

**EXAMINING EPA'S PREDETERMINED EFFORTS  
TO BLOCK THE PEBBLE MINE**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON SCIENCE, SPACE, AND  
TECHNOLOGY**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED FOURTEENTH CONGRESS**

FIRST SESSION

November 5, 2015

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**EXAMINING EPA'S PREDETERMINED  
EFFORTS TO BLOCK THE PEBBLE MINE**

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**THURSDAY, NOVEMBER 5, 2015**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY,  
*Washington, D.C.*

The Committee met, pursuant to call, at 11:24 a.m., in Room 2318 of the Rayburn House Office Building, Hon. Lamar Smith [Chairman of the Committee] presiding.

LAMAR S. SMITH, Texas  
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas  
RANKING MEMBER

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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Full Committee

***Examining EPA's Predetermined Efforts to Block the Pebble  
Mine***

Thursday, November 5, 2015  
10:00 a.m. – 12:00 p.m.  
2318 Rayburn House Office Building

Witnesses

**Panel 1**

**The Honorable William S. Cohen**, Chairman and CEO, The Cohen Group  
**Mr. Charles Schecler**, Senior Counsel, DLA Piper

**Panel 2**

**Mr. Tom Collier**, Chief Executive Officer, Pebble Limited Partnership  
**The Honorable Rick Halford**, Former Alaska Senate President

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY**

**HEARING CHARTER**

***Examining EPA's Predetermined Efforts to Block the Pebble Mine***

Thursday, November 5, 2015  
10:00 a.m. – 12:00 p.m.  
2318 Rayburn House Office Building

**PURPOSE**

The Committee on Science, Space, and Technology will hold a hearing entitled *Examining EPA's Predetermined Efforts to Block the Pebble Mine* on Thursday, November 5, 2015, in Room 2318 of the Rayburn House Office Building. The hearing will examine the U.S. Environmental Protection Agency's (EPA) intention to use Section 404(c) of the Clean Water Act to block the Pebble Mine from development before the project applies for any permits. The Committee is concerned that EPA did not rely on sound science in deciding to undertake a pre-emptive action to limit the Pebble Mine. This hearing follows the Committee's 2013 hearing examining the science that EPA collected with regard to this matter.

**WITNESS LIST**

**Panel 1**

- **The Honorable William S. Cohen**, President and Chief Executive Officer, The Cohen Group
- **Mr. Charles Scheeler**, Senior Counsel, DLA Piper

**Panel 2**

- **Mr. Tom Collier**, Chief Executive Officer, Pebble Limited Partnership
- **Hon. Rick Halford**, Former Alaska Senate President

**BACKGROUND**

The Pebble Mine is a proposed copper, molybdenum, and gold mine located near Lake Iliamna within the Bristol Bay watershed in Alaska. According to the developers of the mine, the total value of the resources on the site is over \$300 billion and would create thousands of high-paying jobs for Alaskans.<sup>1</sup> The Pebble Limited Partnership (PLP), the group that owns the mining claim, has spent millions of dollars undertaking environmental and geological studies in

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<sup>1</sup> The Pebble Partnership, available at <http://www.pebblepartnership.com/why.html#section-jobs> (last visited Oct. 30, 2015); Krista Langlois, *Pebble Mine: Alaska Sides with Mining Corporation, Tribes Back EPA*, High Country News, July 8, 2014, available at <https://www.hcn.org/blogs/goat/the-fight-for-bristol-bay-alaska-sides-with-mining-corporation-tribes-back-epa>.

the course of preparing for the numerous permit applications required to develop the mine.<sup>2</sup> PLP has yet to reach the stage in its planning where it is ready to submit a mine plan and permitting applications for use in National Environmental Policy Act (NEPA) and Clean Water Act reviews.<sup>3</sup> Despite this fact, EPA has decided to use Section 404(c) of the Clean Water Act to limit the development of the Pebble Mine resource.

In July 2014, EPA issued a proposed determination, pursuant to Section 404(c) of the Clean Water Act, to limit the scope of the development of the Pebble Mine before it had applied for any permits under the law.<sup>4</sup> EPA states that it took this action “because of the high ecological and economic value of the Bristol Bay watershed and the assessed unacceptable environmental effects that would result from the [Pebble Mine development].”<sup>5</sup> PLP believes that EPA’s action amounts to a de-facto “veto” of the project and would prevent any development of the mining claim. EPA claims that its proposed determination is the culmination of years of scientific review, the findings of which were released in January 2014 in a report entitled: “Final Report, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.”<sup>6</sup>

Any development project that requires the discharge of material into waterways requires a permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. Section 404 of the Clean Water Act requires permits for the “discharge of dredged or fill material into the navigable waters at specified disposal sites.”<sup>7</sup> The regular permitting process requires that a project undergo evaluation through the NEPA process. However, Pebble Mine has been treated differently by EPA. The agency has asserted that it has the authority under section 404(c) of the Clean Water Act to conduct an evaluation of the mine outside of the normal NEPA process and before a project has applied for any permits or submitted an official mine plan.<sup>8</sup> EPA has never used section 404(c) in this preemptive fashion for a project similar to the Pebble Mine in the history of the Clean Water Act. This action represents a significant expansion of the authority of EPA under the Clean Water Act.

On October 6, 2015, a report was released by the Cohen Group that raised questions about the fairness and biased nature of EPA’s use of section 404(c) of the Clean Water Act with

<sup>2</sup> The Pebble Partnership, available at <http://www.pebblepartnership.com/environment.html> (last visited Oct. 30, 2015).

<sup>3</sup> Hon. William S. Cohen, Report of an Independent Review of the United States Environmental Protection Agency’s Actions in Connection with its Evaluation of Potential Mining in Alaska’s Bristol Bay Watershed, Oct. 6, 2015, available at <http://files.cohengroup.net/Final/Final-Report-with-Appendices-compressed.pdf>.

<sup>4</sup> U.S. EPA, Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, July 2014, available at [http://www2.epa.gov/sites/production/files/2014-07/documents/pebble\\_pd\\_071714\\_final.pdf](http://www2.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> U.S. EPA, Clean Water Act, Section 404, available at <http://water.epa.gov/lawsregs/guidance/wetlands/sec404.cfm>.

<sup>8</sup> U.S. EPA, Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, July 2014, available at [http://www2.epa.gov/sites/production/files/2014-07/documents/pebble\\_pd\\_071714\\_final.pdf](http://www2.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf).



Chairman SMITH. The Science, Space, and Technology Committee will come to order.

Without objection, the Chair is authorized to declare recesses of the Committee at any time.

Welcome, everyone, to today's hearing entitled "Examining EPA's Predetermined Efforts to Block the Pebble Mine."

I'll recognize myself for an opening statement and then the Ranking Member, although on second thought, given time considerations and the fact that we have another vote in 45 minutes or so, and wanting to hear from our witnesses today, I'm going to ask unanimous consent to put my opening statement in the record if the Ranking Member is going to do the same thing, and she's agreed to do the same thing.

[The prepared statement of Chairman Smith follows:]



COMMITTEE ON  
**SCIENCE, SPACE, & TECHNOLOGY**  
Lamar Smith, Chairman

For Immediate Release  
November 5, 2015

Media Contact: Laura Crist  
(202) 225-6371

**Statement of Chairman Lamar Smith (R-Texas)**  
*Examining EPA's Predetermined Efforts to Block the Pebble Mine*

**Chairman Smith:** This morning's hearing will examine a report written by former Secretary of Defense (and former Senator and Congressman) William S. Cohen about the Environmental Protection Agency's efforts to block the Pebble Mine Project from development.

The report, released last month, summarizes the findings of Secretary Cohen's independent review of EPA's decision-making process to mine in southwest Alaska's Bristol Bay watershed.

The Committee has examined the EPA's numerous expensive and expansive regulations. These regulations include the Clean Power Plan, The Waters of the United States rule, and the Ozone National Ambient Air Quality Standard.

EPA's regulations will stifle economic growth, destroy American jobs, and increase energy prices. That means everything will cost more – from electricity to gasoline to food, which disproportionately hurts low income Americans.

Not only are these regulations unnecessary and costly, we also have learned from previous hearings how EPA has used secret science, questionable legal interpretations, and flawed analysis to promulgate these rules. This is not sound science – it is science fiction.

But it doesn't stop there. Today's hearing on the EPA's attempted expansion of the Clean Water Act to prevent the development of the Pebble Mine Project demonstrates how the EPA is truly out of control.

In this case, the EPA attempted to stop the Pebble Mine from moving forward before it even submitted a permit application or finalized a mine plan. Allowing EPA to proceed in this pre-emptive fashion raises many concerns about the due process that should be afforded to those who apply for permits under the Clean Water Act.

Moreover, it appears that the EPA will use this case as precedent to block additional projects throughout the United States. The negative impact this would have on the growth of the American economy is profound.

If we allow the EPA to pursue this path of action the Agency will have the power to tell states, local governments, and even private citizens how they can develop their land before a permit application has ever been filed. This is unprecedented and dangerous.

Given that we have already seen the EPA expand the definition of the Waters of the United States to accomplish its extreme agenda, we should not allow the agency to stop projects before they even apply for a permit. This would be an injustice to the rule of law.

Secretary Cohen's report lays out evidence that shows collusion and a cozy relationship between the EPA and groups actively opposed to the Pebble Mine. Recently, the Committee has uncovered other instances of EPA's inappropriate relationship with outside environmental groups.

In a July hearing with EPA Administrator Gina McCarthy the Committee learned that top EPA officials attended private parties with environmental activists.

During the course of its investigation, the Committee uncovered an event called "Goo-fest" where Michael Goo, a then-policy administrator at the EPA, invited his environmental activist friends to an extravagant party at his lake house where attendees were encouraged to consume shots of alcohol from an ice luge.

These relationships could inappropriately influence EPA's ability to conduct policy based on sound science. The EPA has a responsibility to be open and transparent with the people it serves and whose money it uses.

Unfortunately, it appears that the Pebble Mine Project is another victim of this EPA's extreme agenda. In fact, one of the former EPA employees who this Committee found to have colluded with environmental groups to stop the Pebble Mine project fled the country when Congress attempted to interview him.

Secretary Cohen's independent review of EPA's decision-making process concluded that EPA's actions were not fair to all stakeholders.

This review focused on the process EPA used to assess the environmental risks and to propose restrictions to reduce risks associated with potential mining in the Bristol Bay watershed.

Secretary Cohen and his colleagues carefully reviewed thousands of documents from various and disparate stakeholders, which include the EPA, the State of Alaska, the Pebble Partnership, and other sources.

To maintain his impartiality, Secretary Cohen interviewed individuals with different points of views of the EPA's actions. These include three former EPA administrators and several former senior EPA officials.

No one should be surprised by the findings of Secretary Cohen's report. Just this past spring the EPA received a "D" grade for its lack of openness and transparency, according to the non-partisan Center for Effective Government.

It is my hope that the EPA will finally come clean with the American people about its true involvement with the Pebble Mine Project.

###

[The prepared statement and slides of Ms. Johnson follows:]

Ms. Eddie Bernice Johnson, Ranking Member  
Committee on Science, Space & Technology  
“Examining EPA’s Predetermined Efforts to Block the Pebble Mine”  
Thursday, November 5, 2015, 9 a.m.

Thank you Mr. Chairman.

Despite what I fear may be attempts to obscure the facts at today’s hearing, the issue surrounding the proposed Pebble Mine in Bristol Bay is a simple one. Namely, the people of Alaska, including the native Alaskan tribes, the commercial fisherman who make their living off of the abundant salmon fisheries in Bristol Bay, and everyone else who cares about the environment and protecting the natural beauty of this land want to be confident that the proposed Pebble Mine would not do irreparable damage.

That is why the EPA was asked to assess the potential environmental dangers of placing one of the largest open pit copper and gold mines in the world in the midst of one of the largest and most pristine watersheds in our country.

I fully believe that some environmental groups and some EPA officials thought that building a large metal mine in Bristol Bay may have been a bad idea from the start. Many people did. The Majority, though, has declared in the title of today’s hearing that those misgivings were “predetermined efforts to block the Pebble Mine.” They were not. Indeed, instead of acting precipitously on the logical, common sense concern that the Pebble Mine was the wrong mine in the wrong place, EPA officials took years to conduct a thorough, scientifically valid and peer-reviewed analysis of the environmental impacts of the proposed Pebble Mine on the Bristol Bay Watershed.

EPA could have used their authority under the Clean Water Act’s 404(c) process to prevent the proposed Pebble Mine from moving forward years ago, but they did not. For the past decade, no one has prevented the Pebble Partnership from filing a permit to place a mine in Bristol Bay, but to date the Partnership has not. Because of this long delay, and based on EPA’s lengthy scientific analysis, the agency finally decided to act and initiated the 404(c) process last year.

Despite the Majority’s misleading interpretation of this process, the EPA *does* have the authority to act pre-emptively to deny the building of the Pebble Mine even though the Pebble Partnership has failed to date to apply for a permit. Indeed, in 1988 the EPA under President Reagan acted pre-emptively to help protect Florida’s Everglades.

In addition, some in the Majority want the public to believe that the EPA has engaged in secretive meetings with environmental organizations, and that five years ago certain EPA officials came up with a sinister plan to block construction of the Pebble Mine. I suspect they

will present e-mails at today's hearing from environmental groups and EPA officials in an attempt to paint a picture of some sort of illicit or inappropriate activity between them.

The notion that EPA officials should now be wary of communicating with environmentalists or others defies logic, but I believe this is the intent of some who oppose EPA's actions. , That is why I find it so disturbing that in a court case they filed against the EPA related to their proposed Bristol Bay mine, the Pebble Partnership has subpoenaed or sought to subpoena the records of 72 third party individuals and organizations. Let me repeat—72 separate third parties. These are not EPA officials, but rather anyone who has voiced concerns about the proposed Pebble Mine in Bristol Bay.

The list includes the Universities of Alaska, Washington, and Oregon State; Tiffany & Company jewelers; their former business investor Rio Tinto; the American Fisheries Society; and Pew Charitable Trusts to name just a few.

It is also disheartening to me that today's hearing is largely a platform for the Pebble Partnership to air their grievances with the EPA. Three of today's four witnesses either work for Pebble or have been paid by Pebble to issue a quote – "independent" report regarding EPA's actions concerning the proposed Pebble Mine.

That is why I am so appreciative of our witness, Mr. Rick Halford, who travelled to this hearing from Bristol Bay, Alaska where he has lived for 50 years. Mr. Halford was a Member of the Alaska Legislature for 25 years and served as the Republican Senate President and Majority Leader.

He is a commercial pilot, fishing and hunting guide, and is married to a native Alaskan. He has not always supported the EPA in the past, but he believes strongly in their efforts and presence in Bristol Bay today. I am glad we have one voice in the room that represents the interests of Alaskans and not just the Pebble Partnership. Mr. Halford, welcome. I look forward to hearing your testimony.

Thank you Mr. Chairman. I yield back.

**From:** Katherine Caswell  
**To:** Tim Bristol  
**Cc:** Sean Kraft; Shoren Brown; Scott Hess; Elizabeth Dubovsky; Kate Miller; Lesely Brown; Lindsey Brown; melanie Brown; Seth Williams; Rick Hatfield; Wayne Nester; Tim Krings  
**Subject:** Re: Could you...  
**Date:** Tuesday, February 22, 2011 4:26:58 PM  
**Attachments:** Ekwok Notes.doc  
ATT1260644.htm

tim, i went over most of this on the call this morning, but if you want to take a look and probably help shoren in on whatever I missed?

Internal Trout Unlimited Email  
 Date: February 22, 2011  
 Subject: Re: Could you...  
 Attached: Ekwok Notes.doc

Ekwok Notes  
**Richard Parkins – Reviewed Outline with Tribes –**  
 Clarified what ‘build a common understanding of potential impacts to BB’s salmon fishery...’ means. – get an idea from all ‘stake holders’ if this is 1. Really a ‘world class fishery’ and 2. Put at unacceptable risk by proposed mineral developments – are these risks mitigateable?  
 Stressed that while a 404c determination would be based on science – politics are as big or bigger factor  
 Asked if people would support any gold/copper mine in the region, if it could be shown that the mine would be developed without harm to the fishery – Directed @ BBNC. (Teal explained – BBNC is supportive of some mines, but with a risk threshold which Pebble surpasses)  
 Explained the possibility of a determination that would Restrict vs. Prohibit development.  
Outlined what public meetings will look like:  
 Best time to be in region: Late May; Aug 1-20<sup>th</sup> First week in September; October/November.  
 Parkins gave the impression that Late summer would be the most likely time for first round of meetings.  
 Considering 4 Meeting locations: Anchorage/Billingham/Illiamna/King Salmon  
 -locations chosen geographically & meeting facilities.  
 --Tribes stressed that EPA should choose another village- New Stuyahok or Nondalton were strongly suggested.  
 Asked what the best method to contact tribes or update them through the website

Stressed that while a 404c determination would be based on science – politics are as big or bigger factor.

Q. Keep in mind that there is more here than a commercial fishery - Will this assessment be flexible enough to go broader?  
A. -Parkins clarified that this Fishery is not limited to -commercial- but that in order to complete the assessment in a reasonable timeframe, they will need to stay as focused and specific as possible

Q. What happens if PLP drops Permits in the middle of this process?  
A. EPA can retain Jurisdiction even if Pebble applies mid process.

**BBNC/PVT**

Explained more in depth how important of role the politics will play in this. Basically although the 404c Decision will be based on science, the "decision to make a decision" will be based on the politics.

View the purpose of this assessment is to decide if 404c happens - even if 404c action does not happen & Obama is voted out, this will put much needed science in place.

Have to consider their own future as a *for profit corp.* requesting a specifically tailored 404c action that will not limit BBNC's ability to develop their own lands responsibly.

**TU**

Tim talked about TU's involvement/ what the environment outside of the region with support & interest for 404c... Luki reiterated that Tribes need to be looped in - but made it clear that they want us involved

**Anders/George presented on SOS Initiative**

Would make it impossible for development projects to destroy anadromous streams In context of 404c... Intended to prove local opposition to Pebble Expected to be a 'tough fight' - there is no limit to what PLP could spend to fight an initiative of this type.

Explained more in depth how important of role the politics will play in this. Basically although the 404c decision will be based on science, the 'decision to make a decision' will be based on the politics.



Chairman SMITH. So let me immediately go to the introduction of our witnesses.

Our first witness is the Hon. William Cohen, Chairman and CEO of The Cohen Group, and former Secretary of Defense. Secretary Cohen was first elected to public office in 1969 as a City Councilor. He then spent six years in the House of Representatives and eighteen years in the Senate. In 1997, President Clinton nominated him to be his Secretary of Defense. After 31 years of public service, Secretary Cohen leaves behind a record of accomplishment, integrity, and respect. Secretary Cohen received his bachelor's degree in Latin from Bowdoin College and his law degree from Boston University.

Our second witness is Mr. Charles Scheeler, Senior Counsel at DLA Piper. Before rejoining DLA, Mr. Scheeler was a Federal Prosecutor in the U.S. Attorney's Office for the District of Maryland from 1984 to 1989. Mr. Scheeler serves as the Chairman of Rose-dale Federal Savings and Loan Association and is a Member on the Boards of Johns Hopkins University, Johns Hopkins Medicine, Johns Hopkins International, Johns Hopkins Bayview Medical Center, and the College Bound Foundation. Mr. Scheeler received his bachelor's degree from the University of North Carolina at Chapel Hill and his law degree from Harvard University.

We welcome you both, and Secretary Cohen, if you'll begin?

**TESTIMONY OF HON. WILLIAM S. COHEN,  
CHAIRMAN AND CHIEF EXECUTIVE OFFICER,  
THE COHEN GROUP**

Hon. COHEN. Good morning, Chairman Smith and Ranking Member Johnson, and distinguished Members of the staff. First, let me thank you for inviting me to discuss the recently completed independent report or review of EPA's decision-making process regarding the potential mining in southwest Alaska's Bristol Bay watershed.

The issue has raised important questions of Congressional intent and how the EPA made decisions that are fully worthy of Congressional oversight.

I represented Maine in Congress where the environment is very important. Our state is known as Vacation Land, and for a reason. But there's always been an effort to balance the protection of the environment with permitting responsible development, and that was a major focus during my Congressional service.

And then when I served as Chairman of the Senate Oversight Subcommittee, I focused on ensuring that Executive Branch agencies operated in a fair and responsible fashion.

In the fall of 2014, rather, I was approached by the Pebble Partnership to review EPA's actions regarding the potential mining in southwest Alaska's Bristol Bay watershed. The Partnership holds mineral claims to lands owned by the State of Alaska that contain one of the world's largest known undeveloped copper deposits. The area is also home to one of the most abundant salmon runs in the world, and the commercial salmon industry dominates the private sector economy of the Bristol Bay region.

In July 2014, EPA proposed substantial limits on the development in the Pebble Deposit area using a controversial and nearly

unprecedented process to do so, known as Section 404(c) instead of the traditional permitting method that was adhered to in the requirements of the National Environmental Policy Act, and the Pebble Partnership expressed concern about the fairness of EPA's decision-making process. They wanted an objective party to review the process through the lens of how a Cabinet-level agency should make these kinds of decisions. Given my experience in the legislative and executive branches, I agreed to review EPA's actions, assisted by my staff at The Cohen Group and also the law firm of DLA Piper. The lead counsel on the review, as you've indicated, is Charles Scheeler, who is with me today.

I advised Pebble that I would not try to determine whether a mine should be built nor would I comment on the legality of EPA's preemptive use of Section 404(c). I also undertook to review the conditions of complete independence, and I set those facts out that I would follow the facts wherever they might lead. The conclusions that I drew were mine. Pebble Partnership had no rights to edit or censor my views, and my team was compensated according to commercially standard terms, and no portion of my compensation was contingent upon the result of the review or the content of the report.

And so in order to produce the most thorough and balanced review, we sought to interviewed some 300 people, and we interviewed more than 60, who agreed to participate, representing all points of view including those of EPA's actions including three former EPA Administrators, and we reviewed thousands of documents from EPA, other federal agencies, the State of Alaska, and other sources. EPA declined my request to make current personnel available to interviews, citing ongoing Congressional and Inspector General inquiries, and also pending litigation. I understand their reluctance to do that.

I've submitted the Executive Summary and the full report for the Committee's hearing record, but here are my primary findings.

Because to date the Pebble Partnership has not submitted a permit application, EPA relied on hypothetical scenarios for its assessment rather than using the characteristics of a mine that is actually proposed to be built and maintained. EPA failed to address important considerations that would be included in the permit NEPA process including meaningful participation by other state and Federal Government agencies. The permit/NEPA Process has been used for decades and has been widely endorsed by environmental groups, and yet EPA relied upon the Watershed Assessment even though they acknowledged to peer reviewers that there were significant gaps in the assessment and it was not designed to duplicate or replace the permit and NEPA process. EPA's unprecedented, preemptive use of Section 404(c) before a permit filing, in my judgment, exacerbated the shortcomings of the Bristol Bay Watershed Assessment and inhibited the involvement of two key participants: the Army Corps of Engineers and the State of Alaska. These observations were informed—they informed my conclusion that EPA's application of Section 404(c) prior to the filing of a permit application was not fair to all of the stakeholders, and I found that the fairest, most appropriate process to evaluate possible development in—evaluate development in the Pebble Deposit Area

would use the established regulatory permit/NEPA process to assess a mine permit application, rather than using an assessment based upon the hypothetical mining scenarios described as the basis for imposing potentially prohibitive restrictions on future mines, and I could find no reason why the common established approach was not used.

During the course of my review, there were certain statements and actions taken by EPA personnel that raised questions about the integrity of the process that EPA used. Was the process orchestrated to reach a predetermined outcome? Had there been inappropriately close relationships with anti-mine advocates that influenced EPA's process? Was EPA candid about its decision-making process?

I have refrained from reaching any judgments on any of these questions, and I've done so because, frankly, I don't have subpoena power. I don't have the power to compel anyone to talk to me. I don't have access to documents that have yet to be produced to the Committee or to other agencies, and so I think these are issues that are serious enough for Congress, which does have the power to compel testimony, to follow up on.

I think that the oversight of proper authorities have to be done so that agencies don't engage in decision-making that is preordained, and I would urge Congress to continue to explore the questions I've raised, to illuminate EPA's motives and better determine whether EPA has met its core obligations of government service and accountability, and also, finally, to urge policymakers to consider using the permit/NEPA process in the context of potential development of the Bristol Bay Watershed Area, a process regarded by all stakeholders as the most thorough and fair approach.

And finally, I would think that the Committee may want to review EPA's apparent effort to considering using 404(c) to accomplish a national watershed planning, as EPA personnel stated in a document prepared for the briefing to the Administrator. If such a model is to be established, I would expect that Congress would want to weigh in either in favor or against it, but it's a fundamental issue that Congress, I think, needs to look at.

I've tried to shorten my statement, Mr. Chairman, rush through it, but I stand ready to answer any questions.

[The prepared statement of Hon. Cohen follows:]

**Statement of  
Secretary William S. Cohen**

**before the**

**Committee on Science, Space and Technology  
U.S. House of Representatives**

**November 5, 2015**

Good morning, Chairman Smith, Ranking Member Johnson, and distinguished Members and staff of the Committee. Thank you for inviting me to present my views on my recently completed independent review of the EPA's decision-making process regarding potential mining in southwest Alaska's Bristol Bay watershed. This issue has raised important questions of Congressional intent and the EPA's decision making process that are fully worthy of Congressional oversight.

Protection of the environment is a responsibility that I take very seriously. Like Senator Muskie, the primary sponsor of the Clean Water Act, I represented Maine in Congress. Being from Maine, the balance between protecting the environment and permitting responsible development received considerable attention during my years as a member of the House and Senate. And, as the Chairman or Ranking

Member of the Subcommittee on Oversight of Government

Management, part of the Senate Governmental Affairs Committee, for my 18 years in the Senate, I focused much time and energy, as you are doing now, on seeking to ensure that the Executive Branch agencies operated in a fair and responsible manner.

In the fall of 2014, I was approached by the Pebble Partnership to review EPA's actions in connection with its evaluation of potential mining in southwest Alaska's Bristol Bay watershed. The Pebble Partnership holds mineral claims to lands owned by the State of Alaska in the Bristol Bay watershed. This area contains one of the largest known undeveloped copper deposits in the world, and the Pebble Partnership has been exploring the development of a mine there for more than a decade. The area, which is nearly pristine and sparsely populated, is also home to one of the most prolific salmon runs in the world. The commercial salmon industry dominates the private sector economy of the Bristol Bay region, and Alaska Natives who reside there have maintained a salmon-centered culture and subsistence-based lifestyle for

thousands of years. In July 2014, EPA proposed substantial limits on development in the Pebble Deposit Area.

The Pebble Partnership has expressed concern about the fairness of EPA's decision-making process and wanted an objective party to examine that concern. The Pebble Partnership asked me to review EPA's actions through the lens of how Cabinet-level agencies should make decisions on important public policy questions, given my experience in both the Legislative and Executive branches of government. I agreed to undertake a review of EPA's actions, assisted by my staff at The Cohen Group and the law firm DLA Piper. The lead counsel on the review, Charles Scheeler, is joining me here today. I advised the Pebble Partnership that I would not try to determine whether a mine should be built; such a determination would require engineering and scientific expertise beyond my capabilities. Nor would I comment on the legality of EPA's preemptive use of Section 404(c); that is a question for the courts. Let me emphasize this point, as it has been mischaracterized in several opinion pieces about my report. My report draws no conclusions as to the legality of EPA's actions – one way or

the other. But I did feel qualified to review the process by which EPA assessed, and proposed restrictions to reduce, the environmental risks associated with potential mining in the Bristol Bay watershed.

I undertook the review on conditions of complete independence. I followed the facts wherever they led, and the conclusions I drew were mine alone. The Pebble Partnership had no rights to edit or censor my views. The Partnership compensated my team according to commercially standard terms, and no portion of our compensation was contingent upon the result of the review or the content of the report.

To produce the most thorough and balanced review, we interviewed more than 60 people, including three former EPA administrators. The people interviewed represented all points of view on EPA's actions (EPA declined my request to make current personnel available for interviews, citing ongoing Congressional and Inspector General inquiries and pending litigation.) We reviewed thousands of documents from EPA, other federal agencies, the State of Alaska, Congressional committees, the Pebble Partnership, and other sources. The decision about whether mining should occur in this area, as well as

the process of making such a decision, has been highly controversial and has generated intense passions on all sides. The controversy has prompted an Inspector General's investigation, this and other Congressional hearings, and substantial litigation.

I will submit my Executive Summary and my full report for the Committee's hearing record, but here is a synopsis of what I found during the review:

- The issue of whether mining should occur in the Bristol Bay watershed is of the utmost importance to the State of Alaska's environment, economy, people, and fish and wildlife;
- Because, to date, the Pebble Partnership has not submitted a permit application, EPA relied on hypothetical scenarios for its Bristol Bay Watershed Assessment ("BBWA") rather than the characteristics of a mine that is actually proposed to be built and maintained;
- EPA failed to address important considerations that would be included in the Permit/NEPA Process, including meaningful participation by other state and federal government agencies, mitigation and controls as proposed by the developer, and an array of public interest factors;
- The Permit/NEPA Process has been used for decades and has been widely endorsed by environmental groups;
- EPA relied upon the BBWA in its Proposed Determination but acknowledged that there were significant gaps in its assessment



and that it was not designed to duplicate or replace the Permit/NEPA Process; and

- EPA's unprecedented, preemptive use of Section 404(c) inhibited the involvement of two key participants: the Army Corps of Engineers and the State of Alaska.

These observations informed my conclusion that EPA's application of Section 404(c) prior to the filing of a permit application was not fair to all stakeholders. I found that:

**The fairest and most appropriate process to evaluate possible development in the Pebble Deposit Area would use the established regulatory Permit/NEPA Process to assess a mine permit application, rather than using an assessment based upon the hypothetical mining scenarios described in the BBWA as the basis for imposing potentially prohibitive restrictions on future mines.**

The Permit/NEPA Process is more comprehensive than the preemptive Section 404(c) process employed here. EPA conceded in comments to peer reviewers that there were gaps in its assessment that would be addressed during a Permit/NEPA Process.

Here, as the Agency acknowledges, EPA initiated Section 404(c) in an unprecedented manner. EPA's use of Section 404(c) before a permit filing exacerbated the shortcomings of the BBWA noted by

several peer reviewers, the State of Alaska, and the Pebble Partnership: most notably, the use of hypothetical assumptions that may not accurately or fairly represent an actual project; and the failure to take into account mitigation and control techniques a developer might propose. Stakeholders disagree about the legality of EPA's preemptive use of Section 404(c).

An environmental impact assessment is bound to provide more accurate information if it analyzes a mine that will be built in accordance with the developer's plans, rather than a hypothetical mine plan which even EPA acknowledges is likely to be different from a developer-submitted plan. This project is too important, for all stakeholders, to pilot a new, untested decision-making process. The fairest approach is to use the well-established Permit/NEPA Process, and I could find no valid reason why that process was not used.

During the course of my review, certain statements and actions by EPA personnel raised questions about the integrity of the process EPA used here:

- Was the process orchestrated to reach a predetermined outcome?

- Had there been inappropriately close relationships with anti-mine advocates that influenced EPA's process?
- Was EPA candid about its decision-making process?

Our team looked at all of the information available to date relating to these issues.

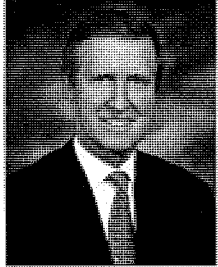
I believe the information unearthed to date raises serious questions about EPA's actions and merits a careful investigation by those who have the subpoena power necessary to develop a complete record. Government oversight by the proper authorities must play an active role in ensuring that agencies do not engage in preordained decision-making. Thus, I urge the Congress to continue to explore these questions, which might further illuminate EPA's motives and better determine whether EPA met its core obligations of government service and accountability.

I also urge policymakers to consider requiring the use of the Permit/NEPA Process. This process, which entails compliance with NEPA and other regulatory requirements, an environmental impact statement, and input from EPA, other relevant agencies, and the State of Alaska, will supply the gaps in information which the BBWA left

outstanding. This decision is too important to be made with anything less than the best and most comprehensive information available.

Congress also may wish to review EPA's apparent effort to use Section 404(c) to accomplish national watershed planning. EPA personnel stated in a document prepared for a briefing of the Administrator that a Section 404(c) action could "serve as a model of proactive watershed planning." If it is EPA's intention to establish such a "model," legislative oversight may be appropriate to assess whether such action is within EPA's mandate and the implications of such a policy.

Mr. Chairman, thank you for providing me the opportunity to brief the Committee on the results of my independent review on this important question.



William S. Cohen

CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Secretary of Defense (1997-2001)

Senator (1979-1997)

Congressman (1973-1979)

From his very first days in Washington, Secretary William Cohen was singled out as a future American leader. In 1974, during his very first term in Congress, TIME magazine named him as one of "America's 200 Future Leaders," and the following year the US Junior Chamber of Commerce named him one of the "Ten Outstanding Young Men in America."

This reflected, in part, the national prominence Secretary Cohen attained as a freshman Republican Congressman who was tasked by the House Judiciary Committee to build, on national television, the evidentiary base for impeachment of President Nixon -- and who then cast one of the critical votes to impeach. But it also reflected the recognition that the intellectual clout, integrity, independence, and public persuasiveness he demonstrated during the Watergate hearings portended a future without bounds on the national scene. Internationally, Secretary Cohen's reputation also took root as, despite the political risk it could entail for a freshman Congressman, he traveled to Thailand in 1974 to reassure a stalwart ally following the US military withdrawal from Vietnam. In the process, Secretary Cohen established relationships that have flourished there and elsewhere around the globe over the quarter century since.

In 1978, he was propelled into the Senate, defeating a highly respected incumbent. During his first weeks in the Senate, he was singled out to be chairman of two powerful subcommittees, the Armed Services Committee's Seapower and Force Projection Subcommittee and the Governmental Affairs Committee's Government Oversight Subcommittee. The former was responsible for tens of billions of acquisition dollars for naval vessels and long-range transport aircraft, as well as US security policy in East Asia, the Middle East and the Persian Gulf. The latter was responsible for reforming the procurement process for the entire Federal Government. As Chairman of the Senate Committee on Aging, Secretary Cohen led efforts to improve the efficiency of Medicare and other health care programs and was a central player in the health care reform

debates of the 1990s. Secretary Cohen also was a member of the Select Committee on Intelligence for a decade, serving half that time as Vice Chairman, overseeing a large budget involving some of the Nation's most advanced technology.

His experience and expertise led to his selection to serve on the "Iran-Contra Committee." His sustained leadership on environmental issues gave him the distinction of being the only Republican Senator endorsed by the League of Conservation Voters re-election after re-election, while his efforts on behalf of small business and early leadership in reversing federal deficits won him awards from the National Federation of Independent Businessmen and the National Taxpayers Union.

Secretary Cohen's international expertise was recognized by his selection to the Board of Directors of the Council on Foreign Relations from 1989 to 1997, whose Middle East Study Group he chaired. He has chaired and served on numerous other study groups and committees at the Center for Strategic and International Studies, the School for Advanced International Studies, and the Brookings Institute. He established and led US delegations to the annual Pacific Dialogue in Kuala Lumpur, as well as the American-Arab Dialogue in Cairo, both regional conferences on economic and security issues. Beginning in 1985, he led the US delegation of senior Executive Branch officials and Members of Congress to the annual Munich Conference on Security Policy, which brings together senior government and industrial officials from throughout Europe and Asia.

Secretary Cohen's service in the House and Senate was marked by electoral success, as well. He was undefeated in six consecutive Maine elections, winning each by wide margins. In 1996, again expected to easily defeat whomever would be nominated to challenge him, Secretary Cohen stunned Maine and Washington by announcing he would not seek re-election. Frustrated with partisan gridlock, Secretary Cohen announced he would return to private life to promote international business and, through his writings and the media, a more thoughtful public discourse on national political issues. He also launched the William S. Cohen Center for International Policy and Commerce at the University of Maine.

President Clinton changed these plans, however, when he asked Secretary Cohen to lead the Department of Defense, the first time in modern US history when a President has chosen an elected official from the other party to be a member of his cabinet. At his January 1997 confirmation hearing, Secretary Cohen set forth his prioritized objectives as Secretary and completed his tenure having accomplished them all. Reversing a steady decline in defense budgets that began in the 1980s, Secretary Cohen succeeded in modernizing the military and maintaining its readiness to fight; reversing recruitment and retention problems by enhancing pay and other benefits; and strengthening security relationships with countries around the world in order to reorient them from the Cold War to the challenges of a new era. Under his leadership, the US military conducted the largest air warfare campaign since World War II, in Serbia and Kosovo, and conducted other military operations on every continent. During his tenure, Secretary Cohen held substantive meetings with foreign leaders in over 60 countries.

A published author of thirteen works of nonfiction, fiction, and poetry; a futurist with degrees in classical Latin and Greek literature; the son of a working-class family who rose to the highest levels in government, it was natural for the Christian Science Monitor to call him "a true Renaissance Man." He is also an accomplished athlete and was named to the Maine all-state high school and college basketball teams, and, while at Bowdoin, he was inducted into the New England All-Star Hall of Fame. In 1987, he was named by the National Association of Basketball Coaches to the Silver Anniversary All Star Team, and in 2001, the NCAA presented him with its Theodore Roosevelt Award. Secretary Cohen is currently a member of the Board of Directors of CBS Corporation. He is also a World Affairs Contributor for Bloomberg Television providing analysis and commentary on major domestic and international news stories.

After 31 years of public service, Secretary Cohen leaves behind a record of unparalleled accomplishment, integrity, and respect, and takes with him unrivaled knowledge, reputation, and relationships, across America and around the globe.

[The submitted biography of Mr. Charles Scheeler, Senior Counsel, DLA Piper:]





## Charles P. Scheeler

Senior Counsel

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Charlie Scheeler has enjoyed a varied practice during his 34 year career.

Charlie's experience includes over 25 jury trials, as well as scores of bench trials and arbitrations. He has an active corporate governance, sports, crisis management, monitorships and internal investigations practice.

Charlie previously served on the firm's Executive Committee.

### EXPERIENCE

Representative engagements include:

- Argued and won reversal of the largest monetary damages case (over US\$1.5 billion) in the history of the Maryland Court of Appeals
- Serving as the monitor of Penn State University relating to the University's compliance with its obligations under an Athletics Integrity Agreement with the NCAA and Big Ten Conference
- Serving as lead counsel to former Secretary of Defense William Cohen in connection with his independent investigation into the regulatory processes surrounding potential mining development in the Bristol Bay, Alaska watershed
- Managed the creation of the Alliance for Bangladesh Worker Safety, Inc., a consortium of North America's largest importers of garments from Bangladesh, including Wal-Mart, Gap, Target, VF Corporation, Macy's, and many more. Through this effort, over US\$140 million in cash and low interest credit was pledged to improve worker safety in Bangladesh garment factories, along with commitments that all Alliance factories would be inspected, and have workers trained in proper safety techniques, within one year of the Alliance's formation
- Served as lead counsel to former Senator George Mitchell in connection with his independent investigation of performance enhancing substance use in Major League Baseball

### CREDENTIALS

#### Education

Harvard Law School (1981) J.D., *cum laude*

University of North Carolina at Chapel Hill (1978) B.S.

Phi Beta Kappa  
Beta Alpha Psi

#### Admissions

District of Columbia  
Maryland



- Served as lead outside counsel to MCI WorldCom in obtaining a declination of criminal charges by the US Department of Justice and a dismissal of criminal charges filed by the Oklahoma Attorney General arising out of an over US\$11 billion accounting restatement announced by MCI WorldCom
- Obtained a defense judgment affirmed on appeal in connection with a class action against a leading hospitality company in which over US\$650 million in damages was claimed
- Served as lead prosecutor of the Boardley/Burrows narcotics/RICO organization which provided the inspiration for the Bell/Barksdale organization portrayed in the HBO series "The Wire"
- Conducted an internal investigation of a global company regarding certain tax practices in over 50 countries and resolved related issues with numerous foreign jurisdictions

#### PUBLICATIONS

- Penn State Third Annual Report, 21 Sep 2015
- Penn State Eleventh Interim Report, 29 May 2015

#### NEWS

##### Media Mentions

- "[Inspired by a daughter, in honor of a mother and father.](#)" *John Hopkins University News*, May 12, 2014

#### PROFESSIONAL EXPERIENCE

Prior to joining the firm, Charlie was federal prosecutor in the US Attorney's Office for the District of Maryland from 1984 to 1989. There, his experience included successfully prosecuting racketeering, narcotics, money laundering and fraud cases.

#### RECOGNITIONS

The respected English research firm Chambers & Partners has repeatedly recognized Charlie in *Chambers USA*, having said he has a "well-respected reputation as a trial lawyer, complemented by specialist expertise in sports arbitration, crisis management, internal investigations and matters of governance." Furthermore, he has the "intelligence and temperament to effectively deal with every aspect of the litigation process from negotiation to trial." One client stated, "[h]e is our number-one attorney and we go to him for all of our important litigation matters."

Charlie was named to the *Annual Guide to Bet-the-Company Litigation* by Best Lawyers. In 2009, the Ethisphere Council named him to its list of 2009 Attorneys Who Matter, described by the Council as "the best and brightest in the legal field" who exemplify "the best public service, legal community engagement and academic involvement" and "help lead their companies to the top of the ethics and compliance world."

#### CIVIC AND CHARITABLE

In addition to practicing law, Charlie is active in the community. He serves as Chair of the Board of Rosedale Federal Savings & Loan Association, Maryland's highest ranked savings institution according to the IDC. He is a member of the boards of Johns Hopkins University, Johns Hopkins Medicine, Johns



Hopkins International, Johns Hopkins Bayview Medical Center and the CollegeBound Foundation (where he is a former chair).

**Additional Accreditation**

Charlie is a Certified Public Accountant (inactive).

Chairman SMITH. Thank you, Mr. Secretary, and I understand Mr. Scheeler is not going to testify but will perhaps respond if necessary.

I've just been told that the next vote is now only 20 or 25 minutes away, and with the concurrence of the Ranking Member, we'd like to suggest, in order to give as many members of the Committee as possible an opportunity to ask a question, that we do just that and try to limit ourselves to one question and see if we can get through most of the members before the next vote is cast.

So I'll recognize myself to start and will ask just a single question, and that, Secretary Cohen, is this: What are the dangers of allowing the EPA's unprecedented actions to go unchecked? Less time than I thought. So we'll go through as many people as we can with one question.

Hon. COHEN. Let me be as brief as I can on this issue. We expect agencies to deal with our citizens in a fair, open, transparent fashion, and to use the most fair process they can. When processes that have been established like 404(c), that's been invoked in 43 years only on 13 occasions, and never, with one minor, very minor exception, never without a permit having been filed. And so the question is, is this an appropriate use of EPA power? I have not reached a conclusion as to whether EPA has this power. I've assumed for purposes of my investigation in this that it has. But that's a matter that others will have to decide.

But to allow an agency to make a ruling on state-owned land—Alaska owns this land. Alaska has regulated this land or issued guidelines specifically for mining, and so for the EPA to come in and say we're going to use a process that has worked well in the past under these certain conditions where a permit's been filed is one thing. To then take action which really intrudes upon state action, state territorial integrity, state power and say we're going to use an unprecedented process to me violates this notion of federal agencies working hand in hand with state agencies to reach an appropriate solution.

Again, I don't come to a judgment. I'm not advocating that a permit be issued. I'm not advocating that the mine be stopped. I'm simply saying this process in my judgment was not fair as carried out.

Chairman SMITH. I understand, and you're talking about the process. Thank you, Secretary Cohen.

And the Ranking Member, the gentlewoman from Texas, Ms. Johnson, is recognized for her question.

Ms. JOHNSON. Thank you, Mr. Chairman.

Pebble has been blasted by Members of Congress from both sides of the aisle for years because of over a decade they filed for a mine permit, and your report claims that EPA did not do a good job receiving input from Pebble Partnership. However, there are ample documents illustrating just how transparent EPA's process has been including a list of numerous meetings with the Pebble Partnership over the course of many years. And we will hear from Mr. Halford, I think, that Pebble rejected EPA's request to provide input participation in the watershed assessment process in 2011. And in your own report, you state that the Pebble Partnership refused repeated requests for the wholesale disclosure of the raw

data and more user-friendly format. So I'm just wondering, Mr. Secretary, did you attempt to acquire the raw data from Pebble to verify their claims or did they provide it or if so, will you please make us—make that information available to the Committee?

Hon. COHEN. I believe that the raw data you're referring to is a baseline report that was developed by Pebble, and they did agree to make that available in a PDF format. The criticism that was leveled on that issue was that it wasn't as user-friendly, and what Pebble, as I understand it, was concerned about was that if it was opened up to all parties, they would—there could be information that was extracted from that that would mischaracterize what the report was saying. But in any event, what EPA has relied upon is the Wardrop Report. The Wardrop Report was really basically a filing saying this is—we're going to examine this area to see what's under the ground. The Wardrop report never proposed to be a mining proposal, never a defined project. In fact, the author of the Wardrop report was never contacted by EPA to say what was the reason that you filed this report and why are you not seeing this in this fashion.

So I think what Pebble has tried to do is say we'll give you our baseline data, we've given it to you, offered it to you, but we're not ready, and you may ask Mr. Collier this, is it the power of the state or the EPA to compel an owner of rights to file a defined plan? Does the EPA force you to file something when you're not ready to file it? I don't know the reasons why Mr. Collier doesn't want to file it at this point. It may be he's looking for more technical data. It may be their financial backers that he needs to acquire. But the notion that the EPA can make you file something that you're not ready to file, and over the objection of the State of Alaska, it seems to me that's quite a stretch for EPA.

Ms. JOHNSON. Even over a decade?

Hon. COHEN. Even over a decade. As a matter of fact, you know, what struck me is looking back in the record that I—the report that I filed, as early as 2005 we have an EPA employee saying that we should use 404(c), I'm going to recommend this, or he is suggesting this is right for 404(c). So from the very beginning before anything is done, you have EPA employees saying let's use 404(c). That at least indicated to me that there was some preliminary decision being made that they're going to invoke this process without giving a fair hearing. So that was my concern on that issue.

Ms. JOHNSON. Thank you very much, Mr. Chairman.

Chairman SMITH. Thank you, Ms. Johnson.

The gentleman from California, Mr. Rohrabacher, is recognized for a question.

Mr. ROHRABACHER. Thank you very much, and let me just note, this hearing represents a major problem that we're facing in our society right now. There is a conflict between the legislative and executive branches over who's going to make the rules and who's going to actually determine what policies will be followed rather than—and I think, unfortunately, what we're describing just today is yet another example of an arrogant usurpation of authority by the Administration, and the EPA is perhaps one of the ones that—instruments that have been used more than others to centralize

this power and create a legal authority when perhaps they do not have it.

In this case, let me just ask you, Secretary Cohen—by the way, another thought. There is not—unfortunately quite often what we're talking about is actions that are taken without regard to cost to the public, and a lot of times people think that we can just do these things and we're going to improve things and there's going to be no cost at all because there's nothing in the federal budget but it ends up costing the American consumer enormous amounts of money. In this case, did you find that the Army Corps of Engineers and the State of Alaska were brought into the decision-making process here and the investigation as they should have been?

Hon. COHEN. Well, the answer to that is yes and no. The State of Alaska was brought into it unwillingly. If you look at the report, you'll find from day one, Alaska objected to this process being instituted under 404(c). So the Governor actually wrote to the EPA Administrator saying it's a case where I'm damned if I do and damned if I don't. If I refuse to participate in this, EPA will say you had your chance. If I don't participate—if I do participate in this, I'll be seen as complying with it and having my chance, but I, the State of Alaska, are fundamentally opposed to proceeding in this fashion. So the State of Alaska did in fact participate unwillingly and with great objection throughout from the day it all started.

With respect to the Corps itself, the Army Corps of Engineers was not brought in to the process. Initially when the Bristol Bay Watershed Assessment was done, they said they couldn't participate because they would be called upon to become active during the NEPA process and therefore wanted to avoid a conflict of interest, and then when the assessments were completed, the watershed assessment was completed, they were asked, do you want to comment, and they said we can't comment because we have no defined plan. So the Army Corps of Engineers never participated in this process, which raises the question that the Army Corps of Engineers is the action agent. They are the project manager for any type of mine or project that would be designed. They are not part of this particular process so they were excluded under it.

Mr. ROHRABACHER. The complications that you are—

Chairman SMITH. Thank you—

Mr. ROHRABACHER. The complications that you are describing are a result of the fact that somebody's going way beyond their authority, and that's what happens when you do that.

Thank you, Mr. Chairman.

Chairman SMITH. Thank you, Mr. Rohrabacher.

The gentlewoman from Oregon, Ms. Bonamici, is recognized for her questions.

Ms. BONAMICI. Thank you very much, Mr. Chairman, and thank you to our witnesses.

I represent a district that includes part of the beautiful Oregon coast, and a lot of my constituents are extremely concerned about the profound environmental risks associated with the operation of an open-pit copper mine in Bristol Bay, and I know we'll hear from Mr. Halford on our second panel, the people of Alaska are already dealing with some of the environmental fallout from the explor-

atory operations conducted by the Pebble Partnership in the region. They're very concerned about that.

Secretary Cohen, you talked about an unprecedented process, but it's my understanding that the Mineral Exploration and Development Act of 1993 contained very similar provisions—you supported it—that would have given the Department of Interior the authority to do essentially what the EPA has done here.

And I wanted to mention how concerned I am that we're having this conversation without the EPA here. We are questioning—raising a lot of questions about their process or their procedure. We absolutely need to hear from them. They should be in the room answering questions—

Chairman SMITH. If the gentlewoman will yield, we are planning a second hearing with the EPA to be present.

Ms. BONAMICI. I appreciate that, Mr. Chairman, because it's important to hear from them. There's some suggestion that they did this without a process and without considering input. There were hundreds of thousands of comments and listening to lots of people across the region. We need to hear from them. And I know Ranking Member Johnson asked this question but—about why you suggested that they could find no valid reason why the NEPA permit process wasn't used, but as you know, that process can only take place when the permit application is filed, and I know you talked about that. I know that over years there were many people, groups, organizations wanting some certainty about this. I know my constituents feel very strongly about it, as those in Alaska do.

I wanted to ask you, Secretary Cohen, in your testimony you state that “the Partnership compensated my team according to commercially standard terms.” Can you please tell us about those, what that means?

Hon. COHEN. It's a standard term that I would have with any client that decides to hire my firm. It's commercially standard. It gets—nothing greater, nothing less than what I would charge any other client, and the point I wanted to make is nothing was contingent upon what I would produce, and I wanted to do this primarily because I really am trying to avoid this becoming a partisan issue, Democrats for the EPA, Republicans opposed to EPA. What I really wanted to do was to say can someone like myself who has been involved in public service for 31 years involved in major investigations—when I look back, for example, on Watergate hearings—long before your time here—but the biggest supporters of mine at that time were the Republican party, the ones who contributed to my campaign, the Republican party, and yet I felt compelled to vote to impeach my own President. And then in Iran-Contra, my biggest supporters were the Republican party, and I found that the President Reagan Administration has abused its position and violated some Constitutional provisions, so—and I assume that's one of the reasons why President Clinton asked me to serve in his Administration because he felt that I would be fair and independent, and that's what I've tried to do here. And I'll just ask you to look at the facts that I laid out, and you can make your own judgment on this, and frankly, it comes down to a policy issue. Do you think under the 404(c) process that there should be a permit filed? Do you think that EPA should say in the absence of that, we will con-

struct a hypothetical scenario and make judgments on what can be done? I think those are policy issues that you as a member would want and I certainly support what you want.

Ms. BONAMICI. And I appreciate that, Mr. Secretary, especially your effort to make sure that this is not a partisan issue, but it also has to be an issue about protecting the environment and having a process, and I know you have your legal team, I know you have some sort of strategic partnership with DLA Piper. What we're trying to figure out is, you're being compensated. We are trying to get the facts so that we can analyze, you know, was everyone on your review team employed by DLA Piper or The Cohen Group. We're trying to get some facts about how you arrived at your position.

And again, Mr. Chairman, we really need to hear from the EPA on this. Thank you. I yield back.

Chairman SMITH. Thank you, Ms. Bonamici.

And the gentleman from Alabama is recognized for his question.

To respond to the gentlewoman from Oregon, EPA was invited and declined to testify on either of these panels, and that is why we're having another hearing with them to be present.

The gentleman from Alabama.

Mr. BROOKS. Secretary Cohen or Mr. Scheeler, whoever prefers to answer, in your investigation, have you discovered any other instance where EPA limited or stopped a project using Section 404(c) before any permit applications have been submitted?

Hon. COHEN. There was one incident that I'm aware of, and Mr. Scheeler can amplify it. Out of the 43-year period of time in which this Act has been in law, there've been 13 occasions when 404(c) has been called upon only after the filing of a permit. The one exception to that was a case in Florida in which there were three contiguous parcels, and in two of those three parcels there had been permits filed and giving the opportunity for EPA and the Army Corps of Engineers and others to participate. Based upon their examination of those three contiguous properties, they decided that there was no need to file a permit in that one exception in Florida based upon the same characteristics, same area, different ownership. They said no need there, we've looked at all of the information from the Army Corps of Engineers and all who had participated and were satisfied this is the right course of action. There was one minor exception, and that was only after two of the three participants in the mining proposals had filed permit applications.

Mr. SCHEELER. And Congressman, EPA themselves have written on this. There was a discussion matrix presented to the Administrator in September of 2010, and they were discussing the potential use of 404(c) before any permit application had been filed, and the EPA written statement is that that had never been done before in the history of the Clean Water Act.

Mr. BROOKS. Are there any underlying facts that would suggest to you that the EPA's use of 404(c) in the Florida instance was justified while it's not justified at the Pebble Mine?

Mr. SCHEELER. Well, yes, because there were three adjacent parcels all from the Rem Estate in the Florida situation. The two adjacent parcels had had permits filed for those parcels, and it was determined by the EPA and reflected in the decision that it was ex-



pected that any permit filed for the third adjacent parcel would be substantially identical to the ones already filed. So in that case, the EPA did in fact have two permits in hand which were substantially similar, if not identical, to that which would be filed for the third parcel. So that's a complete different situation than we have here where of course there've been no permits filed anywhere at or near the Pebble Deposit Area.

Mr. BROOKS. Thank you, Mr. Chairman, and I yield back.

Mr. BABIN. [Presiding] Yes, sir. Thank you. And I now recognized the gentleman from Virginia, Mr. Beyer.

Mr. BEYER. Thank you, Mr. Chairman.

Secretary Cohen, Mr. Scheeler, Pebble's been blasted by Members of Congress from both sides of the aisle for years because for over a decade they haven't filed the mine permit. Mr. Secretary, you talked about there's nothing that the state can do, the EPA can do to compel them to do it. At the same time, they went to the SEC and did detailed information for investors on this, and I understand that much of what the EPA based their 404(c) determination on was Pebble's information to the SEC.

How much of EPA's decision to move forward was based on frustration that emerged from the fishermen who depend on this, from the Native Americans, from the people of Alaska that this was just a sword of Damocles hanging over their head, that Pebble was not coming forward with a mine permit and there was a lot of pressure on the EPA to try to do something?

Hon. COHEN. Well, that's another policy issue, Congressman, that I think needs to be addressed. If the State of Alaska, which owns the property, and have given mining rights to Pebble is there a requirement that they file a defined plan, a specified defined plan, in a certain time frame. I mean, it would seem to me that for the government to say you must file something is really kind of preempting certainly the state's interest in this and certainly Pebble's interest but any time a landowner including the State of Alaska is forced to take action, which it says it's not ready to take or the individual involved who owns the property right or the mineral right, you must do this, it seems to me that this is a policy issue which I think Congress needs to look at closely.

If you think 404(c) should be applied and can be applied on multiple occasions, not just this one but multiple occasions without a permit having been filed, then that's a very big policy decision, and I think it's worth—I think you need to explore it. I think this is very important.

And I would tell the Committee and the people who are here, I've been a big supporter of EPA. Historically, I've supported much if not all of their work in the past certainly when I was a Member of Congress, but I also felt when I was in the Senate and the House that I wanted every agency to act as openly and fairly as possible and you come to the situation where you say I'm going to force you to file a plan before you're ready. I think that trespasses upon the state's right and also the individual's rights. That's a personal opinion. It's a policy decision which I think you need to raise and hopefully resolve.

Mr. SCHEELER. And Mr. Congressman, I think you would be careful about going from the statement that there's been something

submitted to the SEC to the conclusion that there could have been a permit filed. They are very different.

We spoke to Mr. Ghaffari, who wrote the Wardrop Report to which you're referring. That report basically focused on what was in the ground, that is, are there enough valuable minerals that this could potentially be a viable project. A permit application, on the other hand, focuses on how you get that out of the ground and whether you can do it safely or not in accordance with environmental regulations. So there're two very different documents. As a result of that, EPA not only had to rely on the Wardrop Report but fill in a lot of blanks where Wardrop did not have the type of information you would find in a permit application and so they used what they called conventional mining techniques. So in trying to equate the Wardrop Report to what a mine application would look like, I really think we're dealing with an apples-and-oranges situation.

Mr. BEYER. All right. Thank you very much.

Mr. Chair, I yield back.

Mr. BABIN. Thank you.

And Mr. Secretary, I have a couple of questions. The—do you believe that the Environmental Protection Agency followed the proper process when determining, evaluating, and identifying the science behind the Bristol Bay Watershed Assessment, and if this has already been asked, I apologize. I had to run down and vote. You know the procedure.

Hon. COHEN. The answer is no. I think there was not the fairest process that should have been employed, and that's where it comes down to this element of fair. Do I think the State of Alaska, Pebble were treated fairly in the sense that a report that was used and filed with the SEC, and Mr. Scheeler has just mentioned, and then to have a watershed assessment filed and to then represent to the Pebble Partnership and to the State of Alaska this watershed assessment is not going to be used as a basis for our decision when in fact it was used as a basis for their decision. So that gets into the issue of, is that a fair way to treat a key participant that we're not going to use this because this is really incomplete. It doesn't have anything to do with mitigation efforts that might be developed. They might be insufficient. I don't know. But under the normal NEPA process, at least the Corps of Engineers would have a recommendation as to whether there is scientifically valid technology and processes available that would reduce or mitigate the damage that could be caused to the environment. None of that was included, and EPA recognized it, saying look, this doesn't seek to compensate for the regular NEPA process but the implication was, we're not going to use it as the basis for determination, and that's precisely what they did. They used the assessment as the basis for their determination.

Mr. BABIN. So if I'm understanding correctly, Mr. Secretary, how much, in your opinion, of the EPA review process for this project really depended on science that was specifically from the Bristol Bay Watershed Assessment?

Hon. COHEN. Well, there was a great—I should be clear on this. There was a great deal of science that was supplied. The opponents of the mine, they had many talented science experts present infor-

mation. I think Pebble also had their scientists present information. There was disagreement. If you look at the comments in the peer review, you will find that in the peer-review process, there were citations of where the watershed assessment plan was deficient, and it pointed out you haven't taken into account what the Army Corps of Engineers would do and designate whether or not there were mitigation techniques that could be applied whether there could in fact be a reasonable way and a responsible way for controlling the damage from any potential harm to the environment, which is an important consideration.

Mr. BABIN. Certainly.

Hon. COHEN. And so I think there's science on both sides. I decided I'm not a scientist and I wouldn't even step into this. It's beyond my capability. But I respect the individuals who submitted scientific reports on both sides. I just think there's a difference of opinion in terms of whether or not you should have the benefit of having the best technology available, have that presented as evidence through the Army Corps of Engineers. That was not done, and so I think that's the point that needs to be focused upon.

Mr. BABIN. Absolutely. One more question. Why is having an unbiased scientific process important for determining the environmental impact from this project?

Hon. COHEN. Well, you'd like—you would hope you would take the politics out of something this important. This is important to the State of Alaska, to the tribes—no, I think the tribes' members who have traveled from Alaska or who represent the tribes of Alaska, this is important to them. This—salmon's important to the economy of Alaska, and to not only Alaska but the Lower 48 states as well. And so—and it's also important to the State of Alaska to say whether or not we can have economic development in an area that we specifically have designated for economic development in the form of mining. So there are big issues involved, and my point is, when you've got these kinds of issues involved, isn't it the best way to pursue it is do it through the traditional process that you have used historically on those 13 occasions when you invoked 404(c), do it when an application's been filed. And Pebble can say I'm not ready to file it yet. That's—I think that's up to them. They may need more—they may be looking for more technology that would satisfy EPA, but that's a decision. Can EPA force you to do it when you're not ready, and that's a policy decision that Congress is going to have to act upon.

Mr. BABIN. Okay. Thank you very much.

Now I'd like to recognize the gentleman from Georgia, Mr. Loudermilk.

Mr. LOUDERMILK. Thank you, Mr. Chairman, and thank you both for being here.

As a ten year resident of Alaska who did some recreational mining, this is—I can equate to what you're going through, but question for either one of you, Mr. Secretary or Mr. Scheeler. In the course of your investigation, did you determine whether EPA employees were using private email accounts to discuss official EPA business with outside groups opposed to your mine?

Hon. COHEN. The answer is yes. There were—and we documented that in the report. There were a number of occasions when

private emails were set up to conduct business, which violates actually EPA's own rules, in the aspect that those private conversations or communications need to be filed with EPA. There—

Mr. LOUDERMILK. What kind of information was included in those emails?

Hon. COHEN. Well, that's—I indicated information that's in the email file in those documents but I want to get to this point. There was a case of Mr. North, Phil North, who was very instrumental in recommending a process, a 404(c) process. His computer crashed. Not to be unexpected. It happens. His computer was not backed up, and as a result of that, a year or plus years' worth of correspondence was lost. Now, the best person to explain this of course is Mr. North. We tried to make contact with him. I know this Committee or Congress has tried to make contact with him. The latest information I have is that he retired from his position in Alaska, then went on a sailing trip around much of the world. I first tried to find if he was living in New Zealand but now I'm told he's living in Australia, and has refused to respond to requests to meet with him, talk with him. As a matter of fact, he is under subpoena now for a trial taking place in Alaska on November 12th. So I think he would be the best person to say what was in that. I don't know. It might be totally benign. I mean, this is the issue. It might be perfectly legitimate what they were communicating. I don't have any way of knowing yet. I don't want to prejudge it. But there were missing emails, and—

Mr. LOUDERMILK. And these were personal, using personal email accounts?

Hon. COHEN. Outside of the official government—

Mr. LOUDERMILK. Do you know why they would use personal?

Hon. COHEN. You would have to ask Mr. North and you would have to ask others who had these exchanges with—and they would go to the Administrator as well.

Mr. LOUDERMILK. Mr. Scheeler?

Mr. SCHEELER. Just to provide one example, in the summer of 2010, a number of area native tribes filed a petition with the EPA asking them to invoke or commence a section 404(c) process. In the months that preceded the filing of that petition, the attorney for the tribes sent to Mr. North, who was the principal EPA liaison with the tribes, a draft of that petition along with other documents which had been labeled apparently by the counsel for the tribes' "attorney-client privileged." So drafts were exchanged between the EPA representative and between the tribes in the months prior to the actual filing of the petition. Now, that petition was consequential because EPA used that petition and said they were responding to that petition as their basis for deciding to ultimately proceed with the BBWA, the Bristol Bay Watershed Assessment, which in turn ultimately triggered the 404(c) proceeding.

Mr. LOUDERMILK. Let me make sure I understand what you're saying here. Mr. North, who was an employee of the EPA, correct?

Mr. SCHEELER. Yes, sir.

Mr. LOUDERMILK. You're saying he used a personal email account, drafted a letter for the Native corporation or agency for them to use as a document as a petition? Am I getting that—

Mr. SCHEELER. No, not exactly. That's—what I'm saying is, a draft of the petition and related materials were sent by the lawyer for the tribes—

Mr. LOUDERMILK. Okay.

Mr. SCHEELER. —to Mr. North and then ultimately—

Mr. LOUDERMILK. To his personal email?

Mr. SCHEELER. To his personal email. Ultimately what we see filed in June is the petition. It is different in some respects from the draft that was sent earlier. We do not have—we're not sure if we have all the email correspondence so we do not know whether Mr. North provided comments or any of the changes were due to his input or otherwise, but we did find it remarkable and we did remark upon it the fact that a draft petition was being sent to the EPA along with attorney-client-privileged documents in the months preceding the filing of that petition.

Mr. LOUDERMILK. I find it remarkable too.

One last question, Mr. Secretary. Being in government before, is this appropriate to use private—it seems to be a trend that we're seeing now using private email accounts. Is this, in your opinion, professional opinion, an appropriate way to conduct government business?

Hon. COHEN. In my opinion, no. I think if you're going to communicate, you have to do it using government property and government channels. There may be an occasion where someone gets a call or someone gets an email that is of a business purpose but under EPA's own regulations, that should be immediately filed with the EPA so that the public can then see whether or not a public issue was being discussed privately without disclosure so—

Mr. LOUDERMILK. I guess—

Hon. COHEN. —I think the basic rule is, don't do it, but if there are extraordinary circumstances that require it, that something happens in terms you have to get in touch with a higher level official, just make sure it's fully filed with the agency.

Mr. LOUDERMILK. But let's just hypothetically—I know I'm running out of time here, Mr. Chairman. But hypothetically, if I wanted to get around FOIA, I could use a private email account to try to do that?

Hon. COHEN. You could.

Mr. LOUDERMILK. Okay.

With that, Mr. Chairman, I yield back.

Mr. BABIN. Thank you, Mr. Loudermilk.

I'd like to recognize the gentleman from California, Mr. Takano.

Mr. TAKANO. Thank you, Mr. Chairman. Thank you both for being here today.

Mr. Scheeler, the report stresses that you conducted an independent review although you were paid by the Pebble Partnership to write the report, but I've learned of a recent transaction that raises some questions about the association between your law firm, DLA Piper, and Northern Dynasty, the parent company of Pebble Limited Partnership. I'd like to put up a slide, if I may.

[Slide.]

