

1 HOUSE COMMITTEE ON SCIENCE, SPACE AND TECHNOLOGY
2 U.S. HOUSE OF REPRESENTATIVES,
3 WASHINGTON, D.C.

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6 DEPOSITION OF: PHILLIP NORTH

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10 Thursday, April 15, 2016

11 Washington, D.C.

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14 The deposition in the above matter was held in
15 Room 2325 Rayburn House Office Building,
16 commencing at 10:29 a.m.

17 Appearances:

18 FOR THE COMMITTEE ON SCIENCE, SPACE, AND

19 TECHNOLOGY:

20 [REDACTED], SENIOR COUNSEL

21 [REDACTED], COUNSEL

22 [REDACTED], CHIEF INVESTIGATOR

23 [REDACTED], COUNSEL

24 [REDACTED]

25 [REDACTED], PH.D., DEMOCRATIC STAFF DIRECTOR

26 [REDACTED], RESEARCH ASSISTANT

27 [REDACTED], GENERAL COUNSEL

28 [REDACTED], STAFF DIRECTOR

29 [REDACTED], PROFESSIONAL STAFF MEMBER

30 [REDACTED], PROFESSIONAL STAFF

31

32 FOR THE WITNESS:

33 CLIFFORD & GARDE LLP

34 BY: BILLIE PIRNER GARDE, ATTORNEY AT LAW

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37 Suite 500

38 Washington, D.C. 20036

39 (202) 280-6115

40 Exhibit 1 Subpoena

41 Exhibit 2 Position Description

42 Exhibit 3 Pebble Project Archive, Technical

43 Working Groups Document

44 Exhibit 4 1-12-10 E-mail, MacCay to TWG

45 Members

46 Exhibit 5 First Supplement Declaration of

47 Richard B. Parkin

48 Exhibit 6 Bristol Bay Assessment, January

49 2014, Authors, Contributors and

50 Reviewers

51 Exhibit 7 Federal Register Vol 79 No 139,

52 7-21-14 Notices

53 Exhibit 8 Complaint

54 Exhibit 9 7-17-13 Redoubt Reporter Article,

55 "Full Phil, EPA's North Sets Sail

56 After Eventful Career"

57 Exhibit 10 4-4-16 Alaska Dispatch News

58 Article, "Hard-to-find EPA

59 Scientist Tells Where He's Been"

60 Exhibit 11 Joint Letter, Hobson to Jackson

61 Exhibit 12 7-17-13 Article, The Mouth of the

62 Kenai, "Full Phil, EPA's North

63 Sets Sail After Eventful Career"

64 Exhibit 13 10-15-14 E-mail, Holthaus to Gilbride

- 65 Exhibit 14 10-28-10 E-mail, Szerlog to Stern
- 66 Exhibit 15 12-19-10 E-mail, Parkin to
Steiner-Riley
- 68 Exhibit 16 11-4-10 E-mail, Hunter to Hough
- 69 Exhibit 17 2-3-11 E-mail, North to Kader
- 70 Exhibit 18 2-14-12 E-mail, Parker to Hough

71 [REDACTED]: I'd like to note for the record
72 that we are getting started 27 minutes late,
73 10:27. This is a deposition of Phil North
74 conducted by the House Committee on Science,
75 Space, and Technology. This deposition is
76 occurring under a subpoena issued by chairman
77 Lamar Smith as part of the committee's
78 investigation of U.S. Environmental Protection
79 Agency's decision to block the Pebble Mine in
80 Bristol Bay, Alaska under Section 404(c) of the
81 Clean Water Act.

82 Before I get into my preamble, I'll mark the
83 subpoena as Exhibit 1 and enter it into the
84 record.

85 (Deposition Exhibit 1 was marked
86 for identification.)

87 [REDACTED]: In the past, Mr. North has made it
88 difficult for committee staff to interact with
89 him. So it was necessary to issue a subpoena for
90 his appearance today.

91 Could the witness please state your name for
92 the record.

93 MR. NORTH: Phillip North.

94 [REDACTED]: My name is [REDACTED], and I'm
95 counsel for Chairman Smith's committee staff. I

96 will now ask everyone present from the committee
97 to also introduce themselves for the record.

98 [REDACTED]: [REDACTED], counsel for
99 the majority staff.

100 MR. BABIN: I'm Congressman Brian Babin on the
101 science committee.

102 [REDACTED]: [REDACTED]. I'm counsel for the
103 Democratic staff.

104 [REDACTED]: [REDACTED], minority
105 oversight staff.

106 [REDACTED]: [REDACTED],
107 environment subcommittee, Democratic staff.

108 [REDACTED]: [REDACTED], majority staff.

109 [REDACTED]: [REDACTED], majority staff.

110 [REDACTED]: [REDACTED], general counsel,
111 majority staff.

112 [REDACTED]: [REDACTED], oversight
113 subcommittee.

114 [REDACTED]: [REDACTED], minority staff.

115 [REDACTED]: [REDACTED], minority staff.

116 [REDACTED]: Because the witness is compelled
117 to be here by subpoena, we are operating pursuant
118 to House Rule 10, and the rules articulated in a
119 floor speech by Chairman Sessions dated January 7,
120 2015, which covers the procedures for today's

121 deposition.

122 We have previously discussed these guidelines
123 with your counsel and provided her with copies of
124 both. We have copies of the rules here with us
125 today so we can all stay on the same page. I'll
126 go over them now briefly for the record.

127 The way the questioning proceeds is the
128 majority will ask questions first for up to an
129 hour, and then the minority will have an
130 opportunity to ask questions for an equal period
131 of time if they choose. We will firmly adhere to
132 the one-hour time limit for each side, and I will
133 manage the clock so we all know exactly how much
134 time is remaining in any given round.

135 Questions may only be asked by a member of the
136 committee or a staff attorney designated by the
137 chairman or ranking member. We will rotate back
138 and forth, one hour per side, until we are out of
139 questions, and the deposition will be over.

140 As I mentioned, we are operating under
141 compulsion. Unlike in the voluntary interview
142 setting, the witness is required to answer all
143 questions posed except to preserve a privilege.
144 The witness or his counsel may object to a
145 question to preserve a privilege, and not for any

146 other reason, such as if the answer would be
147 uncomfortable or confidential. If the witness
148 objects to a question, the objection should be
149 stated clearly and in a nonargumentative manner.

150 Members and committee staff are not permitted
151 to raise formal objections. Only the witness or
152 his counsel may do so.

153 The chairman will rule on the objection after
154 the deposition has adjourned, and there's a
155 process in the deposition procedures for
156 adjudicating any objections.

157 With respect to objections, be apprised that
158 U.S. House of Representatives and the Committee do
159 not recognize any purported nondisclosure
160 privileges associated with the common law,
161 including but not limited to the deliberative
162 process privilege, the attorney-client privilege,
163 and attorney work product protections and any
164 purported contractual privileges, such as a
165 nondisclosure agreement.

166 As you can see, there's an official reporter
167 taking down everything we say to make a written
168 record. So we ask that you give verbal responses
169 to all questions. It's also important that we
170 don't talk over one another so the court reporter

171 can take down a clear record.

172 Do you understand?

173 MR. NORTH: I do.

174 [REDACTED]: All witnesses who appear before
175 the committee may be accompanied by counsel.

176 Are you appearing today with counsel?

177 MR. NORTH: Yes.

178 [REDACTED]: Would counsel please state your
179 name for the record.

180 MS. GARDE: Billie Garde, Law Firm of Clifford
181 & Garde.

182 MR. CLIFFORD: John Clifford.

183 [REDACTED]: We want you to answer our
184 questions in the most complete and truthful manner
185 possible. So we'll take our time. If you have
186 any questions or if you don't understand any of
187 our questions, please let us know.

188 If you honestly don't know the answer to a
189 question or do not remember, it is best not to
190 guess. Please give us your best recollection, and
191 it's okay to tell us if you learned information
192 from someone else. Just indicate how you came to
193 know the information. If there are things you
194 don't know or can't remember, just say so and
195 please inform us who, to the best of your

196 knowledge, might be able to provide a more
197 complete answer to the question.

198 We'd like to take a break whenever it's
199 convenient for you. This can be after every hour
200 of questioning, after a couple of rounds, whatever
201 you prefer.

202 During a round of questioning, if you need
203 anything, a glass of water, a quick break, please
204 let us know and we'll go off the record and stop
205 the clock. We'd like to make this process as easy
206 and comfortable as possible.

207 House deposition procedures require a member of
208 the Committee to be present during the deposition.
209 It is my understanding that Mr. North has not
210 waived that requirement for today's deposition.

211 Is that correct?

212 THE WITNESS: Yes.

213 [REDACTED]: Members of the Committee will
214 rotate in and out throughout the day. The House
215 of Representative is in session today, and there
216 may be votes on the floor at some point, and there
217 are a number of different Committee activities as
218 well. So there may be breaks and times when we
219 have to unexpectedly take a break until a member
220 returns.

221 We are not able to circumscribe our questions
222 to account for time that we lose because members
223 have busy schedules, but the witness may waive the
224 15E requirement at any time.

225 In a moment, you will be placed under oath.

226 Title 18, Section 161 of the United States Code
227 requires that you answer truthfully when you are
228 under oath. Also, Title 18, section 1001 requires
229 you to answer questions from Congress truthfully.

230 Do you understand?

231 MR. NORTH: Yes.

232 [REDACTED]: This also applies to questions
233 posed by Congressional staff.

234 Do you understand?

235 MR. NORTH: Yes.

236 [REDACTED]: Witnesses that knowingly provide
237 false testimony could be subject to criminal
238 prosecution.

239 Do you understand?

240 MR. NORTH: Yes.

241 [REDACTED]: Is there any reason that you are
242 unable to provide truthful answers to questions
243 today?

244 MR. NORTH: No.

245 [REDACTED]: Pursuant to House rules, the

246 witness will be sworn in before providing
247 testimony during a deposition.

248 (Witness Sworn.)

249 THE WITNESS: Yes.

250 [REDACTED]: Let the record reflect that
251 witness answered in the affirmative.

252 I'd like to note that the content of what we
253 discuss here today is confidential. We ask that
254 you do not speak about what we discuss in this
255 deposition to any outside individuals, other than
256 your counsel, about what was asked or your
257 responses.

258 Okay. That is the end of my preamble. My
259 colleague, [REDACTED], will start the first
260 hour of questions for the majority.

261 [REDACTED]: Before you guys start the clock, I
262 wondered if it might be all right for me to make
263 one quick observation. That is that I think we're
264 all aware the witness and his counsel, the
265 majority and minority staff, that there's pending
266 litigation in U.S. District Court in Alaska
267 between Pebble Limited Partnership and the EPA. I
268 think we're all aware of that.

269 I think we're also aware that government has
270 disclosed documents to us in the course of our

271 investigation which are marked "Privileged." I
272 raise that only just to say that there's nobody in
273 this room who may raise a privilege objection to
274 introductions of those documents because none of
275 us represent the EPA or the executive branch. I
276 just wanted to state that for the record.

277 [REDACTED]: Thank you.

278 MS. GARDE: I have a question on the
279 statement you just read about confidentiality.

280 [REDACTED]: Let's go off the record for just a
281 moment.

282 (A discussion was held off the record.)

283 [REDACTED]: Back on the record.

284 EXAMINATION

285 BY [REDACTED]:

286 Q. Mr. North, I'm [REDACTED]. I'll be
287 primarily asking you questions during our hour,
288 and I'm going to start with some questions about
289 your general background with EPA and your work
290 circumstances.

291 Are you currently employed by the EPA?

292 A. No.

293 Q. And did you retire from the EPA?

294 A. Yes.

295 Q. When did you retire?

296 A. End of April, in 2013.

297 Q. And when did you make the decision to
298 retire from the EPA?

299 A. Well, it's kind of a complex question.
300 More complex than it might seem. I guess the -- I
301 had hoped to retire right around that time for
302 quite a long time, and it became clear in that
303 winter that EPA -- because I was a one-person
304 office, was going to be looking at closing my
305 office because of budget cuts. And so the
306 discussion happened around that time about whether
307 or not they would close the office, and that if
308 they did, I would just retire.

309 Q. And was your -- did you receive any sort
310 of buyout when you retired from the EPA?

311 A. No.

312 Q. What is your educational background?

313 A. I have a bachelor's degree in botany
314 from the University of California Davis, and a
315 master's in natural resource management, fisheries
316 from Humboldt State University in Arcadia,
317 California.

318 Q. What was your position at the EPA when
319 you retired?

320 A. An ecologist.

321 Q. And were you career staff or a political
322 appointee?

323 A. Career staff.

324 Q. And that's part of the GS scale?

325 A. Yes. Yes.

326 Q. How long did you hold that position at
327 EPA?

328 A. At EPA, 23 years.

329 Q. So you were an ecologist for the entire
330 time?

331 A. My title -- I believe when I started my
332 title was environmental protection specialist, and
333 then it changed to ecologist at some point in
334 there.

335 Q. Was that a promotion?

336 A. No.

337 Q. Was it a duty change?

338 A. No. It was just -- it just matched my
339 duties more accurately.

340 Q. And with regard to your work at the EPA,
341 were you considered a scientist?

342 A. Yes.

343 Q. And you considered yourself a scientist?

344 A. Yes.

345 Q. So was the role of ecologist designated

346 as a scientist in some specific way?

347 A. I don't know.

348 Q. Your colleagues considered you a
349 scientist?

350 A. Yes. I'm sure.

351 Q. So you worked for your entire career at
352 EPA in Region 10; is that correct?

353 A. My entire career within EPA, yes.

354 Q. What offices did you work out of?

355 A. I worked out of the Anchorage office and
356 Soldotna offices.

357 REPORTER MARTIN: I'm sorry. What office?

358 THE WITNESS: Anchorage and Soldotna,

359 S-o-l-d-o-t-n-a.

360 BY [REDACTED]:

361 Q. So over that entire period of time, did
362 you work alone?

363 A. No.

364 Q. So in Anchorage, you worked with other
365 EPA colleagues?

366 A. Yes.

367 Q. And in Soldotna you worked alone?

368 A. I was in a one-person office.

369 Q. You were part of a larger team that had
370 employees stretched out across Alaska and

371 Washington or --

372 A. And Oregon and Idaho.

373 Q. So please explain the role of an

374 ecologist at EPA Region 10, your role.

375 A. My role? In my program I would describe

376 it as there were four responsibilities. One was

377 participating with the Corps of Engineers in the

378 application of Section 404 of the Clean Water Act,

379 which is the Corps' permitting program.

380 Another part of it was enforcement under

381 Section 404. So if someone was to discharge

382 dredge or fill material without getting a permit

383 from the Corps, then we would follow up with

384 enforcement.

385 The other part was grants. The aquatic

386 resources unit in the 404 program had a grant

387 program, and I was the grant coordinator for our

388 group within the region.

389 And then, lastly, there was a community

390 outreach function, which was to reach out to the

391 community and help facilitate locally based

392 environmental protection, and that was working

393 with the tribes and local communities and the

394 state and NGOs.

395 Q. And were these job functions

396 specifically articulated to you in some way?

397 A. Yes.

398 Q. Was there a document?

399 A. Yes.

400 Q. And that was provided to you by your
401 manager?

402 A. Yes.

403 Q. Would you explain your role at EPA. You
404 said that you participated in the 404 process with
405 the Army Corps of Engineers. Will you explain
406 your -- that specific role a little bit more.

407 A. Well, as I'm sure you know, the Army
408 Corps of Engineers issues permits under Section
409 404 for the discharge of dredge or fill materials
410 into waters in the U.S. And EPA's role was to
411 develop the guidelines that the Corps used to
412 evaluate whether or not to issue those permits or
413 under what circumstances to issue those permits.
414 And EPA would review projects, most projects to
415 some degree, where there was a proposal to
416 discharge dredge or fill material and give
417 feedback to the Corps on the likely effects and
418 compliance with the B1 guidelines, which is the
419 guidelines that EPA wrote for the Corps' use.

420 Q. So your role was to do what you said is

421 some analysis and provide that feedback. That was
422 your role?

423 A. Yes.

424 Q. Were there other people within the
425 aquatic resources unit that had this similar job
426 function as you?

427 A. Yes.

428 Q. Approximately how many?

429 A. Let's see. Probably 10 or 15. I don't
430 remember the number exactly.

431 Q. How many of those people worked on 404
432 issues in Alaska?

433 A. I believe -- I think there was a minimum
434 of two during my career, and I think maximum of
435 five.

436 Q. How would you break up the projects
437 between the other 404 people in Alaska?

438 A. We had geographic areas that we were
439 assigned to.

440 Q. So it was based on -- it was a regional
441 breakdown?

442 A. Yes, that's correct.

443 Q. I want to talk about your community
444 outreach function.

445 A. Okay.

446 Q. So what groups would you reach out to as
447 part of that role?

448 A. Tribes, local governments, the state of
449 Alaska, NGOs working in the area. Sometimes just
450 community groups. There's lots of unincorporated
451 communities in Alaska. And so sometimes we worked
452 with people within an unincorporated community.

453 Q. So how did you conduct that outreach?

454 A. Well, that was part of why -- well, I
455 guess it depends on which period you're talking
456 about. I think in -- also industry. I'll add
457 industry to that. I think, initially, I was in
458 Anchorage and some of my early responsibilities
459 had to do with mining. In particular, placer
460 mining, which are -- when I was working there was
461 consistently about 200 small placer mines
462 throughout Alaska, and there was a problem with
463 water quality coming from those mines. They
464 weren't meeting water quality standards.

465 And so there was a TMDL done that wasn't very
466 effective. And so one of my jobs was to reach out
467 to the interested parties to bring them together
468 to start to discuss that and really try to find a
469 solution to the problem. And so I would --
470 essentially, in that case I would call -- I knew

471 people in the industry. I knew all the people in
472 the agencies. People at the University of Alaska.
473 Just because of my work, I was familiar with them.
474 And so I called those people and invited them to
475 get together to discuss these issues and try to
476 find a solution that worked.

477 Later, I was actually sent to Soldotna for the
478 purpose of -- this was in the late '90's. For the
479 purpose of engaging in the community and getting
480 to know people and working with people to
481 facilitate local environmental protection, and
482 preferably, locally implement it. So, again, I
483 had been working in that area for quite a long
484 time, and I knew pretty much the people. I knew
485 people in the government. I knew all the agency
486 people. I knew all the tribal people. And then
487 through my work, in my day-to-day work on
488 permitting and enforcement and receiving
489 complaints from the public, I got to know quite a
490 few people within the community.

491 And so they would either -- in some cases they
492 would call me, like in the community of Anchor
493 Point. They wanted to develop a watershed plan.
494 That's an unincorporated community. So they
495 called me and said, "Can you help us?" And so I

496 did. Many, many evening meetings with them to try
497 to develop a watershed plan.

498 The city of Homer expressed dissatisfaction
499 with their wetlands plan. They actually had a
500 general permit with the city of Homer, and they
501 expressed dissatisfaction with the way that was
502 going. And so I talked to them and we agreed,
503 "Let's develop a new one." It was time. It was
504 probably 20 years since it had been developed. So
505 it was probably a good idea to develop a new one.

506 And so I worked with them, along with all the
507 agencies, and I convened that and led the meetings
508 and developed a wetlands plan for the city of
509 Homer. Those are a few examples. There are many
510 more.

511 Q. So it was part of your job duty to
512 advise your direct manager on these matters, your
513 outreach matters as well as the 404 matters?

514 A. Yes.

515 Q. And was it part of your job duty to
516 express certain opinions on projects that may come
517 before the EPA?

518 A. Yes.

519 Q. And was your job duty to report those
520 opinions to your manager?

521 A. Yes.

522 Q. Did you feel that it was part of your
523 job to convince others at EPA of a certain
524 viewpoint on a particular environmental matter?

525 A. I think I have to back up to the word
526 "convince."

527 Q. Sure.

528 A. I don't think it was my job to convince
529 them, but it was my job to inform them, and then
530 they would make their own decisions.

531 Q. Who was your immediate manager?

532 A. At the end it was Michael Szerlog.

533 Q. What was his title?

534 A. Supervisor of the aquatic resources
535 unit.

536 Q. And do you recall what the reporting
537 structure was from there on up to the regional
538 administrator?

539 A. I actually don't know. I don't know how
540 that was structured.

541 Q. Do you know who Mr. Szerlog's boss was?

542 A. Szerlog. It would have been the
543 director for the office of ecosystems, tribal and
544 public affairs, and that changed fairly often over
545 time.

546 Q. What was Richard Parkin's title?

547 A. He was deputy director of the office of
548 ecosystems, tribal and public affairs.

549 Q. So he -- was he Mr. Szerlog's boss?

550 A. No, because he's a deputy. So he's not
551 a supervisor. In my understanding anyway.

552 Q. Do you know who Mr. Parkin's supervisor
553 was?

554 A. It would have been the director of the
555 office.

556 Q. And do you recall who that was when you
557 left?

558 A. When I left, it was David Allnutt.

559 Q. Do you recall immediately who was before
560 Mr. Allnutt?

561 A. I don't. There were a few of them in
562 rapid succession, and I don't remember.

563 Q. And just to your knowledge, does that
564 person report directly to the regional
565 administrator?

566 A. Yes. To my knowledge, yes.

567 Q. I think you stated this, but as part of
568 your outreach role, you were well known amongst
569 the tribes, communities and NGOs in Alaska?

570 A. Well, in certain parts of Alaska. On

571 the Kenai Peninsula, yes. Other parts of Alaska,
572 it just depended how closely I worked with them
573 over time, and I didn't work with all the tribes
574 in Alaska.

575 Q. Approximately how many tribes were you
576 familiar with?

577 A. Closely familiar with, I would say there
578 were probably four on the Kenai Peninsula that I
579 worked with regularly.

580 Q. Was it part of your duty to examine,
581 edit, or approve press releases?

582 A. No.

583 Q. All right. I want to talk to you a
584 little bit about Section 404 of the Clean Water
585 Act a little bit more. What are the last three
586 projects that you worked on at EPA with regard to
587 Section 404?

588 A. Last three projects would have been
589 Bristol Bay. Pebble Mine. Pebble project. The
590 Chuitna coal mine.

591 MS. GARDE: Can you spell that.

592 THE WITNESS: C-h-u-i-t-n-a. And I think
593 Greens Creek mine was also. There might have been
594 some small projects, you know, just day-to-day
595 stuff. Somebody wanted to build a road or

596 something like that. But I don't have a
597 recollection of what those might have been.

598 BY [REDACTED]:

599 Q. Can you recall how many projects that
600 you worked on with regard to Section 404 that
601 received a Section 404 permit?

602 A. I could not even guess what that number
603 is. Many, many.

604 Q. So it's a large amount?

605 A. A very large amount, yes.

606 Q. What about the Chuitna coal mine? Did
607 they receive a 404 permit?

608 A. They had not applied yet.

609 Q. So while you -- sorry.

610 A. I'm sorry. When I left, they had not
611 applied.

612 Q. Okay. And how about Greens Creek mine?

613 A. They -- well, the NEPA process was
614 underway when I left, but that process had not
615 been completed.

616 Q. And the Pebble Mine?

617 A. They had not applied.

618 Q. And are you aware if any of these three
619 projects have subsequently received a 404 permit
620 after you left the agency?

