

THE PEBBLE MINE PROJECT: PROCESS AND POTENTIAL IMPACTS

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WATER RESOURCES AND ENVIRONMENT
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TRANSPORTATION AND
INFRASTRUCTURE
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WEDNESDAY, OCTOBER 23, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:58 a.m., in room 2167, Rayburn House Office Building, Hon. Grace F. Napolitano (Chairwoman of the subcommittee) presiding.

Mrs. NAPOLITANO. Good morning. I call this hearing to order, and we are here today to focus on the Pebble Mine project. Let me begin by asking unanimous consent that the chair be authorized to declare recesses during today's hearing. Without objection, so ordered.

Today's hearing is very important with significant impact to the Nation. While the topic of the Pebble Mine project may seem local to Alaska, the impacts of the mining project in Bristol Bay may be felt as far away as Washington, Oregon, California—my State—States with a robust salmon fishing industry—and the rest of the world.

The predominant Alaska Native cultures present in the Nushagak and Kvichak River watershed—the Yup'ik, Dena'ina, and Alutiiq—sorry if I mispronounce them—are two of the last intact, sustainable, salmon-based cultures in the world. And it is for this reason that it is important that the Pebble Mine project be examined thoroughly with the best science before it proceeds.

Today, we will talk about the process for permitting the Pebble Mine project. Like any process, the outcome of it is as good as its input. In this case, it is not clear that the scientific data is being properly reviewed or considered. The Environmental Protection Agency, EPA, has a significant role in permitting projects for this mine, even though the Army Corps of Engineers is the primary leader in permitting. EPA should be participating in a robust review process for a mine that was once described as the largest open-pit mine in the world.

Even though the current proposal for the mine focuses on a smaller scale mine, the EPA has an important role in evaluating the potential impacts of the latest proposal. It now seems like the EPA is backing off of reviewing the permitting process in a significant manner. Specifically, on July 1, 2019, the EPA expressed concern that the draft EIS, environmental impact statement, under-

estimated impacts and risks of the Pebble Mine project to water resources.

However, on July 30, 30 days later, they chose to withdraw protections for Bristol Bay under section 404(c) of the Clean Water Act. What happened in 30 days to change the EPA's mind?

We need to get to the bottom of this and find out why EPA has changed its mind, or had it changed for them, about the potential impacts of the mine.

The process seems flawed. I am not convinced that if we continue to let the process play out, as proponents of the mine suggest, that we will end up with a final decision based on good science and data. We need evidence that this project is being properly reviewed. And so far, I have not seen that.

[Mrs. Napolitano's prepared statement follows:]

Prepared Statement of Hon. Grace F. Napolitano, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Water Resources and Environment

Good morning. Today's hearing is on a very important issue with significant impacts for the nation.

While the topic of the Pebble Mine project may seem local to Alaska, the impacts of a mining project in Bristol Bay may be felt as far away as Washington, Oregon, California—states with a robust salmon fishing industry—and the rest of the world.

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We need to get to the bottom of this and find out why EPA has changed its mind about the potential impacts of this mine. The process seems flawed and I am not convinced that if we continue to let the process play out, as proponents of the mine suggest, we will end up with a final decision based on good science and data. We need evidence that this project is being properly reviewed, and so far, I have not seen that.

Mrs. NAPOLITANO. I ask unanimous consent that committee members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions. Without objection, so ordered.

I am pleased to yield this time to my ranking member, Mr. Westerman, for any thoughts he may have.

Mr. WESTERMAN. Thank you, Chairwoman Napolitano. We have a significant amount of business before the subcommittee that is critical to the American taxpayer. Today would be better spent dis-

cussing how to move forward the next Water Resources Development Act, a traditionally bipartisan effort to advance navigation, flood control, and ecosystem restoration projects critical to communities nationwide. We can also be examining solutions to fix our aging water infrastructure and flood control strategies to prevent or lessen future flooding events that plague many of our communities.

But instead of focusing on any of these critical issues, the subcommittee is focusing on a partisan priority currently under review at the Federal agency level. We are wading into a project and an issue that is currently in the middle of a comprehensive review under the National Environmental Policy Act.

In 2014, EPA aggressively sought to expand its influence far beyond the original intent of the Clean Water Act and exercised what is known as the 404(c) veto authority by issuing a preliminary determination which essentially blocked development of Pebble Mine. Historically, this authority has been used in rare circumstances, only having been employed 13 times. But never had EPA issued a veto before a project permit application with detailed engineering site plans and environmental mitigation had been filed.

In doing so, EPA completely bypassed the established Clean Water Act and NEPA procedures specifically designed to evaluate potential projects, thereby denying the company a fair regulatory due process by foreclosing the opportunity for science to be objectively presented, reviewed, and assessed, trampling State authority and stranding millions in capital expenditures by the company.

When unprecedented steps like this are taken, a chilling effect is sent around the country and the world for businesses wanting to invest in the United States, and it raises serious concerns about regulatory due process in our country.

I want to be clear. I understand the charged nature of this proposal and the potential for environmental disruption that can occur when mining operations are present, and I know stakeholders are here today representing those concerns. But again, I also believe in proper regulatory due process through a fair and objective Federal environmental permitting process. I believe in giving an applicant the opportunity to have the Corps of Engineers and the State of Alaska, along with a suite of other Federal agencies, review this project objectively on the merits of its permit application.

It wasn't until 2017, 3 years after EPA's preemptive judgment, when the Pebble Partnership filed a permit application, thereby kick-starting NEPA—the environmental review process deemed the gold standard by environmental activists, environmental NGOs, and Democrats nationwide.

I will withhold judgments on the merits of the mine and stay out of the politics, but I will reaffirm that Federal agencies should not be predetermining outcomes, and that the review process that is currently taking place, should be allowed to play out.

In the meantime, this committee should get back to its business of addressing the infrastructure needs of this country. I hope we can get back to real work on what usually are bipartisan issues for us. We have made real headway in the past Congress, advancing three WRDAs in the past 6 years and exploring ways to improve and accelerate our water resources development programs. We

could have focused today on a topic that would help inform our actions on those important issues and help our constituents who sent us here to work together on real solutions.

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Mr. WESTERMAN. I yield back the balance of my time.

Mrs. NAPOLITANO. Thank you. We will proceed now to recognize Mr. DeFazio, the chairman of the full committee.

Mr. DEFAZIO. Thanks, Madam Chair. I would agree with the gentleman that we want to have a proper regulatory due process and should not prejudge. Unfortunately, I think prejudgment has been made since the day that Donald Trump, the President of the United States, who is known to manipulate things, met with the Governor of Alaska, and essentially dictated to the Corps, and EPA, of course, withdrew its objections.

This project is an abomination, and it does have massive implications, not just for Alaska, not just for the west coast, but for the future of sockeye salmon worldwide. Half of the wild sockeye are dependent upon the Bristol Bay region. One-half. At one point, Mr. Collier used to work with Bruce Babbitt, who, I think, probably would disown him at this point. He says this might even improve salmon habitat. I would love for him to name a mine other than a reclamation project that has improved salmon habitat anywhere in the world, particularly a pristine area like this.

As they say, it is about jobs. Yeah. Well, there are a hell of a lot of jobs up there right now dependent upon this resource, 14,000 full- and part-time jobs, \$480 million a year for the fisheries in that area. And then you go on to other activities: 150 sportfishing and hunting-related businesses operate in the watershed, 30,000 sportfishing trips, \$12.4 million in hunting trips, \$34.5 million in wildlife viewing activities. I am sure they will love hunting around the 400- and 500-foot tall piles of dirt holding the toxic waste from this mine.

Now, they are going to say this is about job creation, but the numbers they are using are predicated upon the original proposal which they say they have no intention of doing. We are never going there. We are going to do a 20-year project which has not been economically evaluated, and which the Corps has not dealt with in that manner. But they are still touting the numbers from 100 percent of the project, the 70-plus year project.

Now, I want to hear if he has a credible economic analysis for this scaled-down proposal, because we are going to hear from someone with very significant experience in the industry working for real mining companies, Rio Tinto and others, who withdrew from this project because they knew it was a scam, and it wasn't economically viable.

But now we have a shell company proposing this, a shell company that is going to have to treat the water in perpetuity. We have seen this before. I got one right in my district. A Canadian company came in, did a bunch of mining. Oh, we are gone, we are bankrupt, and you got the toxic waste. We are still working on cleaning that up.

So here we have a shell company with no other assets except for this claim, and they are going to be able to create the largest perpetual water treatment plant in history, the history of the world. Never been done before, but they can do it, and, of course, they will, after they make so much money on this thing that is scaled down to the point where it is not economical.

I would say, you know, if I was looking at this from sort of a financial perspective, I would say we have a pump and dump. It is one of two things: It is a pump and dump, and there have been some credible news reports about insider trading relating to deci-

sions made by the EPA and others in the Trump administration on this. Or it is pump, dump, and fooled you, and we are going to come back with a giant mine, one or the other. Because what is before us today is not credible, and it has not been credibly evaluated by the Corps of Engineers.

These dams are going to be 545 feet tall, made out of dirt, rock, in an area that is seismically active, currently gets an average of 50 inches of rain a year. Don't worry, we can treat all that. We can get all the toxic waste out from exposure, and ultimately we will submerge it and put it in this giant lake, and everything will be fine, and we will treat it in perpetuity, forever.

How much does that cost? That is not in the core analysis. There is no closure analysis in here. So we know what kind of closure it is going to be. They are going to dump it on the people of Alaska and the taxpayers of the United States, and by the way, at that point, we probably won't have a salmon fishery anymore.

So I really think that it is very important we are here today, and this is the business of this committee, clean water and protection of the environment.

[Mr. DeFazio's prepared statement follows:]

Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chairman, Committee on Transportation and Infrastructure

Let me state, right from the start, that the Pebble Mine proposal is a bad idea made even worse by the sham review process currently underway.

First, let's talk about the proposed location of this mine.

The Bristol Bay Watershed, where this mine is proposed, is one of the last pristine environments remaining in the world.

Protection of Bristol Bay is critical to native Alaskan villages that have lived in this area for over 4,000 years, to the fishers and businesses that rely on the salmon run for their livelihood, and to future generations of Alaskans.

The quality of the Bristol Bay environment is also hugely important to the economy of the region. According to today's testimony, the Bristol Bay fisheries support about 14,000 full and part time jobs and generate over \$480 million in direct annual economic expenditures and sales.

Similarly, this pristine environment also supports approximately \$1.5 billion in economic activity to the regional economy, including 150 sportfishing or hunting related businesses that operate in the watershed with about 30,000 sportfishing trips taken to the region each year, as well as an additional \$12.4 million in hunting trips and an additional \$34.5 million in sales from wildlife viewing activities.

Now, the Pebble Partnership will also try to sell this mine on its potential for job creation. I have heard the estimates that the Pebble Partnership is making on the thousands of jobs the mine will create nationwide, and the estimated \$400 million in additional revenues to the State of Alaska that the mine could produce. However, I also understand that these numbers are based on the largest mine proposal that the Partnership floated in 2011 and that the Obama administration attempted to veto in 2016.

Maybe Mr. Collier can enlighten us on the job creation numbers from the slimmed down proposal he is selling today; however, I would suggest that any jobs created from this mining proposal will be to the detriment of the lives and livelihoods of native Alaskans, fisheries, and other commercial entities that rely on the pristine environment there today—so, I ask, is it worth the risk?

Second, let's talk about the unprecedented scale of this mining proposal.

Even at the smallest scale under review, the footprint of the Pebble mine would be unprecedented for an open pit mine in such a pristine environment.

As noted in testimony today, the Pebble proposal would require the removal and treatment of over 1 billion tons of bulk mining tailings, the capturing and treatment of approximately 13,000 gallons per minute of contaminated mine wastewater, and

all of this behind 5 constructed dams in one of the most dynamic environments on earth.

Two of these dams are proposed to exceed 545 feet each—which is roughly the same height as the Grand Coulee Dam, in Washington State. So, the proposal would be to construct at least 2 new Grand Coulee-type dams, on lands that are prone to seismic activity, in an environment that is facing some of the greatest challenges from climate change on Earth. And, Mr. Collier, you will be responsible for treating this mining wastewater, forever, using what others describe today as untested technologies that exist nowhere else in the world at this scale.

Mr. Collier, you also say in your testimony that the mine will “do no damage to the fishery” and may, in fact “have a positive impact on some fish habitats.” Give me a break—how to you improve upon a pristine environment? And, the consequence of you getting this wrong are catastrophic and forever—and I would agree with many of the panelists here today, not worth the risk.

Third, let’s talk about the shell game that is going on with attempts to get approval of a project that just doesn’t pencil out—unless you plan to come back and build the rest later.

Today’s testimony includes the insights of a mining industry specialist—someone whose livelihood has depended on the approval of mining operations, worldwide—who shows how the current mining proposal being advocated by the Pebble Partnership and under review by the U.S. Army Corps of Engineers, is a sham. This testimony demonstrates what I have been hearing all along—that this “smaller, smarter mine”, as Mr. Collier describes it, is not economically feasible—and actually starts with an estimated negative net present value of \$3 billion.

Now, I don’t run a multibillion-dollar company, but if I did, I am not sure how long I would remain employed if I started \$3 billion in the red. But, I also understand that Mr. Collier may not have to worry about this, because the press is reporting that if he is able to get approval of the permit for this mine, he will personally walk away with a \$12 million performance bonus.

But a \$3 billion shortfall in revenue does require us to question the viability of this project, its ability to protect this environment over the long run, or the motives of the mining company on the need to expand the scale of mining to make this a profitable endeavor.

I also want to express my deep disappointment with the Corps of Engineers on their track record of review for this project to date. If the Corps continues its current path to rush approval of this project, I believe this will be a stain on the reputation of this proud institution, which continues to serve as our nation’s premier water resources agency.

I would remind the Corps of the words of the former head of EPA, Scott Pruitt, who said “... It is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there. Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection.”

When you are on the opposite side of Scott Pruitt—who was no friend of the environment—you have to wonder.

I recognize the tremendous political pressure the leadership of the Corps must be facing from this administration to rush approval of this project, but I call on the Corps to start upholding its independent, statutory responsibilities, and stop acting like a cheerleader for this project.

This Administration is once again putting private industry wants at the top of its agenda, risking the health and safety of our nation’s ecosystem, the ancestral home for Alaska Natives, and the destruction of the nation’s most productive salmon habitat.

We need to stop this shell game and understand that a process that purposefully looks at only part of the picture, misses the entire view.

The end goal for the Pebble Limited Partnership isn’t for one-eighth of the deposit, it is for 100 percent of the deposit. That is what the EPA and the Corps need to review—and reviewing anything less is a disservice to the American people.

Mr. DEFAZIO. So with that, I yield back, Madam Chair. Thank you for this important hearing.

Mrs. NAPOLITANO. Thank you, Mr. DeFazio.

I now call on Mr. Sam Graves, the ranking member of the full committee.

Mr. GRAVES OF MISSOURI. Thank you, Chairwoman Napolitano and Ranking Member Westerman. I appreciate that.

I know the issue of Pebble Mine is charged, and I respect the views of our witnesses here, but I also understand that the permit application is currently going through a very robust environmental impact analysis, just as any other large-scale project would. I think we should let that process play out.

With that, I would like to yield the remainder of my time to the distinguished gentleman from Alaska, Mr. Young, whose district this lies in.

Mr. YOUNG. Thank you, Congressman Graves, and I want to associate my remarks to Mr. Westerman, and I would also like to ask for unanimous consent to yield to the committee my written statement. OK.

I guess I might say that I have never been for or against this project, but I am for the process. And I looked at the witness panel. There is not one on the witness panel that is a scientist, or is an engineer or a Federal witness. If we want to talk about the permitting process, we ought to have—Madam Chair, we ought to have a witness from the EPA. We ought to have the Corps of Engineers. We ought to listen to the science. We are going to hear a lot of opinions as it directly affects them, but not the science.

And people forget, Madam Chair, that this is State land. It is not Federal land. The Statehood Act has the right to choose the 103 million acres of land, and they chose this land. They put it up for discovery, and it was discovered. Under the discovery clause, you have a right for exploration. Under the right of exploration, you have a right for development if you go through the permitting process.

This hearing today, and what I have seen recently on TV shows, politicizes this issue. You are not listening to the science. You are saying a lot of what ifs, can and cannot, should we or shouldn't we? This committee has a responsibility to review those that are directly involved, not those that may be affected by it. It is about science.

I worry about it because, very frankly, I agree with Mr. Westerman. We have got other things we should be doing in this committee, including passing a transportation bill. I hope we don't start out a hearing like this one, with a transportation bill that becomes partisan.

This is a State issue, and yet, here we are saying we are going to take land you can't develop. We put it up by hearing or by an agency. EPA did a preemptive strike under the Obama administration. A preemptive strike. Didn't follow the process, didn't follow science.

It always interests me, Madam Chair, that my side and your side of the aisle always wants to say NEPA is perfect. We mustn't attack it. We must use science. But you are not hearing any science from this side of the aisle, from that group of witnesses.

You may hear from somebody who worked for the agency once for awhile, no longer employed there, has a fixed opinion. That is not science. So I am going to sit here and listen to all this testimony, and, respectfully, believe some things people have, but I will tell you, unless we do and follow the rules, any other time there is anything to be done in the State of Alaska, there is a tendency for everybody in the lower 48 that figure they can do what is best

for the State. They know better than anybody else. There is a tendency to have that feeling that we are going to take care of Alaska from Alaskans. This is a State issue. Once you step over that line, that goes for some of the witnesses here today, the Federal Government gets involved in your background, in your business, then you are going to have Big Brother on your shoulder all the time. I want to believe the United States of America, not the United States of the Federal Government.

Mr. Chairman, this isn't a hearing, I don't think, which is as important as everybody makes it out to be. I would say it is important to me, because I follow the process. We are not doing it. We are making presumptive findings without the science, and I have said all along: if it isn't there, then the State does not have to issue its permits. Forget EPA. Forget the Corps of Engineers. The State doesn't have to do it. The emphasis should be put on the State. They chose the land. They put it up. It has to be utilized.

So Mr. Chairman, I do thank Mr. Graves for yielding his time to me, but my written statement will be for the record, and use my vocal statement too because I feel very strongly about this. I yield back.

[Mr. Young's prepared statement follows:]

Prepared Statement of Hon. Don Young, a Representative in Congress from the State of Alaska

Congressman Graves, thank you for yielding and to the committee for allowing me to speak on this uniquely Alaskan issue. For some reason, my colleagues in the majority feel that it is their moral imperative to highlight and politicize issues in my district. It seems that any time Alaskans want to develop their God-given resources, or even just build a road, it becomes a Federal case for the left.

I have said from the beginning that I do not have a position for or against the mine being built. I have always called for a scientific and evidence-based approach to determine whether the project should be permitted in the first place. That is the process that is taking place now, that wasn't taking place before due to the preemptive Obama administration veto.

I want to make several points on the format and substance of this hearing.

First, it is difficult for me to fathom why we are holding this hearing in the first place. This committee has jurisdiction over the Army Corps of Engineers and their handling of Section 404(c) permits. If this hearing is supposedly about the process that our federal agencies are required to follow by the laws that Congress passes, why then, are there no government witnesses present?

These six majority witnesses and my friends on the other side of the aisle have given statements and will give testimony questioning the integrity of the Draft Environmental Impact Statement (EIS), but none of the witnesses are the scientists or engineers that drafted or worked on the Draft EIS.

The lack of an unbiased scientific expert on this panel just shows that this issue has never been about the process but is just an attempt to sway public opinion and tamper with the ongoing NEPA process.

All of the witnesses have had the opportunity to submit comments on the Draft EIS, of which I understand there are more than 115,000. If my Democrat colleagues truly cared about the integrity of due process, they would want to hear from witnesses who do not champion their anti-development agenda.

Secondly, I want to address the timing of this hearing and what it says about the self-serving and selective support for our nation's regulatory process. Comments on the Draft EIS were due on July 1, 2019. The Army Corps of Engineers is reviewing those comments and providing answers to the respective coordinating agencies including the EPA. Holding this hearing in the middle of the NEPA process to attack the Draft EIS is nothing more than another political stunt to cast aspersions and speculation on the outcome of process that is no where near complete.

It is as if we are in the middle of a surgery and we are asked to listen to six people who are not doctors, much less the surgeon, try and predict the outcome for

the patient. But because we are taking testimony that furthers the majority's political agenda, we are forced to take the time in this committee to hear it and in turn defend the NEPA process which Congress has set in law.

Regarding the substance of this hearing, there are three critical points that must not get lost amidst the debate about the potential impacts of the mine.

First, progressives claim that NEPA, is a bedrock environmental law in this country. I've heard Mr. Huffman use that exact phrase many times in the Natural Resources Committee. What specifically is wrong with the current state of the NEPA process for this project? Let us complete the science. Let the Army Corps of Engineers use the NEPA process to complete their EIS. Democrats sing the praises of science—let the scientific process continue to determine what effect, if any, this mine would have on Bristol Bay.

It seems that the NEPA process is only infallible and to be protected at all costs if the Democrats get the outcome they want. If there is something that needs to be changed in NEPA, then let's have that debate but not in the context of politicizing this project. What we cannot have and what I won't stand for is selective outrage about the NEPA process, only when it serves the left's antidevelopment agenda.

Secondly, I understand that there are federal permits required and that the section 404 process exists. But this project is proposed on state land that was specifically reserved for mineral and resource development for decades. Depending on the outcome of the federal permit process, there will be dozens of state permits that would need to be awarded. Primacy on this matter should rest at the state level, where the people are closest to the issue. Alaska is well equipped to decide what is best for Alaskans. During the Obama administration the 404 process was used to inject the opinions of bureaucrats in Washington, D.C. on Alaskans. That was wrong then and any similar attempts today, such as this hearing, are equally wrong.

Lastly, I want to talk about the pitfalls of allowing a politically motivated anti-development agenda dictate how and when the federal government utilizes its veto authority to prematurely end the exploration of resource development projects. The Obama administration set a dangerous precedent in this case. If the EIS process had been allowed to take place then, this issue would have likely been settled by now from a NEPA perspective.

If there is not a commitment to follow the law as written, then a draconian chilling effect will linger over all future proposed development projects in Alaska. Alaska needs to continue balancing economic development with environmental stewardship. Impugning the NEPA process in this case will help ensure that future projects are never proposed, cutting off economic prosperity for future generations of Alaskans.

Nothing has happened yet, and we owe it to all parties and the future of Alaska to make sure we duly consider balancing the need for economic development with environmental stewardship.

I thank Mr. Graves again for yielding and look forward to hearing the witness testimony.

Mrs. NAPOLITANO. Thank you, Mr. Young. I now ask unanimous consent for the following statement to be entered into the hearing record: A statement from Michael Jackson, a fisherperson from Washington State, at the request of Mr. Larsen.

[The information follows:]

**Statement of Michael Jackson, Bristol Bay Driftnet Permit Holder,
FV Kelly J, Submitted for the Record by Hon. Rick Larsen**

I would like to respectfully submit the following testimony regarding the proposed Pebble Mine project in Bristol Bay, Alaska. I am a Bristol Bay salmon commercial fisherman based in Bellingham, Washington and have been fishing in Bristol Bay since 1985. I am also on the Board of Directors for the Bristol Bay Regional Seafood Development Association, which represents Bristol Bay's driftnet permit holders. The proposed Pebble Mine threatens a sustainable industry that provides good-paying, renewable jobs to thousands of Americans like myself. I am deeply concerned with how the Trump Administration is handling the Pebble project's permitting process. Since day one this process has been rushed and ignores the well-documented science showing that the Pebble Mine would cause irreversible harm to Bristol Bay's salmon fishery. I urge you and your colleagues to do everything in your

power to stop this corrupt permitting process from moving forward any further. My livelihood and thousands of others depend on it.

I first started fishing in Bristol Bay as a crewmember. I had fished in many different areas in Alaska in many different fisheries, but Bristol Bay immediately stood out as unique to me in so very many ways. Dangerously quick currents brought about by ridiculously high (over 33 feet) tidal extremes, put my safety protocols to the test immediately. THAT impressed me. I had fished the Gulf of Alaska and the Bering Sea, longlining, crabbing, and seining, harvesting the bounty of the sea efficiently and sustainably, but nothing prepared me for the sheer volume of sockeye salmon that could fill my net with 20,000 pounds of fish in just a few minutes. Bristol Bay's sheer abundance still holds me in awe. I had—and still to this day—have never seen or experienced anything like it. Bristol Bay is Nature at the absolute peak of perfection, with sustainability, volume, and beauty on full display and available for all to experience. I have raised two sons, 26 and 23, to join me in the driftnet fishery in Bristol Bay. They operate their own boat, own their own permits, and will return every season to Bristol Bay, not unlike the migrating sockeye salmon that they come to harvest. Bristol Bay is not just a place where my family goes to make a living though. Bristol Bay is a place where we as a family come to make a life; a life that I cannot imagine living without the ability to participate in this fishery.

Part of why I fish in Bristol Bay instead of where I live in Washington is because Bristol Bay is the last place left in the world where we have this much salmon abundance. Salmon fisheries elsewhere are either gone completely or declining. Bristol Bay is the largest and most valuable wild salmon fishery left in the world. In the last few years, Bristol Bay has seen record-breaking runs with the second largest commercial harvest on record in 2019¹. In an average year, Bristol Bay's salmon fishery contributes roughly 50% of the world's sockeye salmon and generates \$650 million in income and \$1.5 billion in economic activity². The commercial fishery in Bristol Bay has existed for over 130 years and today provides more than 14,000 jobs, including 8,000 fishing jobs³.

The economic impacts of Bristol Bay's salmon fishery extend well beyond the Bristol Bay region, making it an important contributor to our nation's renewable economy. There is a Bristol Bay fishing permit holder living in nearly all 50 states. The majority of Bristol Bay's non-Alaska resident permit holders reside in Washington state with 769 commercial fishing permit holders in Washington alone. Combined, $\frac{1}{3}$ of Bristol Bay's commercial fishermen and $\frac{2}{3}$ of its processing workers live in West Coast states (California, Oregon, Washington). In addition, the majority of supplies and services used in Bristol Bay's fishing and processing industries are purchased in Washington. The Puget Sound region in particular has deep ties to the Bristol Bay fishing industry given that the majority of Bristol Bay's major seafood processors are based in the Seattle area and a substantial percentage of Bristol Bay's salmon products are shipped to Seattle for reprocessing and distribution to other markets around the country and world⁴.

All of this is at risk because a foreign junior mining company is trying to take advantage of the current political climate and push forward an economically unfeasible mine at the expense of our country's salmon, jobs, and economy. I'm concerned and confused about why the Trump Administration would advance this project despite its lack of economic feasibility and despite the 14,000 American jobs at stake. Bristol Bay's salmon fishery is a renewable economic engine, and one that cannot be replaced. I'm disappointed by how the U.S. Army Corps of Engineers is overseeing the current permitting process, and in particular the lack of scientific rigor and accuracy in its Draft Environmental Impact Statement (DEIS). The Army Corps' DEIS is fatally flawed and fails to evaluate the true scale and scope of the potential impacts that the proposed Pebble project would have on Bristol Bay and its wild salmon populations. Ultimately, this is because the DEIS is based on a false, "smaller" mine plan even though the Army Corps itself says in the DEIS that expansion of the project is "reasonably foreseeable." In addition, the DEIS downplays many of the direct and indirect impacts outlined in the EPA's 2014 peer-reviewed Bristol Bay Watershed Assessment and other scientific literature.

Of particular concern to me and my fellow fishermen are the following information gaps and inaccuracies in the DEIS regarding potential impacts to Bristol Bay's salmon fishery:

¹ Alaska Department of Fish & Game: www.adfg.alaska.gov

² Knapp et al. University of Anchorage: Institute of Social and Economic Research. April 2013. *The Economic Importance of the Bristol Bay Salmon Industry*.

³ Wink Research and Consulting. 2018. *Economic Benefits of the Bristol Bay Salmon Industry*.

⁴ Knapp et al., *The Economic Importance*

The risk of a potential tailings dam failure, which would be catastrophic for the Nushagak River—one of Bristol Bay’s most productive salmon river systems. The Army Corps has yet to conduct a thorough, long-term assessment of a potential tailings dam failure and its impacts, which is inexcusable given other recent tailings dam failures and the threats that such a failure could have to the communities and industries that are downstream. Because of these risks, Bristol Bay’s drift net permit holders took it upon themselves to hire independent earth scientist, Dr. Cameron Wobus, to model potential tailings dam failure scenarios and their potential impacts. His analysis found that it is likely that Pebble’s tailings material would reach Bristol Bay⁵ and reinforces that a tailings dams failure at the Pebble project would have far reaching and long-lasting impacts on the Nushagak River drainage and deserves further analysis by the Army Corps and Pebble Limited Partnership.

The DEIS does not adequately look at the immediate or long-term effects of a potential accident or contamination at the Pebble Mine site on the value and marketability of Bristol Bay’s salmon. Instead, the Army Corps makes a sweeping assumption that a change in market reception of Bristol Bay’s salmon is not likely to occur (DEIS 4.6–2). This assumption is ill-founded and is in direct contrast to the Pacific Seafood Processors Association’s conclusion that, “we know from past experience, that actual or perceived damage to the purity of the waters or fish of the Bristol Bay region would harm the marketability of Alaska salmon.”⁶

The DEIS does not include a post-operation reclamation plan or wastewater treatment plan. We understand that this is due to the fact that the Pebble Limited Partnership has not submitted this information to the Army Corps or the State of Alaska, which we find unacceptable and questionable given that this is standard practice in the industry. Because this project will require treatment and monitoring in perpetuity, this information must be made available in the DEIS for the public to review and comment on.

In addition to these information gaps and inaccurate assumptions, the DEIS does not account for the hundreds of millions of dollars in investments made by Bristol Bay’s permit holders and seafood processors, nor does it evaluate the potential impacts that the Pebble project could have on the value of these investments and assets. Every Bristol Bay permit holder invests hundreds of thousands of dollars to participate in the Bristol Bay commercial fishery, requiring loans that depend on a consistent supply of salmon and strong market prices. Any loss in fishing income would create financial hardship for these fishermen, especially younger fishermen who are just getting established.

Despite our repeated questions and requests for more information, the Army Corps continues to push the Pebble Mine forward and is on track to make a decision in just a matter of months. It’s clear that this process is being driven by a foreign mining company and their political agenda. That’s not how a permitting process should work or how our federal agencies should operate. The integrity of this permitting process has been compromised and I have no confidence that the Army Corps is capable of upholding its responsibilities under the National Environmental Policy Act. This permitting process should be testing Pebble’s assumptions and promises, not taking the Pebble Limited Partnership at its word. Americans deserve a rigorous permitting process that’s transparent, rigorous, and based on the best available science and information.

Protecting Bristol Bay makes sound economic sense, and it’s also the responsible and right thing to do. As someone who has been able to benefit greatly from this renewable resource, it is my personal duty to protect it for my sons and future generations. Unfortunately, given the Trump Administration’s aggressive permitting schedule, we are running out of time and only have a few months before the Army Corps makes its final decision. Therefore, I ask that you please act quickly to restore scientific credibility to this permitting process and not allow the Trump Administration to approve this irreversible project that would be an economic disaster for our nation.

Thank you for your time and for taking my testimony into your consideration.

⁵Lynker Technologies, LLC. 2019. *A Model Analysis of Flow and Deposition from a Tailings Dam Failure at the Proposed Pebble Mine*.

⁶Pacific Seafood Processors Association. June 2017. *Position on the Pebble Mine Project*.

Mrs. NAPOLITANO. We will proceed to hear from our witnesses who will testify. Thank all of you for being here. And on the panel, we have Mr. Dennis McLerran, Cascadia Law Group; Mr. Tom Collier, chief executive officer, the Pebble Partnership; Mr. Richard Borden, owner of Midgard Environmental Services LLC; Alannah Hurley, executive director, United Tribes of Bristol Bay; Brian Kraft, owner, Alaska Sportsman's Lodge; Mark Niver, fisherman, Surrender Salmon Company; and Anisa Costa, chief sustainability officer, Tiffany & Co.

Without objection, your statements will be entered in the record. All witnesses will have 5 minutes. You will get the warning at 3, and yellow if you follow that.

Mr. McLerran, you may proceed.

TESTIMONY OF DENNIS J. McLERRAN, ENVIRONMENTAL ATTORNEY, CASCADIA LAW GROUP; TOM COLLIER, CHIEF EXECUTIVE OFFICER, PEBBLE PARTNERSHIP; RICHARD K. BORDEN, OWNER, MIDGARD ENVIRONMENTAL SERVICES LLC; ALANNAH HURLEY, EXECUTIVE DIRECTOR, UNITED TRIBES OF BRISTOL BAY; BRIAN KRAFT, OWNER, ALASKA SPORTSMAN'S LODGE; MARK NIVER, BRISTOL BAY DRIFTNET PERMIT HOLDER, FV SURRENDER; AND ANISA KAMADOLI COSTA, CHIEF SUSTAINABILITY OFFICER, TIFFANY & CO.

Mr. McLERRAN. Good morning, Chairwoman Napolitano, Chairman DeFazio, Ranking Member Graves, Ranking Member Westerman, and members of the committee. I am Dennis McLerran. I am the former EPA regional administrator during the Obama years.

Back in May of 2010, several federally recognized Tribes, and some of the folks in this room, presented EPA with petitions asking that we use our congressionally granted section 404(c) authority under the Clean Water Act. They petitioned us with some very heartfelt and legitimate concerns about what the impacts of large-scale mining on the Bristol Bay watershed might be. When we heard those concerns from those folks, we spent many months deciding how to respond to those petitions. They wanted us to use section 404(c) of the Clean Water Act. We decided that instead of immediately using section 404(c) of the Clean Water Act, we would do a scientific assessment, an ecological risk assessment of the risks to the watershed and to the salmon resources in the watershed from large-scale mining.

And as Madam Chairwoman and Chair DeFazio have said, this is a very rich area. The Bristol Bay watershed supports over 14,000 jobs from fishing, full- and part-time. It is a very robust fishery that has been a sustainable fishery, and it is an area with one of the last intact salmon-based cultures in the world, and so the petitions to us were very heartfelt.

