



TRUSTEES FOR ALASKA

PROTECT | DEFEND | REPRESENT

July 1, 2019

Via U.S. Mail, E-Mail, and Web-Portal:

Mr. Shane McCoy
Program Manager, Regulatory Division
U.S. Army Corps of Engineers
645 G. St., Suite 100-921
Anchorage, AK 99501
shane.m.mccoy@usace.army.mil
drafteis@comments.pebbleprojecteis.com
poaspecialprojects@usace.army.mil

Re: Comments Regarding the Draft Environmental Impact Statement and Public Notice of Application for Permit Reference Number POA-2017-00271 for the Proposed Pebble Project

Dear Mr. McCoy:

Trustees for Alaska and the Sierra Club Environmental Law Program submit these comments on behalf of The Alaska Center, Alaska Community Action on Toxics, Alaska Wilderness League, Audubon Alaska, Cook Inletkeeper, Defenders of Wildlife, Earthworks, Fairbanks Climate Action Coalition, Friends of Alaska Wildlife Refuges, Friends of McNeil River, McNeil River Alliance, National Parks Conservation Association, Natural Resources Defense Council, Sierra Club, and Wild Salmon Center. The comments address the U.S. Army Corps of Engineers (Corps) Draft Environmental Impact Statement (DEIS) and Public Notice of Application for Permit for Pebble Limited Partnership's (PLP) proposed Pebble Mine.¹ This public process, required by the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA), helps to ensure that the Corps fully understands, discloses, and analyzes the effects of the proposal. This is especially important here, because the proposed Pebble Mine would industrialize the headwaters of the world's largest remaining sockeye salmon fishery and bisect the habitat of the world's largest concentration of brown bears. The impacted watershed supports more than 190 species of birds, 40 species of mammals, and 29 species of fish, and a thriving subsistence culture.² If approved, the proposed Pebble Mine would be one of the most damaging,

¹ See 83 Fed. Reg. 13,483–84, Dep't of the Army, Corps of Eng'rs Intent to Prepare an Envtl. Impact Statement (EIS) for the Pebble Project (NOI), Mar. 29, 2018; Public Notice of Application for Permit, May 30, 2019, Ref. # POA-2017-00271.

² See Environmental Protection Agency, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay Alaska*, EPA 910-R-14-001ES at E5, ES-8 and ES-25 (2014) (Watershed Assessment or BBWA).

if not the most damaging, project ever permitted under the CWA.³ The Bristol Bay headwaters is simply not the place for largescale, industrial mining.

The proposed Pebble Mine poses an unacceptable and unprecedeted threat to the land, water, fisheries, animals, and people of Bristol Bay. The mine would destroy salmon habitat, threaten the world's largest sockeye salmon fishery and the economies that rely on it, disturb wildlife, destroy wetlands, threaten several world class brown bear viewing areas and the economy that depends on them, and permanently alter the way of life for those in the region that depend on salmon as food and the cultural thread that weaves through their communities.

The sheer scale and magnitude of impacts places the Pebble deposit in a category all its own. Whether looking at the chimera that is the proposed 20-year mine or the more likely mine that will last for at least a century, the impacts are enormous. PLP pitches the 20-year mine as a "small mine." That is a farce. The "small mine" would destroy approximately 30 miles of salmon supporting streams and another 75 miles of tributaries. The indirect impact would lead to the loss of another 10 miles of salmon streams and 25 miles of tributaries. 3,500 acres of wetlands would be destroyed, according to PLP, while another almost 2,000 acres would be impacted, plus water treatment that would be required forever. The dire nature of destroying critical headwaters grows with the larger, more likely version of the mine that would be in production for an estimated 78 years, with a 20-year closure plan. This mine would extract approximately 55% of the deposit, indicating that there could be another mine expansion after 78 years. The 78-year mine would destroy 125 miles of salmon supporting streams, 337 miles of tributaries and approximately 15,000 acres of wetlands. Surface water impacts would expand the indirect impacts upwards of 45,000 acres. That is approximately 70 square miles, a size that mirrors Washington, D.C.

Development and operation of the mine would require the construction of a 77 mile industrial road — with a second 82 mile corridor after twenty years — and a new industrial port facility in the waters of Cook Inlet. Turning what is currently a pristine, undeveloped area, home to the world's largest concentration of brown bears and unparalleled salmon habitat into a major industrial zone will have far-reaching, extreme, and catastrophic impacts.