621 A. It's my understanding that the Greens
622 Creek mine has received their permit. To my
623 knowledge, Chuitna has not applied yet, still, but
624 I don't know. I'm not that connected. So I don't
625 know for sure.

626 Q. I want to talk to you about Section
627 404(c), specifically of the Clean Water Act. What
628 is your understanding of EPA's authority under
629 that provision?

630 A. When the administrator believes that
631 discharge of dredge or fill material into a
632 designated waters of the U.S. will have
633 unacceptable impacts, then the administrator can
634 restrict -- or will often restrict issuance of a
635 permit.

636 Q. And when you say, "administrator," is
637 that the regional administrator?

638 A. No, it's the administrator of the
639 agency.

640 Q. And what was your understanding of EPA's
641 authority to invoke 404(c)? Sort of at what point
642 in the process -- at what point in the 404 process
643 could EPA decide to do a (c) action?

644 A. The language in the statute is
645 "anytime."

646 Q. So does that include before a project
647 officially applies for a permit?

648 A. It explicitly does in the preamble to
649 the regulations of 404(c), yes.

650 Q. Does that include while the Army Corps
651 of Engineers is analyzing a 404 permit?

652 A. That's my understanding, yes.

653 Q. And does that include after the Army
654 Corps of Engineers has granted a 404 permit?

655 A. That's my understanding, yes.

656 Q. So your understanding is that EPA's
657 authority to use Section (c) -- 404(c) of the
658 Clean Water Act can occur at any time?

659 A. That's correct.

660 Q. And how did you become aware of EPA's
661 404(c) authority?

662 A. When I was first hired by EPA, I was
663 told that I should read the regulations, the B1
664 guidelines and all the 404 regulations. EPA's 404
665 regulations. And so I became aware of it then,
666 and that was in 1989.

667 Q. That's when you first started at EPA?

668 A. Yes.

669 Q. And did you receive specific training on
670 Section 404 of the Clean Water Act?

671 A. Yes, I did.

672 Q. And during that training -- let me
673 backtrack a second. Was the training conducted by
674 other EPA employees?

675 A. Yes.

676 Q. And during that training, was it
677 explained to you when in the 404 process EPA could
678 invoke a 404(c) authority?

679 A. I don't have specific recollection what
680 they said during that training, but I imagine that
681 that would be the case.

682 Q. And so let's talk a little bit more
683 about the actual permitting process. So when a
684 particular project applies for a permit and
685 they're -- is there a specific analysis that's
686 undertaken of the environmental impacts of
687 allowing that permit?

688 A. It depends on the project. If it's
689 significant enough that the NEPA -- well,
690 environmental impact statement is completed, then
691 that's a more in-depth analysis than, say,
692 something where it's just determined that an
693 environmental impact statement isn't required, and
694 then there's a specific analysis of the
695 environmental impacts except to compare to the B1

696 guidelines.

697 MS. GARDE: Counsel, can we reflect when one
698 congressman leaves and another --

699 [REDACTED]: Yes. Chairman Smith is now
700 present.

701 MS. GARDE: Thank you.

702 BY [REDACTED]:

703 Q. Okay. So in certain circumstances,
704 then, under the 404 permitting process, if it's
705 determined that it's necessary, the NEPA, the
706 National Environmental Policy Act, is implemented;
707 correct?

708 A. Correct.

709 Q. And that includes the production of the
710 environmental impact statement?

711 A. Yes. Although NEPA actually is applied
712 on all projects. It's just you don't get to the
713 EIS stage on all of them.

714 Q. And does that particular process, does
715 that analyze mitigation efforts?

716 A. Which particular process?

717 Q. Does the environmental impact statement
718 discuss mitigation?

719 A. Yes, generally so.

720 Q. And mitigation is the -- strike that.

721 Let's move on.

722 Are the environmental risks determined in an
723 environmental impact statement?

724 A. Yes, I suppose, when I think about it.
725 I mean there's no -- I'm trying to think if
726 there's a section where they talk about risks.
727 I'm actually not sure if there's a -- they talk
728 about impacts, likely impact. So whether there's
729 a section where they actually talk about risks, I
730 don't know. I don't remember.

731 Q. This is going to sound funny, but an
732 environmental impact statement discusses the
733 environmental impacts of the particular project?

734 A. That's correct, yes.

735 Q. So you mentioned that it's your
736 understanding that EPA's authority to do a 404(c)
737 determination can occur at any time; correct?

738 A. Yes.

739 Q. So what is the process, your
740 understanding of the process, for moving forward
741 with the 404(c) process before a project has
742 applied for a permit?

743 A. My understanding of the process is that
744 if the agency decides to move forward on a 404(c)
745 action, that first they issue a 15-day letter,

746 which they send to the Corps and to the -- to a
747 potential project proponent, if there is one, to
748 tell them that they're going to move into the
749 404(c) process.

750 And then Step 2 would be to develop a proposed
751 determination to do an analysis of I suppose what
752 would be necessary under Section 404(c) and what
753 types of restrictions they might put in place. So
754 then they do a proposed determination, which they
755 would send to EPA headquarters.

756 And then the next step would be to do a -- it's
757 been a few years. So I don't remember these
758 things. So there's post determination, and then
759 there's a -- I'm drawing a blank on the word, but,
760 basically, it's a -- a recommended determination.
761 I believe that's what it is. And so where they
762 actually suggest to headquarters that they're
763 actually going to -- that they should do -- the
764 decision rests with headquarters in the end.

765 But they tell headquarters that they recommend
766 that they go ahead and do whatever the proposal
767 is, and then headquarters has to decide whether or
768 not to actually do that or not. And then there's
769 public outreach in that process too, so that the
770 public can comment.

771 Q. So I wanted to talk to you about that
772 process. You said something along the lines of if
773 EPA decides to move forward with the 404(c)
774 process. Is there a specific process for that
775 sort of part of the decision making, that is, the
776 process for triggering the 404(c) process?

777 A. To my knowledge, there's not a specific
778 process for triggering a 404(c) process, no.

779 Q. So in your experience at the EPA, then,
780 if you were -- if you felt that the 404(c) process
781 should be triggered, were you sort of -- you
782 didn't have a specific guideline on how to do
783 that?

784 A. That's correct.

785 Q. And if you wanted to do that, is that
786 something you'd have to figure out on your own?

787 A. Well, no, I would not say that I would
788 have to figure that out on my own.

789 Q. You would talk to other people about how
790 to do that?

791 A. Yes.

792 Q. And were there people in Region 10 who
793 had experience with the -- specifically making a
794 decision to start the 404(c) process?

795 A. Yes, but I want to clarify something.

796 Q. Uh-huh.

797 A. I was never in a position to make a
798 decision like that. I could only recommend. So
799 if I thought we should enter into a 404(c)
800 process, I would just recommend to my supervisor,
801 to other people who might be involved in that
802 decision, that I recommend we use 404(c), we use
803 that authority. But it was not my decision to use
804 404(c). I had no such authority. I just wanted
805 to clarify that because it seemed like it was
806 getting a little fuzzy.

807 Q. So how many times in your career did you
808 specifically recommend that the EPA should use the
809 404(c) process?

810 A. One time.

811 Q. And which project was that for?

812 A. That was for the Pebble project.

813 Q. Is it your interpretation that if a
814 project submits a 404 permitting application, that
815 that project will receive a permit?

816 A. More often than not, yes.

817 Q. Could you maybe explain that answer a
818 little bit.

819 A. Sure. Most applications for a 404
820 permit resulted in a 404 permit. There were

821 occasions when the permit was denied.

822 Q. And had any projects that you worked on
823 at EPA applied for a permit and had it been
824 denied?

825 A. Yes, there were some. Not very many.

826 Q. Less than 5?

827 A. Probably. Probably less than 5. Maybe.
828 Less than 10 most certainly.

829 Q. Approximately less than 10 did not
830 receive permits through the 404 process and
831 approximately -- you were talking about
832 approximately hundreds of times that you worked on
833 a project that it moved forward with permitting?

834 A. Yeah. Probably more into the thousands.

835 Q. So thousands of permits granted through
836 the 404 process, less than 10 not approved through
837 the 404 process?

838 A. I would say that's probably a fairly
839 good estimate.

840 Q. And would you say that that -- is that
841 your -- that answer is obviously based on your
842 personal experience; correct?

843 A. Yes.

844 Q. Was there -- what about the other folks
845 in Region 10? Do you feel that they would have

846 felt the same way, do you know?

847 A. My guess -- I can only guess is that I
848 was typical. So everybody else would probably
849 have a similar experience.

850 Q. I'm just curious. I mean is it -- would
851 you say that it's a general sentiment amongst, at
852 least your knowledge of the agency, EPA, that if a
853 project applies for a 404 permit it is more than
854 likely to get one?

855 A. Yes, I would say that's true.

856 Q. Did anyone ever express a displeasure in
857 that?

858 A. Well, yes, I would say so.

859 Q. Did it make you upset?

860 A. I'd say that there were some projects
861 that I thought should have at least been -- had
862 conditions in their permits and perhaps some
863 projects that should not have gotten a permit. So
864 over the course of my career, yes, there were
865 probably projects that I did not agree with the
866 idea of issuing a permit.

867 Q. And was your disagreement with the Army
868 Corps of Engineers' decision to grant the permit,
869 or would you say it was more a displeasure with
870 the fact that the EPA didn't step in and act more

871 decisively?

872 A. It could be either way. It could go
873 both ways.

874 Q. So there were other projects that you
875 worked on where you felt the EPA should act more
876 decisively?

877 A. Yes. Yes, there were.

878 Q. And did you voice that opinion to anyone
879 else?

880 A. Oh, I'm sure I did.

881 Q. And did it ever result in any action?

882 A. I don't think so.

883 Q. And just to be clear, it is the Army
884 Corps of Engineers that actually grants the 404
885 permit?

886 A. Yes, that's correct.

887 Q. And, again, just to clarify, you said
888 that you only worked on one project -- correct? --
889 that you felt that the 404(c) process should be
890 used before the project applied for a permit?

891 A. Actually --

892 Q. Let me rephrase the question. How many
893 projects did you work on that you felt required an
894 advance 404(c) before the project applied for a
895 permit?

896 A. Let me think about your question to make
897 sure I understand it. Actually, just to make sure
898 I answer it correctly. I think probably just the
899 one.

900 Q. And that's the Pebble Mine project?

901 A. Yes, that's right.

902 Q. And just out of curiosity, why didn't
903 you feel on other projects that you had concerns
904 about -- why didn't you think that the EPA should
905 step in before they applied for a permit?

906 A. I think the way I have to answer that is
907 to talk about the Pebble project rather than talk
908 about other projects.

909 Q. So in your mind, the Pebble project was
910 different than those other projects?

911 A. It was, exactly. Yes, it was
912 exceptional.

913 Q. So let's talk a little bit about the
914 Pebble Mine project. When did you first become
915 aware of the potential for the development of
916 Pebble Mine?

917 A. I think I first became aware of it
918 probably in the late '90's, or it might have been
919 around early 2000's. I don't recall specifically,
920 but it was probably in that time frame.

921 Q. And you're aware of what the potential
922 for exploration by this group in that area or
923 something?

924 A. I don't understand the question.

925 Q. So I guess, what did you first hear
926 about it?

927 A. Okay. I was the regional mining
928 coordinator for my group for the aquatic resources
929 unit. So whenever there was exploration anywhere
930 in Alaska, that the permits would be issued by the
931 state or the Corps or both, and I would get those.
932 I would get the notifications of those. So I
933 would become aware of exploration when it was
934 proposed.

935 Q. So an exploration permit is granted by
936 the state of Alaska?

937 A. Yes. And the Corps of Engineers, if
938 there are waters involved.

939 Q. And the Pebble Mine project received an
940 exploration permit from both of those groups?

941 A. Yes.

942 Q. And is it through that permit that you
943 came to learn about Pebble Mine?

944 A. Yeah. Potential Pebble Mine. Pebble
945 deposit, yes. That's when I first learned about

946 it.

947 Q. And what is your understanding of the
948 Pebble Mine? Tell us a little bit about what the
949 mine is.

950 A. Okay. Well, the Pebble deposit is --
951 there was no mine. The pebble deposit is a
952 copper, gold, and molybdenum deposit that's --

953 REPORTER MARTIN: Gold and --

954 [REDACTED]: I think it's Molybdenum,
955 m-o-l-y-b-d-e-n-u-m. I think that's right.

956 THE WITNESS: And it's a metal sulfite deposit,
957 and it's very, very large. It's 11, 12 billion
958 tons of potential ore, and it's located in the
959 Bristol Bay watershed at the head waters of the --
960 of a couple of different creeks that run into the
961 Nushagak River and the Kvichak River.

962 MS. GARDE: Can you spell those.

963 THE WITNESS: Yeah. Nushagak would be
964 N-u-s-h-a-g-a-k. And Kvichak is K-v-i-c-h-a-k.

965 BY [REDACTED]:

966 Q. Bristol Bay was part of that regional
967 area that you were talking about that was assigned
968 to you?

969 A. Yes, that's correct.

970 Q. Had you worked on any other projects

971 within Bristol Bay before?

972 A. You know, I don't think so. I think
973 that was the first one actually I worked on in
974 Bristol Bay.

975 Q. And was -- when the Pebble deposit, as
976 we can call it, was -- when you were aware that
977 they had received exploration permits, did that
978 mean that it was specifically assigned to you as
979 part of your job duties?

980 A. No. Because there was -- well, if there
981 was a need to review those permits, then yes, that
982 would have been my responsibility. But,
983 generally, exploration permits were not something
984 that would have been reviewed.

985 Q. So there was no reason to review those
986 particular exploration permits?

987 A. That's correct.

988 Q. Did you start to do any work on the
989 Pebble deposit when the notice of the exploration
990 permits was given to you?

991 A. No, I didn't.

992 Q. But at some point, did the Pebble
993 deposit become specifically assigned to you as
994 part of your job duties?

995 A. Yes.

996 Q. And approximately when was that?

997 A. It was in 2005.

998 Q. And can you explain the circumstances of
999 that assignment?

1000 A. Yes. We were having a meeting of the
1001 Alaska staff, and our supervisor at the time was
1002 Gary Boerman, B-o-e-r-m-a-n. And then Rick Parkin
1003 was there also, and we were talking about Alaska
1004 projects and which ones we were working on and
1005 which ones we weren't and why.

1006 And at that time I think the EPA was becoming
1007 more involved in Pebble, although my group had not
1008 yet gotten involved. And this meeting was in part
1009 to discuss the need to get involved and for our
1010 group to participate on that team. And then at
1011 that meeting it was assigned to me because it was
1012 in my geographic area.

1013 Q. You said the EPA was becoming more
1014 involved in Pebble, and that was 2005. What does
1015 that mean?

1016 A. Well, up to that time, I believe, my
1017 understanding is that the other agencies, Fish and
1018 Wildlife, Fish and Game, Alaska Department of
1019 Environmental Conservation, all of those agencies
1020 were engaged with the Pebble partnership, or

1021 Northern Dynasty at the time, in discussing a
1022 potential mine at that site and essentially
1023 preparing for a permit application to be issued.

1024 But EPA was not involved in those discussions,
1025 and I believe -- I don't know this, but I believe
1026 that the Pebble partnership or Northern Dynasty
1027 actually approached EPA and said, "You guys aren't
1028 at the table. We need you at the table." And
1029 that's how EPA got involved. That's my
1030 understanding.

1031 Q. And so it was your direct manager at the
1032 time that told you to start doing work on the
1033 Pebble deposit?

1034 A. It was more Rick Parkin.

1035 Q. And do you recall what his position was
1036 in 2005?

1037 A. Yes. He was the deputy director of
1038 ETPA.

1039 Q. He had that particular position from
1040 2005 until you left the agency in 2013?

1041 A. Yes.

1042 Q. And what did Rick tell you to do?

1043 A. He just assigned it to me. I mean it
1044 was a project. He didn't tell me anything
1045 specific. It was -- just basically said, "This

1046 one is assigned to you. Start working on it."

1047 Q. So what did you do?

1048 A. Well, I would have started to get
1049 familiar with it. I knew about the exploration,
1050 but I really didn't know -- wasn't up to speed.
1051 So I would have started attending the meetings
1052 that the Pebble partnership held. I would have
1053 started talking to people in other agencies to
1054 find out what's going on, what are other people
1055 involved in. I would have started doing research
1056 to understand Bristol Bay better because I really
1057 didn't -- I hadn't -- really nothing much was
1058 going on there. So I didn't spend any time there.
1059 I was not really very familiar with the resources.
1060 So I needed to be comfortable with the resources.

1061 I had worked on a lot of mines up to that point
1062 but never a copper sulfite deposit. And so I
1063 needed to understand copper sulfite deposits
1064 better. So I would have learned about those.

1065 Q. So is that the -- was that your normal
1066 process when you were assigned a particular
1067 project?

1068 A. Yes. Yes, it was.

1069 Q. And which other agencies would you speak
1070 to?

1071 A. Fish and Wildlife Service, National
1072 Marine Fishery Service, Alaska Fish and Game,
1073 possibly Alaska Department of Natural Resources,
1074 and the Department of Environmental Conservation.
1075 So all the other agencies involved. I would know
1076 people -- I knew people in all those agencies. So
1077 I would have connected with them and, you know,
1078 asked them questions.

1079 Q. Let's talk a little bit about the
1080 research to understand Bristol Bay and to
1081 understand copper sulfite mine. How do you
1082 approach that?

1083 A. I would do -- I would start looking into
1084 the scientific literature to see what is published
1085 on those things. I would consult with other
1086 experts that I might know who I thought might know
1087 something. I'd probably ask them, you know, what
1088 are the key scientific papers that I should read
1089 to understand these things better. I'd look at
1090 the literature, citations in all of those papers
1091 that I looked at, and I'd look for specific papers
1092 that I might want to find and then get them from
1093 the EPA library or ask them to get them for me.

1094 And I'd call experts, wherever they were. You
1095 know, I recall in this case I wanted to understand

1096 tailings dams better, and there was an expert in
1097 Ontario, Canada who had written a paper. So I
1098 called him and chatted with him a bit about
1099 tailings dams.

1100 Q. You said there really wasn't much going
1101 on in Bristol Bay. You mean in terms of
1102 development?

1103 A. That's correct.

1104 Q. So was there a large body of scientific
1105 research, scientific papers available in 2005 with
1106 regards to the ecology, biology, et cetera, of
1107 Bristol Bay?

1108 A. There was, yes.

1109 Q. And do you know for what purpose that
1110 had been produced?

1111 A. Yes. Bristol Bay is probably the
1112 greatest place on earth for salmon. It's the
1113 last -- you know, there are many healthy rivers
1114 still in North America, mostly in Alaska, that
1115 produce salmon, but Bristol Bay is by far the
1116 greatest of those places. And so there's a lot of
1117 research that has happened in Bristol Bay because
1118 of that. University of Washington has people
1119 who -- I don't know if they only study Bristol
1120 Bay, but that's certainly where they've made their

1121 career.

1122 Q. So they study Bristol Bay to understand
1123 salmon?

1124 A. Salmon ecology, the effects of fisheries
1125 on the salmon, yeah.

1126 Q. How about the -- your research on copper
1127 sulfite mining? Will you walk us through that a
1128 little bit?

1129 A. Yeah. Same kind of thing. It wasn't
1130 too long before that that I met Bob Seal at USGS,
1131 and he is a geochemist. So I was able to tap into
1132 him and ask him where I should look and what
1133 papers I should look. There actually is a paper
1134 on Bristol Bay, on the mineral deposits of Bristol
1135 Bay that the USGS did some time ago, and actually,
1136 I have a few papers since then about Bristol Bay.
1137 So there was a surprising number of papers, mainly
1138 produced by USGS, on mineral deposits of Bristol
1139 Bay.

1140 And then from there, again, you know, I'm able
1141 to go to the literature, cite it, find more
1142 papers, and then that leads to more papers.

1143 Q. So who within EPA did you work with on
1144 Pebble Mine issues?

1145 A. Well, there was a team of people and --

1146 Q. Sorry. Let me rephrase the question so
1147 we can break it down a little bit by years. In
1148 2005, did you work with anyone else on the Pebble
1149 deposit?

1150 A. There was a team that was assigned in
1151 2005.

1152 Q. Who was on the team?

1153 A. Boy, I don't think I could name
1154 everybody. Cindy Godsey in Alaska. She's the
1155 mining coordinator for Alaska. She was certainly
1156 on the team. Patty McGrath as the regional mining
1157 coordinator. Let's see. There's people whose
1158 names I shouldn't forget, but it's been a few
1159 years and now they slip my mind.

1160 Q. That's okay. Let me ask you maybe some
1161 more specific questions about that. So is that
1162 the regular sort of process for when a new project
1163 is thinking about permitting and the EPA gets
1164 involved, that a team is assigned to it?

1165 A. If it's a big project where multiple
1166 programs are involved, then yes. That's something
1167 maybe -- there might be a big highway project
1168 where there's only a 404 is the only federal
1169 permit being issued, and then I would be the team.
1170 I'd be by myself on that, or whoever in my program

1171 would be by themselves. But if it was a big
1172 project where there were multiple programs, such
1173 as a mine, then there's usually a team.

1174 Q. And so you had worked on these big
1175 project teams in the past?

1176 A. I had, yes.

1177 Q. And was anyone -- how about in 2005, was
1178 anyone from the headquarters office involved?

1179 A. 2005, not to my knowledge.

1180 Q. When did headquarters become involved?

1181 A. I'm going to back up a step because I
1182 believe that I had a conversation with someone at
1183 headquarters -- and I don't recall who it was --
1184 about that project because it was a really big
1185 project in an exceptional resource area. So I
1186 think I had a conversation with somebody. But I
1187 don't think headquarters really got involved until
1188 I started thinking about a 404(c) which was, you
1189 know, sometime later I think I was saying 07, 08,
1190 09, 2007, 08, 09, somewhere in there. I really
1191 don't recall the year. But it was definitely at
1192 least a couple years after it was initially
1193 assigned to me.

1194 Q. So from 2000 -- sometime within the time
1195 period of 2007 to 2009, that's when you felt that

1196 the 404(c) process should be used with regards to
1197 the Pebble deposit?

1198 A. That's when I -- yeah. That's when I
1199 began to think that was the case, yes.

1200 Q. And were you working on other projects
1201 from 2007 onwards?

1202 A. I was working on Greens Creek, and I was
1203 working on Chuitna.

1204 Q. So from 2007 to when you retired, it was
1205 the three projects that we just discussed?

1206 A. I think I had -- I probably had some
1207 other projects. I know I had at least one --
1208 well, maybe two enforcement cases that were
1209 continuing, and I spent time on those. And so
1210 there were probably some other small projects, but
1211 I don't recall what they were.

1212 Q. Was Pebble ever your sole responsibility
1213 at any time?

1214 A. You mean -- it got to be -- it got so
1215 that it was taking up pretty much all of my time.
1216 I don't think it was ever the only project that I
1217 was working on because I think I was always
1218 involved in Chuitna to some degree, although I
1219 think that responsibility did get handed off to
1220 somebody else at some point.

