Alaska Department of Natural Resources (DNR) Commissioner Tom Irwin spoke out recently against the growing trend of anti-resource development initiatives in Alaska, and defended the state’s resource permitting and regulatory system as effective, fair and responsible.

“Anyone willing to connect the dots can see that our resource industry is being targeted by multiple efforts to deprive developers of the tools they need to operate in Alaska,” Irwin said.

“Our Constitution mandates responsible resource development for the benefit of the people of Alaska, and I take significant exception to efforts to interfere with that mandate or the corresponding public process,” Irwin noted.

“While it is clear that we must protect our clean water, healthy fish runs, and subsistence opportunities, we also have an obligation to all residents to provide economic opportunities from state and federal lands and for private lands, including Native regional and village corporation land.”

Irwin, whose responsibilities include management and oversight of the state’s oil, gas, mineral, forest and agricultural resources for multiple uses, noted a number of anti-development efforts that have recently come to public notice:

- A statewide ballot initiative was submitted to the lieutenant governor’s office asking voters to deny any large mines from using state water in Southwestern Alaska. Such an initiative would block development of not only the Pebble copper-gold prospect, but virtually all other future mineral development on millions of acres of state and private land, including Native corporation lands.
- A lawsuit was filed last year to block the Rock Creek gold project on Native corporation and private land near Nome.
- Several municipalities have proposed initiatives which would significantly restrict the sound development of state and private lands. These include a proposed Bethel City Council ordinance banning the transportation of cyanide inside Bethel’s borders, and the Denali Borough’s proposed prohibition on coal-bed methane exploration.
- A lawsuit recently blocked Southeast Alaska’s Kensington gold project, halting progress on that mine despite millions of dollars spent to comply with all environmental guidance provided by regulatory agencies.
- Legislators have introduced several bills which would obstruct or bar mining.

(Continued to page 4)
On June 25, 2007, the United States Supreme Court announced a decision, National Association of Home Builders v. Defenders of Wildlife, that clarified how the Endangered Species Act (ESA) applies to federal actions under other laws.

The Defenders of Wildlife case involved the actions of the Environmental Protection Agency (EPA) in approving Arizona’s application for primacy of the federal wastewater permitting program (NPDES permits). Opponents of Arizona’s application attempted to use the ESA to stop EPA’s approval of the Arizona program. Although the Ninth Circuit Court of Appeals sided with the challengers, the U.S. Supreme Court found that the Ninth Circuit misread the ESA and, consequently, reversed the appellate court.

The decision is a victory for Alaska, which had a significant stake in the case due to the fact that the state’s NPDES primacy application is currently pending with EPA.

For advocates of ESA reform, the Defenders of Wildlife decision is a welcome relief. In a 1978 decision, TVA v. Hill, construction of the Tellico Dam was enjoined in litigation concerning the impact of the dam impoundment on the snail darter. By the time the TVA case reached the Supreme Court, the dam was nearly completed. The Court, in one of the strongest environmental opinions in its history, set the stage for future interpretations of the ESA by stating that the ESA “admits of no exceptions” and requires a court to enjoin actions that would jeopardize the continued existence of a species, regardless of economic consequences.

In Defenders of Wildlife, EPA initiated ESA consultation with the U.S. Fish & Wildlife Service (FWS) to determine whether the transfer of primacy to Arizona would result in any adverse impacts on ESA listed species. FWS expressed concerns over the potential direct and indirect impacts to certain upland species from future development in areas that would ultimately be served by Arizona-issued NPDES permits. EPA concluded that it did not have authority to disapprove a transfer based on any considerations other than the nine criteria listed in the Clean Water Act (CWA) governing EPA’s approval of primary applications. EPA concluded that Arizona had met each of the nine CWA criteria, approved the transfer of the permitting program to the state, and concluded the ESA consultation.

The plaintiffs sought review in the Ninth Circuit, arguing that the ESA effectively imposed an additional criterion on the transfer of NPDES permitting program authority, and that the federal duty to avoid jeopardy through consultation must be satisfied before the transfer could be lawfully approved. The Ninth Circuit concluded that the obligation imposed on federal agencies under the ESA to avoid jeopardy and adverse modification of critical habitat “is an obligation in addition to those created by the agencies’ own governing statute.”

The U.S. Supreme Court was presented with two competing statutory mandates—the duty to avoid jeopardy to listed species and designated critical habitat under the ESA, and the duty of EPA to approve the transfer of the NPDES permitting program under the CWA to a state upon satisfaction of the nine specified criteria. In reconciling the two statutory schemes, the Court considered whether the ESA essentially acts as an independent source of authority irrespective of the non-discretionary mandate imposed on EPA under the CWA. In a 5-4 decision, the Court held that Section 7 of the ESA applies only to discretionary federal actions, and thus does not impose an additional statutory criterion on EPA when it is carrying out mandatory obligations.

As a result of the Court’s holding, it is now clear that Section 7 applies only to actions exhibiting the requisite discretionary federal involvement or control. Future litigation will focus on clarifying discretionary federal actions from those that are mandatory.

In terms of direct impacts from the decision, Alaska has already benefited insomuch as the path to obtaining approval of NPDES permitting primacy has one less hurdle to cross. Moreover, federal agencies make decisions every day affecting resource development projects in Alaska. The Defenders of Wildlife decision should ultimately result in a narrower set of circumstances under which the ESA will impact federal actions.

Land access (e.g., rights provided by statute or easements), federal water rights, and other actions compelled by statute come to mind as situations where federal agencies may have nondiscretionary obligations that would not be impacted by the requirements of ESA consultation.

On other fronts, the case will be cited for the proposition that the ESA does, in fact, have limits.

ESA critical habitat issues are looming for Alaska on a variety of fronts, and it remains to be seen whether the lower courts will find support in Defenders of Wildlife to narrow federal agencies’ obligations on critical habitat and other ESA fronts.

Eric Fields is an attorney with Perkins Coie LLP. He is a member of the RDC Board of Directors.
There is a good deal of speculation about whether Governor Palin will call a special session this fall to review the revenue production tax (PPT) adopted by the legislature only last year. Earlier this year the governor had repeatedly refused to call a special session, but since then has said she is waiting for a review of the tax by the Department of Revenue (DOR) to see if there is good reason to call the legislature back.

Several thoughts come to mind as I ponder this situation. The first, “Has the tax worked?” Although I am no expert on taxes, I think it is unfair to judge the “success” of this tax based on a single filing for the first nine months it was in effect. Since this is all the revenue DOR will have for its analysis, I will make mine on the same basis.

The state received over $900 million in additional revenue from the new tax for nine months in 2006. If one extrapolates from this figure to estimate a full year’s tax take, it would seem the state can expect to receive between $1.2 and $1.3 billion dollars each year. This figure will vary based on a variety of factors, including the price of oil, total operating costs, and capital expenditures.

I believe it was appropriate for the legislature to make some changes in the production tax last year, given a drop in the price of oil. It seems to me that getting more than $1 billion dollars a year in new revenue from the industry that already pays over 80% of our state’s expenses is on the high side of reasonable. I see no need for a special session.

However, others see the situation differently. Some want to revisit the painful exercise the legislature went through last year. What made this tax so difficult is that current North Slope production is steadily falling. I am not lower the state’s current take from a production tax. The one thing you can count on is that a special session will be the highest volume of state sales since a market peak in 1989 to under 800,000 barrels today. Will the oil industry this year thanks to the new tax recently put into effect. Since this is all the information DOR will have for its analysis, I will make mine on the same basis.

