

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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August 10, 2020

The Honorable Sean W. O'Donnell
Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Inspector General O'Donnell:

The Committee requests that the Office of Inspector General investigate the Environmental Protection Agency's (EPA) reversal of its Proposed Determination under section 404(c) of the Clean Water Act to "restrict the use of certain waters in the Bristol Bay watershed for disposal of dredged or fill material associated with mining the Pebble deposit, a large ore body in southwest Alaska."¹

In July 2014, after three years of study, EPA Region 10 issued a Proposed Determination, which found serious negative environmental consequences of mining copper and gold in Bristol Bay, Alaska. EPA recognized that "[t]he Bristol Bay watershed provides intact, connected habitats—from headwaters to ocean—that support abundant, genetically diverse wild Pacific salmon populations."² The Proposed Determination described Bristol Bay as "remarkable as one of the last places on Earth with such bountiful and sustainable harvests of wild salmon."³

Significantly, Bristol Bay is also the driver of substantial economic activity in that region. In the Proposed Determination, it was estimated that the commercial salmon fishery market had a value of \$300 million and employed over 11,000 workers.⁴ These and other factors led EPA to conclude that mine construction would pose a substantial risk to Bristol Bay, stating "[i]n simple terms, the infrastructure necessary to mine the Pebble deposit jeopardize[s] the long-term health and sustainability of the Bristol Bay ecosystem."⁵ As a result, Pebble Limited Partnership (PLP)

¹ Environmental Protection Agency, *Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act: Pebble Deposit Area, Southwest Alaska* (Jul. 2014) (online at www.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

was blocked “from building a massive gold, copper and molybdenum mine in Alaska’s Bristol Bay watershed.”⁶

However, in 2017, then-Administrator Scott Pruitt settled litigation with PLP concerning the Bristol Bay reserve by proposing a withdrawal of the Proposed Determination. Under the settlement agreement, EPA also allowed PLP to file a permit application for mining in Bristol Bay.⁷ Pruitt directed his staff to withdraw the Proposed Determination after meeting with Tom Collier, Chief Executive Officer, of PLP, and before Mr. Pruitt had an opportunity “to consult with agency experts who were preparing a briefing on the mine project.”⁸ Former EPA officials publicly criticized this action. Dennis McLarren, a former EPA regional administrator who oversaw Bristol Bay, stated that this rushed decision-making was “very disappointing” and “unlike anything I’ve ever seen.”⁹ Gina McCarthy, former EPA Administrator, stated that meeting with PLP officials when they were currently involved in litigation against EPA was “very unusual,” “disturbing,” and “extraordinary.”¹⁰

In 2018, after receiving more than one million comments in response to EPA’s Notice of proposed withdrawal, with the “overwhelming majority” of these comments being against EPA withdrawing the Proposed Determination, EPA announced that the Proposed Determination would remain in place.¹¹ At the time of the announcement, Mr. Pruitt explained in a statement that, “any mining projects in the region likely pose a risk to the abundant natural resources that exist there.”¹² Mr. Pruitt also stated that EPA would conduct additional research regarding the specific impacts of mining operations on the environment, adding that, “[u]ntil we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection.”¹³

⁶*EPA Chief Pruitt Met with Many Corporate Execs. Then He Made Decisions in Their Favor*, The Washington Post (Sept. 23, 2017) (online at www.washingtonpost.com/news/energy-environment/wp/2017/09/22/epa-chief-pruitt-met-with-many-corporate-execs-shortly-before-making-decisions-in-their-favor/?utm_term=.72a65bd2f136).

⁷ Environmental Protection Agency, *EPA and Pebble Limited Partnership Reach Settlement Agreement* (May 12, 2017) (online at <https://archive.epa.gov/epa/newsreleases/epa-and-pebble-limited-partnership-reach-settlement-agreement.html>).

⁸ *EPA Head Met With A Mining CEO – And Then Pushed Forward A Controversial Mining Project*, CNN (Sept. 22, 2017) (online at www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/index.html); see also *Washington Fishermen Are on Front Lines in Fight Against Proposed Alaska Mine*, The Seattle Times (Oct. 13, 2017) (online at www.seattletimes.com/seattle-news/environment/trumps-epa-decision-on-alaska-mining-project-reignites-battle-over-protecting-wild-salmon/).