When we get the science, we committed to a very expansive and extensive public process around that. We reviewed the best available science from fisheries; scientists have been working in the watershed for over 30 years. We reviewed all the literature. We brought together a group of very talented scientists to prepare the watershed assessment. We released two drafts of the watershed as-

assessment for public comment. We had a large series of public meetings in Alaska. We received over 1 million public comments on the science that was done. In developing the assessment, we also did an extensive independent peer review of the science that was done. So we followed EPA's and OMB's highly influential scientific assessment guidelines and independently peer reviewed the work in two rounds.

The Bristol Bay assessment found that the Bristol Bay watershed, while enormously productive, was also enormously vulnerable to the impacts of large-scale mining. And the owners of the Pebble Mine claims have, in their own report filed with the Securities and Exchange Commission in 2011, identified the pathway there for a mine of unprecedented scope and scale in North America. The Bristol Bay assessment found that the watershed, while enormously productive, ecologically is deeply vulnerable to the impacts of large-scale mining. The assessment concludes that a large-scale mine at the Pebble site would pose risk to salmon and to communities in the Bristol Bay watershed that have depended on the salmon for thousands of years.

And EPA ultimately decided once that 3-year process of developing the science and getting extensive public comment on it, that the impacts of the Pebble Mine would create unacceptable adverse impacts on fishery resources unless limits were placed on the scale of mining at the site. And EPA issued a proposed determination that would have protected Bristol Bay and placed limits on the scope and scale of the mining, the amount of stream-miles that could be lost, the amount of wetlands and lakes and ponds that could be destroyed. And that process did not prevent Pebble from applying for a permit with the Corps of Engineers. It was not a veto, and it did leave the pathway open for a Corps permit application.

However, despite Pebble having come to me multiple times, and come to Members of Congress and the public and saying they were going to file a permit application likely during the pendency of us doing the science, they didn't initiate that permitting process until 2018. And the Corps of Engineers, as has been mentioned in an extraordinarily rapid timeframe, has moved to issue a draft environmental impact statement, a deeply flawed draft environmental impact statement that has received adverse comments from U.S. Fish and Wildlife, from EPA region 10, from many members of the public.

So we felt that we did very strong science. I feel that the Corps of Engineers has not done justice in using NEPA in the appropriate way here. They have done a very fast and slipshod process that is deeply flawed.

In conclusion, the Pebble Deposit is located at the headwaters of the Nushagak and Kvichak Rivers. They produce 50 percent of Bristol Bay's salmon, which produces 50 percent of the world's wild sockeye salmon, and this mine would have significant impacts, and just as importantly, it would open up the watershed to become a mining district because it would put in the roads and the infrastructure that would allow other mines, and there were many other deposits in the watershed that would be developed.

So, I implore the committee to explore this more deeply, get the Corps of Engineers through an appropriate process, and move this forward.

[Mr. McLerran's prepared statement follows:]

**Prepared Statement of Dennis J. McLerran, Environmental Attorney,
Cascadia Law Group**

Good morning Chairman DeFazio, Chairwoman Napolitano, Ranking Member Graves, Ranking Member Westerman and Members of the Committee. I am Dennis McLerran, the former Regional Administrator for EPA Region 10, which covers the States of Oregon, Washington, Idaho and Alaska and 271 Tribal governments within those four states. Today I would like to describe the work EPA completed regarding the proposed Pebble Mine in Alaska during my time at EPA and some relevant details regarding the current status of the evaluation of the Pebble Mine proposal by the Corps of Engineers. I was at Region 10 from February 2010 until late January 2017 when EPA prepared the Bristol Bay Watershed Assessment and later issued a "Proposed Determination" to protect salmon resources within the watershed.

In May of 2010, several federally recognized tribes from the Bristol Bay watershed in Alaska petitioned EPA to use its Clean Water Act Section 404(c) authority to restrict the discharge of fill material from the proposed Pebble Mine. EPA also received similar requests from a diverse group of stakeholders, while others requested that EPA refrain from taking action.

The groups that petitioned for EPA's use of Section 404(c) expressed deep and legitimate concerns that the largest open pit mine ever proposed in North America would be destructive of the fisheries within one of the Western Hemisphere's most productive and vulnerable watersheds.

The economic and cultural value of the Bristol Bay watershed is immense. Data from the region shows that Bristol Bay fisheries support about 14,000 full- and part-time jobs and generate over \$480 million in direct economic expenditures and sales. In addition, for over 4,000 years, it has served as a significant subsistence fishery to Alaska Native people, who are among the last remaining salmon-based subsistence cultures in the world. For these reasons, EPA took very seriously the local concerns raised about a mining project that had the potential for significant environmental harm to this valuable and vulnerable ecosystem.

After receiving the petitions, EPA staff and management visited the watershed and deliberated for months about how to respond to the requests. We decided not to initiate EPA's Section 404(c) authority at the time of the petitions. Instead, we wanted to develop a solid understanding of the watershed and the potential risks of proposed mining activities to fisheries and native cultures before deciding whether or not to exercise our authorities.

In February 2011, consistent with Clean Water Act Section 104, I announced EPA's intent to conduct an ecological risk assessment. The purpose was to characterize the biological and mineral resources of the Bristol Bay watershed, to increase understanding of the potential risks of large-scale mining on the region's fish resources, and to inform future decisions by government agencies and others related to protecting and maintaining the physical, chemical and biological integrity of the watershed.

To help collect, evaluate and summarize information regarding the Bristol Bay watershed and to assess potential risks to salmon and other resources, EPA brought in scientists from multiple federal agencies and also reviewed the best scientific literature available regarding the Bristol Bay fishery. EPA's Headquarters Office of Research and Development led the preparation of the watershed assessment along with a team assembled by Region 10.

Consistent with EPA's authorities under the Clean Water Act, EPA committed to an expansive public process to provide an opportunity to engage with all interested stakeholders. For example, EPA consulted with 20 tribes from the watershed, most of whom supported EPA's proposed assessment but also with some that did not. EPA also formed an intergovernmental technical team to get input from federal agencies, the State of Alaska and tribal governments in the Bristol Bay watershed.

EPA also released two drafts of the assessment for public comment. In total, eight public meetings were attended by approximately 2,000 people, and more than 1.1 million comments were submitted. The Pebble Partnership itself submitted over 1,300 pages of written comments on the first draft and over 450 pages on the second draft and participated in the public meetings.

EPA staff, including EPA's Administrator and me, met with Pebble Executives, state officials and other interested parties to solicit their input. We even invited the State of Alaska to partner with EPA in preparation of the scientific assessment.

In addition to creating and maintaining an open and transparent process, EPA also sought to guarantee that the assessment incorporated high quality data and that all findings were scientifically sound. In developing the assessment EPA followed all data quality and peer-review requirements for a Highly Influential Scientific Assessment, as outlined by the Office of Management and Budget in the White House.

The Agency also conducted an extensive peer-review with 12 independent experts in mine engineering, salmon fisheries biology, aquatic ecology, aquatic toxicology, hydrology, wildlife ecology and Alaska Native cultures. And, at a day-long public meeting in Alaska in August 2012, Pebble and other stakeholders provided feedback directly to the independent peer-reviewers. An independent review by EPA's Inspector General, which was requested by the Pebble Partnership, confirmed that the Agency followed all applicable processes and procedures.

Opening of the Pebble Deposit would ultimately result in the largest open pit porphyry gold and copper mine in North America in one of the most productive and sensitive intact salmon ecosystems on the planet. The owners of the Pebble Mine claims have, in their own Wardrop Report filed with the SEC in 2011, identified the pathway for a mine unprecedented in scope and scale in North America. The infrastructure to support the Pebble mine would include transportation into the heart of the watershed and a gas pipeline and power plant that would open the surrounding area to creation of a large mining district. Almost half of the world's sock-eye salmon are harvested in Bristol Bay and the Pebble Deposit is located at a very vulnerable location—the headwaters of the Nushagak and Kvichak Rivers.

The Bristol Bay watershed assessment evaluated several different mining scenarios for the Pebble Deposit. Two of the scenarios were based on mining plans filed with the Securities and Exchange Commission (SEC) in the Wardrop Report prepared by consultants for Northern Dynasty Minerals, the owner of the Pebble mining claims. A third mining scenario was added to the assessment based on peer-reviewer's comments that the evaluation should consider a first phase mine that would be based on the average size of porphyry gold and copper mines worldwide.

The Bristol Bay assessment found that the Bristol Bay watershed, while enormously productive ecologically, is also deeply vulnerable to challenges posed by the construction and operation of a large mine at the Pebble Deposit. The assessment concludes that a large-scale mine at the Pebble site would pose risks to salmon and the communities that have depended on the salmon for thousands of years.

Based on the mine sizes evaluated, EPA estimated that from 24 to 94 miles of salmon-supporting streams and 1,300 to 5,350 acres of wetlands, ponds and lakes would be destroyed. And extensive quantities of mine waste, leachates and wastewater would have to be collected, stored, treated and managed during mining operations and long after mining concludes.

EPA ultimately decided that the impacts of mining at the Pebble Deposit would create unacceptable adverse impacts on fishery resources unless limits were placed on the scale of mining at the site. EPA Region 10 proposed use of Section 404(c) of the Clean Water Act to place those limits. Section 404(c) specifically authorizes EPA to prohibit the specification of—or deny or restrict the use of any defined areas as a disposal site for dredged or fill material whenever the Administrator determines that such disposal would cause unacceptable adverse effects. The Proposed Determination would have protected Bristol Bay and placed limits on the amount of stream miles, wetlands, lakes and ponds that could be destroyed based on the smaller mining scenario added during the peer review process.

EPA's watershed assessment process and proposed 404(c) action did not prevent the Pebble Partnership from applying to the U.S. Army Corps of Engineers for permits. Both the watershed assessment process and the 404(c) procedural rules provided numerous opportunities for public comment and interaction. At numerous times before and after commencement of the watershed assessment process, the Pebble Partnership informed EPA that an application would be filed for a Corps permit during the timeframe of the assessment process. However, Pebble did not file a permit application until after completion of the assessment and issuance of the Proposed Determination.

The U.S. Army Corps of Engineers permitting process was not initiated by Pebble until 2018. The Corps of Engineers, in an extraordinarily rapid timeframe, issued a Draft EIS for public comment in March 2019. The Corps has received extensive negative comments on the analysis and content of the Draft EIS from the U.S. Fish and Wildlife Service, EPA Region 10, members of Congress and many others. Some key flaws of the Draft EIS are that the process for preparation has been inappropri-

ately accelerated and that the analysis is superficial and not based on plans that provide sufficient detail for proper evaluation. The primary analysis under the Draft EIS is for a much smaller mine than is likely to be ultimately pursued at the site based on representations Northern Dynasty has made publicly and in the Wardrop Report filed with the SEC. Later, larger mine phases would have much greater adverse impacts on fishery resources.

The DEIS also indicates that the mine proponents would use compensatory mitigation to address adverse impacts on fisheries but does not propose any specific plans or projects for such mitigation. Based on the discussions EPA had with fisheries scientists who have studied the Bristol Bay fishery for many years, compensatory mitigation would not be effective in this largely pristine watershed. Compensatory mitigation is a technique normally applied to restore habitat that has been disturbed and there would be few, if any, opportunities for such projects in a largely pristine watershed.

In addition, EPA has now withdrawn the Proposed Determination from EPA Region 10 under Section 404(c) of the Clean Water Act. This comes after now departed EPA Administrator Scott Pruitt initially proposed withdrawal of the Proposed Determination in 2017 and then reversed course after receiving extensive negative public comments on the proposed withdrawal. Only recently, after President Trump reportedly met with Alaska Governor Mike Dunleavy, did EPA Headquarters direct EPA Region 10 to consider withdrawal of the Proposed Determination. The current Regional Administrator for EPA Region 10 quickly withdrew the Proposed Determination after a Headquarters memo directing reconsideration. The withdrawal action was taken without any opportunities for public comment or due process in a manner totally inconsistent with how past work regarding Bristol Bay has been conducted.

In conclusion, the Bristol Bay watershed is a uniquely productive and fragile resource. The Pebble Deposit is located directly at the headwaters of the Nushagak and Kvichak Rivers, which produce nearly 50 percent of the salmon in the Bristol Bay system. Mining at the scale planned for Pebble at the extremely sensitive location of the mineral deposit would result in significant harm to the world-class fisheries of the watershed. And, just as importantly, would open the central portion of the watershed to become a mining district with Pebble's development of road access, a power plant and other mining infrastructure. Northern Dynasty Minerals has aggregated a large area of mining claims beyond the Pebble Deposit and there are many other undeveloped mineral deposits in the unprotected area between Lake Clark National Park and Wood-Tikchik State Park. Loss of one of the world's last remaining salmon strongholds is simply unacceptable and that is why EPA during my tenure decided to take action to protect Bristol Bay fisheries. The mining proposed at the Pebble Deposit requires a better process of evaluation than what has been done so far under the Corps of Engineers' Draft EIS. We are spending hundreds of millions of dollars every year in attempts to recover endangered salmon and restore salmon habitat in the Pacific Northwest and California and we should not allow the mistakes of the past to be repeated in Bristol Bay.

Thank you for the opportunity to present this testimony today.

Mrs. NAPOLITANO. Thank you, sir.

Next, we will have Mr. Tom Collier. Your testimony, please.

Mr. COLLIER. Thank you, Madam Chairman. Members of the committee, thank you for the opportunity to address you today on this important issue.

For over 15 years, there has been a raging debate about whether you can build a copper mine 200 river-miles away from Bristol Bay without doing significant damage to the salmon fishery in Bristol Bay. But today, I am here to tell you that that debate is now over. In February, the Corps of Engineers issued, for the very first time, an independent, transparent, comprehensive review of all of the science and concluded unequivocally, and repeatedly, that building Pebble Mine will not cause any damage to the fishery in Bristol Bay. That is the conclusion it reached.

Now, I wasn't surprised that that conclusion was reached and not because of the reason mentioned by the chairman of the committee. It is because we changed the project that we submitted.

The project that was submitted was de-risked. We listened to the concerns that had been expressed by the agencies, and we listened to the concerns that were expressed by the opponents, and I personally managed a total and complete redesign of this project. It is smaller. There is no cyanide. It is out of the Upper Talarik Creek. There are no waste rock piles, completely redesigned the tailings facilities, and redesigned the water management system. This project is dramatically different from anything that was looked at by EPA in its Bristol Bay watershed assessment.

What we are really here today, I think, to talk a lot about is EPA's decision to withdraw the proposed determination. And the question is, was that an appropriate decision for them to make? I not only think that decision was appropriate, I think it was outrageous that the proposed determination had ever been issued in the first place for a bunch of reasons. But let me just talk about one. I have listed many of them in my written statement.

The Bristol Bay watershed assessment was a predetermined outcome, and the process was manipulated to reach that outcome, and I am not the only one that has reached that conclusion. That conclusion's been reached by a number of folks that have taken a strong look at it. And there are lots of examples of this having been done, but let me just give you one. It is my favorite.

When the senior Senator from Alaska, Lisa Murkowski, wrote a letter to EPA after Mr. McLerran had decided to initiate the Bristol Bay watershed assessment, she congratulated the agency for finally agreeing to do an extensive study of the science so that any decision with respect to vetoing or not vetoing the mine could be based upon science, and that letter was circulated among the senior officials in the Department of EPA. And then one of them sent an email to another, and that email said, quote, "Obviously, that's not what we have in mind," closed quote. In other words, they had already made up their mind. They knew what they were going to do. They were going to veto this project, and they were going to do a scientific study to justify the veto, and that is what we did.

But that is not the basis for the withdrawal that occurred in July of the proposed and preemptive veto of this project. The basis of that withdrawal is process. You need to follow the process. We have a statute. The statute says do an EIS. They didn't do an EIS. In fact, at about the same time Mr. McLerran was deciding to do the first ever in the history of the Clean Water Act, preemptive veto of a major project, his colleague, in region 9, was faced with a request to do the same thing; and his colleague declined to do a preemptive veto of the Rosemont mining project in Arizona. And what he said was, I want to have all the information on the table before I make a decision. I want to have an EIS on the table. I want to see the applicant's permitting process, because I think it would be, and these are his words, impossible to make such a decision without having all that information on the table. And that is what EPA did, and that is the reason the proposed veto, preemptive veto, was withdrawn. Thank you.

[Mr. Collier's prepared statement follows:]

Prepared Statement of Tom Collier, Chief Executive Officer, Pebble Partnership

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

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

The debate is now over.

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

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

I would like to talk about what the Pebble Partnership has done to improve its plans and dispel some of the myths associated with the Corps' work to date. Pebble has planned a smaller, smarter mine. In response to concerns voiced by various stakeholders, we have reduced the mine size to a footprint that even EPA's rigid Proposed Determination would nearly have allowed to proceed through the NEPA permitting process. The Proposed Determination was based on three hypothetical mining plans of differing sizes and stated that EPA would not object to an application being considered for permitting a mine smaller than the smallest hypothetical EPA mine. Pebble's new mine, at an equivalent footprint of just 5.2 square miles, is 75% smaller than the largest mine in the Proposed Determination, 48% smaller than the medium mine, and slightly larger than the smallest mine evaluated. A significant factor in reducing Pebble's footprint is the elimination of permanent waste rock storage on the surface, which further substantially reduces post-closure water management requirements.

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

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

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

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

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

climate variations. The water management system will have multiple, redundant environmental safeguards and will meet the most stringent water quality guidelines.

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

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

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

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

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

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

- *Haile Mine*: the EIS process for the Haile Mine in South Carolina began July 2011, and the FEIS was published less than three years later in June 2014.
- *Pogo Mine*: In August 2000, Teck-Pogo Inc. applied for a Section 404 permit for a proposed underground cut-and-fill gold mine on State of Alaska-owned land in the Goodpaster River Valley. EPA, in close consultation with the USACE, published a Draft EIS in March 2003, then a final EIS in Sept. 2003—three years and a month after the application.
- *Kensington Mine*: In 2001, Coeur Mining redefined the scope for its development of an underground gold mine within the Tongass National Forest outside of Juneau. This necessitated a new NEPA review, which was completed three years later in December 2004.

Chart 1

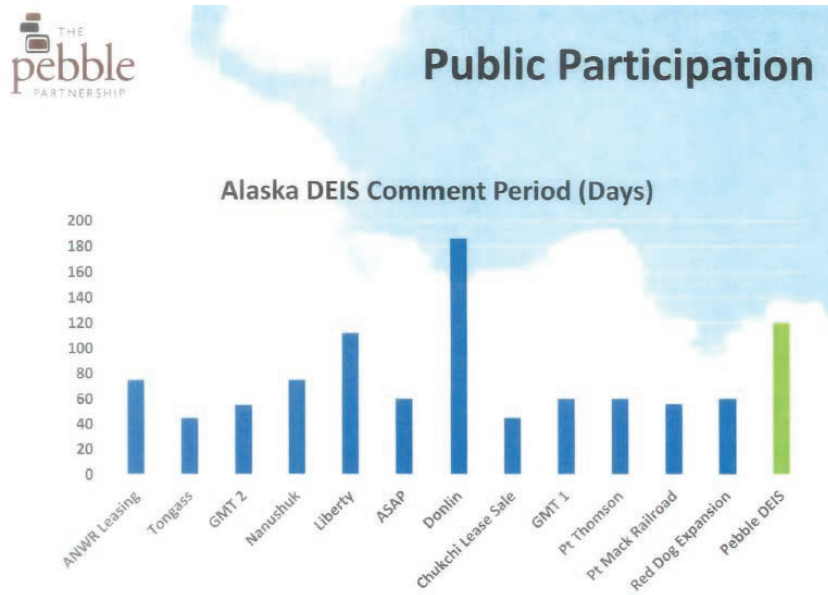
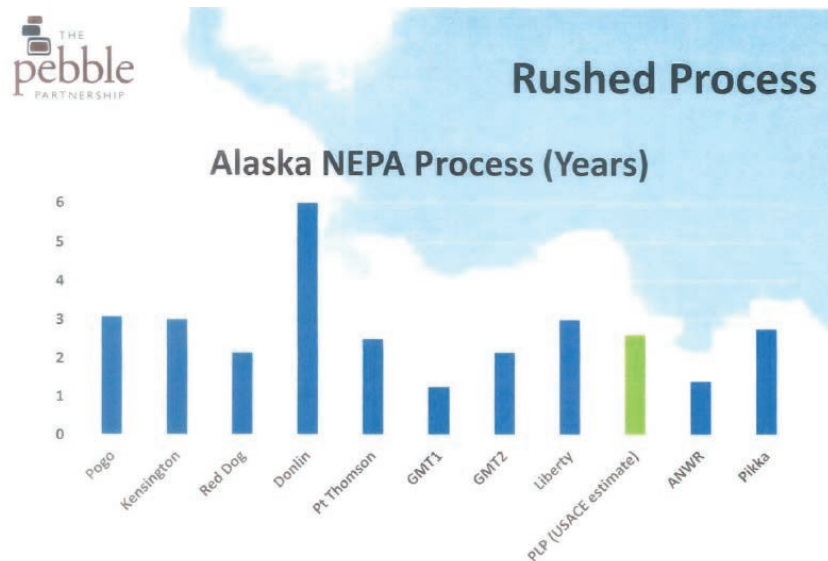


Chart 2



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

EIS process began in late 2009 and the Final EIS was issued mid-2012, taking approximately two and a half years.

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

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

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

- Mitigation
 - Chapter 5 and Appendix M of the DEIS confirm significant mitigation measures were incorporated into Pebble's permit application. More are being included based on input from the DEIS review.
 - The DEIS summarizes 70 different Pebble-proposed mitigation measures.
 - The DEIS includes a draft Compensatory Mitigation Plan.
 - The Final Environmental Impact Statement will have a detailed compensatory mitigation plan with specific mitigation proposals included.
- Climate Change
 - The DEIS provides a detailed description of different long-term climate change models and widely varying predictions of precipitation patterns.
 - The Corps confirmed the reasonableness of Pebble's mine design for foreseeable climate change scenarios.
- Wetlands impacts
 - The DEIS describes the affected environment for wetlands and other waters, which includes vegetated wetlands, ponds, lakes, streams, rivers, and marine and estuarine waters.
 - The DEIS also describes potential environmental consequences from the project on wetlands and other waters.
 - These assessments were based on USGS Hydrologic Unit CodeTenth Level watersheds.
 - The DEIS separately addresses navigable waters and potential impacts related to transportation and navigation.
 - The DEIS summarizes the key issues for wetlands and other waters and the key issues for transportation and navigation.
 - Additionally, the mine site area has some of the most comprehensive wetland mapping ever collected for a mining project in Alaska. This mapping was prepared by independent third-party consultants.
- Fish Populations
 - The DEIS summarizes and tabulates extensive quantitative analyses of fish habitat conditions based on widely accepted flow/habitat modelling methods and supporting intensive physical, chemical, and biological river survey data.
 - There is enough information on fish populations in the record, including that found in Pebble's environmental baseline documents, to allow a final EIS to address any possible request for additional analysis.
- Risks to Commercial and Recreational Fisheries
 - The DEIS relies on extensive scientific data and industry accepted methodologies to provide a robust level of analysis for such concerns.
 - For the assessment of impacts to recreational and commercial fishing, the DEIS covers all river systems hydrologically connected to the project that contribute to the Bristol Bay salmon fishery and to the Cook Inlet saltwater environment.
 - The DEIS's analysis area includes commercial and recreational fisheries, the Alaska Department of Fish & Game commercial registration Area T and Area H, the Cook Inlet Management Area (including associated federal waters) and the ADF&G Statewide Harvest Survey areas S, T, N, and P.
 - Under each of the alternatives (and their variants) proposed for the project, the DEIS examines impacts to commercial fisheries and recreational fisheries resulting from the mine site, transportation corridor, port site, and pipeline route.

- The DEIS also provides a cumulative impacts analysis on commercial and recreational fisheries, examining issues concerning productivity losses, fragmentation of habitat, changes in wetland types and loss or degradation or ecosystem functions.
- Impacts to Wildlife
 - The DEIS provides a description of the birds, terrestrial mammals, and marine mammals that are known or have the potential to occur in the project area.
 - The DEIS describes the potential environmental consequences of the project to non-federally listed birds, terrestrial wildlife, and marine mammals and their habitats.
 - The DEIS addresses impacts to certain species of terrestrial wildlife, including the caribou, moose, bear, gray wolf, and small terrestrial vertebrates.
 - The DEIS addresses specific species, including the Cook Inlet beluga whale, humpback whale, fin whale, Steller sea lion, Northern sea otter, and Steller's eider. Furthermore, the USACE is consulting with the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).
 - In addition, for the final EIS, Pebble has prepared updated biological assessments for species under each agency's jurisdiction.
- Fugitive Dust
 - The DEIS addresses fugitive dust in various sections, such as in relation to the spill risk, impacts of the project on water and sediment quality, potential environmental consequences from the project on vegetation, and potential impacts on soil.
 - The DEIS recognizes that the project design incorporates various measures to minimize fugitive dust. Notably, Pebble's proposed mitigation measures include the use of locked containers to transport concentrate from the mill to the ship and developing a Fugitive Dust Control Plan, which would address fugitive dust emissions created by construction, operations, and closure activities.
 - This plan, which will be in place before construction begins, "would describe the equipment, methodology, training, and performance assessment techniques that would be used for controlling fugitive dust from site activities and wind erosion."
 - Additionally, best management practices would be implemented for fugitive dust management, and methods would be established in order to control dust from various sources, including vehicle travel on unpaved roads, material handling, and wind erosion from disturbed areas.
- Transportation Corridor
 - The DEIS describes both the existing environment that would be affected by the transportation corridor alternatives and the potential impacts on environmental resources.
 - For example, the DEIS discusses the magnitude and extent of impacts from construction of the transportation corridor in relation to wetlands and other waters.
 - The DEIS also summarizes key issues for wildlife resources by project component, including the transportation corridor and describes the potential effects on soils along the transportation corridor.
- Spill Risk
 - The DEIS specifically addresses the spill risk for the following substances, which were selected based on their spill potential and potential consequences: diesel fuel, natural gas, copper-gold ore concentrate, chemical reagents, bulk and pyritic tailings, and untreated contact water.
 - The DEIS also addresses a broad range of topics related to spills, including the probable outcomes that would result from a release into the environment, data on past spills, organizations or plans that may be available as resources in the event of a spill, mitigation and minimization design features or practices, hypothetical spill scenarios, and the potential impacts from each scenario.
- Environmental Justice
 - The DEIS includes a significant examination of environmental justice issues, framing the analysis as an intersection between various resource topics, including subsistence users, subsistence resources, cultural practices, socioeconomic characteristics, and community health, with a potential for both beneficial and adverse impacts.
 - The DEIS examines socioeconomic impacts associated with population, housing, and employment; subsistence resources and harvest patterns for subsistence-based communities in the EIS analysis area; project-related impacts to

human health (including effects from changes in air quality and water quality, and concerns about contamination and subsistence food consumption).

- Further, each project alternative is evaluated for potential disproportionate impacts to minority and low-income communities at issue.
- **Subsistence**
 - The DEIS analysis area for subsistence issues includes the subsistence resources that could be affected by the proposed mine site, port, transportation corridor and natural gas pipeline corridor for each alternative presented.
 - The review includes habitat and migration routes for subsistence resources, community subsistence search and harvest areas, and areas used by harvesters to access resources.
 - The DEIS includes a focus on subsistence activities in indigenous communities, reviewing traditional ecological knowledge and the culture value of subsistence in developing the analysis on subsistence. The analysis also accounts for the cyclical harvest pattern of seasonal round.
 - The DEIS goes on to examine the impacts of the project on subsistence in communities near Iliamna Lake, in the Kvichak and Nushagak river drainages, and on the southwest coast of the Kenai Peninsula, assessing the magnitude, geographic extent and duration of impacts for each project phases.
- **Geochemistry**
 - The DEIS covers the existing geochemistry of the mine site.
 - The DEIS also discusses in detail geochemistry with respect to surface water quality impacts, tailings releases, and spilled concentrate.
 - Pebble's environmental baseline documents further delve into geochemistry issues.

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

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

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

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

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

- First, in the Bayou aux Carpes project in Louisiana, EPA was reviewing a project proposed by the Corps itself, so of course the processes for approval were different. As a federal court reviewing the issue noted, the Corps does not apply to itself for a permit. Additionally, the project approval process began before the passage of the Clean Water Act. There actually was a permit application to review; it was by the local parish under the Rivers and Harbors Act as well as a related permit application under the Clean Water Act that the Corps had denied.

- Second, for the veto related to a development site near the Everglades in the 1980s, EPA determined that the permit application would be identical to applications submitted for two neighboring sites. All three locations were considered “similar pieces of the East Everglades wetlands complex with similar ecological values.” When EPA moved to veto the Corps’ pending 404 permits for the first two projects, it vetoed the third at the same time because it deemed them to have the same characteristics as the other two properties.

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

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

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

Chart 3—USEPA CWA Section 404(c) Final Veto Actions

	Project Name	Type	Location/EPA Region/Corps District	Initiation & Final Determination	Administration	Pre or Post Permit	NEPA Review
1	North Miami	Landfill/ Municipal Recreation	Dade County, FL EPA Region 4/ Jacksonville Dist.	June 25, 1980 Jan 19, 1981	Reagan	Post-Permit	No EIS
2	Norden Co.	Waste Storage/ Recycling Plant	Mobile, AL EPA Region 4/ Mobile Dist.	Sept. 30, 1983 June 15, 1984	Reagan	Pre-Permit	No EIS EA Only
3	Jack Maybank Site	Duck Hunting/ Aquaculture Impoundment	Johannes Island, SC EPA Region 4 / Charleston Dist.	April 15, 1984 April 5, 1985	Reagan	Pre-Permit	No EIS
4	Bayou Aux Carpes	Flood Control Project	Jefferson Parish, LA EPA Region 6/ New Orleans Dist.	Dec. 17, 1984 Oct. 16, 1985	Reagan	Pre-Permit	Post-EIS
5	Attleboro Mall	Shopping Mall	Attleboro, MA EPA Region 1/ New England Dist.	July 23, 1985 May 13, 1986	Reagan	Pre-Permit	No EIS
6	Russo Develop. Corp.	Warehouse Development	Carlsbad, NJ EPA Region 2/ New York Dist.	May 28, 1987 March 21, 1988	Reagan	Pre-Permit	No EIS
7	Henry Rem Estates	Agricultural Conversion	Dade County, FL EPA Region 4/ Jacksonville Dist.	April 22, 1987 June 15, 1988	Reagan	Pre-Permit	No EIS
8	Lake Alma	Dam/ Recreational Impoundment	Bacon County, GA EPA Region 4/ Savannah Dist.	June 8, 1988 Dec. 16, 1988	Reagan	Pre-Permit	Post NEPA
9	Ware Creek	Water Supply Impoundment	James City County, VA EPA Region 3/ Norfolk Dist.	Aug. 4, 1988 July 10, 1988	Reagan- Bush	Pre-Permit	Post NEPA
10	Big River	Water Supply Impoundment	Kent County, RI EPA Region 1/ New England Dist.	Aug. 24, 1988 March 1, 1990	Reagan- Bush	Pre-Permit	Post NEPA
11	Two Forks	Water Supply Impoundment	Jefferson/Douglas County, CO EPA Region 8/ Omaha Dist.	March 24, 1989 Nov. 23, 1990	GHW Bush	Pre-Permit	Post NEPA
12	Yazoo Pumps	Flood Control Project	Issaquena County, MS EPA Region 4/ Vicksburg Dist.	Feb. 1, 2008 Aug. 31, 2008	GW Bush	Pre-Permit	Post NEPA
13	Spruce No. 1 Surface Mine	Surface Coal Mine	Logan County, WV EPA Region 3/ Huntington Dist.	Oct. 16, 2009 Jan. 13, 2011	Obama	Post-Permit	Post NEPA

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

The United States Supreme Court held that the Clean Water Act “gives EPA authority to ‘prohibit’ any decision by the Corps to issue a permit for a particular disposal site.” *Coeur Alaska Inc. v. Southeast Alaska Conservation Council*, 557 U.S. 261, 274 (2009). The D.C. Circuit, in its ruling upholding that EPA could issue a

veto even after the Corps has issued a permit, had before it a “retroactive” veto, not a preemptive veto such as Pebble faced. Indeed, the Court focused on the fact that in the Mingo Logan case, the disposal site was specified in the permit, meaning that EPA could only withdraw post-permit. *See Mingo Logan Coal Co. v. EPA*, 714 F.3d 608, 614 (D.C. Cir. 2013). The case does not address a preemptive veto, which would raise a host of different questions than those addressed by the Mingo Logan court.

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

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

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

Allowing the Proposed Determination to stand would have set a far-reaching, negative precedent for federal land use decisions. Using the Clean Water Act in this way is essentially the Antiquities Act on steroids. EPA—without statutory authority—grabbed the power to turn private and state land into a national park without any adequate stakeholder involvement or process.

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

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

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

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

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

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

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

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

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

- Ann Maest
 - EPA incorporated hydrologist Ann Maest’s work after meeting with her numerous times and noting her bias against Pebble.
 - The second draft of the BBWA was released after Maest was forced to admit in federal court to having falsified scientific reports in other litigation.
 - In this other litigation, the U.S. District Court for the Southern District of New York ruled that a \$9.5 billion Ecuadorian judgment against Chevron, in which Ann Maest served as Plaintiff’s #2 environmental consultant, was the product of fraud and racketeering activity by the Plaintiff’s legal team. Maest declared under oath, “I disavow any and all findings and conclusions in all my reports and testimony on the Equator Project.”
 - EPA covered up Maest’s role by removing explicit citations to her work in the BBWA, but not the underlying information.
- EPA chose University of Washington professor Thomas Quinn as a BBWA contributor, despite having participated in numerous briefings in which he advocated strongly for a preemptive veto, including one instance in which Quinn was forced to apologize for his aggressiveness during a briefing.
- EPA hired Alan Boraas to conduct subsistence and traditional use studies for the BBWA, despite Boraas having previously published several anti-Pebble editorials.
- EPA picked Phil Brna, a USFWS employee, to co-author a major appendix to the BBWA, despite his previously expressed excitement at the possibility of a veto. In an email, Brna stated: “[t]his [i.e., a decision barring Pebble] is going to happen and it’s going to get bloody. I am looking forward to it!”

