

## **Chuitna Coal Project Status Update for December 2008**

### **Status of the Chuitna Coal Project**

At this time a complete permit application package for the Chuitna Coal Project has not been submitted to the Division of Mining, Land and Water and no formal review under AS 27.21 and 11 AAC 90 has been initiated. Once the entire permit application package has been submitted an evaluation of the completeness of the application and of the cumulative impacts of the project can be undertaken.

During the past three month, no additional project components were received from PacRim. Consultation with the project indicated that no additional components will be submitted to DNR until after the first of the year.

### **LGL Fish Presentation**

On December 11, the Department of Natural Resources, Department of Fish and Game, Army Corp of Engineers, U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency and ENSR was presented with the preliminary results for the fish monitoring program on 2002, 2003, 2004 and the Chuit River completed by LGL Alaska Research Associates for PacRim Coal. The final report is expected sometime the end of January, 2009.

### **Petition to Designate the Chuitna River Watershed Unsuitable for Surface Coal Mining Operations**

The Chuitna Citizens No-COALition and the Alaska Department of Natural resources has agreed to settle the appeal of Commissioner Irwin's Final Decision before the Court of the State of Alaska. This settlement was approved by the court and the case was dismissed on December 16<sup>th</sup>. A copy of the dismissal is attached.

On February 14, 2008 the Commissioner for the Department of Natural Resources issued a decision in response to the request from Trustees for Alaska on behalf of the Petitioners to reconsider his prior decision. In his letter, the commissioner decided to affirm his July 16, 007 decision. In the original decision the commissioner found that, LMU-1 lands are ineligible from the petition process, on the grounds that they had previously been reviewed, underwent a comment period, and a decision to issue the permit was made, the petition regarding the remainder of the "Chuitna River watershed" is incomplete because the petitioners do not adequately describe how their interests are adversely impacted within the Chuitna Watershed, and the petition is frivolous because it covers too sweeping and arbitrary an area unsupported by evidence that reclamation of wetlands cannot be accomplished, and 4. assumes that applicable standards and regulations for surface coal mining operations cannot prevent the harms claimed in the allegations.

On March 17, 2008, Trustees for Alaska appealed the final decision of the Commissioner for the Department of Natural Resources to the Superior Court of the State of Alaska and is currently ongoing.

### **Chuitna Project Informational Meeting**

Due to limited availability of participants from the Beluga community, the informational meeting scheduled for December 9th was postponed until after the New Year. As soon as a new schedule is finalized the meeting will be announced as part of the project update and on the web at <http://dnr.alaska.gov/mlw/mining/largemine/chuitna/index.htm>.

### **Health Impact Assessments**

As part of the federal NEPA process, the U. S. Environmental Protection Agency is preparing a Health Impact Assessment (HIA) as part of the Supplemental Environmental Impact Statement for the Chuitna Coal Project. An HIA is used to systematically identify the potential, and sometimes unintended, effects of a policy, plan, decision, or project on the health of a population and the distribution of those effects within the population. HIA are relatively new to the United States and only recently have they been used as part of the NEPA process in Alaska. The scopes of health effects to be addressed in this HIA are limited to those that can be considered under NEPA to be reasonably linked directly, indirectly, or cumulatively to the proposed action.

Currently, the U. S. Environmental Protection Agency, the State of Alaska and the Alaska Native Tribal Health Consortium are working on finalizing the scope of the HIA proposed for the Chuitna Coal Project. Additional information about the HIA process and scope will be presented at the next informational meeting.

### **DNR Website for the Chuitna Coal Project:**

<http://dnr.alaska.gov/mlw/mining/largemine/chuitna/index.htm>

This site contains information about the Chuitna Coal Project, copies of previous month's newsletters and presentations from informational meetings related to this project.

