrator Dennis McLerran. A full article in this issue of Resource Review highlights the state's concerns with the 404(c) effort.

Proposed departures from decades of permitting processes may seem restricted in applicability to the Pebble project, but the precedents these efforts would establish could directly impact other projects and erode the integrity of our permitting processes. Whether it's a community wastewater treatment facility, a fish processing plant, a wind farm, you name it, eroding the foundation of objective project-based permitting is a dangerous and slippery slope, and Alaskans should be wary.

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## New plan could close half of energy reserve to drilling

The Bureau of Land Management has released the Draft Integrated Activity Plan and Environmental Impact Statement for the National Petroleum Reserve-Alaska (NPR-A). The five volume document proposes several alternative future management strategies for the nearly 23-million acres of federal lands in the NPR-A on Alaska's North Slope. Public comment will be accepted through June 1.

"The remarkable resources in the NPR-A call for a sound plan, which fully considers the input of local communities and Alaska Natives, and enables the nation to harness these domestic energy supplies with the right safeguards in place," said Bud Cribley, BLM-Alaska State Director. "We need the public's input to ensure the best management plan is put in place for this area."

The draft plan proposes several alternatives for future management of NPR-A. This plan is the first that covers the entire NPR-A, including BLM-managed lands in the southwest area, which were not included in previous plans. Decisions to be made include oil and gas leasing availability, surface protections, Wild and Scenic River recommendations and Special Area designations. The plan presents four alternatives. Alternative A is the No Action Alternative and reflects current management of NPR-A established in the 2004 and 2008 Records of Decision for the Northwest and Northeast NPR-A,

respectively, and the Colville River Special Area Management Plan of 2008.

Alternative B emphasizes the protection of surface resources with substantial increases in land designations that would close more than half the petroleum reserve to oil and gas leasing and development, including areas around Teshekpuk Lake, coastal bays, and lagoons. It would also close potential rich mineral lands in the southwestern part of the reserve, which the alternative would set aside for primitive recreation and caribou habitat. It recommends the designation of twelve Wild and Scenic Rivers.

Alternative C would offer up to three-quarters of the reserve to oil and gas leasing while providing extensive surface protection stipulations near Teshekpuk Lake. It recommends three rivers for designation as Wild and Scenic Rivers.

Alternative D would allow BLM to offer all of the NPR-A for oil and gas leasing, while protecting surface values with a collection of protection measures.

Public hearings on the draft plan will be held in May in Anchorage, Fairbanks, and North Slope communities. RDC will post an Action Alert with full details at [akrdc.org](http://akrdc.org).

# Attorney General says assessment is premature, unlawful

(Continued from page 1)

is woefully insufficient for a final decision that could significantly affect the economic future of such a large region.”

## Premature assessment

Both the EPA’s watershed assessment and its potential exercise of its 404(c) veto authority over large projects in the absence of an actual Section 404 permit application from a project sponsor are “premature and unprecedented,” the attorney general wrote. He explained that a permit application for a potential project will trigger state and federal regulatory permitting authority reviews, including an impact analysis by the Army Corps of Engineers. The reviews will address the same issues EPA is attempting to consider in its “premature” assessment, Geraghty said.

“Until an application is filed describing a potential project, EPA will be speculating and prematurely determining unavoidable adverse impacts based on hypotheticals and inapplicable modeling, rather than waiting to evaluate real information on specific proposals, as Congress clearly intended,” Geraghty said.

## Lack of EPA Authority

Although the purpose of the assessment is to provide a basis for a response to the Section 404(c) petition, EPA’s ongoing watershed assessment process is neither delineated in the Section 404 statute, nor is it set forth in EPA’s implementing regulations, the attorney general noted. EPA has stated that its assessment will review potential impacts of hypothetical mining alternatives and activities. However, “the unrestricted analysis of alternatives and activities appears to overstep the Section 404 authority Congress granted EPA,” Geraghty said. He pointed out that the Corps – the agency charged with issuing Section 404 permits – is not even listed among the federal agencies EPA has enlisted to develop the assessment.

## Conflict with federal and state law

The attorney general said “the watershed assessment and a premature 404(c) determination by EPA conflict with other laws, including the Alaska Statehood Act,

the CWA, and the National Environmental Policy Act (NEPA).” He said deciding the 404(c) petition without the benefit of a project application and substantial, scientifically vetted project-specific information would infringe on the State’s management and use of its lands.

“The State selected lands with natural resource potential to provide for the economic welfare of the residents of Alaska,” Geraghty said. “A premature decision could thwart those objectives, as established by both Congress in the Alaska Statehood Act and the Alaska Legislature in a myriad of State laws.”

The attorney general said that the formation of alternatives, the consideration of direct and cumulative impacts, and the formulation of mitigation measures are the responsibility of the Corps. “But the EPA’s watershed assessment would usurp the Corps’ role,” Geraghty warned.

