

September 2023

Dear Fellow Shareholder,

There have been some developments regarding the Pebble Project, including the remand order for the United States Army Corps of Engineers (“USACE”) Record of Decision (“ROD”), the U.S. Environmental Protection Agency’s (“EPA”) Final Determination, and the U.S. Supreme Court’s significant reframing of the Clean Water Act (“CWA”) in *Sackett v. EPA*. I wanted to take the opportunity to share this news with you, as I believe that we are in a position with more tailwinds than headwinds.

During any period of sustained litigation, costs are understandably a focus of significant attention. We, of course, also take the view that those costs must be thoughtfully managed. We are taking steps to protect the integrity and value of the assets, of Northern Dynasty Minerals Ltd. (“NDM” or the “Company”), and that effort necessarily involves judicious use of legal tools.

As mining projects progress through their cycles - exploration, discovery, engineering, permitting, development and operations - one encounters both joy and angst along the way. There are always bumps in the road; Pebble has had its obstacles but is not unique. One must simply look at the other five major copper projects in the U.S. that have been similarly stalled - Resolution (Rio Tinto/BHP), Rosemont (HudBay), Twin Metals (Antofagasta), Polymet (Teck/Glencore); and we can now add Arctic (South 32/Trilogy) to that list. These assets are some of the most important mineral projects not only in the U.S., but the world more broadly. To be successful in the mineral resource development business, you must be determined and patient. In the U.S., it also invariably involves litigation to preserve the integrity of your project.

As we discuss the recent developments, it may be helpful to review some of the major past events that give import to the recent decisions.

Negative ROD decision

In November 2020, the Alaska District (the “District”) of the USACE, issued a negative ROD for the Project’s permit applications under the CWA. We promptly filed an administrative appeal of that decision. Timing was tight (just 60 days to file), but this administrative appeal was an important step for any attempt to move USACE back on course towards issuing permits.

Just over two years later, in April 2023, Brigadier General Kirk Gibbs, Commander of USACE’s Pacific Ocean Division (to whom the Review Officer reports), informed Pebble Limited Partnership (“PLP”) he concurred with the Review Officer’s findings and was remanding the ROD for the District to reconsider (the “Remand Order”). General Gibbs agreed with many of our arguments, though not all of them, and we are pleased that the District will now have to rethink its decision with the benefit of the General’s guidance. The General reached many important conclusions that are hard to square with the District’s negative ROD and will create significant challenges if the District tries to adhere to that negative decision. The General’s conclusions also are in significant tension with the EPA’s stated rationale for vetoing PLP’s CWA permits. The administrative appeal was a notable legal cost, and it also required a major commitment of time and effort by the PLP staff and outside consultants to prepare the appeal documents; to provide supporting information; to ensure our positions were robust and accurate; and to respond to the Review Officer’s myriad questions throughout the process.

Among the key reasons cited for the remand decision:

Significant Degradation Finding

Before issuing the negative ROD, the District concluded that development of the Pebble Project would result in significant degradation of the aquatic ecosystem. This significant degradation finding allowed USACE to impose more burdensome compensatory mitigation requirements on the Project. Indeed, the compensatory mitigation requirements effectively left Pebble with only one option - working with the State of Alaska to create a conservation area that would preserve certain state lands and foreclose any future development on those lands.

On appeal, PLP argued that the significant degradation finding was flawed because of USACE's unsupported decision to use a smaller watershed scale when evaluating the mine site¹. The Remand Order ultimately concluded that the District would have to reconsider and re-evaluate its analysis of the severity of impacts and to clarify its selection and use of a smaller scale watershed in its decision.

Compensatory Mitigation Plan

The Remand Order concluded that the majority of PLP's arguments with respect to the District's compensatory mitigation plan review had merit. To begin with, the Remand Order highlighted a USACE regulation requiring that permit applicants receive comments from the District on draft mitigation plans and be given opportunity to address such comments prior to finalizing a mitigation plan. The Remand Order correctly concludes that the Administrative Record lacked sufficient evidence to show that PLP was provided an adequate opportunity to address any comments made by the District prior to finalizing its plan. Indeed, the Remand Order repeatedly points out the Administrative Record notably lacked notes or memoranda reflecting conversations between the District and PLP concerning the compensatory mitigation plan. Thus, the Remand Order directs the District to *"be mindful in the future about including in the administrative record memoranda or notes documenting conversations with applicants, particularly when the District is providing, or may be perceived as providing specific direction to an applicant."*

The Remand Order then reviewed the substance of the District's finding on the merits of PLP's compensatory mitigation plan. On appeal, PLP argued that six of the alleged deficiencies cited by the District in rejecting the compensatory mitigation plan were baseless. Ultimately, the Remand Order concluded that four of those arguments had merit and it noted that many of the alleged deficiencies could have been clarified or corrected had the District provided PLP with an opportunity to address the District's concerns. Significantly, even with respect to the two other arguments raised by PLP, the Remand Order notes that given the remand of the order, PLP will have an opportunity to seek clarification from the District on these other issues.

