

EPA Moves to Reinstate Clean Water Act Protections for Pristine Bristol Bay, Alaska Watershed

Sheppard Mullin Pro Bono Team Secures Groundbreaking Decision to Advance Permanent Protections for Bristol Bay's Unique Ecosystem, Clean Water, Communities and Businesses

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Today, the U.S. Environmental Protection Agency (EPA) announced that it will ask a federal district court in Alaska to vacate its earlier decision to withdraw protections for the pristine Bristol Bay watershed, clearing the way for re-instatement of the agency's earlier proposed preliminary determination under Section 404(c) of the Clean Water Act blocking commercial development in the bay.

Paul Werner, Sheppard Mullin partner and lead counsel representing Trout Unlimited (TU), hailed EPA's announcement as "a victory for TU members and all whose recreation pursuits, livelihoods and traditional ways of life depend on the bay, as well as for the rule of law, science and reason over politics, and common sense."

The EPA's decision comes after a Sheppard Mullin pro bono team filed suit against EPA on behalf of TU in October 2019. The lawsuit challenged EPA's withdrawal decision as arbitrary, capricious and unlawful to the Clean Water Act's governing standard and sought to have it vacated.

While the government argued, and the district court agreed, that EPA's action was beyond the purview of judicial review, in June 2021, the United States Court of Appeals for the Ninth Circuit reversed that judgment. In a groundbreaking opinion, the Ninth Circuit held that EPA's withdrawal decision is subject to judicial review, and that EPA cannot withdraw a Section 404(c) proposed determination unless the agency finds that the proposed mining development is unlikely to have an unacceptable adverse effect on the environment. In light of TU's successful appeal, EPA now has conceded that its withdrawal decision did not consider that core statutory requirement.

Sheppard Mullin has been representing TU on a pro bono basis since 2015 in its efforts to stop the controversial Pebble Mine. The Sheppard Mullin team, led by Werner, also includes partner Steve Hollman and associates Abram Shanedling and Kirsten Ryan.

[Click here to read Trout Unlimited's press release.](#)

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Practice Areas

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