October 1, 2017

The Women’s Mining Coalition is a grassroots organization of a broad spectrum of women engaged in work throughout the mining industry. As a group, we support commitment by the mining industry to resource stewardship and environmentally responsible mining. WMC submits the following comments to the EPA in support of the proposal to withdraw EPA’s July 2014 Proposed Determination to restrict discharges of dredge or fill material into the Bristol Bay Watershed associated with mining the Pebble Deposit. The withdrawal proposal is a good step to reverse the undermining of existing regulatory processes and federal overreach.

The original Bristol Bay Watershed Assessment was completed without the necessary detail that a project proposal submitted to government agencies would have afforded in the evaluation of any potential impacts from mining in the watershed. A preemptive decision, prior to submission of a project application and completion of the National Environmental Policy Act (NEPA) process, is unacceptable, whether it be approval or denial of any project in any industry. Until an application is filed describing the project in detail and an Environmental Impact Statement is completed, the EPA is prematurely determining adverse impacts based on hypothetical assessments and inapplicable modeling.

Specifically:

- The proposed determination ignored existing regulatory processes, undermining agency responsibilities on both the state and federal level. Further, the EPA does not have the authority under the Clean Water Act to preemptively block development in the absence of a permit application.
- The EPA must withdraw its proposed determination because it was based on an untested, ad hoc analysis that is not consistent with the requirements of the CWA or NEPA. Once the NEPA process is initiated, the U.S. Army Corps of Engineers will prepare an Environmental Impact Statement based on project plans.
- Without permit applications - including detailed plans and environmental mitigation strategies - potential 404(c) actions against the Pebble Project are premature. Because the NEPA process has not been initiated, the current assessment and any preemptive action would deprive government agencies and stakeholders of the specific information, science, and rigorous reviews that would come out of the multi-year NEPA process.
- Every project, no matter the size or location, has a legal right to be reviewed under existing regulatory processes. In the case of mining, there are more than 60 major permits and hundreds more from local, state, and federal agencies that must be successfully obtained. If the process determines a project as designed cannot protect the environment and other resources, it will not advance. The process will not permit one industry or resource to advance at the expense of another.
- The House Oversight Committee in 2015 concluded that "EPA’s use of a preemptive veto (at Pebble) was unprecedented and without a legal basis." The Committee described EPA’s course of action as "an unprecedented change in the agency’s process for regulating resource and
development projects," and called on EPA to "cease all preemptive 404(c) activity" to allow for the normal permitting process to take place.

- Any 404(c) action outside the existing permitting process would be an extreme case of federal overreach and a challenge to Alaska sovereignty. The Pebble deposit is not located on federal land, nor inside a refuge or park. It is located on state land designated for mineral exploration. The State of Alaska depends on the responsible development of natural resources on its lands to diversify and support its economy.

- The fate of a project, including Pebble, cannot be rationally decided without consideration of the full social, economic and environmental impacts of the project. This information will be developed through the rigorous NEPA process.

- The actions of the EPA undermine existing regulatory processes and set a dangerous precedent for future projects. If the EPA preemptively stops projects before they enter the permitting process, any project could be at risk. Preemptive action by the EPA could become a new tool that opponents use to stop projects, or at a minimum, introduce significant uncertainty and delay, chilling Alaska's business climate.

For the reasons set forth above, the Women’s Mining Coalition strongly urges the EPA to withdraw the Proposed Determination and allow a return to the normal permitting and review process that should be afforded all proponents based on applicable law and regulations.

Regards,

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