

USACE Media Teleconference 6-21-18

John Budnik (USACE – JB)

Shane McCoy (SM)

Stephen Lee (SL) Bloomberg Environment

Ariel Wittenberg (AW) E&E News

Mariah Oxford (MO) Pebble Watch

Jill Burke (JB) Bloomberg Environment

Tim Sohn (TS) Outside Magazine

Isabelle Ross (IR) KDLG

Tim Bradner (TB) Pratts Metals

Margie Bauman (MB)

Kim West (KW) Western Regional Director / PHMSA

Shane McCoy (SM): Good morning ladies and gentlemen, my name is Shane McCoy. I am the program manager for the Alaska District. I do not have a prepared statement, however I do appreciate these monthly reoccurring roundtables so everyone can be apprised of the current status of the project review. As I am sure most of you are aware, we are still in the public scoping comment period for the development of the EIS which will be closing June 29. After which, there will be a scoping report that will be made publically available on the project EIS website – pebbleprojecteis.com. With that, I'd like to turn it over to you with any questions that you may have.

John Budnik (USACE - JB): I think for ease of asking questions we will go through the list that we just did for the roll call.

Stephen Lee (SL): Thanks guys. Thanks for holding this call. As we all know, the Pebble Partnership is really in serious financial trouble. It looks as though they only have enough funding to get them through next few months. It seems to be having real difficulty attracting another investor. I know that is not your specific concern. Is that affecting anything you do? Are you mindful of the fact that there is a lot of speculation that they will have to bow out of this all together and you guys will still be in the middle of this scoping? You must be at least aware of it. What can you guys tell us about that?

SM: That's a good question and we have receive that inquiry several times. As of this time, it has not affected the development of the analysis. Until such time that the applicant withdraws their application or they cannot provide information we require for our analysis, we will continue to develop the environmental impact statement. Until then, it's really not the Corps' issue with regards to the financing of the project or the Pebble Limited Partnership.

SL: Thanks. Can I ask a quick follow-up?

USACE – JB: Yup. You still have a follow-up there.

SL: So you guys are going ahead with this work, and I take it is not affecting what you guys are doing in terms of person hours, the amount of resources applying to this work...I think there are some questions about whether that's a sensible use of resources given the fact that project is in serious question. Am I hearing you correctly that you guys are basically turning a blind eye to funding issues and plowing ahead? Is that accurate?

SM: We have a statutory requirement that when we receive an application we have to determine that it is complete within 15 days. If it is complete, then we start reviewing the project and are required to do so until such time we don't have the information we need or the applicant withdraws their application. Until one of those are satisfied, we have a statutory requirement to continue the review process.

AW: I was just curious – this week EPA and the Army Corps announced a new Memorandum of Agreement about compensatory mitigation in Alaska and I'm wondering how that might apply to your review of Pebble?

SM: Fundamentally, that MOA reiterated components of the 404(b)1 guidelines subpart j, as well as what's called the final rule, the 2008 rulemaking, the 33 CFR 332. It just reiterates the fact that there is a preference in regards to when compensatory mitigation is required to how that is provided. However, I think it should be noted that it reiterates the process for mitigation as a sequential process of avoidance, then minimization, and if required, then compensation. At the end of the day, we would do the sequential steps of the analysis to determine if compensatory mitigation is required and what it would be.

AW: As a follow-up question, it does reiterate those requirements, but it also says it replaces the 1992 Doran Wilcher Memo and the 1994 Alaska Wetland Initiative, which I know the Alaska District has been relying upon in your permitting decisions. So, that does seem like it might change the way you guys review these projects. Are you saying that it wouldn't?

SM: No, it's fundamentally how we analyze impacts to aquatic resources. We use the analysis to inform associated loss of functions and values. It really is a reiteration of the process that is prescribed in regulation.

MO: Good morning, thanks for hosting this again. I have a question that follows-up from last month. You guys said you were expecting some detailed information from the Pebble Partnership in regards to the changes of their proposed plans. Have you received those?

SM: We have received some additional information. However, there's more coming from the applicant.

