



March 6, 2019

The Honorable R.D. James
Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, D.C. 20310-0101

Col. Phillip Borders
U.S. Army Corps of Engineers, Alaska District
Regulatory Division P.O. Box 6898
JBER, Alaska 99506-0898
poaspecialprojects@usace.army.mil

Dear Assistant Secretary James and Colonel Borders:

On behalf of the Natural Resources Defense Council (NRDC) and our more than 3 million members and activists, we write to request an extension of the May 31, 2019 deadline to submit comments on the Draft Environmental Impact Statement (DEIS) prepared by the U.S. Army Corps of Engineers (Army Corps) for the proposed Pebble Mine.¹

The tribal, community, and business leaders of Bristol Bay – including the Bristol Bay Native Corporation (BBNC), Bristol Bay Native Association (BBNA), and Bristol Bay Economic Development Corporation (BBEDC) – have already requested a minimum 270-day public comment period.² United Tribes of Bristol Bay (UTBB), which represents 15 federally-recognized tribes in the Bristol Bay area, also requested a 270-day public comment period. Likewise, more than three dozen businesses – employing hundreds of Americans in Bristol Bay and representing thousands of sportsmen and sportswomen in Alaska – recently asked the Army Corps not only to extend the public comment period to a minimum of 270 days, but also to “conduct an extensive external scientific peer review” of the DEIS.³

We support and join those requests, each of which underscores the reasoned conviction of the stakeholders most at risk from this project that (1) the current DEIS comment deadline is insufficient for the meaningful public comment that this project deserves; and (2) the current EIS schedule is needlessly rushed.

There is no question that you have the legal authority to grant these requests. Indeed, the requested extension would further the purposes of the National Environmental Policy Act (NEPA) by providing a full and fair opportunity for public involvement. It is particularly warranted by the scale of the proposed action, as well as the length and scope of the DEIS and project library. One of NEPA’s primary goals is to afford the public an opportunity to scrutinize information concerning the environmental consequences

¹ It is unclear whether comments are due on May 31, 2019 or May 30, 2019. See 84 Fed. Reg. 7049 (Mar. 1, 2019) (noting the comment period will end on 05/31/2019); U.S. Army Corps of Eng’rs, *Pebble Project EIS, Newsletter 2*, <https://pebbleprojecteis.com/files/32a80c72-1667-4e57-83f4-45b5e8dc61ce> (stating the comment period will run “through May 31, 2019”); but see U.S. Army Corps of Eng’rs, *Pebble Project EIS*, <https://pebbleprojecteis.com/> (stating the comment period will run “through May 30, 2019”).

² Letter from Jason Metrokin, BBNC, Ralph Andersen, BBNA, and Ralph Van Vactor, BBEDC to Assistant Secretary R.D. James and Colonel Phillip Borders dated Feb. 5, 2019. The Army Corps denied this request via a letter from Colonel Borders dated Feb. 22, 2019.

³ Letter from 39 businesses in Bristol Bay to Assistant Secretary R.D. James and Colonel Phillip Borders dated Mar. 1, 2019. The Army Corps has not yet responded to this request.

of proposed actions.⁴ Federal agencies must “to the fullest extent possible . . . [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.”⁵ To that end, agencies are free to extend the time for comment on an EIS as they see fit.⁶

An extension of the comment period on the DEIS would be especially appropriate here. As the leaders of Bristol Bay noted in their letter to the Army Corps:

In terms of its potential impact to Bristol Bay, no activity has a higher potential to change the fabric of life in Bristol Bay than the proposed Pebble mine. Based on [the Army Corps’ release date] and our collective experience with Bristol Bay, a minimum of 270 days is necessary to ensure that our organizations and the people of the region have the opportunity to meaningfully participate in your critical Clean Water Act and NEPA decision-making.⁷

This is because of the size and scope of the proposed project. Even the reduced 1.5-billion ton mine plan proposed by Pebble would destroy more than 3,500 acres of wetlands, 80 miles of streams, and require the construction of significant infrastructure, including a minimum 6,500-foot long, 5,000-foot wide and 1,750-foot deep mine pit; an 83-milelong transportation corridor with over 200 stream crossings and 8 bridges; year-round icebreaking ferry service across Lake Iliamna with two terminals; a port site in Amakdedori Bay (critical habitat for endangered beluga whales); a 270-megawatt power plant; and a 188-mile natural gas pipeline (94 miles across Cook Inlet).

A project of this size and magnitude has understandably produced deep concern among those who rely on the Bristol Bay fishery for their lives, culture, and livelihood. As dozens of businesses in Bristol Bay noted in their recent letter to the Army Corps, the “DEIS addresses complex scientific and technical issues, has huge implications for the sport fishing and other economies of Bristol Bay, and remains highly controversial.”

