

In light of these deficiencies, SELC requested an extension of the comment period until the Corps could provide this pivotal information to the public. The final day of the comment period, the Corps denied our request, while conceding that Twin Pines still had not provided hydrology reports and other project studies.

By failing to provide the requested information, the Corps deprived the public of its right to meaningfully comment on the application. To comply with the Clean Water Act and its implementing regulations, the Corps must provide the information requested in these comments for public review and comment.

### **III. To comply with NEPA, the Corps must prepare an Environmental Impact Statement to analyze the environmental impacts of the proposed mine.**

#### **A. The Corps must prepare an Environmental Impact Statement.**

The National Environmental Policy Act (NEPA) is “designed to prevent agencies from acting on incomplete information and to ‘ensure that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.’”<sup>37</sup> To this end, NEPA obligates the Corps to prepare an Environmental Impact Statement if “any significant environmental impacts *might* result” from the issuance of a permit.<sup>38</sup>

To evaluate whether a potential impact is “significant,” the Corps should analyze both the context in which the proposed action would take place and the intensity of its impact.<sup>39</sup> “Considering context is critical because the significance of an action can vary based on the setting and surrounding circumstances.”<sup>40</sup>

“Intensity” concerns “the severity of impact.”<sup>41</sup> NEPA regulations prescribe several factors that can make a proposed project significant from an intensity standpoint, including the following:

- “Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, ... wetlands... or ecologically critical areas;”
- “The degree to which the effects on the quality of the human environment are likely to be highly controversial;”
- “The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks;”

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<sup>37</sup> *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209, 1214 (11th Cir. 2002) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)) (internal quotation marks omitted).

<sup>38</sup> *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (first emphasis in original); 42 U.S.C. § 4332(2)(C).

<sup>39</sup> 42 U.S.C. § 4332(2)(C).

<sup>40</sup> *Am. Rivers v. Fed. Energy Regulatory Comm’n*, 895 F.3d 32, 49 (D.C. Cir. 2018)

<sup>41</sup> 40 C.F.R. § 1508.27(b).