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

Other EPA officials were similarly conflicted. Nancy Stoner, EPA’s former Deputy Assistant Administrator for Water, had previously worked for NRDC for over a decade. Despite NRDC’s active opposition to Pebble, in which she participated while at

the organization, Stoner did not recuse herself from Pebble-related matters at EPA. In fact, in response to a meeting request from NRDC leaders in June 2010, Stoner had to bend over backwards to keep an appearance of impartiality, stating in an email “I passed along your request to others here. I am not supposed to set up meetings with NRDC staff, but can attend such a meeting if there are enough others in attendance.” Despite recognizing this conflict, she continued to work on Pebble-related projects.

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

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

Not surprisingly, this predetermined, rushed process produced a scientifically indefensible Assessment and Proposed Determination. With no actual permit application to review, EPA designed hypothetical mining scenarios that it knew would have adverse impacts. EPA admitted the scenarios “are not based on a specific mine permit application and are not intended to be the detailed plans by which the components of a mine would be designed.” For just one example, EPA’s hypothetical mine scenarios did not include the standard robust compensatory mitigation that is required for any project.

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

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

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

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

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

- In violation of its own guidelines, EPA had excessive contact with peer reviewers.

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

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

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

Mrs. NAPOLITANO. Thank you very much for your testimony, sir, and we now will have Mr. Richard Borden. You may proceed.

Mr. BORDEN. I would like to thank Chairwoman Napolitano, Ranking Member Westerman, and members of the subcommittee for the opportunity to present this testimony.

I am a geologist, environmental scientist, and manager with over 30 years of experience in the mining and consulting industries, including 23 years with Rio Tinto. During my career, I have performed permitting, evaluation, design and environmental work at more than 50 mines and mining projects across the world.

I believe mining is essential to sustain our society, and that most commercially viable ore deposits should be developed. However, that does not mean that all ore bodies should be developed regardless of their negative environmental, commercial, or social impacts.

The Pebble project is located in the most sensitive, globally significant, and challenging environmental setting of any mining project I have ever reviewed. It will be extremely difficult to construct, operate, and close a commercially viable mine in this setting that does not do permanent material harm to the Bristol Bay salmon fishery.

Risks associated with the smaller 20-year mine proposed by the Pebble Partnership have been reduced, but by no means have they been eliminated. Even if everything goes exactly according to plan, the proposed mine would disturb 14 square miles of land and 8 miles of salmon-bearing rivers and streams. It would create a very large contaminated water treatment liability which will persist for many decades to centuries after closure.

Despite these challenges, the environmental impact statement, or EIS, is scheduled for completion in less than half the time of a typical new mining project. This overly rushed process has contributed to the deeply flawed draft EIS that was released 6 months ago.

Much of the EIS analysis contains insufficient detail to determine if the planned actions are equate or practicable.

There are significant omissions. The document commonly understates potential impacts. In a number of significant instances, the conclusions are clearly wrong. Based on my experience, the draft EIS does not even meet industry standard practice.

The proposed EIS project only mines about 10 percent of the total resource, and by necessity, must process relatively low grade ore. It would produce only half as much metal for sale as the smallest Pebble Mine plan that has undergone a rigorous, independent, and publicly available financial evaluation. This represents a loss of roughly \$15 billion in revenue.

Based upon a careful review of the available financial data, it is my professional opinion that the mine plan being evaluated by the EIS is, most certainly, not economically feasible. I have estimated the proposed project to have a net present value of approximately negative \$3 billion.

The financial analysis for the 20-year mine plan provided in the draft EIS by the Pebble Partnership is deeply flawed. It ignores smelting and refining costs, understates capital and operating costs, and fails to provide even a placeholder cost for closure.

This represents a fatal flaw in the process because a larger mine would almost certainly need to be constructed in order to obtain a positive rate of return on the very large initial capital investment, which is almost certain to exceed \$6 billion.

The current EIS is, thus, almost certainly not evaluating the true environmental impacts and risks associated with the viable mining project. Even a small expansion of the project to extract 20 percent of the ore body would almost double the size of the disturbed footprint, quadruple water quality risks, and likely spread large-scale impacts into three different river drainage basins.

Before closing, I also feel obligated to point out two of the more significant problems provided by Mr. Collier's written testimony. The examples cited in his EIS timeline are misleading. They are mostly oil and gas projects, or mines that are 10 to 1,000 times smaller than the proposed Pebble project. They all have a very different, and generally, a much lower risk profile, so it is no surprise they were completed more rapidly. The closest analog cited is the Donlin Mine EIS which took 6 years to complete, compared to the 2 years allotted for Pebble.

The written testimony is also completely silent about the economics of the small mine being permitted, and that will almost certainly lose billions of dollars without a major expansion. In fairness to the EIS process, the investment community, and local stakeholders, I would urge the Pebble Limited Partnership to clearly demonstrate that the 20-year mine plan detailed in the EIS is financially viable. Thank you for the opportunity to speak with you.

[Mr. Borden's prepared statement follows:]

Prepared Statement of Richard K. Borden, Owner, Midgard Environmental Services LLC

I would like to thank Chairwoman Napolitano, Ranking Member Westerman, and Members of the Subcommittee for the opportunity to present this written testimony on the "Pebble Mine Project: Process and Potential Impacts."

During my 30-year career I have performed permitting, design and environmental work at more than fifty mines and mining projects across the world. The Pebble Project is located in the most sensitive, globally significant and challenging environmental setting of any mining project I have ever reviewed. It will be extremely difficult to construct, operate and close a commercially viable mine in this setting in a way that does not do permanent material harm to the salmon fishery. Even the smaller 20-year mine proposed for permitting by the Pebble Partnership would create very large environmental impacts and risks in the heart of the Bristol Bay salmon fishery.

Despite these challenges, the Environmental Impact Statement (EIS) is scheduled for completion in less than half the time of a typical mine EIS. This overly rushed process has contributed to the deeply-flawed draft EIS that was released six months ago. I have provided almost 50 pages of detailed technical comments on the draft EIS to the Army Corps of Engineers in six separate letters. Much of the EIS analysis contains insufficient detail to determine if the planned actions are adequate or practicable; the document commonly understates potential impacts; essential analyses and designs are deferred to the post-EIS permitting period; and in a number of significant instances, the conclusions are clearly wrong. The draft EIS clearly does not meet industry standard practice.

The proposed EIS project only mines about ten percent of the total Pebble resource and by necessity must process relatively low-grade ore. It would produce only half as much metal for sale as the smallest mine plan that has undergone a rigorous, publicly available financial evaluation by an independent engineering consulting firm. The proposed EIS project by itself is also not the world class resource which is being advertised. Without a significant expansion it is not even in the top 25 ore bodies in the world for contained copper or gold.

Based upon a careful review of the available financial data, it is my professional opinion that the mine plan being evaluated by the EIS is almost certainly not economically feasible, with an estimated negative net present value of three billion dollars. This represents a fatal flaw in the EIS because a larger mine would almost certainly need to be constructed in order to attain a positive rate of return on the very large initial capital investment. The current EIS is thus almost certainly not evaluating the true environmental impacts and risks associated with a viable mining project. Even a small expansion of the project to extract 20% of the ore body would almost double the size of the disturbed footprint, quadruple water quality risks and likely spread large-scale impacts into three different river drainage basins.

PROFESSIONAL BACKGROUND

I am a geologist, environmental scientist and manager with over thirty years of experience in the mining and consulting industries. During my 23 years with the global mining company Rio Tinto I participated in and contributed to more than twenty financial and technical assessments of new major capital projects, divestments and potential acquisitions. This included over seven years as Head of Environment for Rio Tinto's Copper, Copper & Diamonds and Copper & Coal Product Groups. I have published numerous papers on mine environmental performance and management in peer reviewed scientific journals, conference proceedings and books. I am intimately aware of the environmental challenges, issues and costs posed by the responsible development, operation and closure of large copper mines.

PEBBLE PROJECT ENVIRONMENTAL SETTING, IMPACTS AND RISKS

The Pebble copper-gold ore body is located on a drainage divide between the headwaters of three important river systems in the center of the Bristol Bay watershed. This watershed hosts the globally significant Bristol Bay salmon fishery. Salmon are very sensitive to direct disturbance and to water quality changes within spawning rivers and surrounding wetlands. Most of the deposit is chemically reactive and would be prone to acid rock drainage formation if exposed to surface weathering conditions by mining. The site also has a very wet climate and is in a pristine, remote and seismically active location. All of these factors contribute to the very high innate environmental risk posed by any development of the ore body. Any commercial mining would, by necessity, result in widespread direct disturbance to wetlands,

streams and upland areas. It would also create a contaminated water management liability which will certainly persist for decades and likely persist for centuries after mining is completed.

The mine plan submitted for the EIS by the Pebble Partnership seeks to control these environmental impacts and risks by 1) only mining ten percent of the ore body; 2) minimizing the disturbed footprint; and 3) implementing design and engineering controls. These efforts have reduced, but by no means have they eliminated all the impacts and risks associated with the project. The 20-year mine plan proposed for the EIS would still result in direct disturbance of roughly 14 square miles and the permanent loss of eight miles of salmon river and stream habitat. Approximately 13,000 gallons per minute of contaminated water would need to be reliably captured and treated during operations and over 5000 gallons per minute would need to be managed in perpetuity after closure. Over one billion tons of bulk tailings would also need to be managed in perpetuity. The closure of the small mine would be complex and the total closure cost liability created would almost certainly exceed 1.5 billion dollars. As shown in the table below, if an economically-viable full scale mine were ever developed at the site, most impacts and risks would increase by factors of three to five times and some would increase by more than one hundred times compared to the mine plan currently being evaluated by the EIS process.

	Proposed 20-year EIS mine plan	Expanded 78-year Development Scenario	Relative increase
Direct Disturbance	14 square miles	> 46 square miles	3.3 times greater.
Permanent Direct Wetland Disturbance	5.5 square miles	> 19 square miles	3.5 times greater.
Permanent Loss of Salmon Habitat	8 miles of streams and rivers.	42 miles of streams and rivers.	5 times greater.
Bulk Tailings Production	1140 million tons	5700 million tons	5 times greater.
Pyritic Tailings Production	155 million tons	800 million tons	5 times greater.
Non-Acid-Generating Waste Rock Production	95 million tons	13600 million tons	140 times greater.
Acid-Generating Waste Rock Production	50 million tons	3400 million tons	70 times greater.
Fugitive Dust and Mobile Equipment Emissions	250,000 tons/day of material moved.	900,000 tons/day of material moved.	3.6 times greater.
Open Pit Footprint	608 acres	3600 acres	6 times greater.
Maximum Pit Groundwater Inflow	2400 gallons per minute.	12,000 gallons per minute.	5 times greater.
Operational Spill Risk Duration	20 years	78 years	3.9 times greater.
Green House Gas Emissions	> 22 million tons of CO2 equivalents.	> 160 million tons of CO2 equivalents.	7 times greater.

Source: Pebble Project Draft EIS; Wardrop, Preliminary Assessment of the Pebble Project, 2011 (commissioned by Northern Dynasty Minerals); and independent calculations

Pebble Mine Project Economics

In 2011, Northern Dynasty Minerals Limited commissioned Wardrop (an independent mining engineering consulting firm) to complete a "Preliminary Assessment of the Pebble Project". This study performed financial evaluations on 25-, 45- and 78-year mine scenarios that targeted approximately 17, 32 and 55% of the total ore body respectively. This is the last publicly available, rigorous and independent economic evaluation of the Pebble ore body. The 20-year mine plan being evaluated by the EIS only produces half as much metal for sale as the smallest mine plan evaluated by Wardrop. In sum the value per ton of ore mined by the 20-year EIS mine plan is also about 21% lower than the average ore mined by the 25-year Wardrop plan. Given both project scenarios would have roughly the same very high initial capital costs for infrastructure construction, this has a profound negative impact on the likely economics of the mine being evaluated by the EIS. A comparison of the profits generated by concentrate sales from the two projects can be made using the life of mine average net smelter return per ton of ore calculated in 2011 minus the average total operating costs per ton of ore. For the 25-year mine plan this equates to \$32 billion and for the 20-year mine plan this equates to \$17 Billion. Thus, the mine currently being evaluated in the EIS process makes \$15 billion less profit from concentrate sales. When this difference is apportioned by year and a discount rate of seven percent per year is applied, this equates to a five-billion-dollar reduction in net present value (NPV) between the 25-year plan evaluated in 2011 and the 20-year EIS case. It is certainly acknowledged that these are approximate, back-of-the-envelope calculations but the strategic implications for overall project economics are significant and will be extremely difficult to offset.

The initial mine construction costs assumed by Wardrop were anomalously low compared to other large copper mines that have been studied or built over the past

five to ten years. Part of the apparent discrepancy in capital cost can be attributed to the removal of \$1.3 billion in capital from the 2011 Wardrop construction cost estimate because “it has been assumed in the financial evaluation that the Pebble Partnership will enter into strategic partnerships as needed to develop, finance and operate a number of infrastructure assets—including the transportation corridor (port and road) and the power plant.” However, it is unclear who would partner with the Pebble project in order to provide this extra capital. As such, this assumption is considered speculative. Adding this \$1.3 billion back into the capital cost estimate for the Pebble 25-year mine case brings the total construction cost up to six billion dollars which is a little more in line with other recent mining projects.

The Wardrop study also significantly underestimated annual water treatment costs and did not include even a placeholder cost for closure of the Pebble mine. As shown in the table below, when the higher construction costs; higher operational expenditures for water treatment; closure costs and much lower revenue from concentrate sales are factored into the Wardrop study’s 25-year mine plan economic evaluation, the 20-year mine plan being considered by the Pebble EIS has a negative NPV of approximately three billion dollars. This should only be considered a conceptual level approximation of the project’s actual NPV. While a new rigorous economic evaluation may make the NPV less or more negative, I believe it is very unlikely to make the project have a positive rate of return on what is likely to be an extremely large and risky capital investment.

	NPV
Estimated NPV of the 2011 Wardrop 25-Year Mine Plan	+\$3.8 Billion.
Capital for Access Corridor and Power Plant added back into construction cost	-\$1.3 Billion.
Lost revenues from decreased concentrate sales	-\$5 Billion.
Refined operational water treatment costs	-\$0.3 Billion.
Discounted Closure Cost	-\$0.4 Billion.
Conceptual NPV of the EIS 20-Year Mine Plan	-\$3 Billion.

The conceptual financial analysis provided by the Pebble Limited Partnership for the 20-year mine plan in the draft EIS is fatally flawed. It ignores smelter and refining costs, understates capital and operating costs and fails to provide even a placeholder cost for closure. With the incorporation of just these limited corrections, the Pebble Limited Partnership financial evaluation also has a strongly negative net present value. The draft EIS is thus evaluating a mine plan that does not meet its own alternatives screening criteria including the requirement that each alternative be “practical or feasible from the technical and economic standpoint”.

If the base case mine plan assumed for the EIS is not economic, then the entire permitting process is compromised because the impacts and risks being evaluated are much smaller than those required for a full-scale economically viable project. In other words, the EIS is not evaluating the “least environmentally damaging practicable alternative.” This situation would also place prospective developers in a difficult situation because in order to create a profitable operation they would either need to 1) immediately begin a new EIS for a larger economically viable mine plan or 2) knowingly permit, fund and build an uneconomic mine in the hopes that a later EIS and permitting process would allow a larger, economically viable operation.

For additional detail of the full economic evaluation submitted to the Army Corps of Engineers during the draft EIS public comment period see Appendix A attached to this written testimony.

Environmental Impact Statement Process

The draft EIS document for the Pebble Project was written in only eleven months. This is almost three times faster than the 2.6 years to complete the average draft EIS in the United States between 2010 and 2017 (Executive Office of the President, Council on Environmental Quality, December 2018). This short timeline is unprecedented for such a large, complex mining project which will have unavoidable, material and long-term impacts to a sensitive, globally significant ecosystem. It has almost certainly compromised the technical rigor and reliability of the EIS process.

Based upon a careful review of the Pebble Project draft EIS it is my professional opinion that the document and associated analysis is fatally flawed. The draft EIS contains an unacceptable number of deficiencies, omissions and errors. Due to the global significance of the salmon fishery, any EIS within the Bristol Bay watershed should be held to the highest standard, but the Pebble draft EIS does not even meet industry standard practice. Much of the analysis contains insufficient detail to determine if the planned actions are adequate or practicable; the document commonly

understates potential impacts; essential analyses and designs are deferred to the post-EIS permitting period; and in a number of significant instances, the conclusions are clearly wrong. The analysis of key project components such as water management, geotechnical stability, reclamation & closure, wetlands mitigation and air quality are clearly inadequate. In particular the failure to consider the profound impacts that would result from large-scale catastrophic tailings dam failure means that the draft EIS ignores one of the largest environmental risks posed by the project. The cumulative effects evaluation of the more-credible 78-year mine plan significantly understates and, in some cases, grossly underestimates the much larger impacts and risks associated with an expanded mining operation. There are also several important alternatives which could significantly reduce the environmental impacts and risks of the project which were either not evaluated or were eliminated prematurely.

I have provided almost 50 pages of detailed technical comments on the draft EIS to the Army Corps of Engineers in six separate letters. These letters are publicly available at the Army Corps Pebble Project EIS website and are also attached as Appendix A to this written testimony. Given the substantial flaws in the draft EIS, I have urged the Army Corps of Engineers to restart the process with an analysis based on an economically-credible mine plan; and supported by an independent, rigorous economic analysis to demonstrate that the project is the least environmentally damaging practicable alternative. The EIS process will be severely compromised if the deficiencies of the current document are not fully addressed. This would almost certainly require, as a minimum, the completion of a Supplemental Environmental Impact Statement.

APPENDIX A

TECHNICAL COMMENT LETTERS ON THE PEBBLE PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT

SUBMITTED TO THE UNITED STATES ARMY CORPS OF ENGINEERS DURING THE 2019 PUBLIC COMMENT PERIOD

[The comments are retained in committee files and are available online at the U.S. House of Representatives Document Repository at <https://docs.house.gov/meetings/PW/PW02/20191023/110065/HHRG-116-PW02-Wstate-BordenR-20191023.pdf> beginning on page 7, as well as at <https://pebbleprojecteis.com/publiccomments/drafteiscomments>.]

Mrs. NAPOLITANO. Thank you very much, Mr. Borden.

I now recognize Alannah Hurley, and you may proceed.

Ms. HURLEY. Good morning, Chairwoman Napolitano, Chair DeFazio, Ranking Member Westerman, and members of the subcommittee. I thank you all for having me here today. My Yup'ik name is Acha [phonetic], and my Irish name is Alannah Hurley, and I am executive director for the United Tribes of Bristol Bay.

And UTBB is a Tribal consortium whose mission is to defend our indigenous way of life by protecting our traditional lands and waters. The Yup'ik, Denaina, and Alutiiq peoples of Bristol Bay represent three of the last remaining salmon cultures on the planet. We are salmon people, but salmon are more than food for us. Salmon are central to our cultural identity, our spirituality, and our sacred way of life that has made us who we are for thousands of years in the Bristol Bay region.

Pebble's proposal to build a mine at the heart of our watershed has been a dark cloud over Bristol Bay for the last 15 years. As proposed, the mine would permanently impact thousands of acres of pristine lands and waters that sustain the world's greatest salmon habitat. While our people have opposed Pebble for nearly two decades, our recent experience with the Army Corps of Engineers has made it clear to us, the Government is paving the way for Pebble, regardless of the consequences.

Despite the Corps statement that it is committed to a thorough, fair, and transparent review of Pebble, our Tribes' experiences in the environmental review process demonstrate it is merely paying lip service to its statutory obligations and its trust responsibility to our Tribes. Despite two of our member Tribes' significant efforts to work as cooperating agencies, the Corps has erected substantial barriers to their meaningful participation. The Corps has dismissed the Tribes' concerns and failed to provide the information necessary to meaningfully evaluate impacts, impacts to our people.

Additionally, throughout this process, the Corps has repeatedly failed to meaningfully consult with Tribes on a Government-to-Government basis. We have extended countless invitations to the Corps to visit our communities, see and witness our way of life, and to engage in open dialogue about these issues that are most important to our people. Yet, the Corps continues to be unresponsive to these requests.

The posters you see here today are prime examples of how information is routinely kept hidden from the public eye. As a result, Tribes are forced to rely on the media for critical information the Government should be providing directly to Tribes. This is unacceptable, and it really sends a clear message to our Tribes that the Corps' recitals of its obligations are nothing but hollow words, words so hollow that a senior Corps official in Alaska could not get through prepared remarks at the end of a draft EIS hearing in Dillingham last spring without weeping and having to turn it over to another official.

After nearly 2 years of this treatment by the Corps, Bristol Bay's Tribes are continually left with the lingering question of why. Why is the Army Corps rushing a timeline that doesn't match up with any realities in Bristol Bay? Studies remain undone, data gaps remain unfilled, and the draft EIS has been universally condemned by the scientific community, by other Federal agencies, and by our people for its lack of thorough analysis of this project and its impact to the people of Bristol Bay. Why is it that major announcements and agency decisions are known to Northern Dynasty shareholders who actively discussed this knowledge in online investment forums before those decisions are publicly announced? And why is it that Bristol Bay's first people to whom this Federal Government owes a sacred trust responsibility are continually treated as second-class citizens by agencies of the United States?

We are not a box to be checked, we are not an obstacle to overcome, and we are not enemies to be defeated. We are the indigenous people of Bristol Bay. Our culture is not for sale, and we deserve to be heard, we deserve to be respected, and we will not be brushed aside. We have inherited the responsibility to be strong stewards of Bristol Bay, and we will not stop fighting until our homeland is protected from the Pebble Mine.

I am not here to debate the shape shifting size and scope of whatever size and scope the Pebble Mine is peddling, depending on the month. I am here to tell you that any mine in Bristol Bay threatens our very existence as indigenous peoples. If Pebble is developed, there is no doubt it will forever change who I am, who my people are, where I come from, and it will rob our children's children of their right to continue being Native people as we have for

thousands of years in Bristol Bay. I cannot accept that, our people cannot accept that, and this committee should not accept that.

The Corps has made it clear that our people, science, and fact do not matter in this process, so we plead with this committee to do everything in its power to hold this administration accountable. This must be done to ensure the traditional and natural resources of Bristol Bay wild salmon are protected. Please uphold your responsibility to our Tribes and put an end to this culture of corruption. [Speaking in Native language.] Thank you for having me.

[Ms. Hurley's prepared statement follows:]

Prepared Statement of Alannah Hurley, Executive Director, United Tribes of Bristol Bay

I. INTRODUCTION

Dear Chairman DeFazio, Ranking Member Graves, Subcommittee Chairwoman Napolitano, and Subcommittee Ranking Member Westerman, my name is Alannah Hurley and I am the Executive Director of the United Tribes of Bristol Bay (UTBB), a tribally chartered consortium of fifteen federally recognized tribes in Bristol Bay.¹ Each member tribe passed a tribal resolution delegating its governmental powers to UTBB to implement the Bristol Bay Regional Visioning Project, a region-wide action plan developed by Bristol Bay's tribal communities focused on improving economic development opportunities, preserving cultural and subsistence resources, and increasing educational opportunities for tribal youth. UTBB is organized as a consortium of tribal governments working to protect the traditional way of life of the indigenous people of Bristol Bay and the natural resources upon which that way of life depends. UTBB's mission is to advocate for sustainable communities through development consistent with our traditional values.

The Yup'ik, Dena'ina, and Alutiiq peoples of Bristol Bay represent three of the last remaining "salmon cultures" in the world.² Extending from time immemorial to the present, salmon has been the foundation of Alaska Native cultures in the region. Today, salmon makes up nearly 82% of the subsistence diet in the region.³ Individuals practicing a subsistence way of life devote innumerable hours per year preparing nets, boats, smokehouses, and other equipment just in preparation for the summer salmon runs.⁴ The subsistence way of life is viewed as full-time job and wealth is often defined in terms of a full freezer or a good stockpile of subsistence foods.⁵ Beyond subsistence harvests, salmon also serves an important cultural role. Salmon is more than food for us. Catching, preserving, and eating salmon are part of a genuine and treasured way of life. A way of life that we desire to keep living and have worked diligently to protect.

The proposed Pebble mine poses a serious threat to the extraordinary natural resources of Bristol Bay and our traditional ways of life that depend upon those resources. The pristine ecosystems in the Bristol Bay watershed are critical to the continued health of salmon populations in the region. Pebble Limited Partnership is proposing to build one of the largest open-pit mines in North America in the heart of the Bristol Bay watershed. As proposed, the mine would adversely and permanently impact Bristol Bay's extraordinarily productive system of streams, wetlands, and uplands that support the world's largest salmon fishery. As part of the proposed development of Pebble mine, Pebble Limited Partnership submitted a permit application to the U.S. Army Corps of Engineers (Corps or USACE) to discharge fill ma-

¹UTBB's member Tribes include: Aleknagik Traditional Council, Chignik Lake Tribal Council, Clark's Point Village Council, Curyung Tribal Council, Ekuik Village Council, Levelock Village Council, Manokotak Village Council, New Koliganek Village Council, New Stuyahok Traditional Council, Nondalton Village Council, Pedro Bay Village Council, Pilot Point Tribal Council, Portage Creek Village Council, Togiak Traditional Council, and Twin Hills Village Council. Each is a federally recognized Indian tribe. Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 84 Fed. Reg. 1,200, 1,204-05 (Feb. 1, 2019).

²U.S. ENVIRONMENTAL PROTECTION AGENCY, AN ASSESSMENT OF POTENTIAL MINING IMPACTS ON SALMON ECOSYSTEMS OF BRISTOL BAY, ALASKA App. D, at 11 (2014) (EPA 910-R-14-001B).

³*Id.* at 78.

⁴*Id.* at 85.

⁵*Id.* at 85, 88.

terial into and perform work within the waters of the United States.⁶ Despite the Corps' statements that it is committed to a thorough, fair, and transparent review of the proposed Pebble mine, our Tribes' experiences participating in the environmental review process as cooperating agencies and interacting with the Corps on a government-to-government basis clearly demonstrate that the Corps is merely paying lip service to its statutory obligations and its trust responsibility to our Tribes.

II. TREATMENT OF TRIBES AS COOPERATING AGENCIES

Under the National Environmental Policy Act, the Corps is required to conduct a thorough, science-based analysis of the impacts associated with the proposed Pebble mine. NEPA fosters informed decision-making by requiring federal agencies to take a "hard look" at the environmental impacts of a proposed action.⁷ An environmental impact statement (EIS) must "provide full and fair discussion of significant environmental impacts" and "inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts."⁸ Tribes, like state and federal agencies, have the ability to participate as cooperating agencies and contribute to the development of the EIS. Two of UTBB's member Tribes, Curyung Tribal Council and Nondalton Tribal Council, are participating in the NEPA process as cooperating agencies. Despite the Tribes' significant efforts to fulfill their responsibilities as cooperating agencies, they have faced substantial barriers to full and meaningful participation. The Corps has summarily dismissed tribal cooperating agencies' substantive concerns and failed to provide the information necessary to meaningfully evaluate the impacts of the proposed Pebble mine.

From the beginning, the Corps arbitrarily limited the involvement of tribal cooperating agencies. In November 2018, the Corps distributed an internal draft EIS to cooperating agencies for review and comment. At that time, Shane McCoy, program manager for the Corps' Alaska District, informed tribal cooperating agencies that the Corps would only consider their comments on subjects the Corps identified as their areas of expertise—cultural resources, subsistence, land use, and socioeconomics.⁹ Despite requests from tribal cooperating agencies to remove these limitations, the Corps has imposed them throughout the NEPA process.¹⁰ Most recently, when the Corps held cooperating agency meetings in July and August 2019, McCoy again informed tribal cooperating agencies that their participation would be limited to the subjects that the Corps identified as their areas of expertise.¹¹ Though tribal cooperating agencies were invited to attend all the meetings, they were only permitted to participate in the discussion at one. Tribes, as sovereigns, have broader interests, concerns, and expertise, than the arbitrary and insulting limits that the Corps placed upon tribal cooperating agencies.¹²

The Corps' improper treatment of cooperating agencies is not limited to Tribes. Throughout the NEPA process, the Corps has inhibited the ability of cooperating agencies to participate and failed to properly consider cooperating agencies' substantive comments and concerns. The Department of Interior's (DOI) comments on the draft EIS raised serious process-related concerns, stating that "we must note that, despite being cooperators, [U.S. Fish and Wildlife Service, National Park Service, and Bureau of Safety and Environmental Enforcement] were only provided certain sections of the Administrative DEIS to review as it was prepared and were not

⁶U.S. Army Corps of Engineers, *Public Notice of Application for Permit*, POA-2017-271 (Jan. 5, 2018).

⁷*W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 486 (9th Cir. 2011).

⁸40 C.F.R. § 1502.1.

⁹See Email from Shane McCoy, Program Manager, U.S. Army Corps of Engineers, Alaska/District, to cooperating agencies (Oct. 17, 2018) ("When revising the draft EIS prior to public comment, USACE will consider those comments which are related to the CA's identified area of special expertise. Other comments related to the DEIS will be considered at the same time as the public's comments, after the Notice of Availability for the dEIS.").

¹⁰Letter from William Evanoff, President, Nondalton Tribal Council, to Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers, U.S. Army Corps of Engineers, at 1 (Sept. 5, 2018).

¹¹See Email from Shane McCoy, Program Manager, U.S. Army Corps of Engineers, Alaska District, to cooperating agencies (July 22, 2019) ("All agencies can attend any of the meetings, however, discussions on topics will be limited to the agencies with that expertise.").

¹²See Letter from William Evanoff, President, Nondalton Tribal Council, to Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers, U.S. Army Corps of Engineers, at 1 (Sept. 5, 2018).

able to access the entire document until after it was released for public comment.”¹³ Addressing the Corps’ failure to meaningfully consider and respond to cooperating agencies’ comments, the DOI recommended that the Corps “more effectively and directly address prior comments . . . For example, responses to previous comments often cited conclusions from other sections of the DEIS to resolve concerns, but these citations did not sufficiently address the issues that were originally raised.”¹⁴ The Environmental Protection Agency (EPA) also raised concerns about the manner in which the Corps limited cooperating agencies’ participation, stating that it would continue to provide “special expertise in specific areas requested by the Corps,” but would “also continue to request the ability to assist the Corps in additional areas . . . including fisheries and air quality, where [the EPA has] special expertise and jurisdiction.”¹⁵

In addition to process-related concerns, cooperating agencies submitted extensive comments on the draft EIS’s substantive deficiencies, including insufficient analysis of impacts to watershed health, including impacts to fish and fish habitat;¹⁶ insufficient analysis of “potential impacts to subsistence resources and the communities that depend on them;”¹⁷ and insufficient analysis of spill risk associated with tailing storage and other facilities.¹⁸ Based on these and other deficiencies, the DOI concluded that the draft EIS did not follow NEPA requirements and was so inadequate that it “preclude[d] meaningful analysis.”¹⁹ Ultimately, the DOI recommended that the Corps undertake additional analysis—“Due to the substantial deficiencies and data gaps identified in the document and as a department with multiple cooperating agencies, the DOI recommends that the USACE prepare a revised or supplemental DEIS.”²⁰ Nondalton Tribal Council repeatedly raised the same concern with the Corps, requesting that the Corps prepare a supplemental EIS in accordance with its obligations under NEPA. In multiple letters, Nondalton Tribal Council explained to the Corps that failure to produce a supplemental EIS would deny Bristol Bay Tribes, the public, and state and federal agencies the ability to fairly and objectively review the proposed project and make informed decisions about its impacts.²¹ Senator Lisa Murkowski, Alaska’s senior Senator, also recognizes that the Corps’ process is broken. A committee report accompanying the appropriations bill for DOI, environment, and related agencies included language, drafted by Senator Murkowski, stating that “[a]dverse impacts to Alaska’s world-class salmon fishery and to the ecosystem of Bristol Bay, Alaska, are unacceptable” and directing other federal agencies “to exercise their discretionary authorities . . . to ensure the full protection of the region” if they continue to be unsatisfied with the Corps’ analysis of the project.²²

Though the Corps has repeatedly stated that it is committed to a fair and transparent review of the proposed Pebble mine, its course of action reveals the disingenuousness of that commitment. In response to cooperating agencies’ substantial criticisms of the draft EIS and recommendations to develop a supplemental EIS, the Corps has indicated that it will not undertake additional analysis. On a press call with reporters in July 2019, David Hobbie, chief of the Corps’ Alaska District Regulatory Division, stated that he was not considering a supplemental draft EIS “at this

¹³ Letter from Philip Johnson, Regional Environmental Officer, Office of Environmental Policy and Compliance, Anchorage Region, to Shane McCoy, Program Manager, U.S. Army Corps of Engineers, Alaska District, at 1 (July 1, 2019) (hereinafter “DOI Comment Letter”).

¹⁴ *Id.* at 3.

¹⁵ Letter from Chris Hladick, Regional Administrator, Environmental Protection Agency, Region 10, to Shane McCoy, Program Manager, U.S. Army Corps of Engineers, Alaska District, at 6 (July 1, 2019) (hereinafter “EPA Comment Letter”).

¹⁶ See e.g., DOI Comment Letter at 5; EPA Comment Letter at 4; Comments of the Nondalton Tribal Council and the United Tribes of Bristol Bay on the U.S. Army Corps of Engineers’ Draft Environmental Impact Statement for the Proposed Pebble Mine POA-2017-271 (July 1, 2019) (hereinafter “Nondalton and UTBB Comment Letter”); Letter from Robert Heyano, President, Ekuk Village Council, to Colonel Phillip J. Borders, District Commander, U.S. Army Corps of Engineers, Alaska District, at 1 (April 11, 2019) (hereinafter “Ekuk Comment Letter”).

¹⁷ See e.g., DOI comment letter at 3; Nondalton and UTBB Comment Letter at 2; Ekuk Comment Letter at 1-2.

¹⁸ See e.g., Nondalton and UTBB Comment Letter at 2; EPA Comment Letter at 5.

¹⁹ DOI Comment Letter at 3.

²⁰ *Id.*

²¹ See e.g., Letter from George Alexi, President, Nondalton Tribal Council, to Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers, U.S. Army Corps of Engineers, at 1-2 (Sept. 27, 2019); Letter from George Alexi, President, Nondalton Tribal Council, to Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers, U.S. Army Corps of Engineers, at 2 (Aug. 27, 2019).

