

BRISTOL BAY NATIVE ASSOCIATION

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- Aleknagik*
- Chignik Bay*
- Chignik Lagoon*
- Chignik Lake*
- Clarks Point*
- Curyung*
- Egegik*
- Ekuk*
- Ekwok*
- Igiugig*
- Iliamna*
- Ivanof Bay*
- Kanatak*
- King Salmon*
- Kokhanok*
- Koliganek*
- Levelock*
- Manokotak*
- Naknek*
- New Stuyahok*
- Newhalen*
- Nondalton*
- Pedro Bay*
- Perryville*
- Pilot Point*
- Port Heiden*
- Portage Creek*
- South Naknek*
- Togiak*
- Twin Hills*
- Ugashik*

September 6, 2022

Casey Sixkiller
Regional Administrator
U.S. EPA, Region 10
1200 Sixth Avenue
Mail Code: 14-D12
Seattle, WA 98101

Re: Docket ID No. EPA-R10-OW-2022-0418

Dear Regional Administrator Sixkiller:

The Bristol Bay Native Association (BBNA) is writing in support of the Environmental Protection Agency's (EPA) proposed action to apply Clean Water Act section 404(c) protections to the Pebble deposit, located in Bristol Bay, Alaska. BBNA supports much of the content of the Revised Proposed Determination (RPD) published by EPA Region 10 on May 26, 2022. We do, however recommend that EPA include several improvements and clarifications to the RPD which will provide certainty to the Bristol Bay region, and also request that EPA move as expeditiously as possible to final 404(c) action.

BBNA is a Tribal consortium, governed by a Board of Directors composed of representatives of 31 Tribes and is organized as a non-profit corporation. The mission of BBNA is to maintain and promote a strong regional organization supported by the Tribes of Bristol Bay to serve as a unified voice to provide social, economic, cultural, educational opportunities and initiatives to benefit the Tribes and the Native people of Bristol Bay.

BBNA would like to extend our gratitude to EPA for this proposed RPD. The RPD is a step forward for protections of our rivers, streams, wetlands, subsistence and commercial fisheries and our Way of Life. Bristol Bay residents have been engaged in assessing the Pebble deposit for over 20 years and our position has not changed. The people of Bristol Bay have been sustained on these lands since time immemorial. Our traditions maintain that we are protectors and stewards of our lands. The life source that connects all our people and all living things is water. Water is life. Our watershed must be protected in order to maintain a healthy ecosystem. Water connects us to live a subsistence lifestyle and water connects us along the rivers to access our traditional fishing and hunting grounds. The wildlife species that would be affected by discharges of dredged or fill material associated with the Pebble deposit include, but are not limited to moose, caribou, brown bear, black bear, wolf, wolverine, migratory birds, seals, belugas, sea otters, and small game animals. We cannot put a price on our way of life that has sustained our people for thousands of years. This is the last place on the planet with the world's largest wild sockeye salmon return, with a record year of 78 million returning for the 2022 fishing season.

While the residents of our region have integrated into the market economy through commercial fisheries, the livelihood of our residents are inextricably tied to our subsistence economy. As a region with a range of cultural identities, each of our Tribes retain the right to choose how to engage with these economies, which influence our Way of Life. In decision-making for our future, we will not compromise our sustainable natural resources for non-renewable resource extraction, lest we exchange a sustainable economy for a short-lived one.

The tourism sector of the local market economy is still developing. The remote and pristine nature of the Pebble deposit area allows for an uninterrupted natural experience that recreational users seek. The Kuktuli river is a premier destination for river floating and fly fishing. The Upper Talarik Creek is a world-class Rainbow Trout fishery which is an iconic destination, touted in magazines and articles by outdoor enthusiasts. The preservation of these recreational fisheries in their natural state is a benefit to all of Alaska's sport fishing industry.

