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April 26, 2019

SEC Office of the Whistleblower

100 F Street NE
Mail Stop 5631
Washington, DC 20549

Dear Sir / Madam,

RE: Northern Dynasty Minerals Ltd. (TSX: NDM / NYSE AMERICAN: NAK)

I bring this request to investigate on behalf of Earthworks, an organization that works with communities and grassroots groups to reform government policies, improve corporate practices, influence investment decisions and encourage responsible materials sourcing and consumption.¹

The following is a request for a compliance investigation of Northern Dynasty Minerals Ltd., for

1. Misrepresentation of the amount of the mineral resource available for the Pebble Mine project.
2. Misrepresentation using overly promotional language, such as “world class” and “generational opportunity”.
3. Lack of disclosure concerning Alaska native corporation’s ownership of subsurface rights along the proposed gas pipeline, and the native corporation’s refusal to grant access to the pipeline.
4. Lack of disclosure concerning Alaska Native opposition and failure to secure social license.

The Pebble Mine is the only significant asset of NDM, so any misrepresentation or failure to disclose with respect to the mine will be material information in relation to NDM. The investigation should

¹ Earthworks website: <https://earthworks.org/about/our-mission/>

encompass violations of Regulation S-K as well as Rule 408 of the *Securities Act of 1933* and Rule 12b-20 of the *Securities Exchange Act of 1934*.

1. Misrepresentation of the extent of the mineral resource available for the Pebble Mine project

NDM's statements

"Today, the Pebble deposit comprises some 6.4 billion tonnes of Measured and Indicated plus an additional 4.5 billion tonnes of Inferred Mineral Resources and there is potential for expansion."²

This number, approximately 11 billion tonnes in total (12.125 tons) is mentioned in a number of publications aimed at investors including the April 2019 Factsheet;³ the April 2019 Corporate Presentation, on slides 5 and 34;⁴ the MD&A posted on April 1, 2019;⁵ and the Annual Information Form posted on April 1, 2019.⁶

The Problem

There are two problems with this representation.

- (i) The company is currently getting permits for a much smaller mine that will yield only 1.17 billion tonnes (indicated, measured and inferred).

This is only about 11% of the mineral resource. The number 1.17 billion tonnes or 1.3 billion tons, does not appear anywhere in its information directed at investors, in the disclosures filed on SEDAR, nor could we find it anywhere else on the NDM web site.⁷

- (ii) The closure plan would prohibit any future open pit mining, and possibly underground mining, for the foreseeable future.

² NDM April 2019 Factsheet, p.2

online: https://www.northerndynastyminerals.com/site/assets/files/4590/ndm_april_2019_final_factsheet.pdf

³ NDM April 2019 Factsheet, p.2

online: https://www.northerndynastyminerals.com/site/assets/files/4590/ndm_april_2019_final_factsheet.pdf

⁴ Corporate Presentation, April 2019

online: https://www.northerndynastyminerals.com/site/assets/files/4617/northern_dynasty_april_2019-presentation.pdf

⁵ MD &A for December 31, 2018 posted on SEDAR on April 1, 2019, p. 4

⁶ 2018 Annual Information Form, posted on SEDAR on March 29, 2019, p. 25 Table 3

⁷ The only place this number can be found is in the Project Description filed by Northern Dynasty to the U.S. Army Corps of Engineers in December 2018 and in the Draft Environmental Impact Assessment released by the U.S. Army Corps of Engineers in February 2019. See *Pebble Partnership: The Pebble Project: Project Description, December 2018*, p. 12, available for download at the US Army Corps of Engineers site. For Draft Environmental Impact Statement, February 2019, p. 4.3-1p see the US Army Corps of Engineers, site:

<https://www.pebbleprojecteis.com/documents/background>. The Draft Environmental Impact Statement can also be found at <https://pebblepartnership.com>

The project plan submitted to the U.S. Army Corps of Engineers provides only one closure plan – backfill of the open pit with 150 million tonnes of tailings and 45 million tonnes of potentially acid generating waste rock, and flooding the pit with water.⁸ After digging out the estimated 1.17 billion tonnes of minerals, and then filling the pit with waste, the remaining 89% of the 11 billion ton mineral resource would become “sterilized” – i.e. economically and/or technically unfeasible for mining. As explained below, for further mining, the waste would have to be removed from the pit and placed elsewhere. As well, underground mining could be impossible because of the migration of the tailings from the pit to the underground operations.