## FORM 45-106F6

### *British Columbia Report of Exempt Distribution*

Name of Issuer:	<b>Northern Dynasty Minerals Ltd.</b>
Website Address:	<b>northerndynastyminerals.com</b>
Head Office Address:	<b>15th Floor - 1040 West Georgia Street Vancouver, BC V6E 4H1</b>
Telephone Number:	<b>604-684-6365</b>
E-mail Address:	<b>info@northerndynasty.com</b>

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Information about non-individual purchasers					
Full name and address of purchaser and name and telephone number of a contact person	Indicate if the purchaser is an insider (I) of the issuer or a registrant (R)	Number and type of securities purchased	Total purchase price (Canadian \$)	Exemption relied on	Date of Distribution (yyyy-mm-dd)
1047208 B.C. Ltd. 2800 Park Place, 666 Burrard Street Vancouver, BC V6C 2Z7 Contact: Stuart B. Morrow Tel: 604-643-2948	N/A	8,947,368 Special Warrants	\$3,569,999.83	Section 2.3 of NI 45-106	2015-08-28

This slide here, slide one, shows that on October 28th, nearly 9 million shares of Northern Dynasty stock worth more than \$2.7 million were transferred to a British Columbia company listed by its business number 1047208 BC Limited. Slide two, please.  
[Slide.]

# Stuart Morrow

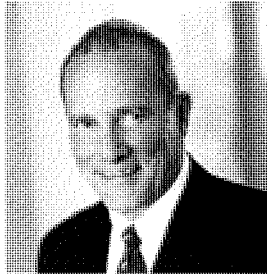
1047208 B.C. Ltd.

DLA Piper



## PEOPLE SEARCH

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Actually, is it slide two or slide three? Well, this slide clearly identifies Stewart Morrow listed as the contact for the business 1047208 as a DLA Piper partner. Last slide, please.  
[Slide.]

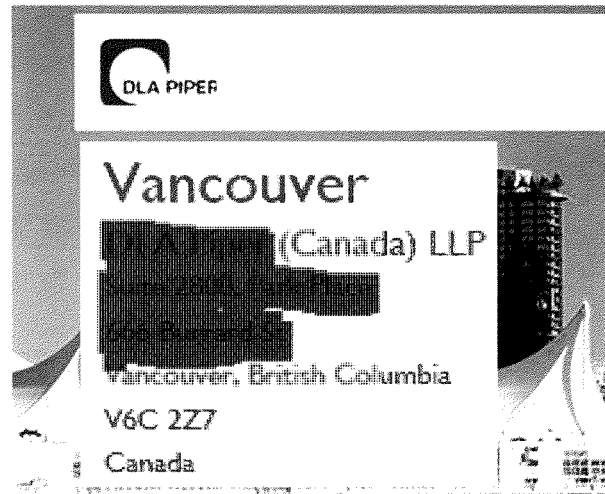
**Suite 2800, Park Place, 666 Burrard St.  
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**1047208 B.C. Ltd.**

**DLA Piper**



Vancouver, BC V6C 2Z7  
Contact: Stuart B. Morrow  
Tel: 604-643-2948



This slide shows that the address this numbered company provided on a British Columbia Securities Commission form is the same exact address and suite number as DLA Piper's Vancouver office.

Now, Mr. Scheeler, I don't know the background or specifics about this transaction but I do believe the mere fact that a DLA Piper partner was involved in a significant business transaction involving the parent company of the Pebble Partnership less than 6 weeks before you and Secretary Cohen released your independent review of the EPA's actions regarding Northern Dynasty's proposed Pebble Mine in Bristol Bay does raise serious conflicts of interest and questions about the independence of your report.

Were you aware of this transaction before the release of the Cohen Report?

Mr. SCHEELER. Absolutely not, and thank you for the opportunity to respond to this issue. We just learned about it yesterday when we got a call from a reporter. Prior to that time, neither I nor anyone on my team had any idea or knowledge about this transaction. So the fact of this transaction could not and did not play any role in connection with the preparation of the report or the development of the investigation because none of us knew anything about it until yesterday.

When I did learn of it, I did inquire of management, and what I did learn from them yesterday is that DLA Piper Canada, the Vancouver office with whom we combined just this past April, acted on instructions of a long-term client to create the entity that's referred to there you have in slide one and that client used that entity to make a purchase of stock without any direction or consultation with DLA Piper.

So the short answer is nobody on our end knew anything about this until yesterday, and nobody in Vancouver had any access or information about what we were doing on behalf of The Cohen Group.

Mr. TAKANO. Well, it would seem to me before issuing a report of this importance to maintain the aura of its independence so there's no even appearance, there's no appearance of even a conflict, that law firms of your size would conduct, you know, a check, a conflict check of some kind. I realize big firms, the left hand may not know what the right hand is doing but still, I think it's—I think an independent, objective observer would see that a law firm that's taken on quite a bit of an acquisition here of stock in a company, I mean, it would raise in that person's mind the idea of this report being so independent.

Mr. SCHEELER. Let me make clear, there may be a misassumption that you have. It was not the law firm that acquired the stock. The DLA Piper Canada law firm has zero interest in that stock. That stock was purchased by a client of DLA Piper. All that DLA Piper Canadian did was create the corporation which the client used as a vehicle to purchase the stock. In other words, the client purchased the stock and put it into that company and established Mr. Morrow as the contact point for that company. But my understanding is, neither Mr. Morrow nor DLA Piper Canada nor any DLA attorney or entity have any financial interest whatsoever in Northern Dynasty.

Mr. TAKANO. Just finally, if you would please follow up and get back to the Committee to let us know of any other DLA attorneys that may have had involvement that DLA attorneys might have had with Northern Dynasty or the Pebble Partnership during the time you were working on the Cohen Report, the Cohen Report's independent review of the EPA actions in Bristol Bay. I mean, it would be helpful if—you probably did that thorough review of any involvement of your partners or the company.

Mr. SCHEELER. We would be happy to do so.

Mr. TAKANO. Thank you.

Mr. BABIN. Thank you.

Now I'd like to recognize the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman, and thank you to the witnesses.

Secretary Cohen, in your investigation, did you determine that EPA employees had considered using 404(c) of the Clean Water Act long before EPA had obtained any science on the impacts of the mine?

Hon. COHEN. I indicated in the report that there were allegations to that effect and that there was some indication, some examples that were cited in the report of conversations had as early as 2005 on the part of Mr. North talking to others that this was something that would be ripe for a 404(c) application. In addition to that, there were a number of matrixes set out, a pro and con matrix, for the Administrator to look at to say well, if we go the NEPA way, here's what happens. If we use 404(c), we have these advantages. And so there were indications that long before they made a determination that this has been something that they were considering. Also, there's a budgetary issue involved. It appears—and again, this is something that we couldn't really confirm but it appears that money was being requested as early as 2009 in order to carry out the 404(c) investigation. There were—it's in the 2010 budget, it appears to be in the 2010 budget of EPA. To get it in the budget, you would have to have started talking about it as early as 2009. So there's—there are a lot of examples. I didn't come to any conclusion that there was—that they in fact had made that decision but there's enough there for you to want to follow up on to say how come these processes were used that early.

Mr. SCHEELER. And we did, I might add, provide EPA's side of the story. While they didn't speak to us, they provided written record with respect to this. They contend that the documents described by Secretary Cohen were by lower-level employees, they were preliminary, they were not decision-making documents, and so I think that's the way they've articulated their side of the story thus far.

Mr. PALMER. But even though it's lower-level employees, wouldn't that be indicative of a, I guess, an attitude of predetermined predetermination?

Hon. COHEN. Well, if you look at the matrix, one of the interesting things you will note is that the—in that matrix it says this is unprecedented, this action under 404(c) would be unprecedented. Number two, if you take action here, it would allow EPA to be able to take greater control on the political spinning of an issue. So

these were laid out as potential actions, pros and cons. If you go 404(c), here are the benefits, here are the liabilities. It's likely if you go 404(c) that you'll stimulate litigation. You're likely to run into litigation. It's likely to be fought legally.

So the Administrator had to look at these issues and make a decision based on the pros and cons, and obviously came out in favor of using 404(c) without the filing of the plan, and based it upon the hypotheticals that we mentioned in the report, three hypotheticals in terms of what the size might be, and again, an issue for Congress. Is this something that comports with a government's obligation to be as forthcoming and fair as possible?

Mr. PALMER. And you know, that's part of my concern with how the EPA does business and what we've seen in this Committee is that EPA makes a determination based on science and then will not turn over the data to back up the science that they used for the decision, but in this case, it seems that there's a predetermination without any science.

Hon. COHEN. Oh, I think—I think there's science involved, Congressman. I really do. I think that I disagree with the method used here but I don't question EPA's calling upon experts with great scientific background.

The issue for me is there's science on both sides, and that's up to the courts and others and Congress to reconcile. But the issue for me is whether or not that you would use a process whereby you preclude in effect a company like Pebble from saying yes, we are going to dredge this amount of land, we're going to do this amount of change to the environment or harm to the environment but we also have some mitigation measures which we feel will give EPA and the State of Alaska and the people of the Greater 48 an opportunity to see that we've got the best possible science that's being developed on a day-by-day basis. That's the part that is missing here. I don't question the science used by EPA to say these things would happen. I just question whether or not they have precluded an equally compelling case to be developed by the Pebble people.

Mr. PALMER. Thank you, Mr. Chairman. My time is expired. I yield.

Mr. BABIN. Yes, sir. Thank you.

And I'd like to recognize the gentleman from New York, Mr. Tonko.

Mr. TONKO. Thank you, Mr. Chair.

Mr. Cohen, I have a series of questions about your report, and please answer a simple yes or no. Did you make any public announcement of your intention to initiate a review of EPA's actions?

Hon. COHEN. I made a public announcement. I had a press conference.

Mr. TONKO. So the answer is yes. Have you disclosed the names and affiliations of the original 200 to 300 people you solicited to participate in your review?

Hon. COHEN. Not all the names, the numbers—.

Mr. TONKO. Yes or no.

Hon. COHEN. No.

Mr. TONKO. Have you disclosed the names and affiliations of the 60 people who responded to your letters and who participated in your review?

Hon. COHEN. No.

Mr. TONKO. Are the individuals' responses or the questions or other information you solicited from them publicly available?

Hon. COHEN. We can arrange for them to be—

Mr. TONKO. Yes or no. Are they available?

Hon. COHEN. They're available if you call for them to be published, yes.

Mr. TONKO. Did you subject your questions and methodologies used in the review to public or outside expert input or comment regarding the validity of your questions and methodologies?

Hon. COHEN. I—the answer is yes.

Mr. TONKO. Before it was finalized, was your report subjected to peer review by anyone unconnected with the report's development, your firm or DLA Piper?

Hon. COHEN. It's not been subjected to peer review.

Mr. TONKO. Did you provide any preliminary drafts of your report to the public?

Hon. COHEN. No.

Mr. TONKO. To EPA?

Hon. COHEN. No.

Mr. TONKO. To the State of Alaska?

Hon. COHEN. No.

Mr. TONKO. To the Pebble Mine Group?

Hon. COHEN. No.

Mr. TONKO. To the 60 individuals who participated in your review?

Hon. COHEN. No.

Mr. TONKO. Well, if I had an EPA witness here, the responses would have demonstrated that they used a far more rigorous and public process to conduct its business than you used to produce this document. This document is little more than a slanted reiteration of the timeline of events. It deals with neither scientific nor legal issues. Your report was privately commissioned and done in a closed process that was subject to little scrutiny. It appears to be little more than your opinion, an opinion that just happens to align with that of your client.

I'd like to point out one small example of the report's bias. Your report describes numerous meetings and communications between EPA and your client in objective, dispassionate terms. Fine. But when it comes to describing contacts between EPA and any of your clients' opponents, all of a sudden these are evidence of bias on the part of the agency. Nonsense. It is evidence that EPA is being responsive to citizens asking for help. Your client has used this Committee and the Freedom of Information Act and firms like yours to harass and discredit its opponents. It's not working.

As more people become aware of the unique beauty and value of Bristol Bay for Alaskans and for the Nation, the region and its people are gaining more support. By contrast, your client's reputation and credibility are losing ground and apparently investors, and this project is being exposed as a potential environmental and social nightmare.

I have enough experience in Washington to be very familiar with the tactic of trying to validate something by simply repeating it. You can label your report "independent" and you can repeat the

word as many times as you like but a report produced at the behest of a client who paid you and your team is not independent. A report that was produced with no public scrutiny or independent review of the methodologies, the information sources or findings is not independent. All you have exposed is the agency responding to the people of Bristol Bay who are trying to preserve their livelihoods, their culture, their communities, and their environment from predation by a foreign company that will take far more from them than it will ever provide.

And with that, Mr. Chair, I yield back.

Hon. COHEN. Mr. Chairman, if I could—

Chairman SMITH. Yes, Secretary, please respond.

Hon. COHEN. I appreciate the comment that was just made but I'd be willing to say I've never questioned your integrity, Congressman, and if it came to a question of—questioning mine, I'd be willing to put my reputation up against yours any day.

Chairman SMITH. Thank you, Secretary Cohen.

Mr. SCHEELER. If I could just add to the notion that this was just opinions that we made up, the fact of the matter is, we borrowed and investigated and see what others had to say about it, and so in terms of, for example, which process was more robust, which process should be used to decide whether or not to build a mine, we really relied upon what the Army Corps of Engineers said. They said that without a permit application, there was no way to evaluate the potential discharges associate with the Pebble Deposit. So if the Army Corps of Engineers with all their expertise could not do this, how could EPA or anybody else? That helped inform our inclusion—our conclusion.

EPA made many statements that also helped inform our conclusion. For example, they admitted in publishing the BBWA, the Bristol Bay Watershed Assessment, that this was not an in-depth assessment of a particular mine, that they did not do a formal determination of compensatory mitigation, that only takes place in the context of a permit/NEPA process. So the EPA was quite candid about describing and exposing the gaps in their analysis that would be filled by the more robust permit process. And so the conclusions were not unique to us. They actually come—if you look at the report, they actually come from the EPA and Corps documents.

Chairman SMITH. Thank you, Mr. Scheeler.

Let me say to the gentleman from New York, I wouldn't want anybody to take down his words so I would suggest in the future that he not impugn the integrity of any witness, and I think that will lead to a more constructive exchange of ideas on this subject.

And now we'll go to the gentleman from Arkansas, Mr. Westerman, for his questions.

Mr. WESTERMAN. Thank you, Mr. Chairman, and thank you, Secretary Cohen, for your testimony today and for your service to our country, and Mr. Scheeler, thank you for being here.

As we broach this subject of integrity and fair processes, the EPA claims that they took their action against the Pebble Mine because the agency received a petition letter asking them to stop the mine by using a preemptive 404(c) action. Mr. Cohen, can you explain what you found regarding this in the course of your investigation?

Hon. COHEN. Well, I think that Mr. Scheeler has already commented on this, that there is evidence that a decision—a recommendation for a decision to go to 404(c) preceded the action taken by EPA so that there is a fairly lengthy period of time in which it's clear that it was not the petition that activated this but rather that this was something that was thought about as long ago as 2005, long before the agency took action by instituting a so-called Bristol Bay Watershed Assessment in 2011.

Mr. WESTERMAN. So in the course of your investigation, did you find that any EPA employees were assisting the petitioners in their efforts to draft the letter?

Hon. COHEN. Again, Mr. Scheeler testified to this a few moments ago, but there was correspondence from an attorney representing the tribes sending a letter to Mr. North suggesting or requesting any assistance he might want to give or comment he might want to make on a potential petition filed by the tribes. That was a subject matter we discussed earlier where we don't know what Mr. North said in return. It was communicated to Mr. North's private email account and not to the public one.

Mr. WESTERMAN. So in your opinion, is it appropriate for a federal government employee to assist a group that petitions a federal agency for action?

Hon. COHEN. I think it's appropriate if it's public. If such communication is taking place and it's above board and this is the EPA assisting tribes or others who have a very strong interest in this, as long as it's fully disclosed and above board, then I certainly don't have any question about that.

Mr. SCHEELER. Congressman, I think you put your finger on one of the core issues that we identified that we could not run to the ground because we did not have subpoena power but it's obviously a very important issue you're raising. So without subpoena power, we were unable to talk to Mr. North or Mr. Parker, the tribe's counsel, and understand what the full amount of collaboration, if any, there was, but that's obviously an important issue, and you know, the question is, what—you know, what did happen, if anything, in terms of collaboration to put together the tribe's document, which was said by the EPA to be really the act that kicked off the 404(c) BBWA process. That's an important point. There may be benign explanations for this interaction but we have not been able to get to the bottom of it lacking subpoena power but it is an important point to run down.

Mr. WESTERMAN. And I know with the votes, some of us were in and out, and maybe missed part of the testimony, so I apologize for doubling up on the same question, but would it be your recommendation that the Committee use its subpoena power to try to get to the bottom of some of these questions?

Hon. COHEN. The answer is absolutely. You're the ones in charge of this in terms of oversight over EPA. EPA should welcome oversight by the appropriate committees, and I think it's a policy decision that Congress really has to adopt here. 404(c) has been used 13 times in 43 years. They've used it after a permit for a mine has been applied for. This is the first time this has been used in this case without one. So I think it's a policy decision.



Now, EPA may say look at the statute, look at the regulation that went into effect without any comment, by the way, look at that and say we have the power. Now, does Congress feel they have the power? Does Congress feel that this should be a model for watershed modeling for land-use planning? That would have some pretty serious consequences to every state if power had shifted to EPA in this fashion. So I think these are issues of policy issues and you can get at them, Congress can get at them through the subpoena power, and frankly, I would be surprised if EPA wouldn't be willing to come before you and testify as to exactly what has happened so that they can say we did everything we feel we were required to do. I don't know why you'd even be forced to issue subpoenas since you have oversight over the EPA, and I don't know why they would be reluctant to do that.

Mr. WESTERMAN. Thank you, Mr. Chairman.

Chairman SMITH. Thank you, Mr. Westerman.

And all members have asked questions of our panelists today. We're going to take a five minute recess so we can reset the witness table. And let me thank both Secretary Cohen and Mr. Scheeler for their comments today, very, very helpful and much appreciated.

We'll take a five minute recess.

[Recess.]

Chairman SMITH. The Science, Space, and Technology Committee will resume our hearing, and if Mr. Collier and Mr. Halford would come forward and be seated? And I'll introduce our two witnesses.

Our first witness on the second panel is Mr. Tom Collier, Chief Executive Officer for Pebble Limited Partnership. Prior to this position, Mr. Collier enjoyed a 40-year legal career with Steptoe and Johnson. There, he helped guide companies through the federal environmental permitting process. He has worked on several Alaskan resource projects. In addition to his legal career, Mr. Collier was the Chief of Staff for the U.S. Department of the Interior. Mr. Collier received his bachelor's degree in international relations from the University of Virginia and his law degree from the University of Mississippi.

Our other witness is Senator Rick Halford, former Alaska State Senator and Representative of Trout Unlimited. Senator Halford served for nearly 25 years in the Alaska State Senate with multiple terms as both Senate President and Senate Majority Leader. In addition, he served as an RNC Committeeman for Alaska and earned a Defender of Freedom Award from the NRA. Prior to joining the Alaska State Senate, Senator Halford was a float plane pilot, and he earned his bachelor's degree from Alaska Methodist University.

We welcome you both, and appreciate your being here and appreciate your patience as well since we're running a little bit late, and Mr. Collier, if you'll begin?

**TESTIMONY OF MR. TOM COLLIER,  
CHIEF EXECUTIVE OFFICER,  
PEBBLE LIMITED PARTNERSHIP**

Mr. COLLIER. Thank you, Mr. Chairman and Members of the Committee, for the opportunity to testify today.

As you all know, there's a well-worn pathway to build a natural resources project in America. You file your permit application. You go to the Corps of Engineers. The Corps of Engineers selects an independent contractor to do an extensive environmental impact statement, and then makes a decision on your permit. In fact, the environmental organizations refer to the environmental impact statement as the Magna Carta of environmental protection, and in fact, I agree with them on that characterization.

In our situation, however, EPA decided to abandon this well-worn pathway, and for the first time ever in the history of the statute, it's issued an intent to veto our project before we've even filed a permit application.

The question is why have they done this, and a starting point in that analysis is recognizing that there's no environmental harm that will happen whatsoever if we're simply allowed to go through the permit process. We don't get to build a mine. We don't get to turn a shovel of dirt. In fact, we go through the permit process. But you don't need to speculate on why because we found documents, internal documents within EPA, that clearly explain what their motive is, what their intent in establishing this precedent is.

The first one is that they want the opportunity when there's a controversial project before them to take jurisdiction away from the Corps of Engineers, away from the state, and to leave it unilaterally with EPA. Second, and this is language straight from EPA documents, they want to establish a precedent for proactive watershed planning for sustainability. They want to be able to go out there and look at a watershed and decide whether or not it should be a park or it should be something subject to development. They want something akin to local zoning authority to reside with EPA. They want to be able to zone the watersheds of America. I don't think the Clean Water Act gives them that authority.

The problem is, when a federal agency wanders off the well-worn pathway, there's opportunity for mischief, and here that mischief has been extensive. As detailed more in my written statement, and as Secretary Cohen just eloquently testified to, EPA, in my view, predetermined the outcome with respect to Pebble. That's what the documents show. And they manipulated the process in order to get to that outcome.

Just a couple of examples, and the record is full of many of these examples. EPA says that they initiated this process because petitions were drafted by Native tribes and submitted to them. The documents show that as early as January, the year before these petitions were submitted in June, an EPA employee and an environmental activist colluded to draft those petitions and then circulated them to the tribes that signed them. In addition, they worked together, an EPA employee and an environmental activist, to draft the decision memo that would be used by the Regional Administrator. This was being done before the petitions had even been filed and the decision memo, the EPA decision memo, was being drafted not just in EPA but was being drafted with the participation of environmental activists. I worked in a federal agency that dealt with environmental issues, and if that had happened on my watch, that employee would have been fired that day. That's how egregious this conduct is.

The BBWA that resulted from this has been characterized by EPA as good science. It's not good science. How in the world do you take a scientific look at the environmental impacts of a project when you don't know what the project is? There's no project on the table.

Second, what they did to get around this is they assigned a biologist in Alaska to design the mine that they assumed Pebble would design, and that biologist designed the mine—Phil North—designed it so that it would have the most egregious environmental impacts so that they could use those impacts as their justification for deciding that the mine should be vetoed. Phil North, by the way, fled the country in order to avoid a subpoena from another committee of Congress.

Look, the impact of this preliminary veto, this preemptive veto on Pebble has been devastating but it's not just an impact on Pebble. This is going to have an impact across the country. We have invested \$750 million to get ready to go into permitting, and EPA is trying to tell us unilaterally that we cannot even initiate the permitting process. If you send that message to people out there regarding natural resource projects across America, nobody's going to stand in line to file permits. Nobody's going to invest in the permitting process.

Thank you for your time today.

[The prepared statement of Mr. Collier follows:]

TESTIMONY OF THOMAS C. COLLIER  
CHIEF EXECUTIVE OFFICER  
THE PEBBLE PARTNERSHIP  
“HEARING EXAMINING EPA’S PREDETERMINED EFFORTS  
TO BLOCK THE PEBBLE MINE”  
BEFORE THE COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY  
U.S. HOUSE OF REPRESENTATIVES  
November 5, 2015

Good morning Chairman Smith, Ranking Member Johnson, and Members of the Committee.

Thank you for the opportunity to be here today to discuss the actions of the US Environmental Protection Agency (EPA) with respect to a proposed mineral development project on state-owned lands in southwest Alaska.

The Pebble deposit is among the most significant accumulations of metals ever discovered in this country. It is the largest undeveloped copper deposit and the largest undeveloped gold deposit on the planet, and contains commercially significant quantities of other strategic metals as well – including molybdenum, silver, platinum and rhenium. Its future development will generate significant economic benefits for generations of Americans and, in particular, for the Alaskan economy, where depressed oil prices and a lack of economic diversity have created serious fiscal strains. It will create much needed jobs and economic activity in one of our country’s most economically depressed regions.

But we’re not here to talk about the Pebble mine today. Indeed, development at Pebble will not occur for many years in the future, inasmuch as the project’s proponents – the Pebble Limited Partnership, of which I serve as Chief Executive Officer – has yet to propose a development plan or initiate federal and state permitting under the National Environmental Policy Act (NEPA).

As I will reference later in my remarks, NEPA requires that an Environmental Impact Statement (EIS) be completed to guide permitting reviews of major development projects like Pebble. The EIS process is scientifically rigorous. It is objective and transparent, utilizing independent, third-party scientists and technical experts. It’s exhaustive, often stretching over multiple years of study and revision. It’s inclusive, providing ongoing opportunities for public participation. And it’s time-proven, having facilitated responsible, science-based regulatory decisions in this country for more than 40 years.

It’s my view that the EIS process under NEPA is the appropriate means by which Pebble– and every other major development project in the nation – should be assessed by federal and state regulators, and the public. I am not here today to discuss the relative merits of the Pebble mine, as I believe there is a well-defined and time-proven process for doing so under American law.

What I am here to speak to you about is EPA’s abuse of process at Pebble, and the significant negative implications of that abuse for my company and its shareholders, for the State of Alaska and its people, for any development interest seeking to secure permits under the *Clean Water Act*, and for future investment in the US economy.

Specifically, EPA has sought to implement the first-ever pre-emptive veto in the 43-year history of the *Clean Water Act* at Pebble, utilizing a little used provision, Section 404(c), in a novel and unprecedented way. They have sought to do so in the absence of the Pebble Partnership filing a permit application with the US Army Corps of Engineers (USACE or the Corps), or the completion of an EIS under NEPA.

There is also evidence that EPA set out to take this action before undertaking any scientific inquiry, and worked behind the scenes with environmental organizations and other activists opposed to the Pebble Project to affect its desired outcome in an inappropriate and covert manner. Finally, there is evidence that EPA may be taking these actions against Pebble, at least in part, to extend its own authority to pro-actively 'zone America' – to place its conservation-first footprint over not just federal lands, but state, private and tribal lands throughout the country.

***Mr. Chairman, I believe the actions taken by EPA to be unlawful, fundamentally unfair, and profoundly unwise.*** I will address those concerns today, but first I would like to reiterate six fundamental points that my testimony is intended to emphasize:

1. There is a well-established and time proven process in this country by which major development projects are assessed and regulatory decisions are made. It is the EIS process under NEPA, and in every other case we have seen in the past, it is a process supported and even lauded by the environmental community as rigorous, science-based, objective and protective of the public interest.
2. When EPA deviates from well-worn regulatory paths like the NEPA EIS process, particularly with significant and contentious projects like Pebble, then bias and abuse is sure to follow. That's certainly what we've seen at Pebble, and I will share a number of examples with you today.
3. The *Clean Water Act*, as passed by Congress in 1972, does not provide EPA with the statutory authority to take pre-emptive action as they have sought to do at Pebble. What's worse, EPA's actions here may not even be motivated by our project at all, but by the agency's blind ambition to seize the authority to proactively issue land use decisions on federal, state and private lands throughout the nation.
4. We believe, and there is ample and growing evidence to support this view, that EPA had a pre-determined intent to veto the Pebble Project before it undertook any scientific study, and that it structured its *Bristol Bay Watershed Assessment* (BBWA) study team and process in such a way as to ensure that outcome.
5. The scientific record EPA is relying upon to support its pre-emptive veto is not only substantially less exhaustive and definitive than an EIS completed under NEPA (something EPA itself acknowledges). It also suffers from serious scientific flaws and even intentional distortions, several of which I intend to review for you today.
6. Finally, should EPA achieve its goal of vetoing the Pebble Project, it will set a dangerous precedent with far-reaching consequences. There are thousands of 404 permits applied for every year in virtually every sector of the American economy – from energy to agriculture, manufacturing to construction. Those permits represent hundreds of billions of dollars of annual investment in our country; investment that EPA's stated desire to achieve pre-emptive veto authority will undeniably place at risk.

In our case, the Pebble Partnership has committed more than \$750 million to the responsible development of the Pebble deposit. Isn't it clear that other developers will think seriously about investing in the United States when their rights to propose a development plan for consideration under well-established regulatory and permitting processes can be taken away at any time by EPA?

*Project Background*

To begin, allow me to briefly introduce myself, as well as the organization I represent.

I have been a regulatory lawyer here in Washington DC for more than 40 years, often representing companies seeking federal permits for resource development and similar projects throughout the country – in particular, 404 wetlands permits under the *Clean Water Act*. I've been personally and intimately involved in dozens of EIS processes under NEPA.

I also spent time working inside government as Chief of Staff to Bruce Babbitt during his term as Secretary of the Interior, as well as within the Department of Housing and Urban Development. There are three very important things I learned during my time at the Department of the Interior, principles that remain with me to this day:

1. It is possible to both achieve economic development and protect the environment;
2. Science must guide the process of regulatory decision-making; and
3. Following the NEPA process is absolutely critical to making responsible and defensible decisions on major development projects.

During my time in government, I also helped lead a number of science-based processes to reach important policy decisions on matters of public interest – related both to the spotted owl crisis in the Pacific Northwest and management of the Everglades. And I learned some important lessons from those experiences as well:

1. When you set out to gather the best scientific knowledge to underpin regulatory decision-making or public policy, you have to ensure that the scientists and experts you retain are entirely objective, and don't have pre-determined views or a personal interest in the subject matter they are tasked with assessing.
2. You must restrict *ex parte* communications between your scientific experts and the special interests involved in the matter at hand.

To achieve the best and most defensible regulatory decisions, the scientific record has to be both entirely open and objective, and it must be perceived by the public and interested parties to be so. Unfortunately, and as you'll hear through my testimony, the EPA failed to observe both of these important tenets in its conduct with respect to its *Bristol Bay Watershed Assessment* and 404(c) veto of the Pebble Project.

In February 2014, I became CEO of the Pebble Partnership, an Alaska-based corporation that owns the Pebble Project. Prior to that time, I had been working as a consultant to Northern Dynasty Minerals Ltd., a Canadian company and, at the time, one of two 50% owners of the Pebble Project, along with global metals producer Anglo American plc. Anglo American actually exited the Partnership in the fall of 2013 after expending some \$600 million at Pebble, due in

some degree to EPA's aggressively hostile stance against a project that had not even been proposed. At that time, Northern Dynasty regained 100% ownership of the Pebble Partnership.

The Pebble deposit itself was first discovered in the late 1980s, but it was Northern Dynasty's work in the early part of this century that really proved it up as one of the world's great mineral resources. Northern Dynasty's acquisition costs for the Pebble property totaled about \$90 million, and the company invested a similar amount to advance the project prior to forming the Pebble Partnership with Anglo American in 2007. Total expenditures to date at Pebble exceed \$750 million.

The Pebble deposit is located on State of Alaska lands some 200 miles southwest of Anchorage, in an area specifically designated for mineral exploration and development. In fact, it's situated on lands that were part of a three-way land exchange between the US government, the State of Alaska and an Alaska Native corporation back in the 1970s, which led to the creation of Lake Clark National Park. In accepting the land swap, the State of Alaska made perfectly clear that its interest in the lands surrounding Pebble was directly related to their mineral potential, and the contribution those minerals could make to support the state's economy. The US Geological Survey has since identified the lands surrounding Pebble as the most extensive mineralized system of its type in the world.

Today, following many tens of millions of dollars of investment in geological investigations, we know Pebble is among the most significant mineral resources ever discovered. At more than 12 billion tons, it has the potential to produce strategic metals like copper, gold, molybdenum, silver, rhenium and platinum for more than 100 years, while generating much needed jobs in Alaska and throughout the country. As noted previously, it is both the largest undeveloped copper deposit and the largest undeveloped gold deposit in the world. It has the potential to produce 20% of America's copper production each year over generations of production.

Economically, Pebble has the potential to support 15,000 high-wage American jobs, while contributing nearly \$4 billion to our Gross Domestic Product each year, and nearly \$400 million in annual government revenues. It will create a sorely needed economic engine for southwest Alaska, a region of the state plagued by low levels of employment and income, and perhaps the highest cost of living in the country. In fact, many Native villages in southwest Alaska are losing population at an alarming rate, causing schools to close, and threatening the very survival of many of these communities.

People have asked why, after more than a decade of study and investment, the Pebble Partnership hasn't yet applied for permits. There are many factors that have contributed to where we are today, as mining projects are large, complex and capital intensive ventures. But key among the drivers for Pebble not being in permitting today is the actions that EPA and its colleagues in the environmental community have taken. EPA's actions at Pebble since 2011 have had a significant negative impact on our ability to finalize a mine plan and apply for permits.

From the outset, EPA's *Bristol Bay Watershed Assessment* (BBWA) study has been used by groups like the Natural Resources Defense Council (NRDC) and others to discourage investment in the Pebble Project, and has materially reduced the financial resources available to advance the project into permitting. In addition, despite Pebble's location on State of Alaska lands designated for mineral exploration and development, EPA has now proposed extraordinary development restrictions that apply nowhere else in the country. This is an unprecedented situation that has never occurred in the 43-year history of the *Clean Water Act* and has not been resolved by the

courts. Moving a project forward into permitting under that kind of uncertainty is, quite frankly, unrealistic.

Finally, even if we were willing to advance Pebble into permitting now, the US Army Corps of Engineers – the federal agency that typically leads 404 permitting and would initiate a NEPA EIS process at Pebble – has made it clear that it cannot issue a 404 permit to Pebble in the current circumstances. EPA’s pre-emptive 404(c) regulatory action must be resolved in some manner before any Corps-led permitting process can run its course.

There are other reasons, of course. Assembling all of the geological, engineering, environmental and other technical information necessary to develop a mine plan that will meet regulatory and permitting requirements, protect the environment, achieve safe and stable operations, and provide an acceptable return on investment takes many years and tens of millions of dollars of investment. In fact, a National Mining Association study recently estimated that mining projects in the US typically take 9 – 11 years to reach the point at which permits are applied for, with large and complex projects such as Pebble taking considerably longer. There’s absolutely nothing unusual about the fact that Pebble hasn’t yet applied for permits when you consider that work began in earnest on the project in 2004.

Further, given the significance of the fishery resources in southwest Alaska and the high-level of scrutiny that Pebble will receive from regulators and the people of the state, we have taken a very methodical and deliberate approach to design a project to achieve the highest levels of environmental performance – including spending more money on environmental studies than any other project in US mining history. We won’t apologize for taking the time necessary to do it right, and we won’t be hurried to bring this project into permitting before we have defined the optimal mine plan from an environmental, social and technical perspective.

Of the more than \$750 million invested in the Pebble Project, some \$150 million has funded environmental studies of the project area undertaken over the course of a decade. As noted, we believe this to be among the most comprehensive and exhaustive environmental data sets ever collected for a mineral development project, and it’s significant for two reasons:

1. because EPA largely ignored this incredible site- and project-specific scientific resource when it conducted the *Bristol Bay Watershed Assessment* and reached conclusions about potential environmental impacts at Pebble, despite doing no original on-the-ground scientific research itself; and
2. because these environmental baseline studies provide the scientific foundation upon which an environmentally sound mine can be designed, built, and operated at Pebble.

Pebble has also invested tens of millions of dollars on engineering work informed by our environmental baseline studies to ensure we can propose a development plan that both meets strict federal and state environmental regulations and fully coexists with the important fisheries resources of Bristol Bay. When it is built, Pebble will incorporate advanced engineering practices and technologies, as well as robust environmental safeguards and mitigation strategies, to maintain water quality, to protect and enhance aquatic habitat, to ensure the mine operates safely throughout its operating life and returns the land to a productive and beneficial condition after mining is done.

We are very confident that we can design, build and operate an environmentally sound and socially responsible mine at Pebble, and we are assembling the scientific and technical



information necessary to demonstrate that to government regulators and the general public during the NEPA EIS process. We know this project can co-exist with a thriving Bristol Bay salmon fishery, and can make a tremendous economic contribution to the people of the region, the state and the country over generations of production. We look forward only to an open, objective and science-based permitting process under NEPA to make that case.

*Permitting under the National Environmental Policy Act*

I said previously there is a well-established and time proven process for regulatory review and approval of resource projects like Pebble. In our case, it would begin by the Pebble Partnership submitting an application to the US Army Corps of Engineers for a permit under Section 404 of the *Clean Water Act* for the placement of dredged or fill material into waters or wetlands of the United States. The Corps' CWA 404 permit procedure is subject to NEPA, which requires that an EIS be completed for "major federal actions significantly affecting the quality of the human environment." Significant mining projects are generally deemed to be major federal actions that require an EIS.

At Pebble, as at other major development projects, the Environmental Impact Statement will be prepared by an independent, third-party expert contractor working under the direction of the USACE. The third-party contractor will rely upon the 'Project Description' and 'Environmental Baseline Document' provided by the project proponent, but it will also demand that an 'alternatives assessment' be undertaken to ensure that the project being proposed utilizes the best available technologies and options to avoid, minimize and mitigate environmental and social effects. The contractor will also independently verify the proponent's environmental studies, and even conduct its own, to ensure that the scientific basis for assessment is sound. It is a very robust and intensive process that takes multiple years to complete.

The EIS process is also open, transparent and participatory. It provides for the involvement of multiple federal, state and local regulatory agencies. It provides ongoing opportunities for public involvement. Ultimately, it will produce a scientific and administrative record upon which the USACE will reach its 'Record of Decision' on Pebble's 404 permit application, and upon which scores of other federal and state regulatory agencies will base their decisions on the dozens of other permits that the Pebble Partnership requires to build and operate a mine. Again, it is a well-established and time proven process for making science-based decisions on major development projects that benefit all Americans.

When it comes to CWA 404 permits, in particular, EPA has a special role as authorized by Congress. Under the statute, the USACE is clearly provided the authority to review CWA 404 permit applications and grant 404 permits, often following completion of a NEPA EIS process. However, Section 404(c) authorizes EPA to veto a USACE 404 permit if it determines that the project as permitted "will have an unacceptable adverse effect" on certain aquatic resources, including fish habitat.

When the *Clean Water Act* was passed into law in 1972, Congress agreed to a framework of 'checks and balances' for authorizing 404 dredge and fill permits between the USACE and EPA, with the former provided authority to grant permits and the latter granted authority to veto them. However, it is clear that Congress intended to allow EPA to rule on specific 404 permits as

granted by the Corps only, rather than to use the statute to impose *a priori* blanket restrictions on development over large areas of land.

The United States Supreme Court has agreed with this interpretation, concluding that the *Clean Water Act* “gives EPA authority to ‘prohibit’ any decision by the Corps to issue a permit for a particular disposal site.”

While rigorous and time-intensive, the system of CWA 404 permitting under NEPA has worked exceedingly well over many decades. The NEPA EIS process has played an enormous role in guiding resource development in this country in a way that protects the environment and the public interest, and has been widely praised by the environmental community. Indeed, the NRDC – one of the loudest campaigners against Pebble – has also been one of the staunchest supporters of NEPA as the gold standard for environmental protection.

Here’s what NRDC has to say about the statute: “NEPA is democratic at its core. In many cases, NEPA gives citizens their only opportunity to voice concerns about a project’s impact on their community. When the government undertakes a major project such as constructing a dam, highway, or power plant, it must ensure that the project’s impacts – environmental and otherwise – are considered and disclosed to the public. And because informed public engagement often produces ideas, information, and even solutions that the government might otherwise overlook, NEPA leads to better decisions – and better outcomes – for everyone. The NEPA process has saved money, time, lives, historical sites, endangered species, and public lands while encouraging compromise and cultivating better projects with more public support.”

The National Academy of Sciences agrees, telling Congress: “The NEPA process is the key to establishing an effective balance between mineral development and environmental protection. The effectiveness of NEPA depends on the full participation of all stakeholders throughout the NEPA process. . . . [A]gencies should continue to rely to the maximum extent possible on the flexible, comprehensive NEPA evaluation process for making permitting decisions.”

In the normal course of events, Pebble would have submitted a 404 permit application to the US Army Corps of Engineers by now, and an EIS process under NEPA would have been well underway – perhaps even completed. Without a doubt, that process as endorsed by the NRDC and the National Academy of Sciences would have provided greater scientific certainty as to whether Pebble can be built and operated in a way that protects the important fisheries and aquatic resources of southwest Alaska than the EPA’s pre-emptive efforts to date.

#### *EPA’s Actions at Pebble*

In January 2014, EPA published the final draft of its *Bristol Bay Watershed Assessment* (BBWA) study. Just six weeks later, and despite repeated assurances that the BBWA would not be used as the basis for any regulatory action, EPA initiated an action under Section 404(c) to veto or restrict development of the Pebble Project – despite the fact that no development plan for the project had yet been proposed or 404 permit applied for. The pre-emptive use of EPA’s 404(c) authority is unprecedented in the 43-year history of the *Clean Water Act*, as EPA itself acknowledged in a ‘Bristol Bay 404(c) Discussion Matrix’ prepared in 2010, which states that such an action has “(n)ever been done before in the history of the CWA.”

In fact, in the past, EPA has used its 404(c) veto authority very judiciously. In total, just 13 such vetoes have been issued by the agency in more than four decades. In all but one of those cases,

the project in question had been fully detailed in a public proposal, 404 permit applications had been filed delineating a specific disposal site and the USACE had proposed a permit decision.

The sole instance in which EPA vetoed a project that had not yet filed a 404 application occurred in Florida in 1988, when an agricultural developer had proposed substantially similar development proposals on three adjacent plots of land. The proponent filed development plans for all three sites and permit applications for two of them. When EPA moved to veto the USACE's pending 404 permit for the first two projects, it vetoed the third at the same time.

This is a fundamentally different set of circumstances than we have at Pebble, where EPA's pre-emptive use of its 404(c) authority, if permitted to stand, will prevent the USACE, other federal and state agencies, and the general public from evaluating the true impacts and benefits of an actual Pebble mine proposal through an objective, rigorous and science-based process.

The denial of due process is troubling in and of itself. We are now aware, however, that EPA intended to use its authority under CWA 404(c) to halt development at Pebble long before it completed the *Bristol Bay Watershed Assessment* study upon which its proposed regulatory action is purportedly based – in fact, before it had conducted any scientific inquiry at all.

It is the height of cynicism for an agency of government mandated to make science-based policy and regulatory decisions in the best interests of the American people to do so in the absence of any scientific foundation, and then set out to create a pseudo-scientific record for its pre-determined action, but that is precisely what has happened in this case.

We have documented evidence that beginning in 2008, perhaps even as far back as 2005, officials within EPA Region 10 were already ruminating about using the agency's 404(c) veto authority to stop Pebble. By January 2010, those considerations had reached the highest office in the agency, when Region 10 briefed then Administrator Lisa Jackson about the Pebble Project and the option of advancing a "pre-emptive" veto under Section 404(c).

In May of that year, EPA began circulating an "Options Paper" that evinces the agency's bias and pre-determination to stop Pebble before a development plan was proposed, before a 404 permit application was submitted and even before any scientific inquiry had been undertaken. A June 2010 draft of the Options Paper contains the following:

"Region 10's Aquatic Resources Unit (ARU) believes that [the already available] information, as it relates to Bristol Bay and its watersheds, is sufficient to make a 404(c) determination now," and that "[w]aiting to make the determination does not seem necessary or a prudent use of anyone's resources." It also describes Pebble as "a project EPA ARU program staff believe should be vetoed in the end," and reports that "NMFS [(National Marine Fisheries Service)], NPS [(National Park Service)] and FWS [(Fish and Wildlife Service)] staff in Alaska have unofficially endorsed EPA initiating a 404(c) action."

The clear question being addressed in EPA's "Options Paper" is not *if* the Pebble Project should be vetoed, but *when* and *how*.

Indeed, just two months later in August 2010, Richard Parkin, who later became the BBWA Team Leader, distributed the final Options Paper and a "Bristol Bay Proposal" to Region 10 staff stating: "The attachment below is a first draft of the pitch I will make to Dennis (McLerran) et al. I included Phil's attachment [the Options Paper] for those of you who haven't seen it. I am viewing it as a background piece but in my pitch I am going right to a recommendation for option 3 [a 404(c) veto]."

By the fall of 2010 – again, six months before the *Bristol Bay Watershed Assessment* study would be launched and more than three years before its final publication – it appears the agency had answered its own question about when, not if, to veto the Pebble Project.

As referenced previously, we now possess an internal EPA briefing note dated September 8, 2010, entitled ‘Bristol Bay 404(c) Discussion Matrix,’ which sets out various process and timing options for issuing a veto. We also have an EPA budget document for Fiscal Year 2011 that confirms EPA’s veto decision, and calls for the requisite funds to “[i]nitiate the process and publish a CWA 404(c) ‘veto’ action for the proposed permit for the Pebble gold mine.”

At the risk of repeating myself, it is critically important for the Committee to appreciate that all of the internal EPA deliberations and decision-making described in these documents occurred *before* the agency had undertaken any scientific inquiry into the impacts of mine development in southwest Alaska, or even understood what a Pebble mine proposal could look like. The agency’s clearly pre-determined intent to veto this project has guided all of its action at Pebble since then.

But EPA has not acted alone in its crusade to stop Pebble. To achieve the necessary political cover for its pre-determined actions, EPA colluded with anti-mining activists to write and submit a petition from six federally-recognized tribes in Alaska, calling on the federal agency to use its authority under CWA 404(c) to pre-emptively veto Pebble. This is not conjecture; there is physical evidence that demonstrates it to be the case.

We have email records that indicate Alaska-based EPA ecologist Phil North (an individual who went on to play a central role in conducting the *Bristol Bay Watershed Assessment*) worked directly with Jeff Parker (an attorney for the six Alaska Native tribes who petitioned the EPA) to write and finalize the tribes’ 404(c) petition. Not only was EPA aware of the tribal petition some six months before it was actually received; EPA staff reviewed the petition and provided substantive comments that were later reflected in the final draft.

That EPA’s North utilized his home email account to facilitate his collaboration with Parker only casts more suspicion on the federal agency’s role in generating the petition. To this day, EPA continues to cite the tribal petition as the sole catalyst for its proposed 404(c) veto, despite evidence the agency itself had a hand in writing the petition and had already taken an internal decision to veto the project.

The tribal petition is not the only time that Mr. Parker and Mr. North worked together. Mr. Parker was also conscripted by EPA staff to contribute his views and input to the Options Paper I discussed moments ago. Mr. Parker shared his edits to the paper not just with his Alaska colleague, Phil North, but also with EPA Region 10 legal counsel Cara Steiner-Riley.

As a former senior official in a previous Administration, I have to tell you how grossly inappropriate it is for representatives of a federal agency to share a document intended to guide government decision-making with outside special interests, let alone seek their input and advice. That EPA subsequently sought to obscure the ‘Options Paper’ from *Freedom of Information Act* (FOIA) requests made by the Pebble Partnership by claiming a deliberative process privilege, despite having shared that document with outside third-parties, is truly beyond the pale.

The truth is EPA granted astonishing access to its decision-making process at Pebble to Mr. Parker and a cadre of environmental and anti-mine activists – access that was assiduously denied to the Pebble Partnership and allied parties, including certain Alaska Native tribes. Through

documents received via FOIA, we know that after the tribal petition was received, EPA held multiple closed door meetings with key Pebble opponents to collaborate on its 404(c) strategy.

For instance, on June 22, 2010, Trout Unlimited flew in a team of anti-mine scientists and activists to confer with EPA Region 10 Administrator Dennis McLerran, as well as Director of the Office of Water and Watersheds (OWOW), legal counsel and others to discuss the “[r]ationale for 404 ‘veto.’” In September 2010, EPA held a two-day strategy session with anti-mining activists concerning the proposed veto.

Anti-mining groups’ access to EPA included direct input on the design and substance of the BBWA study. For instance, EPA met with The Nature Conservancy (TNC) in December 2010 and again in January 2011 for briefings on its October 2010 study, entitled ‘An Assessment of Ecological Risk to Wild Salmon Systems from Large-scale Mining in the Nushagak and Kvichak Watersheds of the Bristol Bay Basin’. Subsequent to those meetings, EPA’s OWOW Director Denise Keehner had the agency’s Office of Research and Development (ORD) conduct an analysis of the TNC report so it could be used in the BBWA. At the same time, in February 2011, North set up a meeting with TNC and the Bristol Bay Assessment Team regarding “Scenario Building for Bristol Bay,” suggesting TNC had direct input into the initial design of the BBWA.

EPA’s collaboration with anti-mining activists was extraordinary in other ways as well. The agency regularly received reports and other input from anti-Pebble activists outside of formal BBWA public comment windows, while refusing to do so for parties with opposing points of view. EPA actively sought input and advice from anti-Pebble activists on how they might respond to correspondence and materials submitted by the Pebble Partnership and the State of Alaska. In one instance, EPA even agreed to receive an embargoed copy of an environmental organization’s yet to be released report, and to receive briefings from its authors while holding the report in confidence.

In fact, over the course of the *Bristol Bay Watershed Assessment* study process, EPA regularly spoke and met with anti-Pebble campaign leaders and scientists to share campaign information, technical studies and other intelligence relevant to EPA’s 404(c) strategy. EPA and anti-mine proponents have communicated – by phone, in writing, via webinar, or in person – almost 1,000 times since 2009. For example, Trout Unlimited’s Shoren Brown communicated with EPA officials regarding Pebble (usually in private) on more than 200 occasions, an average of once every week for four years, including numerous face-to-face meetings, and Jeff Parker communicated with EPA in excess of 100 times.

And whereas former Administrator Lisa Jackson met and communicated with Pebble opponents, even attending fundraisers for the anti-Pebble campaign, she steadfastly refused to meet with Alaska Native representatives supportive of the Pebble Project receiving a fair and objective review under NEPA. On at least one occasion, EPA took steps to ensure that only tribal opponents of the Pebble Project would be allowed to attend a meeting with high-level EPA representatives in Alaska.

#### *The Bristol Bay Watershed Assessment*

EPA responded to the tribal petition in February 2011 by launching the *Bristol Bay Watershed Assessment*. Consistent with its ‘Options Paper’ and ‘Discussion Matrix’ documents, EPA elected

to proceed with a 404(c) veto prior to the Pebble Partnership submitting a development plan or 404 permit application, but after conducting a 'watershed assessment' study to gather scientific and public input on the potential effects of large-scale mine development in Bristol Bay.

It is clear from the strategy documents that preceded the BBWA and from EPA's behavior over the course of the study that its intent was to justify and then issue a pre-emptive 404(c) veto, irrespective of the scientific evidence collected. The Options Paper notes that the study would be no more than "information gathering and analysis" that was to be completed "in order to support a decision to formally initiate ... 404(c)." The Discussion Matrix suggests that by facilitating a public process, "EPA can begin the process in a neutral position, collect information, provide information to public, and building a position iteratively (sic)," and that "(s)tarting in a neutral position can deflect political backlash." Inasmuch as both the Options Paper and Discussion Matrix contemplate no other possible fate for Pebble than a 404(c) veto, EPA's reference to 'starting in a neutral position' can only be viewed as a cynical commentary on the agency's intended public posture, rather than its scientific approach.

At the outset of the BBWA process, EPA stacked the deck against Pebble by placing declared critics of the project in charge of the study. The EPA's BBWA Team Leader was Region 10 Associate Director Richard Parkin, who voiced his support for a pre-emptive veto before any scientific work was conducted. Phil North led the technical team for the BBWA, despite having agitated for a 404(c) veto within the agency as far back as 2009.

EPA then recruited a group of authors and contributors for the study who they knew would stick to the anti-Pebble script. Phil Brna, of the U.S. Fish and Wildlife Service, co-authored a major appendix to the study, despite his longstanding opposition to Pebble. In a September 2010 email, Brna reflected on the likelihood of a pre-emptive veto of the Pebble Project, stating "this is going to happen and it's going to get bloody. I am looking forward to it!"

Ann Maest of Stratus Consulting was regularly consulted by the BBWA study team and contributed several studies for early drafts of the assessment. In another litigation concerning Chevron in Ecuador, Maest confessed to ignoring scientific evidence unfavorable to her pre-determined conclusions, and to ghost writing a scientific report for a court appointed expert who was supposed to evaluate the case and conduct his own scientific assessment. Despite being aware of Maest's alleged role in the Chevron fraud since at least 2011, it was not until after Maest finally admitted her role in a sworn declaration in 2013 that EPA finally omitted references to her work from the final version of the BBWA, but, nonetheless, continued to rely on her conclusions.

Other BBWA authors and contributors were outspoken opponents of the Pebble Project, and some worked for organizations actively campaigning against the project. Alan Boraas, a professor of anthropology at Kenai Peninsula College, co-authored an appendix to the BBWA despite his long-standing opposition to the project, as expressed in vehement anti-Pebble editorials published in Alaska newspapers. Other known opponents of the project that contributed to the BBWA as authors, contributors, sources of research or cited references include:

- Thomas Quinn and Dan Schindler from the University of Washington;
- Bill Riley and Thomas Yocom, former EPA officials who provided a key analysis on how to find "unacceptable adverse consequences" at Pebble;

- Dan Rinella, who worked closely with Ann Maest as a contractor on the BBWA team; and,
- Christopher Frissell, Chris Neher, David Patterson, John Duffield, Carol Ann Woody, Dave Chambers, Kendra Zamzow, Stu Levid, Bretwood Higman and Sarah O’Neal.

I mentioned earlier that EPA largely ignored the most detailed, comprehensive and relevant environmental information with respect to the Pebble Project site – that is, the \$150 million worth of environmental data and analysis synthesized by the Pebble Partnership over the course of a decade. What’s perhaps more shocking is that EPA quietly peer reviewed seven studies prepared by paid critics of the Pebble Project so that they might cite these studies in the BBWA.

I say it’s shocking not just because EPA conducted these peer reviews in secret, and not because they only considered studies written by paid opponents of our project. It’s most shocking because the peer reviewers of these studies roundly condemned them as insufficiently supported by scientific evidence, methodologically flawed and biased. Despite these scathing reviews, the studies prepared by Pebble opposition groups and peer reviewed by EPA are cited throughout the BBWA, where the Pebble Partnership’s ‘Environmental Baseline Document’ is largely ignored.

Of course, if you set out to undertake a ‘watershed assessment’ study with a pre-determined conclusion, if you staff your study team with ideologically pre-disposed scientists and technical experts, if there’s no precedent to guide your study process with well-established scientific checks and balances, there’s a high probability that neutral, objective science will be the first casualty. And that’s exactly what occurred with the *Bristol Bay Watershed Assessment*.

Because EPA set out to evaluate the effects of hard-rock mining in southwest Alaska before the Pebble Partnership had actually proposed a development plan, including comprehensive mitigation and closure strategies, it was left to EPA to devise its own ‘hypothetical mining scenarios’ to evaluate. That task fell to EPA’s Phil North – not a mining engineer, but a biologist, as well as an avowed critic of the project and perhaps the strongest proponent of a 404(c) veto. North subsequently admitted that his ‘hypothetical mining scenarios’ do not employ “state of the art [mining] practices,” with the rationale that “mining companies don’t use state of the art because it’s too expensive, so it’s really more like the state of the practice.”

To be sure, North’s ‘hypothetical mines’ as presented and assessed in the BBWA do not reflect modern mining practices. In fact, they are demonstrably ‘un-permittable’ under both US and Alaska environmental regulations. This is the case for a number of technical reasons, principal among them:

- EPA’s ‘hypothetical mines’ do not employ the seepage and water management features and functions that are regularly installed at modern mines in the US to protect water quality;
- EPA’s ‘hypothetical mines’ do not employ compensatory mitigation for residual project effects on wetlands and aquatic habitat. Mitigation is not just a common feature at every mine development permitted and built in the US in the last 40 years; it is a statutory requirement of NEPA and the *Clean Water Act*. In its *Bristol Bay Watershed Assessment*, EPA elected to ignore that requirement altogether.

In certain instances, EPA's 'hypothetical mining scenarios' go even further than being non-compliant with current industry practices and regulatory requirements. In some cases, they seem contrived to actually *maximize* environmental harm.

For instance, the Pebble Project is located in a relatively wet region of southwest Alaska, such that the precipitation and groundwater in the project area is surplus to the project's needs. This is a good thing, as we will be in a position to collect, treat and release surplus water to mitigate the project's effects on downstream water courses. The EPA in its BBWA study was aware of the opportunity to collect, treat and release surplus water, although its estimate of the volume of water available for release is some 80% lower than the Pebble Partnership's superior hydrological information would dictate.

So EPA in its 'hypothetical mining scenarios' set out to define a 'surplus water release strategy' for this excess treated water. They chose to release 50% of the water into one small stream near the Pebble deposit and the other 50% into another small stream near the deposit, while leaving a third small stream with no surplus water whatsoever. They chose to release these surplus waters at a steady rate throughout the year, and (in the case of one of the streams) elected to release surplus water into a small tributary not used by local fish populations, rather than at the upper reaches of the mainstem stream.

Now, I have to tell you, the one stream EPA elected *not* to release any surplus water into easily has the highest aquatic habitat values among the three. Perhaps EPA did not know that to be the case, inasmuch as they refused to consider the comprehensive, multi-year aquatic habitat and fish distribution/abundance data contained in Pebble's Environmental Baseline Document. Even without this knowledge, however, any reasonable person would have distributed the surplus waters evenly between the three streams at a bare minimum, and so vastly reduced the environmental effects associated with changes to stream flows.

It is our belief that EPA concocted its 50:50:0 surplus water release strategy to *maximize* the environmental harm associated with its "hypothetical mining scenarios." The agency has not yet provided any alternative explanation for its approach, and even suggested in the BBWA that Northern Dynasty was the original source for its misguided 50:50:0 surplus water release strategy. This claim is wholly and demonstrably false.

EPA's surplus water release strategy is scientifically flawed in other ways as well, and certainly doesn't reflect the approach that would be taken at a modern mine like Pebble. EPA's 'hypothetical' release of surplus water at a steady rate over the course of a year is not optimal for downstream habitat, and the locations it chose to re-introduce surplus water also seem designed to exacerbate downstream effects on fish and fish habitat.

In reality, a modern mine like Pebble will employ sophisticated stream flow habitat modeling to release surplus water to local streams at variable rates, times and locations throughout the year to achieve the optimal effect on downstream habitat for the fish species present. The EPA is well aware that Pebble possesses both the scientific data and the stream flow habitat modeling capability to develop a highly protective surplus water release strategy, and yet insisted on assessing its own simplistic and perhaps intentionally malicious 50:50:0 release strategy as representative of the environmental effects likely to occur at Pebble.

In addition to assessing its own deeply flawed 'hypothetical mining scenarios', the science in the BBWA is marred by an absence of high-quality site-specific environmental data. Recall that EPA



undertook no original on-the-ground scientific research for its watershed assessment. Recall that EPA largely refused to consider the tremendous compendium of site-specific environmental data that Pebble has synthesized over a decade of study and at a cost of some \$150 million. And consider that EPA relied most heavily on small studies undertaken by paid opponents of the Pebble Project, despite those studies being heavily criticized by peer reviewers as insufficiently supported by scientific evidence, methodologically flawed and biased.

In addition to inappropriate project design and operating assumptions, and missing and inferior data, the *Bristol Bay Watershed Assessment's* scientific integrity is further confounded by EPA's application of simplistic and flawed methodologies for assessing environmental impacts. A large majority of BBWA peer reviewers agree that important information about the potential effects of mine development on the natural resources of southwest Alaska is lacking in EPA's study, and must be examined during a more rigorous and comprehensive NEPA EIS process.

For instance, aquatic ecology expert Dr. Phyllis Weber-Scannell said, "There are many aspects of the development of a large mine project that need thorough review to ensure that habitats are protected. These include, but are not limited to: classification and storage of waste rock, lower grade ore, overburden, and high grade ore; development and maintenance of tailings storage facilities; development and concurrent reclamation of disturbed areas, including stripped areas and mine pits; collection and treatment of point and non-point source water; quantity and timing of discharges of treated water; monitoring of ground water, seepage water and surface water; and biomonitoring. The transportation corridor will require review and permitting of every stream crossing of fish-bearing waters."

EPA agreed with Dr. Weber-Scannell, responding: "EPA agrees that these aspects would need to be subject to a thorough review during the development and approval of a detailed mining plan." Dr. Weber-Scannell replied: "The reviewer agrees . . . . The comment was initially made to highlight the importance of a rigorous regulatory review." Unfortunately, due to its rush to finalize a 404(c) veto, EPA is now seeking to foreclose any such opportunity for a 'rigorous regulatory review' of the Pebble Project under NEPA.

EPA's response to Dr. Weber-Scannell is not the only time the agency agreed with its peer reviewers that the *Bristol Bay Watershed Assessment* provides an insufficient scientific basis for regulatory decision-making. On more than 50 occasions, EPA acknowledged the BBWA is insufficiently comprehensive and definitive to support a regulatory action.

These comments include:

- "(the) assessment is based on available data and is intended as a background scientific document rather than a decision document;"
- "(the) assessment . . . is not intended to be an environmental impact assessment;"
- "this is not a permitting document;"
- "(the) assessment is not intended to duplicate or replace a regulatory process;
- "We agree that a more detailed assessment . . . will have to be done as part of the NEPA and permitting processes."

From the outset of the BBWA study process, EPA told the Pebble Partnership the very same thing – that the study was not intended to support a regulatory decision. Within six weeks of finalizing

the BBWA in January 2014, however, EPA had initiated a veto under Section 404(c) of the *Clean Water Act*, utilizing the BBWA study as the basis for its regulatory action.

I mentioned the peer review process for the *Bristol Bay Watershed Assessment*. Much has been written and said about the various ways in which EPA contravened its own ‘peer review guidelines’ in advancing the BBWA, including bypassing the independent third-party group retained to manage the peer review process and engaging directly with peer reviewers itself, as well as significantly constraining the scope and extent of the peer review process.

Even so, BBWA peer reviewers raised significant concerns about the study, including:

- “The resulting risk assessment can be at best characterized as preliminary, screening level, or conceptual. There are both technical and process issues that must be addressed before this risk assessment can be considered complete or of sufficient credibility to be the basis for a better understanding of the impacts of mining in the Bristol Bay watershed.”
- “This document is somewhat unique in that no actual mine has been proposed and few site- or project-specific data are available .... It is also unclear why EPA undertook this evaluation, given that a more realistic assessment could have been conducted once an actual mine was proposed and greater detail about operational parameters available .... Unfortunately, because of the hypothetical nature of the approach employed, the uncertainty associated with the assessment, and therefore the utility of the assessment is questionable.”
- “[T]he soundness of the conclusions are somewhat compromised by a lack of information.”

EPA ignored these criticisms, often noting that the reviewers’ concerns were irrelevant since the *Bristol Bay Watershed Assessment* is not a “decision document.” Inasmuch as the BBWA has, by all accounts, now become a ‘decision document’, these serious scientific flaws, shortcomings and biases must be acknowledged.

It is only through the completion of an open, objective and rigorous EIS process under NEPA that the true impacts and potential benefits of a future Pebble Project will become known.

#### *EPA Actions are Unlawful*

The Pebble Partnership has made the case in its submissions to EPA, and in federal court filings, that EPA does not have the statutory authority to do what it is doing here – that is, to pre-emptively use its 404(c) authority to veto development projects before they have been proposed, submitted permit applications or been reviewed under NEPA. This interpretation is supported by a plain reading of the statute, and its application since 1972.

Section 404 of the *Clean Water Act* is explicitly and entirely about *permits*. Thus, section 404(c) cannot apply in the absence of the US Army Corps of Engineers-led permitting process referenced in sections 404(a) and (b).

The D.C. Circuit explained that Section 404(c) “affords EPA two distinct (if overlapping) powers to veto the Corps’ specification: EPA may (1) ‘prohibit *the specification* (including the withdrawal of specification) of any *defined area* as a disposal site’ or (2) ‘deny or restrict the use

of any *defined area for specification* (including the withdrawal of the specification).” And EPA may take such action only after determining “that the discharge of *such materials into such area* will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.”

The legislative history also confirms this view. Originally, the Senate bill proposing the regulation of dredge or fill activities delegated complete authority to issue permits to EPA, as it does for discharges of other pollutants under the *Clean Water Act*. A subsequent House amendment proposed delegating permitting authority to the USACE. The House and Senate later agreed to allocate decisions on dredge or fill projects between the Corps and EPA.

The Senate Debate on the Conference Report explains that the Committee found EPA “should have the veto over the selection of the site for dredged soil disposal and over any specific soil to be disposed of in any selected site.” Under the enacted bill, EPA’s duties to evaluate the permit application would not be duplicative of the Corps’ duties “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 Conferees expect the Administrator to be expeditious in his determination as to whether a site is acceptable or if specific soil material can be disposed of at such site.” The House Debate on the Conference Report similarly provides that “it is expected that disposal site restrictions or prohibitions shall be limited to narrowly defined areas”.

It is perhaps not surprising that, when it comes to Pebble, EPA has eschewed Congress’ expectation that “disposal site restrictions or prohibitions shall be limited to narrowly defined areas.” The area in which EPA has proposed severe restrictions on the storage of dredged or fill material associated with the Pebble deposit totals 268 square miles – 57 times larger than the largest site designated in any prior Section 404(c) action.

Further, the Section 404 process specifically requires an Environmental Impact Statement that fully evaluates all aspects of a major development project. This comprehensive and detailed review process is clearly what Congress intended when it passed the *Clean Water Act*.

If EPA is permitted to expand its statutory authority under the *Clean Water Act* to veto projects that have yet to be proposed, there will be significant implications that go well beyond the Pebble Project. Such a precedent would essentially allow the agency the authority to engage in pro-active land use planning. It may not surprise the Committee to hear that we have discovered evidence of EPA’s ambition in this regard. The ‘Discussion Matrix’ I noted earlier states that one of the benefits of enacting a pre-emptive 404(c) veto of the Pebble Project is that it “(c)an serve as a model of proactive watershed planning.” In my view, this interpretation is an unconstitutional violation of the established position that land use planning is a matter generally reserved to the states, not the federal government.

In addition to initiating litigation that argues EPA has exceeded its statutory authority at Pebble, the Pebble Partnership has also brought a lawsuit alleging that EPA violated the Federal Advisory Committee Act (FACA) by improperly relying on several ‘federal advisory committees’ to achieve its pre-emptive 404(c) veto. As you know, FACA exists to ensure that special interests do not hijack agency decision-making processes and that government consults with interested parties in an open, transparent and even-handed manner. Our lawsuit alleges that EPA established or utilized three illegal federal advisory committees to provide advice and recommendations as the agency concocted and implemented its 404(c) plans at Pebble.

