



## Lead NEPA Story: Fake comments vs. form letters in Pebble fight

(Greenwire, 6/13/2019) Dylan Brown, E&E News Reporter

"Joel Reynolds" has told the Army Corps of Engineers five times that he supports the Pebble mine. And each comment listed a Natural Resources Defense Council email address.

But NRDC Western Director Joel Reynolds is one of the most visible and outspoken foes of Alaska's most controversial mining project.

Impersonators, investors and trolls looking to combat a barrage of environmentalist form letters are among 64,000 comments and counting on Pebble's draft Army Corps environmental impact statement (EIS).

Thousands more arrive each day during an extended public comment period that ends July 1.

As with any contentious project, national environmental groups have asked their members to sign and submit stock comments. In this case, they oppose a massive gold and copper mine that Alaska Natives and fishermen believe threatens a major salmon fishery downstream in Bristol Bay.

About 15,000 different individuals submitted identical calls to "stop the toxic Pebble Mine" via a general National Wildlife Federation email. More than a thousand were sent by a service provider on behalf of the Sierra Club.

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## Clean Water Act: Waters of the U.S. review stumps advisers: 'The science isn't right'

(Greenwire, 6/6/2019) Ariel Wittenberg, E&E News Reporter

Members of EPA's Science Advisory Board grappled with whether and how to weigh in on the Trump administration's rollback of clean water standards given the administration's insistence that the proposal is a question of policy, not science.

"They have the right to change the policy, but the science isn't right," member Robert Merritt said.

The "Waters of the U.S." proposal from EPA and the Army Corps of Engineers would erase Clean Water Act protections for wetlands without surface water connections to larger waterways and streams that only flow following rainfall. At least some federal protections for

those waters have been in place since the Reagan administration.

The Science Advisory Board last addressed questions of Clean Water Act jurisdiction in 2014, reviewing and supporting a 300-page "connectivity report" describing how wetlands

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and small waterways can affect larger resources. The Obama administration used that report, and the board's review, as the basis for its Clean Water Rule, but the Trump administration has insisted that its rollback does not need to be based in science.

"I'll note that the proposed revised definition is a legal and policy decision that is informed by the statute, legislative history, Supreme Court interpretations and the EPA and Department of Army's respect for the traditional power of the states to regulate their inland water resources," EPA Director of Wetlands, Oceans and Watersheds John Goodin told the board today. "The line between federal and state waters is informed by, though not dictated by, science."

That left EPA's science advisers questioning how to handle the situation, particularly because the group still stands by its 2014 scientific review.

"That's what makes this tricky, because while the science hasn't changed, it doesn't seem to be entirely relevant to the way EPA is reviewing this," Deborah Hall Bennett, an SAB member and a professor in environmental health at the University of California, Davis, said of the WOTUS proposal.

A working group tasked with reviewing WOTUS acknowledged EPA's position but still determined: "In reviewing the proposed rule we find that there are some gaps between science and policy that warrant review and bridging."

Those gaps include the significant water quality and filtering benefits that wetlands and streams that flow only after rainfall can have on larger downstream waterways.

However, members of the larger board seemed unsure of what they could do, given EPA's position.

"If we consider the four questions the work group raised, then what would be the impact?" asked SAB member Sue Marty of DowDuPont Inc. "Wouldn't the policy proposal move forward because it is a policy decision?"

University of Washington environmental scientist Alison Cullen, who chaired the work group, said she wasn't sure whether the advisory board could influence an EPA policy decision

but noted that the "gaps" in the WOTUS proposal are things the agencies had asked for public comment on.

"Certainly the Science Advisory Board should at least have a footing with the public comments being considered, if not hopefully a little more cachet," she said. But, she added, "I don't think we pick and choose the issues we weigh in on based on if they are going to use our science. We provide the science; we don't say, 'This is how you should use it.'"

Given that the science hadn't changed, however, SAB member Anne Smith said she wasn't sure what the board could say if it did weigh in.

"I'm perplexed by the situation we put ourselves in, because the board did a review in [2014], and I haven't heard anybody say that anything has changed," she said, suggesting that the board resubmit its approval of the connectivity report. "The difference between then and now is not about scientific information; it's about policy."