Stakeholders must review and respond to complex scientific and technical issues contained not only in the 1,400-page DEIS, but also in the appendices and project library—which contains more than 350,000 pages of documents. 90 days is simply not enough time for the public to adequately review and respond. The Alaska congressional delegation agrees. “It’s a very legitimate request from my perspective to have more time to do the due diligence on a project of this size,” Senator Dan Sullivan told reporters last week. Likewise, Senator Lisa Murkowski “has noted a longer comment period is warranted, given the size and scope of this project and statewide interest.”⁸

A longer comment period is also warranted to slow an otherwise recklessly rushed EIS process, as is discussed in detail in the attached comments of Richard K. Borden, a mining expert with 23 years of experience in mine permitting with Rio Tinto, including seven years as Head of Environment for Rio Tinto’s Copper, Copper & Diamonds, and Copper & Coal Groups. Based on his environmental and permitting work at over fifty mines, projects, and operations around the world with one of the world’s

⁴ See 40 C.F.R. § 1500.1(b).

⁵ *Id.* § 1500.2(d).

⁶ See *id.* § 1506.10(c), (d).

⁷ Letter from Jason Metrokin, BBNC, Ralph Andersen, BBNA, and Ralph Van Vactor, BBEDC to Assistant Secretary R.D. James and Colonel Phillip Borders dated Feb. 5, 2019.

⁸ Dylan Brown, E&E, *Army Corps sticking with 90-day Pebble comment period*, Mar. 4, 2019, <https://www.eenews.net/greenwire/2019/03/04/stories/1060123055>.

largest mining companies, he expresses his “deep concern” about the “extraordinarily short time lines” in the Pebble NEPA process that resulted in the “completion of a draft EIS in only eleven months.”⁹

These short time frames are unprecedented for such a large, complex mining project which will have unavoidable, material and long-term impacts to a sensitive globally significant ecosystem. I believe these short time lines will almost certainly compromise the technical rigor and reliability of the EIS outcomes.

In my professional opinion, given the site’s sensitive environmental setting and the complexity of the necessary management strategies to ensure its responsible development, the extremely short EIS time lines are insufficient to ensure the selection of technically rigorous and defensible solutions to the range of environmental issues and impacts described above.¹⁰

According to Borden:

In order to successfully design, develop and operate the Pebble Mine, potential environmental impacts and risks that will need to be controlled will almost certainly include: mineral waste environmental geochemistry; groundwater and surface water quality; dewatering and discharge impacts to in-stream flow regime; direct disturbance to land and water resources within the mine and transportation corridor footprints; geotechnical stability of tailings, open pits and waste rock piles; minimization of other upset conditions such as spills of reagents, hydrocarbons and concentrate; air emissions and noise; construction-specific impacts; ferry and port operations; and a complex and costly mine closure that will likely require permanent care and maintenance. Each of these areas requires the collection of baseline data, but generally also laboratory analytical characterization, numeric modelling predictions, management strategy development and detailed options analysis.¹¹

Indeed, recent experience for successful mining-related EISs illustrate the longer time lines required to produce a rigorous and defensible outcome:

- The Rosemont Mine EIS in Arizona took nine years to complete with a ROD issued in June 2017;
- The Gold Rock Mine EIS in Nevada took five years to complete with a ROD issued in July 2018;
- The Donlin Mine EIS in Alaska took six years to complete with a ROD issued in August 2018; and
- The proposed Resolution Copper Mine in Arizona is currently completing their EIS with a time line of greater than four years.¹²

The Pebble Mine is more complex and located in a more sensitive environmental setting than any of these other mining projects and yet its EIS is proposed for completion in a fraction of the time.

The Army Corps was the lead agency in the Donlin Gold Project and allowed a 180-day public comment period on the DEIS in 2016. Given that the Army Corps determined that a longer comment period was

⁹ Letter from Richard Borden, Midgard Environmental Services LLC, to Shane McCoy, Project Manager, dated Mar. 4, 2019, attached.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

March 6, 2019

Page 4

appropriate for Donlin – a project without the significant public opposition at Pebble – there is no legitimate reason for the very same agency to justify a much shorter timeline for a project that poses greater risks – in disregard of well supported requests for more time from the overwhelming weight of stakeholders in the region.

Even former EPA Administrator Scott Pruitt has said that Pebble’s “application must clear a high bar, because EPA believes the risk to Bristol Bay may be unacceptable.”¹³ Limiting public input and rushing the NEPA process is the definition of a low bar. Here, “[g]iven the extremely short time line allowed for preparation of the draft EIS,” Borden observes that it is “particularly important for the public comment period to be extended to insure the draft document can receive a rigorous review.”¹⁴

For the foregoing reasons, we respectfully request that you extend the DEIS public comment period deadline to a minimum of 270 days. Thank you for your consideration of this request.

Very truly yours,



Taryn Kiekow Heimer
Senior Advocate



Joel Reynolds
Western Director, Senior Attorney

¹³ U.S. EPA, Press Release, *EPA Administrator Scott Pruitt Suspends Withdrawal of Proposed Determination in Bristol Bay Watershed, Will Solicit Additional Comments* (Jan. 26, 2018), <https://www.epa.gov/newsreleases/epa-administrator-scott-pruitt-suspends-withdrawal-proposed-determinationbristol-bay>

¹⁴ Letter from Richard Borden, Midgard Environmental Services LLC, to Shane McCoy, Project Manager, dated Mar. 4, 2019.