How much of an increase the industry can sustain may be hard to complain about that.

The studies cited by those who believe we need to take $1.2 billion to $2 billion more from the oil industry have a couple of flaws. The first is that the figures are from 2004 and do not take into account revenue from PPT. In addition, the studies do not consider the cost of development, and Alaska ranks among the costliest in the world for the industry.

Another argument used to promote a special session is that the state should not have changed to a net tax, but should have just raised the old gross tax. These individuals would use the special session to change the entire tax structure, only a year after the state had made another major change.

How many ways can one spell fiscal instability? Some of the newer companies operating on the North Slope have made their investment decisions based on the structure of the new tax.

Changing the structure of the production tax again, even if some of the new investment credits remain, sends a terrible message to the oil industry this year thanks to the new tax recently put into effect. Since this is all the information DOR will have for its analysis, I will make mine on the same basis.

We too need to analyze our income, our savings, and our expenses. RDC has had, as its top priority over the years, asked for our elected officials to develop a fiscal plan. RDC has advocated for a three-pronged approach to the development of such a plan:

- Spending restraint
- Implement a broad-based tax
- Support establishment of Permanent Fund (POMV) as a means of distribution from the Permanent Fund. A portion of these funds should be used to help fund state government.

Let’s take a look at the last year from an income perspective. We Alaskans will be getting over $1 billion more from the oil industry this year thanks to the new tax recently put into effect. Even so, oil production in Alaska is declining by over 6% per year. Fortunately, higher oil prices have saved us while oil has declined from a peak of over 2 million barrels per day in 1998 to under 800,000 barrels today. Will the gasline be next to save us? Who knows.

We have implemented a $50 per person head tax on the cruise industry. Mining receipts to the state are at all-time highs thanks to increased commodity prices. And all the while, individual Alaskans are not paying a penny via a broad-based tax to help fund state government. We are the only state in the union that doesn’t have either a state income or state sales tax. It’s hard to imagine what we could do for what they spend when you are not personally impacted. It’s also hard to encourage new companies to invest in Alaska if they will be the next line in line to pay increased taxes. Meanwhile, federal appropriations as the denoming as more money is dedicated to the war effort. This trend will likely continue.

My advice to Gov. Palin is to tread lightly here. She should not spend too much. We should not fund things just because they are existing state programs that need to be maintained. I applaud Governor Palin for exercising fiscal restraint with this year’s capital budget. However, I encourage her to take the same red pen to next year’s operating budget. With each state service, we need to ask ourselves, is this something we expect government to do? Does it pass the red face test?

Let’s put a plan in place this next legislative session. It takes courage and leadership. Let’s get our house in order for future generations, like my son and future daughter, don’t have to.

John Shively
short-circuit the permitting process carry a significant risk by depriving communi-
ties of the opportunity to di-
vary their economies, generate local revenue, and provide high-wage jobs in remote areas."

The risks are especially sig-
nificant for private landholders, in-
cluding Native regional and vil-
lage corpora-
tions, many of which look to development of resources on their lands for shareholder jobs, joint-
venture opportunities, and revenue, he said.

Alaska has a world-class system in place for natural resource use permitting and development, which involves thorough review of proposals to develop the state’s rich natural resources, and has demonstrated to the world that development can and is being accomplished with highest concern for the environment.

The state’s Large Project Team works with large proj-
ect applicants and operators, federal resource managers, local governments and the Alaska public to ensure proj-
cets are designed, operated and reclaimed consistent with the public interest. The state’s laws balance potential economic and social benefits of developing non-renewable mineral resources with the potential risks to the region’s renewable resources.

The Mat-Su Borough Assembly is considering an ordinance that could po-
tentially block construction of new power plants. Coal-fried utilities in Fairbanks receive coal from the Unakwik mine at Healy.

Shell and the Alaska Eskimo Whaling Commission have signed a conflict avoidance agreement for Shell’s 2007 drilling program in the Beaufort Sea.

Shell hopes to drill three exploration wells in its Sivuligq prospect, formerly Hammershead, in western Camden Bay.

Under the agreement, Shell will only move one of its two Beaufort Sea drillships, the Frontier Discoverer, into the Sivuligq area until the fall Cross Island subsistence bowhead whale hunt is over. The Frontier Discoverer will cease drilling operations on Aug. 25, leave out of the Sivuligq area within two days and return with the Kulluk drillship after the end of the hunt.

The conflict avoidance agreement forms a major and critical piece of a broad, multistate umbrella of permits and agreements Shell needs to start its drilling program. However, the state has yet to rule on a determin-
tion that Shell’s program is consistent with the Alaska Coastal Management Plan.

Alaska Native corporations are generating more than $5 billion a year in revenue, according to a report by the Association of ANCSA Presidents and CEOs.

“It is astonishing when I see these figures and realize the impact of what the corporations are doing,” said Vicki Otto, the associa-
tion’s executive director.

The Barrow-based Arctic Slope Regional Corporation surpassed the $1 million mark in annual revenues years ago, but last year Bristol Bay Native Corporation joined the $1 billion club for the first time. Also experiencing strong financial growth were Cook Inlet Region, Inc., NANA Regional Corporation and Chugach Alaska Corporation. Sixteen Native corporations, including 13 re-
gional corporations and three village corporations, reported a com-
bined $5.86 billion in revenue.

The RDC Board of Directors approved a resolution on Aug. 15, 2009 recognizing the 25th anniversary of the Anchorage Area Conservation Commission.

Anchorage judge ruled in favor of NovaGold Resources after a hearing in Alaska District Court on arguments by a Nome citizen group to halt construction of the Rock Creek gold mine near the Bering Sea town.

The plaintiffs argued that the U.S. Army Corps of Engineers’ 424 permit authorization of some of Rock Creek’s construction activities was issued in violation of the Clean Water Act. They were seeking an in-
junction to prevent wetlands from being disturbed.

Judge Ralph Beistline noted Rock Creek is located in “mining country” and that much of the land on which mining is proposed to take place was previously mined. In addition, the wetlands that are the subject of litigation are situated in large tracts of pristine wetland that will not be impacted by the project, the judge said.

DNR will increase out-
reach efforts on Alaska’s resource development permit-
ning process. A series of workshops on resource per-
mitting and regulation will be held around the state this year. The workshops will be designed to educate partici-
pants on Alaska’s environmental laws and regulations and the permitting process.

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The North Slope Borough and several environmental organiza-
tions have appealed the air quality permits for the drilling opера-
tions, and the U.S. 9th Circuit Court of Appeals has placed a temporary hold on drilling, until after an Aug. 14 hearing.

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The judge found the defendants complied with the law and pro-
ceded in a manner that is sensitive to the environment.

A new report by the McDowell Group revealed that the Kennecott gold mine project in Southeast Alaska has provided family-supporting livelihoods for nearly 420 workers, including $25 million in annual labor and wages to residents, and $78 million spent with businesses in Juneau. The study noted a total investment of $238 million by Couer Alaska will occur to bring the mine into development. The study projects annual revenues of $1.5 million to the City and Borough of Juneau from the mine.

While construction at the mine is 85 percent complete, work on the tailings facility has been shut down following a lawsuit by envi-
ronmental groups. The company is attempting to resolve legal issues and work collaboratively to find a solution to the disposal of tailings so that Kennecott may proceed with planned production.