Ultimately, the board voted to write a "commentary" to EPA explaining the science at issue in the WOTUS rule, a solution proposed by the board's chair, Michael Honeycutt, of the Texas Commission on Environmental Quality.

"What I'm hearing is that the Clean Water Act says something that the science has surpassed, and we are trying to fit a square peg into a round hole," he said. "I see the position EPA is in. It's sort of like a cycle, and you're trying to draw a line of where the cycle begins, and it's very difficult to do. Your policy is drawing that line, and it's an unenviable position to be in."

Steven Hamburg, of the Environmental Defense Fund, agreed to the commentary but cautioned against "just putting a new cover letter" on old comments.

While the science hasn't changed, he said, "the context has changed."

"We need to address the new set of options that are on the table," he said.

Board members spent some time discussing the working group's recommendations for WOTUS. Those include that EPA and the Army Corps should consider the "scientific basis" for excluding ephemeral waters that flow only after

rainfall and wetlands without a direct surface water connection to larger waters. The group also recommends considering "the scientific importance of groundwater protection and groundwater," noting that the WOTUS proposal would protect spring-fed creeks but not isolated waters or wetlands with shallow subsurface groundwater to larger waterways that have previously been protected.

Consultant Richard Williams asked whether those recommendations were based on how waterways are connected or "what the risk was, basically, of including or excluding it."

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## **NEPA: Bureau of Land Management to advance massive photovoltaic project in Nevada desert**

**(Greenwire, 6/6/2019) Scott Streater, E&E News reporter**

The Trump administration may soon be able to boast that it approved one of the world's largest solar power projects on federal lands in Nevada.

The Bureau of Land Management tomorrow will release a draft environmental impact statement for the Gemini Solar Project, which would rank among the 10 largest photovoltaic solar power projects ever built.

Gemini Solar would cover about 7,100 acres of BLM lands about 33 miles northeast of Las Vegas in Clark County, Nev. If built, it would have the capacity to produce up to 690 megawatts of electricity, or enough to power nearly 210,000 homes and businesses annually, according to a Notice of Availability in today's *Federal Register*.

The project, proposed by Redwood City, Calif.-based Solar Partners XI LLC, would likely rank as the largest solar project on federal lands. Worldwide, it sits just ahead of the 648-MW Kamuthi Solar Power Project in India, though other solar projects currently under development in China and India would dwarf the Gemini project.

Publication of the Notice of Availability of the draft EIS in tomorrow's *Federal Register* will

Hamburg explained that the analysis stuck to how wetlands and streams are connected to larger water bodies, largely because of how the Clean Water Act is framed. But he stressed the importance of not focusing on the impact one ephemeral stream or wetland might have on a larger water body.

"One might be very small, but the collective influence is very large and tends to drive the chemistry as well as the hydrology of these systems," he said.

kick off a 90-day public comment period running through September 5.

A BLM spokesman in Nevada declined to comment about project specifics, saying in an email to E&E News that the bureau is "still fine-tuning the dates, times and locations of public meetings," and that this information will be included in a press release tomorrow.

But the massive proposed Gemini project has some potential drawbacks.

For one, the project site sits near the Old Spanish National Historic Trail, Muddy Mountain Wilderness Area and Bitter Springs Trail Back Country Byway.

Approving the project would require a resource management plan amendment to change the visual resource classification of the area, which currently requires that the federal lands there "partially retain the existing character of the landscape," according to the advance notice.

BLM concedes in the notice that the project would result in "major modifications of the existing character of the landscape."

The draft EIS evaluates several other alternatives, with BLM's "preferred alternative" proposing to limit the density of solar arrays to

about 2,500 acres, leaving "vegetation and natural land contours in place on the remaining solar array areas" covering about 4,600 acres, the notice says.

Another concern is the threatened desert tortoise and its habitat. The notice suggests the desert tortoise in the area where the solar arrays will be aligned would need to be temporarily relocated. However, it says, "desert tortoise would be reintroduced into the solar array areas after completion of construction, since habitat would remain."

But Kevin Emmerich, co-founder of the Nevada-based group Basin and Range Watch, said he is concerned.

"The Gemini Solar Project will be the biggest impact that a large-scale solar project has had on the desert tortoise yet," Emmerich said in an email.

