BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

Pebble Ltd. Partnership, **Pebble Mines Corporation,** **Resource Development Council** **v.** **Renewable Resources Coalition, Inc., Alaskans for Clean Water,** **Americans for Job Security,** **Robert B. Gillam,**	)))))))))	**OAH Case No. 09-0231-APO** **APOC Case No. 09-01-CD**

CONSENT DECREE BETWEEN THE ALASKA PUBLIC OFFICES COMMISSION AND RENEWABLE RESOURCES COALITION, ALASKANS FOR CLEAN WATER, AND ROBERT B. GILLAM

This Consent Decree is entered into in connection with the above referenced administrative action presently pending before the Alaska Public Offices Commission.

I. Summary of Proceedings Leading to Consent Decree

A. Parties

The parties to this Consent Decree are the respondents Renewable Resources Coalition ("RRC"), Alaskans For Clean Water ("AFCW"), and Robert B. Gillam ("Gillam") (collectively "The Respondents."); and the Alaska Public Offices Commission ("APOC").

The Respondents and the APOC Staff ("Staff") collectively are referred to in this Consent Decree as "The Parties."

B. Complaint

This Consent Decree is entered into in connection with the complaint filed by the Pebble Limited Partnership, Pebble Mines Corp., and Resource Development Council

("Complainants") on March 20, 2009 against RRC, AFCW, Americans for Job Security ("AJS") and Gillam (hereinafter "the Complaint). (The allegations against AJS were resolved in a consent decree approved by APOC on September 24, 2009).

The Staff investigated the Complaint and felt that a preponderance of the evidence supported certain allegations that the Respondents violated the Alaska campaign disclosure law, AS 15.13, as Staff interpreted that law, in the campaign for a ballot measure in the August 2008 state primary election. The Staff Report was issued June 4, 2009 and details of the allegations are contained in that document.

In its response to the Complaint, RRC acknowledged two violations of failing to report independent campaign expenditures. RRC characterized the violations as de minimus innocent oversights. RRC offered to file 15-6 forms disclosing the expenditures if ordered to do so by the Commission.

AFCW, RRC and Gillam denied any and all other allegations and objected to the Complaint and staff conclusions on various legal and factual grounds. Details of AFCW, RRC and Gillam's denials and objections are contained in, but not limited to, the responses and dispositive motions previously filed by them in this proceeding.

C. Intent of Agreement

This Consent Decree is intended to resolve any and all proceedings between the APOC and Respondents with respect to all allegations contained the Complaint. The Parties understand that this Consent Decree is not effective unless and until it is approved by the Alaska Public Offices Commission.

II. The Facts.

RRC, a non-profit corporation established in 2005, is a coalition of individuals and interest groups concerned with water quality issues in the Bristol Bay watershed, protection of the salmon fishery and wildlife, and preventing the development of the proposed Pebble Mine.

AFCW was established in 2008 as a non-profit organization whose purpose was to raise money for and advocate in support of the Clean Water Initiative known as Ballot Measure 4 on the August 26, 2008 state primary ballot.

Robert B. Gillam is a resident of Alaska. Gillam was a substantial supporter and contributor to RRC, AFCW and the proposed clean water initiatives, one of which became Ballot Measure 4 in the August, 2008 primary election.

Staff believes that RRC was required to register as a campaign group and report all financial transactions advocating passage of the ballot initiative, including collecting, pooling, soliciting and spending money to influence the outcome of the vote. RRC maintains that it was not a campaign group as defined by AS 15.13.400; that it did not collect, pool and solicit money for the purpose of influencing the ballot measure campaign; that it did not have reportable expenses; and that it was not required to file disclosure reports.

Gillam was a board member of RRC for a short period of time in 2005, but he withdrew from the board after a few months. Mr. Gillam has consistently made financial contributions to RRC since shortly after its organization, and continuing to the present day.

In the May/June timeframe of 2008, AJS became aware that Gillam was interested in becoming a member of AJS. On June 19, 2008 Gillam contributed $1,000,000 to AJS. On June 20, 2008 AJS contributed $750,000 to Alaskans for Clean Water. On July 11, 2008 Gillam contributed $500,000 to AJS; on July 15, 2008 AJS contributed $450,000 to AFCW. On July 22, 2008 Gillam contributed $500,000 to AJS, and on August 1, 2008 AJS contributed $400,000 to AFCW. AJS and Gillam executed documents stating that AJS was to have complete legal control over any funds once a contribution was made to it. AJS reported the contributions it made to AFCW, in its own name, to the APOC in a timely fashion. AJS believed that it was in compliance with reporting requirements, given that any funds were legally in AJS's name and control for all purposes.

