EPA-PNL-4868

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To Patricia McGrath, Phil North, Cara Steiner-Riley
cc
bcc
Subject FW: BBNC 404c petition

1 attachment

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FYI

Bristol Bay
Native Corporation
Enriching Our Native Way of Life
111 West 16th Avenue, Suite 400 / Anchorage, Alaska 99501 / (907) 278-3602 / Fax (907) 276-3924

August 12, 2010

Dennis J. McLerran, Regional Administrator
Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Phone: (206) 553-1200, (800) 424-4372
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Via electronic and first class mail

Re: Clean Water Act 404(c) process to prohibit certain lands from use as a disposal site for dredged or fill material

Dear Mr. McLerran:

Bristol Bay Native Corporation (BBNC) respectfully requests that EPA initiate a public administrative process to carefully tailor a prohibition of the discharge of dredged or fill material from the proposed Pebble mine, located on specific land owned by the State of Alaska at the headwaters of the Kvichak and Nushagak River drainages under Section 404(c) of the Clean Water Act. The Act authorizes the Administrator of EPA to prohibit, restrict, or deny the discharge of dredged or fill material at defined sites in waters of the United States (including wetlands) when the use of such sites for disposal would have an unacceptable adverse impact on fisheries, wildlife, municipal water supplies, or recreational areas. This request fully meets those requirements.

The Pebble Limited Partnership (PLP)[1] has mining claims in the Bristol Bay region, and proposes a large scale metallic sulfide mine in this area. The massive scope of PLP's proposed mine, the importance and sensitivity of these river drainages and the known facts about the persistence and permanence of impacts to water quality from this type of mining activity are clear indicators that a mine such as that proposed by PLP would present an unacceptable risk of irreparable harm to water, fishery and wildlife resources.

Bristol Bay Native Corporation Background

BBNC is a for-profit corporation created by Congress pursuant to the Alaska Native Claims Settlement Act (ANCSA) to represent the economic, social and cultural interests of the Native people from the Bristol Bay region of Alaska. BBNC represents almost 8,700 shareholders.

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[1] Pebble Limited Partnership is a 50:50 partnership between Northern Dynasty Minerals Ltd and Anglo American PLC.

With enactment of ANCSA, the people of the Bristol Bay region relinquished claims to millions of acres of aboriginal homeland in exchange for uncontested title over nearly three million subsurface acres in the Bristol Bay region and $30 million dollars. From the inception of the corporation the directors of BBNC have taken very seriously the responsibility to protect the assets put into their care. The board of directors has followed a long term strategy of responsible development of lands, prudent investment of BBNC financial resources, and maintained the commitment to protect Native culture and the subsistence way of life. BBNC has provided reliable dividends payments to shareholders, created an education foundation, and advocated on behalf of subsistence rights. BBNC continues this work in furtherance of its mission to "enrich our Native way of life."

The Bristol Bay region is one of Alaska's most varied, beautiful, and bountiful. From Togiak to Nondalton and south to Ivanof Bay, it is home to myriad mountains, lakes, and islands. Situated 150 miles southwest of Anchorage, the region's communities are geographically isolated from the rest of the state—and in most cases from one another. Most of the communities in the Bristol Bay region are self-reliant, operating without the benefit of interconnected road and utility systems. The vast majority of households rely on subsistence fishing and hunting for a large percentage of their food.

The economy of the region is dominated by commercial, sport, and subsistence salmon fishing. For some residents fishing provides nearly year-round employment with most activity taking place during the five months of May through September. The watershed of the Bristol Bay region is a sprawling, permeable, porous, network of creeks and streams perfectly designed to produce salmon. In fact, if Alaska were a nation, it would place ninth among seafood producing countries. Forty-two percent of the world's harvest of wild salmon, and 80 percent of the production of high-value wild salmon species such as Sockeye, King and Coho salmon, are from Alaska. Salmon is the most valuable commercial fish managed by the state of Alaska, and Bristol Bay is Alaska's richest commercial fishery. In Bristol Bay, the 2008 harvest of all salmon species was approximately 29.3 million fish, and the preliminary ex-vessel value of this 2008 commercial catch was approximately $113.3 million. Nearly one-third of all of Alaska's salmon harvest earnings came from Bristol Bay.

Salmon are a revered renewable resource that has been harvested sustainably for millennia. The salmon is central to the cultural traditions of the diverse Native cultures of Bristol Bay. Salmon harvesting is essential to the continued economic and cultural viability of the region's inhabitants and to the economic well being of the State of Alaska.