The ‘federal advisory committees’ we have alleged that EPA relied upon to advance its BBWA study and CWA 404(c) veto are precisely the environmental and anti-mining activists referenced earlier in my remarks. In rejecting the government’s motion to dismiss the FACA case, the federal judge found that Pebble’s claims have merit, including specific allegations of work by the various advisory committees in drafting memoranda for the EPA, attending meetings that the EPA called and chaired, and providing advice and recommendations to the agency. Specifically, the judge found that Pebble had sufficiently alleged that “EPA solicited the views of the Coalition members and actively organized with them in the interest of obtaining advice or recommendations for the Agency”. (Order on Mot. to Dismiss at 12. *Pebble Ltd. P ship v. EPA*. Civil Action No. 3:14-cv-00171-HRH (D. Alaska, June 4, 2015), ECF No. 128 (quoting First Am. Compl.).

Based on the evidence presented to date, the federal court authorized a preliminary injunction last fall, finding that the Pebble Partnership is likely to prevail on the merits of its case. Under the terms of that preliminary injunction, EPA has been required by the court to suspend all efforts toward a preemptive 404(c) veto until a final judgment is handed down in the FACA case.

Additionally, the Pebble Partnership has initiated a lawsuit alleging that EPA violated FOIA by inadequately searching for records in response to requests filed by the Pebble Partnership, and over-applying the deliberative process privilege in fulfilling those requests. The federal court has been persuaded by our arguments in this area as well, and has ordered an in-camera review to evaluate EPA’s assertions related to the deliberative process privilege.

Finally, in response to requests from the Pebble Partnership and Northern Dynasty, the EPA Inspector General has opened up an investigation into EPA’s conduct with respect to the Pebble Project, including alleged violations of the Information Quality Act and the EPA’s own risk assessment and peer review policies.

EPA is required by the Information Quality Act to maximize “the quality, objectivity, utility, and integrity” of the information it creates, collects, and disseminates. The agency’s internal Principles of Scientific Integrity require employees to “[e]nsure that their work is of the highest integrity,” which in particular requires that it must be “performed objectively, without predetermined outcomes.”

We believe EPA is substantially out of compliance with its own doctrine related to fair, open and objective scientific process, and we look forward to the Inspector General’s conclusions on these important matters when he issues his report in early 2016.

#### *A Dangerous Precedent*

Should EPA achieve its ultimate goal – a pre-emptive CWA 404(c) veto of southwest Alaska’s Pebble Project – the denial of due process will not just affect private interests that have invested hundreds of millions of dollars with the expectation of a fair, objective hearing under the law. The State of Alaska, the owner of the Pebble deposit, and the people of the region and the state, will also be substantially and unfairly impoverished. That the process EPA has followed to effect this outcome is so clearly tainted, as this discussion and our FACA litigation makes clear, only adds insult to substantial injury.

Perhaps more important for this body is the dangerous precedent and far-reaching consequences that a pre-emptive veto will have across the country.

There are some 60,000 projects that apply for CWA 404 permits each year in the United States, representing some \$220 billion of investment in our economy. If a precedent is established whereby EPA can veto any of these projects before they are proposed, before they have applied for permits and before they have been comprehensively and objectively reviewed through an EIS process under NEPA, the chilling effect on our economy will be profound. We will have substantially reduced the regulatory certainty that investors expect of first-world jurisdictions, and further eroded our competitiveness as a nation.

The American Exploration & Mining Association has warned that EPA's actions at Pebble are "sending a chilling message to the business and investment community, and has had a negative impact on exploration and mining projects not only in Alaska, but the entire United States. In fact, the world and its investment community are watching. EPA's action at Pebble will clearly indicate whether the United States is open for investment, or closed to innovation, opportunity and job creation."

The precedent becomes even more alarming when you consider that EPA's proactive use of Section 404(c) may be an attempt to expand its statutory authority under the *Clean Water Act* to undertake pro-active land use planning – including of state, private and tribal lands. Despite Congress's clear intent to focus EPA's authority to review only the environmental effects of a particular permit action, EPA is attempting to use a preemptive Section 404(c) process as a mechanism for zoning watersheds. Such actions could impact not only mineral development, but energy, agriculture, manufacturing, construction, infrastructure development, among other sectors, in every region of the country.

In our case, the State of Alaska has already developed a comprehensive land use plan for the Bristol Bay region. Drafted in 1985 and updated in 2005 following extensive public consultation, the Bristol Bay Area Plan "determines management intent, land-use designations, and management guidelines that apply to all state lands in the planning area." EPA's attempt to use the 404(c) process for "proactive watershed planning" in the Bristol Bay area will effectively preempt Alaska's plans for the state lands surrounding Pebble, which are currently specifically designated for mineral exploration and development.

I'd like to close today by reminding the Committee of the six fundamental points with which I opened my testimony.

1. There is a well-established and time proven process in America by which projects like Pebble should be assessed. It's called the EIS process under NEPA, and its precisely what should be occurring here.
2. When agencies of government throw out the rule book and make up their own regulatory processes, particularly when contentious issues like Pebble are at question, it creates a fertile environment for bias and abuse. That is precisely what we've seen in our case.
3. EPA simply does not have the statutory authority under the *Clean Water Act* to do what it is doing. If the agency's motivation is to establish a precedent to expand its statutory authority, so much the worse.

4. There is clear and incontrovertible evidence that EPA set out to veto our project before it had done a stitch of science, and that bias and pre-determination colored everything that came after.
5. The scientific record EPA is relying on to kill this project is not only flawed and vastly inferior to an EIS process under NEPA; it's now become clear it was purposefully constructed to support a pre-determined conclusion.
6. The regulatory action EPA is seeking to conclude will not just harm the Pebble Partnership. It will have far-reaching consequences for our economy and our country.

The remedy we are seeking is simple and straight-forward. We want the Pebble Project to be assessed like every other major development project in the country – via an EIS process under NEPA. This would allow EPA to retain its traditional role as a participating agency, with authority under Section 404(c) to veto any permit the USACE might award in the future.

Allowing this statutory process to proceed as intended by Congress poses absolutely no risk of harm to the environment or the public interest, inasmuch as mine construction and operations cannot proceed prior to the conclusion of an EIS, a positive Record of Decision from the Corps of Engineers (which EPA will have an opportunity to veto, if justifiable), as well as dozens of other permits granted by other federal and state regulatory agencies

*Conclusion:*

Mr. Chairman and members of the Committee, for the reasons I've outlined in my testimony, I strongly believe that Congress needs to thoroughly review the actions, motivations and potential policy implications associated with EPA's efforts to veto the Pebble Project. I believe the circumstances that have unfolded here are unlawful, that EPA has employed a process that is fundamentally unfair, and undercuts the integrity of government's science-based approach to regulatory decision-making.

If allowed to stand, the precedent established will threaten every major development project in the United States. For these reasons, I believe this matter merits further inquiry, and if necessary, changes to current law to ensure this result is avoided in the current situation, and in similar situations in future.

Biography of Thomas C. Collier  
CEO, Pebble Limited Partnership

Tom Collier was appointed CEO of the Pebble Limited Partnership in February 2014. Prior to this role, Tom had a forty year legal career with Steptoe & Johnson LLP with a specialty for guiding companies through the federal environmental permitting process. He has worked on several Alaska resource projects, including the reauthorization of TAPS, Alpine oil development and the CD-5 bridge issue. In addition to his legal career, Tom has worked for the U.S. Department of the Interior as Chief of Staff for former Secretary Bruce Babbitt. Tom has a Law Degree from the University of Mississippi where he graduated first in his class. Tom formerly was counsel for the National Park Foundation and the Association of Zoos and Aquariums. He is married to Siobhan and has two sons, Jesse and Nathan. Tom and Siobhan moved to Anchorage in February 2014.

Chairman SMITH. Thank you, Mr. Collier.  
 Senator Halford.

**TESTIMONY OF HON. RICK HALFORD,  
 FORMER ALASKA SENATE PRESIDENT**

Mr. HALFORD. Thank you, Mr. Chairman, and thank——  
 Chairman SMITH. Is your mic on? There we go.

Mr. HALFORD. Thank you, sir. Thank you, Mr. Chairman, and thank you for the opportunity to testify. I'm one of the many defenders of this watershed including departed friends like Ted Stevens, Jay Hammond, and inspirational elders like Bobby Andrew and Ofi Olsen, Mary Olympic and Violet Wilson. I'm here today humbly in their behalf, and I believe that the people of Bristol Bay who have been dependent on these resources for untold generations, and I believe in the defense of the 14,000 jobs and the \$1.5 billion annual fishery that's supported by Bristol Bay wild salmon.

I live in Bristol Bay and in Chugiak. I've been a commercial pilot and a hunting guide for all my adult life, although I spent 24 years in a detour to the state legislature. I retired as Senate President in 2003. In all my years in the legislature, I never ran without the support of the Alaska mining industry. I was active in their support. I believe that mining is important to Alaska.

You've heard today that EPA has been unfair and has made its mind up in advance. Neither of these things could be further from the truth. The truth is that while EPA was far from the first choice of the people of Bristol Bay in terms of getting someone to listen, EPA was the only choice with the authority and the jurisdiction that had the interest to help, and sadly to me, that included the State of Alaska. The truth is, EPA listened to the people of Bristol Bay and responded by preparing the most objective assessment of the potential impacts of a massive sulfide mine in this particular location.

If there's any unfairness in the discussion, it was produced by Pebble. For years they've tried to manufacture consent for their project. Their obvious efforts to manufacture that consent collapsed under the weight of facts and growing public opposition. Pebble has shown that it's willing to do or say anything to advance this project. By now, the opposition has grown to roughly 90 percent of the people in the region and about 60 percent of the people in Alaska statewide. Of the 1.8 million comments EPA got, 85 percent were in support of the process and EPA.

The more people have learned about this mine, the stronger the opposition has grown. This is in part due to Pebble's numerous false promises, and they're listed in my written testimony in terms of when they're going to apply, when they're going to apply and the continuous parade of changes in their process.

Pebble's contention that the outcome was predetermined is ridiculous. As an advocate, those of us in Bristol Bay couldn't even agree on what to ask for. We didn't know anything about 404(c). We looked first to the state and then went on through federal agencies in any way to look for help. EPA's action thus far if finalized places protection on the resources of Bristol Bay. Pebble must show that it can mine and protect those resources. They can apply for a permit today, tomorrow, the next day. Nothing has been vetoed.



Pebble has the opportunity to prove its critics wrong. They've done no field work for the last two years, and they're only waiting for the right political climate.

The stress and uncertainty on the people of Bristol Bay has been a cloud for over a decade. If there's unfairness, it's the unfairness to the people of Bristol Bay.

The uncertainty makes it difficult even for legitimate mining projects to get support to develop in Alaska because of that uncertainty. Senator Murkowski two years ago asked Pebble to file their permits and get the process started. As Finance Chairman and Presiding Officer in Alaska in years in the process, I probably signed appropriations to sue EPA. My attitude was not positive as we started this process, and I know there are many issues and conflicts with EPA, but my experience in Alaska with the EPA personnel from the secretaries and the office people to the top administrators was amazingly positive. It changed my perceptions about a huge faraway bureaucracy. They came and they listened, and I want to take this opportunity to thank those people because I think they did their best in a difficulty situation in this one place that I saw very extensively.

Today, the people of Bristol Bay are left with questions and fear about the massive exploration project in the head of their watershed. There are over 1,300 drill holes, thousands of settling ponds, potentially acid-generating material in those settling ponds, and tons of material stored on the land at their headwaters.

Pebble should be using its resources to seal their problem wells, to assure there's no acid drainage, and to clean up their mess.

Now, I am fortunate to have wonderful children, and whenever I say, particularly to my 13-year-old, clean up your mess, his response is "It's not fair." I think it is fair to the people of Bristol Bay for Pebble to spend their energy to clean up their mess.

Thank you for your time and your consideration.  
[The prepared statement of Mr. Halford follows:]

Statement for the Record

Before the U.S. House of Representatives  
Committee on Science, Space, and Technology

Written testimony for the full committee hearing titled  
“Examining EPA’s Predetermined Efforts to Block the Pebble Mine”

Rm # 2318 Rayburn House Office Building  
November 5, 2015 at 9:00am

Submitted by:  
Rick Halford  
Former Alaska Senate President  
Chugiak, AK 99567

Testimony submitted on November 3, 2015

Dear Chairman Smith and Members of the Committee:

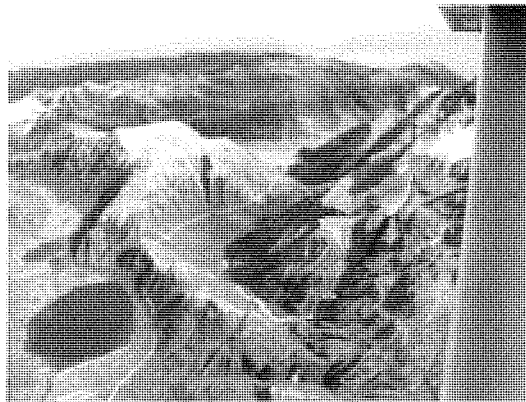
Thank you for the opportunity to testify before the House Science, Space & Technology Committee this week. My name is Rick Halford. I moved to Alaska 50 years ago as a college student and never left. My wife and our kids currently split our time between Chugiak (near Anchorage) and Aleknagik (in Bristol Bay). After I graduated from Alaska Methodist University, I worked as a commercial pilot and big game hunting guide; my first paying customers were miners, prospectors and geologists. I flew them all over the state helping them to stake mining claims. Later I was elected to the Alaska state legislature where I introduced mining legislation and had strong support from resource development groups. I never ran a race without support from a mining organization. Mining is important to Alaska. After 24 years in the Alaska Legislature, serving as House Majority Leader, Senate Majority Leader five times and Senate President for two terms, I retired in 2003.

I first flew over the Pebble area over 40 years ago as a hunting guide. After I retired from the legislature former first lady of Alaska Bella Hammond asked me to look at the Pebble Mine proposal. Shortly thereafter I got stuck in the Village of Ekwok because it was getting dark and my plane was iced up. I stayed at Buck Williams' home and had breakfast with Luki Akelkok, who also asked me to look at the Pebble mine proposal.

I had never opposed a mine before and never expected to. But after I learned about the Pebble proposal, this ended up being the only mine in my life that I didn't like, here's why:

Pebble mine is unique because of its massive size, the type of ore body it is and because the deposit lies underneath rivers that support one of the world's last remaining wild salmon fisheries.

1. The Pebble deposit is a low grade ore body primarily made up of sulfur and has a high likelihood of producing acid mine drainage.
2. The deposit is located in a saddle that drains into both of the largest salmon rivers in Bristol Bay. There could not be a worse location for this mine. Additionally the road, slurry pipeline and other infrastructure necessary to transport materials to and from the deposit to a deep water port would cross over 64 salmon streams in the Kvichak River watershed and go through some of the roughest terrain on the planet.



*Proposed road  
and slurry  
pipeline route to  
deep water port  
in Cook Inlet.*



*Existing road to transfer fishing boats from Cook Inlet to Lake Iliamna. Road would have to be significantly extended and widened to accommodate mining infrastructure.*

3. The size of the Pebble deposit is beyond imagination. According to a 2011 report to their shareholders, Northern Dynasty Minerals the Pebble Mine would include about 10.78 billion tons of mineable ore. The pit would be well over a mile deep in places, and the footprint would cause the direct loss of between 24 and 94 miles of stream, 1,200 to 4,900 acres of wetlands, and 100 to 450 acres of ponds and lakes. The waste would be stored on site in perpetuity.

<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595724>

[http://www2.epa.gov/sites/production/files/2015-05/documents/bristol\\_bay\\_assessment\\_final\\_2014\\_vol1.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/bristol_bay_assessment_final_2014_vol1.pdf)

Over the past decade, Pebble conveniently claimed it had a plan when in their best interest, but in the end these claims were only empty promises to apply for permits and start public review process. Here are a few examples of these empty promises:

- **2004** – (Nov 3) – Northern Dynasty Minerals (NDM) announces they expect “completion in 2005 of permit applications.” See letter from Senator Murkowski.  
[http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4)
- **2005** – (August) NDM claims that “a full permitting process for a port, access road, and open pit mine [were] all slated to begin in 2006”  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595668>
- **2007** - (October) - Pebble targets completion of a pre-feasibility study in December 2008, a feasibility study by 2011 and commencement of commercial production by 2015.  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595686>
- **2008** – Cynthia Carroll, former CEO of Anglo American Mining Company, tells Fast Company Magazine that they won’t go where they’re not wanted.  
<http://www.fastcompany.com/1042481/anglo-american%E2%80%99s-bristol-bay-controversy-wildlife-vs-mineral-riches>
- **2008** - (October) – Alaskans were assured that that Pebble was on “schedule to finalize a proposed development plan in 2009 and, following input from project stakeholders, apply for permits in early 2010.”  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595696>
- **2009** – (March) – Pebble noted they were in the midst of “preparation to initiate state and federal permitting under the National Environmental Policy Act (NEPA) in 2010.  
<http://corporate.pebblepartnership.com/perch/resources/2009-work-plan-1.pdf>
- **2009** - (September) – Preparing for project permitting under NEPA in 2010.  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595723>

- **2010** – (Feb 1) – Pebble claims preparing to initiate NEPA permits in 2011, <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595723>
- **2010** – (May) – Pebble backtracks and now claims it will enter permit phase in 2012. [http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4)
- **2010** - Pebble fined \$45,000 for withdrawing water without a permit on 45 separate occasions over a 3-year period. <http://dnr.alaska.gov/mlw/mining/largemine/pebble/water-settlement/index.cfm>
- **2010** - (September) – Pebble CEO John Shively tells the Juneau Empire that Pebble is likely to start applying for permits in early 2011. [http://juneauempire.com/stories/092410/sta\\_711593114.shtml#.VjEcCqR43Pw](http://juneauempire.com/stories/092410/sta_711593114.shtml#.VjEcCqR43Pw)
- **2011** – (May) – Pebble reports that “design process is nearing important milestones and that Pebble intends to enter the permitting phase toward the end of 2012.” The press release also states that, “The Pebble Partnership has made a public commitment to consult the people of Bristol Bay and Alaska before permitting is initiated as a process of a proposed mine plan for Pebble . . . That important work will begin this year.” (Ron Theissen) <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595726>
- **2011** – (June) – John Shively, CEO of Pebble, tells E&E news that Pebble should have a project proposal sometime in 2012 and be in permitting by late 2012, or early 2013. <http://www.eenews.net/tv/vidcos/1365/transcript>
- **2011** – (October) – Pebble about-faces and now claims . . . We have never even said that we’re going to seek a permit. We may not.” <http://www.aaas.org/news/proposed-pebble-mine-has-alaskan-community-focused-critical-science-and-policy-issues>

- **2012** - (February) – Pebble Releases 27,000 pages of Environmental Baseline Documents that rely on flawed methodology and withhold original data making peer review impossible.  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595657>
- **2012** – (February) – Former Vice President of the Pebble Partnership told the State of Alaska House Resources Committee that Pebble would have a mine plan out within a year, moving to permitting by early 2013.  
<http://juneauempire.com/state/2012-02-17/pebble-partnership-ready-permit-early-fy-13>
- **2012** – (May) – Pebble announces \$107 million work program to prepare Pebble project for permitting at the end of 2012.  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595730>
- **2013** - (June 2013) – Again on E & E News, Pebble CEO John Shively explains that he hopes “to have a project to take into permitting this year.”  
<http://www.eenews.net/tv/videos/1698/transcript>
- **2013** – (March)– Senator Cantwell calls on SEC to investigate Pebble  
<http://www.alaskapublic.org/2013/03/18/senator-cantwell-calls-for-sec-to-investigate-northern-dynasty-minerals/>
- **2013** – (April) – Pebble announces \$80 Million work plan to advance Pebble project to permitting by the end of the year.  
<http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595742>
- **2013** – (July) – Murkowski tells Pebble to apply for permits (see her letter)  
[http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3b2efb37-cdd2-4203-8568-72c405e2a4e4)
- **2013** – (November) – Ron Thiessen, CEO of Northern Dynasty, stated to the International Business Times, that “We can permit this mine. There’s no question.” “The heavy lifting is done and we have all of the data.” Thiessen further stated that “Northern Dynasty will have permitting documentation done and ready to file by the first quarter of 2014”



<http://www.ibtimes.com/pebble-mine-executive-says-northern-dynasty-can-manage-giant-alaskan-copper-mine-alone-if-necessary>

- **2015** – (November) - "working toward the goal of submitting our initial project description for permitting" and "we're only just now preparing to apply for permits" <http://www.pebblepartnership.com/plan.html>

During this time, opposition to the mine grew to an overwhelming majority of local residents, and thousands of commercial fishermen, and fishing and hunting guide businesses. Alaskans asked the State of Alaska for help numerous times, but were disappointed. We started looking to other entities for help and in 2010, six local tribes, a commercial fishing organization, and many others requested to EPA that they initiate a 404(c) process. As EPA responded and local residents learned more about the 404(c) process, it was refreshing to have someone actually listen to us. There were qualified people asking real questions, recording answers, respecting local knowledge and providing interpreters and objective explanation instead of telling people what they should want. Here is a brief timeline:

- **2010** – (May) – Tribes, commercial fishermen, and many others submit request to EPA to initiate 404(c) process in Bristol Bay.
- **2011** – (February and March) – Pebble rejects the EPA's request to provide input and participation in the watershed assessment process.
  - Dennis McLarren asks at least twice for information and data from Pebble, while making sure to answer Pebble's questions. Pebble never outright answers or provides information *as requested* by EPA.
  - Then later, in the Watershed Assessment response, blasts EPA for not using Pebble data.
- **2011** – (June) – EPA hosts 4 informational meetings in Bristol Bay about the Watershed Assessment
- **2012** - (May) – EPA Releases First Draft of Watershed Assessment

<http://www2.epa.gov/bristolbay/about-epas-bristol-bay-assessment>

- **2012** – (June) – EPA held public comment meetings in 6 Bristol Bay villages, as well as Anchorage and Seattle.
  - Approximately 2,000 people attended public meetings
  - During the 60 day comment period EPA collected 233,000 comments
  - 95% of comments supported EPA action to protect Bristol Bay  
<http://www2.epa.gov/bristolbay/public-involvement-bristol-bay-assessment>
- **2012** (August) – EPA holds three day peer-review meetings to review Watershed Assessment
  - Peer Review team consisted of 12 independent experts  
<http://www2.epa.gov/bristolbay/peer-review-bristol-bay-assessment>
- **2013** – (April) – EPA releases second draft of the Watershed Assessment
  - 90 day public comment period
  - EPA collected 890,000 comments
    - Overall, 73% of comments supported EPA
      - 84% of Alaska comments supported EPA
      - 98% of Bristol Bay comments supported EPA
  - <http://www2.epa.gov/bristolbay/public-involvement-bristol-bay-assessment>
- **2014** – (January) – EPA Releases Final Watershed Assessment.  
<http://www2.epa.gov/bristolbay/about-epas-bristol-bay-assessment>
- **2014** – (February) – EPA initiates review of Bristol Bay under §404(c) of the Clean Water Act. <http://www2.epa.gov/bristolbay>
- **2014** – (July) – EPA releases its Proposed Determination for Pebble Deposit in Bristol Bay that sets restrictions for mining in the pebble deposit in the Bristol Bay watershed. <http://www2.epa.gov/bristolbay>
  - Hosts public comment period, and six public hearings in Bristol Bay communities and one in Anchorage
  - Total - over 670,000 comments submitted
    - 99% of comments support EPA’s proposed determination

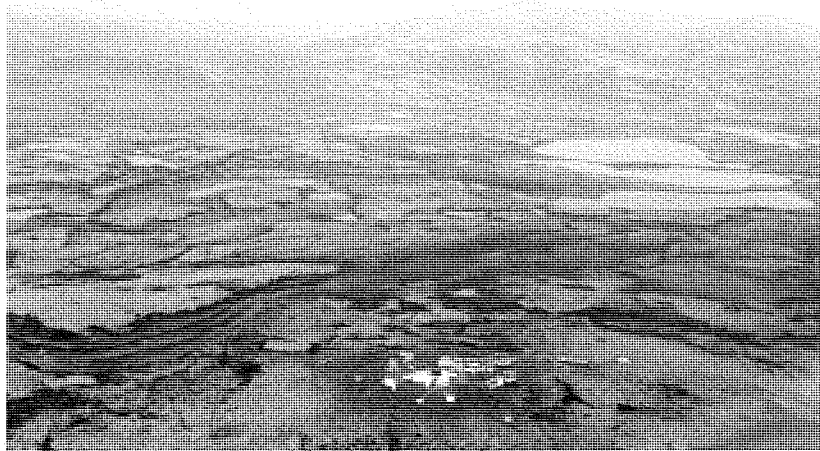
There is widespread and overwhelming local support for completing 404(c) protections for Bristol Bay salmon, culture and jobs. Unfortunately, the Pebble Partnership continues to try to deceive Alaskans. The recent Pebble funded report by the Cohen Group is currently alleging that EPA is unfair, the report omits the fact that the only thing stopping Pebble from applying for permits and undergoing a the NEPA review process is the Pebble Partnership itself.

Further, as a resident of Bristol Bay, I can tell you that nothing seems pre-determined to me in EPA's actions. EPA collected information and data, met with and listened to both sides, and engaged in extensive outreach to all the stakeholders. I do not believe that EPA's engagement itself was out of the ordinary as it is common for developers and the public to seek EPA's perspective in advance of formal project initiation. EPA's engagement on what has the potential to be the largest open-pit mine in North America should have been expected and it should be no surprise that the largest open-pit mine would have the largest environmental impacts. Recognizing the facts associated with the Pebble Mine project does not constitute a "pre-determined" outcome on the part of EPA.

I understand the Committee on Science, Space, and Technology has detailed information on Pebble's exploration harms from its last hearing on Pebble held on August 1, 2013, and I'd like to update that information. *See* Letter from Rep. Paul Broun, Chairman, Committee on Science, Space, and Technology to Wayne Nastri (Sept. 3, 2013) (asking "what possible environmental harm could occur between today and a decision on a Pebble mine proposal following a NEPA process that a preemptive EPA veto might avoid?"); *and* Questions for the Record from Wayne Nastri to the Committee on Science, Space, and

Technology (Sept. 17, 2013) (answering this question with descriptions and photos of on-going harm from Pebble's exploration activities).

In July of 2015, a field inspection report by the State of Alaska showed that 1/3 of the 24 drill sites that PLP showed to DNR during the inspection had problems that could lead to pollution, including acid generation. There are 1300 holes, thousands of settling ponds and tens of thousands of pounds of now unused material on state land. There are several photos below and the full field report can be found: <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>



*Photo: Pebble operations camp (October 2015)*



Photo: Alaska DNR July 2015. Materials stored for future use with a view to the east.

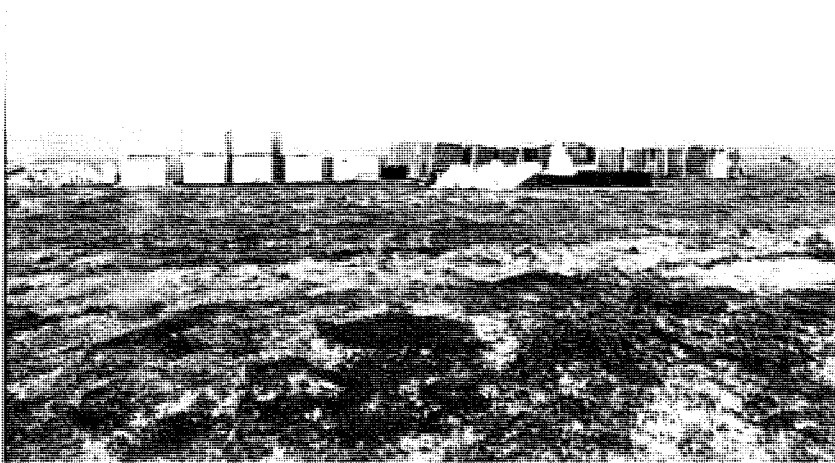


Photo: Alaska DNR July 2015. Boxes for line heaters



Photo: Alaska DNR. Material is stored in this view to the southeast

Right now Pebble chooses to spend its remaining money on lobbyists, lawyers and public relations firms while continuing to ignore the will of the local people. The people of Bristol Bay overwhelmingly thank the EPA and we encourage you to let them do their job.

**Rick Halford**

Former State Senate President Rick Halford is well-respected for his role as a political leader in Alaska. A popular Republican, he served for nearly 25 years in the Alaska State Legislature, with multiple terms as both Senate President and Senate Majority leader. He retired as Senate President in 2003. He served as an RNC committeeman for Alaska and earned a Defender of Freedom award from the NRA. The Alaska Miners Association was among his most consistent supporters during his time in the state legislature. With about 10,000 hours in the air over Alaska as a commercial pilot and big game hunting guide, Halford has a 50 year view of Alaska's incredible values in renewable and nonrenewable resources. He's an avid outdoorsman. He, along with his wife and kids split their time between Chugiak and the village of Aleknagik.

Chairman SMITH. Thank you, Senator Halford.

Instead of recognizing myself first, I'm going to recognize the gentleman from Texas, Mr. Babin, for his questions.

Mr. BABIN. Yes, sir. Thank you, Mr. Chairman. I appreciate it. And I want to thank the witnesses for being here as well.

I would ask that a slide be placed up here in just a second, but first I want to ask Mr. Halford a question. You were the recipient of the notes taken by a Trout Unlimited colleague at a meeting between the EPA and several opponents of the Pebble Mine, and I'd like to point everyone's attention to some excerpts from these notes in light of the fact that we just heard Secretary Cohen testify under oath that there should never be any politics involved in the review process, but I would point your attention to these notes, and this was a—notes that was—that were from Richard Parkin, who is the project leader of the Bristol Bay project and working for the Environmental Protection Agency. It says where the bottom red line, this is what he said. This is the EPA's own representative at the time at this meeting. It said that—clarified—it stressed that while a 404(c) determination would be based on science, he says politics are as big or a bigger factor. Now, how do you—was it your understanding, Senator Halford, that politics would play as big or as big a factor as what Mr. Parkin said than the science in EPA's decision to use section 404(c) to stop the Pebble Mine, and bearing in mind what Secretary Cohen had just testified just a few minutes ago?

Mr. HALFORD. Well, certainly I—you're talking about something that happened in 2011. I don't remember anything about it, and I can see the date but I don't know—I mean, I don't think politics should be the factor. Obviously that's not the way—

Mr. BABIN. Tuesday, February 22nd, 2011, at 4:26 p.m. That's the date and time.

Mr. HALFORD. I can't remember that conversation at all. If it was a memo, particularly if it came by email, I'm one of those people that still lives in an analog world so I have trouble just keeping track of all my emails.

Mr. BABIN. Well, in light of the fact that we just heard Secretary Cohen say that in these types of decisions when we're using—supposedly using science and we have the EPA's own project leader saying that science does play a big factor but politics can be a big factor or bigger factor. That leads me to believe that this is not really based on science after all.

Mr. HALFORD. I have no idea how he was saying it. He might have been saying it as an objection to what politics has influence on. I don't know.

Mr. BABIN. Okay.

Mr. HALFORD. I don't recall.

Mr. BABIN. Mr. Collier, EPA's Bristol Bay project leader Richard Parkin, whose name and quote is here, admitted that politics would play as large a role as the science, in fact, even a larger role, in its determination to stop the Pebble Mine. If this is the feeling of the agency at EPA, how then can the judgment and impartiality of the EPA be trusted at all in these decisions?

Mr. COLLIER. Congressman, obviously I've questioned their judgment in these proceedings, and I think this is one example of why.



I'd like to point out to the Committee that Mr. Parkin was the leader of the scientific effort for this, and this is what he's saying, and I think that's indicative of the problem.

Mr. Congressman, I've probably read more internal memos and emails regarding this situation than anyone else in this room, and this is just one of dozens of examples of this kind of concern, and the criticism of Secretary Cohen's report that it's not independent, what hasn't been criticized is the detailed citation throughout that 350 pages where every one of his statements has been cited back to a document from EPA to verify its authenticity.

Mr. BABIN. Thank you very much to both of you witnesses, and I think the only conclusion you can draw is that science is not the biggest criteria they use to come up with these permits.

Thank you, Mr. Chairman.

Chairman SMITH. Thank you, Mr. Babin.

The gentleman from Virginia, Mr. Beyer, is recognized for his comments.

Mr. BEYER. Thank you, Mr. Chairman, very much, and thank you to the witnesses.

The heart of the questioning today seems to me why did the EPA feel the need to use the 404(c) process rather than just wait for Pebble to file a mining permit. Senator Halford talked about the stress and uncertainty of the people of Bristol Bay, and I'd like to use my time to help the public understand why the EPA took the actions that it has and to help show the potential consequences of a mine failure in Bristol Bay.

The Pebble Partnership has pledged that they would operate their mine safely and that it would contain modern engineering practices that would prevent virtually any conceivable accident from occurring, and they've repeatedly pointed to the Fraser River in British Columbia and specifically the Mount Polley Mine as a working example of a mine with modern engineering that has had minimal impact on the surrounding environment.

I'd like to start by playing a video the Pebble Partnership produced on the coexistence of mines and fish in the Fraser River Basin several years ago.

[Video shown.]

So that is very encouraging. In 2012, in response to the EPA's analysis of the potential impact a Pebble mine could have on the Bristol Bay Watershed, John Shiveley, the CEO of Pebble Partnership and now as Chairman of the Board of Directors, wrote the EPA arguing that their analysis had faulty assumptions based on outdated mining technology. He attached seven White Papers including three by the international engineering firm Knight Piesold and two papers that focused on the coexistence of mining and salmon in the Fraser River. I've prerecorded excerpts from that letter and those papers over a video of the Mount Polley Mine's tailing ponds rupture. This occurred in August 2014, sending 25 million cubic meters of water and mine waste into the waterways of the Fraser River Basin. If we can now play that video?

[Video shown.]

I want to emphasize that those—I was reading it but those are not my words. Those came from the previous CEO of Pebble Mine

and the reports that were issued, so we see the incredible irony and unhappiness.

So three questions that come out. What was the cause of the Mount Polley tailings pond breach? An expert panel found that the geological features of the tailings dam were neglected in its construction and concluded that “the design was doomed to failure.” Who designed the Mount Polley tailing storage facility? It was the same firm that produced the three White Papers that we read from, arguing that modern engineering standards had prevented any failures at the Mount Polley Mine and would prevent any future mishaps at Pebble’s Bristol Bay mine. It’s also the same company hired to design Pebble’s tailings dam at the proposed mine in Bristol Bay.

Finally, what was the environmental impact of the Mount Polley mine breach? Not yet clear but what is clear is that the Pebble Partnership pointed to the Mount Polley mine as an example of what we could expect from modern engineering practices that would be used to construct their mine in Bristol Bay. Hence, the stress and uncertainty of the people of Bristol Bay.

Senator Halford, how do you respond to this? What are your thoughts?

Mr. HALFORD. I guess the question, and there’s been some discussion about the uniqueness of the process and how the process has gone, how hard the people of Alaska tried to get somebody to listen for a decade or more, but I think the other part of it is, this is the last greatest salmon resource left on Earth. It’s the only place where you have all five species and the dependent culture totally intact. Is this the place that we should experiment with something that has never worked in all of history in a wet climate in a comparable size? I don’t think it is. I think it’s a very, very dangerous experiment, and again, if this one goes, it’s the last one. Salmon have been destroyed all over the globe, sadly.

Chairman SMITH. Thank you, Mr. Beyer.

Mr. Collier—well, first of all, let me recognize myself for questions, and Mr. Collier, would you like to respond?

Mr. COLLIER. Thank you. Congressman Beyer, I know that you’ve been a champion, your career, of the environmental impact statement process. This is exactly the kind of thing that ought to be examined very rigorously and very thoroughly in an environmental impact statement setting. And that’s what we’re asking for. That’s all. Just let us have due process.

As to your questions, though, I’m on record, have been since the Mount Polley situation occurred, that we would not go forward with any permit application without an independent review of anything that Knight Piesold came close to on our project.

But let me give you a little bit of background that you may not know about this situation. Knight Piesold withdrew as the engineer of record years before the failure of Mount Polley, and they did so because of an express concern that the facility was not being managed according to the way it was designed. It was designed as a tailings facility to store essentially sand. It was being used to store wastewater. And the reason the facility failed is because there was way too much water in that facility. And it essentially overtopped.

That's the kind of thing we need rigorous enforcement to make sure doesn't ever happen anywhere in the world, especially in America, and we would support that strongly.

There's an existing criminal inquiry going on in Canada with respect to this occurrence, and if they find the facts that are necessary, the industry will support where that should go.

But we're the first ones to say that rigorous enforcement of design characteristics are very important to the mining industry everywhere in the world, and we're confident that would be the case in America if we build ours in Alaska.

But the real point, Congressman, is we need an environmental impact statement to look at these issues and lots of other issues. And that's all we're asking for, just process.

Chairman SMITH. Thank you, Mr. Collier.

My next question is this: What are the implications for private property owners of the EPA's regulatory overreach? What are the implications for the private property owners? They're the ones to me that ought to be most concerned.

Mr. COLLIER. You know, Mr. Chairman, there's a lot of criticism often of something that's called the Antiquities Act, and that's the process by which the President of the United States can sign a document and withdraw federal land and make it a park. What you're faced with here through the use of 404(c) preemptively is the Antiquities Act on steroids because now the Administrator of EPA can unilaterally sign a document and withdraw not just federal land but withdraw state land and private land and essentially declare it a park never to be developed, without doing an environmental impact statement, right?

This is outrageous. I think that private landowners around America should be extremely concerned about what this precedent can set. This gives EPA extraordinary powers that the statute didn't give them. There's not a word in that statute that says this is what ought to play out.

Chairman SMITH. Okay. Thank you, Mr. Collier.

My last question goes to the appearance that taxpayers' dollars were actually used to lobby against Pebble Mine. I'm going to ask you what evidence we have of that, but I also, as a way to emphasize the significance of it, want to read to members of the Committee an excerpt from 18 U.S. Code paragraph 1913, lobbying with appropriated monies. "No part of the money appropriated by any act of Congress shall be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy," and so forth. The penalties for doing so are fines that range from \$10,000 to \$100,000 for each individual violation of that law.

Would you like to comment on that?

Mr. COLLIER. Well, I'm aware of the penalties of the anti-lobbying statute. I know anyone that runs a federal agency in America is quite aware of them. Congressman, I haven't seen any documents that provide the kind of evidence that would be necessary to bring a prosecution under the anti-lobbying statute.

But I've got to tell you, I've got a lot of concern about that issue in Pebble. My concern may be a step away, and whether it's actually a violation of statute I don't know, but the collusion between environmental activists and EPA in this matter are extraordinary. There are over 1,000 times there were contacts between them. They've documented 30 with Pebble to put that into some kind of relative consideration.

The massive lobbying campaign and massive public relations campaign undertaken by those environmental organizations that were in constant contact with EPA, I can't help but wonder whether EPA wasn't suggesting to them that maybe they could be aided if those organizations did some lobbying for them.

Chairman SMITH. Thank you, Mr. Collier. Just to reassure you and others, we will be continuing our investigation into whether or not the anti-lobbying statute was violated.

I thank you.

The next person up is the gentlewoman from Oregon, Ms. Bonamici.

Ms. BONAMICI. Thank you very much, Mr. Chairman. And again, we absolutely need to hear from the EPA.

The people of Oregon and the northwest part of the United States are keenly aware of the potential repercussions of an open-pit copper mine and what those—what that would do to sports fishing, commercial fishing in Bristol Bay. Pebble's exploratory activities are already having a negative toll. A 2015 Alaska Department of Natural Resources report examined 24 of 1,300 exploratory drill holes and found that eight of those 24 had already leached acidic waste into waterways in the region or have caused other environmental damage.

I have a copy of a reclamation petition dated November 3 filed by 15 Alaska-based organizations and individuals calling for Pebble to assess the damage that they've caused and demanding that they come up with a cost estimate and timeline for remediation. And I ask that this petition be included in the record, Mr. Chairman.

Chairman SMITH. Without objection.

[The information appears in Appendix II]

Ms. BONAMICI. And I also sent a letter to the EPA Administrator McCarthy, along with several of my colleagues from the Northwest. This is dated January 30, 2014, urging the Administrator to use the authority given to the EPA under the Clean Water Act to protect the Bristol Bay salmon fisheries from the potentially devastating impacts of the proposed Pebble Mine. And I would like to enter this into the record as well.

Chairman SMITH. Without objection.

[The information appears in Appendix II]

Ms. BONAMICI. Thank you. Senator Halford, I know you fly over Bristol Bay regularly, and we saw some pictures. I wonder if you could just mention what you see now and expand on the current repercussions of the mining activities. But I want you to be brief because I have another important issue I want to ask you about.

Mr. HALFORD. Well, the last time I flew over it was probably just about a week ago, and there was no activity but an awful lot still left on the land. Two years ago, they cleaned up their fuel dump on what they called, I think, Big Wiggly Lake. But there hasn't

been much of anything done since then. And again, the settling ponds where they drilled down through in some cases a mile deep into basically what's a sulfur deposit if it were named for its biggest mineral, those things have the potential of acid generation. They're sitting there like test cells in the watershed. They're dangerous.

Ms. BONAMICI. Thank you. And I need to ask you, too, that, you know, we've heard a lot about subpoenas this morning and also lobbying. I understand that there's been a significant amount of money spent by the company lobbying as well and with a public relations campaign. But could you talk a little bit about this talk about at least 72 subpoenas that are going to be issued or have been issued? What's the talk about that among people in Alaska? Is it—

Mr. HALFORD. Well—

Ms. BONAMICI. —stifling debate or silencing critics?

Mr. HALFORD. There's a very sad case that is—actually turned around when it to the Supreme Court. But one of the Constitutional Convention delegates and a former First Lady filed a suit against the State and Pebble on water rights application just to get notice. When they lost at the lower court, Pebble proceeded to try and research to go after them individually for the money, for the legal costs. They lost at the Supreme Court so it never went forward from there.

But the point is these kinds of actions stop people from trying to question what's being done out there. The same organizations—

Ms. BONAMICI. And I'm sorry to interrupt, but also want, Mr. Chairman, to read from a letter sent to Secretary Cohen from an Assistant Attorney General at the U.S. Department of Justice in April. This is in response to a letter Secretary Cohen wrote in March of 2015 to the Department of Justice about the purported independent review of this issue. And the letter from the Justice Department reads in part, "the federal courts provide the appropriate forum for resolving Pebble's allegations against EPA."

"As you are aware, this matter is in litigation in three separate lawsuits filed by Pebble against EPA in connection with EPA's assessments of the potential environmental effects of Pebble's proposed mine activities."

The letter continues, "your review obviously overlaps with the pending litigation." Then, the letter went on to say that "Pebble has sought a preliminary injunction regarding Section 404(c) activities and the—purportedly, the letter said, "so it could maintain its legal rights and the status quo, not so that it could launch its own private investigation into the EPA's actions. Pebble is attempting to obtain government information relating to its pending claims against the United States outside of the normal discovery context." The letter continued.

This letter is contained in a report released yesterday by the Natural Resources Defense Council. That report is titled "The De-meaning of Independence," which is a rebuttal to the Cohen report. And I ask that this report, which contains the letter I quoted, also be entered into the record.

Chairman SMITH. Without objection.

[The information appears in Appendix II]

Ms. BONAMICI. Thank you. And, Mr. Chairman, I do want to emphasize that it would be inappropriate for this committee to follow up on the advice that was raised earlier this morning for the Committee to issue subpoenas for information that might be used by the Pebble Partnerships solely as a tool in its current litigation. The Department of Justice knows this and recognizes it, and Members of this Committee should know that as well.

Thank you, Mr. Chairman. I yield back the balance of my time.  
Chairman SMITH. Thank you, Ms. Bonamici.

The gentleman from Texas, Mr. Weber, is recognized for his questions.

Mr. WEBER. Thank you, Mr. Chairman.

Mr. Collier, this question is for you. What is your understanding of the decision EPA undertook to initiate the Bristol Bay Watershed Assessment? Did the EPA initiate this study to gather more information, or would—did it seem more like a preemptive 404(c) action?

Mr. COLLIER. Congressman, if you give me just one second, please, sir, to respond quickly to a couple of other—

Mr. WEBER. Go ahead.

Mr. COLLIER. —points raised. There's been no finding by the Department of Natural resources, based on the recent tour that we had leached acidic waste into the environment.

The 24 wells were not random samples. The eight that were leaking water, we took DNR to those eight because we had noted they were leaking water to show them what was going on. We—this—we brought this to their attention, and we wanted them to see what we intended to do in order to plug that water from leaking in the future. Any suggestion that we have any issues out there, we are 100 percent in compliance with our permits.

Mr. Congressman, the—from the get-go there has been a decision made at EPA to veto this project. There are countless emails that show that. I saw a couple new ones just within the last few days—

Mr. WEBER. If I may, let me put you on hold right there. I have a slide I wanted to get your take on—

Mr. COLLIER. Please.

Mr. WEBER. —if we can put the slide up.

[Slides.]

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PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE

EPA-BBL-6416

David Evans/DC/USEPA/US To: Palmer Hough  
02/07/2011 05:46 PM cc  
bcc  
Subject: Re: Fw: Murkowski Welcomes EPA Study of Bristol Bay

Interesting spin on EPA's announcement/decision - her communications would suggest no 404(c) would be done until all the science is in (EIS?). Obviously, that's not what we have in mind....

Dave

-----Palmer Hough/DC/USEPA/US wrote: -----

To: Denise Keehner/DC/USEPA/US@EPA, David Evans/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Christopher Hunter/DC/USEPA/US@EPA, Gregory Peck/DC/USEPA/US@EPA, Ross Geredien/DC/USEPA/US@EPA, Julia McCarthy/R8/USEPA/US@EPA, fertik.rachel@epa.gov, Tanya Code/DC/USEPA/US@EPA, Jim Pendergast/DC/USEPA/US@EPA  
From: Palmer Hough/DC/USEPA/US  
Date: 02/07/2011 07:07 PM  
Subject: Fw: Murkowski Welcomes EPA Study of Bristol Bay

FYI

Palmer Hough, Environmental Scientist  
tel: [REDACTED]

Wetlands Division  
U.S. EPA Headquarters (MC 4502T)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
www.epa.gov/wetlands

----- Forwarded by Palmer Hough/DC/USEPA/US on 02/07/2011 07:15 PM -----

From: SHOREN BROWN <[REDACTED]>  
To: Bill Dunbar/R10/USEPA/US@EPA, Phil North/R10/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA  
Date: 02/07/2011 07:03 PM  
Subject: Murkowski Welcomes EPA Study of Bristol Bay

From: David Evans  
To: Palmer Hough  
Date: February 7, 2011  
Subject: Re: Fw: Murkowski Welcomes EPA Study of Bristol Bay

Interesting spin on EPA's announcement/decision - her communications would suggest no 404(c) would be done until all the science is in . . . . Obviously, that's not what we have in mind....

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PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE

From: Dillon, Robert (Energy) [[mailto:Robert\\_Dillon@energy.senate.gov](mailto:Robert_Dillon@energy.senate.gov)]  
Sent: Monday, February 07, 2011 5:01 PM  
Subject: GOP ENR: Murkowski Welcomes EPA Study of Bristol Bay



FOR IMMEDIATE RELEASE  
(202) 224-6977  
FEBRUARY 7, 2011  
MEGAN HERRMANN (202) 224-7875

CONTACT: ROBERT DILLON

#### Murkowski Welcomes EPA Decision to Study Bristol Bay Watershed

WASHINGTON, D.C. - U.S. Sen. Lisa Murkowski, R-Alaska, today commended Environmental Protection Agency officials on their decision to assess the potential impacts of mining and other development projects on the Bristol Bay watershed.

"The EPA's decision to withhold judgment on the potential environmental impact of projects, like the Pebble Mine, until all the scientific information has been collected and analyzed is a prudent decision," Murkowski said.

Opponents of the Pebble Mine last year petitioned the EPA to preemptively block the development. EPA Administrator Lisa Jackson called Murkowski today to tell her the agency was instead commissioning further study of the region.

Murkowski, the ranking member of the Senate Energy and Natural Resources Committee and the Interior Appropriations Subcommittee, said the agency's pronouncement is in keeping with President Obama's pledge to base his administration's decisions on the best available science.

"I am committed to letting the science decide whether mining is right for the Bristol Bay region, but any attempt to prejudge a project before the environmental work is finished would be a troubling signal, as well as a clear violation of the environmental review process," Murkowski said.

Pebble, located in Southwest Alaska to the north of Lake Iliamna, is one of the largest prospects for copper, gold, molybdenum and silver in the world. The companies working on the mine proposal have invested more than \$100 million in research, studies and field work in preparation to begin applying for the necessary environmental permits in 2011 or 2012.

Bristol Bay is also home to the world's biggest salmon fishery, and it is

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PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE

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Mr. WEBER. If you look at this email communication, it's between EPA employees David Evans and Palmer I guess it's Hough, H-o-u-g-h is how that would be pronounced—

Mr. COLLIER. Yes.

Mr. WEBER. —regarding Alaska Senator Murkowski's press release upon the EPA's announcement to conduct the Bristol Bay watershed assessment. In it, David Evans writes, and I'm quoting, "interesting spin on EPA's announcement/decision. Her communications would suggest no 404(c) would be done until all the science is in." Now, here's the smoking gun. David Evans says, "obviously, that's not what we have in mind." Does it get—when you see a statement like that, do you think a reasonable person says the EPA's probably objective on this matter?

Mr. COLLIER. And, you know, Congressman, this is one of dozens, dozens of such emails. The one I saw just yesterday was one where they—talking back and forth and one says to the other, you know, there are two options. We can do a little science and then veto it or we can just veto it without doing the science. And they said, well, at least we don't have a disagreement of what the end result is.

Mr. WEBER. That's the juror to the judge. Judge, let's give him a fair trial and then hang him.

Mr. COLLIER. Yes. Exactly. And that's why, you know, our request continues to be just let us have due process. Give us an environmental impact statement. Give us an independent to review that environmental impact statement, and then we'll have this debate.

We recognize there are environmental challenges with building a mine in Bristol Bay, but we think we've got answers to those if we can just get an opportunity to have that debate and—

Mr. WEBER. So you're in business. I own an air-conditioning company 34 years. I've dealt with the EPA over Freon issues for a long time. So as businesspeople, we would say, well, the EPA's job is to be fair and an impartial judge if you will to make an assessment based on something that you the business community brings to EPA. It's not—we would—I would argue, see if you agree, that it's not necessarily EPA's job to go out before you bring them something and to tell you, hey, don't bother bringing this to you because we're not going to approve it. Would you agree with that?

Mr. COLLIER. Congressman, I do. And I think fair process is what it's all about. One of the proudest things I've had a chance to do in my career was to work with Vice President Gore and Secretary Babbitt on the spotted owl timber issue in the Pacific Northwest. And I was part of a team that was—helped manage that situation. And our goal was for the first time in a handful of times to be able to put together a scientific report that would withstand judicial scrutiny, been thrown out a number of times before because of process issues. And we did that.

And there are a couple of things we did that were very important. We made sure we had independent scientists that didn't have pre-stated views—

Mr. WEBER. Sure.

Mr. COLLIER. —on the issue. That did not happen here. And we didn't allow there to be contact between the stakeholders and the

decision-makers as the process was going on. Those were two fundamentally fair things we did, and neither of those is present right here.

Mr. WEBER. Well, I'm running out of time, but I would argue that in this case it seems apparent to me that the EPA has acted as judge, jury, and executioner in killing this project. Mr. Chairman—

Mr. COLLIER. Prosecutor also, sir.

Mr. WEBER. Mr. Chair, I yield back.

Chairman SMITH. Thank you, Mr. Weber.

The gentleman from Arkansas, Mr. Westerman, is recognized.

Mr. WESTERMAN. Thank you, Mr. Chairman.

And to follow up from the gentleman from Texas, I do believe the discussion today has devolved more into whether there should be a mine in Bristol Bay or whether there should or shouldn't be a mine. But the real question here is about a fair and impartial process to determine whether there should be a mine. And, Mr. Collier, Secretary Cohen testified that EPA employee Phil North and Jeff Parker, an attorney representing groups opposed to the Pebble Mine, were in regular contact about what action EPA could take with regard to the Pebble Mine. As the CEO of the mining development company, how does this make you feel?

Mr. COLLIER. I've always been shocked by the actions of my government in this situation. You know, I've twice left my law practice and gone into government service. That's an important part of my family's history. And I can't believe that this is the kind of thing—that politics has taken us where it's taken us on issues like this.

As I read these documents, the reason we filed our Federal Advisory Committee Act case—and that's a case, by the way, where a federal judge has granted us a preliminary injunction. And you know you've got to show you've got a likelihood of succeeding on the merits before you get a preliminary injunction.

But the reason we filed that case is—I took off to vacation with me two duffel bags full of documents and sat down and read them all. And at the conclusion of that I was shocked with what I found because what I found was collusion between the decision-makers and environmental activists. And we can't allow that in this country. It's going to chase off investment. It's going to stop people from wanting to step forward to put these projects together.

The amount of money you've got to spend to get ready to go into permitting is astronomical today, and we've done that, and all we want is due process. And, Congressman, if you can do anything to help us, we sure would be appreciative.

Mr. WESTERMAN. Well, and this issue is about much more than a mine in Alaska; it's policy that affects the whole country and projects that could potentially take place all across the country.

There's a slide I would like to have shown.

[Slide.]

**Stolz, Luke**

---

**From:** Holthaus Randy  
**Sent:** Wednesday, October 15, 2014 9:07 PM  
**To:** Gilbride Patrick, Stolz Luke, Cutley, Ganesa, Barnes-Weaver, Erin  
**Subject:** Fwd: Three decisions for Tribes, AIFMA and TU to make  
**Attachments:** FINAL DFT Tribes Lit-EPA w-PAN edits 4-10 doc ATT00001.htm

Sent from my EPA iPhone

Begin forwarded message:

**From:** Geoffrey Parker <[gparker@alaska.net](mailto:gparker@alaska.net)>  
**Date:** October 15, 2014 at 7:07:34 PM MDT  
**To:** "Holthaus, Randy" <[Holthaus.Randy@epa.gov](mailto:Holthaus.Randy@epa.gov)>  
**Subject:** FW: Three decisions for Tribes, AIFMA and TU to make

**From:** Phil and Amanda <<mailto:panorth@alaska.net>>  
**Sent:** Monday, April 12, 2010 9:22 PM  
**To:** jeff parker  
**Subject:** Re: Three decisions for Tribes, AIFMA and TU to make

A few suggested edits. I keep trying to include ecological impacts but if they make the sentences awkward then delete. Of course ignore any suggestions anyway.

----- Original Message -----  
**From:** jeff parker  
**To:** Phil and Amanda  
**Sent:** Sunday, April 11, 2010 4:19 PM  
**Subject:** FW: Three decisions for Tribes, AIFMA and TU to make

This is what I sent on 3/11

**From:** jeff parker <<mailto:gparker@alaska.net>>  
**Sent:** Thursday, March 11, 2010 9:21 AM  
**To:** Phil North <[panorth@alaska.net](mailto:panorth@alaska.net)>  
**Subject:** FW: Three decisions for Tribes, AIFMA and TU to make

Sorry. Slipped my mind

Jeff

From: Phil North  
To: Jeff Parker  
Date: April 12, 2009

A few suggested edits. I keep trying to include ecological impacts but if they make the sentences awkward then delete. Of course ignore any suggestions anyway.



This is from Phil North, who worked with the EPA. And it's an email between Mr. North and Jeff Parker, who was an attorney representing groups opposed to the Pebble Mine. And if you look, the date on this is April 12th, 2009. And we see here from Mr. North, he said, "a few suggested edits. I keep trying to include ecological impacts, but if they make the sentence awkward, then delete. Of course, ignore any suggestions anyway."

Given this email, Mr. Collier, from your perspective how can you feel that Pebble Mine received any fair treatment by the EPA?

Mr. COLLIER. It's been a long time since I felt we ever got any fair treatment, Congressman, so it's a little tough to answer that question. But this is one of the situations that first shocked me so much. What's going on here—this is one of a whole handful of emails. What's going on here is that EPA is drafting the petitions that they said were then the reason why they launched the process against us. I mean that's poppycock. They launched this process against us because they'd always planned to kill this project, particularly Phil North. And he's helping draft the petitions that he then said were the reasons why he initiated this process.

So it's not just that they were working on this together. They then misled the rest of us about why they moved forward with this proposed veto.

Mr. WESTERMAN. So have you ever competed and lost in anything?

Mr. COLLIER. Yes, I have.

Mr. WESTERMAN. So have you ever felt like you were—you competed and it was an unfair competition?

Mr. COLLIER. I have indeed.

Mr. WESTERMAN. So we've all had times when we win and when we lose, but it's a little bit harder to swallow when we feel like it was an unfair competition. If you were able to go through the process and your permit was denied and you couldn't build the mine, how would you feel about it if you thought the process was fair?

Mr. COLLIER. You know, if we go through the permit process and we don't get a permit, that's an entirely different situation. What galls me is that for the first time in the history of the Clean Water Act, for the first time in handfulls of Administrators of EPA there's been a decision made to put us out of business before we even filed a permit application. I think it's outrageous.

Mr. WESTERMAN. It looks like I'm out of time, Mr. Chairman.

Chairman SMITH. Thank you, Mr. Westerman.

The gentleman from Alabama, Mr. Palmer, is recognized.

Mr. PALMER. Thank you, Mr. Chairman.

Mr. Collier, Secretary Cohen testified that EPA employees were considering preemptive 404(c) process for the Pebble Mine as early as 2005. The documents obtained by the Committee show that the EPA employee Phil North began preparing a record to base a preemptive 404(c) action as early as 2009. Tell me, if you would, explain to the Committee why these actions concern you.

Mr. COLLIER. Well, there are two things that concern me, and I think Secretary Cohen, much more eloquently than I'll be able to do, put his finger on both of them. The first one is even if they'd done this fairly, this is not a process you should use in this situation. 404(c) preemptively is not something you should use for a con-

troversial project like this. It deserves to go through the entire permitting process, period.

But second, he also said that the documents that he looked at raised serious questions as to whether the Agency hadn't predetermined the outcome here. So even when they used a process that I think they should never have used and that he thought they should never have used, they then abused the way they did that. So as I said in my opening statement, when an agency wanders off of a well-worn pathway to create a unique process, there's serious opportunity for abuse, and boy did they do that here.

Mr. PALMER. I've got a slide I'd like for the Committee to put up.  
[Slide.]

INTERNAL DELIBERATIVE AND/OR PRIVILEGED DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
DISCLOSURE AUTHORIZED ONLY TO CONGRESS FOR OVERSIGHT PURPOSES IN RESPONSE TO SUBPOENA  
PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE  
12/16/2009 03:33 PM  
cc: Mary ThiesingP10USEPAUS@EPA  
Subject: Pebble

Hi Michael,

I learned from the Mining Team meeting today that the Pebble Mine is on Lisa Jackson's screen and she wants some Region 10 folks to travel to DC to brief her in mid-January. Mary Anne was there so I include her here in case she wants to comment further.

1. I think it is important that ARU continue to lead the Pebble discussion. EPA will not be the lead on NEPA. So our involvement will be in NEPA review, 404 review, or 404 veto. The big issues with the Pebble Mine are all to do with aquatic ecosystems, from the headwaters right out into the North Pacific. ARU is the part of EPA that has the expertise in aquatic ecology needed to adequately review this project. And whether we simply comment on the EIS and 404 permit or initiate a 404C, it will be ARU's initiative that will influence the project. So I think it is imperative that we play a leading role in discussions within EPA, including setting the tone of the presentation to the Administrator. Patty has said that she will seek our council as she develops that presentation, but I want to bring this to your attention so you can weigh in (if you wish) as the opportunity arises in management circles.

2. I am concerned that if we wait for direction from a new RA we will fall behind the curve. Based on Patty's paraphrase of Lisa Jackson's comments about Pebble (that unlike Kensington, perhaps we could do something about Pebble), things could move along quickly once the Administrator is briefed. As Mary Anne said there will be quite a bit of background documentation to do on this project, regardless of our chosen action. I would hate to put us in a position of having to spend a lot of extra time catching up when we could be getting ahead now. Regardless of our action (review or 404c) I think it is inevitable that on this project we are going to have a great deal of work to do. Better to get ahead of it. With this in mind I have the following recommendations:

a. We should have a discussion within ARU about the recommendations I made in my presentation. We should invite Lorraine to discuss whether there is adequate information on geochemistry and hydrogeology to make conclusions about the mine. We should decide on the time frame for considering mining effects: the waste will be in place forever. And we should develop a position, decide not to develop a position at this time or something in between. The reason to do this is that, if the Administrator asks us for a position, we will have an answer and sound reasons.

b. We should begin to identify the information needed for a review or 404C and begin to collect that information. Of course, as demonstrated in the presentation, I have already started this process as part of my day-to-day duties. But I have only skimmed the surface. This is such a large project, in every imaginable dimension, that it will take a much more significant effort than I can apply when treating it as just another project. I suggest that this be a team effort and that we start to discuss the information needs and start to compile that information now.

May Anne - any thoughts?

Phil

Phillip North  
Environmental Protection Agency  
Kenai River Center  
514 Funny River Road  
Soldotna, Alaska 99669  
(907) 714-2483  
fax 260-5992

From: Phil North  
To: Micheal Szerlog, Mary Thiesing  
Date: December 6, 2009  
Subject: Pebble

We should begin to identify the information needed for a review or 404(c) and begin to collect that information. Of course, as demonstrated in the presentation, I have already started this process as part of my day-to-day duties.

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And to the point you just made, this email appears to lay out the playbook for initiating a preemptive 404(c) action. Is it troubling that EPA employees appear to have made up their minds in stopping the Pebble Mine so early in the process? And how much faith can you have in the objectivity of the EPA to evaluate the mine?

Mr. COLLIER. Well, I don't any longer have any such faith, Congressman. I'm no longer surprised by these kinds of emails. This is another one that I just saw quite recently, yesterday for the first time and—with the release of another committee's report. And I'm shocked at the number.

But let me also remind you, Congressman, that Phil North is a guy that was using his private emails to hide, I suspect, the most damaging of his emails.

Mr. PALMER. We've had some issues with private emails. You may have heard of them.

Mr. COLLIER. Yes, I have. But—so this is what he says when he's communicating on the EPA email process. I wonder what those others say, Congressman.

Mr. PALMER. There's another slide I'd like to put up.  
[Slide.]

INTERNAL DELIBERATIVE AND/OR PRIVILEGED DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
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HEARINGS. CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE.

EPA-BBL-4856

Mary  
Thiesing/R10USEPA/US  
12/16/2009 07:05 PM

To: Phil North, Michael Szetlow  
cc  
bcc  
Subject: Re: Pebble

Phil,

I agree with you on practically everything, but especially on the need for ARU to lead the discussion. We have the authority to stop this project, and may consider exercising that authority; consequently, we should be the ones to shape the discussion. However, I also think, as you rightly pointed out, that we need to approach this as a team effort, even within ARU. As project lead, you will get asked to brief people on a moment's notice, and just putting together the briefing packages will be daunting and often happen without a lot of warning. I definitely think we need to start gathering information right now and continue to do so as the project gains momentum. I think what we have to do is approach it as though there will be a 404(c), and we don't need to wait for a new RA to do that; however, we will be getting one very quickly, and there will be no 404(c) without the RA's complete, total, and most importantly, continued buy-in. We can be prepared to give the RA a suggested direction when he/she comes on board. This thing will be developing for years, and we aren't likely to get RA support or HQ support for a pre-emptive 404(c) on a project this big before the information is developed. The other thing is, and I have seen this happen with my own eyes, is that you have to keep doing a gut check, especially with HQ, because support waxes and wanes depending on the administration, which session of Congress, whether it's an election year, etc. The best thing you can do is build a HUGE record, so that if political pressure causes HQ to withdraw support, you have a big public record which still spells out the facts.

So, while you aren't going to get commitments on a 404(c) right now, you are absolutely right in that we need to build our information "war chest". You did a fantastic job (I thought) in blocking out a very persuasive set of arguments on this. To flesh them out, I would recommend the following:

1. Don't base your arguments on impacts 200 or more years out. A political appointee will make the decision, and they are only interested in what's happening now that they can see, kouch, etc. All that a court has to hear is that the project proponent will take every possible precaution to protect the environment and they think that the government is being unreasonable in insisting it's not enough. What would be helpful is to identify mines of the same type, and preferably, by the same project proponent, that have had adverse environmental effects that weren't addressed by the permit or that happened anyway. Lists of impacts, and especially, pictures where "despite industry best efforts", they trashed the surrounding environment and left a cleanup to the government. This is especially significant because we will need to do tribal outreach, and they need to understand what the risk of irreversible jeopardy really is, rather than just getting bought off by the industry.
2. That being said, I think we still want the persuasive hydrology and geology data to show potential effects, if it can be assembled, including earthquake risk in real time.
3. Pictures of the endangered species are useful, but don't go more than one slide on the subject. Get a dollar amount on the value of the fishery as well as the number of people it employs and the portion of the world's catch it represents (I think you said 43% for the state? How much of it comes from Bristol Bay?)

By the way, keep this under your hat, because I wasn't authorized to make it public and I am not sure who knows yet, but Region 3 is doing a 404(c) on that mountaintop mining project. I believe the PD will hit the Federal Register in January.

Mary Anne  
Phil North  
Phil North/R10USEPA/US  
Michael Szetlow learned from the Mining Team meeting  
12/16/2009 03:33 011743

From: Mary Thiesing  
To: Phil North  
Date: December 16, 2009  
Subject: Re: Pebble

Approach it as though there will be a 404(c), and we don't need to wait for a new [Regional Administrator] to do that; however, we will be getting one very quickly, and there will be no 404(c) without the RA's complete, total, and most importantly, continued buy-in.

The best thing you can do is [sic] build a HUGE record, so that if political pressure causes HQ to withdraw support, you have a big public record which still spells out the facts.

Lists of impacts, and especially, pictures where 'despite industry best efforts', they trashed the surrounding environment and left a cleanup to the government. This is especially significant because we will need to do tribal outreach, and they need to understand where the risk of irreversible jeopardy really is, rather than just getting bought off by industry.

