

# Pebble's Permit

*The Race to Approve a Toxic Mine on the  
World's Greatest Salmon Rivers*



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# Executive Summary

Located in Southwest Alaska, Bristol Bay constitutes one of the most important salmon ecosystems left on Earth. Its wetlands and watersheds support some of the largest salmon producing rivers remaining on the planet. Those rivers drive a world-class economic engine of tourism, sport fishing and commercial fishing, supporting more than 14,000 jobs and \$1.5 billion worth of economic stimulus annually. Bristol Bay is home to 25 federally recognized tribes, whose communities continue thousands of years of subsistence-based lifeways that depend on salmon and clean water.

On February 20, 2019, the U.S. Army Corps of Engineers (USACE) released the Draft Environmental Impact Statement (DEIS) for the proposed Pebble Mine—a toxic open-pit mine in Bristol Bay’s headwaters. In this review, USACE has allowed Pebble Partnership and consultants to cut every scientific and statistical corner possible in the development of its permitting materials. The size, scope and complexity of Pebble Mine are immense and unprecedented—one of the most complex ever considered by the U.S. government. But the review flatly ignores concerns and input, not only from stakeholders concerned with Pebble’s impacts on Bristol Bay, but also key cooperating agencies from the U.S. Environmental Protection Agency to the U.S. Fish and Wildlife Service. The list of omissions, errors and oversights is long, but particular concerns include that the review fails to consider a catastrophic toxic-waste spill into the rivers downstream from the mine. And USACE has not required Pebble to put forth a credible economic feasibility study for the mine.

In the years, months and days leading up to the release of the DEIS, Pebble has worked every opportunity to circumvent good governance norms for permitting a mine. In political appointees at key agencies, company officials found willing allies to carry out these questionable practices in the company’s interest. It is noteworthy that throughout these years and efforts there were numerous career staff members who pushed back and questioned key actions of Pebble-friendly appointees. Yet, despite those repeated documented concerns, appointees

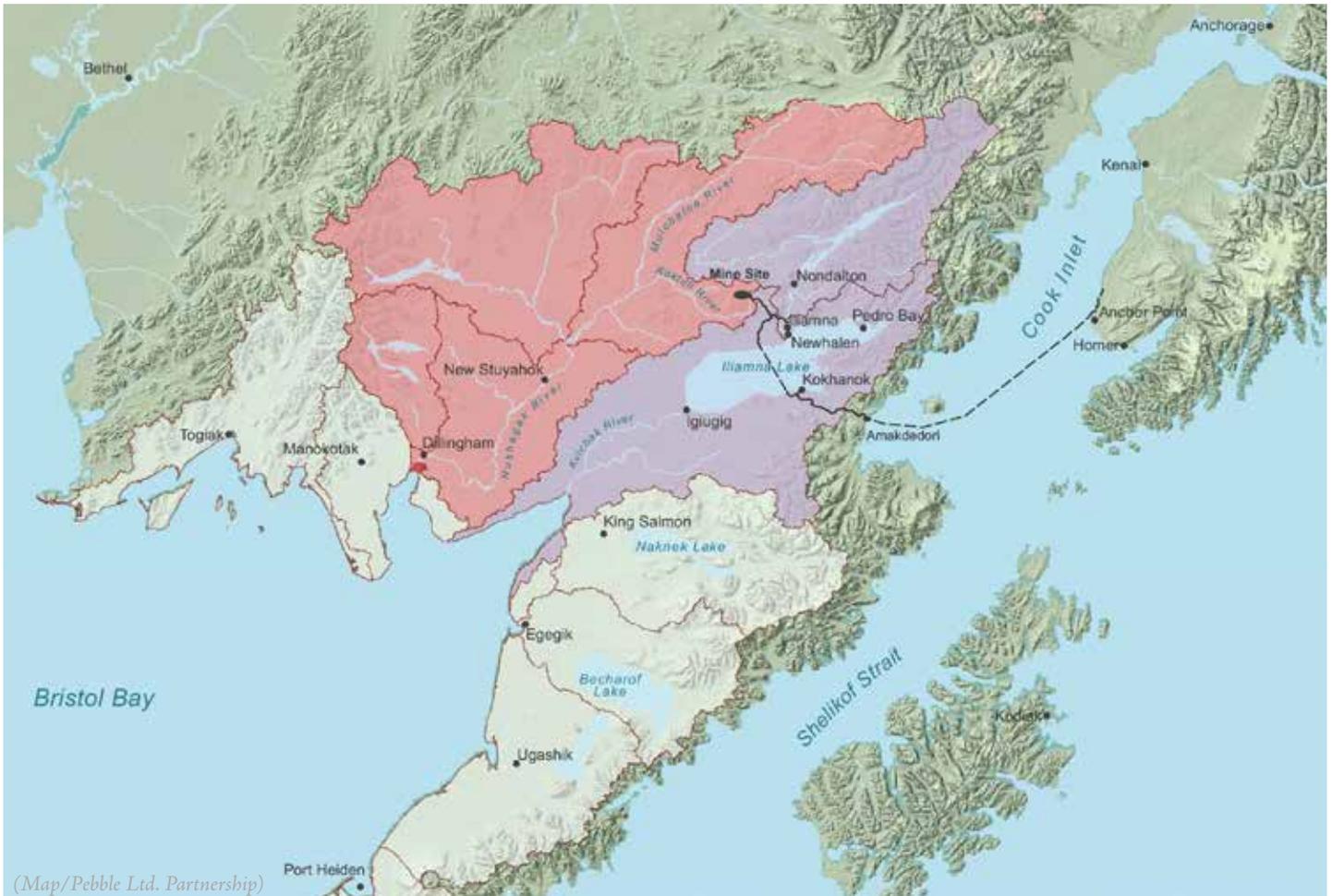
effectively silenced these experts and dismissed long standing scientific standards.

## This report details:

- ♦ **How Pebble spent massive sums of money to ensure that politically appointed allies revive the mine and fix the permitting process, from cutting corners on permitting to helping benefit Pebble’s stocks and investors.**
- ♦ **How EPA officials and leadership took extraordinary steps to ensure that Pebble was a priority project, while using Pebble as a poster child for undercutting long-standing agency authority.**
- ♦ **How the US Army Corps of Engineers worked with Pebble to drive a permitting process that clearly and repeatedly cuts corners and ignores input from government experts and the public, breaking all standards of thorough government review.**

This report is written using available information sought through the Freedom of Information Act, but there is much of the record on Pebble that has not been disclosed. Indeed, USACE directed staff on Pebble to keep correspondence about the project out of the publicly accessible record. Pebble and cooperating staff’s seemingly unethical behavior demands deeper investigation by both press and congressional oversight committees. It is readily apparent that Pebble is working directly with agency political appointees to go against the will of Alaskans and the American people—in pursuit of the mine.

The question for Congress and the American public now is: Will they stand by and let a Canadian mining company and its friends in the administration permit a massive toxic-waste facility in the last great salmon ecosystem in North America?



USACE has allowed Pebble Partnership and consultants to cut every scientific and statistical corner possible in the development of its permitting materials.



# Introduction

## Overview

On May 1, 2017, Scott Pruitt, then-administrator of the Environmental Protection Agency, met with Pebble Partnership CEO Tom Collier. Within hours of that meeting, Pruitt “directed” the agency, via his acting general counsel, to withdraw an Obama-era proposal to protect one of the world’s most ecologically valuable wetlands in southwest Alaska from certain mining activities.<sup>1</sup> That threw the door open to developing the Pebble Mine.