1221 Q. When was Pebble sort of taking up all of
1222 your job --

1223 A. I'd say starting at about 2010 it
1224 started to become all-consuming. And, again, I
1225 don't think I worked on only that, but it
1226 definitely got most of my time.

1227 Q. So is it fair to say, then, given the
1228 time line that you've established here, is there
1229 any sort of work that you did related to Pebble
1230 Mine from 2005 onward, was that considered part of
1231 your official duty?

1232 A. Yes.

1233 Q. And that would include your own analysis
1234 of whether or not 404(c) process should be used?

1235 A. Yes.

1236 Q. And just to be clear, did you ever work
1237 on anything regarding the Pebble project when it
1238 was not specifically assigned to you?

1239 A. No, I never did.

1240 Q. As you stated before, or at least
1241 inferred, that you did, at some time, work with
1242 regards to the Pebble project regarding a Section
1243 404(c); is that correct? Let me rephrase that.
1244 Sorry.

1245 With regard to Section 404(c), you did perform

1246 some sort of an analysis of that with regards to
1247 the Pebble deposit; is that correct?

1248 A. I'm still not clear on the question.

1249 Q. Yeah. At some point -- I'll just move
1250 on.

1251 At some point did you formulate an opinion on
1252 whether or not the Pebble deposit should be
1253 developed?

1254 A. Yes, I did.

1255 Q. And was that within the period of 2007
1256 to 2009?

1257 A. Yes.

1258 Q. And what was that opinion?

1259 A. I'm going to back up one step and say
1260 that when it was first assigned to me, I assumed
1261 it would get a permit because every other mine
1262 that I worked on did. But until that period of
1263 2007 to 2009, I did develop the opinion that it
1264 was not a good idea for a mine to be developed
1265 there and that EPA should use its authority.

1266 Q. Use its Section 404(c) authority?

1267 A. Yes. Exactly, yes.

1268 Q. And was that opinion to use a
1269 preapplication -- preapplication 404(c) authority?

1270 A. Well, I don't know that I was thinking

1271 that initially. I don't know that I had
1272 formulated an opinion of whether it should use
1273 it -- you know, use that authority or just exactly
1274 when that authority should be used. But I felt
1275 that it should use the authority. I don't know
1276 that I was thinking about pre- or post-application
1277 specifically.

1278 Q. And was -- did you formulate that
1279 opinion by reading the scientific studies that you
1280 indicated before? Was that part of your -- was
1281 that part of the formulation of your opinion?

1282 A. I need you to clarify the question. Are
1283 you saying --

1284 Q. How about this. Just walk us through
1285 how you formulated that -- the opinion that EPA --
1286 that not only should the Pebble deposit not be
1287 developed, but also, that the EPA should use its
1288 404(c) authority.

1289 A. Okay. So as I said, in 2005, when it
1290 was assigned to me, I assumed that a permit would
1291 be issued. It seemed like the company had a lot
1292 of information. I assumed they had done their
1293 homework in terms of economics, and they knew that
1294 they could mine it economically and profitability.
1295 And so I assumed it would be -- that a permit

1296 would be issued.

1297 And then I started -- as I said, I started to
1298 do my homework and learned more about that type of
1299 mining, to learn more about Bristol Bay, and part
1300 of learning more about Bristol Bay, as I said, was
1301 reading these USGS papers about mineral deposits
1302 in Bristol Bay, and I realized also that Pebble
1303 was not the only one, and other companies, other
1304 exploration companies were more frequently
1305 announcing that they had now found something that
1306 looked promising in Bristol Bay, either closely
1307 adjacent to the Pebble deposit or farther afield.

1308 So it was -- as I learned more about Bristol
1309 Bay and the salmon resource there, the cultural
1310 resource there, Bristol Bay is one of -- really
1311 the last places also on earth where a salmon-based
1312 culture exists, that people exist on the salmon,
1313 and if the salmon go away, the people go away. So
1314 the natural resources were exceptional, and it
1315 turned out there was a lot of potential mineral
1316 development in the area also.

1317 And so as I thought about the effects of --
1318 potential effects of Pebble and potential effects
1319 of these other deposits, it really was -- I guess
1320 the picture formulated in my mind that it really

1321 couldn't be done without a significant effect to
1322 that salmon resource and all the implications that
1323 are involved in that.

1324 And so I came -- so I came to the conclusion
1325 that we should use our 404(c) authority. And I
1326 don't recall specifically, but I'm going to kind
1327 of, I guess, build a scenario that I think is
1328 likely, in terms of my thinking, that because it
1329 wasn't just public, it wasn't a matter of just
1330 waiting for a project. It was a matter of there's
1331 this whole, big watershed and the whole -- there's
1332 multiple risks or threats in this watershed. And
1333 so we should really address the whole thing at
1334 once, and there's no reason to wait for them --
1335 for each one to individually apply for a permit.
1336 Really the judicious and efficient way to do it is
1337 do a 404(c) ahead of time for the whole thing.

1338 Q. So your vision was then to use a -- the
1339 404(c) process to close off the whole watershed to
1340 development?

1341 A. To mining anyway, to that type of
1342 mining. Not necessarily all types of mining, but
1343 to metal sulfite mining.

1344 Q. Would that include anyone who discharged
1345 into waters?

1346 A. No, it's not even close.

1347 Q. And did you formulate that opinion with
1348 anyone else at the EPA?

1349 A. Good question. I'm actually going to
1350 back up a step and fill in something that I
1351 omitted in my description. At the time when I was
1352 thinking about this, I actually wasn't even
1353 focused on mining. I was focused on development.
1354 Not necessarily prohibiting development in the
1355 watershed, but my initial look was to see what
1356 development is actually happening. I looked at
1357 all the Corps permits that had been issued to see
1358 what kind of development is happening. The state
1359 of Alaska has a -- there's no major highways out
1360 there, and there's actually only few segments of
1361 highway in the whole watershed. But the state of
1362 Alaska had proposed to build a highway system out
1363 there. And so I looked at that. I looked at the
1364 plans for that.

1365 And so that was included in my initial
1366 thinking, is that we shouldn't -- if we're going
1367 to do a 404(c) for this entire watershed, we
1368 shouldn't just focus on one industry. We really
1369 should look at all the threats. And then,
1370 eventually, as I looked at the Corps permits, I

1371 realized, you know, all the projects were very
1372 small, like a boat ramp here, a little house pad
1373 there. But they're few and far between, and it
1374 was really not worth looking at those anymore.
1375 The highway was really hypothetical at that point.
1376 There was really no plan to build it at all. It
1377 was just on paper. So that got left to the side.

1378 And then pretty much we got down to the real
1379 current threat is from metal sulfite mining. And
1380 so then it got narrowed down to that.

1381 Q. And so my last question before the hour
1382 is over is, again, so did you formulate that
1383 opinion with others at the EPA, or was that your
1384 own opinion?

1385 A. I think it was my own opinion.

1386 [REDACTED]: And we'll go off the record.

1387 (A recess was taken from 11:40 a.m.

1388 to 11:42 p.m.)

1389 [REDACTED]: I guess we should go back on the
1390 record before I hit the button.

1391 Q. Thanks for coming, Mr. North. I'm the
1392 minority counsel, [REDACTED], and I'll be asking
1393 questions for this hour, if we take the whole
1394 hour. If you need to take a break, if anybody
1395 needs to take a break, just let me know and we'll

1396 go off the record.

1397 Some of this stuff will sound a little
1398 repetitious. So bear with me. But I want to make
1399 sure we fill in any blanks that I had in sort of
1400 your career work history.

1401 A. Okay.

1402 Q. So you started in 1989 for the
1403 Environmental Protection Agency; correct?

1404 A. Yes, that's right.

1405 Q. The Anchorage office, I believe you
1406 said?

1407 A. That's right.

1408 Q. And did you have any prior work
1409 experience relevant to the issue you worked with
1410 at the EPA before you joined the EPA?

1411 A. Yes.

1412 Q. Could you explain those just briefly.

1413 A. I worked at the Fish and Wildlife
1414 Service in Sacramento, and I worked on in-stream
1415 flow studies. So I was figuring out how much
1416 water to release from dams to allow the last few
1417 thousand salmon in California to continue to
1418 exist.

1419 Q. So at this time, you were not working in
1420 Alaska?

1421 A. Prior to 1989, that's correct.

1422 Q. With the National Marine Fishery
1423 Service?

1424 A. I never worked for the National --

1425 Q. I'm sorry. I misstated that.

1426 A. U.S. Fish and Wildlife.

1427 Q. U.S. Fish and Wildlife, you were not
1428 located in Alaska?

1429 A. I did work in Alaska on fishing boats.

1430 Q. At a different point in time?

1431 A. Yes, different point of time.

1432 Q. You previously stated that you worked in
1433 the aquatic resources unit at the Environmental
1434 Protection Agency. Were you within that unit for
1435 your whole career?

1436 A. Yes, I was.

1437 [REDACTED]: I'm going to show you a document
1438 we'll mark Exhibit 2. And we have copies for
1439 everyone.

1440 You can take a look at that and familiarize
1441 yourself with it.

1442 (Deposition Exhibit 2 was marked
1443 for identification.)

1444 [REDACTED]: This is a position cover page, EPA
1445 Region 10. If you look on -- sort of the top

1446 there, I believe you'll see your name as the
1447 employee. Do you generally have a vague -- or
1448 specific understanding of what this is? You can
1449 flip through it if you want. Take your time.

1450 (The witness reviewed Exhibit 2.)

1451 BY [REDACTED]:

1452 Q. And so this is a description -- it looks
1453 like other people are involved in the creation of
1454 it -- of your position at the Environmental
1455 Protection Agency as an ecologist; is that
1456 correct?

1457 A. Correct.

1458 Q. So I'm going to read a couple sections
1459 of it, and you can tell me -- I'm going to ask you
1460 a couple questions about what I read.

1461 A. Okay.

1462 Q. Okay. In Paragraph 1, in the
1463 introduction, second sentence, it says, "The
1464 wetland program focuses on developing the science
1465 and standards necessary to protect wetlands in
1466 providing support to federal, tribal, state,
1467 local, and other partners in protection in
1468 preserving wetlands." Does that sound like an
1469 accurate description of at least part of your job?

1470 A. Yes.

1471 Q. And you go on down to "Major Duties"
1472 under "Program Project Management." It says,
1473 "Provides advice and assistance to agency,
1474 federal, state, local, and/or tribal governments
1475 on matters relating to the development, execution,
1476 and monitoring of adequate environmental
1477 protection policies, plans, and programs. Serves
1478 as a technical authority in providing expert
1479 advice and assistance to agency, state, local
1480 and/or tribal governments on matters relating to
1481 the development, execution, and monitoring of the
1482 most complex and politically sensitive
1483 environmental protection policies plans and
1484 programs."

1485 That portion that I just read, does that also
1486 sound like an accurate description of at least
1487 partially what your job duties were at EPA?

1488 A. Yes.

1489 Q. I'm also going to read one last
1490 section -- these pages aren't numbered, but it's
1491 on the following page under "Environmental
1492 Liaison." It reads, "Performs liaison work with
1493 individuals in a variety of organizations on
1494 legislative proposals, regulations, policies,
1495 program issues, resources, et cetera." Is that

1496 also an accurate description of part of your job
1497 duties at EPA?

1498 A. Yes.

1499 Q. This is going to sound like I'm jumping
1500 around a little. So I apologize because I'm
1501 filling in some blanks. You stated, I believe, in
1502 1998 you moved to Soldotna?

1503 A. Yes.

1504 Q. And to be the sole EPA staff person at
1505 that office?

1506 A. That's correct, yes.

1507 Q. Was that office new? Was it created and
1508 you were the first person there, or was there an
1509 existing office for the Environmental Protection
1510 Agency there when you went there?

1511 A. No, it was new. I was the first person.

1512 Q. Okay. And can you describe the sort of
1513 office situation you had in Soldotna? Were you
1514 located in an EPA-only facility? Were you
1515 co-located with other people?

1516 A. The building was owned by the Kenai
1517 Peninsula borough, and the purpose of the building
1518 was to house multiple agencies so that the
1519 agencies could work together and so the public
1520 could go from office to office rather than across

1521 town and building to building and interact with
1522 all the agencies at one time.

1523 Q. Do you recall what other agencies were
1524 co-located in your building?

1525 A. Yes. It was the Kenai Peninsula borough
1526 planning department. Alaska Department of Natural
1527 Resources, Parks and Recreation, the Alaska
1528 Department of Fish and Game, and that's it.

1529 Q. Were there any other federal agencies
1530 located within that building?

1531 A. No, there weren't.

1532 Q. Can you describe, in a general sense,
1533 your office facilities there. Did you have access
1534 to computers, E-mails, telephone? What were your
1535 resources at that facility?

1536 A. Yes. All of those. Computer,
1537 telephone, E-mail, copy machine, kitchen, big
1538 conference room. Everything you'd expect to be in
1539 a government office.

1540 Q. And then did you work within that office
1541 all the time, like, for instance, five days a
1542 week, every week of the year, were you within that
1543 office or did you work from other locations as
1544 part of your job in that area?

1545 A. I worked from other locations as part of

1546 my job.

1547 Q. Did you ever work from home?

1548 A. I did, yes.

1549 Q. Was that a regular -- or would it have
1550 been, I should say, regular or routine occurrence
1551 for you to be working either from home or away
1552 from the office?

1553 A. Yes.

1554 Q. So let's discuss -- and did you have an
1555 approved sort of -- you were allowed to work at
1556 home?

1557 A. Yes.

1558 Q. And you had like some sort of approval
1559 mechanism, and I'm guessing they provided you with
1560 some access to work through your computer at home
1561 in some way?

1562 A. First part, yes, there was a process for
1563 me to call in and say, "I'm working at home today
1564 for this reason," whatever it would be, and be
1565 approved. And then there was supposed to be
1566 access from home to the EPA computers, but it
1567 rarely worked.

1568 Q. Okay. This is 1998 that you first
1569 started working in Soldotna. You worked there
1570 until you retired in 2013. I'm guessing

1571 technology changed a little bit in that time. Was
1572 that sort of a moving target? Did your technology
1573 access from home improve at all from 1998 to 2013?

1574 A. Well, I think there was no access in
1575 1998. And then I don't remember when I started
1576 having access, but it never really worked
1577 correctly.

1578 Q. Okay. One of the issues that I think
1579 has come up in the PLP litigation is the
1580 utilization of a personal E-mail address to
1581 sometimes communicate while you were working from
1582 home. Did you do that on occasion when you worked
1583 from home?

1584 A. Yes.

1585 Q. And why did you do that?

1586 A. I'm going to give two reasons. One is
1587 because the EPA system didn't work very well. And
1588 so in order to communicate with people by E-mail,
1589 I had to use my home E-mail.

1590 The other reason is because there was no reason
1591 not to. I mean nobody ever said, "Don't use your
1592 home E-mail," and sometimes I was sending things
1593 off to other EPA employees' home E-mail if they
1594 were working at home, just because it was
1595 convenient and there was no reason not to do that.

1596 Q. So this is sort of a general question
1597 about your E-mail use while you were at the
1598 agency. You started in 1989. Did you have E-mail
1599 when you started working for the agency?

1600 A. No.

1601 Q. And so is it fair to say that E-mail
1602 policies at the Environmental Protection Agency
1603 changed from the time when you joined in 1989 to
1604 when you retired in 2013?

1605 A. Yes.

1606 Q. Did you try and stay abreast of those
1607 changes?

1608 A. Yes.

1609 Q. You previously stated that you worked on
1610 mine issues for the EPA from the time you first
1611 joined in 1989, I believe; is that correct?

1612 A. Probably in 1990 is when they were first
1613 assigned to me. Pretty close.

1614 Q. And did the nature of your work on mines
1615 in Alaska change when you moved to the Soldotna
1616 office, or did your location, was that the only
1617 thing that changed?

1618 A. No. I'd say that the nature of my work
1619 changed a bit.

1620 Q. Can you describe how it did?

1621 A. Yeah. The emphasis of my work changed
1622 from when I was in Alaska -- I mean when I was in
1623 Anchorage, the mining became a larger and larger
1624 part of my work and the -- I still had a
1625 geographic area for 404, but it was being
1626 neglected. So there was a discussion among the
1627 managers, and it was decided that I would kind of
1628 deemphasize my mining and reemphasize what was
1629 supposed to be my regular 404 work. And so I
1630 still worked on mines, but there were some things
1631 like going around inspecting all the small placer
1632 mines, I didn't do that many anymore. I just
1633 worked on the big projects after that, the big
1634 mining projects.

1635 Q. Okay. Can you describe sort of
1636 generally what the other types of things you
1637 worked on in the mines were while you were at the
1638 EPA, and I guess focusing mostly on the time you
1639 were at the Soldotna office?

1640 A. What the other projects were?

1641 Q. What other types of issues you worked
1642 on, what you did.

1643 A. Okay. In terms of the 404 permitting,
1644 it was -- it would be highway projects that the
1645 state was -- maybe they wanted to rebuild a

1646 highway or relocate a highway. It could be
1647 somebody was putting in a subdivision. So they
1648 wanted to build a network of roads, it was
1649 enforcement for when they -- one case where they
1650 put in the roads without getting any permits.

1651 And then I spent a lot of time, actually, and I
1652 mentioned earlier working with the city of Homer
1653 to develop a new wetland plan for them. There's
1654 another small community nearby that I worked with
1655 to develop a watershed plan. There's a research
1656 reserve that's run by NOAA and Alaska Fish and
1657 Game, and I worked with them quite a lot on their
1658 research projects. I was on their advisory
1659 committee. I worked with a consortium of -- like
1660 soil and water conservation district and various
1661 NGOs that were interested in invasive species
1662 primarily having to do with wetland invasive
1663 species.

1664 So there was a tribe. I worked with --
1665 actually, the three -- there's three tribes --
1666 well, four tribes that I mentioned earlier. I
1667 mentioned that I worked with four tribes. At
1668 different times I worked with them on different
1669 projects.

1670 Q. Do you know approximately how many

1671 tribes, native tribes there were within the region
1672 that you covered when you worked at the Soldotna
1673 office?

1674 A. I actually don't know. Quite a few.

1675 Q. And are you generally familiar with the
1676 tribal organization in the state of Alaska?

1677 A. Yes, generally.

1678 Q. And is that -- are there umbrella
1679 organizations within the state of Alaska which are
1680 known as "native corporations"?

1681 A. Yes. They're not tribal government,
1682 though.

1683 Q. And then the various tribes who belong
1684 to those native corporations?

1685 A. It's not so much the tribes belong to
1686 them, but the individuals within the tribes belong
1687 to the corporations.

1688 Q. As shareholders. You previously talked
1689 about how you initially began to hear about the
1690 proposed mine and/or mines at Bristol Bay. Was
1691 the first mine that you heard about or exploration
1692 activity I should say that you heard about done by
1693 Pebble Limited Partnership?

1694 A. I don't think so, no.

1695 Q. Okay. So there were other

1696 contemporaneous companies that were also exploring
1697 in that region?

1698 A. Yes.

1699 Q. And just for the record, you mentioned
1700 the word "Northern Dynasty." Pebble Limited
1701 Partnership, Northern Dynasty, to your
1702 understanding are these different organizations
1703 but with the same general corporate -- can we use
1704 those terms interchangeably, and will that make
1705 sense to you?

1706 A. Yes. Yes, you can.

1707 Q. So can you tell me when you first would
1708 have had interactions with Pebble Limited
1709 Partnership, their employees?

1710 A. In 2005. To the best of my
1711 recollection, 2005.

1712 Q. That would have been after you were
1713 assigned the Pebble Mine as an issue at the
1714 meeting you discussed?

1715 A. Yes, that's correct.

1716 Q. Can you describe that interaction with
1717 the Pebble Limited Partnership?

1718 A. Well, they were holding -- the Pebble
1719 Limited Partnership was holding meetings with
1720 agencies. And so I would have been -- started to

1721 be invited to those meetings. There was many,
1722 many meetings, and there were annual events where
1723 they rented the ballroom in the Captain Cook Hotel
1724 in Anchorage, and invited all the agencies to
1725 present the results of the previous year's field
1726 work, doing their environmental baseline work.

1727 I'm sure there would have been -- I knew -- and
1728 I worked in mining a long time. So I knew people
1729 in mining, and I'm sure there would have been
1730 individual conversations on a particular topic. I
1731 don't recall exactly what those would have been.

1732 And then just many, many meetings.

1733 Q. Can you describe -- this is just a
1734 little bit of a tangent, but in your actions with
1735 people affiliated with the Pebble Limited
1736 Partnership, was it always people within the
1737 corporate structure, or did you interact with
1738 contractors who worked for Pebble as well?

1739 A. I interacted with contractors who worked
1740 for Pebble.

1741 Q. Okay. You mentioned the annual meetings
1742 that, I guess it was Pebble Limited Partnership or
1743 Northern Dynasty held at a hotel in Anchorage. Do
1744 you know when those started, approximately?

1745 A. I don't remember for sure. It might

1746 have been around 2005.

1747 Q. Do you know --

1748 A. I don't really recall.

1749 Q. Do you know how many annual meetings
1750 they held?

1751 A. Well, I believe -- I think they went
1752 through 2010, and I'm not sure if there were any
1753 after that. But I really don't recall.

1754 Q. And those meetings were put on by the
1755 Pebble Limited Partnership, to your understanding?

1756 A. Yes.

1757 Q. Did you have, in the course of your time
1758 working on this project, other meetings that
1759 involved the Pebble Limited Partnership? Were
1760 there regular meetings of another sort?

1761 A. Well, you're talking about the technical
1762 working groups, and there were those.

1763 Q. Can you describe what the technical
1764 working groups were?

1765 A. They were divided up into disciplines.
1766 And so there was one on hydrology. There was one
1767 on fish. Probably one on water quality. So they
1768 were divided up into disciplines, and the purpose
1769 of them was for the Pebble Limited Partnership to
1770 get feedback from the agencies on how to proceed

1771 with their environmental studies in terms of what
1772 to do and methodologies to use.

1773 [REDACTED]: Can you hand me B-1. We'll mark
1774 this document as Exhibit 3.

1775 (Deposition Exhibit 3 was marked
1776 for identification.)

1777 [REDACTED]: Please take a second to look it
1778 over. This is the document from the state of
1779 Alaska available publicly on their website.

1780 (The witness reviewed Exhibit 3.)

1781 [REDACTED]: I'm going to read a portion of
1782 this document into the record and ask you to
1783 comment on it. The first paragraph states, "The
1784 Pebble Project Technical Working Groups, TWGs,
1785 were created to facilitate preapplication, state
1786 and federal agency discussions with the project
1787 proponent, Pebble Limited Partnership, PLP. TWG
1788 meetings began in mid 2007 and covered a wide
1789 array of topics as seen in the meeting minutes
1790 below. This voluntary process regarding
1791 environmental and project design studies was
1792 suspended by PLP in January 2010. Communications
1793 between the PLP and individual agencies then
1794 continued through conventional channels and
1795 procedures."

1796 Q. Does that statement correspond to your
1797 own personal knowledge of how these meetings
1798 proceeded and ended?

