

BEFORE THE ALASKA PUBLIC OFFICE COMMISSION

ALASKA PUBLIC OFFICE
COMMISSION.

v.

RENEWABLE RESOURCES
COALITION, INC., ALASKANS FOR
CLEAN WATER INC., ROBERT
GILLIAM and AMERICANS FOR JOB
SECURITY, ARTHUR HACKNEY,
MICHAEL DUBKE, RICHARD
JAMESON

OAH No. 09-0231-APO
Agency Nos. 09-01-CD
09-04-CD
09-05-CD
09-06-CD

**BRIEF OF RENEWABLE RESOURCES COALITION
RE PAYMENT AMOUNT IN CONSENT DECREE**

Respondent Renewable Resources Coalition, Inc. ("RRC") urges the Commission to set a payment amount of no more than \$60,000 to complete the resolution of this case by Consent Decree.

A. The Proposed Amount Is High Compared with Past APOC Actions and More than Sufficient to Deter Respondents and Others

The Staff has proposed settling this matter for a sum of no less than \$100,000, more than the largest single fine that APOC has ever imposed. Even the maximum of \$60,000 proposed by Respondents exceeds all but two penalties ever imposed.

In the two prior high-penalty cases, John Ellsworth/AIC and VECO engaged in activities that involved not only a failure to disclose campaign contributions; importantly, they involved contributions to *candidates* and were in amounts in excess of legal limits. Ellsworth/AIC and VECO were fined \$98,000 and \$72,660, respectively

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(though the Commission later approved a \$28,000 settlement of the VECO case following an appeal to the Alaska Supreme Court).¹ In contrast to those two prior cases, the contributions at issue here were made in support of a ballot measure. Unlike a *candidate*, a ballot measure cannot be controlled, influenced, or otherwise corrupted by a contributor: that is why there is no limit on the amount of contributions to a ballot campaign.² There is therefore no allegation here, nor could there be, that any of the contributions at issue was in an illegal amount; rather, the crux of the Staff allegations is that contributions were attributed to the wrong contributors. When the conduct at issue here is compared to the conduct of Ellsworth/AIC and VECO that resulted in the largest penalties approved by APOC to date, Respondents' proposal is imminently reasonable.

Additionally, the amount offered by Respondents is more than sufficient to deter them, and others, from engaging in similar conduct in the future. Any payment amounting to tens of thousands of dollars is strong incentive for regulated persons, including Respondents, to educate themselves about APOC Staff's view of the law and to err on the side of Staff's position, even if they disagree with it. And Respondents have incurred other hidden and significant damages: attorneys' fees that exceed the

¹ Notably, the penalty in VECO was reduced to \$28,000 after the Alaska Supreme Court had affirmed the superior court's finding that VECO had relied on advice from APOC. In this case, APOC Staff acknowledges that Respondents "took steps to attempt to ensure that their conduct and activities conformed to the requirements of Alaska law," including obtaining an Advisory Opinion, AO 08-02-CD. *See* Consent Decree, p. 7.

² *See State v. Alaska Civil Liberties Union*, 978 P.2d 597, 606-07 (Alaska 1999) ("quid pro quo corruption is not a significant danger" in ballot initiatives).

maximum possible penalties, and, in RRC's case, reputational harm that has affected its ability to continue its educational mission promoting clean water and salmon.

B. RRC Has Already Been Financially Penalized

Since 2006, a large proportion of RRC's funding has come from the Gordon and Betty Moore Foundation, a charitable organization dedicated to promoting science and environmental conservation. *See* Ex. A. RRC received a 21-month grant of \$666,755.00 beginning in November 2006, followed by a 14-month grant of \$1,409,100.00 beginning in July 2008. *See* Ex. A at 2, 3. This grant money gave the organization some predictability with regard to hiring and educational campaigns, and RRC therefore enjoyed long-term stability. The prospects for sustained funding from the Moore Foundation seemed excellent.

This changed in the spring of 2009, with the public allegations that RRC had violated APOC laws. Members of the RRC Board of Directors, including Norman Van Vactor and Brian Kraft, and its Acting Executive Director Anders Gustafson, were attending a meeting of the Bristol Bay Working Group in Naknek/King Salmon. Also in attendance was Michael Webster, a program officer with the Moore Foundation. At that meeting -- before APOC had even investigated the allegations or reached any conclusions about them -- Webster informed these representatives of RRC that the Moore Foundation was unwilling to go forward with RRC because of the APOC allegations and resulting bad publicity. He had concluded that the "RRC brand was tainted" and that the Moore Foundation should no longer be associated with the

organization. Once the 2008 grant money was exhausted, RRC received no more funding from the Moore Foundation, either directly or indirectly. See Affidavit of Anders Gustafson.

RRC has never recovered from the loss of funding from the Moore Foundation. RRC spent much of the last year trying out various new avenues of fundraising rather than pursuing its educational mission. Fundraising itself has been difficult, both because of the damage to RRC's image and because people who are interested in funding public outreach and education are less interested in contributing to the costs of litigation or regulatory disputes. *Id.* The impact on RRC is undoubtedly permanent.

C. The Commission Should Encourage Reasonable Settlements

Parties are more likely to work amicably and cooperatively when they know that, once the facts are on the table and each side understands the other's position, there is the possibility of a good-faith, negotiated resolution. In this case, APOC Staff acknowledges that Respondents fully cooperated during the investigation, providing over 3,000 pages of documents and making available everyone the Staff wanted to depose, all without challenging the scope or substance of a single subpoena or document request. This cooperation substantially reduced costs and expedited the investigation. The Commission should certainly encourage such cooperation in future cases, and it can do so by encouraging settlement.

