



TRUSTEES FOR ALASKA

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September 6, 2023

Via E-mail

Ms. Charlene Bringhurst
Alaska Department of Natural Resources
3700 Airport Way
Fairbanks, AK 99709
apma.f20232882@alaska.gov
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RE: Applications for Permits to Mine Nos. F20239785 and F20232882

Dear Ms. Bringhurst:

Trustees for Alaska submits these comments on behalf of Alatna Village Council, Evansville Tribal Council, Yukon River Inter-Tribal Watershed Council (representing 74 Tribes and First Nations), Alaska Community Action on Toxics, Alaska Soles Broadband – Great Old Broads for Wilderness, Alaska Wilderness League, Brooks Range Council, Earthworks, National Parks Conservation Association, Native Movement, Northern Alaska Environmental Center, and Winter Wildlands Alliance (collectively, “commenters”) regarding Ambler Metals’ Applications for Permits to Mine (APMA) Numbers F20239785 (the “Arctic Deposit application”) and F20232882 (the “Upper Kobuk application”) and the corresponding temporary water use permit (“TWUP”) renewal (in the Arctic Deposit application) and issuances (in the Upper Kobuk application). We appreciate the opportunity to provide comments and assist with the Department of Natural Resources’ (“the State”) review of the proposed permits.

I. Cumulative Environmental Impacts

Although Ambler Metals’ exploration activities have been ongoing in the Upper Kobuk region for years now, the State has failed to prepare a best interest finding looking at the cumulative impacts of these activities combined with other existing and reasonably foreseeable activities in the region. Ambler Metals’ pending applications indicate that its proposed projects will finish in 2026 and 2027, but the actual impacts from these activities extend well beyond that timeframe. The past activities, together with these proposed future activities, clearly amount to a disposal of an interest in State lands and the Alaska Constitution requires that the State conduct a best interest finding. The Supreme Court of Alaska has repeatedly held that the Alaska Constitution requires that the State perform a “continuing assessment of factors relevant to the

public interest during the course of a natural resources project, particularly when a permit authorizing future activities is contemplated.”¹

This best interest finding should take into account the cumulative and other impacts of the project. The cumulative impact of multiple years of exploration and water use and the reasonably foreseeable development of a mine, as well as the associated proposed road to the Ambler Mining District, should be evaluated by the State as part of a best interest finding prior to the issuance of any additional permits. Mining and exploration activities such as drilling, water withdrawal, aircraft traffic, and vegetation clearing disrupt wildlife and can harm fish and drinking water resources. Prior to issuance of any more permits, the State should evaluate the impacts to subsistence uses, cultural resources, recreation, drinking water, and community uses, as well as to the populations of fish and wildlife in the area. It is especially crucial that the State evaluate whether this project is truly in the best interest of the public given that the State is currently moving forward with permitting a road to the mining region in support of this exploration activity.

In the applications, Ambler Metals proposes vastly expanded drilling operations. The previous 2018 Ambler Deposit permit authorized 50 exploration holes drilled to 300 feet, but the new permit application indicates Ambler Metals will drill 153 holes to 2,000 feet. The Upper Kobuk application is jumping from 8 exploration holes at 1,200 feet in the 2018 permit to 181 holes at 4,000 feet. Given that each permit requests a significant expansion over the previously permitted activity, it is crucial that the State conduct a cumulative impacts analysis before allowing activities to be scaled up. The State has a legal duty under the Alaska Constitution to consider cumulative impacts at each phase of a project, and it is particularly important to do so here before the State allows such a significant expansion in activities.²

Commenters also have concerns related to the duration of the TWUP renewal requested in the Arctic Deposit application. Since permits have previously been issued for camp use and exploration activity in this region, the terms exceed the five-year limit for “temporary” water use.³ In the Arctic Deposit application, Ambler Metals requests a renewal of its previous TWUP, originally issued in March of 2017, and for the volume of water withdrawal to be increased from 21,600 up to 57,600 gallons per day. The five-year limit for this TWUP has expired. The State should not re-issue this TWUP before undertaking a thorough evaluation of the cumulative impacts of Ambler Metals’ prior and proposed water withdrawals.

