

**ALASKA MENTAL HEALTH TRUST AUTHORITY
TRUST LAND OFFICE**

**BEST INTEREST DECISION AFFIRMED
Haines Block Competitive Lease Offering
File No. 2014-57**

Action: Adopt the January 8, 2014 Best Interest Decision (the Decision) regarding the above referenced lease offering as final without modification. This document, combined with the January 8, 2014 Best Interest Decision, constitutes the final decision on this matter, in accordance with 11 AAC 99.040.

Public Notice under 11 AAC 99.050: The Trust Land Office (TLO) published the proposed decision to offer for competitive mineral leasing approximately 99,257 acres of subsurface estate approximately 30 miles northwest of Haines, Alaska in the Anchorage Daily News on January 10, 2014 and the Chilkat Valley News on January 16, 2014. The proposal was posted on the State of Alaska Online Public Notice Website on January 10, for a 30 day period. The Haines Borough and Klukwan Native Corporation were also notified of the proposed lease offering. The public notice comment period ended on February 10, 2014.

Public Comments: Twenty commenters submitted written comments that were received before the comment deadline closed. The majority of commenters expressed concern over potential adverse effects to water, fish and wildlife. Comments from the Haines Chamber of Commerce encouraged the proposed lease offering. Few comments addressed the best interest of the beneficiaries or consistency with Trust management principles. The comments below are representative of the comments received.

Comment: It is not in the best interest of The Trust to offer the holdings for lease.

When Congress made provisions for the one million-acre land grant to the Trust in 1956, it provided for transfer of surface and mineral estate to The Trust so that development of those resources could help support mental health trust programs. After mismanagement of Trust land by the State of Alaska and the resulting lawsuit and settlement, reconstitution of Trust lands involved the transfer of considerable acreage to The Trust of lands with subsurface estate ownership only; such is the case of most of the lands in the proposed mineral lease in the Haines Block. The Trust owns only the mineral estate. If those lands cannot generate income to The Trust through mineral leasing then they are of no value to The Trust. The Trust derives revenue from mineral leasing even if mineral deposits are not found – through annual rental payments or payments in lieu of production – and bonus bids. Exploration also helps the Trust inventory the

resources on its holdings. Because The Trust does not own the surface estate on most of the Haines Block lands, the Trust's only primary source of potential revenue is through mineral leasing.

Certain concerns expressed by the commenters are based upon reasoning more applicable to a leasing program that might occur on general state land, and for a project that has been "scoped and defined" rather than a leasing program on Trust land that does not identify a specific mineral deposit or extraction program. Any TLO decision pertaining to the use of Trust land that is based upon broad public interests would clearly violate Trust management responsibilities as accepted by the Territory of Alaska under the 1956 Alaska Mental Health Enabling Act, as further clarified by the 1994 Alaska Mental Health Trust litigation settlement and the associated State of Alaska legislation. Regulation 11 AAC 99.020(b) requires Trust land to be managed "solely in the best interest of the Alaska Mental Health Trust and its beneficiaries." To the extent that management "solely in the best interest of the Trust results in broader public purposes outcomes, such management is allowed." However, if management for broader public purposes, such as recreational opportunities or viewshed protection, beyond what is required by law, results in a cost to The Trust and its beneficiaries then, the action is not allowed. The TLO's responsibility and obligation to The Trust is summed up in the need to maximize revenue from a given asset to the beneficiaries.

Comment : Most of the Trust land offered for this mineral leasing is in the Multiple Use designation, which is designed for areas where multiple activities and land uses occur, the emphasis is on recreation tourism uses, not on resource extraction uses (Haines Borough Comprehensive Plan).

Part of the proposed lease area is on land designated by the Borough for "Resource Development" and a larger portion is on land with a use designation by the Borough as "Multiple -- Recreation Emphasis". The definition of this land use designation further notes that "Resource development activities and uses are not prohibited". The State, which it owns and manages the surface, has a land use designation (Northern Southeast Area Plan) for these lands of "General Use" with the notation that, except where state land is closed to mineral entry, DNR will treat mining as if it were a co-designated use.

Comment: There are anadromous fish streams catalogued on the lease block.

An overlay of the anadromous waters catalog of the state of Alaska from the data set (ADF&G) as of February 11, 2014 indicates that there are no streams or stream reaches catalogued as anadromous on the proposed lease block. As noted in the Best Interest Finding, "anadromous fish are catalogued in the main stems of the Klehini and Tsirku Rivers and some small tributaries in the lower country." However, these waters are outside the lease block. The TLO is aware of the importance of anadromous fish to the area for subsistence, commercial fishing, and tourism.