## Reliance on draft guidance

Geraghty wrote McLerran that the watershed assessment appears to inappropriately rely on draft guidance relating to the delineation of “waters of the U.S.” The draft guidance was released by the EPA and the Corps last spring, but has never been adopted. Many commenters, including the State and RDC, objected that the draft guidance illegally expands the scope of federal CWA jurisdiction. Geraghty said EPA should not rely on the draft guidance for its assessment.

## Lack of scientific credibility

The State has previously advised the EPA that the agency may not currently have sufficient scientifically vetted water quality and hydrological data for the area to conduct the review EPA proposes for its watershed assessment. The State charged that EPA also proposes to use inappropriate modeling and documents that are internal or commissioned reports that have limited distribution and that have not been subject to external peer review. The State also charged that EPA has contracted with at least one consultant who has publically expressed actual bias against the Pebble project.

“These aspects of the assessment are troubling, will undermine the scientific credibility of the watershed assessment, and will yield unreliable conclusions,” the attorney general said.

## Disregard of federal and state laws

Geraghty enclosed a list of laws and other documents that EPA should recognize in considering whether it is even appropriate for it to evaluate potential impacts of hypothetical development prior to submittal of a Section 404 permit application.

“This host of federal and state permitting authorities, including the Alaska Water Quality Standards and the Bristol Bay Area Plan, clearly apply to protect waters, watersheds, fish, wildlife, fisheries, subsistence, and public uses of the Bristol Bay watershed,” he said.

## Disregard of potential benefits

EPA has indicated that the watershed assessment will not consider any potential benefits of large-scale development to water quality or to human health, safety, and welfare. As a result, the assessment will present a very limited and biased assessment of only negative impacts, and will fail to disclose the state and regional benefits that might result from mine development, Geraghty said.

In February, RDC Executive Director Rick Rogers had the opportunity to meet with EPA Region 10 Administrator Dennis McLerran, along with members of the RDC board. In that exchange, Rogers expressed many of the same concerns Geraghty raised in his letter.

“RDC advocates for predictable, timely and efficient state and federal permitting processes based on sound science and economic feasibility,” Rogers told McLerran. “RDC has grave concerns regarding the 404(c) process, including the precedent it may establish for other projects and the inappropriate role it puts the federal government in dictating the disposition and use of lands conveyed to the State and Alaska Native corporations under the terms of Statehood and the Alaska Native Claims Settlement Act.”



# Scientific expertise deserves consideration

Today's polarized world presents an interesting dilemma to logical debate and respectful discussion. Society has become accepting, and often ambivalent, of street theater, failing to wade through the clutter and precipitate thoughtful, considerate dialogue. Dogmatic views, narrow opinions and intransigent positions are often presented as fact without accountability, evidence or substantiation. While some consider this acceptable, it should not function as the norm for the act of problem solving the very real and serious economic challenges facing Alaskan communities and our country as a whole.

Consistent with our promise to be open with Alaskans, the Pebble Partnership recently released its Environmental Baseline Document (EBD) to the public. While not required to present this information publicly, we did this to reinforce our commitment to responsible, sustainable development principals.

This rigorous compilation of studies conducted by dozens of the best independent environmental consultants from throughout Alaska, the Lower 48 and across the world, covers multiple science disciplines with extensive studies of the physical, biological and social environments in the region. The research covers an impressive expanse of studies, including fish, ground water, water quality, seismic, subsistence, socioeconomic, and wildlife.

Last month, this expansive body of work, which represents one of the most comprehensive research programs ever undertaken for a natural resource project in Alaska, and the reputations of the participating consultants came under expected criticism in the press. While this is a standard tactic often used by those opposed to natural resource development projects in Alaska, I find the assertion offensive with no basis in fact.

Yes, Pebble paid for these studies. Who else would invest \$120 million in research? Were the studies "slanted?" Absolutely not. Not only is the reputation of the consultants at stake, but more importantly, no one gains from inaccurate data. This information is essential for responsible development planning. Further, the scientists undertaking this work conduct research for a wide variety of entities, including non-governmental organizations (NGOs) and government agencies. Objectivity, professionalism and impartiality are critical to their business.

The Pebble Deposit in southwest Alaska is the largest known copper, molybdenum, and gold deposit in North America. Copper is an essential element driving today's technologies and a critical component of green energy. Located on state land designated for mineral exploration, it is one of two significant natural resources contained within southwest Alaska. As such, it is important to understand how it may be developed, and what impact it could have on the environment, the surrounding communities and Alaska as a whole. It is for this very reason that the Pebble Partnership has spent extensive time and effort studying virtually every aspect of the environment surrounding the Pebble Deposit.

At the turn of the last century, conservation was defined by Gifford Pinchot, a close friend of President Theodore Roosevelt, as "...the wise use of the earth and its resources for the lasting good of men." Use of resources, both renewable and nonrenewable, is fundamental to all our lives whether we choose to recognize this or not. To use them, they must be developed. To develop them, our approach must be wise.

As the former Director of the Habitat and Restoration Division for the State of Alaska, I was immersed in the regulatory world where "wise use" was essential to maintaining Alaska's environment, economy, and culture.

