

Testimony of Dennis J. McLerran
House Transportation and Infrastructure Committee
October 23, 2019

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 sockeye 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 inappropriately 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.