1799 A. Yes, it does.

1800 Q. And if you sort of scroll down to the
1801 bottom of the page, you'll see various things in
1802 bold. For instance, the first one says, "Pebble
1803 Project TWG steering committee meeting minutes."
1804 There's several of these as you go on through the
1805 next page. Are these categories the disciplines
1806 that you were referring to when you initially
1807 answered the question?

1808 A. Yes.

1809 Q. And do these appear to be the TWG --
1810 [REDACTED]: Can we go off the record for a
1811 moment.

1812 (A recess was taken from 12:05 p.m.
1813 to 12:12 p.m.)

1814 [REDACTED]: Mr. North and his attorneys have
1815 agreed to waive the member requirement for the
1816 remainder of this hour, but we do expect another
1817 member to be joining us shortly.

1818 [REDACTED]: I'll start the clock.

1819 Q. All right. So I think I'll try and
1820 restart the question I was asking you, Mr. North,

1821 which is looking down at the dates that's
1822 underneath what you identified as sort of the
1823 discipline groups, do those appear to be the
1824 specific meeting dates for the technical working
1825 groups?

1826 A. They appear to be, yes.

1827 Q. Did you attend some of these technical
1828 working groups?

1829 A. I'm sure I did.

1830 Q. Do you know, off the top of your head,
1831 how many technical working group meetings that you
1832 attended?

1833 A. Off the top of my head, no.

1834 Q. Do you have like a ballpark? You know,
1835 are we talking most of them or just a handful?

1836 A. Well, all of them for certain groups.

1837 So do you want me to list them?

1838 Q. You can just list the number if you
1839 want. I don't think the specific meeting dates or

1840 --

1841 A. Yeah. Yeah. But for the fish groups
1842 and aquatic organisms, I would have been there.
1843 Geochemistry, I might have been there. I don't
1844 recall for sure. Hydrology, I don't think I was.
1845 Water quality, I could have been there. So

1846 wildlife, I probably was there. Marine, fish. So
1847 quite a few of them.

1848 Q. Sounds like a good handful. Maybe two
1849 handfuls?

1850 A. Right.

1851 Q. So these technical working group
1852 meetings, you sort of described what the purpose
1853 of them was. Who put on these meetings? Who was
1854 the sponsor of these meetings?

1855 A. The Pebble partnership.

1856 Q. And do you know why they sponsored these
1857 meetings? I mean, obviously, that's a speculative
1858 question, but in the course of your work in these
1859 meetings, do you know why they put on these
1860 meetings? Stated purpose, I guess, might be a
1861 better --

1862 A. My understanding is that they wanted to
1863 get feedback and approval from the agencies for
1864 the -- for their methods, as well as for the
1865 purposes of their environmental baseline studies.

1866 Q. During the course of this period of time
1867 when you and other people were attending these
1868 technical working group meetings, was it your
1869 anticipation that the Pebble Limited Partnership
1870 was preparing to file a permit application? Was

1871 that the general feeling of yourself or others?

1872 A. Yes.

1873 [REDACTED]: I'm going to show you another

1874 document that we'll list as Exhibit 4.

1875 (Deposition Exhibit 4 was marked

1876 for identification.)

1877 [REDACTED]: If you'd take a look at this.

1878 I'll characterize it while you're taking a look at

1879 it. This is an E-mail from Charlotte McKay,

1880 presumably to technical working group members

1881 because that's who it's addressed to. And while

1882 you're reading it, I'm just going to read a line

1883 into the record. The third paragraph states, "As

1884 a result of this, PLP is suspending the technical

1885 working groups at this time. PLP continues to

1886 value agency recommendations and will maintain

1887 communication with the large mine permitting team

1888 and individual agencies through conventional

1889 channels and procedures."

1890 Q. Is this your recollection of when the

1891 technical working group meetings were suspended?

1892 A. You know, I don't remember when they

1893 were suspended, but I believe it. I believe this.

1894 Q. And after -- so this E-mail is dated

1895 January 12, 2010. After this date, were there any

1896 further technical working group meetings that you
1897 can recall, after they were sort of initially
1898 suspended?

1899 A. No, not that I recall.

1900 Q. Okay. Did you, after the technical
1901 working group -- let me strike that and let me go
1902 back one step.

1903 Do you know who Charlotte McKay is?

1904 A. Yes, I do.

1905 Q. Who is Charlotte McKay?

1906 A. She was a permitting manager for -- it
1907 says it right there, for the Pebble Limited
1908 Partnership.

1909 Q. And do you know -- do you have any
1910 personal knowledge about why these technical
1911 working group meetings were suspended?

1912 A. Well, I mean it says here that they
1913 collected the information that they need, or it
1914 infers that anyway. It doesn't say it explicitly.
1915 It infers that they collected the information they
1916 needed, but I also know that some of the agencies
1917 were unhappy with the way the technical working
1918 groups were proceeding in that the agencies were
1919 giving input but not getting any results back.

1920 Q. Can you describe that just a little bit

1921 more, what you mean by that?

1922 A. That the agencies would go to the
1923 meetings, Pebble would describe what they want to
1924 do. The agencies would give advice on, you know,
1925 "Well, you might want to look at this or that, and
1926 here's the methodology that we would recommend
1927 that you use." So Pebble would gather that
1928 information, and then they'd do their field --
1929 unfortunately, they usually -- the meetings
1930 typically were kind of late in the spring. So
1931 there was little opportunity -- it seemed like
1932 they had already developed what they wanted to do,
1933 and they were almost like they wanted a blessing.

1934 Q. I don't mean to interrupt you. When you
1935 say they had developed what they wanted to do, are
1936 you referring to the upcoming field season?

1937 A. I am, yes.

1938 Q. And just as an aside, can you explain
1939 what you mean by that. What is a "field season"?

1940 A. A field season is when there's no snow
1941 on the ground and the water is liquid and all the
1942 plants are growing, all the animals are moving
1943 around, and that's when you have the opportunity
1944 to study them. And that was the spring, summer,
1945 fall. That's the field season. So they would go

1946 out and they would do their studies during that
1947 period.

1948 Unfortunately, when they'd come back and the
1949 agencies would ask for the results, the Pebble
1950 partnership wouldn't give us the results. They
1951 would just say, "Well, we did these studies, and
1952 now we're going to do these more studies. And
1953 what do you think of that." And some of the
1954 agencies got tired of -- well, they became
1955 impatient and unhappy about not getting the
1956 results of the studies.

1957 Q. Do you know if you personally ever
1958 expressed that opinion to Pebble Limited
1959 Partnership on your own?

1960 A. I don't think I expressed that. That
1961 discussion was essentially led by people from Fish
1962 and Game and Fish and Wildlife Service.

1963 Q. When you say, "Fish and Game," is that a
1964 state agency?

1965 A. Yes. Alaska Fish and Game. And I was
1966 cc'd, and I might have put in a few words here and
1967 there, but I really was not leading that
1968 discussion.

1969 Q. Okay. So you mentioned annual meetings
1970 that were put on by Pebble Limited Partnership.

1971 You've talked about the technical working groups.
1972 Were there other meetings between either yourself
1973 or your colleagues from EPA that you were aware of
1974 between Pebble Limited Partnership and the
1975 Environmental Protection Agency?

1976 A. Yes.

1977 Q. And can you describe, just generally,
1978 you know, the nature of those meetings?

1979 A. Well, it seems to me there was frequent
1980 meetings and, you know -- oh, boy. I'm trying to
1981 remember -- trying to picture one in my mind, and
1982 I'm really not recalling a specific meeting. But
1983 it might have been a meeting to talk about
1984 technical issues. It might have been -- you know,
1985 actually, I really -- I'm just sort of grasping at
1986 things.

1987 Q. Did you personally have meetings --

1988 A. Yes.

1989 Q. -- with Pebble Limited Partnership after
1990 the technical working group meetings?

1991 A. Yes.

1992 Q. Okay. And did you converse or
1993 communicate with Pebble Limited Partnership
1994 employees or contractors through other means than
1995 face-to-face meetings?

1996 A. Yes.

1997 Q. Can you describe, just in a general way,
1998 how you did that?

1999 A. E-mail and phone.

2000 Q. Okay. And would you call that a regular
2001 or a routine occurrence?

2002 A. I'd say regular, yes.

2003 [REDACTED]: I'm going to show you an exhibit
2004 that we will mark as 4, I think we're up to now --
2005 I mean 5. I'm sorry.

2006 (Deposition Exhibit 5 was marked
2007 for identification.)

2008 [REDACTED]: What you should be looking at is a
2009 public document related to the Pebble Limited
2010 Partnership v. United States Environmental
2011 Protection Agency litigation. You'd previously
2012 stated -- you mentioned a person by the name of
2013 Richard Parkin.

2014 Q. Would you remind us who Richard Parkin
2015 is?

2016 A. He's the deputy director of the office
2017 of ecosystems tribal and public affairs.

2018 Q. And you've personally had interactions
2019 with Richard Parkin over the course of your
2020 career?

2021 A. Yes.

2022 Q. In fact, while he's not a supervisor in
2023 your chain, I think you explained he reported to
2024 the supervisor in your chain of command; right?

2025 A. That's right.

2026 Q. I'm going to direct you to the second
2027 page. Paragraph 3. I'm going to read it into the
2028 record, and we'll ask you questions about this in
2029 a second. It states, "As I described in my
2030 previous" -- this is a declaration by Richard
2031 Parkin. "As I described in my previous
2032 declaration, the EPA made substantial effort to
2033 collaborate with Northern Dynasty Minerals, NDM,
2034 and Pebble Limited Partnership, PLP, throughout
2035 the years. These efforts began as early as 2003
2036 when EPA began engaging with NDM regarding the
2037 environmental effects of the development of a mine
2038 at the Pebble deposit and extended well past
2039 January 2014 when EPA released the final
2040 assessment of potential mining impacts on salmon
2041 ecosystems in Bristol Bay, Alaska (assessment)."
2042 I'll go on to the beginning of Paragraph 4.
2043 "As part of these ongoing efforts, to the best of
2044 my knowledge, EPA granted every meeting requested
2045 by the complainant."

2046 To the best of your knowledge, based on your
2047 experiences at EPA, are those statements accurate
2048 as far as your interactions with the Pebble
2049 Limited Partnership?

2050 A. Yes. I didn't know that they started as
2051 early as 2003, but the rest of it, yes.

2052 Q. Is there anybody -- let me strike that
2053 and go back.

2054 In the nature of your meetings with --
2055 communications with the Pebble Limited
2056 Partnership, how far in this sort of corporate
2057 structure at PLP did those communications go? Did
2058 you ever speak to the people in charge, you might
2059 say, the chairman or CEO or president of PLP or
2060 Northern Dynasty Minerals, as the case may be?

2061 A. Did I?

2062 Q. Yes, personally.

2063 A. I spoke with the CEO on a casual basis.

2064 Q. And do you know when that was?

2065 A. Well, it was --

2066 Q. What the circumstance of the meeting, I
2067 should say?

2068 A. The first time was he was -- somebody --
2069 there was a private company offering a course on
2070 regulation in mining, and he was in a panel

2071 discussion before -- and I gave a presentation.
2072 He was in a panel discussion before me, and when
2073 he saw my name go up just before he left the room,
2074 he came over and introduced himself, and we
2075 chatted for a few minutes. And then later, at
2076 just events, you know, we'd talk on the side.
2077 He'd talk to me and other people.

2078 MS. GARDE: Who are you talking about?

2079 THE WITNESS: I'm talking John Shivley.

2080 BY [REDACTED]:

2081 Q. And in the course of your dealings with
2082 PLP, were most of your interactions at a lower
2083 level within the corporate structure than the CEO,
2084 John Shivley?

2085 A. Mostly.

2086 Q. Were your interactions routine in terms
2087 of did you have a specific point of contact you
2088 normally talked to, or did you talk to many
2089 different people in the company?

2090 A. Mainly I talked to Charlotte McKay or
2091 Mike Smith. Mainly they were the people I
2092 interacted with.

2093 Q. Let's discuss some of the other meetings
2094 and discussions you had with outside parties
2095 during consideration of this, or your work on the

2096 Bristol Bay deposit. What other types of groups,
2097 governments did you speak with in the course of
2098 your involvement at the Pebble deposit?

2099 A. Well, let's start with kind of the
2100 research phase. I called people who I knew to be
2101 experts in issues that I wanted to know more about
2102 in Bristol Bay, and they could be anywhere, at
2103 universities, NGOs, private industry. They could
2104 be all kinds of places.

2105 Then I also talked to -- at one point I
2106 realized that I was not able to advise the
2107 managers about what was going on in terms of NGOs
2108 and tribes working directly at Bristol Bay. And
2109 so I sought them out and asked them what they were
2110 doing, what their positions were.

2111 Q. I don't mean to interrupt, but can I ask
2112 you do you recall when you first started reaching
2113 out to the NGOs who were involved with Bristol
2114 Bay? Was that time frame after you were initially
2115 put onto the Pebble team in 2005? Do you recall?

2116 A. It was after that, yes.

2117 Q. And I'm sorry for interrupting, but who
2118 else over the course of your time, what groups did
2119 you -- in broad terms did you meet with?

2120 A. Well, I met with and talked frequently

2121 with other agency people. So state agency people,
2122 federal agency people. So Fish and Wildlife
2123 Service, National Marine Fisheries, Alaska Fish
2124 and Game, DNC, DNR. You know, just all the
2125 agencies.

2126 Q. Can you describe, in your interactions
2127 with tribal communities, to the best of your own
2128 personal knowledge, how did that work? Was there
2129 a governmental structure that you communicated
2130 with? Were there representatives from the tribes
2131 that you communicated with? How did your
2132 interactions regarding the Bristol Bay deposit
2133 work? How were those structured?

2134 A. Typically, over time my involvement with
2135 the tribes was fairly informal. I knew a lot of
2136 people personally. So it was pretty easy just to
2137 call them up and chat.

2138 But with Bristol Bay I didn't know anybody. So
2139 I asked around to find out who's working with the
2140 tribes. Which tribes are involved. Who should I
2141 talk to. And I was directed to a man named Jeff
2142 Parker, who I knew.

2143 Q. Who is Jeff Parker?

2144 A. Jeff Parker is an attorney in Anchorage
2145 who works on fishery issues, and he was

2146 representing six tribal governments at the time.

2147 Q. Are these tribal governments within the
2148 Bristol Bay watershed?

2149 A. Yes, that's correct. And so in my
2150 effort to understand what people were thinking, I
2151 went and talked to Jeff Parker, and I asked him
2152 that question, you know, "What's going on?"

2153 Q. Did you have subsequent continued
2154 meetings with Geoffrey Parker in his capacity as a
2155 representative of the tribes?

2156 A. I had conversations with him, not so
2157 much meetings but conversations with him. He
2158 called me fairly often to either ask me a question
2159 or he had an idea that he wanted to share or
2160 something.

2161 Q. Based on your personal knowledge, do you
2162 know if he also contacted other government
2163 agencies who were involved in this Bristol Bay
2164 deposit evaluation?

2165 A. Yes, he did.

2166 Q. Does that -- going back to the original,
2167 is that a comprehensive list of the type of people
2168 you met with when dealing with the Bristol Bay
2169 deposit at the time at EPA?

2170 A. Yes, I think so.

2171 Q. You previously mentioned that it was
2172 some time period, 2007 through 2009 that you began
2173 to personally come to the decision that a 404(c)
2174 action might be appropriate for this area.

2175 A. Yes.

2176 Q. And I believe you described the -- you
2177 characterized the resource area as exceptional as
2178 being one of the reasons why.

2179 A. Yes, that's right.

2180 Q. So what did you do? Once you came to
2181 this decision personally, what did you do in the
2182 capacity of your job within the agency about it
2183 once you made the decision yourself?

2184 A. Right. I think -- I don't know the
2185 exact order of when I started talking to people.
2186 I talked to my supervisor and told him, you know,
2187 I think we should use our authority. I talked to
2188 the regional mining coordinator. And there was a
2189 retreat of the mining team, the regional mining
2190 team, and at one point they asked the question,
2191 kind of strategy development for the region, and
2192 somebody asked the question of "You know, what are
2193 our priorities for the next year?"

2194 And I said, "This should be one of the
2195 priorities."

2196 Q. But you don't recall what specific year
2197 that was when you had that retreat?

2198 A. I don't remember, no.

2199 Q. So what happened once you started
2200 communicating this opinion to your coworkers at
2201 the Environmental Protection Agency?

2202 A. Well, not much.

2203 Q. Okay.

2204 A. I -- my supervisor, my direct supervisor
2205 was supportive, and he basically said, "Start
2206 putting together materials so that we can brief
2207 others and start putting together the materials
2208 to -- for why this is the case."

2209 Q. And did you do that?

2210 A. I did, yes.

2211 Q. And did you at some point begin briefing
2212 other people about this within the agency?

2213 A. Yes. Within the agency, yes.

2214 Q. And do you recall -- we haven't really
2215 talked about the Bristol Bay watershed assessment.
2216 Before that process was initiated, do you recall
2217 who you briefed on this subject at the
2218 Environmental Protection Agency?

2219 A. Well, I briefed Rick Parkin, I briefed
2220 Marcia Combes, who was the director of the Alaska

2221 operations office, and I briefed others who were
2222 involved in the ecosystems tribal and public
2223 affairs, but I don't recall who they were. But I
2224 did brief some people.

2225 Q. Did you brief anybody at the EPA
2226 headquarters?

2227 A. No. Well, at this time I would have
2228 started communicating with people that were in my
2229 program at EPA, of course, but I don't know that I
2230 had given them a presentation or anything like
2231 that.

2232 Q. But they would have been, at some point
2233 in this time frame, generally aware that -- of
2234 this issue?

2235 A. Yes. Yes.

2236 Q. So what -- can you describe to me what
2237 the Bristol -- okay. Before I ask that question,
2238 let me strike that.

2239 Did the EPA initiate the 404(c) process at that
2240 point in time during your briefings?

2241 A. No.

2242 Q. Can you explain to me -- were you
2243 familiar with something known as the "Bristol Bay
2244 Watershed Assessment"?

2245 A. Yes.

2246 Q. Can you, just in this general terms,
2247 describe what the Bristol Bay watershed assessment
2248 is?

2249 A. It's an assessment of the risks
2250 associated with metal sulfite mining in Bristol
2251 Bay watershed. Specifically, in the Nushagak and
2252 Kvichak river watersheds.

2253 Q. And do you -- did you work on the
2254 Bristol Bay watershed assessment?

2255 A. I did, yes.

2256 Q. In what capacity?

2257 A. Early on I was the lead for it. And I'm
2258 going to take a step back because before there was
2259 a decision to do the watershed assessment, my
2260 supervisor directed me to use some contract funds
2261 to start to hire a contractor to help us bring
2262 together information about Bristol Bay and copper
2263 sulfite mining and just whatever would relate to
2264 the 404(c) issue. To start bringing that
2265 information together because, eventually, we would
2266 need it if we were going to proceed with the
2267 404(c).

2268 And so he told me to do that, which makes me --
2269 and I was the staff person. So it makes me the de
2270 facto lead on that. And so I engaged the

2271 contractor. The contractor put together the team.
2272 There were other EPA people involved in that team.
2273 And so I led that.

2274 Q. This is an information-gathering effort
2275 is what you're describing?

2276 A. Yes. Correct.

2277 Q. But not a formal watershed assessment?

2278 A. No. This is in late 2010.

2279 Q. So do you know when that
2280 information-gathering process somehow turned into
2281 the watershed assessment, the circumstances
2282 surrounding that?

2283 A. Actually, I mean I could tell you when
2284 the announcement was made.

2285 Q. Okay. Do you know when that was?

2286 A. Yeah. That was February 7, 2011. But I
2287 actually don't know how that decision was made.

2288 Q. Why don't you know that?

2289 A. Because I was not involved in that
2290 decision.

2291 Q. So even though you described yourself as
2292 having sort of the initial lead in the information
2293 gathering, you actually had no decision-making
2294 authority to initiate the Bristol Bay watershed
2295 assessment process?

2296 A. That's correct.

2297 Q. Do you know who would have had the
2298 decision-making authority to initiate that process
2299 in the chain of command?

2300 A. Somebody above me. I actually don't
2301 know who made the decision.

2302 Q. Can I ask you specifically, did you
2303 think a Bristol Bay -- the Bristol Bay watershed
2304 assessment or a watershed assessment was a
2305 necessary step to initiate the 404(c) process?

2306 A. I believe it was not a necessary step.

2307 Q. Can you explain why?

2308 A. Yeah. Because the 404(c) process has a
2309 deliberative process built into it. Collect the
2310 information. Evaluate it. Decide does this
2311 information support the idea that special
2312 restrictions are needed and can be implemented
2313 using 404(c). It's built into the process, and so
2314 I didn't see a need to do this assessment. It was
2315 completely separate from 404(c).

2316 Q. When you say it's "built into the
2317 process," is that a component of the process once
2318 the initiation is actually formally started?

2319 A. That's correct, yes.

2320 Q. Did you express your sentiments that the

2321 watershed assessment was not necessary to other
2322 people at EPA?

2323 A. Yes.

2324 Q. Did that include your supervisor or
2325 people up the chain of command?

2326 A. It might have included my supervisor.
2327 It would have been -- it wouldn't have been in
2328 terms of a complaint --

2329 Q. Sure.

2330 A. -- but more just like oh, it's not
2331 really necessary.

2332 Q. Nonetheless, the watershed assessment
2333 moved forward; correct?

2334 A. That's correct, yes.

2335 [REDACTED]: I'm going to show you an exhibit.

2336 We'll call this No. 6, and this is E.

2337 (Deposition Exhibit 6 was marked
2338 for identification.)

2339 (Mr. Lucas joined the proceedings.)

2340 [REDACTED]: This is an acknowledgment page --
2341 or pages from the Bristol Bay watershed
2342 assessment.

2343 THE WITNESS: Who's the --

2344 [REDACTED]: This is Mr. Lucas from Oklahoma.

2345 THE WITNESS: Okay.

2346 BY [REDACTED]:

2347 Q. If you look down under the authors,
2348 listed alphabetically, are you listed under the
2349 authors of this report?

2350 A. I am, yes.

2351 Q. So you were at least a contributing
2352 author to the Bristol Bay watershed assessment?

2353 A. Yes, that's correct.

2354 Q. Can you explain how the report, in
2355 general terms, was structured and what that meant,
2356 the fact that you were an author, not the author?

2357 A. How was it structured?

2358 Q. Yeah. How was the Bristol Bay watershed
2359 assessment structured? Did you work on the entire
2360 report, for instance?

2361 A. No. There were chapters. Chapters
2362 addressing specific issues.

2363 Q. Subject matter issues?

2364 A. Yeah. Subject matter issues, right.

2365 And I did not work on -- I worked on 2 chapters.

2366 Q. Do you know how many chapters there
2367 were?

2368 A. I believe 13 or 14.

2369 Q. So other authors worked on those other
2370 chapters?

2371 A. That's correct.

2372 Q. You'll see below there's a list of
2373 contributors, and it goes on to the next page.
2374 Was it the same sort of general format for the
2375 contributors? Contributors would contribute to
2376 certain chapters but not the entire document?