MO: Do you expect those to get those before the end of the scoping period so they can be put online for public consumption?

SM: I can't speculate on that. I know there are some engineering – design considerations going on in that discussion.

JB: Hi, thanks for doing this. Just to follow-up on the viability of the project – is fiscal viability a required part of an application being determined complete. If so, if those conditions change after the application has been submitted, does Northern Dynasty have an obligation to come back and say we are not in the position to pull this off?

SM: Let me understand the question – will you reiterate the question?

JB: When the application was initially made was fiscal viability an element of that complete application? Meaning the ability to demonstrate economic resource to complete the project.

SM: That is not one of the requirements for a complete application in the statutes. No.

JB: No requirement on Northern Dynasty's part to come back and tell you they don't have monetary resources in hand?

SM: Correct.

TB: A couple of questions: what would the timing be for the draft EIS after the scoping period?

SM: Was there a second question or that it?

TB: Yeah, then how long would the draft EIS take...I know the DOI are under a guideline to produce EIS's in 12-months. Does something similar apply to the Corps of Engineers?

SM: No. The DOI guidance...we are the Department of Army, however there is a draft schedule out right now. Understand, procedurally, the scoping period informs what our scoping analysis for the document will be. Until such time it closes and determine what additional data we need it is very difficult to pin down the very specific timeline. However, if we work under the assumption that we will have all of the information we

need for the analysis at the end of the scoping period the current schedule for publishing of the draft EIS will be January 2019.

TB: Can I ask one additional question?

USACE – JB: Is it a follow-up?

TB: Yeah.

USACE – JB: Sure.

TB: What is the Corps' cost of doing a draft EIS? Is there an estimate? And do you have funds for this if Northern Dynasty is unable to pay?

SM: So, the cost to the Corps is my salary – which is paid for by Congress. That is all in addition to any other resources internally that we use. With regards to the cost of the EIS for the third-party contractor, it is paid for by the applicant. The third party contractor directly reports and is accountable to the Corps.

TB: Can I ask one more?

USACE – JB: Tell you what, Tim, let's keep going through the list here. We've got a few more journalist here...

TB: ...if you have time, come back to me...

USACE – JB: Yeah, we'll go through another round. I appreciate it. I'm sorry I realized that we have two Tim's. I think we'll have Isabelle Ross ask a question next and then Tim Sohn you're after her. So, Isabelle, if you have any questions...

IR: Could you guys speak to the PLP land permit that was issued on Tuesday for the temporary radio repeater on the Alaska Peninsula...or are you not involved with that?

SM: That is a State use permit...other than having visibility on that it was issued I have no comment.

IR: Ok.

USACE – JB: Any follow-up there, Isabelle?

IR: No, that's it for now.

USACE – JB: Okay then...Tim Sohn.

TS: Thanks guys. Quick question, I know this was discussed in the last call, but I'm curious about the preliminary scoping report you guys put out and whether releasing

such a report is normal in the scoping process and whether putting out such a document without incorporating the changes that Pebble submitted is considered standard operating procedure.

SM: Certainly. It is not typical to put out a preliminary scoping report, but we did it. As I iterated at the last call we are a learning organization and part of us being transparent and efficient it was decided to put that out there because many of the comments that were received initially are familiar to many of the folks continuing to provide comment.

TS: The purpose was to avoid redundancy in future comments?

SM: No. Not at all. It's really a matter of transparency. I have heard that it sometimes helps to inform other people's comments in regards to other people's concerns or potential alternatives that may inform our analysis. Therefore, in an effort to be transparent, efficient and effective, we put it out there for cooperating agencies, for the public, for anybody to see.

TS: My follow-up would be: will the final scoping report will substantially resemble the draft? That's the format as it will be laid out in final form.

SM: Yes.

USACE – JB: Thanks, Tim Sohn. That concludes the first round of questions. I just want to see if we have any late comers...any new people have not called on in the roll call? Alright without further adieu...

MB: Yes. This is Margie Bauman, Fishermen's News and Cordova Times. I have no questions at this time.