The Alaska Mineral and Energy Resource Education Fund (AMEREF) is celebrating 25 years of providing Alaskans students, with the knowledge and skills to make informed and objective deci-
sions relating to mineral, energy and forest resources. AMEREF Executive Director Lee Clune has been working to update existing material, and to develop training for educators. Recent fundraising efforts include the Coal Classic Golf Tournament and generous cen-
terpiece sponsorships at the RDC Annual Meeting. Upcoming events, including the Alaska Resource Development Conference and silent auction in Anchorage, will occur in November.

The RDC website has been updated with new and returning board members. Visit http://www.akrdc.org/membership/board to view the 2007–2008 board. New and renewing members of RDC are encouraged to join. RDC provides a unique opportunity to network with other leaders in the industry.

Visitor hits is expected to exceed 150,000 for a second month. A link to the Petroleum News Alaska Book Club is also available on the RDC site, where you can learn more about the club. Visit http://www.akrdc.org/auctions/pnb/akdbhl.html.

Before starting construction, NovaGold Resources’ subsidiary Alaska Gold “went to great lengths to publicize its intentions and to obtain the support of the local community, two Native organiza-
tions, the state and federal agencies,” the judge wrote. “As a result, there is considerable support for this project and a realistic hope for an economic boom to the community.”

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At Arctic Slope Regional Corporation (ASRC), our traditional values are what guide us each day. It is important for us to respect the people who live there and work in the region, and to prove that theory wrong. ASRC has been involved in the processes of change. Not as an optimist sees the opportunity in every adversity; or as a pessimist sees the difficulty in every opportunity. ASRC isn’t focused only on its past; it is working toward adapting to the changes we see on the horizon. We are trying to position ourselves to be competitive.

Sir Winston Churchill once stated, “A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.” These are good words to live by, and the Inupiat have always known this to be true. We are eternal optimists, but we are also realists.

These are times when we need to be involved in the processes of change. Not as roadblocks because we are afraid of change, but as contributors to growth. We see the benefits from development through revenue, jobs, and improved infrastructure, these benefits do not come without a cost to the Inupiat people.

My perspectives are shaped both by the economic reality of growing a sustainable economy and by the desire to ensure that my children and others after them will have a livable and prosperous natural habitat. The strategic plan of ASRC sets forth the values of our people and the corporation. It states that “we blend Inupiat and business values in our own resources and the habitat we need to respect the people who live there and work in the region. That is my mission and goal. The development that has taken place in the Arctic over the last 30 years has truly enhanced our lives. The habitat and the environment we rely on for our subsistence resources have been well respected by the industrialists occupying some of that space with us. Not only have they respected the land, but they also respect the people who live there and work with them. Granted there have been some mistakes, but lessons have been learned. Technology and understanding has advanced significantly. I actively participate with my family in the development of the region. I have a job working at the office and travel out on the tundra and ocean, I take very seriously the future of these resources and the habitat we need to continue to provide a sustainable and prosperous future for our subsistence resources and cultural freedoms for the Inupiat people.

These communities are located far from the Prudhoe Bay infrastructure and have never directly benefited from oil development. The opportunity provided by BHP Billiton requires them to enter into separate agreements with the two communities. It is our goal for them to build a strong community-based corporation to contribute to local economic sustainability.

For ASRC to finally have a partner to evaluate this Inupiat resource from investing the near Kivalina. ASRC, NANA, Teck Cominco and the governments of the Northwestern Arctic and North Slope Boroughs are working together to develop and strengthen economic stability.

Development of this resource is important to our region. It is important to this state. ASRC has worked very hard over those years to develop the necessary infrastructure: job training, telecommunications, education, transportation, and economic development. These are times when we need to be involved in the processes of change.

One region, providing benefit to all Alaskan communities, is the potential for the development of coal resources. The need for energy will always be present, and the development of clean coal technology holds much promise for the future. In ASRC’s view, 7(i) discourages a land-use decision on a large scale resource. It states that 7(i) revenue has been derived from two regions: Stilaska and Alaska Porcupine.

The fundamental result of 7(i) is that the corporation in the region where the resource is developed is in a stronger position to work with the corporation. The corporation is in a stronger position to work on a revenue sharing agreement. The corporation is in a stronger position to work toward a long-term viable economy for Alaska. That is my mission and goal. The development that has taken place in the Arctic over the last 30 years has truly enhanced our lives. The habitat and the environment we rely on for our subsistence resources have been well respected by the industrialists occupying some of that space with us. Not only have they respected the land, but they also respect the people who live there and work with them. Technology and understanding has advanced significantly.

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MARIE GREGRE

DEVELOPING OUR RESOURCES WHILE HONORING THE PAST

Editor’s Note: The following is a condensed version of the presentation Marie Greene gave as one of three keynote addresses at the NANA Annual Luncheon in Anchorage June 19. Greene serves as President of NANA Regional Corporation. For the complete text, visit NRC’s website at www.nakrdc.org.

A recent Wall Street Journal article addressed the high cost of fuel, which this winter was $8.12 per gallon in Shungnak. On a barge somewhere to the south, a natural gas drilling equipment is headed for Red Dog. Our Partnership, NANA, and our host, Kakslauttanen, will hopefully help fund lower-cost and cleaner-burning fuel.

At the Red Dog Mine, Tek Cominco has started a $30 million project and has mineral exploration underway. They are hoping to find another Red Dog and we hope they do.

There is so much activity going on at Red Dog this summer that the main camp has grown out of space. We like this growth, because as NANA Management Services will be running the camp and there are numerous job opportunities for our shareholders.

Other NANA companies are as busy as ever on the North Slope. Working out of Anchorage, NANA engineering companies and the hotel group are all operating at full speed.

This year, NANA will surpass $1 billion in revenues. We will have employed more than 1,100 shareholders. Our agreement with Tek Cominco is to develop a workforce that will one day be responsible for the overall management of the mine. To that end, we have an Employment and Training Committee made up of senior level staff from both Tek Cominco and NANA.

Together with the Northwest Arctic Borough School District, Alaska Technical Center, and the University of Alaska, we work to strengthen and develop the workforce. More than half of the workforce at Red Dog are NANA shareholders.

Environmental oversight and the protection of our natural resources is another critical part of what makes our relationship with Tek Cominco work. There is a regional caribou-monitoring program and shipping is carefully scheduled to minimize effects on whaling and seal hunting seasons.

So, what have we been able to accomplish through Red Dog?

First, our goal for the mine to become 100% NANA shareholder operated is still a dream. We need many more people to receive the education and training required to operate and manage a facility of Red Dog’s scope. But we are making progress.

Second, Red Dog is the main source of funds for the Northwest Arctic Borough. The borough receives $8.6 million in annual payments from the mine. Mine revenues are used to fund new schools, renovations, scholarships, and to provide services to NANA shareholders.

Red Dog is the biggest employer in the region with a shareholder payroll of $16.6 million. NANA businesses earn revenues from Red Dog by providing support services.

Something that perhaps is not fully understood is the fact that 62% of all royalties received by NANA are distributed to all other Alaska Native corporations. So it is in everyone’s best interest to see Red Dog Mine operate as efficiently as possible.

Five years ago the price of zinc was 35 cents a pound and the mine was not covering its expenses. Today, zinc is in the $1.72 per pound range and the value of royalties has increased considerably.

