



FROM OUR MOUNTAINS TO OUR LAKE

Hope

THE LEGAL FRONT

State Court Case Challenges Revett's Construction Permit

On January 12th, our court case challenging the issuance of a general construction permit by Montana DEQ was argued in Helena. Our state attorney made the case that in authorizing the construction of the evaluation adit through a general construction permit, DEQ violated several provisions of Montana's Water Quality Act.

The construction would take place over five to seven years and would generate as much as 1,400 tons of sediment per year. This sediment would be destined for Rock Creek, home to a threatened population of bull trout. Rock Creek is already impaired by sediment from past logging practices and cannot accept any new sediment loading without significant harm to bull trout. Under Montana law, the stream is considered to be of "unique ecological significance" because of the importance of its resident bull trout population to recovery efforts in the lower Clark Fork River.

In addition, its waters are classified as "high quality," meaning that they should not be subject to any degradation. The issuance of a general permit does not take into consideration the nature of the stream or the impacts that the construction would have on bull trout. The state also violated the Montana Constitution by issuing a construction permit without public input on a matter of significant interest to the public. We are asking the court to revoke the construction permit and require the state to conduct a nondegradation analysis of the impacts of the discharge with an opportunity for public comment.



Rock Creek photo by Woods Wheatcroft

Changing of the Guard

Two of the Alliance's board members recently retired from the board. We would like to thank Dave Reseska and Tom Pagliasotti for their years of service to the board, and the enthusiasm and direction they provided! We know they will continue to champion our cause, and we look forward to their ongoing involvement. We also want to welcome Diane Mosley and Linda Olson as our newest board members.

Annual Party

Thanks to everyone who was able to make it to our annual gathering! This year's event was held at Sandpoint's Pend D' Oreille Winery. Businesses that helped make our event a success included Coldwater Creek, Lake Pend Oreille Cruises, Maps & More, MeadowBrook Home & Gift, Misty Mountain Furniture, Patagonia's Dillon, MT Outlet Store, Pend D' Oreille Winery, and Sandpoint Marina. Thanks also go to the Edwards Park Trio for providing fantastic music, and to Laura Bry for being our MC.

Hope



Western Mining Action Project

The Alliance has a top-notch legal team with attorneys in private practice and with non-profit environmental law centers. We thought our members might be interested to learn who represents them in the fight to protect our clean water and public lands from the mine. In this issue, we profile our non-profit attorney who has been with us since our inception.



Roger Flynn

Roger Flynn is the founder of the non-profit law clinic Western Mining Action Project (WMAF), based out of the small town of Lyons, Colorado. He and his staff attorney, Jeff Parsons, have represented communities and indigenous peoples all over the west and in Alaska fighting major mining proposals. The non-profit environmental law center brings expertise in mining law and public land laws, such as NEPA, the Clean Water Act, and the Clean Air Act, and years of experience in challenging illegal mining proposals. Roger first learned about the proposed mine 15 years ago. Upon examining the Draft EIS, he realized that the mine was on the fast track to a permit and described the mining plan as “so full of holes it is like Swiss cheese.”

In addition to providing pro bono legal representation, WMAF is involved in drafting legislation aimed at protecting water quality and strengthening mining regulations. Roger has testified before Congress about the inadequacies of mining policy in this country, and WMAF is working closely with the conservation community in working to reform the 1872 Mining Law.

We want to thank Roger for his enthusiasm and his dedication to our cause! The hours that he has spent conducting research, formulating strategy, writing briefs and rebuttals, and advising his clients on Rock Creek are deeply appreciated.

Watch for a profile of our EarthJustice attorneys in an upcoming issue.

Do You Remember?

In 2001, six years after the release of the Draft EIS, the Kootenai National Forest issued its first approval of the Plan of Operations for the Rock Creek mine. This action unleashed a storm of protest by concerned citizens and local residents in Idaho and Montana. That same year, the Rock Creek Alliance organized a rally and a march to the Regional Forester's Office in Missoula, asking him to reject the Plan of Operations.

In Idaho, Bonner County was angry at the prospect of the Rock Creek mine's construction upstream of Lake Pend Oreille. In April 2002, the Alliance sponsored a walk across the Long Bridge to bring attention to the downstream impacts. In anticipation, children from local schools painted protest signs and banners. The turnout far exceeded expectations, attracting protesters from our lake front communities and from western Montana. More than 1,000 people participated, letting their voices be heard by walking across the 2-mile bridge spanning Lake Pend Oreille and connecting Sandpoint to Sagle. Speakers at the event included then Bonner County Commissioner Tom Suttmeier and Rep. George Eskridge.





