



# TRUSTEES FOR ALASKA

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August 23, 2020

Via E-Mail and hand delivery:

Mr. Shane McCoy  
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**Re: Comments on the Final 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 submits these comments on behalf of Alaska Wilderness League, Audubon Alaska, Cook Inletkeeper, Defenders of Wildlife, Friends of Alaska National Wildlife Refuges, Friends of McNeil River, National Parks Conservation Association, National Wildlife Federation, Natural Resources Defense Council, SalmonState, Sierra Club, and Wild Salmon Center. The comments, as well as the reports attached, address the U.S. Army Corps of Engineers (Corps) Final Environmental Impact Statement (FEIS) and Public Notice of Application for Permit for Pebble Limited Partnership's (PLP) proposed Pebble Mine.<sup>1</sup>

The proposed Pebble Mine would industrialize a pristine and intact environment that provides key habitat as headwaters for the world's largest remaining sockeye salmon fishery. The impacted watershed supports more than 190 species of birds, 40 species of mammals, and 29 species of fish, and a thriving subsistence culture.<sup>2</sup> If approved, the proposed Pebble Mine would be one of the most damaging, if not the most damaging, project ever permitted under the Clean Water Act (CWA). The Bristol Bay headwaters is simply not the place for largescale, industrial mining.

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<sup>1</sup> 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.

<sup>2</sup> 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).

The proposed Pebble Mine poses an unacceptable and unprecedented 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 to the environment places the Pebble project in a category all its own. Whether looking at the proposed 20-year mine, for which PLP has made no showing of economic feasibility or viability, or the expanded mine scenario 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 result in the direct and permanent loss of 105.4 miles of streams and 2,231 acres of wetlands.<sup>3</sup> The indirect impacts would lead to the loss of another 79.5 miles of streams and 1,609 acres of wetlands.<sup>4</sup> The temporary losses include 773 acres of wetlands and 6.2 miles of streams.<sup>5</sup> The total impact from the proposed Phase 1 amounts to a direct, indirect, and temporary loss of 4,613 acres of wetlands and 191.1 miles of streams.<sup>6</sup> 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 FEIS predicts that the 78-year mine would destroy an additional 347.5 miles of streams and 10,585 acres of wetlands.<sup>7</sup> Astoundingly, and without explanation, the FEIS has substantially reduced the numbers of wetlands and streams that would be impacted from the 78-year mine. In the draft EIS, the Corps found that the 78-year mine would destroy 125 miles of salmon supporting streams, 337 miles of tributaries, 15,000 acres of wetlands, with an indirect impact to upwards of 45,000 acres. That is approximately 70 square miles, a size that mirrors Washington, D.C.

In addition to the mine site, development and operation of the mine would require the construction of an 82-mile industrial road 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' National Environmental Policy Act (NEPA) review proceeded at a blistering and unprecedented rate for a project of this scale and size. Adding to the inherent problems with such a review, the Corps conducted its analysis based on ever-changing, but consistently deficient CWA applications, that lacked

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<sup>3</sup> FEIS at 4.22-111, Table 4.22-40.

<sup>4</sup> FEIS at 4.22-111, Table 4.22-40.

<sup>5</sup> FEIS at 4.22-111, Table 4.22-40.

<sup>6</sup> FEIS at 4.22-111, Table 4.22-40.

<sup>7</sup> FEIS at 4.22-111, Table 4.22-40.

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baseline reports and insufficient field analysis from PLP. In its haste, the Corps has prepared an FEIS that violates both NEPA and the CWA.

The Corps' fast track review and lacking NEPA analysis is so egregious that the Corps' assessment of the Pebble mine recently instigated a request from the U.S. House of Representatives Committee on Oversight and Reform (House Oversight Committee) to the Offices for Inspector General for both the Department of Defense and the U.S. Army Corps of Engineers to:

conduct a comprehensive review of the U.S. Army Corps' of Engineers' conduct with regard to the Pebble Mine project, including but not limited to the Corps' review of the project under the Clean Water Act and National Environmental Policy Act from May 2017 to the present date and the development of the draft and final EIS.<sup>8</sup>

In its request to the Inspector Generals, the House Oversight Committee explicitly identified concern over how quickly the Corps has conducted its NEPA review and the impact of moving that quickly on the EIS analysis:

The Committee is concerned that the Army Corps expedited the Clean Water Act permitting and NEPA review process at the expense of a thorough scientific review. It appears that this timeline is inappropriate for a hardrock mine of this scale, complexity, and potential regional and state environmental, social, and economic impacts—especially during the ongoing coronavirus pandemic. Even more concerning is that despite repeated pleas and requests from federal, state, local, and tribal cooperating agencies and stakeholders for a more comprehensive review process, it appears that the Army Corps set aside thorough scientific review in favor of an expedited permitting timeline.<sup>9</sup>

The House Oversight Committee also identified concerns over PLP's incomplete application, noting that the "application failed to include essential information regarding mine construction, operation, maintenance, and closure plans necessary to adequately develop an EIS under NEPA or conduct review under the Clean Water Act."<sup>10</sup>

In addition to the variety of problems stemming from its hasty review, the Corps has failed to provide the public, as well as other state and federal agencies, with an opportunity to meaningfully participate by precluding review of a draft EIS that includes all requisite information pertaining to the project, including the applicant's preferred alternative.

