

As the U.S. Supreme Court Term winds down, only one environmental case on the Court's docket remains undecided: Coeur Alaska v. Southeast Alaska Conservation Council, No. 07-984.



Lower Slate Lake, Alaska-Site of the Proposed Coeur Alaska Mining Project

That case, which involves the relationship between the Clean Water Act's water pollution control (NPDES) and its wetlands dredge-and-fill programs, arises in the context of a proposed gold mine operation in Alaska. That mining project would use –and essentially destroy–an Alaskan lake by turning it into a disposal site for the substantial volumes of waste materials the mine would generate.

As previously reported on this website, the Supreme Court is obviously struggling with the issues involved in the Coeur Alaska case: last month, it ordered supplemental briefing by the parties, signaling by its order that the Court is unlikely to embrace the pro-development legal arguments previously advocated by the Bush Administration.

The intriguing thing about the Court's order directing supplemental briefing is that it gave the Obama Administration an opportunity to ratify–or depart from–the Bush Administration's position in the Coeur Alaska case.

In a fascinating [submission](#), President Obama's Solicitor General nominally endorses her predecessor's view that, under the CWA, the U.S. Army Corps of Engineer's wetlands permitting jurisdiction trumps USEPA's water pollution permitting process. But the S.G.'s brief does so in a perfunctory way, and mostly carves out a new, fall-back position that's unlikely to satisfy either the development interests with which the U.S. was previously aligned in the case, or the environmental plaintiffs that brought the case challenging the mining project.

Essentially, the federal government for the first time argues that it indeed has the power to address both the wetlands dredge-and-fill and the distinct water pollution provisions of the CWA in a single permitting proceeding. But the Solicitor General goes on to argue that it is the Corps of Engineers that should oversee that unitary CWA permitting process, rather than USEPA.

The Supreme Court will issue its decision in Coeur Alaska within the next three weeks. This case just keeps getting more and more interesting...