2377 A. Yes, that's right.

2378 Q. And I think you'll see the next category
2379 on the second page is "Reviewers of internal
2380 review drafts." I don't even understand what that
2381 means. Can you explain what that means, what
2382 those people would have been doing?

2383 A. I think these people -- before it was
2384 released, these people would have done a check of
2385 the document to read it and give feedback on if we
2386 had any, you know, major problems with it
2387 internally within EPA --

2388 Q. Before it was released?

2389 A. -- before it was released to anybody
2390 else.

2391 Q. And then you'll see before that
2392 "Reviewers of External Review." What does that
2393 mean?

2394 A. Those were the peer reviewers. They
2395 were other scientists unrelated to EPA that were

2396 contracted not by the EPA but by EPA contractors
2397 that ran the peer review process, and they did a
2398 scientific -- well, they reviewed it for
2399 scientific standards.

2400 Q. Okay. Were you the -- was there a lead
2401 author for the Bristol Bay watershed assessment?

2402 A. The lead author for the Bristol Bay
2403 watershed assessment was Jeff -- let's see.

2404 Q. He's listed under this first list;
2405 correct?

2406 A. Yeah. I think I need to qualify that,
2407 though, because early on, I was designated to be
2408 the lead. As I said, this was sort of a carryover
2409 from before we were doing the assessment and
2410 before the office of research and development was
2411 involved. And even after they got involved, they
2412 designated me as the lead. So, really, I was the
2413 nominal lead.

2414 Q. Through the entire assessment or for the
2415 initial part of the assessment?

2416 A. For the initial part. You know, you've
2417 got these scientists here who are the world
2418 experts in their field, and I'm this guy in the
2419 end of the pipe in Soldotna, Alaska, and it
2420 quickly got over my head. And so Jeff Frithsen

2421 really took over the lead.

2422 Q. So you worked on the Bristol Bay
2423 watershed assessment. Was there ultimately a
2424 first draft of the Bristol Bay watershed
2425 assessment that was released to the public?

2426 A. Yes.

2427 Q. Do you know what year that was?

2428 A. I believe it was 2012.

2429 Q. And you were still at the EPA at that
2430 time?

2431 A. Yes.

2432 Q. Once that first draft of the watershed
2433 assessment is released, is there a public comment
2434 period on the document?

2435 A. There was, yes.

2436 Q. To your knowledge, that occurred?

2437 A. Yes.

2438 Q. And anybody in the public, including
2439 Pebble Limited Partnership, could comment on the
2440 document?

2441 A. That's correct.

2442 Q. To your knowledge, did Pebble Limited
2443 Partnership offer comments?

2444 A. They did, yes.

2445 Q. And I don't know the time frame of this,

2446 but subsequent to that there was a peer review, or
2447 was it contemporaneous?

2448 A. I believe it was contemporaneous.

2449 Q. And, in fact, there was a peer review
2450 meeting as part of this process; correct?

2451 A. That's right.

2452 Q. During that meeting, there was an
2453 opportunity for public comment; is that correct?

2454 A. Yes, there was.

2455 Q. Do you know if Pebble Limited
2456 Partnership offered comments during that
2457 opportunity?

2458 A. They did, yes.

2459 Q. At some point in time, was there a
2460 second draft of the watershed assessment released?

2461 A. Yes.

2462 Q. And do you know what year that was?

2463 A. I believe it was 2013.

2464 Q. Were you still at the Environmental
2465 Protection Agency when the second draft was
2466 released?

2467 A. I think I was.

2468 Q. Okay. So it sounds, from what you're
2469 answering, I'm inferring that it was approximately
2470 around that time frame that you were retiring?

2471 A. That's right, yes.

2472 Q. Do you know when the second draft of the
2473 watershed assessment was released, was there a
2474 public comment period?

2475 A. Yes, there was. My understanding is
2476 that there was, yes.

2477 Q. Do you have any knowledge of whether or
2478 not Pebble Limited Partnership offered comments
2479 during that public comment period?

2480 A. I believe they did.

2481 Q. Okay. You stated that you retired in
2482 April, 2013 --

2483 A. Correct.

2484 Q. -- is that correct?

2485 A. Yes.

2486 Q. Do you know when the final Bristol Bay
2487 watershed report was released, what year?

2488 A. I think it was 2014.

2489 Q. And this is after you retired from --

2490 A. Yes, that's correct.

2491 Q. Do you know --

2492 [REDACTED]: I'm going to show you, actually,
2493 Exhibit -- where are we at? 7? And this is G,
2494 guys.

2495 (Deposition Exhibit 7 was marked

2496 for identification.)

2497 [REDACTED]: For the record, this is a publicly
2498 available federal register notice for Monday, July
2499 21, 2014. It's entitled "Proposed Determination
2500 to Restrict the Use of an Area as a Disposal Site,
2501 Pebble Deposit Area, Southwest Alaska."

2502 Q. Do you know what this document is?

2503 A. Yes.

2504 Q. What is this document?

2505 A. It's a proposed determination to
2506 restrict discharge at the Pebble site.

2507 Q. And since it was issued in July of 2014,
2508 you were no longer at the EPA at that time; is
2509 that correct?

2510 A. That's correct.

2511 [REDACTED]: I'm going to show you a document
2512 we'll refer to as Exhibit 8. It's H-1.

2513 (Deposition Exhibit 8 was marked
2514 for identification.)

2515 BY [REDACTED]: And what you're looking at is
2516 a publicly available court document in the case
2517 Pebble Limited Partnership v. United States
2518 Environmental Protection Agency. And I'm going to
2519 ask you to do a favor for me. I don't want you to
2520 read over this whole document unless you feel

2521 compelled to, but if you flip to the last page of
2522 the document, you'll see a signature line and a
2523 date, and that date is May 21, 2014.

2524 Q. You were no longer at the Environmental
2525 Protection Agency when Pebble Limited Partnership
2526 initiated litigation with the Environmental
2527 Protection Agency; correct?

2528 A. That's correct.

2529 Q. Let's talk about -- in the time
2530 remaining, let's talk about your continued
2531 interactions with the Environmental Protection
2532 Agency, any work related to this after you
2533 retired. So after you retired in 2013, did you
2534 continue to communicate with anybody about the
2535 Pebble mine or any of the issues related to the
2536 Bristol Bay resource deposit?

2537 A. No, I didn't.

2538 Q. And at some point in time, you in fact
2539 did communicate with -- or perhaps through your
2540 attorney, with attorneys related to Pebble Limited
2541 Partnership?

2542 A. Yes. Yes.

2543 Q. And I believe also staff members from
2544 Congress?

2545 A. Yes.

2546 Q. Perhaps through your attorney?

2547 A. Yes.

2548 Q. At some point in time, did you engage in
2549 a deposition related to this case prior to today?

2550 A. Yes.

2551 Q. And when was that?

2552 A. That was Wednesday, the 30th. 30th and
2553 31.

2554 Q. And who was that deposition with?

2555 A. It was with Steptoe & Johnson.

2556 Q. And to your knowledge, are they
2557 attorneys for the plaintiffs in the Pebble Limited
2558 Partnership case versus the Environmental
2559 Protection Agency?

2560 A. That's my understanding.

2561 Q. And when did that deposition -- that
2562 deposition is over?

2563 A. Yes.

2564 Q. You completed that deposition?

2565 A. Yes.

2566 Q. Let me ask you another question related
2567 to this deposition. When you were leaving that
2568 deposition on the first day of the deposition,
2569 were you served with a subpoena?

2570 A. Yes.

2571 Q. And where was that that you were served
2572 with the subpoena?

2573 A. In the lobby of the Steptoe & Johnson
2574 building.

2575 Q. Okay. Was it federal marshals who
2576 served you, or was it congressional staffers?

2577 A. It was two young men. That's all I
2578 know.

2579 Q. Did -- when you were served with the
2580 subpoena for appearance at the Steptoe &
2581 Johnson -- I'm going to call it "the Steptoe &
2582 Johnson deposition," where did that subpoena
2583 request that you appear? The original subpoena.

2584 A. The Congressional subpoena?

2585 Q. No. The PLP --

2586 A. In Anchorage, Alaska.

2587 Q. But you did not appear there. You
2588 appeared in Washington?

2589 A. That's correct.

2590 Q. Did you tell anybody, in the course of
2591 your dealings with people, that your deposition
2592 was going to be held in Washington and not in
2593 Anchorage? Besides your attorneys.

2594 A. Or my family, or friends in Indonesia.

2595 Q. Correct.

2596 A. No.

2597 Q. And do you know if this was -- whether
2598 or not your deposition at Steptoe & Johnson was
2599 a -- like a publicly announced event?

2600 A. I don't believe it was. I don't know,
2601 though.

2602 [REDACTED]: I think that's a good time for me
2603 to wrap up. I've got 20 seconds left. Should we
2604 go off the record?

2605 (Bruce Westerman joined the proceedings.)

2606 (A recess was taken from 12:50 p.m.
2607 to 1:35 p.m.)

2608 [REDACTED]: We'll go back on record.

2609 EXAMINATION

2610 BY [REDACTED]:

2611 Q. So when we were last talking, you were
2612 talking about the -- a little bit about the 404
2613 process. And so I just want to -- I have a couple
2614 follow-up questions on that.

2615 Would you agree that there is no bright-line
2616 rule for triggering a recommendation for -- just
2617 to begin the 404(c) process?

2618 A. Yes, I guess I would agree.

2619 Q. And you mentioned that there are some
2620 instances of projects that you worked on where the

2621 permit was denied by the Army Corps of Engineers.
2622 Were the permittees in those instances allowed to
2623 file a permit application?
2624 A. Yes.
2625 Q. And we were also talking about,
2626 previously, that you had formulated an opinion on
2627 whether or not the EPA should use authority, under
2628 404(c), to stop the Pebble mine; is that correct?
2629 A. Yes.
2630 Q. So at the time you had formulated your
2631 opinion on 404(c) with regards to the Pebble
2632 deposit, had a mine plan been filed by the PLP?
2633 A. Well, yes. There was a mine plan that
2634 had been filed.
2635 Q. Had it been filed with the EPA?
2636 A. No.
2637 Q. Had it been filed with the Army Corps of
2638 Engineers?
2639 A. No.
2640 Q. So had a formal 404 permit application
2641 been submitted for development of the project?
2642 A. No.
2643 Q. And at the time that you formulated your
2644 opinion on the 404(c) action that EPA could take
2645 with regards to the Pebble deposit, had EPA

2646 formulated any scientific documents on that
2647 particular topic?

2648 A. Could you ask the question again?

2649 Q. Sure. At the time you formulated your
2650 opinion on the 404(c) action with regard to the
2651 Pebble deposit, had the EPA produced any
2652 scientific studies, reports or anything of that
2653 nature with regards to the Pebble deposit?

2654 A. No.

2655 Q. And you also were talking about how you
2656 were collecting data with regards to the Pebble
2657 deposit -- is that correct? -- from 2005 onwards?

2658 A. I wouldn't call it "data." I would call
2659 it "information." Scientific papers. Scientific
2660 information. So data in itself.

2661 Q. Did you have a working hypothesis with
2662 regards to the Pebble deposit when you were
2663 collecting that information?

2664 A. I would have to guess what you mean. So
2665 can you restate the question?

2666 Q. Sure. Which part are you unclear on?

2667 A. You said, "a working hypothesis," and I
2668 don't know what -- hypothesis on what?

2669 Q. Did you have a working -- what question
2670 were you trying to answer when you were collecting

2671 the information on the Pebble deposit?

2672 A. Well, I assumed -- as I have said
2673 before, I assumed that the permit would be issued
2674 eventually. And so I needed to understand the
2675 area, the resources of the area, and I needed to
2676 understand that particular kind of mining and what
2677 the risks are associated with that particular kind
2678 of mining so that I could intelligently
2679 participate in the discussions about a permit and
2680 what conditions might be placed on that permit.

2681 Q. And when you collect that information,
2682 is there a specific charge question that you've
2683 come up with?

2684 A. Not a specific question, no.

2685 Q. And you don't develop a specific
2686 hypothesis?

2687 A. As in a written hypothesis? Is that
2688 what you mean?

2689 Q. Well, did you produce a written
2690 hypothesis?

2691 A. No.

2692 Q. Did you have one in your mind?

2693 A. Not a stated hypothesis. I'm actually
2694 not even sure what you mean by a hypothesis.

2695 Q. Okay. To your knowledge, did anyone at

2696 EPA believe that -- sorry. Let me back up.

2697 For the purposes of a 404(c) action before a
2698 group files a permit, would you agree that we
2699 could call that a "preemptive" or "prospective
2700 action"?

2701 A. Well, I don't think I would call it
2702 either of those things --

2703 Q. Okay.

2704 A. -- because that's not what it was about.

2705 Q. Okay. To your knowledge, did anyone at
2706 the EPA believe that initiating the 404(c) process
2707 before a project had applied for a permit had ever
2708 been done before under the Clean Water Act?

2709 A. It's my understanding that it had been
2710 done. I'm not sure that answered the question you
2711 asked.

2712 Q. So your understanding was that a
2713 preapplication 404(c) action had been done before
2714 in the history of the Clean Water Act?

2715 A. Yes, it's my understanding.

2716 Q. To your knowledge, did anyone feel that
2717 that was different at the agency?

2718 MS. GARDE: Object. Lack of foundation.

2719 [REDACTED]: That's not a valid objection
2720 that we recognize.

2721 THE WITNESS: I don't really understand what
2722 the question means, though. Can you ask me again?

2723 BY [REDACTED]:

2724 Q. Sure. I'm asking if you're aware that
2725 anyone at EPA felt that a pre-application -- do
2726 you understand that part?

2727 A. Yes.

2728 Q. A preapplication for a 404(c) agency had
2729 never been done before under the Clean Water Act?

2730 MS. GARDE: Same objection.

2731 THE WITNESS: To clarify, that anyone at EPA
2732 thought that it had never been done.

2733 BY [REDACTED]:

2734 Q. Right. To your knowledge.

2735 A. To my knowledge I'm not aware of anybody
2736 at EPA who thought it had never been done.

2737 (Record read.)

2738 BY [REDACTED]:

2739 Q. What I'm trying to determine is if
2740 you're aware of anyone having the understanding
2741 that a pre-application, Section 404(c) action had
2742 never been done before in the history of the Clean
2743 Water Act?

2744 MS. GARDE: Same objection.

2745 THE WITNESS: Well, I really don't know. I

2746 work in my program, and I'm sure people in my
2747 program under -- believed or understood that there
2748 were 404 -- there was at least one or two 404(c)
2749 actions that were preapplication in the past, but
2750 anybody in EPA, I mean, I don't know that they
2751 would have a basis of knowing one way or the
2752 other. So it's sort of a broad question.

2753 BY [REDACTED]:

2754 Q. So was that something that you ever
2755 discussed with your EPA colleagues, meaning that a
2756 potential precedential nature of doing a
2757 pre-application 404(c) action?

2758 A. I think there were discussions about --
2759 whether it was precedential, I don't know, but
2760 there were -- I believe there were discussions
2761 about the -- kind of the preapplication nature of
2762 it, of what was being discussed.

2763 Q. Can you describe some of those
2764 discussions?

2765 A. Well, I have to remember them. I just
2766 remember -- I don't remember the specific
2767 discussions, but I do recall that there were -- I
2768 just recall that there were some discussions about
2769 that.

2770 Q. Do you recall who you discussed that

2771 with?

2772 A. You know, I could -- almost a guess, but
2773 I think probably with -- I think the discussion
2774 was whether or not -- perhaps whether there was a
2775 foundation for that or not. It might have been
2776 with -- like Patty McGrath might have been
2777 involved with that. Cara Steiner-Riley might have
2778 been involved in that discussion. Michael
2779 Szerlog. So but I'm really kind of reaching to
2780 the edge of my memory. I don't know for sure who
2781 was involved in and -- or even really, I'm not
2782 clear about what the conversation was.

2783 Q. So you're saying that these are
2784 conversations that you may not have been a party
2785 to but you're aware that they took place?

2786 A. No. I think I was involved in some
2787 discussions about that because -- and the reason I
2788 think so is because I think -- I recall going back
2789 to the regs and saying, "Oh, no. No. No. Look,
2790 it says so right here, that we have the authority
2791 to do this before an application." I recall doing
2792 that. It would have -- people like Patty McGrath
2793 or Cara Steiner-Riley, they won't know those regs.
2794 So it would be bringing them to their attention
2795 for the first time.

2796 Q. How did you know that Cara Steiner-Riley
2797 and Patty McGrath didn't know that particular
2798 regulation?

2799 A. I don't think that I knew that for sure,
2800 but they're not in the program. So they would not
2801 necessarily have a reason to know.

2802 Q. As you stated before, you had formulated
2803 your opinion on whether EPA should use Section
2804 404(c) for the Pebble mine before a scientific
2805 document was prepared by the EPA; right?

2806 A. Yes.

2807 Q. Did you ever consider the
2808 appropriateness of coming to that conclusion?

2809 A. Yes.

2810 Q. And did you feel that that was
2811 appropriate to come to that conclusion before the
2812 agency had established a scientific document?

2813 A. Yes. I felt that that was my job, to
2814 come to that conclusion and then -- or not
2815 necessarily come to that conclusion but to do that
2816 evaluation and then take the next steps from
2817 there.

2818 Q. So at the beginning of your interview,
2819 you discussed that sort of outside the EPA
2820 outreach it was part of your job description;

2821 correct?

2822 A. Yes.

2823 Q. And I believe you stated before that you
2824 worked with some tribal governments with regards
2825 to the Pebble deposit issue; is that correct?

2826 A. Well, I contacted a representative of
2827 the tribal governments, and I talked with him and
2828 I talked to one other -- one person who was one of
2829 the administrators for a tribal government.

2830 Q. And the representative of the tribal
2831 governments in question was Jeff Parker; is that
2832 correct?

2833 A. Yes, that's right.

2834 Q. And previously, you had stated, I
2835 believe, that there were four, I think, tribal
2836 groups that you were -- that you felt you were
2837 well known with. Are those four different groups
2838 than we're talking about here?

2839 A. Yes, they are.

2840 Q. So these specific tribal groups are ones
2841 that you only became aware of because you were
2842 working on the Pebble deposit issue?

2843 A. Which one?

2844 Q. I'm sorry. Just strike that question.

2845 And you also have indicated that you work with

2846 NGOs on the Pebble deposit matter; is that
2847 correct?

2848 A. Well, I talk to them, yes.

2849 Q. And was one of the NGO groups that you
2850 talked to Trout Unlimited?

2851 A. Yes.

2852 Q. And was one the Natural Resources
2853 Defense Council?

2854 A. No, I don't think I ever did talk to
2855 anybody there.

2856 Q. How about the Sierra Club?

2857 A. No.

2858 Q. How about the Nature Conservancy?

2859 A. Yes.

2860 Q. And what about the Alaska Independent
2861 Fishermen's Marketing Association?

2862 A. There was one man from a fishing
2863 marketing organization, but there are numerous
2864 organizations. And so I couldn't say that's the
2865 right one.

2866 Q. Do you recall that person's name?

2867 A. Do you want to suggest a name, and I'll
2868 tell you if it's right? I have a hard time
2869 remembering peoples' names.

2870 Q. That's okay. We'll just keep moving on.

2871 So how -- did you know Jeff Parker before you
2872 had been given his name to reach out to about sort
2873 of tribal involvement in the Pebble deposit?

2874 A. Yes, I did know him.

2875 Q. And how long had you known him?

2876 A. Oh, for several years.

2877 Q. Did you know him when you lived in
2878 Anchorage?

2879 A. I don't think I did.

2880 Q. So sometime after 2000?

2881 A. Or in that vicinity. After '98 would
2882 probably be more accurate.

2883 Q. And how did you come to know him?

2884 A. He works on a lot of fishing issues, and
2885 the Kenai River, which was right by my office, is
2886 a major fishing, sport fishing and commercial
2887 fishing river in Alaska, and he was involved in
2888 issues on the Kenai River.

2889 Q. What groups was he representing at the
2890 time?

2891 A. Well, good question. I don't know that
2892 I ever dealt with him in a way that I would know
2893 that. I think it was more that he would be
2894 suggested as someone who would have particular
2895 knowledge, and so I might call and chat with him

2896 on that particular subject. I don't know that I
2897 ever worked with him where I would even know if he
2898 was representing anybody.

2899 Q. So when you first interacted with him,
2900 was that to discuss sort of legal analysis or
2901 regulatory analysis?

2902 A. No. You mean first contacted him in '98
2903 or whatever?

2904 Q. Regarding the Kenai --

2905 A. Good question. I actually don't know.
2906 I don't remember.

2907 Q. So when you said that he had particular
2908 knowledge about, I think you said,
2909 "fishing issues" --

2910 A. Right.

2911 Q. -- what did you mean?

2912 A. Well, I mean he's in the -- he's --
2913 fishing is a very political issue in Alaska
2914 because there's so many different groups that want
2915 the fish, but it's also -- you know, for somebody
2916 like me, it's a -- I'm interested in the ecology
2917 of the fish. And so different people have
2918 different knowledge about those things, and Jeff
2919 has pretty good knowledge of the whole range.
2920 He's not an ecologist. He's an attorney, and I

2921 think he's generally in the thick of the politics
2922 of it all but -- you know, in the Kenai River
2923 particularly.

2924 But he also has a pretty good knowledge of just
2925 what's going on and who's doing what and the
2926 ecology of the fish. So I could have called him
2927 for anything, really, and I don't recall why or
2928 what exactly.

2929 Q. Would it be fair to say that you worked
2930 together with him on water conservation issues in
2931 the past?

2932 A. No. I don't think that that would be
2933 correct. I might call him and ask him a question,
2934 discuss something with him, but working with him
2935 on water conservation issues, I don't think that's
2936 correct.

2937 Q. And just -- just to be clear, Jeff
2938 Parker was an attorney representing tribal groups?

2939 A. That's correct.

2940 Q. Did you know him to be part of any
2941 tribal government?

2942 A. He didn't belong to a tribe or, as far
2943 as I know, except as an attorney, work for a
2944 tribe.

2945 Q. And as you knew him, his expertise was

2946 in fishing issues; correct?

2947 A. Well, I knew him to have expertise in
2948 fishing issues, you know, among other things.

2949 Q. Did you ever socialize with Jeff Parker
2950 outside of a work context?

2951 A. No. Not -- I mean there were times
2952 after the Pebble process started when I had -- you
2953 know, I was going to Anchorage and he'd say,
2954 "Let's go talk, have a cup of coffee, have dinner,
2955 whatever. Let's talk." But before that, no.

2956 Q. Are you familiar with a document that
2957 has been called the "options paper"?

2958 A. I am, yes.

2959 Q. And at some point did you start working
2960 on this options paper?

2961 A. Well, I guess you're suggesting that I
2962 wrote it, and I have to tell you that when I saw
2963 it at the other deposition, I have no recollection
2964 of writing it. But it looks like I wrote it
2965 because it's my kind of prose, and the citations
2966 are things that I actually researched. So it
2967 looks like I wrote it.

2968 Q. So you don't recall working on it at
2969 all? Is that --

2970 A. I actually don't, that's correct. I

2971 don't recall working on it.