The Alaska courts have repeatedly recognized a "strong policy favoring settlement as a positive method of case resolution." *Petrolane Inc. v. Robles*, 154 P.3d

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1014, 1021 (Alaska 2007); *Interior Credit Bureau, Inc. v. Bussing*, 559 P.2d 104, 106 (Alaska 1977) ("Stipulations and settlements are favored in law because they simplify, shorten and settle litigation without taking up valuable court resources"). Settlements, by their nature, involve compromises of disputed amounts. If the Commission takes the position that any amount approved in settlement must approach the maximum penalties that could be imposed after hearing, future respondents will be discouraged from considering settlement as an option; they are likely to be less cooperative as well, if they see that nothing can be gained from cooperation.

D. RRC Adopts the Additional Arguments Made by Gillam and AFCW

RRC adopts the arguments made by the other Respondents in this action.

CONCLUSION

RRC asks the Commission to approve a payment amount no greater than \$60,000 for purposes of finally resolving this matter by Consent Decree.

DATED: 2-22-10

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on
22nd day of February, 2010, a copy of
the foregoing was sent to the following via:

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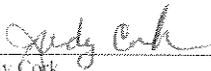
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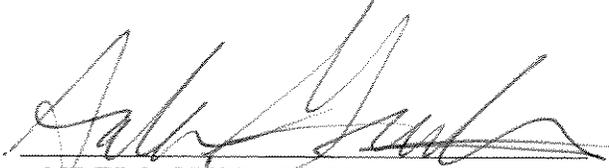
3. This changed in the spring of 2009, with the publication of allegations that RRC had violated APOC laws. Members of the RRC Board of Directors, including Norman Van Vactor and Brian Kraft, and myself as Acting Executive Director, were attending a meeting of the Bristol Bay Working Group in Naknek/King Salmon. Also in attendance was Michael Webster, a program officer with the Moore Foundation. At that meeting -- before APOC had even investigated the allegations or reached any conclusions about them -- Webster informed us that the Moore Foundation was unwilling to go forward with RRC because of the APOC allegations and resulting bad publicity. He had concluded that the "RRC brand was tainted," or words to that effect, and that the Moore Foundation should no longer be associated with the organization.

4. Once the 2008 grant money was exhausted, RRC received no more funding from the Moore Foundation, either directly or indirectly. RRC has never recovered from the loss of this funding. RRC spent much of the last year trying out various new avenues of fundraising rather than pursuing its educational mission. Fundraising itself has been difficult, both because of the damage to RRC's image and because people who are interested in funding public outreach and education are less interested in contributing to the costs of litigation or regulatory disputes. The impact on RRC is severely crippling for the foreseeable future.

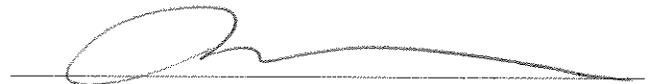
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Affidavit of Anders Gustafson

DATED: Feb 22, 2010


ANDERS GUSTAFSON

SUBSCRIBED AND SWORN to before me this 22nd day of February, 2010.


Notary Public in and for the State of Alaska
My Commission Expires: 9-28-13

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 22nd day of February, 2010, a copy of the foregoing was sent to the following via:

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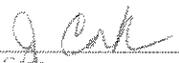
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Creating positive outcomes for future generations

About Us

Established in September 2000, the Gordon and Betty Moore Foundation seeks to improve the quality of life for future generations.

The Foundation's science-based, results-driven orientation stems from the principles and interests of Gordon and Betty Moore. The Foundation operates proactively in three specific areas of focus—environmental conservation, science, and the San Francisco Bay Area—where a significant and measurable impact can be achieved. Distinct Initiatives have been created within these three Program areas. An Initiative employs a portfolio of grants that are expected to help achieve targeted, large-scale outcomes in a specific time frame.

Each Initiative is grounded in a specific theory of change (a rationale for why strategies and activities are selected and a detailed explanation of how they will produce positive transformations) which informs our grantmaking and mobilizes grantees and stakeholders to achieve shared goals. To make strides and show achievement at this scale requires strong partnerships with communities, government entities, other nonprofit organizations, and the private sector.

In addition to Initiative-based grantmaking, the Foundation is providing significant funding to Conservation International, the California Institute of Technology, the Thirty-Meter Telescope, and the Betty Irene Moore School of Nursing. These long-term funding Commitments have been made to support these organizations on multiple projects that will lead to large-scale outcomes within their respective programmatic priorities.

The Foundation also awards grants for unique and opportunistic projects within our areas of focus, particularly when the potential outcome is high-impact, long-term, and measurable. Across all Initiatives, Commitments, and special opportunity grants, the Foundation's grantees and partners seek to make positive changes in the world.

The Foundation's headquarters are in Palo Alto, in a building renovated with an emphasis on the environment and sustainability.

Please note that the Foundation does not accept unsolicited proposals. Instead, we fund Foundation-generated Initiatives, Commitments, and special opportunities within our areas of focus, and we make local grants through our San Francisco Bay Area program.



Grants Awarded

Grant Summary

Renewable Resources Coalition

Bristol Bay Conservation -- Campaign Coordination

Term	Amount	Date Approved
21 months	\$666,755	Nov. 2006

Purpose

Through this grant Renewable Resources Coalition (RRC) will coordinate the efforts of ENGOs and other key players working to secure the protection of Bristol Bay's valuable salmon resources.

Funding area: Environmental Conservation / Wild Salmon Ecosystems Initiative



Grants Awarded

Grant Summary

Renewable Resources Coalition Pebble Mine Education and Outreach

Term	Amount	Date Approved
14 months	\$1,409,100	Jul. 2008

Purpose

The Renewable Resources Coalition will use this grant to increase public support within Alaska for protecting the Bristol Bay region's renewable resources.

Funding area: Environmental Conservation / Wild Salmon Ecosystems Initiative