²² S. Rep. No. 116-123, at 87 (2019).

point.”²³ Similarly, on a call with reporters last month, Shane McCoy, program manager for the Alaska District stated that despite significant changes to plans for the proposed Pebble mine submitted by the project proponent, the Corps “would not be publishing a supplemental [environmental impact statement], and there wouldn’t be an opportunity for the public to comment.”²⁴ Despite the fact that the Corps was “still working through all the comments” and was “still waiting on additional data on groundwater modeling, wetlands and cultural resources” from the project proponent, McCoy stated that the Corps was still on pace to issue a final EIS in early 2020.²⁵ McCoy then went a step further, essentially agreeing with claims the project proponent made in a recent presentation to investors that the proposed Pebble mine “will not harm salmon and will not affect water resources of Bristol Bay.”²⁶

Hobbie and McCoy’s statements are consistent with the Corps’ pattern of summarily dismissing the significant concerns and substantive recommendations of cooperating agencies. This pattern is particularly alarming in contrast to the Corps’ conduct toward Pebble Limited Partnership. As the Nondalton Tribal Council explained to the Corps in a recent letter, these statements “clearly demonstrate a significant bias in favor of the applicant, the intent to implement a politically driven fast-track schedule, and a pre-decisional mindset that sets aside any attempt to make a reasonable, fair, and objective final permit decision.”²⁷

III. TREATMENT OF TRIBES ON A GOVERNMENT-TO-GOVERNMENT BASIS

The Corps, like all federal agencies, owes a trust responsibility to Tribes. Because of Tribes’ legal status as sovereigns, the federal government has an obligation to consult with Tribes on a government-to-government basis when contemplating actions that may affect tribal lands, resources, members, and welfare. Executive Order 13175 mandates that all executive agencies recognize and respect Tribes’ sovereign status.²⁸ The order also requires agencies to establish policies and procedures to ensure meaningful and timely consultation with tribes when an action affects tribal interests.²⁹ Under the Corps’ own guidance, it must “ensure that all Tribes with an interest in a particular activity that has the potential to significantly affect protected tribal resources, tribal rights (including treaty rights) and Indian lands are contacted and their comments taken into consideration.”³⁰ The Corps’ guidance also emphasizes beginning consultation at “the earliest planning stages, before decisions are made.”³¹ Though the Corps often recites its obligations in communications with Bristol Bay Tribes, its course of action falls far short of its recitals. In stark contrast to its promises, the Corps has ignored tribal concerns, withheld information from Tribes, refused to meet on a government-to-government basis, and treated Tribes like stakeholders instead of sovereign Nations.

The Corps’ failure to meaningfully consult with Tribes on a government-to-government basis is a concern that UTBB and its member Tribes have continuously raised with the Corps. We have extended countless invitations to the Corps to visit our villages and to engage in open dialogue about the issues that are most important to us. We have explained that meeting with us in our communities provides the most inclusive participation of our Tribal leaders and members. Traveling to our communities would also provide the Corps leadership and staff with a better understanding of the resources, and in turn the traditional ways of life, that would be adversely affected by the proposed Pebble mine. But the Corps has been unresponsive to our requests.

The Corps’ monthly tribal teleconference is another illustrative example of the way in which the Corps views its government-to-government relationship with Tribes. Though a teleconference with thirty-five Tribes is not an appropriate means to engage in government-to-government consultation, the Corps includes its monthly

²³ Ariel Wittenberg, *EPA punts on latest Pebble mine decision*, E&E News (July 29, 2019), <https://www.eenews.net/greenwire/stories/1060806401>.

²⁴ Dylan Brown, *Revised mining plan won’t require new review—Army Corps*, E&E News (Sept. 18, 2019), <https://www.eenews.net/greenwire/stories/1061134919> (alteration in original).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Letter from George Alexi, President, Nondalton Tribal Council, to Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers, U.S. Army Corps of Engineers, at 2-3 (Sept. 27, 2019).

²⁸ Exec. Order No. 13,175, 65 Fed. Reg. 67,249, 67,249-50 (Nov. 6, 2000) (mandating that agencies “respect Indian tribal self-government and sovereignty” when “formulating and implementing policies” that affect tribal interests).

²⁹ *Id.* at 67,250.

³⁰ U.S. ARMY CORPS OF ENGINEERS, TRIBAL CONSULTATION POLICY, at 4 (Nov. 2012).

³¹ *Id.* at 2-3.

tribal teleconferences in its record of tribal consultation.³² Monthly teleconferences could be an appropriate mechanism to provide Tribes with information and updates that implicate tribal interests; however, the Corps' tribal teleconferences fail to achieve even this more limited purpose. As a result, Tribes are forced to rely on the media for critical information that the Corps should provide directly to Tribes. News articles about the recent changes to the proposed mining plan are just one of the many instances where Tribes learned of significant project-related information from the news instead of the Corps.³³ This is unacceptable and sends a clear message to Tribes that the Corps' recitals of its obligations are merely hollow words.

IV. LAND OWNERSHIP AND REASONABLE ALTERNATIVES

The Corps must "[r]igorously explore and objectively evaluate all reasonable alternatives."³⁴ Failing to meet this basic NEPA requirement, the Corps merely tweaked Pebble Limited Partnership's proposal. The two additional action alternatives the Corps included in the draft EIS are variations on access to the mine and transportation of mine products; they are not alternatives. The inadequacy of the range of alternatives is further undermined by the fact that the only feasible and practicable alternative is Pebble Limited Partnership's proposal, suggesting that the Corps is attempting to improperly select the company's preferred alternative.

Most of the alternatives that the Corps considered in its draft EIS include building components of the transportation corridor over Native allotments and lands where an Alaska Native Claims Settlement Act corporation owns the surface or subsurface.³⁵ The Corps considered alternatives using these lands even if the landowners did not extend their permission to use the land, or in some cases expressly refused permission. For example, despite Pedro Bay Corporations' refusal to allow Pebble Limited Partnership to use its land, two of the three alternatives considered in the draft EIS would cross the corporation's lands.³⁶ Pebble Limited Partnership's preferred alternative is the only alternative that does not cross Pedro Bay Corporation's lands. On two occasions the corporation's board of directors voted unanimously against providing access to its lands, first in 2014 and again in January 2019.³⁷ Pedro Bay Corporation explained to the Corps that the proposed Pebble mine does not satisfy its "responsible development standards" and for "Alaska Natives who depend on the natural environment for traditional and cultural hunting, fishing, and gathering, the Pebble Project represents an existential threat to their ways of life."³⁸ An alternative is not reasonable or feasible when a landowner has not, and will not, consent to the use of its lands.

In developing and analyzing alternatives, the Corps disregarded the property interests of individual Alaska Native allottees and Alaska Native Claims Settlement Act corporations, leaving Pebble Limited Partnerships' proposal as the only feasible and practicable option considered in the draft EIS. Again, the Corps ignored the indigenous people of Bristol Bay in favor of furthering Pebble Limited Partnership's interests.

V. CONCLUSION

I would like to thank Chariman DeFazio, Ranking Member Graves, Subcommittee Chairwoman Napolitano, and Subcommittee Ranking Member Westerman for inviting me to testify today. One thing is clear, the proposed Pebble mine will have significant and permanent adverse impacts on the extraordinary natural resources of Bristol Bay and our traditional ways of life that are so closely tied to those resources. With so much at stake, the people of Bristol Bay, and all Alaskans, deserve a fair, thorough, and transparent review of the proposed Pebble mine. In contrast, the Corps' opaque process is moving toward a permit decision at an unprecedented pace, ignoring substantial criticism and concern from Bristol Bay Tribes, other federal agencies, and the public. Under the Corps' current timeline, it is planning to

³² U.S. ARMY CORPS OF ENGINEERS, PEBBLE PROJECT EIS: DRAFT ENVIRONMENTAL IMPACT STATEMENT, at 6-2 to 6-6 (Feb. 2009).

³³ Dylan Brown, *Revised mining plan won't require new review—Army Corps*, E&E News (Sept. 18, 2019), <https://www.eenews.net/greenwire/stories/1061134919>.

³⁴ 40 C.F.R. § 1502.14(a).

³⁵ See U.S. ARMY CORPS OF ENGINEERS, PEBBLE PROJECT EIS: DRAFT ENVIRONMENTAL IMPACT STATEMENT, at 3-2.1.

³⁶ *Id.*

³⁷ Ariel Wittenberg, *Native corp.: Pebble mine can't use our land*, E&E News (Feb. 28, 2019), <https://www.eenews.net/stories/1060122683>.

³⁸ Letter from Matt McDaniel, CEO, Pedro Bay Corporation, to Shane McCoy, Program Manager, U.S. Army Corps of Engineers, Alaska District, at 1-2 (July 1, 2019).

issue a final EIS in early 2020 and make a permit decision in mid-2020.³⁹ The Corps has made clear that it will not listen to our voices, so we ask this Committee to act now and help us protect Bristol Bay.

Mrs. NAPOLITANO. Thank you, Ms. Hurley.

We now have Mr. Brian Kraft. You may proceed.

Mr. KRAFT. Chairwoman Napolitano, Chair DeFazio, Ranking Member Westerman, thank you for the opportunity to testify today. My name is Brian Kraft. My wife and I are long-time Alaskan residents where we are raising our family and four kids. We own and operate two remote sportfishing lodges in the Bristol Bay region. Between my wife's company and mine, we employ 180 people in the State of Alaska. We understand business in Alaska. We get it.

I grew up in Chicago and was fortunate enough to move to Alaska and discover the uniqueness and special nature that Alaska has and Bristol Bay in particular. It is in this area where gin-clear rivers flow over the tundra into the sea. The nutrient-rich environment allows salmon runs to grow to millions and rainbow trout to grow to epic size.

I first heard of the Pebble Mine proposal in 2004, and was all for it. I actually thought, great; jobs, economic opportunity. This is it what it is going to be about in this area. And I was an oil field roughneck, worked in the North Slope, worked for ARCO, understood resource development in the State of Alaska. It wasn't until I actually had a client at the lodge from Newmont Mines. His name was Gary Dowdle. And Gary was at the lodge, and I asked him about Pebble. This is about 2005. And he said, hey, Brian, fly me up over that area. Show me where we are talking about.

So I flew him up there, we landed, we got out, walked around, and this is before parts per billion or dam size or pit size, or cyanide, not cyanide. He just looked at it, and as a mining manager, he said, Brian, I have made my life living and working in mines. We try and get it right, but most of the time there are mistakes that happen. We don't always get it right. And whatever number we think it is going to be, it is usually bigger and more costly, more damaging. He looked at the site, and he said, too much water. And so I have always held that in the back of my mind that it is all about the water.

When I was building my lodge in 1998, I had an elder come down to the river, the Kvichak River which drains Lake Iliamna. He grabs my arm, and you know, I am a kid from Chicago, as I said. Turn on the faucet, water comes out, and I drink it in my home. This elder grabs my arm, and he says, hey, Brian, take care of the water. I said OK, Mikey, yeah, no problem. I will take care of the water. He says no. Take care of the water. It is who I am. It is in my soul.

And the gravity and the weight of that moment, I can feel his hand on my arm today. It carries just something that a lot of us in this room don't have any idea. Maybe Alannah does. But other than that, we just think it is just water, right? Well, that resource is of unbelievable importance, and I appreciate the committee taking time to look at this. It is a national issue.

³⁹U.S. Army Corps of Engineers, *Pebble Project EIS*, <https://pebbleprojecteis.com/schedule> (last visited Oct. 16, 2019).

My industry, the sportfishing industry, touches every single State in the Union. We have got clients from all over the country that come and visit the area, and to a person, they express how unique and special the area is.

I have been involved in this battle for 15 years. I started an organization called the Bristol Bay Alliance to educate people and myself on what mining is and does. And the conclusion that I have come to, not being a scientist, is that the best mining decisions are made when it takes location into account. And so you have this location, and you can't directionally drill. We can't shift the deposit, so we have to consume the habitat where the minerals are, and there is 100 percent consumption of that habitat.

So the decision comes, quite simply, down to, is it appropriate to be in this location? If everything is done right, according to the smaller, but yet it is still an enormous mine footprint, but the smaller mine plan, you are still going to consume 80 miles of streams. You are still going to consume 3,500 acres of wetland in an area that is part of the Bristol Bay fisheries reserve, where our first legislation action in the State of Alaska was to create a Bristol Bay fisheries reserve in 1972 to protect the area. Nobody could have conceived back then the amount of habitat destruction that a mine of this nature would have proposed.

The sportfishing industry generates \$65 million a year to the Alaska economy. It is part of a broader \$1.5 billion a year that is produced in the economy through the sportfishing, commercial fishing, tourism, and other outdoor activities.

I can see I am out of time. I just want to thank the committee for the opportunity to testify.

[Mr. Kraft's prepared statement follows:]

Prepared Statement of Brian Kraft, Owner, Alaska Sportsman's Lodge

Chairwoman Napolitano and Ranking Member Westerman, thank you for the opportunity to testify today before the House Transportation and Infrastructure Committee for its hearing on the Pebble Mine Project: Process and Potential Impacts. My name is Brian Kraft, and my wife and I are long-time Alaska residents where we are raising our family. We currently own and operate two sportfishing lodges in the southwest part of the state known as the Bristol Bay region. Someday, in the not too distant future, I hope that one or several of our daughters will take over our lodge business as they have a passion for the fishery and have a strong connection to the region and its environment.

Today I'd like to share with the Committee why the Bristol Bay region is unlike any other place in the world, specifically from the perspective of a person that grew up in the suburbs of Chicago and now spends half of each year in a remote, roadless, pristine, intact, functioning ecosystem. I will also share with you the significance this habitat and fishery plays in a thriving sportfishing industry that creates a strong economic engine for the state of Alaska. This could all be compromised with the massive industrialization of the area through large-scale open-pit mining.

We are relying on effective and science-based implementation of the Clean Water Act to protect our livelihoods from this potentially destructive mine proposal. I am here to tell you that the Army Corps of Engineers (Corps) is failing at implementing the Clean Water Act as it reviews the Pebble Mine proposal. We commend you for making it a priority of your Committee to review the Corps' implementation of the Clean Water Act on what we believe is one of the most critical permit proposals in history.

I also want to thank Committee leadership for supporting Representative Huffman's amendment to the FY 2020 Interior and Environment appropriations bill which would have cut funding to the Corps until it fixed its flawed review of the Pebble mine permit. I urge the Committee to continue working with the appropri-

ators, including Senator Murkowski who recently added strong report language to the Senate version of the bill, to compel the Corps to fix its review using the best available science.

BRISTOL BAY IS A STATE AND NATIONAL TREASURE.

People spend significant amounts of money, time and effort to travel from all over the world to experience and fish in this unique, pristine and incredibly productive corner of Alaska. There are very few places left in the world where you can see and fish for thriving runs of salmon and massive rainbow trout, and fly for miles without seeing a road, buildings or other signs of human development. There is a strong desire and willingness to pay for the experience of being outdoors in such a pristine setting. Clients who come to my lodge are blown away by the magnitude of this place, and the special, uniquely Alaskan experience that comes with it.

Salmon have fueled everything that lives in this region for thousands of years. Here, salmon runs are measured in the millions. For the past two years, record breaking salmon runs have returned to the rivers and lakes of the Bristol Bay region. It's one of the only places left in the world where there are still thriving runs of wild salmon and where 30-inch rainbow trout are not mythical creatures. It's one of the few places in the world where you can watch a brown bear, yards away, devour salmon as if you were not there. It's one of the last places left on the planet where you can stand on a river, perhaps with your niece or grandfather, and be hundreds of miles from a highway. The bottom line is that Bristol Bay is special even by Alaska's already high standards.

But perhaps fish, wildlife and scenic landscapes aren't your thing. Let me speak to the importance of Bristol Bay from a business perspective. Bristol Bay is an economic powerhouse, fueled by salmon. Wildlife viewing, hiking, hunting and sportfishing play an important part of the regional economy.

There are approximately 150 sportfishing or hunting related businesses that operate in the Bristol Bay drainage with about 30,000 sportfishing trips taken to the region each year. Some anglers stay at lodges like mine, some are local fishermen, and some are anglers who experience Bristol Bay through "do it yourself" trips. It is estimated that each year Bristol Bay anglers spend approximately \$58 million, with a vast majority of this spending (approximately \$47 million annually) coming from nonresident anglers.¹ An additional \$12.4 million in economic activity is attributable to people traveling to the area to hunt bear, moose, ducks and other wildlife. A growing part of the tourism economy in Bristol Bay is bear viewing. A study produced this spring found in 2017, bear viewing-related service providers (air/boat taxis, guides, lodging) reported \$34.5 million in sales.² McNeil River and Brooks Camp are two of the most important and well-known bear viewing areas in the world.³ Together, recreational fishing and hunting activities support more than 1,000 jobs in the area, and bear viewing supports another 490 sustainable jobs in the region.⁴

All told, commercial, sport and subsistence fishing accounts for more than \$1.5 billion to the regional economy and are an important part of Alaska's broader fishing-based economy.⁵

The University of Alaska Center for Economic Development estimates consumers in Alaska spent \$501 million on equipment for sport fishing in 2017.⁶ That is one of several reasons that companies such as Orvis, and other fishing gear manufacturers, care so much about keeping Bristol Bay the way it is.

My clients, and anglers of all types who visit the region, consistently emphasize the importance of Bristol Bay's remote, and wild setting in their decision to fish the area. Additionally, a significant proportion of anglers, when responding to surveys, specifically traveled to the Bristol Bay region to fish the world-class rainbow trout fisheries. Yet, when assessing the potential impacts of the proposed Pebble mine, the Corps gave little consideration to the importance of rainbow trout and other non-salmon species and dismissed the impact industrial activities will have on the

¹ <https://www.epa.gov/bristolbay/bristol-bay-assessment-final-report-2014>

² University of Alaska Fairbanks, The Economic Contribution of Bear Viewing to Southcentral Alaska, (2019) <https://static1.squarespace.com/static/5c4025a7b40b9dc76548186e/t/5cdb69154e17b630b2880c51/1557883183050/BearEconomicsStudy-Full.pdf>

³ The Value of Watchable Wildlife: A Case Study of McNeil River by C. Clayton and R. Mendelsohn 1993 <https://www.sciencedirect.com/science/article/pii/S0301479783710571?via%3Dihub>

⁴ https://www.fs.fed.us/rm/pubs/rmrs_p049/rmrs_p049_035_044.pdf

⁵ https://iseralaska.org/static/legacy_publication_links/2013_04-

TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf

⁶ <https://www.alaskatla.org/Research/OutdoorRecreationImpactsandOpportunities%202019.pdf>

remote setting on which my business depends. This is not just hearsay; survey responses confirm that anglers consistently emphasize the importance of Bristol Bay's remote and wild setting in their decisions to fish the area.⁷

The Bristol Bay's world-famous fisheries, its unparalleled water, and the local economies and cultures they support can continue to thrive if we simply have the common sense to leave this place as it is.

For reference, on the Columbia River, once a wild salmon-filled river, about \$500 million a year is spent on salmon mitigation, restoration and management. Yet, salmon populations continue their precipitous decline and, in many cases, are barely hanging along. By comparison, only about \$5 million a year is spent on fisheries research and management in the Bristol Bay region, while many millions more than that return through related industries.⁸ If we properly protect existing habitat and carefully manage for sustainable yield, nature will continue to provide a renewable resource that continues to produce indefinitely. It just doesn't make economic sense to compromise this resource, which supports thousands of small, American family-run businesses like mine.

I first heard about Pebble 15 years ago. At first, I thought, "Great—jobs." I had worked on the North Slope as a roughneck on the oil rigs and then worked as an intern for Arco in the Drilling Engineering Department. I thought mining would be similar to oil extraction on the North Slope of Alaska. However, I really knew nothing about open-pit mining on the scale of Pebble. I went on an educational journey. I actually had the CEO of Northern Dynasty, the sole owner of the Pebble Project, at my lodge to present his case to the people of Igiugig. It was at this presentation in 2005 that we learned of their plans—and the core concepts of their plans remain basically the same to this day.

Upon learning the proposed Pebble mine would consume massive amounts of the headwater lakes, streams and wetlands that support our wild fisheries, I knew the project would create long-term problems for our fisheries. I started the Bristol Bay Alliance to educate the people of the Bristol Bay region about large-scale open-pit mining and what it would mean for the region and recreational fishing.

Open-pit mining consumes earth. That's how it works. There are no other ways to get the minerals out without removing the earth that holds the minerals. This is the crux of the issue and why certain locations are better suited for mining than others. The more we all learned about the industry, the more we understood that this was the wrong mine in the wrong place.

The goal of the Clean Water Act is to restore and maintain the health of the Nation's waters. Surely the tremendous resources I have described above would warrant one of the most critical, science-based reviews for a permit in the history of the law. The Corps has done just the opposite.

As we and many critical comments from federal and state resource agencies have called out, the Corps has rushed its Draft Environmental Impact Statement (DEIS) and missed many key points that are important to understanding why the proposed Pebble mine should not receive its necessary permits. Beyond the many technical, ecological, and scientific shortcomings of the DEIS, the Corps has also failed to adequately assess the logistical components of the project. The Corps has two alternative routes for the road corridor, both of which must cross privately held Alaska Native Village Corporation lands. These landowners refuse to grant permission to use their lands for the project and, thus, the Corps cannot consider these options as viable. This is one small example of the many missteps the Corps has made with regards to evaluating the permit application.

The pending permit application also calls for only mining just 1/8th of the deposit, while putting potentially acid generating toxic tailings back into the open pit after extracting the minerals. Of course, since the Pebble Partnership is simultaneously selling the huge size of the deposit (nearly 11 billion tonnes⁹) and its potential for expansion to potential investors, we know the project will expand and that tailings will need to be stored somewhere else while the remaining portions of the deposit are mined. Because the toxic mine waste will require perpetual care, we know we will still be dealing with the tailings and acid-generating waste long after the Pebble Partnership, or any successive owner of the mine, closes its doors.

⁷ https://www.fs.fed.us/rm/pubs/rmrs_p049/rmrs_p049_035_044.pdf

⁸ Presentation by Dr. Daniel Schindler, University of Washington at American Fisheries Society Meeting, Anchorage 2018

⁹ Ghaffari, H., R. S. Morrison, M. A., deRuijeter, A. Živković, T. Hantelmann, D. Ramsey, and S. Cowie. 2011. Preliminary Assessment of the Pebble Project, Southwest Alaska. Document 1056140100-REP-R0001-00. February 15. Prepared for NDML by WARDROP (a Tetra Tech Company), Vancouver, BC.

Furthermore, neither the DEIS nor any of its accompanying materials include a mine construction plan, mine operations plan, or water management plan. While the Corps acknowledges that these details will not be available until successive state-permitting phases, it plans to issue a final decision before any of the missing information will be available and without a full accounting and evaluation of likely impacts associated with hazardous contaminants, fish migration, proposed culverts, changes to water quality and quantity, critical habitat loss, and other indirect ecological effects. The DEIS fails to consider foreseeable impacts to the habitat.

I am not a scientist, but I can tell you that the entire Bristol Bay system is connected and that water flows downhill. The water is the lifeblood of this region. These flowing, moving waters allow life to exist in this region. These salmon runs feed the world. The entire system relies on each part remaining intact. The proposed mine site is critical to salmon and other freshwater species and will be destroyed if this project is built. It can be hard for many of us to understand the importance of the water and habitat to remain in its natural state, functioning perfectly without human interference or destruction. We turn on the water facet and clean water comes out. We can drink it, wash with it, and never even give it a second thought. However, as an elder Alaskan told me as I was building my lodge on the banks of the Kvichak River: "Take care of the water. It is who I am, it is in my soul, it is my survival."

I am here to urge you to look at this issue closely, it is of national importance. The review being conducted by the Army Corps of Engineers is unacceptable. It is a mockery not worthy of the lofty goals of the Act that this Committee oversees and stewards. The stakes are too high to cut corners and a foreign mining company has had far too much influence on a system that is supposed to protect the best interests of Americans. We should be doing everything we can to protect American jobs and existing thriving businesses, not squander them.

Thank you for your time and willingness to give attention to this issue that is extremely important to my family, hundreds of other businesses that depend on Bristol Bay, and sportsmen and women in Alaska and around the world that love this special corner of America. We continue to urge you to do all in your power to use the legislative tools available to you and the Congress to make sure the Bristol Bay watershed is protected.

Mrs. NAPOLITANO. Thank you very much, sir.

We now have Mr. Mark Niver, a fisherman. You are on, sir, please.

Mr. NIVER. Good morning. We have a video to show up on the screens here this morning. Is that possible or not? There we go. All right. This is my family. It is my sons on deck of the fishing vessel *Surrender*. And roll? No action? OK.

[Video shown.]

Thank you, Congressman DeFazio and Chairwoman Napolitano, for giving me the opportunity to be here this morning to testify on behalf of Bristol Bay's 8,000 commercial fishermen, including my three sons. One of them is behind me here. He came here on his own dime here today. My other sons are Blake and Bryce, and Grant is behind me. My name is Mark Niver. I live in Wasilla, Alaska.

I have fished in Bristol Bay since 1980, and I am here because I am deeply concerned about the proposed Pebble Mine and the discreditable permitting process currently underway. I have lived in Alaska since 1977, and I am newly retired from the Prudhoe Bay oil field where I worked as a plant operator for BP for 42 years. I supplemented my oil job by commercial fishing in Bristol Bay with my father and three brothers.

After fishing with them for a few seasons, I decided this fishery was what I wanted to invest in and bought my own fishing boat and permit. Commercial fishing in Bristol Bay is not easy, and it requires a substantial amount of financial investment. Today, a driftnet permit costs around \$185,000. A fishing boat costs around

\$250,000. While this initial investment is daunting, it is one worth making thanks to Bristol Bay's strong runs and high market price. This fishing season, my boat alone made \$650,000. That is a lot of money.

For me and many others, fishing in Bristol Bay is a family endeavor with multiple generations fishing together. I raised my three boys on my fishing boat, and they have chosen to continue fishing in Bristol Bay as adults. In addition, they run their own seafood company, marketing the salmon that we catch back in the Midwest area. Bristol Bay salmon fishery allows them to make a good living and is a job that they are proud of. As their father, I am proud to know that they will continue fishing after my time is over and perhaps their future children and their grandchildren will do the same.

There are thousands of similar stories in Bristol Bay. Bristol Bay's commercial fishermen are just one link of the chain, though. Bristol Bay's salmon fishery employs more than 14,000, as Mr. DeFazio talked about earlier, people every summer, and creates more than \$1.5 billion in the worldwide economic activity. We sell our catch to seafood processors, who then process and distribute Bristol Bay salmon to buyers and markets around the world. With the quality and value of Bristol Bay salmon increasing, its global value will only increase in time.

Relative to other salmon fisheries in Bristol Bay, Bristol Bay is unmatched in its sustainability and productivity. In 2018, we harvested over 43 million salmon. Bristol Bay produces half of the world's sockeye salmon. Bristol Bay's commercial salmon fishery continues to thrive thanks to its pristine, undeveloped freshwater habitat and Alaska's science-based fishery management.

Despite all this, Bristol Bay is one of the most endangered fisheries. For over a decade, the proposed Pebble Mine has cast a shadow of uncertainty over my livelihood and my family's future. Nowhere in the world has a mine of this type and size been located in a place as ecologically sensitive and pristine as Bristol Bay. As the late Senator Ted Stevens once said, wrong mine, wrong place.

Bristol Bay's fishermen have taken precious time away from fishing to submit comments to the Army Corps during both the scoping and draft EIS comment periods. However, the Army Corps has yet to address our concerns and questions. I have no confidence in this permitting process, and that the Army Corps will factor in our concerns.

We have one shot at doing this permitting process right. It should be testing Pebble's assumptions and promises, not taking Pebble at its word.

I have been fighting to save my sons' and my livelihood from the Pebble Mine for over a decade and will continue to do so, along with Alannah next door to me here, until Bristol Bay is protected. I am increasingly concerned that my efforts and those of my fellow fishermen won't be enough. The permitting process is a runaway train paving the way to the Army Corps to rubber stamp the Pebble Mine. That is why I traveled here, along with my son, to ask for your help and leadership.

I understand there are very important things before Congress at this moment. However, our Federal agencies have chosen to ignore

Bristol Bay's fishermen and science that shows salmon and the Pebble Mine cannot coexist. I urge you to do anything and everything to stop this flawed process. We are running out of time. There is too much at stake to punt this issue. The facts are clear, and it is time for this project to put its fishermen and businesses in jeopardy to be stopped. Alaska, the State of Alaska, is its people. The people of Alaska do not want this mine. Thank you for giving me the opportunity to speak.

[Mr. Niver's prepared statement follows:]

**Prepared Statement of Mark Niver, Bristol Bay Driftnet Permit Holder,
FV Surrender**

I am submitting the following testimony regarding the proposed Pebble Mine project in Bristol Bay, Alaska's headwaters. This project is irresponsible and jeopardizes a thriving renewable industry, including my livelihood and that of my three sons. I am deeply concerned with how the Trump Administration is handling the Pebble project's permitting process. The process has been rushed since day one and ignores well-documented science showing that the Pebble Mine would cause irreversible harm to Bristol Bay's salmon fishery. I ask that you and your colleagues do everything in your power to stop this corrupt permitting process from moving forward and that you not allow this administration to destroy the world's largest wild salmon fishery and with it 14,000 American jobs.

My Bristol Bay fishing career started in my teens when I worked for Kachemak Seafoods in Togiak. I soon after moved to Alaska during college to take a job in the Prudhoe Bay Oil Field where I just recently retired as a Plant Operator. I supplemented my oil job on the "North Slope" by commercial fishing in Bristol Bay with my father and three brothers. After fishing with them for a few seasons I decided that this was a fishery I wanted to invest in and I bought my own fishing boat and permit.

Commercial fishing in Bristol Bay is not easy and it requires a substantial amount of investment and long-term commitment. Today, a driftnet permit costs on the average of \$185,000 with a fishing boat costing on average \$250,000. While this initial investment can be daunting for new fishermen, it's one worth making thanks to Bristol Bay's strong runs and high market price. This fishing season, my one boat harvested \$650,000 worth of salmon.

For me and many others, fishing in Bristol Bay is a family endeavor and that's part of what makes it so special. It's also generational and you often have multiple generations fishing together. I raised my three boys on my fishing boat; they started to come out with me when they were ten years old. Commercial fishing taught them how to work hard and solve problems on their own. Today, they continue to fish and have also started their own seafood company, Surrender Salmon, selling more than 100,000 pounds of Bristol Bay salmon fillets to markets in the Midwest. It's a good living that they are proud of. As their father, I'm proud to know that they will continue fishing after my time is over, and perhaps their future children and grandchildren will do the same.

Bristol Bay is the largest and most valuable wild salmon fishery left in the world. In 2018, Bristol Bay saw a record-breaking return of 62 million sockeye salmon, 43 million of which were sustainably harvested by the commercial fishery.¹ In an average year, Bristol Bay's salmon fishery contributes roughly 50% of the world's sockeye salmon and generates \$650 million in income and \$1.5 billion in economic activity.² The commercial fishery in Bristol Bay has existed for over 130 years and today provides more than 14,000 jobs, including 8,000 fishing jobs.³

At a local level, Bristol Bay's salmon fishery is an economic engine for the region. It employs 1,567 regional resident workers, provides 4,217 total average regional jobs, and generates \$220 million in total regional labor income.⁴ These jobs and income are significant since they are renewable and will be available to local residents

¹ Alaska Department of Fish & Game: www.adfg.alaska.gov

² Knapp et al. University of Anchorage: Institute of Social and Economic Research. April 2013. *The Economic Importance of the Bristol Bay Salmon Industry*.

³ Wink Research and Consulting. 2018. *Economic Benefits of the Bristol Bay Salmon Industry*.

⁴ Wink, *Economic Benefits*

so long as Bristol Bay's salmon populations remain productive and are able to support a commercial fishery.

The economic impacts of Bristol Bay's salmon fishery extend well beyond the Bristol Bay region, making it an invaluable part of our nation's renewable economy. It sustains service and support industries such as boat builders, engine mechanics, and fishing gear manufacturers as well as other industries in the seafood supply chain, including distribution, retail, and food service. Bristol Bay is especially important for the Pacific Northwest given the hundreds of permit holders, seafood processors, and seafood distributors that are based in Washington and Oregon. The Puget Sound region in particular has deep ties to the Bristol Bay fishing industry given that the majority of Bristol Bay's major seafood processors are based in the Seattle area and a substantial percentage of Bristol Bay's salmon products are shipped to Seattle for reprocessing and distribution to other markets around the country and world⁵.

As other salmon fisheries in Alaska face cyclical declines, Bristol Bay's salmon fishery is more important than ever. In 2018 thanks to its record-high returns, Bristol Bay contributed 38% of Alaska's entire 2018 salmon harvest and 48% of its total estimated ex-vessel value⁶. Its abundance allows it to provide financial stability for seafood processors, fishermen, and other businesses and is a pillar for the entire Alaska seafood industry.

For over a decade the Pebble Mine has been casting a shadow of uncertainty over my livelihood and Bristol Bay's entire fishing industry. I first learned about the proposed Pebble Mine in 2006 and the more I learned about the project the more concerned I got. Nowhere in Alaska or the world have we ever had a mine of this type and size located in a place as ecologically sensitive and pristine as Bristol Bay. As the late U.S. Senator Ted Stevens once said, "it is the wrong mine for the wrong place."

It's extremely troubling that the Trump Administration would push this project forward despite its well-documented risks and despite the 14,000 jobs at stake. Bristol Bay's salmon fishery is a renewable economic engine, and one that cannot be replaced. What is especially troubling about the current permitting process is the U.S. Army Corps of Engineers' Draft Environmental Impact Statement (DEIS). The Army Corps' DEIS is fatally flawed and fails to accurately portray the ecological impacts that the proposed Pebble project would have on the Bristol Bay watershed and its wild salmon populations. Ultimately, this is because the DEIS is based on a false project scope and duration even though the Army Corps itself says in the DEIS that expansion of the project is "reasonably foreseeable." In addition, the DEIS downplays many of the direct and indirect impacts outlined in the EPA's 2014 peer-reviewed Bristol Bay Watershed Assessment, which concluded that "large-scale mining in the Bristol Bay watershed poses significant near- and long-term risk to salmon, wildlife and Native Alaska cultures," according to former EPA Regional Administrator Dennis McLerran. The discrepancies in the DEIS and the EPA Bristol Bay Watershed Assessment are concerning and raises questions about the scientific integrity of the DEIS.