Attached is an opinion from David M. Chambers, Ph.D., P. Geop. that explains that:

(i) Before any future mining could take place, the pit would need to be drained of any accumulated water and the backfilled tailings and waste rock would need to be removed. In order to remove the waste material from the open pit to resume mining, I estimate the cost would be at least \$100 million, and quite possible several times that amount.

(ii) Backfilling the pit could also prevent mining of the underground mineral resource. When the backfilled waste is saturated with water, it will flow like a liquid. If there are any fractures that could connect the pit with the underground workings, the underground miners are at risk. This is exactly what happened at the Mufulira Mine in Zambia, killing 89 miners. Since this accident in 1970, mine engineers have been reluctant to mine under tailings because the fracture systems that would allow the migration of tailings to the underground workings are difficult to detect.

We could find no mention of the smaller volume, 1.17 billion tonnes (1.3 billion tons), anywhere in NDM materials prepared for investors or in any of its disclosures posted on SEDAR, while there are numerous references to 11 billion tonnes throughout those documents. In other words, the company gives the impression that the project will access almost 11 billion tonnes of minerals, but in fact, it is only getting permits for 1.7 billion tonnes and its closure plan will make it economically and/or technically unfeasible to access the remaining 89% of the mineral resource. NDM has omitted to state a material fact which is necessary to make the statements about its Pebble deposit not misleading.

2. Overly promotional language

NDM's statements

“The Pebble deposit is one of the greatest stores of mineral wealth ever discovered, and the world’s largest undeveloped copper and gold resource. The Pebble Project’s tonnes, grade, metallurgy and geometry have the potential to support a modern, long-life mine.”⁹

NDM uses similar extravagant language throughout its promotional material:

⁸ See Draft Environmental Impact Assessment, February 2019, p. 4.17-8 available at US Army Corps of Engineers <https://www.pebbleprojecteis.com/>

⁹ NDM website: “Project Overview” online: <https://www.northerndynastyminerals.com/pebble-project/project-overview/>

In its Corporate Presentation, April 2019:¹⁰

slide 3 “World Class Resource”

slide 4 “World Class Resource”

slide 5 “A World Class Mineral Resource”

slide 21 “A generational opportunity”

slide 30 “Among the world’s greatest stores of mineral wealth”

In its Factsheet, April 2019:¹¹

p.1 “A Generational Opportunity”

p. 3 “A World Class Resource”

In its press release of April 3, 2019:¹²

“[Pebble Limited Partnership] is the proponent of the Pebble Project, an initiative to develop one of the world's most important mineral resources.”

The problem

There are two problems with this language.

(i) Extravagant claims are not supported by preliminary economic assessment, pre-feasibility study or feasibility study.

In its Annual Information Form for 2018, released on March 29, 2019, NDM states that “.... the Pebble Project is no longer an advanced property for the purposes of NI 43-101, as the potential economic viability of the Pebble Project is not currently supported by a preliminary economic assessment, pre-feasibility study or feasibility study.”¹³ In other words the project is not yet able to show the basis for viability of the smaller 1.17 billion tonne project, let alone for the full 11 billion tonne project it advertises.

(ii) Extravagant claims based on a mineral resource of 11 billion tonnes, not 1.7 billion tonnes.

As indicated above, the extravagant language is associated with the claims of access to 11 billion tonnes, whereas the actual application is for 1.7 billion tonnes, and the proposed closure technology will sterilize the remainder of the resource.

¹⁰ Corporate Presentation, April 2019

online: https://www.northerndynastyminerals.com/site/assets/files/4617/northern_dynasty_april_2019-presentation.pdf

¹¹ NDM April 2019 Factsheet, online:

https://www.northerndynastyminerals.com/site/assets/files/4590/ndm_april_2019_final_factsheet.pdf

¹² NDM Press Release, online: https://www.northerndynastyminerals.com/site/assets/files/4753/2019-04-03_nr_rev_ndm_fw4j6xqx.pdf

¹³ Annual Information Form for 2018, released on March 29, 2019, p.15

A project that does not have support for its potential economic viability, and that bases its claims on accessibility to ten times the volume of mineral resources it is actually seeking permits for, is would seem to be misrepresenting the opportunity with unjustified promotional language. Such promotional language is an issue of concern for the Canadian Securities Administrators which has published staff notices on “Problematic Promotional Activities by Issuers”¹⁴ and a “Review of Website Investor Presentations by Mining Issuers” where terms such as “world class” were specifically flagged as problematic.¹⁵

3. Lack of disclosure concerning Alaska native corporation’s ownership of subsurface rights along the proposed gas pipeline, and the native corporation’s refusal to grant access to the pipeline.

