



**united**  
TRIBES OF BRISTOL BAY



**FOR COMMERCIAL FISHERMEN  
BRISTOL BAY**



January 23, 2019

Tom Collier, CEO  
Pebble Limited Partnership  
3201 C Street, Suite 505  
Anchorage, AK 99503

Dear Mr. Collier:

On behalf of the people of the Bristol Bay region, we write to register our strong disagreement with statements made in your December 11, 2018 letter to the Bristol Bay Native Corporation (“BBNC”) and substantially reiterated in a January 9, 2019 follow-up letter from your staff.<sup>1</sup> Repeatedly you emphasize the word “responsible” in describing your plans for development of a mine at Pebble, and you express frustration that nevertheless “BBNC continuously refuses to have a detailed discussion about our issues and potential partnering initiatives” and warn that the “window for decisions is closing”-- that the “worst possible outcome for BBNC and its shareholders is for Pebble to secure permits to operate a mine with BBNC standing on the sideline watching as others enjoy the economic benefits.”

To be crystal clear, **we remain committed to doing everything within our power to protect the Bristol Bay region from the Pebble Mine.** While we hear your frustration at the continuing opposition to your project by BBNC and so many others, your correspondence, in language and substance, reflects again the kind of clumsy duplicity and hollow assurances that, over the past decade, have plagued the Pebble project and its last remaining partner, Northern Dynasty Minerals. Rather than “elevating a fact-based discussion about the project,” as you claim, your letters to BBNC – and your refusal to concede the legitimacy of any of its articulated concerns – reflect only the latest attempt, through misstatements, omissions, and arrogance, to elevate the

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<sup>1</sup> Letter from Thomas Collier, The Pebble Limited Partnership, to Daniel Cheyette, BBNC (Dec. 11, 2018); Letter from Abe Williams, The Pebble Limited Partnership, to Daniel Cheyette, BBNC (January 9, 2019).

desperate financial interest of Northern Dynasty over the interests and long-expressed opposition of the region's residents.

Consider, for example, the following:

### **1. History of Pebble Partnership**

Over the past eight years, the Pebble project has been abandoned by Mitsubishi Corporation (2011), Anglo American (2013), Rio Tinto (2014), and First Quantum Minerals (2018) -- not for reasons of misrepresentations by others about the project's risks; indeed, these global mining companies are eminently qualified to assess mining value and risk. Each certainly had the benefit of travelling "to the site to view our operation and our commitment first hand." Each left the project after concluding, based on their own due diligence, that better economic opportunities lie elsewhere, with partners other than Northern Dynasty. And, as you well know, Northern Dynasty has itself been seeking to sell its interest in Pebble since at least 2011 and, most recently, has cited the possibility of a buy-out once a DEIS is issued.<sup>2</sup> Because Northern Dynasty is entirely invested in the Pebble prospect, the company -- and any prospect for its major shareholders to recoup their financial losses -- depend on attracting such a buyer or other significant funders.

### **2. Failure to Provide Economic Feasibility Analysis**

Under these circumstances, the continuing lack of an "economic feasibility study" of the project is inexplicable, and your assurance that such an analysis "remains on your to-do list" is unacceptable and manifestly non-responsive. Since you have previously promised a study by the end of last year,<sup>3</sup> a more likely explanation for its continuing absence is your concern that a competent economic analysis of what you refer to as the "new smaller, more environmentally responsible project" proposed for permitting would underwhelm any reputable investor interested either in making a profit or in being assured of Pebble's financial viability.

When the Army Corps of Engineers' contractor AECOM submitted a formal request for such an analysis last September, Northern Dynasty declined, citing a Canadian securities regulation enacted to ensure that misleading, erroneous or fraudulent information relating to mineral properties is not published or promoted to investors on the stock exchanges overseen by the Canadian Securities Authority. Our repeated requests, too, have simply been ignored.