The Northern Southeast Regional Aquaculture Association operates a fish enhancement project that includes two 1,500' spawning channels at Herman Creek – on Trust Land.

Comment: The health of human, fishery resources, and wildlife in the Chilkat Valley could be impacted by mercury contamination, acid mine drainage, and other toxic metals if placer mining is allowed in the Chilkat Watershed.

The proposed lease addressed in the Best Interest finding does not include placer mining but does include lode mining. The TLO does not have authority to issue permits for mining. Proper constraints on mining and mitigation measures are most appropriate once the location of an operation and the nature of that operation has been defined. At this point in time, it is not known if there are any economic mineral resources on the Haines Block or, if present, how they would be developed – open pit or underground. Also, the nature and chemistry of ore and development rock greatly influence protection and mitigation measures that the permitting agencies would enforce. Permitting efforts regarding mining wastes, water quality, and habitat protection are best addressed by permitting agencies such as the DNR/Division of Mining, Land, and Water, the Departments of Environmental Conservation, Transportation and Public Facilities, and Fish & Game at such time as any mineral discoveries warrant actual production plans and public comment is sought. The TLO has no such permitting authority, since it is not a regulatory agency, and the expertise to impose the mining and environmental regulations and standards lies within those other agencies. The TLO has full faith in, and relies on those agencies to fulfill their statutory and regulatory obligations, in the event an actual mining project develops from this decision.

Comment: Mineral development is incompatible with the existing economic and cultural activity in the area.

The proposed lease to attract mineral exploration on The Trust's mineral holdings is in keeping with the Haines Borough's Comprehensive Plan (September 2012) including Objective 3N which is to "Develop economically viable mineral deposits in a manner that complies with environmental regulation, protects fishery resources of the Chilkat and Chilkoot River systems, and promotes local hire. Conditions may be placed on permits to promote compatibility with adjacent land uses." Also Goal 10, "Support responsible development of renewable and non-renewable resources within Haines Borough" is consistent with this decision.

Comment: Acid mine drainage could require perpetual waste water treatment and become a responsibility of The Trust.

Not all mines produce acid mine drainage. Any mine project that would produce acid mine drainage would have to treat or otherwise manage the waters to meet water quality standards.

Such post mine mitigation efforts are supported by financial assurances such that water treatment can be conducted into the future should the company be unable or unwilling to conduct such operations. The State of Alaska, Department of Natural Resources, and Department of Environmental Conservation currently employs such bonding (financial guarantees) for mines such as the Red Dog operation; that bond is currently \$305.2 million to cover reclamation and post closure water treatment. The Trust has an interest in demanding that proper financial assurances are in place and updated regularly.

Comment: The proposal would jeopardize long-term sustainability of Alaska's wild fish stocks.

No modern lode mines in Alaska have created long-term sustainability problems for Alaska's wild fish stocks. The State of Alaska and federal permitting agencies have been effective at placing and enforcing provisions of mining permits that protect fisheries. Some companies have undertaken programs to enhance fisheries through habitat enhancement. Water treatment at the Red Dog mine improved the water quality on the Creek from its natural state to the point where fish migration into these improved waters had to be halted using a weir. Fort Knox conducted wetlands enhancements to the Fish Creek drainage upon mine construction, making this area one of the most important spawning and rearing areas for grayling in the Chena River system. The Pogo mine has had no ill effects on the anadromous fish or others in the Goodpaster drainage. Likewise, operations at Kensington and Greens Creek have had no demonstrated long-term affect on the sustainability of Alaska's wild fish stocks.

Comment: Chemical pollution, acid drainage, and community-wide stress can be the only possible outcome of this proposed lease.

The Departments of Environmental Conservation and Natural Resources are responsible for making sure that any development is conducted in a responsible manner and that all existing regulations and permit stipulations are followed. Compliance is assured by regular inspections, the ability to issue fines and/or to shut down operations, and the ability to pursue criminal and civil penalties. In addition to these two departments, other state and federal agencies have enforcement authority to prevent adverse impacts to the environment.

Comment: The risk and consequences of any environmental accident will be much larger than at Greens Creek or Kensington Mines.

It is premature to consider the risks of an undefined accident from the mining of a mineral deposit with characteristics not known and not yet discovered. For instance, mining of marble and carbonate rock on Trust land in the upper Klehini River area to provide fill and riprap to stabilize the Haines Highway has had no deleterious effects. Some mineral deposits are quite

benign and yet others require extreme care, depending upon the chemistry of the ore and wall rocks. The regulatory agencies consider and attempt to minimize the mining and transportation related risks once they are defined in the permitting process.

Comment: There will be no NEPA Process, thus limiting public opportunities for commenting on hard-rock mining and being a wholly state action, there will be no NEPA process, thus limiting public comment and little, if any, alternative analysis.