But with fluctuating commodity prices this year’s bounty cannot be counted on for next year.

What else have we learned?

We have learned that outside environmental groups will take advantage of our people to further their own goals and to raise money for their own organizations. Our villages do not benefit from the actions of these organizations, and unfortunately we expect to be faced with the same for many such groups for the duration of our mine.

We have learned it is possible for a Native corporation to respect the land and our traditional culture while involving ourselves in resource development. I am not saying it is not a challenge. But if you ask me if it is worthwhile, I would have to say yes.

As a shareholder of NANA Regional Corporation, I remember the early discussions about whether we should develop the mine. I was against it because of my concern about whether it could be done in a way that protected the environment and our subsistence way of life.

Trade, commerce and the use of our natural resources to sustain our people and families have always been a part of Inupiaq culture. Today, our lives are balanced between our desire to maintain the traditional skills and values it takes to live off the land, while gaining the income required to do business on a global level.

Just as our land and culture have always sustained us, we are building a corporation that will also sustain us forever. We will not be acquired or dissolved.

We will work to ensure that our land can sustain our people now and in the future.

MATTHEW NICOLAI

ALASKA NATIVES RESPECT PAST, EMBRACE NEW IDEAS

Editor’s Note: The following is a condensed version of the presentation Matthew Nicolai gave as one of three keynote addresses at the NRC Annual Luncheon in Anchorage June 19. Nicolai serves as President of Calista Corporation. For the complete text, visit NRC’s website at www.nakrdc.org.

Alaska Native Cultures respect and honor the past, yet the path to developing new ideas and projects ensures our future. For millennia we have paid great attention to natural resources of our lands to honor and respect the teachings of our Elders.

It is the instruction from our Elders that provided the source of strength that bound and guided our daily lives, to make the right choices for the common good of the people we serve. Managing natural resources in our past was done for the purpose of providing for the future.

In the past we looked upon the cultural value of land for the purpose of preservation of the culture and the resources it depended on. Calista Corporation is a new concept brought to us through the Alaska Native Claims Settlement Act (ANCSA).

ANCSA has a distinctive position where Native claims were settled through unique and untested charters by state and federal governments. These charters set up the ANCSA region corporations and 223 village corporations who own 44 million acres of subsurface and surface properties. To date none of the corporations have closed their doors, which is due to a common bond that ties us together.

During the past 32 years, these unique charters established great opportunities, especially in resource development. Before the charters were set up in 1974, we were stewards of the lands that nurtured and sustained our families. Today we have made great advances by making choices to develop our bountiful resources.

Developing our natural resources has been a long and arduous process, usually made through consensus. The consensus process takes a long time as compared to western societies. The decision process involves the emotional intelligence of our Native people because we are cautious people. In our world, emotional intelligence is usually managed through the trust and leadership of the Elders.

Elders are very much respected in our culture, and we often seek their teachings increase awareness that we must prepare for the future.

Elders as the Yupik culture possess confidence in the future due to their understanding of past challenges and the barriers that prevent successful dialogue. The basic rudiments of our village Elders is to constantly listen, show confidence in self and humility to those around them. Elders carry the wisdom to translate rules and give admonishments that are meaningful.

These traits are relied upon by our leaders when decisions have to be made. In the 1970s and1980s, the leaders of our region were interested in development of the subsurface lands due to rules established under federal and state regulations. Our leadership was listening to the Elders’ advice that it was not the right time for development.

Later, federal and state regulations brought encouraging changes. Native corporations started to develop subsurface agreements one region at a time.

These agreements affect all of us because of the ANCSA 70(7a) agreement. 70(a) requires natural resource income from regional corporations be shared under a 70/30 formula. As I understand 70(a) revenue sharing, it came from our long-standing traditional values that require us to share with all peoples with whom we have a common heritage.

The wisdom of the Elders who negotiated the sharing formula of 70(a) has been a godsend to the communities we serve. 70(a) is the common bond that ties all Native corporations together.

Nowhere else has such Native American law been implemented to benefit the whole. Funds shared from ANCSA resource income have sustained $182 million dollars in our regions developing their oil, gas, timber, and mineral properties. Village corporations in our region have received $72 million dollars. The common bond of sharing supported survival for mineral exploration in our region. Over $140 million dollars have been invested in Calista subsurface lands by several companies.

This investment has had a huge impact to the people we serve. Over 2,102 jobs were created from mineral exploration projects at Colville, Kuskokwim, Yukon-Kuskokwim, and Stuyahok. If Donlin Creek becomes a mine, the economic profile of our region will shift.

Our region has one of the highest rates of unemployment in the country. The creation of the Donlin Creek exploration project in the upper Kuskokwim region has had a huge impact on the demographics and economic profile of the 10 communities there.

A shareholder survey in 1994 showed 36% supported nationwide development of the 10 communities. A recent survey last year indicated a complete turn-around, with 76% support.

As Native people and Native corporations, we will develop our resources as we have done for many millennia, and we will continue to honor our past.

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Editor’s Note: The following is a condensed version of the presentation Marie Greene gave as one of three keynote addresses at the 40th Annual Meeting Luncheon in Anchorage June 19. Greene serves as President of NANA Regional Corporation. For the complete text, visit NRC’s website at www.anrc.org.

A recent Wall Street Journal article addressed the high cost of fuel, which this winter was $8.12 per gallon in Shungnak. On a barge somewhere to the south, natural gas drilling equipment is headed for Red Dog. Our partnership, NANA, will hopefully help fund lower-cost and cleaner-burning fuel.

After Red Dog Mine, Teck Cominco has invested $30 million project and have mineral exploration underway. They are hoping to find another Red Dog and we hope they do.

There is so much activity going on at Red Dog this summer that the main camp has run out of space. We like this idea, as these NANA Management Services will be running the camp and there are numerous job opportunities for our shareholders.

Other NANA companies are as busy as ever on the North Slope. Working out of Anchorage, NANA engineering companies and the hotel group are all operating at full speed.

This year, NANA will surpass $1 billion in revenues. We will have employed more than 7,000 people throughout Alaska and other states, and we have operations in Antarctica, Guam, Korea, Spain, and France.

NANA has been involved in resource development from the beginning. It was clear to our leaders that the place to Alaska in develop profitable business with jobs that sustain families is in the resource industries.

But past like all people over the world who consume resources, it is one thing to buy gasoline at the corner gas station or to use a car that contains zinc in its components, and it is another thing to actually develop those resources in our own back yard.

When NANA made the decision to establish a partnership with a Canadian firm to develop Red Dog, we did it with considerable forethought. People were concerned about environmental issues and the caribou. They talked about the new people who would come and how cultural differences would change our way of life.

They talked about jobs and they were concerned the only opportunities seemed to be far away.

Our leaders believe the best way to improve the lives of our shareholders is through jobs. That is why when we weighed the positives and negatives of developing the Red Dog Mine we were willing to accept the change to our lifestyle that has come with that decision.

After ten years, our shareholders voted to pursue Red Dog.

In 1989, Red Dog has employed more than 1,100 shareholders. Our Agreement with Teck Cominco is to develop a workforce that will one day be responsible for ownership and management of the mine. To that end, we have an Employment and Training Committee made up of senior level staff from both Teck Cominco and NANA.

