

TESTIMONY OF TOM COLLIER
CEO OF THE PEBBLE PARTNERSHIP
BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND THE
ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
OCTOBER 23, 2019
“THE PEBBLE MINE PROJECT: PROCESS AND POTENTIAL
IMPACTS”

Good morning. Mr. Chairman and members of the Subcommittee, my name is Tom Collier, and I am the CEO of the Pebble Limited Partnership, based in Anchorage, Alaska. I'm grateful that you included me as a witness in this important hearing.

For over 15 years, a battle has been fought over whether building a copper mine over 200 river miles from Bristol Bay in Alaska would significantly damage the salmon fishery in that region.

The debate is now over.

In February of this year, the U.S. Army Corps of Engineers (“the Corps”) issued its draft Environmental Impact Statement (DEIS) for the proposed Pebble Mine and unequivocally concluded that the project will not harm the Bristol Bay fishery.

We were confident that the Corps would reach this conclusion. Why? This conclusion was the result of several factors: First, the citizens of Alaska voiced concerns over the Pebble Project, and we have listened to them. Second, we have taken several steps to de-risk our mining plans. And finally, the Corps has led a process that to date has placed science over politics. It is certainly not because, as some have suggested, the Trump Administration orchestrated any sort of political fix. There is not a shred of evidence showing any inappropriate conduct in this process, which stands in stark contrast to what was uncovered from the EPA of the previous administration.

I would like to talk about what the Pebble Partnership has done to improve its plans and dispel some of the myths associated with the Corps' work to date. Pebble has planned a smaller, smarter mine. In response to concerns voiced by various stakeholders, we have reduced the mine size to a footprint that even EPA's rigid Proposed Determination would nearly have allowed to proceed through the NEPA permitting process. The Proposed Determination was based on three hypothetical mining plans of differing sizes and stated that EPA would not object to an

application being considered for permitting a mine smaller than the smallest hypothetical EPA mine. Pebble's new mine, at an equivalent footprint of just 5.2 square miles, is 75% smaller than the largest mine in the Proposed Determination, 48% smaller than the medium mine, and slightly larger than the smallest mine evaluated. A significant factor in reducing Pebble's footprint is the elimination of permanent waste rock storage on the surface, which further substantially reduces post-closure water management requirements.

In response to public concerns, Pebble has also committed to using *zero cyanide*, thus there will be no secondary gold recovery. To be clear, cyanide is used safely at industrial facilities and mines throughout the world, including in Alaska. But Pebble has heard the community's concerns and has completely eliminated spill and post-closure cyanide risks. This means that Pebble is walking away from 15% of the gold that, at this time, cannot be recovered without using cyanide.

In addition, Pebble has incorporated a drained storage method for its bulk tailings, eliminating concerns that a disaster such as that which occurred at Mt. Polley could happen here. Some Pebble opponents have falsely claimed that the firm designing Pebble's tailings storage facility, Knight Piesold, also designed the failed TSF for Mt. Polley. In fact, although Knight Piesold designed the original facility, they later left the project, after which the design was radically altered with weaker, steeper slopes used for tailings storage.

The operator at Mt. Polley permitted excessive water storage, far exceeding what Knight Piesold had designed originally. David Chambers of the Center for Science in Public Participation, who has for years opposed Pebble, even admitted that "if the original design had been followed [*i.e.*, Knight Piesold's design], the failure would not have occurred" at Mt. Polley. Pebble's state of the art, "buttressed flow-through embankment" design will minimize water storage, maximize stability, facilitate dry closure, and diminish the need for long-term water treatment.

Pebble has also developed state-of-the-art methods for dealing with potentially acid-generating ("PAG") tailings and waste rock. They will be stored subaqueously, preventing oxidation of potentially reactive materials. They will be stored in a fully lined tailings storage facility. Upon closure, PAG tailings and waste rock will be transferred to the former open pit, and this permanent subaqueous storage further prevents oxidation. There is thus no risk of PAG tailings being released into the environment.

The Pebble Mine will feature an optimized water management strategy with the potential to have a positive impact on some fish habitats. Based on more than 75 years of high-quality hydrological records, Pebble has designed a system with enhanced management capacity to address both extreme climate events and long-term climate variations. The water management system will have multiple, redundant environmental safeguards and will meet the most stringent water quality guidelines.

Pebble will utilize strategic water releases designed to optimize downstream fish habitat conditions. Unlike the scenarios analyzed in the Bristol Bay Watershed Assessment and Proposed Determination, Pebble's permit application calls for no mine facilities in the Upper Talarik Creek or Kvichak River watersheds. Mine development will occur only within two small creeks within the Nushagak River drainage: the North Fork Koktuli and the South Fork Koktuli.

The NFK and SFK produce just 0.08% of Bristol Bay sockeye. The area streams contribute negligible salmon habitat relative to the entire watershed. Habitat availability is not a limiting factor for Bristol Bay sockeye or Chinook.

One of my fellow panelists today, former EPA Regional Administrator Dennis McLerran, has called Pebble's permit application the "camel's nose under the tent," which I suppose means that he believes that Pebble plans on shoehorning in a larger project despite the fact that we have scaled back the footprint in the mine plan currently before the Corps of Engineers. I have several responses.

First, I believe it shows the level of desperation that the Pebble opposition has reached. Think about it: to oppose this permit application, they are forced to argue that it must in fact be far different than what is actually proposed. In other words, they are struggling to find problems with what is currently pending before the Corps.