BBNA has consistently engaged in dialogue with the EPA. In March of 2012 BBNA requested the EPA to use the 404(c) authority to protect our waters. We reiterate our request for EPA to use this authority to impose restrictions on regulated discharges of dredged or fill material (i.e., mine waste) that would result from mining operations of the Pebble ore deposit. These included the following: 1) a prohibition on discharge of mine waste into salmon habitat; 2) a prohibition on the discharge of mine waste that does not meet testing requirements demonstrating that such material is not toxic to aquatic life; and 3) a prohibition on the discharge of mine waste where runoff or seepage from the waste would require treatment in perpetuity (BBNA, 2012).

While the 2022 RPD is much smaller in scope than our 2012 request, BBNA supports EPA action to end the threat of Pebble and wishes to see Bristol Bay permanently protected. This section 404(c) action should be amended to provide comprehensive protections that prevent Pebble, and other potential large-scale mining operations like it, from storing or disposing of mining waste at the headwaters of Bristol Bay. These protections need to include the watersheds of the North Fork Kuktuli, South Fork Kuktuli and Upper Talarik Creek, all of which support the productivity of Bristol Bay's wild salmon and aquatic resources, which are under threat from any development of the Pebble deposit. The Kuktuli River has been nominated for a Tier 3, Outstanding National Resource Water designation, as an acknowledgment of its exceptional water quality characteristics (Trout Unlimited, 2009). The Kuktuli river provides up to 24% of the Chinook Salmon populations in the Nushagak drainage (Schwanke, 2007). Placing mine waste capable of acid mine drainage leaching into the Kuktuli River is an unacceptable adverse change to these waters. These are critical Chinook salmon habitat that provide a staple subsistence resource, which have been used in cultural and ceremonial practices by our region for millennia.

BBNA recommends that EPA adopt the below described changes to the RPD and incorporate them into the Recommended Determination.

Prohibitions

BBNA is pleased to see the inclusion of a prohibition of dredge and fill materials in the RPD. The use of a section 404(c) prohibition is supported by sound science and the lengthy record developed by the EPA's 2014 Bristol Bay Watershed Assessment and the Army Corps of Engineers' (Army Corps) 2020 Environmental Impact Statement (EIS). However, BBNA understands that the proposed prohibition as written would only prohibit dredge and fill material associated with the routine construction and operation of the Pebble Mine, as described in the

Pebble Limited Partnership's (PLP) 2020 Mine Plan submitted to the Army Corps. This qualification on the prohibition severely limits its practical effect because it merely prohibits a mine plan already deemed un-permittable by the Army Corps in its 2020 Record of Decision. As written, the RPD's prohibition is vulnerable to future permit applications that are not identical to the 2020 Mine Plan but are in effect the same. BBNA does not believe this is what the EPA intended when it determined to utilize a section 404(c) prohibition. To clarify the intent of the prohibition, BBNA suggests that EPA adopt language that clearly delineates a contiguous defined area in which the prohibition applies, as well as what types of dredge and fill that are specifically being prohibited.

In specifying waters that cannot be used as a disposal area, BBNA suggests that EPA not limit the area to the 2020 Mine Plan footprint. Instead, the EPA should prohibit discharges into designated rectangular survey system township, range, and section units 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 in the Army Corps' EIS process. Next, BBNA suggests that EPA provide greater specificity as to the type of mining-related activities at the Pebble deposit which are being prohibited. Language to this effect may be:

1. prohibit . . . the discharge of dredged or fill material for the construction and routine operation of a large-scale porphyry mine at the Pebble deposit; or
2. prohibit . . . the discharge of dredged or fill material for the construction and routine operation of the 2020 Mine Plan and substantially similar mine plans.

Prohibition language such as this will ensure that the section 404(c) prohibition clearly addresses the real issue at stake: that dredge and fill material associated with mining the Pebble deposit poses an unacceptable adverse impact to the fisheries resources of the Bristol Bay Region.