UPCOMING ESA CHALLENGE

Protecting Bull Trout and Grizzly Bears

In 2010, a decision from a federal district court in Montana rescinded the Forest Service's 2001 Environmental Impact Statement and 2003 Record of Decision for the Rock Creek mine. Unfortunately, we did not prevail in our litigation against the US Fish and Wildlife Service (USFWS) because the court failed to fully comprehend the impacts the proposed project would have on threatened grizzly bear and bull trout. Our legal counsel in the Endangered Species Act suit, EarthJustice, has filed an appeal of this decision in the Ninth Circuit Court of Appeals. Here we outline the issues surrounding bull trout and grizzly bears, as these species are at the heart of our upcoming challenge.

Rock Creek Bull Trout

The 2006 Biological Opinion (Bi-Op) issued by US Fish and Wildlife Service acknowledged the likelihood that the impacts from the proposed Rock Creek mine would extirpate bull trout from Rock Creek. The agency trivialized the significance of this loss by diminishing the importance of bull trout in Rock Creek. In this opinion, the USFWS stated, "If direct loss of individuals or indirect adverse effects from additional habitat modifications occurs, this could reduce the likelihood of persistence of both forms of Rock Creek bull trout. Such effects increase the risk of extirpation of Rock Creek bull trout; however, the effect on the Lower Clark Fork Core Area population would be minor because Rock Creek's contribution to the core area population is relatively small."

This conclusion contradicts an earlier proclamation by the agency on the importance of the bull trout population in Rock Creek. In 1999, the US Fish and Wildlife Service stated: "Rock Creek and the Bull River are effectively all that remains of bull trout associated with Cabinet Gorge reservoir. In short, these two streams are critical to conserving the species in the area."

The one conclusion that we concur with the agency on is that the mine would jeopardize this small population. This is primarily due to the destruction of critical habitat from the introduction of sediment into Rock Creek. Our case will challenge the agency's failure to protect bull trout by allowing the critical habitat in Rock Creek, which is crucial for spawning and rearing, to be destroyed.

Cabinet Mountain Grizzly Bears

Approximately 30-40 grizzly bears are estimated to reside in the Cabinet-Yaak Ecosystem, with 10-15 of those within the Cabinet Mountains Wilderness. The home range for this small population of bears is within the Kootenai National Forest. Degradation and loss of habitat is a primary reason the remaining bears are approaching extirpation and the loss of habitat from the proposed Rock Creek mine would significantly exacerbate the already dire conditions.

The mine would displace grizzlies from 7,044 acres of habitat. Yet as a condition for permitting, Revett Minerals is only asked to secure 2,450-acres during the life of the mine. Unfortunately, if these replacement acres are suitable habitat, then they are likely already occupied by bears and the proposed mitigation plan will not create any new habitat. Additionally, the amount of actual replacement

acres ultimately secured may be far less than the projected 2,450 if willing sellers and suitable habitat are not available. Revett is not obligated to secure these replacement acres prior to the proposed mine's final permitting. In all, as a direct result of the proposed Rock Creek mine, the grizzly would lose eleven square miles of native habitat critical to the survival of the species in the region.

Due to the precariously low number of grizzlies in the Cabinets, the USFWS stipulated that six additional females be added to the population before the

mine is constructed. Wildlife agencies have been attempting to do so by transplanting bears from other regions in Montana. The outcome of this effort has been dismal. Two bears were transplanted into the Cabinets in 2008; both were dead before the year was done. A restaurant owner from Noxon poached one bear and a train hit the other. In 2010, two bears were removed from the Whitefish range and brought south into the Cabinet Mountains. Less than a week after their release, the two grizzly bears made the journey north and east and were found again in their home range near Whitefish, Montana.

The Rock Creek mine, and the concurrent loss of habitat, would create a significant obstacle for recovery—one that would likely be insurmountable. When our appeal in the Ninth Circuit Court of Appeals is heard, the plight of the Cabinet bears and the gross inadequacy of the mitigation measures will be raised.



Grizzly bear photo by William S. Keller, N.P.S.



**PO. Box 2636
Sandpoint, ID 83864**

Non-Profit Org.
US Postage
PAID
Permit No. 208
Sagle, ID 83860

Please note the date by your name to check your membership expiration date. Thank You!

PROTECTING OUR WATER AND QUALITY OF LIFE



Rock Creek Alliance is a non-profit organization formed by citizens, conservationists, and outdoor sports enthusiasts to protect our public lands and water resources from proposed mining activities within the lower Clark Fork River—Lake Pend Oreille Watershed

Board of Directors:

Rich Del Carlo, Sandpoint ID
John Edwards, Sagle, ID
Jean Gerth, Sandpoint, ID
Diane Mosley, Heron, MT
Linda Olson, Sagle, ID

Staff:

Mary Crowe Costello, Executive Director
Jim Costello, Outreach & Communications Coordinator