

Greens push court to rethink Izembek road ruling

By Pamela King

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Conservation groups today asked a prominent federal appeals court to take a second look at its ruling that set the stage for construction of a controversial road through Alaska's Izembek National Wildlife Refuge.

The [petition](#), filed by the firm Trustees for Alaska, requests a rehearing by a larger set of judges of the 9th U.S. Circuit Court of Appeals after it delivered a divided ruling in March upholding a Trump-era land exchange agreement that could lead to the building of a 12-mile gravel road through the wilderness area.

Environmental challengers rebuked the decision — and the Biden administration — for its support of the land swap.

“We filed this petition for review by the Ninth Circuit because the March ruling endangers not only Izembek, but all of Alaska's wildlife refuges and national parks,” said Bridget Psarianos, staff attorney with Trustees for Alaska, in a statement.

“It allows an unelected Interior Secretary to overrule Congress by simply giving away lands designated as Wilderness,” Psarianos continued. “We are disappointed in the Biden administration for supporting this Trump-era travesty and hope that a broad panel of the Ninth Circuit will take this appeal and roll back a decision made by two judges that disregards the laws that protect our nation's lands, waters, and wildlife.”

Trustees for Alaska filed the petition for rehearing on behalf of Friends of Alaska National Wildlife Refuges, the National Audubon Society and other conservation groups.

In its ruling last month, two 9th Circuit judges reversed a lower court's finding that the 2019 land exchange between former Interior Secretary David Bernhardt and Alaska Native corporation King Cove Corp. violated federal law ([E&E News PM](#), March 16).

The majority ruling was led by Judge Eric Miller and joined by Judge Bridget Bade — both of whom were appointed to the 9th Circuit by former President Donald Trump.

Judge Kim McLane Wardlaw, a Clinton appointee and the third member of the panel, wrote in her dissent that Bernhardt's agreement constituted a “tectonic shift” from the Interior Department's Obama-era decision that a road “would lead to significant degradation of irreplaceable ecological resources that would not be offset by the protection of other lands to be received under an exchange.”

Wardlaw said she would have found that the land swap violated the Administrative Procedure Act, which governs federal rulemaking, and the Alaska National Interest Lands Conservation Act, the 1980 law that established the refuge.

The 9th Circuit's ruling did not guarantee that the road would be built. The project would still require permitting and review.

Supporters of the road have said it would provide residents in the remote King Cove community important access to an all-weather airport in the event of a medical emergency. Challengers have said the road would disrupt crucial habitat for the emperor goose and other migratory birds.

Environmentalists had expected Biden Interior officials to return to the Obama administration's position on the land swap and were frustrated last year when the department continued the Trump-era appeal ([E&E News PM](#), March 8, 2021).

Interior generally does not comment on pending litigation. The department will have an opportunity to respond in court to the rehearing request.