Restrictions

BBNA appreciates that EPA is seeking to remove the threat of future mine plans to develop the Pebble deposit through use of a restriction on any future plans that would result in adverse effects "similar or greater in nature and magnitude" to the 2020 Mine Plan. However, the restriction as drafted, with emphasis on numerical standards for triggering the restriction and use of "similar or greater," is vulnerable to future proposals from PLP that would be unacceptable based on sound science and the administrative record. This threat is very real as the company behind the proposed Pebble Mine has previously developed alternatives to work around prior section 404(c) actions proposed by the EPA.

As such, BBNA suggests two modifications that will work in tandem to address this problem. First, EPA should provide more detail as to what constitutes adverse effects "similar or greater in nature and magnitude" as the 2020 Mine Plan. This definition should focus on particular ecological effects supported by sound science, not just numerical standards developed in response to PLP's 2020 Mine Plan. It should ensure that the restrictions will provide protections from a mine similar to that analyzed in the 2014 Proposed Determination and the 2014 Bristol Bay Watershed Assessment. Providing this certainty will ensure that the people of Bristol Bay, federal and state regulators, and industry are all clear on the precise meaning and scope of the restrictions prior to any future permitting process of mining in the area. BBNA and others can

then avoid spending substantial financial and human resources in a future environmental review process to determine whether the restrictions will be triggered.

Second, EPA should 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. This could include utilizing PLP’s definition of the Pebble deposit and orebody from the company’s 2021 Preliminary Economic Assessment report, including the full 11 billion tons of measured, indicated, and inferred ore at the Pebble deposit (Ausenco Engineering Canada, 2021). EPA could also remove reference to a specific border for the Pebble deposit and instead focus the restriction on the character of the orebody (Northern Dynasty Minerals, 2022). As acknowledged by EPA, the full extent of the Pebble deposit is an estimate based on PLP’s exploration efforts and should not be used as the basis of the restriction. Because the extent of the deposit may expand over time, the agency could focus on the ore type as it is the ecological effect of mining this ore type that EPA uses to support its restriction.

As one people and one voice, we are united with Bristol Bay Native Corporation (BBNC), and United Tribes of Bristol Bay (UTBB) in our recommended modifications to the RPD.

Bristol Bay Tribes have been engaged through tribal consultation during this RPD. As outlined in the EPA Policy on Consultation and Coordination for Indian Tribes, there will be a final phase to this process and our member tribes look forward to hearing from a senior EPA official on how the tribes input was considered for the final action (EPA, 2011). BBNA would like to thank the EPA for its efforts in understanding and acknowledging our position through enacting these modifications to the prohibitions in the RPD. These additions provide protections in sustaining clean and healthy waterways, which are essential in maintaining our Way of Life. The importance of finalizing the section 404(c) process cannot be overstated. It is critical for EPA to expeditiously move forward with a Recommended and Final Determination.

If you have any questions or require further information, please contact Gayla Hoseth, Director of Natural Resources at ghoseth@bbna.com or 907-842-5257.

Sincerely,



Garvin Federenko
President & CEO

References

Bristol Bay Native Association, March 23, 2012 Resolution 2012-04

Trout Unlimited, Oct. 19, 2009, Nomination of the Kaktuli River.

Schwanke, C. J. 2007. Kaktuli River fish distribution assessment. Alaska Department of Fish and Game, Fishery Data Series No. 07-78, Anchorage

Pebble Project Preliminary Economic Assessment NI 43-101 Technical Report, Prepared for Northern Dynasty Minerals Ltd., Prepared by Ausenco Engineering Canada (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.

Northern Dynasty Minerals 2022, Pebble Project Reserves and Resources, (access: Aug. 30, 2022) <https://northerndynastyminerals.com/pebble-project/reserves-resources/>.

Environment Protection Agency, May 4, 2011. EPA POLICY ON CONSULTATION AND COORDINATION WITH INDIAN TRIBES