2972 Q. Does that mean you don't recall who you
2973 would have worked on it with?

2974 A. Well, I mean I know -- I saw E-mails
2975 where I sent it to people within EPA to provide
2976 feedback on it.

2977 Q. So your recollection with regards to
2978 this matter has been refreshed by certain
2979 documents you've seen?

2980 A. Yes. Right. Yes.

2981 Q. And so you don't recall who tasked you
2982 with working on an options paper?

2983 A. No, I don't recall.

2984 Q. Do you know who would know that?

2985 A. Well, if my supervisor tasked me with
2986 it, he might know. He might remember that.

2987 Q. And that's Michael Szerlog?

2988 A. Yeah, that's Michael Szerlog. I would
2989 think he would be the only one, I guess.

2990 Q. Do you recall if you ever consulted with
2991 anyone outside of the EPA on the options paper?

2992 A. I don't think I did. Not that I recall.

2993 Q. Did you ever send the options paper to
2994 anyone outside of the EPA?

2995 A. It's possible, but I don't recall doing

2996 that.

2997 Q. When you say it's possible, is that
2998 because you were sending a lot of information
2999 outside the EPA?

3000 A. I would say no, I wasn't sending a lot
3001 of information outside of the EPA.

3002 Q. Were you transmitting EPA documents
3003 outside of the EPA to other people?

3004 A. I was periodically, yes.

3005 Q. To whom were you transmitting that?

3006 A. I believe I transmitted some to Jeff
3007 Parker.

3008 Q. And were these final documents or draft
3009 documents?

3010 A. Well, I guess -- I don't recall. I
3011 don't think they were -- I don't think they would
3012 be final documents because that wasn't the nature
3013 of the documents, whether they'd be -- but they
3014 might be just discussion documents. He called me
3015 quite often to chat about things, and he had ideas
3016 and things that he liked to run past me and
3017 others. And so, you know, I can easily -- I'm
3018 sure that I might have -- I would have said,
3019 "Well, here's what I'm working on right now on
3020 this particular thing," and so I might send him

3021 something that I had written up.

3022 Q. So when did you start conversing with
3023 Jeff Parker on the Pebble deposit?

3024 A. I think it would have been the fall of
3025 2009, I believe.

3026 Q. And who had put you in touch with him?

3027 A. I don't remember. I called -- I was
3028 trying to figure out who was working in Bristol
3029 Bay in terms of NGOs and tribes. I wanted to find
3030 out what they were doing so I could then brief the
3031 managers. And I called around, and I don't
3032 remember who I called, and then somebody said,
3033 "Call this person at Trout Unlimited and call Jeff
3034 Parker at the tribes," or "He's working for the
3035 tribes."

3036 Q. So you called Jeff Parker and you
3037 started to have what kind of discussions?

3038 A. I was in Anchorage, and I arranged to
3039 meet with him and -- just to find out what was --
3040 what they were doing, what the tribes were doing,
3041 what their position was because I needed to be
3042 able to tell the managers what was going on
3043 because I didn't know.

3044 Q. And prior to reaching out to Jeff Parker
3045 in the fall of 2009, had you already come to any

3046 conclusions on the development of the Pebble
3047 project?

3048 A. I had, yes. I had decided that it was
3049 appropriate at that time.

3050 Q. And in fall of 2009, did you discuss a
3051 404(c) action with Jeff Parker?

3052 A. I told him that that's what I was
3053 thinking.

3054 Q. Did you discuss with him what you felt
3055 would be any difficulties with that?

3056 A. Not that I know of. Not that I recall.

3057 Q. So how often, regarding the Pebble
3058 project, did you speak with regional administrator
3059 Dennis McLerran?

3060 A. I think I briefed him once, and maybe
3061 twice, although I can -- I only have a clear
3062 recollection of briefing him once. And other than
3063 that, I don't think I talked to him at all about
3064 it. Not directly.

3065 Q. So no regular phone calls or E-mails?

3066 A. No.

3067 Q. How many times have you met him in
3068 person?

3069 A. I don't know. Quite a number. Quite a
3070 number of times.

3071 Q. More than 10?

3072 A. Possibly. Possibly. Maybe not, but
3073 possibly.

3074 Q. And just to clarify, so one -- you're
3075 certain of one briefing; correct?

3076 A. Yes.

3077 Q. And do you have any recollection of
3078 conference calls regarding the Pebble project
3079 which Dennis McLerran may have been on?

3080 A. I know it seems likely, but I don't have
3081 a recollection of conference calls with Dennis.
3082 But it seems likely.

3083 Q. And of the briefing that you recall of
3084 Administrator McLerran, what was the topic of that
3085 briefing?

3086 A. He was brand new as the regional
3087 administrator. So he was being briefed on the
3088 issues that the region was dealing with. And
3089 another person briefed him on the 404 program, and
3090 then I briefed him on Bristol Bay and the Pebble
3091 project.

3092 Q. So that's when he started as the
3093 regional administrator?

3094 A. That's right.

3095 Q. At that time, did you -- was that after

3096 you had come to your decision on 404(c) in the
3097 Pebble project?

3098 A. It may have been, but I remember that
3099 during that briefing it was not about promoting
3100 404(c). It was just telling him, "This is what's
3101 going on."

3102 Q. An overview?

3103 A. Yes. An overview. That's right.

3104 Q. So do you believe that there was a
3105 briefing that you were involved with regarding
3106 Dennis McLerran where a recommendation was given
3107 to him with regard to how EPA should proceed
3108 regarding the Pebble project?

3109 A. It makes sense that I would have been
3110 involved in a briefing like that, but I don't
3111 recall the briefing.

3112 Q. Is it that you don't recall the time of
3113 the briefing, or you have no memory of the
3114 briefing itself?

3115 A. I just have no memory of the briefing
3116 itself.

3117 Q. And if it's likely that that briefing
3118 took place, wouldn't you have been the person to
3119 either present that recommendation or have a large
3120 role in preparing for a certain recommendation?

3121 A. That makes sense. And, again, I just
3122 don't have a recollection, but it does make sense.

3123 Q. It should be a memorable event because
3124 it is the first -- is it not the first
3125 preapplication 404(c) action that you would be
3126 recommending that the regional administrator
3127 conduct?

3128 A. Well, I didn't consider that to be a
3129 remarkable event. The idea that it's the first
3130 one, I didn't consider that to be remarkable. So
3131 I wouldn't remember it because of that. I mean I
3132 think I would remember it just because I -- if I
3133 was believing the regional administrator, but I
3134 just don't.

3135 MR. CLIFFORD: Speak up.

3136 THE WITNESS: Okay. Sorry.

3137 BY [REDACTED]:

3138 Q. You mentioned that your immediate
3139 manager, Michael Szerlog, was in agreement with
3140 you on the -- your belief that EPA should use
3141 section 404(c) for the Pebble project?

3142 A. Yes, that was my understanding.

3143 Q. And you -- did he come to that decision
3144 based on information that you had given him?

3145 A. That would have been the case, yes.

3146 Q. And did you present similar-type
3147 information to any other management level
3148 employees at the EPA?

3149 A. I did, yes.

3150 Q. And who were those people that you
3151 presented that to?

3152 A. As I said earlier, Rick Parkin and
3153 Marcia Combes, and then there was at least one
3154 other person on the phone when I did that
3155 briefing, and I don't recall who it was. But it
3156 was somebody in the management structure of ETPA.

3157 Q. And what -- do you know when that was?

3158 A. Well, it was before I talked to Jeff
3159 Parker. So it probably would have been in the
3160 fall of 2009.

3161 Q. And did you get any feedback on that
3162 recommendation from Rick Parkin?

3163 A. No, I don't think I did. Not at that
3164 time.

3165 Q. Did you come to know whether or not at
3166 some time that Rick Parkin shared the same
3167 sentiment as you, that the EPA should use Section
3168 404(c)?

3169 A. I'm trying to think carefully because I
3170 don't know if Rick ever came to an independent

3171 conclusion that we should do that or if at some
3172 point the region had made a decision that he went
3173 along with that decision. I don't know which one
3174 it was.

3175 Q. How about Marcia Combes?

3176 A. Marcia Combes was not supportive of
3177 using 404(c).

3178 Q. Did you try to convince her otherwise?

3179 A. No. I asked her why she wasn't, but I
3180 did not try to convince her.

3181 Q. And why was she not in favor?

3182 A. Well, I've never -- I was never really
3183 clear about why she wasn't in favor. So,
3184 actually, I don't think I could tell you. I asked
3185 her and we talked about it a little bit, but I was
3186 never really clear why.

3187 Q. Let me go back to Rick Parkin for a
3188 second. Who would know what Rick's feeling was,
3189 whether it was his independent personal decision
3190 or the regional decision on the 404(c)?

3191 A. Certainly he would, but maybe Michael
3192 Szerlog might. They might have had conversations
3193 about it. Certainly Rick would have interacted
3194 with Michael more than with me, just because of
3195 the chain of command.

3196 Q. And Patty McGrath. Is that someone that
3197 you ever discussed your opinion on 404(c) with?

3198 A. Yes, I did.

3199 Q. And what was your feedback on that?

3200 A. She also was not supportive. She felt
3201 that it was better -- that it required a lot of
3202 resources to do a 404(c). And so it was better to
3203 wait and see what would happen in terms of the
3204 mine application at Pebble before we should
3205 progress.

3206 Q. And were you aware of what Dennis
3207 McLerran's position was with regard to a Section
3208 404(c) action?

3209 A. At what time?

3210 Q. In -- you stated -- so you had the first
3211 briefing with him when he came on board; right?

3212 A. Yes.

3213 Q. And at that time, as far as you know, he
3214 didn't have an opinion; is that correct?

3215 A. As far as I know, that's correct, yes.

3216 Q. And there is -- you don't recall the
3217 briefing where you would have specifically
3218 discussed with him your opinions on 404(c), but do
3219 you happen to recall what his feedback was or what
3220 his opinion was after that?

3221 A. You know, I don't know that I ever knew
3222 what his opinion was. I believe that I did not
3223 know what his opinion was about the 404(c). And
3224 the reason that I say that is because I recall
3225 feeling a little trepidation that perhaps the
3226 region would not decide to do the -- or decide not
3227 to do the 404(c). I recall having some concern
3228 about that.

3229 Q. And when was that?

3230 A. That would have been around the time
3231 that the assessment was announced and perhaps --

3232 Q. February 2011?

3233 A. Yeah. Yeah, that's right.

3234 Q. Would you say that it is fair to say
3235 that you were open and honest about your position
3236 on the Pebble project with your EPA colleagues?

3237 A. Yes, I would say that.

3238 Q. And is it fair to say that you were also
3239 open and honest with your EPA colleagues about
3240 your position on whether EPA should use Section
3241 404(c) with regards to the Pebble project?

3242 A. Yes.

3243 Q. And did you ever try to convince anyone
3244 else at the EPA that the agency should use Section
3245 404(c) authority with regards to the Pebble

3246 project?

3247 A. Well, what do you mean by "anyone else"?

3248 I mean I don't deal with everybody in the agency.

3249 Q. Right. Do you specifically recall

3250 trying to persuade someone to that particular

3251 sentiment?

3252 A. Well, I think it was my job to brief

3253 them and to inform people about the issue, and

3254 then it was really strictly up to them to decide

3255 whether they agreed or not. I felt that we should

3256 use 404(c), and I made that case.

3257 Q. Did you present the other part of the

3258 case, which, presumably, is not to use the 404(c)

3259 process?

3260 A. Well, actually, now that you mention

3261 that, I believe in the option paper it talked

3262 about the other -- about not using 404(c) and what

3263 that entailed. But I don't think it was

3264 necessarily my job to say -- well, I mean I had

3265 come to the conclusion that this was an authority

3266 that we had and we should do so. So I don't think

3267 I presented, you know, say, "Well, here's the

3268 option. The other options is to wait for the

3269 permitting process to go" --

3270 MS. GARDE: Keep your voice up.

3271 THE WITNESS: -- you know, "to go forward and
3272 to work under that." I don't think -- that was
3273 not what I was presenting.

3274 [REDACTED]: Joe, can we go off the record for
3275 just one second.

3276 (A discussion was held off the record.)

3277 [REDACTED]: Back on the record.

3278 Q. Thinking back now, would you say that
3279 you were an advocate within the EPA for the
3280 position that the agency should use Section 404(c)
3281 authority with regards to the Pebble project?

3282 A. Yes, I would say that's fair.

3283 Q. Are you aware if EPA at any time
3284 initiated the 404(c) process with regard to the
3285 Pebble project?

3286 A. At any time? After I retired, they did.

3287 Q. And so it is not your opinion, then,
3288 that the 404(c) process was initiated when the
3289 Bristol Bay watershed assessment was started?

3290 A. The Bristol Bay watershed assessment was
3291 not the 404(c) process.

3292 Q. And you previously mentioned that you
3293 worked on that assessment?

3294 A. That's correct, yes.

3295 Q. And the assessment was officially

3296 announced in February 2011?

3297 A. That's right.

3298 Q. Is that when you began working on it?

3299 A. That's when -- I guess the way I would
3300 describe it is that's when my effort to collect
3301 information working with the contractor, instead
3302 of being 404(c) became for the assessment.

3303 Q. So that work was just translated over
3304 from the -- what you saw as 404(c) work to the
3305 watershed assessment?

3306 A. Yes, that's correct. That's how I would
3307 interpret that.

3308 Q. Had you ever worked on a watershed
3309 assessment before in your EPA career?

3310 A. Not of that scale, certainly, but yes, I
3311 had worked on watershed assessments before.

3312 Q. Are you aware if there's an established
3313 process at EPA for conducting a watershed
3314 assessment?

3315 A. There is an established process for a
3316 risk assessment. And so to the degree that the
3317 watershed assessment is a risk assessment, then
3318 yes. I'm not sure that they were considered to be
3319 exactly the same thing.

3320 Q. In your mind, was this a risk

3321 assessment?

3322 A. Well, effectively, yes, I would say so.

3323 Q. You treated it as a risk assessment?

3324 A. Well, I mean I don't want to imply that,

3325 you know, okay, there's this formal process for a

3326 risk assessment and so, you know, we should take

3327 exactly those steps, because I don't think it

3328 mattered, and I don't think it was called a risk

3329 assessment. But it certainly was assessing the

3330 risks of mining in the Bristol Bay watershed.

3331 Q. So I think you had mentioned before that

3332 you are not sure whose decision it was to conduct

3333 the watershed assessment?

3334 A. That's correct.

3335 Q. Do you know who would know that?

3336 A. I imagine Dennis McLerran would know

3337 that. I imagine probably Rick Parkin would know

3338 that, and everybody in between in the command

3339 structure.

3340 Q. And is it your understanding that that

3341 information on whose decision it was just didn't

3342 get to you?

3343 A. It didn't matter. I wasn't -- whether I

3344 knew or not didn't make any difference. So

3345 since -- nobody told me, and it didn't matter. We

3346 were doing it, the managers had decided. So
3347 that's what I proceeded with.

3348 Q. Do you know if that decision was made
3349 within Region 10 or within headquarters in
3350 Washington, D.C.?

3351 A. I don't know. I don't know that.

3352 Q. And you previously stated that you did
3353 not agree the EPA should conduct the watershed
3354 assessment?

3355 A. Would not have been my choice. So to
3356 that extent, yes.

3357 Q. And you believe you told your manager,
3358 Michael Szerlog, that?

3359 A. Yeah. Yes, I think I did.

3360 Q. Anyone else?

3361 A. No. Maybe Patty McGrath or staff level
3362 people, but not any managers. It wasn't like I
3363 went and objected and said, "We shouldn't be doing
3364 this." It was just a matter of saying, "Oh, well,
3365 that wouldn't have been my choice."

3366 Q. And is the watershed assessment a
3367 scientific document?

3368 A. Yes, it is.

3369 Q. And to your knowledge, what was the
3370 purpose of it?

3371 A. To my knowledge, it was to assess the
3372 likely effects of metal sulfite mining in the
3373 Bristol Bay watershed on the resources of the
3374 Bristol Bay watershed -- of the aquatic resources
3375 of the Bristol Bay watershed.

3376 Q. And was that to inform a 404(c)
3377 decision?

3378 A. I guess I would say yes, that that was
3379 to inform -- to inform a decision on whether to
3380 proceed with 404(c) or not.

3381 Q. Are you aware if that was a point of
3382 debate within the EPA at the time?

3383 A. I'm not aware -- I'm not aware that it
3384 was a point of debate within EPA. I'm aware that
3385 Region -- that EPA was saying, "This is an
3386 assessment. It's not the 404(c), and they're
3387 separate."

3388 I think people, some people might have even
3389 been saying, "This is an assessment, and it's not
3390 for a 404(c)," which I guess I don't
3391 necessarily -- I mean it seems like the assessment
3392 was to inform the decision to proceed with 404(c)
3393 or not. So it was connected in that way.

3394 Q. At the time of the announcement of the
3395 watershed assessment, February 2011, was there a

3396 wide -- would you say that there was a widespread
3397 agreement within the EPA employees in Region 10
3398 that a 404 action should commence?

3399 MS. GARDE: Object. Lack of foundation.

3400 THE WITNESS: Well, you're asking questions
3401 about the whole body of EPA Region 10 when only
3402 very few of those people are involved in this
3403 program.

3404 BY [REDACTED]:

3405 Q. Those are the people I'm talking about.

3406 A. Okay.

3407 Q. The people who would need to have a --
3408 have that opinion in order for it to get to the
3409 regional administrator.

3410 A. Yeah. Okay. So could you ask the
3411 question again. I'm sorry.

3412 Q. Sure. I'm trying to determine if the --
3413 if Region 10's opinion on the Pebble mine project
3414 at the time that the watershed assessment was
3415 announced was that the EPA should move forward
3416 with a Section 404(c) action.

3417 A. Okay. And so I would say that people
3418 within the 404 program, I believe, were supportive
3419 of the idea of doing a 404(c). Others like Patty
3420 McGrath were not. Marcia Combes was not. My

3421 opinion is that a decision had not been made at
3422 the time that it was decided to move forward with
3423 the assessment.

3424 Q. And you may have mentioned this before,
3425 but when it came to the watershed assessment, you
3426 worked on the mine scenario portion; is that
3427 correct?

3428 A. That's correct, yes.

3429 Q. In your opinion, was a watershed
3430 assessment conducted in an unbiased manner?

3431 A. In my opinion, yes, it was conducted in
3432 an unbiased manner.

3433 Q. And did you -- are you familiar with
3434 something called the Wardrop or Ghaffari paper?

3435 A. Report, yes. Yes, I am familiar with
3436 that.

3437 Q. And did that particular report contain
3438 some sort of Pebble mine scenario?

3439 A. It did, yes.

3440 Q. And to your knowledge, was that scenario
3441 developed for engineering purposes?

3442 A. It was developed to -- for the purpose
3443 of saying that the mine was economically viable,
3444 that a mine at that site was economically viable.

3445 Q. So to your knowledge, it was not

3446 developed for engineering purposes?

3447 A. Well, there is engineering -- there was

3448 quite a bit of engineering in that document.

3449 So -- but it wasn't a construction. It wasn't a

3450 construction plan, if that's what you mean.

3451 Q. To your knowledge, was the Ghaffari

3452 report submitted to the U.S. Securities and

3453 Exchange Commission?

3454 A. To my knowledge, yes.

3455 Q. And at one time, is that the mine

3456 scenario that you used within the Bristol Bay

3457 watershed assessment?

3458 A. That was part of it, yes.

3459 Q. And you felt that that was an adequate

3460 mine scenario for that document?

3461 A. For -- yes, for our purposes, using that

3462 information plus additional information that was

3463 available from other sources, you know, it

3464 educated our mine scenario.

3465 Q. And was a time line or schedule adopted

3466 for the completion of the watershed assessment?

3467 A. I don't think we actually had a time

3468 line, but I'm not positive about that.

3469 Q. If there was a time line, is that

3470 something you would have had access to?

3471 A. Yes. Yes, certainly.

3472 Q. But do you recall if that was something
3473 you had developed yourself?

3474 A. A time line? I did not. No, I don't
3475 think I did.

3476 Q. What is the Nature Conservancy?

3477 A. What is the Nature Conservancy? It's an
3478 international organization that -- oh, one of the
3479 things they do is they set up conservation
3480 easements or purchase land outright for
3481 conservation purposes. They also work with
3482 governments and other organizations to -- for land
3483 conservation purposes.

3484 Q. Are they an environmental nongovernment
3485 organization?

3486 A. NGO, yes, they are.

3487 Q. And did you speak with them or anyone
3488 from that organization regarding the Pebble
3489 deposit?

3490 A. I did, yes.

3491 Q. Do you recall who you may have spoken
3492 with?

3493 A. Well, okay. Getting back to my
3494 difficulty with names. If you showed me names, I
3495 could tell you who they were, but...

- 3496 Q. Was Katherine Knott someone who worked
3497 with the Nature Conservancy?
- 3498 A. No, she did not.
- 3499 Q. Do you -- you spoke with multiple people
3500 at Nature Conservancy?
- 3501 A. I did, yes.
- 3502 Q. And did the Nature Conservancy
3503 commission a report entitled "An Assessment of
3504 Ecological Risk to Wild Salmon Systems from Large
3505 Scale Mining in the Nushagak and Kvichak
3506 Watersheds of the Bristol Bay basin"?
- 3507 A. Kvichak.
- 3508 Q. Kvichak, sorry.
- 3509 A. I believe they did, yes.
- 3510 Q. And were you provided a briefing on that
3511 document?
- 3512 A. Yes.
- 3513 Q. Do you know when that was?
- 3514 A. I don't recall.
- 3515 Q. October 2010?
- 3516 A. Could have been.
- 3517 Q. Sometime in the fall when the report
3518 came out, you think?
- 3519 A. Probably yeah. Probably.
- 3520 Q. And was Trout Unlimited involved in that

3521 briefing in any way?

3522 A. I don't recall whether they were or not.

3523 I don't know.

3524 Q. You had had other meetings with Trout

3525 Unlimited?

3526 A. Yes. Yes.

3527 Q. Do you recall what the findings of the

3528 Nature Conservancy report were?

3529 A. You know, I should recall that, but I

3530 actually don't. I don't remember. I haven't

3531 looked at it in such a long time.

3532 Q. Is it fair to say that generally they --

3533 generally, the findings indicate that there was an

3534 ecological risk to salmon from large-scale mining

3535 in that area?

3536 A. I would certainly expect that to be the

3537 case.

3538 Q. And are you -- did you ever reach out to

3539 the Nature Conservancy to obtain any data or

3540 information that was used in that report?

3541 A. In which report?

3542 Q. The Nature Conservancy report.

3543 A. Oh, yes, I did.

3544 Q. And did they provide it to you?

3545 A. I believe they did, yes.

3546 Q. Do you recall which data you were
3547 looking for?

3548 A. Yeah. There was spatial information
3549 that I was interested in that would feed into a
3550 GIS, geographic information system. And I recall
3551 that, that I asked them if I could have that
3552 information. And I believe they gave it to me.

3553 Q. And at this period of time, were you --
3554 I want to be very clear about -- you called it an
3555 "ecological assessment," I believe. Were you
3556 working on that?

