



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Notice of Intent (NOI) to Prepare a Draft Environmental

Impact Statement for the Kennecott Tailings Impoundment Expansion

Project in Salt Lake County, Utah

AGENCY: Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of Intent; withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District (Corps) is issuing this notice to advise Federal, State and local governmental agencies and the public that the Corps is withdrawing the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Kennecott Tailings Impoundment Expansion Project in Salt Lake County, Utah, which was published in the Federal Register on March 17, 2023.

DATES: The notice of intent to prepare an EIS published in the Federal Register on March 17, 2023 (88 FR 16418), is withdrawn as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Sacramento District, Bountiful Regulatory Field Office, 533 West 2600 South, Suite 150, Bountiful, Utah 84010.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Project Manager, Nicole D. Fresard (801) 295-8380 X 8321 or at Nicole.D.Fresard@usace.army.mil. Please refer to identification number SPK-2009-01213.

SUPPLEMENTARY INFORMATION: An NOI to prepare an EIS for the Kennecott

Tailings Impoundment Expansion Project was published in the Federal Register on March 17, 2023 (88 FR 16418). Since publication of the NOI, the regulatory definition of "waters of the United States" in 33 CFR Part 328 was amended by the final rule "Revised Definition of 'Waters of the United States'; Conforming", 88 FR 61964 (September 8, 2023) (Conforming Rule), consistent with the U.S. Supreme Court's May 25, 2023, decision in *Sackett v. Environmental Protection Agency* 598 U.S. 651, 143 S. Ct. 1322 (2023) (*Sackett*). Specifically, the Conforming Rule amended 40 CFR 120.2(a)(1)(iii), (a)(3) through (5), and (c)(2) and (6), and 33 CFR 328.3(a)(1)(iii), (a)(3) through (5), and (c)(2) and (6) to be consistent with the Supreme Court's interpretation of the Clean Water Act in *Sackett*. As a result, the Corps re-evaluated the impacts to waters of the United States resulting from the proposed action in the EIS. Under the current definition of waters of the United States, the proposed action would only result in a minor discharge of fill material in jurisdictional wetlands thus an EIS is no longer warranted. Therefore, the Corps is terminating the EIS process, in accordance with 33 CFR Part 230, Appendix C(2) and 33 CFR Part 325, Appendix B(8)(g).

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