He estimated that nearly 300 desert tortoises "will have to be excavated from their burrows and moved away."

He added, "All the new development in Las Vegas could be retrofitted with solar panels, so it is quite unnecessary to destroy this quality habitat for a solar project."

BLM acknowledges in the *Federal Register* notice that it received 34 public scoping "comment letters" that "focused on biological resources," specifically the desert tortoise and the threecorner milkvetch. The comments also centered on impacts to visual resources, as well as "recreation and public access," and the Old Spanish National Historic Trail.

"The BLM analyzed a combination of proposed environmental measures and possible mitigation to eliminate or minimize impacts associated with the proposed action," the notice says. "These included the potential for identifying opportunities to apply on-site mitigation

strategies appropriate to the site of the proposal, and management actions to achieve resource objectives."

The draft EIS comes as Interior Department officials have faced increased scrutiny from Democrats in Congress over the Trump administration's focus on fossil fuels to the apparent detriment of renewables.

Mike Nedd, BLM's deputy director of operations, conceded during a House Natural Resources subcommittee hearing in March that the bureau has approved only two solar power projects, and no wind or geothermal power plants on federal lands.

The Obama administration approved 60 solar, wind and geothermal power projects on federal lands that are projected to have a total capacity to produce about 15,500 MW of electricity — enough to power more than 5 million homes and businesses.

Of those approved projects, 36 were solar.

But BLM has been working quietly the past year to develop and advance a number of major renewable energy proposals.

In February, the Interior Department announced it would begin a detailed analysis of a 300-MW photovoltaic solar power project on the Moapa River Indian Reservation in southeast Nevada.

And last year, BLM issued a record of decision formally approving the 500-MW Palen Solar Project in the Southern California desert.

BLM has said it plans this year to approve two other commercial-scale solar projects — the 450-MW Desert Quartzite Solar Project and the 450-MW Crimson Solar Project, both in Riverside County, California.

The Notice of Availability may be viewed at *Federal Register* 84:26701-26702 (June 7, 2019).

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## **NEPA: Feds: Bureau of Land Management didn't 'misrepresent' revisions to Obama-era plans**

*(Greenwire, 6/3/2019)* Scott Streater, E&E News reporter

The Trump administration fully complied with environmental laws in revising Obama-era greater sage grouse conservation plans and should be allowed to continue implementing them, government attorneys assert in new court filings defending the changes.

In the motion, filed Friday with the U.S. District Court for the District of Idaho, the Justice Department attorneys argue against the court issuing an order blocking implementation of the revisions.

The government attorneys also strike back in the motion against assertions by environmental groups, as well as a well-regarded sage grouse expert, that the Bureau of Land Management wasn't truthful with the public about the impacts of the revised plans.

Clait Braun, a biologist who spent 40 years studying the sage grouse, made that claim in a formal declaration accompanying a legal challenge to the revisions from four environmental groups.

The revisions "are contrary to the best available science and will allow significant adverse impacts to sage-grouse populations and habitats that BLM has failed to acknowledge, and has misrepresented in its decision documents," Braun wrote.

The government attorneys, under a section of the motion titled "BLM Did Not Misrepresent the Impacts of the 2019 Plan Amendments," write that the plaintiffs' "laundry list of ways" the revised plans "gut" the Obama-era blueprint is what's "misleading."

"In fact ... the 2019 Plan Amendments retain many of the protections" in the original blueprint, "and, where they modify the prior Plan Amendments, do so in ways that eliminate ineffective requirements and reduce inconsistencies with State Sage-Grouse plans while minimizing adverse impacts to Sage-Grouse," it says.

The latest court filing is the Trump administration's response to a motion for preliminary injunction from four groups — the Western Watersheds Project, WildEarth Guardians, the Center for Biological Diversity and the Prairie Hills Audubon Society.

Attorneys for the groups are asking the court to step in because BLM "is now moving rapidly to implement the weakened sage-grouse plans through site-specific decisions that threaten irreparable harm to sage-grouse populations and habitat."

They requested that the court issue the injunction by June 15.

The government's motion argues that the groups "are not entitled to such extraordinary relief" and are "not likely to succeed" because the revisions finalized in March by BLM methodically followed mandates outlined in the National Environmental Policy Act (NEPA).