Since the beginning of the current administration, spending on D.C. lobbyists and lawyers has grown exponentially. Over the past two-plus years, Pebble has spent nearly \$4.5 million on lawyers and external lobbyists. For 2018, Politico listed Pebble’s contract with Akin Gump Strauss Hauer and Feld as the eighth largest single contract in D.C.<sup>2</sup> Pebble is spending more money on lobbyists than most development projects in North America, and this spending represents an enormous percentage of the company’s overall resources.<sup>3</sup> These efforts are paying off.

The US Army Corps of Engineers and the Environmental Protection Agency appear to be bypassing established governance standards and normal review procedures in their rush to permit the Pebble Mine. Given the gravity of the environmental risk to Bristol Bay, this is inappropriate. Under this administration, political appointees at the agencies are working closely with Pebble to ensure a permitting process that is faster than any project of this size and type in American history. On closer examination, a few key moments should cause much greater concern. From EPA to USACE, numerous examples underscore close coordination with Pebble Partnership and its parent company that go well beyond simply ensuring an expedited permitting process for the mine. On one occasion emails between EPA and Pebble Partnership reveal discussions to release news of a lawsuit settlement to coincide with the opening of stock markets, to boost stock returns.<sup>4</sup> Other examples underscore consistent efforts by USACE to cut corners, silo agency cooperation and rush review of permitting processes. These years are marked by

events that underscore a new era of advancing the proposed Pebble Mine—a period marked by efforts to at best manipulate federal permitting processes, or at worst rewrite it, pushing the Pebble Mine at all costs.

These moments raise serious ethical concerns and warrant accusations of wrongdoing, and they demand deeper investigation by both press and Congress. Pebble is working directly with political appointees at the agencies to go against the will of Alaskans and the American people—in pursuit of its mine.

## Bristol Bay

### From Near Protection to Vulnerability

Bristol Bay is located in Southwest Alaska, and it and surrounding watersheds constitute the most important salmon ecosystem left on Earth. Its wetlands and watersheds support some of the largest salmon producing rivers remaining on the planet. Those rivers drive a world-class economic engine of tourism, sport fishing and commercial fishing, supporting more than 14,000 jobs and \$1.5 billion worth of economic stimulus annually. Bristol Bay is home to 25 federally recognized tribes, whose communities continue thousands of years of subsistence-based lifeways that depend on salmon and clean water.

Bristol Bay is also home to the Pebble deposit, a large copper, gold and molybdenum porphyry deposit. In 2001, Northern Dynasty Minerals Ltd. began studying the Pebble deposit with the goal of developing the project. By 2006, the Pebble Limited Partnership (consisting of Northern Dynasty, Rio Tinto and Anglo-American) released preliminary mining plans as a part of its water rights application to the State of Alaska. These plans revealed the potential for a massive large-scale open-pit copper and gold mine situated at the headwaters of the largest salmon-producing system on the planet.

In May 2010, six federally recognized tribes from the Bristol Bay region submitted a petition to the EPA requesting a review under Section 404(c) of the Clean Water Act (CWA) to identify wetlands and waters in the Kvichak and Nushagak river drainages, where the EPA might prohibit or restrict dredge and fill material associated with large-scale mining. Many other groups ranging from sportsmen and commercial fishermen to chefs and religious leaders followed suit, asking that EPA use their CWA authority to ensure Bristol Bay's protection.

In response, EPA decided to “gather additional information through a public process.”<sup>5</sup> On February 7, 2011, EPA Region 10 Administrator Dennis McLerran announced that EPA would begin an ecological risk assessment in order to better determine

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**It's wetlands and watersheds support some of the largest salmon producing rivers remaining on the planet.**

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the impacts of large-scale mining on the salmon watersheds of Bristol Bay, Alaska. The goal was to gather and analyze all available information so as to inform any decision on whether to use its authority under Section 404(c) of the CWA immediately or in the future. Between February 2011 and January 15, 2014, when EPA published the final assessment, it held at least eight public meetings and received more than 1.2 million comments, covering two drafts that were peer-reviewed twice by a team of 12 independent scientific experts. The final analysis found that even at a minimum possible size, the proposed Pebble Mine posed unacceptable adverse risks to the watershed and fishery of Bristol Bay. Based on this analysis, on July 18, 2014, the EPA issued a “proposed determination” under the CWA to restrict large-scale mining in the Pebble deposit. The EPA received more than 670,000 additional comments and held seven hearings in Alaska on this proposal.

The short story here is the EPA spent four years listening to Alaskans and the people most impacted by the Pebble Mine. The agency studied the issue

at length before proceeding. In addition to studying the problem, EPA scientists subjected their own work to an independent peer-review process that exceeded the standards and expectations of even the most rigorous academic publication. And perhaps most importantly, EPA exemplified the best of public process and engagement, taking care to ensure a clear and transparent process, resulting in a product and decision founded on the best available science and expertise.

Despite the care and diligence of EPA to ensure a sound and legal process, Pebble sued the EPA in November 2014, effectively halting the 404(c) process pending resolution of the litigation. This suit provided a respite for Pebble to wait for a more favorable political and permitting climate. In November 2016, Pebble got its wish: In the newly elected administration that would soon take over in Washington, Pebble found allies willing to skirt, bend and rewrite longstanding procedures to push Pebble Mine forward, despite a decade of resistance from the people of Bristol Bay, Alaska, and America.

## **EPA's About-Face**

### **New Administration Abandons Popular Protective Stance**

Within weeks of President Trump's inauguration, Pebble and its lobbyists worked to ensure that its mine was a beneficiary of the new administration. The organization's goal: undermine the EPA Watershed Assessment and put Pebble Mine on the fast track.

For example, on February 15, Pebble lobbyist Peter Robertson wrote to EPA transition staffer David Schnare:

“As you may know, Pebble is trying to develop a world-class copper mine in southwestern Alaska. We have yet to submit the first of the permit applications necessary to move ahead with the mine, the permit application under section 404 of the Clean Water Act... Do you have time for me to meet with you in the near future?”<sup>6</sup>



Within 24 hours, Schnare replied to Robertson in writing:

“I am aware of the problem in general but do not have specifics. Can you bring with you a time line of events and a status on the legal actions?... In any case, I need to get this set up for the Administrator, which means I need the full background and a specific proposal on what we can and should do... Without meaning to be flip, that’s your homework assignment.”

Pebble clearly had new and direct connections to key agency leadership. While EPA and Pebble had been in negotiations around the lawsuit over EPA’s 404(c) actions for months already, the pace and impact of those decisions picked up quickly. As this happened, both opponents of the mine and career EPA staff who had worked years on this issue saw their work quickly slip away and get swept under the rug.

### **Pebble-Friendly Legal Settlement**

By May 2017, plans to settle the lawsuit were nearly final. On May 1, 2017, not only did Pebble CEO Tom Collier meet with Scott Pruitt, but immediately following that meeting Pruitt instructed his staff to begin the process of withdrawing the 2014 Proposed Determination.<sup>7</sup> The decision was made

The agencies appear to be bypassing established governance standards and normal review procedures in their rush to permit the Pebble Mine. This is unacceptable, given Bristol Bay’s environmental resources.

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without consulting with or being briefed by agency staff or scientists. More troubling was that email specifically noted that the agency would need to develop a judicially defensible post hoc rationale for its about-face: “As far as the basis, we will need to develop the most defensible basis we can...” Administrator Pruitt’s rush to withdraw the Proposed Determination without taking the time to review the existing record—or make a new record—reveals the arbitrary and capricious nature of this decision.<sup>8</sup>

On May 12, 2017, EPA outlined the plan to settle the lawsuit.

The settlement included the following key decision points:

- Pebble and the U.S. Department of Justice (on behalf of the EPA) will ask the U.S. District Court for the District of Alaska to dismiss the cases with prejudice and to lift the court-ordered preliminary injunction.

