

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

Pebble Ltd. Partnership,)	
Pebble Mines Corporation,)	OAH Case No. 09-0231-APO
Resource Development Council)	
v.)	
Renewable Resources Coalition, Inc., Alaskans)	APOC Case No. 09-01-CD
for Clean Water,)	
Americans for Job Security,)	Consolidated with:
Robert B. Gillam,)	
_____)	
APOC)	APOC Case No. 09-04-CD
v.)	APOC Case No. 09-05-CD
Michael Dubke)	APOC Case No. 09-06-CD
Arthur Hackney)	
Richard Jameson)	

CONSENT DECREE BETWEEN THE ALASKA PUBLIC OFFICES COMMISSION AND RENEWABLE RESOURCES COALITION, ALASKANS FOR CLEAN WATER, MICHAEL DUBKE, ARTHUR HACKNEY, RICHARD JAMESON, AND ROBERT B. GILLAM

This Consent Decree is entered into in connection with the above referenced administrative action presently pending before the Alaska Public Offices Commission.

I. Summary of Proceedings Leading to Consent Decree

The parties to this Consent Decree are the respondents Renewable Resources Coalition (“RRC”), Alaskans For Clean Water (“AFCW”), Michael Dubke, Arthur Hackney, Richard Jameson and Robert B. Gillam (“Gillam”) (collectively “The Respondents.”); and the Alaska Public Offices Commission (“APOC”).

The Respondents and the APOC Staff (“Staff”) collectively are referred to in this Consent Decree as “The Parties.”

This Consent Decree is entered into in connection with two complaints. First, the complaint filed by the Pebble Limited Partnership, Pebble Mines Corp., and Resource Development Council (“Complainants”) on March 20, 2009 against RRC, AFCW, Americans for Job Security (“AJS”) and Gillam. (The allegations against AJS were resolved in a consent decree approved by APOC on September 24, 2009). The second complaint was filed by the Staff against Dubke, Hackney, Jameson and Gillam on June 4, 2009.

A. The March 20, 2009 Complaint

The Staff investigated the March 20 Complaint and felt that a preponderance of the evidence supported certain allegations that the Respondents violated the Alaska campaign disclosure law, AS 15.13, as Staff interpreted that law, in the campaign for a ballot measure in the August 2008 state primary election. The Staff Report issued June 4, 2009 alleged that AFCW, RRC and Gillam committed 13 of the original 14 allegations against them. Details of those allegations are contained in that document.

In its response to the complaint, RRC acknowledged two violations of failing to report independent campaign expenditures. RRC characterized the violations as de minimus innocent oversights. RRC offered to file 15-6 forms disclosing the expenditures if ordered to do so by the Commission.

AFCW, RRC and Gillam denied any and all other allegations and objected to the complaint and staff conclusions on various legal and factual grounds. Details of AFCW, RRC and Gillam’s denials and objections are contained in, but not limited to, the responses and dispositive motions previously filed by them in this proceeding.

B. The June 4, 2009 Complaint

During the investigation of the March 20 Complaint, the Staff came to believe the evidence supported a finding that Dubke, Hackney, Jameson and Gillam acted as a “group,” as it interpreted that term to be defined by Alaska law, and that they failed to register with and report to the APOC as required by AS 15.13.050, AS 15.13.040, and associated regulations. These individuals denied any violation on various legal and factual grounds, including those set forth in their responses to the complaints and related motions.

C. Intent of Agreement

This Consent Decree is intended to resolve any and all proceedings between the APOC and Respondents with respect to all allegations contained in both the March 20 and June 4, 2009 Complaints. The Parties understand that this Consent Decree is not effective unless and until it is approved by the Alaska Public Offices Commission. The Parties agree that the pre-hearing deadlines, applicable to proceedings involving the Respondents in this matter, shall be suspended pending review, consideration, and approval of this Consent Decree by the Alaska Public Offices Commission.

II. The Facts.

The facts are not materially in dispute. The Respondents have fully cooperated with the investigation by the Staff. They voluntarily have provided sworn testimony and produced an extensive range of documents and records. As a result, the factual record has been fully developed. The facts set forth here are an agreed upon set of facts and form the basis for this Consent Decree.