As a result of these flaws in the District's analysis, the Remand Order directs the District to *"provide complete and detailed comments to [PLP] on the compensatory mitigation plan allowing [PLP] sufficient time to address those comments prior to finalizing a revised mitigation plan review."* Because the compensatory mitigation plan is a critical component of the District's analysis, particularly with respect to the District's significant degradation finding, the remand is significant. As the Remand Order notes, if on remand the District determines that PLP's compensatory mitigation is *"acceptable and adequately offsets direct and indirect impacts, a new [public interest review] and 404(b)(1) analysis may be required."*

Public Interest Review

The Remand Order also found that the District had erred in evaluating several factors in its Public Interest Review ("PIR") and directed the District to *"reconsider its evaluation of the[se] public interest factors."* The Remand Order emphasized that *"the regulations require that the PIR be based on an evaluation of probable impacts on the public interest by weighing and balancing the benefits, and reasonably foreseeable detriments."*

The District's analysis failed to adhere to this standard when evaluating both the Needs and Welfare of the People and the Economics factors. In particular, the Remand Order found that the Administrative Record did not support the District's conclusions with respect to the duration of some of the benefits flowing from the project and may have improperly weighted some post-closure effects in considering detriments of the project. Thus, it directed the District on remand to *"consider its PIR analysis relative to the Needs and Welfare of the People PIR factor and adequately describe its determinations of the extent and permanence of the benefits and detriments. Additionally, the District should re-evaluate the analysis under the Economics PIR factor and the assignment of post-project 'expiration of benefits' as economic detriments."*

¹ For further explanation of the U.S. Hydrological Unit Codes, I suggest you visit [Hydrologic unit system \(United States\) - Wikipedia](https://en.wikipedia.org/wiki/Hydrologic_unit_system_(United_States))

The Remand Order also found fault with the District's evaluation of the public need for the project. In the ROD, the District suggested that alternative locations within the U.S. exist that could produce the same minerals as PLP would produce. The Remand Order concluded that the District did not adequately explain why it believed these locations might be practicable or reasonable alternatives. Thus, it ordered the District on remand to re-evaluate this portion of its PIR analysis and *"provide adequate discussion of alternatives it has identified as meeting the regulatory requirement of 'practicability of using reasonable alternative locations and methods.'"*

Importantly, the Remand Order also credited PLP's argument that the District erred when it raised the possibility of catastrophic tailings storage facility failure in its PIR analysis. The Remand Order concludes that *"[b]ecause the District found that large spills are not reasonably foreseeable, its discussion of them ... is inappropriate."* It went on: *"The District is required to analyze effects which are likely to occur, but the District found that a catastrophic event is not reasonably foreseeable."* Given that the District may have unduly weighted the potential for catastrophic failure as likely, while also stating that it is not reasonably foreseeable, a remand was required.

Finally, the Remand Order took issue with the District's evaluation of harm to fisheries. The Remand Order pointed out that the ROD states in several locations that damages to fisheries are not anticipated, *"so citing potential damages to fisheries, specifically related to catastrophic or human error events, as a basis for and adverse PIR conclusion is contradictory."* This too required remand.

For the Public Interest Review, the USACE and EPA focused on a catastrophic tailings [storage facility] failure. At the outset of this section of the Administrative Appeal Decision, the Review Officer writes that *"...the District should reconsider its evaluation of the public interest factors as described in each of these RFAs. [those found to have merit]"* There are several instances where the Review Officer reminds the USACE that their assessment and decisions need to be based on, and supported by, conclusions in the record.

Given the pendency of EPA's Final Determination, Commanding General Gibbs directed the district to consider what effect the EPA veto has on how the District will proceed with reconsideration of the administrative record after remand. The District has until September 26, 2023 (unless further extended), to notify PLP of how it plans to proceed with the reconsideration, given the limitations imposed by EPA's veto. If PLP is successful on remand, the EPA Final Determination will need to be withdrawn or overturned before the District can issue a permit to PLP.

EPA's Final 404(c) Determination

On January 30, 2023, the EPA issued its Final Determination to veto/preclude any "dredge and fill" (mining and waste deposition) in a 309 square-mile restricted area, representing the South and North Fork Kaktuli River watersheds and the upper reaches of the Upper Talarik Creek watershed. The Pebble Deposit and Proposed Project, as currently envisioned, occupy approximately 10-12 square miles within this area in the Kaktuli watershed. The EPA is blocking not only the Proposed Project, but also any future prospects or alternative development of one of the world's most valuable and largest undeveloped mineral resources.