NDM’s statements

“In November 2018, the Pebble Partnership finalized a Right-of-Way Agreement with Alaska Peninsula Corporation (“APC”), securing the right to use defined portions of APC lands for the construction and operation of transportation infrastructure associated with the Pebble Project.”¹⁶

The problem

The statements by NDM give the impression that it has already secured agreements for its transportation infrastructure. However, the mine plan, currently under consideration by the U.S. Army Corps, includes a subsurface natural gas pipeline that would require subsurface rights for completion.¹⁷

NDM has not disclosed that it has not secured rights for its proposed gas pipeline.

- (i) The Bristol Bay Native Corporation owns the subsurface rights along a portion of the proposed gas pipeline

BBNC is the largest private land holder in the region, including ownership of roughly 3 million acres of subsurface estate.¹⁸ The U.S. Army Corps of Engineers has expressly stated BBNC’s land ownership in relationship to the gas pipeline in the Pebble DEIS:

“The natural gas pipeline corridor would cross subsurface lands owned by Cook Inlet Region, Inc. and Bristol Bay Native Corporation. Uses of these surface and subsurface lands privately owned by Alaska Native corporations are subject to the approval of the landowners.”¹⁹

¹⁴ CAS Staff Notice 51-356, “Notice of Problematic Promotional Activities by Issuers” (https://www.bcsc.bc.ca/Securities_Law/Policies/Policy5/PDF/51-356_CSA_Staff_Notice__November_29__2018/)

¹⁵ CSA Staff Notice 43-309, “Review of Website Investor Presentations by Mining Issuers” (https://www.bcsc.bc.ca/Securities_Law/Policies/Policy4/PDF/43-309_CSA_Staff_Notice__April_9__2015/)

¹⁶ MD &A for December 31, 2018 posted on SEDAR on April 1, 2019, p. 7.

¹⁷ The Pebble Partnership: Pebble Project, Project Description 2018. p. 48 – 53, online: <https://pebbleprojecteis.com/files/5ebfa789-8763-4f06-970d-65aeb20320a3>

¹⁸ Bristol Bay Native Corporation, “Land”, online: <https://www.bbnc.net/our-corporation/land/land-policy/>

¹⁹ see Draft Environmental Impact Assessment, February 2019, p. 4.2-4 available at US Army Corps of Engineers <https://www.pebbleprojecteis.com/>

(ii) BBNC has notified NDM of its intent to refuse access to these subsurface lands for the purposes of a pipeline.

In order to place a below surface natural gas pipeline NDM needs to have the cooperation of the BBNC. However, BBNC has stated that it does not have any intention of giving NDM access to the subsurface, in a letter sent to the Pebble Limited Partnership (a subsidiary of Northern Dynasty) on December 7, 2018:

“There are potential corridors along the north side, south side and around the west end of Lake Iliamna. What all these routes have in common is that they traverse Alaska Native corporation split-estate lands where BBNC is the subsurface landowner. [Pebble Limited Partnership] does not have BBNC’s permission to trespass our subsurface or to utilize any of our subsurface resources.”²⁰

This letter has not been disclosed by NDM.

The opposition of the BBNC should be disclosed on the basis that failure to secure access to the subsurface will present barriers to the construction of the pipeline.

5. Lack of disclosure of Alaska Native opposition to the project and failure to secure social license for the mine.

There is broad opposition to the proposed project by Alaska Native interests within Bristol Bay. The Bristol Bay Native Corporation opposes the mine in general because of its impact on the way of life of Indigenous people. This opposition is stated on its website:

“Development of the Pebble Mine would threaten the Bristol Bay fishery and the world-class salmon run which has served as the heart of our subsistence lifestyle, supporting our people for generations. BBNC’s firm opposition to Pebble is consistent with the values of cultural and economic sustainability to which we hold ourselves.” – BBNC Chairman Joe Chythlook