BBNC has experience gained from four decades of stewardship over three million acres of entitlement lands. Throughout those years of stewardship, BBNC's leaders, with input from its land managers and scientists, have balanced the commitment to a traditional lifestyle and a sustainable relationship with the salmon with prudent development of BBNC's other natural resources. BBNC recognizes the region's need to diversify its economy and has investigated non-renewable resource development on its lands in order to provide economic opportunities for its shareholders. BBNC, however, is committed to conservative, sustainable resource and

mineral development that does not negatively impact the region's traditional mainstay: fish harvest.

Environmental safeguards, rigorous permitting regimes and active oversight are protocols supported by BBNC in any development effort. Based on all current and available information, the proposed Pebble mine presents an unacceptable risk to the watershed of the Bristol Bay region, thereby threatening the fish harvest of Bristol Bay. The vast size of the proposed development magnifies the ramifications of any potential harm so that the impacts become almost unquantifiable. The economic benefit to the region from the proposed Pebble mine simply does not justify the loss of habitat and contamination risks to our fisheries and the long-term sustainability of Bristol Bay area cultures.

Pebble Limited Partnership Plans Large-Scale Metallic Sulfide Mining

PLP holds mining claims on over 200 square miles of state land within the Bristol Bay Watershed. The company plans to mine these claims for copper, gold and molybdenum.

While the exact parameters of PLP's proposed mine are not yet known, there is sufficient information to know that the proposed mine's risks are too great to accept. PLP's planning and exploration documents indicate that the final mine site would likely be 15 square miles, and include an open pit mine and an underground, block-caving mine. By 2006 estimates, the open pit mine would be 2 miles wide and produce up to 2.5 billion tons of acid-generating waste rock and discharged chemicals. Recent PLP estimates show nearly 11 billion tons of mineral resources, which, if recovered, would generate significantly more acid-generating waste rock.[2] PLP plans to store the tailings waste in artificial lakes restrained by earthen dams. The largest of the dams would be 740 feet tall and 4.3 miles long, as proposed in 2006. The project also would require many miles of roads and bridges within the mine site as well as a 100-mile road to a port facility on Cook Inlet. The port site would require additional facilities to store metal concentrates and fuel, a ship loading structure, barge landing, and offices and housing for workers. Operation of the mine would require pipelines for fuel and rock slurries, electrical power lines, and the constant transport and use of fuel and industrial and domestic chemicals and supplies.

Unacceptable Adverse Impacts from Known Hazards

The proposed mine site is at the top of a hydrologic divide in an especially wet area. The impoundment facilities planned by PLP will create at least two large tailings ponds that sit on highly permeable sand and gravel. Contamination from the disposed mining waste to ground and surface water in this remote region will thus be extremely difficult to contain over time. The high seismicity of the area in which PLP proposes to mine also poses an unacceptable risk of dam failure and increases the risk of ground and surface water contamination.

These risks to Bristol Bay resources from leaching and potential dam failure are something that the people of this region will face long after the proposed mine has stripped the mineral wealth and ceased operating. The impoundment of mining tailings would occur in the

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[2] *See* http://www.pebblepartnership.com/project/faqs ("The Pebble mineral resource totals 5.94 billion tonnes measured and indicated, and 4.84 billion tonnes inferred.")

remote and largely uninhabited watershed that provides important spawning grounds for Bristol Bay's world-class salmon fisheries. Contamination to surface and ground water would impact these fisheries, and an impoundment failure quickly would reach BBNC lands and Bristol Bay itself, and thus be devastating to the people of this region.

Tailings impoundment problems and failures, and water contamination at mines of this size around the world, demonstrate that the proposed Pebble mine would pose unacceptable risks of irreparable harm to the water quality and the natural and renewable resources in this region and to the economic, cultural and environmental values that BBNC seeks to protect for its shareholders.

Conclusion

Under section 404(c), EPA has the authority to prohibit or otherwise restrict specified areas from the discharge of dredged or fill material before a permit application has been submitted to the Army Corps of Engineers. BBNC requests that EPA begin this process. What is already known about the scope of current project planning and known contamination from this type of mining poses an unacceptable risk to our shareholders, their subsistence-based livelihoods, and the prospects for future, long-term economic development opportunities for the region.

We urge you to begin the 404(c) process immediately and look forward to working with EPA to supply additional information about the resources of this region that may assist in carefully crafting a prohibition that avoids the unacceptable adverse impacts from the proposed Pebble project.

Sincerely,

Jason Metrokin
President and Chief Executive Officer

cc: Marcia Combes, Director, EPA Alaska Operations Office
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