BLM conducted six separate environmental impact statements analyzing the revisions in each of the seven states: California, Colorado, Idaho, Nevada, Oregon, Utah and Wyoming. BLM evaluated "a reasonable range of alternatives" in the EIS and took the requisite "hard look at the impacts" of the revisions, the motion says.

BLM's analysis "fully complied with NEPA," and as a result, the environmental coalition's challenge is "not likely to succeed on the merits of their claims," it says.

"BLM, the public, and the numerous stakeholders involved in the multi-year effort to improve and refine the Plan Amendments have a strong interest in consistent State and federal management of Sage-Grouse habitat, and that interest far outweighs Plaintiffs' speculative injuries," the motion says. "Because Plaintiffs have failed to meet their burden, this Court should deny their motion for a preliminary injunction."

The 61-page motion lays out the most detailed response to date from the Trump administration to critics who have blasted the revisions, claiming that they weaken protections for the bird and will ultimately drive it toward a future listing under the Endangered Species Act.

Among major components of the revised plans addressed in the court motion:

- Compensatory mitigation. The revisions remove mandatory mitigation in the 2015 plans designed to ensure "net conservation gain" for projects in grouse habitat. But the revised plans were tailored to "align" with state mitigation requirements, and in some cases, such as Nevada, where the revised plan "adopts Nevada's goal of 'net conservation gain.'"
- Buffers around breeding grounds. The revisions reduce, or provide for an opportunity to reduce, buffers around grouse breeding grounds, called leks. But the revised plans "continue to provide for buffers around" active leks. "BLM does not expect the changes to lek buffers to significantly alter the impacts" to grouse outlined in the original plans.
- Sagebrush focal areas (SFAs). The revisions remove almost all of the 10 million acres of SFAs, identified in the Obama-era plans as habitat critical to the bird's survival. But doing so was justified after evaluations of these areas concluded that withdrawing the acres from "fluid mineral leasing" was "not necessary to protect" the bird.

Reporter Pamela King contributed.

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## **NEPA: Groups, companies spar over coal leasing program**

**(Greenwire, 6/11/2019) Dylan Brown, E&E News reporter**

Input poured into the Interior Department as the public comment period ended yesterday on its analysis of the impacts of restarting federal coal lease sales.

Critics hammered the Bureau of Land Management's draft environmental assessment for the Trump administration's decision to end a temporary leasing moratorium. Obama-era officials wanted the pause to conduct a programmatic environmental impact statement (PEIS) of federal coal leasing.

The U.S. District Court for the District of Montana in April ordered BLM to revisit former Secretary Ryan Zinke's order to halt the moratorium and PEIS.

Judge Brian Morris gave BLM, mining companies and the environmental groups that sued the agency until June 18 to submit a potential settlement.

But in the draft EA released in May, the Trump administration doubled down on an argument Morris rejected — that Zinke's decision was not subject to the National Environmental Policy Act.

"BLM's response was to issue an assessment that was rushed, and it shows," said California Attorney General Xavier Becerra (D), who submitted comments along with the attorneys general of New Mexico, New York and Washington.

Although technical problems over the Memorial Day weekend extended the comment period, critics demanded more time to weigh in and the Northern Cheyenne Tribe asked for government-to-government consultation on the analysis.

"Failure to heed climate and economic warnings by continuing the federal coal leasing program will lock-in dangerous climate disruption while

starving coal-dependent communities of orderly economic transition and mitigation," more than 50 conservation groups wrote in joint comments.

The National Mining Association, however, came to the Trump administration's aid, calling the court ruling "fundamentally flawed."

"The Zinke Order simply ceased a voluntary and wholly unnecessary review and resumed the faithful implementation of [federal coal leasing] under which decisions to lease coal are already subject to multiple NEPA reviews before leasing and before mining commences," the trade association wrote in comments.

But the mining lobby supported the EA's preparation as a way to counter the Obama administration's "politically contrived reasoning" for proposing leasing reform "that mirrored the activist wish list for 'keeping coal in the ground.'"

Despite a 705-million-ton error in the draft EA, BLM said renewed coal leasing affected only the

timing of carbon emissions, not their cumulative impacts.

Mary Ellen Kustin, public lands policy director at the Center for American Progress, called that "unacceptable" as the federal coal mining generates more than 10% of all national greenhouse gas emissions.