Alaska has a strict regulatory process, in fact, one of the most stringent in the world. Modern Alaska mines have achieved success where others have failed because of the environmental care required by the state coupled with responsible practices exercised by conscientious companies that take environmental stewardship seriously.

The EBD is a vast technical body of work that deserves thoughtful consideration. It is a foundational document that will, among other things, guide a future responsible mining plan for the Pebble deposit. The entire EBD, as well as technical summaries by chapter are available to view at [pebbleresearch.com](http://pebbleresearch.com). A condensed overview of the EBD, called the Pebble Environment, is also available at [pebblepartnership.com](http://pebblepartnership.com). If you are interested in Pebble, I hope you will invest time reviewing the studies.

Ken Taylor is Vice President, Environment for the Pebble Partnership.

## More than 65 gather in Juneau for Women in Resources

Over 65 women attended the 8th Annual Women in Resources Reception in Juneau on February 23rd. The event, hosted annually by RDC's women Board members, recognizes the women legislators and policymakers in a unique, private setting where attendees network and talk about



Jeanine St. John, Lynden, and Senator Linda Menard.

issues of importance. This year, U.S. Senator Lisa Murkowski joined the group.

Diane Scoboria, Marine Conservation Alliance, Patty Bielawski, Jade North LLC, U.S. Senator Lisa Murkowski, Rosie Barr, NANA Regional Corporation, Ella Ede, Statoil, and Andra Love, HDR Alaska.





# Make It Meaningful! Alaskans rally for reform

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Corporation; Steve Robustellini, Little Red Services; and Laura Maketa, Mak 3 Construction.

Rally organizers pointed out that since Alaska's oil taxes were dramatically increased in 2007, oil production has declined even more than predicted. When ACES was passed in 2007, production decline was forecast at 46,000 barrels per day. However, production has actually declined by 150,000 barrels per day.

"Production has declined over 150,000 barrels per day over the last four years, and North Dakota is on pace to out-produce Alaska, maybe even by the end of this year," said Jim Placquet of Operating Engineers 302 at the Fairbanks rally. "Every Alaskan is in the oil business, and we are feeling the effects of the oil companies' lack of investment in our state. Juneau needs to make it (tax reform) meaningful, and they need to make it meaningful today."

RDC board member Todd Abbott, President of Pioneer Natural Resources, said Alaska is not competitive under the current tax structure. In Alaska, an added incentive is needed to compete with states such as Texas that yield a superior return, Abbott said.

"They're easy to get to, you can drill year round, it's warm weather, it's low risk, it's quick turn, and it's a very robust service industry," Abbott said. "When I stack those projects up against projects from Alaska, it's very hard to justify spending money here when you can spend that money somewhere else for a better return."

At the Anchorage rally, Governor Parnell said, "Alaskans don't live in a world of 'we can't.' We live in a world of 'can do.' We live in a land where billions of barrels of oil are yet to be recovered. We live in a time where Alaskans can unlock this oil for our own benefit and for future generations."

Former Governor Tony Knowles agreed. "By all accounts today we are resource abundant, just as we were in 1981. The fields are harder and more expensive to develop, but we know they are there. We are not resource short; rather, we are capital investment short." Knowles warned of an approaching train wreck if the oil production decline is not arrested and called on Republicans and Democrats to formulate a united position on Alaska's "fair share" of tax revenues. He urged lawmakers to not come home from Juneau until the job is done.

"Oil fuels our economy," said Steve Robustellini of Kodiak, an employee with Little Red Services. "I left a dying timber industry when I moved my family from California 12 years ago. I have seen the consequences of lost revenue from an industry that is the lifeblood of a state. It is not so much about 'Big Oil' as it is about Alaska, its people, and communities. We need a globally competitive tax structure and long-term sustainability."

With a government take ranging from 76 to 92 percent, "Alaska must correct its high industry taxation, or the reality of a fiscal crisis will correct it for us," said Laura Maketa, the co-owner of a family-owned construction business based in Wasilla. She encouraged Alaskans to contact their elected officials and their aides to have a dialogue with them, "even if you don't think it will matter."

Cordelia Kellie of Arctic Slope Regional Corporation urged lawmakers to make significant reforms to the tax regime so that she and her fellow Alaskans will have secure jobs in Alaska. "Alaskans need



Photos by  
Judy Patrick



In top photo, Barbara Huff of Teamsters Local 959 moderates the Anchorage rally. At left, Carlisle Transportation employees rally. At right, attendees hold up comment cards urging oil tax reform.

oil tax reform so my peers will have a future in this state.

Organizations lending support to the rallies included the Alaska Bankers Association, Alaska Crab Coalition, Alaska Cruise Association, Alaska Energy Forum, Alaska Forest Association, Alaska Miners Association, Alaska Oil & Gas Association, Alaska State Chamber of Commerce, Alaska Support Industry Alliance, Alaska Trucking Association, Anchorage Chamber of Commerce, Anchorage Economic Development Corporation, Associated Builders and Contractors, Associated General Contractors, Consumer Energy Alliance Alaska, Council of Alaska Producers, Make Alaska Competitive Coalition, Prosperity Alaska, and RDC.

