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House of Representatives

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February 24, 2017

The Honorable Scott Pruitt
Administrator, Environmental Protection Agency (EPA)
U.S. EPA Headquarters
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

On February 22, 2017, Science Committee Chairman Lamar Smith sent you a letter in which he urged you to rescind the EPA's 2014 decision to use Section 404(c) of the Clean Water Act (CWA) to limit the scope of the proposed development of the Pebble Mine in Bristol Bay, Alaska. I want to take this opportunity to provide you with a more complete picture, and draw your attention to information the Chairman left out of his letter, as well as to specific inaccuracies in the Chairman's letter that he has frequently repeated before our Committee. I hope that you will use the full resources of the EPA to review the factual history of the Agency's appropriate use of the 404(c) process and to assess the claims in the Chairman's letter in an objective and unbiased manner.

As you may know, Alaska's Bristol Bay watershed supports the world's largest sockeye salmon fishery in the world, employing an estimated 14,000 workers and generating annual revenues of nearly $500 million. For more than a decade, the Pebble Limited Partnership (PLP) and its parent company Northern Dynasty Minerals, a Canadian-owned mining company, have been proposing to build one of the world's largest open pit copper and gold mines in the heart of the Bristol Bay watershed. Earlier this month, in a scathing economic analysis of the proposed mine, Kerrisdale Capital, a private investment firm, made public their analysis of the Pebble Mine, stating that the company planning to build the mine "is worthless" and "that the mine isn't commercially viable." It also pointed to the fact that "Major Investors Repeatedly Walked Away from Pebble – and Not Because of the EPA," and it said, "Alaska Doesn't Want the Pebble Mine."[1]

Acting under the First Amendment rights of the U.S. Constitution, the EPA was petitioned by Native Alaskan Tribes and others, to utilize the 404(c) process to access the potential impact of the proposed mine on the Bristol Bay region. One EPA employee in Alaska did act

[1] "Northern Dynasty Minerals Ltd. (NAK)," Kerrisdale Capital Management, LLC, February 2007, accessed here: https://www.kerrisdalecap.com/wp-content/uploads/2017/02/Northern-Dynasty-Minerals-NAK.pdf

inappropriately in his interactions with members of the public regarding the 404(c) process. The Science Committee deposed this individual and spent an inordinate amount of time attempting to tie this one individual to the entire EPA 404(c) process regarding the Pebble Mine. However, contradicting the Majority's repeated false conclusions about this issue, the EPA Office of Inspector General (OIG), "found no evidence of bias in how the EPA conducted its assessment of the Bristol Bay watershed, or that the EPA predetermined the assessment outcome."[2]

In January 2014, after an extensive, three-year long scientific peer-reviewed study, the EPA detailed the potential adverse impacts of the Pebble Mine on the environment, public health, and economic livelihood of residents and workers who rely upon the salmon fisheries in the Bristol Bay watershed. In July 2014, under the 404(c) process, the EPA took action to limit the inevitable environmental damage a mine in Bristol Bay would cause.

Those scientific reviews were sought by Alaska's citizens. They were conducted with technical rigor by the EPA's scientists. The in-depth scientific studies produced were transparent. These reviews were carried out with the same scientific integrity that both Democratic and Republican EPA Administrators utilized on 13 previous occasions since 1980 to initiate 404(c) actions under the EPA's clear authority under the Clean Water Act. To suggest that the EPA's action regarding the proposed Pebble Mine in Bristol Bay was "unprecedented," as the Chairman has repeatedly done is simply false.

Under President Reagan's Administration, for instance, the EPA's 404(c) process was initiated a total of nine times, including once in a pre-emptive fashion prior to a mine permit application being filed. The Chairman, however, has also claimed that the EPA had no authority to initiate its 404(c) process prior to a mine permit application being filed. This is simply not true. These, and other, inaccuracies are clearly addressed in a detailed Minority Staff Report released during the Committee's last hearing on the Pebble Mine in April 2016.[3] That report also highlights past ethical misconduct of some of Pebble's senior most leadership, including its CEO John Shively who once admitted to lying to Alaskan state prosecutors and destroying evidence to protect the then-Governor of Alaska.

I hope that as EPA Administrator you will adhere to the mission of the Agency that was created to protect the environment and the public's health, not the potential profits of foreign mining entities, such as Canada's Northern Dynasty Minerals and its proposed Pebble Mine. I hope that you believe putting America First also means protecting Americans first before the interests of foreign corporations. I appreciate your attention to this issue.

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[2] "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 Office of Inspector General (OIG), Report #16-P-0082, January 13, 2016, accessed here: https://www.epa.gov/office-inspector-general/report-epas-bristol-bay-watershed-assessment-obtainable-records-show-epa

[3] "The Pebble Promise in Bristol Bay," A Minority Staff Report, Prepared for Democratic Members of the Committee on Science, Space & Technology, April 2016, accessed here: http://democrats.science.house.gov/sites/democrats.science.house.gov/files/Staff%20Report%20-The%20Pebble%20Promise%20in%20Bristol%20Bay.pdf

Sincerely,

Eddie Bernice Johnson

Ms. Eddie Bernice Johnson
Ranking Member
Committee on Science, Space & Technology