

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

Trefim Andrew, Tim Anelon, Gary
Nielsen, Henry Olympic, Abe Williams
and Braden Williams,

Plaintiffs,

v.

Case No. 3AN-19-_____CI

Bristol Bay Regional Seafood
Development Association, United Tribes
of Bristol Bay, and SalmonState,

Defendants,

COMPLAINT

COME NOW Plaintiffs Trefim Andrew, Tim Anelon, Gary Nielsen, Henry Olympic, Abe Williams, and Braden Williams (collectively, "Plaintiffs"), by and through counsel, Perkins Coie LLP, and complain and allege as follows:

I. STATEMENT OF CIVIL ACTION

1. This is a civil action brought by Plaintiffs pursuant to AS 10.20.016 against Bristol Bay Regional Seafood Development Association ("BBRSDA"), seeking to set aside and enjoin the performance of contracts entered into by BBRSDA with United Tribes of Bristol Bay ("UTBB") and SalmonState as Defendants pursuant to the requirement in AS 10.20.016(b).

2. Plaintiffs, who are members of BBRSDA, allege that Defendant BBRSDA acted beyond the powers granted to it by AS 44.33.065, the Amended and Restated Articles of Incorporation of BBRSDA (as amended by the Articles of Amendment filed with the Division of Corporations, Business and Professional Licensing on January 2, 2019) (the “Articles of Incorporation”), and the Bylaws of BBRSDA (“Bylaws”). BBRSDA did so by entering into two contracts, one with UTBB and one with SalmonState (“Contracts”), whose purposes are unrelated to and beyond the scope of the purpose for which BBRSDA was created: to promote and market Alaska seafood products harvested in the Bristol Bay region. Plaintiffs ask that this Court exercise its equitable powers to set aside and enjoin the performance of the Contracts pursuant to AS 10.20.016(b).

3. Plaintiffs also seek declaratory relief from this Court in the form of an order declaring that BBRSDA is prohibited from using its resources to try to impact the permit or developing of Pebble Mine because such use of resources would not be for the purpose of promoting and marketing Alaska seafood products in the Bristol Bay region and thus BBRSDA does not have capacity or power to use its resources in this manner.

II. PARTIES

4. Plaintiffs are all employed as commercial fishermen in the Bristol Bay

region of Alaska. Because each Plaintiff holds a commercial fishing permit in Bristol Bay, by law, each Plaintiff is a member of BBRSDA. Plaintiffs reside in Anchorage, Iliamna, Kokhanok, and Newhalen, Alaska.

5. Defendant BBRSDA is a registered Alaska nonprofit corporation. BBRSDA is formed pursuant to AS 44.33.065, which permits the formation of regional seafood development associations to promote and market Alaska seafood products harvested in Alaska.

6. Defendant UTBB is a tribally-chartered consortium in the Bristol Bay region of Alaska, comprised of representatives from fifteen tribal governments. UTBB is located in Dillingham, Alaska. UTBB's stated mission is to protect the lands and waters that support the traditional way of life of the indigenous people of Bristol Bay by advocating against unsustainable large-scale hard rock mines like the Pebble Project.

7. Defendant SalmonState is an initiative housed at the New Venture Fund in Juneau, Alaska. SalmonState's stated goal is to keep Alaska a place where wild salmon, and the people who depend on them, thrive.

III. JURISDICTION AND VENUE

8. This Court has original jurisdiction over this action pursuant to Alaska Statute 22.10.020 because this is a civil action seeking injunctive and declaratory relief.

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9. Venue is proper within the Third Judicial District under Alaska Rule of Civil Procedure 3(c)(2) because Defendant BBRSDA has officers who may be personally served in the Third Judicial District. Venue is also proper under Alaska Rule of Civil Procedure 3(c)(1) because Plaintiffs' claims arise from Contracts that will be performed, in part, in the Third Judicial District.

IV. FACTUAL ALLEGATIONS

10. BBRSDA is a regional seafood development association formed pursuant to AS 44.33.065 to promote and market Alaska seafood products harvested in the Bristol Bay region of Alaska.