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Here again it's very apparent that they—the playbook is already laid out and has less to do with establishing the actual science or determining the actual impacts of the project or conducting objective analysis and more to do with appealing to politics and optics to achieve a certain outcome at the EPA. Would you agree with that?

Mr. COLLIER. I do agree, Congressman.

Mr. PALMER. It's almost—I hate to even ask the question, but is that the correct way for an agency to make decisions?

Mr. COLLIER. Not at all. And also as I said in my opening statement, when I was involved in government, these folks wouldn't have been around anymore.

Mr. PALMER. Well, my—Mr. Chairman, if I may before I yield back, I'd just like to point out that the topic of this hearing is just another example of the EPA working outside acceptable parameters, overreaching and in some cases—in this case it just appears to be very manipulative of the process to reach a predetermined outcome.

And we've seen it in other areas where the EPA is involved, the ozone standards, the Clean Power Plan, the Waters of the U.S., and now with Pebble Mine. I just think that at some point the EPA has got to be held accountable for actions such as this.

I yield back.

Chairman SMITH. Thank you, Mr. Palmer.

The gentleman from Georgia, Mr. Loudermilk, is recognized.

Mr. LOUDERMILK. Thank you, Mr. Chairman. And it looks like I'm the last one between several people flying home.

I'm just amazed. When I hear of all the questions and the testimonies and, quite frankly, the evidence that I've seen, this reads more like a novel. We've got predetermined outcomes. You testified to potential collusion. Some of those involved in the collusion have moved to other countries and will not respond to our subpoenas or questions. And, Mr. Chairman, I don't know how legal it is for us to do a CODEL down to Australia, but if we need to go down there to get some answers, you know, I may be willing to volunteer, but—

Chairman SMITH. True.

Mr. LOUDERMILK. And of course the using of private emails, this—Mr. Collier, as I hear the allegations of collusion, that's very troubling, but what's even more troubling is the evidence I see. It looks very overwhelming that this has happened.

I would like to show you an email conversation between two of the EPA lawyers, Cara Steiner-Riley and Keith Cohen, as well as employees Phil North and Rick Parkin, who again I think Phil is the one who is now in Australia. And they're discussing conversations with Jeff Parker, who is an attorney representing the groups that petitioned the EPA to use a preemptive 404(c) action. Can we have the slide up?

[Slide.]

INTERNAL DELIBERATIVE AND/OR PRIVILEGED DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
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PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE

fax: (206) 553-0163

Keith Cohon attorney-client communication, privileged, do not 12/22/2010 11:35:54 AM

From: Keith Cohon  
To: Cara Steiner-Riley, Phil North, Richard Parkin  
Date: December 22, 2010  
Subject: Phone conversation with Jeff Parker

**attorney-client communication  
privileged, do not release**

I had a conversation with Jeff Parker about the trust responsibility and other stuff, and I wanted to fill you in.

The conversation was yesterday (12/21).

1. My observation: Jeff is talking straight to Rick and Phil regarding a matter in which EPA is represented by counsel (Cara). I'm sure the Rules of Professional Responsibility in Alaska are like they are everywhere, and that they prohibit Jeff from talking to either Rick or Phil without Cara's consent. It's kind of up to Cara to call him on this. If we care, we also might want to have an internal discussion about whether whether Phil and/or Rick want to refer him to Cara as well. We are engaged in a potentially adverse proceeding with them (the petition, possible litigation), and he's a lawyer who's kind of pumping us (me included) for information he can use to help his client. It sounds like he's talking to Phil about their 404(c) petition, the status of it, and how to help move it forward -- he certainly did so with me (see below). He's also using Rick and Phil (and me) as legal authorities.
2. Jeff was intrigued by the concepts of "domestic dependent nations" and the "trust responsibility" that he heard about from Phil and/or Rick. Jeff was looking for me to basically educate him on these concepts, which is remarkable considering he represents Indian Tribes. Jeff says Phil says Rick says that the trust responsibility means that if the State and the Tribes disagree, then we have to take the Tribes' side. [This kind of illustrates that problems of having a lawyer for another party free to call around the Agency trolling for information he can use on behalf of his client.]
3. I explained the differences between the specific and general trust responsibilities. Specific is where we're managing assets the U.S. is holding in trust on behalf of Indians or an Indian Tribe, and doesn't apply here in any way. General is procedural, and says we'll consult with tribes, and consider and give weight to their concerns. I passed along the citations to the *Cros Venite* and *HRI* judicial decisions, which are important recent cases concerning the scope and limits of the trust responsibility, and gave him a couple of hints about what they say and why he should read them to get a better understanding.
4. Jeff was particularly interested in Phil's comment that Rick supposedly says that Tribes get precedence over the State. I explained that I have the actual Rick Parkin e-mail that Phil was probably talking about. First, it's talking only about process, not substance -- about involving the Tribe and the State in our decisionmaking process, not about doing what they want. Second, it says that the obligation to consult govt to govt with the Tribe is a concept that applies to the Tribe and not the State, so again, the emphasis is on whether and how we involve the Tribes procedurally, not the substance of our decision. We have separate reasons for talking to the State, as a number of our statutes provide roles for the State, and many of our respective programs overlap or interact in ways that call for close coordination with them. So it's not as if Rick is saying the trust responsibility requires us to talk with Tribes "more" than with the State. Rick's message correctly says that in making a decision on the Tribes' petition, we would offer them the opportunity to consult with us.
5. He asked for my advice as to how to push their petition forward -- should he send a letter to HQ officials, etc. I referred him to Cara.

From: Keith Cohon  
To: Cara Steiner-Riley, Phil North, Richard Parkin  
Date: December 22, 2010  
Subject: Phone conversation with Jeff Parker

1. My observation: Jeff [Parker] is talking straight to Rick and Phil, regarding a matter in which EPA is represented by counsel (Cara). I'm sure the Rules of Professional Responsibility in Alaska are like they are everywhere, and that they prohibit Jeff from talking to either Rick or Phil without Cara's consent. . . . We are engaged in a potentially adverse proceeding with them (the petition, possible litigation), and he's a lawyer who's kind of pumping us (me included) for information he can use to help his client. It sounds like he's talking to Phil about their 404(c) petition, the status of it, and how to help move it forward -- he certainly did so with me. . . ."

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EPA attorney Cohen writes, number one “my observation, Jeff Parker is talking straight to Rick and Phil regarding a matter which EPA is represented by counsel, Cara. I’m sure the rules of professional responsibility in Alaska are like they are everywhere and that they prohibit Jeff”—prohibit Jeff—“from talking to either Rick or Phil without Cara’s consent. We are engaged”—we are engaged—“in a potentially adverse proceeding with them, the petition, possible litigation. And he’s a lawyer who’s kind of pumping us, me included, for information he can use to help his client. It sounds like he’s talking to Phil about their 404(c) petition, the status of it and how to help move it forward. He certainly did so with me.”

Now, if we could go to the next slide.

[Slide.]

INTERNAL DELIBERATIVE AND/OR PRIVILEGED DOCUMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
DISCLOSURE AUTHORIZED ONLY TO CONGRESS FOR OVERSIGHT PURPOSES IN RESPONSE TO SUBPOENA  
PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE

Phil North 12/29/2010 09:19:02 AM  
I will forward Jeff to Cara per your suggestion.

From: Phil North/R10USEPA/US  
To: Richard Parkin/R10USEPA/US@EPA  
Ken Cohon/R10USEPA/US@EPA, Cara Steiner-Riley/R10USEPA/US@EPA, Michael Szeleg/R10USEPA/US@EPA  
Date: 12/29/2010 09:19 AM  
Re: Phone conversation with Jeff Parker

I will forward Jeff to Cara per your suggestion.

Phillip North  
Ecologist  
Environmental Protection Agency  
Kenai River Center  
514 Funny River Road  
Soldotna, Alaska 99669  
(907) 714-2463  
fax 260-5592  
north.phil@epa.gov

"To protect your rivers, protect your mountains."

Richard Parkin 12/27/2010 05:38:30 PM  
I don't believe I had a conversation with Jeff this.

From: Richard Parkin/R10USEPA/US  
To: Ken Cohon/R10USEPA/US@EPA  
Phil North/R10USEPA/US@EPA, Cara Steiner-Riley/R10USEPA/US@EPA, Michael Szeleg/R10USEPA/US@EPA  
Date: 12/27/2010 05:38 PM  
Re: Phone conversation with Jeff Parker

I don't believe I had a conversation with Jeff this go around. I called you instead Keith. Perhaps I should have called Cara but his message to me was about tribal trust. I will forward him to Cara in the future and Phil please do the same please. Thanks  
Rick Parkin  
U.S. EPA, Region 10  
(206) 553-8574

Keith Cohon 12/22/2010 12:23:35 PM  
I just want to clarify that I'm not against helping

From: Keith Cohon/R10USEPA/US  
To: Phil North/R10USEPA/US@EPA, Cara Steiner-Riley/R10USEPA/US@EPA,  
Parkin Richard@epamail.epa.gov  
Date: 12/22/2010 12:23 PM  
Re: Phone conversation with Jeff Parker

I just want to clarify that I'm not against helping Jeff or his clients, or siding with them on the substantive issues. I just have some concerns that Jeff is mining his conversations with Phil and Rick for legal principles and arguments, and also getting second hand info from Phil about what Rick is saying in internal u-mail messages. Both of those create a lot of risk of Jeff misunderstanding and misstating the law and/or EPA's position on the law, which isn't in anyone's interest.

Keith Cohon, Assistant Regional Counsel  
EPA Region 10  
phone [REDACTED]

From: Keith Cohon  
To: Phil North, Richard Parkin, Cara Steiner-Riley  
Date: December 22, 2010  
Subject: Phone conversation with Jeff Parker

I just want to clarify, I am not against helping Jeff or his clients, or siding with them on the substantive issues....

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Cohen sends a followup email and writes, “I just want to clarify. I am not against helping Jeff or his clients”—again, Jeff representing those opposed to the mine. “I am not against helping Jeff or his clients or siding with them on the substantive issues.” To me that sounds like predetermined outcome, as well as collusion going on.

Is this some of the collusion that you have referred to?

Mr. COLLIER. It is Congressman. When I first saw this collection of emails, and there are another four or five—

Mr. LOUDERMILK. And I do have another one to go to after this.

Mr. COLLIER. —I was shocked. It’s one thing to say that it’s improper for a lawyer to be talking to someone else’s client. That’s an ethics rule that anyone who has practiced law is familiar with. But it’s like they completely missed the ball. The ball is you shouldn’t be talking to him at all, nobody should, not about helping draft the petitions that are going to be filed by the native communities, and, God forbid, not about help letting him draft the decision memo for the regional administrator. They completely missed the ball here.

And what it means is that they’re colluding with environmental activists on decisions Region 10 has to make appear to be the way the region works.

Mr. LOUDERMILK. Let me—because I’m running out of time, can we go ahead and go to the next slide here. And this answers a question that I asked Secretary Cohen in the first panel. Why? Why would you use a private email to conduct business, which is totally improper? Why? Would it be to avoid the Freedom of Information Act? Could that be why you would do something like that? Let’s look at this email.

[Slide.]

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PRIVILEGE CLAIMS NOT WAIVED FOR ANY OTHER PURPOSE

EPA BBL 6076

Richard  
Parkin/R10/USEPA/US  
12/29/2010 03:59 PM

To: Cara Steiner-Riley  
cc  
bcc: Richard Parkin  
Subject: Fw: Phone conversation with Jeff Parker 2nd message

Cara, in terms of the record for the decision making on the 404(c) petitions, are message chains such as this one, protectable from FOIA? should we be concerned with that? Should the subject line include something like Atty-Client Privileged or what ever? Should we just do that routinely? For example the message chain between me and Patty that I cc'd you on showed disagreement within the agency about the 404(c) so I added a privileged statement to it and sent it to you. Should we implement something like that among the team for all messages in which we are deliberating about the 404(c)?

Rick Parkin  
U.S. EPA, Region 10  
(206) 553-8574

----- Forwarded by Richard Parkin/R10/USEPA/US on 12/29/2010 12:54 PM -----

From: Richard Parkin/R10/USEPA/US  
To: Keith Cohon/R10/USEPA/US@EPA, Phil North/R10/USEPA/US@EPA, Cara Steiner-Riley/R10/USEPA/US@EPA, Michael Szeleg/R10/USEPA/US@EPA  
Date: 12/29/2010 12:53 PM  
Subject: Re: Phone conversation with Jeff Parker

Thanks Keith and Phil... We need to have one main spokesman for Bristol Bay and that's me. But for legal questions from lawyers I should refer him to our legal staff or probably better speaking with them jointly with our attorney. Then keep records. If we get too casual about it we may regret what we see being attributed to us in the future. Already I feel that way about how that message was interpreted. Dynamics wise I think we have been a bit casual.

Rick Parkin  
U.S. EPA, Region 10  
(206) 553-8574

Keith Cohon I don't want you all to feel like I'm scolding, or ma... 12/29/2010 10:25:38 AM

From: Keith Cohon/R10/USEPA/US  
To: Phil North/R10/USEPA/US@EPA, Richard Parkin/R10/USEPA/US@EPA, Cara Steiner-Riley/R10/USEPA/US@EPA, Michael Szeleg/R10/USEPA/US@EPA  
Date: 12/29/2010 10:25 AM  
Subject: Re: Phone conversation with Jeff Parker

I don't want you all to feel like I'm scolding, or making a unilateral decision about communications with Jeff. You all can decide, or we can decide together, how to handle communications with him. I honestly don't know the dynamics of the different relationships, or his role in the case. I just had a few warning bells go off in my mind during our conversation, and I wanted to pass them along so the decision can be well informed.

Keith Cohon, Assistant Regional Counsel  
EPA Region 10  
ph: [REDACTED]  
fax: [REDACTED]

From: Cara Steiner-Riley  
To: Richard Parkin  
Date: December 29, 2010  
Subject: Fw: Phone conversation with Jeff Parker 2nd message

Cara, in terms of the record for the decision making on the 404(c) petitions, are message chains such as this one, protectable from FOIA? should we be concerned with that?

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“Cara, in terms of the record for the decision-making on the 404 petitions, are message chains such as this one protected from FOIA?” This is asking are we going to be protected from FOIA? I think this clearly gives the reason why they’re using private emails. “Should we be concerned with that?” It appears that EPA employees were attempting to prevent the release of this series of email communications because it would show the inappropriate contact between EPA employees and you.

Would you like to comment? I mean to me when I look at this it’s clear. It’s clear that there was collusion, there was predetermined outcome, there was potentially illegal activity, definitely improper activity, as Secretary Cohen mentioned early, that they used private emails to conduct official business, which is against EPA policy. And by their own admission, I think it’s to keep the American people in the dark, and they knew that they were doing wrong.

Mr. COLLIER. Congressman, I agree. And let me also remind you that Phil North’s laptop computer crashed, crashed—

Mr. LOUDERMILK. Yes.

Mr. COLLIER. —he was using his personal emails and he was encrypting thumb drives that he stored documents on.

Mr. LOUDERMILK. They quit—need to buy the computers that the IRS buys, I guess.

And so with that, Mr. Chairman, I yield back the balance of my time.

Chairman SMITH. Thank you, Mr. Loudermilk.

We have no other Members who want to ask questions.

Senator Halford, yes?

Mr. HALFORD. Just briefly, I’d like to say that although TU has supported me, a number of other organizations in Bristol Bay have also supported me, I consult for a lot of them and I try to represent them all and work with them all, for them all. They are concerned about fairness as well. They have been under this cloud for well over a decade. They would like to see some resolution. They went to the EPA.

When I first talked to EPA people, I was talking about wetlands things. It had nothing to do with—and I didn’t understand or know anything about the 404(c) process.

Chairman SMITH. Yes.

Mr. HALFORD. So I just wanted to make that clear.

Chairman SMITH. Okay.

Mr. HALFORD. The people of Bristol Bay went to EPA. EPA didn’t come to Alaska to get involved.

Chairman SMITH. Right.

Mr. HALFORD. People were concerned.

Chairman SMITH. I just wish they’d followed proper process and—anyway, Mr. Collier, anything you want to clarify?

Mr. COLLIER. [Nonverbal response.]

Chairman SMITH. Okay. All set. Thank you both for your testimony today. It was very, very helpful. And we stand adjourned.

[Whereupon, at 1:32 p.m., the Committee was adjourned.]



## Appendix I

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ANSWERS TO POST-HEARING QUESTIONS

## ANSWERS TO POST-HEARING QUESTIONS

*Responses by The Hon. William S. Cohen*



300 Constitution Ave  
 Suite 200  
 Washington DC  
 20004

tel: 202.462.7211  
 (202) 462-7474 fax

William S. Cohen  
 Chairman, U.S. House of Representatives  
 wcohen@pebblingroup.net  
 www.pebblingroup.net

December 9, 2015

The Honorable Lamar C. Smith  
 Chairman, Committee on Science, Space, and Technology  
 2321 Rayburn House Office Building  
 Washington, DC 20515

Re: November 5, 2015 Hearing before the Committee on Science,  
 Space and Technology

Dear Chairman Smith:

Thank you for your letter dated November 23, 2015. That correspondence attached questions to me submitted by Ranking Member Eddie Bernice Johnson and Congressman Mark Takano. My responses are set forth below.

**Questions from Ranking Member Johnson**

Question 1: I did not attempt to acquire the raw data from the Pebble Partnership known as the Environmental Baseline Data as it was not required for my work. As I noted in my report, I did not review "whether a mine should be built: such a determination would require engineering and scientific expertise beyond my capabilities." Rather, I reviewed "the process by which EPA assessed, and proposed restrictions to reduce, the environmental risks associated with potential mining in the Bristol Bay watershed." (Report at ES-1) A review of the Environmental Baseline Data was not necessary to perform a review within the scope described above.

Question 2: I have no views regarding the subpoenas issued by Pebble Limited Partnership in the litigation referred to in this question, and I respect the decision of the U.S. District Court for the District of Alaska concerning those subpoenas.

**Questions from Congressman Takano**

Question 1: I first met or otherwise communicated with Tom Collier, CEO of the Pebble Limited Partnership (PLP), on November 14, 2014. After undertaking an initial review as discussed in my report (pp. 1-2), I met with Mr. Collier on March 4, 2015, to advise on my initial



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concerns. I did not have any further meetings or communications with Mr. Collier prior to the public release of my independent report on October 6, 2015.

Question 2: I did not have any contact with anyone from PLP while I was working on my independent report.

Question 3: I did not brief anyone from PLP regarding the final version of my report.

Question 4: No.

Question 5: No. See below for additional discussion on the topic of drafts.

Question 6: No.

Question 7: DLA Piper LLP ("DLA Piper") was paid directly by PLP for its work.

Question 8: As discussed at the hearing, The Cohen Group and DLA Piper treats its financial arrangements with its clients and other counterparties as confidential. As I testified, we were compensated according to commercially standard terms, and no portion of my compensation was contingent upon the result of the review or the content of the report.

Question 9: I was not aware of the transaction referred to in this question prior to the release of my report. I did not learn of this transaction until my office received press inquiries about the transaction on November 4, 2015. As Mr. Scheeler described in his testimony and his letter to your Committee of this date, excluding those DLA Piper attorneys working for me and The Cohen Group, neither DLA Piper nor any DLA Piper attorney in the U.S. or Canada had any financial or business relationships with PLP, Northern Dynasty, Hunter Dickinson, Inc. or any of their affiliates, and so there was no such information to disclose. This includes Stuart Morrow, whom Congressman Takano referenced in his remarks. Mr. Morrow, at the request of a client of the firm, established 1047208 B.C. Ltd., with Mr. Morrow as the point of contact for the entity (the "Company"). Neither Mr. Morrow, DLA Piper, nor any DLA Piper attorney in the U.S. or Canada held or holds an ownership interest in the Company, nor were they involved in the Company's purchase of any interest in any other entity. The Cohen Group conducted its customary process prior to accepting this engagement to ensure that there were no conflicts or other factor which might impede my ability to conduct a fair and impartial review. I understand that DLA Piper also conducted their standard conflicts check by running the names of PLP and related parties through its conflicts database.

I also note that during questioning by Congressman Tonko, I was repeatedly instructed to limit my responses to a simple "yes" or "no". See, e.g., Tr., lines 955-965. Had I been permitted to elaborate, I would have explained that my team consulted outside experts about various methodologies relevant to the EPA's activities which were the subject of my review, but not as to the questions or methodologies I used. The methodologies and questions that my team employed were based upon the decades of experience possessed by team members, as well as



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drawing upon lessons learned from other investigations. Tr., lines 978-982. Additionally, I did not provide drafts to PLP or EPA prior to my report's release. A member of my staff provided drafts of portions of the report to PLP on September 18 and October 1. Mr. Scheeler briefed EPA on my report and findings on September 24. Tr., lines 987-995.

Please do not hesitate to contact me if you or your office have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Cohen", is written over a faint, larger version of the same signature. The signature is written in a cursive, flowing style.

William S. Cohen

CPS/td

cc: Charles P. Scheeler, Esq.

*Responses by Mr. Charles Scheeler*

Committee on Science, Space & Technology  
*"EPA's Predetermined Efforts to Block the Pebble Mine,"*  
November 5, 2015

Questions for the Record to Mr. Charles Scheeler, Senior Counsel, DLA Piper  
Submitted by Congressman Mark Takano

- Q: Mr. Scheeler, I assume the day of the Committee's hearing on the proposed Pebble Mine on November 5, 2015, was not the first time you had ever met Tom Collier, the CEO of the Pebble Limited Partnership. When did you first meet, speak or exchange e-mails or other correspondence with Mr. Collier? Between the first time you met, spoke or communicated with Mr. Collier and the time you began working on The Cohen Report how many times in total had you ever met, spoke or communicated with Mr. Collier? Once you began working on The Cohen Report and the report was publicly released on October 6, 2015, how many times did you meet, speak or communicate with Mr. Collier?
- Q: Mr. Scheeler, who was your primary point of contact at the Pebble Limited Partnership while you were working on The Cohen Report and how often did you meet, speak or communicate with them via e-mail or via any other type of communication medium?
- Q: When and who did you brief from the Pebble Limited Partnership regarding the final version of The Cohen Report?
- Q: Did you ever brief or discuss with anyone from Pebble Limited Partnership, Northern Dynasty Minerals, Hunter Dickinson, Inc., or any of these companies' subsidiaries or legal representatives any aspects of the report or your findings prior to the public release of The Cohen Report? If so, when and who did you brief on this report?
- Q: Did you ever share a "draft" of The Cohen Report with any individual employed by the Pebble Limited Partnership, Northern Dynasty Minerals, Hunter Dickinson, Inc., or any of these companies' subsidiaries or legal representatives? If so, who did you share this report with and when?

Q: Mr. Scheeler, as discussed at the hearing, six weeks prior to the release of The Cohen Report a DLA Piper partner in your Vancouver office, Stuart Morrow, apparently facilitated the transfer of nearly \$3 million in Northern Dynasty stock options to a company known as "1047208 B.C. Ltd." This company, which was created on August 27, 2015, one day before the stock transfer, lists Stuart Morrow as the sole Director and the address it provides is the address of the DLA Piper office in Vancouver. You indicated at the hearing, however, that DLA Piper or its attorneys took no ownership of this stock transaction and you suggested that Mr. Morrow simply served as a facilitator in this transaction. You also indicated that you would check with DLA Piper and let the Committee know if any other DLA Piper attorneys had any business or financial interactions with the Pebble Limited Partnership, its parent companies Northern Dynasty Minerals and Hunter Dickinson, Inc. or any of their subsidiaries during the time that DLA Piper and The Cohen Group were working for the Pebble Limited Partnership to complete The Cohen Report. Please indicate if you have followed through on researching this issue and if you found any other cases of DLA Piper employees engaging in business or financial transactions that involved Pebble or its parent companies after DLA Piper and The Cohen Group were hired to write your report on the proposed Pebble Mine in Bristol Bay.

Q: The Cohen Report was prepared jointly by The Cohen Group and DLA Piper with which The Cohen Group has a "strong strategic partnership," according to the company's website. Was your company, DLA Piper, paid for their work on The Cohen Report by The Cohen Group or were you paid directly by the Pebble Limited Partnership?

Q: The Cohen Report also suggests that the EPA was not transparent in its process to initiate the 404 (C) process. Since transparency is an important issue we can agree on and The Cohen Report has also made numerous representations to the "independent" nature of its review of the EPA's process I believe it is important to let the public and Congress know how much you were paid by Pebble to conduct this review and write the report.

- Please indicate how much DLA Piper was paid in total for their work on The Cohen Report.
- Please indicate if the amount indicated above reflects a flat fee or not. If DLA Piper received an hourly rate for its work on the Pebble report please indicate what that hourly rate was or if the payment method was based on some other financial metrics.





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December 8, 2015

The Honorable Lamar C. Smith  
Chairman, Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, DC 20515

Re: November 5, 2015 Hearing before the Committee on Science,  
Space and Technology

Dear Chairman Smith:

Thank you for your letter dated November 23, 2015. That correspondence attached questions to me submitted by Congressman Mark Takano. My responses are set forth below.

Question 1: The responses to this question are based on the records I maintain, as well as my best recollection. Subject to that qualification, I respond as follows: I first met or otherwise communicated with Mr. Tom Collier, CEO of the Pebble Limited Partnership (PLP), on October 9, 2014. I did not have any further meetings or communications with Mr. Collier prior to commencing work with Secretary William Cohen on his independent review of the EPA's actions in connection with the Bristol Bay watershed. From the time I commenced such work in November 2014, to the release of the independent review, I had occasional contact with Mr. Collier, principally to clarify factual information obtained during the conduct of the review.

Question 2: My primary point of contact with PLP was Mr. Collier. See response to question #1 for the remaining information requested.

Question 3: On September 14, 16, and 24, 2015, I provided a briefing of the report during which representatives of PLP were present. During the September 24 briefing, EPA representatives were also present. .

Question 4: See response to question #3.

Question 5: I provided a draft of a portion of the review to Mr. Collier on September 21, 2015. For additional information on the subject of drafts, see Secretary Cohen's letter of this date.

Question 6: DLA Piper LLP ("DLA Piper") has researched the issue discussed in this question. The characterization of the transaction within this question is inaccurate. Mr. Morrow, at the



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request of a client of the firm, established 1047208 B.C. Ltd., with Mr. Morrow as the point of contact for the entity (the "Company"). Neither Mr. Morrow, DLA Piper nor any DLA Piper attorney in the U.S. or Canada held or holds an ownership interest in the Company. It was the client, not Mr. Morrow, who effected the transfer of Northern Dynasty warrants to 1047208 B.C. Ltd. To clear up the mistaken assumption in this question, no U.S. or Canadian DLA Piper entity or attorney had "business or financial relationships that involved Pebble or its parent companies after DLA Piper and The Cohen Group" were retained by PLP. This statement specifically includes Mr. Morrow, who had no such relationships.

Question 7: DLA Piper was paid directly by PLP for its work.

Question 8: As discussed at the hearing, The Cohen Group and DLA Piper treat its financial arrangements with its clients and other counterparties as confidential.

Please do not hesitate to contact me if you or your office have any questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Charles P. Scheeler".

Charles P. Scheeler

CPS/td

cc: Secretary William S. Cohen

*Responses by Mr. Tom Collier*

**ANSWERS TO QUESTIONS FOR THE RECORD TO**

**MR. TOM COLLIER, CEO, PEBBLE LIMITED PARTNERSHIP**

**SUBMITTED BY RANKING MEMBER JOHNSON**

- Q: Mr. Collier, you were listed at the hearing as the Chief Executive Officer (CEO) of the Pebble Limited Partnership, but I understand you are also currently listed as a "Senior Counselor" at the law firm of Steptoe & Johnson and formerly you served as "senior external counsel" to Pebble's parent company Northern Dynasty. The Steptoe & Johnson website currently says, "Tom Collier is a senior counselor in Steptoe's Washington office, where he is a member of the Regulatory & Industry Affairs Department. He practices in the dispute resolution, environmental and natural resources areas." Is this accurate? Do you currently practice law at Steptoe & Johnson while you are the CEO of the Pebble Limited Partnership?
- A: Pursuant to my agreement with Steptoe & Johnson I am available to consult with other Steptoe lawyers on matters unrelated to Pebble Limited Partnership, but related to my former law practice specialties. During 2015 I have not engaged in any such consultations. During 2014 I engaged in minimal consultations related to transitioning matters I had been working on before I became the CEO of Pebble Limited Partnership to other lawyers at Steptoe & Johnson.
- Q: It is also my understanding that Steptoe & Johnson is one of the law firms that works for the Pebble Partnership. The law firm has also been involved in Pebble's attempt to subpoena dozens of non-EPA third party individuals and entities who have opposed Pebble's proposed mine in Bristol Bay. In your capacity as a "Senior Counselor" at Steptoe & Johnson were you involved in any way in Pebble's current lawsuit against the EPA regarding the Federal Advisory Committee Act (FACA), where Pebble has sought to serve subpoenas on non-EPA third parties? If so, please explain your role in these actions and the timeframe in which you were involved in these actions as a Steptoe & Johnson attorney.
- A: In my capacity as a senior counselor at Steptoe & Johnson, I have had absolutely no role in Pebble's law suit against EPA under the Federal Advisory Committee Act.

Q: Much of your criticism of the EPA has suggested that the 404(C) process they engaged in was not transparent. Since transparency is an important issue we can agree on, I hope that you can be transparent and provide a detailed summary of how much you paid for The Cohen Report.

- Please indicate how much the Pebble Partnership paid, in total, for The Cohen Report.
- Please indicate if the amount indicated above reflects a flat fee or not. If not, please indicate the hourly rate you were charged for this report or if the payment method was based on some other financial metric please, indicating what that was and the rate you paid.
- Please indicate each and every company, consultant, or other organization, association or individual that was paid by the Pebble Partnership, Northern Dynasty or Hunter Dickinson, Inc. or any of their subsidiaries, for work related to the research, production, writing, marketing or communications related to The Cohen Report. For each of the entities or individuals paid please indicate both the time period they worked on this report and how much they were paid. Please be sure to include how much Pebble paid DLA Piper, if DLA Piper was paid directly by the Pebble Partnership.

A: We compensated the Cohen Group and DLA Piper according to commercially standard terms. As Secretary Cohen said in the report, and testified to in front of the Committee, no portion of our compensation to them was contingent upon the result of the review or the content of the report.

Q: Mr. Collier please indicate the first time you ever met, spoke or communicated, via e-mail or any other means, with Mr. Charles Scheeler?

- Please indicate how many times you met, spoke or communicated with Mr. Scheeler about The Cohen Report from the time you hired The Cohen Group and DLA Piper to write this report and Oct. 6, 2015, when it was publicly released?
- Please indicate how many times you met, spoke or communicated with any other DLA Piper employees about The Cohen Report from the time you hired The Cohen Group and DLA Piper to write this report and Oct. 6, 2015, when it was publicly released?
- Please indicate if the Pebble Partnership, Northern Dynasty or Hunter Dickinson, Inc. or any of their subsidiaries has ever employed or hired DLA Piper in the past. If so, please indicate when, the circumstances surrounding this employment, consultancy or related business association, and the names of the specific individuals who worked with Pebble.

A: I have worked with Pebble Limited Partnership staff to gather the information necessary to answer these questions accurately. While we have diligently worked to ensure we found all

instances of meetings or communications with Mr. Scheeler, I cannot be certain that we have found every instance. I am certain that the answer accurately reflects the fact that we had very little communication with the Cohen Group and DLA Piper about the report, and those communications were undertaken to ensure that the report was factually accurate.

I first met with Charlie Scheeler on October 9, 2014. After that date, I met very infrequently with Mr. Scheeler and/or other attorneys in the law firm of DLA Piper to discuss the factual background of the Pebble mine status, and to answer their questions about others who might have information relevant to Secretary Cohen's investigation.

Q: Mr. Collier please indicate the first time you ever met, spoke or communicated, via e-mail or any other means, with Secretary William Cohen?

- Please indicate how many times you met, spoke or communicated with Secretary Cohen about The Cohen Report from the time you hired The Cohen Group to write this report until Oct. 6, 2015, when it was publicly released?
- Please indicate how many times you met, spoke or communicated with any other Cohen Group employees about The Cohen Report from the time you hired The Cohen Group to write this report and Oct. 6, 2015, when it was publicly released?
- Please indicate if the Pebble Partnership, Northern Dynasty or Hunter Dickinson, Inc. or any of their subsidiaries has ever employed or hired The Cohen Group in the past. If so, please indicate when, the circumstances surrounding this employment, consultancy or related business association, and the names of the specific individuals who worked with Pebble

A. I have worked with Pebble Limited Partnership staff to gather the information necessary to answer these questions accurately. While we have diligently worked to ensure we found all instances of meetings or communications with Secretary Cohen or other employees of the Cohen Group, I cannot be certain that we have found every instance. I am certain that the answer accurately reflects the fact that we had very little communication with the Cohen Group and DLA Piper about the report, and those communications were undertaken to ensure that the report was factually accurate.

I met with Secretary Cohen twice before October 6, 2015. I had a very limited number of meetings – fewer than five – with others in the Cohen Group to answer questions about the factual information we provided to them.

Neither the Pebble Partnership, Northern Dynasty Minerals nor Hunter Dickinson have hired the Cohen Group in the past.

*Responses by The Hon. Rick Halford*

The Honorable Rick Halford  
Former Alaska Senate President  
P.O. Box 771209  
Eagle River, AK 99577

December 7, 2015

*Via Email to:*

Chairman Lamar Smith  
U.S. House of Representatives  
Committee on Science, Space, & Technology  
Attn: Michelle Stoika, [Michelle.Stoika@mail.house.gov](mailto:Michelle.Stoika@mail.house.gov)

**Re: Supplemental Statement for the Record for Full Committee Hearing Held November 5, 2015 regarding the proposed Pebble Mine; Responses to Questions for the Record to The Honorable Rick Halford, Former Alaska Senate President, Submitted by Ranking Member Johnson**

Dear Chairman Smith and Members of the Committee:

Thank you for the opportunity to testify at the Committee's hearing on Thursday, November 5, 2015 regarding the proposed Pebble Mine in southwest Alaska.

Enclosed are my responses to questions submitted for the record by Members of the Committee. I am also enclosing my suggested corrections to the hearing transcript.

I appreciate this opportunity to provide the Committee with an Alaskan viewpoint on the proposed Pebble Mine, the EPA's involvement, and the harm being imposed on the people who live, work, and subsist in the region.

At the heart of the discussion at the hearing was whether or not EPA's action was "unfair" to Pebble proponents. With the utmost respect to committee members, I think that sorely misses the point.

The real issue at stake is that Americans are trying to keep a foreign mining company from harming a critical food source and their culture and economies. The people in Bristol Bay turned to the federal government and laws that have been in place for fifty years for help when their own state government refused to listen. Unfortunately, but not surprisingly, Pebble mine proponents are trying to

undermine this important system of protecting our jobs, culture, and American way of life.

The Environmental Protection Agency's action in Bristol Bay does not in any way prevent Pebble Partnership from submitting their permit applications and going through the National Environmental Protection Act process that they claim to want. We've been asking them, and they've been promising, to submit these applications for a decade. We are still waiting.

Bristol Bay, Alaska is unique in nearly every way. It produces half the wild salmon the world eats (1 billion pounds in 2015), has a thriving economy based on fishing, one of the last remaining salmon-based cultures in the world, and is a dream destination for sport anglers. It is a landscape that works hard for Americans and should be treasured and protected.

The widespread locally-driven opposition to the proposed Pebble mine is unique too. In a resource-development friendly state, nearly 60% of Alaskans don't want the mine developed and 8 in every 10 Bristol Bay residents don't want it. Thousands of others have come together to support local residents, including chefs, commercial fishermen, major jewelers (e.g., Tiffany & Co), and hundreds of hunting and fishing businesses. Tech Cominco, Mitsubishi, Anglo American, and Rio Tinto, four major mining companies, have left the project believing that the risks of the project outweighed any potential gain. Simply put, the proposed Pebble Mine poses too much risk.

Northern Dynasty Minerals, now the sole promoter of this mine, is a junior Canadian mining company that has never before developed a mine. This is not your grandfather's mine using two picks, a mule, and some gold pans. Presently, there are over 1 million feet of drill holes, 1355 wells, and documented water pollution concerns. This proposed mine is massive – indeed it would be three times larger than the current largest operating mine in North America.

The Environmental Protection Agency has not acted in a "pre-determined" manner and its proposed 404 (c) action does not foreclose PLP from submitting its permit applications. The proposed 404(c) restrictions would not ban mining—they would protect important salmon streams and establish guidelines for the permitting process. The Pebble Partnership remains free today to submit a 404 permit application at any time. Assuming EPA were to finalize its 404(c) action as presently proposed, PLP remains free at any time – before or after that final action

-- to apply for a 404 permit and go through the process it claims to desire yet so far avoids.

Section 404(c) of the Clean Water Act is not "the Antiquities Act on steroids," and it does not entail land use planning. With 404(c), EPA focuses strictly on the preservation of important aquatic resources, and it is meant to set parameters for permitting that will prevent the waste of resources by government, permit applicants, and the public. Bristol Bay headwaters are waters of huge regional and national significance. EPA has used 404(c) very sparingly, and this is just the type of unusual situation for which 404(c) was designed; indeed if not here, with this massive and unique threat, it is hard to understand where it would be appropriate to use this long-established authority.

As a public servant, I urge you to stand up for American citizens, and not listen to the whining of a foreign mining company on political life support that can't even clean up their mess.

Sincerely,



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Rick Halford  
Former Alaska Senate President

**Cc via email to:**  
Ranking Member Johnson

**Enclosures:**

1. Answers to Questions for the Record to The Honorable Rick Halford, Former Alaska Senate President Submitted by Ranking Member Johnson
2. Transcript Corrections



## HOUSE COMMITTEE ON SCIENCE, SPACE, &amp; TECHNOLOGY

“EPA’s Predetermined Efforts to Block the Pebble Mine”  
Hearing on November 5, 2015

**Questions for the Record to  
The Honorable Rick Halford, Former Alaska Senate President  
Submitted by Ranking Member Johnson**

*Q: The Majority put up slides of several emails but did not provide you, or any of the other witnesses, a real opportunity to examine them. Having now had an opportunity to examine the attached slides:*

- *Please provide some context to the emails and explain their significance, if any.*

The selected few emails put forth at the hearing, culled out of the thousands and thousands of emails EPA has internally and externally sent on the subject of Bristol Bay over the years, were all made within the context of the public petitioning their government for legal redress of lengthy grievances brought on by a decade of deception by the Pebble Partnership. The public was asking for EPA’s help and, in return, why shouldn’t the agency be allowed to give explanations to the public about the authority of the agency to act? The Cohen Report’s entire attack on EPA is that they prejudged and pre-decided and were biased; not true. EPA did a lot of work throughout its lengthy comprehensive public process and via communications with the public to explain its methodologies, science, and legal authority to both sides of this debate. Importantly, lower level staff comments and opinions DO NOT reflect the official agency position. Staff was required to undertake an extensive and exhaustive review so that senior management could make informed and reasoned decisions, much like your staff members meet with various interests, conduct analyses, and help inform your views. In fact, isn’t that what an agency serving the public is supposed to do?

EPA began its internal discussion of issues relating to 404 permitting, 404(c) authority, Bristol Bay watershed and fisheries science, Pebble’s mining plans, and stakeholder involvement *because, from 2004 onward, Pebble had been claiming that permitting of the mine was imminent.* EPA was preparing for its legally-required involvement, through the Clean Water Act and NEPA, in an eventuality that Pebble itself said was coming by the next year – permit applications. As one timely example, in March 2009 a Pebble press release asserted the company was in

“preparation to initiate state and federal permitting under the National Environmental Policy Act (NEPA) in 2010.” As such, in early EPA emails cited by the Cohen Report, for example an email dated August 17, 2009,<sup>1</sup> Pebble mine was discussed at a meeting regarding *all mining issues* in EPA Region 10 within the broader context of *all permitting issues related to EPA’s purview* – including NEPA issues, 404 permitting issues, and other CWA permitting issues – and not solely within the context of 404(c). EPA employees were merely identifying information they would need to fulfill their statutory authority under the CWA and NEPA, whether or not 404(c) would be in play. And because 404(c) is the EPA’s main interface with 404 permits processed, the agency was doing its job in evaluating that statutory requirement as well.

While this overall context for EPA’s emails was avoided in the Cohen Report, more egregious is that some of the emails mentioned during the hearing were taken completely out of context and misconstrued. For example, the email displayed by Rep. Babin,<sup>2</sup> which I was copied on, contained notes from an EPA meeting with the public that mentions politics were to play a role in the process were merely notes from a third party who attended the EPA meeting. And, as such, the notes were merely an attendee’s interpretation of the meeting. This email was not, as suggested, something that EPA employee Richard Parkin said to me. These were third-hand notes from a public meeting with EPA. Moreover, concerns expressed about politics playing a role in the process actually refer to bemoaning the (prescient, as it turns out) intrusion of politics into what should be a scientific inquiry.

*Q: In his testimony, Mr. Collier claimed that the delay of Pebble Partnership to submit an application for a mining permit caused no real harm to the people of Bristol Bay. However, as I and other Democratic Members pointed out, the people of Bristol Bay had been waiting for more than a decade for the Pebble Partnership to file a permit, and the uncertainty and inaction on the part of the mining company ultimately led to their request for EPA’s help.*

- *Please describe what impacts the long and continuous delay of Pebble in applying a mining permit has had to the economy, the culture, and the environment of Bristol Bay.*

<sup>1</sup> Email from Phil North to EPA colleagues (August 17, 2009), available at Cohen Report App.-21 (Mr. North stated

<sup>2</sup> Hearing Transcript lines 1391-1415.

The Pebble Partnership's repeated delay in submitting permit applications is part of a long string of lies and deception perpetrated by it against the people of Bristol Bay. For more than a decade, Pebble has repeatedly claimed it was on the verge of submitting permit applications. Even today, as Pebble trots out its report by Secretary Cohen and claims to want NEPA review of its proposed mine, the only thing preventing NEPA review of the proposed mine is Pebble's own refusal to follow through with its many promises to apply for mine permits.

More than ten years ago, in November of 2004, Northern Dynasty Minerals announced it expected "completion in 2005 of . . . permit applications." In 2005, another statement declared "a full permitting process for a port, access road and open pit mine [were] all slated to begin in 2006." Fast forward to 2008 and Pebble assured Alaskans it was "on schedule to finalize a proposed development plan in 2009 and . . . apply for permits in early 2010." This claim was reaffirmed just six months later, in March of 2009, when Pebble announced it was in the midst of "preparation to initiate state and federal permitting under the National Environmental Policy Act (NEPA) in 2010." In 2010, Pebble claimed it was "preparing to initiate project permitting under the National Environmental Policy Act (NEPA) in 2011." Yet in May of 2011, Pebble began to sound like a broken record when it said it intended "to enter the permitting phase towards the end of 2012." In October of 2011, Pebble finally changed its message when a representative stated "We have never even said that we're going to [seek a] permit. We may not."

As Senator Murkowski noted in a July 1, 2013, letter to Pebble executives, "after years of waiting, it is anxiety, frustration, and confusion that have become the norm in many communities."

Again, the only thing preventing Pebble from obtaining the relief it seeks—i.e., NEPA review of its proposed mine—is its own failure to apply for mine permits. Federal agencies cannot unilaterally initiate NEPA review without a permit application. Additionally, nothing about the EPA's proposed determination, the watershed assessment, or § 404(c) review of Bristol Bay prohibits Pebble from submitting a mine application. The proposed § 404(c) restrictions are not final, and even if they were to become final would not ban mining. The proposed restrictions would protect important salmon streams and establish guidelines for the permitting process.

Bristol Bay is a world-class fishery, and the last place in the world where intact wild salmon fisheries form the foundation of the region's economy, communities,

and culture. Bristol Bay fisheries support more than 14,000 jobs and are valued at more than \$2 billion dollars annually. Yet, the specter of Pebble Mine and its potential impacts to salmon hang like a black cloud over the people of Bristol Bay.

If built, the Pebble Mine would be one of the largest mines in the world. Because of its massive size, geochemistry and location, the proposed mine runs a high risk of polluting Bristol Bay headwaters. Pebble-produced reports, such as the Waldrop report, discussed in greater detail below, indicate that the Pebble Mine complex would span 20 square miles and would require the world's largest earthen dam, some 700 feet high and several miles in length. Any release of toxic mine waste into the surface or groundwater has the potential to catastrophically harm Bristol Bay's salmon runs. Even absent catastrophic failure of some aspect of the mine, such as the tailings pond (or ponds), any version of this mine will by definition consume significant fish spawning habitat and therefore reduce the size and quality of Bristol Bay's world-class fishery.

Alaska Natives that have relied on the region's fish, wildlife and pristine water resources for subsistence and their cultural heritage for thousands of years have their very way of life in jeopardy. Commercial fishermen and salmon processors that might otherwise want to expand their operations to take advantage of increasing demand, strong salmon prices, and the many millions of salmon that sustainably return each year do so at their own peril. Sportsmen and sport fishing business owners find themselves in a similar plight. World class rainbow trout and salmon fishing bring fishermen from all over the world to Bristol Bay in increasing numbers, yet business owners looking to expand do so with the risk that if the proposed Pebble Mine is developed their livelihood could be taken from them in a plume of mine waste not unlike what we recently saw at the Mount Polly Mine tailings pond breach in Canada.

### ***Cultural & Social Impacts***

Below are several comments made by local residents during public hearings about Pebble that reflect the impacts this long decade of lies has had on Bristol Bay residents:

- “[W]e have a right to be afraid of what is happening, because we live in this land . . . . We have been in this battle long enough. We want to see

something start happening that can assure Alaska native people in this area that our waters, our way of life will continue to be protected.”<sup>3</sup>

- “As I stand here in front of you today, my mind isn’t really here. It’s at home with my children that I’ve left for the fourth time this month on Pebble-related causes. It’s on my subsistence net I was supposed to mend. It’s on getting fish ready, the birch trees we were supposed to cut, it’s on my cabin and boat rentals, it’s on my clients I get in seven days for the sport fishing opener. It’s on my school board meeting I’ll be missing. It’s on canning jars, bug spray for the baby, and another toy I’d better get for the quilt trip present. Standing here in front of you today, talking about a mining giant threatening my entire way of life wasn’t what I ever could have planned for . . .”<sup>4</sup>
- “Every year my freezer is full of meat, fish and berries from Bristol Bay. I look at this proposed mine as an attempt to take that from me, my children and future grandchildren. I believe with all of my heart that if this mine goes through, this will be the end of our lives as we know it. We will be forced to look to other sources for survival and will be forced to give up a part of our lives that is not just about food, but about a culture and a way of life.”<sup>5</sup>
- “Nondalton has already been heavily impacted by the mining exploration in the area. In the last six years, there has been a steady increase in visitors to the village, including scientists, researchers, reporters, mining companies, anti and pro Pebble people. . . . There is an increased level of stress . . . The survival of our culture directly depends on the health of our land, the fish and the wildlife.”<sup>6</sup>
- “[Y]ou have a lot of people concerned about the future and who knows what the future is.”<sup>7</sup>

<sup>3</sup> U.S. EPA Draft Bristol Bay Watershed Assessment Record of Public Comment Meeting – New Stuyahok, Alaska, at 15 (June 7, 2012) [hereafter “New Stuyahok Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-4154>.

<sup>4</sup> EPA Bristol Bay Watershed Assessment Public Hearing – Seattle, Washington at 24-25 (May 31, 2012) [hereafter “Seattle Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-1270>.

<sup>5</sup> Public Comment Letter from Sherina R. Ishnook, Assistant Controller, BBNC (June 5, 2012), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-0580>.

<sup>6</sup> U.S. EPA Draft Bristol Bay Watershed Assessment Record of Public Comment Meeting – Nondalton Alaska at 1 (June 7, 2012) [hereafter “Nondalton Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-4830>.

<sup>7</sup> New Stuyahok Transcript, at 13.

- Our food are in jeopardy, our future is in jeopardy. What my mind and heart can fathom is the future of my people . . . We are of the fish people. We are the salmon people.”<sup>8</sup>
- “And the thought of my children not being able to pass our way of life to their children makes my heart hurt. I come to you today for my children and my grandchildren’s way of life to continue to be passed on to the future generations. Please protect our water.”<sup>9</sup>
- “Please help us, it would be the biggest mine in the world. It hurts me deeply, I have actually cried that our home might be destroyed and I want to save our fish and wildlife. I want my grandchildren to be able to fish like I did. I want to be using my fish camp and living off the fish and subsistence every traditional way. I’ve lived this way my whole life and I’m 77 years old. I don’t like people being against each other over this mine.”<sup>10</sup>

### *Economic Impacts*

There have also been repeated comments concerning the hardship already being suffered by Bristol Bay fishermen, residents, and communities due to the uncertainty surrounding the proposed Pebble Mine. Examples of this include:

- “Our village, through the help of BBEDC grants will be implementing and will be utilizing a fish processing plant that will employ up to 22 local residents with the potential for growth. This employment will help us to become a more sustainable community. For how long? It is detrimental to our way of life to hang on to the ingenuity of the proposed Pebble project.”<sup>11</sup>
- “On the average, we do 160 million pounds of fish a year. If you do that [mine], you might as well shut down our plant in Naknek. I’ve talked to our buyers and if the mine goes through and pollutes the water in front of Levelock, and that water goes down to the Kvichak and taints the fish, our market are done.”<sup>12</sup>

<sup>8</sup> U.S. EPA -- Region 10 Bristol Bay Watershed Assessment Public Hearing – Dillingham, Alaska, at 8-9 (June 5, 2012) [hereafter “Dillingham Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-1290>.

<sup>9</sup> Dillingham Hearing Transcript, at 86.

<sup>10</sup> Nondalton Hearing Transcript, at 7.

<sup>11</sup> U.S. EPA Draft Bristol Bay Watershed Assessment Record of Public Comment Meeting – Levelock, Alaska, at 2 (June 6, 2013) [hereafter “Levelock Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-4037>.

<sup>12</sup> Levelock Hearing Transcript, at 13-14.

- “As the prospect of a mine becomes more real, major uncertainty will be created throughout the fishery, from production through consumption.”<sup>13</sup>
- “[T]he perception that these salmon are tainted food sources is all that it will take to drive prices down to a point where the industry will not survive. 15,000 jobs and hundreds of millions of dollars annually are at stake. My job is at stake. A way of life is at stake. The largest reason the community is here is at stake. The quality of the water is at stake. It is not worth the risk.”<sup>14</sup>
- “As a grocery retailer with 80 stores in the northeast and mid-Atlantic regions of the United States, we spend our days sourcing high quality, safe food for consumers . . . . The placement of a large-scale mineral extraction mine within the Bristol Bay endangers the home of one of the largest wild salmon populations in the world. Any failure, no matter how minute, has the potential to destroy the ecology, economy, and culture of the area as well as the wealth of seafood.”<sup>15</sup>
- “[N]o amount of money can replace the many different kinds of fish we enjoy or the experience of a first job in the commercial fishing industry.”<sup>16</sup>
- “As a member of a local fishing crew I fear for my fishing livelihood . . .”<sup>17</sup>
- “The subject of Pebble is raised by concerned anglers in every conversation I have about the Bristol Bay fishery . . . . [D]evelopment of Pebble will put the sport fishing industry of the Bristol Bay region into a recession of long-term duration. It is unlikely my business nor more sport fishing businesses would survive. Development of Pebble would be the destruction of our Bristol Bay ‘brand’ of clean water and sustainable wild salmon.”<sup>18</sup>

<sup>13</sup> Statement of Robert Waldrop, Executive Director, Bristol Bay Regional Seafood Development Association (July 11, 2012) available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-4525>.

<sup>14</sup> U.S. EPA Draft Bristol Bay Watershed Assessment Record of Public Comment Meeting – Naknek, Alaska, at 11-12 (June 5, 2012) [hereafter “Naknek Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-4153>.

<sup>15</sup> Public Comment Letter from Carl Salamone, Vice President, Seafood Wegmans Food Markets, Inc. (July 23, 2012), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-4141>.

<sup>16</sup> Public Comment Letter from Helen Gregorio, Togiak Resident (June 4, 2012), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-0594>.

<sup>17</sup> Public Comment Letter from Robert Massengale, Fisherman and Dillingham Resident (June 24, 2012), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-1244>.

<sup>18</sup> Public Comment Letter from Mark Rutherford, Owner, Wild River Guides Co. (May 31, 2012), available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-ORD-2012-0276-1353>.

***Environmental Harm***

Beyond these economic and cultural impacts, Pebble's failure to apply for mine permits also exacerbates and contributes to harm to the region's ecology. Under a more typical mine-development scenario, a mine proponent will conduct the necessary exploration, apply for permits and navigate the permitting process, develop the mine, and then perform any necessary reclamation while moving from one stage immediately to the next. However, because Pebble has instead chosen to delay and refuses to submit permit applications, its exploration period has extended indefinitely and the threat posed by its over 1350 exploration wells, which remain unremediated, continues today. As described in further detail below, these numerous exploration well sites can create acid drainage, contaminate nearby anadromous waters and wetlands, impact fish and wildlife, and ultimately harm the people of Bristol Bay that rely on the region's fish, wildlife and water. As science tells, the longer insufficiently reclaimed or closed wells and well sites are left alone, the greater the risks.

Many individuals from the Bristol Bay region have commented on the on-going environmental risks and harms to water quality and quantity, waste disposal concerns, and negative impacts to fish and wildlife from exploration activities.<sup>19</sup> Some examples of this include:

- "What I didn't see in the [BBWA] was anything addressing the ongoing damage from the exploration . . . it's ongoing, it's happening now, it is doing damage."<sup>20</sup>
- ". . . [The] reason why the tribal fishermen are asking for your help and action now. I'm talking about impacts [to the] region that are going on right now on a massive scale with no end in sight. Effects of fuel spills, water generation, connection of generation, degradation of significant and going on unchecked."<sup>21</sup>
- "Exploratory mining is already ongoing. In just two years ago gallons of fuel were spilled in the river as a direct result of development actions."<sup>22</sup>
- "It looks like they are polluting already. I want EPA to look into what they are already doing with the drill holes and the mud. It looked like pollution

<sup>19</sup> See, e.g., Dillingham Hearing Transcript, at 39, 57, 59, 66, 79; see also Naknek Hearing Transcript at 10, 17-18; and New Stuyahok Hearing Transcript at 7-10, 18-19, 27-29.

<sup>20</sup> Dillingham Hearing Transcript, at 39.

<sup>21</sup> Id. at 56-58.

<sup>22</sup> Id. at 65-66.



and like maybe there was already acid coming up from the drill holes. I would like that to be looked into and seeing maybe if it is polluting and already happening.”<sup>23</sup>

- “Whether it is temporary water use permits, dumping directly of drilling material into the groundwater, artesian slime running down the hill. We flew across a well that has been running for three years, since it was photographed by National Geographic in September of 2009. It is still running today and the slick is still going down the hill. It is within a mile of their biggest camp. They fly across it hundreds and hundreds of times and do nothing. And the state does nothing.”<sup>24</sup>
- “For the last 24 years, the mining companies have been exploring for copper and gold on the state lands in the headwaters of BB, hoping to develop the largest mine of its type in North America. They have drilled 1200 bore holes some more than a mile deep and used fragile tundra and wetlands as their waste dump; criss-crossed subsistence areas with tens of thousands of helicopter flights and removed millions of gallons of water from streams and ponds that support spawning salmon and other freshwater fishes.”<sup>25</sup>
- “[I] have seen a change to this land. Truly there is salmon all over the area now, a day -- now a day we go up there and you don’t see them like I used to. This is telling me that the exploration for gold and copper may already be affecting the salmon that returns every year. Now, that rock is doing exploration, we are now seeing the pike population be affected.”<sup>26</sup>
- “Since I have lived here, 32 plus years, travelling up and down the river, I have noticed that ever since the mine started doing exploration up in the Kuktuli, the fish and game have been depleting more and more every year. So there has been some point of effect from exploration.”<sup>27</sup>

*Q: The Majority elected to have two separate panels for this hearing, offering Secretary Cohen, the author of the Cohen Report, and his attorney Charles Scheeler of the law firm DLA Piper an opportunity to present their perspective without direct challenge from any of the other witnesses, including yourself. Having had an opportunity to review the Cohen Report, and having listened to his testimony, I hope you can offer your perspective on the following points:*

<sup>23</sup> U.S. EPA Draft Bristol Bay Watershed Assessment Record of Public Comment Meeting – Igiugig, Alaska at 9 (June 6, 2013) [hereafter “Igiugig Hearing Transcript”], available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-3819>.

<sup>24</sup> Naknek Hearing Transcript, at 17.

<sup>25</sup> New Stuyahok Hearing Transcript, at 7-9.

<sup>26</sup> Dillingham Hearing Transcript, at 58-59.

<sup>27</sup> New Stuyahok Hearing Transcript, at 18.

- *Based on your review, how accurate was the report in representing the issues plaguing the development of the Pebble Mine?*

Based on my review, the Cohen Report was inaccurate in representing the issues surrounding the Pebble Mine – from the EPA’s initiation of involvement and public process to the company’s own responsibilities in its failure to move the project forward and submit a mine plan. The Cohen Report fails to acknowledge that *only Pebble itself* has the power to secure the full NEPA review that it allegedly seeks, and it could do so by filing its promised permit application—promises which it serially breaks. By this failure—for reasons known only to itself—Pebble has created an environment of stress, anxiety and uncertainty in the Bristol Bay region. These were the reasons the people of Bristol Bay asked the EPA to get involved. From there, EPA listened to *all stakeholders* by traveling to the region and sitting down and *listening to the people in the region*. EPA should be commended and not criticized for the massive extent of its public process and involvement in the region and the lengths the agency went to in order to ensure public involvement. I believe the Cohen report largely under-represents and wrongfully downplays EPA’s process.

From the perspective of the real stakeholders, EPA went in and asked them what they thought. They did not tell the residents what to believe. They listened to the people and worked to respect elders, local knowledge, the history and the region. Neither Pebble nor the State have acted this way. In the end, then, the Cohen report completely misrepresents the work of the EPA. The Cohen report, instead, creates a conspiracy based on a few cherry picked emails, rather than truly evaluating the perspectives and wishes of the people of Bristol Bay.

- *To your knowledge, was any additional information omitted from the report that would further inform an evaluation of the issue? If so, what information was absent?*

Not only does the Cohen Report misrepresent EPA’s actions, the report is missing critical information to help readers judge even its own credibility, much less judge EPA’s actions. For example, the report is missing critical information such as: (1) more complete background information as to *why* the residents of Bristol Bay asked the EPA to get involved, including background on Pebble’s close relationship with the State of Alaska and the state’s refusal to listen to local concerns and the decade of promises made by the mining company that mine permitting was forthcoming and the uncertainty engendered by Pebble’s

obfuscation surrounding its permitting timeline; (2) a more complete description of EPA's extraordinarily comprehensive and inclusive public process that accompanied every stage of the agency's review and included multiple visits to the region to *listen to the local people and our concerns*; and (3) a more complete description of EPA's extensive record of scientific information compiled that supports the agency's proposed decision and fully explains the basis for the proposed 404(c) restrictions.

In addition to these missing pieces, it is the Cohen Report that lacks transparency, peer review, and public process. For example, the report fails to disclose names and affiliations of the original 200-300 people Cohen allegedly solicited to participate in the review, any information about the names and content of the alleged 60 interviews, what information was drawn from them, whose comments and perspectives were incorporated into the Report, and whose comments and perspectives were excluded from the Report. The Report did not subject interview questions and methodologies used in the review to public input or comment, no drafts of the Report were put forth for public or stakeholder review before finalized, and before it was finalized the report was not subjected to peer review.

In my personal experience, including my connections with many people in the Bristol Bay region, *I have not heard of a single individual from the region who participated in the Cohen Report review*. This suggests an extremely biased review that omits important information and differing viewpoints from inclusion in the Report.

- *Do you agree with the Report's characterization of EPA's activity? If no, why?*

I do not agree with the Report's characterization of EPA's activity as "unfair." First and foremost, EPA's activity and the unprecedented level of public participation and process that corresponded with the agency's activity was extremely fair, inclusive, and thorough. As described throughout my response here, EPA's science has been through rigorous peer reviews to the satisfaction of all peer reviewers, its process has been open and transparent, and its authority to invoke 404(c) has been upheld in court.

I cannot agree with the Cohen Report's characterization as "unfair," moreover, because the Report uses the term without definition to what is "fair" or "unfair" and fails to use an objective, measurable standard by which to judge the EPA's actions. The Report does not purport to determine whether EPA's actions are legal

or not legal or whether the agency is meeting its statutory duties under the Clean Water Act. The agency is indeed acting with full statutory authority and has gone above and beyond the requirements for public process. The Cohen Report dodges an objective standard to measure EPA's actions and instead develops its own subjective criteria of "fairness," a criteria that is informed by a complete lack of public process and transparency, selected interviews, and biased responses.

As articulated above in the discussion of Pebble's failure to apply for permits there is a sentiment in Alaska and Bristol Bay, in particular, that it is Pebble who has been "unfair." Whereas Pebble has long ignored the wishes of Bristol Bay residents and stakeholders, from the beginning EPA has been open and transparent in their process. Starting in February of 2011, after Dennis McLerran announced the Watershed Assessment Process, EPA promptly scheduled meetings throughout Bristol Bay to discuss with Bristol Bay residents the goals and intentions of the Watershed Assessment.

Following the release of the first draft of the Watershed Assessment, EPA then conducted meetings in Bristol Bay, Anchorage, and Seattle. The same is true following the release of the Proposed Determination. All told they held at least 18 meetings in over a dozen Bristol Bay communities. Just as EPA worked to create opportunities to talk to the public and listen to public comment in different venues, EPA also made the effort to reach out to Pebble and maintain an open dialogue with them. For example, on February 7, 2011, Regional Administrator Dennis McLerran wrote to the Pebble Partnership hoping to open a dialogue about analyzing the impacts of large-scale development on water quality and the salmon fisheries of Bristol Bay.

In particular, EPA requested information from Pebble's Environmental Baseline Data, hoping that could inform the discussion and evaluation. Pebble, despite "expressing a willingness to share baseline data," Pebble did not respond with the requested information. Further, the Regional Administrator wrote, "we invite you PLP's review of documents and your participation at meetings to ensure that our assessment yields a result that is high quality, scientifically sound and includes effective consideration of your input." Despite participating in the process, as EPA requested however, in subsequent comments to EPA on the Watershed Assessment, proceeded to critique EPA for not evaluating Pebble's data.<sup>28</sup> Further, it is my understanding that in addition to opportunities to engage the Watershed

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<sup>28</sup> Page 9 and 18

Assessment process, EPA met with Pebble at least 60 times and ultimately never denied a meeting requested to Pebble.<sup>29</sup>

In addition to public information and comment meetings, EPA also held multiple public comment periods on both the Watershed Assessment and the Proposed Determination. During those comment periods, EPA worked with Pebble and the State of Alaska, each time extending the length of the comment periods at their request. For the Watershed Assessment, EPA held two separate comment periods. In total, those comment periods generated over 1.1 million comments.<sup>30</sup> Further, an additional 670,000 comments were submitted in response to EPA's Proposed Determination.

Analysis of those comments shows that Bristol Bay residents, Alaskans, and Americans overwhelmingly supported the work that EPA was undertaking and supported protecting Bristol Bay from the threats posed by the Pebble Mine. During the second comment period, over 73% of comments supported EPA. More specifically, over 84% of Alaska comments and over 98% of Bristol Bay comments supported EPA's work in Bristol Bay. And, on the over 99% of comments on the Proposed Determination support EPA's work in Bristol Bay. EPA's work in Bristol Bay is supported by local residents, Native Corporations, 100 commercial fishing groups and companies, over 1000 sportfishing and hunting groups and businesses, 59% of all Alaskans, the National Council of Churches and many other organizations. Ten sitting United States Senators and thirteen Congressmen and women have also gone on record supporting the science of the Watershed Assessment and urging protective action.

In addition to public support, EPA also has clear authority to utilize its 404(c) authority in this case. A recent DC Circuit Court Decision in *Mingo Logan Coal Company v. USEPA* found in favor of USEPA regarding its authority to prohibit, restrict or deny an area for specification "whenever" it determines that a discharge will have an "unacceptable adverse effect" on identified environmental resources.<sup>31</sup> The court notes, "Section 404 imposes no temporal limit on the Administrator's authority to withdraw the Corps's specification but instead expressly empowers

<sup>29</sup> <http://thehill.com/blogs/congress-blog/energy-environment/238944-pebble-mine-still-a-threat-to-bristol-bay>. Also, based on review of Pebble litigation documents, FOIA documents, online EPA administrator calendars, and State of Alaska Pebble Mine technical working group meetings, between 2003 and 2014 Pebble met individually with EPA over 60 times, including bi-weekly meetings from 2010-2014. Declaration of Richard B. Parkin, Pebble II Docket No. 72 (Nov. 7, 2014); *See e.g.*, Senior Managers Schedules, <http://yosemite.epa.gov/opa/admpress.nsf/Calendars> (last visited Oct. 19, 2015).

<sup>30</sup> <http://www2.epa.gov/bristolbay/public-involvement-bristol-bay-assessment>

<sup>31</sup> *Mingo Logan Coal Co. v. EPA*, Case # 12-5150 at page 9 (D.C. Cir., April 23, 2013).

him to prohibit, restrict or withdraw the specification “*whenever*” he makes a determination that the statutory “unacceptable adverse effect” will result.<sup>32</sup> Using the expansive conjunction “whenever,” the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at *any* time.<sup>33</sup>

### **State of the Science/Peer Review**

In addition to overwhelming public transparency and public support, EPA also undertook a rigorous effort to ensure that they were putting forth the most comprehensive and detailed analysis possible. This included conducting an independent peer review of their own work. Through an outside consultant, a peer review committee was established, with members of that committee representing all topics covered in the Watershed Assessment – ranging from fisheries ecology to mining and engineering.