We view this action by the EPA as deeply troubling, not just for its impact on the Company's assets but also as a major expansion of the EPA's asserted authority under the CWA. We are planning to vigorously contest the EPA's veto. That contest will take work and it will take time. But this work is critical for protecting the integrity and the value of the asset. Having the Remand Order discussed above will help the process, and it also helps confirm our decision to move forward in the challenge.

We are aligned with the State of Alaska in this fight. This Final Determination is as detrimental to the State (it is a State asset) as it is to PLP. The State is currently attempting to present its contest to the U.S. Supreme Court, which is a potential forum for a dispute between a State and the federal government. Procedurally, the State needs permission *from* the Court to file its case *with* the Court, and we expect to hear no sooner than mid-October whether the Court will accept the case.

The State has contractual issues (breaches) by the EPA that PLP does not. In its motion to the Supreme Court, the State has alleged that the EPA's veto breaches the Cook Inlet Land Exchange Agreement (a contractual breach), which is how the State came to own the Kaktuli, Talarik and Mulchatna watersheds.

By contrast, Pebble's issues are mainly ones of statutory authority – Does the EPA have the right to veto any mineral development across 309 square miles?; Does the EPA have the authority to do that on land that was traded to Alaska specifically for mineral development?; Does the EPA have the authority to do that without accounting for the vast value to the country that it is destroying?; and Did the EPA adhere to the established regulations and protocols of the CWA in promulgating the Final Determination?

So, we come to the decision of whether we should challenge the EPA in court. We believe we should. This is a necessary step to preserve the value of the asset and it is a challenge that we believe has strong prospects of success. The EPA's rationalizations are, on many issues, inconsistent with the reasoning of USACE, the agency that engaged most extensively with the Project – and especially with the reasoning in the Remand Order that we won through our administrative appeal. The EPA issued, effectively, a wholesale veto on mineral development throughout several watersheds, without regard to the value lost to the United States and to Alaska. The EPA did not follow its own regulations and protocols for making the decision. Furthermore, it ignored the instruction from Congress, when the federal government traded this land to Alaska, that the purpose was to enable development of the mineral resources.

As we began planning for the possible legal challenge, we considered multiple law firms to do the work, and we negotiated vigorously to manage the cost of the litigation. We are coordinating closely with the State of Alaska, and we will take our next step when we learn whether the Supreme Court accepts the State's case.

Sackett Decision

In May of this year, the U.S. Supreme Court issued its decision in the case of *Sackett v. EPA*, which has been winding its way through the judicial system for about 14 years. We had been closely following the case as it had potentially significant implications for PLP. While it is not a mining/mineral resource case, it does strike at the heart of key permitting issue: What are considered to be Waters of the U.S. ("WOTUS") triggering permit requirements under the CWA?

The Supreme Court's decision re-wrote the definition of WOTUS. The EPA had expansively interpreted that concept over the years, eventually covering wetlands, and/or water sources (i.e., artesian springs, creeks or streams), and just about anything that flowed into a river, lake, or ocean, whether those flows were intermittent or continuous, surface or subsurface (even ditches). Furthermore, the EPA did not limit its interpretation to just sources that *flow*; it considered a wet area to be within its authority if the area has a "significant nexus" with a river or lake. It got so extended that the EPA and USACE came up with a resource labeled "Jurisdictional Wetlands," which include lands that don't appear to be wetlands, many of which flow intermittently depending on snow melt or rainfall.

The Supreme Court has now clarified that WOTUS means waters (and wetlands) that have continuous surface flow into truly navigable waters. This outcome significantly reduces the scope of EPA's (and USACE's) authority under the CWA. The EPA has just issued an amendment to its regulations based on the *Sackett* decision, and whole categories of its purported authority have been stricken.

The *Sackett* ruling could be quite important for Pebble in terms of the degree to which the Proposed Project is exposed to CWA consideration and thus the need for a 404 permit. That is not to say that the Project will be exempt, however it would reduce the quantum of 'Jurisdictional Wetlands' in the Pebble Deposit area. Historically, given the definition, the Pebble area has been determined to be nearly entirely Jurisdictional Wetlands. As such, to date we have spent approximately \$200 million to create an extensive environmental baseline database; participated in the CWA 404 permitting process between December 2017 and November 2020 at a further cost of approximately \$75 million; and incurred historical litigation costs (during 2014 to 2017) of nearly \$25 million; and, lastly, spent from 2012 to 2020 preparing for and completing the permitting process. All of this to say we have been, and are, prepared for any eventuality given the Remand Order, the EPA Final Determination and the *Sackett* decision's implications on the definition of WOTUS.