- EPA agrees to commence a process to propose to withdraw the currently pending proposed determination, consistent with its regulations.
- EPA agrees that it will not move to the next step in its CWA process, which would be to issue a recommended determination (determination steps are: proposed, recommended, final) until 48 months from settlement or until the U.S. Army Corps of Engineers issues its final environmental impact statement, whichever comes first. To take advantage of this period of forbearance, Pebble would have to file its permit application within 30 months.
- Pebble will drop its lawsuits and requests for fees against EPA and agree to file no new Freedom of Information Act (FOIA) requests during the pendency of the “forbearance” period.
- EPA may use its scientific assessment regarding the Bristol Bay Watershed without limitation.<sup>9</sup>

Throughout the settlement process, Pebble pushed hard to not only have the Proposed Determination withdrawn, but also for the Watershed Assessment as a whole struck from the record and prevented from future use. Email correspondence shows that EPA did not bend to each of Pebble’s demands, ultimately preserving the work leading up to and contained within the Watershed Assessment.

Those unfamiliar with this history need to understand that EPA’s 2014 action under Section 404(c) of the Clean Water Act never precluded Pebble from applying for permits. However, the general rhetoric from Pebble was that EPA had issued an outright veto of the project and had prevented Pebble from pursuing a permit. This could not be further from the truth. EPA’s work was not a veto. It merely dampened investor interest. Settling the lawsuit reassured investors of a clear path toward permitting. Pebble certainly looked to leverage the settlement in its favor and sought EPA’s help in doing so. EPA, it appears, obliged.

## Stock Price Favors

Emails obtained by E&E News from the days leading up to the settlement of the lawsuit reveal a disturbing willingness of senior EPA leadership to work with Pebble on the timing of the settlement announcement so as to have the greatest benefit to Northern Dynasty Minerals on the stock market. E&E News reporters Dylan Brown and Kevin Bogardus explain, “Emails obtained by E&E News under the Freedom of Information Act reveal how Pruitt’s staff crafted the settlement announcement—delaying it to help the mining company, scouring for leaks and spurning an interview request from a local Alaska public radio station because it was considered ‘liberal.’<sup>10</sup> The documents included a list of redacted attachments and messages, including four emails between EPA press aides in the agency’s Seattle office were sent on May 11, the day before the settlement was announced.” Justice Department attorney Robin Thurston wrote an email May 11 to Justice and EPA colleagues explaining that Pebble “would prefer to make a public announcement regarding the settlement agreement before markets open tomorrow morning.”<sup>11</sup>

While some EPA staff did indeed express concern with the timing and coordination with Pebble, the agency still moved forward on the time line desired by Pebble.<sup>12</sup>

## Pruitt Hedges, Pebble Forges Ahead

Pebble hoped the settlement was just the beginning and a critical step, one that allowed Northern Dynasty and Pebble to attract a new investor in First Quantum Minerals, among other things. With the settlement underway and a new \$37.5 million investment from First Quantum, Pebble had significant wind in its sails.<sup>13</sup>

A core piece of the settlement agreement was to commence the process to withdraw the Proposed Determination. Pebble applied consistent pressure to ensure EPA was holding up its end of the bargain. For example, in July 2017, EPA spoke with Pebble CEO Tom Collier and Pebble lobbyist Peter Robertson when the pair called to confirm that the agency would publicly initiate a process to withdraw

the proposed determination.<sup>14</sup> On July 11, 2017, EPA announced that it was beginning the process for withdrawal. This initiated yet another comment period, between July and October—to which 26,000 Alaskans chimed in asking EPA to keep its work intact.

During that comment period, in September 2017, Pebble lobbyist Alan Mintz (Van Ness Feldman) met with EPA Office of Water Deputy Administrator Dennis Lee Forsgren to discuss Pebble. At this point, meeting logs stated that “EPA confirmed that it was still in the process of the proposal to withdraw the Proposed Determination, and no decision had been made.”<sup>15</sup>

However, on October 31, 2017, Pruitt met with individuals who represented key Bristol Bay–based organizations who were strongly opposed to the Pebble Mine. Shortly after that meeting, then–Alaska Governor Bill Walker weighed in expressing concerns with the mine and the permitting process.

By the beginning of 2018, things had changed significantly, so it seemed. On January 26, 2018, Pruitt announced that the agency was leaving the Proposed Determination in place. EPA’s press release explained: “From public comments to various community meetings, stakeholders stressed the importance of balancing a singular mining venture with the risk of one of the world’s largest commercial fisheries.”<sup>16</sup>

While opponents of the mine celebrated the decision, the reality was that leaving the Proposed Determination in place had no detrimental impact on Pebble’s fate. And Pebble confirmed that responding that this changed “nothing.” EPA promised that the decision “neither deters nor derails” the company’s bid to develop the Pebble deposit.<sup>17</sup>

To be clear, this was a calculated political move from the EPA.

First, EPA could in no way ignore the sheer volume of comments that continued to pour in supporting the protection of Bristol Bay. They received more than a million comments nationwide, with more than 26,000 from Alaskans. The vast majority of those requested leaving the Proposed Determination

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in place. In addition to the comments and input from Bristol Bay leadership, then-Governor Walker had also expressed concerns with Pebble.

Comments and pressure aside, keeping restrictions was the more politically savvy move—it gave the appearance of concern, it prevented a counter suit on process, and still ensured a green light for Pebble to pursue its permits, per the settlement agreement. As reporters Brown and Bogardus noted in an E&E News article, “Although Pruitt surprisingly reversed course earlier this month to put the Obama-era limits back in play, the settlement still prevents them from being finalized, keeping the pathway open for the permit application that Pebble has since submitted.”<sup>18</sup> In reality, leaving the restrictions in place ensured a permitting process pushed by the weight of urgency.

The previously agreed upon legal settlement had already sped up the permitting process for Pebble, while paying lip service to the locals. At this point already, USACE was moving full steam ahead on scoping and was taking steps demonstrating its desire to fast-track the permits, with the scoping process already underway by then.

While these decisions push the permitting process forward, Pebble has repeatedly expressed its dissatisfaction with the Watershed Assessment and the Proposed Determination. While the settlement agreement precludes NDM from attacking EPA, the Proposed Determination and the Watershed Assessment, through industry front groups it continues to attack EPA and the 404(c) authority as a whole. Of

note is a 2018 Request for Correction filed by the Competitive Enterprise Institute (CEI) requesting that EPA withdraw the Proposed Determination and the Watershed Assessment.<sup>19</sup>

Pebble is looking for every angle to ensure that this mine goes forward. Therefore, through front groups like CEI to Congressional Committees, Pebble would continue to push back against existing agreements and settlements.

## **Pebble Makes Trouble for Pruitt**

From the start of the Trump administration, Pebble worked the Pruitt office for an inside track on Pebble.

Now that scoping was swiftly underway at the direction of USACE, Pebble was far from deterred by EPA's decision to leave the Proposed Determination in place. Company officials began to make it clear that they would stop at no cost to get their way—and their mine. Between March 1, 2018, and April 25, 2018, CEO Collier reached out again to Pruitt on three occasions to express his dismay at Pruitt's decision. Collier wrote on March 1 that Pebble was still "Seeking an opportunity to discuss Pebble's status as a source of critical mineral commodities to ensure that Pebble's Clean Water Act 404 Permit application receives full and fair consideration"<sup>20</sup> In his April 24 letter to Pruitt, Collier called Pruitt's decision "surprising," "disappointing," and "misguided."<sup>21</sup>

Pebble wanted to make sure EPA knew and understood its place in the scoping process now well underway: Don't overstep boundaries and stay on the sidelines while USACE does its work.