⁹ *EPA Head Met With A Mining CEO – And Then Pushed Forward A Controversial Mining Project*, CNN (Sept. 22, 2017) (online at www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/index.html).

¹⁰ *Id.*

¹¹ Environmental Protection Agency, *Notification of Decision not to Withdraw Proposed Determination to Restrict the Use of an Area as a Disposal Site; Pebble Deposit Area, Southwest Alaska* (Jan. 26, 2018) (www.epa.gov/sites/production/files/2018-01/documents/bristol-bay-fm-prepub-1-26-2018.pdf).

¹² *In Reversal, EPA Leaves Restrictions On The Table As It Considers Alaska Mine Permits*, NPR (Jan. 28, 2018) (online at www.npr.org/2018/01/28/581403241/in-reversal-epa-suspends-alaska-mining-project-to-preserve-watershed-protections).

¹³ *EPA Suspends Withdrawal of Oversight of Pebble Mine*, Natural Resource Defense Council (Jan. 26, 2018) (online at www.nrdc.org/experts/joel-reynolds/epa-declines-withdraw-oversight-pebble-mine).

However, in July 2019, EPA Region 10 again announced a withdrawal of the Proposed Determination.¹⁴ EPA staff sources reportedly disclosed to the press that the reversal occurred on June 27, 2019, a day after President Trump met with Mike Dunleavy, the Governor of Alaska, on Air Force One—which raises questions regarding whether EPA's decision to withdraw the Proposed Determination was arbitrary and capricious.¹⁵ Indeed, after that meeting with the President, Governor Dunleavy stated that President Trump informed the Governor that he is, “doing everything he can to work with us on our mining concerns.”¹⁶

Christine Todd Whitman, who served as EPA Administrator under President George W. Bush, raised concerns that EPA's decision to withdraw the Proposed Determination before the agency's scientists could fully evaluate the mine's impact could be a violation of the Clean Water Act. EPA staff described the announcement as “shock[ing]” and believed that the abrupt decision was not in-line with standard assessment processes under the Clean Water Act.¹⁷

The Committee requests that your office conduct a comprehensive review of EPA's actions surrounding the Proposed Determination from January 2017 to present. We request in your investigation that you examine the following:

- Whether EPA followed all relevant laws, regulations, and policies in actions concerning the Proposed Determination;
- Whether EPA's 2019 decision to withdraw the Proposed Determination was supported by the standard assessment processes and scientific findings under the Clean Water Act;
- The influence of industry groups, including PLP, their representatives, and their lobbyists in EPA's actions regarding the Pebble Mine project and how their influence may have affected EPA's decision-making;
- The influence of President Trump, other White House officials, and other non-EPA senior elected officials on the state and federal level over EPA's actions regarding the Pebble Mine project and how political influence may have affected EPA decision-making; and
- Whether EPA scientists or other career experts raised concerns about the influence of industry groups or political officials on the EPA's actions regarding the Pebble Mine project, and whether those concerns were treated appropriately by EPA officials.

¹⁴ Environmental Protection Agency, *EPA Withdraws Outdated, Preemptive Proposed Determination to Restrict Use of the Pebble Deposit Area as a Disposal Site* (July 30, 2019) (online at www.epa.gov/newsreleases/epa-withdraws-outdated-preemptive-proposed-determination-restrict-use-pebble-deposit).

¹⁵ *EPA Dropped Salmon Protection After Trump Met with Alaska Governor*, CNN (Aug. 9, 2019) (online at www.cnn.com/2019/08/09/us/epa-alaska-pebble-mine-salmon-invs/index.html).

¹⁶ *Id.*

¹⁷ *Id.*

The Honorable Sean O'Donnell
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The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Please contact Committee staff at (202) 225-5051 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Carolyn B. Maloney
Chairwoman



Harley Rouda
Chairman
Subcommittee on Environment



Jackie Speier
Member of Congress

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Mark Green, Ranking Member
Committee on Oversight Reform
Subcommittee on Environment