

September 25, 2019



Katherine Chalfant
Acting Director
Enterprise Quality Management Division
Office of Enterprise Information Programs
U.S. Environmental Protection Agency
Washington, DC 20460

Re: Request for Correction 19001 and Request for Reconsideration 19001A Pertaining to the Bristol Bay Watershed Assessment

Dear Acting Director Chalfant:

Your most recent letter regarding the Competitive Enterprise Institute's Request for Correction of the Bristol Bay Watershed Assessment (BBWA) both denies the request and appears to have initiated an appeal on our behalf with a deadline of December 30, 2019, to respond. With this letter, we wish to formally request such an appeal and provide our reasoning for it.

By way of background, CEI first filed its Request for Correction of the BBWA on November 14, 2018 – more than ten months ago. We also requested that the agency withdraw its 2014 Proposed Determination regarding the Pebble Mine in Alaska, which was based on the BBWA. The latter step was undertaken by EPA on July 30, 2019, after which we received a letter dated August 15 from Chief Information Officer Vaughn Noga. But instead of responding to the substance of our request, this letter asserted that the withdrawal of the Proposed Determination renders the Request for Correction moot. In response, we wrote an August 29 letter to Mr. Noga specifying that, since the BBWA itself has not been withdrawn, we wish to continue pursuing the Request for Correction, which prompted your latest letter initiating the appeals process.

It is worth emphasizing that EPA's Information Quality Guidelines apply to "disseminated information" and requires that such information "should adhere to a basic standard of quality, including objectivity, utility, and integrity." As of this writing, the entire BBWA, including the Executive Summary and all three volumes, remains on EPA's website. Indeed, EPA has given the BBWA a separate page, which among other things informs us that "EPA developed this assessment to better understand the Bristol Bay watershed and its resources," and that "EPA will use the assessment to inform future decision making."

Given the BBWA's prominent place on EPA's website, it continues to be disseminated by the agency and thus is still subject to the Information Quality Act. It should not take until the December 30th deadline to determine so. In any event, we believe that in the interim the BBWA should carry a label prominently identifying it as under review according to the Information Quality Act.

EPA might contend that the withdrawal of the Proposed Determination means that the BBWA is no longer influential information subject to additional scrutiny under the Information Quality Act. Even under this approach, however, the report would not be exempt from the standard level of review. However, we would also disagree with this assertion, since the BBWA still meets the Office of Management and Budget's definition of influential information as that likely to have "a clear and substantial impact on important public policies...." Most notably, the BBWA is prominently and repeatedly cited by the Department of the Interior in its participation in the Army Corps of Engineers' ongoing review of the project under the National Environmental Policy Act. This includes a July 25, 2019 letter from Interior, under section 404(q) of the Clean Water Act, which refers to the BBWA in asserting that the project will have unacceptable impacts and recommending to the Army Corps that a permit should not be issued.

The BBWA's flaws are every bit as relevant today as they were when we filed our Request for Correction. It remains an unacceptably speculative document, as it was compiled before a mine permit application had been filed with the government and thus analyzed purely hypothetical scenarios. It is also very selective in its inclusion of expert contributors and source documents skewed heavily against the mine. In contrast, the Army Corps' review process is underway, is based on the details of the actual permit application, and is inclusive, interactive, and data-driven. Overall, the Army Corps process better complies with the Information Quality Act than the BBWA. Nonetheless, the actions of the Army Corps continue to be influenced by the BBWA.

CEI continues to insist upon the substantive review of the BBWA based upon the Information Quality Act violations set out in our original Request for Correction, and we do not believe any further delays are justified.

As always, do not hesitate to contact me if you have any questions.

Respectfully submitted,

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