

Message

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Sent: 1/24/2018 7:09:01 PM
To: phedger@freedomworks.org
CC: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]
Subject: Draft Pebble Mine Tick Tock

NOT FOR DISTRIBUTION

Patrick, below is a lot of information regarding the Pebble Mine process at EPA since the Obama EPA's 2014 decision to stop Pebble Limited Partnership from being able to apply for a mining permit. What Administrator Pruitt is announcing tomorrow is a win for rule and due process.

Administrator Pruitt is allowing the well-established Section 404 process under the Clean Water Act to play out. The previous administration took the unprecedented step of vetoing this project before it was even allowed to apply. With Administrator Pruitt's actions to propose a withdrawal to the "proposed determination" in July 2017, Pebble Limited Partnership was allowed to file a permit with the Army Corps of Engineers and did just that. Administrator Pruitt's decision to terminate the July 2017 proposal came after over million comments on the proposal most of which were negative.

But to be clear, the no final decision on the "proposed determination" has been proposed and won't be until 2021 as required by a court settlement or when the environmental impact statement of Pebble Limited Partnership's project is complete.

Below is a tick-tock of these actions as well as our actions that will take place tomorrow:

- The EPA's upcoming announcement on Pebble Mine may surprise many people. But it's right in line with Administrator Pruitt's top priorities: fulfilling the Agency's core mission of protecting our nation's waters, while doing so in a way that respects due process and our statutory authority.
- In 2014, EPA's Region 10 (Seattle office) issued a "proposed determination" that, if finalized, would have effectively vetoed the Pebble Mine project. This happened before Pebble Mine had even applied to the U.S. Army Corps of Engineers for a permit. EPA does have the legal authority to issue such determinations before a company applies for a permit ("preemptively"), but the Agency has almost never done so.
- Pebble sued the Obama Administration in 2014, and the U.S. District Court for the District of Alaska issued an injunction that prohibited EPA from taking the next step in the "determination" process. Under EPA's regulations, the regions first make a "proposed determination," then forward it as a "recommended determination" to the Administrator. If the Administrator approves, it becomes a "final determination." The Corps cannot issue a final permit while a "determination" at any of these stages is outstanding. However, the Corps can and will *review* Pebble's permit application. In this review, the Corps will prepare an Environmental Impact Statement under NEPA (National Environmental Protection Act), and EPA plays a role in advising the Corps in that process.
- The Obama Administration explored settlement with Pebble, but was unable to come to terms. In May 2017, EPA settled with Pebble. Under this settlement, Pebble released all claims against EPA. In exchange, EPA agreed to initiate a process to propose to withdraw the 2014 "proposed determination." EPA also agreed that, if Pebble did apply to the Corps for a permit, Region 10 would not forward any "recommended determination" to the Administrator until May 2021 or until the Corps issued its final Environmental Impact Statement on the Pebble application, whichever came earlier.

- In July 2017, the EPA proposed to withdraw the 2014 “proposed determination.” Over one million comments were submitted in response to the proposed withdrawal. The vast majority were opposed to withdrawal, raising concerns about threats to the environment and to the local fishing and recreational economy posed by the Pebble project.
- In December 2017, **Pebble submitted its application to the Corps, and the Corps is proceeding to review the application.** This process will involve a detailed study of the environmental impacts of the proposed mine, and EPA will be able to provide input to the Corps as part of that process.
- Now, EPA is announcing its decision not to withdraw the 2014 “proposed determination” at this time. On the one hand, **any uncertainty over whether Pebble would be able to apply to the Corps for a permit has been resolved;** Pebble did so last December. On the other, serious concerns regarding the environmental and economic impact of the project remain.
- It’s important to note that **the Corps’ permitting process will now play out,** but EPA retains the prerogative to keep its “proposed determination” of the project in place, or to modify or withdraw it at a later time. **Any ultimate decision EPA makes will be made with due consideration of all relevant factors, chief among these being protection of the environment in a responsible manner consistent with proper process, respect for the limits of the agency’s statutory authority, and the relevant science and record.**

Call James or I with any questions whatsoever. We want to make sure you guys are fully informed when it is announced.

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M: Ex. 6