Despite PLP’s claims to the contrary, the peer review panel never called the science of the document into question. The peer reviewers did request more information and noted:

*This Assessment presents a “comprehensive overview of current conditions and establishes the global uniqueness of the area to salmon ecology.” (Atkins)*

*“The Assessment presents a well documented discussion of the fish and wildlife resources of the Nushagak and Kvichak River Watersheds, with more limited discussions on the remainder of the Bristol Bay watershed.” (Webber Scannell)*

*“My point is that probable environmental consequences of mining activities are much greater than this report alludes to, given that consequences are likely, even if their magnitude is uncertain.” (Dauble)*

*“Make no mistake we cannot have both mining and productive salmon stocks in the Bristol Bay watershed. . . As a result of the mining*

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<sup>32</sup> Id., citing 33 U.S.C. § 1344(c) (emphasis added).

<sup>33</sup> Id.

*operation, the government will be saddled with a 1000 years (at minimum) of monitoring and maintenance of this closed site.” (Stein)*

Further, as of the release of the Second Draft of the Watershed Assessment, in April of 2013 over 300 internationally-recognized scientists have signed a collective letter validating the work of the EPA, and expressing deep concerns about the prospects of large-scale mining in the Bristol Bay Watershed.<sup>34</sup>

- *Please provide any other comments you have on the substance of the report, and how it was presented at the hearing.*

*Q: During the hearing, some members described the various exploration wells and other mining activities that have been, or are being, conducted by Pebble Partnership. Mr. Collier attempted to justify some or all of these activities by claiming State-owned lands at the Pebble deposit have been designated solely for mining.*

- *What have you witnessed at these exploration sites? Are you aware of any on-the-ground cleanup or remediation efforts? If so, please describe them and the reasons why they are occurring.*

The last time I personally flew over the Pebble deposit area was late October 2015 and there was no activity on the ground. On numerous overflights I haven't personally seen activity on the ground since 2013. And Pebble's labor affidavit filings with the State of Alaska state that they have not been active on the ground since September 2013.<sup>35</sup> It also appears that that no remediation efforts have taken place on the ground since October 2013, when Pebble reclaimed a mere 0.18 acres for the entire year of 2013 despite having disturbed much more ground.<sup>36</sup> The most recent cleanup I have witnessed was the cleanup of Pebble's fuel dump at Big Wiggly Lake.

I have also witnessed firsthand major problems with Pebble's exploratory drilling efforts and the mess left behind in sumps, pits, and on the tundra. For example, in September 2011 I witnessed a Pebble drill rig platform and silt fences pushed

<sup>34</sup> <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2013/04/26/scientists-call-on-white-house-to-protect-bristol-bay-watershed-from-mining>

<sup>35</sup> See Petition to DNR p. 13, submitted to the hearing record by Rep. Bonamici, transcript line 1668.

<sup>36</sup> See Alaska DNR, Pebble Limited Partnership Reclamation Reports, <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/index.cfm> (showing no reclamation report submitted for 2014 or 2015). See specifically, 2013 Reclamation Report p. 6 (showing the acreage reclaimed and that zero acres were to be reclaimed in 2014).

down into the tundra and grey water from drilling muds and operation running off onto the tundra and waters adjacent to an anadromous stream. In October 2011 I witnessed excavated sumps overflowing with drilling muds, fluids, additives, and drill cuttings that were later filled with soil and left behind to potentially generate acid drainage in the future. In September 2009, I witnessed Pebble employees pumping water containing drilling muds and fluids out of sumps and deposited onto upland tundra. And in September 2012, I witnessed uncapped well holes from years past that were not properly plugged causing artesian flow and groundwater and minerals leaching on the site.<sup>37</sup> I have pictures of all of these events, which should already be in the record.

- *Please provide comments on Mr. Collier's characterization of the land designations in the lease area.*

Mr. Collier's characterization of the land designations in the region of Pebble's mineral claims as solely for mining is wrong, only part of the story, and misleading.

First, the State of Alaska emphasized the fisheries and related benefits of the lands near the Pebble deposit when selecting those lands under the Statehood Act.<sup>38</sup> This is shown in, among other historical documents, the *State of Alaska Land Selection Program – State Lands to be Conveyed by Congress* (May 15, 1978), where the state concluded that the primary values listed for the selection of the lands in "Unit 23," which includes the Pebble deposit, focused on fisheries, recreation, access and consistent ownership patterns ahead of mineral potential.

Second, once the State of Alaska selected the lands containing the Pebble deposit, it placed Mineral Closure Order 393 on part of the region, thus closing even to mineral staking about 214,000 acres of land along the corridors of 64 streams important for the spawning and rearing of salmon.

Third, the Bristol Bay Area Plans have noted the importance of the land overlying the Pebble deposit for salmon rearing and spawning habitat.

*Q: The Pebble Partnership often claims that EPA cannot accurately evaluate the environmental impacts the Pebble Mine may have on Bristol Bay because no permit has been filed and no detailed mining documents or plans have been*

<sup>37</sup> See Questions for the Record from Wayne Nastri to the Committee on Science, Space, and Technology (Sept. 17, 2013) (providing descriptions and photos of on-going harm from Pebble's exploration activities).

<sup>38</sup> See *Pebble I*, EPA's Opposition to Motions for Preliminary Injunction, dkt. 188 (Aug. 18, 2014), p. 29-30.



*submitted for consideration by EPA or other involved parties. However, a report filed by Northern Dynasty Minerals, the parent company of the Pebble Partnership, with the Securities and Exchange Commission in 2011 appears to include such detailed plans. This report, known as the “Wardrop Report” was characterized at the hearing by Mr. Collier as merely a description of the mineral deposit, and not a plan for how those minerals could be mined.*

- *Is this characterization accurate? If not, how would you correct the statements made by Mr. Collier during the hearing?*

No this characterization is not accurate. Simply put, the Wardrop report contains a great deal of detail from describing the nature of the deposit, down to details such as the geochemical make up of the deposit, potential tailings locations, and mining infrastructure.

Throughout this process Pebble has been quick to criticize EPA for evaluating mining in Bristol Bay without having a formal mining permit to review. However, that argument is flawed on a number of levels.

There is a well-established plan for the Pebble mine. The EPA based its mining scenario on the Pebble Limited Partnership’s (PLP) own documents. For example, it relied on PLP’s filings with the Securities and Exchange Commission. The mining scenarios detailed in the Wardrop Report, released in 2011, are described by PLP as “*economically viable, technically feasible, and permissible*.”<sup>39</sup> How can the EPA’s scenario be a “fantasy” when it relies on the very same document that PLP produced and called “feasible and permissible” in its legal filings with other state and federal agencies?

EPA also relied on permits PLP filed with the State of Alaska, notably Northern Dynasty Minerals applications for water rights reservations submitted to the Alaska Department of Natural Resources (DNR) in 2006.<sup>40</sup> These applications and reports provide hundreds of pages of information, maps, and descriptions of the Pebble mine. The applications specify the location of the Pebble Deposit and the

<sup>39</sup> Northern Dynasty Minerals. Press Release: Northern Dynasty Receives Positive Preliminary Assessment Technical Report for Globally Significant Pebble Copper-Gold-Molybdenum Project in Southwest Alaska. February 23, 2011. <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595724>

<sup>40</sup> DNR, Mining, Land & Water (website), [Pebble Project-Water Rights Applications, Complete Water Rights Applications submitted by Northern Dynasty Mines, Inc.](http://dnr.alaska.gov/mlw/mining/largemine/pebble/water-right-apps/index.cfm), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/water-right-apps/index.cfm> (last visited July 10, 2012).

overall mine plans and infrastructure including the location of the proposed open pit, two proposed tailings storage facilities, water treatment facility, drainage ditches, transportation and road corridor, deep water port, and water transmission routes.<sup>41</sup>

During the peer review process, peer reviewers with long experience in mining and mine permitting had the following to say about EPA's mine scenario:

*"The hypothetical mine scenario initially appeared realistic and useful in terms of potential project scope . . . . My point is that probable environmental consequences of mining activities are much greater than this report alludes to, given that consequences are likely, even if their magnitude is "uncertain." - Dennis Dauble*

*"Assumptions about the location and operation of the mine seemed reasonable and the authors clearly articulated limitations of available data and other information concerning the mine's location and operation...Inclusion of experiences from other mining operations was also helpful in understanding the conclusions about potential impacts of the mine and its operation over time." - Gordon Reeves*

*"The potential risks and impacts are fairly and succinctly stated. Given the extremely long-term nature of the projected Pebble project, and the irreversible changes which would be imposed to the region, the risks seem, if anything, understated...This Assessment is thus inadequate in terms of considering potential broader consequences for the Bristol Bay watershed system." Charles Wesley Slaughter*

In addition to comments and review from the peer review committee regarding the mining scenario evaluated in the Watershed Assessment, in a comment dated June 13, 2013, mining expert David Chambers from the Center for Science and Public Participation, reviewed this common critique of those critical of the Assessment is that it does not consider a final mine scenario as proposed by the mining proponent. He noted that the argument for waiting for an actual mine proposal has several fundamental flaws:

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<sup>41</sup> Northern Dynasty Mines, Inc., *Application for Water Rights South Fork Koktuli River*, LAS 25871 (July 7, 2006), available at <http://dnr.alaska.gov/mlw/mining/largemine/pebble/water-right-apps/index.cfm>.

First, it presupposes that an EIS for a mine will provide a detailed analysis of the potential impacts of this type of mining on the region. Contrary to Pebble's arguments, a mine plan submitted and reviewed during the An EIS is *not* designed to provide this level of analysis. EPA's work is exhaustive in that it analyzes the broad impacts of mining upon the region, more so than would a site-specific proposal.

Second, throughout this process, Pebble has promised it would use 'modern mining technology,' as means to prevent accidents and meet permit requirements. Chambers argued that throughout the 40+ year history of EIS analyses there has never been a mine that has gone through the permitting process and not promised anything but a perfect track record and that mitigation measures will work. These EIS related analyses often prove to be wrong, Chambers explained.

For example, in their response to the Watershed Assessment, then consultant for Northern Dynasty Minerals, Tom Collier highlighted the Mount Polley mine in British Columbia as a prime example of a mine 'with proven track records, of sustainable low impact operations adjacent to important fisheries habitat in the Fraser River drainage.'<sup>42</sup> Collier insists that EPA should have reviewed more carefully mines such as Mount Polley as it is more appropriately comparative. In the end, perhaps this statement was prescient, given the failure of the Mount Polley tailings dam on August 4, 2014 in which a tailings dam breached releasing 10 million cubic meters of water and 4.5 million cubic meters into downstream and adjacent water ways. This has been called by many as one of the largest environmental disasters in Canadian history.<sup>43</sup> In the end, Pebble critiqued EPA for not considering more appropriate examples of modern mining technology but that argument failed with the breach of the Mount Polley tailings dam.

More importantly, while Pebble presses EPA on lack of a final mine plan, Chambers argued that in the history of mining, plans submitted during permitting are rarely the final mine design. Indeed those final designs are hardly known until the mine is near closure. Mine plans proposed during the NEPA process, instead detail the initial mine, not the final build out accessing the total mineral resource. EPA, instead, looks at multiple mining scenarios from small at .25 billion tons, to large at 6.5 billion tons. However, even that larger size does not cover the full known size of the material resource at 10.78 billion tons.

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<sup>42</sup> Northern Dynasty Minerals. "Comments on "An Assessment of Potential Mining Impacts on Salmon Ecosystems Bristol Bay, Alaska." July 23, 2012. Page 12.

<sup>43</sup> "Breach Of Tailings Pond Results In 'Largest Environmental Disaster In Modern Canadian History'". *Australian Mine Safety Journal*. 12 August 2014.

Based on his experience in the mining industry, Chambers explained that over the course of life for a mine, the mine will undergo multiple changes. They ultimately always apply for new or revised permits, with revised plans. Therefore, in the case of Pebble, a plan submitted during the NEPA process would be “less detailed in analyzing and predicting long term impacts to non-mining resources in Bristol Bay than the ecological risk assessment framework of the Bristol Bay Watershed Assessment.” Put another way, Pebble’s critique of EPA for failing to review a EIS-based plan for the mine is flawed because that plan would also be far from final and in many ways would be less detailed than the Watershed Assessment.

What is most important here is not the final mine plan, but a true understanding of the nature of the deposit, its location, its geochemical make up, proximity to ground and surface water resources and more. All of these points are clearly detailed in Pebble’s Wardrop Report, as well as the Environmental Baseline Documents released by Pebble in February of 2012 and utilized by EPA in the Watershed Assessment.

- *To your knowledge, how has the Pebble Partnership used the Wardrop Report to date?*

To my knowledge the Pebble Partnership, and more specifically Northern Dynasty Minerals, the sole owner of the Pebble Partnership, has used the Wardrop Report to conduct outreach to potential investors, speak to the public, and broadly explain plans for mining of the pebble deposit. In their annual presentations, based on information in the Wardrop report, Pebble continues to underscore the mine as “*economically viable, technically feasible, and permissible.*”

When coupled with the data presented in Pebble’s Environmental Baseline Documents, the Wardrop report puts forth a very clear picture of the scope, technologies, and impacts of mining the Pebble deposit. If Pebble has different approaches to mining the deposit, then they should pull these plans from their public presentations and withdraw their water rights applications from the State of Alaska.

- *What does the Wardrop Report tell us about the status of the Pebble deposit itself?*

The Wardrop Report provides a great amount of detail on the nature and status of the deposit. The report catalogues all available information regarding exploratory

drilling, tracing out the size and scope of the deposit. Most importantly the Wardrop report details the status of the mineral resources of the deposit. For example, Section 17, presents the mineral resource and reserve mineral estimates in great detail. In doing so, it presents the percentage of known mineral resources as well as other estimated areas of mineral opportunity. The discussions of the mineral resources in the Wardrop Report not only outline the degree of mineral resources, but the location, range, and depth of the deposit, clearly outlining the potential size and scope of the mine. Building on that information, the Wardrop Report outlines proposed mining schedules and benchmarks at 25, 45, and 78 years. Following those schedules, Northern Dynasty is able estimate costs for mining the deposit and the potential value of the resource.

All told, the Wardrop Report outlines access roads, power production options, processing options and locations, tailings facilities, the size of those tailings facilities over time, and more. All of which, again provides more than enough information for EPA to conduct a thorough review of potential impacts from mining in the Bristol Bay watershed.

- *What information does the Wardrop Report provide about any potential mine that may be built in the region, or, what impacts any potential mine may have on the region?*

Again, the Wardrop Report provides a great deal of information about the development of the Pebble Mine. As noted, the Wardrop Report not outlines access roads, power production options, processing options and locations, tailings facilities, and the size of those tailings facilities over time, it also provides basic information about jobs, the value of the deposit over time, mining rates and therefore estimated profits. The Wardrop Report also provides basic information about other potential deposits in the area, especially adjacent to the Pebble deposit.

However, the Wardrop Report does not provide a risk assessment or full evaluation of impacts any potential mine may have on the region. At a minimum, the Wardrop Report does discuss water management and some opportunities for mitigation. However, as the Wardrop Report is a document primarily used to educate potential investors on the project, it does not provide the analysis of a risk assessment. This in turn, is where EPA's work filled out the picture for all stakeholders.

## **Conclusion**

In the end, Pebble can complain about issues of “fairness” from the Environmental Protection Agency, as they seek to override the people of Western Alaska. They can create a conspiracy around the EPA’s work based on a few cherry picked quotes from emails from low-level EPA staff. Ultimately, it is Pebble who has acted unfairly to the people of Bristol Bay for a decade. Unlike EPA, Pebble has never listened to the people of Bristol Bay. As far back as 2008, the former CEO of Anglo American Mining Company told Fast Company Magazine that they would not build a mine, Pebble in particular, if they were ‘not wanted.’<sup>44</sup> This was a common early claim by Pebble. In reality, though, they have never listened to the people of Bristol Bay who have expressed their opposition to this project for over a decade.

No plan can change that this deposit is in two drainages of the Bristol Bay headwaters, that it is a sulfide mineral deposit with potential for acid mine drainage, and has to be huge to support a hundred mile remote transportation corridor, deep water port, pipelines, power, and infrastructure. The facts of this mine cannot change. Pebble can argue that they are not being treated fairly. They can claim that they might build a smaller mine. Ultimately, those are false and misleading claims, as is their perception of fairness.

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<sup>44</sup> <http://www.fastcompany.com/1042481/anglo-american%E2%80%99s-bristol-bay-controversy-wildlife-vs-mineral-riches>

## HOUSE COMMITTEE ON SCIENCE, SPACE, &amp; TECHNOLOGY

“EPA’s Predetermined Efforts to Block the Pebble Mine”  
Hearing on November 5, 2015

**Transcript Corrections**

<b>Transcript Line</b>	<b>Transcript</b>	<b>Correction</b>
1368	“difficulty situation”	should read “difficult situation”
1380	“13-year-odl”	typo corrected to “13-year-old”
1505	[video shown]	Audio of the video should be added to the transcript
1728—1731	Transcript omits quotation marks around the paragraph contained in lines 1728—1731; however, this paragraph is a direct quote from the letter submitted to the record	Place quotation marks around the following, as it is part of a letter being read by Ms. Bonamici: “As you are aware, this matter is in litigation in three separate lawsuits filed by Pebble against EPA in connection with EPA’s assessments of the potential environmental effects of Pebble’s proposed mine activities.”

*Enclosure 2: Transcript Corrections*





## Appendix II

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ADDITIONAL MATERIAL FOR THE RECORD

**Report of An Independent Review Of  
The United States Environmental Protection Agency's  
Actions In Connection With Its Evaluation Of  
Potential Mining In Alaska's Bristol Bay Watershed**

**Executive Summary**

Secretary William S. Cohen  
The Cohen Group  
DLA Piper LLP (US)

October 6, 2015

**EXECUTIVE SUMMARY**

In fall 2014, I was approached by the Pebble Partnership (“Pebble Partnership” or the “Partnership”) to review the actions of the United States Environmental Protection Agency (“EPA”) in connection with its evaluation of potential mining in southwest Alaska’s Bristol Bay watershed. The Partnership holds mineral claims to lands owned by the State of Alaska in the headwaters of the Nushagak and Kvichak Rivers of the Bristol Bay watershed (the “Pebble Deposit Area”).<sup>i</sup> This area contains one of the largest known undeveloped deposits of copper in the world, and the Pebble Partnership has been exploring the development of a mine there for more than a decade.<sup>ii</sup> The area is also home to one of the most prolific salmon runs in the world.<sup>iii</sup> The commercial salmon industry dominates the private sector economy of the Bristol Bay region, and Alaska Natives who reside there have maintained a salmon-centered culture and subsistence-based lifestyle for thousands of years.<sup>iv</sup> In July 2014, EPA proposed substantial limits on development in the Pebble Deposit Area.<sup>v</sup>

The Pebble Partnership has expressed the concern that EPA’s decision-making process and proposed limits were unfair and wanted an objective party to examine those concerns. The Partnership asked me to review EPA’s actions through the lens of how Cabinet-level agencies make decisions on important public policy questions, given my experience in the Legislative and Executive branches of government. I agreed to undertake a review of EPA’s actions, assisted by my staff at The Cohen Group and the law firm DLA Piper LLP. I advised the Partnership that I would not review whether a mine should be built; such a determination would require engineering and scientific expertise beyond my capabilities. Nor would I comment on the legality of EPA’s actions; that is a question for the courts. But I did feel qualified to review the

process by which EPA assessed, and proposed restrictions to reduce, the environmental risks associated with potential mining in the Bristol Bay watershed.<sup>vi</sup>

I undertook the review on conditions of complete independence. I would follow the facts wherever they might lead, and any conclusions would be mine alone. The Pebble Partnership would have no rights to edit or censor my views. The Partnership agreed to this and to compensate my firm and DLA Piper according to commercially standard terms. No portion of our compensation was contingent upon the result of the review or the content of the report.<sup>vii</sup>

To produce the most thorough and balanced review, we interviewed more than 60 people, including three former EPA administrators. The people interviewed represented all points of view on EPA's actions. (EPA declined my request to make current personnel available for interviews.) We reviewed thousands of documents from EPA, other federal agencies, the State of Alaska, Congressional committees, the Pebble Partnership, and other sources. My team also visited the Pebble Deposit Area to observe the Bristol Bay watershed.<sup>viii</sup>

The decision about whether mining should occur in this area, as well as the process of making such a decision, has been highly controversial and has generated intense passions on all sides. The controversy has prompted an Inspector General's investigation, Congressional hearings, and litigation.<sup>ix</sup>

#### **A. Background Facts**

The question of the appropriate process to make a determination to permit, limit, or ban development is at the heart of this review. EPA elected to proceed under Section 404(c) of the Clean Water Act to limit development within the Pebble Deposit Area.<sup>x</sup> EPA undertook its Section 404(c) action before the Partnership filed a permit application, but after EPA had conducted an assessment of the potential effects of mining in the region, principally on fish.<sup>xi</sup>

The State of Alaska and the Pebble Partnership have argued that EPA should have used the process that is customarily employed when assessing the effects of potential development; that is, the permit application process.<sup>xiii</sup>

Congress passed the Clean Water Act in 1972 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”<sup>xiii</sup> Under the Act, if a development would result in the discharge of dredged or fill materials in the nation’s waters (as would be the case here), the developer must first receive a permit from the U.S. Army Corps of Engineers (the “Corps”).<sup>xiv</sup> The Corps evaluates a permit application (proposing a specific mine with specific control and mitigation measures) using guidelines it developed in conjunction with EPA and complies with the National Environmental Policy Act (“NEPA”) and regulations developed by the Council on Environmental Quality.<sup>xv</sup> NEPA mandates that the Corps coordinate with EPA and other interested agencies, prepare an environmental assessment, consider an array of public interest factors and the beneficial effects of the proposed project, assess mitigation plans, and evaluate alternatives.<sup>xvi</sup> The Corps then either issues a permit and imposes conditions or denies the permit application.<sup>xvii</sup> We refer to this as the “Permit/NEPA Process.” The Permit/NEPA Process has been widely endorsed by environmental groups, including the Natural Resources Defense Council.<sup>xviii</sup>

Section 404(c) authorizes EPA to “prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site . . . whenever [the Administrator] determines . . . that the discharge of such materials into such area will have an unacceptable adverse effect” on the environment.<sup>xix</sup> EPA may act under Section 404(c) whenever it has “reason to believe” based on available information that “‘an unacceptable adverse effect’ could result from the specification or use for specification of a defined area for the disposal of dredged or fill

material[.]”<sup>xx</sup> Regulations promulgated by EPA in 1979 allow it to initiate a process to deny or restrict the use of an area for the disposal of dredged or fill material before a project proponent has submitted a permit application.<sup>xxi</sup>

The decision regarding which process to use—the Permit/NEPA Process or the preemptive Section 404(c) process—has been a focal point of this controversy. Since passage of the Clean Water Act, EPA has exercised its authority under Section 404(c) thirteen times, in each case relying on a permit application that had already been filed.<sup>xxii</sup> As an internal EPA document reveals, a truly preemptive Section 404(c) action had “[n]ever been done before in the history of the [Clean Water Act].”<sup>xxiii</sup>

Since the early 2000s, EPA has communicated with a variety of stakeholders who hold a wide range of views concerning mining in the Bristol Bay watershed and the potential development of a Pebble mine.<sup>xxiv</sup> Support for EPA’s actions centers on concerns about the environmental impacts of mining and the perceived incompatibility of large-scale mining with the maintenance of a healthy ecosystem and salmon fishery and the preservation of the area residents’ way of life.<sup>xxv</sup> Opposition to EPA’s actions is based largely on the potential economic benefits mining may yield for the region, basic “due process” and sovereignty considerations, and the Partnership’s belief that mining can occur in the Pebble Deposit Area without harming the salmon fishery.<sup>xxvi</sup>

In May, 2010, six federally-recognized tribes from the Bristol Bay watershed asked EPA to invoke Section 404(c) to protect the region from metallic sulfide mining, including a potential Pebble mine.<sup>xxvii</sup> In the following months, others urged EPA to take action under Section 404(c), noting the cultural, ecological, and economic importance of the watershed and the magnitude of a potential Pebble mine.<sup>xxviii</sup> The State of Alaska, the Pebble Partnership, certain tribes, and

other stakeholders opposed the request that EPA preemptively apply Section 404(c), questioning the timing of and EPA's authority for such action and urging EPA to allow the Permit/NEPA Process to take place.<sup>xxix</sup>

On February 7, 2011, EPA announced its plan to conduct an assessment of the Bristol Bay watershed (the "BBWA") to determine the significance of its ecological resources and evaluate the potential effects of large-scale mining development.<sup>xxx</sup> EPA invited various federal agencies to participate in the BBWA.<sup>xxxi</sup> The Corps declined to participate in order to maintain its independence in any subsequent Permit/NEPA Process.<sup>xxxii</sup> The State of Alaska participated in EPA's assessment while also registering its objection to the process.<sup>xxxiii</sup> With EPA's assurance that it was not using the BBWA to make a decision under Section 404(c), the Pebble Partnership also participated in the assessment notwithstanding its objection to the study.<sup>xxxiv</sup>

To conduct the BBWA in the absence of any permit application, EPA made assumptions about potential mine operations in the Pebble Deposit Area and created hypothetical mine scenarios based largely on a preliminary economic analysis prepared for the Pebble Partnership.<sup>xxxv</sup> Over the course of three years, EPA prepared and issued two BBWA drafts for public comment and peer review.<sup>xxxvi</sup> The considerable public participation in response to the BBWA drafts reflected a wide diversity of opinion as to the quality and comprehensiveness of the BBWA.<sup>xxxvii</sup> Environmental non-governmental organizations, commercial fishermen, many Alaska Native tribes and tribal organizations, and some state legislators commended EPA on its effort and praised the scientific rigor of the BBWA drafts.<sup>xxxviii</sup> The State of Alaska, the Pebble Partnership, and other Alaska Native tribes and interested parties identified technical and legal issues they believed undermined the validity of the BBWA, including reliance on hypothetical

mine scenarios and failure to consider mitigation strategies to compensate for the loss of wetland habitat caused by mine development.<sup>xxxix</sup>

Some peer reviewers raised concerns about the use of hypothetical mine scenarios in the BBWA—noting that this approach limited the utility of the study in such a way that the assessment might not “provide risk decision-makers with sufficient information upon which to make long-term project decisions”—and about the aforementioned failure to address mitigation.<sup>xi</sup> EPA defended its work, asserting that “all mining plans are hypothetical” and that analyzing efforts to mitigate adverse effects “would be addressed through a regulatory process that is beyond the scope of this assessment.”<sup>xli</sup>

EPA published the final BBWA on January 21, 2014.<sup>xlii</sup> EPA stated that the BBWA was not designed to duplicate or replace the Permit/NEPA Process and acknowledged that certain analyses were not undertaken in the BBWA that would occur during the Permit/NEPA Process.<sup>xliii</sup> Among the most significant gaps was that the BBWA employed hypothetical assumptions as to mine operation and mitigation rather than considering the techniques a developer would propose in an actual permit application.<sup>xliv</sup> EPA nevertheless expressed confidence that its analyses were conservative and that compensatory mitigation techniques were unlikely to offset impacts of the nature described in the BBWA.<sup>xlv</sup>

Based on the BBWA, EPA issued its notice of intent to proceed under Section 404(c) on February 28, 2014.<sup>xlvi</sup> EPA gave the Corps, the State of Alaska, and the Pebble Partnership 60 days to submit information to demonstrate that no unacceptable adverse effects to aquatic resources would result from any associated mining discharges.<sup>xlvii</sup> The Corps declined to provide substantive comments on the ground that there was no pending permit application.<sup>xlviii</sup> The State of Alaska and the Pebble Partnership reiterated their respective positions that the Section 404(c)



action was premature and that the BBWA was flawed.<sup>xlix</sup> Their response letters did not persuade EPA to change course, and EPA moved forward with its Section 404(c) action.<sup>1</sup>

On July 18, 2014, EPA Region 10 issued a Proposed Determination relating to development in the Pebble Deposit Area.<sup>li</sup> EPA premised its regulatory action on a hypothetical scenario assessed in the BBWA.<sup>lii</sup> EPA proposed restrictions based on its conclusion that an “unacceptable adverse effect on fishery areas” would result from development that would cause estimated losses of habitat greater than those associated with the hypothetical 0.25 billion-ton mine it evaluated in the BBWA.<sup>liii</sup> Since that time, litigation has ensued, and there is currently an injunction in place temporarily prohibiting EPA from further proceedings.<sup>liv</sup>

#### **B. Observations and Conclusion**

Over the course of this review, I have arrived at a number of observations, including:

- The issue of whether mining should occur in the Bristol Bay watershed is of the utmost importance to the State of Alaska’s environment, economy, people, and fish and wildlife;
- To date, the Pebble Partnership has not submitted a permit application. Thus, EPA relied on hypothetical scenarios rather than the characteristics of a mine as it was actually planned to be built and maintained;
- EPA failed to address important considerations that would be included in the NEPA/Permit Process, including meaningful participation by other state and federal government agencies, mitigation and controls as proposed by the developer, and an array of public interest factors;
- The Permit/NEPA Process has been used for decades and has been widely endorsed by environmental groups;
- EPA relied upon the BBWA in its Proposed Determination but acknowledged that there were significant gaps in its assessment and that it was not designed to duplicate or replace the Permit/NEPA Process; and
- EPA’s unprecedented, preemptive use of Section 404(c) inhibited the involvement of two key participants: the Corps and the State of Alaska.<sup>lv</sup>

These observations have informed my conclusion that that EPA's application of Section 404(c) prior to the filing of a permit application was not fair to all stakeholders.<sup>lvi</sup> I find that:

**The fairest and most appropriate process to evaluate possible development in the Pebble Deposit Area would use the established regulatory Permit/NEPA Process to assess a mine permit application, rather than using an assessment based upon the hypothetical mining scenarios described in the BBWA as the basis for imposing potentially prohibitive restrictions on future mines.**<sup>lvii</sup>

The Permit/NEPA Process is more comprehensive than the preemptive Section 404(c) process employed here. EPA conceded in comments to peer reviewers that there were gaps in its assessment that would be addressed during a Permit/NEPA Process.<sup>lviii</sup>

While I recognize EPA's authority to initiate Section 404(c) actions, here EPA acknowledged it did so in an unprecedented manner. EPA's use of Section 404(c) before a permit filing compounded the shortcomings of the BBWA noted by several peer reviewers, the State of Alaska, and the Pebble Partnership: the use of hypothetical assumptions that may or may not accurately or fairly represent an actual project; and the failure to take into account mitigation and control techniques a developer might propose.<sup>lix</sup>

An environmental impact assessment is bound to provide more accurate information if it assumes that the mine will be built in accordance with the developer's plans, rather than a hypothetical mine plan which even EPA acknowledges is likely to be different from a developer-submitted plan. This project is too important, for all stakeholders, to pilot a new, untested decision-making process. The fairest approach is to use the well-established Permit/NEPA Process, and I can find no valid reason why that process was not used.<sup>lx</sup>

The statements and actions of EPA personnel observed during this review raise serious concerns as to whether EPA orchestrated the process to reach a predetermined outcome; had inappropriately close relationships with anti-mine advocates; and was candid about its decision-

making process. I have not attempted to reach conclusions on these issues. First, any such findings would not affect my overarching conclusion about the process that should have been followed. Second, the record remains incomplete on these issues. EPA declined my requests to cooperate with this review, so I allow there may be benign explanations for these actions. There are also troubling gaps in the documents EPA has produced in response to Freedom of Information Act requests, including those said to be lost as a result of a computer crash and EPA personnel's use of personal email.<sup>lxii</sup>

I believe the information unearthed to date merits the development of a complete record by those who have the subpoena power necessary to look at these questions more closely. Government oversight by the proper authorities must play an active role in ensuring that agencies do not engage in preordained decision-making. Thus, I urge the EPA's Inspector General and Congress to continue to explore these questions which might further illuminate EPA's motives and better determine whether EPA has met its core obligations of government service and accountability.<sup>lxiii</sup>

It is my hope that the policymakers involved in charting the course of the Bristol Bay watershed's future find this report helpful. I have tried to describe the history of EPA's actions accurately and objectively. As we look to the future, I urge policymakers to consider requiring the use of the Permit/NEPA Process. This process, which entails compliance with NEPA and other regulatory requirements, an environmental impact statement, and input from EPA, other relevant agencies, and the State of Alaska, will supply the gaps in information which the BBWA left outstanding. This decision is too important to be made with anything less than the best and most comprehensive information available.<sup>lxiiii</sup>

- <sup>i</sup> See Background Facts at Sections II.D.1 and II.D.3.
- <sup>ii</sup> See *id.* at Sections II.A and II.D.3.
- <sup>iii</sup> See *id.* at Section II.A.
- <sup>iv</sup> See *id.* at Section II.C.
- <sup>v</sup> See *id.* at Section IX.
- <sup>vi</sup> See Independence and Methodology.
- <sup>vii</sup> See *id.*
- <sup>viii</sup> See *id.*
- <sup>ix</sup> See *id.*
- <sup>x</sup> See Background Facts at Sections IV.A, IV.C, IV.E, and VIII.
- <sup>xi</sup> See *id.* at Sections II.D.3, VII, and IX.
- <sup>xii</sup> See *id.* at Sections IX.C-D.
- <sup>xiii</sup> Clean Water Act § 101(a), 33 U.S.C.A. § 1251(a) (West 2015); see Background Facts at Section I.A.
- <sup>xiv</sup> See Background Facts at Section I.B.
- <sup>xv</sup> See *id.*
- <sup>xvi</sup> See *id.*
- <sup>xvii</sup> See *id.*
- <sup>xviii</sup> See *id.*
- <sup>xix</sup> 33 U.S.C.A. § 1344(c); see Background Facts at Section I.C. The full text of Section 404(c) provides that:
- The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.
- <sup>xx</sup> 40 C.F.R. § 231.3(a) (2010); see Background Facts at Section I.C.
- <sup>xxi</sup> See Background Facts at Section I.C.

<sup>xxii</sup> *See id.* Technically, in one of these cases, there was no permit application, however EPA did rely on the permit application of two adjacent and separately-owned parcels to make the determination. EPA deemed the parcel to have the same characteristics as the other two properties and applied its Section 404(c) action to all three properties based on their coextensive characteristics. *See Chronology of 404(c) Actions*, EPA (Sept. 23, 2013), <http://water.epa.gov/lawsregs/guidance/wetlands/404c.cfm>.

<sup>xxiii</sup> EPA, DISCUSSION MATRIX (Sept. 8, 2010), at 1; *see* Background Facts at Section IV.E.

<sup>xxiv</sup> *See* Background Facts at Section III.C.

<sup>xxv</sup> *See id.* at Sections III.D, IV.B, VI.A.2, and VI.B.

<sup>xxvi</sup> *See id.* at Sections III.E, IV.B, VI.A.2, VI.B, and IX.C-D.

<sup>xxvii</sup> *See id.* at Section IV.B.

<sup>xxviii</sup> *See id.*

<sup>xxix</sup> *See id.*

<sup>xxx</sup> *See* Background Facts at Section V.B.

<sup>xxxi</sup> *See id.* at Sections IV.D, IV.G, and V.B.

<sup>xxxii</sup> *See id.* at Section V.B.

<sup>xxxiii</sup> *See id.*

<sup>xxxiv</sup> *See id.*

<sup>xxxv</sup> *See id.* at Section VII.A.

<sup>xxxvi</sup> *See* Background Facts at Sections VI-VII.

<sup>xxxvii</sup> *See id.* at Sections VI.A.2 and VI.B.

<sup>xxxviii</sup> *See id.*

<sup>xxxix</sup> *See id.*

<sup>xi</sup> EPA, RESPONSE TO PEER REVIEW COMMENTS ON THE MAY 2012 AND APRIL 2013 DRAFTS OF AN ASSESSMENT OF POTENTIAL MINING IMPACTS ON SALMON ECOSYSTEMS OF BRISTOL BAY 65-66 (2014); *see* Background Facts at Section VI.A.3.

<sup>xii</sup> EPA, RESPONSE TO PEER REVIEW COMMENTS ON THE MAY 2012 AND APRIL 2013 DRAFTS OF AN ASSESSMENT OF POTENTIAL MINING IMPACTS ON SALMON ECOSYSTEMS OF BRISTOL BAY 65-66, 114-115 (2014); *see* Background Facts at Section VI.A.3.

<sup>xlii</sup> *See* Background Facts at Section VII.

<sup>xliii</sup> *See id.* at Section VII.A.

<sup>xliv</sup> *See id.*

<sup>xliv</sup> *See id.*; *see also id.* at Section IX.

<sup>xlvi</sup> *See id.* at Section VIII.

<sup>xlvi</sup> *See* Background Facts at Sections VIII, VIII.B-C.

- xlvi *See id.* at Section VIII.A.
- xlix *See id.* at Sections VIII.B-C.
- <sup>1</sup> *See id.* at Section VIII.D.
- li *See id.* at Section IX.
- lii *See id.*
- liii *See* Background Facts at Section IX.
- liiv *See id.* at Section X.E.
- liiv *See* Conclusion and Observations.
- livi *See id.*
- liiii *See id.*
- liiii *See id.*
- lix *See id.*
- lx *See id.*
- lxi *See* Conclusion and Observations.
- lxii *See id.*
- lxiii *See id.*

The full report can be found here: <http://www.cohengroup.net/news/reports>

## DOCUMENTS SUBMITTED BY REPRESENTATIVE SUZANNE BONAMICI



November 3, 2015

*Via email and hand delivery to:*

Commissioner Mark Myers  
[mark.myers@alaska.gov](mailto:mark.myers@alaska.gov)  
 Alaska Department of Natural Resources  
 550 W. 7th Avenue, Ste 1400, Anchorage, AK 99501

**Re: Petition to the State of Alaska for a Detailed Inspection and Reporting of Impacts Associated with the Pebble Limited Partnership's Multi-Year Hardrock Exploration and Reclamation at the Pebble Deposit (Permit No. 6118)**

Dear Commissioner Myers:

The Pebble mineral deposit underlies land owned by the State of Alaska at the headwaters of one of the most abundant and sustainable wild salmon fisheries in the world. The wild salmon of Bristol Bay support the cultural, spiritual, and subsistence way of life of the residents of Bristol Bay. Alaska Native households in Bristol Bay are highly reliant on subsistence resources as sources of food.<sup>1</sup> In addition, subsistence resources and activities related to harvesting these resources play a major role in defining Alaska Native families and communities.<sup>2</sup> The fishery is also the foundation for the region's economy. The direct annual monetary value of the commercial fishery alone is \$1.5 billion and it supports 14,000 jobs.<sup>3</sup> Bristol Bay is also one of the world's preeminent sportfishing destinations, attracting anglers from around the globe who seek the region's beauty, remoteness, and phenomenal fishing, and provide jobs and annual

<sup>1</sup> Callaway, Don, *A Statistical Description of the Affected Environment as it Pertains to the Possible Development of the Pebble Mine—17 Communities in Bristol Bay* (2012) at 2, 17.

<sup>2</sup> See *id.* at 17.

<sup>3</sup> Institute of Social and Economic Research at the University of Alaska, *The Economic Importance of the Bristol Bay Salmon Industry* (May 13, 2013) available at [http://www.iser.uaa.alaska.edu/Publications/2013\\_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf](http://www.iser.uaa.alaska.edu/Publications/2013_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf)



revenues in excess of \$100 million. Subsistence commercial and sportfishing are all wholly dependent on Bristol Bay's renewable fishery resource and the region's pristine habitat and waters.

While no longer actively engaged in mineral exploration in the region, over the last three decades the Pebble Limited Partnership ("PLP") and its subsidiaries and predecessors have drilled 1,355 holes totaling 1,042,218 feet (over 190 miles) of core holes in the Pebble deposit area.<sup>4</sup> This exploratory drilling, with some drillholes more than one mile deep, and associated staging activities have the potential to harm the abundant, pristine and critically important surface water and groundwater in the areas in which PLP's exploration activity has occurred.<sup>5</sup> As the Alaska Supreme Court noted this year: "the hundreds of sumps [associated with PLP's exploration activities] containing toxic waste and chemically reactive material represent a continuing potential source of environmental harm . . . ."<sup>6</sup>

To ensure the protection of Bristol Bay's waters and wild salmon fishery, the undersigned groups and individuals ("Petitioners") hereby petition the State of Alaska, Department of Natural Resources ("DNR") to direct PLP to undertake an investigation.<sup>7</sup> As detailed below, it appears from past and recent field reports and investigations that many of PLP's wells may not have been properly plugged, reclamation and re-vegetation efforts have been unsuccessful in many locations, and potentially toxic drilling waters and muds from PLP's drilling activities may have been mishandled and thus may pose a serious yet unquantified threat to surface water and groundwater in the region. The people of Bristol Bay are entitled to know the extent of the problems and thus a thorough investigation of the exploration activities and risks is warranted. The State should also be concerned about the extent of potential problems at the Pebble exploration site because if PLP's financial situation requires them to abandon the Pebble project the expense of conducting the statutorily required reclamation will fall onto the State. As it

<sup>4</sup> Northern Dynasty Minerals Ltd., 2014 Technical Report on the Pebble Project, Southwest Alaska, USA (effective date Dec. 31, 2014), p.67 available at <http://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00003151> (date of filing Feb. 6, 2015) (also available on SEC website at: <https://www.sec.gov/Archives/edgar/data/1164771/000106299315000646/exhibit99-1.htm>) [hereinafter "NDM 2014 Technical Report"] (attached hereto as Exhibit A). Regardless of who actually did the work on the claims now held by PLP, the company, being the sole permittee, is responsible for reclamation of any activity undertaken on those claims.

<sup>5</sup> See Exhibit B for a map showing selected PLP boreholes with a depth greater than 5,000 feet. Some of these boreholes DNR has identified as problematic over the years, such as 8432, 8405, and 8420. Moreover, some of these drillholes are located less than 100 feet from water bodies.

<sup>6</sup> *Numamta Aulukestai, et al. v. State of Alaska, Dep't of Natural Res.*, No. S-14560/14579, at 47 (Alaska 2015); see also *id.* at 46 ("there is the potential for environmental damage primarily through pollution of groundwater by the toxic waste that has been disposed of on the land and by acid rock drainage").

<sup>7</sup> DNR already appears to be starting an investigation into the status of PLP's reclamation. DNR took a good first step by requesting PLP provide a "[c]omplete catalog of drill holes and current site conditions for scheduling planned maintenance" in its most recent Field Monitoring Report. DNR, Field Monitoring Report—APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), available at <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>. From the language of the action item, however, it is unclear precisely what DNR is asking of PLP and in what timeframe, and as detailed below, in any event it is a subset of what petitioners seek here. Regardless, petitioners ask that whatever information DNR obtains from PLP through its action item be made publicly available.

stands now, PLP is exempt from preparing a reclamation plan and providing a security bond,<sup>8</sup> and absent State action consistent with this petition, there is currently no mechanism in place to protect the State if PLP abandons the site.

As described in this petition, Petitioners request that: (1) DNR require PLP to undertake studies of the reclamation status and potential threats posed by its exploration activities; (2) DNR require PLP to provide a detailed accounting of the present reclamation status and surface and ground water quality for all sites associated with PLP's exploration activities between 1987 and today; and (3) DNR require PLP to present a plan, including cost estimates and work deadlines, for eliminating the threat posed by its exploration activities to water and wild salmon.

Three factors add urgency to this request. First, as PLP, DNR, and others acknowledge, PLP's exploration activities have exposed to air and water ore that has the potential to generate acid, which can have significant impacts on land and water quality and the life it sustains. As explained below, the time frame in which such acid can be generated is such that it may already be occurring from some of PLP's earlier exploration activities. Even where acid generation is not yet occurring, the potential for it to occur as a result of PLP's exploration activities is high and it is therefore critical that a timely effort be made to prevent such pollution in order to avoid the much more difficult challenge of redressing it after the fact. Second, PLP and its parent company, Northern Dynasty Minerals, are not currently engaged in exploration operations in Alaska and based on public information may be facing unusual financial liquidity constraints. Third, the reclamation costs for the already-existing exploration disturbances are a large unknown. Consequently, to avoid the risk that the State may have to cover the costs associated with assessing and reclaiming PLP's exploration activities if the company is financially unable to do so, it is important that DNR obtain the information and commitments sought by this petition in a timely manner.

#### **I. Petitioners**

Petitioners consist of groups and individuals who live, work, and recreate in the Bristol Bay region and have been concerned about PLP's exploration efforts for more than ten years.

United Tribes of Bristol Bay ("UTBB") is a tribally-chartered consortium in the Bristol Bay region of Southwest Alaska. UTBB acts as political subdivision of its member tribal governments who have been leading environmental justice work in Bristol Bay for decades. UTBB was founded in 2013 by six Bristol Bay tribes and has grown to represent fourteen tribal governments. UTBB's mission is to protect the lands and waters supporting the subsistence way of life by advocating against unsustainable large-scale hard rock mines like the Pebble Project. UTBB is guided by the results in the Bristol Bay Regional Visioning Project, a comprehensive project outlining a sustainable future that honors our traditional values and way of life. UTBB's fourteen member Tribal governments include: Togiak Traditional Council, Twin Hills Village

<sup>8</sup> AS 27.19.050(c) ("A miner exempt under (a) of this section shall file an annual reclamation statement with the commissioner disclosing . . . the specific reclamation measures used to comply with AS 27.19.020,"); *see also*, Alaska DNR, Multi-Year 2014-2016 Miscellaneous Land Use Permit for Hardrock Exploration & Reclamation, Permit #6118 to Pebble Limited Partnership [hereinafter "PLP 2014-2016 MLUP"] ("[y]ou . . . are exempt from reclamation bonding").

Council, Manakotak Village Council, Curyung Tribal Council, Ekuk Village Council, Clark's Point Village Council, Aleknagik Traditional Council, Portage Creek Village Council, New Stuyahok Traditional Council, New Koliganek Village Council, Levelock Village Council, Nondalton Village Council, Pilot Point Tribal Council, and Chignik Lake Tribal Council.

Stuyahok Limited is a Native Corporation located in New Stuyahok, a village located on the Nushagak River. Ekwok Natives Limited is a Native Corporation with offices in Dillingham and Ekwok, a village located on the Nushagak River. Koliganek Natives Limited is a Native Corporation with offices in Koliganek, a village located on the Nushagak River.

Nunamta Aulukestai ("Nunamta"), which means Caretakers of our Land, is a 501(c)(3) non-profit that includes ten tribal corporations and ten tribal governments. The organization was incorporated as a non-profit in 2007.<sup>9</sup> Nunamta's headquarters is in Dillingham, Alaska. Nunamta's mission is to protect the land, water, and air that will sustain their way of life for all generations. Since 2007, Nunamta has focused its organizational efforts on educating the local people and the general public about the Pebble Project and the harmful effects it would have on the subsistence, commercial, and sport fishing economies in Bristol Bay. In doing so, Nunamta advocates on behalf of more than 6,000 tribal and village corporation members in the Bristol Bay region. Nunamta has aesthetic, cultural, and subsistence interests in the public lands, waters and resources at the Pebble Project site. Members of Nunamta use the Pebble project area for hunting, fishing, other subsistence activities, and recreation. The members of Nunamta have lived off the land for thousands of years. For the members of Nunamta, subsistence has been and continues to be the means of survival in the region. Nunamta's members' subsistence depends on access to both (1) the Pebble project area and (2) wildlife resources that utilize that habitat in the project area.

Bristol Bay Native Association, Inc. ("BBNA") is an Alaska Native regional non-profit corporation and a tribal consortium of 31 federally recognized tribes of the Bristol Bay region. BBNA works collectively with tribes and partnering organizations to protect the lands and natural ecosystem of Bristol Bay as well as support subsistence opportunities for the people of the region. The Mission of BBNA is to maintain and promote a strong regional organization supported by the Tribes of Bristol Bay to serve as a unified voice to provide social, economic, cultural, educational opportunities and initiatives to benefit the Tribes and the Native people of Bristol Bay.

Bristol Bay Native Corporation ("BBNC") is a for-profit ANCSA regional corporation with more than 9,600 shareholders. BBNC was created by Congress in 1971 pursuant to ANCSA to represent the economic, social, and cultural interests of Alaska Native people from the Bristol Bay region. Since its inception, BBNC has taken seriously its responsibility to protect the assets entrusted to its care as well as the interests of its shareholders. BBNC remains actively engaged in a variety of efforts to preserve Bristol Bay's salmon fisheries, which serve as the basis for the

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<sup>9</sup> In April 2013, Nunamta filed an administrative appeal of PLP's 2013 MLUP (Permit No. A136118) that expressed concern with PLP's inadequate reclamation for certain boreholes, among other things. Because the 2013 permit has expired, Nunamta has agreed to withdraw its administrative appeal. However, Nunamta still has concerns about the particular boreholes addressed in the administrative appeal, but this Petition addresses those specific concerns along with Nunamta's overall concerns about reclamation at the Pebble site.

region's social, cultural, and economic well-being. In order to fulfill these duties and carry out the will of its Alaska Native shareholders, BBNC has a strong interest in protection of the water and salmon resources of Bristol Bay, as well as the associated subsistence, commercial and sport fishing, and cultural values of its shareholders.

Bristol Bay Economic Development Corporation ("BBEDC") is a regional, community-based corporation charged with developing and enhancing the economic opportunities in the 17 communities BBEDC represents and for the greater Bristol Bay watershed.

Commercial Fishermen for Bristol Bay ("CFBB") is a group of commercial fishermen and fishing organizations from around the country working together to protect the commercial fishing industry and commercial fishing jobs in Bristol Bay.

Alaska Sportsman's Bear Trail Lodge, Blue Mountain Lodge, Enchanted Lake Lodge, Alaska's Fishing Unlimited, Frontier River Guides, and No See Um Lodge are all sport fishing and guiding businesses that depend on Bristol Bay headwaters for the successful operation of their businesses.

## II. PLP's Exploration Permit, Remediation, and Monitoring Requirements

PLP's current and past exploration activities were authorized by DNR under Miscellaneous Land Use Permits ("MLUP").<sup>10</sup> An MLUP is issued under AS 38.05.850, which provides:

The director . . . may issue permits, rights-of-way, or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or revocable nonexclusive permits for the personal or commercial use or removal of resources that the director has determined to be of limited value.<sup>11</sup>

Under this authority, the director and commissioner must make all decisions to grant, suspend, or revoke a MLUP by giving "preference to that use of the land that will be of greatest economic benefit to the State and the development of its resources."<sup>12</sup> The purpose of the permitting is to manage uses on State land "in order to minimize adverse effects on the land and its resources."<sup>13</sup> DNR has the discretion to subject each permit to "any provisions the department determines necessary" to assure compliance with the MLUP regulations, and "to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the interests of the state."<sup>14</sup>

<sup>10</sup> PLP's current MLUP will expire on December 31, 2016.

<sup>11</sup> AS 38.05.850. MLUPs are discretionary for many general land uses; however, DNR must issue MLUPs for "more intrusive" land uses, such as the activities involving the use of hydraulic prospecting or mining equipment or exploratory drilling to a depth in excess of 300 feet. 11 AAC 96.010(a)(1)(A) and (D). *See also Nunamta v. State*, No. S-14560/14579, at 29 (Alaska 2015).

<sup>12</sup> AS 38.05.850.

<sup>13</sup> 11 AAC 96.005.

<sup>14</sup> 11 AAC 96.040(b).

DNR issues MLUPs for mineral exploration operations with reclamation stipulations as required by Alaska Statute 27.19 (Reclamation).<sup>15</sup> The standard for reclamation requires that mining operations “be conducted in a manner that prevents unnecessary and undue degradation of land and water resources, and... [is] reclaimed as contemporaneously as practicable with the mining operation to leave the site in a *stable condition*.”<sup>16</sup> Leaving the site in a stable condition requires the permittee to “reclaim a mined area that has potential to generate acid rock drainage (acid mine drainage) in a manner that prevents the generation of acid rock drainage or prevents the offsite discharge of acid rock drainage.”<sup>17</sup> This reclamation standard applies even if the miner is exempt from the reclamation plan and bonding requirements.<sup>18</sup> If an exempt miner “fails to reclaim a mining operation to the standards of AS 27.19.020,” that miner is then required to prepare a reclamation plan and provide a bond.<sup>19</sup> The bonding requirements under AS 27.19.040 are intended to protect the State should a miner leave a mining site without completing the necessary reclamation.

In addition to the general reclamation standard, PLP’s current MLUP contains the following specific reclamation stipulations:

- (a.) Topsoil and overburden muck, not promptly redistributed to an area being reclaimed, shall be separated and stockpiled for future use. This material shall be protected from erosion and contamination by acidic or toxic materials and should not be buried by broken rock.
- (b.) The area reclaimed shall be reshaped to blend with surrounding physiography using strippings and overburden, then be stabilized to a condition that shall retain sufficient moisture to allow for natural revegetation.
- (c.) Stockpiled topsoil, overburden muck, and organic material shall be spread over the contoured exploration to promote natural plant growth.
- (d.) Exploration trenches shall be backfilled and the surface stabilized to prevent erosion... All exploration trenches shall be reclaimed by the end of the exploration season in which they are constructed, unless specifically approved by the Division of Mining, Land & Water.
- (e.) Shallow auger holes (limited to depth of overburden) shall be backfilled with drill cuttings or other locally available material in such a manner that closes the hole to minimize the risk to humans, livestock, and wildlife.
- (f.) All drill hole casings shall be removed or cut off at, or below, ground level.

<sup>15</sup> See PLP 2014-2016 MLUP (issued by DNR “in accordance with and subject to the requirements and general stipulations of Alaska Statute 27.19 (Reclamation)...”); see also AS 27.19.100 (the definition of “mining operation” includes “each function, work, facility, and activity *in connection with* the development, extraction, and processing of a locatable or leasable mineral deposit... and each use reasonably incident to the development, extraction, and processing...”) (emphasis added).

<sup>16</sup> AS 27.19.020 (emphasis added); see also PLP 2014-2016 MLUP Terms of Permit (issued by DNR “in accordance with and subject to the requirements and general stipulations of Alaska Statute 27.19 (Reclamation)...”).

<sup>17</sup> 11 AAC 97.240.

<sup>18</sup> AS 27.19.050(c) (“A miner exempt under (a) of this section shall file an annual reclamation statement with the commissioner disclosing . . . the specific reclamation measures used to comply with AS 27.19.020.”); see also AS 27.19.070(a) (“A miner exempted under AS 29.19.050(a) is subject to civil action for the full amount of reclamation and administrative costs incurred by the state related to the action if the commissioner determines that reclamation was not conducted under AS 27.19.020.”).

<sup>19</sup> AS 27.19.050(d).

- (g.) All drill holes shall be plugged by the end of the exploration season during which they are drilled, unless otherwise specifically approved by the Division of Mining, Land & Water.
- (h.) All drill holes shall be plugged with bentonite holeplug, a benseal mud, or equivalent slurry, for a minimum of 10 feet within the top 20 feet of the drill hole in competent material. The remainder of the hole will be backfilled to the surface with drill cuttings. If water is encountered in any drill hole, a minimum of 7 feet of bentonite holeplug, a benseal mud, or equivalent slurry shall be placed immediately above the static water level in the drill hole. Complete filling of the drill holes, from bottom to top, with a bentonite holeplug, benseal mud, or equivalent slurry is also permitted and is considered to be the preferred method of hole closure.
- (i.) If artesian conditions are encountered, the operator shall contact [DEC] for hole plugging requirements.
- (j.) Upon completion of drilling activity, drill pads shall be reclaimed as necessary, including reseeding, to encourage natural revegetation of the sites and protect them from erosion.<sup>20</sup>

PLP's current MLUP requires that the company file an Annual Reclamation Statement by December 31st each year the permit is in effect, including photographs of the completed reclamation work. Failure of PLP to submit an Annual Reclamation Statement and photos may result in loss of PLP's exemption from reclamation bonding.<sup>21</sup>

PLP's current MLUP does not permit the company to allow surface structures to remain on the property beyond the expiration of the permit and, if surface structures remain, "they must be immediately authorized through another operations approval and land use permit or other written authorization, even if no mining is occurring, otherwise the surface structures will be deemed to be in trespass."<sup>22</sup> If PLP fails to remove surface structures, DNR has the right to do so at PLP expense.<sup>23</sup>

Under the terms of PLP's current MLUP, DNR may enter onto and inspect the Pebble deposit area and PLP's facilities at all reasonable times and without notice to PLP.<sup>24</sup> PLP's MLUP is revocable upon violation of any of the permit's terms, conditions, stipulations, or upon failure to comply with any other applicable laws, statutes, and regulations (both federal and state).<sup>25</sup> Moreover, DNR has the authority to require PLP, "at its expense" to clean an area "to the reasonable satisfaction of the State of Alaska" where "any unlawful discharge, leakage, spillage,

<sup>20</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 1.

<sup>21</sup> AS 27.19.050(c). *See also*, PLP 2014-2016 MLUP (DNR exempting PLP from reclamation bonding because the company submitted a Letter of Intent to do Reclamation).

<sup>22</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 5.

<sup>23</sup> 11 AAC 96.040(f) ("If the permittee fails to remove the improvements in compliance with this requirement, the department may sell, destroy, or remove the improvements, whichever is most convenient for the department, at the permittee's expense, including the department's costs associated with restoration and expenses incurred in the performance of these duties.").

<sup>24</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 9.

<sup>25</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 10. *See also id* at Sec. 3 (requiring that PLP's operations under the permit be conducted "in conformance with applicable Federal, State, and local laws and regulations now, or hereafter, in effect during the life of the permit.").

emission, or pollution of any type occur[s] due to permittee's or its employees', agents', contractors', subcontractors', licensees', or invitees' act or omission..."<sup>26</sup> In short, DNR has broad authority to investigate and enforce PLP's compliance with its permit.<sup>27</sup>

As detailed below, evidence indicates that PLP may not be in compliance with the State reclamation standard and the reclamation stipulations contained in its permit. If this evidence proves true and PLP has un-remedied violations, DNR can condition a new permit on remedying the violations, requiring a reclamation plan, and securing financial assurance or a bond.<sup>28</sup> DNR has a duty to the people of Bristol Bay and all Alaskans to investigate this situation and to ensure that the risk posed by PLP's explorations efforts to area water quality and fishery resources is eliminated.<sup>29</sup>

### **III. Evidence indicates that PLP's exploration efforts may pose significant risk to area water quality and fishery resources.**

There is evidence that PLP is not complying with the reclamation standard and the conditions of its MLUP. As described below and further detailed in the attached Exhibits, Petitioners have categorized their concerns into five types of long- and short-term harm associated with PLP's exploration activities: (1) acid-generating pollution impacts from PLP's efforts to drill 1,355 holes and apparent failures to plug or properly plug abandoned drill holes; (2) impacts from unlined sumps to surface and ground water quality and re-vegetation and remediation efforts; (3) failure of remediation and re-vegetation efforts due to discharge of drilling waters and muds onto tundra and in natural water bodies and topographic depressions; (4) oil and fluid spills associated with exploration activities; and (5) storage of heavy equipment, materials, fluids, and debris on tundra, as well as abandoned facilities, buildings, and equipment.

DNR's recent visit to a limited portion of PLP's exploration drilling and activity sites furthers Petitioners' concerns with current and potential long-term contamination from PLP's exploration activities and reveals that PLP may be in on-going violation of its MLUP and the relevant statutes and regulations governing mineral exploration and reclamation. Furthermore, in clear violation of AS 27.19 and the terms of its MLUP, PLP has failed to file its most recent Annual Reclamation Statement for any land reclamation and activities conducted by the company during 2014.<sup>30</sup>

<sup>26</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 10.

<sup>27</sup> See, e.g., *id.* at Sec. 3. In addition, if PLP fails to comply with the terms and stipulations of its MLUP, or the provisions of the Miscellaneous Land Use Regulations and Reclamation Act, and "after receiving written notice, fails to remedy such default within the time specified in the notice, the Director may cancel this permit." *Id.* at Sec 16.

<sup>28</sup> 11 AAC 96.145(b); AS 27.19.050(d).

<sup>29</sup> 11 AAC 96.040(a); PLP 2014-2016 MLUP Terms of Permit, Sec 10.

<sup>30</sup> See <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/index.cfm>. (last accessed Nov. 1, 2015).

*A. Acid-generating pollution impacts from efforts to drill 1,355 Drill Holes and failures to plug abandoned drill holes*

Evidence indicates that PLP may have failed to plug or adequately plug many abandoned drill holes. For example, DNR's field monitoring report from this year concludes that, out of a sampling of 24 drill holes checked during the site visit (~2% of PLP's entire drilling effort), eight drill holes require action to eliminate surface water seepage and to repair equipment, caps, or plugs.<sup>31</sup> Thus, 33% of the holes checked by DNR have problems, and if this ratio holds true for the entirety of PLP's holes, there could be well over 400 holes that require remedial action. This demonstrates why a full accounting is needed.

Many of PLP's drilling activities targeted and bore through potentially acid-generating (PAG) ore. As PLP acknowledges, the pre-Tertiary rock it pierced through and pulled from the ground "was found to be dominantly PAG due to elevated acid potential (AP) values resulting from increased sulphur concentrations and limited neutralization potential (NP) resulting from lack of carbonate minerals."<sup>32</sup> PAG ore causes acid drainage with high levels of dissolved metals (such as ammonia, barium, and other contaminants) and high sulfate levels, and may have long-lasting impacts to surface water and ground water.<sup>33</sup> Importantly, the higher occurrence of Pebble PAG ore exists in the headwaters of river systems that provide habitat and nutrients to aquatic life that are sensitive to chemical fluctuations and are easily disrupted by discharge of acid drainage over time.<sup>34</sup>

Furthermore, PAG ore can lead to the generation of acid in as little as ten years, and can persist for thousands of years. PLP further describes that "[i]n the pre-Tertiary samples, acidic conditions occur quickly in core with low NP [and] field data suggest that the onset to acidic conditions is about 20 years, while laboratory kinetic tests show that the delay to the onset of acidic conditions is expected to be between a decade and several decades."<sup>35</sup> Acid generation may persist in surface and ground water for hundreds to thousands of years.<sup>36</sup>

To provide one example of the lasting impacts from PAG rock, in 2013 DNR reported that an abandoned PLP well hole drilled in 2011 was discharging iron-colored water, staining the surface and impacting vegetation.<sup>37</sup> Such discoloration is a sign that PAG ore may be generating

<sup>31</sup> DNR, Field Monitoring Report—APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>32</sup> NDM 2014 Technical Report at 146.

<sup>33</sup> Kendra Zamzow, PhD, *Potential Impacts to Water during Exploration at the Pebble Prospect, Alaska* (Aug. 2010) at 54, available at <http://www.csp2.org/files/reports/Potential%20Exploration%20WQ%20Impacts%20-%20Zamzow%20Aug10.pdf>.

<sup>34</sup> Zamzow at 54.

<sup>35</sup> NDM 2014 Technical Report at 146.

<sup>36</sup> Zamzow at 4 ("Depending on the other material in the rock, such as carbonates, the development of acid may be delayed by several decades; however, once started, it may continue unabated for hundreds to thousands of years.")

<sup>37</sup> ADNR Pebble Field Monitoring Report, p. 1, 16 (July 23, 2013), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072313.pdf>. For another example of long-term impacts, see DNR, Field Monitoring Report—APMA A20146118 Pebble Limited Partnership, p. 9 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22> (where DNR noted that a well hole drilled in 1988 was still discharging iron-colored water to the surface in 2015).



actual acid.<sup>38</sup> For ease of reference, Petitioners have compiled from past DNR reports numerous examples of failure to plug drill holes and abandoned drill holes impacting the tundra years later.

***B. Impacts from unlined sumps to surface and ground water quality and re-vegetation and remediation efforts***

Evidence indicates that PLP has not re-vegetated and remediated all sumps and trenches used in exploration. The regulations require that the company “reclaim a mined area that has potential to generate acid rock drainage (acid mine drainage) in a manner that prevents the generation of acid rock drainage or prevents the offsite discharge of acid rock drainage.”<sup>39</sup> DNR should further investigate to determine the status of PLP’s efforts to re-vegetate and remediate the sumps and trenches used in exploration.

As the Alaska Supreme Court recently noted regarding the risk of sumps associated with PLP’s exploration, “the hundreds of sumps containing toxic waste and chemically reactive material represent a continuing potential source of environmental harm.”<sup>40</sup> Between one and three sump pits were dug for the settlement of the slurry of drilling mud and drilling waste that was discharged from a single bore hole.<sup>41</sup> The smaller sump pits are approximately eight feet long, four feet wide and six feet deep, while the larger sump pits are about 15 to 20 feet long, five feet wide and six feet deep.<sup>42</sup> The risk of harm from sumps containing drill cuttings increases with time, as the onset to acidic conditions from PAG rock materials contained in the drill cuttings is about 10 years.<sup>43</sup>

One third-party report of water quality sampled at a sump located at an active PLP exploration rig in October 2011 found that water sampled from the sump exceeded water quality standards for aluminum, cadmium, copper, iron, lead, manganese, silver, zinc, diesel range organics, and residual range organics.<sup>44</sup> The study found that these contaminants documented in the sump were “likely attributable to mineralized drill cuttings and rock ‘flour’ [as well as] from fuels and/or muds used in drilling.”<sup>45</sup> Moreover, studies of the Pebble deposit area show porous surface materials, highly interconnected ground and surface waters, and a subsurface perforated

<sup>38</sup> Zamzow at 54 (“Acid rock reactions occur as oxygenated groundwater moves through sulfidic rock; the onset of the reactions may be delayed by several years, but once started they are likely to continue for decades. This may be directly observable as red or orange water. . .”).

<sup>39</sup> 11 AAC 97.240.

<sup>40</sup> *Nunamta v. State*, No. S-14560/14579, at 47 (Alaska 2015).

<sup>41</sup> *Nunamta v. State*, No. S-14560/14579, at 4 (Alaska 2015).

<sup>42</sup> *Nunamta v. State*, Case No. 3AN-09-9173 CI (Superior Court’s Findings of Fact and Conclusions of Law) at 25-26 (citing Taylor at Tr. 817 and Wober at Tr. 264-65).

<sup>43</sup> NDM 2014 Technical Report at 146. *See also*, Zamzow at 1 (“Sulfide rock is particularly problematic in that it becomes sulfuric acid upon contact with water and oxygen; this process may occur quite quickly or may take several decades depending on the other material in and around the rock.”).