The Senate Resources and Finance committees held public hearings in March on SB 192, which outlines the Senate's approach to oil production tax reform. Over 70 percent of those testifying at the hearings said SB 192 would not "move the needle" in attracting new oil and gas investments to increase production.

SB 192 makes relatively minor tweaks to Alaska's oil tax structure. As the bill stood in late March, at \$130 per barrel, it would reduce oil taxes by \$300 million a year to producers, but in the context of a total State and federal government take of \$15 billion annually, it is considered immaterial and does not make the changes necessary to alter investment behavior and increase oil production.

Depending upon various assumptions, analysis of Parnell's bill (HB 110) indicates it would reduce taxes by \$1-1.5 billion per year at a time when the state is forecast to have a \$2.9 billion revenue surplus next fiscal year, and has built up reserves of \$15 billion. The governor has cited industry statements committing billions of dollars in new investments if the tax structure is changed along the lines of HB 110. By comparison, the Senate proposal would reduce taxes by a fraction of the amount in the Governor's bill, at a time when total State revenues are forecast to be almost \$8-10 billion per year.

A state consultant told senators last month during committee hearings that tax levels in Alaska make the economics of new projects "very challenging." The consultant said the effects of the Senate's bill would be "negligible" at attracting investment and boosting production at current oil prices.

# Looming ocean policy: How will it impact Alaska?

By Marleanna Hall

The National Ocean Council recently accepted comments on the Draft Implementation Plan of the National Ocean Policy, a policy that will likely add another layer of bureaucracy with no added benefit to the environment.

The National Ocean Policy will likely negatively impact the nation's economy, adding more regulations to industries including fishing, transportation, oil and gas development, and tourism, causing harm to the livelihood of millions of Americans.

Alaskans, with 34,000 miles of coastline, 3,000 rivers, and over three million lakes, have a significant stake in National Ocean Policy, and will be impacted more than other states by the Policy. Coastal and rural Alaskan communities may become financially devastated by National Ocean Policy enforcement.

In a March 2 letter, Department of Fish and Game Commissioner Cora Campbell, wrote "Alaska is committed to protecting the health and productivity of its coastal and marine resources." She noted that any major proposed policy change related to the oceans has the State's full attention.

The Draft Plan includes 53 actions and almost 300 benchmarks, of which more than half are supposed to be completed by the end of 2013. The Draft Plan calls for the federal government to make a "land grab" of millions of acres, both on and offshore, as well as apply regulations to both land and water based activities.

It is a policy of RDC to support efforts to reduce federal interference and devolve more authority to the states. The National Ocean Policy does not do that.

Alaska's resources are vital to its economy. Alaska, and the U.S., can benefit from largely untapped resources such as the estimated 27 billion barrels of oil and the 132 trillion cubic feet of natural gas in the Outer Continental Shelf. RDC recently advocated that development of these resources must not be further restricted or further hindered by unnecessary bureaucratic delay.

As currently proposed, National Ocean Policy will further limit domestic energy development and harm the nation's economy, business and industry leaders warn. They maintain that access to resources must be allowed, and uncertainty and unnecessary regulations that offer no added benefit to the environment avoided.

Responsible development of these resources creates jobs in rural Alaska communities. Local economies could be at risk if overly burdensome regulations are added to existing and new projects.

In part, Alaska was granted statehood due to its vast natural resources, with Congress expecting the new 49th state to utilize its natural resources to build and sustain its economy.

RDC Executive Director, Rick Rogers, testified April 2 to the U.S. House Natural Resources Committee's Subcommittee on Fisheries, Oceans, Wildlife and Insular Affairs in Anchorage addressing "Alaska's Sovereignty In Peril: The National Ocean Policy's Goal To Federalize Alaska." Congressman Don Young hosted the Alaska meeting, and U.S. Senator Lisa Murkowski was also present.

In Young's opening remarks, he said, "the reach of this ocean



RDC Executive Director Rick Rogers and board member Stephanie Madsen, along with Doug Vincent-Lang of the Alaska Department of Fish and Game testify at a congressional field hearing in Anchorage.

policy will stretch throughout almost the entire state and affect almost all activity that requires a federal permit. Any new federal initiative that affects our ability to use these natural resources will cost jobs."

Murkowski warned, "one size fits all standards rarely work for Alaska." The Senator added, "we recognize that this is another attempt by the executive branch to tell us how we can and how we cannot use our oceans and our coasts."

In his testimony, Rogers explained, "the National Ocean Policy adds yet another hurdle to overcome, and may serve to provide an additional platform for third party eNGOs to litigate against projects that appear to lack the informational requirements or expectations for the National Ocean Policy."

Rogers noted, "RDC shares the concerns expressed by Alaska Governor Sean Parnell and the six other Governors in the Outer Continental Shelf Governors Coalition in their letter to President Obama dated March 13. In that correspondence, the Governors raise concerns of unintended consequences for all types of energy development. The same unintended consequences are likely to also affect fisheries, forestry, mineral development, and tourism activities."