A. Common Facts

RRC, a non-profit corporation established in 2005, is a coalition of individuals and interest groups concerned with water quality issues in the Bristol Bay watershed, protection of the salmon fishery and wildlife, and preventing the development of the proposed Pebble Mine.

AFCW was established as a non-profit organization whose purpose was to raise money for and advocate in support of the Clean Water Initiative known as Ballot Measure 4 on the August 26, 2008 state primary ballot.

Michael Dubke is a resident of Virginia and is a professional, paid media and political consultant. At different times, and for different purposes, Mr. Dubke was hired by RRC, AFCW, and Gillam, personally, to provide information, analysis, and strategic advice concerning the support and enactment of Ballot Measure 4 and the task of educating Alaskans about the costs and risks presented by mining operations in environmentally sensitive areas of Alaska.

Arthur Hackney is a resident of Alaska and was an original board member of RRC until his resignation in April of 2007. Mr. Hackney also served as a member of the board of Americans for Job Security and as a professional, paid consultant to RRC, AFCW, and Alaska Wild Salmon Protection, Inc.

Richard Jameson is a resident of Alaska and is the founder and current chairman of RRC and the Renewable Resources Foundation.

Robert B. Gillam is a resident of Alaska. Gillam was a substantial supporter and contributor to RRC, AFCW and the proposed clean water initiatives, one of which became Ballot Measure 4 in the August, 2008 primary election.

B. Facts relevant to March 20, 2009 Complaint

Staff believes that RRC was required to register as a campaign group and report all financial transactions advocating passage of the ballot initiative, including collecting, pooling, soliciting and spending money to influence the outcome of the vote. RRC maintains that it was not a campaign group as defined by AS 15.13.400; that it did not collect, pool and solicit money for the purpose of influencing the ballot measure campaign; that it did not have reportable expenses; and that it was not required to file disclosure reports.

Gillam was a board member of RRC for a short period of time in 2005, but he withdrew from the board after a few months. Mr. Gillam has consistently made financial contributions to RRC since shortly after its organization.

In the May/June timeframe of 2008, AJS became aware that Gillam was interested in becoming a member of AJS. On June 19, 2008 Gillam contributed \$1,000,000 to AJS. On June 20, 2008 AJS contributed \$750,000 to Alaskans for Clean Water. On July 11, 2008 Gillam contributed \$500,000 to AJS; On July 15, 2008 AJS contributed \$450,000 to AFCW. On July 22, 2008 Gillam contributed \$500,000 to AJS, and on August 1, 2008 AJS contributed \$400,000 to AFCW. AJS and Gillam executed documents stating that AJS was to have complete legal control over any funds once a contribution was made to it. AJS independently made the decision to contribute the funds to AFCW. AJS believed

that it was in compliance with reporting requirements, given that any funds were legally in AJS' name for all purposes, if it reported its contributions in its own name. AJS reported the contributions it made to AFCW, in its own name, to the APOC in a timely fashion. AJS has a policy of keeping the identities of its membership confidential. AJS did not believe that it could legally directly become involved in managing or carrying out a ballot initiative campaign while keeping its membership identities confidential and for this reason, in order to comply with what it thought was the law, forwarded funds to AFCW to be used in connection with the ballot initiative campaign and retained funds for use in an issue related campaign not directly related to the ballot initiative. AJS believed it was required to report the contribution to AFCW in its own name and did so.

On June 2, 2008 Gillam contributed \$350,000 to RRC. He had previously made numerous similar contributions to RRC. On June 4, RRC contributed \$150,000 to AFCW. The Staff believes that the contribution by RRC to AFCW was a contribution in the name of another – i.e., Mr. Gillam, and was a violation of AS 13.15.074. The Staff contends that Mr. Gillam should have reported that contribution in his own name and that AFCW should have reported that contribution as having come from him.