<sup>44</sup> Woody, Zamzow, Welker, and O’Neal, Water Quality at Pebble Prospect Drill Rig #6, South Fork Koktuli River, Bristol Bay, Alaska, 22-23 Oct. 2011 (Final Report July 9, 2012), available at [http://www.pebblescience.org/pdfs/2013-July/SUMP\\_Final\\_9\\_July\\_2012compressed.pdf](http://www.pebblescience.org/pdfs/2013-July/SUMP_Final_9_July_2012compressed.pdf) (Table 2 from report attached hereto as Exhibit C).

<sup>45</sup> Woody, et al., at 1.

so extensively by PLP's drilling operations that anything spilled to the surface waters or tundra may easily spread to the groundwater as well.<sup>46</sup>

***C. Failure of remediation and re-vegetation efforts due to discharge of drilling waters and muds onto tundra and in natural water bodies and topographic depressions***

In addition, PLP's discharge of drilling waters and muds into water bodies and directly onto tundra may have occurred in the past without a permit from the State.<sup>47</sup> These discharges have led to failed re-vegetation efforts and lasting impacts on the tundra. If verified, this failure would also violate the regulatory requirement that PLP "reclaim a mined area that has potential to generate acid rock drainage (acid mine drainage) in a manner that prevents the generation of acid rock drainage or prevents the offsite discharge of acid rock drainage."<sup>48</sup>

Use of the sumps as described above "describes best practices." However, there is evidence that at times PLP and its predecessors simply allowed the discharged material to flow onto the tundra or into tundra ponds.<sup>49</sup> Indeed, numerous DNR field reports describe discharge of drilling water and muds directly onto tundra and into natural water bodies (such as kettle ponds) and topographic depressions.<sup>50</sup> For ease of reference, in Exhibit D Petitioners have compiled from past DNR reports numerous examples of unsuccessful site re-vegetation and PLP's disposal of drill materials and water directly onto tundra.

***D. Oil and fluid spills associated with exploration activities***

Evidence indicates that there were numerous oil spills over time by PLP in its exploration efforts. Petitioners are concerned that the harms from these spills may still be present and the site may not be in a stable condition.<sup>51</sup> DNR should investigate further to determine the status of any spills at the Pebble exploration site.

Petitioners have compiled a list of 27 oil, fuel, or fluid spills by PLP totaling 467 gallons.<sup>52</sup> Some of these spills occurred during drilling operations and present challenges for keeping fluids

<sup>46</sup> Zamzow at 54.

<sup>47</sup> It is unclear to petitioners when the use of sumps became a part of PLP's Plan of Operations and when PLP completely discontinued discharging drilling waters and muds directly onto tundra and into natural water bodies. Petitioners have evidence that suggests PLP was discharging directly into water bodies and tundra pursuant to an expired Plan of Operations when they should have been using sumps as required in their current Plan of Operations. Such information gaps about potentially harmful and unlawful activities is precisely why DNR should be collecting more complete information from PLP.

<sup>48</sup> 11 AAC 97.240.

<sup>49</sup> *Nunamta v. State*, No. S-14560/14579, at 4, fn 2 (Alaska 2015). DNR field reports identified discharge directly onto tundra and surface waters as a problem in late 2008 and somewhere around 2009-2010 PLP's practices changed to greater use of sumps. See, e.g., ADNR Field Monitoring Report, p. 2 (Oct. 28, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble102808.pdf> ("State regulatory agencies and the PLP should further discuss the relative merits of handling drill fluids by discharge onto the ground, discharge into dry depressions, or recirculation.")

<sup>50</sup> See Exhibit D—Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems.

<sup>51</sup> AS 27.19.020.

<sup>52</sup> See Exhibit E—ADEC Record of Reported Spills from Pebble Exploration Activities.

out of ground and surface water.<sup>53</sup> The porous surface materials at the Pebble deposit, combined with the subsurface perforated so extensively by PLP's drilling operations, means that anything spilled to the surface waters or tundra may easily spread to the groundwater as well.<sup>54</sup>

For example, at one spill location, DNR made note that the smell and sheen from the spill remained in the soil months later; however, it is not clear that DNR ever was able to revisit the site to see if the issue was resolved.<sup>55</sup> And in another instance, observation of a drill site nearly two years after a hydraulic fluid spill showed reclamation issues with little vegetation regrowth and tundra replacement that did not survive.<sup>56</sup> And in a third instance, a spill of 40 gallons of hydraulic fluid was injected down the drill hole, so the leak was not noticed until circulation brought it back to the surface.<sup>57</sup> A DNR visit to the site a year later, once the drilling rig had been removed and drilling had ceased, showed that the tundra was regenerating slowly and an iron bacteria sheen was noted in water surface at the site.<sup>58</sup> These three examples are a small subset of the at least 27 spills caused by PLP during its exploration efforts. Review of DNR's field reports suggests that many of the more significant spill sites were never revisited by DNR.<sup>59</sup> These spill sites could be exhibiting similar reclamation issues.

***E. Storage of heavy equipment, materials, fluids, and debris on tundra; abandoned facilities, buildings, and equipment***

Finally, PLP has paused exploration activities and has performed no actual labor or improvements to its claims since September 19, 2013.<sup>60</sup> Despite PLP's failure to work on its claims for the past two seasons, the company has failed to remove much of its equipment, facilities, debris, and buildings. Petitioners have compiled a list of the known equipment and facilities located on PLP's claims in Exhibit F. Types of equipment left behind include: abandoned camp sites and buildings,<sup>61</sup> mounted backhoes for digging sumps,<sup>62</sup> likely hundreds

<sup>53</sup> Zamzow at 9-11.

<sup>54</sup> Zamzow at 54.

<sup>55</sup> ADNR Pebble Field Inspection, Part III at p. 2 (July 26, 2007),

<http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072607.pdf>

<sup>56</sup> ADNR Field Monitoring Report, p. 15 (Oct. 28, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble102808.pdf> and ADNR Field Monitoring Report, p. 12 (Aug. 3, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble080310.pdf>.

<sup>57</sup> ADNR Pebble Field Monitoring Report, p. 3 (July 12, 2011),

<http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble071211.pdf>

<sup>58</sup> ADNR Pebble Field Monitoring Report, p. 11 (June 19, 2012),

<http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061912.pdf>

<sup>59</sup> See Exhibit D (oil and hydraulic fuel spills occurring at drill sites such as 10488, 10512, 11529, 11540, and 1549 were never mentioned in subsequent DNR field reports after an initial site visit).

<sup>60</sup> Pebble Limited Partnership, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2015, Recording Dist. 320 Iliamna, 2015-000160-0 9 (showing no labor from September 1, 2014 to September 1, 2015); and Pebble Limited Partnership, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2014, Recording Dist. 320 Iliamna, 2014-000302-0 (showing September 19, 2013 as the last day of actual work performed on claims).

<sup>61</sup> ADNR Pebble Project Inspection (June 14, 2006), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble06142006.pdf> (describing 2004 camp site left behind

<sup>62</sup> ADNR Pebble Field Inspection 9 (July 26, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072607.pdf> (describing site preparation for drilling operations). See also id at 10 (photo of backhoe used for drilling sumps)

of tundra mats (large wooden pallets, constructed with 2x6 boards with 4x4 cross members for support, sometimes placed on steel supports),<sup>63</sup> weather stations,<sup>64</sup> and drill rig facilities (e.g., a storage structure, fuel storage, numerous drill rods and casing).<sup>65</sup>

Section 5 of PLP's MLUP requires that all surface structures be removed from State land upon expiration or termination of the MLUP.<sup>66</sup> As described below, Petitioners are concerned that PLP will abandon its exploration efforts and run out of the financial resources to comply with this permit condition, and will instead leave behind its equipment, facilities, and debris for the State to remove at substantial expense. In order to lessen the potential for this outcome, Petitioners request that DNR require an accounting from the company of everything that it will be required to remove from State land at the end of its permit term. In addition, given PLP's financial state, it may be prudent for DNR to obtain financial security from PLP to ensure that there are available funds for the statutorily required remediation.

#### IV. PLP's mine development and financial status

As noted above, between 1987 and 2013 PLP and its subsidiaries and predecessors drilled thousands of wells in the headwaters of Bristol Bay, totaling nearly 200 miles of holes through the mineralized rock, overburden, surface water, and groundwater of the region.<sup>67</sup> Since then, PLP has undertaken no exploration or other significant activity on its claims, and it has not made public any specific plans to do so.<sup>68</sup>

Over the last decade, PLP has made multiple statements about its near-readiness to file for mine development permit applications. However, PLP has never followed through with action after making those statements, and in its recent filings with the U.S. Securities and Exchange Commission it is unclear whether PLP has current or specific plans to file for such permits.<sup>69</sup>

In urging PLP to proceed with permitting, U.S. Senator Lisa Murkowski detailed some of these promises in a 2013 letter to PLP and its parent companies, pointing out that PLP promised "imminent" action on the mine for "nearly a decade" but "after years of waiting, it is anxiety, frustration, and confusion that have become the norm" in many Alaska communities in the

<sup>63</sup> *Id* at 9. Photos of PLP's Main Camp site from DNR's July 22, 2015 inspection show at least 10 piles of tundra pads stacked 10 high.

<sup>64</sup> *Id* at 4 (photo of weather station)

<sup>65</sup> *Id* at 12-13 (see also photos at 14-22).

<sup>66</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 5.

<sup>67</sup> NDM 2014 Technical Report at 67-73. *See also*, Pebble Limited Partnership, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2014, Recording Dist. 320 Iliamna, 2014-000302-0 and Pebble Limited Partnership, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2015, Recording Dist. 320 Iliamna, 2015-000160-0 9 (showing no labor from September 1, 2014 to September 1, 2015) (showing that PLP's last field work on its claims occurred on September 19, 2013).

<sup>68</sup> *See* NDM 2014 Technical Report at 14. *See also, supra* at fn. 60 (labor affidavits showing no labor conducted on the claims from since September 13, 2013). *See also*, NDM 2014 Technical Report at 30 ("There are no activities proposed that require additional permits.").

<sup>69</sup> The report "is unable to offer any assessment of the likelihood of permitting a future mine at Pebble as it is beyond the scope of this report;" however, the report also states that "There are no activities proposed that require additional permits." NDM 2014 Technical Report at 30.

region of the Pebble deposit.<sup>70</sup> Statements from PLP and its parent companies claiming permitting is imminent include:

- November 3, 2004: a press release asserting “completion in 2005 of . . . permit applications.”<sup>71</sup>
- August 12, 2005: a press release asserting “a full permitting process for a port, access road and open pit mine all slated to begin in 2006.”<sup>72</sup>
- October 27, 2008: a press release asserting the company was “on schedule to finalize a proposed development plan in 2009 and, following input from project stakeholders, apply for permits in early 2010.”<sup>73</sup>
- March 18, 2009: a press release asserting the company was in “preparation to initiate state and federal permitting under the National Environmental Policy Act (NEPA) in 2010.”<sup>74</sup>
- February 1, 2010: a press release asserting the company was “preparing to initiate project permitting under the National Environmental Policy Act (NEPA) in 2011.”<sup>75</sup>
- May 2, 2011: a press release announcing that the company intended “to enter the permitting phase towards the end of 2012.”<sup>76</sup>
- October 18, 2011: a media statement from a PLP representative that “We have never even said that we’re going to [seek a] permit. We may not.”<sup>77</sup>
- June 13, 2013: a media statement from a PLP representative that the company “hope[s] to have a project to take into permitting this year.”<sup>78</sup>

Today, PLP’s website claims that they are “working toward the goal of submitting our initial project description for permitting” and “we’re only just now preparing to apply for permits.”<sup>79</sup> However, according to PLP’s most recent SEC filings, additional work on its claims and prerequisite prefeasibility studies will be undertaken at a later, unknown, date “as funds become available.”<sup>80</sup>

Further, public records reveal that PLP and its parent company NDM are facing potential cash flow constraints. According to the company’s most recent quarterly financial disclosures, it is spending roughly \$25 million per year.<sup>81</sup> To meet these expenses, three times in the last year NDM has raised working capital by issuing special warrants that can be converted into NDM

<sup>70</sup> Letter from Senator Lisa Murkowski to John Shively, PLP CEP, Mark Cutafini, Anglo American CEO, and Ron Thiessen, NDM CEO (July 1, 2013), available at [http://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=3b2efb37-edd2-4203-8568-72c405e2a4e4](http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=3b2efb37-edd2-4203-8568-72c405e2a4e4).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> <http://www.pebblepartnership.com/plan.html> (last accessed Nov. 1, 2015).

<sup>80</sup> NDM 2014 Technical Report at 14 (emphasis added).

<sup>81</sup> Northern Dynasty Minerals Ltd., Management’s Discussion and Analysis (ended June 30, 2015), available at <http://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00003151> (date of filing Aug. 14, 2015) (also available on SEC website at: <https://www.sec.gov/Archives/edgar/data/1164771/000106299315004694/exhibit99-2.htm>)

stock shares.<sup>82</sup> In other words, Northern Dynasty has been diluting its value in order to generate its operating capital. Significant to this petition, the money NDM has been raising is not being spent on advancing its claims or dealing with environmental concerns outlined above. Between 2010 and 2014 PLP spent in excess of \$23 million on its drilling and exploration efforts,<sup>83</sup> but during the 2014-2015 season, it does not appear as if the company has spent any money on either due diligence on its claims or reclamation efforts.<sup>84</sup>

Equally telling, all of PLP's major mining partners (Mitsubishi, Anglo American, and Rio Tinto) have departed the project.<sup>85</sup> This suggests that some of the world's most sophisticated and experienced mining companies see mining the Pebble deposit as a major risk that is not worth the investment.

Petitioners are concerned that, given PLP's financial status and its decade of unreliable and misleading statements regarding its federal permit application timeline, the company cannot be trusted to keep its promises to the State of Alaska and the people of Bristol Bay that it will fully document, reclaim, and remediate all of the harms associated with its mineral exploration operations.

#### V. Request to DNR for a Complete Reclamation Status and Formal Exploration Reclamation Plan from PLP

In order to ensure that PLP is in compliance with state law and the terms of its permit, and to ensure that PLP fully reclaims its exploration operations, Petitioners hereby request that DNR require PLP: (1) to undertake studies of the reclamation status and potential threats posed by its exploration activities; (2) to provide a detailed accounting of the present reclamation status and surface and ground water quality for all sites associated with PLP's exploration activities

<sup>82</sup> See, e.g. NDM, News Releases, *Northern Dynasty to Raise Up to \$20 Million in Financing Transactions* (Aug. 10, 2015) (Northern Dynasty Minerals planning to raise about US\$20 million dollars by offering Special Warrants (to be converted to NDM shares) and by acquiring Cannon Point Resources, a small mineral exploration company. The acquisition of Cannon Point Resources was contingent on selling US\$10 million Special Warrants).

<sup>83</sup> PLP, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2011, Recording Dist. 320 Iliamna, 2011-000252-0 (spending in excess of \$3,806,240); PLP, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2012, Recording Dist. 320 Iliamna, 2012-000366-0 (spending in excess of \$13,552,783); PLP, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2013, Recording Dist. 320 Iliamna, 2013-000302-0 (spending in excess of \$4,322,289); and PLP, Affidavit of Annual Labor for State Mining Claims for the Year Ending September 01, 2014, Recording Dist. 320 Iliamna, 2014-000302-0 (spending in excess of \$2,130,230).

<sup>84</sup> See *supra* at fn. 60 (labor affidavits showing no labor conducted on the claims from since September 13, 2013). See also, <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/index.cfm>. (last accessed Nov. 1, 2015) (showing PLP failed to file an Annual Reclamation Report for 2014).

<sup>85</sup> See, InvestorPoint, *All Insiders Activity for Northern Dynasty Minerals Ltd. – Mitsubishi Corporation*, <http://www.investorpoint.com/stock/nak-Northern%20Dynasty%20Minerals%20Ltd./insider/Mitsubishi%20Corporation/All%20Types/> (showing Mitsubishi sale of 10.1 million Northern Dynasty shares and divestment from the company on Feb. 25, 2011); and NDM News Releases, *Anglo American Withdraws from Pebble Project* (Sept. 16, 2013), available at: <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=605024>; and Rio Tinto News Releases, *Rio Tinto gifts stake in Northern Dynasty Minerals to Alaskan charities* (April 7, 2014), [http://www.riotinto.com/media/media-releases-237\\_10183.aspx](http://www.riotinto.com/media/media-releases-237_10183.aspx).

between 1987 and today; and (3) to present a plan, including cost estimates and work deadlines, for eliminating the threat posed by its exploration activities to water and wild salmon.

A reclamation plan and reclamation bonding protects the State from bearing the financial burden of statutorily required reclamation when a mining operation fails to do so.<sup>86</sup> However, PLP is exempt from the reclamation plan and bonding requirements.<sup>87</sup> In the normal circumstance, a mining operation would proceed from exploration to production, which would trigger the requirements for a reclamation plan and bonding. Thus, the State is typically able to protect itself at that stage. Indeed, the development of many mines in Alaska proceed directly from exploration to permitting and development in very short order, sometimes within one year.<sup>88</sup> However, as demonstrated above, there is no certainty that PLP will ever progress to that stage.<sup>89</sup> In addition, there are legitimate questions about PLP's financial ability to ever do so.<sup>90</sup> Indeed, there are numerous examples of when a state and/or federal government have become financially responsible for significant reclamation costs after a mining company abandons a project or declares bankruptcy.<sup>91</sup> As a result, the State has a financial interest right now in investigating the status of PLP's reclamation. If there are any questions about whether PLP has met the reclamation requirements under the statute or the conditions in their permit, the State should make the necessary determinations and require a reclamation plan and bonding.<sup>92</sup>

Petitioners request that any reclamation plan should include all of the following elements to address the suspected reclamation violations described above:

#### A. 1,355 Drill Holes

Petitioners request that DNR require PLP to provide a full listing of all 1,355 drill holes and should include at least the following information:

- Type of drill hole
- Location of drill hole
- Date drilled and date plugged

<sup>86</sup> AS 27.19.030-.040; 11 AAC 97.310; 11 AAC 97.400-.450.

<sup>87</sup> AS 27.19.050(a); PLP 2014-2016 MLUP.

<sup>88</sup> See U.S. Dept. of Interior, Bureau of Mines, *Regulator Processes Associated with Metal-Mine Development in Alaska—A Case Study of the Red Dog Mine*, at pp. 9-11, available at [http://www.blm.gov/style/medialib/blm/ak/jrmic/usbm\\_rpts.Par.22991.File.tmp/OFR\\_93-92.pdf](http://www.blm.gov/style/medialib/blm/ak/jrmic/usbm_rpts.Par.22991.File.tmp/OFR_93-92.pdf) (explaining that exploration activities of the Red Dog deposit were conducted from 1980-81, while at the same time the EIS process under NEPA began in 1981 and was completed in 1984 with full permitting completed in 1984 and construction on the project and infrastructure beginning in 1986.).

<sup>89</sup> See *supra* at Sec. IV.

<sup>90</sup> *Id.*

<sup>91</sup> See Jim Kuipers, *Putting a Price on Pollution, Financial Assurance for Mine Reclamation and Closure*, Center for Science in Public Participation, (March 2003), available at <https://www.earthworksonline.org/files/publications/PuttingAPriceOnPollution.pdf>; see also U.S. Gov't Accountability Office, GAO-05-377, *Hardrock Mining: BLM Needs to Better Manage Financial Assurances to Guarantee Coverage of Reclamations Costs* (2005), <http://www.gao.gov/assets/250/246828.pdf> (out of 48 hardrock operations on BLM land "that had ceased and not been reclaimed by operators," BLM only has \$69 million in financial assurances while the actual cost for reclamation was \$10.6 million, which left a \$56.4 million shortfall that the government had to cover).

<sup>92</sup> AS 27.19.050(d); 11 AAC 97.610.

- Observed issues over the years
- Current status of drill hole
- Water quality samples from surface water and ground water near drill hole
- Estimated cost of plugging and further reclamation

***B. Sumps associated with each drill hole***

Petitioners request that DNR require PLP to provide a full listing of all sumps and trenches associated with each of the 1,355 drill holes and should include at least the following:

- Location of sump
- Associated drill hole
- Date of reclamation
- Observed issues over the years
- Current status of sump
- Water quality samples directly from the sump, remove overburden from reclaimed sump and sample the surface water beneath
- Estimated cost of further reclamation

***C. Drilling water overflow areas, including trenches, kettle ponds, topographic depressions, and tundra uplands***

Petitioners request that DNR require PLP to provide a full listing of all areas where water and drilling muds were allowed to overflow from sump and drill holes or where discharged into trenches, kettle ponds, topographic depressions, and tundra uplands and should include at least the following information:

- Location of overflow or discharge
- Associated drill hole number and location
- Date of reclamation
- Observed issues over the years
- Current status of overflow or discharge area, including status of re-vegetation
- Water quality and soil quality samples directly from kettle ponds and topographic depressions used as overflow areas
- Estimated cost of further reclamation

***D. Oil and Fluid Spills***

Petitioners request that DNR require PLP to provide a full listing of all oil and other liquid spills, including those that may not have been reported to the Department of Conservation, if any, and should include in this listing at least the following information:

- A description of the spill, including location, type of material, and volume
- How the spill was cleaned up at the time
- Subsequent efforts to clean up spill impacts
- Current status of reclamation and re-vegetation of the spill site
- Soil and/or water testing of the spill site
- Estimated cost of further cleanup



***E. Storage of heavy equipment, materials, fluids, and debris on tundra; abandoned facilities, buildings, and equipment***

Petitioners ask that DNR obtain from PLP a complete and more detailed accounting of the items that remain on the surface of the mining claims held by PLP and its affiliates in the Pebble deposit. This accounting will allow the State and public to assess the cost and the company's ability to remove such equipment and facilities. This accounting will also be beneficial to the State when PLP is required to remove such equipment at a future date, pursuant to its MLUP permit conditions. Petitioners ask that DNR require PLP to provide a list detailing all equipment, including but not limited to all materials, fluids, debris, facilities, and should include at least the following information:

- A description of each item,
- How long each item has been located in the Pebble deposit area
- Whether the company plans to use the item in the future
- The weight of the item and estimated cost of removal.

In addition, the reclamation plan should include any additional requirements that DNR deems necessary to meet the statutory requirements and the requirements of PLP's current MLUP. These statutory and permit requirements include: minimizing adverse effects on State land and resources;<sup>93</sup> reclaiming the exploration disturbances to leave the site in a stable condition, including the prevention of generation and/or discharge of acid rock drainage;<sup>94</sup> cleaning up any discharges, leakages, spills, or pollution;<sup>95</sup> and removal of all surface structures, facilities, and debris from the surface of the mining claims held by PLP and its affiliates.<sup>96</sup> Finally, pursuant to the terms and stipulations of its MLUP, DNR should require PLP to clean up any threats posed by its exploration activities to water and wild salmon "to the reasonable satisfaction of the State of Alaska."<sup>97</sup>

**VI. Conclusion**

Evidence from public documents raises serious questions about the existing and potential impact stemming from Pebble Limited Partnership's exploration activities. Given the unique attributes of the proposed Pebble mine—its large size, potentially-acid-generating ore type, and sensitive location—it is important that the State of Alaska be especially vigilant in its oversight of PLP's exploration activities. PLP's ambiguous future—both in terms of its finances and permitting plans—add further weight and urgency to this petition. To ensure the protection of Bristol Bay's waters and wild salmon fishery and to protect itself from potential financial exposure, the State should timely act on this petition.

<sup>93</sup> 11 AAC 96.005.

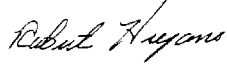
<sup>94</sup> AS 27.19.020; 11 AAC 97.240.

<sup>95</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 10.

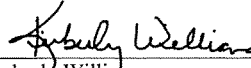
<sup>96</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 5.

<sup>97</sup> PLP 2014-2016 MLUP Terms of Permit, Sec 10.

Sincerely,



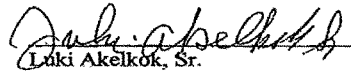
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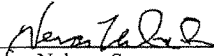
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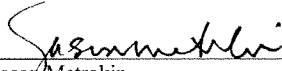
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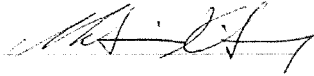
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/s/  
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**Cc**  
Governor Bill Walker  
Lieutenant Governor Byron Mallott  
Representative Bryce Edgmon  
Senator Lyman Hoffman  
Tom Collier, CEO, Pebble Limited Partnership

**LIST OF EXHIBITS**

- A.** Northern Dynasty Minerals Ltd., 2014 Technical Report on the Pebble Project, Southwest Alaska, USA (effective date Dec. 31, 2014), Chapter 10, *available at* <http://www.sedar.com/DisplayCompanyDocuments.do?lang=EN&issuerNo=00003151> (date of filing Feb. 6, 2015) (also available on SEC website at : <https://www.sec.gov/Archives/edgar/data/1164771/000106299315000646/exhibit99-1.htm>)
- B.** Map of Selected PLP Boreholes with Depth Greater than 5,000 Feet
- C.** Analyte Concentrations of Water Quality Parameters Measured at Pebble Drill Rig #6, South Fork Koktuli River, Nushagak River Drainage, Bristol Bay Alaska on October 22 and 23, 2011, from Woody, Zamzow, Welker, and O'Neal, *available at* [http://www.pebblescience.org/pdfs/2013-July/SUMP\\_Final\\_9\\_July\\_2012compressed.pdf](http://www.pebblescience.org/pdfs/2013-July/SUMP_Final_9_July_2012compressed.pdf)
- D.** Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems
- E.** ADEC Record of Reported Spills from Pebble Exploration Activities
- F.** Pebble Exploration Facilities and Equipment Left Behind

# Exhibit A



**2014 TECHNICAL REPORT  
ON THE  
PEBBLE PROJECT, SOUTHWEST ALASKA, USA**

**NORTHERN DYNASTY MINERALS LTD.**

**Effective Date – December 31, 2014**

Qualified Persons

J. David Gaunt, PGeo.

James Lang, PGeo.

Eric Titley, PGeo.

Ting Lu, PEng.



## 10.0 DRILLING

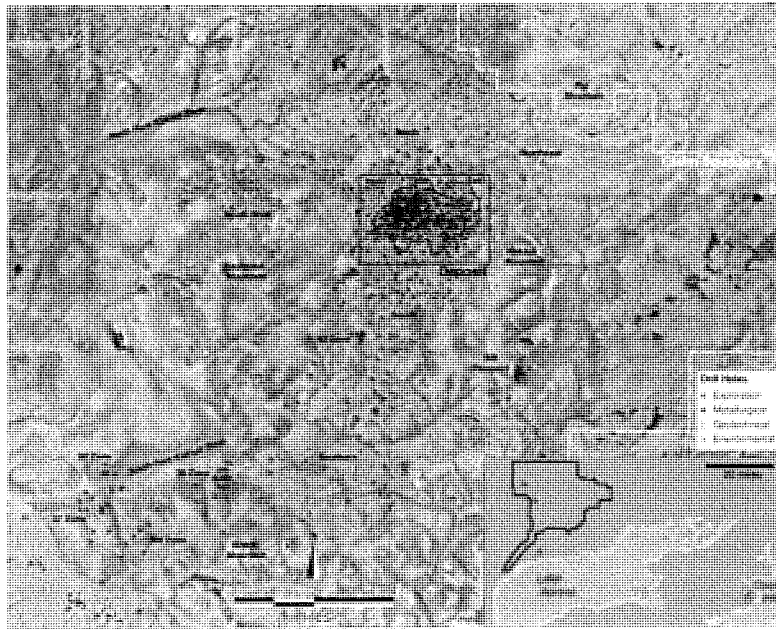
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### 10.1 LOCATION OF ALL DRILL HOLES

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Extensive drilling totaling 1,042,218 ft has been completed in 1,355 holes on the Pebble Project. These drill campaigns took place during 19 of the 26 years between 1988 and 2013. The spatial distribution and type of holes drilled is illustrated in Figure 10.1.1.

**Figure 10.1.1** Location of all Drill Holes



Drilling completed by Cominco (Teck) (1988 to 1997) is described briefly in Section 6.0 and will not be discussed further here.



All drill hole collars have been surveyed using a differential global positioning system (GPS). A digital terrain model for the site was generated by photogrammetric methods in 2004. All post-Cominco (Teck) drill holes have been surveyed downhole, typically using a single shot magnetic gravimetric tool. A total of 989 holes were drilled vertically ( $-90^{\circ}$ ) and 192 were inclined from  $-42^{\circ}$  to  $-85^{\circ}$  at various azimuths.

## 10.2 SUMMARY OF DRILLING 2001 TO 2013

---

The Pebble deposit has been drilled extensively (Figure 10.2.1). Drilling statistics and a summary of drilling by various categories to the end of the 2013 exploration program are compiled in Figure 10.2.2. This includes seven drill holes completed by FMMUSA, drilled by Peak Exploration (USA) Corp. in the area in 2008; these holes were drilled on claims that are now part of the Pebble property and have been added to the Pebble dataset. Detailed descriptions of the programs and results for 2009 and preceding years may be found in technical reports by Rebagliati and Haslinger (2003 and 2004), Haslinger et al. (2004), Rebagliati and Payne (2005, 2006 and 2007), and Rebagliati et al. (2008, 2009 and 2010).

Most of the footage on the Pebble Project was drilled using diamond core drills. Only 18,716 ft was percussion-drilled from 222 rotary drill holes. Many of the cored holes were advanced through overburden, using a tricone bit with no core recovery. These overburden lengths are included in the core drilling total.

Since early 2004, all Pebble drill core has been geotechnically logged on a drill run basis. Over 69,000 measurements were made for a variety of geotechnical parameters on 735,000 ft of core drilling. Recovery is generally very good and averages 98.5% overall; two-thirds of all measured intervals have 100% core recovery. Additionally, all Pebble drill core from the 2001 through 2013 drill programs was photographed in a digital format.





Figure 10.2.1 Location of Drill holes – Pebble Deposit

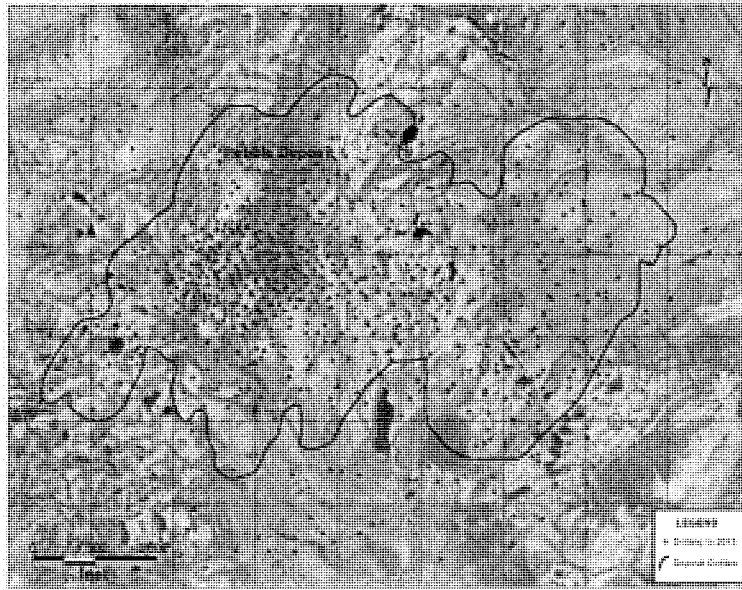
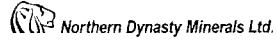


Figure 10.2.2 Summary of Drilling to December 2013

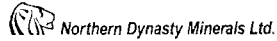
<b>By Operator</b>			
Cominco (Teck) <sup>1</sup>	164	75,741.0	23,086
Northern Dynasty	578	495,069.5	150,897
Pebble Partnership <sup>2</sup>	606	465,957.7	142,024
FMMUSA	7	5,450.0	1,661
<b>Total</b>	<b>1,355</b>	<b>1,042,218.2</b>	<b>317,668</b>
<b>By Type</b>			
Core <sup>3</sup>	1,132	1,023,297.6	311,901
Percussion <sup>4</sup>	223	18,920.6	5,767
<b>Total</b>	<b>1,355</b>	<b>1,042,218.2</b>	<b>317,668</b>
<b>By Year</b>			
1988 <sup>1</sup>	26	7,601.5	2,317



1993	27	7 422.0	2 262
1997	27	11 321.0	3 054
1999	48	26 128.6	6 974
1999	13	8 003.0	2 014
1999	4	2 553.1	385
1999	22	14 895.5	4 476
2000	87	27 230.1	7 150
2005	87	71 226.6	21 710
2004	24	100 891.7	30 488
2005	114	61 978.5	24 987
2006	41	7 930.9	20 196
2007	51	107 990.4	31 405
2007	241	184 733.4	49 308
2008	21	34 047.5	9 553
2009	23	87 581.0	27 657
2010	1	10 737.7	2 871
2010	81	35 760.3	10 900
2011	3	3 121.7	837
<b>Total</b>	<b>1,355</b>	<b>1,042 218.2</b>	<b>317 658</b>
<b>By Area</b>			
East	34	145 905.0	40 120
West	411	251 699.7	107 280
Mag	1	10 737.7	2 871
NW	273	45 248.4	13 005
NE	13	1 067.0	274
South	4	23 680.5	6 323
25 Zone	9	3 041.7	1 234
37 Zone	1	4 270.0	1 095
15 Zone	27	4 111.0	1 035
92 Zone	1	2 894.0	772
101 Zone	1	2 177.0	577
Eastern	21	1 128.0	292
South	1	11 441.4	3 110
SW	31	3 177.9	1 946
SE	25	17 145.8	4 794
Core Area	1	10 737.7	2 871
<b>Total</b>	<b>1,355</b>	<b>1,042 218.2</b>	<b>317 658</b>

Notes:

1. Includes holes drilled on the Sill prospect.
2. Holes started by Northern Dynasty and finished by the Pebble Partnership are included as the Pebble Partnership.
3. Drillholes counted in the year in which they were completed.



4. Wedged holes are counted as a single hole including full length of all wedges drilled.
  5. Includes FMMUSA drillholes; data acquired in 2010.
  6. Shallow (<15 ft) auger holes not included.
  7. Comprises holes drilled entirely in Tertiary cover rocks within the Pebble West and Pebble East areas.
- Some numbers may not sum exactly due to rounding.

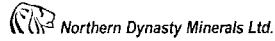
The drill hole database includes drill holes completed up until 2013; the drilling completed in 2013 is outside the area of the resource estimate. Highlights of drilling completed by Northern Dynasty and the Pebble Partnership between 2001 and 2013 include:

- Northern Dynasty drilled 68 holes for a total of 37,237 ft during 2002. The objective of this work was to test the strongest IP chargeability and multi-element geochemical anomalies outside of the Pebble deposit, as known at that time, but within the larger and broader IP chargeability anomaly described above. This program discovered the 38 Zone porphyry copper-gold-molybdenum deposit, the 52 Zone porphyry copper occurrence, the 37 Zone gold-copper skarn deposit, the 25 Zone gold deposit, and several small occurrences in which gold values exceeded 3.0 g/t.
- In 2003, Northern Dynasty drilled 67 holes for a total of 71,227 ft, mainly within and adjacent to the Pebble West zone to determine continuity of mineralization and to identify and extend higher grade zones. Most holes were drilled to the zero meter elevation above mean sea level and were 900 to 1,200 ft in length. Eight holes for a total of 5,804 ft were drilled outside the Pebble deposit to test for extensions and new mineralization at four other zones on the property, including the 38 Zone porphyry copper-gold-molybdenum deposit and the 37 Zone gold-copper skarn deposit.
- Drilling by Northern Dynasty in 2004 totalled 165,481 ft in 266 holes. Of this total, 131,211 ft were drilled in 147 exploration holes in the Pebble deposit; one exploration hole 879 ft in length was completed in the southern part of the property that discovered the 308 Zone porphyry copper-gold-molybdenum deposit. Additional drilling included 21,335 ft in 26 metallurgical holes in Pebble West zone, 9,127 ft in 54 geotechnical holes and 3,334 ft in 39 water monitoring holes, of which 33 holes for a total of 2,638 ft were percussion holes. During the 2004 drilling program, Northern Dynasty identified a significant new porphyry centre on the eastern side of the Pebble deposit (the Pebble East zone) beneath the cover sequence (as described in Section 7).
- In 2005, Northern Dynasty drilled 81,979 ft in 114 holes. Of these drill holes, 13 for a total of 12,198 ft were drilled mainly for engineering and metallurgical purposes in the Pebble West zone. Seventeen drill holes for a total of 60,696 ft were drilled in the Pebble East zone. The results confirmed the presence of the Pebble East zone and further demonstrated that it was of large size and contained higher grades of copper, gold and molybdenum than the Pebble West zone. The Pebble East zone remained completely open at the end of 2005. A further 13 holes for a total of 2,986 ft were cored for engineering purposes outside the Pebble deposit area. An additional 6,099 ft of drilling was completed in 71 non-core water monitoring wells.
- Drilling during 2006 focused on further expansion of the Pebble East zone. Drilling comprised 72,827 ft in 48 holes. Twenty of these holes were drilled in the Pebble East zone, including 17 exploration holes and three engineering holes for a total of 68,504 ft. The Pebble East zone again remained fully open at the conclusion of the 2006 drilling program. In addition, 2,710 ft were drilled



in 14 engineering core holes and 1,612 ft were drilled in 14 monitoring well percussion holes elsewhere on the property.

- Drilling in 2007 continued to focus on the Pebble East zone. A total of 151,306 ft of delineation drilling in 34 holes extended Pebble East to the northeast, northwest, south and southeast; the zone nonetheless remained open in these directions, as well as to the east in the East Grahén. Additional drilling included 10,167 ft in nine metallurgical holes in Pebble West, along with 4,367 ft in 26 engineering holes and 1,824 ft in 23 percussion holes for monitoring wells across the property.
- In 2008, 234 holes were drilled totalling 179,275 ft, the most extensive drilling on the project in any year to date. A total of 136,266 ft of delineation and infill drilling, including six oriented holes, was completed in 31 holes in Pebble East. This drilling further expanded the Pebble East zone. Fifteen metallurgical holes for a total of 14,511 ft were drilled in the Pebble West zone. One 2,949 ft infill/geotechnical hole was drilled in the Pebble West zone. Geotechnical drilling elsewhere on the property included 105 core holes for a total of 18,806 ft. Hydrogeology and geotechnical drilling outside of the Pebble deposit accounted for 82 percussion holes for a total of 6,745 ft. In 2010, the Pebble Partnership acquired the data for seven holes totalling 5,450 ft drilled by FMMUSA in 2008. These drill holes are located near the Property on land that is now controlled by the Pebble Partnership and provided information on the regional geology.
- The Pebble Partnership drilled 34,948 ft in 33 core drill holes in 2009. Five delineation holes were completed for 6,076 ft around the margins of Pebble West and 21 exploration holes for a total of 22,018 ft were drilled elsewhere on the property. In addition, seven geotechnical core holes were drilled for a total of 6,854 ft.
- In 2010, the Pebble Partnership drilled 57,582 ft in 66 core holes. Forty-eight exploration holes totalling 54,208 ft were drilled over a broad area of the property outside the Pebble deposit. An additional 3,374 ft were drilled in 18 geotechnical holes within the deposit area and to the west.
- In 2011, the Pebble Partnership drilled 50,768 ft in 85 core holes. Eleven holes were drilled in the deposit area totalling 33,978 ft. Of these, two holes were drilled in Pebble East for metallurgical and hydrogeological purposes. The other nine holes in the deposit area were drilled for further delineation of Pebble West and the area immediately to the south. These results indicated the potential for resource expansion to depth in the Pebble West zone. Six holes totalling 8,780 ft were also drilled outside the Pebble deposit area to the west and south. In addition, 8,010.2 ft was drilled in 68 geotechnical holes within and to the north, west and south of the deposit.
- The Pebble Partnership drilled 35,760 ft in 81 core holes in 2012. Eleven holes totalling 13,754 ft were drilled in the southern and western parts of the Pebble West zone. The results show potential for lateral resource expansion in this area and further delineation drilling is warranted. Six holes totalling 6,585 ft. were drilled to test exploration targets to the south on the Kaskanak claim block, to the northwest and south of Pebble, and on the KAS claim block further south. An additional 64 geotechnical and hydrogeological holes were drilled totalling 15,422 ft. Of this drilling, 41 holes were within the deposit area and 15 geotechnical holes were drilled at sites near the deposit, and eight geotechnical holes were completed near Cook Inlet.



- The Pebble Partnership drilled 6,190 ft in 29 core holes for geotechnical purposes in 2013 at sites west, south and southwest of the deposit area.
- No holes were drilled in 2014.

A re-survey program of holes drilled at Pebble from 1988 to 2009 was conducted during the 2008 and 2009 field seasons. For consistency throughout the project, the resurvey program referenced the control network established by R&M Consultants in the U.S. State Plane Coordinate System Alaska Zone 5 NAVD88 Geoid99. The resurvey information was applied to the drill collar coordinates in the database in late 2009.

In 2009 and 2013, the survey locations, hole lengths, naming conventions and numbering designations of the Pebble drill holes were reviewed. This exercise confirmed that several shallow, non-cored, overburden drill holes described in some engineering and environmental reports were essentially the near-surface pre-collars of existing bedrock diamond drill holes. As these pre-collar and bedrock holes have redundant traces, the geologic information was combined into a single trace in the same manner as the wedged holes. In addition, a number of very shallow (less than 15 ft), small diameter, water-monitoring auger holes were removed from the exploration drill hole database, as they did not provide any geological or geochemical information.

10.3 BULK DENSITY RESULTS

Bulk density measurements were collected from drill core samples, as described in Section 11.4. A summary of all bulk density results is provided in

Figure 10.3.1.

Figure 10.3.2 shows a summary of bulk density drill holes used in the current mineral resource estimate.

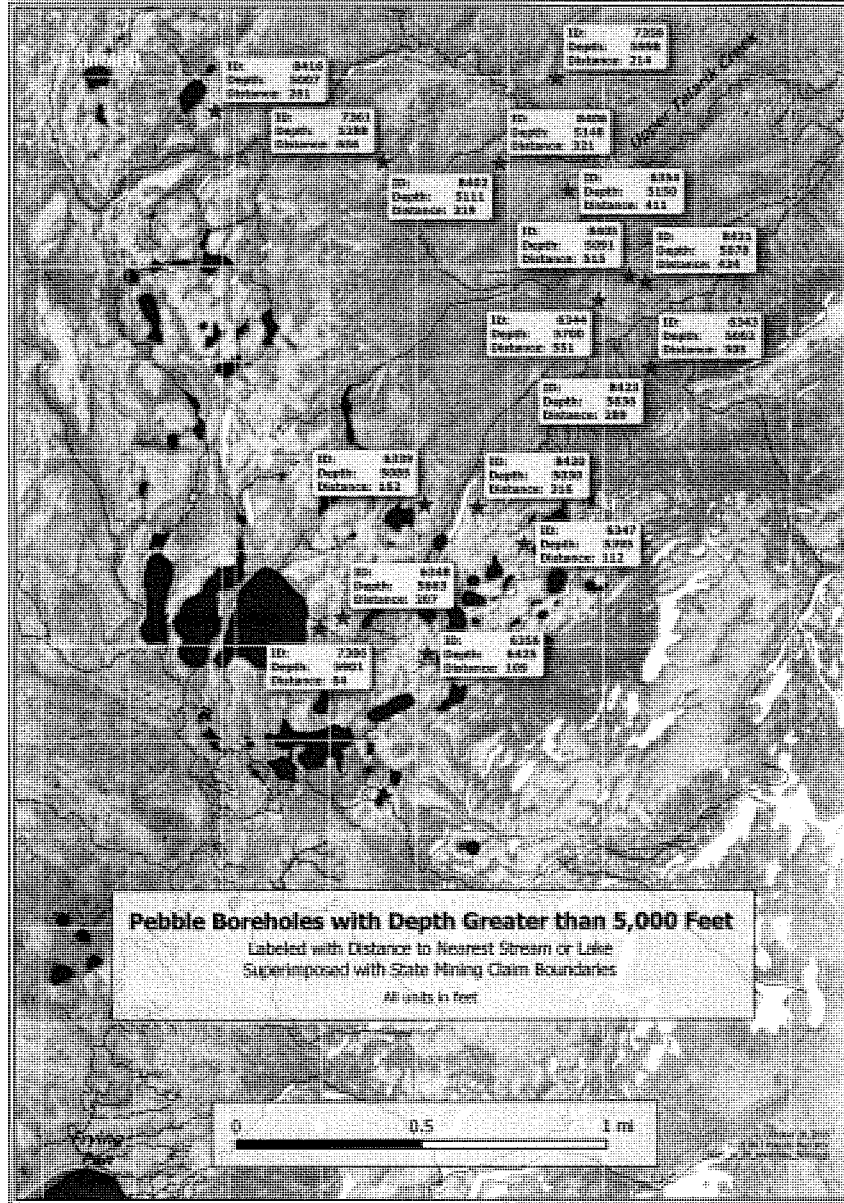
Figure 10.3.1 Summary of All Bulk Density Results

Year	Number of Holes	Total Volume (m <sup>3</sup> )	Average Bulk Density (g/cm <sup>3</sup> )
2008	34	2,600	2.60
2009	2,763	2,497	2.60
2013	2,172	1,925	2.61
All	11,775	2,622	2.62

Figure 10.3.2 Summary of Bulk Density Results Used for Resource Estimation

Year	Number of Holes	Total Volume (m <sup>3</sup> )	Average Bulk Density (g/cm <sup>3</sup> )
2008	34	2,600	2.60
2009	2,130	1,881	2.61
All	11,185	2,622	2.62

# Exhibit B



# Exhibit C



## Exhibit C

Analyte Concentrations of Water Quality Parameters Measured at Pebble Drill Rig #6, South Fork Koktuli River, Nushagak River Drainage, Bristol Bay Alaska on October 22 and 23, 2011

**Table 2. Metal, DRO, and RRO concentrations at Pebble Drill Rig 6 sample sites (SUMP, POOL, SPRING) and Pebble Limited Partnership (PLP) sample site SK133A relative to Water Quality Criteria (WQC). All parameters in µg/L unless otherwise noted. Exceeded WQC are bold. Where replicates were collected (all data from 10/23), means of replicates are listed. Where an analyte was undetected, symbol < is noted with method detection limit. PLP water quality analyte medians for site SK133A included for comparison.<sup>29</sup> Data unavailable for diesel range organics and residual range organics for SK133A. Note: exploration activities are not required to meet WQC. Data for metals not listed here (nickel, mercury, antimony, molybdenum, selenium) are available in Appendix III.**

Parameter	SUMP	POOL		SPRING		PLP SK133A	Water Quality Standard*
	10/23	10/22	10/23	10/22	10/23	2004-2008	
Aluminum (Total)	55,750	27,600	16,300	23	35	39	87
Aluminum (Dissolved)	911	59	946	14	20	13	87
Arsenic (Total)	14.7	8.29	4.47	0.15	0.15	0.155	10
Arsenic (Dissolved)	1.90	1.31	1.14	0.15	0.15	0.155	10
Barium (Total)	368	505	280	5.7	5.4	6.2	2,000
Barium (Dissolved)	11.5	27.6	38	5.0	4.2	6.0	2,000
Cadmium (Total)	0.164	0.177	0.146	0.015	0.015	0.0167	0.10
Cadmium (Dissolved)	0.0673	0.0528	0.0470	0.015	0.015	0.0125	0.09
Chromium (Total)	45.2	16.4	7.54	0.124	0.132	0.259	100
Chromium (Dissolved)	0.635	0.364	0.720	0.143	0.191	0.243	100
Copper (Total)	435	137	70.8	0.2	0.3	0.8	2.85
Copper (Dissolved)	2.7	3.95	5.8	0.8	0.7	0.7	2.74
Iron (Total)	60,950	20,600	12,700	99	87	223	1000
Iron (Dissolved)	595	594	945	26	36	107	1000
Lead (Total)	13.0	10.7	5.01	0.03	0.03	0.05	0.54
Lead (Dissolved)	0.17	0.478	0.483	0.04	0.04	0.05	0.54
Manganese (Total)	365	490	383	6.1	6.4	18	50
Manganese (Dissolved)	15.9	153	182	1	1.6	14	50
Silver (Total)	9.35	2.01	1.65	0.006	0.007	0.003	0.37
Zinc (Total)	116	85.3	71.8	2.8	1.8	3.3	37.02
Zinc (Dissolved)	3.71	6.48	9.11	23.2	4.6	2.8	36.20
Diesel Range Organics (mg/L)	2.95	0.94	0.335	0.18	0.18	--	1.5
Residual Range Organics (mg/L)	2.68	1.32	0.515	0.421	0.201	--	1.1

\* The most stringent standard for all uses is listed (ADEC 2008 [http://dec.alaska.gov/water/wqsar/wqs\\_index.htm](http://dec.alaska.gov/water/wqsar/wqs_index.htm)). For hardness-dependent metals, a hardness of 25 mg/L is used for calculations.

<sup>29</sup> Pebble Limited Partnership Environmental Baseline Document, Chapter 9, Water quality, Appendix 9.1B available at: <http://www.pebbleresearch.com/ebd/bristol-bay-phys-chem-env/chapter-9>

# Exhibit D

Exhibit D

Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
6/14/2006	DH 6339	Drill fluids overflow onto tundra	PLP encountered water at 1200' depth, discharged 2-30 gallons per minute of water over a rocky area on a hill. <sup>1</sup> The "water" discharged onto the tundra at this drill rig – as well as with all others in this Exhibit – was a mixture of water, drilling muds (such as EZ-mud) and cuttings from bore holes.
6/14/2006	DH 6340	Drill fluids overflow onto tundra	PLP encountered water at 150' to 275' depth, produced 80-130 gallons per minute. <sup>2</sup> Water flowed from the drill hole through a hose to a ditch flowing into a sump and the sump was overflowing onto the tundra and a large pump moved water from the sump to an upland pond. <sup>3</sup>
5/9/2007	DDH 7366	Fuel spill; unknown if drill hole was cemented when abandoned.	PLP spilled 2-5 gallons of diesel fuel while slinging a fuel tank away from DDH 7366. The diesel spilled onto the tundra approximately 200 yards east-southeast of the hole. A light backhoe was used to scoop up the contaminated soil. Inspection of the site by DNR nearly 2 months later indicated a faint smell of diesel from the soil. <sup>4</sup> Also unknown if the drill hole was cemented when abandoned. <sup>5</sup>
9/6/2007	DDH 7374	Drill fluids overflow onto tundra	Overflow water from the sump was discharged directly to tundra and DNR observed evidence that the settling sump pit had overflowed. <sup>6</sup>
9/6/2007	DDH 7368	Drill fluids overflow onto tundra; footprint visible after reclamation	Sump pits were not used during drilling, drilling water was discharged directly onto the tundra, post-reclamation the site was not re-vegetated and bare soil was observed. <sup>7</sup>
9/6/2007	DDH 6355	Drill fluids overflow onto tundra; footprint visible after reclamation	Sump pits were not used during drilling, drilling water was discharged directly onto the tundra, post-reclamation the site footprint was slightly visible. <sup>8</sup>

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<sup>1</sup> ADNR Pebble Project Inspection, pp. 2-3 (June 14, 2006), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble06142006.pdf>.  
<sup>2</sup> ADNR Pebble Project Inspection pp. 3-4 (June 14, 2006), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble06142006.pdf>.  
<sup>3</sup> ADEC Pebble Project Inspection pp. 3-4 (June 14, 2006), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebbledcc06142006.pdf>.  
<sup>4</sup> ADNR Pebble Field Inspection, Part III at p. 2 (July 26, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072607.pdf>.  
<sup>5</sup> ADNR Pebble Field Report, p. 4 (Sept. 13, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble091307.pdf>.  
<sup>6</sup> ADNR, Pebble Field Report, p. 3 (Sept. 6, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble090607.pdf>.  
<sup>7</sup> ADNR, Pebble Field Report, p. 5 (Sept. 6, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble090607.pdf>.

Exhibit D

Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
9/13/2007	Drill Site/Well No. 6347	Not plugged or reclaimed, potential groundwater contamination site	"One hole was located that was drilled in 2006 and not plugged or reclaimed (drill hole 6347)." <sup>9</sup> "Wells used as water sources need to be capped when not in use to prevent contamination of groundwater, e.g., Well No. 6347." <sup>10</sup>
10/4/2007	DDH 7385	Drill fluids overflow onto tundra	Sump pit and trench flooded, water and material discharged directly onto the tundra north of the rig, trench and sump pit system inadequate due to marshy conditions. <sup>11</sup>
10/4/2007	Drill Site No. 7369	Natural hollow used a sump	A large natural hollow is used as a secondary sump, DNR pictures show a large pond completely filled with drilling mud-laden water. <sup>12</sup>
10/17/2007	DDH 7388	Drill fluids overflow onto tundra	Artesian flow of 4 gallons/minute, drill water discharge was flowing along a trench into a sump which was overflowing into a small depression nearby and spilling onto the surrounding tundra. <sup>13</sup>
6/18/2008	DDH 7362	Not plugged; water discharging from hole	Abandoned drill site, not plugged, unknown if cemented, site not re-vegetated, reclamation on-going, water discharging from the hole. <sup>14</sup>
6/18/2008	DDH 5331	Drill fluids overflow onto tundra; footprint visible after reclamation	Abandoned drill site, site plugged and reclamation on-going, footprint still visible with bare patches present <sup>15</sup>
6/18/2008	DDH 7389	Not plugged; water discharging from hole	Abandoned drill site, not plugged, water discharging from the hole, hole not cemented, reclamation work had been done. <sup>16</sup>
8/27/2008	Drill Hole/Site no. 8423	Drill fluids overflow onto tundra; smell of fuel	Drill water overflow discharged to upland tundra from sumps, slight fuel odor near the fuel tanks and staining on the ground near the odor. <sup>17</sup>

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<sup>8</sup> ADNR, Pebble Field Report, p. 6 (Sept. 6, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble090607.pdf>.

<sup>9</sup> ADNR Pebble Field Inspection Report, p. 1 (Sept. 13, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble091307.pdf>.

<sup>10</sup> ADNR Pebble Field Inspection Report p. 1 (Oct. 4, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble100407.pdf>.

<sup>11</sup> ADNR Pebble Field Inspection Report p. 3 and 10 (Oct. 4, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble100407.pdf>.

<sup>12</sup> ADNR Pebble Field Inspection Report p. 8 (Oct. 4, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble100407.pdf>.

<sup>13</sup> ADNR Pebble Field Inspection Report p. 3 (Oct. 17, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble101707.pdf>.

<sup>14</sup> ADNR Pebble Field Monitoring Report p. 8 (June 18, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061708.pdf>.

<sup>15</sup> ADNR Pebble Field Monitoring Report p. 8 (June 18, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061708.pdf>.

<sup>16</sup> ADNR Pebble Field Monitoring Report p. 9 (June 18, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061708.pdf>.

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Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
8/27/2008	Drill Hole/Site No. 8420	Drill fluids discharged onto tundra	Drill water overflow discharged to upland tundra from sumps. <sup>18</sup>
8/27/2008	Drill Hole/Site No. 8418	Drill fluids discharged onto tundra	Drill water overflow discharged to upland tundra from sumps. <sup>19</sup>
8/27/2008	DDH 8405	Footprint visible after reclamation, unable to tell if plugged	Abandoned well hole, unable to tell if drill hole had been plugged or not, no re-vegetation, footprint visible. <sup>20</sup>
8/27/2008	DDH 8415	Footprint visible after reclamation, unable to tell if plugged	Abandoned well hole, unable to tell if drill hole had been plugged or not, no re-vegetation, footprint visible. <sup>21</sup>
10/28/2008	Drill Hole/Site No. 8440	Drill fluids discharged onto tundra	Mud was flowing out of the recirculation tank, onto the ground next to the drill, mud flowed downhill towards a kettle pond. <sup>22</sup>
10/28/2008	Drill Hole/Site No. 8441	Fuel spill	Approximately one gallon of hydraulic fluid was spilled; some got into the sump and surrounding area; discharge of drill water and mud into topographic depression. <sup>23</sup> Observation of this site 2 years later showed reclamation issues with little soil or vegetation and tundra replacement that did not survive. <sup>24</sup>
10/28/2008	Drill Hole/Site No. 8420	Drill fluids discharged onto tundra	No water recirculation, drilling water and mud discharged onto snow/tundra. <sup>25</sup>
10/15/2009	Drill Hole/Site No. 9473	Drill water discharged onto tundra	Drill water and mud from sump pits discharged uphill onto tundra. <sup>26</sup> Returning to this site one year later to observe reclamation, the drill hole was not plugged and reclamation was not finished. <sup>27</sup>

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<sup>17</sup> ADNR Pebble Field Monitoring Report, pp. 8-10 (Aug. 27, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082708.pdf>.  
<sup>18</sup> ADNR Pebble Field Monitoring Report, pp. 12-14 (Aug. 27, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082708.pdf>.  
<sup>19</sup> ADNR Pebble Field Monitoring Report, pp. 15-16 (Aug. 27, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082708.pdf>.  
<sup>20</sup> ADNR Pebble Field Monitoring Report, pp. 1, 23-24 (Aug. 27, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082708.pdf>.  
<sup>21</sup> ADNR Pebble Field Monitoring Report, pp. 1, 25-26 (Aug. 27, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082708.pdf>.  
<sup>22</sup> ADNR Pebble Field Monitoring Report, p. 8 (Oct. 28, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble102808.pdf>.  
<sup>23</sup> ADNR Pebble Field Monitoring Report, p. 15 (Oct. 28, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble102808.pdf>.  
<sup>24</sup> ADNR Pebble Field Monitoring Report, p. 12 (Aug. 3, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble080310.pdf>.  
<sup>25</sup> ADNR Pebble Field Monitoring Report, p. 18 (Oct. 28, 2008), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble102808.pdf>.  
<sup>26</sup> ADNR Pebble Field Monitoring Report, p. 3 (October 15, 2009), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble101509.pdf>.  
<sup>27</sup> ADNR Pebble Field Monitoring Report, p. 15 (May 24, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble052411.pdf>.

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Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
10/15/2009	Drill Hole/Site No. 9471	Drill fluids discharged onto tundra	Drill water and mud from sump pits discharged uphill onto tundra <sup>28</sup>
10/15/2009	Drill Hole/Site No. 9462	Sump pit not reclaimed	Abandoned drill hole, plugged, but sump pit not reclaimed and water discharge trench only partially filled in.
6/8/2010	DDH 10488	Fuel spill	Spill of 15.0 gallons of hydraulic oil <sup>29</sup>
6/15/2010	Drill Hole/Site No. 8429	Footprint visible after reclamation	"Site was reclaimed but vegetation is not growing well"; dead vegetation at the site. <sup>30</sup>
6/15/2010	Drill Hole/Site No. 8432	Footprint visible after reclamation	"site reclaimed but vegetation growth is limited and bare soil present." <sup>31</sup>
6/15/2010	Drill Hole/Site No. 9466	Footprint visible after reclamation	"Vegetation growth appears slower here than other sites." <sup>32</sup>
6/15/2010	Drill Hole/Site No. 9470 and 9471	Footprint visible after reclamation	"Site reclaimed, but areas of exposed soil were observed where vegetation did not take." <sup>33</sup>
6/16/2010	Drill Hole/Site No. 8412	Incomplete or unsuccessful remediation	Unknown if drill hole was plugged or cemented, vegetation is not regrowing at the site. "Site was messy and in poor condition. What appeared to be bentonite was present in clumps on the ground. Standing water around drill hole." <sup>34</sup>
6/16/2010	Drill Hole/Site No. 8440	Footprint visible after reclamation	"Most of the vegetation is dead and not growing back." <sup>35</sup>
7/8/2010	DDH 10488	Fuel Spill	Spill of 15.0 gallons of hydraulic oil. <sup>36</sup>
8/3/2010	DDH 10498	Drill fluids discharged onto tundra	Drill water and mud from sump pits discharged uphill onto tundra <sup>37</sup>

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<sup>28</sup> ADNR Pebble Field Monitoring Report, p. 7 (October 15, 2009), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble101509.pdf>.

<sup>29</sup> ADEC Spill Report (June 8, 2010), <http://dca.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=35905>.

<sup>30</sup> ADNR Pebble Field Monitoring Report, p. 8 (June 15-16, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061510.pdf>.

<sup>31</sup> ADNR Pebble Field Monitoring Report, p. 9 (June 15-16, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061510.pdf>.

<sup>32</sup> ADNR Pebble Field Monitoring Report, p. 11 (June 15-16, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061510.pdf>.

<sup>33</sup> ADNR Pebble Field Monitoring Report, p. 12 (June 15-16, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061510.pdf>.

<sup>34</sup> ADNR Pebble Field Monitoring Report, p. 14 (June 15-16, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061510.pdf>.

<sup>35</sup> ADNR Pebble Field Monitoring Report, p. 16 (June 15-16, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061510.pdf>.

<sup>36</sup> ADEC Spill Report (July 8, 2010), <http://dca.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=35905>.

<sup>37</sup> ADNR Pebble Field Monitoring Report, p. 7 (Aug. 3, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble080310.pdf>.

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Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
8/3/2010	DDH 9464	Footprint visible after reclamation	"much of the site has not revegetated." <sup>38</sup>
8/3/2010	DDH 7378	Footprint visible after reclamation	"Tundra has been replaced, but growth of the vegetation is quite limited." <sup>39</sup>
9/10/2010	DDH 10512	Fuel spill	Spill of 25.0 gallons of hydraulic oil <sup>40</sup>
10/13/2010	Drill Hole/Site No. 10523	Drill fluids discharged onto tundra	Drill water and mud from sump pits discharged downslope from pits onto tundra <sup>41</sup>
5/24/2011	DDH 11528	Drill fluids discharged onto tundra	"DDH 11528 had areas on the tundra where drill water had overflowed trench." <sup>42</sup>
6/22/2011	Drill Hole/ Site No. 10514	Staining and petroleum odor at reclamation site	Reclaimed in Fall 2010, "Slight petroleum odor on vegetation adjacent to drill hole. Approximately a 4-foot diameter area was stained at this site." <sup>43</sup> Spill remediated by next site visit but the vegetation around the drill site is sparse. <sup>44</sup>
6/26/2011	DDH 11529	Fuel spill	Spill of 3.0 gallons of hydraulic fluid <sup>45</sup>
6/26/2011	Drill Hole/Site No. 11533	Fuel Spill; Incomplete or unsuccessful remediation	Spill of 40.0 gallons of hydraulic fluid. Hydraulic fluid was injected down the drill hole, so the leak was not noticed until circulation brought it back to the surface. <sup>46</sup> A year later, after abandoned, tundra is regenerating slowly and iron bacteria sheen noted on water surface at reclamation site. <sup>47</sup>
7/12/2011	DDH 10523	Filled sump collapsed	"A filled sump at DDH 10523 has collapsed, and needs more fill." <sup>48</sup>

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<sup>38</sup> ADNR Pebble Field Monitoring Report, p. 11 (Aug. 3, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble080310.pdf>.  
<sup>39</sup> ADNR Pebble Field Monitoring Report, p. 13 (Aug. 3, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble080310.pdf>.  
<sup>40</sup> ADEC Spill Report (Sept. 10, 2010), <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=36292>.  
<sup>41</sup> ADNR Pebble Field Monitoring Report, p. 2 (Oct. 13, 2010), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble101310.pdf>.  
<sup>42</sup> ADNR Pebble Field Monitoring Report, p. 1 (May 24, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble052411.pdf>.  
<sup>43</sup> ADNR Pebble Field Monitoring Report, p. 14 (June 22, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble062211.pdf>.  
<sup>44</sup> ADNR Pebble Field Monitoring Report, p. 1 (July 12, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble071211.pdf>.  
<sup>45</sup> ADEC Spill Report (June 26, 2011), <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=38026>.  
<sup>46</sup> ADNR Pebble Field Monitoring Report, p. 3 (July 12, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble071211.pdf>.  
<sup>47</sup> ADNR Pebble Field Monitoring Report, p. 11 (June 19, 2012), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061912.pdf>.  
<sup>48</sup> ADNR Pebble Field Monitoring Report, p. 1 (July 12, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble071211.pdf>.

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Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
8/25/2011	Drill Hole/Site No. 11531	Impacts to vegetation	"Evidence of significant impacts to riparian vegetation or stream banks." <sup>49</sup>
8/25/2011	Drill Hole/Site No. 11-533	Impacts to vegetation	"Site 11-522 will require extra attention during reclamation as the site was occupied for a considerable period of time and some vegetation was trampled." <sup>50</sup>
10/7/2011	GH11292S	Fuel spill	Spill of 13.0 gallons of diesel <sup>51</sup>
10/20/2011	Drill Hole/Site No. 09462	Artesian flow impacting remediation efforts	Abandoned well, plugging in progress, "lots of water issued from the hole;" water upflowing through subsurface materials and discharging to the ground. "Overland flow as created discolored, possibly iron stained zones on the surface 10-15 feet wide." <sup>52</sup> Eight months later, grouting stopped the artesian flow, but the drill hole was not yet reclaimed and iron staining and remnants of materials discharged from previous artesian upwelling were observed. <sup>53</sup> And in summer 2013 there was still some iron staining on the tundra adjacent to the revegetated sump pits and most of the vegetation was not doing well. <sup>54</sup>
6/8/2012	DDH 11540	Fuel spill	Spill of 10.0 gallons of hydraulic fluid <sup>55</sup>
6/19/2012	DDH 11534	Incomplete or unsuccessful remediation	Abandoned drill hole site from previous year, replaced tundra not doing very well. <sup>56</sup>
8/7/2012	DDH 1549	Fuel spill	Spill of 13.0 gallons of hydraulic fluid <sup>57</sup>
8/21/2012	GH 12-333	Drill fluids discharged onto tundra	"Water from sump pit pumped up slope and away from any surface water and discharged on tundra." <sup>58</sup>

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<sup>49</sup> ADNR Pebble Field Monitoring Report, p. 2 (Aug. 25, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082511.pdf>.  
<sup>50</sup> ADNR Pebble Field Monitoring Report, p. 1 (Aug. 25, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082511.pdf>.  
<sup>51</sup> ADEC Spill Report (Oct. 7, 2011), <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=38469>.  
<sup>52</sup> ADNR Pebble Field Monitoring Report, p. 10 (Oct. 20, 2011), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble102011.pdf>.  
<sup>53</sup> ADNR Pebble Field Monitoring Report, p. 1, 6 (June 19, 2012), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061912.pdf>.  
<sup>54</sup> ADNR Pebble Field Monitoring Report, p. 1, 16 (July 23, 2013), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072313.pdf>.  
<sup>55</sup> ADEC Spill Report (June 8, 2012), <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=39865>.  
<sup>56</sup> ADNR Pebble Field Monitoring Report, p. 9 (June 19, 2012), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble061912.pdf>.  
<sup>57</sup> ADEC Spill Report (Aug. 7, 2012), <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=40301>.  
<sup>58</sup> ADNR Pebble Field Monitoring Report, p. 2 (Aug. 21, 2012), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble082112.pdf>.