Pebble has no current plans, in this application or in any other way, for expansion. If expansion did become feasible, new permits would be required. The permit applicant would have to go through the same rigorous procedure that Pebble is now going through. Any concerns with scope or environmental risk can be addressed in that new permitting process. If the Corps grants Pebble's current permit application, nothing in that permit suggests a carte blanche to expand. Any future mining projects in the area would therefore be evaluated on their own merits based on then-existing conditions when and if future applications are submitted to the relevant permitting agencies.

The Corps' EIS and NEPA processes to date have been comprehensive and complied with all statutory requirements. Those calling this process "rushed" are clearly unaware of how these decisions work. Charts 1 and 2 demonstrate that the process has been anything but rushed. In length of comment period and draft EIS itself, the Corps' work here has been thorough, transparent and deliberate, and several major projects went through this same process even faster. For example, as the chart shows, the Pogo, Kensington, and Red Dog Mines, as well as several major oil and gas projects in Alaska, all received major federal permits within about three years.

- **Haile Mine:** the EIS process for the Haile Mine in South Carolina began July 2011, and the FEIS was published less than three years later in June 2014.
- **Pogo Mine:** In August 2000, Teck-Pogo Inc. applied for a Section 404 permit for a proposed underground cut-and-fill gold mine on State of Alaska-owned land in the Goodpaster River Valley. EPA, in close consultation with the USACE, published a Draft EIS in March 2003, then a Final EIS in Sept. 2003 – three years and a month after the application.
- **Kensington Mine:** In 2001, Coeur Mining redefined the scope for its development of an underground gold mine within the Tongass

Public Participation

Alaska DEIS Comment Period (Days)

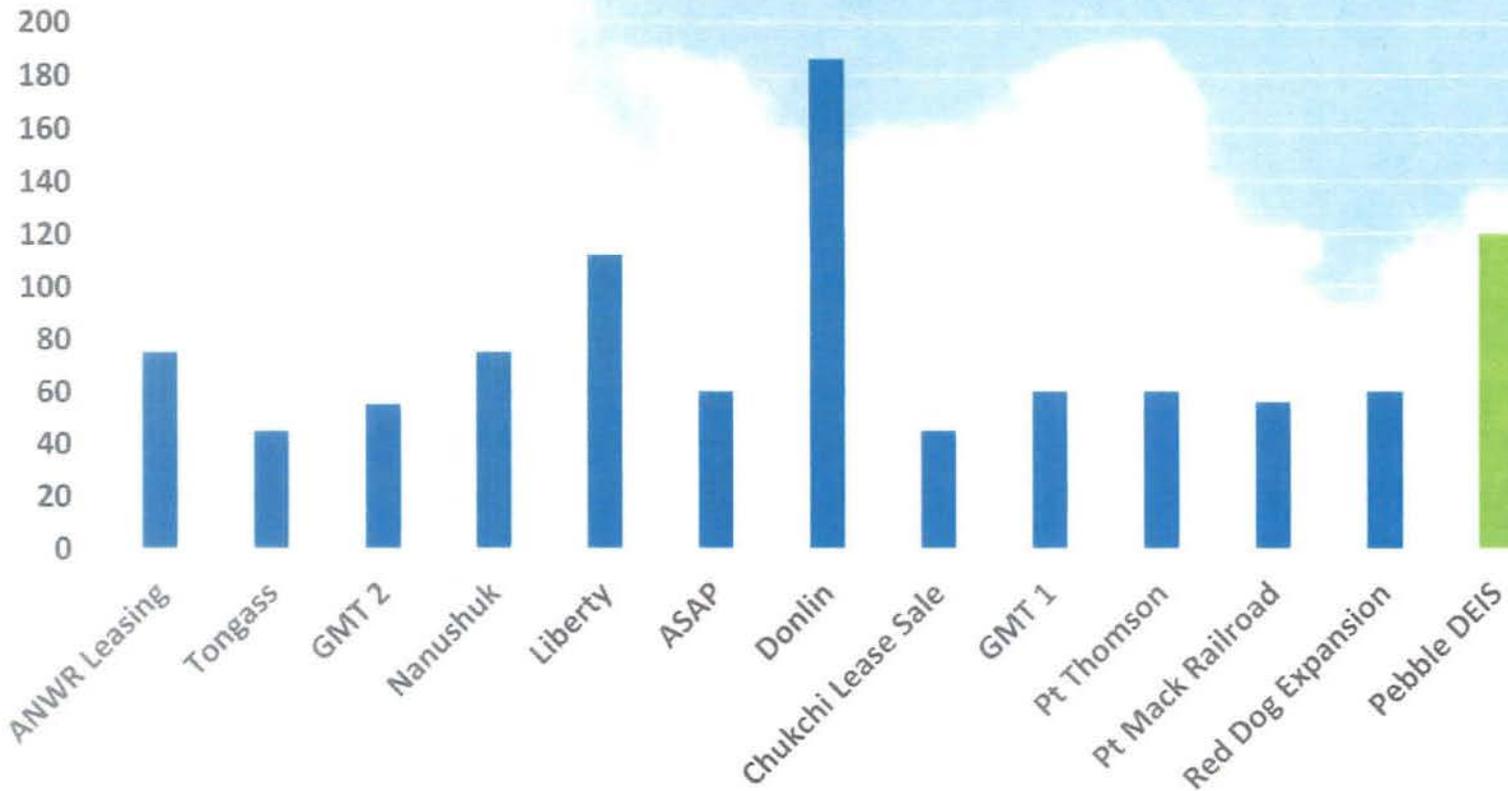


CHART 1

Rushed Process

Alaska NEPA Process (Years)