11. AS 44.33.065 allows the formation of regional seafood development associations in specified regions of Alaska for the purpose of "promoting and marketing Alaska seafood products harvested in the region" through

"(A) promotion of seafood and seafood by-products that are harvested in the region and processed for sale;

"(B) promotion of improvements to the commercial fishing industry and infrastructure in the seafood development region;

"(C) establishment of education, research, advertising, or sales promotion programs for seafood products harvested in the region;

"(D) preparation of market research and product development plans for the promotion of seafood and their by-products that are harvested in the region and processed for sale;

“(E) cooperation with the Alaska Seafood Marketing Institute and other public or private boards, organizations, or agencies engaged in work or activities similar to the work of the organization, including entering into contracts for joint programs of consumer education, sales promotion, quality control, advertising, and research in the production, processing, or distribution of seafood harvested in the region;

“(F) cooperation with commercial fishermen, fishermen's organizations, seafood processors, the Alaska Fisheries Development Foundation, the Fisheries Industrial Technology Center, state and federal agencies, and other relevant persons and entities to investigate market reception to new seafood product forms and to develop commodity standards and future markets for seafood products[.]”

12. BBRSDA's Articles of Incorporation provide that BBRSDA “is organized to implement the provisions of AS 44.33.065 for fishers operating within the Bristol Bay Region of Alaska” and that “[a] primary goal of the corporation is to promote and market seafood harvested in the region and pursue any other legal purpose.” The Articles provide that BBRSDA shall:

- Provide for representation of commercial fishing permit holders for each fishery in the region that is subject to a seafood development tax levied under AS 43.76.350 — 43.76.399 on the board of directors of the organization.
- Provide for membership in the organization by any commercial fisherman who holds a commercial fishing permit for a fishery that is conducted in the region and by other persons and groups in the region who wish to be members of the organization.
- Maintain itself as a nonprofit corporation under the

laws of the State of Alaska for the purpose of marketing and promoting seafood products taken in the region and seafood products taken in fisheries subject to a seafood development tax levied under AS 43.76.350 — 43.76.399.

13. BBRSDA has adopted Bylaws that govern the activities of BBRSDA. Like the Articles of Incorporation, the Bylaws provide that BBRSDA is “organized to implement the provisions of AS 44.33.065 for fishers operating within the Bristol Bay Region of Alaska,” and that “[a] primary goal of the corporation is to promote and market seafood harvested in the region and pursue any other legal purpose.” The Bylaws further provide that BBRSDA is “organized as a regional seafood development association for the Bristol Bay Region of Alaska under the terms of AS 44.33.065” and incorporate the terms of that statute.

14. Plaintiffs have worked as commercial fishermen in the Bristol Bay region of Alaska for periods ranging between 9 to 55 years. As commercial permit holders in the Bristol Bay region, by law Plaintiffs are members of BBRSDA and are required to pay a seafood development tax to the State of Alaska on the fishery resources taken and sold by them from the Bristol Bay fishery. The seafood development tax collected from Plaintiffs and other commercial fishermen in the Bristol Bay region is contributed by the state to BBRSDA.

15. Plaintiffs’ fishing operations are relatively small. Plaintiffs do not have

the time or the resources to promote and market Alaska seafood products by themselves, so they rely on BBRSDA to do this promotion and marketing.

16. Pebble Limited Partnership (“PLP”) is a company that is looking to develop the Pebble Deposit, a copper-gold-molybdenum porphyry deposit in southwest Alaska, by building a mine. Before construction may begin, PLP must receive permits from multiple state and federal agencies, including the Alaska Department of Environmental Conservation (“Alaska DEC”), the Alaska Department of Natural Resources (“Alaska DNR”), the United States Bureau of Safety and Environmental Enforcement (“US BSEE”), the United States Environmental Protection Agency (“US EPA”), and the U.S. Army Corps of Engineers (“USACE”).

17. In February 2019, USACE released the draft environmental impact statement (“EIS”) for Pebble Mine. The public comment period for the draft EIS began on March 1, 2019 and is scheduled to end 90 days later, on May 30, 2019. USACE will be holding public hearings on the draft EIS in nine different communities from March 25 through April 16, 2019. At present, the final EIS is estimated for release in early 2020.

18. Plaintiffs have learned that, just days after USACE released its draft EIS regarding the Pebble Mine, on February 28, 2019, BBRSDA proceeded with the two Contracts intended to influence the permitting process and prevent the construction of

Pebble Mine.