While the U.S. Environmental Protection Agency (EPA) took years to prepare a comprehensive, science-based review of potential impacts, the Corps is proceeding at an unprecedeted rate with this NEPA review. Even more troubling, the Corps is reviewing a deficient application. PLP has asked the Corps to conduct its analysis and permit what would be the largest mine ever allowed under the CWA while the company continues to redesign its plans and conduct relevant field work. Inexplicably, the Corps has gone along with this, and has rushed to complete its review. In its haste, the Corps has prepared a DEIS that violates both NEPA and the CWA. As Dr. Daniel Schindler noted in testimony before the Alaska House Resources Committee:

[I]n a nutshell, Alaskans should be dismayed. Alaska's leaders should be

³ Schweisberg, Matthew, May 14, 2019, *Pebble Mine: Anticipated Adverse Impacts to Wetlands*, A Report Prepared for Trustees for Alaska (Schweisberg, 2019a) at 1 (report and references included as attachments to these comments).

outraged. The Army Corps of Engineers should be ashamed of themselves, and embarrassed, if they're going to put this [EIS] forward as a piece of credible science. It is not.⁴

The following are just some of the flaws found in the DEIS:

- The DEIS does not include reasonable alternatives, including the more probable 78-year mine;
- The DEIS contains no information demonstrating that this proposed project is economically feasible;
- The DEIS fails to consider direct, indirect, and cumulative impacts to wetlands, water quality, fish, birds, and wildlife;
- The DEIS overestimates economic benefits to local communities and underestimates costs to the State of Alaska;
- The DEIS ignores impacts to brown bears and the wildlife watching businesses that will be substantially hurt by the proposed Pebble Mine;
- The DEIS fails to consider the impacts from a Tailings Storage Facility that would be operated in perpetuity, and has a high probability of failure;
- The DEIS assumes the proposed mine could capture 100% of all contaminated water;
- The DEIS fails to acknowledge the experimental nature of the proposed water treatment system;
- The DEIS fails to acknowledge the extensive water quality impacts the proposed mine would have to the aquatic ecosystem;
- The DEIS lacks any reclamation or post-closure plans;
- The DEIS does not demonstrate that this proposed project can meet the requirements of the CWA.

The American Fisheries Society, on behalf of its 7,500 professional fishery scientists and resource managers, found that the DEIS “fails to meet basic standards of scientific rigor.”⁵ And three former EPA administrators who served under Presidents Nixon, Reagan, George H.W. Bush, and George W. Bush have told the Army Corps of Engineers “[w]e oppose the Trump administration’s efforts to sweep nearly a decade of science and Clean Water Act review under the rug.”⁶

⁴ See Christy Fry, *Seawatch: Committee Gets Earful on Pebble*, Homer News, Apr. 11, 2019. <https://www.homernews.com/news/seawatch-committee-gets-earful-on-pebble/> (included as an attachment to these comments) (testimony by Dr. Daniel Schindler, a professor in the School of Aquatic and Fishery Sciences at the University of Washington who has spent 20 years in the field in Alaska, before the Alaska House Resources Committee).

⁵ See American Fisheries Society, June 13, 2019, *Pebble Mine DEIS comments to the U.S. Army Corps of Engineers* (AFS, 2019) (included as an attachment to these comments).

⁶ William Ruckelshaus, William K. Reilly, Christine Todd Whitman, & Bruce Babbitt, June 24, 2019, *Pebble Mine DEIS comments to the U.S. Army Corps of Engineers*.

Even the mining industry has shied away from this proposed project. Since 2011, four major mining companies have withdrawn their support, including Anglo American who took a \$500 million loss to move on and away from the Pebble Mine.⁷ PLP has failed to demonstrate that its proposal to mine the Pebble deposit for only 20 years is economically feasible. While pitching the smaller mine to Alaskans, PLP is touting its proposed project to investors as the world largest undeveloped copper and gold resource, supporting a mine that would operate for a century or more.

The application under review lacks any economic information that would demonstrate that the Pebble Mine could even be built. A former Rio Tinto employee raised concerns that, “[i]f the base case mine plan assumed for the EIS is not economic, then the entire permitting process risks being compromised because the impacts and risks being evaluated are much smaller than those required for a full-scale economically viable project.”⁸

The number of problems with the DEIS is staggering. The scope of analysis is completely inadequate to account for impacts to ecosystems. The baseline documents are inadequate. There are far too many data gaps to allow for a thorough review at this time. Some of the underlying assumptions are flat out wrong. There is no meaningful cumulative impacts analysis reviewing how each of the independent stressors to the environment interacts with one another. The Corps cannot comply with NEPA or the CWA based on these documents.

The comments attached to this letter, along with the included technical reports, references and administrative documents, demonstrate that Corps cannot legally move forward based on the information before it. It must withdraw the DEIS from further review and reject PLP’s application. Only when there is a complete application, demonstrating economic feasibility and including all required baseline data, could the Corps reissue a revised DEIS.

Sincerely,



Brian Litmans

⁷ The other three companies were Rio Tinto, Mitsubishi Corporation, and First Quantum Minerals.

⁸ Borden, Richard, March 28, 2019, *Pebble Mine DEIS comments to the U.S. Army Corps of Engineers on Pebble Mine Project Economics* (Borden, 2019a) at 5 (included as an attachment to these comments). Richard Borden is an independent consultant at Midgard Environmental Services. He was Head of Environment for Rio Tinto and employed at Rio Tinto for over 20 years. See Richard Borden Curriculum Vitae, 2019 (included as an attachment to these comments).