Mr. Gillam maintains that the funds were contributed to RRC without any understanding or agreement as to what RRC would do with them and that, upon RRC's receipt of the funds, Mr. Gillam had no control over RRC's use of those funds. The President of RRC similarly testified that there was no prior agreement as to how these funds would be used. Mr. Gillam's position, supported by RRC, is that the decision to make a contribution to AFCW was made entirely by RRC and that its contribution was

properly reported as having been made by RRC. As a matter of law, Mr. Gillam further contends that the statute as written exempts donors to ballot measure campaigns from the limitations of section .074 and that section .074 does not prohibit “pass through” or “conduit” contributions and that this transaction was not a violation of the law. Mr. Gillam contends, for the same reasons as relate to the contributions to and by RRC, that the contributions to and by AJS were not a violation of the law.

Mr. Gillam made a \$30,000 payment to Fund Raising, Inc. (FRI) which had a contract to raise money for AFCW, RRC and the Renewable Resources Foundation. He also paid for RRC to run two advertisements in two national magazines (On Target and Fly Fishing America). The Staff contends that Mr. Gillam’s payments of these expenses for RRC were in-kind contributions to AFCW and should have been reported as such.

Mr. Gillam asserts that the payment to FRI was to pay FRI for its upfront fee to raise funds for RRC for its normal operations, not AFCW, and that it was not an in-kind contribution to AFCW. Mr. Gillam also contends that the costs of the two advertisements were not required to be reported as in-kind contributions because they concerned only RRC and the Pebble Mine Project, and did not even mention Ballot Measure 4 or AFCW. Therefore, the advertisements were not campaign related.

In August of 2008, Mr. Gillam contributed \$585,000 to AFCW, which AFCW reported as required. However, the Staff maintains that Mr. Gillam had an independent obligation to report such activity on a Form 15-5 Statement of Contributions, and that he did not do so by September 15, 2008. On May 29, 2009, when it first became evident that the Staff did not have all of his reports of contributions in its possession, Mr. Gillam

immediately forwarded a copy of all such reports he had prepared to the Staff. Included in these documents was the Form 15-5 report of his contribution of \$585,000, which was dated as signed on September 12, 2008. Mr. Gillam believes that this report was timely signed and submitted as required by law, and that he is not responsible for the report's absence from APOC's records. Further, Gillam contends that technical issues with APOC's fax machine and/or errors in documenting receipt of faxes are to blame for the report's absence. Under APOC's Civil Penalty Assessment Appeal Mitigation Criteria, this "Potential technical error at APOC" (which includes fax machine errors) could qualify a respondent for a 50% reduction in civil penalties.

The Staff further contends that Mr. Gillam's support of Alaska Wild Salmon Protection, Inc. ("AWSP") and its activities somehow violated lobby disclosure laws. Mr. Gillam contends that AWSP properly reported all of its lobbying activity and there is no requirement that such a trade group report the source of its funding and therefore, his support of that group did not violate any law.

Staff felt that a preponderance of the evidence supported the allegation that AFCW violated AS 15.13.114 and 2 AAC 50.258, as the Staff interpreted the law, by receiving contributions from RRC and AJS and allegedly failing to properly report all monetary and in-kind contributions. AFCW maintains that, consistent with the positions of the other respondents, the contributions were not made in violation of the law, and all contributions that were required to be reported were in fact reported.

RRC, AFCW and Gillam believe that the Staff is applying the law in ways which are unprecedented, improper and violate their constitutional rights. These same

respondents also contend, and the evidence adduced in this matter confirms, that they sought and obtained legal advice confirming that their activities were legal and appropriate and took steps to attempt to ensure that their conduct and activities conformed to the requirements of Alaska Law.

RRC sought and obtained an advisory opinion from the Alaska Public Offices Commission in the Spring of 2008 which was shared with other Respondents. (APOC Advisory Opinion No. AO 08-02-CD, dated as approved April 23, 2008). This opinion concluded that activities limited to education regarding the proposed Pebble Mine, and that did not mention Ballot Measure 4 or advocate for its passage, were not required to be reported as campaign activities. RRC, AFCW and Gillam relied on this opinion to guide their activities.

Under the definition contained in APOC's Civil Penalty Assessment Appeal Mitigation Criteria, RRC, AFCW and Gillam are all inexperienced filers, in that 2008 was the first year that they filed campaign finance disclosures. Under the Mitigation Criteria, this designation can qualify a respondent for a 50% reduction in civil penalties.