“BBNC does not otherwise oppose mining development. Pebble Mine is simply different. In any configuration, the mine is too big and will be located in too important of a location. It poses unacceptable risks to the salmon resource and consequently, the subsistence lifestyle and economic interests of our shareholders.” – Jason Metrokin, President & CEO, BBNC²¹

The United Tribes of Bristol Bay (UTBB) is a tribal consortium of Bristol Bay tribal governments.²² UTBB’s member tribes represent fifteen of the Yup’ik, Dena’ina, and Alutiq indigenous communities in Bristol Bay – over half the population of the region.²³ The Bristol Bay Native Association (BBNA) comprises 31 tribes organized as a non-profit corporation to provide a social, educational, and economic services to

²⁰ Bristol Bay Native Corporation, “Letter to Tom Collier”, December 7, 2018, online: <https://www.bbnc.net/wp-content/uploads/2019/01/BBNC-Letter-to-PLP-12.7.18.pdf>

²¹ “Pebble Mine” <https://www.bbnc.net/our-corporation/pebble-mine/>

²² United Tribes of Bristol Bay, <http://utbb.org/>

²³ United Tribes of Bristol Bay, “About us”, <http://utbb.org/about-us/>

the Native People of the Bristol Bay region.²⁴ UTBB and BBNA have expressly stated their opposition to Pebble in full-page advertisements and elsewhere:

“We will never relent in our fight against the Pebble Mine”²⁵

“A Pebble mine, big or small, cannot co-exist with our fishery. Pebble will always be the wrong mine, in the wrong place. And the people of Bristol Bay will never trade our fish for gold.”²⁶ –
Alannah Hurley, Executive Director of UTBB

NDM does not mention Indigenous opposition in the April 2019 Factsheet;²⁷ the April 2019 Corporate Presentation;²⁸ the MD&A posted on April 1, 2019;²⁹ nor in the Annual Information Form posted on April 1, 2019.³⁰

The lack of social license affects share value and should be disclosed, especially when it concerns Indigenous peoples. Numerous international industry standards require consent of Indigenous people for extractive projects, including the Performance Standards of the International Finance Corporation³¹ and the Equator Principles,³² adopted by the world’s major financial institutions. A recent case on point is the continued suspension of the second largest silver mine in the world for failure to consult the Indigenous Xinca people in Guatemala. The mining company had not disclosed widespread Indigenous opposition to the mine before the mine was suspended by court order in July 2017 for lack of consultation with Indigenous people. The mine, owned by Tahoe Resources, traded at about \$25 US at its height in 2014, but sold to Pan American Silver for \$3.40 US in 2019, with still no date for reopening the project.

²⁴ Bristol Bay Native Association <https://www.bbna.com/>

²⁵ From full page advertisement against the mine in the *Vancouver Sun*, <https://earthworks.org/blog/when-it-comes-to-pebble-mine-no-means-no/>

²⁶ Anchorage Daily News, “People of Bristol Bay will never trade fish for gold”
<https://www.adn.com/opinions/2017/06/22/people-of-bristol-bay-will-never-trade-fish-for-gold/>

²⁷ NDM April 2019 Factsheet
online: https://www.northerndynastyminerals.com/site/assets/files/4590/ndm_april_2019_final_factsheet.pdf

²⁸ Corporate Presentation, April 2019
online: https://www.northerndynastyminerals.com/site/assets/files/4617/northern_dynasty_april_2019-presentation.pdf

²⁹ MD &A for December 31, 2018 posted on SEDAR on April 1, 2019

³⁰ 2018 Annual Information Form, posted on SEDAR on March 29, 2019

³¹ International Finance Corporation, Performance Standard 7 (Indigenous People), paragraph 2, sets out the objectives for conduct in relation to Indigenous peoples:

“To ensure the Free, Prior, and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples when the circumstances described in this Performance Standard are present.”

online:

https://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES

³² Ninety-six of the most important financial institutions in the world subscribe to the Equator Principles. Principle 5 (Stakeholder Engagement) adopts the IFC Performance Standards:

“Projects with adverse impacts on indigenous people will require their Free Prior Informed Consent”

online: https://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf

The opposition of the Alaska Native interests in Bristol Bay should be disclosed, then, on the basis that the lack of consent from Indigenous people can have a detrimental impact on the price of shares.

If you would like clarification or have any questions, please feel free to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Shin Imai". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Shin Imai
Attorney