

Bristol Bay Economic Development Corporation

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September 6, 2022

The Honorable Michael Regan
U.S. Environmental Protection Agency
Office of the Administrator – 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Casey Sixkiller
Regional Administrator
Region 10 U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

To: Water Docket
Environmental Protection Agency Mail Code 2822T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Comments in Support of Finalizing Proposed Determination for the Pebble Deposit Area, Docket ID No, EPA-R10—OW-2022-0418

Dear Administrator Regan and Regional Administrator Sixkiller,

The threat that the proposed Pebble Mine poses to the people and resources of Bristol Bay has loomed over Bristol Bay for far too long. We therefore express our appreciation for restarting the Clean Water Act Section 404(c) process to protect Bristol Bay from the unacceptable adverse impacts associated with Pebble.

I. INTRODUCTION

The Bristol Bay Economic Development Corporation (BBEDC) is a 501(c) non-profit corporation whose mission is to promote the economic interest and opportunities for the residents of 17-member communities throughout the region. Our organization stands for the economic, cultural and social foundations of Bristol Bay Alaska, home of the worlds most prolific wild sockeye salmon fishery.

The Bristol Bay region comprises approximately 40 million acres of land and water. It contains mountains, rivers, lakes, wetlands, and marine waters. Much of the region lies within the Bristol Bay watershed— a network of creeks and streams that produce large numbers of locally-adapted

Given the clear science supporting EPA's 404(c) Proposed Determination, we support EPA's use of its 404(c) Clean Water Act authority to permanently protect the Bristol Bay fishery from large-scale hard rock mining. We offer the following Recommendations to further strengthen EPA's Proposed Determination. Finally, we adopt and incorporate the comments on the Proposed Determination submitted by Bristol Bay Native Corporation.

II. RECOMMENDATIONS

A. Prohibition Recommendations

We understand EPA's Proposed Determination applies to the 2020 Mine Plan and thus would remove the 2020 Mine Plan as a possible future threat to the region. However, the prohibition as drafted – with its qualification that it applies only to the 2020 Mine Plan – is vulnerable to future creative permit application proposals from Pebble Limited Partnership (PLP) that are in effect functionally the same as that prohibited mine plan but not identical.

This threat is real. For example, after the Army Corps denied PLP's permit application, the CEO of PLP's parent company stated that the company was looking for ways to amend its mine plan, including new options for gold recovery, dry-stacking, and an underground mine at the Pebble deposit.

Changes to PLP's proposed transportation corridor, port site, or compensatory mitigation projects would similarly result in modifications to the 2020 Mine Plan, rendering the prohibition as currently stated in EPA's Proposed Determination moot even though impacts to the mine site would remain unchanged.

We provide three separate recommendations to address this problem.

1. Revise the definition of the Pebble Deposit.

Redefine and specify that the "Pebble deposit" is broader than "an area of at least 1.9 by 2.8 miles" or delineated as a 2.5 mile- by 3.5-mile box and instead base the definition of the Pebble deposit on the best available information and science of ecological effects from mining pyritic ore. In the alternative, when defining the Pebble deposit ore body that, when mined, would be subject to the prohibition, use PLP's definition of the Pebble deposit as seen in its filings with the U.S. and Canadian Securities agencies.

2. Prohibit alternative mine facility locations proposed by PLP in the permitting process.

In specifying waters that cannot be used as a disposal area, do not limit the area to the 2020 Mine Plan footprint, but rather prohibit discharges into designated rectangular survey system township, range, and sections that encompass: (1) areas PLP proposed to use in the 2020 Mine Plan *as well as* (2) areas PLP proposed as other options for mine site tailings storage facilities and the water treatment ponds as analyzed and rejected by the Army Corps in the EIS process.

should not be used as the basis of the restriction.⁵ Because the extent of the deposit may expand over time, the agency should focus on the ore type as it is the ecological effect of mining this ore type that EPA uses to support its restriction.

- b. Use the PLP's definition of the Pebble deposit and ore body extent from the company's 2021 Preliminary Economic Assessment report,⁶ including the full 11 billion tons of measured, indicated, and inferred ore at the Pebble deposit.⁷

III. CONCLUSION

For over a decade, BBEDC has strongly supported EPA's use of its 404(c) to permanently protect the Bristol Bay fishery and our member communities throughout the region who rely on the Bristol Bay fishery for their livelihood, and cultural and social foundations. We thank EPA for restarting the Clean Water Act Section 404(c) process to protect Bristol Bay from unacceptable adverse impacts associated with Pebble. We request that the Agency move swiftly to complete the process this year and incorporate the above recommendations in EPA's 404(c) Final Determinations.

Sincerely,



Robin Samuelsen
Chairman, Bristol Bay Economic Development Corporation
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cc:

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Online: <https://www.regulations.gov/commenton/EPA-R10-OW-2022-0418-0001>

⁵ Proposed Determination at page 2-1. ("The full extent of the Pebble deposit is not yet defined.")

⁶ See, Pebble Project Preliminary Economic Assessment NI 43-101 Technical Report, Prepared for Northern Dynasty Minerals Ltd, (effective date: Sept. 9, 2021), Figure 10-2, at p. 109, on file with the Securities and Exchange Commission at:

https://www.sec.gov/Archives/edgar/data/1164771/000165495421011600/ndm_ex991.htm.

⁷ See, e.g., Northern Dynasty Minerals—Pebble Project Reserves and Resources, <https://northerndynastyminerals.com/pebble-project/reserves-resources/>.