AJS has a policy of keeping the identities of its members confidential. AJS did not believe it could legally become directly involved in managing or carrying out a ballot initiative campaign while keeping its membership identities confidential and for this reason, in order to comply with what it understood the law to be, contributed some funds to AFCW for AFCW to use in connection with the ballot measure campaign and used other funds in an issue related campaign regarding Pebble Mine that was not directly related to the ballot measure. AJS believed it was required to report the contributions it made to AFCW in its own name and did so when it made the donations. The Staff contends that Mr. Gillam should have reported AJS' contributions to AFCW in his own name and that AFCW should have reported them as having come from Mr. Gillam and not AJS.

On May 29, 2008 the Board of RRC passed a resolution pledging to make contributions to AFCW in the amount of $150,000 per month in June, July and August 2008, such contributions being contingent on RRC raising adequate funds. On June 2, 2008 Gillam contributed $350,000 to RRC. He had previously made numerous similar contributions to RRC. On June 4, RRC contributed $150,000 to AFCW. RRC reported the contribution to APOC as a contribution in its own name, and AFCW reported to APOC that it had received the contribution from RRC. RRC made no subsequent contributions to AFCW. The Staff believes, however, that the one contribution by RRC to AFCW was a contribution in the name of another – i.e., Mr. Gillam, and was a violation of AS 13.15.074.

The Staff contends that Mr. Gillam should have reported RRC's contribution in his own name and that AFCW should have reported that contribution as having come from Mr. Gillam and not RRC.

Mr. Gillam maintains that the funds were contributed to RRC and AJS without any express or implicit understanding or agreement as to what RRC and AJS would do with them and that, upon these organizations' receipt of the funds Mr. Gillam had no control over their use of those funds. The President of RRC similarly testified that there was no prior agreement as to how these funds would be used. The President of AJS has also provided a sworn statement that there was no such agreement. Mr. Gillam's position, supported by RRC and AJS, is that the decisions to make contributions to AFCW were made entirely by the leadership of these organizations and that their contributions were

properly reported in their own names. APOC Staff disputes this position considering the timing of the contributions and the relationships among the parties.

Mr. Gillam made a $30,000 payment to Fund Raising, Inc. (FRI) which had a contract to raise money for AFCW, RRC and the Renewable Resources Foundation. He also paid for RRC to run two advertisements in two national magazines (On Target and Fly Fishing America). The Staff contends that Mr. Gillam's payments of these expenses for RRC were in-kind contributions to AFCW and should have been reported as such.

Mr. Gillam asserts that the payment to FRI was to pay FRI for its upfront fee to raise operating funds for RRC, not AFCW, and that it was not an in-kind contribution to AFCW. Mr. Gillam also contends that the costs of the two advertisements were not required to be reported as in-kind contributions because they concerned only RRC and the Pebble Mine Project, and did not even mention Ballot Measure 4 or AFCW, and that they were therefore not campaign related.

In August 2008, Mr. Gillam contributed $585,000 to AFCW. AFCW reported this contribution as required allowing the public timely access to the information. However, the Staff maintains that Mr. Gillam had an independent obligation to report such activity on a Form 15-5 Statement of Contributions, and that he did not do so by September 15, 2008. On May 29, 2009, when it first became evident that the Staff may not have all of his reports of contributions in its possession, Mr. Gillam immediately forwarded a copy of all reports he had prepared to the Staff. Included in these documents was the Form 15-5 report of his contribution of $585,000, which was dated as signed on September 12,

2008. Mr. Gillam believes that this report was timely signed and submitted as required by law, and that he is not responsible for the report's absence from APOC's records.

Staff felt that a preponderance of the evidence supported the allegation that AFCW violated AS 15.13.114 and 2 AAC 50.258, as the Staff interpreted the law, by receiving contributions from RRC and AJS and allegedly failing to properly report all monetary and in-kind contributions. AFCW maintains that, consistent with the positions of the other respondents, the contributions were not made in violation of the law, and all contributions that were required to be reported were in fact reported.

