THE pebble PARTNERSHIP

March 7, 2012

Mr. Dennis McLerran
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Bristol Bay Watershed Assessment Peer Review Process

Dear Dennis,

I am writing on behalf of Pebble Limited Partnership ("PLP") in regard to the Federal Register notice published last week entitled *Assessment of Potential Large-Scale Mining on the Bristol Bay Watershed of Alaska: Nomination of Peer Reviewers*, 77 Fed. Reg. 11111 (Feb. 24, 2012). PLP welcomes EPA's steps to involve the public in the peer review process, and in the Watershed Assessment. This peer review process is a critical event in our development of a project application. Our concern has been heightened because the watershed assessment and conclusions drawn from it will be the bases for the Agency's decision on how to respond to requests that EPA prevent the Pebble Mine from being built (EPA comments to Alaska Forum on the Environment, February 2012).

This letter outlines several of our concerns and recommendations regarding the peer review process.

Timing of Peer Reviewer Nominations

The Agency and its contractor charged with selecting the peer review panel – Versar, Inc. – have allowed only three weeks for interested parties to submit nominations. This compressed time frame for nominations is too short given the gravity of the Watershed Assessment and the number of areas of expertise for which EPA seeks peer reviewers. We urge you to extend the deadline of the nomination period to a total of 60 days. Extending the nomination process will allow all stakeholders to conduct a more thorough search for qualified candidates, and will provide the time needed to evaluate whether candidates have potential conflicts of interest or could lack impartiality. The *U.S. Environmental Protection Agency Peer Review Handbook* ("Peer Review Handbook") provides that the Agency or its contractor must avoid selection of peer reviewers with

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conflicts of interest or who may not be impartial.[1] Extending the period for peer review nomination should also provide better candidates and thus improve the final composition of the peer review panel.

Ability to Comment on the Larger Peer Review Process

The Peer Review Handbook states that for influential scientific information ("ISI") and highly influential scientific assessments ("HISA"), the Agency should open the peer review plan to public comment. Consistent with the Peer Review Handbook and the Office of Management and Budget's *Final Information Quality Bulletin*, the Bristol Bay Watershed Assessment certainly qualifies as HISA and likely qualifies as ISI due to the assessment's potential economic impact, its application to other potential development in the Bristol Bay watershed, and its controversial nature.[2] To date, it appears that aside from reviewer nominations there is no provision for stakeholders and the broader public to comment on the peer review process. The February 24 Federal Register notice did not indicate that the Agency had any future plans to provide an open public comment period for other phases of the peer review, although there has been an indication that there might be a limited time to comment on the "charge" to the peer reviewers. EPA should allow public comment on the Agency's peer review plan for the Watershed Assessment and any comment period should take into account the time needed for meaningful public input.

Areas of Expertise

EPA should make sure that the peer review panel covers the following subjects, which will be essential to an effective peer review of the Bristol Bay Watershed Assessment:

- Mine design and engineering;
- Mine operation, including hydrologic control;
- Mine pollution control technology;
- Acid mine drainage prevention, control, containment, and treatment;
- Mine reclamation and post-closure measures;
- Pollutant fate and transport in ground water and surface water;
- Aquatic habitat mitigation;
- Salmon fisheries management;
- Economics (if this subject will be part of the report) –the economic impact (including benefits) of mining on surrounding communities; and
- Indigenous Alaskan socio-economics.

All of these areas of expertise are highly relevant to evaluating a mining project's impact on the watershed. Additionally, with respect to area of expertise (9) in the Federal Register notice (indigenous Alaskan Cultures) –, PLP urges Versar and EPA to solicit

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[1] 3rd Edition. Specifically, Section 3.4.5 "Ethical Standards" requires the entity assembling the peer review panel – either EPA or a contractor – to consider these two issues.

[2] *See* Peer Review Handbook at 2.2.3 – 2.2.4.

and select experts knowledgeable on the potential economic benefits of a large-scale mining project on the economically depressed indigenous communities in the Bristol Bay region. In the interest of objectivity, the Agency and the peer review panel should consider the potential benefits as well as the potential negative economic impacts of the large-scale mining.

Peer Review Selection

As discussed above, the Peer Review Handbook requires the Agency to make sure that peer reviewers carry the appearance of impartiality and that an impartial peer review panel is in fact assembled. Numerous experts have been involved in working for parties associated with those that have taken positions for or against the prospect of a large mining operation in the Bristol Bay watershed. Individuals who have publicly taken a side on this issue should be precluded from participating in the peer review panel. EPA should open any proposed list of peer reviewers to public comment prior to Versar's final selection. The opportunity to comment would allow stakeholders to provide more information about the candidates and identify those who may lack the appearance of impartiality.

Creating the Charge

One of the most important elements of the peer review process is formulating the charge – the specific task or questions posed to the reviewers. The Peer Review Handbook provides that EPA must create the charge, and not a contractor.[3] Given the Watershed Assessment's potential importance to the economic future of the region, PLP urges EPA to solicit public input regarding the charge early in its development. Because the Watershed Assessment encompasses a broad array of disciplines, the quality of the charge should be improved by soliciting ideas from the public. In addition, the public should be given adequate time to submit their recommendations in this regard. A 60 day comment period is the minimum time necessary.

EPA Communications With Peer Reviewers

Regardless of whether a peer review is supervised by a contractor, the Peer Review Handbook instructs EPA personnel not to contact the peer reviewers during the course of the review.[4] The purpose of this rule is to ensure that EPA personnel do not have *ex parte* communications with peer reviewers that would taint the objectivity of the peer review process. PLP expects that EPA and other interested federal agencies will comply with this rule during the Watershed Assessment's peer review, and we urge EPA to confirm that it will apply it to the Bristol Bay Assessment.

Transparency

We urge the Agency to make the peer review process as transparent as possible, and to solicit formal public input at every stage. Increased public involvement in this process

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[3] *Id.* at 3.2.4.

[4] *Id.* at 3.5.3.

will only improve the quality of the peer review, and help ensure that Watershed Assessment receives an objective and fair analysis.

As I expressed to Bob Sussman and others during my meeting with the Agency last week, we remain concerned about EPA's drive to meet a self-imposed schedule. As far as we know, this is the largest area EPA has ever considered for a watershed assessment, and the Agency seems intent on completing the study in record time. We at Pebble have spent over eight years and over $120 million studying a relatively small area of the two watersheds. The Agency has indicated to us that our data is essential to your assessment, and yet seems unwilling to collect comparable data and conduct a similar analysis for the remainder of the two watersheds. The short timeframe you set for receiving nominations for peer reviewers is an indication to us that EPA may be more driven by a date on the calendar than collecting the necessary data and allowing appropriate opportunity for public input.

We appreciate you consideration of these comments on the Bristol Bay Watershed assessment peer review process.

Sincerely,

John Shively
Chief Executive Officer

Cc: Richard Parkin

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