Together with the Northwest Arctic Borough School District, Alaska Technical Center, and the University of Alaska, we work to strengthen and develop the workforce.

More than half of the workforce at Red Dog are NANA shareholders.

Environmental oversight and the protection of the caribou’s habitat is another critical part of what makes our relationship with Teck Cominco work. There is a regional caribou monitoring program and shipping is carefully scheduled to minimize effects on whaling and sealing hunting seasons.

So, what have we been able to accomplish through Red Dog?

First, our goal for the mine to become 100% NANA shareholder operated is still a dream.

We need many more people to receive the education and training required to operate and manage a facility of Red Dog’s scope. But we are making progress.

Teck Cominco is the main source of funds for the Northwest Arctic Borough. The borough receives $8.6 million in annual payments from the mine. Mine revenues are used to fund new schools, renovations, scholarships, and to provide services to NANA shareholders.

Red Dog is the biggest employer in the region with a shareholder payroll of $16.6 million.

NANA businesses earn revenues from Red Dog by providing support services.

Something that perhaps is not fully understood is the fact that 62% of all royalties received by NANA are distributed to all other Alaska Native corporations. So it is in everyone’s best interest to see Red Dog Mine prosper.

Five years ago the price of zinc was 35 cents a pound and the mine was not covering its expenses. Today, zinc is in the $1.72 per pound range and the value of royalties has increased considerably. But with fluctuating commodity prices this year’s bounty cannot be counted on for next year.

What else have we learned?

We have learned that outside environmental groups will take advantage of our people to further their own goals and raise money for their own organizations. Our villages do not benefit from the actions of these organizations, and unfortunately we expect to be fed on by such groups for the duration of our mine.

We have learned it is possible for a Native corporation to respect the land and our traditional culture while involving ourselves in resource development. I am not saying it is an easy or simple path. But if you ask me if it is worth it, I will tell you it is.

As a shareholder of NANA Regional Corporation, I remember the early discussions about whether we should develop the Donlin Creek. I was against it because of my concern about whether it could be done in a way that protected the environment and our subsistence way of life.

Trade, commerce and the use of our natural resources to sustain our people and families have always been a part of Inupiaq culture. Today, our lives are balanced between our desire to maintain the traditional skills and values it takes to live off the land, while gaining the income required to do business on a global level.

Just as our land and culture have always sustained us, we are building a corporation that will also sustain us forever. We will not be acquired or dissolved.

We will work to ensure that our land can sustain our people now and in the future.

Editor’s Note: The following is a condensed version of the presentation Matthew Nicolai gave as one of three keynote addresses at the 40th Annual Meeting Luncheon in Anchorage June 19. Nicolai serves as President of Calista Corporation. For the complete text, visit BC’s website at www.bcrdc.org.

Alaska Native Cultures respect and honor the past, and in developing ideas that guard our cultural heritage and our subsistence heritage. For millennia we have paid great attention to the natural resources of our lands to honor and respect the teachings of our Elders.

It is the instruction from our Elders that provided the source of strength that bound and guided our daily lives, to make the right choices for the common good of the people we serve. Managing natural resources in our past was done for the purpose of providing for the future.

In the past we looked upon the cultural value of land for the purpose of preservation of the culture and the resources it depended on. Today, it is the instruction from our Elders that is a new concept brought to us through the Alaska Native Claims Settlement Act (ANCSA).

ANCSA has a distinctive position where Native claims were settled through unique and untested charters by state and federal laws and regulations. These charters set up the ANCSA region corporations and 223 village corporations who own 44 million acres of subsurface and surface properties. To date none of the corporations have closed their doors, which is due to a common bond that ties us together.

During the past 32 years, these unique charters established great opportunities, especially in resource development. Before the charters were set up in 1971, we were stewards of the lands that nurtured and sustained our families. Today we have made great advances by making choices to develop our bountiful resources.

Depending on our natural resources has been a long and arduous process, usually made through consensus. The consensus process takes a long time as compared to western society. The decision process involves the emotional intelligence of our Native people because we are cautious people. In our world, emotional intelligence is usually managed through the trust and leadership of the Elders.

Elders are very much respected in our cultures, and the teachings increase awareness that we must prepare for the future.

Elders as the Yupik culture possess confidence in the future due to their understanding of past challenges and the barriers that prevent successful dialogue. The basic rudiments of management among Elders is to constantly listen, show confidence in self and humility to those around them. Elders carry the wisdom to translate rules and give admonishments to our actions.

These traits are relied upon by our leaders when decisions have to be made. In the 1970s and 1980s, the leaders of our region were interested in development of the subsurface lands due to inexperience with development under federal and state regulations. Our leadership was listening to the Elders’ advice that it was not the right time for development.

Latter, federal and state regulations brought encouraging changes. Native corporations started to develop subsurface agreements one region at a time.

These agreements affect all of us because of the ANCSA 70(7) agreement. 70(7) requires Native resources income from regional corporations be shared under a 70/30 formula. As I understand 7(7) revenue sharing, it came from our long-standing traditional values that require us to share with all peoples with whom we have a common heritage.

The wisdom of the Elders who negotiated the sharing formula of 70(7) has been a godsend to the communities we serve. 7(7) is the common bond that ties all Native corporations and villages together.

Nowhere else has such Native American law been implemented to benefit the whole. Funds shared from ANCSA resources income have supported $82 million dollars to regions developing their oil, gas, timber, and mineral properties. Village corporations in our region have received $72 million dollars. The common bond of 70(7) sharing supported our commitment to mineral exploration in our region. Over $140 million dollars has been invested on Calista subsurface lands by several companies.

This investment has had a huge impact to the people we serve. Over 2,100 jobs were created from mineral exploration projects at Red Dog. In addition to NANA and Teck, Barrick and Stuyahok. If Donlin Creek becomes a mine, the economic profile of our region will change.

Our region has one of the highest rates of unemployment in the country. The creation of the Donlin Creek exploration project in the upper Kuskokwim region has generated the demographics and economic profile of the 10 communities there.

A shareholder survey in 1994 showed 36% supported mineral exploration project. A new survey last year indicated a complete turnaround, with 76% support.

Today, we thank the predecessor of Barrick Gold Corporation, Place Dome, for placing trust in our Elders and the leadership of Calista to develop a regional communications plan for shareholders of our company to learn and comprehend mining today under new federal and state mining laws. Elders and leaders were invited to visit new mines established under NEPA and the Clean Water Act in Montana and Nevada. These trips provided helpful learning experience to our Elders, regional leaders, and to our hosts.

Historically, mining companies did not listen to local concerns. That changed with the arrival of new federal laws. New reclamation regulations do place a heavy burden on companies to obtain local input.

The mining companies we work with recognize the importance of the leadership and emotional intelligence of our Elders who can guide us while we develop our resources and honor the cultural values of our past.

The State of Alaska has a lot to offer, but Native corporations have a lot more to offer. That is, Native peoples build upon the instructions of our Elders as a source of strength that will benefit the future. The Elders in our region have led changes that benefit resource development.

As Native people and Native corporations, we will develop our resources as we have done for many millennia, and we will continue to honor our past.

GUEST OPINION

DEVELOPING OUR RESOURCES WHILE HONORING THE PAST

Marie Greene

Alaska Natives Respect Past, Embrace New Ideas

Matthew Nicolai

GUEST OPINION

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Strategic Plan Blends Inupiat and Business Values

Bobbi Quintavalle

At Arctic Slope Regional Corporation (ASRC), our traditional values are what guide us each day. It is important for us to stay grounded in our heritage and where we have come from. ASRC isn’t focused only on its past; it is working toward adapting to the changes we see on the horizon. We are trying to position ourselves to be proactive.