C. Facts relevant to June 4, 2009 Complaint

In 2007, several individuals, including certain of the individuals named as respondents, contemplated preparation of a ballot initiative aimed at imposing heightened water quality standards and other requirements on certain mineral mines in Alaska. The ballot initiative came to be known as the "Clean Water Initiative." AFCW was established as a non-profit organization whose purpose was to raise money for and

advocate in support of the Clean Water Initiative. AFCW registered with the APOC as a ballot measure group and filed reports of its activities.

Because of the overlapping areas of interest between RRC and AFCW, and, in some instances, because of pre-existing personal and professional relationships, the Pebble-related activities of RRC, AFCW, Dubke, Hackney, Jameson and Gillam brought these individuals and organizations into contact with one another in a number of different ways.

As discussed above, Robert B. Gillam was a board member of RRC for a short period of time in 2005, but he withdrew from the board after a few months. Mr. Gillam has consistently made financial contributions to RRC since shortly after it was organized. He also made financial contributions to AJS which, thereafter, provided financial support to AFCW. Mr. Gillam also personally hired Michael Dubke to perform research and analysis in connection with public attitudes toward the Pebble Mine project.

Art Hackney is a member of the board of AJS, and was a member of the board of RRC until he resigned in April of 2007. Mr. Hackney was retained by AFCW and RRC, and also by Alaskans for Wild Salmon Protection, Inc., to provide media and political consulting services in connection with Pebble Mine related activities by those organizations. Mr. Hackney had a pre-existing personal and professional relationship with Michael Dubke, who previously served as AJS's president and currently works as a media and political consultant.

Michael Dubke was retained at different times by RRC, AFCW, and by Mr. Gillam personally, in connection with issues and interests they each wished to pursue in

connection with Pebble Mine related issues. In the course of his work, Mr. Dubke necessarily came into contact and worked with the other Respondents.

Richard Jameson currently serves as RRC's chairman and was president from its founding in 2005 until January of 2009. In that capacity, he had occasion to work with the other Respondents in connection with Pebble Mine related issues.

Staff believes that actions and communications by Dubke, Hackney, Jameson and Gillam about their Pebble-related activities were sufficient to fall within the definition of a "group" as provided by applicable Alaska statutes and regulations. Staff contends that these individuals' activities sufficed to constitute the making of contributions and expenditures without first having registered as a "group" as required by law. As a result, Staff believes that the public was not sufficiently informed in connection with the ballot initiative campaign that Dubke, Hackney, Jameson and Gillam were engaged in a coordinated effort to influence the outcome of that campaign.

Dubke, Hackney, Jameson and Gillam believe that the Staff is applying an unprecedented, improper, and unconstitutionally vague interpretation of the term "group." These individuals also contend, and the evidence adduced in this matter confirms, that they sought and received legal advice confirming that their activities were legal and appropriate, and took steps to attempt to ensure that their conduct and activities conformed to the requirements of Alaska law. These individuals were also aware of the advice contained in the opinion obtained from APOC by RRC.

III. Legal Questions Presented.

Though the facts of the matter are not materially in dispute, the requirements of the law and the Respondents' legal duties and reporting obligations are vigorously disputed by the parties. Specifically, the parties disagree as to:

(1) Whether the facts as described above support the allegation that RRC violated the law by failing to register and report as a group;

(2) Whether the facts as described above support the allegation that RRC acted as a pass through;

(3) Whether the facts as described above support the allegations that RRC otherwise violated the provisions of the Alaska campaign law;

(4) Whether the facts as described above support the allegation that AFCW received contributions that were made in violation of Alaska Law;

(5) Whether the facts as described above support the allegation that AFCW failed to report all contributions that it was required to report;

(6) Whether the facts as described above and the law support the allegations that Mr. Gillam's individual actions violated Alaska law; and

(7) Whether the facts as described above support the allegation that Dubke, Hackney, Jameson and Gillam were a "group" as defined by AS 15.13.400(8)(B), and whether, as a result, these individuals had any legal duty to register and report their activities in accordance with the statutes and regulations that are applicable to groups in Alaska.

