

**U.S. House of Representatives
Committee on Science, Space, and Technology
Subcommittee on Oversight**

HEARING CHARTER

EPA's Bristol Bay Watershed Assessment – A Factual Review of a Hypothetical Scenario

Thursday, August 1, 2013
1:00 p.m. – 3:00 p.m.
2318 Rayburn House Office Building

Purpose

On August 1, 2013, the Subcommittee on Oversight will hold a hearing titled, “EPA’s Bristol Bay Watershed Assessment – A Factual Review of a Hypothetical Scenario.” The purpose of the hearing is to review the U.S. Environmental Protection Agency’s (EPA) draft Bristol Bay watershed assessment (BBWA) titled, “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.”¹ According to the EPA, its focus relative to this document is on a “timely completion of a robust and technically sound scientific Assessment.”² The Committee will review the EPA’s timing and rationale for conducting the draft watershed assessment.

Witnesses

- **Mr. Lowell Rothschild**, Senior Counsel, Bracewell & Giuliani LLP
- **Dr. Michael Kavanaugh**, Senior Principal, Geosyntec Consultants, and Member, National Academy of Engineering
- **Mr. Wayne Nastri**, Co-president, E4 Strategic Solutions, and Former Regional Administrator, USEPA Region 9
- **Mr. Daniel McGroarty**, President, American Resources Policy Network

Background

By some estimates, the Bristol Bay watershed in Alaska, home to the Pebble deposit, contains the second largest reserves of gold and copper in the world. The watershed also supports the largest sockeye salmon fishery in the world. According to a recent *Washington Post* editorial, while this area “is one of the last unspoiled habitats in the world,”³ it is also “rich in other natural resources; billions of dollars sit under the ground there in one of the largest finds of

¹ Bristol Bay Assessment, available at: <http://www2.epa.gov/bristolbay>.

² Letter from EPA Associate Administrator Arvin Ganesan to House Science, Space, and Technology Committee Chairman Lamar Smith and Subcommittee on Oversight Chairman Paul Broun, April 4, 2013.

³ Editorial, “Bristol Bay Mining Proposal Must Be Thoroughly Studied,” *The Washington Post*, June 23, 2013, available at: http://www.washingtonpost.com/opinions/bristol-bay-mining-proposal-must-be-thoroughly-studied/2013/06/23/9c4c1a20-d9ec-11e2-9df4-895344c13c30_story.html.

copper, gold and molybdenum in the United States.”⁴ An economic study by IHS Global Insight indicates there are up to an estimated 107 million ounces of gold, 81 billion pounds of copper, and 5.6 billion pounds of molybdenum, within the Pebble deposit at Bristol Bay.⁵

In 2007, two mining companies joined together to form the Pebble Limited Partnership (PLP) to “design, permit, construct and operate a modern, long-life mine at Pebble.”⁶ With some estimating that the Pebble deposit could be worth \$500 billion,⁷ the PLP’s projected annual operating budget has been estimated at \$1 billion⁸ - even though it has not filed a mining permit.

In 2010, several Alaskan tribes and organizations wrote to EPA requesting that the agency “initiate a public process under Section 404(c) of the Clean Water Act, to protect waters, wetlands, fish, wildlife, fisheries, subsistence and public uses in the Kvichak and Nushagak drainages and Bristol Bay of Southwest Alaska from metallic sulfide mining, including a potential Pebble mine.”⁹ In response, EPA conducted a watershed assessment using its general research authority under Section 104(a) and (b) of the Clean Water Act.¹⁰

EPA completed and released the first draft of this assessment in May 2012. In August 2012, EPA convened a three-day meeting in Alaska for a twelve-member external peer review panel to evaluate the scientific and technical merit of the BBWA. Afterward, the peer reviewers submitted written comments to EPA in September 2012, and in November, the agency released the final peer review report.¹¹

In April 2013, EPA released a revised version of the assessment, which was made available for public comment at the same time as to the original twelve peer reviewers. The peer reviewers were tasked with evaluating the revisions EPA made to the first draft assessment. The comment period for this revised assessment ended on June 30, 2013, and it is EPA’s goal to “finalize the assessment in 2013 after reviewing additional public comments, consulting and coordinating with tribes and considering input from the expert peer reviewers.”¹²

⁴ Ibid.

⁵ “The Economic and Employment Contributions of a Conceptual Pebble Mine to the Alaska and United States Economies,” IHS Global Insight, May 2013, available at:

<http://corporate.pebblepartnership.com/files/documents/study.pdf>; (hereinafter IHS Study).

⁶ The Pebble Partnership, available at: <http://corporate.pebblepartnership.com/about.php>.

⁷ Edward Lempinen, “Proposed Pebble Mine Has Alaskan Community Focused on Critical Science and Policy Issues,” American Association for the Advancement of Science, October 18, 2011, available at: http://www.aaas.org/news/releases/2011/1018arctic_div_pebble.shtml.

⁸ IHS Study, *supra*, note 5.

⁹ Joint letter from six Federally recognized Tribes to former EPA Administrator Lisa Jackson and EPA Region 10 Administrator Dennis McLerran, May 2, 2010, available at: <http://ourbristolbay.com/pdf/tribes-letter-to-epa-on-404-c.pdf>.