Any new action by the National Ocean Council should not further hinder Alaska's ability to responsibly develop its resources, creating jobs and a healthy economy, RDC cautioned.

In a March 28 letter to the National Ocean Council, RDC questioned how the policy could proceed without Congressional authorization. Noting that implementation of the Plan will likely cost a considerable amount of federal dollars and that it adds another level of bureaucracy to already highly regulated and protected oceans and surrounding areas.

RDC once again recommended efforts focus on reducing unnecessary measures and improve existing programs and policy.

The Draft Plan called for improvement of Arctic development response, coordination of science and data, and new studies. The National Ocean Council must ensure the new studies and efforts do not unnecessarily delay or curtail activities, effectively making those activities non-viable.

Before further proceeding, the National Ocean Council must fully consider the potential economic impacts that the National Ocean Policy may have on industries across the nation, including fishing, oil and gas, energy, mining, transportation, tourism and more, RDC noted. To view RDC's comments, visit [akrdc.org](http://akrdc.org).

# Governor Parnell promotes Alaska tourism and fisheries

By Deantha Crockett

Last month, Governor Sean Parnell promoted Alaska's seafood at the world's largest seafood trade show, the International Boston Seafood Show, where he spoke to international fisheries experts on Alaska's history and commitment of managing its fisheries for sustainability.

Immediately following, the Governor attended Cruise Shipping Miami, an annual convention attended by worldwide destinations and cruise-related businesses.

In addition to meeting with cruise line executives, Parnell appeared at Alaska's trade show booth and met with many Alaskan business owners in attendance. The Governor's visit marked the third consecutive year he has traveled to Miami to promote Alaska's tourism industry.

"The seafood and tourism sectors of Alaska's economy are on a definite upswing,"



Governor Sean Parnell traveled to Miami in March to pitch Alaska as a tourist destination. To the right of Parnell is John Binkley, President of the Alaska Cruise Association.

(Photo by Deantha Crockett)

Parnell said. "We are carrying our message to the markets to ensure continued growth in our economy. My message is that our

wild Alaska seafood comes from sustainable fisheries, and our state is excited about bringing more visitors to Alaska."

## Dittman poll shows strong support for tax reform, big projects

A public opinion survey conducted in early March by Dittman Communication Corporation of over 1,000 Alaskan voters statewide revealed 59 percent of respondents support major reform of Alaska's oil production taxes to attract new industry investment to boost production, while only 23 percent believed no changes should be made.

The Dittman poll asked dozens of questions relating to Alaska's economy and big potential projects, including an instate gas pipeline, the Susitna hydroelectric project, and the Knik Arm Bridge.

Tracking polls over the past year by Dittman show increasing support among Alaskans for oil tax reform. In less than a year, support for repealing ACES is up six points while support for modifying the tax structure has increased seven points. The number of Alaskans opposing changes to ACES has declined seven points.

While respondents leaned toward supporting the Senate's methodical process in considering modifications to the tax structure, 89 percent think oil tax reform is either extremely important or somewhat

important this year. The poll has a margin of error of 3.1 percent.

On the issue of state taxes, 54 percent believe lower taxes will generally result in greater business investment in Alaska.

Support for major oil tax reform was highest in urban areas, including Anchorage, Fairbanks, and Southcentral. In Anchorage, 67 percent of respondents supported reform, but only 49 percent of Southeast did, however, only 34 percent there wanted taxes to remain as high as they are today.

On other major issues, 53 percent of Alaskans statewide support construction of the Susitna hydroelectric dam, while 28 percent oppose it. Support was strongest in the Interior where 63 percent support the project, while 54 percent in Anchorage are supportive.

With regard to the proposed Knik Arm Bridge, the poll revealed 37 percent of Alaskans support immediate construction while 32 percent believe the state should wait until later to build it. Only 26 percent think it should never be built. Among those provided with additional information on the bridge, support grew to 65 percent for

immediate construction, 19 percent said wait until later, and 13 percent remained in opposition.

On the Pebble project, Alaskans were nearly split on the project moving into the permitting process. Support for the permitting process was strongest in urban areas, with 55% of Interior residents supportive, followed by 53 percent of Anchorage residents. Only 34 percent of Interior residents were opposed to the project moving into permitting while 41 percent of Anchorage respondents did not approve. Support for the project was weakest in rural areas where 62 percent of respondents were opposed to the project going into the permitting phase.

On the issue of coastal zone management, the largest percentage of Alaskans, 49 percent, agreed that a program should involve local communities at the advisory level only. Forty-four percent felt local communities should have the ability to put conditions on or stop proposed projects. See poll results at: [housemajority.org/chenault/pdfs/27/2012\\_Alaska\\_State\\_House\\_Survey\\_Presentation\\_Final.pdf](http://housemajority.org/chenault/pdfs/27/2012_Alaska_State_House_Survey_Presentation_Final.pdf)



## Alignment on Point Thomson, gas pipeline

Governor Sean Parnell announced at the end of March that two major milestones have been met in efforts to bring Alaska's natural gas to Alaskans and markets beyond.