Attachment

March 4, 2019

Shane McCoy
Program Manager
United States Army Corps of Engineers
645 G Street
Suite 100-921
Anchorage, Alaska 99501

Subject: Pebble Project Environmental Impact Statement Schedule

Dear Mr. McCoy,

I write to express my deep concern about the extraordinarily short time lines allowed for the preparation of the Environmental Impact Statement (EIS) for the proposed Pebble Mine in the Bristol Bay region of Alaska.

Professional Background

I am an environmental scientist and manager with over thirty years of experience in the mining and consulting industries. During my 23 years with the global mining company Rio Tinto I performed environmental and permitting work at over fifty mines, projects and operations. This included over seven years as Head of Environment for Rio Tinto's Copper, Copper & Diamonds and Copper & Coal Product Groups. I have provided oversight and support to the design and permitting of new mines in Michigan, Arizona, Australia, Asia, Europe, Africa and South America. In particular I worked closely with the EIS permitting and environment team at Resolution Copper until my recent retirement. I have published numerous papers on mine environmental performance and management in peer reviewed scientific journals, conference proceedings and books. I am intimately aware of the environmental challenges and issues posed by the responsible development, operation and closure of large copper mines.

Discussion of the Pebble Project EIS

The United States Army Corps of Engineers (USACE) has promulgated a schedule of less than 2.5 years for the Pebble Project EIS, from the published notice of intent in March 2018 to issuance of a final record of decision (ROD) in mid-2020. This has necessitated completion of a draft EIS in only eleven months. These short time frames are unprecedented for such a large, complex mining project which will have unavoidable, material and long-term impacts to a sensitive globally significant ecosystem. I believe these short time lines will almost certainly compromise the technical rigor and reliability of the EIS outcomes.

In order to successfully design, develop and operate the Pebble Mine, potential environmental impacts and risks that will need to be controlled will almost certainly include: mineral waste environmental geochemistry; groundwater and surface water quality; dewatering and discharge impacts to in-stream flow regime; direct disturbance to land and water resources within the mine and transportation corridor footprints; geotechnical stability of tailings, open pits and waste rock piles; minimization of other upset conditions such as spills of reagents, hydrocarbons and concentrate; air emissions and noise; construction-specific impacts; ferry and port operations; and a complex and costly mine closure that will likely require permanent care and maintenance. Each of these areas requires the collection of field baseline data, but generally also laboratory analytical characterization, conceptual modelling of system behavior, numeric modelling predictions, management strategy development and detailed options analysis.

The average EIS completed in the United States between 2010 and 2017 took 4.5 years from the initial notice of intent to issuance of the final record of decision (Executive Office of President, Council on Environmental Quality, December, 2018). Even more importantly, the average draft EIS took 2.6 years to write; almost three times longer than the time allowed for completion of the draft Pebble EIS. The Executive Council on Environmental Quality further states that the mean time line for EIS completion when the Army Corps of Engineers was the lead agency is 6.1 years, and the average time to produce the draft EIS was 4.2 years. I do not believe the USACE can justify the short Pebble Project EIS time line when compared to their recent requirements and performance on other projects.

Unsurprisingly, Environmental Impact Statements for large, complex projects such as Pebble, which impact sensitive environments, and which are socially and politically contentious, typically take longer to complete than for small, simple projects. Mining project EIS documents also generally take longer to complete than the national average. A report completed for the National Mining Association in 2015 states that, on average, permitting for mining projects in the United States takes seven to ten years. Recent experience for successful mining-related Environmental Impact Statements illustrate the longer time lines required to produce a rigorous and defensible outcome. The Rosemont Mine EIS in Arizona took nine years to complete with a ROD issued in June 2017; the Gold Rock Mine EIS in Nevada took five years to complete with a ROD issued in September 2018; and the Donlin Mine EIS in Alaska took six years to complete with a ROD issued in August 2018. The proposed Resolution Copper Mine in Arizona is currently completing their EIS with a time line of greater than four years. The Pebble Project is generally more complex and located in a more sensitive environmental setting than any of these other mining projects and yet its EIS is proposed for completion in half the time.

The USACE has also proposed a 90-day public comment period on the draft EIS closing on May 31, 2019. This is certainly comparable to the comment periods associated with some other recent but less complex mining-related Environmental Impact Statements from outside Alaska. However, the Donlin Project located in Alaska and with the USACE as the lead agency allowed a

six-month public comment period on the Draft EIS in 2016. If the USACE determined that the longer comment period was appropriate for Donlin three years ago, it is unclear how a much shorter time line can be justified by the same agency for a project that poses greater risks. Given the extremely short time line allowed for preparation of the draft EIS, I believe it is particularly important for the public comment period to be extended to insure the draft document can receive a rigorous review.

In my professional opinion, given the site's sensitive environmental setting and the complexity of the necessary management strategies to ensure its responsible development, the extremely short EIS time lines are insufficient to ensure the selection of technically rigorous and defensible solutions to the range of environmental issues and impacts described above.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Borden". The signature is stylized with a large "R" and "B".

Richard K. Borden

Owner Midgard Environmental Services LLC
4507 South Gilead Way
Salt Lake City, Utah 84124