19. The first contract, the “Pebble Outreach and Permitting Process Engagement Project” (“Outreach Contract”), is between Defendants BBRSDA and UTBB. One of the stated purposes of the Outreach Contract is “outreach and education activities related to the National Environmental Policy Act (“NEPA”) permitting process for the proposed Pebble Mine.” The Outreach Contract extends BBRSDA funding in the amount of \$225,000 for various activities, including, “Educating the public about how to contact state and federal officials to communicate their views on the Pebble Mine project, and to assist the public in preparing testimony regarding the same.” UTBB describes the purpose of the Outreach Contract as “permit withdrawal or denial for the Pebble project,” “successfully engag[ing] all stakeholders . . . with the ultimate goal of permit withdrawal or denial,” and “engag[ing] area communities in the permitting process and others through social media and other technology” with the goal of “hindering potential for additional investment in the project.” BBRSDA funds are to be expended by UTBB for certain categories of activities including “travel expenses to transport fishermen and community members to and from public hearings,” “travel expenses of UTBB staff and tribal leadership related to ‘UTBB Consultation (NEPA & NHPA Section 106) Travel,’” as well as the creation of “communication materials” and the hosting of

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“engagement sessions for public hearings and other regional meetings.” In the Outreach Contract, UTBB committed not to participate in lobbying, which under AS 24.45.171(11) includes certain communications with public officials for the purpose of influencing administrative action, whether done directly or through agents.

20. The second contract, the “BBRSDA/CFBB Pebble Mine Draft EIS Technical Review Project” (“EIS Contract”), is between Defendants BBRSDA and SalmonState. The stated purpose of the EIS Contract is to engage SalmonState in the performance of technical analysis and review of information related to the Pebble Mine Draft Environmental Statement in exchange for \$27,383 in funding from the BBRSDA. The project activities, which are described in an appendix to the contract, further provide that the goal of the project is to “convince the Army Corps to require PLP to seriously consider several scenarios in a supplemental [EIS].” The EIS Contract notes that SalmonState is part of the Save Bristol Bay Coalition, a group opposed to the Pebble Mine.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION (Violation of AS 10.20.016 - Ultra Vires) (Against Defendant BBRSDA)

21. Plaintiffs incorporate by reference paragraphs 1 through 20 above.
22. BBRSDA is a nonprofit corporation that is subject to the laws of Alaska,

including the Alaska Nonprofit Corporation Act (the “Act”).

23. Pursuant to AS 10.20.016(b), members of a nonprofit corporation may seek to enjoin the performance of an act or the transfer of property by the nonprofit corporation. AS 10.20.016(b) provides, in part, “If the unauthorized act or transfer sought to be enjoined is being or is to be performed or made under a contract to which the corporation is a party, the court may, if the parties to the contract are parties to the proceeding and if the court considers it equitable, set aside and enjoin the performance of the contract.”

24. BBRSDA’s Articles of Incorporation and Bylaws reflect that BBRSDA’s purpose is to promote and market seafood harvested in the Bristol Bay region of Alaska, consistent with the legislatively-mandated terms set out in AS 44.33.065 and using substantially the same language as AS 44.33.065(a)(1)(A)-(F).

25. Neither the Outreach Contract nor the EIS Contract is related to the promotion or marketing of Bristol Bay seafood. The purpose of the Outreach Contract is outreach related to the permitting process for Pebble Mine, with the ultimate goal of permit denial or withdrawal. Similarly, the purpose of the EIS Contract is to commission a technical analysis in connection with the Pebble Mine draft EIS with the ultimate goal of convincing USACE to require a supplemental EIS.

26. BBRSDA’s actions in entering into the Contracts are not authorized by

and are beyond the allowable scope of the powers granted to regional seafood development associations under AS 44.33.065 and are therefore *ultra vires*.

27. BBRSDA's actions in entering the Contracts are also not authorized by and are beyond the allowable scope of BBRSDA's Articles of Incorporation and Bylaws, which incorporate the terms of AS 44.33.065, and are therefore *ultra vires*.

28. Pursuant to AS 10.20.016(b), Plaintiffs are entitled to a preliminary injunction against BBRSDA and its officers, directors, agents, servants, employees, attorneys and other persons who are in active concert or participation with BBRSDA ("BBRSDA and Agents") and against Defendant UTBB and its officers, agents, servants, employees, attorneys and other persons who are in active concert or participation with UTBB ("UTBB and Agents") as follows:

- Setting aside and enjoining the performance of BBRSDA and Agents and UTBB and Agents under the Outreach Contract or other agreement related to the Pebble Mine project.
- Ordering that UTBB and Agents shall cease all further work under the Outreach Contract.
- Ordering that BBRSDA and Agents shall not request that UTBB and Agents perform any further work under the Outreach Agreement and shall make no future payments to UTBB related to the Outreach Contract.
- Ordering that UTBB shall reimburse BBRSDA all unexpended funds received from BBRSDA under the Outreach Contract.