First, the State resolved its litigation with leaseholders over the Point Thomson field, which holds a quarter of the North Slope's known natural gas. Second, ExxonMobil, ConocoPhillips, BP, and TransCanada, through participation in the Alaska Pipeline Project, announced they have agreed on a work plan aimed at commercializing North Slope natural gas resources within an Alaska Gasline Inducement Act (AGIA) framework.

Because of a rapidly evolving global

market, large-scale liquefied natural gas (LNG) exports from southcentral Alaska will be assessed as an alternative to a natural gas pipeline through Alberta.

With Point Thomson legal issues now settled, the producers are moving forward with the initial development phase of the Point Thomson project.

"The recent Point Thomson settlement lays out strong near-term production commitments and a clear path for full development of the field's significant oil and gas resources, and it establishes clear consequences if the companies do not follow through," said Alaska Natural Resources Commissioner Dan Sullivan. "The



ExxonMobil will be the operator of the Point Thomson field east of Prudhoe Bay.

companies have agreed to firm timetables for production at Point Thomson. This will result in significant new investment, increased work for Alaskans and increased revenue for state and local government." Sullivan spoke to a sold-out RDC breakfast forum April 5. View video at [akrdc.org](http://akrdc.org).

## Homeowner wins Idaho wetlands case

In a late March decision, the U.S. Supreme Court ruled unanimously that property owners facing an Environmental Protection Agency (EPA) compliance order under the Clean Water Act (CWA) can seek judicial review before being forced to comply.

The case, *Sackett vs. EPA*, involved the Sacketts, a couple in Priest Lake, Idaho, who challenged EPA's issuance of a CWA compliance order against them for filling wetlands without obtaining a permit. The couple did not believe their 0.63 acre lot contained wetlands, but they had no legitimate avenue to challenge EPA's determination without subjecting themselves to an EPA enforcement action and huge fines.

After obtaining all local permits to build a modest home in Priest Lake, the Sacketts cleared their lot and laid gravel in preparation to pour the foundation. But before they could go any further, officials from the EPA showed up and declared their property a wetland. They denied the Sacketts a hearing and ordered them to restore the property, plant wetland vegetation that was not there before and wait up to five years for it to grow, and then apply for a CWA permit. If they did not comply, they could be subject to \$75,000 per day in fines.

The Sacketts were represented by the Pacific Legal Foundation.

The government argued that the Sacketts'

claim was invalid because judicial review is available once enforcement actions go to court. The Court disagreed, finding that the Sacketts should be able to contest EPA's findings under the Administrative Procedures Act (APA). The Justices found that the CWA does not preclude review under the APA.

In the majority opinion, Justice Scalia said the CWA's "presumption of judicial review is a repudiation of the principle that efficiency of regulation conquers all....there is no reason to think that the CWA was designed to enable the strong-arming of regulated parties into 'voluntary compliance.'"

As a result of the *Sackett* decision, the EPA will be forced to change how it does CWA enforcement. The agency issued 1,300 compliance orders last year.

Though the case focused on the CWA, it could have implications for EPA's use of compliance orders under other statutes such as the Clean Air Act.

The case will also likely be used for legal arguments in various other litigation arenas dealing with the CWA's jurisdictional reach.

Governor Sean Parnell welcomed the news that the Supreme Court unanimously overturned a 9th Circuit Court of Appeals decision denying the property owners access to the courts.

The State of Alaska took the lead on a multi-state brief urging the Supreme Court

to permit property owners to challenge federal compliance orders.

When the Sacketts asked a court to review whether the EPA had jurisdiction over their property, the trial court and the 9th Circuit held that the CWA precludes pre-enforcement judicial review of the compliance order. Instead, the Sacketts would have only two choices. They could wait for the EPA to sue them to enforce the order, and in the meantime accrue huge fines. Alternatively, the Sacketts could restore their lot to its original condition, conduct a three-year environmental monitoring program, and request a permit to redo the work they had already done. Only then could the Sacketts ask the court to determine the reach of the federal agency's jurisdiction.

The Supreme Court found that neither option provided the Sacketts with a meaningful remedy, and that the Sacketts should have an avenue to challenge the order now.

"This ruling is great news for the Sacketts and for Alaskan families," Governor Parnell said. "Alaska is vulnerable when it comes to EPA regulations. Alaska possesses the largest geographic footprint of any state, more wetlands than all other states combined, and more coastline than the entire contiguous 48 states. We will continue to fight to protect property owners."

# Shops empty as oil production declines, many workers head south

By Tim Bradner, Alaska Journal of Commerce

When a film producer called up CH2M HILL's area manager Tom Maloney a few weeks ago to ask if the company's empty fabrication shop could be used as space for film production, it was the last straw.

Maloney's job includes keeping the shop full and its people working.

"I was tempted – it was revenue – but I just couldn't let it happen on the odd chance that we might get some work into the shop," Maloney said.

Alaska's once-bustling oilfield fabrication shops are now empty, CH2M HILL's among them. ASRC Energy, which also operates a fabrication shop in south Anchorage, reports a similar situation.