Sir Winston Churchill once stated, “A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.” These are good words to live by, and the Inupiat have always known this to be true. We are eternal optimists, and we are also resilient.

These are times when we need to be involved in the processes of change. Not as roadblocks because we are afraid of change, but as contributors to growth. We see the benefits from development through revenue, jobs, and improved infrastructure, these benefits do not come without cost to the Inupiat people.

My perspectives are shaped both by the economic reality of growing a sustainable economy and by the desire to ensure that my children and others after them will have a livable and prosperous natural habitat.

The strategic plan of ASRC sets forth the values of our people and the corporation. It states that we “blend Inupiat and business values in the best interests of our people and the corporation. It states that ASRC’s strategic plan sets forth the values and principles of ASRC and details the path forward in implementing the corporation’s mission and vision.”

ASRC’s mission statement is: “To create value for our shareholders and our communities through revenue, jobs, and improved infrastructure, these benefits do not come without cost to the Inupiat people.

The habitat and the environment we rely on for our subsistence resources have been well respected by the industrialists occupying some of that space with us. Not only have they respected the land, but they also respect the people who live there and work with them. Granted there have been some mistakes, but lessons have been learned. Technology and understanding has advanced significantly.

I actively participate with my family in subsistence activities. I’ve developed the habit of office and travel on the tundra and ocean, I take very seriously the future of these resources and the habitat we need to continue enjoying them. 

Our subsistence way of life is critically important to our way of life and our subsistence. We must ensure that we keep our communities healthy.

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short-circuit the permitting process carry a significant risk by depriving communi- ties of the opportunity to di- versify their economies, generate local revenue, and provide high-wage jobs in remote areas."

The risks are especially sig- nificant for private landholders, in- cluding Native regional and vil- lace corporations, many of which look to development of resources on their lands for shareholder jobs, joint-venture opportunities, and revenue, he said. Alaska has a world-class system in place for natural resource use permitting and development, which involves thorough review of proposals to develop the state’s rich natural resources, and has demonstrated to the world that development can and is being accomplished with highest concern for the environment.

The state’s Large Project Team works with large proj- ect applicants and operators, federal resource managers, local governments and the Alaska public to ensure proj- ects are designed, operated and reclaimed consistent with the public interest. The state’s laws balance potential economic and social benefits of developing non-renewable mineral resources with the potential risks to the region’s renewable resources.

Commissioner Tom Irvin of the Alaska Department of Natural Resources isn’t the only Alaskan concerned about what appears to be building momentum against development proj- ects and attempts to circumvent the permitting process: RDC board members meeting in June for their annual meeting expressed alarm that Alaska’s re- source industries appear to be under siege by non- development interests. They noted that virtually every month a new initiative surfaces to challenge development. For example, this month the Mat-Su Borough Assembly is considering an ordinance that would require a local permit to build power plants. Much of what the ordinance requires will duplic- ate requirements of federal and state regulators and potentially discourage energy infrastructure development.

In addition, the Chuitna coal project faced a challenge by opponents to designate the Beluga coal district as a mining district. The plaintiffs argued that the U.S. Army Corps of Engineers’ 404 permit authorizing some of Rock Creek’s construction activities was permit for Anchorage is not significant for coal mining. However, the state has denied a petition seek- ing the designation.

RDC Board members Judy Patrick, John Sturgeon and others urged Alaska’s resource industries to work together through RDC to support each other, or else face the set back similar to what Alaska’s forest products industry has experienced over the past decade. That industry is now only a mere shadow of its former self.

“How could the forest products industry go from being the second or third largest sector in Alaska ten years ago to being insignificant now?” Sturgeon asked.

The state must be able to assure the international in- dustries and financial mar- kets that our processes work, that they accommodate Alaskans’ concerns, and that the system cannot be ignored because some individuals do not like a potential outcome of the development process."

The commissioner ex- pressed particular apprecia- tion for environmental groups that have worked suc- cessfully with DNR and within the established per- mitting system. “We under- stand that environmental groups have real concerns about issues related to de- velopment that are shared by many Alaskans, and appreci- ate their involvement and input into how to improve the permitting process,” he said.

DNR will increase out- reach efforts on Alaska’s resource development per- mitting process. A series of workshops on resource per- mitting and regulation will be held around the state this year. The workshops will be designed to educate partici- pants on Alaska’s environ- mental laws and regulations and the permitting process.

**Native Corporations Hit $5 Billion Mark**

Alaska Native corporations are generating more than $5 billion a year in revenue, according to a report by the Association of ANCSA Presidents and CEOs.

“It is astounding when I see these figures and realize the impact of what the corporations are doing,” said Vicki Otto, the associa- tion’s executive director.

The Barrow-based Arctic Slope Regional Corporation surpassed the $1 billion mark in annual revenues years ago, but last year Bristol Bay Native Corporation joined the $1 billion club for the first time. Also experiencing strong financial growth were Cook Inlet Region, Inc., NANA Regional Corporation and Gwich'in Alaska Corporation. Sixteen Native corporations, including 13 re- gional corporations and three village corporations, reported a com- bined $5.6 billion in revenue.

**Shell and AEWG Agree On Conflict Avoidance**

Shell and the Alaska Eskimo Whaling Commission have signed a conflict avoidance agreement for Shell’s 2007 drilling program in the Beaufort Sea.

Shell hopes to drill three exploration wells in its Sivuligq prospect, formerly Hammerhead, in western Camden Bay.

Under the agreement, Shell will only move one of its two Beaufort Sea drillships, the Frontier Discoverer, into the Sivuligq area until the fall Cross Island subsistence bowhead whale hunt is over. The Frontier Discoverer will cease drilling operations on Aug. 25, move out of the Sivuligq area within two days and return with the Kulluk drillship after the end of the hunt.

The conflict avoidance agreement forms a major and critical piece of a coalition of permits and agreements Shell needs to start its drilling program. However, the state has yet to rule on a determin- ation that Shell’s program is consistent with the Alaska Coastal Management Plan.

The North Slope Borough and several environmental organiza- tions have appealed the air quality permits for the drilling opera- tions, and the U.S. 9th Circuit Court of Appeals has placed a temporary hold on drilling, until after an Aug. 14 hearing.

**Nome’s Rock Creek Project Wins Legal Battle**

An anchor judge ruled in favor of NovaGold Resources after a hearing in Alaska District Court on arguments by a Nome citizen group to halt construction of the Rock Creek gold mine near the Bering Sea town.

The plaintiffs argued that the U.S. Army Corps of Engineers’ 424 permit authorizing some of Rock Creek’s construction activities was issued in violation of the Clean Water Act. They were seeking an in- junction to prevent wetlands from being disturbed.

Judge Ralph Beistline noted Rock Creek is located in “mining country” and that much of the land on which mining is proposed to take place was previously mined. In addition, the wetlands that are the tailings facility are surrounded by vast areas of pristine wetland that will not be impacted by the project, the judge said.

The judge found the defendants complied with the law and pro- ceded in a manner that is sensitive to the environment.