29. Pursuant to AS 10.20.016(b), Plaintiffs are entitled to a preliminary injunction against BBRSDA and Agents against Defendant SalmonState and its officers, directors, agents, servants, employees, attorneys and other persons who are in active concert or participation with SalmonState (“SalmonState and Agents”) as follows:

- Setting aside and enjoining the performance of BBRSDA and Agents and SalmonState and Agents under the EIS Contract.
- Ordering that SalmonState and Agents shall cease all further work under the EIS Contract and shall not share the work that came from the *ultra vires* contract.
- Ordering that BBRSDA and Agents shall not request that SalmonState and Agents perform any further work under the EIS Contract and shall make no future payments to SalmonState related to the EIS Contract.
- Ordering that SalmonState shall reimburse BBRSDA all unexpended funds received from BBRSDA under the EIS Contract.

SECOND CAUSE OF ACTION (Declaratory Relief)

30. Plaintiffs incorporate by reference paragraphs 1 through 29 above.

31. There is a substantial controversy, between Plaintiffs and Defendants, having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to AS 22.10.020(g) and Alaska Rule of

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32. Plaintiffs have alleged a real and substantial controversy pursuant to AS 10.20.016(b) based on BBRSDA's unauthorized actions in entering into Contracts with UTBB and SalmonState.

33. The controversy between the parties warrants the issuance of a declaratory judgment because Defendant BBRSDA is unlawfully using monies that it receives from taxes imposed on Bristol Bay commercial fishermen, including Plaintiffs, to fund Contracts with Defendants UTBB and SalmonState beyond the uses permitted for those monies under AS 44.33.065, which requires such taxes to be used to promote and market Alaska seafood products harvested in Alaska.

34. Plaintiffs are entitled to a declaration that BBRSDA is prohibited from using its resources to try to impact the permitting or developing of Pebble Mine because such use of resources would not be for the purpose of promoting and marketing Alaska seafood products in the Bristol Bay region.

35. Such declaratory relief is warranted because the taxes that BBRSDA receives are currently being unlawfully spent on the Outreach Contract and EIS Contract. Monies spent on the Outreach Contract and EIS Contract are monies that can no longer be spent to promote and market Alaska seafood products harvested in Alaska, as is required under AS 44.33.065, and thus can no longer benefit Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request relief as follows:

A. For an order issuing a preliminary injunction against BBRSDA and Agents against UTBB and Agents pursuant to this Court's equitable powers under AS 10.20.016 as follows:

- Setting aside and enjoining the performance of BBRSDA and Agents and UTBB and Agents under the Outreach Contract or other agreement related to the Pebble Mine project.
- Ordering that UTBB and Agents shall cease all further work under the Outreach Contract.
- Ordering that BBRSDA and Agents shall not request that UTBB and Agents perform any further work under the Outreach Agreement and shall make no future payments to UTBB related to the Outreach Contract.
- Ordering that UTBB shall reimburse BBRSDA all unexpended funds received from BBRSDA under the Outreach Contract.

B. For an order issuing a preliminary injunction against BBRSDA and Agents against SalmonState and Agents pursuant to this Court's equitable powers under AS 10.20.016 as follows:

- Setting aside and enjoining the performance of BBRSDA and Agents and SalmonState and Agents under the EIS Contract.
- Ordering that SalmonState and Agents shall cease all further work under the EIS Contract and shall

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not share the work that came from the *ultra vires* contract.

- Ordering that BBRSDA and Agents shall not request that SalmonState and Agents perform any further work under the EIS Contract and shall make no future payments to SalmonState related to the EIS Contract.
- Ordering that SalmonState shall reimburse BBRSDA all unexpended funds received from BBRSDA under the EIS Contract.

C. For an order pursuant to AS 22.10.020(g) declaring that BBRSDA is prohibited from using its resources to try to impact the permitting or developing of Pebble Mine because such use of resources would not be for the purpose of promoting and marketing Alaska seafood products in the Bristol Bay region and thus BBRSDA does not have capacity or power to use its resources in this manner.

D. For reasonable costs and attorney's fees incurred by Plaintiffs in this action as allowed by law; and

E. For any further relief as the Court deems equitable and appropriate.

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DATED: April 1, 2019.

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