



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

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Statement of Chairman Lamar Smith (R-Texas)

Examining EPA's Predetermined Efforts to Block the Pebble Mine Part II

Chairman Smith: Today we will examine the Environmental Protection Agency's (EPA) efforts to block the Pebble Mine Project from development before it even applied for a permit. This morning, the Committee will hear testimony from EPA Region 10 Administrator Dennis McLerran.

According to the EPA, Regional Administrator McLerran is the "decision maker" for EPA matters that involve the Pebble Mine.

It was his decision to improperly use the Clean Water Act to stop the Pebble Mine before the project submitted a formal plan, before it submitted a permit application, and before due process was able to proceed. I am certain that we will hear from our colleagues on the other side of the aisle about the EPA Inspector General's (IG) report that appeared to absolve the agency of any pre-determination or bias in this matter.

However, the IG's report is flawed. It took a top down analytical approach and focused only on Administrator McLerran and acting Assistant Administrator Nancy Stoner. It did not focus on all the EPA employees involved in the Pebble Mine matter, nor did it discover the actions taken by those who funneled information up to Administrator McLerran.

In the course of the Committee's investigation, we discovered that EPA employees colluded with third party Pebble Mine opponents. They sought to deliberately establish a record that pointed to one outcome: the Pebble Mine will be excluded from the regular permitting process and should be stopped.

Recently, the Committee conducted a deposition of former EPA employee Phil North – the EPA employee who, on the advisement of environmental groups, chose not to voluntarily speak to Congress. Mr. North's testimony is important to understand the mindset of the EPA employees under the authority of Administrator McLerran in Region 10.

Mr. North readily admitted to the Committee that he opposed the Pebble Mine and advocated among his colleagues that the agency use the Clean Water Act to stop it. Mr. North and his EPA colleagues arrived at this conclusion before the agency had produced any scientific information. While the EPA has been quick to minimize Mr.

North's role in the agency's decision making process, his influence to promote the idea to stop the Pebble Mine is clear.

Mr. North admitted under oath that he provided edits to an official petition letter from a third party sent to Administrator McLerran. The letter requested that the EPA stop the Pebble Mine before it applied for any permits. Mr. North asserted that it was, in fact, his duty as a federal government employee to provide assistance to a group that petitioned the government and the EPA.

The EPA Inspector General and the EPA Office of Ethics apparently do not agree. Both determined that Mr. North's actions constitute a possible misuse of his federal government position. Mr. North's testimony also provided a clear depiction of the lack of adherence to official EPA policies that went on under Administrator McLerran's watch. Mr. North admitted that he and other EPA employees within Region 10 used personal email accounts to conduct official EPA business.

Mr. North discussed matters that related to Pebble Mine on his personal email with third party groups opposed to the project. Nearly all of these official records are now unavailable to the Committee for review because Mr. North and the agency failed to preserve them.

We may never know the true extent to which Mr. North and EPA employees worked with outside groups to establish a process to stop the Pebble Mine before it applied for a permit.

But we know enough to conclude that EPA employees violated ethical standards by giving outside groups unprecedented access to internal EPA deliberations, allowing for close collaboration on agency actions and strategy.

Documents obtained from the EPA show that Administrator McLerran's trusted advisor on Pebble Mine matters, Richard Parkin, presented only one option to Administrator McLerran – that the EPA use the Clean Water Act to stop the mine before it applied for a permit.

The EPA should be reminded that it was Congress that established the Clean Water Act. It is not the decision of activist EPA employees to decide to circumvent the processes established in the Clean Water Act. The EPA and anti-Pebble Mine groups continue to assert that the pre-application process EPA used to stop the Pebble Mine is one that will ultimately save the mining company time and money.

But it is not the agency's place to decide how a company should spend its resources. If the Pebble Mine chooses to use its resources to move forward with the permitting process, then it should be allowed to do so. Moreover, it appears that the EPA will use this case as precedent to block additional projects throughout the United States.

If we allow the EPA to pursue this path of action, the Agency will have set the precedent 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 harmful to economic development and dangerous to the democratic process.

This Committee should support due process, protect the permitting process, and insist that EPA actions be based on objective science. The EPA violated all of these tenets in its evaluation of the Pebble Mine.

The Committee should not allow EPA to stop projects before they even apply for a permit. This would be contrary to the rule of law and the principles of scientific analysis. The inappropriate actions by the EPA employees, the misapplication of the law, and lack of decision making based on science throughout this process requires that the agency cease any further action against the Pebble Mine.

The EPA should allow the established permitting process to run its course and determine the future of this project. Science and due process should lead the way, not pre-determined outcomes by activist EPA employees.

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