The State permitting process has a good deal of public process in it; DNR and DEC routinely public notice and seek comment on their mining and mining-related approvals, including Hardrock Exploration Permits. The public process is not lost where NEPA does not apply. NEPA will still apply for those projects where a major federal action is required. At this juncture, the TLO cannot know if NEPA would be triggered. However, it is highly unlikely that any large mine would not trigger a federal action since most involve some degree of wetlands disturbance.

Comment: Every year since 2007 Alaska's Red Dog mine has released more toxic substance than any other site in the United States and Red Dog, Greens Creek, Fort Knox, and Pogo mines hold the top four places in the Toxic Release Inventory (TRI).

The metal mining industry's total disposal or other releases reflect the high volume of materials managed on-site at metal mines. Nationally, more than 99% of these "releases" are on-site land disposals resulting from very small concentrations of metals naturally present in the orebody and waste rock. Only a tiny fraction actually leaves the site. The majority of mine TRI chemical production is determined by the geochemistry of the ore body and host rock, as is the case with Red Dog Mine. It does not represent the mine's operational performance or regulatory compliance history. As one of the world's largest lead and zinc mines, Red Dog Mine's waste rock is classified as TRI chemicals due to its high levels of naturally occurring mineralization. In contrast, the Fort Knox Mine, the state's largest gold mine, processes about five times more material per year than the Red Dog Mine, but Fort Knox's TRI chemical release amounts to only 0.3% of Red Dog's total. This discrepancy arises from the fact that Fort Knox's non-mineralized waste rock is not classified as a TRI chemical where the TRI classifies Red Dog waste rock as released chemicals. For all of the above mines, practically all of the "release" is contained on-site and little or none released off-site. For example, the 2012 Toxics Release Inventory for Alaska report shows the Kensington mine with a "Release" of 1,080,831 pounds – of this, 1,080,831 pounds was on-site and 0 was offsite. Several single non-mining TRI reporting sites in Alaska exceed that of the combined metal mines for off-site releases.

Comment: To meet the requirements of section 106 of the Historical and Cultural Resources Protection Act, one commenter requests consultation with the Chilkat Indian Village to ensure cultural resource protection.

It would be the responsibility of a developer (lessee) and permitting agencies to enter into a consultation with the Chilkat Indian Village, should potential impacts to cultural resources be recognized.

Comment: A Human Health Impact Assessment should be conducted.

It is common practice for the State Department of Health and Social Services to work with the Department of Natural Resources to conduct a human health impact assessment once a large mine project has been identified.

Comment: A study done in 2006 by Jim Kuipers and Ann Maest found that 76% of the mines in the study, all in the United States, do not comply with water quality standards.

The Kuipers and Maest study was not a peer reviewed study. It compares “predicted” water quality to actual water quality. The authors started with a list of 100 mines of all ages and types. They selectively chose to further review 25 of these. Of the 25 the majority failed to meet predicted water quality estimates. Any statistics from the study represent the performance of only those 25 mines selected for study and not the nation’s mines as a whole or Alaska. The list included a number of legacy mines which began operations prior to passage of the Clean Water Act. A potential flaw in the study is that the short list was subjectively picked from a larger list and that it includes some old mines that fail to reflect more modern study approaches for predicting acid rock drainage/metal leaching (ARD/ML) and water quality. Greens Creek was the only Alaska mine included in the study.

Comment: The Trust should use the land for a mitigation bank rather than for mineral development.

The Trust does not own the land surface and thus is not in a position to use the land as a mitigation bank.

Trust Authority Consultation: The Alaska Mental Health Trust Authority was consulted on this matter on October 10, 2014 and November 21, 2014.

Final Decision: Considering all of the above, the Executive Director of the Trust Land Office hereby determines that the competitive mineral lease offering as described in the January 8, 2014, Best Interest Decision is hereby adopted without modification.

Reconsideration: Persons who submitted timely written comments during the notice period that ended February 10, 2014, are eligible to request reconsideration of the final best interest decision under 11 AAC 90.660(b) within 20 calendar days after publication of the notice or receipt of the final decision, whichever is earlier. A request for reconsideration must be submitted in writing to the Executive Director. Before filing an appeal to the Superior Court under AS 44.62.560, a person must be eligible to request and must actually request reconsideration within the time specified above.

The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the written request for reconsideration. If the Executive Director takes no action during the 20-day period following the request, the request is considered denied. Denial of a request for reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560.

In compliance with the Americans with Disabilities Act, the Trust Land Office is prepared to accommodate individuals with disabilities.

Approved:



Marcie Menefee, Executive Director
Alaska Mental Health Trust Land Office

February 13, 2014