

Sheppard Mullin Pro Bono Team Achieves Groundbreaking 9th Circuit Decision For Trout Unlimited

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On June 17, 2021 Sheppard Mullin secured a landmark appellate victory for pro bono client Trout Unlimited in the Ninth Circuit concerning a challenge to the Environmental Protection Agency's (EPA's) about-face decision to withdraw Clean Water Act restrictions on mining in the Bristol Bay watershed in southwestern Alaska.

At issue was the EPA's abrupt reversal of a "proposed determination" promulgated in 2014 pursuant to the Clean Water Act (CWA) that mining in Bristol Bay would cause unacceptable adverse effects on the area's ecosystem and one of the world's largest wild salmon fisheries. The EPA under the Trump administration suddenly withdrew that restriction in 2019 without any consideration of the adverse effects the agency had previously determined would occur.

Sheppard Mullin filed suit in October 2019 on behalf of Trout Unlimited against the EPA in Alaska federal district court to challenge the agency's withdrawal as unlawful and arbitrary and capricious. But the district court dismissed the lawsuit, concluding that the EPA's withdrawal was discretionary and not reviewable agency action.

On appeal led by the Sheppard Mullin team, however, a divided Ninth Circuit panel partially reversed the district court, holding that EPA's regulations did provide a judicially reviewable legal standard for withdrawing proposed determinations. While the EPA has discretion whether to issue proposed determinations in the first place, the Court held that once the agency *does*, EPA's regulations "impose mandatory, procedural and substantive obligations" on the agency such that it can withdraw the restriction "only if an unacceptable adverse effect is unlikely." The Court agreed with Trout Unlimited that a meaningful legal standard for review existed based on the text and structure of the regulations and the agency's past practice. The court also rejected the government's argument that its withdrawal decision was akin to an unreviewable decision not to take enforcement action.

In dissent, Judge Daniel A. Bress suggested that because the EPA did not base its withdrawal decision on the likelihood of unacceptable environmental effects, it necessarily means Trout Unlimited would succeed on remand.

"The Ninth Circuit's opinion holding the EPA may only withdraw Clean Water Act protection for the unique Bristol Bay watershed if it determines that proposed mining operations there are unlikely to have unacceptable adverse environmental effects is a victory for science, common sense, and the rule of law," said Paul Werner, Sheppard Mullin partner and lead counsel representing Trout Unlimited.

The Sheppard Mullin team that represented Trout Unlimited included partners Paul Werner and Steve Hollman, and associates Abraham Shanedling and Kirsten Ryan.

[Click here to read the press release.](#)

[The Ninth Circuit's opinion is available here.](#)

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Practice Areas

Litigation