In comments, she highlighted "flagrant hypocrisy" in the draft EA finding "negligible socioeconomic impacts" when the Trump administration has trumpeted Zinke's order as the end of the "war on coal."

"The environmental assessment's failure to address coal's declining role in power generation and the need to assist coal-dependent communities in transition as we move toward cleaner fuel sources does these communities a disservice," more than 40 local Colorado elected officials wrote in their own comment letter.

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## **Lead NEPA Story** (continued from page 1)

Every one of those form letters infuriates the investor community standing behind Northern Dynasty Minerals Ltd., the Canadian parent company of Pebble LP.

The die-hards, who rally anonymously on internet forums around a "social engineering" campaign to resurrect their penny stock, have responded with their own comment drive.

"Massive form letter dumps on EIS. Please post comments folks," wrote user "Minersforty9er" on StockTwits, a social media site for investors.

Another StockTwits regular, "whosat," was initially scared off by having to provide personal information in order to comment. But a fellow investor recommended a private network service and "whosat" filed his comment. He relayed to his compatriots he is "Mike Lebeb," whose mailing address is the headquarters of the Alaska Democratic Party.

The same address was used to call NRDC's Reynolds a "treasonous cocksucker" by "Joel Safag" — a homophobic fake name that

StockTwits users later joked was just one of many.

"It's not really a laughing matter at all," the real Reynolds said in an interview with E&E News. "It's an effort to perpetrate a fraud."

### **'A class by itself'**

After decades around the environmental review process, Reynolds said he has never seen anything like what's happening with the most recent round of public input on Pebble.

Impersonators have submitted comments on behalf of Sahm Adrangi, chief investment officer at Kerrisdale Capital Management LLC, the investment firm that "shorted" Northern Dynasty, or made a high-risk bet the stock price would fall.

A comment from "Nelli Williams" stated that advocacy group Trout Unlimited runs a "well-oiled propaganda apparatus." The real Williams, Trout Unlimited's Alaska director, called the whole experience disconcerting.

Reynolds said, "There is something particularly insidious at work here on behalf of the Pebble mine." And the personal abuse, he said, is in a "class by itself."

A StockTwits user wrote, "Hey Joel ... I know you read this board you snake. I hope you jaywalk and get hit by a truck in Newport Beach."

Another top target of often sexist abuse is Alannah Hurley, executive director of the United Tribes of Bristol Bay. A comment from "Alannah Qklukpikquakapikl" states Pebble opponents used "every dirty trick possible" to delay the mine permitting.

"Stone Alannah," StockTwits user "whosat" wrote. "Mine Pebble."

Hurley said the "vitriol" typifies Pebble's business model: "Build this mine, and to hell with the consequences." "No one should have to fear violence as the response for standing up for their family and community," she said.

Reynolds said Pebble LP must condemn shareholders even if it risks alienating people who have been with it through its stock's collapse.

"These kinds of fraudulent comments cross the line," he said. "We should all be able to agree that it's inappropriate and needs to stop."

Pebble spokesman Mike Heatwole said the fake comments "don't help." "We clearly want to see

... public participation and comments of substance from people that have taken the time to review the DEIS," he said.

Northern Dynasty investors defended their right to comment, but some rejected the fakery and abuse.

"I'm a stakeholder and see nothing sinister or illegal about it," longtime mining investor David Owen said. "I have not vilified or threatened anyone in my comments and have tried to make my comments meaningful and relevant."

### 'Not like a vote'

Army Corps Alaska District Regulatory Division Chief David Hobbie said "substantive" comments are the only ones that matter anyway. "It's really not like a vote," he said.

On a call with reporters yesterday, Hobbie acknowledged the fake comments. "As soon as we're notified about that, we take it down," he said. "We don't like it and we're aware it, but there's not really a practical way to stop that from happening."

Hobbie has said, generally, Pebble opponents have tended to outnumber supporters, but the Army Corps will separate opinion from substance in their comment review.

For that reason, Hobbie was not "really concerned" about fake comments.

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This edition of the National Desk was compiled by Harold Draper. For more information on NAEP, please contact the NAEP office at [office@naep.org](mailto:office@naep.org).

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