We anticipate that the effect of *Sackett* will be to reduce the amount of jurisdictional "water" affected by the Pebble Project.

In order to determine a way forward, we need to know what aspects of the Pebble lands and proposed development will still be under the jurisdiction of the CWA and what will not. Needless to say, we need this knowledge for our statutory authority challenge and so does the State.

We have retained a reputable expert consulting firm with a significant presence in Alaska, and we value their work to assess the impact from Sackett. If possible, we will consider altering the development plan to take some aspects of the development out of the CWA.

These costs from the hydrological firm, as well as additional legal time dealing with the SCOTUS ruling, dealing with the State Attorney General's office and outside legal counsel have all been additive to our expenditures, and were never part of the original 2023 budgets, but will be an important part of our response to the upcoming EPA/USACE actions.

Summary

It is conceivable that with the successful remand decision, the frailty of the EPA's Final Determination and the SCOTUS ruling in favour of Sackett and the new resulting WOTUS interpretation, Pebble has a better chance now than over the past several years, of seeing positive momentum related to a potential near term permit decision. Based on recent discussions with other affected peers, this seems to be a common perception.

I would venture that of all the major copper projects in the U.S., Pebble is in the best shape.

/s/ Ron Thiessen
Ron Thiessen
Chief Executive Officer

Forward Looking Information and other Cautionary Factors

This document includes certain statements that may be deemed "forward-looking statements" under the United States Private Securities Litigation Reform Act of 1995 and under applicable provisions of Canadian provincial securities laws. All statements in this presentation, other than statements of historical facts, which address permitting, development and production for the Pebble Project are forward-looking statements. These include statements regarding (i) the mine plan for the Pebble Project, (ii) the outcome of the USACE remand and ability to successfully appeal the negative Record of Decision and secure the issuance of a positive Record of Decision by the USACE and the ability of the Pebble Project to secure all required federal and state permits, (iii) the status/merit of the EPA Final Determination and the actions of the EPA with respect to its Final Determination with respect to the Pebble Project; and (iv) exploration potential of the Pebble Project. Although NDM believes the expectations expressed in these forward-looking statements are based on reasonable assumptions, such statements should not be in any way be construed as guarantees that the Pebble Project will secure all required government permits, establish the commercial feasibility of the Pebble Project, achieve the required financing or develop the Pebble Project.

Forward-looking statements are necessarily based upon a number of factors and assumptions that, while considered reasonable by NDM as of the date of such statements, are inherently subject to significant business, economic and competitive uncertainties and contingencies.

Assumptions used by NDM to develop forward-looking statements include the assumptions that (i) the Pebble Project will obtain all required environmental and other permits and all land use and other licenses without undue delay, (ii) any feasibility studies prepared for the development of the Pebble Project will be positive, (iii) NDM's estimates of mineral resources will not change and NDM will be successful in converting mineral resources to mineral reserves, (iv) NDM will be able to establish the commercial feasibility of the Pebble Project, (v) NDM will be able to secure the financing required to develop the Pebble Project, and (vi) the EPA's Final Determination will ultimately not be successful in restricting or prohibiting development of the Pebble Project.

The likelihood of future mining at the Pebble Project is subject to a large number of risks and will require achievement of a number of technical, economic and legal objectives, including (i) the current mine plan may not reflect the ultimate mine plan for the Pebble Project, (ii) obtaining necessary mining and construction permits, licenses and approvals without undue delay, including without delay due to third party opposition or changes in government policies, (iii) finalization of the mine plan for the Pebble Project, (iv) the completion of feasibility studies demonstrating that any Pebble Project mineral resources that can be economically mined, (v) completion of all necessary engineering for mining and processing facilities, (vi) the ability of NDM to secure a partner for the development of the Pebble Project, and (vii) receipt by NDM of significant additional financing, to fund these objectives as well as funding mine construction. NDM is also subject to the specific risks inherent in the mining business as well as general economic and business conditions. Investors should also consider the risk factors identified in NDM's Annual Information Form for the year ended December 31, 2022, as filed on SEDAR+ (www.sedarplus.ca) and included in the Company's annual report on Form 40-F filed by the Company with the SEC on EDGAR (www.sec.gov), as well as the risk factors set out in the Company's subsequent public continuous disclosure filings available on SEDAR+ and EDGAR.

The National Environment Policy Act Environmental Impact Statement process requires a comprehensive "alternatives assessment" be undertaken to consider a broad range of development alternatives, and therefore the final project design and operating parameters for the Pebble Project and associated infrastructure may vary significantly from that currently contemplated. As a result, the Company will continue to consider various development options and no final project design has been selected at this time.

For more information on the Company, you should review the Company's filings with the United States Securities and Exchange Commission at www.sec.gov and its home jurisdiction filings that are available at www.sedarplus.ca.