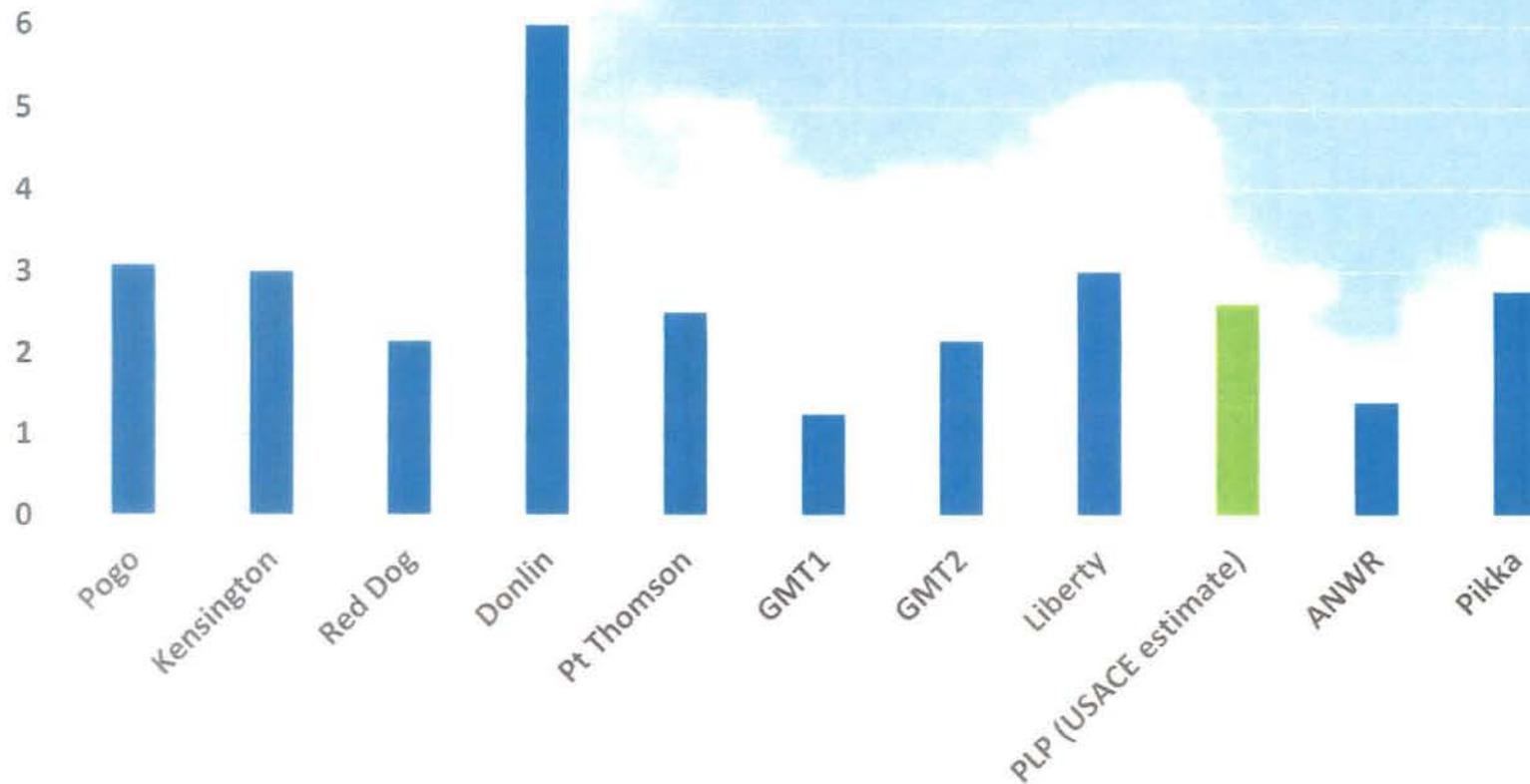


CHART 2

National Forest outside of Juneau. This necessitated a new NEPA review, which was completed three years later in December 2004.

- **Red Dog Mine:** EPA prepared the Supplemental EIS for the expansion of the Red Dog Mine into the Aqqaluk deposit in northwest Alaska. The permitting process started in mid-2007 and the EIS was finished during Fall 2009, taking just over two years. USACE was a cooperating agency.
- **Point Thomson:** The Corps was the lead agency for the EIS for the development of ExxonMobil's Point Thomson oil facility on the North Slope of Alaska. The EIS process began in late 2009 and the Final EIS was issued mid-2012, taking approximately two and a half years.

Furthermore, this is undoubtedly one of the most transparent NEPA processes ever conducted. All documents and supporting information, including any Request for Information, are posted to the EIS website in near real time and accessible to anyone who is interested.

The goal of NEPA has always been to foster better decisions, not merely add unnecessary process. The Corps' actions here show that it is committed to quality decision-making. The Corps is closely coordinating with numerous federal, state, and local agencies, including the State of Alaska and native Alaskan entities. Two Bristol Bay area tribes are cooperating agencies for the EIS, and the Corps' is also engaging in government-to-government consultation with a broad range of tribes in the Bristol Bay and Cook Inlet areas. To date, the Corps consulted with 24 federally recognized tribes.

Criticisms of the contents of the DEIS are similarly off base. First, many Pebble opponents have claimed that the DEIS has ignored several topics, but if they actually reviewed the documents, they would know that is not the case.