### **Other State and Federal Permits**

In addition to ASCMCRA permitting requirements, the Chuitna Coal Project must address the concerns of other state and federal agencies. As part of the Department of Natural Resources statutory role as lead agency in matters relating to exploration, development and management of mining activities, the DNR Office of Project Management and Permitting has developed a document describing some of the permits and approvals to help the public

understand the permitting of mines in Alaska. This document and other useful information are available on the web at:

<http://dnr.alaska.gov/mlw/mining/largemine/index.htm>

### **Chuitna Project SEIS**

As part of the federal NEPA process the U. S. Environmental Protection Agency (EPA) determined that a Supplemental Environmental Impact Statement (SEIS) would be prepared for the Chuitna Coal Project. Scoping for the SEIS was completed in August of 2006. Currently agencies are reviewing the available baseline data in preparation to write the Draft SEIS. During March, EPA, the U.S. Army Corp of Engineers, and Alaska Department of Natural Resources met with the company to discuss the status and timeline for the SEIS. Included in these discussions were updates to the companies proposed action and alternatives to be considered in the SEIS.

Information concerning the SEIS process can be found at:

<http://www.chuitnaseis.com/>

IN THE SUPERIOR COURT OF THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DEPARTMENT OF  
NATURAL RESOURCES

CHUITNA CITIZENS NO-COALITION, INC., )  
)  
APPELLANT, )  
)  
v. )  
)  
TOM IRWIN, COMMISSIONER, ALASKA )  
DEPARTMENT OF NATURAL RESOURCES, )  
)  
APPELLEE, )  
)  
PACRIM COAL, LP, )  
)  
INTERVENOR-APPELLEE. )  
\_\_\_\_\_ )

DEC 19 2008

COMMISSIONER'S OFFICE  
ANCHORAGE

Superior Court No. 3AN-08-6009CI

**ORDER DISMISSING APPEAL  
WITH PREJUDICE**

Appellant Chuitna Citizens NO-COALition and Appellee Commissioner Tom Irwin, Alaska Department of Natural Resources ("DNR") have filed a joint motion to dismiss this appeal with prejudice on the basis of a Settlement Agreement. Under this Settlement Agreement, DNR will withdraw its specific factual determination holding exempt, on the basis of the 1980s Diamond Shamrock coal permitting process, the Logical Mining Unit 1 ("LMU-1") lands from the lands unsuitable petition process and DNR agrees that it will not exempt the LMU-1 lands on this basis in a future petition proceeding. Intervenor-Appellee PacRim Coal ("PacRim") is not a party to the Settlement Agreement, but PacRim fully retains its right under 11 AAC 90 to intervene in any future petition proceeding involving any lands on which the company holds coal leases as well as its right to appeal any decision resulting from such future petition proceeding.

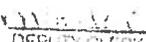
Having reviewed this matter, the court hereby GRANTS the joint motion to dismiss.

ORDERED this 16<sup>th</sup> day of DEC. 2008.

By:   
Honorable Judge Peter Ashman  
Superior Court Judge



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12/16/08 DATE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHUITNA CITIZENS NO-COALITION, INC.	)
	)
Appellant,	)
	)
v.	)
	)
TOM IRWIN, COMMISSIONER, ALASKA DEPARTMENT OF NATURAL; RESOURCES	)
	)
Appellee,	)
	)
and	)
	)
PACRIM COAL, L.P.	)
	)
Intervenor/Appellee.	)
	)

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Case No. 3AN-08-6009 CI

NOTICE OF DECISION

The Court has reviewed the parties' pleadings relating to entry of an order of dismissal. The Court notes that Appellant DNR appears to have taken no position on the dispute. Intervenor/Apellee Pacrim Coal is not a party to the settlement agreement. The Court concludes that the amended language proposed by the Appellant NO COALition fully effectuates the intentions of the parties to the agreement, and works no unfair prejudice to Intervenor/Apellee Pacrim Coal, and so will enter the order proposed by Appellant on December 5, 2008.

Dated at Kodiak, Alaska this 16<sup>th</sup> day of December, 2008.



*[Handwritten Signature]*

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Peter G. Ashman  
Superior Court Judge Pro Tem

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*Mordal* 12/16/08  
DEPUTY CLERK DATE