¹ *Nunamta Aulukestai v. State*, 351 P.3d 1041, 1051 (Alaska 2015), *see also Sullivan v. Resisting Envtl. Destruction on Indigenous Lands (REDOIL)*, 311 P.3d 625, 634–35 (Alaska 2013).

² *REDOIL*, 311 P.3d at 634–35.

³ 11 A.A.C. 93.210(a).

II. Duration of Permits and Timeline of Activities

Public notice and meaningful opportunities for comment are a key component to improving government accountability and agency decision making. For the process to be meaningful, the agency must do more than simply provide legal notice or make information available at a government office. Using courtesy notices for these permit applications is insufficient because they do not provide any substantive information about the permit being sought; do not notify the public when a permit is issued, which triggers the 30-day window for challenging a permit; and only allow for a limited 14-day comment period.⁴

The State's notices describe the applications as being for permits extending from the date of issuance through December 31, 2027. This time period goes beyond the time requested in the Arctic Deposit application, which states that it will finish in 2026. It is inappropriate for the State to issue the permit for a longer length of time than what was requested and for which the applicant has not provided adequate information.

The permit applications are unclear on the timeframe of the activities described in the application. The application form requires applicants to describe "when and where activities will occur."⁵ It is a troubling and potentially dangerous public policy for the State to issue permits for extensive operations over a long period of time when Ambler Metals has not provided a clear timeline of exactly when and where activities will occur throughout the duration of the permit. For these reasons, the State should reject the applications and require resubmission of applications with detailed year-by-year breakdowns of Ambler Metals' proposed activities and initiate a new public comment period.

Beyond this flawed process and the State's continued failure to meaningfully involve the public in these decisions, commenters are also deeply concerned about the impacts that the applicant's mining activities will have on water quality, fish, cultural resources, and subsistence activities. The following sections explain our concerns with respect to the applications and discuss the issues that the State must address prior to issuance of the permit.

III. Subsistence and Cultural Resources

The State must require archaeological and cultural resource surveys of the proposed drill sites prior to any ground-disturbing exploration activity to ensure Ambler Metals complies with the Alaska Historic Preservation Act.⁶ More generally, the State should ensure that there are adequate protections for subsistence and cultural resources by providing more specific requirements for (1) identification of potential areas of interference with reasonable concurrent

⁴ Alaska Dep't of Nat. Res., Notice of F20232882 - A Hardrock Exploration & Reclamation Permit Application Within the Kiana & Shungnak Mining Districts_Upper Kobuk Mineral Projects (Aug. 22, 2023), <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=212308>; Alaska Dep't of Nat. Res., Notice of F20239785 - A Hardrock Exploration & Reclamation Permit Application Within the Kiana & Shungnak Mining Districts_Arctic Deposit (Aug. 22, 2023), <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=212309>.

⁵ Application form 102-4071 at box 32.

⁶ See Alaska Stat. §§ 41.35.010, 41.35.200(a).

users (including subsistence users); (2) identification of cultural or subsistence sites prior to disturbance; and (3) design and operation of Ambler Metals' exploration activities under both applications to ensure the protection of these important areas. To determine what protective stipulations will be adequate, the State should meaningfully consult with Tribes and the state Office of History and Archaeology.

Both applications depend heavily on helicopters to move equipment and personnel to the various drilling sites. Helicopters, generators, pumps, and drilling equipment all have the potential to disturb wildlife and create dust and other pollutants. The State should provide detailed information about precisely how Ambler Metals will be required to protect fish, wildlife, water resources, cultural resources, and vegetation from interference from aircraft, vegetation clearing, water withdrawals, drilling operations, and other aspects of the proposed activities. The States should meaningfully consult with Tribes and the Alaska Department of Fish and Game to ensure that it develops adequately protective stipulations. The State should add in site-specific requirements, subject to meaningful public review and comment and Tribal consultation prior to Ambler Metals beginning any activities.