To do this, Pebble enlisted the help of the House Science, Space and Technology Committee. On March 7, the company published a letter to Pruitt from then-Chairman Lamar Smith (R-Texas), House Natural Resources Chairman Rob Bishop (R-Utah), and Congressional Western Caucus Chairman Paul Gosar (R-Arizona). The letter urged that EPA Region 10 officials should monitor the scoping process, but if the Army Corps' environmental impact statement addresses all the issues, Pruitt

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and EPA should withdraw the 2014 proposed determination. That, the letter states, "establishes a commitment to regulatory certainty and environmental protection while advancing the Administration's commitment to streamlining the permitting process based on sound science."<sup>22</sup> In other words, USACE is the boss here. Follow its lead.

With each passing month, Pebble's frustration with EPA grew. While Pebble initially brushed off the decision to leave the Proposed Determination intact, the company would prefer it was removed and out of the equation—mostly because Pebble felt it sent the wrong message to stockholders and investors.<sup>23</sup>

It enlisted other Washington insiders to push its agenda.

On June 14, the Federalist Society, a conservative legal group, hosted a conference call on behalf of Pebble and Northern Dynasty Minerals. On that call was Myron Ebell, a Trump appointee who was responsible for heading up the administration's EPA transition team. Pebble CEO Collier argued on the phone that when Pruitt left the Proposed Determination in place, he overstepped his authority and was not following their vision of regulatory certainty. He said, "I'm riled up about the precedent, but what drives me even more crazy is why this administration, which talks about federal overreach, would in January recognize the use of a preemptive veto... That's what Scott Pruitt did."<sup>24</sup>

Three weeks later, by July 5, 2018, Pruitt was out the door.

Pebble's conference call was probably not the final straw. However, Pebble used an administration insider to apply pressure to the administrator who was already embroiled in scandal and had failed to fully clear the deck for Pebble.

## Pro-Pebble Rule Change

Before he left, Pruitt saw greater opportunity in going after the EPA's very authority to implement the Proposed Determination itself. After all, this was Pebble's biggest complaint—EPA overstepped its authority by engaging the 404(c) process prior to a permit application itself.<sup>25</sup>

On June 26, 2018, the EPA signed a memorandum to its Office of Water and Regional Administrators outlining changes that the agency will propose to update the regulations governing its role in permitting discharges of dredged or fill materials under Section 404 of the Clean Water Act (CWA).<sup>26</sup> The memo directs EPA's Office of Water to develop a proposed rulemaking that would consider the key point, among a series of changes:

Eliminating the authority to initiate the section 404(c) process before a section 404 permit application has been filed with the USACE or a state, otherwise known as the "preemptive veto."<sup>27</sup>

The review and "streamlining" of EPA's ability to do its job remains underway and plans to review the agency action appear scheduled for Summer 2019.<sup>28</sup>

Given the nature of the lawsuit settlement and the scoping process in the hands of the USACE, here Pruitt had an opportunity to take another step that could inhibit EPA's work in Bristol Bay (and nationwide). It is critical to understand the importance of this action. By making this move, Pruitt initiated a massive rollback of agency authority, effectively gutting EPA's ability to address, slow or even stop destructive projects such as Pebble.

That said, this final effort was not enough to save his job. The next guy in line, it seems, might be even more favorable toward the Pebble project.

## Pebble Gets a New Inside Man

On March 5, 2019, Andrew Wheeler was confirmed as the new Administrator of the EPA.

Andrew Wheeler was intimately close to the Pebble Mine. His firm, Faegre Baker Daniels LLP, was

acting as Pebble's consultant when it set the May 1, 2017, meeting with Pruitt to settle the lawsuit.<sup>29</sup> Documents acquired by the Natural Resources Defense Council (NRDC) through the FOIA process reveal a series of communications between Pebble, Faegre Baker Daniels and EPA leading up to that May meeting.<sup>30</sup>

Wheeler was not directly involved in these conversations, but his history with Faegre Baker Daniels raises significant alarm bells. He worked "directly" with lobbyist Darrin Munoz on other issues: "lobbying on behalf of coal mining company Murray Energy Corp, uranium miner Energy Fuels Resources, Inc."<sup>31</sup> It was Munoz who set up the initial meetings between Tom Collier and Scott Pruitt in May 2017.

When the conflict was raised in May 2018, EPA explained that, "Wheeler would not be recusing himself on any matter involving Pebble LP or the Pebble Mine project."<sup>32</sup> On May 24, 2018, Wheeler disclosed conflicts in a recusal statement as required under federal ethics laws. However, while he noted Murray Energy and Energy Fuels, he did not list Pebble as one of those conflicts.<sup>33</sup>

A memo dated March 20, 2019, notes that Wheeler does plan to recuse himself on any decisions related to the ongoing Pebble Mine permitting process. In doing so, he has delegated any decisions to EPA General Counsel Matthew Z. Leopold.<sup>34</sup>



Despite his recusal, Wheeler will still drive the effort started by his predecessor to curb his own agency's authority under section 404 of the CWA. And conservative groups such as Americans for Tax Reform are working to ensure that Wheeler "makes an example out of the...Pebble project" by rolling back EPA's 404(c) authority.<sup>35</sup> As of now, it looks as if EPA will take this up in July of 2019.<sup>36</sup>

## Political Permit

### US Army Corps rushing Pebble process to finish in Trump's first term.

While the politics surrounding Pruitt, Wheeler, and the smoke and mirrors of whether or not to withdraw the Proposed Determination swirled in the headlines, Pebble was preparing for the permitting process.

On December 22, 2017, Pebble submitted applications for a key permit under the Clean Water Act to dredge and fill wetlands and authorization under section 10 of the Rivers and Harbors Act to obstruct and alter navigable waters. On January 5, 2018, the USACE posted public notice that the application was received. It took USACE less than two weeks—including holidays and weekends—to review the application and supporting material before deeming it complete despite the massive data dump of documents. Conspicuously missing from Pebble's application were several important items that typically accompany mining applications. **Those include:**

- 1. Pre-feasibility study (or any economic study);**
- 2. Supplemental baseline data and reports;**
- 3. Wetlands delineation and wetlands impact report; and**
- 4. Plans for mitigation, reclamation and post closure.**

The lack of attention to detail merely scratches the surface of a deeply flawed environmental review. At an early stage of scoping, EPA staff expressed concerns that the Pebble scoping documents were incomplete and inadequate to proceed. For example, on February 5, 2018, EPA's David Allnutt wondered how the scoping process "provides no information

about whether the District has determined the application to be complete, or whether it has concluded its completeness review of the application materials."<sup>37</sup> Of those missing elements, EPA noted that the application materials do not include clear statements on how Pebble will mitigate "unavoidable impacts to waters of the United States," nor does it include information about "disposal sites or mixing zone for proposed dredged material effluent."<sup>38</sup> Four days later, in an internal EPA email, Matt LaCroix of USACE explained the omission of compensation and mitigation of dredged material was of "no consequence."<sup>39</sup>

Equally troubling was how the National Environmental Policy Act (NEPA) review time line was established. During its presentation to bid for the consulting contract to prepare the Environmental Impact Statement, Anchorage-based consulting firm AECOM relayed its qualifications to handle the task. However, rather than framing the time line for completion of the Draft Environmental Impact Statement (DEIS) around the need to fully understand and vet the impacts of the proposed project, AECOM instead directly tied its time line to political drivers, namely the goal of having the permitting process wrapped up before the end of the Trump administration's first term.<sup>40</sup>

In so doing, AECOM cited two "schedule drivers" for fast-tracking the Pebble NEPA process. First, AECOM tied the time line to a settlement agreement between Pebble and EPA. The settlement sets a deadline for the Final EIS to be complete and available within 48 months of the date of the settlement agreement. Therefore, by May 2021.<sup>41</sup> Second, AECOM tied the time line to Executive Order 13807 (signed August 15, 2017), which AECOM says "outlines the policy

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of the federal government to make timely decisions (within two years) on reviews and authorization decisions.”<sup>42</sup>

Alternatively, it is worth noting that Pebble CEO Collier has significant financial reasons to see Pebble permitted quickly. Should Pebble secure a Record of Decision by December of 2021, he would receive a “extraordinary bonus” of \$12.5 million.<sup>43</sup>

The efforts to fast-track were just beginning.