Exhibit D

Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
10/17/2012	DDH 12561	Drill fluids discharged onto tundra	Water from sump pit discharged on tundra approximately 200ft south of the rig. <sup>59</sup>
10/17/2012	DDH 12560	Drill fluids discharged onto tundra	Water from sump pit discharged on tundra approximately 200ft south of the rig. <sup>60</sup>
6/28/2013	DDH 12562	Fuel spill	Spill of 2.0 gallons of hydraulic fluid <sup>61</sup>
7/23/2013	GH 13-371	Drill fluids discharged onto tundra	Water from sump pit discharged on tundra about 200ft northwest of the rig, some murky water pooled at discharge site. <sup>62</sup>
7/23/2013	GH 12-322S	Footprint visible after reclamation, drill hole not plugged	Drill hole not plugged and the trench and sump pit locations were visible due to brown color of tundra. <sup>63</sup>
8/6/2013	DDH12555	Footprint visible after reclamation	Abandoned drill site, vegetation sparse. <sup>64</sup>
9/9/2013	GH 13-383	Drill fluids discharged onto tundra	Water from sump pit discharged on tundra about 200ft northeast of the rig. <sup>65</sup>
7/22/2015	DH 4223	Water upwelling near abandoned drill hole	"The area around the drill hole location is extremely wet and spongy. Lab tests conducted by PLP indicate that the chemical composition is similar to other nearby seeps in the surrounding area." <sup>66</sup>
7/22/2015	DDH 40	Water from well created surface staining	"Water from DDH 40 created the surface staining with iron algae in a channel approximately 120 feet long." <sup>67</sup>
7/22/2015	DH 9	Surface staining; impacts to vegetation	Abandoned well hole from 1988, "Surface staining and impact on vegetation are evident from aerial view." <sup>68</sup>

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<sup>59</sup> ADNR Pebble Field Monitoring Report, p. 8 (Oct. 17, 2012), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble101712.pdf>.  
<sup>60</sup> ADNR Pebble Field Monitoring Report, p. 14 (Oct. 17, 2012), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble101712.pdf>.  
<sup>61</sup> ADEC Spill Report (June 28, 2013), <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=42036>.  
<sup>62</sup> ADNR Pebble Field Monitoring Report, p. 2 (July 23, 2013), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072313.pdf>.  
<sup>63</sup> ADNR Pebble Field Monitoring Report, p. 13 (July 23, 2013), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072313.pdf>.  
<sup>64</sup> ADNR Pebble Field Monitoring Report, pp. 5-6 (Aug. 6, 2013), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble080613.pdf>.  
<sup>65</sup> ADNR Pebble Field Monitoring Report, pp. 2-4 (Sept. 9, 2013), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble090913.pdf>.  
<sup>66</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 7 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.  
<sup>67</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 9 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

Exhibit D

Selected Examples of Pebble Exploration Drill Holes with Known Past Recorded Problems

Obs. Date	Drill Hole Site No.	Type of Problem	Details
7/22/2015	DH 1240	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>69</sup>
7/22/2015	DH 4224	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>70</sup>
7/22/2015	DH 5330	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>71</sup>
7/22/2015	DH 7382	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>72</sup>
7/22/2015	DH 8413	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>73</sup>
7/22/2015	DH 8423	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>74</sup>
7/22/2015	DH 9475	Field maintenance needed	"Field maintenance activities to eliminate surface water seepage and minor surface repairs to existing valves, caps, or plugs." <sup>75</sup>

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<sup>68</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 9 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>69</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>70</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>71</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>72</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>73</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>74</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>75</sup> ADNR, Pebble Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, p. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

# Exhibit E

Date	Spill Number	Spill Name	Gallons Spilled	Material Spilled	Responsible Party
3/12/2006	06269907101 <sup>1</sup>	Northern Dynasty Mine/ Pollux Aviatin	35.0	Aviation Fuel	Northern Dynasty Mine
5/28/2006	06269914801 <sup>2</sup>	Northern Dynasty Mines, Iliamna Runway Spill	90.0	Diesel	-----
6/23/2006	06269917402 <sup>3</sup>	Northern Dynasty Mine Connector	20.0	Diesel	Northern Dynasty Mine
5/9/2007	07269912901 <sup>4</sup>	Northern Dynast Mine AK Plane zone 5	80.0	Diesel	Northern Dynasty Mine
9/12/2007	07269925501 <sup>5</sup>	Northern Dynasty Mines Diesel	12.0	Diesel	Northern Dynasty Mine
2/15/2008	08269904601 <sup>6</sup>	Pebble Mine Hydraulic Oil 2/15/08	30.0	Hydraulic Oil	Northern Dynasty Mine
5/16/2008	08269913701 <sup>7</sup>	-----	5.0	Hydraulic Oil	Pebble Mine
5/17/2008	08269913801 <sup>8</sup>	-----	3.0	Engine Lube Oil	Pebble Mine
5/22/2008	08269914301 <sup>9</sup>	-----	4.0	Hydraulic Oil	Pebble Mine
6/13/2008	08269916501 <sup>10</sup>	-----	8.0	Hydraulic Oil	Pebble Mine
7/15/2008	08269919701 <sup>11</sup>	-----	18.0	Aviation Fuel	Pebble Mine
7/28/2008	08269921001 <sup>12</sup>	-----	2.0	Ethylene Glycol	Pebble Mine
9/2/2008	08269924601 <sup>13</sup>	Pebble 5 gal hydraulic spill	5.0	Hydraulic Oil	Pebble Limited Partnership
9/2/2008	08269924602 <sup>14</sup>	Pebble Project 5 gal Hydraulic Spill	5.0	Hydraulic Oil	Pebble Limited Partnership
9/25/2008	08269926901 <sup>15</sup>	Pebble Exploration AvGas Spill 40 Gallons	40.0	Aviation Fuel	Pebble Exploration
11/17/2008	08269932201 <sup>16</sup>	-----	9.0	Hydraulic Oil	Pebble Mine

<sup>1</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=26070>  
<sup>2</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=26636>  
<sup>3</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=26839>  
<sup>4</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=28682>  
<sup>5</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=29926>  
<sup>6</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=30799>  
<sup>7</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=31549>  
<sup>8</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=31551>  
<sup>9</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=31552>  
<sup>10</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=31702>  
<sup>11</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=31800>  
<sup>12</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=31889>  
<sup>13</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=36122>  
<sup>14</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=36124>  
<sup>15</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=32204>

Exhibit E

ADEC Record of Reported Spills from Pebble Exploration Activities

Date	Spill Number	Spill Name	Gallons Spilled	Material Spilled	Responsible Party
8/3/2009	09269921501 <sup>17</sup>	South Hanger, Iliamna Airport	10.0	Diesel	Pebble Exploration
8/15/2009	09269922701 <sup>18</sup>	Hydraulic line ruptured	1.5	Hydraulic Oil	Pebble Exploration
10/15/2009	09269928801 <sup>19</sup>	Pebble Exploration 7 Gal Hydraulic Spill	7.0	Hydraulic Oil	Pebble Project
6/1/2010	10269915201 <sup>20</sup>	Pebble Project Diesel	1.5	Hydraulic Oil	Pebble Limited Partnership
7/8/2010	10269918901 <sup>21</sup>	Pebble Project Bore Hole DDH 10488	15.0	Hydraulic Oil	Pebble Limited Partnership
9/10/2010	10269925301 <sup>22</sup>	Pebble Bore Hole DDH 10512	25.0	Hydraulic Oil	Pebble Limited Partnership
6/26/2011	11269917702 <sup>23</sup>	Pebble Exploration Boring DDH 11529	3.0	Hydraulic Oil	Pebble Limited Partnership
10/7/2011	11269928001 <sup>24</sup>	Pebble Project Drill Site GH11292S	13.0	Diesel	Pebble Limited Partnership
6/8/2012	12269916001 <sup>25</sup>	Pebble Limited Partnership, DDH 11540, 10 Gal Hydr	10.0	Hydraulic Oil	Pebble Limited Partnership
8/7/2012	12269922001 <sup>26</sup>	Pebble DDH1549 Hydraulic	13.0	Hydraulic Oil	Pebble Limited Partnership
6/28/2013	13269917901 <sup>27</sup>	Pebble BH DDH 12562 Hydraulic	2.0	Hydraulic Oil	Pebble Limited Partnership
<b>Total Spills = 27</b>		<b>Total Gallons Reported Spilled = 467</b>			

<sup>16</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=32592>  
<sup>17</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=34277>  
<sup>18</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=34507>  
<sup>19</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=34651>  
<sup>20</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=35949>  
<sup>21</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=35905>  
<sup>22</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=36292>  
<sup>23</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=38026>  
<sup>24</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=38469>  
<sup>25</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=39865>  
<sup>26</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=40301>  
<sup>27</sup> <http://dec.alaska.gov/Applications/SPAR/PublicMVC/PERP/SpillDetails?SpillID=42036>

# Exhibit F

Facility or Equipment	Location	Description
2004 Camp Site with 8-10 buildings	SE1/4 SE1/4 Sec 21 T3S R35W	"Northern Dynasty built a camp with 8-10 small buildings for use in 2004. The facility is no longer used as a camp, but Northern Dynasty has left the structures in place for storage and a possible shelter in bad weather." <sup>1</sup> As of 2013, it is "used for storage of drill parts, water line, reclamation supplies, etc. in temporary structures. When not in use at the drill rigs, all other temporary structures used as emergency shelters, water heater housing, empty garbage totes, outhouses, etc., are also stored at the Supply Depot. One 10ft x 20ft wooden structure is used to store drill supplies that require protection from the elements. A WeatherPort type tent (approximately 24ft x 60ft) is used to temporarily store mechanical equipment. Both temporary structures are heated." <sup>2</sup>
Discovery Outcrop Old Exploration Camp	West Orebody, discovery outcrop	The old exploration camp is located about 200 yards south of discovery outcrop and was being used for storage during many years of PLP's exploration efforts. According to DNR in 2007, PLP "has a lot of materials stored in the old camp, particularly drill steel." <sup>3</sup>
Main Supply Depot	Near drill hole GH12-320S	As of July 2015, the following items remained at the depot: (1) at least 19 boxes for line heaters; (2) spill response kits; (3) at least 3 wooden fly boxes; (4) at least 10 piles of tundra pads stacked 10 high; (5) multiple drill platforms not being used; (6) numerous drill rods and casing; (7) dunnage material for cribbing; (8) multiple aluminum water boxes and fly boxes stored for future use; (9) two med ports; (10) numerous empty fuel tanks; (11) sheds; (12) supply storage tents; and (13) the main supply storage building. <sup>4</sup>
Watershed Supply Area	Near DH 5326	As of July 2015, this closed site contained a few buildings, a Quonset hut, support structures out in the field, and many scattered barrels. <sup>5</sup> Contains two temporary structures erected to protect water hose and keep it from freezing. One is metal clad (approximately 10ft x 20ft) and the other is a wooden structure (approximately 20ft x 40ft). <sup>6</sup>

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<sup>1</sup> ADNR Pebble Project Inspection (June 14, 2006), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble06142006.pdf>.

<sup>2</sup> PLP, 2013 Annual Reclamation Report, The Pebble Project, p 3 (April 4, 2014), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/plprcc2013.pdf>.

<sup>3</sup> ADNR Pebble Field Inspection, Part III at 6 and 9 (July 26, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble072607.pdf>.

<sup>4</sup> ADNR, Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, pp. 2-5 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>5</sup> ADNR, Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, pp. 11-12 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>6</sup> PLP, 2013 Annual Reclamation Report, The Pebble Project, p 3 (April 4, 2014), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/plprcc2013.pdf>.

Exhibit F

Pebble Exploration Facilities and Equipment Left Behind

Facility or Equipment	Location	Description
Weather Monitoring Facilities	Various	Pebble 1, aka North Weather Station, is situated at 59d 54.183 N, 155d 19.800 W. Pebble 8, aka Northwest Weather Station, is situated at 59d 54.536 N, 155d 18.742 W. "During 2013, two 60 meter towers were installed at two distinct locations. The purpose of these stations is to collect wind data for 18 to 24 months, after which the towers and stations will be removed and site reclaimed. Meteorological Tower 1 is located on State of Alaska land, PLP mining claim, on Kaskanak Mountain approximately 18 miles from the Iliamna Airport at 59d 49 40.08 N, 155d 28 33.67 W. Meteorological Tower 2 is located on State of Alaska land, PLP mining claim, on Sharp Mountain approximately 17 miles from the Iliamna Airport at 59d 46 55.70 N, 155d 26 01.72 W." <sup>7</sup>
West Bay (3)	Western extent of PLP operations, former drill sites DDH-6349, GH10-220, and DDH 11531 <sup>8</sup>	Three small facilities for storage and to provide shelter for crews during data collection. <sup>9</sup>
Wiggly Lake Airport and fuel storage	Wiggly Lake	In 2007, the site was used for on-site fuel storage – one depot held 3,000 gallons and was 200 feet from the lake, the other depot held 2,000 gallons and was 100 feet from the lake and fuel was parsed out to the various drill sites as needed. <sup>10</sup> However, as of summer 2015, the structures and infrastructure for the heliport site and fuel supply depot at Wiggle Lake had been removed. <sup>11</sup>

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<sup>7</sup> PLP, 2013 Annual Reclamation Report, The Pebble Project, p 3 (April 4, 2014), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/plprece2013.pdf>.

<sup>8</sup> PLP, 2013 Annual Reclamation Report, The Pebble Project, p 3 (April 4, 2014), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/reclamation-reports/plprece2013.pdf>.

<sup>9</sup> ADNR, Field Monitoring Report, APMA A20146118 Pebble Limited Partnership, pp. 15 (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.

<sup>10</sup> ADNR, Field Report Pebble Copper/Gold Project (April 5, 2007), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble040507.pdf>.

<sup>11</sup> ADNR, Pebble Project Field Monitoring Report (July 22, 2015), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/field-reports/pebble10122015.pdf?pdf=pebble-july22>.





**The Demeaning of Independence:  
Response to the Pebble Limited Partnership-Funded  
Cohen Review of EPA's Proposal to  
Protect Salmon from Large-Scale Mining in  
Bristol Bay, Alaska**

November 4, 2015

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## I. EXECUTIVE SUMMARY

On October 6, 2015, The Cohen Group, led by former Secretary of Defense William Cohen, in association with the law firm DLA Piper LLP, issued a report (“Cohen Report”)<sup>1</sup> commissioned by their client The Pebble Limited Partnership (“PLP”) critiquing the U.S. Environmental Protection Agency’s (“EPA”) review and proposed action with respect to PLP’s Pebble Mine, proposed to be constructed in the headwaters of Bristol Bay, Alaska. The Natural Resources Defense Council (“NRDC”)<sup>2</sup> responds here to that report.

Bristol Bay is “one of America’s greatest national treasures.”<sup>3</sup> The Bristol Bay watershed—and the salmon, wildlife, and Native communities that call it home—exist in a rare and pristine state of self-sustainability, undisturbed by significant human development. The watershed is home to the largest wild sockeye salmon fishery in the world, supporting half of the world’s wild sockeye salmon and generating \$1.5 billion annually and 14,000 jobs.<sup>4</sup> Approximately 70% of the salmon returning to spawn are harvested, and the commercial salmon harvest has been successfully regulated to maintain a sustainable fishery and, in turn, sustainable salmon-based ecosystems. The Bristol Bay watershed, with its high quality commercial, recreational, and subsistence fisheries, represents an aquatic resource of national—and global—importance. Indeed, its sensitive streams and wetlands are cherished not only because they are essential to the well-being of the region’s world-class wild salmon fisheries, but also because they serve as the lifeblood of Alaska Native cultures that have thrived there for millennia—as well as world-class sports fishing and tourism industries that the region’s hydrology supports.

Bristol Bay is threatened by large-scale mining like the proposed Pebble Mine, a giant gold and copper mine that, if built, would: produce up to 10 billion tons of mining waste; destroy salmon spawning and rearing habitat, including up to 94 miles of streams; devastate 5,350 acres of wetlands, ponds, and lakes; significantly impact fish populations in streams surrounding the mine site; alter stream flows of up to 33 miles of salmon-supporting streams, likely affecting ecosystem structure and function; and create a transportation corridor to Cook Inlet crossing wetlands and approximately 64 streams and rivers in the Kvichak River watershed, 55 of which are known or likely to support salmon. Culvert failures, runoff, and spills of chemicals would put

<sup>1</sup> The Cohen Group, *Report of An Independent Review Of The United States Environmental Protection Agency’s Actions In Connection With Its Evaluation Of Potential Mining In Alaska’s Bristol Bay Watershed* (Oct. 6, 2015), available at <http://files.cohengroup.net/Final/Final-Report-with-Appendices-compressed.pdf> [hereinafter “Cohen Report”].

<sup>2</sup> NRDC is a nonprofit organization of 500 scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment in the United States and internationally, with offices in New York, Washington D.C., Montana, Los Angeles, San Francisco, Chicago, and Beijing. Founded in 1970, NRDC uses law, science and the support of 2.4 million members and online activists to protect the planet’s wildlife and wild places and to ensure a safe and healthy environment for all living things.

<sup>3</sup> Tanya Somanader, *5 Things You Need to Know About Alaska’s Bristol Bay*, The White House Blog (Dec. 16, 2014 at 5:12 PM), <https://www.whitehouse.gov/blog/2014/12/16/5-things-you-need-know-about-alaskas-bristol-bay>.

<sup>4</sup> Gunnar Knapp et al., Univ. of Alaska Anchorage Inst. of Soc. & Econ. Research, *The Economic Importance of the Bristol Bay Salmon Industry at 1* (2013), available at <http://fishermenforbristolbay.org/wp-content/uploads/2013/02/CFBB-ISER-FINAL-REPORT-5-10-2013.pdf>; see also U.S. EPA, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, 910-R-14-001ES (2014), available at [http://www2.epa.gov/sites/production/files/2015-05/documents/bristol\\_bay\\_assessment\\_final\\_2014\\_vol1.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/bristol_bay_assessment_final_2014_vol1.pdf) [hereinafter “BBWA”].

salmon spawning areas at risk and require the collection, storage, treatment and management of extensive quantities of mine waste, leachates, and wastewater during mining and “long after mining concludes.”<sup>5</sup>

Given Bristol Bay’s economic and ecological importance—and the potentially “catastrophic”<sup>6</sup> risks of large-scale mining on the watershed—EPA adopted a methodical scientific review process for (1) assessing the potential impacts of large-scale mining in the region and (2) determining whether a proposed determination under Section 404(c) of the Clean Water Act<sup>7</sup> is warranted and, if so, what that determination should be. This process – conducted over a period of four years – was designed to ensure that the assessment would be informed both by extensive public participation and by significant scientific peer review.

Secretary Cohen and DLA Piper LLP have acknowledged that they were hired and paid by PLP, the proponent of the proposed Pebble Mine, and that should be kept in mind when evaluating the independence of their report. More specifically, though, and as described in detail below, the Cohen Report’s criticisms of EPA are entirely unfounded on the merits as a matter of fact and law. For the reasons summarized below, the Report should be disregarded in its entirety:

First, contrary to the allegations in the report, EPA’s proactive approach in the pre-permit timeframe is common in a variety of environmental decision-making contexts. The fact that a proactive approach has only rarely been used in the Clean Water Act Section 404 permitting context does not render EPA’s use of this approach in Bristol Bay unprecedented, novel, or illegitimate in any way. Second, following PLP’s lead in attacking EPA for allegedly pre-determining the outcome of its administrative review process, the Cohen Report repeats similar arguments on PLP’s behalf and ignores the extraordinarily comprehensive and inclusive public process that accompanied every stage of EPA’s review, including repeated opportunities for public comment and two scientific peer reviews. Third, the Cohen Report authors’ make it sound as if the use of hypothetical scenarios in environmental decision-making is unusual or in some way inadequate, when this is routinely done in many contexts. Fourth, the Cohen Report’s assertion that EPA has not fully explained the basis for its 404(c) proposal is belied by the extensive record, including both EPA’s comprehensive scientific watershed assessment and the agency’s proposed determination. Finally, in contrast to EPA’s actions, it is the Cohen Report that lacks transparency and reflects bias.

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<sup>5</sup> U.S. EPA, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, 910-R-14-001ES (2014), available at [http://www2.epa.gov/sites/production/files/2015-05/documents/bristol\\_bay\\_assessment\\_final\\_2014\\_vol1.pdf](http://www2.epa.gov/sites/production/files/2015-05/documents/bristol_bay_assessment_final_2014_vol1.pdf) [hereinafter “BBWA”]; see also Press Release, U.S. EPA, *EPA Releases Bristol Bay Assessment Describing Potential Impacts to Salmon and Water From Copper, Gold Mining / Agency launched study after requests for action to protect Bristol Bay watershed from large-scale mining* (Jan. 15, 2014), available at <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/eab0fc9ea00209d785257c610069e88?OpenDocument>.

<sup>6</sup> BBWA at 9-2.

<sup>7</sup> 33 U.S.C. § 1344(c).

## II. STATUTORY BACKGROUND

EPA’s primary mission is to “ensure that ... all Americans are protected from significant risks to human health and the environment where they live, learn and work;”<sup>8</sup> and one of EPA’s top strategic priorities is “Protecting America’s Waters,” which means “[p]rotect and restore waters to ensure that drinking water is safe and sustainably managed, and that aquatic ecosystems sustain fish, plants, wildlife, and other biota, as well as economic, recreational, and subsistence activities.”<sup>9</sup>

In Section 404(c) of the Clean Water Act (“CWA”),<sup>10</sup> Congress gave EPA broad authority to protect water resources from unacceptable adverse effects “whenever” the time is right.<sup>11</sup> It is beyond dispute that the CWA authorizes EPA to undertake 404(c) action in a proactive manner to prevent certain areas from being used as disposal sites for mining waste or other dredged or fill material. As explained by the D.C. Circuit, the statute “imposes no temporal limit” on EPA’s authority to exercise its 404(c) authority “whenever” it makes a determination that an “unacceptable adverse effect” would result because, by using the “expansive conjunction ‘whenever,’ the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at *any* time.”<sup>12</sup> In light of this “unambiguous” and “manifest” intent of Congress,<sup>13</sup> the Cohen Report “[a]ccept[s] EPA’s statutory authority to take action to protect the environment whenever it determines unacceptable adverse effects may result from development activities.”<sup>14</sup>

EPA has articulated several policy rationales in support of pre-permitting action in the 404(c) context. Where EPA has reason to believe that “unacceptable adverse effects” would result from the specification of an area for disposal of dredged or fill material, acting on that belief before a permitting process has begun is beneficial because it provides certainty for developers and avoids wasting their time and money:

EPA also feels that there are strong reasons for including this pre-permit authority in the present regulations. Such an approach will facilitate planning by developers and industry. It will eliminate frustrating situations in which someone spends time and money developing a project for an inappropriate site and learns at an advanced stage

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<sup>8</sup> U.S. EPA, *Our Mission and What We Do* (Nov 2, 2015, 10:35 AM), <http://www2.epa.gov/aboutepa/our-mission-and-what-we-do>.

<sup>9</sup> U.S. EPA, *An Introduction to the Water Elements of EPA’s Strategic Plan*, (Nov. 2, 2015, 10:56 AM), [http://water.epa.gov/aboutow/goals\\_objectives/goals.cfm](http://water.epa.gov/aboutow/goals_objectives/goals.cfm).

<sup>10</sup> EPA’s mandate under Section 404(c) is to prohibit, deny, restrict, or withdraw dredge and fill projects that are reasonably likely to have an “unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.” 33 U.S.C. § 1344(c).

<sup>11</sup> 33 U.S.C. § 1344(c).

<sup>12</sup> *Mingo Logan Coal v. EPA*, 714 F.3d 608, 613 (D.C. Cir. 2013) (emphasis in original).

<sup>13</sup> *Id.*

<sup>14</sup> *Cohen Report*, at 2.

that he must start over. In addition, advance prohibition will facilitate comprehensive rather than piecemeal protection of wetlands.<sup>15</sup>

These policies underscore the appropriateness of proactive 404(c) action in Bristol Bay. Waiting for a permitting process to begin would only be more damaging as more time, energy, and money would be invested by industry, permitting agencies, and the public.<sup>16</sup> Moreover, the disruption and anxiety arising from the potential for large-scale metallic sulfide mining to cause “unacceptable adverse effects” in vital salmon habitat would continue for many more years. The Pebble deposit presents one of the rare cases when the right time for EPA to exercise its authority happens to be before the proponent has filed a permit application.

### III. DISCUSSION

#### A. EPA’s Proactive Approach Is Common in Environmental Decision-Making, Not Unprecedented or Novel.

The fundamental premise of the Cohen Report is that environmental decision-making should begin when a project proponent submits a permit application and that proactive agency decision-making prior to that starting point lacks legitimacy.<sup>17</sup> In particular, the Cohen Report lauds the dredge-and-fill permitting program under Section 404(a) of the CWA as a “well-established, widely-endorsed, and court-tested process,”<sup>18</sup> while denigrating the proactive restriction of disposal sites under Section 404(c) as an “unprecedented” and “novel” “experiment” that is “not fair to all stakeholders.”<sup>19</sup> This argument is fundamentally wrong because, even apart from the congressionally enacted 404(c) process itself, it ignores decades of environmental decision-making in which EPA and other federal and state agencies routinely set parameters for permitting in the pre-permit timeframe similar to the restrictions EPA established in its Proposed Determination regarding the Pebble deposit.<sup>20</sup>

For example, also under the CWA, EPA and states establish parameters for industrial permitting and agricultural development in the pre-permit timeframe under the CWA’s total maximum daily

<sup>15</sup> U.S. EPA, *Denial or Restriction of Disposal Sites: Section 404(c) Procedures*, 44 Fed. Reg. 58076, 58077 (Oct. 9, 1979).

<sup>16</sup> According to a recent GAO report, the average time from initiation to completion of an EIS is 4.6 years. See U.S. GAO, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, GAO-14-370 at 14 (April 2014), available at <http://www.gao.gov/assets/670/662546.pdf> (Noting that it would be wasteful and inefficient for all involved to complete an EIS process for a mining project without taking into account 404(c) restrictions from the outset).

<sup>17</sup> See *Cohen Report*, at 2 (describing Secretary Cohen’s “central concern” as being “that EPA took regulatory action under Section 404(c) of the Clean Water Act substantially limiting potential development without first having reviewed a permit application for any proposed project”).

<sup>18</sup> *Cohen Report*, at 84.

<sup>19</sup> *Id.*, at 82, 83, ES-8 (“This project is too important, for all stakeholders, to pilot a new, untested decision-making process.”).

<sup>20</sup> U.S. EPA, *Proposed Determination of the U.S. Envtl. Prot. Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska* (July 2014) [hereinafter “Proposed Determination”].

load (“TMDL”) program.<sup>21</sup> States identify and rank impaired waters and then, for each, they develop a TMDL and corresponding effluent limitations for particular pollutants.<sup>22</sup> These are submitted to EPA for approval as part of a continuing planning process.<sup>23</sup> One example is the large-scale TMDL designed to restore clean water in the Chesapeake Bay and its tributaries.<sup>24</sup> The Chesapeake Bay TMDL sets limits on nitrogen, phosphorous, and sediment pollution, and it allocates pollution budgets to the surrounding states.<sup>25</sup> Each of these states has submitted implementation plans to EPA for approval, and they are in the process of implementing them and developing follow-up plans.<sup>26</sup> The implementation plans establish restrictions on industrial and agricultural activities that release the types of pollutants subject to the TMDL.<sup>27</sup> Permits cannot be approved for new industrial or agricultural activities unless they are consistent with the TMDL and applicable implementation plans.<sup>28</sup>

Similarly, under the Clean Air Act (“CAA”), EPA and states establish parameters for the permitting of industrial facilities near National Parks and other Class I areas through the CAA’s visibility and regional haze programs.<sup>29</sup> States are required to develop programs and strategies designed to assure “reasonable progress” toward the national policy goal of remedying impairment and preventing future impairment of visibility in Class I areas.<sup>30</sup> These programs and strategies are incorporated into each state implementation plan (“SIP”) addressing regional haze,<sup>31</sup> and permits for new and modified major stationary sources of air pollution—such as power plants and manufacturing facilities—cannot be issued unless the permits comply with the visibility provisions of the SIP.<sup>32</sup> Arizona, for instance, has provisions in its SIP establishing guidelines and requirements for the permitting of several large coal-fired power plants situated near the Grand Canyon National Park as a means to protect visibility at this treasured national landmark.<sup>33</sup>

In short, the fact that environmental decision-making in the CWA dredge-and-fill context is

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<sup>21</sup> See 33 U.S.C. § 1313(d).

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* § 1313(d)-(e).

<sup>24</sup> See generally U.S. EPA, *Chesapeake Bay Total Maximum Daily Load (TMDL)*, (Oct. 25, 2015, 10:57 AM), <http://www2.epa.gov/chesapeake-bay-tmdl>.

<sup>25</sup> See U.S. EPA, *Chesapeake Bay TMDL Fact Sheet*, (Oct. 25, 2015, 9:32 AM), <http://www2.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-fact-sheet>.

<sup>26</sup> See *id.*

<sup>27</sup> See U.S. EPA, *Sector-Specific EPA Oversight in the Chesapeake Bay Watershed*, (Nov. 2, 2015, 11:02 AM), <http://www2.epa.gov/chesapeake-bay-tmdl/sector-specific-epa-oversight-chesapeake-bay-watershed>.

<sup>28</sup> See, e.g., Virginia Dept. Env’t. Quality, *Chesapeake Bay TMDL Action Plan Information*, (Oct. 26, 2015, 3:22 PM), <http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/MS4Permits/ChesBayTMDL/ActionPlanInformation.aspx>.

<sup>29</sup> See generally 42 U.S.C. § 7491; 40 C.F.R. §§ 51.300-309.

<sup>30</sup> See 42 U.S.C. § 7491(a)(1),(b)(2); 40 C.F.R. § 51.300(a).

<sup>31</sup> See 40 C.F.R. § 51.300(b), .302(a).

<sup>32</sup> See 40 C.F.R. §§ 51.307, 51.166.

<sup>33</sup> See generally U.S. EPA, *Regional Haze in Arizona*, (Oct. 30, 2015, 1:26 PM), <http://www3.epa.gov/region9/air/az/haze/#308>.

usually prompted by the submission of a permit application<sup>34</sup> does not mean that the establishment of restrictions on development prior to the permitting stage is unusual, novel, experimental, or inherently suspect, as argued in the Cohen Report. This type of phased approach is standard practice in environmental decision-making, and EPA's authority under 404(c) to establish up-front limits on dredge-and-fill permitting is simply one instance among many.

Indeed, EPA's proactive authority under 404(c) was explicitly upheld by the D.C. Circuit in *Mingo Logan Coal v. EPA*.<sup>35</sup> There, the court of appeals reversed a district court ruling that EPA lacked statutory authority under 404(c) to withdraw a disposal site specification of the Spruce No. 1 Surface Mine permit four years after it was granted to Mingo Logan Coal.<sup>36</sup> In making this determination, the court rejected the mining company's argument that EPA's authority under 404(c) is in any way temporally restricted. The 404(c) term "whenever," the Court held, truly means *whenever*:

Using the expansive conjunction "whenever," the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at *any* time.

To find otherwise "would eliminate EPA's express statutory right" and "thereby render 404(c)'s parenthetical 'withdrawal' language superfluous—a result to be avoided."<sup>37</sup>

Claims that EPA must wait to protect Bristol Bay until a mining application has been submitted are equally flawed. This would *both* render superfluous the "whenever" provision of the regulation *and* overtly contradict its plain language:

The Administrator may [] prohibit the specification of a site under section 404(c) with regard to any existing *or potential* disposal site *before a permit application has been submitted* to or approved by the Corps or a state.<sup>38</sup>

The plain language of the regulation contradicts the Cohen Report's—as well as PLP's—position that a "hypothetical" mine scenario is an improper basis for initiating 404(c) action. The regulation clearly contemplates 404(c) protection for "potential" disposal sites "before" submission of an application. For instance, in the 1979 preamble to its regulations implementing 404(c), EPA explained that "the statute clearly allows it to use 404(c) *before an application is filed*" and that "... [S]ection 404(c) authority may be exercised *before a permit is applied for*, while an application is pending, or after a permit has been issued. In each case, the Administrator may prevent any defined area in waters of the United States from being specified as a disposal site, or may simply prevent the discharge of any specific dredge or fill material into a specified

<sup>34</sup> EPA's 404(c) authority is not "confined to the permitting process under Section 404(a)" as the Cohen Report and mining interests would have us believe, but rather, "[t]he Secretary's authority to specify a disposal site is expressly made subject to subsection (c) of section 404." See *Mingo Logan Coal v. EPA*, 714 F.3d 608, 610 (D.C. Cir. 2013) (internal quotations omitted).

<sup>35</sup> *Mingo Logan Coal v. EPA*, 714 F.3d 608 (D.C. Cir. 2013).

<sup>36</sup> *Id.* at 609.

<sup>37</sup> *Id.* at 613–14.

<sup>38</sup> 40 C.F.R. § 231.1(a) (2012) (emphasis added).



area.”<sup>39</sup> Moreover, contrary to the assertion in the Cohen Report that EPA’s use of its 404(c) authority pre-permit is “unprecedented,”<sup>40</sup> EPA has invoked its 404(c) authority preemptively on at least one prior occasion. In its Henry Rem Estate, Marion Becker, et. al. and Senior Corporation final determination, EPA invoked its 404(c) authority to prevent “proposed *and anticipated* rockpiling activities” regarding three different properties: (1) Rem (whose owner was actively seeking a 404 permit with the Army Corps and the Corps had announced its intention to issue permit), (2) Senior Corporation (whose owners were actively seeking a 404 permit and the Army Corps was in the process of preparing documentation for a permit decision), and (3) Becker (whose owners *had not yet applied for a 404 permit* with the Army Corps).<sup>41</sup> Although the property owners of the Becker site had not yet applied for a 404 permit to rockpile, EPA found that the Army Corps, in the supporting documentation for the permit to be issued to the Henry Rem Estate, had predisposed itself to issuing a permit authorizing rockpiling on the Becker tract. Even though no permit application was pending for the Becker site, EPA included all three properties in its 404(c) determination because they are “ecologically similar portions of the East Everglades wetlands complex,” and there was a high probability the Corps would authorize rockpiling which would result in “similar unacceptable adverse environmental effects.”<sup>42</sup> In making its 404(c) determination, EPA found: “Section 231.1 [of the CFR] ... states that EPA’s Section 404(c) authority may be used to either veto a permit ... (as in the case of the Rem site) *or to preclude permitting* either before the Corps has made its final decision (as in the case of the Senior Corp. site) *or in the absence of a permit application* (as in the case of the Becker site).”<sup>43</sup>

As a factual matter, EPA’s pre-permit restriction under 404(c) is no less viable than a 404(c) response to a permit application, because both are based on a predictive assessment from which “actual events will undoubtedly deviate.” To be sure, “[e]ven an environmental assessment of a proposed plan by a mining company would be an assessment of a scenario that undoubtedly would differ from the ultimate development.”<sup>44</sup>

And EPA’s proactive approach in Bristol Bay is well-grounded in common sense. Pre-permit consideration of 404(c) action is ultimately beneficial even to mine development interests like PLP because it will protect it and other stakeholders with mining claims in the Bristol Bay watershed from investing additional resources in a large-scale mining project manifestly unsuited to the watershed’s pristine and ecologically rich environment. As EPA noted in 1979, the use of pre-application 404(c) protection “may well have some economic benefits that outweigh some of the costs,” because it takes place “before industry has made financial and other commitments.”<sup>45</sup>

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<sup>39</sup> *Denial or Restriction of Disposal Sites; Section 404(c) Procedures*, 44 Fed. Reg. 58,076, 58,076-77 (Oct. 9, 1979) (to be codified at 40 C.F.R. pt. 231) (emphasis added) [hereinafter “Denial or Restriction of Disposal Sites”].

<sup>40</sup> *Cohen Report*, at 83-84.

<sup>41</sup> *See Final Determination of the U.S. EPA’s Assistant Adm’r for Water Concerning Three Wetland Properties (sites owned by Henry Rem Estate, Marion Becker, et. al. & Senior Corp.) for which Rockpiling is Proposed in East Everglades, Dade County, Florida* (June 15, 1988) at 3 (emphasis added), available at <http://water.epa.gov/lawsregs/guidance/wetlands/upload/RemFD.pdf>.

<sup>42</sup> *Id.* at 4.

<sup>43</sup> *Id.* (emphasis added).

<sup>44</sup> *BBWA*, at ES-28. *See also* David M. Chambers, Ctr. For Sci. in Pub. Participation, *Comments on Docket #EPA-HQ-ORD-2013-0189* (June 28, 2013) (hardrock mines frequently expanded beyond their initially permitted size).

<sup>45</sup> *Denial or Restriction of Disposal Sites*, at 58077 (“EPA feels that the statute clearly allows it to use 404(c) before

For mining interests that have emphasized the hundreds of millions of dollars they have invested in the Pebble project to date,<sup>46</sup> the *Mingo Logan* opinion—allowing for the withdrawal of a mining permit years after additional funds have been expended for research, development, and construction are complete—is a clear testament to the value of the advance 404(c) determination proposed by EPA here. It would also address State concerns raised in the *Mingo Logan* case: namely, that delayed 404(c) action results in a “squandering” of State resources (i.e., reviewing permit applications and issuing permits and water quality certifications),<sup>47</sup> which could otherwise have been avoided by an earlier determination. Industry cannot have it both ways, complaining about proactive restrictions that provide regulatory certainty and avoid the fruitless commitment of resources while simultaneously arguing that restrictions imposed later squander resources and somehow infringe on rights.

**B. EPA’s Scientific Assessment and 404(c) Processes Have Unquestionably Been Fair and Inclusive.**

The stated purpose of the Cohen Report was to determine “whether EPA acted fairly” in evaluating potential mining in the Bristol Bay watershed,<sup>48</sup> and the Report sets forth a host of specious arguments in support of PLP’s view that EPA failed to do so.<sup>49</sup> In fact, as appears in detail below, the processes for both the Bristol Bay Watershed Assessment (“BBWA”) and the Proposed Determination under Section 404(c) have been extraordinarily inclusive—perhaps among the most inclusive in EPA’s history.

Although nowhere conceded by the Cohen Report or by PLP, which commissioned it, these processes included a wide array of mechanisms designed to promote engagement with PLP, other agencies, tribal entities, local communities, and the general public. In anticipation of PLP’s submission of mining permit applications, for example, from July 2007 through November 2009, EPA staff participated in over 20 technical working group (“TWG”) meetings<sup>50</sup> as a means to “facilitate pre-application state and federal agency discussions with the project proponent.”<sup>51</sup> The TWG meetings included representatives from PLP, technical consultants, staff from several State of Alaska agencies, staff from other federal agencies, and members of the public.<sup>52</sup> *PLP*

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an application is filed.”)

<sup>46</sup> Interview by Monica Trauzzi with John Shively, CEO, Pebble Ltd. P’ship, on OnPoint (June 13, 2013), available at <http://www.eenews.net/tv/videos/1698/transcript>.

<sup>47</sup> Randy Huffman, Brief of Amicus Curiae on Behalf of the State of W. VA. & in his Official Capacity as Cabinet Sec’y of the W. VA. Dep’t of Env’tl. Prot., in Support of Appellee Mingo Logan Coal at 12, *Mingo Logan Coal*, 714 F.3d 608 (D.C. Cir. 2013).

<sup>48</sup> *Cohen Report*, at 82.

<sup>49</sup> *See id.* at 82-94.

<sup>50</sup> *See* Div. of Mining, Land & Water, Alaska Dep’t of Natural Res., *Pebble Project Archive—Technical Working Groups*, (Nov. 2, 2015, 11:38 AM), <http://dnr.alaska.gov/mlw/mining/largemine/pebble/twg/> [hereinafter “Pebble Project Archive”] (compiling meeting minutes from a total of 30 TWG meetings); *see also Proposed Determination*, at 2-3 to 2-4 (describing EPA’s meetings, communications, and information exchange with PLP and its affiliates from 2004 through 2011).

<sup>51</sup> *Pebble Project Archive*, *supra*.

<sup>52</sup> *See id.*

unilaterally withdrew from this process in January 2010.<sup>53</sup> This move generated strong criticism and frustration in local communities, and it served as the backdrop for the submission of 404(c) petitions to EPA starting in May 2010.<sup>54</sup> As explained by Senator Lisa Murkowski in 2013, PLP had been announcing “imminent” action on the mine for “nearly a decade,” but “after years of waiting, it is anxiety, frustration and confusion that have become the norm” in many Alaska communities.<sup>55</sup>

EPA commenced a scientific assessment of the Bristol Bay watershed in February 2011,<sup>56</sup> and thereafter EPA provided PLP and other mining interests with repeated opportunities for participation and information exchange. The following are a few examples:

- EPA carefully considered information provided by PLP and its affiliates in the voluminous Wardrop Report and Environmental Baseline Document prepared by Northern Dynasty Minerals and PLP respectively.<sup>57</sup>
- EPA invited the public, including PLP, to nominate candidates for the Peer Review Panel, a panel comprised of 12 independent scientists who reviewed the scope and content of the BBWA and offered suggestions which EPA then incorporated into both its revised and final assessment.<sup>58</sup>
- EPA invited the public to comment on the proposed peer review “charge questions,”<sup>59</sup> and PLP and its affiliates submitted comments on these questions.<sup>60</sup>

<sup>53</sup> See E-mail from Charlotte McCay, Manager of Permitting, PLP, to TWG Members (Jan. 12, 2010, 10:23 a.m.), available at <http://dnr.alaska.gov/mlw/mining/largemine/pebble/twg/twgsuspended.pdf>.

<sup>54</sup> Joint Letter from Six Federally-Recognized Tribes to Lisa P. Jackson & Dennis J. McLerran, EPA (May 2, 2010) at 5-6 (“The magnitude of the issues and PLP’s recent decision to terminate its Technical Working Groups justify an EPA decision to commence a 404(c) process at this time.”); see also Declaration of Richard B. Parkin at 9, *Pebble Ltd. v. U.S. EPA*, 604 Fed.Appx. 623 (9th Cir. 2015) (No. 3:14-cv-00171 HRH) (“uncertainty about the future of Bristol Bay’s resources remained, as evidenced by the petitions submitted to EPA in 2010”).

<sup>55</sup> Ex. 2, Letter from Lisa Murkowski, United States Senator, to John Shively, CEO, Pebble Ltd. et. al., (July 1, 2013).

<sup>56</sup> Press Release, U.S. EPA, *EPA Plans Scientific Assessment of Bristol Bay Watershed* (Feb. 7, 2011), available at <http://yosemite.epa.gov/opa/admpress.nsf/0/8c1e5dd5d170ad99852578300067d3b3>.

<sup>57</sup> See *BBWA* (citing the Wardrop Report as “Ghaffari, et al. 2011” and the Environmental Baseline Document as “PLP 2011” throughout).

<sup>58</sup> See *Assessment of Potential Large-Scale Mining on the Bristol Bay Watershed of Alaska: Nomination of Peer Reviewers*, 77 Fed. Reg. 11,111-01 (Feb. 24, 2012) (notice of call for nominations); 77 Fed. Reg. 14,011-02 (Mar. 8, 2012) (extension of the time period for nominations); see also VERSAR, INC., FINAL PEER REVIEW REPORT: EXTERNAL PEER REVIEW OF EPA’S DRAFT DOCUMENT: AN ASSESSMENT OF POTENTIAL MINING IMPACTS ON SALMON ECOSYSTEMS OF BRISTOL BAY, ALASKA 1 (2012) [hereinafter FINAL PEER REVIEW REPORT], available at <http://www2.epa.gov/bristolbay/peer-review-bristol-bay-assessment>.

<sup>59</sup> *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska—Peer Review Panel Members and Charge Questions*, 77 Fed. Reg. 33,213-02, 33,214 (June 5, 2012) (notice of availability and public comment period).

<sup>60</sup> See, e.g., Letter from John Shively, Chief Executive Officer, The Pebble P’ship, to U.S. EPA on Peer Review Panel Members and Charge Questions (June 25, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0358-0017>; Letter from Ronald W. Thiessen, N. Dynasty Minerals Ltd., to U.S. EPA on Peer Review Panel Members and Charge Questions (June 26, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0358-0018>.

- EPA held a 60-day public comment period on the first draft of the BBWA,<sup>61</sup> and during this period, EPA held eight public hearings in six Bristol Bay communities as well as in Anchorage and Seattle.<sup>62</sup> The hearings were attended by approximately 2,000 people, and EPA received more than 233,000 public comments.<sup>63</sup> Over 90 percent of those comments supported EPA.<sup>64</sup> PLP staff and other mining industry representatives participated in the hearings,<sup>65</sup> and PLP submitted multiple sets of written comments to EPA.<sup>66</sup>
- EPA held a three-day Peer Review meeting in Anchorage in August 2012.<sup>67</sup> The first day of the meeting was open for public participation, and EPA heard testimony from approximately 95 people,<sup>68</sup> including PLP staff and other mining industry representatives.<sup>69</sup>
- EPA held a 60-day public comment period on the second draft of the BBWA in April through June 2013,<sup>70</sup> and EPA received more than 890,000 public comments.<sup>71</sup> Once again, a substantial majority of those comments supported EPA: 73 percent of all comments, 84

<sup>61</sup> *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, AK*, 77 Fed. Reg. 31,353-01 (May 25, 2012) (notice of public comment period).

<sup>62</sup> See *BBWA*, *supra*, at 1-5.

<sup>63</sup> See *id.*

<sup>64</sup> Joel Reynolds, *Unprecedented Coalition in Washington, D.C. Next Week Urging EPA to Protect Bristol Bay, Alaska*, NRDC Switchboard, (Feb. 20, 2014), available at [http://switchboard.nrdc.org/blogs/jreynolds/unprecedented\\_coalition\\_in\\_was.html](http://switchboard.nrdc.org/blogs/jreynolds/unprecedented_coalition_in_was.html).

<sup>65</sup> See, e.g., U.S. Evtl. Prot. Agency, Draft Bristol Bay Watershed Assessment: Record of Public Comment Meeting: Nondalton, Alaska 8 (testimony of PLP employee Valerie Engebretsen) (June 7, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-4830>; U.S. Evtl. Prot. Agency, Draft Bristol Bay Watershed Assessment: Record of Public Comment Meeting: New Stuyahok, Alaska 22 (testimony of PLP employee Sarah McCarr) (June 7, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-4154>; Transcript, Anchorage Public Hearing 30–32 (testimony of Bryan Clemenz, Board Member of Alaska Support Industry Alliance) (June 4, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-1289>; *id.* at 52–53 (testimony of John Shively, Chief Executive Officer of PLP); Transcript, EPA Bristol Bay Watershed Assessment Public Hearing, Seattle, Washington 30–31 (testimony of NDM employee Sean Magee); *id.* at 47–48 (testimony of Anglo American employee Jason Brune) (May 31, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-1270>.

<sup>66</sup> See, e.g., Letter from John Shively, Chief Executive Officer, The Pebble P'ship, to U.S. EPA, on Comments of PLP and Various Experts (July 23, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-3419>; Letter from John Shively, Chief Executive Officer, The Pebble P'ship, to U.S. EPA on Legal Analysis of EPA's Bristol Bay Watershed Assessment and Authority Under Section 404(c) (July 22, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-4960>; Letter from John Shively, Chief Executive Officer, The Pebble P'ship, to U.S. EPA, with White Papers (July 23, 2012), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2012-0276-5416>.

<sup>67</sup> See *Notice of Peer Review Meeting for EPA's Draft Report: An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, AK*, 77 Fed. Reg. 40,037-01 (July 6, 2012).

<sup>68</sup> See Final Peer Review Report at 3, *supra*.

<sup>69</sup> See, e.g., *EPA Peer Review Continues Today*, PEBBLEWATCH, (Aug. 8, 2012), available at <http://www.pebblewatch.com/index.php/443-epa-peer-reviewers-hear-public-testimony> (discussing the testimony of employees of PLP, NDM, and Anglo American during August 7, 2012 peer review meeting).

<sup>70</sup> *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, 78 Fed. Reg. 25,266-01 (Apr. 30, 2013) (notice of public comment period); *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, 78 Fed. Reg. 34,093 (June 6, 2013) (extension).

<sup>71</sup> *BBWA*, *supra*, at 1-5.

percent of individual comments from within Alaska and a staggering 98 percent of individual comments from within the Bristol Bay region supported EPA action.<sup>72</sup> And once again PLP submitted multiple sets of written comments.<sup>73</sup>

- EPA released the final BBWA in January 2014,<sup>74</sup> and in March 2014, EPA released detailed responses to public comments totaling 1,225 pages,<sup>75</sup> including extensive responses to the comments submitted by PLP.<sup>76</sup>

EPA's commitment to open dialogue with affected mining interests has continued during the 404(c) review process. EPA commenced its review of potential 404(c) action by sending an initial consultation letter to PLP, the State of Alaska, and the Army Corps in February 2014.<sup>77</sup> In response to requests from PLP and the State of Alaska, EPA extended the initial consultation period from 15 to 60 days and emphasized that the initial consultation was "just one of many opportunities" for PLP and others to submit comments and participate in the 404(c) review process.<sup>78</sup> As part of this initial consultation, PLP and the State of Alaska submitted written comments in late April 2014.<sup>79</sup> Along with the formal comment and consultation opportunities

<sup>72</sup> Taryn Kiekow Heimer, *The Message to EPA is Clear: It's Time to Stop Pebble Mine*, NRDC Switchboard (Sept. 17, 2013), available at [http://switchboard.nrdc.org/blogs/tkiekow/the\\_message\\_to\\_epa\\_is\\_clear\\_it.html](http://switchboard.nrdc.org/blogs/tkiekow/the_message_to_epa_is_clear_it.html).

<sup>73</sup> See, e.g., Letter from John Shively, Chief Executive Officer, The Pebble P'ship, to U.S. EPA, on Comments of Pebble Ltd. P'ship (June 28, 2013), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2013-0189-5535>; Letter from John Shively, Chief Executive Officer, The Pebble P'ship, to U.S. EPA, on Comments of Scientific and Technical Experts (June 28, 2013), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2013-0189-5536>; Letter from John Shively, Chief Executive Officer, The Pebble P'ship, to U.S. EPA, on Submittal of Report on the Economic and Employment Contributions of a Conceptual Pebble Mine to the Alaska and United States Economies (June 28, 2013), available at <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-ORD-2013-0189-5534>.

<sup>74</sup> *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, 79 Fed. Reg. 3,369-02 (Jan. 21, 2014) (notice of availability of final report).

<sup>75</sup> See U.S. EPA, Response to Public Comments on the May 2012 Draft of *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska* (Mar. 2014), available at <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=241743>; U.S. EPA, Response to Public Comments on the April 2013 Draft of *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska* (2014) [hereinafter EPA Second Round Response], available at <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=242810>.

<sup>76</sup> See, e.g., *EPA Second Round Response*, *supra*, at 8, 22-23, 31-43, 45-46, 53-58, 73-76, 90-100, 129-45, 167-95, 256-69, 294-316, 345-68, 372-82, 388-406, 425-28, 440-44, 446-47, 451-53, 456-58, 462, 463, 466-67, 478-95.

<sup>77</sup> See Letter from Dennis J. McLerran, Reg'l Adm'r, U.S. EPA, to PLP, Alaska Dep't of Natural Res., and U.S. Army Corps of Eng'rs (Feb. 28, 2014) (initiating consultation regarding commencement of 404(c) review), available at <http://www2.epa.gov/sites/production/files/2014-02/documents/bristol-bay-15day-letter-2-28-2014.pdf>.

<sup>78</sup> Letter from Dennis J. McLerran, Reg'l Adm'r, U.S. EPA, to Tom Collier, Chief Executive Officer, Pebble Ltd. P'ship (Mar. 13, 2014), available at <http://www2.epa.gov/sites/production/files/2014-03/documents/bristol-bay-15day-letter-extension-3-13-2014.pdf>.

<sup>79</sup> See Letter from Thomas Collier, Chief Executive Officer, Pebble Ltd. P'ship, to Dennis J. McLerran, Reg'l Adm'r, U.S. EPA (Apr. 29, 2014), available at <http://corporate.pebblepartnership.com/perch/resources/plp-submittal-to-epa-apr-2014.pdf>; Letter from Michael C. Geraghty, Attorney Gen., Alaska Dep't of Law, to Dennis McLerran, Reg'l Adm'r, U.S. EPA on State of Alaska's Response to EPA's Notice of Intent to Issue a Public Notice of Proposed Section 404(c) Determination (Apr. 29, 2014), available at [http://dnr.alaska.gov/commis/cacfa/documents/MeetingInformation/2014Fairbanks/Executive\\_Directors\\_Report/BristolBayWatershedAssessment/14\\_4\\_30SOA\\_Response\\_to\\_EPA\\_re\\_Clean\\_Water\\_Act.pdf](http://dnr.alaska.gov/commis/cacfa/documents/MeetingInformation/2014Fairbanks/Executive_Directors_Report/BristolBayWatershedAssessment/14_4_30SOA_Response_to_EPA_re_Clean_Water_Act.pdf).

listed above, EPA held at least 20 meetings with PLP during the BBWA and early 404(c) processes.<sup>80</sup>

Moreover, after issuing its Proposed Determination under Section 404(c) of the CWA in July 2014,<sup>81</sup> EPA held another 60-day public comment period and public hearings in six Bristol Bay communities and in Anchorage.<sup>82</sup> EPA received approximately 670,000 written comments through this process,<sup>83</sup> including lengthy submissions from PLP.<sup>84</sup> Before EPA's Proposed Determination is finalized (assuming it proceeds to that end), EPA Region 10 will issue a Recommended Determination to the EPA Administrator, and PLP will have yet another opportunity for consultation with EPA.<sup>85</sup>

EPA's processes relating to Bristol Bay have greatly exceeded the requirements set forth in federal executive branch and EPA-specific policies supporting public participation and transparency.<sup>86</sup> Indeed, EPA's Bristol Bay process more than fulfilled its policy to "provide[] the public with many avenues, including public meetings, webinars, and conferences, to learn about, participate in, and collaborate with us on our processes and meeting the Agency's mission."<sup>87</sup> Furthermore, EPA fully satisfied its tribal consultation and coordination responsibilities, pursuant to which EPA must "ensure[] the close involvement of tribal governments and give[] special consideration to their interests whenever EPA's actions may affect Indian country or

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<sup>80</sup> See U.S. EPA, *Senior Manager Schedules, Dennis J. McLerran, Regional Administrator, EPA Region 10* (Oct. 2010 to Oct. 2014), available at [http://yosemite.epa.gov/opa/advpress.nsf/Calendars\\_3?OpenView&RestrictToCategory=Dennis%20J.%20McLerran.%20Regional%20Administrator.%20US%20EPA%20Region%2010&count=10000](http://yosemite.epa.gov/opa/advpress.nsf/Calendars_3?OpenView&RestrictToCategory=Dennis%20J.%20McLerran.%20Regional%20Administrator.%20US%20EPA%20Region%2010&count=10000); U.S. EPA, *Senior Manager Schedules, Gina McCarthy, EPA Administrator* (Aug. 2013 to Oct. 2014), available at [http://yosemite.epa.gov/opa/advpress.nsf/Calendars\\_3?OpenView&RestrictToCategory=Gina%20McCarthy.%20Administrator.%20Environmental%20Protection%20Agency&count=10000](http://yosemite.epa.gov/opa/advpress.nsf/Calendars_3?OpenView&RestrictToCategory=Gina%20McCarthy.%20Administrator.%20Environmental%20Protection%20Agency&count=10000); See also, e.g., U.S. EPA, *Meetings with Multiple Stakeholders* (Aug. 27, 2013), available at [http://yosemite.epa.gov/opa/advpress.nsf/Calendars\\_3/85256CBD007E4BB785257BCE006F5727?OpenDocument](http://yosemite.epa.gov/opa/advpress.nsf/Calendars_3/85256CBD007E4BB785257BCE006F5727?OpenDocument).

<sup>81</sup> See *Proposed Determination, supra*.

<sup>82</sup> See U.S. EPA, *Proposed Determination to Restrict the Use of an Area as a Disposal Site: Pebble Deposit Area, Southwest Alaska*, 79 Fed. Reg. 42,314 (July 21, 2014) (notice of public comment period and public hearings); 79 Fed. Reg. 56,365 (September 19, 2014) (extension). PLP representatives testified at these public hearings. See, e.g., Alaska Dispatch, *Hundreds Make Their Case on Pebble Mine to EPA in Anchorage Hearing* (Aug. 12, 2014), available at <http://www.adn.com/article/20140812/hundreds-make-their-case-pebble-mine-epa-anchorage-hearing> (discussing testimony of PLP CEO Tom Collier); KDLG, *Alaska Natives Have Strong Presence at EPA Hearing* (Aug. 18, 2014), available at <http://kdlg.org/post/alaska-natives-have-strong-presence-epa-hearing> (discussing testimony of PLP employees at Dillingham hearing).

<sup>83</sup> See *Opposition to Pebble Ltd. P'ship's Motion for Expedited Discovery at 7, Pebble Ltd. v. U.S. EPA*, 604 Fed.Appx. 623 (9th Cir. 2015) (*No. 3:14-cv-00171-HRH*).

<sup>84</sup> See *Pebble Limited P'ship, Comments on Proposed Determination* (Sept. 19, 2014), available at <http://www.regulations.gov/#!documentDetail;D=EPA-R10-OW-2014-0505-3777>.

<sup>85</sup> See 40 C.F.R. § 231.6; U.S. EPA, *Bristol Bay 404(c) Process*, (Nov 2, 2015, 1:37 PM) <http://www2.epa.gov/bristolbay/bristol-bay-404c-process>.

<sup>86</sup> See e.g., *Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies*, 74 Fed. Reg. 4685 (Jan. 26, 2009); 40 C.F.R. pt. 25 (general EPA public process requirements); 40 C.F.R. pt. 231 (Clean Water Act section 404(c) public process requirements); U.S. EPA, *Open Initiative Homepage*, (Nov. 2, 2015, 1:40 PM) <http://www2.epa.gov/open>.

<sup>87</sup> U.S. EPA, *Open Government Plan 3.0*, at 7 (June 2014), available at <http://www2.epa.gov/sites/production/files/2014-06/documents/epaopengovernmentplan3.pdf>.

other tribal interests.”<sup>88</sup>

Despite the exceptional extent of EPA’s public engagement, the Cohen Report nevertheless argues that EPA “inhibited the involvement” of the Army Corps and the State of Alaska by failing to wait for PLP to submit a permit application.<sup>89</sup> Yet the Cohen Report acknowledges that, despite having multiple opportunities to participate, both the Corps and the State of Alaska refused to do so.<sup>90</sup> The Cohen Report does not point to a single specific issue or category of information for which Corps or State input was indispensable. Nor, in any case, could it do so, because, in spite of Corps and State refusal to participate, EPA—with the help of contractors, peer reviewers, and enormous input from PLP, other stakeholders, and the public—has developed a body of scientific and technical information that robustly supports the Proposed Determination.

EPA has also proceeded in a manner fully compliant with all applicable regulations and procedures. For instance, the BBWA was prepared in accordance with the demanding peer review requirements applicable to highly influential scientific assessments (“HISAs”).<sup>91</sup> HISA guidelines are designed to “enhance the quality and credibility of the government’s scientific information” by ensuring that peer review is transparent, that the reviewers possess the necessary expertise, and that the agency addresses the reviewers’ potential conflicts of interests and independence from the agency.<sup>92</sup> HISAs are subject to “stricter minimum requirements” for peer review than other types of scientific assessments.<sup>93</sup> EPA has also complied with all aspects of the procedures specified in its regulations for 404(c) determinations.<sup>94</sup>

The Cohen Report does not dispute that EPA has complied with these procedural requirements. Nor, as far as we know, has such compliance been disputed by PLP.

### C. NEPA Review Is Not Necessary for an EPA 404(c) Decision.

The Cohen Report’s contentions regarding EPA’s ability to develop adequate scientific and technical information outside the permitting context are equally unfounded.<sup>95</sup> The Report discusses at great length the benefits of review under the National Environmental Policy Act (“NEPA”)<sup>96</sup> for informing agency decision-making, and it argues that the NEPA approach is

<sup>88</sup> U.S. EPA, *EPA Policy on Consultation and Coordination with Indian Tribes* at 4 (2011), available at <http://www2.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>. See generally U.S. EPA, *Region 10 Tribal Consultation and Coordination Procedures* (2012), available at <http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100FFEY.txt>.

<sup>89</sup> *Cohen Report*, at 87.

<sup>90</sup> *Cohen Report*, at 47-48, 68-69, 87-89.

<sup>91</sup> See U.S. EPA, *Frequently Asked Questions About Bristol Bay Assessment* (Oct. 26, 2015) <http://www2.epa.gov/bristolbay/frequently-asked-questions-about-bristol-bay-assessment>

<sup>92</sup> See OMB, *Final Information Quality Bulletin for Peer Review*, 70 Fed. Reg. 2664, 2665 (Jan. 14, 2005), available at [http://www.ers.usda.gov/media/138535/peerreviewbulletin\\_1\\_.pdf](http://www.ers.usda.gov/media/138535/peerreviewbulletin_1_.pdf).

<sup>93</sup> See *id.*

<sup>94</sup> See 40 C.F.R. Part 231; U.S. EPA, *Bristol Bay*, (Oct. 26, 2015) <http://www2.epa.gov/bristolbay>.

<sup>95</sup> See *Cohen Report*, at 59-61, 84-85.

<sup>96</sup> 42 U.S.C. § 4321 *et seq.*

superior to the manner in which EPA developed information supporting its Proposed Determination in Bristol Bay.<sup>97</sup> This line of reasoning is a red herring, however, because it ignores the long established fact that EPA's authority to restrict large-scale mining in Bristol Bay using its 404(c) Clean Water Act authority is separate and distinct from any process under NEPA.

Here, in the absence of a 404 permit application (which is solely within PLP's power to file), the requirements of NEPA are not triggered. Because PLP has not applied for a 404 permit with the Army Corps to dispose of dredged or fill material from the Pebble Mine, EPA's review is based solely on its authority under Section 404(c) of the Clean Water Act. Contrary to PLP's claims, review under NEPA is not required before EPA may invoke its authority under Section 404(c). In other words, NEPA does not somehow entitle PLP to separate NEPA review before EPA can prohibit or restrict Pebble Mine under the Clean Water Act.

NEPA was enacted in 1969 precisely to ensure that projects like the one pursued by PLP cannot be approved without environmental review. NEPA was never intended to burden EPA actions necessary under Section 404(c) to prevent large-scale mining from contaminating a resource like Bristol Bay under the Clean Water Act. In fact, EPA action under Section 404(c) triggers separate notice and comment requirements under the Clean Water Act—a rigorous process subject to similar standards of transparency, public participation and informed agency decision making as NEPA. It deserves special emphasis that PLP itself had the power to secure the full NEPA review that it allegedly seeks, and it could do so by filing a permit application—something, again, it has failed for years to do. By this failure—for reasons known only to itself—PLP has created an environment of anxiety and uncertainty in the Bristol Bay region, despite a decade of promises that such an application is imminent. As Senator Lisa Murkowski observed, PLP has promised “imminent” action for “nearly a decade” but “after years of waiting, it is anxiety, frustration, and confusion that have become the norm” in many Alaska communities.<sup>98</sup> It is precisely because of these years of anxiety and confusion—created entirely by PLP—that federally recognized tribes, the Bristol Bay Native Corporation, the commercial and sport fishing industries of Bristol Bay, and numerous conservation groups petitioned EPA to initiate 404(c) action to protect Bristol Bay.

Indeed, even outside the NEPA context, EPA has ample capability to develop the scientific and technical information necessary to support a proactive 404(c) determination. For instance, EPA has broad research and investigation authority,<sup>99</sup> and it employs scientists, engineers, and other staff who are experienced in making a wide range of complex determinations regarding the protection of water resources.<sup>100</sup>

The Cohen Report also argues that the “well-established Permit/NEPA process is the most

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<sup>97</sup> See *Cohen Report*, at 8-17, 84-85.

<sup>98</sup> See Ex. 2, Letter from Lisa Murkowski, United States Senator, to John Shively, CEO, Pebble Ltd. et. al., (July 1, 2013).

<sup>99</sup> 33 U.S.C. § 1254.

<sup>100</sup> See generally U.S. EPA, *About the Office of Water*, (Oct. 26, 2015), available at <http://www2.epa.gov/aboutepa/about-office-water>.



accurate means of assessing environmental impacts of proposed development.”<sup>101</sup> This argument rests on the false premise that the issues being addressed and the decisions being made in the pre-permit context are the same as those in the permitting stage, which is simply not the case.