- Mitigation
 - Chapter 5 and Appendix M of the DEIS confirm significant mitigation measures were incorporated into Pebble's permit application. More are being included based on input from the DEIS review.
 - The DEIS summarizes 70 different Pebble-proposed mitigation measures.
 - The DEIS includes a draft Compensatory Mitigation Plan.
 - The Final Environmental Impact Statement will have a detailed compensatory mitigation plan with specific mitigation proposals included.

- Climate Change
 - The DEIS provides a detailed description of different long-term climate change models and widely varying predictions of precipitation patterns.
 - The Corps confirmed the reasonableness of Pebble's mine design for foreseeable climate change scenarios.

- Wetlands impacts
 - The DEIS describes the affected environment for wetlands and other waters, which includes vegetated wetlands, ponds, lakes, streams, rivers, and marine and estuarine waters.
 - The DEIS also describes potential environmental consequences from the project on wetlands and other waters.
 - These assessments were based on USGS Hydrologic Unit Code Tenth Level watersheds.
 - The DEIS separately addresses navigable waters and potential impacts related to transportation and navigation.
 - The DEIS summarizes the key issues for wetlands and other waters and the key issues for transportation and navigation.
 - Additionally, the mine site area has some of the most comprehensive wetland mapping ever collected for a mining project in Alaska. This mapping was prepared by independent third-party consultants.

- Fish Populations
 - The DEIS summarizes and tabulates extensive quantitative analyses of fish habitat conditions based on widely accepted flow/habitat modelling methods and supporting intensive physical, chemical, and biological river survey data.
 - There is enough information on fish populations in the record, including that found in Pebble's environmental baseline documents, to allow a final EIS to address any possible request for additional analysis.

- Risks to Commercial and Recreational Fisheries
 - The DEIS relies on extensive scientific data and industry accepted methodologies to provide a robust level of analysis for such concerns.
 - For the assessment of impacts to recreational and commercial fishing, the DEIS covers all river systems hydrologically connected to the project that contribute to the Bristol Bay salmon fishery and to the Cook Inlet saltwater environment.
 - The DEIS's analysis area includes commercial and recreational fisheries, the Alaska Department of Fish & Game commercial registration Area T and Area H, the Cook Inlet Management Area (including associated federal waters) and the ADF&G Statewide Harvest Survey areas S, T, N, and P.
 - Under each of the alternatives (and their variants) proposed for the project, the DEIS examines impacts to commercial fisheries and recreational fisheries resulting from the mine site, transportation corridor, port site, and pipeline route.
 - The DEIS also provides a cumulative impacts analysis on commercial and recreational fisheries, examining issues concerning productivity losses, fragmentation of habitat, changes in wetland types and loss or degradation of ecosystem functions.

- Impacts to Wildlife
 - The DEIS provides a description of the birds, terrestrial mammals, and marine mammals that are known or have the potential to occur in the project area.
 - The DEIS describes the potential environmental consequences of the project to non-federally listed birds, terrestrial wildlife, and marine mammals and their habitats.
 - The DEIS addresses impacts to certain species of terrestrial wildlife, including the caribou, moose, bear, gray wolf, and small terrestrial vertebrates.
 - The DEIS addresses specific species, including the Cook Inlet beluga whale, humpback whale, fin whale, Steller sea lion, Northern sea otter, and Steller's eider. Furthermore, the USACE is consulting with the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

- In addition, for the final EIS, Pebble has prepared updated biological assessments for species under each agency's jurisdiction.
- Fugitive Dust
 - The DEIS addresses fugitive dust in various sections, such as in relation to the spill risk, impacts of the project on water and sediment quality, potential environmental consequences from the project on vegetation, and potential impacts on soil.
 - The DEIS recognizes that the project design incorporates various measures to minimize fugitive dust. Notably, Pebble's proposed mitigation measures include the use of locked containers to transport concentrate from the mill to the ship and developing a Fugitive Dust Control Plan, which would address fugitive dust emissions created by construction, operations, and closure activities.
 - This plan, which will be in place before construction begins, "would describe the equipment, methodology, training, and performance assessment techniques that would be used for controlling fugitive dust from site activities and wind erosion."
 - Additionally, best management practices would be implemented for fugitive dust management, and methods would be established in order to control dust from various sources, including vehicle travel on unpaved roads, material handling, and wind erosion from disturbed areas.
- Transportation Corridor
 - The DEIS describes both the existing environment that would be affected by the transportation corridor alternatives and the potential impacts on environmental resources.
 - For example, the DEIS discusses the magnitude and extent of impacts from construction of the transportation corridor in relation to wetlands and other waters.
 - The DEIS also summarizes key issues for wildlife resources by project component, including the transportation corridor and describes the potential effects on soils along the transportation corridor.

- Spill Risk
 - The DEIS specifically addresses the spill risk for the following substances, which were selected based on their spill potential and potential consequences: diesel fuel, natural gas, copper-gold ore concentrate, chemical reagents, bulk and pyritic tailings, and untreated contact water.
 - The DEIS also addresses a broad range of topics related to spills, including the probable outcomes that would result from a release into the environment, data on past spills, organizations or plans that may be available as resources in the event of a spill, mitigation and minimization design features or practices, hypothetical spill scenarios, and the potential impacts from each scenario.

