UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
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OFFICE OF THE REGIONAL ADMINISTRATOR

May 28, 2020

Colonel David Hibner
Alaska District Engineer
U.S. Army Corps of Engineers
P.O. Box 6898
JBER, Alaska 99506-0898

Dear Colonel Hibner:

As I am sure you are aware, the U.S. Environmental Protection Agency has been carefully reviewing and commenting on the Pebble Limited Partnership's proposal to produce commodities, including copper, gold, and molybdenum, from the Pebble deposit at the headwaters of the Koktuli River and Upper Talarik Creek. These waters contribute to the Nushagak and Kvichak Rivers, respectively, within the Bristol Bay watershed. I am writing this letter to share the EPA's views gained during the Agency's engagement with the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (Corps) over the past several months and to reiterate the EPA's commitment to further coordination.

The EPA provided a Clean Water Act (CWA) Section 404 "3a" letter and National Environmental Policy Act comment letter to the Corps on July 1, 2019. Both letters expressed concerns with impacts associated with development of the Pebble Mine under proposed Department of Army permit # POA-2017-00271. The EPA expressed concern regarding the extent and magnitude of the substantial proposed impacts to aquatic resources within the Bristol Bay watershed that would result from the project. The diverse mosaic of streams, wetlands, lakes, ponds, and other aquatic resources in the Bristol Bay watershed support world-class fishery resources including an abundance of genetically diverse wild Pacific salmon populations. These salmon populations have significant economic, nutritional, cultural, ecological and recreational value, both within and beyond the Bristol Bay region, including supporting a subsistence-based way of life for many Alaska Natives.

Since July of 2019 our agencies have been working together on Corps review of this proposed project. Most recently since mid-March, the Corps, EPA, and USFWS have met weekly to discuss issues related to the evaluation of the proposed Pebble Mine pursuant to the CWA Section 404(b)(1) Guidelines (Guidelines).[1] The EPA has found these weekly sessions to be invaluable. We appreciate the Corps' convening of these discussions.

The Corps has demonstrated its commitment to the spirit of the dispute resolution process pursuant to the 1992 Memorandum of Agreement between EPA and the Department of the Army regarding CWA Section 404(q) by the extensive engagement with the EPA over the recent months. The EPA appreciates the Corps' recent commitment to continue this coordination into the future, outside of the formal dispute resolution process outlined in the MOA.

[1] 40 CFR Part 230.

The EPA would like to articulate the Agency's views based on recent discussions, convey some critical information that was discussed, and express our appreciation for this focused engagement. The EPA's relevant key views include:

- Relative to compliance with 40 CFR 230.10(a), the Alternative 3 – North Road Only Alternative, Concentrate Pipeline Variant, which was evaluated in the project's Environmental Impact Statement (EIS), is the least environmentally damaging practicable alternative (LEDPA) for purposes of the Guidelines;
- The discharges of dredged or fill material associated with the LEDPA may well contribute to the permanent loss of 2,292 acres of wetlands and other waters is anticipated, including 105.4 miles of streams, along with secondary impacts to 1,647 acres of wetlands and other waters, including 80.3 miles of streams, associated with fugitive dust deposition, dewatering, and fragmentation of aquatic habitats; and
- The Corps should continue to evaluate whether the minimization and compensation measures currently proposed by the permit applicant as well as other measures identified during agency discussions that would likely reduce these impacts to a level that would not cause or contribute to significant degradation of waters of the U.S. If additional minimization or compensation measures are proposed by the permit applicant, the EPA requests the opportunity to coordinate further with the Corps regarding whether such additional measures would alter the EPA's views on the project's compliance with the 404(b)(1) guidelines

Furthermore, during our coordinated meetings information and analyses came to the EPA's attention such as the State of Alaska's findings that the sockeye salmon in the Koktuli River, represent a genetically distinct population of river-type salmon that is evolutionarily important and distinctly unique within the Bristol Bay watershed and Alaska.[2] Loss of such populations could erode the genetic diversity that is crucial to the stability of the overall Bristol Bay salmon fisheries. We would like to reiterate that such information should be reflected in the Corps permit record.

As the very productive interagency discussions conclude, we want to express our appreciation for the Corps' willingness to engage with both the EPA and Fish and Wildlife Service collectively. Our hope is that this experience lays the groundwork for continuing cooperation between the agencies to resolve substantive concerns on this project or any future projects in Alaska. Should you have any questions about this letter, please do not hesitate to contact me at (206) 553-1855 or have your staff contact Matthew LaCroix in our Alaska Operations Office at (907) 271-1480 or by email at LaCroix.Matthew@epa.gov.

Sincerely,

Hladick, Christopher W.

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Chris Hladick
Regional Administrator

cc:

U.S. Fish and Wildlife Service

[2] Dann, T. H. *In prep*. An updated genetic baseline for Bristol Bay sockeye salmon. Alaska Department of Fish and Game, Fishery Manuscript Series No. XX-XX, Anchorage.