TESTIMONY OF
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EPA REGION 10
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
COMMITTEE ON SCIENCE, SPACE AND TECHNOLOGY
UNITED STATES HOUSE OF REPRESENTATIVES

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Good morning Chairman Smith, Ranking Member Johnson, and members of the Committee. My name is Dennis McLerran. I am EPA's Regional Administrator for Region 10, which includes the states of Washington, Oregon, Idaho, and Alaska, and the region's 271 tribal governments.

In May of 2010, several federally recognized tribes from the Bristol Bay watershed in Alaska petitioned EPA to use its Clean Water Act Section 404(c) authority to restrict the discharge of dredged or fill material from the proposed Pebble Mine in the watershed.[1] EPA also received similar requests from a diverse group of stakeholders, while others requested that EPA refrain from taking action. The groups that supported EPA's use of 404(c) were deeply concerned that the largest open pit mine in North America could potentially be opened within one of the Western hemisphere's most productive and vulnerable watersheds. The economic and cultural value of the Bristol Bay watershed is immense: it supports about 14,000 part-time and full-time jobs, and generates an estimated $480 million in direct economic expenditures and sales. In addition, for over 4,000 years, it has served as a significant subsistence fishery to Alaska Native people, who may be among the last remaining salmon-based, subsistence cultures in the world. For these reasons, EPA took very seriously these local concerns raised about a mining project

[1] Proposed by the Pebble Limited Partnership, which is owned by the Canadian firm, Northern Dynasty, Limited.

that had the potential for significant environmental harm to this valuable and vulnerable ecosystem.

EPA staff and management deliberated for months about how to respond to these requests, and we ultimately decided not to initiate EPA's Section 404(c) authority at that time because we wanted to develop a solid understanding of the watershed, and the potential risks of proposed mining activities, before deciding whether or not to exercise our authorities regarding the watershed. Instead, on February 7, 2011, consistent with Clean Water Act section 104, I announced EPA's intent to conduct an ecological risk assessment, the purpose of which was to:

- characterize the biological and mineral resources of the Bristol Bay watershed;
- increase understanding of the potential risks of large-scale mining on the region's fish resources; and
- inform future decisions by government agencies and others related to protecting and maintaining the chemical, physical, and biological integrity of the watershed.

To help us collect, evaluate, and summarize information about the Bristol Bay watershed -- and to assess potential risks to salmon and other resources from large-scale mining -- EPA brought in scientists from our Office of Research and Development, the Office of Water, and other federal agencies, including the U.S Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the U.S. Geological Survey.

Consistent with EPA's authorities under the Clean Water Act and relevant guidelines and procedures, EPA committed to a public process to provide an opportunity to engage with all interested stakeholders. For example, EPA consulted, on a government-to-government basis,

with 20 tribes from the watershed, most of whom supported EPA's proposed assessment. EPA also formed the Intergovernmental Technical Team to get individual input from other federal agencies, the State of Alaska, and tribal governments in the Bristol Bay watershed. EPA also released two drafts of the assessment for public comment. In total, eight public comment meetings were attended by approximately 2,000 people, and more than 1.1 million comments were submitted. The Pebble Limited Partnership submitted over 1,300 pages of written comments on the first draft of the assessment and over 450 pages on the second draft, and participated in public meetings. EPA staff, including EPA's Administrator and Regional Administrator, met with Pebble Executives, State officials, and other interested organizations to solicit their input, discuss options, and exchange information regarding review of the proposed Pebble Mine.

In addition to creating and maintaining an open and transparent process, EPA also sought to guarantee that the assessment incorporated high quality data and that all findings were scientifically sound. In developing the Assessment, EPA followed all data quality and peer review requirements for a Highly Influential Scientific Assessment[2] as outlined by the White House Office of Management and Budget. A recent independent review by EPA's Office of Inspector General confirmed that the Agency followed all applicable procedures and policies related to scientific conduct and scientific external peer review. With respect to peer review, an extensive, external peer review was conducted by 12 independent experts in mine engineering, salmon fisheries biology, aquatic ecology, aquatic toxicology, hydrology, wildlife ecology, and

[2] A Highly Influential Scientific Assessment ("HISA") is defined by OMB as a product that an agency determines could have a "potential impact of more than $500 million in any year"; "is novel, controversial, or precedent-setting"; or "has significant interagency interest."