RRC, AFCW and Gillam believe that the Staff is applying the law in ways which are unprecedented, improper and violate their constitutional rights. Respondents also contend that they took steps to attempt to ensure that their conduct and activities conformed to the requirements of Alaska Law. RRC sought and obtained an advisory opinion from the Alaska Public Offices Commission in the spring of 2008 which was shared with other Respondents. (APOC Advisory Opinion No. AO 08-02-CD, dated as approved April 23, 2008). This opinion concluded that activities limited to education regarding the proposed Pebble Mine, and that did not mention Ballot Measure 4 or advocate for its passage, were not required to be reported as campaign activities. RRC, AFCW and Gillam relied on this opinion to guide their activities. AFCW also consulted regularly with members of the APOC staff concerning its reporting requirements and it relied on the advice it received.

III. Legal Questions Presented.

The requirements of the law and the Respondents' legal duties and reporting obligations are vigorously disputed by the parties. Specifically, the parties disagree as to:

(1) Whether the facts as described above support the allegation that RRC violated the law by failing to register and report as a group;

(2) Whether the facts as described above support the allegation that RRC acted as a pass through;

(3) Whether the facts as described above support the allegations that RRC otherwise violated the provisions of the Alaska campaign law;

(4) Whether the facts as described above support the allegation that AFCW received contributions that were made in violation of Alaska Law;

(5) Whether the facts as described above support the allegation that AFCW failed to report all contributions that it was required to report; and

(6) Whether the facts as described above and the law support the allegations that Mr. Gillam's individual actions violated Alaska law.

While the Staff and the Respondents stand by their respective positions, both acknowledge that the positions of the other are held and asserted in good faith. In addition, the Staff acknowledges that substantial evidence exists that Respondents did not intend to violate any provision of Alaska law and, instead, took substantial efforts to obtain and rely on proper advice in order to comply with the requirements of Alaska law.

The Staff believes that it is in the public interest to resolve this matter by way of this Consent Decree, given that the Respondents have voluntarily disclosed their conduct

and all the facts related to such conduct are fully disclosed. The Respondents likewise wish to resolve this matter and to continue to cooperate with the APOC, notwithstanding the fact that they believe that their legal positions, and the facts on which they are based, are well-supported and have merit. The Parties do not wish to engage in protracted litigation of this matter given the good faith nature of their positions. The Parties also are mindful that, in the absence of a resolution by Consent Decree, this controversy likely only would be resolved following a protracted and expensive legal process including lengthy appeals, and they believe that the expenditure of the substantial resources that would be required litigating these issues would serve no useful purpose and would not be in the public interest. Therefore the Parties have agreed to proceed by Consent Decree, subject to the approval by the APOC, in order to fully and finally resolve this matter.

IV. Terms of the Consent Decree.

WHEREAS many of the legal issues presented in this matter are complex and have not previously been ruled upon by any court in the state of Alaska; and,

WHEREAS, should this matter be contested further, the resulting litigation and proceedings are likely to be protracted and expensive; and,

WHEREAS both the Staff and the Respondents have acted in good faith and recognize that the facts presented in this matter and the uncertainty with respect to the application of existing statutes and regulations to those facts make the outcome of this matter uncertain as to all parties; and,

WHEREAS the Respondents wish to continue to cooperate with the APOC and to support the APOC in its statutory mission, and to comply fully with all provisions of Alaska campaign finance law; and,

WHEREAS the Staff agrees that the Respondents have cooperated fully with its investigation and that, at all times, the Respondents believed their conduct to be in accordance with Alaska law; and,

WHEREAS related complaints that were initiated and investigated by the Staff (APOC Case Nos. 09-04-CD, 09-05-CD and 09-06-CD), have been rejected by the Commission, resulting in the dismissal of several allegations and parties; and,

WHEREAS the allegations against Americans for Job Security were resolved by means of a consent decree which, among other provisions required AJS to make a payment of $20,000. That consent decree was approved by the APOC on September 24, 2009; and,

WHEREAS the Parties believe that it is in the public interest, subject to approval by the APOC, to settle this matter rather than incur further expense by the state or the Respondents through continued litigation; and

WHEREAS the terms of this agreement were negotiated by the parties through mediation conducted on January 20, 2010 by retired Superior Court Judge John Reese.

