



Committee on Transportation and Infrastructure
U.S. House of Representatives

Peter A. DeFazio
Chairman

Washington, DC 20515

Sam Graves, MO
Ranking Member

November 15, 2019

Katherine W. Dedrick, Staff Director

Paul J. Sass, Republican Staff Director

Lieutenant General Todd T. Semonite
54th Chief of Engineers and Commanding General
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

Dear General Semonite:

I write to express my deep concern with the actions taken, to date, by the U.S. Army Corps of Engineers (Corps) in its review of a Clean Water Act permit application by the Pebble Limited Partnership (PLP) for the development of an open pit mining operation, proposed in the Bristol Bay watershed, Alaska.

Based on my review of the process undertaken by the Corps, thus far, as well as the testimony received before a hearing of the Subcommittee on Water Resources and Environment on the Pebble Mine project, I am deeply concerned that your agency's review of this permit application and the associated review of the project under the National Environmental Policy Act (NEPA) are so fundamentally flawed and inadequate as to preclude any meaningful review on the likely impacts of this project – in violation of your responsibilities under both the Clean Water Act and NEPA. Since the DEIS fails to meet the basic adequacy standards required under existing NEPA regulations,¹ the Corps must prepare, and circulate for public review and comment, a revised environmental impact statement for the project that addresses the shortfalls identified with the Corps' Draft Environmental Impact Statement (DEIS) for the Pebble Mine project, released on February 20, 2019.²

As per our meeting on November 15, 2019, I am requesting that the Corps immediately prepare a revised environmental impact statement (EIS) for the entire Pebble Mine project, including providing renewed opportunity for public and agency review and comment on the revised EIS, before any further action is taken on the PLP's Clean Water Act permit application.

As you know, in December 2017, the PLP, a corporation wholly-owned by Northern Dynasty Minerals Ltd. (Northern Dynasty), a Canadian-owned mining company, filed a Clean Water Act permit application with the Corps to develop Pebble Mine with four primary project elements:

¹ See 33 CFR 230.1 and 40 CFR 1502.9.

² <https://pebbleprojecteis.com/documents/eis>

the mine site, the Amakdedori Port, the transportation corridor, and the natural gas pipeline.³ The proposed project would require approximately four years to construct, and result in 1.2 billion tons of material (ore, waste rock, and overburden) being mined over a projected mine life of approximately 20 years.⁴ While the scope of this most recent Pebble Mine project is smaller than that initially proposed by PLP in 2011 (and determined by the U.S. Environmental Protection Agency, in 2014, as likely posing an “unacceptable adverse effect” on the Bristol Bay watershed⁵), the scale and impacts of an open pit mining operation in such a pristine environment are unprecedented in modern times, and are likely to result in increased industrialization of the Bristol Bay watershed.

In May 2018, PLP updated the project description to include mining 1.44 billion tons of material, increased the milling rate by 12 percent, and modified the tailings storage facility design.⁶ This update was the basis for the Corps’ February 2019 DEIS for the Pebble Mine project.⁷

In August 2019, the PLP proposed several additional project amendments including relocating the mine water management pond and rerouting portions of the transportation corridor.⁸ That same month, the Corps publicly announced it would not be undertaking additional environmental review of the proposed changes to the project permit application.⁹

Under Federal regulations, a DEIS “must fulfill and satisfy to the fullest extent possible the requirements established for final [environmental impact] statements.”¹⁰ Yet, the comments filed by the Federal cooperating agencies and other agencies with jurisdiction over portions of the Pebble Mine project clearly demonstrate that the Pebble Mine DEIS fails to meet this standard.

For example, comments submitted by the Department of the Interior (DOI) note that “the DEIS, as prepared, does not follow NEPA requirements and conventions for data inclusion or analysis for an activity of this scope and scale. The DEIS precludes meaningful analysis (40 CFR 1509.2(a)) ... lacks an index for cross-referencing...and a robust discussion of cumulative effect ... including other ‘past, present, and reasonably foreseeable actions.’” DOI also notes that the “DEIS does not fully discuss the potential impacts of the proposed mining activity on DOI-managed resources and lacks a number of important analyses that are necessary to adequately assess the project.” Finally, DOI notes that “the DEIS has major outstanding issues related to an overreliance on qualitative, subjective, and unsupported conclusions. There are also instances where the USACE failed to conduct or include important analyses and where effects are minimized or dismissed as not being ‘measurable’ without providing the measurement types or measurable variability used. Based on these identified deficiencies, the DEIS is so inadequate that it precludes meaningful analysis 40 CFR 1502.9(a).”¹¹

³ <https://pebbleprojecteis.com/files/a4f5b9d3-7c40-4960-a30e-e50b2a61bd39>

⁴ *Id.*

⁵ See <https://www.epa.gov/bristolbay/bristol-bay-assessment-final-report-2014>

⁶ <https://pebbleprojecteis.com/files/083461a0-998f-4686-8f6a-38546b64c632>

⁷ <https://pebbleprojecteis.com/documents/eis>

⁸ <https://pebbleprojecteis.com/files/81ba1532-66c3-4300-9bb8-40d392a74403>

⁹ <https://www.eenews.net/greenwire/stories/1061134919/>

¹⁰ See 40 CFR 1502.9.