While the Staff and the Respondents stand by their respective positions, both acknowledge that the positions of the other are held and asserted in good faith. In

addition, the Staff acknowledges that substantial evidence exists that Respondents did not intend to violate any provision of Alaska law and, instead, took substantial efforts to obtain and rely on proper advice in order to comply with the requirements of Alaska law.

The Staff believes that it is in the public interest to resolve this matter by way of this Consent Decree, given that the Respondents have voluntarily disclosed their conduct. The Respondents likewise wish to resolve this matter and to continue to cooperate with the APOC, notwithstanding the fact that they believe that their legal positions, and the facts on which they are based, are well-supported and have merit. The Parties do not wish to engage in protracted litigation of this matter given the good faith nature of their positions. The Parties also are mindful that, in the absence of a resolution by Consent Decree, this controversy likely only would be resolved following a protracted and expensive legal process, and they believe that the expenditure of the substantial resources that would be required litigating these issues would serve no useful purpose. Therefore the Parties have agreed to proceed by Consent Decree, subject to the approval by the APOC, in order to fully and finally resolve this matter.

IV. Terms of the Consent Decree.

WHEREAS the legal issues presented in this matter are complex and have not previously been ruled upon by any agency or court in the state of Alaska; and,

WHEREAS, should this matter be contested further, the resulting litigation and proceedings are likely to be protracted and expensive; and,

WHEREAS both the Staff and the Respondents have acted in good faith and recognize that the facts presented in this matter and the uncertainty with respect to the

application of existing statutes and regulations to those facts make the outcome of this matter uncertain as to all parties; and,

WHEREAS the Respondents wish to continue to cooperate with the APOC and to support the APOC in its statutory mission, and to comply fully with all provisions of Alaska campaign finance law; and,

WHEREAS the Staff agrees that the Respondents have cooperated fully with its investigation and that, at all times, the Respondents believed their conduct to be in accordance with Alaska law; and,

WHEREAS the full details and nature of the conduct and activities at issue in this matter have been fully disclosed to Staff; and,

WHEREAS, the Parties believe that it is in the public interest, subject to approval by the APOC, to settle this matter rather than incur further expense by the state or the Respondents through continued litigation:

The Parties, therefore, agree and consent to a decree issuing by APOC providing as follows:

1. RRC acknowledges that it violated AS 15.13.040 and 15.13.140 by failing to disclose the cost of e-mails in which it urged its members to vote “yes” on Ballot Measure 4 and the cost of table space at the Alaska State Fair that RRC made available to AFCW for campaign-related materials.

2. AFCW agrees that it will in the future comply with all statutes and regulations administered by the APOC and not engage in activity in the State of Alaska whereby it accepts a contribution from one party with the knowledge that all or a portion

of the funds may have originated with another party with respect to any election or ballot initiative campaign in the future. AFCW agrees that it will not knowingly accept anonymous contributions, or contributions in the name of another in connection with any election or ballot initiative campaign in the State of Alaska.

3. Gillam agrees that he will in the future comply with all statutes and regulations administered by the APOC, and that all contributions, regarding any election or ballot initiative campaign, will be reported by him as required by Alaska law.

4. Dubke, Hackney, Jameson and Gillam agree that they will in the future strictly comply with all statutes and regulations administered by the APOC and, under the current version of AS 15.13.400(8)(B), will register as a group if, in Alaska, they organize and act jointly with others for the principal purpose of influencing the outcome of an election and take action the major purpose of which is to influence the outcome of an election.

5. The Respondents agree that a copy of this consent decree shall be placed in APOC's file for AFCW, and shall be available to the public for inspection and copying.

6. The Respondents, collectively, agree to pay costs to the State of Alaska in the amount of \$35,000.

7. The Respondents agree that, within 15 days of acceptance of this Consent Decree by the Commission:

(a) RRC will submit a Form 15-6 reporting the independent expenditures, related to the cost of e-mails and of shared table space at the Alaska State Fair, it has conceded it made on behalf of Ballot Measure 4. RRC will also file a notice with APOC that it withdraws its previous filing stating that it contributed \$150,000 to AFCW.