Of particular concern to myself and Bristol Bay's commercial fishermen are the following information gaps and inaccuracies in the DEIS regarding potential impacts to Bristol Bay's fish and fish habitat:

- The DEIS grossly underestimates Pebble's potential impacts and bases its analysis on a false project scope and duration, leading to inaccurate conclusions in the DEIS about future changes in the number of returning salmon available for harvest. The Army Corps' estimations are not supported by the best available science and analysis, specifically when it comes to the impacts of changes in water temperature and traces of copper on aquatic life.
- The risk of a potential tailings dam failure, which would be catastrophic for the Nushagak River—one of Bristol Bay's most productive salmon river systems. The Army Corps has yet to conduct a thorough, long-term assessment of a potential tailings dam failure and its impacts, which is inexcusable given other recent tailings dam failures and the threats that such a failure could have to the communities and industries that are downstream. Because of these risks, Bristol Bay's drift net permit holders took it upon themselves to hire independent earth scientist, Dr. Cameron Wobus, to model potential tailings dam failure scenarios and their potential impacts. His analysis found that it is likely that Pebble's tailings material would reach Bristol Bay⁷ and reinforces that a

⁵ Knapp et al., *The Economic Importance*

⁶ Alaska Department of Fish & Game: www.adfg.alaska.gov

⁷ Lynker Technologies, LLC. 2019. *A Model Analysis of Flow and Deposition from a Tailings Dam Failure at the Proposed Pebble Mine*.

tailings dams failure at the Pebble project would have far reaching and long-lasting impacts on the Nushagak River drainage and deserves further analysis by the Army Corps and Pebble Limited Partnership.

- The DEIS does not include a post-operation reclamation plan or wastewater treatment plan. We understand that this is due to the fact that the Pebble Limited Partnership has not submitted this information to the Army Corps or the State of Alaska, which we find unacceptable and questionable given that this is standard practice in the industry. Because this project will require treatment and monitoring in perpetuity, this information must be made available in the DEIS for the public to review and comment on.

The inadequacies in the Army Corps' assessment of potential impacts to fish and habitat impedes the Army Corps from accurately assessing the magnitude of Pebble's socio-economic impacts, including changes to the value and marketability of Bristol Bay's salmon and the subsequent impacts these changes would have on the well-being of Bristol Bay's commercial fishermen, businesses, and support industries. The Army Corps erroneously assumes that the total value of the fishery is based solely on the volume of fish harvested and value per pound of salmon. This assumption is wrong and does not factor in the influence that marketing, public perception, and quality can have on fish value. In addition, the Army Corps also makes a sweeping assumption in its DEIS that a change in market reception of Bristol Bay's salmon is not likely to occur (DEIS 4.6-2). This assumption is ill-founded and is in direct contrast to the Pacific Seafood Processors Association's conclusion that, "we know from past experience, that actual or perceived damage to the purity of the waters or fish of the Bristol Bay region would harm the marketability of Alaska salmon."⁸ Thus, even if there is not a catastrophic environmental disaster at the proposed Pebble Mine site, just the public's perception of an open-pit mine in Bristol Bay's headwaters will damage the Bristol Bay and greater Alaska seafood brands. The DEIS completely dismisses these risks and its subsequent impacts on the thousands of businesses that purchase and sell Bristol Bay salmon, including seafood distributors, retailers, and restaurants.

The DEIS does not account for the hundreds of millions of dollars in investments made by Bristol Bay's permit holders and seafood processors, nor does it evaluate the potential impacts that the Pebble project could have on the value of these investments and assets. As stated previously, many fishermen invest hundreds of thousands of dollars to participate in the Bristol Bay commercial fishery, requiring loans that depend on a consistent supply of salmon and strong market prices. Any loss in fishing income would create financial hardship for these fishermen.

Over the last year and a half, Bristol Bay's fishermen have taken precious time away from fishing to write and submit comment letters to the Army Corps during both the Scoping and Draft EIS comment periods. We have yet to see the Army Corps address our concerns and questions, including our request for a more rigorous tailings-dam failure assessment. Instead it appears that this Administration has already decided the outcome and is simply going through the motions. That's not how a permitting process should work, especially in Bristol Bay where the world's largest wild salmon fishery is at stake. The integrity of this permitting process has been compromised and I have no confidence that the concerns and interests of Bristol Bay's fishermen will be factored into the Army Corps' final permitting decision.

As someone who spent their career working in the oil industry, I am not anti-development. Far from it. I fully support development of our natural resources, but only when it's done responsibly and based on the best available science. We have one shot to do this permitting process right in Bristol Bay—there is no where else with a salmon fishery this valuable and productive. To allow the Pebble Limited Partnership to drive this permitting process in spite of science and the will of Alaskans goes against our country's own best interests, violates the National Environmental Policy Act, and jeopardizes more than 14,000 renewable jobs. This permitting process should be testing Pebble's assumptions and promises, not taking the Pebble Partnership at its word. We deserve a rigorous permitting process that's transparent, rigorous, and based on the best available science and information.

I have been fighting to save my livelihood—and my sons' livelihoods—from the Pebble Mine for over a decade and will continue to do so until Bristol Bay is protected. I'm increasingly concerned under this current Administration that this permitting process is a runaway train with nothing stopping the Army Corps from rubber stamping the Pebble Partnership's permit application in just a matter of months. That is why I am here, to ask for your help and leadership. Please do everything you can to stop this flawed process from moving forward any further. Al-

⁸Pacific Seafood Processors Association. June 2017. *Position on the Pebble Mine Project*.

lowing the Trump Administration to permit this project would be an economic disaster for our country and Bristol Bay's thousands of commercial fishermen.

Thank you for your attention and consideration.

Mrs. NAPOLITANO. Thank you, sir.

We now have Anisa Costa. You may proceed.

Ms. COSTA. Thank you. Chairman DeFazio, Chairwoman Napolitano, Ranking Members Graves and Westerman, members of the committee, my name is Anisa Costa, and I serve as chief sustainability officer at Tiffany & Co. I would like to thank you all for holding this important hearing. It is an honor for me to testify here today to express Tiffany & Co.'s longstanding opposition to the proposed Pebble Mine, and to ask for rigorous environmental review of the mine proposal.

Since Tiffany & Co. was founded, we have looked to the beauty of the natural world for design inspiration. We also rely on materials that come from the earth, whether it is diamonds or precious metals to bring life to our designers' creations. In other words, nature's abundance is integral to the success of our company. As such, we have a business imperative to operate our company and source our materials in a responsible manner that protects the planet and supports communities.

Tiffany was founded in 1837 in New York City and has since grown into a global luxury house at the forefront of jewelry design and expert craftsmanship. The company has retail and manufacturing operations in 29 States and the District of Columbia, and we employ nearly 6,000 people across the country. We manufacture the majority of our jewelry here in the United States and source the majority of our precious metals from recycled sources and mines in the U.S. as well.

Whether here or elsewhere in the world, we take great pride in upholding exemplary standards for environmental and social responsibility at every step in our supply chain. With more than 180 years of experience in sourcing precious metals and gemstones, we have learned that there are certain special places where mining simply must not occur. We take too much risk in altering timeless treasured landscapes that generations of communities have thrived in for short-term financial gain.

Relatedly, we have also long championed the need to reform the Mining Law of 1872, and I would like to thank the House Natural Resources Committee, which is advancing an important mining law reform bill this morning, written by Chairman Raúl Grijalva.

In Bristol Bay, we believe mining would ultimately destroy the lands in the watershed, causing irreparable harm to the communities who depend on this majestic place. It is our view that sourcing for mines that destroy our economies and ecosystems is not good for our bottom line, or for our country's. For these reasons, we have publicly opposed the proposed Pebble Mine for more than a decade.

In 2008, we were one of the first jewelers to sign on to the Bristol Bay Protection Pledge and declare that we would never source gold from the proposed Pebble Mine. Since signing that pledge, Tiffany & Co. has raised awareness about the risk of mining in such a pristine place, first within the jewelry industry, and then among the broader public. We stand by the Bristol Bay Protection Pledge

today alongside 100 of our colleagues in the jewelry industry as well as other sectors who have since signed the pledge.

We know, from experience, that when our customers, when consumers view mining as irresponsible and harmful, it hurts all industries who use mined materials from technology to renewable energy enterprises, to automotive companies, and the construction sector, and of course, the jewelry industry. Today's corporate stakeholders, including our valued customers, expect business to be done without risking the country's natural resources.

Sadly, the Army Corps' EIS fails to even consider the findings of the EPA 2014 watershed assessment to push for answers for the Bristol Bay region. So we are respectfully urging the committee to push for answers to the critical questions raised by the EPA while there is still time.

Many of our concerns have been highlighted by the other witnesses this morning, and are included in my written testimony, so I will not repeat them here. But simply put, we urge the committee to consider the many omissions in the Army Corps' permit process, and ensure that they are fully addressed. The communities of Bristol Bay and the diverse coalition that opposes the mine deserve nothing less.

We at Tiffany & Co. look forward to continuing to source materials and manufacture our products here in the United States. However, we can promise that we will never use gold from the proposed Pebble Mine should it be developed. The long-term threats to the Bristol Bay region are simply too great. They outweigh the short-term value of any precious metals which might be extracted from there.

For this generation and all those to follow, this majestic landscape simply must be protected. We know that there will be other copper and gold mines to develop, but there will never be another place as special and productive as Bristol Bay. Thank you for your time.

[Ms. Costa's prepared statement follows:]

**Prepared Statement of Anisa Kamadoli Costa, Chief Sustainability Officer,
Tiffany & Co.**

Chairman DeFazio and Chairwoman Napolitano, Ranking Members Graves and Westerman, and Members of the Committee, my name is Anisa Kamadoli Costa and I am the Chief Sustainability Officer at Tiffany & Co.

I would like to thank you all for holding this important hearing related to the Bristol Bay Region of Alaska and the proposed Pebble Mine. It is an honor for me to testify here today to express Tiffany & Co.'s longstanding opposition to the proposed Pebble Mine and to ask for rigorous environmental review of the mine's proposal.

Since our inception, Tiffany & Co. has looked to the beauty of the natural world for design inspiration. We also rely on the bounty of this world for the precious materials that bring our designers' creations to life. In other words, nature's abundance is integral to the success of our company, given the precious materials that are mined to be utilized in our products. As such, we believe we have a business imperative to operate our company and source our materials in a responsible manner that protects the planet and supports communities.

Tiffany was founded in 1837 in New York City and has since grown into a global luxury house at the forefront of jewelry design and expert craftsmanship. The company has retail and manufacturing operations in 29 states and D.C., and we employ approximately 5,900 people across the United States. We manufacture the majority of our jewelry domestically and source the majority of our precious metals from

mines and recycled sources in the U.S. Whether here or elsewhere in the world, we take great pride in upholding exemplary standards for environmental and social responsibility at every step in our supply chain.

After more than 180 years of experience in sourcing precious metals and gemstones, we have learned there are certain places where mining simply must not occur. We risk too much in altering timeless, treasured landscapes in pursuit of short-term financial gain. In Bristol Bay, we believe mining would ultimately destroy the lands and the watershed, causing irreparable harm to the communities who depend on this majestic place. It is our view that sourcing from mines that destroy economies and ecosystems are not good for our bottom line or our country. For these reasons, we have publicly opposed the proposed Pebble Mine for more than a decade.

In 2008, we were one of the first jewelers to sign the Bristol Bay Protection Pledge and declare that should the proposed Pebble Mine be developed, we would not source gold from it. Since signing the pledge, Tiffany & Co. has proactively raised awareness about the danger of mining in such a pristine place, first within the jewelry industry and then among the broader public. We have voiced our positions in *National Jeweler*, *National Geographic*, *The Washington Post*, *San Francisco Chronicle* and *The Seattle Times*.

We continue to stand by the Bristol Bay Protection Pledge today, alongside 100 of our colleagues in the jewelry industry and other sectors who have since signed onto the pledge. Indeed, Tiffany & Co. is far from alone in our opposition to Pebble Mine. A diverse coalition—including recreational and commercial fishing companies, restaurateurs, conservationists and Alaska Natives—has raised a unified voice in opposition to the proposed mine. The list of those who believe this proposed mine should not be built has continued to grow in recent years and now includes mining companies who previously planned to develop the deposit. All of us concluded long ago, that this mine represents a risk of the highest order. We all agree Pebble is the wrong mine in the wrong place and should not be permitted.

We know from experience that when consumers view mining as irresponsible and harmful, it does not blemish the jewelry industry alone. All industries reliant on mined materials are impacted negatively, from technology and renewable energy, to automotive companies and the construction sector. Today's corporate stakeholders, including our valued customers, expect business to be done without destroying the country's natural treasures, including Bristol Bay.

In light of the potentially harmful environmental, social and economic consequences which could result from the construction of Pebble Mine, we commend the Committee for holding this important hearing to examine the process and potential impacts of the mine proposal. It is especially critical at this moment in time, as the U.S. Army Corps of Engineers (Army Corps) is continuing to move forward with permitting the mine without considering the extensive scientific data that have clearly projected devastating consequences resulting from the mine's development.

In particular, the Army Corps' Draft Environmental Impact Statement (DEIS) fails to consider the findings of the Environmental Protection Agency's (EPA) 2014 Watershed Assessment of the Bristol Bay region. Given the Committee's jurisdiction over both the Army Corps and the EPA on matters related to clean water, wetlands, watershed health, and clean-up and remediation of environmental catastrophes, we respectfully urge you to push for answers to the questions posed by the EPA on these topics. By driving the discussion, this Committee can help ensure that the highly predictable and catastrophic impacts of mining in the Bristol Bay ecosystem are avoided.

As a company, we provided comments on the Army Corps' DEIS earlier this year, highlighting various gaps in the assessment. We believe these gaps must be addressed and that the Army Corps must disclose the direct, indirect and cumulative effects of the proposed Pebble Mine, given it would be built in one of the most significant, precious and pristine ecosystems in the world.

Our recent comments focused on five major deficiencies: (i) the limited scope of the DEIS, (ii) long-term water management, (iii) water quality, (iv) biodiversity matters and (v) post-mining reclamation.

- (i) In terms of scope, the current application is to mine 1.4 billion tons of mineralized ore. However, the Pebble deposit is reported as at least a 10-billion-ton mineral resource. It is reasonable to predict that mine proponents would seek to exploit the entire mineral resource. Therefore, any review of the proposed mine should assess the impacts of mining the entire resource.

Additionally, the Army Corps only evaluates the potential for risks and failures over a 20-year timeline. However, this estimated timeframe is likely far shorter than the life of the mine would be. A 100-year timeline, or even longer,

would be more appropriate for proper evaluation. The long-term pollution issues associated with abandoned mines throughout the United States underlines the importance of looking beyond a 20-year horizon.

- (ii) Regarding water management, the proposed Pebble Mine is located within the reaches of three separate stream systems and would have potentially devastating consequences for both water quantity and quality in each drainage. The Army Corps should require a water management plan that evaluates the potential impacts on water in these drainages and outlines proposed mitigation. The current application is inadequate in this regard, as a detailed water management plan has not been submitted. It is impossible to evaluate the direct, indirect and cumulative impacts to these watersheds until such a plan has been completed.

Further, in order to characterize the impacts of mining on the Bristol Bay region, the Army Corps should explicitly consider the management of groundwater and surface water as a coupled system using an integrated hydrologic model. Hydrologists know that pumping substantial volumes of groundwater will adversely affect surface water and permanently degrade or destroy the affected streams. The Army Corps should evaluate groundwater and surface water flow modeling predictions.

- (iii) From a water quality perspective, we expect there will be both short- and long-term degradation from the mine site water impoundments and open pit mining activities. The use of petroleum products, large quantities of chemicals for milling processes and erosion from heavy equipment operations degrade water quality. There is high potential for pollution from waste rock, tailings and pit wall leaching. A large open pit and dewatering will have negative impacts on nearby streams and lakes. A mine waste management plan should be included in the water management plan to account for groundwater pollution from the proposed mine.
- (iv) Though the Army Corps is currently considering a permit for a mine at a smaller scale than originally proposed, a smaller mine would still eliminate, block or dewater over 80 miles of streams and nearly 3,500 acres of wetlands. The loss of such habitat would significantly impact biodiversity, as these streams are critical for the spawning and rearing of salmon. Even with a smaller footprint—which, it is reasonably foreseeable would expand significantly—this proposed loss is considerably above the advised miles and acreage outlined in the EPA's 2014 watershed assessment. We continue to urge the Army Corps to reconcile the differences between its analysis and the EPA's 2014 analysis.

Further, it is critical to consider the potential for a tailings dam failure as none of the dams and tailing storage facilities would ever be removed. Such a failure would bury many miles of streams and salmon habitats with fine sediment, destroying the possibility of spawning and rearing. The impact this would have not only on the ecosystem's biodiversity, but on the Alaskan communities and economies who depend on a productive salmon fishery, is unacceptable.

- (v) Finally, in relation to closure, the Army Corps does not analyze possible future impacts of a catastrophic failure of the tailings dam on the surrounding environment and fish and wildlife, nor does it provide a sophisticated geochemical analysis of a tailings dump. The Army Corps needs to evaluate all possible outcomes and should widen its scope of risk impacts to include catastrophic dam failure. It must also recognize a tailings dump is a permanent waste pile and will not be removed when the mine closes. The long-term impact of a tailings dump on water quality in the region should be carefully evaluated.

We urge the Committee to consider the many omissions in the Army Corps' DEIS and demand they be fully addressed. The communities of Bristol Bay and the diverse coalition that opposes the mine deserve nothing less.

We at Tiffany & Co. look forward to continuing to source materials and manufacture products in the United States. However, we can promise we will never use gold from the Pebble Mine should it be developed. The long-term threats to the Bristol Bay region far outweigh the short-term value of any precious metals which might be extracted there.

For this generation and all those to follow, this majestic landscape simply must be protected. We know there are other copper and gold mines to develop, but there will never be another place so abundant and productive as Bristol Bay.

Thank you for your time. I will be happy to answer questions at the appropriate time.

Mrs. NAPOLITANO. Thank you very much, Ms. Costa.

Thank you to all the witnesses. We will now have questions for the witnesses, and again, we will use the timer to allow 5 minutes of questions for each Member. If there are additional questions, we might have a second round as necessary, and I will now begin.

Ms. Hurley, as a member of a sovereign nation, do you think that Tribal consultation on the project is adequate?

Ms. HURLEY. No.

Mrs. NAPOLITANO. Why is it important that Tribal perspective be included in the EIS?

Ms. HURLEY. It is very important for the Tribal perspective to be included in the EIS because we have lived in Bristol Bay for thousands of years. We know more about these lands and waters and what the potential impacts could be to our people from a project like this more than anyone else. The Tribal perspective should be included in the draft EIS, and to date, it has not been included in a meaningful way.

Mrs. NAPOLITANO. Thank you.

Ms. Costa, your company led the way in signing the Bristol Bay Protection Pledge, committing not to source mine from Pebble. If it is true your company seeks to source materials only from the United States, why is it important you take this stand?

Ms. COSTA. It is important to us because what happens at the origins of our supply chain, it matters; it matters to our customers, it matters to our employees, it matters to our investors and all of our stakeholders. Consumers expect us to be sourcing responsibly, and simply put, I think anything that puts the mining industry in a bad light is bad for our business.

Mrs. NAPOLITANO. Thank you.

Mr. McLerran and Mr. Borden, there is a lot of talk about letting the process play out. You have both been involved with the permitting from a Federal agency and then from a developer's perspective. How does this process compare in scope and detail?

Mr. McLERRAN. So—Dennis McLerran. Actually, I have never seen anything quite like this. This is being shortcut. There are gaps in the data. The NEPA process only works well if it is done well, and this one is not being done well. So the process is deeply flawed. The withdrawal of the watershed assessment—or excuse me—withdrawal of the proposed determination was truly extraordinary after President Trump met with Governor Dunleavy on a plane. There was an EPA headquarters directive to reconsider, and it was withdrawn within a matter of days. So it appears that it was a political decision rather than a science- or data-based decision.

Mrs. NAPOLITANO. Thank you.

Mr. Borden?

Mr. BORDEN. I can say also that I am very uncomfortable with this process. I have been involved with a lot of EISs and many permitting processes for mines of comparable size and smaller. I have never seen something going this fast, at least half the time of what you would expect for such a complex project. I also have to say the EIS that was submitted in draft had so many omissions and errors in it that I personally would have been ashamed to be involved with that.

Mrs. NAPOLITANO. How does the timeline compare for Pebble to other EIS processes?

Mr. BORDEN. From my analysis, the average mining project is probably closer to the 5- to 6-year range. And the current administration also looked at EIS process overall in the United States over the last decade or so, and even the average EIS, and that includes very simple highway projects, things of that sort, they are closer to 4 to 5 years also. So this is even less than just the average project, not even the average mining project.

Mrs. NAPOLITANO. Thank you, sir.

I yield to Mr. Westerman.

Mr. WESTERMAN. Thank you, Madam Chair.

I find it interesting that we bring up draft EISs. We don't point out that all of this is subject to review. And, you know, just the idea that NEPA is a gold standard except when NEPA is actually being used, and now, NEPA and the people carrying it out are somehow villains.

And, Mr. McLerran, in a recent interview with The Seattle Times, you said that what is happening now as a decisionmaking process is being politicized and removed from the science. And I find that extraordinary to be coming from you, the person who handpicked somebody to lead the Bristol Bay watershed assessment, that said in a public meeting that politics are as big or a bigger factor than science, in your Clean Water Act veto decision.

Mr. McLerran, isn't it true that a preemptive veto, such as the one you undertook, wasn't necessary because you had no idea if the Army Corps of Engineers was even going to grant a permit? Isn't it the case that unless the Corps is going to grant a permit, that a veto is unnecessary?

Mr. McLERRAN. So, first, there was no veto, as I explained in my testimony. But we did, after 3 years of science, impose restrictions on the development in the watershed, but that was based on good science. It was a very participatory process. So there was no predecision of that, as Mr. Collier testified. That certainly was not the case. We went into this with open eyes and open ears, and heard the science and made some—

Mr. WESTERMAN. You are saying the 404(c) was not used originally?

Mr. McLERRAN. We did use the 404(c) process, which Congress has provided the authority and the power for EPA to use. We have used that—EPA has used that very sparingly over the years. But this is a case where the science really drove that and merited it.

Mr. WESTERMAN. So everyone on the committee has probably dealt with the Corps of Engineers in some form or fashion. And I have yet to see the Corps of Engineers get in a hurry about anything. I have yet to see them sidestep any processes or try to fast-track anything. Quite honestly, it has been just the opposite of that. There has been a lot of talk about the politicization of this process.

What exactly about the U.S. Army Corps of Engineers and its career military team is politicized? Because I have not seen that with any of them that I have dealt with.

Mr. McLERRAN. So I didn't state that the Corps of Engineers was politicized, but I did state that the EPA process to withdraw the proposed determination appears to have been politicized.

Mr. WESTERMAN. But it is the Corps of Engineers that is doing this permit.

Mr. McLERRAN. So all of the Federal agencies do provide input into that. And the U.S. Fish and Wildlife Service, the EPA, several other Federal agencies have pointed out that the process is deeply flawed at this point that the Corps is undertaking.

Mr. WESTERMAN. Madam Chairman, I yield the remainder of my time to the gentleman from Alaska, Mr. Young.

Mr. YOUNG. I thank you.

Mr. Collier, you have heard this comment about rushing NEPA. How long does the Donlin mine and the rest of the mines in Alaska, how long were their process going, permitting?

Mr. COLLIER. So the Donlin mine was the longest, Congressman. It took 5 to 6 years. There are some reasons why that took a long time, including a management change that happened in the middle of the process and a need to slow it down for new management to consider whether they wanted to go ahead with the same plans that were on the table.

Mr. YOUNG. How does that compare to the Pebble process?

Mr. COLLIER. Donlin was longer. But there are a lot of projects in Alaska, mining projects, that have been permitted in a significantly shorter time. There is a table in my written testimony that—you saw those. But I think the clear comparison for the hearing today, Congressman, is that I have heard repeatedly, since I have sat here, that the Bristol Bay watershed assessment was the gold standard process. That took precisely the same amount of time to prepare its draft as the DEIS took to prepare that draft, exactly the same amount of time. So if it was enough time for the Bristol Bay watershed assessment, that everybody thinks it ought to be upheld, it ought to be enough time for the DEIS in this process also.

Mr. YOUNG. I want to just say that, along that line, have you—because I have heard this—have you talked to the local people around Lake Iliamna and worked with them and other groups?

Mr. COLLIER. Yes, Congressman, we have.

Mr. YOUNG. Are they part of the group that Ms. Hurley represents?

Mr. COLLIER. No. The group she represents is much farther away from the project.

Mr. YOUNG. OK. I yield back.

Mrs. NAPOLITANO. Thank you, sir.

Mr. DeFazio.

Mr. DEFazio. Thanks, Madam Chair.

Yeah, it is not politicized. I have a media advisory from the Army Corps of Engineers. They are going to try and rebut this hearing with a press event afterwards, not politicized at all. Everything is politicized with this administration.

We have comments from the EPA. This DEIS likely, and there—this is 2019, this is Trump's EPA—likely underestimates adverse impacts to groundwater, surface flows, water quality, wetlands, fish resources, and air quality—nothing much to that—including

the ability of the proposed water treatment plant to annually meet water treatment goals and water quality standards in perpetuity.

Mr. Collier, tell me about the assets of the Pebble Mine, in a very short sentence. What are the assets, other than this claim?

Mr. COLLIER. That is it. That is all there is.

Mr. DEFAZIO. OK. All right. Thank you. I appreciate the brevity.

The Department of the Interior submitted comments suggesting that the DEIS, as prepared, does not follow NEPA requirements and conventions for data inclusion, analysis of an activity of this scope and scale. This is the Trump Department of the Interior, and it is inadequate and it precludes meaningful analysis. That is the Trump administration coming out—Scott Pruitt—Scott Pruitt said, it is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there. Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection. Seriously, Scott Pruitt. So we have a little contradiction going on here.

Mr. Borden, I was told there weren't any engineers here. You are an engineer, correct?

Mr. BORDEN. I am a geologist.

Mr. DEFAZIO. A geologist. You worked for Rio Tinto for 23 years?

Mr. BORDEN. Correct.

Mr. DEFAZIO. And you developed mines all around the world?

Mr. BORDEN. Yes, I did.

Mr. DEFAZIO. Have you ever seen a water treatment plant constructed that is still working, or is going to work in perpetuity, in an area—we heard about the water—as wet as this?

Mr. BORDEN. No. This would be truly unprecedented. The flows that would need to be routinely treated, up to 19,000 gallons per minute, peaking above 20,000 at closure, and then incredibly complex and costly multistage water treatment process, I have never seen such high flows linked with such a complex treatment process in my career.

Mr. DEFAZIO. Do you think maybe that is one of the reasons Rio Tinto, a real mining company with real assets, pulled out?

Mr. BORDEN. I think I would break some confidentiality agreements there.

Mr. DEFAZIO. As I recall, there were a number of major mining companies. We are down to one who has, you know—but also, they are not part of the shell company, so they won't have any liability if this fails. Is that correct?

Mr. BORDEN. Water treatment is truly an Achilles' heel for this project. And I had estimated that even being rather kind and conservatively low, it would be \$40 million a year every year just to—in operating costs to run a water treatment plant here.

Mr. DEFAZIO. So how is a shell company with no assets going to do that, I wonder? Maybe they will post a \$1 billion bond. Oh, no, we don't require that, do we?

Mr. COLLIER. I would be happy to answer that question, if you would like.

Mr. DEFAZIO. No, sir. I didn't—I want to ask another question. We will get to you.

Mr. COLLIER. I thought you probably wouldn't.

Mr. DEFAZIO. Yes. Thank you.

How about the financial viability? You say its net present value is negative \$3 billion.

Mr. BORDEN. That is correct.

Mr. DEFAZIO. All right. Now I have a question, Mr. Collier. Have you submitted a document on this much smaller mine showing it is financially viable to the Corps of Engineers that is a certifiable, real analysis? Yes or no?

Mr. COLLIER. No.

Mr. DEFAZIO. No. OK.

Mr. COLLIER. But if the mine is not financially—

Mr. DEFAZIO. No—sir, I asked you a yes or no. You answered no. Thank you very much.

Mr. COLLIER. Thank you.

Mr. DEFAZIO. I appreciate that.

How about the height of—Mr. Borden, the height of these dams. Are there a lot of dams this height around the world in wet, seismically active areas?

Mr. BORDEN. No. This would be unique. It would be at least in the upper 99th percentile of tailings dams constructed globally today for height.

Mr. DEFAZIO. Oh, Mr. Collier looks appalled at that statement. So—we will see if he can document something else.

So—and it will be about as tall as Hoover Dam—I mean Grand Coulee. Sorry. Not Hoover. Hoover is taller.

Mr. BORDEN. It will be 545 feet high at its highest point. I am afraid I don't know how high—

Mr. DEFAZIO. OK. Yeah, we are close. Yeah, OK.

And what are these constructed of?

Mr. BORDEN. The dam embankments will dominantly be constructed of bedrock, which is quarried from greenfields quarries.

Mr. DEFAZIO. OK. Great. Thank you very much.

My time has expired.

Mrs. NAPOLITANO. Thank you.

Mr. Woodall, you are on.

Mr. WOODALL. Thank you, Madam Chair.

I used to serve on the Oversight Committee, where we would routinely have the folks asking the yes-or-no questions and not giving an opportunity for folks to respond. But one of my great pleasures in moving to the chairman's committee is that this is a bipartisan committee where folks are actually seeking answers instead of just trying to make a point.

And so, Mr. Collier, I actually have some other questions for other witnesses, but you didn't get a chance to answer any of the chairman's questions. And if they were worth asking, presumptively they are worth answering.

Mr. COLLIER. Yes. Two answers that I would like to provide. The first is, as I am sure the chairman of the committee knows with his great experience in this area, you can't turn a shovel full of dirt for a project like this without a bond being posted that guarantees all of the financial closure requirements and perpetuity requirements that have been imposed by the permit that you are operating under.

So we couldn't start building this mine until we had posted an adequate bond to make sure that all of those requirements could be taken care of. That is the law today. And furthermore, the State law in Alaska is even more severe than the Federal laws in terms of bonding.

And as for financial viability, I don't believe for a second that members of this committee accept the fact that this project isn't financially viable. If it is not financially viable, it is not going to be built. And if it is not going to be built, what the hell are we doing here today?

So if you believe it is not financially viable, let's all go home. But the project is financially viable. We have invested almost \$1 billion in this project to get it where it is now, and we are going to be able to build it, and it is going to make money as we go forward.

Mr. WOODALL. I thank the gentleman.

Mr. Niver, I am glad to see here you. I confess, I don't know much about Alaska. The Chesapeake Bay is in my back yard here. And whenever we are talking about protecting the bay, we rarely have families that have done generational fishing come to testify. So I just can't tell you how pleased I am to see folks who work for a living here making their case.

I saw in your testimony, you got started on your dad's boat as a teenager. Did I read that correctly?

Mr. NIVER. Yes.

Mr. WOODALL. Does it go back another generation, or did your dad start the company?

Mr. NIVER. My dad actually got us into the fishing business, yes, and then we expanded it. All my brothers all ended up getting permits. And my sons are fishing with me now. They started a company called surrendersalmon.com. They sell it in the Midwest. They sold over 100,000 pounds of fillets last year, and they are doing quite well.

Mr. WOODALL. We are talking about protecting the watershed and protecting that fishery.

Can your grandsons get permits today? Are permits still being issued in that—

Mr. NIVER. Well, it is a limited entry system, but they are always being bought and sold always, every year. You can go to a permit broker and buy a permit every year if you want. There are a limited amount, but there are people getting into the business and people getting out of the business every year.

Mr. WOODALL. We can't compete on the east coast with Ms. Hurley's thousands of years of dependence upon the land. But tell me about commercial fisheries in the bay. How far back generationally will a fishing family go? If we are not talking about Ms. Hurley and Native peoples, what are we talking about?

Mr. NIVER. Well, I mean, Ms. Hurley, her families go back thousands of years, right?

Mr. WOODALL. In the commercial fishing business, Ms. Hurley?

Mr. NIVER. In the commercial fishing, yes, it has been going on for 135 years.

Mr. WOODALL. We have got some great restaurants in Atlanta. I just want to know how long that has been shipping our way.

Mr. NIVER. All right. Well, I hope that your restaurants are getting wild Alaska salmon, because you don't want to do the farm salmon.

Mr. WOODALL. I noticed your son was marketing in the Midwest; he wasn't marketing in the Deep South. We will come and talk to him after—

Mr. NIVER. We will keep him away from there, OK?

Mr. WOODALL. Ms. Hurley, what are we talking about in terms of commercial fishermen in families that you represent? Are we going back—how far?

Ms. HURLEY. Yeah. I am happy to add to what Mark said. I am actually a fourth generation commercial set-netter as well. So my great grandmother, my grandmother, my mother, and I, and our permits have been passed down. And that is very—a regular practice in Bristol Bay. This is generations of fishing families, you know, not only from a Native perspective, but from a commercial perspective as well.

And you would be hard pressed to find anyone in Bristol Bay who isn't connected and benefiting in a cash economy in some way, either directly or through a support industry, from the sustainable commercial fishery that has provided for this region economically and for the State and the Nation for over 135 years and counting, with record runs this last year, 54 million salmon.

Mr. WOODALL. Given those high stakes, Ms. Hurley, what I thought I understood in your testimony—I think shape-shifting was the reference you made. But there is no proposal that you could see for this mine that will satisfy your concerns, that your sense is that this mine cannot be built in any way and have the Tribes' concerns addressed.

Ms. HURLEY. Yeah. So what we have seen is with the company's proposal, that has changed in different ways, it has not changed in any way that changes our mind that this will not impact fisheries. We have seen this throughout history, throughout other mines.

Ms. MUCARSEL-POWELL [presiding]. Thank you, Ms. Hurley. The time is up.

