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March 14, 2014

The Honorable Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
Office of the Inspector General
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Elkins:

The Committee is conducting oversight of the U.S. Environmental Protection Agency's actions related to preliminary environmental permitting for the Pebble Project, a well publicized mining venture, in Southwest Alaska near Bristol Bay. On February 28, 2014, EPA announced its intention to proceed under Clean Water Act section 404(c) to review the environmental effects of discharges of dredged and fill material from the Pebble Project before it even has applied for a permit to do so.[1] EPA based its decision on the Bristol Bay Watershed Assessment completed by EPA on January 21, 2014.[2] EPA's actions regarding the preemptive use of Clean Water Act section 404(c) are unprecedented and appear to rest upon an evaluation written with a predetermined conclusion of invoking a preemptive 404(c) veto of the Pebble Project.

Documents obtained by the Committee show that EPA managers had been briefed by EPA staff as early as 2009 on the possibility of undertaking a 404(c) preemptive veto of the Pebble Project.[3] The EPA maintains that it had only considered a preemptive veto when asked to do so by six Alaska Native groups in May 2010.[4] However, the EPA explanation is contradicted by briefing materials prepared for then Administrator Lisa Jackson in January 2010 about how EPA could influence the Pebble Project. The presentation specifically states, "Project-specific options to influence project: 404(c) veto either pre-emptive, during EIS [Environmental Impact Statement], or after EIS."[5] Other documents and information show that EPA officials working on the Bristol Bay Watershed Assessment consistently coordinated with groups who were opposed to the project to obtain briefings and meetings for information for use in the

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[1] Letter from Dennis J. McLerran, Regional Administrator, U.S. EPA, to Thomas Collier, CEO, Pebble Limited Partnership, Joe Balash, Commissioner, Alaska Department of Natural Resources, Col. Christopher D. Lestochi, Commander, U.S. Army Corps of Engineers, Feb. 28, 2014, *available at* http://www2.epa.gov/sites/production/files/2014-02/documents/bristol-bay-15day-letter-2-28-2014.pdf.

[2] *Id.*; An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska, U.S. EPA, January 2014, *available at http://www.epa.gov/ncea/pdfs/bristolbay/bristol_bay_assessment_final_2014_vol1.pdf.*

[3] Email from Phil North, U.S. EPA, to Glenn Suter and Kate Schofield, U.S. EPA (Aug. 24, 2012, 5:15 PM) (on file with author).

[4] Why We Studied Bristol Bay Watershed, U.S. EPA, *available at* http://www2.epa.gov/bristolbay/why-we-studied-bristol-bay-watershed.

[5] Proposed Pebble Mine Project Alaska, Briefing for Administrator Jackson, U.S. EPA, Jan. 13, 2010 (on file with author).

assessment.[6] For example, EPA employees would request and rely upon guidance from Jeff Parker, an attorney representing the six Alaska Native groups that asked EPA for a pre-emptive 404(c) veto.[7] These actions show that EPA employees were determined to shape the Bristol Bay Watershed Assessment to fit their desired goal of vetoing the Pebble Project.

The Committee has serious concerns about the extraordinary actions taken by EPA in Bristol Bay to move toward a preemptive Clean Water Act section 404(c) veto of the Pebble Project. Taking such unprecedented federal agency action with predetermined conclusions is not sound government practice and delegitimizes other necessary regulatory action undertaken by the EPA. Accordingly, we request that you investigate EPA's actions regarding the potential use of Clean Water Act section 404(c) in Bristol Bay, Alaska.

If you have any questions about this request, please contact Joseph Brazauskas or Ryan Hambleton of the Committee Staff at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,

Darrell Issa
Chairman

James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements

Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs

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[6] Email from Phil North, U.S. EPA, to Shoren Brown, Bristol Bay Campaign Director, Trout Unlimited (June 11, 2010, 4:37 PM) (on file with author); Email from Phil North, U.S. EPA, to Cara Steiner-Riley, U.S. EPA (Jan. 28, 2011, 2:56 PM) (on file with author); Email from Phil North, U.S. EPA, to Jeff Parker, Attorney at Law, Law Office of Geoffrey Y. Parker (June 9, 2010, 8:01 PM) (on file with author).

[7] Email from Phil North, U.S. EPA, to Barbara Butler, U.S. EPA (July 21, 2011, 7:45 PM) (on file with author); Email from Phil North, U.S. EPA, to Michael Szerlog, U.S. EPA (June 29, 2010, 1:23 PM) (on file with author) (forwarding and supporting Jeff Parker's email regarding options for EPA to pursue regarding the Pebble Project).