¹¹ <https://pebbleprojecteis.com/files/3a2302b2-830b-43e8-8339-61b71a76d054>

Similarly, in comments submitted by the U.S. Environmental Protection Agency (EPA), the agency noted that the DEIS “likely underestimates adverse impacts to groundwater and surface flows, water quality, wetlands, fish resources, and air quality,” including the ability of the proposed water treatment plant to annually meet water treatment goals and water quality standards in perpetuity.¹² EPA’s comments also highlight that the DEIS does not evaluate the consequences of a potential mine tailings dam failure (which would depend on the size of the mining operations) and recommends that a breach or failure scenario be developed.¹³

Both the U.S. Coast Guard and the National Marine Fisheries Service (NMFS) also filed comments criticizing the analysis and information contained in the DEIS, suggesting that the DEIS does not adequately assess impacts of the project and that there are “insufficient details regarding the aspects of the proposed project that would allow [NMFS] to make determinations regarding the requirements” of the Marine Mammals Protection Act. Further, NMFS challenged the validity that the PLP would limit its mining activity to the scope proposed in the Clean Water Act permit, noting that “project proponent [PLP] will not halt mining operations just when they arrive at the richest ore deposits.”¹⁴

Further, as noted above, several experts and affected stakeholders testified on October 23, 2019 before the Subcommittee on Water Resources and Environment and raised similar concerns on the adequacy of the Pebble Mine DEIS. For example, Subcommittee witnesses testified on the following issues:

- Lack of Meaningful Tribal Consultation and Involvement in the DEIS – Ms. Alannah Hurley of the United Tribes of Bristol Bay testified that tribal consultation has been inadequate;
- Inadequate Time Spent on DEIS – Mr. Richard Borden of Midgard Environmental Services, LLC testified that that he has never seen an EIS move as quickly as the one for the Pebble Mine project, and that the DEIS for Pebble Mine was completed in half the time it should have taken;
- Lack of Specifics on Compensatory Mitigation Plans – Mr. Dennis McClellan, the former EPA Administrator for Region 9, noted that compensatory mitigation would not be effective nor appropriate to address impacts to a pristine environment, such as the Bristol Bay watershed;
- Lack of Certainty for Plans for Required Treatment of Mining Wastewater – Mr. Borden described the conceptual need to treat up to 19,000 gallons of wastewater per minute as “truly unprecedented.” Similarly, Mr. Borden noted that, even after formal mine closure, more than 5,000 gallons of wastewater per minute would need to be managed in perpetuity—for centuries in the future;

¹² <https://www.epa.gov/sites/production/files/2019-07/documents/epa-comments-draft-eis-pebble-project-07-01-2019.pdf>

¹³ *Id.*

¹⁴ NMFS, comments on ESA consultation, DEIS, and EFH Assessment

- Lack of Confidence in Financial Viability of Proposed Mine – Mr. Borden testified that the net economic present value of the Pebble Mine project, as proposed, is negative \$3 billion, and that PLP has produced no further evidence that the mine proposed in the 2017 and 2018 Clean Water Act permit application would be financially viable;
- Concern about the Height and Location of Tailings Dam – Mr. Borden testified that the height of the proposed tailings dam and its location in a wet, seismically active location make it unique and one of the tallest dams constructed globally today. Even though the dam would remain saturated in perpetuity and is located in a seismically active area, the DEIS did not adequately look at the potential for a failure. The failure scenario in the current DEIS analyzed a release of .004 percent of the tailings; however, this is one hundred times smaller than three large mine tailing failures in the last five years; and
- Inadequacy of Bonding Requirements – Mr. Borden testified about the inadequacy of the bonding required for long term management and sustainability of the Pebble Mine.

Through the Clean Water Act, Congress vested the Corps with the co-responsibility for restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. To carry out that responsibility, as well as its obligations under NEPA, the Corps must ensure that any activities that may adversely impact our Nation's waters are fully evaluated, and that the Corps' legal obligations to avoid such impacts, to minimize such impacts, and to fully mitigate such impacts are achieved through its Clean Water Act permitting responsibilities.

Based on my review of the Corps' activities on the proposed Pebble Mine project, the Corps has failed to meet these legal obligations. As previously noted, the Committee has received information and testimony that the Corps' efforts, thus far, on the Pebble Mine DEIS are so fundamentally flawed and inadequate as to preclude any meaningful review on the likely impacts of this project, in violation of the Corps' responsibilities under both the Clean Water Act and NEPA. Accordingly, Federal regulations require that the Corps prepare, and circulate for public review and comment, a revised environmental impact statement for the project that addresses the shortfalls identified in the Pebble Mine DEIS.

Therefore, I request that the Corps immediately prepare a revised EIS for the Pebble Mine project, including providing renewed opportunity for robust public and agency review and comment on the revised EIS, and take no further action on the PLP's Clean Water Act permit application until such action is completed.

Please do not hesitate to contact me if you have any questions.

Sincerely,



PETER A. DeFAZIO
Chairman