Last year the welders, pipe fabricators and electrical technicians were busy building things for the oil fields. Not this year.

NANA/Colt Engineering operates a facility in the Matanuska-Susitna Borough, and Flowline Inc. does fabrication as well as pipe-coating at its Fairbanks plant.

Everyone is in the same boat, Maloney said.

"I've never seen things so bad. Even in 1998, oil prices dropped to \$10 a barrel but we were still busy. That's because people were optimistic, and planning new projects. They knew the oil price would go back up," Maloney said. "Now prices are almost \$120 a barrel and we've got this pessimism. We're losing our key workers to North Dakota where oil work is booming."

Maloney puts the blame for things on the impasse squarely on the Legislature's inability to agree on a needed adjustment to the state oil and gas production tax, which he says are too high. That is impeding new investment by oil producers and new projects to keep CH2M HILL's workers busy.

The state House passed a bill last year, House Bill 110, which would lower the taxes, but the Senate disagreed. Senators are now working on their own proposal, but state House leaders and Gov. Sean Parnell are dubious that it will be enough to make a difference.

Meanwhile, CH2M HILL's 100-plus workers normally at work in the fabrication shop aren't there.

These employees, and those who work for the company's competitors in Anchorage, Kenai and Fairbanks, are indirectly employed by Alaska's oil industry but many don't show up counted as oil workers in state labor statistics.

"Our people live in Anchorage and Mat-Su and they work here. They don't go to the Slope," Maloney said.

The last big jobs the fabricators had was two years ago on the building of Eni's small Nikaitchuq oil field on the slope, and before that it was the construction of the Ooguruk field by Pioneer Natural Resources. Both companies built many of their production facilities in Alaska as "truckable" modules that could be constructed in Anchorage and moved by road to the North Slope.

A boom time for the fabricators was from 1998 through 2000 when the Alpine and Northstar oil fields were being developed by ConocoPhillips and BP, and large "sealift" modules, so large they

had to be moved to the slope by barge in summer, were built in Anchorage and Nikiski, near Kenai.

Since then there have been a steady stream of smaller projects, mostly facilities for expansions of the large oil fields, and then the new fields by Pioneer and Eni. Since then, the work has dried up.

When oil companies decide to build their projects in Alaska the decision has a much bigger economic impact than just the module-building, because companies like CH2M HILL are also asked to help install the modules on the Slope, which creates a lot more jobs.

"With the Eni project we had 120 in our 'fab' shop, working 70 to 80 hours a week, and we had 350 at the site on the slope, on installation. At one time we had as many as 600 working for Eni," Maloney said. "Now it's zero."

Engineering work comes along with a fabrication contract, too, and this creates additional jobs. Terry Bailey, a CH2M HILL vice president responsible for engineer services, recalled that during a particularly busy period when the company was doing the engineering on the CD-3 and CD-4 drill sites for the Alpine field and the DS 1-J drill site in the Kuparuk River field that CH2M HILL had 175 people employed in the design work, and 60 to 70 hour work weeks were the norm.

Not all of those people were engineers. Typically 30 percent to 40 percent of those in the engineering group were support people doing data management, Bailey said.

Module work always had its peaks and dips, said Nate Andrews, CH2M HILL's manager for the fabrication plant, but the company has always tried to keep a core group of about 60 skilled and experienced fabrication workers busy, to retain them.

With no work in the plant it's getting really tough to keep these workers, Andrews said.

"The problem we now have is that we're losing our core workers to North Dakota, as well as Alberta. They can work three weeks on and three off, and the employers will fly them back and forth," Andrews said.

If work picks up in Alaska, CH2M HILL will be able to get some of these workers back, but not all.

"They can see years of work down there. Why come back here when it's start-and-stop?" he said.

Maloney said these workers, including project managers and supervisors, are critical.

"Without people like these you're not in the construction business," he said.

Andrews said the company is doing everything it can to hang onto these experienced people including putting them temporarily into CH2M HILL's field maintenance jobs on the North Slope or on loan to the company's well service group.

This isn't enough to take care of everyone, however, so the company has initiated a "work-load imbalance" program where it has had to furlough workers, but with benefits. There are about 75 people temporarily furloughed for now, who are on call.

"Some of these people haven't worked since last November," Maloney said.

Editor's Note: This article was republished from the March 25 edition of the Alaska Journal of Commerce.



Tom Maloney

# Industry digest

## RDC objects to ESA draft policy directive

RDC provided comments last month on a federal policy proposal regarding the interpretation of "significant portion of range" as it applies to implementation of the Endangered Species Act (ESA).

RDC members are significantly and directly impacted by the implementation of the ESA, noted Executive Director Rick Rogers. "The preponderance of recent and pending listings of species and distinct population segments in Alaska is compounding the challenges of responsibly developing and appropriately managing the natural resources of Alaska that are critical to Alaska's economy," he said.

The implications of the draft policy are complex and profound, Rogers explained. He said the draft policy is troubling and just one in a seemingly endless array of policy directives, guidance documents, and rulemakings coming from a multitude of federal agencies.