Now I would like to recognize the gentlelady from Texas, Ms. Johnson.

Ms. JOHNSON OF TEXAS. Thank you very much. I ask unanimous consent to put my opening statement in the record.

Ms. MUCARSEL-POWELL. Without objection.

[The information follows:]

Prepared Statement of Hon. Eddie Bernice Johnson, a Representative in Congress from the State of Texas

Madam Chairwoman, there are serious concerns with the Pebble Mine Project in Bristol Bay, Alaska.

Bristol Bay is an American treasure and economic engine. It is home to the world's greatest wild salmon fishery that generates \$1.5 billion annually, fuels Alaska's economy, supports 14,000 jobs, and feeds indigenous communities. The proposed Pebble Mine threatens the entire region—its people, water, fisheries, and wildlife.

As Chair of the Science Committee, we have oversight of the EPA. I have been concerned about this issue for quite some time.

We have been here before with hearings on EPA and the proposed Pebble Mine. As far back as August 2013, the Science Committee held a hearing on the EPA's

Bristol Bay Watershed Assessment. It held a second hearing titled, "Examining EPA's Predetermined Efforts to Block the Pebble Mine." That hearing included the CEO of the Pebble Partnership and two of the company's paid consultants.

We also heard from an EPA witness, Mr. Dennis McLerran. As the EPA Administrator of Region 10, that includes Oregon, Washington, Idaho and Alaska, he played a pivotal role in helping the EPA carry out its critical mission of protecting human health and the environment.

Madam Chairwoman, commercial fishermen in Bristol Bay, environmental groups, Native Alaskan Tribes, and even jewelry companies such as Tiffany & Company, were and are, deeply concerned that a mine in Bristol Bay would destroy the splendor and unspoiled beauty of this unique watershed, and cripple the economic livelihood of thousands of its residents who rely on its world-renowned salmon fisheries. All those groups called on the EPA to take action to protect this critical environmental resource.

I have heard from constituents in my district in Dallas on this issue.

They are also opposed to this mine. This should not be a political issue. I believe, as others have said, that the proposed Pebble Mine in Bristol Bay is simply the wrong mine in the wrong place.

The potential development of the Pebble Mine in Bristol Bay poses an extreme adverse threat to U.S. waters. We must not allow that to happen. We must continue to protect the waters of the United States.

Ms. JOHNSON OF TEXAS. Thank you.

Mr. Kraft, at one point you were supportive of the Pebble Mine project. What made you change your mind?

Mr. KRAFT. Actually, Ms. Congresswoman, what changed my mind was actually a presentation by Northern Dynasty at my lodge. I had the CEO of—then it was Northern Dynasty that owned the deposit, wasn't in the Pebble Partnership. And he came to the lodge, at my request, and we had people from the Village of Igiugig, a Native village 4 miles from my lodge, came down, population of 35 people year-round.

We came down and we all had concerns about what was going on. We are the first village downriver from the proposed mine site. And he did a presentation that looks very similar to the presentation that we see today. Frying Pan Lake, a headwater lake, it starts one of the salmon-bearing streams, is going to be gone. And he started pointing this out, and we are scratching our head, going, that doesn't sound so good. And this much habitat is going to be consumed and this much acreage is going to be gone.

So it was at that point that we started asking questions and saying, wait a minute, maybe this isn't what is right for this area and for this region. So it was an educational journey that we went on. And it was talking to mine people and finding out what were the good mining decisions, why they went in where they did, and why they didn't go where they did.

And so it just—it was evolutionary, over time, finding out that, look, this area, one, it is aqueous, the water table is at 6 feet, everything is interconnected. We have got salmon identified in land-locked-looking lakes, which means they travel underground. And finding out the connectivity of the entire system, it just became very obvious very quickly that an industrial development that digs a big hole and consumes the habitat is probably not the right thing for this fishery.

Ms. JOHNSON OF TEXAS. There is the argument that if the mine is smaller, the impacts are smaller. Do you agree, or what size mine would have no impact?

Mr. KRAFT. Ms. Congresswoman, it is—it is hard to get to yes because of the sheer location. Location, the size, and the scope of it. The Pebble Partnership has tried to put forth a mine plan that Mr. Collier thinks is permissible. I think that the strategy is not beyond anybody's reasonable assumption that as soon as this permit gets OKed, that they are going after the entire deposit.

It would be ludicrous to think that, on a business sense, you are going to put in the capital infrastructure, the roads, the ports, the powerplant, the extraction mechanisms, to get to one-eighth of the deposit and leave seven-eighths of the deposit in the ground. So it is very hard to get to yes on this.

Ms. JOHNSON OF TEXAS. Thank you very much.

Mr. NIVER, you are a multigenerational family fisherman. If the salmon fishery was severely impacted, what would it mean to your family and to the community in Alaska or even the United States that depend on this fishery?

Mr. NIVER. Yes. It would—the impact of the mine will be substantial to all fishermen in the Bristol Bay watershed. And we are talking about putting an open-pit mine of the largest kind in the United States between the two largest salmon-producing rivers in the world. I mean, we are only like 3 miles from Lake Iliamna and about 1½ miles from the upper reaches of the Nushagak River system. It will have an impact on all fishermen in Bristol Bay.

Ms. JOHNSON OF TEXAS. OK. Thank you very much.

Mr. NIVER. Thank you.

Ms. JOHNSON OF TEXAS. Now, Ms. Hurley, can you talk a little bit about the area's importance to the Alaska Natives who call the Bristol Bay watershed home? Quickly.

Ms. HURLEY. I am sorry. I didn't catch the beginning of what you said. Talk to the——

Ms. JOHNSON OF TEXAS. Why this area is important to the Alaska Natives.

Ms. HURLEY. Yeah. Sorry. This is very important to us. This is a human rights issue. This is an indigenous rights issue. This is an environmental justice issue for our people. If our lands and waters are devastated, our people are devastated and can no longer exist. We don't have a choice. We have to fight this project for the survival of our people.

Ms. JOHNSON OF TEXAS. Thank you very much. My time has expired.

Ms. MUCARSEL-POWELL. Thank you.

I now recognize Mr. Bost from Illinois.

Mr. BOST. Thank you, Madam Chair.

Because I think that he has the questions that are vitally important to his State and where he represents, I would like to yield my time to Representative Young, please.

Mr. YOUNG. Thank you.

And, Mr. Collier, have you secured the necessary property rights permissions to develop the project?

Mr. COLLIER. Yes, we have.

Mr. YOUNG. You have talked to—includes surface transportation and surface transportation and roads that can be built?

Mr. COLLIER. Yes. In fact, the two village corporations in Alaska, that is Native Government corporations, that own the majority of the land in the—Lake and Pen Borough where we are.

Mr. YOUNG. So they actually support the project?

Mr. COLLIER. They support the project and have entered into right-of-way agreements with us and contractual cooperation agreements.

Mr. YOUNG. The reason I ask that question is I have heard some people are claiming that they own the subsurface, and that would stop road. That is not the law, to my knowledge.

Mr. COLLIER. That is not the law.

Mr. YOUNG. And these are Native groups too?

Mr. COLLIER. That is correct.

Mr. YOUNG. That is good.

Just out of curiosity, Mr. Borden, what do you do now?

Mr. BORDEN. I retired from Rio Tinto in January of this year, and I am now running my own consulting firm.

Mr. YOUNG. For mining?

Mr. BORDEN. Yes. So far, I have had five clients this year, three mining companies and two NGOs.

Mr. YOUNG. Just curious. Rio Tinto is a pretty good operation.

I think everybody—anybody disagree that this is a draft statement from the Corps of Engineers? Everybody agree with that or disagrees with it?

Is it a draft?

EPA is a draft too?

We are all talking about drafts here. These are not final products. And I think everybody in that table, both sides, have made up their mind already. This is about science. I don't see much science here. Everybody—I hear you referring to the scientists. What scientists? Who were they? Mr. McLerran, who were they?

Mr. McLERRAN. So the watershed assessment was done by EPA's Office of Research and Development in conjunction with region 10. That was EPA's science office.

Mr. YOUNG. You already made up your mind, didn't you—

Mr. McLERRAN. No, never made up—

Mr. YOUNG [continuing]. Made up their minds?

Mr. McLERRAN [continuing]. Our mind. During the—during the pendency of the watershed assessment, I knew I was going to be the decisionmaker on whether we use 404(c) or not and making a proposed determination. Ultimately, the decision would be made by headquarters Office of Water.

But, no, I had not made up my mind. I wanted to see what the science said. I wanted to learn more about the watershed, and that is what the process we did with those scientists informed me.

Mr. YOUNG. What is your employment now?

Mr. McLERRAN. So I am an attorney and—

Mr. YOUNG. I figured that.

Mr. McLERRAN [continuing]. Policy consultant in Washington State.

Mr. YOUNG. All right. I yield back.

Ms. MUCARSEL-POWELL. Thank you.

I now recognize Representative Carbajal for 5 minutes.

Mr. CARBAJAL. Thank you, Madam Chair.

Ms. Costa, thank you for your testimony before our subcommittee today to discuss your concerns with the Pebble Mine project.

From what we have heard today from you and some of the other witnesses, this proposed project poses a significant threat to the natural environment and commercial fishermen interests in Bristol Bay.

You mentioned that in 2008, Tiffany & Company was one of the first jewelers to sign the Bristol Bay Protection Pledge, and continues to oppose this project, proposed Pebble Mine project.

Can you elaborate further on why a successful business like Tiffany would oppose a mining project like this? And, two, are there other businesses that have signed the Bristol Bay Protection Pledge?

Mr. COSTA. Thank you for the question. Yes, there are many other businesses that have signed on, many other sectors and over 100 jewelers that have signed on to the pledge itself. And as I referenced, it has always been critical to us to make sure that we understand the origins of our supply chain because of what we are selling, our jewelry. But I think that it is even more critical now, because consumers are demanding to understand the origins of our products, and it is upon us to make sure that we are sourcing responsibly. And we feel, simply put, that this is the wrong mine in the wrong place at the wrong time, and that is why we have stated that we will not source from Bristol Bay—from the Pebble Mine should it move forward.

Thank you.

Mr. CARBAJAL. Thank you very much.

Mr. Chairman, I yield back.

Mr. GARAMENDI [presiding]. Mr. Weber, if you would care to take 5 minutes here.

Mr. WEBER. Thank you, sir.

I appreciate our colleague from Alaska's comments earlier about—that would be Congressman Young—that everybody on both sides seems to have made up their mind. And as I sit here today, I think it is extremely telling that in one opening diatribe that the name of Donald Trump was once again invoked, mentioned, and once again maligned. It seems apparent that the hatred for the President is being, dare I say, mined to the deepest depths in order to continue the false narrative that President Donald Trump is pretty much to blame for just about everything. It is old.

The actual depths that that hatred is being mined to appears to be one of the deepest despair that President Trump will actually continue to do what he was elected to do, and as one of the Democratic Members said in a televised interview, they are actually afraid that Donald Trump will get reelected, he has to be impeached. They fear that he might be reelected. They don't trust the American public to make the right decision.

So I want to associate my remarks with Mr. Westerman when he was here and with Mr. Young. Why doesn't this committee focus on what we are here to do? And that is a highway bill, a water bill, and other priorities. Why don't we focus on actually helping build and sustain the good American economy that has made tremendous gains and gigantic leaps, dare I point out, under President Donald Trump? Why don't we?

Oh, that is right. It might remind many Americans of what is already apparent, that the Donald Trump administration's agenda is actually benefiting America and Americans.

Well, as Congressman Young said, follow the process, in his opening—in earlier comments. Of course, he was referring to the environmental impact process that has been used for many a year, and might I add, long before President Donald J. Trump came along and took the reins and catapulted our economy into high gear.

So why not focus—why doesn't this committee focus on, dare I use the word, the best sustainable economy of arguably the last 30 to 50 years? Let's get to work on behalf of Americans to continue the process that has benefited the most people in this country in recent memory. Our citizens deserve no less.

Now, having gotten that out of the way. I have some questions. Mr.—I have 2 minutes and 24 seconds. Thank you, Mr. Chairman.

Mr. Collier, you were able to—thank you to Mr. Woodall from Georgia for allowing you to answer a couple of questions about maintaining the water. But I also remembered a remark by Mr. Borden that there was 99 percent of something that couldn't be done, and you kind of looked at him incredulously. Remind us what that was and what your answer was.

Mr. COLLIER. He stated that the height of our tailings facility dam was in the 90-something percentile in terms of dams in the world. And that is just not true. It is about in the middle of the percentile.

And there are a number of statements like that that have been made by Mr. Borden, including that the water treatment facility design here is unprecedented. That is a word with a technical meaning. It means it has never been done before. That is just wrong. And there are—there are a number of those.

And one more, while I am kind of on a roll here, if I could. I am particularly interested in Tiffany's statement that they won't source from Pebble Mine if we get our permit and we are built, particularly in light of the fact that Tiffany's took a position a number of years ago before the SEC—before the Securities and Exchange Commission that they shouldn't be held to a particular standard in the conflict gold debate because they couldn't source gold. So if you can't source it, how are they going to—it is a publicity stunt to have done this. It has no meaning in reality.

Tiffany's real contribution to this project was to contribute some money that was used by one of the NGOs to hire a woman named Ann Maest to do a number of studies that the Bristol Bay watershed assessment then relied upon. Ann Maest, in an action in New York, a RICO action in New York, admitted that she had made up her data and her conclusions in another legal proceeding.

Mr. WEBER. Is that in a deposition?

Mr. COLLIER. Actually, she admitted it in order to be withdrawn as a defendant in the RICO action. But under oath, in that proceeding.

So—and just one more point—I have run out of time. But I hope I have a chance to make one more. Thank you, sir.

Mr. WEBER. OK. Well, thank you.

I appreciate the chairman's indulgence, and I yield back.

Mr. GARAMENDI. Just when it was my turn and I was about to yield as much time as I might consume, I turn the chair back over.

Ms. MUCARSEL-POWELL [presiding]. I apologize for all the musical chairs. I had to vote in the Judiciary Committee, and that is where I had to go.

But now I would like to recognize—and thank you very much to our great Representative Garamendi for stepping in for 5 minutes.

Mr. GARAMENDI. Thank you.

I am going to start in the 1860s. A Native American woman in the community of which I was raised said, and they came and they cut down the trees and they burned them. We would take the dead wood to warm ourselves. And they went to the hills, and they removed the rocks and filled the rivers. One hundred fifty years later, my part of California continues to resonate with the residue of the great California Gold Rush.

In the 1990s, mid-1990s, Mr. Collier, you and I were both at the Department of the Interior, and this project was proposed at that time. I had the pleasure of traveling as the Deputy Secretary of the Department of the Interior to this area, spent nearly a week in the area looking at all that was going on. Went down one of the rivers in a raft and flew over the Pebble Mine area.

There are some places that are special. My part of California is no longer special. The residue of the mines is still there, the mercury is still in the river, still causing problems, and the floods occur as a result of the mining that took place. There are some places you simply shouldn't rip the rocks from the hills and fill the valleys. That Native American woman was correct.

I am sure this project could be built. But 150 years from now, when the miners have left and the residue of the mine is there, it will contaminate the rivers, it will contaminate the bays, and my daughter and son-in-law that have spent every summer in the Tikchik Lakes will not see the salmon that are there today, nor will their grandchildren and their grandchildren. There are some places that simply should not be mined, and this is one such place.

I am familiar with this. I dealt with this in the 1990s. And at that time, Secretary Babbitt, who told me, take care of Alaska, I did my best, and one of the things that we said should not happen is Pebble Mine. Twenty-four years later, Pebble Mine should never happen. Not now, not tomorrow. There will be another developer coming through with some great plan about how much money can be made.

But I will tell you, from my experience in California, my family's experience over three generations—four now—is that some places are precious, unique. This particular part of the world, the globe on which we all live, is really unique. There is no other place like it. The economic activity here is salmon. It is recreation, it is tourism, all of which would decline substantially if Pebble Mine and mines in this particular area ever come to be.

And so today we hear, once again, 24 years after I first heard it, about the potential profit to be made and the potential damage—not the potential—the real damage that would occur from that profit that could be made. And so we simply should say, no, not here, not now, not ever. Not here, not now, not ever. Some things should be left alone.

I yield back.

Ms. MUCARSEL-POWELL. Thank you, Representative Garamendi. I now recognize Representative Weber for 5 minutes.

Mr. WEBER. Thank you, ma'am. Appreciate that.

Mr. Niver—am I saying your name right? Is it Niver?

Mr. NIVER. It is Niver.

Mr. WEBER. OK. All right. Well, I appreciate that. Thank you for the correction. If you are like me, you have probably been called worse, and recently too.

Mr. NIVER. I probably have.

Mr. WEBER. Yeah. When you—and I owned an air-conditioning company for 35 years, small business guy, that I started from scratch, so I am familiar with how that works. So when you started doing fishing and stuff and you decided that you were going to go in and you are going to buy a fishing vessel, you quoted some numbers. Couple hundred thousand dollars?

Mr. NIVER. Today, they are around \$250,000 on average to get into a Bristol Bay boat.

Mr. WEBER. Right.

Mr. NIVER. Yes.

Mr. WEBER. So you made the business decision, you calculated that out, and said, OK, there is some risk here, I am going to invest, it is going to take hard work. I know what that is about. But you hung in there and you made it work. But that was a calculated decision you made?

Mr. NIVER. Yes.

Mr. WEBER. And your dad made one before you, sounds like.

Mr. NIVER. Correct.

Mr. WEBER. You betcha.

And I appreciate the other side's concern about Pebble Mine, that y'all might not make money, you know, and looking out for them. But wouldn't it be safe to assume that they made the same—y'all made the same calculated decision, Mr. Collier, that they did when they bought boats, you actually calculated this out? You betcha. And so it is going to make money for you. That is a good thing.

I am going to stay with you, Mr. Collier, for a second. Been a lot of talk about the DEIS, draft environmental impact statement, about the deficiencies in that DEIS. And Representative Young, Congressman Young pointed out that it is just a draft, just simply a draft. And I think it is very—it is an important point to remember that it is just the draft.

Is it true, Mr. Collier, in your experience, that the Army Corps will need to address—look at that draft and is currently undertaking to look at that draft, and they will actually address a response to the EPA's concerns over that DEIS, or draft environmental impact statement? Isn't that going to happen?

Mr. COLLIER. Of course. That is the way the process works. And to add to that just a little bit, there have been three pretty powerful points that have been made by this side of the room. One is that the political fix is in, and that is why we are where we are in the permitting process. The second is the process is being rushed. And the third is DEIS is inadequate.

And one of the things that has been pointed to repeatedly are the criticisms that have been filed by EPA and by the Department of

the Interior. And the point I want to make is that they don't support those three points. In fact, they run directly against them.

If the political fix is in, why is it that Trump's EPA and Trump's DOI are criticizing the draft environmental impact statement?

Mr. WEBER. I talked about that in my opening remarks. Go ahead.

Mr. COLLIER. It is just—it is absurd, and it is internally inconsistent position to take.

Second, if this is a rushed process, why are these agencies building speed bumps for the process? I mean, that is crazy.

And then the third point—and this one is the most important—now that these criticisms have been put on the table, it is incumbent upon the Corps of Engineers to address them and address them thoroughly. And if they don't address them thoroughly, then a court is going to throw this permit right out the door the minute it is issued.

And so one of the things that has happened is that the process is, in fact, working, which was your original point. This is a draft. Criticisms have been put on the table, and those criticisms are going to be addressed. And if they are not adequately addressed, we won't be able to have our permit upheld when the courts review it.

Mr. WEBER. And isn't it also true that if for some reason after the draft is thoroughly vetted, that if there is a problem, the EPA is still not satisfied, they still have the ability to use their 404(c) authority?

Mr. COLLIER. That is correct.

Mr. WEBER. That is a true statement?

Mr. COLLIER. That is correct.

Mr. WEBER. So, you know, let the process go forward, let it be thoroughly—after all, wouldn't we want as much science, as much information as we can to let the process go forward, let it be vetted as nearly and as clearly and as thoroughly in depth as it can be?

And so I just thank you for being here.

And I am going to stop there, Madam Chair. I am going to yield back.

Ms. MUCARSEL-POWELL. Thank you, Mr. Weber.

I now recognize myself for 5 minutes.

Thank you for all of you for coming here.

And I just want to say, Ms. Hurley, I hear you loud and clear. And we are going to do everything we can in this committee to conduct the appropriate oversight of this project.

I represent south Florida. And the Pebble Mine site is more than 4,000 miles away from my district, which makes my district the farthest district from this mine location. But even yet, I am that far, I have very strong concerns about Pebble Mine, because it has such serious potential consequences for our environment, the fisheries, the indigenous populations, and water quality.

Mr. Collier, in your testimony, you repeatedly refer to the draft environmental impact statement, which was released in February, when making the case that there won't be any significant environmental impact. But I think you need to do much better than that.

The EPA, under the Trump administration, the most anti-environment administration we have had in decades, the Trump EPA

argued that the DEIS, quote, “likely underestimates adverse impacts to groundwater and surface water flows, water quality, wetlands, fish resources, and air quality.” Similarly, the Trump administration’s Department of the Interior concluded that the DEIS is so inadequate that it precludes meaningful analysis. And I think that that’s very damning.

So I ask for unanimous consent to enter into the record two articles, one in the Juneau Empire entitled, “Scientists: Pebble Mine study doesn’t account for all risks,” and one from the Anchorage Daily News saying, “Pebble Mine EIS is fatally flawed.”

[The information follows:]

**Article from Juneau Empire, Submitted for the Record by
Hon. Debbie Mucarsel-Powell**

SCIENTISTS: PEBBLE MINE STUDY DOESN'T ACCOUNT FOR ALL RISKS

Group presents to Alaska House Resources committee

<https://www.juneauempire.com/news/scientists-pebble-mine-study-doesnt-account-for-all-risks/>.



Gayla Hoseth, 2nd Chief of Curyung Tribal Council and Director of Natural Resources at Bristol Bay Native Association, left, Norman Van Vactor, CEO of the Bristol Bay Economic Development Corporation, center, and former Alaska legislator Rick Halford, present at a press conference against the Pebble Mine project on Monday, April 1, 2019. (Michael Penn, Juneau Empire)

By Mollie Barnes
Wednesday, April 3, 2019

Representatives have been grappling with the a proposal to develop a mine near Bristol Bay.

As a part of the wider discussion, the House Resources committee heard Monday from a group of scientists and advocates who disagree with the Pebble Mine project which proposes developing the Pebble copper-gold-molybdenum porphyry deposit (Pebble Deposit) in southwest Alaska as an open-pit mine, with associated infrastructure.

A group of scientists and Bristol Bay residents held a press conference, detailing concerns with the draft environmental impact statement (DEIS) released by the

U.S. Army Corps of Engineers in February. Some critics have said the 90-day comment period for this DEIS is not long enough, considering the length of the document.

The chief concerns were that the DEIS used too short of a time frame to associate the risks of the mine, it used an inappropriate fish habitat assessment, cumulative risks were essentially ignored, there was very little mention of long-term risks associated with climate change and that it used selective use of scientific literature when backing up claims.

"It is absolutely clear that it has way underestimated risks and does not pass as credible science," said Daniel Schindler, a professor in the School of Aquatic and Fishery Sciences at the University of Washington during the press conference.



Dr. Daniel Schindler, a professor in the School of Aquatic and Fishery Sciences at the University of Washington, left, and Dr. Cameron Wobus, a Senior Scientist at Lynker Technologies, present at a press conference against the Pebble Mine project on Monday, April 1, 2019. (Michael Penn, Juneau Empire)

Resources Co-Chair, Rep. Geran Tarr, D-Anchorage, says that the Army Corps of Engineers will be speaking in front of the committee on the same topic soon.

Norman Van Vactor, a longtime participant in Bristol Bay fisheries and current CEO of the Bristol Bay Economic Development Corporation, said that he has absolutely no confidence in the Army permitting process.

"To allow Pebble to drive this permitting process makes absolutely no sense and defeats the purpose of a permitting process to begin with," he said at the press conference. "(The) process should be testing their assumptions, not taking Pebble at it's word. ... Science drives the decision-making, not industry speculation, fantasies or good intentions. The Army Corps' draft is the complete opposite—it ignores well documented data and is missing critical info. ... Why are we lowering the bar to the lowest level possible? Alaska should be upholding strong standards and science-based permitting in all industries not just some."

The group also took problem with the economic implications of the mine, saying that major mining companies would not invest in the project because it would not net enough profit if it was only open for 20 years, the period the DEIS draft uses.

"The economic world says this doesn't work either," said Rick Halford, a former Alaska legislator. "Everything they do is designed to get a permit, and the permit is going to be worthless. This mine is at least a mile deep and it's the richest at depth and to mine your way down to the money and then stop is a ridiculous assumption."



Former Alaska legislator Rick Halford, right, and Norman Van Vactor, CEO of the Bristol Bay Economic Development Corporation, present at a press conference against the Pebble Mine project on Monday, April 1, 2019. (Michael Penn, Juneau Empire)

They change in the middle of the process, Halford said. “They came in with a number for the size of their small mine ... within months they’ve increased that by 25 percent. They’re not bound by what they’re trying to get a permit on and they know it.”

During the committee presentation, Rep. Ivy Spohnholz, D-Anchorage, said that there are more jobs at risk from potential effects of the mine than the mine itself would create. This comment came after Rep. Sara Rasmussen, R-Anchorage, asked how many of the fishery jobs were held by workers from out of state.

“Forty-eight percent of Alaska’s salmon comes from the region, 14,000 direct jobs (at the fishery) compared to 750 jobs presented to us last week by Pebble Partnership,” Spohnholz said. “Even if only half of those go to year-round residents, that is a lot of jobs for a region in which people have lived for millenea. I think that’s a very important distinction to make.”

Rasmussen also asked, “Why are so many people migrating from Southeast Alaska?”

She said a number of families have migrated to her district from the area and that the Pebble Mine could support infrastructure that would slow this migration.

Van Vactor said people migrate for different reasons. He said if the Pebble Mine project were to go through it would be mostly workers who come in for a certain period of time just to work at the mine, more like oil field workers rather than long-time residents.

A big issue the scientists said they had with the EIS was that the timeline was way too short to evaluate risks and that a 100 year analysis would have been better than a 20 year one, because the tailings dam has a 1 in 5 chance of failing over a century.

“There’s a lack of confidence in the Army Corps permitting process as it relates to this EIS project,” Van Vactor said. “I would ask the hundreds of thousands if not millions of Americans in the Midwest right now how much confidence they have in the Army Corps of Engineers certification process as it relates to the dams and levees that have failed and flooding that is happening throughout the U.S.”

**Article from Anchorage Daily News, Submitted for the Record by
Hon. Debbie Mucarsel-Powell**

OPINION: PEBBLE MINE EIS IS FATALLY FLAWED

<https://www.adn.com/opinions/2019/09/27/pebble-mine-eis-is-fatally-flawed/>

By Phil Brna
September 26, 2019



This is an aerial view of a work camp in the area of the proposed Pebble Mine in Iliamna, Alaska, seen on Tuesday, August 27, 2013. The Pebble Mine could be the largest open pit mine on the continent, with an earthen tailings dam higher than the Washington Monument to hold mine waste for hundreds to thousands of years, according to an Environmental Protection Agency analysis. (Bill Roth/ADN archive)

The Environmental Impact Statement, or EIS, process and the document for Pebble mine by the Corps of Engineers are deeply and fatally flawed. I spent my entire professional career of 42 years working for the Corps, Alaska Department of Fish and Game, U.S. Fish and Wildlife Service and, as a consultant, on review and regulation of large and small development projects in Alaska. I worked on roads, oil and gas drilling and development, pipelines, refineries, utility lines, ports, boat harbors, hydroelectric projects, military projects, and many large and small mines.

During my career I was directly involved with preparation of several dozen EIS's and I reviewed dozens more. Pebble is the largest and potentially most destructive project I have ever been involved with. The environmental resources at risk in Bristol Bay from Pebble's development and operations are the most precious, unique and susceptible to long-term and irreversible damage of any project in my experience. I have not seen an EIS as poorly written and inadequate as the Pebble draft EIS.

Although there are many issues to be concerned about, I want to focus on Pebble's environmental baseline studies, which were begun and completed years before Pebble applied for a Corps permit. Environmental baseline studies are intended to show the current state of the environment in a project area so that potential project effects can be predicted and measures to mitigate the harm can be proposed. They also serve to guide long-term monitoring during and following operations. Pebble's study designs for baseline studies were inadequate and not based on best-available scientific methods.

This was because Pebble did not want to know or to ultimately divulge to the public the actual scope, importance of and risk to fish, wildlife, water and subsistence resources. I call their studies the "illusion of good science." Others have called it "junk science." If they had conducted proper studies, the results could have been used to oppose the project. Scientific fact would have undermined Pebble's hollow claims of "no harm." Pebble repeatedly said its studies were "state of the art" and cost millions of dollars. However, state and federal agencies said over and over that Pebble's study objectives and methods were not statistically defensible or repeatable, and their financial cost was irrelevant.

Pebble's baseline environmental studies were not designed to or intended by Pebble to tease out the differences between natural, long-term environmental change and long-term acute or chronic effects of a mine, as recommended by the agencies. Pebble artificially limited the scope, time and geographic extent of their studies. State and federal agencies repeatedly suggested ways for Pebble to design scientifically defensible studies. Those suggestions were largely ignored. If the baseline environmental science is bad, Pebble cannot be held accountable for the damage it will do. Independent science clearly shows Pebble mine will result in disastrous long-term and irreversible effects on fish, wildlife, air, water and, most importantly, local people and their subsistence way of life. This may not happen in my lifetime, but it will happen.

This then is the first major flaw of the Corps' EIS process. The Corps has not independently evaluated the inadequate baseline environmental information they were presented by Pebble. Rather, they accepted it and used it to develop their flawed draft EIS. The remedy for this fatal flaw is for the Corps to begin again. First, by conducting an expert and independent review of the Pebble baseline environmental studies, and then requiring Pebble to complete scientifically meaningful studies. This may take years, but only then should the Corps accept an application and begin an open and transparent EIS process.

Agencies like the U.S. Fish and Wildlife Service, the Department of Interior, and the Environmental Protection Agency have noted numerous EIS deficiencies. For instance, the Department of Interior said the draft EIS "does not fully discuss the potential impacts of the proposed mining activity" and "lacks a number of important analyses that are necessary to adequately assess the project." The Interior Department also said the draft EIS "was so inadequate that it precludes meaningful analysis." The Corps has no responsible choice except to begin the Pebble EIS again.

Phil Brna is a retired wildlife biologist living in Anchorage.

Ms. MUCARSEL-POWELL. Moving forward with this mine is utterly irresponsible and will be putting at risk \$1.5 billion in annual economic output from the sockeye salmon fishery, which provides half of the world's supply. We will be putting at risk more than 10,000 jobs in the area. We will be putting many Alaska Native villages in harm's way to benefit a company that is not even a U.S.-based company. This is the epitome of carelessly putting profits over health and safety.

And my first question, Mr. Collier, because I have watched you all morning rolling your eyes, listening to the concerns of the people that are actually living in this area. It was reported that if you were to get the permit by the EPA, a quick approval from the Corps, you will receive a bonus of \$12.5 million. Is that correct?

Mr. COLLIER. Yes, it is.

Ms. MUCARSEL-POWELL. OK. Thank you.

Mr. Borden, the proposed mine would be operational for 20 years. After that, it would, in theory, be reclaimed. But that doesn't mean that everything goes back to normal.

Can you just explain how the mine would cause damage, long-term damage, and the likely extent of the damage?

Mr. BORDEN. Yes, I am happy to. So the Pebble Limited Partnership has proposed some mitigation actions at closure, which do lower some of the risks, such as returning the acid-generating tailings and waste rock back to the open pit. But a lot of the other water quality issues that will persist for decades to centuries to potentially millennia have not been fully addressed.

For instance, there will be a water treatment liability of probably 5,000 gallons per minute that will persist for centuries after mine closure coming from the pit high walls. There is a risk from the pit high walls failing, releasing billions of gallons of contaminated water after closure. Several of the relatively benign waste rock

piles still produce water quality which is not suitable for release. All that water would need to be treated. And this could go on for decades and decades to centuries after the formal closure process.

Ms. MUCARSEL-POWELL. Thank you, Mr. Borden.

And I have heard from the minority Members on my left that we shouldn't be conducting this hearing. And I don't think there is anything more important than water. And it is our job to conduct this important oversight.

Mr. McLerran, I am troubled also by the recent allegations of insider trading. You are a lawyer. You are a former EPA official. Can you help us understand what secrecy rules the EPA employees must abide when it comes to forthcoming EPA decisions?

Mr. McLERRAN. So I can't speak to the current state of facts, but I can say that leaking decisions before decisions are made and then having someone capitalize on those could very well be an insider trading problem with—

Ms. MUCARSEL-POWELL. Yeah. Thank you. And just because we are short of time. I just don't understand why there is any other explanation as to why there was such a significant increase in Northern Dynasty stock trades shortly before the EPA's decisions to lift the protections for the area.

And for that, now I am going to—

Mr. COLLIER. May I respond to that?

Mr. MUCARSEL-POWELL. No. We are out of time. Thank you.

Mr. COLLIER. So you make an allegation—

Ms. MUCARSEL-POWELL. Mr. Westerman, I now recognize you for 5 minutes.

Mr. WESTERMAN. Thank you, Madam Chair.

And I would like to give Mr. Collier a moment to respond.

Mr. COLLIER. Thank you.

Northern Dynasty has denied unequivocally on the record, under oath, that we had any advance knowledge of that decision, zero. That complaint was filed by Earthjustice, which has a record of filing complaints that don't have adequate factual basis behind them. And, in fact, they filed one sometime ago against Northern Dynasty that the Securities and Exchange Commission didn't even find credible enough to investigate.

There is no factual basis whatsoever for that claim, and it shouldn't be treated as though it is factual just because it is filed. That is not the way things work in this country. And so I want to adamantly state that we had no such advance knowledge at all of the decision, nor did we know what the decision was going to be.

Thank you.

Mr. WESTERMAN. I would also like to make note that we have not said this is not an important issue. As a matter of fact, this is my third term in Congress, and this isn't the first hearing I have had on the Pebble Mine, not even the first hearing in—not just this committee, but the Natural Resources Committee. There has been hearing after hearing on the Pebble Mine. And we are actually now into the permitting process, using the guidelines that Congress has established, that the agencies are carrying out.