3557 A. On which?

3558 Q. You had mentioned that, before the
3559 watershed assessment had come out, that there was
3560 a contractor, and you were working on -- I believe
3561 you said that was an ecological assessment, but if
3562 you didn't say that, please characterize what it
3563 was you were working on.

3564 A. Okay. I think what I said was that it
3565 was -- my supervisor had directed me to work with
3566 the contractor to start to gather the information
3567 that would go into the first steps of the 404(c),
3568 if we had decided to do one, and that that's what
3569 I was working on with the contractor.

3570 Q. Would you characterize that work as an

3571 ecological assessment in any way?

3572 A. I actually wouldn't. I think I would
3573 call it an assessment. It was more of a gathering
3574 of information.

3575 Q. Is that because you just hadn't gotten
3576 to the point where you were going to write
3577 something?

3578 A. Possibly. I mean, eventually, we'd have
3579 to decide does this information justify going
3580 forward with the 404(c). And so you can certainly
3581 call that an assessment.

3582 Q. And do you recall if you ever worked
3583 with anyone from a firm called "Ecology &
3584 Environment, Incorporated"?

3585 A. Well, they are a firm in Alaska, and I
3586 know I have worked with them on different
3587 projects.

3588 Q. Sorry. Relating specifically to the
3589 Pebble --

3590 A. Probably. Probably, but I don't recall
3591 specifically.

3592 Q. Are you aware that they were the
3593 contractors who wrote the Nature Conservancy
3594 report?

3595 A. Now that you mention it, yes, I'm

3596 remembering that.

3597 Q. And did you ever -- are you aware if
3598 they ever provided you any data or information?

3599 A. They might have. I might have, in
3600 talking to the Nature Conservancy, it's all -- you
3601 know, they're -- working with their contractor, I
3602 very well could have talked to somebody there.

3603 Q. So what we were just discussing a few
3604 minutes ago, the -- your manager instructed you to
3605 work with a contractor to gather information;
3606 correct?

3607 A. Yes.

3608 Q. And you became a contract officer in
3609 order to do that?

3610 A. I did, yes.

3611 Q. And when -- and the organization that
3612 you would contract with was NatureServe?

3613 A. That's right, yes.

3614 Q. Do you recall what time period that was?

3615 A. It was before Christmas of 2010.

3616 Q. Okay. And did you -- can you explain
3617 the scope of work that you contracted them to
3618 perform?

3619 A. Boy, I don't think I could explain it
3620 more than what I described, which is to collect

3621 information on -- it did identify, I believe
3622 anyway, specific topics where we wanted to collect
3623 information that would then go into -- that would
3624 be summarized and then go into the decision of
3625 whether to proceed with the 404(c).

3626 Q. And who was aware that you were working
3627 with NatureServe on this endeavor?

3628 A. My supervisor was, Michael Szerlog, and
3629 I imagine other people like Patty McGrath probably
3630 was. The regional wetland ecologist, Mary Anne
3631 Thiesing, she probably was aware of it.

3632 Q. So to your knowledge, then, NatureServe
3633 didn't prepare any sort of written document that
3634 would appear to be your report at this time?

3635 A. No, it didn't get that far.

3636 Q. Not even a draft?

3637 A. Well, let me think. There were draft
3638 sections, but I don't know if they came out before
3639 they converted this effort to the assessment or
3640 after. I don't remember. I think it might have
3641 been after. I think we were still putting
3642 together the team when the assessment announcement
3643 was made.

3644 Q. So were you working with anyone at
3645 headquarters, EPA headquarters at this time on

3646 this particular endeavor that Mr. Szerlog had you
3647 doing with regards to 404(c)?

3648 A. I was. I was coordinating with the
3649 headquarters wetlands program.

3650 Q. Is that Palmer Hough?

3651 A. Yes, it was Palmer.

3652 Q. Is that the correct way to pronounce his
3653 last name?

3654 A. Hough, yes, that's correct.

3655 Q. So you -- so he was aware that you were
3656 building, or you were gathering information for a
3657 potential 404(c) action?

3658 A. That's correct, yes.

3659 Q. And was his manager David Evans?

3660 A. I think he had a manager between David
3661 Evans and him, I think. I think he had a
3662 supervisor in between. But I'm not sure.

3663 Q. Was David Evans aware of that, that you
3664 were working on this 404(c) information?

3665 A. I assume he would know.

3666 Q. And how did you get in touch with him?

3667 A. Palmer?

3668 Q. How did you know to reach out to him?

3669 A. Because -- well, could be that somebody
3670 like Michael told me to call him, or I might have

3671 just taken the initiative to call him because we
3672 were familiar with the headquarters staff and what
3673 they did, and they knew that they needed to know
3674 what we were doing.

3675 Q. And Palmer Hough, are you aware if he
3676 agreed with you that EPA should use Section
3677 404(c)?

3678 A. I believe he did agree.

3679 Q. And were you one that provided him the
3680 information about the Pebble project, or had he
3681 gained information other ways?

3682 A. He probably would have gotten it from
3683 me.

3684 Q. And what about David Evans? Do you know
3685 his opinion?

3686 A. I don't know his opinion. No, I don't
3687 know. At that time.

3688 Q. And I have just a few seconds here. So
3689 I just want to be very clear. The work that
3690 NatureServe had already been doing, as you've
3691 stated to build the record for a 404(c) action,
3692 that work just became part of the watershed
3693 assessment?

3694 A. That's correct.

3695 Q. And money was added onto the contract

3696 and everything else that was needed to facilitate
3697 that?

3698 A. Right.

3699 [REDACTED]: I'm out of time. So we'll go
3700 off the record.

3701 (A recess was taken from 2:36 p.m.

3702 to 2:44 p.m.)

3703 (Gary Palmer joined the proceedings.)

3704 FURTHER EXAMINATION

3705 [REDACTED]: I'll start the time.

3706 Q. All right. This is [REDACTED] asking
3707 questions again, the second minority hour. I'm
3708 going to jump around a little bit here, Mr. North.
3709 I apologize in advance for that before I sort of
3710 get into another logical line of questions.

3711 One of the things that you had discussed
3712 earlier is the 404 process, not the 404(c)
3713 process, what some people call dredge and fill,
3714 maybe is a casual term people use; is that
3715 correct?

3716 A. Yes.

3717 Q. That vernacular?

3718 A. Yes.

3719 Q. In that process, you had worked on over
3720 the course of your career in Alaska, many of those

3721 types of permits -- I think at one point you
3722 estimated could be over 1,000 and I think there
3723 was a question how many of those were rejected,
3724 and you had said a very small number. Handful or
3725 -fuls; is that correct?

3726 A. Yes, that's correct.

3727 Q. I wanted to follow up on that a little
3728 bit. Can you describe the permit granting or
3729 denying process that is entailed -- and what I
3730 mean by that is is the question yes, the permit is
3731 approved; no, the permit is not approved, or is
3732 there generally other things that can happen, like
3733 conditional approvals, for instance? Can you
3734 explain that a little bit?

3735 A. Yes. There's definitely conditional
3736 approvals. When somebody applies, the Corps
3737 issues a public notice, the agencies get the
3738 public notice. Ideally, we've met before the
3739 application went in. So we're familiar with the
3740 project, and we can provide feedback to the
3741 applicant and to the Corps that, you know, "Deny
3742 the permit. We're not worried about this
3743 project," or, as you say, something in between
3744 where we can recommend specific conditions under
3745 which it could be approved to try to mitigate

3746 whatever effect that project would have.

3747 Q. So would it be a fair characterization
3748 to say that in some permit applications you would
3749 get the application, you would say, "We can't
3750 approve the application as written, but if you go
3751 back and meet these conditions, the permit would
3752 be approved." Am I characterizing the process
3753 somewhat -- I don't want to mischaracterize it.

3754 A. That's correct, but I just changed it a
3755 little bit to say that we don't -- that we would
3756 recommend that you don't approve it just as it is.
3757 If they change it in this way or that, fine.

3758 Q. And so based on your experience over the
3759 years of doing all these permitting projects, is
3760 that generally why permits are not denied
3761 outright, because people will go back and meet
3762 most of the condition that the government agencies
3763 ask for?

3764 A. That, or I mean to be fair, they would
3765 do that, but then some of them would say, "Oh, I
3766 realize for what I have to do, I can't really do
3767 this project." And so they might just withdraw
3768 it.

3769 Q. So they'd withdraw the permit instead of
3770 having it be rejected?

3771 A. Yes, that's correct. Could be more
3772 often the former, but sometimes the latter.

3773 Q. So would you have a -- since we're
3774 asking you to estimate random numbers over a
3775 23-year period, do you have a general sense of how
3776 many times, in projects you worked on, people
3777 withdrew their permit after a final determination
3778 had been made on granting or denying the permit?

3779 A. Right. I really couldn't give you
3780 numbers. But as I said, more often it would be
3781 conditioned. Less often it would be withdrawn,
3782 and then less often further, it would be denied.

3783 Q. Okay.

3784 A. But I think those numbers are available
3785 at the court.

3786 Q. I'm sure they are.

3787 A while ago we were talking about, during the
3788 process of all the meetings that you and other
3789 government agencies had with PLP that you expected
3790 at that time -- fully expected PLP to file a
3791 permit for a mine at that time?

3792 A. Yes.

3793 Q. Now, up until the point you retired, the
3794 time you were involved with EPA, was there
3795 anything, anything that would have prevented PLP,

3796 anything from a government perspective that the
3797 government did that would have prevented PLP from
3798 submitting the mine application?

3799 A. No.

3800 Q. And just to be clear, they did not
3801 submit a mine application during your career at
3802 EPA; correct?

3803 A. That's correct, yes.

3804 Q. We have one more cat before we go on to
3805 the dogs. We were talking about the BBWA, the
3806 Bristol Bay watershed assessment. I believe you
3807 discussed -- I think it was referred to as the
3808 Wardrop report. Am I saying that correctly?

3809 A. Yes.

3810 Q. And this was an SEC -- a report done for
3811 an SEC filing or something of the sort; correct?

3812 A. Right.

3813 Q. And this contained a hypothetical mine
3814 scenario that was submitted by PLP -- correct? --
3815 or at least somebody for PLP?

3816 A. I'm not sure I would call it
3817 hypothetical, but it included a mine scenario,
3818 yes.

3819 Q. Okay. And you utilized that mining
3820 scenario from that report for the watershed

3821 assessment?

3822 A. That's correct. Well, yes, we utilized
3823 the information in the Wardrop report in addition
3824 to the other information that we gathered.

3825 Q. In the watershed assessment, was that
3826 the only mining scenario that was considered, or
3827 were there multiple mining scenarios that were
3828 considered in the watershed assessment?

3829 A. There were three mining scenarios that
3830 were considered in the assessment.

3831 Q. And can you sort of briefly describe
3832 what all three mining scenarios were?

3833 A. There were the two from the Wardrop
3834 report, and now you're going to ask me to remember
3835 what those sizes were.

3836 Q. If you don't know the specifics, I mean
3837 just generally what you remember.

3838 A. Okay. I don't. I don't remember. And
3839 then there was one that was smaller that was based
3840 on a USGS document that described the worldwide
3841 size range and then statistics for copper sulfite
3842 mines. And so we used the average, the worldwide
3843 average size for copper sulfite mines. It's a
3844 third smaller mine scenario.

3845 Q. And I wanted to delve in a little bit

3846 why you used a third mining scenario that was not
3847 based on any information from Pebble Limited
3848 Partnership. You had stated earlier that the
3849 Pebble deposit was not the only deposit in the
3850 Bristol Bay watershed; is that correct?

3851 A. That is correct, yes.

3852 Q. And other entities owned mineral rights
3853 within that watershed and potentially were
3854 exploring for them; is that correct?

3855 A. That is correct, yes.

3856 Q. Is that something that informed your
3857 decision to have a generic -- I'm calling it --
3858 this is my words, a generic mining scenario within
3859 the watershed assessment?

3860 A. Right. The Pebble deposit was one of
3861 the biggest in the world. I mean in the top five,
3862 maybe even the top three. And so it was unusual,
3863 and so it made sense to me that we should have --
3864 we should be assessing a mine that represents the
3865 rest of the deposits, or at least it's closer to
3866 the rest of the deposits. And so they are more
3867 likely to be an average size mine. And so we
3868 did -- so we included an average size deposit in
3869 the assessment to try to capture what the likely
3870 effects of that smaller kind of mine would be.

3871 Q. You had previously stated that you
3872 retired in April of 2013?

3873 A. Correct. Yes, that's right.

3874 [REDACTED]: I'm going to show you an exhibit.
3875 I believe we're at Exhibit 9.

3876 MS. GARDE: Yes, we are.

3877 (Deposition Exhibit 9 was marked
3878 for identification.)

3879 [REDACTED]: And this is J.

3880 Just take a look at it.

3881 (The witness reviewed Exhibit 9.)

3882 BY [REDACTED]:

3883 Q. Are you just kind of glancing at it? If
3884 you're not, I'll let you look it over. But are
3885 you generally familiar with what this is?

3886 A. I am, yes.

3887 Q. And this is -- what is this? Is this a
3888 Redoubt report or article concerning basically
3889 you; correct?

3890 A. Yes.

3891 Q. From July 17, 2013?

3892 A. Yes.

3893 Q. And just for our own knowledge, what is
3894 the Redoubt Reporter?

3895 A. The Redoubt Reporter is a small

3896 newspaper on the central Kenai Peninsula in
3897 Alaska.

3898 Q. And this article characterizes some of
3899 the work you did at the EPA; correct?

3900 A. (Nods head.)

3901 Q. It also talks about your retirement and
3902 your plans after retirement from EPA; correct?

3903 A. Yes, that's right.

3904 Q. And can you describe, you know, what
3905 your plans were during this time frame immediately
3906 after retiring from the EPA, at that time?

3907 A. Right. Our plan was to clean out our
3908 house and sell all our stuff and move onto a boat
3909 that we owned at that time and go sailing around
3910 the world.

3911 Q. And when did you first start -- this
3912 seems like a pretty significant plan. When did
3913 you first start thinking about this plan to sail
3914 around the world?

3915 A. As a teenager.

3916 Q. Okay. That's quite some time ago. When
3917 did you start sort of, I would say, planning it
3918 with detail?

3919 A. Well, we had bought the boat that we
3920 were going to do it in about five years prior.

3921 Q. To 2013?

3922 A. Yes.

3923 Q. Okay.

3924 A. And before that, I think well, quite a
3925 while. I mean I had been thinking about it and
3926 thinking about how to do it and what the timing
3927 would be for quite a long time. I don't remember
3928 exactly, you know, 15, 20 years prior to my
3929 retiring at least.

3930 Q. And just for -- you said sailing around
3931 the world with your family, I think. Just --
3932 you're married?

3933 A. Yes.

3934 Q. And you were at the time?

3935 A. Yes.

3936 Q. And you have children?

3937 A. Yes.

3938 Q. You had children at the time?

3939 A. Yes.

3940 Q. That's all I need to know.

3941 A. Okay.

3942 Q. You said you bought your sailing boat
3943 five years prior to retiring.

3944 A. Yes.

3945 Q. So after you retired -- your sailing

3946 boat is in Alaska?

3947 A. No, it was in South Carolina.

3948 Q. Okay. So after you retired, what was
3949 your next step in terms of carrying out your plan
3950 to travel?

3951 A. Well, to sell all our stuff, clean out
3952 our house and rent it out, which we did, and then
3953 drive --

3954 Q. Do you know when approximately you moved
3955 out of your house?

3956 A. We moved out in September of 2013, we
3957 were out of our house.

3958 Q. And you said you got rid of all your
3959 stuff?

3960 A. Yes.

3961 Q. Be a little more specific. What did you
3962 take with you, I guess, would be a better
3963 question?

3964 A. Well, we didn't take much with us, as it
3965 turns out. We had three or four garage sales over
3966 the course of the summer. Took truckloads of
3967 stuff to the thrift store, and then when we
3968 were -- the house was completely empty and we were
3969 closing up boxes to take with us to ship to the
3970 boat so we could move on the boat, and, you know,

3971 we got a call from the boatyard saying that there
3972 were problems with the boat, and --

3973 Q. What time frame was this?

3974 A. This is late summer. This must be
3975 August.

3976 Q. Okay. So what did you do at that point?

3977 A. So we just said -- I think we had a few
3978 expletives when we realized the boat just was not
3979 going to work. And then we put the stuff we were
3980 going to ship to the boat, we put it under a
3981 friend's house and we camped -- packed up our
3982 camping gear and headed out, went ahead and
3983 continued with the plan to go down to South
3984 Carolina. We needed to really see the boat,
3985 understand exactly what was wrong with it, whether
3986 it was going to work or not.

3987 And so we drove out, drove down the west coast
3988 visiting family and then across the country,
3989 learned that the boat was not going to work. It
3990 was a lost cause, and --

3991 Q. It was just unseaworthy?

3992 A. Yeah. And it was just going to cost too
3993 much for us to repair.

3994 Q. So what did you guys decide to do at
3995 that point?

3996 A. So we sold the boat for salvage,
3997 essentially, small fraction of what we paid for
3998 it, and then we went -- we still had some money.
3999 So we went to look for -- we decided to go ahead
4000 and drive around looking for another boat and
4001 seeing the country, just go ahead with the plan of
4002 traveling, just do it a different way. And so we
4003 drove around. We never found a boat. We looked
4004 at a lot of boats, but we never found one that
4005 suited our needs for the money we had available.
4006 And so we never bought a boat.

4007 Q. So at this point you have retired?

4008 A. Yes.

4009 Q. Sold much of your stuff; correct?

4010 A. Right.

4011 Q. Rented your house out?

4012 A. Rented our house out, yes.

4013 Q. Sold your unseaworthy boat --

4014 A. Right.

4015 Q. -- at that point?

4016 So at that point, what did you decide to do
4017 next?

4018 A. And then we drove -- we spent the winter
4019 in Florida, drove across the country. I highly
4020 recommend Big Bend National Park. It's really

4021 beautiful.

4022 Q. It is beautiful.

4023 A. And then we kept going. Got to the west
4024 coast, looked at a couple more boats. Those
4025 weren't going to suit our needs, and we said,
4026 "Well, what are we going to do now?" The -- there
4027 was a Plan B. The Plan B was to go to either
4028 Spain, Chile, or New Zealand and just live there
4029 for a while, and if we went to Spain or Chile,
4030 we'd learn Spanish. But everybody got really
4031 excited about New Zealand. So we went to New
4032 Zealand.

4033 Q. You flew to New Zealand?

4034 A. Yes, we flew.

4035 Q. Abandoned the sailing?

4036 A. Yeah. Flew to New Zealand, traveled
4037 around, really liked it, decided to stay longer.
4038 Bought a camper van. Ended up traveling around
4039 New Zealand for 10 months, and then decided -- and
4040 we got to the end of our Visa because New Zealand
4041 has limited Visas. So we decided that we were so
4042 close we'd go to Australia and do the same thing
4043 around Australia. Australia will give you a
4044 longer Visa. So we ended up traveling around
4045 Australia for a year.

4046 And then we got to the end of that time, and
4047 now the family is waiting for me in Indonesia.

4048 Q. At various times in sort of press
4049 accounts, statements that had been issued various
4050 people, perhaps some people from Pebble Limited
4051 Partnership, some members of Congress, have
4052 accused you of fleeing from an investigation,
4053 whether or not it's a Congressional investigation
4054 or the court case involving Pebble Limited
4055 Partnership. Did you flee from an investigation?

4056 A. No, we did not flee.

4057 Q. Was the reason that you traveled abroad
4058 because of long-standing plans to travel the
4059 world?

4060 A. Yes, it was. We had those plans for a
4061 long time.

4062 Q. I want to talk a little bit about -- we
4063 had spoken previously about your sort of work
4064 situation in Soldotna and the equipment that you
4065 had. Did the EPA provide you with a -- I'm going
4066 to call it a company computer --

4067 A. Yes.

4068 Q. -- in your office in Soldotna?

4069 A. Yes.

4070 Q. Did you have a computer at home?

4071 A. I did, yes.

4072 Q. Was your home computer a personal
4073 computer or provided by the Environmental
4074 Protection Agency?

4075 A. It was a personal computer.

4076 Q. While you were with the EPA in Soldotna,
4077 did you have one computer or multiple computers?

4078 A. You mean over the course of time?

4079 Q. Over the course of your employment.

4080 A. I had multiple computers.

4081 Q. At some point in time did you have a
4082 computer problem while you were working in
4083 Soldotna?

4084 A. I did, yes.

4085 Q. What happened?

4086 A. My hard drive crashed, and I basically
4087 lost all my work.

4088 Q. Do you know approximately what time that
4089 was?

4090 A. I believe it was in the early 2010, but
4091 I'm not sure.

4092 Q. And so what did you do?

4093 A. I called the IT office in Seattle and
4094 told them, "My computer is not working," and they
4095 sent me a new hard drive, told me to send them the

4096 hard drive. And then I did my best to kind of
4097 reconstruct files that I needed by looking -- by
4098 asking people that I had sent copies to, to send
4099 them back to me, and just getting them wherever I
4100 could.

4101 Q. Did you have -- I don't know exactly.
4102 I'm not a computer person. So I'm going to try my
4103 best. Did you have like a company drive, or were
4104 all your files on your actual computer?

4105 A. They were all on my actual computer.

4106 Q. Okay. When you said your hard drive
4107 crashed in 2010 -- I believe that's what you said.

4108 A. Yes. Right. To the best of my
4109 recollection, it was 2010.

4110 Q. At that point in time had you received
4111 any investigatory inquiries from Congress?

4112 A. No.

4113 Q. At that point in time -- this is
4114 preceding Pebble Limited Partnership's court file,
4115 which we marked as an exhibit earlier. Did you
4116 receive any sort of legal requests for information
4117 from Pebble Limited Partnership? For instance,
4118 FOIA request responses from them in 2010?

4119 A. No.

4120 Q. You mentioned earlier some of the issues

4121 you had around connecting into company E-mail from
4122 your home computer and that you occasionally would
4123 use personal E-mail while you were working from
4124 home for business or for communicating with people
4125 officially.

4126 A. Yes, that's right.

4127 Q. Were you aware of any EPA policies at
4128 that time about whether you should do something
4129 different with this E-mail, whether or not you
4130 should even be using personal E-mail to
4131 communicate?

4132 A. I'm not aware of any policies.

4133 Q. Did you do anything -- did you take any
4134 particular actions, when you would use personal
4135 E-mail to communicate with people in an official
4136 capacity, to preserve that E-mail outside of your
4137 personal E-mail system?

4138 A. If I -- if there were documents
4139 associated with whatever I was doing, I would
4140 generally send them to my EPA E-mail address.

4141 Q. Okay. Do you know when your computer --
4142 EPA computer that you had in the Soldotna office
4143 crashed in 2010, did at that time you lose access
4144 to the E-mails that had been, you know, working
4145 with on that computer, or were they backed up in

4146 some other location?

4147 A. To my knowledge, they were not backed up
4148 in another location. So whatever was on that hard
4149 drive, I lost.

4150 Q. Okay. Was the EPA IT department ever
4151 able to recover anything from that hard drive, to
4152 your knowledge?

4153 A. To my knowledge, no, they were not.

4154 Q. The -- when you retired from the
4155 Environmental Protection Agency, presumably you
4156 had a functioning computer in your office in
4157 Soldotna?