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<sup>8</sup> Letter from U.S. House of Representatives Committee on Oversight and Reform to Inspector General O'Donnell, Dept. of Defense, and Inspector General Smith, U.S. Army Corps of Engineers, Aug. 10, 2020 (included as an attachment to these comments).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

The comment period for review of the draft EIS closed on July 1, 2019.<sup>11</sup> Since completion of the comment period, the project has undergone a number of changes and the Corps collected a significant amount of new information. While PLP has been constantly changing the project since it first submitted its application in December 2017, it has made several substantive changes since the close of the comment period, with updates to its application and/or Project Description in December 2019, April 2020, May 2020, and June 2020.<sup>12</sup>

In addition to the multiple changes to the Section 404 permit application and associated Project Descriptions, including the substantial change in the applicant's preferred alternative in April 2020, PLP has submitted over 170 responses to the Corps' Requests for Information (RFIs) since the DEIS comment period closed.<sup>13</sup> New information released after the DEIS comment period closed, including reports and supporting documents, totals over 56,000 pages. Of the 2,094 documents included by the Corps under "data reviewed for the EIS" on the Corps' Pebble Project EIS webpage, 699 were added after the DEIS comment period closed. This information included updates to the preliminary jurisdictional wetlands determination, revision to the compensatory mitigation plan, wetlands modelling, fish habitat modelling, new modelling on copper dispersion and dust, over 30 new reports from new consultants, including new groundwater modeling and tailings designs, and substantial changes to the water treatment facility. None of this information was available for the public to review, consider, and comment on during the DEIS comment period.

Furthermore, in an April 24, 2020 technical memorandum from the consultant responsible for preparing the EIS for the Corps, it was disclosed that PLP had changed its preferred alternative from the southern transportation corridor route to one that would run north of Lake Iliamna. The change in preferred alternative included substantive changes to the port location and need for dredging, road corridor alignment, and use of a concentrate slurry pipeline at the start of mining operations.

Under the Council on Environmental Quality's (CEQ) regulations implementing NEPA, agencies "shall prepare supplements to either draft or final" EISs if there have been either "substantial changes in the proposed action that are relevant to environmental concerns" or "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."<sup>14</sup> The CEQ regulations further state that supplementation is required where "a draft statement is so inadequate as to preclude meaningful analysis."<sup>15</sup> Due to the number of project changes, the substantive responses to RFIs, changes or revisions to modeling and analyses, as well as the overarching change to the preferred alternative, the Corps

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<sup>11</sup> *EIS Schedule*, PEBBLE PROJECT EIS, <https://www.pebbleprojecteis.com/schedule>.

<sup>12</sup> *Background Documents*, PEBBLE PROJECT EIS, <https://pebbleprojecteis.com/documents/background>; POA 2017-271, *Pebble Project Description* (2019).

<sup>13</sup> *See Project Library*, PEBBLE PROJECT EIS, <https://pebbleprojecteis.com/documents/library>.

<sup>14</sup> 40 C.F.R. §1502.9(c).

<sup>15</sup> 40 C.F.R. §1502.9(a).

has violated NEPA by failing to revise the DEIS and allow for a second round of public comment.

Despite the Corps' failure to provide for a meaningful opportunity for public engagement at the DEIS stage, Trustees takes this opportunity to identify some major concerns with the FEIS and provide the Corps with several reports critical of the FEIS analysis prepared by nationally recognized experts holding doctorates or other relevant advanced certifications in their respective fields. The majority of the authors participated in the EIS process by submitting technical reports on the draft EIS analysis and are responding to both the number of project changes and presentation of new information, as well as any relevant response in the FEIS to their draft EIS comments. Trustees recognizes that while the Corps asserts it has no obligation to respond to these comments or the critiques contained in the attached reports, these comments along with the reports will be included in the administrative record.<sup>16</sup> Trustees incorporates the critiques provided in the following reports into these comments:<sup>17</sup>

- David M. Chambers, PhD, P. Geop., *Significant Omissions in the Pebble Project EIS Final Environmental Impact Statement*, August 19, 2020;
- Siobhan Fennessy, PhD, PWS, Fennessy Consulting, LLC, *Comments on the Pebble Mine Final EIS on selenium and impacts to waterbirds*, M. Siobhan Fennessy, Ph.D., PWS, August 17, 2020;
- Siobhan Fennessy, PhD, PWS, Fennessy Consulting, LLC, *Comments on the Final Environmental Impact Statement on the Impacts to Wetlands, Waters and Special Aquatic Sites*, M. August 21, 2020;
- Bretwood Higman, PhD, *Comments on the Final EIS*, Aug. 18, 2020;
- Susan C. Lubetkin, PhD, *A review of Pebble Project Final EIS Section 4.27, Spill Risk: current data compilations and consequences of probability analyses*, August 19, 2020;
- Susan C. Lubetkin, PhD, and Gordon H. Reeves, PhD, *A review of Pebble Project Final EIS Section 4.24, Fish Values: PHABSIM/HABSYN model estimates of salmonid usable habitat areas in the presence of Pebble Mine are baseless*, August 19, 2020;