- Environmental Justice
 - The DEIS includes a significant examination of environmental justice issues, framing the analysis as an intersection between various resource topics, including subsistence users, subsistence resources, cultural practices, socioeconomic characteristics, and community health, with a potential for both beneficial and adverse impacts.
 - The DEIS examines socioeconomic impacts associated with population, housing, and employment; subsistence resources and harvest patterns for subsistence-based communities in the EIS analysis area; project-related impacts to human health (including effects from changes in air quality and water quality, and concerns about contamination and subsistence food consumption).
 - Further, each project alternative is evaluated for potential disproportionate impacts to minority and low-income communities at issue.

- Subsistence
 - The DEIS analysis area for subsistence issues includes the subsistence resources that could be affected by the proposed mine site, port, transportation corridor and natural gas pipeline corridor for each alternative presented.
 - The review includes habitat and migration routes for subsistence resources, community subsistence search and harvest areas, and areas used by harvesters to access resources.
 - The DEIS includes a focus on subsistence activities in indigenous communities, reviewing traditional ecological knowledge and the

culture value of subsistence in developing the analysis on subsistence. The analysis also accounts for the cyclical harvest pattern of seasonal round.

- The DEIS goes on to examine the impacts of the project on subsistence in communities near Iliamna Lake, in the Kvichak and Nushagak river drainages, and on the southwest coast of the Kenai Peninsula, assessing the magnitude, geographic extent and duration of impacts for each project phases.
- Geochemistry
 - The DEIS covers the existing geochemistry of the mine site.
 - The DEIS also discusses in detail geochemistry with respect to surface water quality impacts, tailings releases, and spilled concentrate.
 - Pebble's environmental baseline documents further delve into geochemistry issues.

Second, many critics have claimed that their comments were ignored or disregarded. Again, if those critics read the DEIS, they would see that the opposite is true. It is important to remember that the DEIS is just a draft, and the Corps can and will bolster the document before releasing a final EIS. The Corps is already gathering substantial data on many issues to add to the FEIS. For example:

- **Reclamation:** PLP has provided for the Corps a draft Reclamation and Closure Plan that meets State of Alaska formatting requirements in support of the FEIS.
- **Compensatory Mitigation:** PLP has developed a revised compensatory mitigation plan, which the Corps will evaluate for the FEIS.
- **Biological Assessment:** PLP agreed to develop a revised biological assessment and work with US Fish and Wildlife Service on mitigation measures and effects decisions to address Endangered Species Act concerns.
- **TSF Design/Spill Risk:** The Corps has facilitated technical working group meetings with cooperating agencies to address these issues.
- **Groundwater Impacts:** Pebble and its contractors have developed an updated groundwater model, which is now being utilized to generate data in response to a request for information from the Corps.
- **Wetlands:** Supplemental wetland mapping from the 2019 field season will fill data gaps for the final EIS.

Another concern expressed today has been whether EPA withdrawing its preemptive, unprecedented veto (also known as the Proposed Determination) was the correct decision. There can be no question that it was.

First, the entire Proposed Determination was the epitome of bad process – a lack of statutory authorization, no valid scientific record to speak of, and unelected, unaccountable bureaucrats trying to regulate a major economic development project out of existence.

In the 47-year history of the Clean Water Act, EPA has never used Section 404(c) preemptively – that is, without a permit application reviewed by the Corps. As you can tell from Chart 3, EPA has only used the power 13 times. In 11 of the 13 instances, EPA had a full permit application record to review before it issued its veto. In the remaining 2 vetoes, unique circumstances existed to make the decision to veto wholly different than exists here.

- First, in the Bayou aux Carpes project in Louisiana, EPA was reviewing a project proposed *by the Corps itself*, so of course the processes for approval were different. As a federal court reviewing the issue noted, the Corps does not apply to itself for a permit. Additionally, the project approval process began before the passage of the Clean Water Act. There actually *was* a permit application to review; it was by the local parish under the Rivers and Harbors Act as well as a related permit application under the Clean Water Act that the Corps had denied.
- Second, for the veto related to a development site near the Everglades in the 1980s, EPA determined that the permit application would be identical to applications submitted for two neighboring sites. All three locations were considered “similar pieces of the East Everglades wetlands complex with similar ecological values.” When EPA moved to veto the Corps’ pending 404 permits for the first two projects, it vetoed the third at the same time because it deemed them to have the same characteristics as the other two properties.

Finally, EPA has even *admitted* that its actions lacked precedent.

- A briefing paper prepared in 2010, prior to the BBWA, noted that the contemplated preemptive veto had “[n]ever been done in the history of the CWA.”
- The paper also correctly predicted that, given the unprecedented use of the authority, there was “[l]itigation risk.”

The preemptive veto is rarely used for a simple reason: In addition to it being bad policy to make major regulatory decisions on the basis of zero project-specific information, the Clean Water Act does not authorize a preemptive veto. The language of the statute itself contemplates a permit application before EPA can exercise its narrow veto authority. The U.S. Army Corps of Engineers is authorized to issue permits “for the discharge of dredged or fill material into the navigable waters at *specified* disposal sites.” 33 U.S.C. § 1344. EPA’s authority is narrow and must be based on a permit application, as the statute only allows the Agency to “prohibit the