**Kensington Project Benefits Juneau**

A new report by the McDowell Group revealed that the Kensington gold mine project in Southeast Alaska has provided family-supporting livelihoods for nearly 420 workers, including $25 million in annual labor and $78 million spent with businesses in Juneau. The study noted a total investment of $238 million by Couer Alaska will occur to bring the mine into development. The study projects annual revenues of $1.5 million to the City and Borough of Juneau from the mine.

While construction at the mine is 85 percent complete, work on the tailings facility has been shut down following a lawsuit by envi- ronmental groups. The company is attempting to resolve legal issues and work collaboratively to find a solution to the disposal of tailings so that Kensington may proceed with planned production.

**Anti-mining Water Initiative Denied Certification**

Lieutenant Governor Sean Parnell has denied certification of an application for an initiative related to water and mining. The initia- tive would put forth regulations for new water permits for new mining operations over 642 acres in size. According to Parnell, “The initiative would impermissibly allo- cate public lands and waters away from mining uses. The people, via Alaska’s constitution and statutes, reserved these powers of appropriation to the legislature.”

**AMREF Celebrates 25 Years**

The Alaska Mineral & Energy Resource Education Fund (AMEREF) is celebrating 25 years of providing Alaskans students with the knowledge and skills to make informed and objective deci- sions relating to mineral, energy and forest resources. AMEREF Executive Director Lee Clune has been working to update existing material, and to develop training for educators. Recent fundraising efforts include the Coal Classic Golf Tournament and generous cen- terpiece sponsorships at the RDC Annual Meeting. Upcoming events, including the Alaska Minerals Association raffle and silent auction in Anchorage, will occur in November.

The RDC website has been updated with new and returning board members. Visit http://www.akerd.org to view the board as of 2007-2008 board. New and renewing members of RDC are now listed on the website. The next RDC board meeting is scheduled for June 7-8. Visitor hits is expected to exceed 150,000 for a second month. A link to the Petroleum News Alaska Book Club is also available on the RDC site, where you can learn more about the club. Visit http://www.akerd.org/issues/olgas/auctions/kchul.html.
SPECIAL SESSION: A DANGEROUS PATH?

John Shively

There is a good deal of speculation about whether Governor Palin will call a special session this fall to review the revenue production tax (PPT) adopted by the legislature only last year. Earlier this year her advisors encouraged her to call the session, but since then has said she is waiting for a review of the tax by the Department of Revenue (DOR) to see if there is good reason to call the legislature back.

Several thoughts come to mind as I ponder this situation. The first, “Has the tax worked?” Although I am no expert on taxes, I think it is unfair to judge the “success” of this tax based on a single filing for the first nine months it was in effect. Since this is all the information DOR will have for its analysis, I will make mine on the same basis.

The state received over $900 million dollars in additional revenue from the new tax with a couple of flaws. The first is that the figures are from 2014 and do not take into account the revenue from PPT. In addition, the studies do not consider the cost of development, and Alaska ranks among the costliest in the world for the industry.

Another argument used to promote a special session is that the state should not have changed to a net tax, but should have just raised the old gross tax. These individuals would use the special session to change the entire tax structure, only a year after the state had made another major change.

How many ways can one spell fiscal instability? Some of the newer companies operating on the North Slope have made their investment decisions based on the structure of the new tax.

Changing the structure of the production tax again, even if some of the new investment credits remain, sends a terrible signal to those thinking about investing in Alaska. Worse yet, it sends an unfortunate message not only to those who are or may be thinking about investing in Alaska, but will most likely have the opposite effect as Alaska ultimately loses the new investment dollars needed to stem the decline.

A special session which raises the production tax is a dangerous path that could lead us to the edge and over an economic cliff.

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Volume In State Timber Sales Reach 10-Year High, Insects And Disease Hit Hardwoods

In 2006, the State of Alaska sold 25 million board feet of timber in 61 sales to Alaskan purchasers for value-added processing, according to the state’s annual forestry report. This was the highest volume of state sales since a market peak in 1998.

Meanwhile, only 40 million board feet was logged off the Tongass National Forest last year. The annual harvest ceiling set under the current plan is 267 million board feet.

According to the state report, aerial surveys revealed 33 million acres of forest land in Alaska damaged by insects and disease last year. Hardwood defoliators were the most widespread pests in 2006, affecting birch, aspen, and willow. Although far below epidemic levels of the 1990s, spruce bark beetles were the major factor in mortality on 110,000 acres.

My wife and I are about to have our second child and we’re very excited about welcoming our new bundle of joy to this great state of Alaska. However, her forthcoming arrival has caused us to have a lot of discussions lately about our future. Things to consider: a new house; additional cost of day-care and child care; funding college; her wedding; more diapers…I could go on. Before diving into anything, we’re planning. We’re looking at our income/savings and analyzing our expenses. We’re prioritizing what we need and, ulti- mately, making hard choices on what we can afford, what we should save for, and what we just have to say “no” to.

The discussions have not always been easy. Even so, we both agree it is to have these discussions now rather than wait until we’ve amassed piles of things we don’t need, lists of things we need but don’t have money or room for, and all the while accruing large credit card debt.

Has the state of Alaska had a similar conversation with itself? Is our fiscal house in order? Governor Palin’s revenue and budget chiefs recently indicated a budget deficit will likely materialize by 2010 under current oil projections. Let’s not wait until then to have these hard discussions.

We too need to analyze our income, our savings, and our expenses. RDC has had, as its top priority over the years, asked for our elected officials to develop a fiscal plan. RDC has advocated for a three-pronged approach to the development of such a plan:

- Spending restraint
- Implement a broad-based tax
- Support establishment of Percent of Market Value (POMV) as a means of distribution from the Permanent Fund.

A portion of these funds should be used to help fund state government.

Let’s take a look at the last year from an income perspec- tive. We Alaskans will be getting over $1 billion more from the oil industry this year compared to last year thanks to the new tax. However, it still sits in place. Even so, oil production in Alaska is declining by over 6% per year. Fortunately, higher oil prices have saved us while oil has declined from a peak of over 2 million bar- rels per day in 1989 to under 800,000 barrels today.

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Let’s take a look at the last year from an income perspec- tive. We Alaskans will be getting over $1 billion more from the oil industry this year compared to last year thanks to the new tax. However, it still sits in place. Even so, oil production in Alaska is declining by over 6% per year. Fortunately, higher oil prices have saved us while oil has declined from a peak of over 2 million bar- rels per day in 1989 to under 800,000 barrels today. Will the gasoline be next to save us? Who knows.

We have implemented a $50 per person head tax on the cruise industry. Mining receipts to the state are at an all-time high thanks to increased commodity prices. And all the while, individual Alaskans are not paying a penny via a broad-based tax to help fund state government. We are the only state in the union that doesn’t have either a state income or state sales tax. It’s half the battle for those attempting to make a living for what they spend when you are not personally im- pacted. It’s also hard to encourage new companies to invest in Alaska if they very well may be the next ones in line to pay increased taxes. Meanwhile, federal appropriations as de- clining as more money is dedicated to the war effort. This trend will likely continue.