### Recklessly Fast Permitting Process

Throughout this process staff across agencies have expressed concerns to each other and even the White House Council on Environmental Quality (CEQ) that the USACE is pursuing every option to push an expedited permit approach to permitting Pebble.

For example, on February 8, 2018, EPA explained that USACE has “developed a starting schedule of two years to complete all the NEPA and *permitting on one of the largest mines in America* (emphasis added). . . . The Corps’ two-year schedule has already highlighted where they plan to skip steps in the NEPA process that would typically have been part of the EIS development.”<sup>44</sup> EPA’s Patty McGrath noted in an email as recently as March 16, 2018, that “[t]he only thing I will add is that the Corps Alaska district has

said that they were told by their HQ to put together a two-year schedule.”<sup>45</sup> Cooperating agencies consistently pushed back on the expedited time line to no avail. USACE has thus far continued to proceed on schedule.

It is hard to compare Pebble to any other mine in Alaska due to its size and complexity. The closest comparison is the Donlin Gold Mine, which took far longer to evaluate. It took more than two-and-a-half years for USACE to complete the DEIS for Donlin compared to merely nine months for Pebble. And while the anticipated public review and comment period for Pebble is 90 days, USACE allowed five months to comment on Donlin.<sup>46</sup> Indeed, the NEPA process on Donlin took nearly six years.

### Creating Permitting Loopholes

Pebble and its administration allies have strived to create new loopholes in the permitting process that would allow Pebble an even faster timeline and review. One key example, pertains to the Fixing America’s Surface Transportation Act (FAST 41). Enacted on December 4, 2015. Title 41 of that act (FAST-41) established new coordination and oversight procedures for infrastructure projects being reviewed by federal agencies. The intention of FAST 41 is to improve early consultation and coordination among government agencies; increase transparency through



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Wheeler was close to Pebble's lobbying efforts. And he will drive the effort started by his predecessor to curb his own agency's authority under section 404 of the Clean Water Act.

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the publication of project-specific timetables with completion dates for all federal authorizations and environmental reviews; and increase accountability through consultation and reporting on projects.<sup>47</sup>

FAST 41 is designed for nation-critical infrastructure, not mining.

On July 28, 2017 Pebble submitted a formal request to the Federal Permitting Improvement Steering Council (FPISC) to add mining as a covered sector under FAST-41.<sup>48</sup>

On numerous occasions, EPA staff expressed deep concern and surprise that Pebble would qualify for FAST 41 status. In early 2018, for example, in an internal EPA email, Patty McGrath noted “I thought that was just for infrastructure projects?”<sup>49</sup> On February 8, 2018, EPA career staff continued to express concern with the FAST 41 process. However, political appointees were looking to open the opportunity for Pebble. And Pebble’s lobbying appeared to be paying off.

On April 18, 2018, Angie Colamaria, the Acting Executive Director of FPISC, sent a memo to the FPISC council members outlining a request to add mining “as a new sector of covered projects” for Fast 41 consideration. In so doing, she specifically cited Pebble’s request. She proposed that “Council Members discuss and vote on the request to add mining as a sector under FAST-41” at their April 20, 2018 meeting.<sup>50</sup>

While the effort appeared to stall prior to the April meeting as a result of public interest group backlash, as of May 15, 2019 there is still an opening the permitting board is going to have a notice and comment on rulemaking about adding ‘critical material’ mining to their list of eligible projects.

## Army Corps Cuts Out Government Experts

On numerous occasions, EPA staff has pushed USACE to have broad engagement in the EIS process. However, USACE was working to limit EPA’s authority.<sup>51</sup> In fact, internal communications reveal EPA staff expressing frustration that “[t]he Corps and

*Pebble are advancing numerous rationales for expediting review, eliminating steps, and limiting cooperating agency review and meaningful public participation.*”<sup>52</sup>

For example, throughout the planning process, USACE repeatedly removed any reference to EPA’s 404 authority and limited EPA to “special expertise” status only. Limiting engagement from EPA staff in the permitting process is significantly concerning. First, EPA has statutory authority over the CWA 404 permit. Second, EPA staff has a long history of work in Bristol Bay. Many of the career staff who worked on the Bristol Bay Watershed Assessment and the Proposed Determination to protect Bristol Bay under the Clean Water Act still work at EPA. They understand the fishery of Bristol Bay, its importance as an ecological and economic resource, and the potential impacts of large-scale mining on the fishery. USACE’s effort to limit EPA staff involvement can and should only be seen as a clear effort to curtail the experience EPA has and the role the agency should play in evaluating and permitting the Pebble project.<sup>53</sup>

EPA staff repeatedly pushed back asking for an expanded role in the permitting process. For example, on January 29, 2018, David Allnutt of EPA Region 10 wrote that “[t]he EPA has significant concerns with the Corps’ proposal to limit EPA’s cooperating agency involvement with the development of the EIS to CWA Section 404 (b)(1) issues... we would not necessarily be afforded the opportunity to provide early input on baseline data review and impact assessment.”<sup>54</sup> In his letter to USACE, Allnutt underscored how EPA has had a range of expertise and roles of managing EIS process in several other Alaska mining projects. USACE repeatedly and swiftly responded by noting that “Sheila [Newman, Regulatory Division Program Manager for USACE] indicated...that she does not see the Corps changing course.”

EPA staff members were not the only experts and key stakeholders cut out of the process. In early iterations, USACE also did not plan to include federally recognized tribes, despite repeated EPA recommendation.<sup>55</sup> Even now, only two of more than 25 federally recognized tribes in the Bristol Bay region have been included as cooperating agencies in the process: Nondalton and Curyung tribes. Both tribes have consistently raised issues with the process. In the

end, USACE only invited one of two Alaska regional boroughs to be a cooperating agency—the Lake and Peninsula Borough, where the mine would be located, but not the Kenai Peninsula Borough, where a large portion of the road, pipeline and ports would be located.<sup>56</sup>

Further, despite repeated requests, USACE saw no need to have a MOU or Cooperating Agency Agreement. Newman (USACE) argued to Patty McGrath (EPA) that a MOU hinders efficiency.<sup>57</sup> A lead agency and cooperating agencies typically enter into MOUs during a NEPA review process, especially in preparation of an EIS. An MOU establishes “lead and cooperating agency roles and responsibilities” and “typically also contain provisions for confidentiality of information, FOIA request coordination, and resolution of issues.”<sup>58</sup> EPA requested such an MOU, because “establishing clarity... at the outset is important, particularly for larger, more controversial projects.”<sup>59</sup>

The frustration with cooperating agency status is clear. Again, Allnutt continued to note that “[t]he Corps and Pebble are advancing numerous rationales for expediting review, eliminating steps, and limiting cooperating agency review and meaningful public participation.”

Career EPA staff are troubled for good reasons: an MOU structure is a cornerstone of a clear and transparent permitting process. Given the number and frequency of MOU requests from cooperating agencies, especially EPA, USACE’s refusal to enter into an MOU is alarming.

### **Review: Nothing Close to “High Quality”?**

On February 20, 2019, the USACE released the DEIS for the proposed Pebble Mine. Under the National Environmental Policy Act, the DEIS is an important step in the public disclosure of environmental risks associated with a project. NEPA regulations specify that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments and public scrutiny are essential to imple-

“[t]he Corps and Pebble are advancing numerous rationales for expediting review, eliminating steps, and limiting cooperating agency review and meaningful public participation.”