USEPA CWA Section 404(c) Final Veto Actions

	Project Name	Type	Location/EPA Region/Corps District	Initiation & Final Determination	Administration	Pre or Post Permit	NEPA Review
1	North Miami	Landfill/ Municipal Recreation	Dade County, FL EPA Region 4/ Jacksonville Dist.	June 25, 1980 Jan 19, 1981	Reagan	Post-Permit	No EIS
2	Norden Co	Waste Storage/ Recycling Plant	Mobile, AL EPA Region 4/ Mobile Dist.	Sept. 30, 1983 June 15, 1984	Reagan	Pre-Permit	No EIS EA Only
3	Jack Maybank Site	Duck Hunting/ Aquaculture Impoundment	Jehossee Island, SC EPA Region 4 / Charleston Dist.	April 15, 1984 April 5, 1985	Reagan	Pre-Permit	No EIS
4	Bayou Aux Carpes	Flood Control Project	Jefferson Parish, LA EPA Region 6/ New Orleans Dist.	Dec. 17, 1984 Oct. 16, 1985	Reagan	Pre-Permit	Post-EIS
5	Attleboro Mall	Shopping Mall	Attleboro, MA EPA Region 1/ New England Dist.	July 23, 1985 May 13, 1986	Reagan	Pre-Permit	No EIS
6	Russo Develop. Corp	Warehouse Development	Carlsbad, NJ EPA Region 2/ New York Dist.	May 26, 1987 March 21, 1988	Reagan	Pre-Permit	No EIS
7	Henry Rem Estates	Agricultural Conversion	Dade County, FL EPA Region 4/ Jacksonville Dist.	April 22, 1987 June 15, 1988	Reagan	Pre-Permit	No EIS
8	Lake Alma	Dam/ Recreational Impoundment	Bacon County, GA EPA Region 4/ Savannah Dist.	June 8, 1988 Dec. 16, 1988	Reagan	Pre-Permit	Post NEPA
9	Ware Creek	Water Supply Impoundment	James City County, VA EPA Region 3/ Norfolk Dist.	Aug. 4, 1988 July 10, 1989	Reagan- Bush	Pre-Permit	Post NEPA
10	Big River	Water Supply Impoundment	Kent County, RI EPA Region 1/ New England Dist.	Aug. 24, 1988 March 1, 1990	Reagan- Bush	Pre-Permit	Post NEPA
11	Two Forks	Water Supply Impoundment	Jefferson/Douglas County, CO; EPA Region 8/ Omaha Dist.	March 24, 1989 Nov. 23, 1990	GHW Bush	Pre-Permit	Post NEPA
12	Yazoo Pumps	Flood Control Project	Issaquena County, MS EPA Region 4/ Vicksburg Dist.	Feb. 1, 2008 Aug. 31, 2008	GW Bush	Pre-Permit	Post NEPA
13	Spruce No. 1 Surface Mine	Surface Coal Mine	Logan County, WV EPA Region 3/ Huntington Dist.	Oct. 16, 2009 Jan. 13, 2011	Obama	Post-Permit	Post NEPA

CHART 3

specification” or “deny or restrict the use of any *defined area* for *specification*.” EPA can only take this action after determining that the discharge “into *such area*” will have an unacceptable adverse effect on the environment.

The legislative history of the Clean Water Act and major cases interpreting it confirm that it was not intended to allow for preemptive vetoes. When Congress enacted the Clean Water Act, it expressly declined to give EPA complete authority over the issuance of permits, dividing up responsibilities between EPA and the Corps. The Senate Debate on the Conference Report contemplated that there would be a permit application before any 404(c) action “because *the permit application* transmitted to [EPA] for review will set forth *both the site to be used and the content of the matter of the soil to be disposed.*”

The United States Supreme Court held that the Clean Water Act “gives EPA authority to ‘prohibit’ *any decision by the Corps* to issue a permit for *a particular disposal site.*” *Coeur Alaska Inc. v. Southeast Alaska Conservation Council*, 557 U.S. 261, 274 (2009). The D.C. Circuit, in its ruling upholding that EPA could issue a veto even after the Corps has issued a permit, had before it a “retroactive” veto, not a preemptive veto such as Pebble faced. Indeed, the Court focused on the fact that in the Mingo Logan case, the disposal site was specified in the permit, meaning that EPA could only withdraw post-permit. *See Mingo Logan Coal Co. v. EPA*, 714 F.3d 608, 614 (D.C. Cir. 2013). The case does not address a preemptive veto, which would raise a host of different questions than those addressed by the Mingo Logan court.

The Proposed Determination was also faulty process because it deliberately avoided NEPA and an EIS, which together comprise a superior, time-tested means of evaluating major development projects. Internal EPA emails make clear that the Agency had no intention of ever getting to a NEPA process. When Senator Lisa Murkowski of Alaska suggested that EPA’s decision to conduct the BBWA in February 2011 meant no preemptive action would occur until all the science had been evaluated, an EPA official stated “her statement would suggest no 404(c) would be done until all the science is in (EIS?). Obviously, that’s not what we have in mind...”

NRDC, a vocal opponent of the Pebble Project, has long referred to NEPA as the Magna Carta of environmental protection and “democratic at its core.” But now, when presented with an opportunity to put NEPA to work doing the exact project analysis for which it was designed, NRDC has shown its true colors: it only likes NEPA when it can be used to block a project.

Not all EPA regional administrators during the Obama Administration believed the statutory federal permitting process could be disregarded like Mr. McLerran did. In 2016, then-Region 9 Administrator Jared Blumenfeld, when asked if EPA would veto a second permit for the Rosemont Copper Mine in Arizona, stated that he could not say if EPA was considering a veto until the Corps indicates that it intends to issue one. According to Blumenfeld, EPA needs “a complete record” to “see the entire body of information” and in the absence thereof, it would be “irresponsible to make a statement” regarding a veto. As Blumenfeld aptly put it: “Prejudging is actually not useful for EPA.”