IV. Drill Water Sources and Disposal

The application provisions related to Ambler Metals' water use and lack of water disposal plans are particularly troubling. Both applications are deeply concerning and should not be approved without additional protective stipulations and information about the precise plans for water withdrawals and use. Neither application contains any indication of specific points of withdrawal, where and how water might be returned to the creeks, or how the contaminated water that contains drilling muds will be treated or disposed of to ensure there is no runoff to tributaries or creeks. The lack of information on where withdrawals and discharges will occur makes it impossible for the public or the State to analyze the impacts of this proposal, let alone to ensure there are adequate protective measures in place to prevent damage or contamination.

The proposed increase in water usage in the Upper Kobuk application is both significant and poorly calculated. The application requests TWUPs for thirty new water sources.⁷ According to Ambler Metals' project narrative letter, three pumps would be used at a time, for a total daily water withdrawal of 43,200 gallons during operations.⁸ This conflicts with Ambler Metals' statement in the application that up to five pumps could be used at a time.⁹ The State should resolve this inconsistency. Regardless of whether it is three or five pumps, Ambler Metals' request represent a tremendous amount of water to be withdrawn from unnamed creeks and Naniratkohort Creek each day. The State must evaluate the cumulative impacts of these water withdrawals on these creeks and on downstream water bodies thoroughly to ensure sufficient flow remains to support fish and other aquatic life.

The Alaska Department of Fish and Game has identified anadromous fish in these streams, and Ambler Metals' applications state that it is seeking renewal of its fish habitat permit

⁷ APMA F20232882, attached letter to DNR at 3.

⁸ *Id.*

⁹ APMA F20232882, box 21.

(in the Arctic Deposit application) and issuance of a new fish habitat permit (in the Upper Kobuk application) along with these applications. However, Ambler Metals' existing and prior permits are not attached to the application. Without those permits, neither the State nor the public can fully consider data contained therein and relevant impacts to fish and their habitat. Thus, the State should reject and require resubmission of both permits.

Ambler Metals' proposed disposal of contaminated water is also problematic. A wide range of chemicals are typically added to water in order to facilitate drilling. No information is provided in the applications regarding the chemicals that will be used, and therefore commenters cannot evaluate whether the proposed chemicals will adversely impact fish, wildlife, or drinking water resources. Drilling additives often contain heavy metals and other contaminants that have the potential to leach into the groundwater and surrounding environment and cause both immediate and long-term harm to wildlife and people. Additionally, little is known about the risks, impacts, and maximum exposure levels associated with these toxic chemicals. More information is needed regarding these chemicals and their use under this permit. The State should allow an opportunity for public notice and comment once the chemical compositions of the drilling muds are known. Because of the risk that contaminants will leach into groundwater and the surrounding environment, as well as the fact that the toxins are likely to persist in the environment for extended periods of time, the State should not allow Ambler Metals to dispose of contaminated drill cuttings and fluids without treatment.

The discharges authorized under the permit have the potential to bioaccumulate and cause both short and long-term harm to fish, wildlife, vegetation, and water resources important for subsistence, both in the vicinity of the discharges and in downstream areas. Water, for instance, is essential to nearby villages; Tribal members drink and fish from these water bodies. The discharge or disposal of chemicals and other toxic materials that can potentially contaminate surrounding waters is unacceptable. The impacts unreasonably interfere and conflict with many rural communities' use of the environment and subsistence resources. The State should not allow Ambler Metals to discharge wastewater into any water bodies or directly onto land.

Additionally, there is no indication that Ambler Metals has integrated any mitigation measures into their permit application to mitigate the adverse effects from discharges and disposal of toxic materials. Ambler Metals should be required to implement mitigation measures to protect resources of local importance, such as water resources, fish and wildlife populations and their habitats, vegetation, subsistence resource uses and activities, and cultural resources. Mitigation measures should be imposed to avoid adverse effects to resource or other uses, minimize effects that cannot be avoided, and to restore or rehabilitate resources to pre-disturbance conditions.

In the Arctic Deposit application, Ambler Metals requests permission to drill within 100 feet of a water body — specifically, within twenty feet of Subarctic Creek.¹⁰ Ambler Metals states that drill cuttings and petroleum products will not be allowed to flow into the creek, but provides no information about how such adverse impacts would be prevented. Indeed, Ambler

¹⁰ APMA F20239785, attached letter to DNR at 5.