Mr. Collier, have you been granted a permit?

Mr. COLLIER. No, we haven't.

Mr. WESTERMAN. Have you been told you are going to get a permit?

Mr. COLLIER. No, we haven't.

Mr. WESTERMAN. So we are letting the process play out. You may or may not get a permit when the process is complete?

Mr. COLLIER. That is correct.

Mr. WESTERMAN. Can you talk more about the differences that are in the application you supplied versus what was reviewed in 2014? I know you have talked about that some, but it is almost as if a case is being built that what was denied in 2014 is the exact project that is being proposed now.

Mr. COLLIER. No. In fact, in the statement that was issued by EPA when it withdrew the proposed determination, one of the reasons that it said it was withdrawn is that the project that had been analyzed and the proposed determination based on, back in those early years, didn't bear any resemblance to the project that we took into permitting. And that, in fact, is true.

There are a number of significant changes in that project. The first one, of course, is that it is smaller. The second is that we are out of one of the three creeks that are up in that area, which means we are out of one of the river watersheds. There are no waste rock piles as there were before.

But perhaps the most interesting change deals with the tailings facility design, where we have gone to a unique design that is now capable of being done because of some technological development, where we are able to separate out the bulk tailings, which are about 90 percent of the tailings, from the potentially acid-generating tailings, which are about 10 percent. And that means that we can store the bulk tailings without storing them with water on top. And what that means is that the facility is a much safer facility. It is a facility that is not capable of the kind of accident that occurred in Mt. Polley in British Columbia that caused a great deal of concern in the mining community.

So we have been able to do some technological designs that have made this project substantially safer and a project that is dramatically different from the one that was analyzed by EPA earlier when the proposed determination was issued.

Mr. WESTERMAN. So, again, even with all those changes, with the redesign, the new submittal, you still don't know whether or not you will get a permit when the process is through?

Mr. COLLIER. That is correct.

Mr. WESTERMAN. And, again, we could be working on a water bill today, we could be working on other issues that are important before Congress. This has been debated over and over. I want to re-emphasize, it is in the permitting process that was established by NEPA. They are going through those processes, and there is no predetermined outcome. Yet we do know that WRDA expires next year, we do know that the surface transportation bill expires next year, yet we are spending our time debating something that is going through the proper channels.

And I yield back.

Mr. DEFAZIO [presiding]. I thank the gentleman.

I would observe this committee has not held a focused hearing on the Pebble Mine project previously. We have Clean Water Act

jurisdiction, we have Corps of Engineers jurisdiction, and personally, I have people who fish there.

With that, I would go to Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman.

I am so grateful that the committee is having this critically important hearing. And I want to follow up on a colloquy between Mr. Collier and my colleague Don Young from Alaska alluding to the fact that, notwithstanding all of this widespread opposition of the Pebble Mine, that if you get closer to the mine in the Lake Iliamna area, that there are people that actually support it.

And so I want to ask my friends from Alaska on the right side of the panel here a pretty simple question. Is Lake Iliamna upstream of the mine or downstream?

Ms. HURLEY. Downstream.

Mr. HUFFMAN. I believe it is upstream, is my understanding, of the dam that would be proposed?

Ms. HURLEY. Oh, I am sorry. I misunderstood your question. Yes. My communities are downstream.

Mr. HUFFMAN. Yeah, you are downstream. I get that.

Lake Iliamna, this area where we are led to believe there is a pocket of support for the project, is actually upstream.

Mr. COLLIER. That is just not correct.

Mr. HUFFMAN. Not correct?

Mr. COLLIER. Absolutely not correct. It is dramatically downstream.

Mr. HUFFMAN. All right. Well, I appreciate that, because from the map I have here, it was not clear to me.

It is downstream of the dam?

Mr. COLLIER. Absolutely downstream.

Mr. HUFFMAN. OK. Well, thanks. That answered a question that I had for—just based on the map.

I also have questions based on a conversation involving the bond. And Mr. Collier has led us to believe that all of the concerns about permanent water treatment at a dam that would hold in perpetuity, an earthen dam in a seismically active area that would hold in perpetuity, that all that can be addressed by a bond.

And, Mr. Borden, I want to just invite you to speak a little more to that issue, because it seems to me that that is asking us to put a lot of trust in this bonding instrument.

Mr. BORDEN. I need to be careful how I respond to this. I haven't given this a lot of thought. But it is very difficult to bond for perpetual water treatment using the existing mechanisms that we have in place now generally around the world.

You know, these things persist—there are mines in Spain that the Romans mined that are still producing acid rock drainage. So these problems can persist into the post-historical period, if you will, and that is a challenging thing to bond for.

Mr. HUFFMAN. And there would actually need to be active measures to treat this water. It is not like the system would operate itself in perpetuity, correct?

Mr. BORDEN. It would eventually burn itself out as the sulfide minerals, the reactive minerals in the ore body that are left in the pit high walls and in the mined rock—

Mr. HUFFMAN. What about this huge earthen dam itself? Because, you know, I am from California. We know a little something about dams and even highly engineered ones that are very carefully maintained. Like my colleague, Mr. Garamendi from Oroville, could probably share with us the fact that there is no such thing as a permanent dam. You can't just leave a dam there in perpetuity without at some point experiencing failure.

Am I missing something about this concept of a permanent dam that would perpetuate itself forever?

Mr. BORDEN. So the dam has been built with additional—is proposed for construction with additional safeguards. That doesn't mean it won't require long-term, perhaps in perpetuity, care and maintenance for erosion control, all of the other issues that could compromise the integrity of the dam in the long term.

Mr. COLLIER. Congressman, this dam doesn't hold any water. You know that, right? This is a dam that holds sand.

Mr. HUFFMAN. Well, we also heard about how much water is in the area. So, Mr. Borden, let me—

Mr. COLLIER. It is a dam that is built so that the water drains through the dam. It doesn't hold water. I just want to make sure you are focused on the right—

Mr. HUFFMAN. Well, I am questioning Mr. Borden right now, because he has got years of experience and has actually said—

Mr. COLLIER. Yeah, but he is wrong on this point.

Mr. HUFFMAN [continuing]. Has said that the high amount of water in this area is one of his primary concerns. So why don't you elaborate on that, sir.

Mr. BORDEN. Sure. So even with the proposed cover design, water will infiltrate into the underlying tailings. And I would expect the majority or—a significant minority of the tailings will remain saturated in perpetuity after closure because of the extremely wet climate.

Yes, it is better than having a lake on top of a dam, but a lot of the tailings will still be prone to liquefaction and slurring and things of that sort.

Mr. HUFFMAN. All right. And you mentioned that the environmental review that has been done to date is deficient. Is this one of the areas in which you see deficiencies, the failure to adequately consider the possibility of failures and leakage and problems relating to that structure?

Mr. BORDEN. Yes. We are almost out of time. But the largest failure scenario looked at for that structure only released .004 percent of the tailings due to a pipeline break, 100 times smaller than 3 of the large tailings dam failures that have occurred in Canada and Brazil over the last 5 years.

Mr. HUFFMAN. Thank you, sir. I yield back.

[Mr. DeFazio and Mr. Westerman talk briefly off record.]

Mr. WESTERMAN. Thank you, Mr. Chairman.


Ms. Costa, in 2010, in a letter to the U.S. Securities and Exchange Commission, Tiffany & Co. stated that the company believes that it would be impracticable and extremely costly to attempt to trace the chain of custody to determine the mine or location of origin of the gold it uses in the manufacture and sale of its products.

The lack of any identifying characteristics means that the company and any other purchaser of refined gold bullion cannot identify where the gold originated. As a result, the company does not believe that it or any jeweler, whether or not it manufactures its products, can certify where the gold used in its products is originated.

And, Mr. Chairman, with that, I would like to submit that for the record, a letter from Tiffany & Co. without objection.

Mr. DEFAZIO. We will accept it for the record, but I am going to be giving Tiffany an opportunity to respond.

[The information follows:]

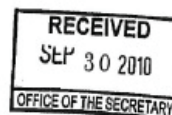


**Letter of September 29, 2010, from Patrick Dorsey, Senior Vice President,
Secretary and General Counsel, Tiffany & Co., Submitted for the Record
by Hon. Bruce Westerman**

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September 29, 2010

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Attention: Mrs. Elizabeth M. Murphy, Secretary

Re: *Press Release No. 2010-135*
SEC Initiatives under the Dodd-Frank Act
Comments with Respect to Section 1502 (Conflict Minerals)

Dear Mrs. Murphy:

The Securities and Exchange Commission has requested comments as the Commission sets out to make rules required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). Tiffany & Co. respectfully submits the following comments in response to the Commission's request with respect to rulemaking under Section 1502 of the Dodd-Frank Act.

Tiffany & Co.

Tiffany & Co. (the "Company") is a holding company that operates through its subsidiary companies. The Company's principal subsidiary, Tiffany and Company ("Tiffany"), is a manufacturing jeweler and specialty retailer whose principal merchandise offering is fine jewelry, generally made with gemstones, sterling silver, platinum, gold or some combination of the foregoing. Through Tiffany and other subsidiaries, the Company is engaged in product design, manufacturing and retailing activities.

The Company's manufacturing facilities produce approximately 60% of TIFFANY & CO. merchandise sold. These facilities include fine jewelry manufacturing facilities in New York and Rhode Island; none of Tiffany's proprietary jewelry manufacturing facilities is located outside the U.S. The balance of TIFFANY & CO. merchandise, including almost all non-jewelry items, is purchased from third parties.

Tiffany has been a leader in the responsible mining movement and, for its U.S. manufacturing facilities, seeks to purchase only recycled gold or gold produced by a single U.S. smelter from ore produced by a single U.S. mine. However, for the following reasons, Tiffany cannot unqualifiedly attest to mined source of all gold incorporated in all of its products:

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- use of recycled gold;
- use by its smelter of a continuous process, which sometimes requires supplementary input of recycled gold or gold from other mines;
- purchase of jewelry components ("findings" such as spring closures) from third parties who do not attest to the source of their gold; and
- purchase of finished jewelry and watches from third parties who manufacture to Tiffany's design and specifications, but who for various reasons, including logistical and alloy-dependent¹ manufacturing operations and supply constraints, cannot use gold from the aforesaid smelter.

The Company is committed to deal only with suppliers who observe the highest ethical standards and has instructed its vendors not to purchase "conflict" diamonds or precious metals. Tiffany is a founding member of the Council for Responsible Jewellery Practices, which seeks to exclude "conflict" diamonds and precious metals from legitimate trade through an international system of certification and legislation.

The Company's Primary Concerns

Rules promulgated under Section 1502 could have profound and unintended effects on the Company, could seriously affect its competitive position and significantly increase its annual costs of compliance with the provisions of the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act. The extent of these effects will depend upon the approach the Commission takes with respect to the following issues:

- Will a "person" be defined for purposes of Section 13(p)(1)(A) as a company required to file reports pursuant to Section 13(a) or Section 15(d) — a "reporting company" — or would a "person" be defined as anyone required to file reports under Section 13(p) whether or not a reporting company?
- Will gold be considered a "conflict mineral" even if it was not mined in the Democratic Republic of the Congo or an adjoining country?
- What diligence will be required by a Section 13(p)(1)(A) reporting person in order to provide the certification generally described in Section 1502(b)(1)(B) of Dodd-Frank?

¹ Gold is alloyed with various other metals to produce mixtures that exhibit various characteristics in manufacturing operations including ductility (important for drawing and shaping operations) and lack of porosity (important for molding operations).

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"Person" as defined for purposes of Section 13(p)

The general description of a "person" in Section 1502 of Dodd-Frank appears to authorize the Commission to define "person" very broadly, to include both reporting and non-companies and to include individuals as well as companies, partnerships and other entities, so long as "conflict minerals are necessary to the functionality or production of a product manufactured by such person". Under paragraph (1)(A) of Section 1502(b) of Dodd-Frank, the Commission is directed to promulgate rules requiring any person "described in paragraph (2)(B)" to file reports, while paragraph (2)(B)(A) refers to any "person . . . required to file reports with the Commission pursuant to paragraph (1)(a) [of Section 1502(b)]. This referral back to paragraph (1)(A) appears to direct the Commission to promulgate rules requiring persons and entities to file reports under Section 13(p)(1)(A), whether or not they are "reporting companies".

We believe that the Commission, in order to implement the intent of Section 1502 of Dodd-Frank, and to refrain from damaging the competitive positions of reporting companies compared to non-reporting companies, should define "persons" in the broadest possible sense. In making this request, Tiffany notes that there is persuasive precedent for the proposition that the Commission can and should require non-reporting persons to file disclosure reports pursuant to Section 13 of the Securities Exchange Act of 1934. Section 13(f) requires every institutional investment manager, whether or not it is a reporting company, to file periodic disclosure reports at such times and in such form as the Commission prescribes by rule.

Implementing the intent of Section 1502

Section 1502(a) of Dodd-Frank states that "[I]t is the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo . . .". The "sense of Congress" dealt exclusively with a perceived need to understand the extent to which the exploitation and trade of conflict minerals was helping to finance extreme levels of violence and to facilitate the design of policies intended to limit the exploitation and trade of conflict minerals for those purposes. Section 1502 does not even mention disclosure to or protection of investors, which suggests that the intent was not to limit the scope of Section 1502 to "reporting companies". Furthermore, limiting the class of covered persons to reporting companies, while excepting all other persons from any obligation to diligence the source of any conflict minerals used in their products, would dramatically weaken the scope of Section 1502. Most users of gold, and certainly most jewelers, are not "reporting companies. Although the Commission is generally charged with investor-protection or market-integrity functions, in this instance, at least, the Commission has been charged with a consumer-advice function which cannot be fulfilled if reporting is limited to reporting companies.

Damaging the competitive position of "reporting companies"

Persons that are required to file reports under Section 13(p) of the Exchange Act will incur significantly greater burdens of compliance, and of diligencing the source of materials used in the manufacture of products, than other persons would not incur. Depending on the nature of the rules promulgated by the Commission, these costs and burdens, monetary and non-monetary, could be very significant and could materially impair the ability of Section 13(p)

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reporting persons to compete effectively. There is nothing in the text of Section 1502 that suggests that Congress intended or desired to weaken the competitive strengths of any class of persons who use gold in their products, and thereby to favor another such class of persons, by imposing significant costs and burdens on the one and not on the other.

"Gold" defined as a "conflict mineral"

Section 1502(e)(4)(A) can be read to define gold as a "conflict mineral" regardless of the location of the mine from which the gold was extracted. Section 1502(e)(4)(B), referring to other minerals besides gold, requires a determination by the Secretary of State that the minerals are "financing conflict in the Democratic Republic of the Congo or in an adjoining country". That determination does not appear to be required in order for gold to be considered to be a "conflict mineral" for purposes of Section 1502.

It thus appears to be the case that, unless the Commission defines gold as a "conflict mineral" only when there is reason to believe that it was mined in the Democratic Republic of the Congo since the President signed Dodd-Frank, Section 1502 would treat gold, regardless of the time when it originally was mined in the case of recycled gold and regardless of the location of the mine from which it was extracted, as a "conflict mineral". As a result, every Section (b)(1)(A) reporting person that uses gold in the manufacture of a product would be subject to the provisions of Section 1502, whether or not the gold was mined in the Democratic Republic of the Congo or adjoining countries and whether or not the sale of the gold was "financing conflict" in the Democratic Republic of the Congo or an adjoining country.

The Company believes that it would be wholly impracticable to define gold as a "conflict mineral" unless there is reason to believe that it was mined in the Democratic Republic of the Congo or in an adjoining country. Gold is mined in many different countries, with the Democratic Republic of the Congo and the adjoining countries accounting for only a small percent. According to industry statistics, recycled gold accounts for 39%, and newly-mined gold accounts for approximately 61%, of the supply of gold to the world market in 2009 and sources in the Democratic Republic of the Congo accounted for only 0.3% of the newly-mined gold. These industry statistics imply that it is highly unlikely that any of the gold used by fine jewelers in the manufacture of their products was mined in the Democratic Republic of the Congo or adjoining countries.

The Company believes that the burden on all manufacturers that use gold in the production of their products to comply with the diligence and reporting obligations of Section 1502 cannot be justified unless there is some reason to believe that the gold indeed was mined in the Democratic Republic of the Congo or in an adjoining country. The Company therefore suggests that the Commission take these facts into consideration and promulgate rules that would define gold as a "conflict mineral" only when there is some reason to believe that it was mined in the Democratic Republic of the Congo or in an adjoining country.

The diligence required to provide the described certification

The Company believes that it would be impracticable and extremely costly to attempt to trace the chain of custody "to determine the mine or location of origin" of the gold it uses in the manufacture and sale of its products.

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Gold used by the manufacturers of fine jewelry, like Tiffany, has been alloyed to the desired level of purity, usually expressed in karats, which for the Company's fine jewelry is 75% (18 karat) pure gold. The Company purchases gold at this level of purity or greater from bullion banks and refiners, who in turn source their gold from recyclers, smelters and mines. Refined gold is a pure commodity that does not have any chemical characteristics that distinguish one gold bullion bar from another, and the process by which gold concentrate is refined to pure gold does not permit even the smelters to identify which mine or mines produced the gold, or even to distinguish recycled gold from newly-mined gold, once it has been refined into a gold bullion bar.

The lack of any identifying characteristics means that the Company, and any other purchaser of refined gold bullion, cannot identify where the gold "originated". Given the continuous process involved in the refining of gold, the Company does not believe that even the smelter could certify as to the countries of origin of any specific gold bullion that it has refined. The Company can, and does, require that its sources avoid delivering any raw materials from conflict zones. The Company requests that only gold that has been mined in North America be delivered to it, but cannot verify whether or not those requests are being complied with in full.

As a result, the Company does not believe that it, or any jeweler, whether or not it manufactures its products, can certify where the gold used in its products "originated". All that the Company can certify to is the identity of the party from whom it purchases its gold. The Company therefore suggests that, in promulgating regulations implementing Section 1502, the Commission require only that fine jewelers request an annual certification from its suppliers that they have no reason to believe that gold newly-mined from the Democratic Republic of the Congo or any adjoining country accounted for any significant portion of the gold sold to the jeweler.

The Company appreciates the Commission's consideration of these comments.

Very truly yours,



Patrick Dorsey
Senior Vice President, Secretary
and General Counsel
Tiffany & Co.

Mr. WESTERMAN. So, Ms. Costa, my question is: Since 2010, have you come up with technology or a method to determine chain of custody on the gold that you use; and can you certify that all gold that you use comes from sustainable mining?

Ms. COSTA. So, we have been quite transparent in terms of our sustainability reporting and our supply chain for many years now on our website. I can't speak to that particular document off the top of my head; but we do source the precious metals that we use in our manufacturing processes from the U.S., from Bingham Canyon Mine, for example, in Utah. The gold comes from there.

Mr. WESTERMAN. So you have made some kind of change since 2010 where you can do that?

Ms. COSTA. I am not clear exactly what that was in reference to, like, what the broader context was.

Mr. WESTERMAN. It was a letter that Tiffany & Co. sent to the U.S. Securities and Exchange Commission in 2010.

Ms. COSTA. Yes, probably regarding conflict minerals in the DRC specifically, I am guessing; but we do have traceability of our gold and precious metals that we secure from the U.S.

Mr. WESTERMAN. Do most jewelers have that capability now?

Ms. COSTA. No, they do not.

Mr. WESTERMAN. What makes gold traceable?

Ms. COSTA. I mean, for us, it is because we have a vertically integrated supply chain. So we manufacture as well. So we are purchasing gold, for example, from the Bingham Canyon Mine. There is a smelter on site, and we manufacture.

Mr. WESTERMAN. Do you use any recycled gold?

Ms. COSTA. We do use recycled gold as well.

Mr. WESTERMAN. How do you know that came from sustainable practices?

Ms. COSTA. Well, I think it hinges on your definition, and recycled gold is not needing to mine gold from scratch from new mines, and the mine that we do source from has been in existence for quite some time now.

Mr. WESTERMAN. Do you know if it went through permitting?

Ms. COSTA. It is the Bingham Canyon Mine. So—in Utah, so—

Mr. WESTERMAN. So the process worked for that mine?

Ms. COSTA. I am not familiar with what the process was at the time when it—when that mine was permitted because it was so long ago but it is in existence. It was permitted.

Mr. WESTERMAN. OK. I yield back.

Mr. DEFAZIO. Oh, Mr. Lowenthal is next. He is recognized.

Mr. LOWENTHAL. Thank you, Mr. Chair.

Mr. McLerran, I am going to follow up about that—the questions about the draft EIS, and I apologize if some of them have been asked before. I am just trying to dig a little deeper about some of the terminology.

And so, my first question is: In the September 2019 presentation to investors, the Pebble project stated that the draft EIS and the public comment, and I quote now, “show no substantive data gaps,” no substantive data gaps. However, EPA comments on the draft EIS identify the need for further analysis of groundwater impacts, water quality impacts, wetland impacts, fishery impacts, and air quality impacts.

So, my question to you is: Are these substantive data gaps?

Mr. McLERRAN. So I have reviewed the EPA comments on the draft EIS, and there are clear indications that there are substantive gaps in the data and in the analysis, and part of that is based on the fact that much of what is presented in the mining plants are just conceptual level, and not designed at a level that allows the appropriate level of analysis.

Mr. LOWENTHAL. So following up, that same presentation that was made to investors declares that the process that they went through, that it went through, identified no significant impacts that can't be mitigated. But the mine's compensatory mitigation plan does not identify any proposed mitigation projects, and I believe your testimony indicated that compensatory mitigation would not be effective in this watershed.

The first question is: Are these significant impacts?

Mr. McLERRAN. Yes, I believe they are. You know, when we did the watershed assessment, we spoke to some of the best fishery scientists in the world, the folks who had been working in the Bristol Bay watershed for over 30 years; and the conclusions that were made out of the watershed assessment were that compensatory mitigation would not be effective in a pristine watershed. Compensatory mitigation is typically used in the context of a disturbed watershed where we are trying to restore habitat or restore salmon runs. Here you have a wild fishery that is in a pristine area that has been undisturbed and, again, our scientists felt that compensatory mitigation just was not an appropriate concept here and wouldn't work in this context.

Mr. LOWENTHAL. I appreciate that, and I just want to be clear. So compensatory mitigation would not be effective.

Mr. McLERRAN. That was certainly our conclusion in the watershed assessment.

Mr. LOWENTHAL. Thank you.

And I yield back.

Mr. DEFAZIO. I thank the gentleman.

Mr. WESTERMAN. Just a quick question. Yield some time to Mr. Collier to talk about mitigation features that are planned for the Pebble project.

Mr. COLLIER. There are substantial compensatory mitigation options that are identified in the draft environmental impact statement, and there will be a compensatory mitigation plan that will be required to be implemented as part of the permitting process as we go forward. We have identified a number of particular options, all kinds of issues that can be addressed in the area. One of them deals with culvert replacement; another deals with wastewater treatment facilities in a number of the villages. There are ways to do mitigation that will compensate in terms of clean water in the region.

Alaska has a particularly interesting challenge with respect to compensatory mitigation and it is one that the agencies, both EPA and the Corps of Engineers, struggle with on a regular basis and recently entered into a memorandum of understanding so that they could identify those projects. But the statute requires compensatory mitigation. There is compensatory mitigation discussed at length in chapter 5 of the DEIS, and there will be a required compensatory

mitigation plan that will be part of the permit when the permit is issued.

Mr. WESTERMAN. So, in 2015, former Secretary of Defense William Cohen undertook an independent examination of EPA's 2014 proposed preemptive veto, and in his report, he highlighted that the watershed assessment was based on, quote, "hypothetical assumptions that may or may not accurately or fairly represent an actual project" and "raise serious concerns as to whether EPA orchestrated the process to reach a predetermined outcome."

As I mentioned earlier, this isn't the first hearing on the Pebble Mine in Congress. I believe I sat on at least one under the Science, Space, and Technology Committee, at least one, maybe more, under the Natural Resources Committee. You know, I remember one of the characters in the story was a guy that, when we tried to question him, he was off somewhere on his yacht; and it was very hard for us to reach this former EPA employee.

Can you talk more about the controversy surrounding several of the former EPA staffers who managed that process?

Mr. COLLIER. Yes, and just a bit about the Cohen report. When I saw what had happened, I was involved in helping to run a Federal agency. I worked with Mr. Garamendi at the Department of the Interior. And I was personally shocked is at the level of conflict of interest that had occurred with respect to the involvement of environmental NGOs in the drafting of this document, in the outline of this document, and the review of drafts of this document, and so forth. And I couldn't get any attention from folks at EPA about these concerns. So I needed some kind of independent credibility behind them and looked around in the town of Washington. This is a town that is short on people with high reputations for credibility.

But I found former Secretary Bill Cohen, who had been a Republican, both Congressman and Senator from Maine, and then served in the Clinton administration as Secretary of Defense.

When I sat down with Secretary Cohen to ask him to take on this project, he said to me right off the bat, he said, Tom, you don't want me to do this. And I asked him why I wouldn't want him to do it. And he said, because I value my reputation for independence and credibility, and if I take a deep dive into this and look at it, I am going to call it as I see it, and I might just say that what EPA has done is correct and right. And if I do, that is the end of Pebble Mine.

And I said, well, you know, that is what I am after, Senator. I am after somebody that has that kind of reputation.

And so, he took the project on, and you read his conclusions when he looked at it. And he looked at it thoroughly. He wrote a 300-page report. He looked at thousands of documents, interviewed 60-some-odd witnesses, and came up with that particular conclusion. And I think he captured it well.

The examples, one of the things that I was interested in that Mr. McLerran talked about, was that the reason he took this on and took it so personally is that a petition had been filed from a number of the Tribes in the region; but the documents show, and the deposition testimony show, that what actually happened is that

Phil North, an EPA employee, was the one that decided that he wanted to start this process, and he helped draft that petition.

Mr. DEFAZIO. I would note that we are wasting a lot of time on a document that has been withdrawn by the Trump administration. It is sort of like Trump obsessing over Clinton and Obama and whatever. So I hope we don't waste much more time on that. It has been withdrawn.

We have the current statements from EPA and Department of the Interior, saying that basically, there is not sufficient evidence in the DEIS to substantiate moving forward, and it should be substantially revised.

With that, I recognize Mr. Rouda.

Mr. ROUDA. Thank you, Mr. Chairman.

And thank you, panel, for joining us today.

Mr. Collier, I want to talk a little bit about the process on how we got here today. The EPA and the Army Corps of Engineers have made decisions with regard to the proposed mining project that EPA scientists have flagged issues with the work done by the Army Corps of Engineers in their draft environmental impact statement. Yet, despite these concerns, the EPA political leadership decided to allow your project to proceed through the permitting process. Additionally, the Army Corps of Engineers decided to release a draft scoping report, a completely unprecedented move that is not a part of the standard NEPA permitting process, just 42 days into the 90-day scoping period for your project.

This draft report was released publicly just days after your project lost its fourth major institutional investor, and saw a rapid drop in your stock price. This atypical release gave your project a sense of momentum at a critical juncture, and this committee has a very little sense about how that decision to release that report came about. The Government has refused to disclose its communications, and we want transparency as to how that happened.

Mr. Collier, will you commit to producing all written communications between your companies or their representatives, and the EPA and the Army Corps of Engineers from the last 2½ years?

Mr. COLLIER. I need to consult with my lawyers, but it sounds to me as though that is a reasonable request and we would consider it.

Mr. ROUDA. The committee would like to understand exactly what transpired. So thank you for your commitment to provide that documentation.

Mr. COLLIER. My commitment was to consider it, and I will certainly do so.

Mr. ROUDA. If it is not protected work legal product, is there any reason you can imagine why you wouldn't produce it?

Mr. COLLIER. I have got to talk to my lawyers to find out, sir.

Mr. ROUDA. On May 1 of 2017, you met with then-EPA Administrator Scott Pruitt. At 10:36 a.m. That same day, after your meeting, he sent an email to EPA staff, directing them to withdraw the agency's proposal to protect Bristol Bay using section 404(c) of the Clean Water Act.

Previously, the EPA had put forth language protecting the bay that said a mine, quote, "would result in complete loss of fish habitat due to elimination, dewatering, and fragmentation of streams,

wetlands, and other aquatic resources ... All of these losses would be irreversible,” unquote.

The EPA arrived at this language after more than 3 years of scientific study of the issue.

Mr. Collier, what was discussed in that May 1, 2017, meeting with Scott Pruitt that would make him, in a matter of minutes, cast aside lengthy scientific study that had been subject to over 1 million comments and allow this to proceed forward?

Mr. COLLIER. He didn’t do that.

Mr. ROUDA. He didn’t do that?

Mr. COLLIER. You have got your facts wrong. He didn’t—that is not what he did.

Mr. ROUDA. You are denying that he took——

Mr. COLLIER. Absolutely.

Mr. ROUDA [continuing]. An email out to the EPA, moving this forward?

Mr. COLLIER. Absolutely. He did not withdraw the proposed determination. It wasn’t withdrawn until July of this year.

Mr. ROUDA. Did Administrator Pruitt then, in that conver—why don’t you tell us what took place in that conversation?

Mr. COLLIER. Sure. I had been in negotiations, Pebble had been in negotiation with the Obama administration for months to settle pending litigation. And, in fact, we had reached a settlement with the Obama administration. The Justice Department had signed off. I was told that EPA had signed off on that settlement, and that all we all had to do was sign the documents.

I signed. I understood that the Justice Department signed. And it got over to Gina McCarthy’s desk; and for some reason, she reneged on what I understood had been an agreement that the settlement would, in fact, occur.

Mr. ROUDA. Well, let me ask you this: In that meeting, you are saying that the email to move the procedure forward didn’t happen until July instead of immediately after? Did he greenlight your project in that meeting?

Mr. COLLIER. I am saying that the withdrawal of the proposed determination didn’t happen until July of this year.

Mr. ROUDA. Did he greenlight the project in that meeting?

Mr. COLLIER. He didn’t greenlight the project at all.

Mr. ROUDA. He gave you no indication of moving forward. He gave no positive feedback. So you would be willing to provide any information, any memorandum that you have——

Mr. COLLIER. You just got your facts wrong. Talk to your staff. You are wrong on this. That is not what he did.

Mr. ROUDA. And are you happy to produce any memorandum and internal documents that you have that document that meeting?

Mr. COLLIER. Again, I will talk to my lawyers about what I will produce for you; but you have got your facts wrong on what Mr. Pruitt did after——

Mr. ROUDA. Well, tell me is this quote correct that: “I believe that a lot of these environmental organizations choose issues in Alaska, they make them cause celebre so they can raise money around them, and they choose Alaska primarily because they don’t have to suffer the backlash from the economic impact of the project

being killed because no one gives a rat's ass what happens in Alaska," unquote.

That is attributable to you.

Mr. COLLIER. That is my quote.

Mr. ROUDA. Thank you.

I yield back.

Mr. DEFAZIO. I would recognize that the question was whether Pruitt sent an email, directing staff to withdraw after, immediately after he met with you; and I believe the answer to that is yes. He did send an email. It is true. It wasn't withdrawn until later because he got so much blowback, but is it true—

Mr. COLLIER. He didn't discuss—

Mr. DEFAZIO [continuing]. That he sent an email, directing staff to withdraw after you met with him? Is that correct?

Mr. COLLIER. That is not my understanding of what happened, Congressman.

Mr. DEFAZIO. Well, I think your facts are incorrect.

Mr. COLLIER. Thank you.

Mr. DEFAZIO. Mr. Westerman, do you want to yield more time to the CEO of the assetless company?

Mr. WESTERMAN. I would like to yield a little time to Mr. Collier, if he would like to make a rebuttal.

Mr. COLLIER. What Mr. Pruitt and I discussed was a settlement, a pending litigation, and it was a settlement that originally had been reached with the Obama administration. People settle cases for all different kinds of reasons. I believed at the time that the reason the Obama administration was willing to enter into this settlement is because they thought they were going to lose the litigation that we brought, which claimed that EPA had not followed statutory law in terms of process to make decisions like this.

And so, we litigated that point, and we reached a settlement agreement. That settlement at the last minute was reneged upon after we had been told it had been agreed to. So that settlement was dormant until the new administration came in, and then we began the settlement negotiations again and we agreed to a settlement that was fairly similar to the one we would have agreed to under the Obama administration.

And that was a settlement that was then before EPA for its approval. I met with Mr. Pruitt to discuss with him whether it was appropriate to agree to that settlement, again, a settlement that had been agreed to by the Obama administration; and Mr. Pruitt agreed to it.

He wasn't reversing anybody's science. He was settling a case because EPA failed to follow appropriate process, and that is the reason that we were having that discussion.

Mr. WESTERMAN. I have no more questions, Mr. Chairman.

But I would like to say that, you know, the facts are that there is a process that is underway, a process that has been established by Congress. This is in the State of Alaska, a long ways away from the State of Arkansas where I live, but Alaska is a beautiful place, and we certainly want to keep it a beautiful place.

I know that the world depends more and more on critical elements, elements that are needed to make electronics, elements that are needed to make renewable energy components, a vast amount

of those elements that we are relying on places like China to supply right now, in disproportionate amounts we are relying on China to supply.

So that is why we created processes, so that we can have a fair process to go through to determine whether we want to extract these resources from our country and from our States; and the facts are the process is taking place. There has been a draft EIS, there are comments. There are a lot of hurdles that still have to be overcome by Mr. Collier's company.

At the end of the day, EPA still has veto authority under 404(c). So I guess it never hurts to debate things in Congress, but why do we set up these processes and entrust the administration and the agencies to carry out the processes if we are going to—I guess, you know, Congress could pass a law to say you can't do this Pebble Mine development. But are we going to do that with every project that comes along?

It just seems to me like we are undermining the very stringent processes that we have put in place to deal with issues like this when, quite frankly, we have other big issues that we need to be dealing with.

And I will yield back.

Mr. DEFAZIO. I thank the gentleman.

I will yield myself such time as I may consume.

I will observe next week we will do the first reauthorization of a Clean Water SRF since 1987. At this point, your side has not agreed. I met with the ranking member last night. They wanted a much lower number, pathetically low, but then they also wanted some things that would impact the environment, and we have drawn a line there.