Allowing the Proposed Determination to stand would have set a far-reaching, negative precedent for federal land use decisions. Using the Clean Water Act in this way is essentially the

Antiquities Act on steroids. EPA - without statutory authority - grabbed the power to turn private and state land into a national park without any adequate stakeholder involvement or process.

Make no mistake: federal zoning authority is what EPA explicitly *wanted* with this decision. One of the early, pre-BBWA EPA briefing papers stated that an *advantage* of a preemptive veto of Pebble was that it would “serve as a model of proactive watershed planning for sustainability.”

The bottom line is that the bad process and lack of statutory authority alone are solid reasons to withdraw the Proposed Determination. But if you look at how EPA actually crafted its Clean Water Act Section 404(c) veto, you will see the most shoddy and corrupt federal agency analysis that I have ever seen in more than 40 years working in environmental regulation.

EPA’s action was initiated not by the public or an independent tribal petition as claimed, but by a rogue EPA staffer who colluded with a known anti-mining activist to improperly petition his own agency. In 2009, EPA Region 10 ecologist Phil North concluded his agency should use its authority under Section 404(c) of the Clean Water Act to veto Pebble. North advocated for a preemptive 404(c) veto throughout the agency, including to then-Administrator Lisa Jackson in early 2010.

- According to sworn deposition testimony, by 2010 North had convinced two high ranking EPA Region 10 staff members (Richard Parkin and Michael Szerlog) that the project should be preemptively vetoed. EPA determined it needed political cover to kill Pebble, so it conspired with anti-mine activists to orchestrate a “tribal petition” as a pretext to initiate a process.
- North worked secretly with Geoff Parker, a known Pebble critic and attorney for several Alaska Native Tribes, to draft a petition for submission by some tribes. In an email uncovered by the House Oversight Committee, some within EPA expressed concern over the level of access and influence Parker had within EPA.
- EPA “lost” Phil North’s computer hard drive for a critical two-year period when North and others regularly used personal email to conduct Pebble-related business.

Even before receiving the petition and without any scientific study, EPA started drafting internal policy documents to facilitate preemptive action against Pebble.

- In 2010, a budget was prepared to secure funds to preemptively veto Pebble. EPA developed an “options paper” *in consultation with Parker* outlining the various paths EPA could take to a veto.
- Other federal agencies were looped in: a 2010 US Fish & Wildlife Service memo describes how EPA had made up its mind to veto the project.

From the very beginning of the BBWA process, EPA stacked the deck against Pebble by placing avowed Pebble opponents in prominent positions drafting the BBWA.

- Richard Parkin
 - Region 10's Richard Parkin, placed in charge of the BBWA, believed as early as 2010 that Pebble should be vetoed and campaigned aggressively within EPA for that result.
 - At an early community meeting about the BBWA, Parkin even admitted that politics were "as big or bigger factor" than science in evaluating Pebble.
- Phil North
 - North testified that he opposed Pebble very early and began campaigning within EPA in 2009 for an eventual veto.
 - North even worked with Geoff Parker, a known Pebble critic and attorney for several Alaska Native Tribes, to draft a petition on behalf of those tribes urging EPA to veto Pebble. In other words, North engaged in a clandestine lobbying effort of his own agency, and EPA's Inspector General determined that this constituted a "possible misuse of position."
 - North was named "technical lead" for the BBWA.
- Michael Szerlog, head of Region 10's Aquatic Resources Unit, testified that he too became opposed to Pebble before the BBWA.

EPA was also sure to load the BBWA team with Pebble opponents from outside the Agency.

- Ann Maest
 - EPA incorporated hydrologist Ann Maest's work after meeting with her numerous times and noting her bias against Pebble.
 - The second draft of the BBWA was released after Maest was forced to admit in federal court to having falsified scientific reports in other litigation.
 - In this other litigation, the U.S. District Court for the Southern District of New York ruled that a \$9.5 billion Ecuadorian judgment against Chevron, in which Ann Maest served as Plaintiff's #2 environmental consultant, was the product of fraud and racketeering activity by the Plaintiff's legal team. Maest declared under oath, "I disavow any and all findings and conclusions in all my reports and testimony on the Equator Project."
 - EPA covered up Maest's role by removing explicit citations to her work in the BBWA, but not the underlying information.
- EPA chose University of Washington professor Thomas Quinn as a BBWA contributor, despite having participated in numerous briefings in which he advocated strongly for a

preemptive veto, including one instance in which Quinn was forced to apologize for his aggressiveness during a briefing.

- EPA hired Alan Boraas to conduct subsistence and traditional use studies for the BBWA, despite Boraas having previously published several anti-Pebble editorials.
- EPA picked Phil Brna, a USFWS employee, to co-author a major appendix to the BBWA, despite his previously expressed excitement at the possibility of a veto. In an email, Brna stated: “[t]his [i.e., a decision barring Pebble] is going to happen and it’s going to get bloody. I am looking forward to it!”

The BBWA began with anti-mine material, drawing heavily on the resources of ENGOs and activists and developed in close coordination with them. EPA shared with ENGOs an outline of the BBWA nearly a year before it announced the study. EPA planned to mimic a “risk assessment” by The Nature Conservancy (“TNC”) that had an extreme, negative view of Pebble. Before the launch of the BBWA in early 2011, EPA scheduled several briefings with anti-Pebble groups and invited anti-mine scientists to “summarize the TNC risk assessment and how it supports 404(c).” TNC has bragged that its “science work is flowing directly into EPA’s assessment of mining risk.” Over the course of the BBWA (2011-2014), EPA communicated hundreds of times with anti-Pebble activists and scientists to share campaign information, technical studies and other intelligence relevant to EPA’s 404(c) strategy.