Metals does not even specify where these holes would be located or how deep they would be. The State should not allow any drilling within 100 feet of a water body.

V. **Additional Concerns**

Access: The maps attached to Ambler Metals' applications indicate that public land will be crossed. Any impacts to RS2477 trails from these crossings should be addressed.

The Arctic Deposit application indicates that travel by bulldozer and excavator will take place during the summer and winter months. The actual travel dates and plans should be identified with more specificity. In addition, the Arctic Deposit application requests authorization for stream crossings by heavy equipment (a bulldozer and excavator) at three locations on Subarctic Creek without acknowledging how these stream crossings will damage the streambeds and riparian areas. The State should thoroughly analyze these potential impacts before authorizing stream crossings by heavy equipment and require mitigation measures to prevent damage to the streambed and riparian zone.

Depth and Plugging of Holes: Both applications state that drill holes will be plugged with cement and/or bentonite clay and the drilling infrastructure will be cut off at ground level. Neither application provides any detail as to when this remediation would take place, or how much of the several thousand feet of drill hole would be plugged. In the absence of any detail about how the holes would be plugged, it is impossible to determine whether Ambler Metals' remediation plan would be successful at keeping fluids underground and preventing migration to other waterbodies. This is particularly concerning given Ambler Metals' plan to drill within twenty feet of water bodies in the Arctic Deposit application. Ambler Metals should be required to provide significantly more detail on its remediation plans and perform integrity tests on the effectiveness of their well plugging and abandonment activities to ensure that its proposed level and means of plugging (whatever they may be) are sufficient.

Acid Rock Drainage: In both applications, Ambler Metals proposes to significantly increase the number and depth of holes to be drilled, as compared to prior activity, and the applications are vague about plans to plug the holes or handle any waste rock. The State should thoroughly consider the potential for acid rock drainage into soil and water bodies caused by drilling operations. Sulfide-bearing rocks and drilling mud can be acidic, or become acidic upon oxidation, which can harm vegetation and waterways. Rocks with the potential for acidic drainage are present in the area.¹¹ The State should require mitigation measures to prevent potentially acidic or otherwise toxic materials from contaminating land or water, such as by requiring treatment of drilling muds and restricting the disposal of waste rock in ways that could lead to acid rock drainage.

¹¹ See BLM, Ambler Road Final Environmental Impact Statement (2020) at 3-4, 3-6-7, 3-10-11, available at https://eplanning.blm.gov/public_projects/nepa/57323/20015364/250020506/Ambler_FEIS_Volume_1- Chp_1-3_& Appendices_A-F .pdf.

Waste Oil Disposal: Both applications state that waste oil will be generated as part of the project operations. Both applications then omit waste oil when discussing waste disposal.¹² This violates the application instructions. Ambler Metals must explain how it will properly dispose of waste oil from operations. The State should reject both applications and require resubmission to correct this oversight, followed by a renewed public comment period.

VI. Conclusion

For the reasons stated above, the State should not issue either exploration permit as applied for, nor the requested TWUPs. Because both applications propose a vast expansion of drilling activity, both in number of holes and depth drilled, an analysis of the cumulative impacts of the past and proposed exploration and related activities should be performed prior to issuance of any permits for this project. It would be inconsistent with the Alaska Constitution for the State to issue these authorizations without first engaging in a robust analysis of these cumulative impacts. Ambler Metals' discharges will also potentially harm drinking water, fish and wildlife, and subsistence resources. The State should ensure the protection of these resources and users by incorporating additional mitigation measures to the permits.

Thank you for the opportunity to comment on this permit. Please contact Suzanne Bostrom, Senior Staff Attorney, Trustees for Alaska at (907) 433-2015 with any questions. We request that the State respond to these comments, and inform us of any decision on this application via e-mail (sbostrom@trustees.org).

Sincerely,

s/ Geoff Toy
Geoff Toy
Legal Fellow
Trustees for Alaska

s/ Suzanne Bostrom
Suzanne Bostrom
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Trustees for Alaska

¹² APMA F20232882, box 19; APMA F20239785, box 19.