UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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OFFICE OF
ENVIRONMENTAL REVIEW
AND ASSESSMENT

January 29, 2018

Colonel Michael S. Brooks
Department of the Army
Alaska District, U.S. Army Corps of Engineers
P.O. Box 6898
Joint Base Elmendorf-Richardson, Alaska 99506

Dear Colonel Brooks:

Thank you for your letter, dated January 9, 2018, inviting the EPA to serve as a cooperating agency in development of the Environmental Impact Statement for the Pebble Project (EPA Region 10 Project Number 18-0002-COE). The U.S. Army Corps of Engineers-Alaska District will be the lead federal agency under the National Environmental Policy Act for the development of the EIS. Your letter invites us to participate as a cooperating agency due to our special expertise with respect to the Clean Water Act Section 404(b)(1) Guidelines and indicates that our involvement in the EIS development process for the Pebble Project will be limited to that topic. Your letter also contains certain specific requirements for cooperating agencies. Our concerns with the District's current approach are included below.

Special Expertise

The EPA has significant concerns with the Corps' proposal to limit the EPA's cooperating agency involvement with the development of the EIS to CWA Section 404(b)(1) issues. We understand that this would enable us to provide early input on alternatives development, but we would not necessarily be afforded the opportunity to provide early input on baseline data review and impact assessment. The EPA made the Corps aware of these concerns in the comments attached to my January 11, 2018 letter to Sheila Newman on the Corps' Draft Cooperating Agency Plan, as well as during discussions at the January 18, 2018 pre-scoping agency meeting that was hosted by the Corps in Anchorage.

In addition to our CWA Section 404(b)(1) role, the EPA has the responsibility under the Clean Water Act to provide oversight of the State's Alaska Pollutant Discharge Elimination System permit for discharges of wastewater from the project and to prevent, clean up, and mitigate spills and discharges of oil and other hazardous substances into navigable and coastal waters. We also have the responsibility under the Marine Protection, Research, and Sanctuaries Act to designate, monitor, and manage any site for the ocean disposal of dredged material and to review and concur on any Corps-issued permit for the ocean disposal of dredged material (should that become a potential alternative to one of the current project components). In addition, we have responsibility under the Clean Air Act to provide oversight of air permits issued by the State, and CAA Section 309 responsibility to review and comment in writing, for the public, on the entirety of the draft EIS. Given these authorities and responsibilities pertinent to wetlands impacts, water discharges, air emissions, and overall review of all aspects of an EIS, the EPA has substantial special expertise in the assessment of the environmental impacts of large mining projects. The EPA has previously managed the development of EISs for mining projects in Alaska (Pogo Mine, Red Dog Aqqaluk Extension) and has been a cooperating agency on EISs for other mining projects (Kensington, Greens Creek, Donlin Gold). In addition, we are currently serving as a cooperating agency for EIS development on several projects in Alaska that involve pipelines similar to the Pebble Project

(Alaska Stand Alone Pipeline, AK LNG, Donlin Gold). The scope of our cooperating agency involvement in EIS development on these and other projects in Alaska has not been restricted by the Corps or other federal agencies.

The EPA was involved in this particular project from 2004 to 2010 as part of the interagency technical review teams' evaluation of select baseline environmental data from the project area. In January 2014, after three years of study, the EPA released its final report on "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska." The EPA developed this assessment to better understand the Bristol Bay watershed and its resources. The assessment reviews, analyzes, and synthesizes information relevant to potential impacts of large-scale mine development on Bristol Bay fisheries and the potential consequent effects on Alaska Native cultures and wildlife in the region.

The EPA is interested in bringing both our broader environmental and site-specific special expertise to the cooperating agency team that the Corps is establishing for the Pebble EIS. To better fulfill our responsibilities under CAA Section 309 and CWA Section 404 and our State air and water permitting oversight role, we have already assembled a cross-programmatic, multi-disciplinary team including EPA employees with expertise in hydrogeology, hydrology, geochemistry, air modeling, water quality modeling, water treatment, dredged material management, wetlands, fisheries, mining engineering, and mining waste management technologies. Our desire is to work collaboratively with the Corps during EIS development so that issues are identified and resolved early in the process. This is consistent with CEQ guidance that lead federal agencies encourage active participation from cooperating agencies in order to improve the efficiency, effectiveness, and value of NEPA analyses (Memorandum for the Heads of Federal Agencies, Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, CEQ, January 30, 2002).

We would like to have a meeting with you to discuss revising your NEPA cooperating agency invitation to the EPA beyond CWA Section 404(b)(1) to include all areas of EIS analysis, consistent with the Corps' past and current implementation of NEPA on other projects. If, after this meeting, the Corps agrees to reconsider our role, we request a revised cooperating agency invitation letter and will likely respond affirmatively.

Cooperating agency specific requirements

We agree with the specific requirements for cooperating agencies included in your January 9, 2018 letter. If, after our meeting, we decide to participate as a cooperating agency, we will request several additional provisions in our response letter, including provisions to address communication regarding Freedom of Information Act requests, modification of the Cooperating Agency Coordination Plan and the Corps' commitment to provide cooperating agencies with the opportunity to review and comment on a preliminary draft EIS. We note that a preliminary draft EIS is typically developed for cooperating agency review prior to becoming available for public comment. These issues were discussed with the Corps during the January 18 pre-scoping meeting.

Concluding Remarks

You have requested a response to the cooperating agency invitation by January 29th. As discussed above, we would like to have a meeting with you regarding the invitation before providing a final response. We believe that a meeting is warranted because the current invitation is a significant departure from how the Corps has implemented NEPA in establishing the EPA's cooperating agency role on other projects. The EPA's substantial expertise on a broad range of issues will contribute to a more efficient, transparent, and robust NEPA process and we request that the Corps reconsider our role as a cooperating

agency, consistent with numerous ongoing and past projects. We are committed to providing a response shortly after we have an opportunity to discuss this issue.

Please feel free to contact me at (206) 553-2581, or Patty McGrath at (206) 553-6113 to set up such a meeting.

Sincerely

Linda Anderson-Carnahan for

R. David Allnutt, Director
Office of Environmental Review and Assessment

Cc: Sheila Newman, Alaska District, U.S. Army Corps of Engineers

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