

**American Exploration and Mining Association * National Stone, Sand, and Gravel Association
Arizona Rock Products Association * Colorado Mining Association * Montana Mining Association
Mining Minnesota * Oregon Concrete and Aggregate
Texas Mining and Reclamation Association* Utah Mining Association**

April 20, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Re: Proposed Determination Pursuant to Section 404c of the Clean Water Act.

Dear Administrator Pruitt,

We call upon the U.S. Environmental Protection Agency (EPA) to withdraw the Proposed Determination Pursuant to Section 404c of the Clean Water Act for Pebble Deposit Area, Southwest Alaska.

Being on the front lines of the permitting and regulatory process, we are concerned that the EPA overreached when it initiated a preemptive Section 404(c) veto in the absence of a permit application. The action circumvented the NEPA process of scientific review, economic analysis, and social impact research. While the EPA action was a proposed veto, and the Corps of Engineers is moving forward on the review of the Pebble permit, it is only fair to all that any such NEPA review be allowed to proceed without a proposed veto looming over it.

The House of Representatives Government Reform and Oversight Committee report and internal information from the EPA show that the 'Proposed Determination' on the Pebble deposit was based on a report (the Bristol Bay Watershed Assessment) that was initiated by biased EPA staff who colluded with environmental groups. The EPA also utilized shoddy analysis based on false facts in the report to draw conclusions to justify a 404c pre-permit veto.

We all know that under the Clean Water Act (CWA), the US Army Corps of Engineers (Corps) has the authority to grant permits while EPA has only the authority to veto permits. Under Section 404(a), the Corps evaluates a permit application (proposing a specific mine with specific control and mitigation measures) using guidelines it developed in conjunction with EPA and complies with NEPA and regulations developed by the Council on Environmental Quality. EPA, under 404(c), may then prohibit "the specification ... of any defined area" or deny or restrict the use of "any defined area for specification." Thus, the EPA should not act in the absence of a permit application detailing the specification and area of development.

In addition, President Trump believes that the EPA's use of 404(c) veto power is egregious as he proposed the elimination of the EPA's 404c authority in his recent Infrastructure proposal:

Eliminate duplicative oversight by removing EPA's authority to veto a 404 permit under Section 404(c). The Secretary of the Army, acting through the Chief of Engineers, has authority to grant permits for the discharge of dredged or fill material under Section 404 of the Clean Water Act. EPA can exercise veto authority prior to, during, and after permit decisions. The threat of the veto creates significant uncertainty and delays permit decisions, because project proponents and USACE address perceived concerns to avoid elevation or veto. Removing EPA's authority to veto a 404 permit would make the permitting process more efficient and predictable.

Lastly, we know that Pebble is moving forward with a permit application, under a settlement agreement, that is based on a vastly different mine plan than the false analysis the EPA used for the 'Proposed Determination.' Thus, another reason the 'Proposed Determination' should be discarded in its entirety and have the EPA utilize the facts that will be determined by the Corps in making any new 404c determination.

We agree with the Wall Street Journal's concern regarding the blunt power of the 404c as a weapon that "...makes the [EPA] a super-regulator able to kill any mine, pipeline, bridge or oil well before companies can make a case, and regardless of support by one of the 50 states."

We appreciate your efforts in trying to unwind the restrictive federal regulatory legacy the previous administration heaped upon the United States of America. However, we urge you to not allow the 404c pre-permit veto precedent to stand as well—be it for mining, oil and gas production, pipelines, solar energy, ranching and farming, and others.

Once again, we urge you to move forward the withdrawal of the Proposed Determination and bring the EPA back under the rule of law and fair process.

Sincerely,

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