In the offshore oil and gas context, for example, the Bureau of Ocean Energy Management (“BOEM”) argued that any error resulting from its use of a one billion barrel estimate for total offshore oil production could be corrected during the exploration and development stages of the process.<sup>102</sup> The Ninth Circuit disagreed, explaining that:

An appropriate time to estimate the total oil production from the lease sale is the time of the lease sale itself. ... A later project or site-specific environmental analysis is an inadequate substitute for an estimate of total production from the lease sale as a whole. It is only at the lease sale stage that the agency can adequately consider cumulative effects of the lease sale on the environment, including the overall risk of oil spills and the effects of the sale on climate change. It is also only at the lease sale stage that the agency can take into account the effects of oil production in deciding which parcels to offer for lease.<sup>103</sup>

So, too, in the Bristol Bay context, EPA’s goal was to evaluate a range of different levels of mining activity and establish parameters that would guide all future mine development and prevent an “unacceptable adverse effect” on Bristol Bay salmon resources. It is entirely reasonable for EPA to conclude in this instance—based on its 404(c) authority—that this type of broad, programmatic analysis and decision-making is best done in the pre-permit context. The Cohen Report erroneously characterizes as “admissions” EPA’s statements distinguishing between the nature and purpose of its proposed 404(c) action—establishing parameters for future permitting and mine development—and the site-specific issues that would be addressed in a future permitting process relating to a particular mine proposal—facility design, permit conditions, mitigation measures, economic impacts, etc.<sup>104</sup>

**D. Hypothetical Scenarios Are Standard in Environmental Decision-making, Not an Unusual Approach.**

The Cohen Report’s arguments regarding EPA’s use of hypothetical scenarios similarly reflect a limited understanding of environmental law and practice.<sup>105</sup> If there were something inherently problematic about relying on hypothetical scenarios, this would call into question the standard practices of numerous federal and state agencies over the past four decades or more.

EPA’s contaminated site cleanup rules, for example, require EPA and other agencies to “ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the remedial action options can be presented to a decision-maker and an appropriate

<sup>101</sup> *Cohen Report*, at 84.

<sup>102</sup> *See Native Village of Point Hope v. Jewell*, 740 F.3d 489, 504 (9<sup>th</sup> Cir. 2014).

<sup>103</sup> *Id.*

<sup>104</sup> *See Cohen Report*, 59-61, 84-85.

<sup>105</sup> *See id.*, at 84-85.

remedy selected.”<sup>106</sup> Remedial action typically proceeds in two phases. Hypothetical remedial alternatives are considered during the remedial investigation /feasibility study phase.<sup>107</sup> After the remedial approach has been selected, the details of the project are then developed during the remedial design/remedial action phase.<sup>108</sup>

The same general approach is used in NEPA, as NEPA requires federal agencies to evaluate hypothetical alternatives at both the programmatic stage and the permitting stage for a wide variety of projects and actions.<sup>109</sup> Many states likewise require analysis of hypothetical alternatives under state laws modeled after the federal NEPA statute.<sup>110</sup>

In short, the use of hypothetical scenarios is standard practice in environmental decision-making, and there is nothing about them that undermines the validity of EPA’s scientific assessment or its proposed 404(c) determination.

Furthermore, the Cohen Report dismisses the fact that EPA appropriately relied on PLP’s own project data and plans to form its assumptions and baseline data. PLP’s materials provided detailed information, maps, and descriptions on which to assess realistic, fact-based mining scenarios. Indeed, Northern Dynasty Minerals itself characterized the plans as set out in its Wardrop Report<sup>111</sup>—which, along with PLP’s Baseline Document, EPA used to develop its mining scenarios—as economically viable, technologically achievable and permissible.

It is Northern Dynasty Minerals and PLP’s use of material—not EPA’s—that is questionable, since those companies have willfully disseminated contradictory information to the public. As described in a letter from Senator Maria Cantwell to the U.S. Securities and Exchange Commission,<sup>112</sup> Northern Dynasty Minerals submitted its Wardrop Report to meet filing requirements with the SEC on February 24, 2011. When it did so, it informed the SEC and investors that the proposed project design and specifications contained therein were “feasible and permissible.” EPA relied on this language in its BBWA, stating that Pebble 2.0 and Pebble 6.5 are among the most likely to be developed in the watershed, as they “reflect projects based on extensive exploration, assessment, and preliminary engineering, which are described in [the Wardrop Report] as ‘economically viable, technically feasible and permissible’.”<sup>113</sup>

Yet, in order to block EPA’s efforts, PLP referred to the “very same Wardrop Report” as a

<sup>106</sup> 40 C.F.R. § 300.430(e)(1).

<sup>107</sup> See 40 C.F.R. § 300.430.

<sup>108</sup> See 40 C.F.R. § 300.435.

<sup>109</sup> See 40 C.F.R. § 1502.14 (requiring agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives”).

<sup>110</sup> See, e.g., Washington State Environmental Policy Act, Wash. Rev. Code § 43.21C.030; Mont. Code Ann. § 75-1-201.

<sup>111</sup> See Wardrop, *Preliminary Assessment of the Pebble Project: Sw. Alaska* (Feb. 17, 2011), available at [http://www.northerndynastyminerals.com/1/pdf/ndm/Pebble\\_Project\\_Preliminary%20Assessment%20Technical%20Report\\_February%2017%202011.pdf](http://www.northerndynastyminerals.com/1/pdf/ndm/Pebble_Project_Preliminary%20Assessment%20Technical%20Report_February%2017%202011.pdf).

<sup>112</sup> See Letter from Senator Maria Cantwell, to Elisse B. Walter, Chairman, U.S. Securities & Exchange Comm’n (Mar. 18, 2013), available at [http://www.cantwell.senate.gov/public/\\_cache/files/169563e5-e840-4021-911d-74f63d55e13f/SEC%20pebble%20final%2003182013.pdf](http://www.cantwell.senate.gov/public/_cache/files/169563e5-e840-4021-911d-74f63d55e13f/SEC%20pebble%20final%2003182013.pdf). [hereinafter, “Senator Cantwell Letter”].

<sup>113</sup> *BBWA*, at 6-2-.

“fantasy proposal” when it delivered formal testimony to the EPA in August of 2012,<sup>114</sup> and, in its submission to EPA regarding the first draft Assessment, as a “generic mine development scenario” that “is missing critical information.”<sup>115</sup> These conflicting formal statements to two different federal agencies—statements that cannot both be true—leave the public, corporate investors, and two United States regulatory bodies to wonder if Northern Dynasty Minerals is misleading its investors and the Securities and Exchange Commission, or intentionally providing misleading testimony to EPA.

**E. EPA Has Fully Explained the Basis for Its Proposed Determination.**

In defiance of the record, the Cohen Report contends that “the Proposed Determination contains no explanation by EPA as to how it concluded that the ‘Pebble 0.25 mine’ was not reasonably likely to cause an unacceptable adverse impact, but that a larger mine was reasonably likely to do so.”<sup>116</sup> Yet EPA has offered the following detailed explanation of precisely that issue:

The 0.25 stage mine is based on the worldwide median size porphyry copper deposit (Singer et al. 2008). Although this smaller size is dwarfed by the mine sizes that NDM put forward to the SEC (Ghaffari et al. 2011, SEC 2011), its impacts would still be significant.

In total, the Bristol Bay Assessment estimates that habitat losses associated with the 0.25 stage mine would include nearly 24 miles (38 km) of streams, representing approximately 5 miles (8 km) of streams with documented anadromous fish occurrence and 19 miles (30 km) of tributaries of those streams (EPA 2014: Chapter 7). Total habitat losses would also include more than 1,200 acres (4.9 km<sup>2</sup>) of wetlands, lakes, and ponds, of which approximately 1,100 acres (4.4 km<sup>2</sup>) are contiguous with either streams with documented anadromous fish occurrence or tributaries of those streams. For the largest mine that NDM put forward to the SEC (the 6.5 stage mine), stream losses would expand to 94 miles (151 km), representing over 22 miles (36 km) of streams with documented anadromous fish occurrence and 72 miles (115 km) of tributaries of those streams (EPA 2014: Chapter 7). Total habitat losses for the 6.5 stage mine would also include more than 4,900 acres (19.8 km<sup>2</sup>) of wetlands, lakes, and ponds, of which approximately 4,100 acres (16.6 km<sup>2</sup>) are contiguous with either streams with documented anadromous fish occurrence or tributaries of those streams.

To put these numbers in perspective, stream losses for just the 0.25 stage mine would equal a length of more than 350 football fields and the 0.25 stage mine wetland losses would equal an area of more than 900 football fields. Although Alaska has many streams and wetlands that support salmon, individual streams, stream reaches, wetlands, lakes, and ponds play a critical role in protecting the genetic diversity of

<sup>114</sup> Senator Cantwell Letter, *supra*, at 2.

<sup>115</sup> Pebble Limited Partnership (Crowell & Moring LLP) Comments on *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, in Docket Number #EPA-HQ-ORD-2012-0276, at 49 (July 23, 2012), available at <http://www.northerndynastyminerals.com/i/pdf/ndm/attachment-3-of-8.pdf>.

<sup>116</sup> *Cohen Report*, at 92.

Bristol Bay's salmon populations. Individual waters can support local, unique populations (Quinn et al. 2001, Olsen et al. 2003, Ramstad et al. 2010, Quinn et al. 2012). Thus, losing these populations would erode the genetic diversity that is crucial to the stability of the overall Bristol Bay salmon fisheries (Hilborn et al. 2003, Schindler et al. 2010, EPA 2014: Appendix A).

These stream, wetland, and other aquatic resource losses also would reverberate downstream, depriving downstream fish habitats of nutrients, groundwater inputs, and other subsidies from lost upstream aquatic resources. In addition, water withdrawal, capture, storage, treatment, and release at even the 0.25 stage mine would result in streamflow alterations in excess of 20% in more than 9 miles (nearly 15 km) of streams with documented anadromous fish occurrence. These streamflow changes would result in major changes in ecosystem structure and function and would reduce both the extent and quality of fish habitat downstream of the mine to a significant degree. The impacts from the larger mine sizes NDM has forecasted would be significantly higher. The 2.0 and 6.5 stage mines would result in streamflow alterations in excess of 20% in more than 17 miles (27 km) and 33 miles (53 km), respectively, of streams with documented anadromous fish occurrence (EPA 2014: Chapter 7).

Moreover, EPA's proposed restrictions under Section 404(c) flow directly from the agency's findings in the BBWA, contrary to the Cohen Report's assertion that there is a "fundamental inconsistency between the BBWA and the Proposed Determination."<sup>117</sup> For instance, in language that mirrors the BBWA, the Regional Administrator for EPA Region 10 proposed that EPA "restrict the discharge of dredged or fill material related to mining the Pebble deposit into waters of the United States within the potential disposal site that would, individually or collectively, result in any of the following" stream or wetland losses:<sup>118</sup>

- 5 or more linear miles of streams with documented anadromous fish occurrence;<sup>119</sup>
- 19 or more linear miles of stream tributaries where anadromous fish occurrence is not currently documented, but that are tributaries to streams with documented anadromous fish occurrence;<sup>120</sup>
- 1,100 acres or more of wetlands, lakes, or ponds contiguous with either streams with documented anadromous fish occurrence or tributaries of those streams;<sup>121</sup> and

<sup>117</sup> *Cohen Report*, at 91.

<sup>118</sup> *PD*, at 5-1.

<sup>119</sup> *Compare Proposed Determination*, at 5-1, with *BBWA*, at ES-14 (concluding that the mine footprint alone for a 0.25 billion ton mine would destroy 5 miles of known salmon spawning or rearing habitat).

<sup>120</sup> *Compare Proposed Determination*, at 5-1, with *BBWA*, at ES-14 (concluding that the mine footprint alone for a 0.25 billion ton mine would destroy a total of 24 miles of anadromous and non-anadromous streams).

<sup>121</sup> *Compare Proposed Determination*, at 5-1, with *BBWA*, at ES-14 (concluding stream flow alterations resulting from the mine footprint alone for a 0.25 billion ton mine would destroy 1,300 acres of wetlands, ponds, and lakes serving as off-channel habitat for salmon and other fishes).

- Greater than 20% of alteration of daily flow in 9 or more linear miles of streams with documented anadromous fish occurrence.<sup>122</sup>

EPA Region 10's proposed restrictions are not only based on the BBWA, but they are conservative, because aquatic resource losses at the levels specified would still amount to massive impacts. Never before has the government authorized a mining project in Alaska with the potential for this extent of anadromous streams and wetland destruction.<sup>123</sup> At Alaska's Rock Creek Gold Mine, for example, the U.S. Army Corps of Engineers permitted discharges into about 347 acres of waters of the U.S. for purposes of mine construction and authorized the permanent loss of about 171 acres of wetlands, but the affected waters were not anadromous.<sup>124</sup> The Red Dog Mine recently obtained approvals for an expansion that involved the placement of dredged or fill material in less than 10 acres of wetlands.<sup>125</sup> At the Kensington Mine in Southeast Alaska, a 404 permit for the construction of new facilities affected approximately 62 acres of anadromous waters and wetlands.<sup>126</sup> And, at Greens Creek Mine, the presence of salmon streams led the U.S. Forest Service to reject the operator's proposed 116-acre tailings expansion, which would have resulted in the direct loss of 1,646 linear feet (0.3 mile) of salmon stream habitat from tailings, in favor of a smaller tailings facility expansion alternative that would not discharge into streams.<sup>127</sup> The Corps has never issued 404 permits in Alaska allowing losses anywhere near 19 miles of non-anadromous streams, 5 miles of anadromous stream losses, or 1,100 acres of

<sup>122</sup> Compare Proposed Determination, at 5-1, with BBWA, at ES-14 (concluding stream flow alterations exceeding 20% resulting from the mine footprint alone for a 0.25 billion ton mine would adversely affect habitat in 9.3 miles of salmon streams).

<sup>123</sup> For 404 permit documents on large-scale mining projects in Alaska, see Alaska Dep't of Natural Res., *Large Mine Permitting*, (Nov. 2, 2015 2:06 PM) <http://dnr.alaska.gov/mlw/mining/largemine/>.

<sup>124</sup> See Department of the Army, *Permit Evaluation and Decision Document* (Feb. 26, 2007), available at <http://dnr.alaska.gov/mlw/mining/largemine/rockcreek/pdf/reacoedd.pdf>.

<sup>125</sup> See U.S. Army Corps of Engineers, *Public Notice of Application for Permit* (Apr. 23, 2013), available at [http://www.poa.usace.army.mil/Portals/34/docs/regulatory/publicnotices/POA-1984-12-M49\\_Chukchi%20Sea\\_PN.pdf](http://www.poa.usace.army.mil/Portals/34/docs/regulatory/publicnotices/POA-1984-12-M49_Chukchi%20Sea_PN.pdf) (proposed work included "1.79 acres of excavated wetlands to raise the dam plus 5.7 acres of excavated wetlands and 6.6 acres of excavated uplands to construct the road."). Previous authorizations at Red Dog included proposed work that would "affect 245 acres, of which 119 acres are wetlands."; U.S. EPA, *Red Dog Mine Extension, Aggaluk Project: Final Supplemental Environmental Impact Statement* (Oct. 2009), available at <http://dnr.alaska.gov/mlw/mining/largemine/reddog/pdf/rdseis2009vol2a.pdf>.

<sup>126</sup> See U.S. Army Engineer District, Alaska, *Department of the Army Permit POA-1990-592-M, Lynn Canal 31* (June 17, 2005), available at <http://dnr.alaska.gov/mlw/mining/largemine/kensington/pdf/kensusaceplyncanal05.pdf> (authorizing permittee to "[d]redge, place structures, and discharge an approximate total of 3,487,950 cubic yards of fill and dredged fill materials into an approximate total of 61.7 acres of waters."); see also U.S. Army Corps of Engineers, *Public Notice of Application for Permit POA-1990-592-M6* (July 17, 2009) available at <http://dnr.alaska.gov/mlw/mining/largemine/kensington/pdf/kensusacepnjul09.pdf> ("A total of 83.4 acres of fill was authorized under DA permit modification POA-1990-592-M"). See also, *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*, 129 S. Ct. 2458, 2464 (2009) ("Over the life of the mine, Coeur Alaska intends to put 4.5 million tons of tailings in the lake. This will raise the lakebed 50 feet—to what is now the lake's surface—and will increase the lake's area from 23 to about 60 acres.").

<sup>127</sup> See Alaska Journal of Commerce, *Greens Creek gets OK for partial expansion of tailings facility* (Sept. 12, 2013), available at <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/September-Issue-3-2013/Greens-Creek-gets-OK-for-partial-expansion-of-tailings-facility/>; see also, U.S. Dep't. of Agriculture, *Greens Creek Mine Tailings Disposal Facility Expansion, Final EIS and ROD Vol. 1* (Aug. 30, 2013), available at [http://dnr.alaska.gov/mlw/mining/largemine/greencreek/pdf/FEIS\\_ROD.pdf](http://dnr.alaska.gov/mlw/mining/largemine/greencreek/pdf/FEIS_ROD.pdf) (selecting alternative D, which was developed to "avoid filling any part of Tributary Creek with tailings.").

wetlands, lakes, or ponds.

Furthermore, the Cohen Report erroneously criticizes the proposed restrictions because they do not take into account the adverse impacts on salmon and their habitat resulting from “wastewater treatment plant failure,” “blockage of culverts,” “multiple failures of infrastructure in the event of a natural or man-made disaster,” and other factors.<sup>128</sup> EPA’s decision to limit the focus of its restrictions to the impacts posed directly by the mine footprint rendered its proposed restrictions very conservative and favorable to mineral development. These other factors are all considerations that EPA could reasonably have relied on in developing its restrictions, and doing so could only have led to a *more* stringent approach.

By using the Pebble 0.25 scenario as a baseline and focusing primarily on the impacts associated with the mine footprint, EPA Region 10 has developed proposed restrictions that are closely tied to and amply supported by the BBWA and administrative record.

**F. The Cohen Report Mischaracterizes Normal and Appropriate Government Activities.**

The Cohen Report’s suggestion that EPA may have pre-determined its decision to undertake 404(c) action is meritless and unsupported by the record.

For instance, the Report confuses lower-level staff advocacy within an agency early on in a decision-making process with the final decision made by the upper level agency managers with the benefit of a comprehensive and transparent public process. Even the documents cited in the Report demonstrate that EPA officials, especially higher level officials, have consistently stated throughout the process that scientific review and public comment could cause it to change direction.<sup>129</sup> At no time has a senior management-level official expressed a commitment to a final 404(c) action. Indeed, even today, there is no clear and final decision from EPA Headquarters as to whether the agency will ultimately accept Region 10’s Proposed Determination and proceed to a Final Determination.

The Report also conflates the policymaking process, in which it is standard practice for administrative agency staff members to advocate for their preferred programs and policy directions, with the scientific review process, where a higher level of objectivity is ensured (and was achieved in this instance) through the safeguards offered by a robust peer review process. In light of the record-breaking public comment processes (generating well over one million public comments) and the two rounds of peer review, any viewpoints possibly harbored by individual lower level EPA staff members prior to those processes is wholly irrelevant to the validity of the agency’s final BBWA or Proposed Determination.

Similarly, the Cohen Report’s allegation that “certain EPA officials had inappropriately close relationships with anti-mine advocates” has no factual basis.<sup>130</sup> This contention mischaracterizes normal government interactions with stakeholders that are strongly supported by the EPA and

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<sup>128</sup> *Cohen Report*, at 91.

<sup>129</sup> *Id.* at 13-14, 76, 98, App-97.

<sup>130</sup> *Id.* at 90.

federal government policies discussed above, including outreach, information-gathering, sharing of ideas, brainstorming of solutions, discussion of pros and cons, and submission of relevant information. Indeed, the Cohen Report's contention is belied even by PLP's own repeated statements (documented in the Report<sup>131</sup>) of gratitude and appreciation for EPA's open-door policy, willingness to meet, and strong interest in PLP's scientific data. It would be ironic indeed if the end result of the Cohen Report and PLP's self-serving advocacy for greater transparency is to discourage federal agencies from maintaining open communications with stakeholders.

The Cohen Report's charges relating to EPA's lack of candor and cooperation are equally unfounded.<sup>132</sup> EPA has repeatedly clarified that the BBWA process was a scientific investigation, as opposed to a decision-making process, and that the scientific assessment would inform its later decision-making. The Cohen Report disingenuously points to these clarifying statements as an alleged promise never to undertake a 404(c) action at all—a contention frivolous of its face.

The Report also asserts that EPA has failed to cooperate with congressional inquiries and FOIA requests.<sup>133</sup> This is simply untenable in light of the thousands of documents EPA has disclosed to Congress, and the Alaska federal district court's recent decision finding that EPA conducted an adequate FOIA search and “worked cooperatively” thereafter with PLP representatives to track down additional responsive documents, as well as its finding that there was no evidence of EPA bad faith.<sup>134</sup> With regard to the cooperativeness of EPA's former employee Phil North, it is clear from the contemporaneous email traffic that his computer crash occurred in 2010,<sup>135</sup> long before Congressional inquiries began in 2012, long before PLP submitted its FOIA request to EPA in 2014, and long before the FOIA litigation that ensued. The Cohen Report's insinuation that the computer crash was fabricated as a means to hide documents has no basis whatsoever.

Finally, the off-hand remark on the last page of the Cohen Report suggesting that “watershed planning” is a novel activity that should raise alarm bells and prompt congressional investigation<sup>136</sup> is manifestly frivolous and reflects the authors' limited understanding of the CWA. Watershed planning is commonly undertaken by EPA and states under the TMDL program. For instance, EPA has approved TMDLs for the 40 lakes, rivers, creeks, bays, and harbors identified as impaired by the Alaska Department of Environmental Conservation.<sup>137</sup> The proactive use of 404(c) to prevent such impairment is likewise well within EPA's authority and consistent with its statutory mandate under the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.”<sup>138</sup>

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<sup>131</sup> *Id.* at 48, App-5.

<sup>132</sup> *Id.* at 90-91.

<sup>133</sup> *Id.* at 92.

<sup>134</sup> See Order on Motion for Summary Judgment, *Pebble Ltd. Partnership v. U.S. EPA*, (D. Alaska, Aug. 24, 2015) (No. 3:14-cv-0199) 2015 WL 6123614.

<sup>135</sup> *Cohen Report*, at fn 490.

<sup>136</sup> *Id.* at 94.

<sup>137</sup> Alaska Dep't of Env'tl. Conservation, *Approved TMDLs* (Nov. 2, 2015, 2:41 PM)

<https://dec.alaska.gov/water/tmdl/approvedtmdls.htm>.

<sup>138</sup> 33 U.S.C. § 1251.

**G. The Cohen Report Lacks Transparency and Reflects a Biased Perspective.**

Given its criticism of EPA and its process for lack of transparency and “level of candor,” it is both notable and ironic that the Cohen Report lacks even the most basic level of transparency. The report states that “more than 60 individuals ... spoke with me or members of my team,”<sup>139</sup> and yet the Report only identifies three of these people by name.<sup>140</sup> The Cohen Report also fails to disclose any information about the content of these 60 interviews, what information was drawn from them, whose comments and perspectives were incorporated into the Report, and whose comments and perspectives were excluded from the Report.

The Report’s failure to disclose the names and affiliations of the interviewees suggests that this group may have been skewed in favor of mine development and opposition to EPA’s proposed restrictions. This inference is supported by the fact that 140 of the stakeholders Secretary Cohen approached refused to participate.<sup>141</sup> The Report lists several categories of people that were interviewed, and this list notably excludes any representatives from commercial or sports fishing organizations, Bristol Bay tourism operators, public interest organizations, or environmental groups.<sup>142</sup> Since these have been among the strongest supporters of EPA’s proposed restrictions and have participated actively in the administrative decision-making processes for several years, any Report written without their input is bound to reflect a biased perspective.

This skewed nature of the report is underscored by the fact the U.S. Department of Justice refused to allow current federal employees at EPA and other federal agencies to participate in the investigation.<sup>143</sup> Indeed, U.S. Assistant Attorney General John Cruden sent a strongly worded letter to Secretary Cohen in April 2015 urging him and his firm to “desist” in the PLP-sponsored “private investigation.”<sup>144</sup> Mr. Cruden emphasized that “no valid purpose could be served” by this effort.<sup>145</sup> He further explained that the Cohen review “overlaps with the pending litigation” and is “in tension with the preliminary injunction” that PLP obtained, purportedly to maintain the status quo rather than provide an opportunity for PLP to conduct civil discovery outside of the appropriate channels.<sup>146</sup> Accordingly, Mr. Cruden advised that the United States would not cooperate in the development of the Cohen Report, and he requested prior notice before any contact with employees of the EPA, U.S. Fish and Wildlife Service, National Park Service, or U.S. Geological Survey in order to allow the government to “take appropriate actions.”<sup>147</sup> It is hard to imagine any other credible and serious investigation pushing forward despite zero participation from the principal actors involved and then (1) making bold conclusions critical of those actors and (2) recommending that they be scrutinized even more closely than they already

<sup>139</sup> *Cohen Report*, at 4.

<sup>140</sup> *Id.* at 5.

<sup>141</sup> *Id.* at 4; *see also* Ex.4, Letter from Joel Reynolds, NRDC, to C. Scheeler, DLA Piper (Mar. 30, 2015) (attaching a blog highlighting the many reasons why NRDC declined to participate).

<sup>142</sup> *Cohen Report*, at 4.

<sup>143</sup> *Id.* at 5.

<sup>144</sup> *See* Ex. 1, Letter from J. Cruden, U.S. Asst. Atty. Gen. to W. Cohen, The Cohen Group (April 23, 2015).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*



are by Congress and EPA's Office of Inspector General.

Other aspects of the Cohen Report are troubling with respect to transparency and bias as well. The heavy imbalance of sources cited in the footnotes is illustrative:

- The Wardrop Report commissioned by Northern Dynasty Mineral and the Environmental Baseline Document prepared by PLP were cited a total of at least 31 times.
- Letters from PLP, Northern Dynasty Minerals, and Rio Tinto executives were cited at least 33 times.
- Letters from Sean Parnell, Michael Geraghty, Joe Ballash, and other State of Alaska officials strongly opposed to EPA's proposed 404(c) action were cited at least 36 times.
- The comments from six peer reviewers quoted in the footnotes were selectively chosen such that all six comments were negative and critical. No quotations expressing positive or supportive views were included even though there were many such comments in the enormous peer review record.
- Very long excerpts from the comments of those opposed to EPA's 404(c) advocates were included in the footnotes, including about 2 full pages from PLP about 5 full pages from the State of Alaska.

In contrast, the Cohen Report's citations, quotations, and excerpts from correspondence, reports, comments, and other materials prepared by the overwhelming number of supporters of EPA's 404(c) action did not amount to even a small fraction of the citations to sources expressing critical views.

The Cohen Report also lacks transparency regarding the qualifications, experience, and affiliations of its own authors and contributors. The Report is written largely in the first person, expressing the opinions, views, and conclusions of former Secretary of Defense William Cohen. Secretary Cohen's background and expertise is thus highly relevant to the credibility and persuasiveness of his review and conclusions. The Report fails to explain, however, why Secretary Cohen was chosen to conduct this report, other than a vague statement that he has "Cabinet-level experience."<sup>148</sup> Although Secretary Cohen has served as a respected public servant, he lacks experience in environmental law, mine permitting, engineering, fisheries, aquatic ecosystems, and all other legal and scientific disciplines relevant to the subject matter of the Report.<sup>149</sup>

Additionally, Secretary Cohen indicates that he was assisted in his review by his "staff at The

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<sup>148</sup> *Cohen Report*, at 1.

<sup>149</sup> Secretary Cohen obtained a law degree in 1965, but he has not practiced law since approximately 1972, and his few years of legal experience did not include the practice of environmental law. Secretary Cohen's subsequent political career focused on military operations and international relations, and he is not known for having any special expertise in environmental policy. See *William Cohen*, Wikipedia, [https://en.wikipedia.org/wiki/William\\_Cohen](https://en.wikipedia.org/wiki/William_Cohen) (last visited Oct. 24, 2015).

Cohen Group and by the law firm DLA Piper LLP.”<sup>150</sup> Not one of these individuals is mentioned by name or title, however, and no resume or other biographical information is provided for any of them either. Of the 63 staff members at The Cohen Group and the 3,328 attorneys at DLA Piper, many are junior-level associates with little experience in agency administration.<sup>151</sup> Without knowing the names of the individuals who contributed to the Cohen Report, it is impossible to know whether or to what extent those contributors have expertise relevant to the subject matter of the report or whether their prior experiences and affiliations might predispose them toward conclusions critical of EPA and favorable for mine developers.

This lack of transparency regarding the authors and contributors represents a major departure from standard practice in reports analyzing government policies and procedures. For comparison, a recent report analyzing the impacts of EPA decision-making, entitled the *Potential Energy Impacts of the EPA Proposed Clean Power Plan*, was produced by NERA Economic Consulting.<sup>152</sup> The names of the two Project Directors and five Project Team members who prepared the report are listed prominently on the inside cover of the report, and detailed biographical information is readily available about these individuals on NERA’s website.<sup>153</sup> Their biographies demonstrate substantial expertise relevant to the subject matter of the report, as shown in the following example:

Dr. David Harrison is a Senior Vice President at NERA Economic Consulting and Co-Chair of NERA’s Global Environmental Group. ... He participated in the development or evaluation of major greenhouse gas emission trading programs and proposals in the US, including those in California, the Northeast, and the Midwest, and various federal initiatives, as well as programs in Europe and Australia. He and his colleagues assisted the European Commission and the UK government with the design and implementation of the European Union Emissions Trading Scheme ... Most recently, Dr. Harrison and colleagues have used NERA’s proprietary energy-macroeconomic model ... to evaluate the potential economic impacts of a US carbon tax and to evaluate the potential economic impacts of federal regulations on carbon dioxide emissions from existing power plants. ... Dr. Harrison has directed studies of the local and state economic impacts of major energy infrastructure ... transportation infrastructure ... manufacturing and mining activities ... and large commercial and retail developments. ... Before joining NERA, Dr. Harrison was an Associate Professor at the John F. Kennedy School of Government at Harvard University, where he taught microeconomics, energy and environmental policy, ... and other courses for more than a decade. He also served as a Senior Staff Economist on the US government’s President’s Council of Economic Advisors, where he had responsibility for environment and energy policy issues. He is the author or co-author of two books

<sup>150</sup> *Id.* at 1.

<sup>151</sup> See The Cohen Group, *Who We Are*, (Nov. 2, 2015 2:58 PM), <http://www.cohengroup.net/who-we-are/team>; DLA Piper, *People Search*, (Nov 2, 2015 3:03 PM), <https://www.dlapiper.com/en/us/people/>.

<sup>152</sup> See NERA Economic Consulting, *Potential Energy Impacts of the EPA Proposed Clean Power Plan* (Oct. 17, 2014), available at [http://www.nera.com/content/dam/nera/publications/2014/NERA\\_ACCCE\\_CPP\\_Final\\_10.17.2014.pdf](http://www.nera.com/content/dam/nera/publications/2014/NERA_ACCCE_CPP_Final_10.17.2014.pdf).

<sup>153</sup> See NERA Economic Consulting, *Experts*, <http://www.nera.com/experts.html> (Nov. 2, 2015 5:21 PM).

on environmental policy and numerous articles on various topics in professional journals. ...<sup>154</sup>

In light of these experts' extensive background and expertise concerning the subject matter of their report, their conclusions and recommendations could reasonably be expected to be persuasive to government decision-makers, as well as to members of the public. By contrast, the Cohen Report fails to identify even the names of any of its authors or contributors other than Secretary Cohen, and it provides no information as to their expertise concerning EPA's procedures and policies. The Cohen Report thus appears to be asking readers to accept its conclusions and recommendations based primarily on the name recognition enjoyed by Secretary Cohen. This is not an adequate basis for Congress, the EPA Office of Inspector General, or the general public to give weight to the Cohen Report.<sup>155</sup>

Finally, it appears that a partner at DLA Piper LLP was recently the sole director of a company with a direct financial interest in Northern Dynasty Minerals ("NDM"), now the sole "partner" in the Pebble Partnership. With the exodus by April 2014 of all of its major investors—Mitsubishi in 2011, Anglo American in 2013, and Rio Tinto in 2014—NDM has several times sought to raise capital through the issuance of special warrants.<sup>156</sup> Notably, the most recent sale of NDM special warrants resulted in the investment on August 28, 2015 of about \$3.6 million (8,947,368 Special Warrants at \$0.399/share) by a company named *1047208 B.C. Ltd.*<sup>157</sup> *1047208 B.C. Ltd.* was incorporated on August 27, 2015—the day before the special warrant sale and in advance of the October 6, 2015 release of the Cohen Report critical to EPA's treatment of NDM. The sole director of *1047208 B.C. Ltd.* is Stuart B. Morrow, and its registered address is 2800 Park Place, 666 Burrard Street Vancouver, BC V6C 2Z7.<sup>158</sup> Stuart Morrow is a partner at DLA Piper.<sup>159</sup> 666 Burrard Street Vancouver, BC V6C 2Z7 is the same address as DLA Piper's Vancouver office.<sup>160</sup> As described above, the Cohen Report does not provide the level of author detail needed to ascertain Mr. Morrow's involvement, if any.

<sup>154</sup> *Id.*, at <http://www.nera.com/experts/dr-david-harrison-jr.html>.

<sup>155</sup> See *Cohen Report*, at 93-94.

<sup>156</sup> See, e.g. Northern Dynasty Minerals Ltd., *News Releases: Northern Dynasty to Raise Up to \$20 Million in Financing Transactions*, (Aug. 10, 2015), available at <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=718967>; see also Northern Dynasty Minerals Ltd., *News Releases: Northern Dynasty Completes C\$15.5 Million Financing*, (Jan. 13, 2015), available at <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=690926>.

<sup>157</sup> Northern Dynasty Minerals Ltd., *FORM 45-106F6, British Columbia Report of Exempt Distribution*, (Sept. 8, 2015), available at <http://www.bcsc.bc.ca/ViewDocument.aspx?DocNum=J7G5O6YBB7P3M7J6N6K2Q7O5D7N3>

<sup>158</sup> See Ex. 3, British Columbia Company Summary For 1047208 B.C. LTD.

<sup>159</sup> See DLA Piper, *People Search: Stuart Morrow*, (Nov. 2, 2015, 3:27 PM)

<https://www.dlapiper.com/en/canada/people/m/morrow-stuart/>.

<sup>160</sup> See DLA Piper, *Locations: Vancouver*, (Nov. 2, 2015, 3:29 PM)

<https://www.dlapiper.com/en/canada/locations/vancouver/>.

**IV. CONCLUSION**

For all of these reasons, the Cohen Report is neither reliable nor persuasive—and it lacks the essential independence that allegedly underlies its value as an assessment of EPA’s activities related to the Pebble Mine. Indeed, it is the Cohen Report—rather than EPA’s BBWA/Proposed Determination process—that is one-sided, non-transparent, and pre-determined in its findings and recommendations. The Cohen Report nowhere discloses what Secretary Cohen and DLA Piper were paid by PLP to prepare this report on its behalf, and, in the final analysis, it contributes nothing to the proceedings concerning 404(c) action in Bristol Bay beyond the arguments previously articulated on numerous occasions by PLP itself and its consultants. Under these circumstances, it should unquestionably be ignored.

**EXHIBIT 1**



## U.S. Department of Justice

Environment and Natural Resources Division

Assistant Attorney General  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Telephone (202) 514-2701  
Facsimile (202) 514-0557

APR 23 2015

Mr. William S. Cohen  
The Cohen Group  
500 Eighth Street, N.W., Suite 200  
Washington, DC 20004

Dear Mr. Cohen:

This is in response to your letter of March 24, 2015, concerning the retention of the Cohen Group and the DLA Piper law firm by the Pebble Limited Partnership ("Pebble") to conduct a purported "independent review" of what you characterize as "whether the U.S. Environmental Protection Agency ("EPA") has acted fairly in connection with its evaluation of potential mining in the Bristol Bay, Alaska, watershed."

The federal courts provide the appropriate forum for resolving Pebble's allegations against EPA. As you are aware, this matter is in litigation in three separate lawsuits filed by Pebble against EPA in connection with EPA's assessment of the potential environmental effects of Pebble's proposed mine activities. First, in May 2014 Pebble filed a lawsuit alleging, among other things, that EPA had exceeded its authority under Section 404(c) of the Clean Water Act by initiating an administrative review process to determine whether to deny or restrict the use of an area as a disposal site before Pebble had submitted a Section 404 permit application. The United States District Court for the District of Alaska dismissed Pebble's suit. As you know, Pebble has appealed that decision and the suit is pending in the Ninth Circuit Court of Appeals. In September 2014 Pebble filed a second lawsuit alleging that EPA violated the Federal Advisory Committee Act (FACA), which remains pending. And, in October 2014 Pebble filed a third lawsuit against EPA under the Freedom of Information Act (FOIA). That suit also remains pending.

Your "review" obviously overlaps with the pending litigation. In this regard, the district court in the FACA lawsuit has, with one limited exception, precluded any discovery until it rules on the government's pending motion to dismiss. Pebble's review is also in tension with the preliminary injunction that it obtained in the FACA lawsuit suspending actions by all persons involved in the Section 404(c) evaluation from proceeding with that process until the court has ruled on the merits of Pebble's complaint. Pebble sought the preliminary injunction purportedly

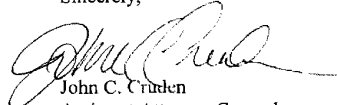
so that it could maintain its legal rights and the status quo, not so that it could launch its own private investigation into the EPA's actions. Pebble is attempting to obtain government information relating to its pending claims against the United States outside of the normal discovery context.

Further, as noted in your letter, in addition to the three separate lawsuits initiated by Pebble, there are multiple, pending investigations or inquiries. The U.S. House of Representatives Committee on Oversight and Government Reform and the U.S. Senate Committee on Environment and Public Works are both examining EPA's actions regarding Pebble's proposed Alaska mining project. Furthermore, EPA's Office of the Inspector General is also conducting a review. By law, the Office of Inspector General is an independent and objective unit, created pursuant to the Inspector General Act of 1978, which is responsible for conducting and supervising audits and investigations relating to the programs and operations of the EPA. There is therefore no valid purpose that could be served by the review that you propose on Pebble's behalf.

For all of the foregoing reasons, the United States will not cooperate with your private evaluation, and we respectfully urge you and your client to desist in this effort. However, should you and your client nevertheless choose to move forward with your review, the Environmental Protection Agency and the Department of Justice request to be contacted before any attempt is made to speak to any persons listed in Attachment A to your March 24th letter, so that we may take appropriate actions.

We also understand that the Cohen Group and the DLA Piper law firm have directly contacted individual employees of the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Geological Survey, and requested that they participate in your review. You provided no notice to the Department of Justice before making those contacts. We ask that, should you move forward with your review, you contact the Department of Justice and any affected agency before attempting to communicate with that agency's employees.

Sincerely,



John C. Cruden  
Assistant Attorney General

**EXHIBIT 2**



LISA MURKOWSKI  
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SENATE  
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WASHINGTON, DC 20540-1000  
202-224-3114  
202-224-3114

United States Senate

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202-224-3114  
202-224-3114

OFFICE  
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WASHINGTON, DC 20540-1000  
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202-224-3114

July 1, 2013

Mr. John Shively  
Chief Executive Officer  
Pebble Limited Partnership  
3201 C Street, Suite 604  
Anchorage, AK 99503

Mr. Mark Cutifani  
Chief Executive Officer  
AngloAmerican  
20 Carlton House Terrace  
London  
SW1Y 5AN

Mr. Ron Thiessen  
Chief Executive Officer  
Northern Dynasty Minerals  
1040 West Georgia Street  
15<sup>th</sup> Floor  
Vancouver, BC, Canada  
V6E 4H1

Messrs. Shively, Cutifani and Thiessen:

I write today with regard to the Pebble Limited Partnership (PLP)'s timeline for releasing a project description and submitting permit applications for development of the Pebble deposit in the Bristol Bay region of Alaska. As you know, in anticipation of PLP taking these actions, I have been and remain neutral on potential development in this area.

To that end, I have encouraged all stakeholders to withhold judgment until a project description is released, permit applications filed, and all relevant analyses completed. Because of that position, I have opposed the prospect of a preemptive veto of development in Alaska by the Environmental Protection Agency (EPA) under Section 404(c) of the Clean Water Act. Such an action would be based purely upon speculation and conjecture. It would deprive relevant government agencies and all stakeholders of the specifics needed to make informed decisions. But failure to describe the project and submit permit applications has the same effect.

For nearly a decade, Alaskans have been told that these actions are imminent. This has generated a broad range of responses from people throughout the state. Yet today, after years of waiting, it is anxiety, frustration, and confusion that have become the norm in many communities – rather than optimism about the new economic opportunities that responsible development of the Pebble deposit might be able to deliver.

As you know, I have been highly critical of EPA and protective of the due process that any entity considering investment in Alaska should be provided. But your own actions have created uncertainty among the people I represent, and the time has come to tell Alaskans whether and how you plan to proceed. I have addressed this correspondence to all of you, as a group, because your organizations are collectively responsible for these issues. You are also the only ones in a position to remedy them.

At least as far back as November 3, 2004, Northern Dynasty Minerals asserted that the submission of permit applications was imminent, stating that the company expected "completion in 2005 of ... permit

applications.”<sup>1</sup> On August 12, 2005, another statement was issued, claiming that “a full permitting process for a port, access road and open pit mine [were] all slated to begin in 2006.”<sup>2</sup>

On October 27, 2008, Alaskans were assured that those seeking to develop the Pebble deposit were “on schedule to finalize a proposed development plan in 2009 and, following input from project stakeholders, apply for permits in early 2010.”<sup>3</sup> Six months later, on March 18, 2009, this timeline was reaffirmed, with an announcement that PLP was in the midst of “preparation to initiate state and federal permitting under the National Environmental Policy Act (NEPA) in 2010.”<sup>4</sup>

On February 1, 2010, Alaskans were told that PLP was “preparing to initiate project permitting under the National Environmental Policy Act (NEPA) in 2011.”<sup>5</sup> Yet on May 2, 2011, came the announcement that PLP intended “to enter the permitting phase towards the end of 2012.”<sup>6</sup> On October 18, 2011, came another revision, as Alaskans were told by a PLP representative that “We have never even said that we’re going to [seek a] permit. We may not.”<sup>7</sup>

Most recently, on June 13, 2013, a PLP representative said that you “hope to have a project to take into permitting this year.”<sup>8</sup> And in what seems representative of the confusing message being communicated to Alaskans, at the time of this letter, a PLP company website still asserts that you are planning on “initiating permitting by late 2012.”<sup>9</sup>

By failing to take the next step – by failing to decide whether to formally describe the project and seek permits for it – PLP has created a vacuum that EPA has now filled with not one, not two, but three hypothetical mine scenarios contained in its so-called Watershed Assessment.

So I have a simple request: please establish a timeline and adhere to it. Clarity and certainty over how you intend to proceed is in the best interest of all who are involved with – and all who could be affected by – development of the Pebble deposit.

Sincerely,

  
Lisa Murkowski  
United States Senator

<sup>1</sup> “Northern Dynasty Secures Listing With Symbol ‘NAK’ on the American Stock Exchange,” Northern Dynasty Minerals Ltd. press release, November 3, 2004, on the Northern Dynasty Minerals Ltd. website, <http://bit.ly/1cmYd03>, accessed June 26, 2013.

<sup>2</sup> “Northern Dynasty Welcomes New Director to Board,” Northern Dynasty Minerals Ltd. press release, August 12, 2005, on the Northern Dynasty Minerals Ltd. website, <http://bit.ly/138vW1>, accessed June 26, 2013.

<sup>3</sup> “Successful 2008 Study Program Continues At Alaska’s Pebble Project,” Northern Dynasty Minerals Ltd. press release, October 27, 2008, on the Northern Dynasty Minerals Ltd. website, <http://bit.ly/10Vbp7S>, accessed June 26, 2013.

<sup>4</sup> “Pebble 2009 Work Plan to Focus on Finalizing Prefeasibility Study,” Pebble Limited Partnership press release, March 18, 2009, on the Pebble Limited Partnership website, <http://bit.ly/120vTWM>, accessed June 26, 2013.

<sup>5</sup> “Updated Mineral Resource Estimate Confirms the Pebble Project as North America’s Most Important New Copper-Gold-Molybdenum Development Opportunity,” Northern Dynasty Minerals Ltd. press release, February 1, 2010, on the Northern Dynasty Minerals Ltd. website, <http://bit.ly/14a3M6K>, accessed June 26, 2013.

<sup>6</sup> “\$91 million work program underway to prepare Pebble Project for permitting in 2012,” Northern Dynasty Minerals Ltd. press release, May 2, 2011, on the Northern Dynasty Minerals Ltd. website, <http://bit.ly/15FP3Du>, accessed June 26, 2013.

<sup>7</sup> I. J. Campinen, Edward W., “Proposed Pebble Mine Has Alaskan Community Focused on Critical Science and Policy Issues,” AAAS news release, October 18, 2011, on the AAAS website, <http://bit.ly/nh7qnW>, accessed June 26, 2013.

<sup>8</sup> Shively, John. Interview by Monica Trauzzi. OnPoint, E&E TV, “Bristol Bay: Pebble mine’s Shively discusses future of project. EPA’s watershed assessment,” June 13, 2013, online, <http://bit.ly/16zAHXq>, accessed June 26, 2013.

<sup>9</sup> AngloAmerican, “Case studies: Pebble partnership,” <http://bit.ly/19tRNeA>, accessed June 26, 2013.

**EXHIBIT 3**



BC Registry  
Services

Mailing Address:  
PO Box 9431 Stn. Prov. Govt  
Victoria BC V8W 9V3  
www.corporateonline.gov.bc.ca

Location:  
2nd Floor - 940 Blanshard Street  
Victoria BC  
1 877 526-1526

## BC Company Summary

For  
**1047208 B.C. LTD.**

**Date and Time of Search:** October 29, 2015 10:27 AM Pacific Time  
**Currency Date:** October 08, 2015

### ACTIVE

**Incorporation Number:** BC1047208  
**Name of Company:** 1047208 B.C. LTD.  
**Recognition Date and Time:** Incorporated on August 27, 2015 09:31 AM Pacific Time  
**Last Annual Report Filed:** Not Available  
**In Liquidation:** No  
**Receiver:** No

### REGISTERED OFFICE INFORMATION

**Mailing Address:**  
2800 PARK PLACE  
666 BURRARD STREET  
VANCOUVER BC V6C 2Z7  
CANADA

**Delivery Address:**  
2800 PARK PLACE  
666 BURRARD STREET  
VANCOUVER BC V6C 2Z7  
CANADA

### RECORDS OFFICE INFORMATION

**Mailing Address:**  
2800 PARK PLACE  
666 BURRARD STREET  
VANCOUVER BC V6C 2Z7  
CANADA

**Delivery Address:**  
2800 PARK PLACE  
666 BURRARD STREET  
VANCOUVER BC V6C 2Z7  
CANADA

### DIRECTOR INFORMATION

**Last Name, First Name, Middle Name:**  
Morrow, Stuart B.

**Mailing Address:**  
2800 PARK PLACE  
666 BURRARD STREET  
VANCOUVER BC V6C 2Z7  
CANADA

**Delivery Address:**  
2800 PARK PLACE  
666 BURRARD STREET  
VANCOUVER BC V6C 2Z7  
CANADA

NO OFFICER INFORMATION FILED .

**EXHIBIT 4**

## NRDC

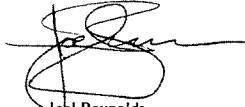
March 30, 2015

Charles P. Scheeler  
The Marbury Building  
6225 Smith Avenue  
Baltimore, Maryland 21209-3600  
[charles.scheeler@dlapiper.com](mailto:charles.scheeler@dlapiper.com)

Dear Mr. Scheeler:

I have received your phone message of today regarding the investigation that DLA Piper and the Cohen Group have undertaken on behalf of The Pebble Partnership. For at least the reasons stated in the attached blog post, NRDC is declining your invitation to participate.

Very truly yours,



Joel Reynolds  
Western Director  
Senior Attorney  
Natural Resources Defense Council  
[jreynolds@nrdc.org](mailto:jreynolds@nrdc.org)

# THE HUFFINGTON POST

FRIDAY MARCH 27, 2015

## The Pebble Partnership and the Demeaning of Independence

By Joel Reynolds



*Joel Reynolds is the Western Director and Senior Attorney of NRDC, Los Angeles*

Leave it to the flailing Pebble Partnership -- now consisting of just one under-funded Canadian company -- to conclude that the only truly "independent" review of its uniquely reckless Pebble Mine is an "independent" review that is hought and paid for by . . . The Pebble Partnership.

Pebble and its Beltway-based CEO announced this week the hiring of two Washington, D.C. consulting firms to "conduct an independent review" of the U.S. Environmental Protection Agency's ("EPA") work on the proposed mine. According to former Defense Secretary William Cohen, principal of the Cohen Group, the "independent" review being undertaken by his firm and the DC law firm DLA Piper will "focus on the fairness of EPA's actions" and "will follow the evidence wherever it might lead . . . as fairly and thoroughly as possible."

Never mind that Mr. Cohen has been hired by the very company whose economic existence depends on building the Pebble Mine.



Photo Credit: Matthew Gibson Fortcham

Never mind that Mr. Cohen has been hired by the very company that has attacked EPA relentlessly for years, claiming that its Pebble Mine project has been illegally and unfairly targeted by EPA.

Never mind that the residents of Bristol Bay have overwhelmingly opposed the Pebble Mine and supported EPA's involvement to an unprecedented degree, because the mine, if constructed, threatens to contaminate and ultimately destroy the incomparable Bristol Bay wild salmon fishery -- the economic, cultural, and subsistence life-blood of the region, its communities, and its people.

After a four-year, twice peer-reviewed comprehensive scientific risk assessment of the potential impacts on the Bristol Bay watershed from large-scale mining like the Pebble Mine, EPA found "significant" and potentially "catastrophic" impacts on the region -- and on its \$1.5 billion salmon fishery and the 14,000 jobs that it generates.

This was, of course, bad news for The Pebble Partnership, but it was neither illegal nor unfair. In stark contrast to The Pebble Partnership's penchant for high-priced DC lobbyists and lawyers, it reflects our constitutional democracy at its best.

Congress gave EPA the clear legal authority over 40 years ago under the Clean Water Act, and the public record shows that scientific review, public participation, and opportunities for stakeholder input (including time and again by The Pebble Partnership) in EPA's process were extensive and pervasive. By the time the process had

run its course, the agency had received over 1.5 million comments, with an astounding 95 percent supporting EPA's review.

For years, EPA has taken plenty of heat from The Pebble Partnership and from the company's mining industry boosters in Congress, who launched their own investigation and requested that EPA's Inspector General do the same. With no disrespect intended to Mr. Cohen or his firm, there is absolutely nothing credible to be gained from yet-another Pebble-sponsored "independent" review. If Pebble doesn't like EPA's process or the ultimate outcome of that process, it has a right to file an appeal in court, but that review, too, is unlikely to meet Pebble's nonsensical and uniquely self-serving definition of "independence."

"Here we go again," said Alannah Hurley, the Executive Director of United Tribes of Bristol Bay. "This is more of the same desperate PR-stunt, a bought-and-paid-for review, from a company who has lost on the science, who has lost on the truth, who has lost on public opinion."

Sadly, The Pebble Partnership isn't listening. It is hoping that its latest high-priced Beltway consultants can engineer an end-run around the science, the law, and the will of the people of Alaska.

Stop the Pebble Mine. Take action again -- now.

**Congress of the United States**  
Washington, DC 20515

January 30, 2014

The Honorable Gina McCarthy  
Administrator, Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20004

Dear Administrator McCarthy:

We are writing to thank you for your thorough work on completing a Watershed Assessment on the proposed Pebble Mine in Bristol Bay, Alaska. Because we are very concerned that a large-scale mining project would cause irreparable damage to the Bristol Bay Watershed, we ask that you use your authority under the Clean Water Act to protect Bristol Bay and the fishing industry it supports.

Bristol Bay is home to all five species of North American Pacific salmon, and up to 40 million salmon return to the fishery each year. This fishery provides thousands of jobs in the commercial fishing industry and also supports a vibrant outdoor tourism industry. Recreational fishermen travel from around the world to fish in this pristine ecosystem, anglers from our states lead trips to Bristol Bay, and equipment manufacturers outfit these expeditions. In recent years, the health of this fishery has been threatened by the proposed construction of what would be the largest open-pit mine in North America: Pebble Mine. The EPA Watershed Assessment confirmed our most serious concerns and those of our constituents, that mining on the scale of Pebble would compromise the health of thousands of acres of wetland, even without a spill or accident.

The Bristol Bay fishery is a vital economic engine for the Pacific Northwest, impacting more than half of the region's commercial and recreational fishing industries. According a report released last year by the Institute for Economic and Social Research at the University of Alaska, the fishery supports over 5,000 jobs and \$618 million in annual economic output in Oregon and Washington alone. The fishing community is too important to the economy, and history, of the Pacific Northwest to be threatened with this massive development.



In the past, we have contacted EPA to ask that you protect Bristol Bay from any industrial development that would be detrimental to the fishing economy of the Pacific Northwest. The Watershed Assessment clearly indicates that Pebble Mine constitutes such a threat. We urge you to use your authority under the Clean Water Act to protect the Bristol Bay salmon fishery from the devastating impact of Pebble Mine.

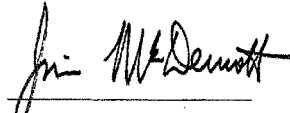
We thank you for your work on this important issue, and appreciate your consideration of our request.

Sincerely,



SUZANNE BONAMICI

Member of Congress



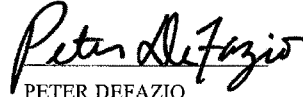
JIM MCDERMOTT

Member of Congress



EARL BLUMENAUER

Member of Congress



PETER DEFAZIO

Member of Congress



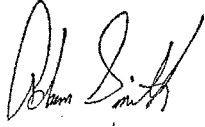
RICK LARSEN

Member of Congress



DEREK KILMER

Member of Congress



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ADAM SMITH  
Member of Congress



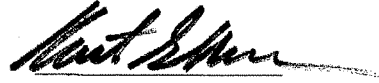
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SUZAN DELBENE  
Member of Congress



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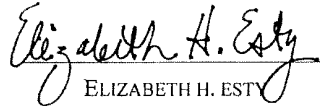
DENNY HECK  
Member of Congress



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KURT SCHRADER  
Member of Congress

REPORT SUBMITTED BY REPRESENTATIVE  
ELIZABETH H. ESTY



ELIZABETH H. ESTY

*Statement and Questions for the Record*  
*Hearing of the House Committee on Science, Space, and Technology*  
*“Examining EPA’s Predetermined Efforts to Block the Pebble Mine”*

*November 5, 2015*

Thank you, Chairmen Smith and Ranking Members Johnson for holding today’s hearing to examine the Environmental Protection Agency’s (EPA) intention to use Section 404 (c) of the Clean Water Act to limit the development of Pebble Mine in Bristol Bay, Alaska.

Alaska’s Bristol Bay is one of the most pristine watersheds in the world, where the spawning ground for the planet’s largest sockeye salmon fishery can be found. This fishery is a lifeline to the commercial fishing industry and the people of Bristol Bay. Going back a millennium, the Native Alaskan population has relied on this fishery for sustenance, and today, it supports an industry that employs 14,000 workers, generating \$500 million in annual expenditures. Additionally, nearly half of the seafood we consume is harvested from Bristol Bay.

Bristol Bay’s exceptional ecological value must be preserved. And it should come as no surprise that the proposal to construct one of the largest open pit copper mines in the Bristol Bay watershed would draw attention from the Environmental Protection Agency (EPA).

After three years of scientific study, the EPA released a final assessment that measures the impacts the Pebble Limited Partnership (PLP’s) proposed mine could have on the environment, public health, and economic livelihood of those who rely on the fisheries in the Bristol Bay watershed. From these findings, the EPA initiated the 404(c) process under the Clean Water Act to limit—but not ban—the scope of development of Pebble Mine. This action does not prevent the Pebble Limited Partnership (PLP) from submitting a mine plan and permit applications for use in National Environmental Policy Act (NEPA) and Clean Water Act reviews.

*For Mr. Halford*

According to your testimony the Pebble Partnership first indicated it would complete its permit application in 2005. Can you explain how EPA activities in

2011 could have prevented Pebble from submitting a permit for the seven years between when it first announced its intention and EPA's activities?

- Did EPA somehow prevent the Pebble Partnership from filing a section 404 permit application?
- It is my understanding that EPA began examining the potential adverse impacts of the project in 2011 at the request of a number of tribes and commercial fisherman. Is that correct?
- Why were these groups asking EPA to initiate a 404(c) process?

## STATEMENT SUBMITTED BY TROUT UNLIMITED



November 3, 2015

Honorable Lamar Smith, Chair  
US House of Representatives  
Science, Space and Technology Committee

Honorable Eddie Bernice Johnson, Ranking Member  
US House of Representatives  
Science, Space and Technology Committee

Dear Chairman Smith and Ranking Member Johnson –

On behalf of Trout Unlimited and its 155,000 members nationally, we submit these comments to the record for the hearing on the “Report of an Independent Review of the United States Environmental Protection Agency Actions In Connection with Its Evaluation of Potential Mining In Alaska’s Bristol Bay Watershed” (Cohen Report).

In Alaska, we have over 1000 members and work alongside sport fishing and recreation businesses, Alaska Native communities, commercial fishermen, and many others with the goal of protecting Bristol Bay from the proposed Pebble mine. There is little doubt what is at stake in Bristol Bay, which is the largest producer of sockeye salmon globally. This fishery, which supports more than 14,000 jobs, drives an economy contributing more than \$1.5 billion annually, and provides more than half of the world’s wild caught sockeye salmon. In addition to a thriving commercial fishing economy, Bristol Bay has supported Alaska Native communities for thousands of years, as they depend upon the fishery of subsistence, economic, and cultural needs. Dozens of sport fishing businesses also depend on the wild fish-producing rivers where thousands of anglers from all over the world come to fish each year.

Our Alaska staff and members have worked for years along side local groups to support their efforts to protect Bristol Bay from the threats posed by a foreign mining company. For more than a decade, the threat of the Pebble Mine has loomed over the communities of Bristol Bay. Beginning as early as 2004, and nearly every year since then, Northern Dynasty Minerals, and thereby the Pebble Limited Partnership, have promised to be on the cusp of submitting various permit applications in the pursuit of the Pebble Mine. However, after repeated hollow promises, Pebble has failed thus far to submit its applications and has needlessly drawn out the permit process—all the while forcing the people and businesses of Bristol Bay to wait with the shadow of the Pebble Mine hanging over them.

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*Trout Unlimited: America’s Leading Coldwater Fisheries Conservation Organization*  
Alaska Office: 3105 Lakeshore Drive Suite 102B /Anchorage, AK / 99517  
[www.tu.org](http://www.tu.org) • [www.savebristolbay.org](http://www.savebristolbay.org)

As a committee, you must understand that while Alaska has robust resource development industries—such as oil and gas, mining and timber harvesting—it is also a state that is unwilling to trade one resource for another. In this case, Alaskans overwhelmingly recognize the threat posed by Pebble to Bristol Bay’s world-class fishery and Alaskans continue to oppose the Pebble mine.

Polling as recent as August 2015 shows statewide opposition to Pebble near 60%.<sup>1</sup> Despite the picture painted by the Cohen Report, residents of the communities of Bristol Bay overwhelmingly oppose the Pebble Mine. More than 81% of Bristol Bay Native Corporation shareholders voted to oppose the mine. During public comment periods for the EPA’s Watershed Assessment and initiation of a draft 404(c) Determination more than 99% of comments submitted by Bristol Bay residents supported protecting Bristol Bay from large-scale mining.

Today, instead of finalizing and submitting its permit applications, as it promised to do more than ten years ago, which would have brought about the very permit/NEPA process Pebble claims to want, the Pebble Partnership is doubling down on an elaborate public relations scheme in a desperate attempt to prop up a mine that Alaskans do not want.

While Pebble, through its own press releases as well as through the conclusions presented in the Cohen Report, claim to seek a more traditional permit/NEPA process, such a process is only available upon submission of complete permit applications. At this point the only thing preventing the Pebble Partnership from receiving the remedy it claims to seek is its own repeated refusals to submit applications for the requisite permits.

While the EPA has proposed restrictions on mining the Pebble deposit, it has not preemptively vetoed the Pebble Mine. Additionally, these proposed restrictions came only after a lengthy process involving a comprehensive review of the risks associated with large-scale mining in the pebble deposit, two peer-review sessions, countless stakeholder and public meetings, and numerous opportunities for input by both Pebble itself as well as the State of Alaska.

While Pebble complains about issues of transparency, in reality, EPA’s actions were based on sound scientific process and its community engagement efforts were a model of transparency. The Proposed Determination followed an extensive process of public engagement and scientific investigations into the significance of the Bristol Bay watershed and the significant unacceptable risk posed by large-scale porphyry copper mining activities at the Pebble Mineral Deposit.

EPA’s Proposed Determination is comprehensive, incorporating the vast amount of scientific information, peer review, and public comment that went in to the final Bristol Bay Watershed Assessment. Development of that Assessment was the result of a three-year process of research and investigations, extensive interaction between EPA, the mining companies, local residents and tribes as well as regional citizens, two rounds of exceptionally extensive peer review, and multiple public hearings and public comment periods—which elicited more than 1

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<sup>1</sup> <http://bit.ly/1KTXj6l>

million comments, the vast majority of which supported protective action by EPA<sup>2</sup>. In the end, not only did the peer review process laud the EPA's efforts, but also more than 300 national scientists applauded EPA's work noting that the science is clear for protection of Bristol Bay.

When EPA began the Watershed assessment process in early 2011, they requested on several occasions for Pebble to participate in a meaningful way, sharing data, input and expertise. On at least two occasions, Dennis McLarren requested information from Pebble, while taking the time to answer all of Pebble's questions about the process. Pebble never outright answered those questions, nor did they provide the information requested. Then, Pebble blasted EPA for not consulting with Pebble or considering their data in the assessment.

In its Assessment, the EPA concludes that mining impacts of this scale would be unprecedented in Alaska, and that development of even an unprofitable fraction of the Pebble Deposit would cause significant, irreversible loss of and impairment to fish habitat due to elimination, fragmentation and dewatering of streams, wetland, and other aquatic resources. Only when faced with these irrefutable facts did the EPA proceed with the §404(c) process.

Secretary Cohen and Pebble have criticized the EPA for basing its review on 'hypothetical mining scenarios.' However, these scenarios are not based on pure imagination, as Pebble would have you believe. The EPA's assessment is based on documents that Pebble has filed with the Alaska Department of Natural Resources as well as the United States and Canadian Securities Exchanges Commissions. These filings document the size, scope, and nature of Pebble deposit and give scenarios for mining that deposit. Further, they drew from the broadest and most comprehensive of examples and research on modern mining, mining impacts on salmon, and mining related mitigation.

Contrary to Pebble's claims, the EPA has not pre-emptively vetoed the Pebble Mine. Rather, it has placed common-sense restrictions on mining the Pebble deposit in Bristol Bay that will allow mining to continue so long as it is done in a way that doesn't cause unacceptable loss to the fisheries values that support the culture, economy and way of life of Bristol Bay.

Since 2004, on at least a dozen occasions, and likely many more, Pebble has told investors and the public that permit applications were forthcoming, yet permit applications have inexplicably been delayed year after year.<sup>3</sup> For example, in October of 2008, Alaskans were assured that that Pebble was on "schedule to finalize a proposed development plan in 2009 and, following input from project stakeholders, apply for permits in early 2010."<sup>4</sup> Even after the EPA began the Watershed Assessment process, Pebble CEO John Shively told the Juneau Empire that

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<sup>2</sup> During the first round of public comments on the first draft of the Watershed Assessment, EPA collected over 233,000 comments, with 95% supporting EPA's work. During the second comment period during Summer 2012, EPA received over 895,000 total comments, with 73% in favor of protecting Bristol Bay. Of those, 85% of Alaska comments and 98% of Bristol Bay comments supported EPA action. In total, between two rounds of comment, over 1.1 million comments, with over 79% of comments supporting EPA's Assessment and requesting EPA take action to protect Bristol Bay. <http://www2.epa.gov/bristolbay/public-involvement-bristol-bay-assessment>

<sup>3</sup> <http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=595723>

<sup>4</sup> <http://www.energy.senate.gov/public/index.cfm/2013/7/sen-murkowski-calls-on-pebble-partnership-to-release-mining-plan>

Pebble is likely to start applying for permits in early 2011.<sup>5</sup> Elected officials and the public have repeatedly asked Pebble to move on with the project and submit its permit applications. Notably, in 2013 Senator Lisa Murkowski strongly urged Pebble to apply for permits. The Cohen Report conveniently omits this letter, where she states that Pebble's delay 'has generated a broad range of responses from people throughout the state. Yet today, after years of wait, it is anxiety, frustration, and confusion that have become the norm in many communities.'<sup>6</sup>

In addition to misleading Bristol Bay communities, Pebble has not acted as a good neighbor to the region of Bristol Bay. Bristol Bay residents have long worried about the impacts of the vast number of exploration drill sites in the Pebble deposit. Many of them, residents have found, remain uncapped or poorly capped, causing possible leaking, acid mine drainage, and possible pollution. In July of 2015, a field inspection report by the State of Alaska showed that 1/3 of the 24 drill sites that PLP showed to DNR during the inspection had problems that could lead to pollution, including acid generation. Today there are more than 1300 holes, thousands of settling ponds and tens of thousands of pounds of now unused material on state land. Instead of funding lawyers and lobbyists, Pebble should invest in cleaning up their mess left behind in Bristol Bay.

In the end, it is past time for Pebble to stop misleading Congress and the communities of Bristol Bay. Today, Pebble is more interested in funding lawyers and lobbyists than they are in developing a mine. Through its repeated failure to submit permit applications, its countless broken promises to the people of Alaska, and its ongoing campaign of deception, Pebble has created a culture of uncertainty, frustration, and distrust. Pebble complains, and has high-dollar consultants complain for it, that the §404(c) process has been unfair and that it should be evaluated through the traditional permit/NEPA process. However, these complaints are unfounded for the simple fact that Pebble has had the ability to initiate the permit/NEPA process at any point. We urge this committee to join the people of Alaska and tell Pebble enough is enough.

Thank you for your thoughtful consideration and for the opportunity to weigh in on this important issue.

Sincerely,



Nelli Williams  
Alaska Program Director  
Trout Unlimited

<sup>5</sup> [http://juneauempire.com/stories/092410/sta\\_711593114.shtml#VjEcQr43Pw](http://juneauempire.com/stories/092410/sta_711593114.shtml#VjEcQr43Pw)

<sup>6</sup> <http://www.energy.senate.gov/public/index.cfm/2013/7/sen-murkowski-calls-on-pebble-partnership-to-release-mining-plan>