

ALASKA STATE SENATE MAJORITY



March 14, 2019

Colonel Phillip Borders
Alaska District Commander
US Army Corp of Engineers
PO Box 6898
Joint Base Elmendorf-Richardson, Alaska. 99506-0898

Mr. Shane McCoy, Project Manager
U.S. Army Corps of Engineers Regulatory Division
P.O. Box 6898
Joint Base Elmendorf-Richardson, Alaska 99506-0898

Re: Pebble Project Draft Environmental Impact Statement (DEIS) – Avoidance of the “No Action Alternative”

Dear Col. Borders and Mr. McCoy:

We have reviewed the material found at <https://pebbleprojecteis.com/documents/eis> and have the following comment: the Pebble Project has been studied and debated for years; **the “No Action Alternative” should be avoided.**

“Action Alternatives 1,2,3,” or, at least a “version” of those “Action Alternatives,” are generally supported, although we, (which represent an average of 35,512 Alaskans each), do not, at this time, advocate for one particular “Action Alternative” over the other.

Why should, generally, an “Action Alternative” advance and why should the “No Action Alternative” be avoided?

It’s simple: The Pebble Project is on state land that was specifically selected by the state for mineral development.

To understand how this scenario occurred, it’s important to remember history.

The federal Alaska Statehood Act,¹ which was voted on and agreed upon to include Alaska under an equal footing,² expressly allowed state land selections for the purposes of becoming self-sufficient and allowing the state to develop its own natural resources.³

There are two particular sections of the Alaska Statehood Act that all should be aware of: Section 6(b) and Section 6(i).

1. Section 6(b) declared that the State of Alaska has the right to select 102,500,000 acres of land.
2. Section 6(i) granted the State of Alaska the right to the minerals in the lands it selected. It also gave the State the right to decide when and under what terms, state selected lands (with minerals) would be leased for development. “Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct.”

To be absolutely clear: The federal government, through an agency, cannot unilaterally amend Section 6(i) of the Statehood Act. Additionally, there is no exception allowing a federal agency to unilaterally hamper development on state land.⁴

The State of Alaska has long had an expectation of receiving the value of the royalties and taxes from this particular land selection. Federal government “delay” or “non-compliance” with its necessary good faith obligations could subject the federal government to potential damages under the compact theory. In addition, Alaska could seek other equitable rights (such as the right to select *other* lands containing a similar amount of minerals, oil, or gas from federal lands available after the state ratified the Statehood Act).⁵

The area in question has tremendous value. A value recognized by generations of Alaskans that came before us. Those generations had the wisdom and foresight to understand how the state could further contribute, today, to the world economy from the EIS analysis area.

Here’s the reality: As technology advances (with the development of more smart devices to more electric vehicles) the world needs raw materials. Copper and gold are excellent conductors. Molybdenum is used to make alloys that increase strength, hardness, and resistance to corrosion and wear. The project applicants seek to provide those materials.

Alaska, as a state recovering from recession, will benefit tremendously too:

1. The project could reverse population declines.

¹ Alaska Statehood Act, Pub. L. No. 85-508, § 4, 72 Stat. 339 (1958), reprinted in 48 U.S.C.A. ch.2, refs & annos (2003).

² *United States v. Alaska*, 521 U.S. 1, 6, 117 S. Ct. 1888, 1892, 138 L. Ed. 2d 231 (1997)

³ “The natural resources of Alaska ‘belong’ to Alaska and to Alaskans in a way that, in our federal system, Alaska’s society and economy in general do not.” *Hicklin v. Orbeck*, 1978 WL 223115 (U.S.), 3 (U.S.,1978).

⁴ For example: The Statehood Act does not say “Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct except when the Environmental Protection Agency or the Army Corps of Engineers decides to forbid development.”

⁵ *Marathon Oil Company v. U.S.*, 236 F.3d 1313 (Fed. Cir. 2001)(“If the Government said it would break, or did break an important promise... The Government must give the companies their money back.”) (Emphasis added).

2. The project applicants have expressly communicated that one of its core objectives is to maximize opportunities for local hire.
 - a. First directly from residents in the area.
 - b. Then, residents that have close ties to the area.
 - c. Then, to Alaska residents in general.
3. Moving forward with the project may provide for educational opportunities for Alaskans (through mining industry sponsored programs) and increased revenue streams to the surrounding areas (which could help keep enrollment numbers high enough to avoid school closures).
4. If allowed to move forward, the project could increase job opportunities with year-round or seasonal employment, steady income, and a lower cost of living. That would have noticeable, beneficial impacts on the EIS analysis area.
5. There may well be positive impacts on subsistence harvest levels and participation. Increased incomes mean that procurement of hunting and fishing equipment becomes more likely. The equipment is simply more affordable.
6. There may well be positive impacts on psychological health, family stress, and unintentional and intentional injuries. Why? Increased revenue for local governing bodies may lead to improved community health services. Additionally, more disposable income for project employees may give those employees a greater financial ability to manage health related issues.

Although some have requested additional delay of the DEIS (for at least 270 days), we do not support that position. The Pebble Project has been analyzed and debated for years, through multiple federal and state administrations. The process and permitting is rigorous. It’s time to start meaningfully moving forward.

Noteworthy: Delaying this DEIS process is a slippery slope.

A 90-day public comment period is not unprecedented. In fact, 45-days is the normal public comment period provided for within statute. Other resource development projects have received shorter or equal length of time for review and public comment.

| Project Name | DEIS | Comment Period | Extension of Comment Period | Length of DEIS (Excluding Appendices) |
|--|-------------|-----------------------|------------------------------------|--|
| ANWR Coastal Plain Oil and Gas Leasing | 2018 | 45 days | Yes 30 days | 392 pages |
| Tongass Timber Sale on POW Island | 2018 | 45 days | No | 408 pages |
| ConocoPhillips GMT 2 | 2018 | 45 days | Yes 10 days | 631 pages (SEIS) |
| Oil Search Nanushuk Project | 2017 | 45 days | Yes 30 days | 1,191 pages |
| Alaska Stand Alone Pipeline Project | 2017 | 45 days | Yes 15 days | 1,822 pages (SEIS) |

The USACE DEIS for the Pebble Project is a comprehensive document and includes a significant number of findings that should provide confidence that the Pebble Project has undergone a rigorous and thorough review. The 90-day comment period provides adequate time for individuals and organizations to review the document and provide feedback.

The time has come for responsible development without unnecessary delay.

Sincerely,



Senate President Cathy Giessel



Senator John Coghill



Senator Chris Birch



Senator Click Bishop



Senator Mike Shower



Senator Shelley Hughes

cc:

Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young
Governor Mike Dunleavy