Other EPA officials were similarly conflicted. Nancy Stoner, EPA’s former Deputy Assistant Administrator for Water, had previously worked for NRDC for over a decade. Despite NRDC’s active opposition to Pebble, in which she participated while at the organization, Stoner did not recuse herself from Pebble-related matters at EPA. In fact, in response to a meeting request from NRDC leaders in June 2010, Stoner had to bend over backwards to keep an appearance of impartiality, stating in an email “I passed along your request to others here. I am not supposed to set up meetings with NRDC staff, but can attend such a meeting if there are enough others in attendance.” Despite recognizing this conflict, she continued to work on Pebble-related projects.

What we know about EPA’s wrongdoing in the Proposed Determination process may in fact only be the tip of the iceberg due to shoddy and perhaps nefarious record-keeping.

- Phil North and others regularly used personal email to communicate, including on Pebble-related matters, but EPA has never conducted a full search of personal emails.
- Somehow, EPA even “lost” North’s computer hard drive spanning a full *two-year period* when he was working on Pebble matters.
- In an email uncovered by the House Oversight Committee, Richard Parkin indicated that staff members may have routinely taken sham steps to avoid FOIA disclosure, asking an attorney, “Should [our] subject line include something like Atty/Client Privileged or whatever? Should we just do that routinely?”

Not surprisingly, this predetermined, rushed process produced a scientifically indefensible Assessment and Proposed Determination. With no actual permit application to review, EPA designed hypothetical mining scenarios that it knew would have adverse impacts. EPA admitted

the scenarios “are not based on a specific mine permit application and are not intended to be the detailed plans by which the components of a mine would be designed.” For just one example, EPA’s hypothetical mine scenarios did not include the standard robust compensatory mitigation that is required for any project.

Peer reviewers criticized the reliance on hypothetical mine scenarios, stating “because of the hypothetical nature of the approach employed, the uncertainty associated with the assessment, and therefore the utility of the assessment, is questionable.” EPA continued to use hypothetical mine scenarios that did not reflect modern engineering or environmental management because it knew that doing so would result in exaggerated environmental impacts and overstated risks, ensuring it could justify its proposed pre-emptive veto.

The water release scenario in the BBWA shows how the hypothetical mines were practically designed to fail. The BBWA assumed that the Pebble Mine would release surplus water into only two of three available streams. Despite no logical, scientific, or legal basis for assuming such a release system, EPA chose to adopt it so that the BBWA could overstate impacts on downstream aquatic habitats. If, instead, EPA had chosen to assume that surplus water would have been released strategically, as is the case with Pebble’s proposed plan, it would have concluded, for each hypothetical mine scenario analyzed, that the changes in streamflow would have involved a relatively *high* level of ecosystem protection, rather than finding a potentially adverse impact on the surrounding ecosystem. The obvious explanation for the BBWA’s surplus water release scenario, therefore, is that EPA was designing a mine to fail.

EPA even manipulated the peer review process to hide these glaring problems. Each time the BBWA underwent a peer review, reviewers pointed out its serious shortcomings. The following are quotes from various peer reviewers.

- “I find this report, by its nature, to be very biased.”
- This report “is clearly intended to convince the reader that the Pebble Mine should not be permitted to operate” and “lacks impartiality.”
- “[S]ome of the comments read like editorial opinions rather than reporting scientific results.”
- One reviewer noted the BBWA’s conclusions were “not appropriate for a document that is intended to provide a scientific and technical foundation for future decision making.”
- Another concluded, “Although interesting, the potential reality of the assessment is somewhat questionable. It is also unclear why EPA undertook this evaluation, given that a more realistic assessment could probably have been conducted once an actual mine was proposed and greater detail about operational parameters available.”

EPA designed a peer review process that was contrary to its own regulations and guidelines so the many flaws in its BBWA study would remain hidden.

- In violation of its own guidelines, EPA had excessive contact with peer reviewers.
- EPA short-circuited the peer review process, limiting both oral and written submissions during public meetings.
- When EPA released the second draft of the BBWA, it had expanded from 339 pages to 618, and included an entirely new hypothetical mine scenario. This was not a second draft; it was an entirely new document which EPA should have peer reviewed. Not surprisingly, EPA ignored requests that it conduct a full peer review of the new document.
- EPA allowed peer reviewers to review only a limited set of materials in a limited amount of time and permitted them to address only specific questions selected by EPA.
- EPA ignored peer reviewers when they complained about the process and the insufficient time given for review.
- EPA tried to mollify peer reviewers' concerns by misleading them with promises that the BBWA would not be used for a regulatory decision. In response to peer review comments, EPA stated 67 times that the BBWA was not intended to be a decision document, even though it ultimately relied on it exclusively in issuing preemptive restrictions on Pebble.

In short, the Trump Administration has not overturned science with this decision. To the contrary, by withdrawing a shoddy and corrupt decision and allowing the statutorily-mandated federal permitting process to proceed, this Administration has in fact injected more – and better – science into the process.

I appreciate the opportunity to testify before this committee and to address many of the myths that opponents are trying to build around the Pebble mine. We are dedicated to building a mine that can deliver the economic benefits that Alaskans so desperately need while ensuring that we do no damage to the fishery that is vital to the life of our State.