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Lobbying Heats Up in Fight Over Alaska Mine

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Both sides in the fight over a proposed hard-rock mine near Alaska's Bristol Bay are ratcheting up their public relations efforts, as the EPA's comment period for a draft ecological risk assessment of the watershed draws to a close at the end of June.

The EPA is being asked to use its rarely exercised veto authority under the Clean Water Act (PL 92-500) to block the mining project even before the Pebble Partnership files for permits. The scientific assessment of the risks to the area's economy from mining operations would form the basis of any regulatory action by the EPA.

Neither a final risk assessment nor a formal mine plan exists yet publicly, rendering the issue a debate over hypotheticals, at least for now. But two competing narratives are emerging from the lobbying efforts: one of a regulatory agency that is overreaching beyond its charge to conduct an unbiased review of a sensitive region's environment and another of a resource-grab by international mining companies that are trying to diminish the environmental impact of its proposal.

At the cornerstone of the debate is the EPA scientific evaluation of the risks that developing the mining operation would pose to a watershed that's the home to the largest sockeye salmon fishery in the world. EPA critics are trying to undermine the scientific basis of preliminary findings that stream and wetland losses caused by mining operations would make those fisheries less productive.

"This is still a relatively new conversation in D.C.," said Peter Robertson, senior vice president for corporate affairs at the Pebble Partnership, the entity established by the project owners to manage mining plans and lobbying efforts.

Northern Dynasty Minerals Ltd., which owns half of the project with mining giant Anglo American, says the Pebble deposit is the largest undeveloped copper, gold and molybdenum resource in the world. Proponents argue that valuable metals that the mine would produce are integral to telecommunications, national security and clean-energy needs. They say Pebble Mine would create thousands of jobs for Alaskans — including native populations struggling with high unemployment — as well as residents of the Lower 48.

The partner companies also have pledged not to build the mine if it cannot "coexist" with a healthy fishery. The companies maintain that they can survive and prosper side by side.

"It's our view that this project can coexist with the fisheries resources in Bristol Bay," said Sean Magee, a spokesman for Northern Dynasty Minerals.

But last week, Democratic senators from California, Oregon and Washington wrote to President Barack Obama to express concern about the potential effect of the mine on their salmon fishing industries and demanding a "valid, sound science based approach to ensuring that Bristol Bay salmon are safeguarded." They said the Bristol Bay fishery generates the equivalent of nearly 4,400 full-time jobs for Alaskans and about 6,000 full-time jobs in Washington, Oregon and California.

The Pebble Partnership has taken issue with how the EPA has conducted its watershed assessment. The agency's approach relies on conceptual models based on publicly available information on the Pebble proposal. The EPA has maintained that it is not studying a specific mine, but rather the effects of "reasonably foreseeable" mining operations in the region.

The partner companies "cautiously" accepted the EPA's first plan to study the watershed in 2011, Magee said, because the scope focused generally on large-scale development in the area rather than hard-rock mining in particular.

"It's moved a long way since that time," he said.

The partnership's own mining plans are hypothetical, since the developers will undoubtedly encounter environmental issues they did not anticipate, said Bob Waldrop, executive director of the Bristol Bay Regional Seafood Development Association. Though the exact location is technically unknown until the Pebble Partnership files a permit application, opponents say there are only so many places in the area where mining could feasibly occur.

"There's no plan that can change the location of this mine," Waldrop said.



Courtesy Wikimedia

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The EPA began its watershed assessment after nine federally recognized Bristol Bay tribes petitioned the agency to use its veto authority under the Clean Water Act to pre-empt the mining project. The EPA claims it may exercise its so-called 404(c) authority before a permit application is submitted, while an application is pending or after one has been issued.

In its history, the agency has vetoed 13 projects using that section of the law, including just one during President Barack Obama's tenure. That veto, which retroactively revoked a mountaintop mining permit for a West Virginia project in 2011, drew fierce denunciations from coal-state lawmakers as well as Republican lawmakers who regularly criticize what they view as excesses by the EPA.

Tom Collier, who served as chief of staff at the Interior Department under President Bill Clinton, said the EPA's previous vetoes occurred either during the permitting process or right after a permit was granted, leaving no precedent for such a decision to be made before a permit application is submitted.

The partner companies want to go through the environmental review process established under the National Environmental Policy Act (PL 91-190) as any other proposed mine would, Northern Dynasty Minerals' Magee said.

"We don't really understand why there are those who believe we should not enter that process," he said.

The agency's first administrator interpreted the law as giving him the power to nix proposals at any stage of the regulatory process to dump dredge or fill material into the nation's waterways. During his second tour of duty as the EPA administrator under President Ronald Reagan, William D. Ruckelshaus, wrote in a veto decision that the Clean Water Act "authorizes several degrees of limitation on discharge of dredged or fill material at a disposal site." He noted that he could prohibit all future dredging material disposal regardless of whether a site was specified in a permit — or he could issue a "prohibition of specification" if no permit had been issued.

For now, the EPA is mum on whether it will use its veto power to stop Pebble Mine before the developers apply for federal permission to break ground, though it hasn't explicitly ruled out the option. Agency officials have said they will not make any regulatory decisions until after they complete the watershed assessment.

Supporters of the mine complain that completing the study using the data and methods contained in the drafts could affect public opinion against the project before they can unveil formal plans. They also fear the impact a "pre-permitting" review could have on other companies looking to develop natural resources and attract investors.

"EPA's opinion on these sorts of things carries a lot of weight," the Pebble Partnership's Robertson said.

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