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menting NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question...”<sup>60</sup>

The Pebble DEIS is wholly deficient due to the profound lack of information to support a credible environmental review. First, Pebble’s proposed 20-year mine plan is not supported by an economic feasibility analysis. In addition, important aspects of the environmental review are either completely missing from the DEIS or simply ignored. And finally, USACE is limiting the scope of the environmental impact statement to the point where it fails to analyze very real threats to Bristol Bay.

### **Army Corps Isn’t Evaluating a Realistic Mine Plan**

Ronald Thiessen, CEO of Northern Dynasty Minerals, the parent company of Pebble, has no trouble shopping around two different Pebble Mine plans. He promotes a “smaller, more environmentally sensitive project” to the Alaskan public.<sup>61</sup> He tells a very different story to investors. On February 27, 2019, just days after USACE released the DEIS, Thiessen spoke to investors at the BMO Capital Markets Global Metals and Mining Conference, where he told a more honest narrative about Pebble. He touted “many generations of mining.” When asked about the life of the project, he explained that the smaller mine plan was purely to gain social license during permitting so that you can “expand the project beyond” the scope of original permits.<sup>62</sup> The clear suggestion is that Pebble plans to mine well beyond the 20 years they’re seeking permits for. (Indeed, experts suggest that’s the only way they can make money.<sup>63</sup>)

Accordingly, Pebble has repeatedly refused to publicly release any information to support the economic

viability of the 20-year mine plan proposed to Army Corps. The lack of an economic feasibility analysis prompted former Governor Walker to request a suspension of the NEPA process (June 29, 2018). In making the request, Governor Walker recognized the importance of the economic analysis stating, “PLP has yet to demonstrate to us or the Alaska public that they have proposed a feasible and realistic project. Without, at a minimum, a preliminary economic assessment, but preferably a prefeasibility study, the Corps will be unable to take a hard look at all reasonable alternatives in the draft EIS.” The “hard look” requirement and alternatives analysis are the hallmarks of the NEPA process.<sup>64</sup>

In October and December 2018, through AECOM (USACE’s contractor drafting the EIS), USACE requested cost estimates on the project in order to understand the economic feasibility. Northern Dynasty responded, stating it could not give estimates for the mine’s exploration, permitting, development and construction costs claiming it would violate a Canadian rule, known as National Instrument 43-101, Standards of Disclosure for Mineral Projects. Bloomberg News requested further information from USACE, but was denied the request.<sup>65</sup>

This is significant because by allowing this response, USACE is accepting Pebble’s plan as viable, even without the supporting pre-feasibility study and economic assessment. The Clean Water Act requires the Army Corps to choose the Least Environmentally Damaging Practicable Alternative (LEDPA); practicability is defined, in part, by what is economically feasible. The Army Corps should not be in the process of permitting Pebble until it determines it’s feasible.

Without the pre-feasibility study, it is nearly impossible for AECOM, the agencies or the public to review and evaluate the economically feasible design alter-

natives or the scope of environmental impacts based on a realistic mine plan. In fact, on March 28, 2019, Richard Borden, a former environmental scientist and manager for the mining giant Rio Tinto, submitted an independent economic feasibility analysis of the 20-year mine plan to the record. In the analysis, Borden concludes that the 20-year plan shows a \$3 billion loss and is “almost certainly not economically feasible.”<sup>66</sup> He goes on to state, “[A]t a minimum relative capital costs for the different development and design options need to be evaluated by the Army Corps of Engineers so a meaningful options analysis can be conducted on practicable alternatives.”<sup>67</sup> “If the base case mine plan assumed for the EIS is not economic, then the entire permitting process risks being compromised because the impacts and risks being evaluated are much smaller than those required for a full-scale economically viable project.”<sup>68</sup>

The DEIS process is deeply flawed because USACE refuses to independently verify that the proposed mine plan is viable and therefore is limiting the scope of the review. NEPA requires USACE to evaluate all “reasonably foreseeable” environmental effects of the proposed mine plan and a range of practicable alternatives. That includes the evaluation of direct, indirect and cumulative effects.<sup>69</sup> However, the scope of the analysis depends on a realistic plan. In fact, the scope of the analysis should include an evaluation of connected actions and interdependent actions.<sup>70</sup> If the scope of the analysis is limited, then the true environmental effects are not properly evaluated.

In the case of the Pebble environmental review, USACE is limiting the scope of the review to impacts associated with the unrealistic 20-year mine plan. Although USACE makes cursory references to the expansion of the mining venture, it fails to actually analyze the environmental impacts of a much larger—and more realistic—mine on Bristol Bay. Expansion is both “reasonably foreseeable” and “connected” to the small mine plan because not only is the small plan not economically viable but **if Pebble closed up shop after 20 years it would be walking away from nearly 88 percent of the ore deposit**—a highly unrealistic proposition.

To underscore how flawed the proposal is, mining watchdog Earthworks filed a recent complaint to the

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The Pebble DEIS is wholly deficient due to the profound lack of information to support a credible environmental review.

Securities and Exchange Commission, explaining that:

*The project plan submitted to the U.S. Army Corps of Engineers provides only one closure plan—backfill of the open pit with 150 million tons of tailings and 45 million tons of potentially acid generating waste rock, and flooding the pit with water.<sup>8</sup> After digging out the estimated 1.17 billion tons of minerals, and then filling the pit with waste, the remaining 89% of the 11 billion-ton mineral resource would become “sterilized” – i.e. economically and/or technically unfeasible for mining. As explained below, for further mining, the waste would have to be removed from the pit and placed elsewhere. As well, underground mining could be impossible because of the migration of the tailings from the pit to the underground operations.<sup>71</sup>*

Perhaps that’s why the DEIS does not contain any information on a post-closure reclamation plan. It doesn’t exist because Pebble has no intention of walking away.

## Pebble Hiding Risks of Catastrophic Spill

Perhaps most troubling about USACE’s review of the Pebble project is the failure to provide the public and decision-makers with credible information about the true risk to the Bristol Bay fishery and all who depend on it.

The DEIS ignores the environmental effects associated with introducing persistent long-term contamination to an otherwise pristine watershed. It ignores the potential impacts of frequent and continuous toxic leaks and spills from mining operations, support facilities and equipment used in mining and transport of mining products, supplies, and materials. And when it comes to a major failure of the tailings dam, the DEIS fails to consider failure scenarios beyond a 20-year life of the mine. In justifying the decision, USACE states that “massive and catastrophic releases that were deemed extremely unlikely were...ruled out for analysis.”<sup>72</sup>

Yet, tailings dam failures over the more realistic life of the mine are not only “reasonably foreseeable” but highly likely and therefore should be analyzed. If

recent events in Canada (Mount Polley, 2014) and Brazil (Samarco and Brumadinho, 2015 and 2019) are any indication of the risk, USACE is obligated to analyze it under NEPA especially considering Pebble’s plan to use the same tailings dam design that failed in those instances.<sup>73</sup>

A recent report, independently commissioned by the Bristol Bay Regional Seafood Development Association, modeled the impacts of a full tailings dam failure to the Bristol Bay watershed. According to the study, “[u]nder all of the scenarios tested, our model results indicate that the tailings from a dam breach would travel more than 75 kilometers (~50 miles) downstream, beyond the confluence with the Mulchatna River, where the majority of our simulations end. Over the entire modeled reach, the mudflow fills the valley bottoms, spreading tailings across the off-channel habitat in the floodplains. The tailings within this limited model domain alone would be deposited in approximately 250 kilometers (155 miles) of streams that are mapped as salmon habitat (Johnson and

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The DEIS virtually ignores impacts from infrastructure, downstream effects, cumulative effects, effects related to climate change, and long-term effects associated with introducing persistent toxic contamination to an otherwise pristine ecosystem.



