



united
TRIBES OF BRISTOL BAY

 BRISTOL BAY NATIVE ASSOCIATION



July 12, 2019

Matthew Leopold, General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
Via email and first class mail

Re: Clean Water Act 404(c) Process Related to Proposed Pebble Mine

Dear Mr. Leopold:

We are the organizations that met with yourself, Regional Administrator Chris Hladick, and other EPA representatives in Dillingham, Alaska on June 13, 2019. Thank you for traveling to Bristol Bay to meet with us in person.

You visited Bristol Bay at an auspicious time, on the eve of the commercial fishing season. Since your trip, millions of King and sockeye salmon have returned to Bristol Bay on the way to their natal streams. The commercial harvest for sockeye salmon is looking at another robust year. This past week, the commercial fleet recorded multiple days of harvesting more than 2 million fish and the total run has surpassed 22.7 million fish which is more than halfway to the forecast of 40.2 million fish. This fishery is what makes Bristol Bay so unique. It is the backbone of a \$1.5 billion economy that employs more than 14,000 people and supplies nearly half of the world's wild sockeye salmon harvest. It is also the reason why the proposed Pebble mine is so uniquely risky and why our organizations and others petitioned EPA to use its Clean Water Act 404(c) authority to protect Bristol Bay from the potential impacts a large-scale open pit mine development such as Pebble would cause.

During our June 13th meeting, we specifically asked you about EPA's 2014 Proposed Determination. We were pleased with your response in which you openly told us that EPA had "no timeline" for any potential further review of the Proposed Determination, and, should EPA do so, it would honor former Administrator Scott Pruitt's commitment to do so only after

“solicit[ing] public comment on what further steps, if any, the Agency should take in the section 404(c) process in order to prevent unacceptable adverse effects to the watershed’s world-class fisheries in light of the permit application that has now been submitted to the Corps.”¹ Your specific words were that former Administrator Pruitt’s directive on the Proposed Determination, “still stands.”

In light of our discussion on June 13th, we were dismayed to read your Memorandum to Region 10 Administrator Chris Hladick regarding the Proposed Determination that was released to the public on June 26th. Less than two weeks after you made commitments to us regarding the Proposed Determination you directed Hladick to resume consideration of whether to withdraw the Proposed Determination and “to reevaluate the need for additional [public] comment...” in doing so.

The purpose of this letter is twofold. First, it is to remind you of the commitment you made to our organizations just a few short weeks ago to honor former Administrator Pruitt’s commitment to continue to solicit public input. Second, it is to alert you to the significant deficiencies in the job the Corps of Engineers is doing to identify and assess the impacts the proposed Pebble mine would have on the Bristol Bay region. All of our organizations submitted detailed written comments regarding the deficiencies in the Draft EIS and the Corps’ review of Pebble’s permit application. The EPA, Department of the Interior, and numerous other federal and state permitting agencies submitted comments that echoed our concerns. These deficiencies underscore the concerns former Administrator Pruitt articulated in deciding not to rescind the Proposed Determination.

“...[I]t is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there. Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection.”

Nothing has changed since former Administrator Pruitt came to this conclusion. As is well documented in the administrative record for the Pebble Limited Partnership’s permit application and the related Draft EIS, numerous data gaps about the project proposal still exist and many of the conclusions in the Draft EIS about the potential impacts of the project are premised on faulty or inaccurate assumptions or are otherwise incorrect.

Our organizations continue to believe that EPA should keep the Proposed Determination in place so that EPA may, as former Administrator Pruitt indicated was important, continue to “receive[] more information on the potential mine’s impact on the region’s world-class fisheries and natural resources.” Anything short of this would, to borrow language from your Memorandum to Region 10, abdicate your core mission “of protecting human health and the environment ... within the statutory authority provided to the Agency by Congress.” EPA’s statutory authority to issue the Proposed Determination has already been upheld by the U.S. District Court for the District of Alaska and the Ninth Circuit Court of Appeals.² We expect EPA to continue to fulfill its mission to protect human health and the environment of Bristol Bay.

¹ 83 FR 8668 (February 28, 2018).

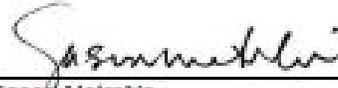
² *Pebble Limited Partnership and Alaska Peninsula Corporation v. U.S. Env’t Prot. Agency, et al.*, No. 3:14-cv-00097-HRH (D. Alaska Sept. 26, 2014), *affirmed*, No. 14-35845 (9th Cir. May 28, 2015).

Please keep us informed of any likely EPA action in response to your Memorandum.

Sincerely,



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Cc: Chris Hladick, Regional Administrator, EPA Region X
Senator Lisa Murkowski
Senator Dan Sullivan
Congressman Don Young