"Such an approach flies in the face of this administration's stated goals for more regulatory efficiency, increased domestic energy production, and economic recovery and job creation," Rogers said.

"Imposing additional burdens on commerce, communities, landowners, and industry for no public benefit cannot be aligned with congressional intent for protecting species and in the long term can only serve to undermine public support for species protections afforded by the ESA," Rogers warned.

The proposed policy applies protections across the entire species range when only a portion of its range warrants protections. RDC strongly objected to the listing of a species throughout its entire range, rather than looking to the portion of its range where the species is actually at risk. Please see full comments at: [akrdc.org](http://akrdc.org).

## State intervenes in navigable waters case

U.S. Federal District Court Judge Russell Holland has issued an order recognizing the State of Alaska's interest in challenging federal authority over State-owned navigable rivers and submerged lands.

The state is now a party to a lawsuit by plaintiff John Sturgeon, an Anchorage resident challenging the authority of the National Park Service to regulate activities on State-owned waters within national parks and preserves in Alaska. Sturgeon is an RDC board member from the forest products industry.

Citing National Park Service regulations, park rangers have prevented Sturgeon from operating his hovercraft on the Yukon and Nation Rivers within Yukon-Charley National Preserve. The Yukon and Nation Rivers are navigable, State-owned waterways, and hovercrafts are legal under Alaska law.

Under the Alaska National Interest Lands Conservation Act (ANILCA), the State says Park Service regulations cannot be applied to State land or water that lies within national parks and preserves.

"My administration will continue to aggressively push back on federal overreach, and efforts to control Alaskans' ability to travel on rivers and waterways," Governor Parnell said. "I am pleased the court recognized Alaska's strong interest in this issue over the objections of the federal government to our participation in the case."

## Feds finalize new Forest Planning Rule

In late March, the U.S. Department of Agriculture finalized a new Forest Planning Rule that will require mandatory components to restore and maintain national forests and grasslands, including requirements to protect plant and animal diversity, wetlands, watersheds, water quality, ecological integrity of riparian areas, fish

and wildlife, and outdoor recreation. It also provides multiple uses, including timber harvesting.

The rule essentially revises policies guiding land and resource management planning for all units of the National Forest System under the National Forest Management Act of 1976.

The new rule reflects the Forest Service's most recent effort to revise the regulatory framework for developing, amending, and revising land management plans for the 155 national forests and 20 grasslands in America. The Service's proposal is just the latest chapter in a protracted and torturous history associated with the Service's planning process.

Unfortunately, the draft rewrite continues the pattern. "The proposal is a thinly-veiled attempt to shift the USFS' mission from managing the responsible use of National Forest System resources to other purposes," said Holly Propst, Executive Director of the Western Business Roundtable. "That makes it legally suspect. Further, the rule fails on regulatory efficiency grounds. It, too, promises to be costly, complex and procedurally burdensome."

In earlier comments on the issue, RDC warned that the Forest Service, through the new rule, is attempting to unilaterally shift its mission by simply redefining what "multiple use" means. Of particular concern is the inclusion of an expansive and vaguely-defined category of obligations defined as "ecosystem services."

## RDC comments and testimony online

Over the past two months, RDC has filed comments on a wide range of federal and state issues and testified at numerous hearings on legislation and big projects spanning Alaska's resource industries. There were far too many hearings and issues to cover them all in this edition of Resource Review. However, comments and testimony are available online at [akrdc.org](http://akrdc.org).

Testimony was presented on oil production tax reform, litigation reform, the creation of the Susitna State Forest, resource education in public schools, AIDEA Sustainable Energy Program, legislative approval of a Bristol Bay Sulfide Mine, oil and gas tax credits, the plugging of legacy wells in NPR-A, the DEIS on Effects of Oil and Gas Activities in the Arctic Ocean, NEPA-CEQ Draft Guidance, the Susitna Hydro project, Point MacKenzie rail extension, and the Shadura Natural Gas Project, and more.

## RDC Annual Meeting set for June 21

John Hofmeister, President of Citizens for Affordable Energy, and former President of Shell Oil Company, will be the keynote speaker at RDC's 37th Annual Meeting Luncheon Thursday, June 21 at the Dená'ina Convention Center in Anchorage. The luncheon is one of the largest business functions held in Anchorage annually, attracting over 1,000 attendees.

Hofmeister is a frequent energy commentator on CNBC. Upon his retirement from Shell in 2008, Hofmeister founded the not-for-profit nationwide association, Citizens for Affordable Energy, which promotes sound U.S. energy security solutions for the nation. He has held key leadership positions at General Electric, Nortel, and Honeywell.

## Coal Classic Golf Tournament is June 13

Alaska Resource Education's 20th Annual Coal Classic Golf Tournament will be held on Wednesday, June 13 at the Anchorage Golf Course. For sponsorship and participation information, please call 907-276-5487, email [golf@akresource.org](mailto:golf@akresource.org) or visit: [akresource.org](http://akresource.org).





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