Alaska's Proposed Clean Water Initiatives

In the beginning, three Initiatives were proposed by the public opposing Pebble.

- Clean Water Initiative 1
- Clean Water Initiative 2
- Clean Water Initiative 3

Specific Legal Status: 07WATR

Two court challenges thus far to the legality of this Initiative.

Judge Torrisi of Dillingham ruled that the initiative is legal.

Judge Blankenship of Fairbanks ruled that it is not legal.

Both judges agreed that 07WATR would render it impossible to develop new large mines in Alaska. Sponsors have requested that this initiative be withdrawn. Under review by Lt. Gov.

The appeal to the higher court means that 07WATR may or may not be on the August ballot.

Specific Legal Status: 07WTR2

Proponents filed an application to collect signatures for this Ballot Initiative.

The Lt. Governor ruled that the proposed language did not meet the criteria for a State of Alaska Initiative.

No signatures were collected.

This initiative will not be on the August ballot.

Specific Legal Status: 07WTR3

One court challenge thus far to the legality of this Initiative in Alaska Superior Court in Fairbanks.

Judge Blankenship's decision that 07WTR3 is legal is being appealed to the Alaska Supreme Court.

The appeal to the higher court means that 07WTR3 may or may not be on the August ballot.

What does this mean?

The Alaska public must prepare to be informed to possibly vote on both in August.

07WATR

- Yes
- No

07WTR3

- Yes
- No

Both Initiatives would:

- Regulate metal mines with greater than 640 acres of disturbance
- Apply to all landowners in Alaska

07WATR would:

- Prohibit the release of metals or chemicals "in any measureable amount" even if the amounts released:
  - **are permitted by EPA and DEC; and**
  - **would not harm fish or human health.**

07WTR3 would prohibit:

- The discharge of "toxic pollutants or pollutants" in a "measureable amount that will affect human health or welfare of any stage of the life cycle of salmon into surface or subsurface water or tributary thereto."

Problem

- "Will affect" is not defined and could include even positive effects.

Outcome

- Uncertainty. Potentially years of court challenges before effects of 07WTR3 are actually known

07WTR3 would prohibit:

- Storing or disposing of rock in a way that "will affect, directly or indirectly, surface or subsurface water or tributaries thereto used for human consumption or salmon spawning, rearing, migration or propagation."

Problem

- "Will affect" is not defined and could include even positive effects.

Outcome

- Uncertainty. Potentially years of court challenges before effects of 07WTR3 are actually known

07WTR3 would prohibit:

- "the release or discharge of toxic pollutants and other chemicals into waters of the State" which would effectively eliminate mixing zones.

Problem

- Ignores fact that even treated water contains some chemicals

Outcome

- Prohibit new large metal mines, and
- Close some existing ones that need to get new permits to increase their mine life

07WTR3 would not apply to:

- "Existing large scale metallic mineral mining operations that have received all required federal, state and local permits... Or to future operations of existing facilities at those sites,"

Problem

- Uncertain definition of existing facilities

Outcome

- Still prohibit new large metal mines, and
- Close some existing ones that need to build a new facility to increase their mine life

Existing, Tested Laws & Regulations

DEC

- **Protects water quality**

EPA

- **Requires that any discharge from a large mine not adversely affect humans or fish**

Therefore…

Another Interpretation of 07WTR3

- "This initiative appears to propose language that does not differ significantly from existing water quality standards." **Dept. of Law**

- This interpretation being appealed to the Supreme Court because it is different than the plain meaning of the text.

- But , **if** the Court upholds and the State completes a mulit-year rule making and then determines no change to existing standards is needed after passage, opponents will likely sue, causing major disruption to regulatory process.

- But this is uncertain now.

07WTR3: The Bottom Line

Problem:

- The language is so broad that it leaves room for vastly different interpretations: one that would prohibit large mines, one that would disrupt existing permitting process

Outcome:

- Uncertainty. Inevitable lawsuits by all sides to force interpretation of the broad language. Different judges may force the State to reinterpret its regulations.

Registered Alaska Voters

may be asked to vote on one or both Clean Water Initiatives in August.

07WATR

- Yes
- No

07WTR3

- Yes
- No