So, you know, we will see. I have asked the ranking member to consult with your side and see if that is where you are going to stick, and, if so, unfortunately, we will move ahead with that bill.

We are also drafting a surface transportation bill. We will do a WRDA bill that was never scheduled to begin until next year. And we are very busy, and, of course, we have the MAX hearing coming up next week. So, we are paying attention to business.

I just go back to all this discussion about a fair process, and this can't be restated too many times. EPA's 2019 Donald Trump EPA says the DEIS, quote, "likely underestimates adverse impacts to groundwater and surface water flows, water quality, wetlands, fish resources, and air quality," end quote.

And then it goes on to say—and this is footnoted—and including the ability of the proposed water treatment plan to annually meet water treatment goals and water quality standards in perpetuity.

That is a long time, perpetuity, although I guess we heard from Mr. Borden it might only be a few centuries before this stuff becomes less active.

And then they go on to say, the DEIS does not evaluate the consequences of a potential tailings dam failure, which, of course, depends upon the size of the mining operations, and recommends that a breach or failure scenario should be developed, footnote.

And then we have the cites here. Now that is Donald Trump's EPA; and we are saying this is a straight-up, good process. The Corps hasn't rushed this through, the Corps that is going to hold

a press availability afterwards to try and pump the stock back up, which probably fell during this hearing. You know, that is just extraordinary to me, and we are going to be—I think the Corps may be answering some very stern questions regarding, this and disclosing documents regarding how they got to produce such a defective document.

In addition, the U.S. Department of the Interior, under Donald Trump, submitted comments suggesting the DEIS, as prepared, does not follow NEPA requirements and conventions for data inclusion or analysis for an activity of this scope and scale. They recommend the Corps prepare a revised or supplemental DEIS for public review.

And we are talking about a straight-up process here, and they are rushing this through with the minimal comment period. Seriously? We are saying this is normal? I guess this may be normal in this administration, but it is not the way the process is supposed to work and that is why we are here today.

Now, Mr. Borden, you made a statement that Mr. Collier contradicted, that it is virtually unprecedented—I think one of your figures of 99 percent, one was 90—talking about both the water treatment and dams of this size and the containment. And he said, no, no, there are lots of examples around the world.

And, Mr. Borden, I will give you another chance to back down on that; and then we are going to ask Mr. Collier to list them.

Mr. BORDEN. So I do want to clarify it is unprecedented for flows of this volume to be linked with a water treatment plant of this complexity, which is what I had said earlier; but I just want to restate that.

Mr. DEFAZIO. OK.

Mr. BORDEN. The tailings dam height is certainly, almost certainly, in the upper 99th percent of those that have been built across the world throughout the history of mining in the world.

Mr. DEFAZIO. OK. OK. Now, Mr. Collier, regarding the water treatment, what he just stated.

Mr. COLLIER. He is just wrong.

Mr. DEFAZIO. OK. He is wrong. OK. Tell me about your engineering background?

Mr. COLLIER. I don't have any, but I have got a bunch of them that work for me and I rely on them.

Mr. DEFAZIO. They are all paid by the assetless corporation that you are representing before us today.

Tell me this, Mr. Collier. Why did Rio Tinto, First Quantum Minerals, Anglo American, and Mitsubishi, all withdraw their support? And, further, why has Northern Dynasty not taken an equity stake and exposed themselves to potential liability with your project? Instead you have a shell corporation with no assets.

Mr. COLLIER. Well, two questions. As to the first, I know most about the Anglo situation. That was the partner that was with us the longest, and Anglo publicly stated and assured us personally that the reason they withdrew was because of their own financial situation at the time and that it had nothing to do with the Pebble project and I think they would have, in fact, liked to stay in the project.

Mr. DEFAZIO. Mitsubishi, First Quantum, Rio Tinto. Mr. Borden worked for them for 23 years. I think Rio Tinto has a hell of a lot of assets out there.

Mr. COLLIER. I believe that is the reason why they all withdrew.

Mr. DEFAZIO. Really? Rio Tinto felt that this project was just—that they are in such financial difficulty now that they couldn't participate.

Mr. COLLIER. No, I think they withdrew because of reasons that deal with their internal management decisions as to where they wanted to concentrate their resources. At that time, Rio Tinto was beginning to concentrate more in iron ore and less in what we were.

Mr. DEFAZIO. OK. First Quantum.

Mr. COLLIER. First Quantum, because I think they were focusing instead on their project in Panama.

Mr. DEFAZIO. Mitsubishi?

Mr. COLLIER. That is way before my time, and I don't know why that happened.

Mr. DEFAZIO. OK. So, you have Northern Dynasty, who, again, has no equity stake in Pebble?

Mr. COLLIER. Yes, it does, by the way. I don't understand—

Mr. DEFAZIO. They are not part of the shell corporation. They have—

Mr. COLLIER. What shell corporation are you referring to?

Mr. DEFAZIO. Pebble.

Mr. COLLIER. Pebble is a partnership, and the sole partner in the partnership is Northern Dynasty. There is no shell corporation.

Mr. DEFAZIO. So it had—so they are linked and they would have potential liability.

Mr. COLLIER. Absolutely.

Mr. DEFAZIO. OK. That is good to know, because then we have some assets in the future.

And then I would like to go back to Ms. Costa, because I quickly read the documents submitted. It was 2010, and there was huge controversy about blood diamonds and blood gold, and it does—there is—it seems like that is what it is referring to.

But essentially, you—Tiffany has made a judgment that this would—is not a desirable or sustainable project, and would cause irrevocable environmental harm.

Ms. COSTA. Correct. And I think, simply put, the precedent that Pebble Mine would set by bringing materials that are mined from that site into the broader market is bad for consumer-facing companies because it erodes, to me, it would erode the public's confidence in environmental and social practices and mining companies.

Mr. DEFAZIO. OK. All right.

Any of the other—we have heard a lot from Mr. Collier, thanks to us yielding all this time. The Republicans have yielded it all to him. Would anybody else on the panel like to summarize?

Yes, Ms. Hurley.

Ms. HURLEY. I would just like to thank you for the opportunity. I would like to clarify. I think there was a fundamental misunderstanding from the beginning that the Pebble Limited Partnership has total support around Lake Iliamna, and that simply is not true. To correct the record, you know, there was a misleading statement

made that United Tribes of Bristol Bay doesn't represent people around the lake, and that is not true; Nondalton, one of the closest communities to the mine, and Pedro Bay. Those misleading comments really capture the company's dismissive attitude of our people's concerns.

And I would also like to correct the record that the Bristol Bay Native Corporation, one of the major landholders in the region, and the Pedro Bay Corporation are very much opposed to this project and have not granted access to the company for their project.

Lastly, I will just say that I am so thankful to be here today. There is no guarantee that there is no risk, you cannot change the location and type of this mine. And I am just so thankful that we are being heard because the Corps is not listening. They have proved they are not going to listen, and we really need Congress to intervene and help the people of Bristol Bay. So, thank you very much for having us here.

Mr. DEFAZIO. OK. Mr. McLerran.

Mr. McLERRAN. So I just want to refute a couple of things that Mr. Collier said. One is that the only independent review of the EPA's actions in preparing the watershed assessment was completed by the Office of the Inspector General. The Office of the Inspector General concluded that there was no predetermination, and that we followed all of the statutory procedures and did the science in the right way.

And because I was the decisionmaker, I want to state unequivocally that I had not predecided this issue until all the evidence was in. We did the scientific assessments so we would learn more about the watershed, learn more about whether the petition should be responded to in the way we did, and it was not until the weeks after the watershed assessment was completed that we made those decisions. And there were two different Administrators at EPA that were involved in the discussions around that. At the very end it was Gina McCarthy.

So I can state unequivocally this was not predetermined in any way.

Mr. DEFAZIO. OK. Thank you for clarifying that.

I believe Mr. Huffman has one last question for the second round.

Mr. HUFFMAN. I did. Thank you, Mr. Chair.

We have had a great conversation about the impacts of the proposed Pebble Mine, and I have learned a lot from this conversation. So thank you, including the significant impacts of even the downsized project that Mr. Collier describes.

But it strikes me that we also ought to have a conversation about the fact that this wouldn't be the end of the mining impacts in this area.

And I want to ask you, Ms. Hurley. I would assume, given how wild this area is, that the lack of infrastructure is one reason why we don't have a whole bunch of huge mines in the Bristol Bay watershed. And I look at the project description here for this project and it includes massive changes to the landscape, a new port, transportation corridor, natural gas pipeline, permanent massive changes to the landscape.

And I am wondering, what does that mean? Even if we can maybe mitigate the impacts of this one mine project, does this open the door to other permanent and far-reaching changes to the Bristol Bay watershed that we ought to think about before we start down that road?

Ms. HURLEY. Most definitely.

You know, I think anyone who is paying attention and knows about Bristol Bay issues knows that this would just be the beginning, that this would transform what is now salmon country for the entire planet into a toxic mining district.

When the watershed assessment was released, it mentioned 17 other active mining claims in the area. Today, that number has grown to over 25, I believe, the number is. So when we are looking at this, we are looking at this for generations, because this is where we come from, this is our home. This has the power to completely transform this place, and not in a way that anybody wants.

Mr. HUFFMAN. All right. I will ask Mr. Borden to follow up on that. As an expert in the mining industry, would the presence of all of this expansive infrastructure change the way mining companies look at the Bristol Bay watershed? What are the implications?

Mr. BORDEN. Yes. I would have to say, once the infrastructure is in place, the transport infrastructure—powerplant, ports—that is upfront capital that would not theoretically be needed to develop other mines in the area.

Mr. HUFFMAN. All right. Thank you, Mr. Chairman.

I yield back.

Mr. DEFAZIO. I thank the gentleman for that.

And at this point, I am going to ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing and there was some discussion of that earlier, and unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in today's hearing.

Without objection, so ordered.

Again, I would like to thank our witnesses today and I would add, you know, you can tune in to the promotional, which is totally inappropriate, by the Corps of Engineers which will be playing soon after this hearing and I will be discussing that with the Secretary and with the Corps itself. I find it very inappropriate.

With that, the subcommittee is adjourned.

[Whereupon, at 12:32 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

“EPA’s Bristol Bay Watershed Assessment: Obtainable Records Show EPA Followed Required Procedures Without Bias or Predetermination, but a Possible Misuse of Position Noted,” EPA Report No. 16-P-0082, January 13, 2016, Submitted for the Record by Hon. Peter A. DeFazio

[The report is retained in committee files and is available online at: <https://www.epa.gov/sites/production/files/2016-01/documents/20160113-16-p-0082.pdf>.]

“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, The Cohen Group and DLA Piper LLP, October 6, 2015, Submitted for the Record by Hon. Bruce Westerman

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”).¹ 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.² The area is also home to one of the most prolific salmon runs in the world.³ 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.⁴ In July 2014, EPA proposed substantial limits on development in the Pebble Deposit Area.⁵

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 re-

¹ See Background Facts at Sections II.D.1 and II.D.3.

² See *id.* at Sections II.A and II.D.3.

³ See *id.* at Section II.A.

⁴ See *id.* at Section II.C.

⁵ See *id.* at Section IX.

duce, the environmental risks associated with potential mining in the Bristol Bay watershed.⁶

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.⁷

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.⁸

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.⁹

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.¹⁰ 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.¹¹ 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.¹²

Congress passed the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."¹³ 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").¹⁴ 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.¹⁵ 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.¹⁶ The Corps then either issues a permit and imposes conditions or denies the permit application.¹⁷ 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.¹⁸

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.¹⁹ EPA may act under Sec-

⁶ See Independence and Methodology.

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See Background Facts at Sections IV.A, IV.C, IV.E, and VIII.

¹¹ See *id.* at Sections II.D.3, VII, and IX.

¹² See *id.* at Sections IX.C-D.

¹³ Clean Water Act § 101(a), 33 U.S.C.A. § 1251(a) (West 2015); see Background Facts at Section I.A.

¹⁴ See Background Facts at Section I.B.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ 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

tion 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[.]”²⁰ 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.²¹

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.²² 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].”²³

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.²⁴ 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.²⁵ 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.²⁶

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.²⁷ 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.²⁸ 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.²⁹

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.³⁰ EPA invited various federal agencies to participate in the BBWA.³¹ The Corps declined to participate in order to maintain its independence in any subsequent Permit/NEPA Process.³² The State of Alaska participated in EPA’s assessment while also registering its objection to the process.³³ 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.³⁴

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

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.

²⁰ 40 C.F.R. § 231.3(a) (2010); see Background Facts at Section I.C.

²¹ See Background Facts at Section I.C.

²² 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>.

²³ EPA, DISCUSSION MATRIX (Sept. 8, 2010), at 1; see Background Facts at Section IV.E.

²⁴ See Background Facts at Section III.C.

²⁵ See *id.* at Sections III.D, IV.B, VI.A.2, and VI.B.

²⁶ See *id.* at Sections III.E, IV.B, VI.A.2, VI.B, and IX.C-D.

²⁷ See *id.* at Section IV.B.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See Background Facts at Section V.B.

³¹ See *id.* at Sections IV.D, IV.G, and V.B.

³² See *id.* at Section V.B.

³³ See *id.*

³⁴ See *id.*

hypothetical mine scenarios based largely on a preliminary economic analysis prepared for the Pebble Partnership.³⁵ Over the course of three years, EPA prepared and issued two BBWA drafts for public comment and peer review.³⁶ 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.³⁷ 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.³⁸ 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.³⁹

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.⁴⁰ 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.”⁴¹

EPA published the final BBWA on January 21, 2014.⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵

Based on the BBWA, EPA issued its notice of intent to proceed under Section 404(c) on February 28, 2014.⁴⁶ 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.⁴⁷ The Corps declined to provide substantive comments on the ground that there was no pending permit application.⁴⁸ 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.⁴⁹ Their response letters did not persuade EPA to change course, and EPA moved forward with its Section 404(c) action.⁵⁰

On July 18, 2014, EPA Region 10 issued a Proposed Determination relating to development in the Pebble Deposit Area.⁵¹ EPA premised its regulatory action on a hypothetical scenario assessed in the BBWA.⁵² 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.⁵³

³⁵ See *id.* at Section VII.A.

³⁶ See Background Facts at Sections VI-VII.

³⁷ See *id.* at Sections VI.A.2 and VI.B.

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ 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.

⁴¹ 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.

⁴² See Background Facts at Section VII.

⁴³ See *id.* at Section VII.A.

⁴⁴ See *id.*

⁴⁵ See *id.*; see also *id.* at Section IX.

⁴⁶ See *id.* at Section VIII.

⁴⁷ See Background Facts at Sections VIII, VIII.B-C.

⁴⁸ See *id.* at Section VIII.A.

⁴⁹ See *id.* at Sections VIII.B-C.

⁵⁰ See *id.* at Section VIII.D.

⁵¹ See *id.* at Section IX.

⁵² See *id.*

⁵³ See Background Facts at Section IX.

Since that time, litigation has ensued, and there is currently an injunction in place temporarily prohibiting EPA from further proceedings.⁵⁴

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.⁵⁵

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.⁵⁶ 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.⁵⁷

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.⁵⁸

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.⁵⁹

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.⁶⁰

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

⁵⁴ See *id.* at Section X.E.

⁵⁵ See Conclusion and Observations.

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *id.*

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.⁶¹

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.⁶²

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.⁶³

Supplemental Written Testimony Provided by Richard K. Borden, Owner, Midgard Environmental Services LLC

I would like to thank Chairwoman Napolitano, Ranking Member Westerman, and Members of the Subcommittee for the opportunity to present this supplemental written testimony on the "Pebble Mine Project: Process and Potential Impacts." This supplemental written testimony provides additional information and clarification on three issues which arose during the hearing on October 23, 2019: 1) concerns were raised by some Subcommittee Members as to why the Pebble Project Environmental Impact Statement (EIS) needs to be scrutinized now, when the process is still ongoing; 2) there was contradictory testimony on the relative height of the proposed Pebble bulk tailings dam compared to other tailings dams in the global inventory; and 3) there was contradictory testimony on the uniqueness of the design for the proposed Pebble water treatment plants.

ENVIRONMENTAL IMPACT STATEMENT PROCESS

The Pebble Project EIS schedule published on the Army Corps of Engineers website predicts the final EIS will be completed in early 2020 and a record of decision will be issued by mid-2020. The schedule does not include any more opportunities for public review of the revised EIS before it is issued as final. This is a major concern because the Draft EIS contains so many strategic errors and omissions that I consider it fatally flawed; and a Final EIS could be issued without allowing public experts in geology, mining, environment, communities and fisheries to confirm that their concerns have been adequately and honestly addressed. If the fatal flaws in the Draft EIS are not fully addressed, this would almost certainly require, at a minimum, the completion of a Supplemental EIS, recirculated in draft for public comment. It is for this reason that I believe the Pebble EIS process does need to be scrutinized at the highest levels.

RELATIVE TAILINGS DAM HEIGHT

According to the Pebble Project Description written by the Pebble Partnership and incorporated into the Draft EIS as Appendix N, the main embankment of the bulk tailings dam will be up to 545 feet high. Based upon additional research completed after the hearing, the proposed Pebble tailings dam is almost certain to be higher than 99% of the tailings dams constructed to date across the world and may be higher than 99.9% of the existing dams. Six of the eight largest mining companies in the world by market capitalization have recently published tailings dam inventories in response to several large-scale and high-profile tailings dam failures. In sum BHP Billiton, Rio Tinto, Vale, Glencore, Newmont and Anglo American manage over 650 tailings dams. Only two of these dams are over 545 feet high which means that the proposed Pebble dam would be higher than 99.7% of the tailings dams managed by the world's largest and most experienced mining companies. Further-

⁶¹ See Conclusion and Observations.

⁶² See *id.*

⁶³ See *id.*

more, only 1% of the tailings dams managed by these six companies exceed 400 feet in height. No data could be found for the fifth and six largest mining companies in the world which are China Shenhua Energy and Norilsk Nickel of Russia.

A commonly cited estimate is that there are more than 3500 tailings dams in the world. Many of these dams are associated with small historic mining operations and with small mining companies. It is almost certain that these dams are, on average, smaller than the very large, high-tonnage operations managed by the world's biggest modern mining companies.

PROPOSED WATER TREATMENT PLANT DESIGN

According to the Pebble Project Description written by the Pebble Partnership and incorporated into the Draft EIS as Appendix N, "the annual average [water] surplus is estimated at approximately 29 cubic feet per second for the maximum mine site footprint". This equates to an annual average of 13,000 gallons per minute that will need to be treated towards the end of the mine's life. The Draft EIS also predicts that water treatment requirements will rise to 22,000 gallons per minute in early closure. The proposed water treatment plant designs are extremely complex, still have significant uncertainties and are likely to have very high operating costs. According to Section 4–18 of the DEIS "both facilities would employ treatment plant processes commonly used in mining and other industries around the world". While this is certainly true of individual plant components, I am not aware of a treatment flowsheet with this many steps and of this complexity being applied to such high flows anywhere else in the world. In this respect it is unprecedented.

The contaminated water flows predicted at Pebble are larger than about 95% of the 108 global mine water treatment plants detailed in the 2013 report "Review of Mine Drainage Treatment and Sludge Management Operations" (Canadian Mine Environmental Neutral Drainage Report 3.43.1). The most common treatment technology for high flow volumes used in the metals mining industry involves relatively simple lime and flocculant addition to raise the pH and remove dissolved metals. However, the treatment technologies incorporated into the two proposed Pebble plants are much more complex. They include initial metals precipitation with lime, sodium hydroxide and other reagents, secondary metals precipitation using sodium hydrogen sulfide and other reagents, clarification and ultrafiltration at both plants. The open pit treatment plant also includes reverse osmosis and a biological reactor for selenium removal. The main water treatment plant also includes nanofiltration, followed by gypsum precipitation via lime addition, clarification, reverse osmosis and evaporation (EIS Chapter 2 and Appendix K, 4.13).

Chart and Email Provided by Alannah Hurley, Executive Director, United Tribes of Bristol Bay

To: [REDACTED]
From: Linda Anderson-Carroll, Linda
Sent: Tue 1/30/2019 11:42:53 PM
Subject: RE: [REDACTED] has changed Response to PCA/2017-021 V2

I don't want to make changes in the browser (in case they are wrong) but I have some suggestions.

Ex. 5 - Deliberative Process

EPA-6178-000201

Ex. 5 - Deliberative Process

Linda Anderson-Carroll, Associate Director
Office of Environmental Review and Assessment
US EPA Region 10, CER-140, Suite 900
1200 3rd Ave, Seattle, WA 98101
phone [REDACTED]
cell [REDACTED]

EPA-6178-000202

McGrath, Patricia

Subject: ORD support for Pebble EIS
Location: [REDACTED]
Start: Thu 4/5/2018 1:00 PM
End: Thu 4/5/2018 2:00 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: McGrath, Patricia
Required Attendees: McGrath, Patricia; Schofield, Kate; Suter, Glenn; Molly Vaughan
[REDACTED]@pepa.gov
Optional Attendees: Lavoie, Emma; Bierwagen, Britta
Resources: [REDACTED]

(b) (6)

(b) (6)

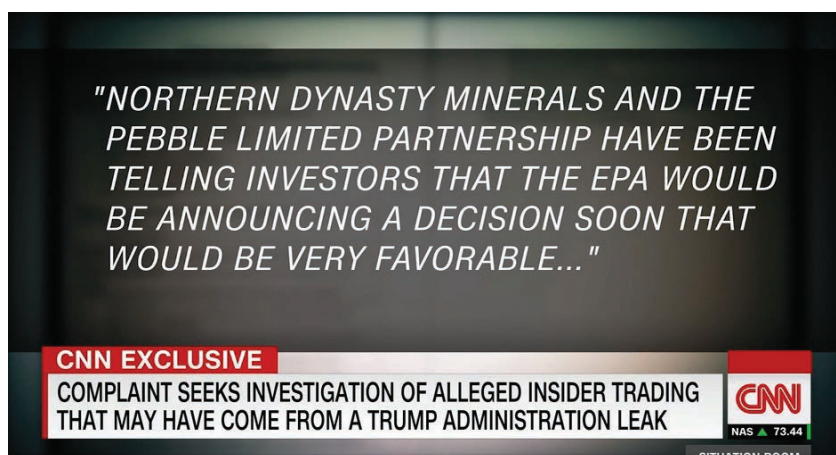
(b) (5) Deliberative Process Privilege

(b) (5) Deliberative Process Privilege

(b) (5) Deliberative Process Privilege

EPA-00135-008558

Screen captures, "CNN Exclusive: Complaint Seeks Investigation of Alleged Insider Trading That May Have Come From a Trump Administration Leak," Provided by Brian Kraft, Owner, Alaska Sportsman's Lodge



Companies Opposed to Proposed Pebble Mine, Submitted for the Record by Hon. Peter A. DeFazio

Nearly 200 leading companies in the fly fishing and outdoor gear industry groups have voiced opposition to the proposed Pebble Mine.

Guides, Outfitters and Lodges:

AK Adventures
Alaska Bear Adventures
Alaska Rainbow Adventures
Alaska Trophy Fishing Safari
Beyond Boundaries Expeditions
Bristol Bay Adventures
Deneki Outdoors*

Alagnak Lodge Alaska
Alaska's Fishing Unlimited Lodge
Alaska Sportsman's Lodge*
Bear Trail Lodge
Blue Fly Bed & Breakfast Guide Service
Copper River Lodge
Enchanted Lake Lodge

Alaska Alpine Adventures
Alaska Fly Fishers
Alaska Trophy Adventures
Beluga Air
Blue Mountain Lodge
Crystal Creek Lodge*
Epic Angling and Adventure

Guides, Outfitters and Lodges:—Continued

Fishing Bear	Fish and Float Alaska	Frigate Adventure Travel
Frontier River Guides	Grizzly Skins of Alaska	Iguigig Lodge
Iliamna River Lodge	Katmai Service Providers	Katmai Wilderness Lodge
No See Um Lodge*	Sweetwater Travel Company	Tikchik Narrows*
Togiak River Lodge	Rainbow River Lodge	Royal Coachman
Western Alaska Sport Fishing	Wild on the Fly	

Brands and Retailers:

Abel	Abu Garcia	AirFlo Fly Fishing Tackle
All Star Graphite Rods	Albright	Berkeley
Beulah	Berkley	Boss Tin
Brunton Outdoor	Castaway Rods	Chota Outdoor Gear
Clackacraft Drift Boats	Clear Creek Fishing Gear	Cliff Outdoors
Cloudveil	Cortland	Costa del Mar
Diamondback Fly Rods and Fly Reels	Dragon Tackle	Dr Slick Company
ECHO Fly Fishing	Elkhorn Fly rod and Reel	Exefficio
Fetha Styx	Filson	Fly Water Travel LLC
Frontiers Travel	Fenwick	Fishpond
Galvan Fly Reels	Gamakatsu	Gamma
G. Loomis	Greys	Guideline
Hardy	Hatch Outdoors	Hendrix Outdoors
HMH Vices	International Sportsman's Exposition	Islander Sportfishing
Jim Teeny Incorporated	Johnson Fishing	Kaenon Polarized
LL Bean	Lamiglas	Lateral Line
Loon Outdoors	Loop Tackle	Marryat
Mitchell	Montana Fly Company	Mustad
Nautilus Reels	Norstream	Orvis
Outcast Sporting Gear	OPM Fishing Tackle	Optic Nerve
Patagonia	PENN	Pflueger
Pro Troll Fishing Products	Pure Fishing	Rec Components
Redington	Renzetti	Rep Your Water
Rising Fish Nets	Rio Products	RL Winston Rod Company
RO Drift Boats	Ross Reels	Sage
Salmon Trout Steelheader	Sierra Fly Fishing	Scott Fly Rods
Simms	Shakespeare Fishing and Supplies	Shallow Water Fishing Expo
Smith Optics	Snowbee USA	Spiderwire
St Croix Rods	Stream Works	Stren
Targus	Temple Fork Outfitters Flyrods	Tibor Reels
The Fly Shop	The Fly Fishing Show	Thomas and Thomas
Turrall	Ugly Stik	Van Staal
Vosseler	Wapsi	Waterworks Lamson
William Joseph	Wind River Fly Fitter	Woolrich
Yellow Dog Flyfishing Adventures		

Media

Amato Books	Fish and Fly	Fly Fish America
Fly Fishing Magazine	Fly Fusion Magazine	Grays Sporting Journal
Hendrix Outdoors	Match the Hatch	Ribolowacki Magazine
The Drake	This is Fly	

Over 100 jewelers, representing more than \$6 billion in annual sales, have pledged support for protecting Bristol Bay from the proposed Pebble Mine.

Jewelers

Beaverbrooks	Ben Bridge Jewelers	Birks and Mayors
Boucheron (UK)	Commemorative Brands Inc.	Fortunoff
Fraser Hart (UK)	Goldsmiths	Hacker Jewelers
Helzberg Diamonds	Herff-Jones	Ingle & Rhode (UK)
Leber Jewelers	Mappin and Webb	Tiffany and Co.
Zales Corp.		

**Timeline of Pebble Mine Process, Submitted for the Record by
Hon. Peter A. DeFazio**

Year	Label
2019	EPA announces final repeal of Proposed Determination.
2019	EPA directs Region 10 Administrator to resume withdrawal of Proposed Determination.
2019	President Trump meets with Alaska Governor Dunleavy ¹ .
2019	PLP proposes project amendments ² .
2018	EPA suspends proposal to withdraw its Proposed Determination.
2017	PLP submits new and revised permit application.
2017	EPA proposes withdrawal of 2014 Proposed Determination.
2017	EPA settles litigation with PLP, promising withdrawal of Proposed Determination.
2017	EPA Administrator Pruitt meets with Tom Collier, CEO of PLP ³ .
2016	IG Clears EPA of bias or wrong-doing.
2014	Federal judge signs a preliminary injunction halting EPA work.
2014	EPA Releases Proposed Determination, with recommendations to limit the scope of a mining project.
2014	PLP calls on EPA to halt 404(c) process, files suit.
2014	EPA Announces intent to pursue 404(c) process.
2014	Final Bristol Bay Watershed Assessment is released, finding inevitable negative effects.
2014	Rio Tinto Group divests its 19.8% ownership ⁴ .
2013	Anglo American divests its 50% interest ⁵ .
2012	EPA Releases two draft watershed assessments for public input and peer review.
2011	Mitsubishi Corp. divests its 9.1% interest ⁶ .
2011	EPA study period begins.
2011	Formal plan filed by Pebble Limited Partnership (PLP) ⁷ .
2010	Zale Corp. joins boycott of precious metals mined from Pebble ⁸ .
2008	Tiffany and Co., Ben Bridge Jewelers, Helzberg Diamonds, Fortunoff and Leber Jewelers vow boycott of any metals mined at Pebble ^{9 10} .

Most events: <https://pebblewatch.com/epa-in-bristol-bay-timeline/>, otherwise noted below.

1 <https://www.cnn.com/2019/08/09/us/epa-alaska-pebble-mine-salmon-invs/index.html>

2 <https://pebbleprojecteis.com/files/083461a0-998f-4686-8f6a-38546b64c632>

3 <https://www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/index.html>

4 <https://www.adn.com/economy/article/latest-blow-pebble-prospect-mining-giant-rio-tinto-pulling-out/2014/04/07/>

5 <https://web.archive.org/web/20140821042341/http://www.northerndynastyminerals.com/ndm/NewsReleases.asp?ReportID=615657>

6 https://www.sec.gov/Archives/edgar/data/877197/000095014211000433/eh11000089_sc13ga4-ndml.htm

7 <https://www.sec.gov/Archives/edgar/data/1164771/000106299311000722/exhibit99-1.htm>

8 <https://www.fieldandstream.com/blogs/fishing/2010/04/major-us-jewelry-maker-boycott-alaska-pebble-mine-gold/>

9 <https://www.alaskajournal.com/community/2008-02-17/major-retail-jewelers-take-stance-against-pebble-mine>

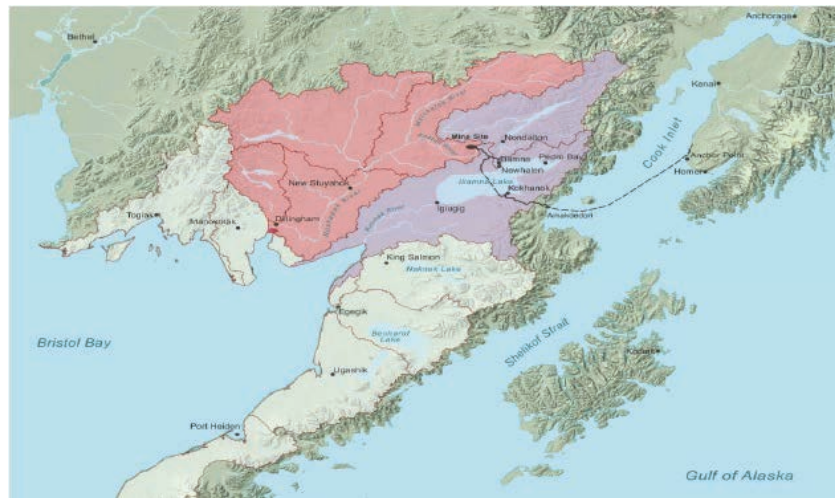
10 https://earthworks.org/media-releases/jewelry_retailers_opposition_to_pebble_mine_gains_momentum/

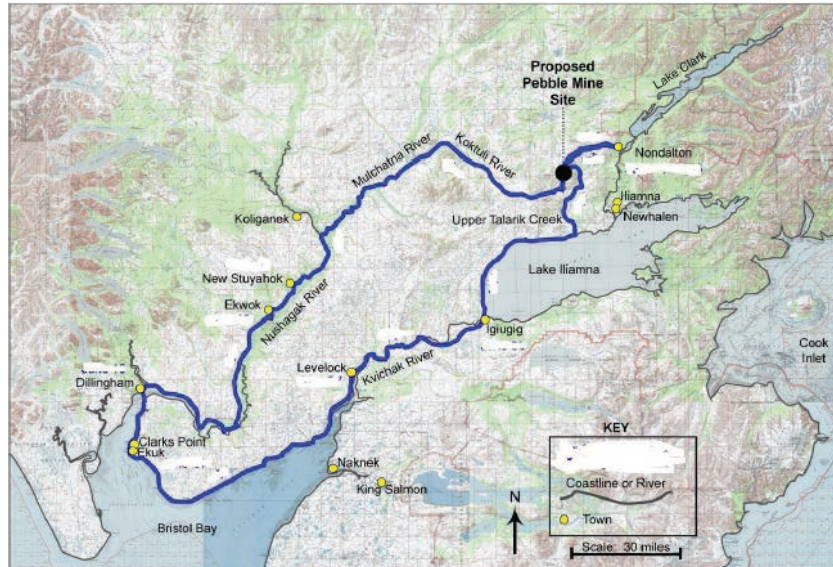
APPENDIX

QUESTION FROM HON. DON YOUNG TO ALANNAH HURLEY, EXECUTIVE DIRECTOR,
UNITED TRIBES OF BRISTOL BAY

Question 1. What rivers are your members fishing that are directly tied to Lake Iliamna?

ANSWER. UTBB represents 15 tribes in Bristol Bay that make up over 80% of the total population of the region. The Pebble project is in an area that has the capacity to impact both major river systems in Bristol Bay. Please see maps and further explanation below.





The mine site is in the area of the Koktuli river that flows into the Mulchatna River, which then flows into the Nushagak River that connects the area to all of Western Bristol Bay. Additionally, the mine site area is connected to the Upper and Lower Talarik Creeks that flow into Lake Iliamna, which empties into the Kvichak River, that connects to the area of all of Eastern Bristol Bay and the Alaska Peninsula. Every one of United Tribes of Bristol Bay communities are connected to the waterbodies that will be impacted by the Pebble Mine.

Please don't hesitate to reach out with any further questions and we look forward to working with the Committee to ensure decisions regarding Bristol Bay by the U.S. government are based on a robust scientific process that respects and incorporates the traditional ecological knowledge of Bristol Bay's tribes.

QUESTION FROM HON. DON YOUNG TO BRIAN KRAFT, OWNER,
ALASKA SPORTSMAN'S LODGE

Question 1. How many of your direct hire employees are members from the communities surrounding Lake Iliamna?

ANSWER. Three.