### **3. Disregard for Objections to Accelerated Permitting Schedule**

Far from listening to the concerns of Bristol Bay's residents, as you claim, you have also ignored our repeated objections to the unreasonably accelerated schedule for permitting by the Army Corps -- something you characterize as a "red herring." It is disingenuous for you to assert, in reply to these concerns, that meaningful public participation "is not about lengths of timelines to complete the process nor is it about page lengths of given documents" -- as if those aspects of the

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<sup>2</sup> Frank Curzio, Interview with Ron Thiessen, Wall Street Unplugged (Dec. 20, 2017).

<sup>3</sup> Elwood Brehmer, *Pebble owners working to refine economics of smaller plan*, Alaska Journal of Commerce (Apr. 11, 2018), available at <http://www.alaskajournal.com/2018-04-11/pebble-owners-working-refine-economics-smaller-plan#.XBqJWXRKq2w>.

process have nothing to do with either the thoroughness and transparency of the review or the ability of the public to engage.

In fact, for a project like Pebble – given its complexity, controversy, risk, data gaps, and significant post-application changes in scale and description – such concerns go to the very heart of the credibility of the process and the trustworthiness of both the applicant and the regulator. Your generalized assurance of a “thorough review in a timely fashion in a way that is helpful for concerned stakeholders” does nothing to ensure, as you describe it, a “thorough, objective, and transparent review of the data presented by the applicant.”

#### **4. Failure to Disclose Personal Financial Interest**

Our concern about schedule is reinforced on a more personal level by your own financial stake in early completion of the federal permitting process. As BBNC noted in its recent letter to you, “[y]our employment contract guarantees you an ‘extraordinary bonus’ of \$12.5 million if PLP obtains a ‘positive ROD’ from the Corps of Engineers within four years of the date of PLP’s application.”<sup>4</sup> This staggering bonus – above and beyond your PLP annual compensation (in 2017: CAN \$2,357,744) – exceeds even the \$5,274,000 “success fee” owed by the end of 2018 to Pebble’s counsel (presumably Steptoe and Johnson, with which you have long been associated) for reaching an agreement with former EPA Administrator Scott Pruitt to settle Pebble’s litigation against EPA.<sup>5</sup> Your personal financial interest in an accelerated schedule presents the appearance of (or an actual) conflict of interest at odds with your assurances about the adequacy of the permit process. This question, too, you have ignored.

#### **5. Pattern of False or Misleading Statements**

If trust is your goal, other questionable assurances have also been consistently counter-productive, including, for example, your unequivocal endorsement on national television of the absurd proposition that “you are going to be able to put a clean mine up there that’s going to have no effect.”<sup>6</sup> In fact, thousands of acres of pristine wetlands will be destroyed just in construction of the mine footprint, not to mention hundreds of stream crossings and attendant degradation of critical salmon habitat. Similarly, by minimizing or failing to mention the complex connections between ground and surface waters in the upper watershed, your public statements intentionally suggest a hydrological isolation of the site that not only materially understates risk but, as BBNC has pointed out, is belied even by Pebble’s own Environmental Baseline Document.

You assert that you “are absolutely convinced [the project] will not harm the fishery in Bristol Bay” – indeed, that your “sophisticated models ... show we can have a potentially positive

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<sup>4</sup> Letter from Daniel Cheyette, BBNC, to Thomas Collier, The Pebble Partnership, Dec. 7, 2018; *see also* Northern Dynasty Minerals Ltd., Notice of Annual General Meeting of Shareholders and Information Circular (May 16, 2018), p. 20, available at <https://www.sec.gov/Archives/edgar/data/1164771/000106299318002329/exhibit99-3.htm>.

<sup>5</sup> Northern Dynasty Minerals, Ltd., Condensed Consolidated Interim Financial Statements (September 30, 2018), at 19, available at <https://www.sec.gov/Archives/edgar/data/1164771/000149315218016262/ex99-1.htm>.