And yet Governor Palin has asked for a separate Fiscal Plan In Place for the Permanent Fund. Our savings account has just surpassed the $40 billion threshold. The dividends paid from this savings account to all Alaskans have become an entitlement and in fact, the first question people ask of someone running for office is, “Will you touch my Permanent Fund?” It’s a sad state of affairs. Despite revi- sionist historians who would like to tell you otherwise, the Permanent Fund was created as a rainy day account to help fund state government when oil revenues declined. That’s not to say I oppose the payment of dividends. I do, however, oppose the payment of huge dividends which are forthcom- ing should revenues continue to rise up to the $40 billion in value. Perhaps if the state implemented an income tax, capped at the level of the previous year’s dividend, we’d have a win-win. Lower-in- come households would still get the shot in the arm the divi- dends provide and the rest of us would break even. Pretty hard to complain about that.

Now, about our expenses? As a state, we definitely spend too much. We should not fund things just because they are existing state programs that need to be maintained. I ap- plaud Governor Palin for exercising fiscal restraint with this year’s capital budget. However, I encourage her to take the same approach with the state’s operating budget. With each state service, we need to ask ourselves, is this something we expect government to do? Does it pass the red face test?

Let’s put a plan in place this next legislative session. It takes courage to lead. Let’s get our house in order for future generations, like my son and future daughter, don’t have to.
On June 25, 2007, the United States Supreme Court announced a decision, National Association of Home Builders v. Defenders of Wildlife, that clarified how the Endangered Species Act (ESA) applies to federal actions under other laws.

The Defenders of Wildlife case involved the actions of the Environmental Protection Agency (EPA) in approving Arizona’s application for primacy of the federal wastewater permitting program (NPDES permits). Opponents of Arizona primary status attempted to use the ESA to stop EPA’s approval of the Arizona program. Although the Ninth Circuit Court of Appeals sided with the challengers, the U.S. Supreme Court found that the Ninth Circuit misconstrued the ESA and, consequently, reversed the appellate court.

The decision is a victory for Alaska, which had a significant stake in the case due to the fact that the state’s NPDES primacy application is currently pending with EPA.

For advocates of ESA reform, the Defenders of Wildlife decision is welcome relief. In a 1978 decision, TVA v. Hill, construction of the Tellico Dam was enjoined in litigation concerning the impact of the dam impoundment on the snail darter. By the time the TVA case reached the Supreme Court, the dam was nearly complete. The Court, in one of the strongest environmental opinions in its history, set the stage for future interpretations of the ESA by stating that the ESA “admits of no exceptions” and requires a court to enjoin actions that would jeopardize the continued existence of a species, regardless of economic consequences.

In Defenders of Wildlife, EPA initiated ESA consultation with the U.S. Fish & Wildlife Service (FWS) to determine whether the transfer of primacy to Arizona would result in any adverse impacts on ESA listed species. FWS expressed concerns over the potential direct and indirect impacts to certain upland species from future development in areas that would ultimately be served by Arizona-issued NPDES permits. EPA concluded that it did not have authority to disapprove a transfer based on any considerations other than the nine criteria listed in the Clean Water Act (CWA) governing EPA’s approval of primacy applications. EPA concluded that Arizona had met each of the nine CWA criteria, approved the transfer of the permitting program to the state, and concluded the ESA consultation.

The plaintiffs sought review in the Ninth Circuit, arguing that the ESA effectively imposed an additional criterion on the transfer of NPDES permitting program authority, and that the federal duty to avoid jeopardy through consultation must be satisfied before the transfer could be lawfully approved. The Ninth Circuit concluded that the federal obligation imposed on federal agencies under the ESA to avoid jeopardy and adverse modification of critical habitat “is an obligation in addition to those created by the agencies’ own governing statutes.”

The U.S. Supreme Court was presented with two competing statutory mandates – the duty to avoid jeopardy to listed species and designed critical habitat under the ESA, and the duty of EPA to approve the transfer of the NPDES permitting program under the CWA to a state upon satisfaction of the nine specified criteria. In resolving the two statutory schemes, the Court considered whether the ESA essentially acts as an independent source of authority irrespective of the non-discretionary mandate imposed on EPA under the CWA. In a 5-4 decision, the Court held that Section 7 of the ESA applies only to discretionary federal actions, and thus does not impose an additional statutory criterion on EPA when it is carrying out mandatory obligations.

As a result of the Court’s holding, it is now clear that Section 7 applies only to actions exhibiting the requisite discretionary federal involvement or control. Future litigation will focus on clarifying discretionary federal actions from those that are mandatory.

In terms of direct impacts from the decision, Alaska has already benefited irrespective of the path to obtaining approval of NPDES permitting primacy. The process now has a narrower set of circumstances under which the ESA will impact federal actions.

Land access (e.g., rights provided by statute or easements), federal water rights, and other actions compelled by statute come to mind as situations where federal agencies must consider the ESA consultation. On the other hand, the case will be cited for the proposition that the ESA does, in fact, have limits.

The ESA critical habitat issues are looming for Alaska on a variety of fronts, and it remains to be seen whether the lower courts will find support in Defenders of Wildlife to narrow federal agencies’ obligations affecting resource development projects in Alaska. The Defenders of Wildlife decision should ultimately result in a narrower set of circumstances under which the ESA will impact federal actions.

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Alaska Department of Natural Resources (DNR) Commissioner Tom Irwin spoke out recently against the growing trend of anti-resource development initiatives in Alaska, and defended the state’s resource permitting and regulatory system as effective, fair and responsible.

“Anyone willing to connect the dots can see that our resource industry is being targeted by multiple efforts to deprive developers of the tools they need to operate in Alaska,” Irwin said.

“Our Constitution mandates responsible resource development for the benefit of the people of Alaska, and I take significant exception to efforts to interfere with that mandate or the corresponding public process,” Irwin noted.

“While it is clear that we must protect our clean water, healthy fish runs, and subsistence opportunities, we also have an obligation to all residents to provide economic opportunities from state and federal lands and for private lands, including Native regional and village corporation land.”

Irwin, whose responsibilities include management and oversight of the state’s oil, gas, mineral, forest and agricultural resources for multiple uses, noted a number of anti-development efforts that have recently come to public notice:

A measure to the state Board of Fish in December 2006 seeking creation of a fish refuge in the drainages near the Pebble deposit.

“What these and other efforts have in common is a goal of subverting the full, fair, public process established in our Constitution and in state law to allow lawful development of our natural resources in a responsible manner,” Irwin said. “These efforts to would block mines and most other resource development projects from using any water that runs into Bristol Bay or supports the bay’s salmon, and another would create a new 7.7 million acre wildlife refuge with special water quality and discharge standards. Each bill would effectively block development of the Pebble prospect and any other mining development on millions of acres of state land in Southwest Alaska.

- A Homer resident introduced a measure to the state Board of Fish in December 2006 seeking creation of a fish refuge in the drainages near the Pebble deposit.
- A statewide ballot initiative was submitted to the lieutenant governor’s office asking voters to deny any large mines from using state water in Southwestern Alaska. Such an initiative would block development of not only the Pebble copper-gold prospect, but virtually all other future mineral development on millions of acres of state and private land, including Native corporation land.
- A lawsuit recently blocked Southeast Alaska’s Kensington gold project, halting progress on that mine despite millions of dollars spent to comply with all environmental guidance provided by regulatory agencies.
- A lawsuit was filed last year to block the Rock Creek gold project on Native corporation and private land near Nome.
- Several municipalities have proposed initiatives which would significantly restrict the sound development of state and private lands. These include a proposed Bethel City Council ordinance banning the transportation of cyanide inside Bethel’s borders, and the Denali Borough’s proposed prohibition on coal-bed methane exploration.
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