

Stop the EPA's Pebble Power Grab Stand Up for Due Process for Resource Projects in Alaska

On July 18th, the EPA opened a 60-day public comment period soliciting input about their intention to preemptively place restrictions on development of a mine at Pebble. The EPA's actions, a first in the 43-year history of the Clean Water Act, amount to a de facto veto of a mine at Pebble. Please take time to let the EPA know their actions are not appropriate nor should anything be done by the agency at this time – other than wait for the Pebble Partnership to present a detailed mine plan, file for permits, and initiate the thorough and objective National Environmental Policy Act (NEPA) process. The public comment window closes on September 19th, 2014.

Your comments are needed and appreciated. You can comment directly via www.AKStopEPA.com. You can participate in a public meeting in Alaska. Or, you can send a letter to the EPA directly. Details about how you can participate are at the end of this document.

Suggested messages to include in comments to the EPA:

- EPA's actions reflect a **major overreach of federal authority** on State of Alaska land.
 - EPA **does not have the authority** under the Clean Water Act to preemptively block development.
 - EPA's actions are a **fundamental denial of fair and due process**.
 - EPA's actions are **unprecedented, unwarranted and wrong**.
 - There is **no formal mine application** for EPA or other government agencies to review.
 - EPA should **stop its work now** and wait to review the project when it has a detailed mine plan in front of it.
 - The document used by the EPA for its actions is **speculative, biased, and fundamentally flawed**.
 - The Pebble Prospect could provide **thousands of jobs for Alaskans**, provide **hundreds of millions** in new local and state revenue, and provide annual economic activity exceeding \$1 billion dollars. As such, it **deserves to be thoroughly and objectively evaluated**.
- The EPA's proposed determination should not be finalized. It is unprecedented and bases its findings on a flawed report. EPA should uphold and follow the thorough, science based review process for resource development projects.
 - EPA is seeking the ability to zone and manage by watersheds across the US. This is their ultimate plan and is backed up by internal EPA strategy memos. EPA is clearly using Pebble as the test case to establish this authority. Once EPA has this authority they will

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essentially eliminate the role of Corps of Engineers and the states in managing and permitting resource projects in America.

- This preemptive action by the EPA has never been done before in the history of the agency. It is unprecedented and would establish a new tool to block development in Alaska and the U.S. A group in Wisconsin is asking the EPA to preemptively stop a mine there.
- Even the EPA's peer reviewers say the Bristol Bay Assessment is insufficient for regulatory decision making with nearly 60 specific references to this point in a 400 page report released earlier this year.
- EPA's recommendations are completely arbitrary and lack a scientific basis. Why five miles? Why not 4.9 or 5.1? More evidence as to why EPA should wait for and participate in the permitting process.
- The lack of a full, thorough, objective NEPA review process presents a flawed, biased process against the potential developer. Major environmental decisions must be carefully and thoroughly vetted. It's why NEPA was established. Ironically, the environmental community calls NEPA the "magna carta" of environmental law. Why not allow NEPA for Pebble? Makes no sense.
- There is no mine plan and no permit application in front of any government agency for Pebble. The EPA's hypothetical mine plan was based upon an economic analysis and is not a development plan. There is not detailed engineering and there is no environmental management or mitigation plans in the economic analysis. It is an inappropriate use of that document.
- EPA's reliance on the flawed Bristol Bay Assessment leads to flawed decision making. A flawed report cannot and should not be used for agency decision making.
- There is absolutely no environmental harm in allowing Pebble proponents to go through the permitting process. There is a robust review program for all mining projects in Alaska and the U.S. If the mine cannot protect the fishery, it won't get built.
- Need to put the EPA's stream mile "impacts" in context. EPA says their hypothetical mine at Pebble will impact 5 miles of streams. There are approximately 670 stream miles in the South Fork Kaktuli, North Fork Kaktuli, and Upper Talarik watersheds. That's .7% of impact from the EPA's mine – with no mitigation. When using the 33,000 miles of streams in the Nushagak and Kvichak watersheds the EPA's "impact" reflects .01%.

- EPA further states that no project with more than 1100 acres of wetlands loss will be approved. Alaska is full of wetlands. The Ted Stevens International Airport complex comprises 4800 acres – much of which is wetlands. Under this wetlands prohibition, most large Alaska development projects (roads, airports, oil and gas, mines) could not be built.
- There is no legal authority for EPA to act. The congressional record is clear that when Congress enacted the Clean Water Act they wanted the Corps of Engineers to have the lead role in permit decisions with the EPA to have an important review role – with a veto authority to be used in a limited way within the permitting context.
- Taking a significant, precedent setting action while there is an active court case contesting the legality of the EPA's authority is duplicitous and harmful. EPA should wait for a court decision on the legality of their actions.
- The refusal to consider a mitigation strategy allows EPA to overstate impacts and misconstrues and misunderstands a cornerstone of how responsible development takes place in Alaska in the 21st century. Mitigation is essential to all development projects in Alaska.
- Preemptive action to shut down the Pebble Project without a full environmental review of a detailed plan will stop a significant economic opportunity preventing thousands of jobs to employ people, stopping the flow of billions of dollars in economic activity for Alaska and the nation, and denying hundreds of millions in revenue for Alaska at a time when public policy makers are actively discussing the need to diversify revenue streams in the state.

Ways you can to let the EPA know their unprecedented and preemptive action should be stopped and ask the EPA to allow the established state and federal permitting process to proceed:

Public Meetings:

- **Anchorage:** Tuesday, August 12th at 2:00p.m., Egan Center – Cook and Artegan Rooms
- **New Stuyahok:** Wednesday, August 13th at 5:00p.m., Cetuyaraq Community Center
- **Nondalton:** Wednesday, August 13th at 5:00p.m., Nondalton Community Center
- **Kokhanok:** Thursday, August 14th at 5:00p.m., TBD
- **Dillingham:** Thursday, August 14th at 5:00p.m., Middle School Gymnasium
- **Iliamna:** Friday, August 15th at 12:00p.m., Community Center
- **Igiugig:** Friday, August 15th at 12:00p.m., Tribal Hall

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How to submit your comments

Comments must be submitted by **8pm (Alaska time) September 19, 2014**.

1. **(EPA's preferred method):** [Submit comments online at regulations.gov](http://www.regulations.gov). Specify Docket # EPA-R10-OW-2014-0505.
2. Send an email to OW-Docket@epa.gov. Include Docket # EPA-R10-OW-2014-0505 in the subject line.
3. Fax your comments to 202-566-1753. Include Docket # EPA-R10-OW-2014-0505 in the subject line.
4. Send a letter to the EPA Bristol Bay Docket at:

Water Docket # EPA-R10-OW-2014-0505
U.S. Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

You can also send comments electronically via www.AKStopEPA.com

The EPA's **unprecedented action** to impose restrictions on development at Pebble before a mine plan has been proposed or **federal and state permitting has begun** – restrictions that amount to a **de facto veto** of the project – is unlawful, highly prejudicial and damaging to the Alaska and U.S. economy.

EPA should **immediately halt its pre-emptive regulatory process**, wait for the Pebble Partnership to submit a development plan for federal and state regulatory review.

For additional information, visit www.pebblepartnership.com or call the office directly at (907) 339-2600.