<sup>6</sup> Drew Griffin, Scott Bronstein and John D. Sutter, *EPA head met with a mining CEO -- and then pushed forward a controversial mining project*, CNN (Oct. 24, 2017), available at <https://www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/index.html>.

impact on fish habitat ...” -- and Northern Dynasty CEO Ron Thiessen, too, has claimed that Pebble “will enhance the fisheries.” This kind of technological arrogance only undermines your credibility and, ultimately, public confidence. By contrast, on the basis of its twice peer-reviewed scientific risk assessment – the Bristol Bay Watershed Assessment – EPA concluded that mining of the scale contemplated at the Pebble deposit would result in “significant and unacceptable adverse effects” to important fishery areas in the Bristol Bay watershed,<sup>7</sup> that the Pebble Mine would have “significant” impacts on fish populations and streams surrounding the mine site, and that a tailings dam failure would have “catastrophic” effects on the region.<sup>8</sup>

## **6. Mischaracterization of EPA Review Requested by Bristol Bay Residents**

Your opposition to the EPA process is, of course, one more example of your disregard for the concerns of the people of Bristol Bay. EPA’s review was formally requested by the region’s tribes, and the agency’s resulting administrative process was endorsed and supported in overwhelming numbers by Bristol Bay’s residents at every opportunity. Formal comments from the region submitted during the final public comment period, for example, supported EPA’s watershed assessment by a staggering 98 percent, as did 84 percent of all comments from Alaskans. While Pebble’s opposition to EPA’s review was in no way surprising, it was a definite outlier, motivated by transparent self-interest.

Notably, you suggest through citation to the House Science Committee that the process was somehow tainted with bias, but you fail to mention the contrary conclusion of EPA’s Inspector General after an investigation undertaken at Northern Dynasty’s request. According to that report: “Based on available information, we found no evidence of bias in how the EPA conducted its assessment of the Bristol Bay watershed, or that the EPA predetermined the assessment outcome.”<sup>9</sup> Notably, under the terms of Pebble’s own May 2017 settlement agreement with EPA (at 111.A.3), “EPA may use the Bristol Bay Watershed Assessment without any limitation.”

## **7. Disregard of Broad Consensus that Pebble is the “Wrong Mine in the Wrong Place”**

Perhaps you have in mind findings like those of EPA when you refer to “correcting the rhetoric that has permeated the public conversation in Alaska about Pebble.” But the problem historically with Pebble isn’t the failure of its underfunded Canadian owner to set the record straight. The fundamental problem is that Pebble is “the wrong mine in the wrong place” -- something you have been told repeatedly for years not only by the people of Bristol Bay but by a wide range of other voices, including EPA Administrators from the administrations of Presidents Nixon, Reagan, George H.W. Bush, and George W. Bush. According to Tiffany and Co., whose

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<sup>7</sup> U.S. EPA, *Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act*, Pebble Deposit Area, Southwest Alaska (July 2014), available at [https://www.epa.gov/sites/production/files/2014-07/documents/pebble\\_pd\\_071714\\_final.pdf](https://www.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf).

<sup>8</sup> U.S. EPA, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, 910-R-14-001A (Jan. 2014), available at [https://www.epa.gov/sites/production/files/2015-05/documents/bristol\\_bay\\_assessment\\_final\\_2014\\_vol1.pdf](https://www.epa.gov/sites/production/files/2015-05/documents/bristol_bay_assessment_final_2014_vol1.pdf).

<sup>9</sup> U.S. EPA, Office of Inspector General, *EPA’s Bristol Bay Watershed Assessment: Obtainable Records Show EPA Followed Required Procedures Without Bias or Predetermination, but a Possible Misuse of Position Noted*, Report No. 16-P-0082 (Jan. 2016), available at <https://www.epa.gov/sites/production/files/2016-01/documents/20160113-16-p-0082.pdf>.

“No Pebble Pledge” has been joined by over 60 jewelers around the world, the question is whether “there are certain places where mining simply should simply never occur,” and its answer is “Alaska’s Bristol Bay is one such place.”<sup>10</sup>

We agree. The unacceptable location of this massive project—whether permitted in twenty-year phases or all at once—is the issue that has most animated the breadth and intensity of Pebble’s opposition. As Mitsubishi, Anglo American, Rio Tinto, and First Quantum discovered for themselves, it is the issue on which economic and technical feasibility ultimately depends.