USACE – JB: Hi Margie, thanks. Okay, going into Round 2...Stephen, back to you.

SL: Curious about the relationship between AECOM and Northern Dynasty. Am I correct that you guys don't have any relationship there or any knowledge of what kind of money is being paid? You guys have no knowledge about that?

SM: I'm not sure if I understand the question.

SL: What are they paying AECOM?

SM: I'd request that you contact the Pebble Limited Partnership with regards to that.

SL: They are not responsive to those questions, and neither is AECOM. I'm just curious if that is information you guys had.

USACE – JB: It is information that we are aware of, but it is proprietary information that we cannot disclose without running through our Office of Counsel.

SL: Okay, got it. Thanks guys.

USACE – JB: Ariel, back to you...

AW: You had mention that you were expecting to receive more information from Pebble, or maybe you have...I was just wondering if you guys had a compensatory mitigation plan from them or when you expect to receive one?

SM: We do not have a compensatory mitigation plan. I wouldn't assume we would entertain or they would entertain developing that until we have gone through the process to avoid and minimize, which, again, is fundamental to the iterative process of mitigation.

USACE – JB: Do you have a follow-up, Ariel?

AW: Nope.

USACE – JB: Okay, thank you. Mariah, back to you.

MO: Thanks. I'm also wondering about documents you may have received. Have you seen any preliminary economic assessment yet?

SM: We have not.

MO: And you would need one of those before you can complete the Draft EIS, correct?

SM: No, we would not, actually. It behooves them to do so for their shareholders, however, that is not what we are evaluating. We are evaluating the application for discharge of dredge and fill material into waters of the U.S. as well as work in and affecting navigable waters.

MO: Okay. Thank you.

USACE – JB: Thank you, Mariah. Jill.

JB: I don't have any additional questions, thanks.

USACE – JB: Thanks. Let's go back to Tim Bradner.

TB: Thanks for indulging me again. Back to the cost of this EIS...and I guess I'm partly informed by the previous question...the contractor is paid for directly by Pebble and you folks have no idea of what the cost of that is or the schedule of payments, or whether the payments are being made?

SM: We do have an idea of that, but it's not within our purview to release that.

TB: Okay, so just as a follow-up...so if payments cannot be made by Pebble and work stops then you'll obviously be informed of that?

SM: Yes.

USACE – JB: Thanks, Tim. Let's go Isabelle Ross.

IR: Hi. I was wondering if you guys have seen public comments change as the scoping period...or wane or trickle off or grow...as the scoping period is coming to an end here at the end of June?

SM: We have seen them wax and wane. There was a brief uptick, and I anticipate there to be additional comments as the comment period closes on the 29th.

IR: How do you take into account the public comments?

SM: The public comments are to help inform our scope of analysis. It can help inform alternatives that the applicant or agencies are unaware of, it can help identify areas of concern, and it can help identify areas of less concern for the analysis.

IR: Got it. Thank you.

USACE – JB: Thank you, Isabelle. Tim Sohn.

TS: Thanks. Back to the issue of the changes that Pebble submitted, and the anticipated documents coming, but do you anticipate other changes to the mine plan and is there any statutory limit of the amount of changes they can submit during the drafting of the EIS?

SM: No, it would be an alternative we will analyze in the draft EIS. There will be many alternatives to components of the project. Statutorily, there is no limit of alternatives within NEPA, it has to be in a reasonable range.

TS: Ok. If you come across something you mentioned earlier, if you request something they couldn't meet – this is in response to a question about their financial resources – what does the process look like then...if you have a request for information that they, for monetarily reasons, cannot respond to....what happens then?

SM: We could either make a decision per 33 CFR 325, or we could consider the application withdrawn and we would suspend our review.

TS: Ok. Withdrawn means the application is simply on hold or it's thrown out entirely?

SM: We would stop our analysis. It would not preclude them from coming in and reinitiating the process.

TS: Ok. Thanks.

USACE – JB: Thank you, Tim. Margie.

MB: Yes. If they do not respond and you stop the process is there a deadline by which time they would have to respond...in other words, can they ask to continue the analysis three weeks after that or 3 years? What kind of a timeline is there please?