Pebble CEO, Tom Collier (Center) at the DEIS Public Hearing in Anchorage - April 16, 2019

Blossom, 2018) and approximately 700 kilometers (435 miles) of streams that have been identified as potentially suitable for salmon spawning and/or rearing (Woll et al., 2012). In these simulations, up to 80% of tailings are still moving through the downstream boundary of the model.”<sup>74</sup>

In summary, by ignoring the true scope and scale of the mine proposal, the DEIS simply does not credibly evaluate the environmental impacts of the proposed mine plan. It also virtually ignores impacts from infrastructure, downstream effects, cumulative effects, effects related to climate change, and long-term effects associated with introducing persistent toxic contamination to an otherwise pristine ecosystem. The deficiencies cannot be cured without starting over.

## Conclusion: Pebble Mine’s Path to Permit Doesn’t Hold Water

Over the past two years, it is clear that leadership in EPA and USACE have been working with Pebble to push an unrealistic mine plan. In doing so, USACE is cutting corners, rushing the process, and ignoring the long-standing tenets of a scientifically credible environmental review. Despite years of concerns and the strong scientific record in favor of protecting Bristol Bay from large-scale mining, this process is a fixed game with a predetermined outcome.

This report is based on documents and information gathered through the FOIA process, and therefore can only highlight emerging trends based on an incomplete record. But this close look at a few key moments during Pebble’s abrupt turn of fortune starting in November 2016 is alarming and warrants a critical review of the Pebble mine permitting process.

Without further investigation and political intervention, America is headed toward approving construction of one of the largest mines on the planet at the headwaters of the world’s largest and most important wild salmon fishery. The Bristol Bay Watershed

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## Congress and the American public have a critical choice to make.

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Assessment, based on a rigorous peer-reviewed scientific process, determined that the Pebble Mine poses unacceptable risks to the Bristol Bay fishery and all who depend on it. In contrast, the DEIS that purports that there will be no significant environmental impacts is a far cry from a credible scientific document.

Congress and the American public have a critical choice to make. Will they stand by and let a Canadian mining company and their friends in the administration recklessly permit a massive toxic waste facility in the last great salmon ecosystem in North America? Will they allow this administration to sacrifice one of our last great climate refuges for fish and wildlife, dozens of indigenous communities with thousands of years of history, and a thriving seafood economy that feeds the world—all for foreign mining interests? This report makes clear that Pebble and the administration’s conduct over the past two years has been highly suspect. Now it’s time for decision makers in Congress to investigate further. And, where appropriate, act decisively.

# Endnotes

- 1 <https://www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/index.html>;
- 2 <https://www.politico.com/newsletters/politico-influence/2019/01/23/k-street-reports-another-strong-year-under-trump-489102>
- 3 Cook Inlet Keeper, *The Pebble Mine: Lobbyists and Lies – A Payday for the Washington Swamp, a Scam for Alaskans*. April 30, 2019. <https://inletkeeper.org/wp-content/uploads/2019/05/LobbyingReportPebble.pdf>
- 4 <https://www.eenews.net/stories/1060075043>
- 5 U.S. Environmental Protection Agency Office of the Inspector General. *EPA's Bristol Bay Watershed Assessment: Obtainable Records Show EPA Followed Required Procedures Without Bias or Predetermination*. January 13, 2016.
- 6 <https://www.eenews.net/greenwire/stories/1060055768/print>
- 7 <https://www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/index.html>;
- 8 Drew Griffin, Scott Bronstein & John D. Sutter, *EPA Head Met with a Mining CEO—and Then Pushed Forward a Controversial Mining Project*, CNN, Sept. 22, 2017 <http://www.cnn.com/2017/09/22/politics/pebble-epa-bristol-bay-invs/>.
- 9 <https://www.epa.gov/bristolbay/2017-settlement-agreement-between-epa-and-pebble-limited-partnership>
- 10 The timing wasn't the only issue of concern here. It is notable that EPA press official Jahan Wilcox dismissed certain news outlets as options for EPA staff to discuss the settlement because of their perceived political reputation. On an interview with a reporter for the Bristol Bay public radio station, he exclaimed, "No way. It's a liberal station in Alaska." This is one of a number examples that shows EPA appeared to be now favoring one media source over others in ways that benefited not only the agency, but Northern Dynasty Minerals and the Pebble project.
- 11 <https://www.eenews.net/stories/1060075043>; see also email itself - [https://www.eenews.net/assets/2018/02/28/document\\_gw\\_16.pdf](https://www.eenews.net/assets/2018/02/28/document_gw_16.pdf)
- 12 The irony here is that the announcement had little to no effect on Pebble's stock prices.
- 13 <https://www.first-quantum.com/Media-Centre/Press-Releases/Press-Release-Details/2017/First-Quantum-Minerals-Enters-into-a-Framework-Agreement-with-Northern-Dynasty-Minerals/default.aspx>
- 14 <https://www.eenews.net/stories/1060080079/print>
- 15 *Id.*
- 16 EPA press release on January 26, 2018. <https://www.epa.gov/newsreleases/epa-administrator-scott-pruitt-suspends-withdrawal-proposed-determination-bristol-bay>
- 17 January 30, 2018 - E&E News Story
- 18 <https://www.eenews.net/stories/1060075043>
- 19 Competitive Enterprise Institute to Andrew Wheeler, Administrator USEPA. Request for Correction Number 19001 Pertaining to the Bristol Bay Watershed Assessment. March 20, 2019.
- 20 Note: EPA withheld this letter in FOIA request. Expected receipt in next FOIA request
- 21 April 25, 2018. Tom Collier to Scott Pruitt. FOIA Document
- 22 March 20, 2018, E&E Story. See also <https://www.adn.com/politics/2018/03/21/house-republicans-needle-epa-on-pebble-mine-decision-minus-don-young/>. Emphasis added.
- 23 Dating back to the settlement process, Pebble pushed back against the Proposed Determination for reasons of 'market perception.' For example, in email dated April 4, 2017, Pebble lawyer Ron Tempas, wrote: "It does not matter at this point whether, in fact, EPA ever pursues that option or not—the fact is that such a settlement will tell the public markets that nothing meaningful has ever changed with respect to EPA's overall prior hostility toward the project, especially against the backdrop of EPA's insisting on terms that also allow it to make use of the BBWA in the future and forego withdrawing the existing Proposed Determination."
- 24 Stephen Lee, "Pebble CEO Feeling Riled Up by EPA's Pruitt," Bloomberg News, June 14, 2018. <https://news.bloombergenvironment.com/environment-and-energy/pebble-mine-ceo-feeling-riled-up-by-epas-pruitt>; accessed February 13, 2019.
- 25 Reminder, it didn't overstep and was clearly legally allowed to act as it did. see *Mingo Logan Coal Co. v. EPA*, 714 F. Supp. 3d 608, (D.D.C. 2013), "Con-