Alaska Native cultures. At a public meeting in August of 2012, Pebble and other stakeholders, provided feedback directly to the peer reviewers prior to their formal review.

EPA scientists used the results of that peer review, and the public comments, to improve the draft assessment. EPA then released a second public draft to the same 12 peer reviewers so they could evaluate whether EPA had adequately addressed the concerns and questions raised. EPA evaluated the additional comments from peer reviewers and members of the public, and released the final assessment in January of 2014, three years after beginning the assessment.

The Bristol Bay Assessment found that the Bristol Bay watershed, while enormously productive ecologically, is also deeply vulnerable to the challenges posed by the construction and operation of a large open pit mining operation. The Assessment concludes that large-scale mining poses risks to salmon and the tribal communities that have depended on them for thousands of years. Depending on the size of the mine, EPA estimates that from 24 to 94 miles of salmon-supporting streams and 1,300 to 5,350 acres of wetlands, ponds, and lakes would be destroyed. Extensive quantities of mine waste, leachates, and wastewater would have to be collected, stored, treated and managed during mining operations, and long after mining concludes. In addition to these impacts as part of routine operations, our assessment identified risks from potential accidents and failures. Short and long-term water collection and treatment failures are possible. Consistent with the recent record of petroleum pipelines and of similar mines operating in North and South America, pipeline failures along the transportation corridor could release toxic copper concentrate or diesel fuel into salmon-supporting streams or wetlands. Additionally, the failure

of a tailings storage facility dam (such as the failure of the Mt. Polly Dam in British Columbia in 2014) would result in catastrophic effects on fishery resources.

Section 404(c) of the Clean Water Act specifically authorizes EPA to prohibit the specification of, or deny or restrict the use of, any defined area as a disposal site for dredged or fill material "whenever" the Administrator determines that such disposal would cause "unacceptable adverse effects" on certain aquatic resources. EPA's 44-year history of judicious use of its Section 404(c) authority has and continues to ensure predictability and certainty for the business community while at the same time providing a critical safeguard for the nation's most valuable and vulnerable water resources. As I understand it, EPA has taken final action under its 404(c) authority only 13 times out of the millions of Corps authorizations for regulated activities in jurisdictional waters under Section 404 since the enactment of the CWA in 1972.

On February 28, 2014, I sent letters to the U.S. Army Corps of Engineers, the State of Alaska, and the Pebble Limited Partnership, initiating the Section 404(c) process to review the potential adverse environmental effects of the discharge of dredged or fill material associated with mining the Pebble deposit. After this review and consistent with EPA's implementing regulations, I subsequently issued a Proposed Determination on July 21, 2014 that proposed to restrict the discharge of fill material into certain waters of the U.S. associated with the Pebble Deposit. This proposal is not a "veto"; it is not a final action, and the Proposed Determination does not prevent Pebble Limited Partnership from filing any permit applications, including a Clean Water Act section 404 permit application. Rather, this proposed determination addresses where, and what levels of impacts from the discharge of dredged or fill material related to mining the Pebble

deposit could result in unacceptable adverse effects on important water resources near the deposit. The EPA has consistently demonstrated its willingness to collaborate with federal and state regulatory agencies and mining companies to ensure that projects can move forward in ways that protect water quality and the health of communities.

In conclusion, EPA is relying on strong science to support our review under the Clean Water Act. I am extremely proud of the work the staff at EPA have done in compiling and analyzing the science, in conducting an inclusive, open and transparent process, and in exhibiting a dignified professionalism throughout our work in the Bristol Bay watershed.

Thank you, Chairman Smith, Ranking Member Johnson, and members of the Committee, for the opportunity to appear before you today. I look forward to answering your questions.