SM: Well, the regulations state that we need to give them a reasonable time, generally not to exceed 30 days. However, if the applicant indicates that they will be getting us that information, we can extend that period to which we will wait for that information. However, if we stop that analysis, there is no statutory limit to when an applicant can come back in to reinitiate the process.

MB: Thank you.

SM: You're welcome.

USACE-JB: Alright, well I think that concludes Round 2 and we'll go again. Is there any one on the call that joined late?...Alright, starting Round 3, Stephen back to you. Do you have any further questions?

SL: No further questions. Thanks a lot, guys.

USACE-JB: Ariel?

AW: You said that you didn't think they'd be entertaining...developing a mitigation plan until you look at avoiding and minimizing. I guess I'm just wondering how that works because the deposit is located where it is located, so if they minimize it it seems inconceivable that there would be no wetlands, streams, no impacts...is this something you have begun discussing with them at all or do you really think you will have to go through the process sort of thing even though everyone knows there will be some sort of impact?

SM: I have not discussed a compensatory mitigation plan with them, yet. Until we get to the Draft EIS stage and identify preferred alternative, we really can't do any sort of functional analysis.

AW: So you guys have not discussed the mitigation thought process or any of those other kinds of guidance you guys would potentially rely on when you do get to that stage?

SM: I'm really focused right now on the scoping period and the scope of analysis for the NEPA document.

AW: Ok.

SM: And do understand that the NEPA document when we publish a final EIS is not a decision at that point. It is used to inform our decision. That is the analysis - after we do our complete analysis we would enter the substantive evaluation underneath the 404(b) Guidelines and public-interest review factors.

USACE-JB: Alright. Thank you, Ariel.

MO: Hi, I have a question about the end of the scoping period. I know that Sen. Cantwell had asked for it to be extended again and that meetings be held in Washington state. I also saw a letter from Bryce Edgmon in the scoping comments. Do you have official responses to those folks and, if so, where can we find them?

SM: The official response to Sen. Cantwell will be coming from Mr. James' office – the Assistant Secretary of the Army for Civil Works. It was addressed to him, so he will be responding to that. Sen. Edgmon...we have responded to that and we will not be extending the scoping period or holding any additional scoping meetings at this time.

MO: Ok, thank you.

USACE-JB: Thank you, Mariah. Next is Jill.

JB: I don't have anything further.

USACE-JB: Ok, thank you, Jill. Back to you, Tim Bradner.

TB: I don't have anything further...just to clarify, the end of scoping is June 30?

SM: June 29, yes.

TB: That's all I have. Thank you.

USACE-JB: Thank you. Back to you, Isabelle.

IR: No further questions now, thanks.

USACE-JB: Thank you. Tim Sohn?

TS: I'm good for now. Thanks, John. Thanks, Shane.

USACE-JB: Thank you. Margie?

MB: No further questions, thank you.

****WENT THROUGH LIST ONE LAST TIME – NO FURTHER QUESTIONS FROM THE POOL****

USACE-JB: I do want to take the opportunity with everyone is to seek you guys' feedback. The purpose of why we are doing these monthly teleconferences is to make ourselves available. I know I work with and interface with you guys quite a bit personal, that is, through my office and I want to express my thanks to you guys for being understanding that our people are highly engage but certainly that we are empathetic to deadlines and we're empathetic that you guys have readers. We are doing our best to help you guys out there. I really appreciate you guys all joining us and if you have any feedback on how we can make these better, please do send that my way. Thank you.

SM: Can I also make a personal request - this is Shane? If you guys have questions that may require a more in-depth answer to forward those to John prior to the teleconference, that would help me.

USACE-JB: Alright, without further ado, unless there's any more questions than we'll end this call...

MB: I have another question. When do you expect to call another teleconference? Do you have a date on that, please?

USACE-JB: Not at the moment, but right now we are in a rhythm of monthly – so I would look toward the end of July. Mid to late July.

MB: Thank you.

USACE-JB: Thank you, Margie. Alright folks, which concludes today's call.