WHEREAS, by virtue of this agreement, all facts relevant to Respondents' conduct will be provided to the public, thereby fulfilling the APOC's mission of publishing financial information related to election campaigns:

The Parties, therefore, agree and consent to a decree issuing by APOC providing as follows:

1. RRC acknowledges that it violated AS 15.13.040 and 15.13.140 by failing to disclose the cost of e-mails in which it urged its members to vote "yes" on Ballot Measure 4 and the cost of table space at the Alaska State Fair that RRC made available to AFCW for campaign-related materials.

2. Respondents AFCW, RRC and Gillam agree that they will in the future comply with all statutes and regulations administered by the APOC. Respondents agree that they will not individually or jointly make any contribution to any person with the knowledge that the contribution will be expended in any State election campaign without that contribution being reported as coming from the contributing Respondent. AFCW and RRC agree that if they, or any of their officers, employees or agents are aware that the true source of any contribution is any party other than the person purporting to make the contribution, then they will not accept the contribution. AFCW and RRC also agree that they will not accept a contribution if the circumstances surrounding the contribution would lead a reasonable person to suspect that an intermediary is being used to obscure the source of the contribution.

3. The Respondents acknowledge being advised of the Staff's interpretation of the present law and that, in the future, similar actions should they occur may be considered by the Staff to be violations of statutory reporting requirements, and any future violations would imply a high level of culpability and, if proven at hearing, will be referred for prosecution.

4. The Respondents agree that a copy of this consent decree shall be placed in APOC's file for AFCW, and shall be made available to the public for inspection and copying.

5. The Respondents, collectively, agree to pay the State of Alaska the amount of $ 100,000.00 .

6. The Respondents agree that, within 15 days of acceptance of this Consent Decree by the Commission:

(a) RRC will submit a Form 15-6 reporting the independent expenditures, related to the cost of e-mails and of shared table space at the Alaska State Fair; it has conceded it made on behalf of Ballot Measure 4. RRC will also file a notice with APOC that it withdraws its previous filing stating that it contributed $150,000 to AFCW.

(b) RRC will report as if it were a group for the relevant time period. Specifically, RRC will disclose the identity and contribution amounts for all individuals who made donations of over $500 of unrestricted funds to the organization from April 2008 through the August 2008 primary election.

(c) Mr. Gillam will re-file a Form 15-5 reporting the contributions made by him of the amounts described above which were previously reported as having been contributed by RRC and AJS;

(d) AFCW agrees to submit amended disclosure forms that take into account the new disclosures submitted by Gillam and RRC.

(e) Upon the filing of the disclosure forms and paying the costs described above, the Respondents shall be deemed to have complied with all reporting and all other legal requirements with respect to this matter.

7. The APOC staff agrees that in light of this agreement, and in light of Respondents' cooperation with the investigation, no referral for criminal enforcement against any of the Respondents is warranted. Accordingly, the Commission will not refer this matter to the Attorney General's office.

8. The Parties agree that this Consent Decree is entered into by way of settlement, no representations contained herein are intended to be admissible in any other proceeding, nothing in this Consent Decree constitutes any admission or acknowledgment of any wrongdoing or misconduct by any party and shall not constitute a formal finding on the merits of the complaints or any other violation of any state statute, but instead is the consequence of the Respondents' voluntary agreement to resolve this disputed matter.

9. This Consent Decree is not to be interpreted or construed as binding legal precedent in any subsequent legal proceeding against any Party. This Consent Decree may be used in the future should the Respondents be subject to proceedings in any other matter before the APOC as it may be relevant to their past history before the APOC.

10. Upon the approval by the Alaska Public Offices Commission, and compliance by the Respondents with the provisions of paragraphs 5 and 6 of this section, the Parties stipulate that all allegations against the Respondents, arising from either the Complaint or their conduct in connection with the Clean Water Initiatives or the 2008

Ballot Measure Campaign and their prior lobbying activities, if any, shall be dismissed with prejudice and no further proceedings against Respondents will be brought by the Alaska Public Offices Commission with regard to these matters.

DATED this _____ day of _____, 2010

Norman Van Vactor, as Chair of RRC

2-26-10
Arthur Hackney, as Deputy Treasurer of AFCW

2-26-10
Robert B. Gillam

DATED this 26th day of FEBRUARY, 2010.

ALASKA PUBLIC OFFICES COMMISSION

Holly Hill, Executive Director