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<sup>16</sup> See E-mail from Shane McCoy, Project Manager, U.S. Army Corps of Engineers, to Rachel James, July 29, 2020, noting that “[t]he U.S. Army Corps of Engineers – Alaska District is not soliciting public comment on the Final Environmental Impact Statement (FEIS). Consistent with National Environmental Policy Act implementing regulations at 40 CFR 1502.9(a) comment solicitation is only required on the Draft EIS. The Notice of Availability in the Federal Register for the Final EIS is for a period of 30 days. We have left the comment portal open for members of the public who choose to share thoughts during the notice of availability period and will add those thoughts to the public record, but we will not be responding to those comments.”

<sup>17</sup> The reports identified here, as well as references relied upon in these reports, are included as attachments to these comments.

- Sarah O’Neal, PhD Candidate, *Toxicological shortcomings of the Pebble Project Final Environmental Impact Statement (FEIS)*, August 22, 2020;
- Sarah O’Neal, PhD Candidate, *Pebble Mine Final Environmental Impact Statement (FEIS): Anticipated adverse impacts from the transportation corridor*, August 20, 2020;
- Gordon H. Reeves, PhD, and Susan Lubetkin, PHD, *Uncertainties of the Analyses of Altered Flows as discussed in FEIS*, August 20, 2020;
- Gordon H. Reeves, PhD, *Review of Effects of the Proposed Pebble Mine on Fish Values in the FEIS: The Portfolio Effect*, August 20, 2020;
- Gordon H. Reeves, PhD, *Review of the Assessment of Water Temperatures*, August 20, 2020;
- Gordon H. Reeves, PhD, and Susan Lubetkin, PhD, *Uncertainties of the Analyses of Altered Flows as discussed in FEIS*, August 20, 2020;
- Matthew Schweisberg, PWS, *Pebble Mine Final Environmental Impact Statement (FEIS): Anticipated Adverse Impacts to Wetlands*, August 22, 2020;
- André Sobolewski, PhD., Clear Coast Consulting, Inc, *Review of water treatment plants proposed in FEIS for Pebble Project*, August 23, 2020;
- Lowell H. Suring, Northern Ecologic L.L.C., *Brown Bears and the Pebble Project in Southwest Alaska*, August 2020;
- Adam Wlostowski, PhD., Lynker Technologies, LLC, *Comments on Pebble Project Final EIS*, August 7, 2020;
- Cameron Wobus, PhD., Lynker Technologies, LLC, and Robert Prucha, PhD., Integrated Hydro Systems, *Comments on Pebble Project Final EIS*, August 19, 2020;
- Thomas G. Yocom, Senior Wetlands Regulatory Scientist, Huffman-Broadway Group, Inc., *Review of Pebble Project FEIS, Appendix B: Alternatives Development Process, How the Alaska District of the Corps biased its analysis to favor the applicant*, August 19, 2020;
- Thomas G. Yocom, Senior Wetlands Regulatory Scientist, Huffman-Broadway Group, Inc., *The Pebble Project Draft Compensatory Mitigation Plan (January 2020) provides no habitat replacement or preservation to offset thousands of acres of wetland and aquatic habitats that the Pebble Mine Project would destroy, degrade, or fragment*, August 19, 2020;
- Thomas G. Yocom, Senior Wetlands Regulatory Scientist, Huffman-Broadway Group, Inc., *The Alaska District of the Corps of Engineers’ Revised Preliminary Jurisdictional Determinations for POA-2017-271 Inappropriately Reduces Estimates of the Direct Impacts of the Pebble Mine Project to Wetland and Aquatic Areas by Over 1200 Acres*, August 19, 2020;
- Kendra Zamzow, PhD, *Pebble FEIS on discharge of selenium*, August 15, 2020; and
- Kendra Zamzow, PhD, *Pebble FEIS, comments on ore concentrate pipeline*, August 16, 2020.

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The Corps has failed to satisfy its obligations under NEPA. The analysis provided in the FEIS is substantially flawed and inadequate. The only way the Corps can rectify these failures is to require PLP to submit a complete application and then initiate a new NEPA analysis, with a revised draft EIS. Due to the failures and inadequacies found in the FEIS, the Corps is unable to rely upon its final EIS to support the requisite findings it must make pursuant to the CWA. Absent revising the draft EIS, the Corps must deny PLP's permit.

Sincerely,



Brian Litmans  
Legal Director  
Trustees for Alaska

Enclosure: USB flash drive with comments, attachments and references hand delivered.

cc: Regional Administrator Hladick, U.S. Environmental Protection Agency, Region 10.