(b) Mr. Gillam will re-file a Form 15-5 reporting the contributions made by him of the amounts described above which were previously reported as having been contributed by RRC and AJS;

(c) AFCW agrees to submit amended disclosure forms that take into account the new disclosures submitted by Gillam and RRC.

(d) Upon the filing of the disclosure forms and paying the costs described above, the Respondents shall be deemed to have complied with all reporting and all other legal requirements with respect to this matter.

8. Staff agrees that the recommendations contained in the Staff reports in these proceedings that the matter be referred to the Attorney General pursuant to 2 AAC 50.476(b)(2) for investigation whether violations have occurred should be withdrawn and that, in light of the facts and information now known, no referral for consideration of possible criminal enforcement against any of the Respondents is warranted or appropriate.

9. The Respondents and the Staff agree that this Consent Decree is entered into by way of settlement, no representations contained herein are intended to be admissible in any other proceeding, nothing in this Consent Decree constitutes any admission or acknowledgment of any wrongdoing or misconduct by any party and shall

not constitute a formal finding on the merits of the complaints or any other violation of any state statute, but instead is the consequence of the Respondents' voluntary agreement to resolve this disputed matter.

10. This Consent Decree is not to be interpreted or construed as binding legal precedent in any subsequent legal proceeding against any Party. This Consent Decree may be used in the future should the Respondents be subject to proceedings in any other matter before the APOC as it may be relevant to their past history before the APOC.

11. Upon the approval by the Alaska Public Offices Commission, and compliance by the Respondents with the provisions of paragraphs 6 and 7 of this section, the Parties stipulate that all allegations against the Respondents, arising from either the original complaint filed on March 20, 2009, the complaint filed on June 4, 2009 or their conduct in connection with the Clean Water Initiatives or the 2008 Ballot Measure Campaign and their lobbying activities, if any, shall be dismissed with prejudice and no further proceedings against Respondents will be brought by the State of Alaska with regard to these matters.

DATED this _____ day of September, 2009

Richard Jameson, Individually, and as Chair of
RRC

Michael Dubke

Arthur Hackney, Individually, and as Deputy
Treasurer of AFCW

Robert B. Gillam

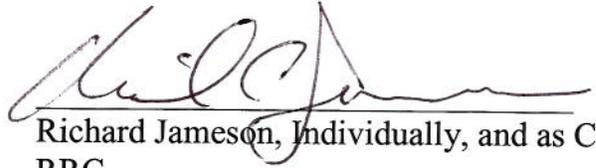
DATED this 30th day of September, 2009.

ALASKA PUBLIC OFFICES COMMISSION



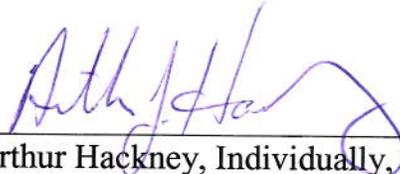
Holly Hill, Executive Director

DATED this 30th day of September, 2009



Richard Jameson, Individually, and as Chair of
RRC

Michael Dubke



Arthur Hackney, Individually, and as Deputy
Treasurer of AFCW



Robert B. Gillam

DATED this _____ day of September, 2009.

ALASKA PUBLIC OFFICES COMMISSION

Holly Hill, Executive Director

Order

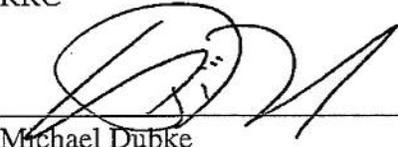
The undersigned Administrative Law Judge assigned to this matter hereby orders that the pre-hearing deadlines, applicable to proceedings involving the Respondents named in the above Consent Decree, shall be suspended pending review, consideration, and approval of this Consent Decree by the Alaska Public Offices Commission.

DATED this _____ day of September, 2009.

Christopher Kennedy
Administrative Law Judge
Office of Administrative Hearings

DATED this 30 day of September, 2009

Richard Jameson, Individually, and as Chair of
RRC



Michael Dubke

Arthur Hackney, Individually, and as Deputy
Treasurer of AFCW

Robert B. Gillam

DATED this _____ day of September, 2009.

ALASKA PUBLIC OFFICES COMMISSION

Holly Hill, Executive Director