- gress granted EPA a broad environmental ‘back-stop’ authority over the Secretary’s discharge site selection in subsection 404(c)... Section 404 imposes no temporal limit on the Administrator’s authority to withdraw the Corps’ specification but instead expressly empowers him to prohibit, restrict or withdraw the specification ‘whenever’ he makes a determination that the statutory ‘unacceptable adverse effect’ will result... Using the expansive conjunction ‘whenever,’ the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at any time.” Mingo Logan, 714 F.3d at 612-614.
- 26 <https://www.epa.gov/cwa-404/memo-updating-epas-regulations-implementing-clean-water-act-section-404c>
- 27 Other changes include: Eliminating the authority to initiate the section 404(c) process after a permit has been issued by the USACE or a state, otherwise known as the “retroactive veto.”
- Requiring a Regional Administrator to obtain approval from EPA Headquarters before initiating the section 404(c) process.
- Requiring a Regional Administrator to review and consider the findings of an Environmental Assessment or Environmental Impact Statement prepared by the USACE or a state before preparing and publishing notice of a proposed determination.
- Requiring EPA to publish and seek public comment on a final determination before such a determination takes effect.
- 28 <https://www.reginfo.gov/public/do/eAgenda-ViewRule?pubId=201810&RIN=2040-AF88>
- 29 Attached are NRDC’s FOIA documents showing this.
- 30 And here is a summary of what those docs contain:
- On April 21, 2017, Darrin Munoz of Faegre Baker Daniels LLP emails numerous EPA employees (Sydney Hupp, Ryan Jackson, Justin Schwab, and Sharnett Willis) asking for a meeting with Pruitt on Pebble Mine. (“I’m with Faegre Baker Daniels here in town and I represent the Pebble Mine in Alaska. The CEO Tom Collier will be in DC from Alaska next week and would appreciate the opportunity to meet with the Administrator if he is available, or his Chief of Staff Mr. Jackson. He will be here on Friday, April 28, and Monday, May 1, if either of those dates would work. Thank you for your attention at such short notice.”)
- On April 21, 2017, Pruitt’s Chief of Staff Ryan Jackson responds to Munoz to say “We would be happy to. What times work?”
- That same day EPA’s Office of the Administrator is able to set a time to meet with Munoz and Tom Collier on May 1, 2017.
- On May 1, 2017, Tom Collier and Darrin Munoz met with Administrator Pruitt
- On May 11, 2017, Munoz emails Albert Kelly, Senior Advisor to Administrator Pruitt to ask about an item unrelated to BB (regulations related to uranium and thorium ore processing) and says “First off I wanted to thank you for meeting with myself and the folks from Pebble Mine a few weeks ago. We really appreciated you and the Administrator’s time.”
- 31 Dylan Brown. “Foes in Pebble mine war scrutinize Wheeler’s ties to project.” Greenwire: Energy and Environment News. July 24, 2018. <https://www.eenews.net/greenwire/stories/1060090195>
- 32 Ibid.
- 33 Ibid.
- 34 <https://news.bloombergenvironment.com/environment-and-energy/epa-chief-wheeler-recuses-himself-from-pebble-mine-decision>
- 35 Dylan Brown. “Conservatives push Wheeler to help Pebble. Greenwire: Energy and Environment News. September 10, 2018. <https://www.eenews.net/greenwire/stories/1060096407>
- 36 <https://www.reginfo.gov/public/do/eAgenda-ViewRule?pubId=201810&RIN=2040-AF88>
- 37 February 5, 2018 - Letter from David Allnut to Sheila Newman. EPA - 5178-0000088
- 38 February 5, 2018 - Letter from David Allnut to Sheila Newman. EPA - 5178-0000088
- 39 February 9, 2018. Internal EPA Email from Matt LaCroix regarding a conversation he had with Sheila Newman. EPA 5178-0000092.
- 40 We know that other firms who were going to bid on this contract turned it down because the USACE was demanding a fast timeline, and those firms did not feel comfortable completing an EIS in that timeframe. It’s also an open secret in Washington that the administration wants to permit major developments including Pebble in its first term. New documents are forthcoming regarding this timeline question.
- 41 AECOM “Technical 3rd Party EIS Proposal -

- Prepared for United States Army Corps of Engineers.” January 29, 2018; page 3.
- 42 AECOM “Technical 3rd Party EIS Proposal - Prepared for United States Army Corps of Engineers.” January 29, 2018; page 3.
  - 43 See Northern Dynasty Minerals Ltd., Information Circular (May 16, 2018), pp. 20-21 and 25-26, on file with the SEC and available at <https://www.sec.gov/Archives/edgar/data/1164771/000106299318002329/exhibit99-3.htm>
  - 44 Email from Jill Nogi (EPA) following an EPA/CEQ phone call on February 8, 2018. FOIA - EPA-5178-0000122 and EPA - 5178-0000132.
  - 45 March 16, 2018. Email exchange between David Allnutt, Chris Hladick and Patty McGrath. FOIA - EPA -5178-0000093.
  - 46 <https://pebblewatch.com/pebble-donlin-gold-comparison-permitting-timelines/>
  - 47 <https://www.energy.gov/oe/mission/transmission-permitting-and-technical-assistance-division/fast-41>
  - 48 Letter from PLP to Federal Permitting Improvement Steering Council, July 28, 2017.USACE FOIA Response to NRDC.
  - 49 December 1, 2017, Internal EPA email. EPA - 517800000046
  - 50 April 18, 2018. Memorandum - Angie Colamaria to Council Members of the Federal Permitting Improvement Steering Council. “Revised Request for the Addition of Mining as a Sector of Covered Projects under FAST 41”
  - 51 December 20, 2017, Email from Sheila Newman (USACE) to potential cooperating agencies. EPA - 5178-0000050.
  - 52 (David Allnutt, March 7, 2018)
  - 53 January 13, 2018. USACE Memo. EPA 5178-0000025.
  - 54 January 29, 2018. Letter from David Allnutt, EPA, Region 10 Office of Environmental Review and Assessment, to Colonel Brooks, USACE. EPA-5178-0000006.
  - 55 January 11, 2018. Letter from David Allnutt, EPA, to Sheila Newman, USACE. FOIA - EPA -5178-000001.
  - 56 January 11, 2018. Letter from David Allnutt, EPA, to Sheila Newman, USACE. FOIA - EPA -5178-000001.
  - 57 January 16, 2018. Phone call between Patty McGrath, EPA, and Sheila Newman, USACE. EPA - 5178-0000024.
  - 58 January 11, 2018. Letter from David Allnutt, EPA, to Sheila Newman, USACE. EPA- 5178-0000001.
  - 59 January 11, 2018. Letter from David Allnutt, EPA, to Sheila Newman, USACE. EPA- 5178-0000001.
  - 60 NEPA Reg (40 CFR 1500.1(b))
  - 61 <https://www.adn.com/opinions/2019/03/24/dont-buy-the-alarmism-about-the-pebble-mine/>
  - 62 [https://event.webcasts.com/starthere.jsp?ei=1234294&tp\\_key=2a250b24a0&tp\\_special=8](https://event.webcasts.com/starthere.jsp?ei=1234294&tp_key=2a250b24a0&tp_special=8)
  - 63 Letter from Richard Borden to Shane McCoy, USACE, March 28, 2019.
  - 64 Alaska Governor Bill Walker to USACE. Letter seeking economic feasibility study of proposed Pebble Mine. July 2, 2018.
  - 65 <https://news.bloombergenvironment.com/environment-and-energy/pebble-mines-canadian-owner-rebuffs-us-financial-queries>
  - 66 Letter from Richard Borden to Shane McCoy, USACE. March 28, 2019.
  - 67 Id. at 5.
  - 68 Id.
  - 69 40 CFR section 1508.25(c).
  - 70 Id. at section 1508(a)(1).
  - 71 April 26, 2019. Earthworks and Justice and Corporate Accountability Project, to Whistleblower of SEC. <https://earthworks.org/cms/assets/uploads/2019/04/2.-Pebble-USSEC.pdf>
  - 72 AECOM. Pebble EIS – Phase Failure Modes and Effects Analysis Workshop Report. USACE, Alaska District. December 2018. Page 13. <https://pebbleprojecteis.com/files/e1d0473c-8a1a-44aeb8f7-97f2ffd1532f>
  - 73 Lynker Technologies, A Preliminary Model Analysis of Flow and Deposition from a Tailings Dam Failure at the Proposed Pebble Mine (March 12, 2019), Executive Summary.
  - 74 Lynker Technologies, A Preliminary Model Analysis of Flow and Deposition from a Tailings Dam Failure at the Proposed Pebble Mine (March 12, 2019), Executive Summary.