¹⁰ EPA Revised Draft Assessment, Executive Summary, available at:

http://www.epa.gov/ncea/pdfs/bristolbay/bristol_bay_assessment_erd2_2013_vol1_exec_summary.pdf.

¹¹ “External Peer Review of EPA’s Draft Document – An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska,” September 17, 2012, available at:

<http://www.epa.gov/ncea/pdfs/bristolbay/Final-Peer-Review-Report-Bristol-Bay.pdf>; (hereinafter Final Peer Review Report).

¹² Bristol Bay Assessment Fact Sheet, April 2013, available at:

<http://www2.epa.gov/sites/production/files/documents/bba-update-revjune2013.pdf>.

Issues

Two Sides of the Debate

The discussion over Bristol Bay stems from groups with two different perspectives. Environmentalists generally believe the Bristol Bay region to be too important and too pristine to risk allowing any type of mining activity to take place in the area. According to one think tank:

“This remote wild region is off the electrical grid, and to heat and power their villages, the Alaska Native communities must either ship in fuel or harness renewable resources. Construction of the mine will therefore also require the building of significant amounts of supporting infrastructure, including roads, power plants, pipelines, and a port, and the resulting development would have destructive environmental impacts for hundreds of square miles.”¹³

The other side of the argument is that there may be a way for both to coexist, that “we can have mining in Alaska and protect the Alaska salmon.”¹⁴ According to a grassroots organization:

“EPA chose to examine a ‘hypothetical’ mine plan, one that had not even gone through their own review process, and then came to the rather obvious conclusion that it wasn’t safe enough. We all agree on the importance of preserving our environment, and protecting the health of the Alaska salmon fishery and related jobs, but there is already an established set of rules in place to do just that.”¹⁵

Peer Reviewers Concerns

Some members of EPA’s external peer review panel raised similar concerns about the scientific soundness of the draft assessment given its reliance on hypothetical mining scenarios. These include:

Dr. Dirk van Zyl:

“The failure likelihoods and consequences on salmonid fish are very dependent on the assumptions for the hypothetical mine. These uncertainties are neither clearly identified nor included in the evaluations. This is a major shortcoming of the present analysis.”¹⁶

¹³ Jessica Goad, Shiva Polefka, Michael Conathan, and Christy Goldfuss, “Mining in Alaska’s Bristol Bay Region Threatens a Sustainable Economy,” *Center for American Progress*, June 27, 2013, available at: <http://www.americanprogress.org/issues/green/report/2013/06/27/68127/mining-in-alaskas-bristol-bay-region-threatens-a-sustainable-economy-2/>.

¹⁴ Nansen Malin, “Pebble Mine: We Can Have Jobs and Salmon,” *Chinook Observer*, July 2, 2013, available at: <http://northwestopinions.com/chinook-observer/pebble-mine-we-can-have-jobs-and-salmon/>.

¹⁵ *Ibid.*

¹⁶ Final Peer Review Report, *supra*, note 11.

Dr. William A. Stubblefield:

“It is also unclear why EPA undertook this evaluation, given that a more realistic assessment could probably have been conducted once an actual mine was proposed and greater detail about operational parameters available.”¹⁷

Intent

EPA’s purpose for drafting the BBWA is unclear. The agency was asked to take preemptive action under Section 404(c) of the Clean Water Act prior to any mining permit application, but it elected instead to proceed with a watershed assessment under a different section of the Act. If EPA plans to base a significant federal decision on the basis of this watershed assessment, it is critical that the document be scientifically sound and beyond reproach. Dr. Michael Kavanaugh, one of the witnesses for today’s hearing, told the peer review panel in Alaska last year that the BBWA:

“fails to meet widely accepted quality standards that must be satisfied to produce a credible scientific and technical assessment. The report both significantly exaggerates both the probabilities of failures of all engineered mining components and the environmental consequences of these failure scenarios.”¹⁸

Timing

The speed with which EPA has completed this assessment has prompted some to comment that this is the “largest watershed assessment they’ve [EPA] ever done in the shortest amount of time.”¹⁹ This has prompted questions such as that raised by several Senators in a recent letter to EPA, “**What harm would result from EPA allowing Pebble Mine proponents to actually apply for a Clean Water Act permit before commenting on potential mining impacts, instead of the agency speculatively opining on hypothetical scenarios?**”²⁰ (Emphasis in original.)

¹⁷ Ibid.

¹⁸ Tim Bradner, “Both Sides of Pebble Find Fault with EPA Study,” Alaska Journal of Commerce, August 23, 2012, available at: <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/August-Issue-4-2012/Both-sides-of-Pebble-find-fault-with-EPA-study/>.

¹⁹ Monica Trauzzi, “Bristol Bay: Pebble Mine’s Shively Discusses Future of Project, EPA’s Watershed Assessment,” *E&E News* – OnPoint Interview, June 13, 2013, available at: <http://www.eenews.net/eenewspm/stories/1059982823/search?keyword=shively>.

²⁰ Letter from Senators Vitter, Barrasso, Crapo, Wicker, and Boozman, to EPA Senior Policy Advisor Ken Kopocis, June 11, 2013, available at: http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=c5687274-ac36-434f-988e-0335fd9fc9f6.