## **8. Inconsistency of Current and Future Mine Plans with Regional Concerns**

Your claim to “have spent a lot of time to understand local concerns” is simply not credible. In fact, your refusal to acknowledge or meaningfully respond to the questions or concerns of the people of Bristol Bay – including each of those described above – suggests that you aren’t actually listening at all. Even your central assertion that “we have brought forward a smaller mine plan . . . in direct response to these conversations” is belied by Northern Dynasty’s continuing sales pitch to potential investors about a 200-year, “multi-generational opportunity” at Pebble, grounded on the expectation of full development of a mine far beyond the scale, time-frame, and impacts of what is described in your permit application. In fact, that expansive investor pitch is as inextricably tied today to the financial viability of the Pebble Mine as it was a decade ago – before every one of your major mining partners walked away.

## **9. Unacceptable Vision for the Future of Bristol Bay Region**

Finally, you state that your project “could dramatically change the political and economic balance in the region . . .,” and this may be true if your vision is a demand for jobs in environmental remediation. But the reckless future you imagine for the region – long after you and Northern Dynasty are gone -- isn’t anything to which the people of Bristol Bay aspire. Indeed, through the Bristol Bay Regional Vision Project, priorities have been explicitly defined in the region, including improving sustainable economic development opportunities, preserving cultural and subsistence resources, and increasing education opportunities for tribal youth. “Large development based on renewable and non-renewable resources must not threaten our land, our waters, or our way of life.”<sup>11</sup>

This vision means maintaining and protecting the incomparable fishery forever as the engine that sustains the people and communities economically, culturally, socially, and environmentally. There is no place for a project that introduces the kind of unreasonable and unavoidable risk posed by the Pebble Mine.

**We will never relent in our defense of Bristol Bay – for our communities, our families, and future generations.**

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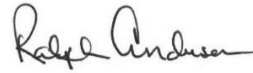
<sup>10</sup> Tiffany & Co., Washington Post Ad (Feb. 2018).

<sup>11</sup> Bristol Bay Regional Vision Project, available at <http://www.infoinsights.com/project/bristol-bay-regional-vision/>.

Sincerely,



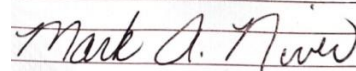
Robert Heyano  
President  
United Tribes of Bristol Bay



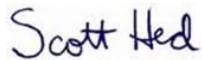
Ralph Andersen  
President & CEO  
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Joel Reynolds  
Western Director  
Natural Resources Defense Council

Cc:

Dan Sullivan, United States Senator for Alaska  
Lisa Murkowski, United States Senator for Alaska  
Don Young, United States Representative for Alaska  
Mike Dunleavy, Governor of Alaska  
Cathy Giessel, Senator, Alaska State Senate  
Chris Birch, Senator-Elect, Alaska State Senate



Lyman Hoffman, Senator, Alaska State Senate  
Bryce Edgemon, Speaker, Alaska House of Representatives  
Alicia Sirra, Associated General Contractors of Alaska  
Andrew Wheeler, Acting Administrator, Environmental Protection Agency  
Bruce Tangeman, Commissioner, Alaska Department of Revenue  
Chris Hladick, Region 10 Administrator, Environmental Protection Agency  
Colonel Phillip Borders, Commander, U.S. Army Corps of Engineers, Alaska District  
Corri Feige, Commissioner, Alaska Department of Natural Resources  
Curtis Thayer, Alaska Chamber of Commerce  
Deantha Crockett, Alaska Miners Association  
Douglas Vincent-Lang, Acting Commissioner, Alaska Department of Fish and Game  
Hallie Bissett, Alaska Native Village Corporation Association  
Jason Brune, Commissioner, Alaska Department of Environmental Conservation  
Jason Metrokin, President and CEO, Bristol Bay Native Corporation  
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