4158 A. I did, yes.

4159 Q. Do you know what -- you didn't take that
4160 computer with you when you left?

4161 A. Correct. I did not take it with me.

4162 Q. Did you like delete the hard drive when
4163 you left or just left it in --

4164 A. No. I just sent all the computer
4165 equipment to Seattle or -- I think to Seattle. It
4166 might have been -- some of it may have gone to
4167 Anchorage, but I think I sent it to Seattle.

4168 Q. You stated earlier that you got rid of
4169 most of your personal possessions when you began
4170 your retirement journeys. Does that include your

4171 home computer you had at the time?

4172 A. Yes, it does.

4173 Q. And did you save anything, like portable
4174 memory devices, from stuff that you had in your
4175 computer from that time that were work related?

4176 A. That were work related, no.

4177 Q. Let's talk a little bit about -- I'm
4178 jumping around again, and I apologize. We
4179 previously discussed your job description. I
4180 believe it's one of the exhibits that's in the
4181 record. Part of your job description included
4182 communicating with members of the public,
4183 government, tribes; is that correct?

4184 A. Yes.

4185 Q. And we've talked about your
4186 communications with Geoffrey Parker who was
4187 representing certain tribes in the Bristol Bay
4188 watershed?

4189 A. That's correct.

4190 Q. He did not represent all the tribes in
4191 the Bristol Bay watershed; is that correct?

4192 A. That is correct.

4193 Q. Did you have interactions with tribes
4194 other than ones that were represented by Geoffrey
4195 Parker from within the Bristol Bay watershed, you

4196 know, in the course of your dealings with the
4197 Bristol Bay resource development issues
4198 surrounding the mining?

4199 A. Yes. Yes, I did.

4200 Q. And can you describe generally what
4201 tribes you met with or communicated with or their
4202 representatives?

4203 A. There were a number of calls and
4204 meetings with tribes really from all over, all
4205 around Bristol Bay. And so at different times we
4206 had meetings with -- you know, with those
4207 different tribes.

4208 Q. So this wasn't necessarily a personal
4209 one-on-one meeting with you. It sounds like there
4210 were other people involved?

4211 A. There were other people involved, that's
4212 correct.

4213 Q. Did you communicate with any tribes from
4214 the Bristol Bay watershed who had divergent views
4215 of what should happen to the Pebble Limited
4216 Partnership mine proposal than Geoffrey Parker's
4217 client tribes?

4218 A. Under the circumstances that I just
4219 described, yes. Yes.

4220 Q. So there were tribes that disagreed with

4221 Geoffrey Parker's tribes?

4222 A. That's right. Yes.

4223 Q. And you communicated with those tribes
4224 and listened to their concerns as well?

4225 A. Yes.

4226 Q. Do you know the name of any of those
4227 tribes -- I don't want to characterize it as "in
4228 favor of the mine," but not necessarily on board
4229 with Geoffrey Parker's clients?

4230 A. Iliamna, New Halen. Oh, let's see. I'm
4231 trying to remember the name of the village. It's
4232 across Lake Iliamna from New Halen. I can't
4233 remember. But I do want to qualify something just
4234 so I'm not -- I don't mean to misrepresent
4235 anything. Initially, I contacted Jeff Parker
4236 because I was told, "If you want to know, talk to
4237 Jeff Parker." So I did. And then EPA got more
4238 involved with the tribes, but I didn't.

4239 Jeff Parker often called me, and he called
4240 other people in the EPA also to -- as I've said
4241 before, to talk about this issue or that issue or
4242 put out this idea or that idea. And but in terms
4243 of working with the tribes, I was involved in
4244 discussions at various places, but I was not a
4245 lead in working with tribes.

4246 Q. Was there somebody designated from
4247 Alaska EPA offices that was the lead in working
4248 with tribes? Or at least -- let me clarify that.
4249 With the Bristol Bay watershed tribes.

4250 A. Tammy Fordham was probably the -- she
4251 was the tribal program person, and then Rick
4252 Parkin was the other person who spent a lot of
4253 time interacting with tribes.

4254 Q. Mr. Parkin was based out of the Seattle
4255 office, though?

4256 A. Yes. And Tammy was based out of
4257 Anchorage.

4258 Q. At some point in time -- I think you
4259 mentioned this already. You mentioned that you
4260 may have edited a document for Mr. Parker. I
4261 think you mentioned that earlier.

4262 A. Yes, that's right. I don't think I did
4263 mention it here. Did I?

4264 Q. I think you mentioned something about
4265 providing comments.

4266 A. Yes. Okay. Yes.

4267 Q. So let's talk a little bit about that.
4268 At some point in time, did Geoffrey Parker provide
4269 you with a draft document and ask you for your
4270 comments on it or your thoughts?

4271 A. Yes, he did.

4272 Q. Okay. And do you have any idea

4273 approximately what time frame that would be?

4274 A. The only reason I would know is because

4275 of the previous deposition. And so I believe it

4276 was the spring of 2010 or winter of 2010. I

4277 believe January of 2010 was the first time he

4278 contacted me.

4279 Q. Did you immediately respond to him when

4280 he reached out to you?

4281 A. I did not. I kind of felt bad about

4282 that, but no, I did not.

4283 Q. But you followed up at some point in

4284 time and communicated with him?

4285 A. Yes.

4286 Q. At some point in time you eventually did

4287 provide comments on what he had sent you?

4288 A. Yes.

4289 [REDACTED]: I'll show you a document

4290 marked as Exhibit 10.

4291 (Congressman Moolenaar joined the proceedings.)

4292 (Deposition Exhibit 10 was marked

4293 for identification.)

4294 [REDACTED]: Does everybody have a copy?

4295 MR. MOOLENAAR: Congressman Moolenaar from

4296 Michigan.

4297 [REDACTED]: This is an Alaska Dispatch News
4298 article from April 4, 2016, and I want to direct
4299 your attention to Page 5. The fourth paragraph on
4300 Page 5 reads -- or the third and fourth paragraph,
4301 "Pebble maintains North's role with the tribes was
4302 significant. 'They weren't just minor efforts,
4303 edits. He helped draft it. His language ended up
4304 in the petition. That is just not proper conduct
4305 for a federal employee,' said Pebble's Collier.
4306 "This is outrageous conduct.'"

4307 Q. Is this -- I'm sure, in the course of
4308 your time after retiring from the EPA, you've
4309 heard some of these accusations that your conduct
4310 in dealing with, in particular, Mr. Parker was
4311 inappropriate?

4312 A. Yes, I've heard that.

4313 Q. Presumably, it's part of the reason why
4314 you were deposed at Steptoe & Johnson last week.
4315 I assume that's your understanding.

4316 A. Yes.

4317 [REDACTED]: I want to direct you to another
4318 document that we'll mark as Exhibit 11.

4319 (Deposition Exhibit 11 was marked
4320 for identification.)

4321 [REDACTED]: Please take time to look at it.
4322 If you don't recognize it, if you recognize it,
4323 just let me know.

4324 (The witness reviewed Exhibit 11.)

4325 THE WITNESS: I recognize it.

4326 BY [REDACTED]:

4327 Q. And can you tell me what this is?

4328 A. This is the letter from the six tribes
4329 to EPA asking that EPA initiate a 404(c).

4330 Q. And if you look down the page, there is
4331 a gray mark on the right-hand column, and there
4332 are edits to the document. As far as the --
4333 are -- these edits presumably are edits that were
4334 made by you in your comments and sent back to
4335 Geoffrey Parker. Is that your general
4336 understanding?

4337 A. Yes.

4338 Q. All right. So I want you to -- we'll go
4339 through this document, and I want you to put on
4340 the record what these edits are so that there's a
4341 record of how minor or major these edits were. So
4342 I believe if you look in the left-hand column,
4343 there's marks in the left-hand column where there
4344 were any edits made.

4345 A. Okay. Okay.

4346 Q. So as you go down, I believe in the
4347 second to the last paragraph, there's an edit.
4348 Can you read what edit you made?

4349 A. Crossing out mining companies is the
4350 edit I made.

4351 Q. There's a mark on the -- the last
4352 paragraph, but there's no edit there. On Page 2,
4353 top paragraph, can you read what that edit was?

4354 (The witness further reviewed Exhibit 11.)

4355 THE WITNESS: I see where it is, but I don't
4356 see --

4357 BY [REDACTED]:

4358 Q. I believe the underlined --

4359 A. Yeah. I think it's an insertion of
4360 "attention to environmental justice."

4361 Q. Okay. And then the third paragraph is
4362 the next edit.

4363 A. Yes. It says, "adding cultural and
4364 ecological" were those words.

4365 Q. I believe your next edits are on Page 3
4366 of 12.

4367 A. Okay. It's correcting the misspelled
4368 "produces."

4369 Q. And then there's one more edit in that
4370 paragraph, I believe.

4371 A. Yep. Adding "and the ecosystems of the
4372 north Pacific Ocean."

4373 Q. Going onto Page 4, it looks like there's
4374 an edit and a comment. Can you describe that
4375 comment?

4376 A. The comment is, "Is there room here for
4377 ecological impacts not directly related to
4378 commercial or subsistence fisheries."

4379 Q. We may come back to this later, but
4380 we'll just leave that.

4381 A. Okay.

4382 Q. Going on, I don't see any edits on Page
4383 5. There's an edit on Page 6. Can you describe
4384 that edit?

4385 A. I think it --

4386 Q. I think my understanding is there's just
4387 a dash.

4388 A. Oh, yeah. There's crossing out on this
4389 page.

4390 Q. Yes. Do you see any other edits as
4391 reflected in the rest of the document?

4392 A. No, I don't see any more.

4393 Q. So these are the edits in question that
4394 you made and sent back to Geoffrey Parker when he
4395 requested that you do so?

4396 A. Right.

4397 Q. To the best of your knowledge, was there
4398 ever a second round? Did Geoffrey Parker ever
4399 send you this document again and say, "Make some
4400 more edits"?

4401 A. Not that I'm aware of.

4402 Q. Okay. And to the best of your
4403 recollection, this is the only edits or commentary
4404 you made regarding this particular document to
4405 Mr. Parker?

4406 A. Yes.

4407 Q. Representing the four tribes in the
4408 Bristol Bay watershed?

4409 A. Yes. To my knowledge, it is.

4410 Q. Do you consider these edits that you've
4411 made to be major edits to the document?

4412 A. No, I don't.

4413 Q. Do you think that these edits
4414 fundamentally changed the tenor of what the
4415 document is talking about?

4416 A. Not at all.

4417 Q. I do want to go back to Page 4 of 12 in
4418 this document where there was one comment. I
4419 believe it's the only comment you made in the
4420 document.

4421 A. Yes.

4422 Q. To the best of your knowledge, do you
4423 know if Mr. Parker responded to your comments by
4424 changing what was written here in the final
4425 document that was submitted to the EPA?

4426 A. I don't know.

4427 Q. Okay. To the best of your knowledge,
4428 did Mr. Parker communicate to you ever, "I changed
4429 something based on your comments" or do you just
4430 not know?

4431 A. Not that I recall.

4432 Q. Okay. You stated that you worked with
4433 or spoke with some other tribes, although there
4434 was a designated tribal person. You may have
4435 spoken with more. Did you speak with other local
4436 or state government officials in the course of
4437 your evaluation of the Pebble deposit?

4438 A. Yes.

4439 Q. And --

4440 A. Many times.

4441 Q. Let's start at the state level. Did you
4442 work routinely with the state officials?

4443 A. I did, yes, routinely.

4444 Q. And was that at multiple different state
4445 agencies?

4446 A. Yes.

4447 Q. And did you provide feedback on what
4448 they were doing in the course of their -- bounce
4449 ideas back and forth, things like that?

4450 A. Yes. Bounce ideas back and forth.

4451 Q. Was it routine to provide advice to each
4452 other?

4453 A. Yes.

4454 Q. And would you consider providing that
4455 sort of advice to a state government official to
4456 be any different than a tribal government official
4457 under your duties under the law?

4458 A. Not at all.

4459 Q. What about local governments, did you
4460 have any interactions with -- let me be clear.
4461 Nontribal local governments in the course of this
4462 process?

4463 A. In the Bristol Bay area, I don't
4464 actually think I worked with nontribal
4465 governments.

4466 Q. Is that because it's mostly tribal --

4467 A. Yes.

4468 Q. -- governments in that area?

4469 A. Yes, that's exactly right.

4470 Q. Going back just a little bit. You read

4471 Mr. Collier's comments about your edits in the
4472 news report. Do you think his comments about your
4473 edits is accurate or inaccurate?

4474 A. I think it's inaccurate.

4475 Q. Can you explain why?

4476 A. Yes. Let me look at it.

4477 Q. I think it's in the second document.

4478 The Alaska Dispatch News. The third and fourth
4479 paragraphs of Page 5 is what I read into the
4480 record.

4481 A. Okay. It starts out with, "They weren't
4482 just minor edits." Just one word at a time. Six
4483 words in a whole 12-page document is -- I recall
4484 it minor edits. "He helped draft it" is simply
4485 not true. I just did not help draft it. "His
4486 language ended up in the petition." If Jeff
4487 Parker kept my words, then I suppose that's
4488 technically true, but it's still -- I think it's
4489 suggestive of something more than actually
4490 happened. And "That's just not proper conduct for
4491 a federal employee." I actually categorically
4492 disagree with that. I think it's my duty -- as a
4493 federal employee, when someone comes to me and
4494 they want help petitioning the government, it's my
4495 duty to give them feedback and help them on that.

4496 Q. And just to be clear, the person that
4497 you were giving feedback with was representing
4498 sovereign tribal governments recognized by the
4499 United States government?

4500 A. That's correct, yes.

4501 Q. I think I wanted to ask you -- sir, I
4502 don't have very many questions left. I'm probably
4503 not going to use the whole 20 minutes. But this
4504 is sort of a general question about your 404(c)
4505 work.

4506 A. Okay.

4507 Q. Did you view your 404(c) work as being
4508 specifically targeted towards Pebble Limited
4509 Partnership, or did you view your 404(c) work as
4510 targeted towards any mines that might occur within
4511 the Bristol Bay watershed?

4512 A. I saw it as targeting the Bristol Bay
4513 watershed or the Nushagak and the Kvichak River
4514 watersheds.

4515 Q. And would it be fair to characterize the
4516 advanced state of Pebble Limited Partnership's
4517 proposals as being a stimulating occurrence that
4518 sort of brought the issue forward?

4519 A. Yes, I would. Yes.

4520 MS. GARDE: Could I talk to him for a second?

4521 [REDACTED]: Sure.

4522 (A discussion was held off the record.)

4523 [REDACTED]: Back on the record.

4524 Mr. Moolenaar has stepped out, for the record,
4525 but the witness's counsel has agreed to waive his
4526 presence for the purposes of the next couple
4527 minutes.

4528 MS. GARDE: I don't know if it's proper if I
4529 ask him a clarifying question or if I just let him
4530 clarify.

4531 [REDACTED]: It's fine with me if you let your
4532 client clarify.

4533 THE WITNESS: Okay. You asked me about my
4534 personal computer and whether or not I had
4535 downloaded documents from my personal computer
4536 and -- work documents from my personal computer.

4537 BY [REDACTED]:

4538 Q. Yes, that's correct.

4539 A. And I said no, that I didn't. So I want
4540 to clarify -- this had occurred to me also when we
4541 got done with those questions, that I did keep --
4542 I kept documents from my work computer, and I kept
4543 them on a thumb drive, and I have since turned
4544 those over to the Department of Justice.

4545 Q. Okay. And --

4546 MS. GARDE: And that did not contain any
4547 E-mails.

4548 THE WITNESS: And it was no E-mails, right. It
4549 was just the record of my work. And I kept it
4550 simply because it was my life's work. Then I
4551 realized I guess I shouldn't keep this, and I gave
4552 it to them.

4553 [REDACTED]: Great. That's all I have.

4554 (A recess was taken at 3:26 p.m.)

4555 [REDACTED]. We'll go back on the record.

4556 Congressman Neugebauer from Texas is present
4557 as well as Congressman Loudermilk from Georgia.

4558 This is Mr. North, the deponent.

4559 Mr. North. Hi. Hi.

4560 BY [REDACTED]:

4561 Q Mr. North, Congressman Palmer was here
4562 in the last hour, from Alabama, and he had some
4563 questions that he passed along to me to ask.

4564 You said that you bought a sailboat in 2008;
4565 is that correct?

4566 A Yes.

4567 Q And do you recall what it cost?

4568 A It was \$95,000.

4569 Q And did you buy it sight unseen?

4570 A No.

4571 Q And you testified that you sold that
4572 boat for salvage?

4573 A Yes, that's right.

4574 Q And you didn't buy another boat?

4575 A No. That's correct.

4576 Q And while at the EPA, did you earn any
4577 outside income?

4578 A No.

4579 Q And after retiring from the EPA have
4580 you earned any income?

4581 A A small amount, yes.

4582 Q And from what source?

4583 A I have a company called North Ecology.
4584 It's just a consulting company. And I had two
4585 clients briefly.

4586 Q And at what period of time did you have
4587 those clients?

4588 A From I believe it was the fall of 2013
4589 to January of 2014.

4590 Q And who were those clients?

4591 A One was the Native American -- let's
4592 see, Native American -- drawing a blank. It was
4593 Native American something foundation. Can't
4594 remember -- can't remember what -- what they --

4595 Q And what would -- what specific project

4596 were you working on?

4597 A They asked me to review a document on
4598 Chuitna for them, on the Chuitna coal mine.

4599 Q And approximately how much did they pay
4600 you for that service?

4601 A Oh, I think I got \$2,000 for that.

4602 Q I'm marking this Exhibit 12.

4603 (Exhibit No. 12 was marked for
4604 identification.)

4605 BY [REDACTED]:

4606 Q This is the same article that you have
4607 received previously from the Redoubt Reporter.
4608 And I just -- this is -- I just want to call your
4609 attention, this is the exact same article. I
4610 just -- if you will turn to page 10, the comments
4611 have been included. There's a commenting feature
4612 on the website where someone can come in and post
4613 a comment, and I just want to call your attention
4614 to the first comment --

4615 A Yes.

4616 Q -- posted on July 17, 2013, at 3:20
4617 p.m., which is -- it's the same date that the --
4618 that the article was published online; is that
4619 correct?

4620 A Yes.

4621 Q And who was the first commenter?

4622 A Jeff Parker.

4623 Q And did he write, "We all owe him a
4624 lot. Best sailing. Jeff"?

4625 A Apparently so, yes.

4626 Q And that is -- as far as we could
4627 understand this to be, that would potentially be
4628 the same Jeff Parker we've been discussing in the
4629 interview?

4630 A Yes.

4631 Q Did you know that he wrote that
4632 comment?

4633 A I did not. Well, before -- I knew
4634 before this time. I didn't know it at the time.

4635 Q He never discussed that with you?

4636 A No.

4637 Q Thank you. So I want to go back to --
4638 we'll get to Exhibit 11, but I just want to
4639 clarify a couple of things.

4640 Did you use your personal e-mail account to
4641 conduct official EPA business?

4642 A Yes, I did.

4643 Q And do you have access to the personal
4644 e-mails that you sent while you were at the EPA?

4645 A Do I now?

4646 Q That's correct.

4647 A No, I don't.

4648 Q And is that because that -- when you
4649 closed that account, those e-mails were lost or
4650 unavailable?

4651 A When I -- well, I -- when we moved out
4652 of our house and got rid of all of our belongings,
4653 we recycled our computers; didn't need the e-mail
4654 anymore, so we didn't copy any of that down. And
4655 then when we -- the e-mail was attached to our
4656 phone account. So when we left our house and we
4657 closed our phone, they kept it for as long as they
4658 keep it, which is I don't think very long, and
4659 then it disappears. So --

4660 Q Did you make any attempts to get those
4661 files back?

4662 A No.

4663 Q And you have -- you have received a
4664 subpoena from --

4665 Ms. Garde. Can -- I think he wants -- when
4666 we tried to call him, when he asked us for that.
4667 So why don't you clarify that, when we called ACS.

4668 Mr. North. Oh, yeah, we did -- oh, yes, we
4669 did. I'm sorry. We did call the phone company
4670 and asked them if the e-mail was still available.

4671 That's right, we did do that, yeah. And they said
4672 no, it's not available anymore.

4673 BY [REDACTED]:

4674 Q And when did you try to recover them?

4675 A When was that?

4676 Ms. Garde. It was after you asked us for
4677 them.

4678 BY [REDACTED]:

4679 Q So --

4680 A A year ago. Something like that.

4681 Q After 2013?

4682 A After 2013, yes.

4683 Q And you have received a subpoena from
4684 the Science Committee to produce all of the
4685 personal e-mails you have sent regarding the
4686 Pebble Mine; is that correct?

4687 A Yes.

4688 Q And you've been unable to produce those
4689 documents to the Committee responsive to the
4690 subpoena?

4691 A Well, I don't think I -- I don't think
4692 I have any that are responsive to the subpoena.

4693 Q And just to clarify, you have a
4694 current -- a current personal e-mail account that
4695 you use now which was different than the previous

4696 one, correct?

4697 A Yeah, that's correct.

4698 Q And you conducted a search of those
4699 e-mails to see if you had any documents responsive
4700 to the subpoena?

4701 A Yes.

4702 Q And did you find any responsive
4703 documents?

4704 A No.

4705 Q And just to be clear, with regards to
4706 your alaska.net e-mail account, your previously
4707 personal e-mail account, you didn't take any steps
4708 to preserve any data other than, I believe,
4709 pictures from that personal e-mail account; is
4710 that correct?

4711 A That's correct, yes. Or not -- you
4712 just said from the personal e-mail account. I
4713 didn't take any steps to preserve anything but
4714 pictures from my computer.

4715 Q Okay. Appreciate the clarification.
4716 So you didn't take any steps to preserve any
4717 personal e-mails?

4718 A That's correct.

4719 Q Okay. I want to -- so I'm going to
4720 mark this Exhibit 13.

4721 (Exhibit No. 13 was marked for
4722 identification.)

4723 BY [REDACTED]:

4724 Q This is -- we -- this is a -- the
4725 e-mail that was sent in connection with
4726 Exhibit 11, which was the draft petition letter.
4727 This is the transmittal e-mail, as we understand
4728 it.

4729 So this appears to be an e-mail that you sent
4730 from your personal e-mail account to Jeff Parker
4731 with a few suggested edits of the draft petition
4732 letters; is that correct?

4733 A It -- yes, that's what it appears to
4734 be.

4735 Q And why were you conversing with Jeff
4736 Parker on your personal e-mail?

4737 A Probably because it was just convenient
4738 for me to do so. I was probably busy during the
4739 day and so I just decided to just do this at
4740 night. So this was probably just convenient.

4741 Q And I believe you've previously stated
4742 that you would converse with Jeff Parker on your
4743 personal e-mail at times and other times on your
4744 official account; is that correct?

4745 A Yes, that's correct.

4746 Q Did you -- do you recall telling Jeff
4747 Parker at any time that you would edit the draft
4748 petition letter?

4749 A I believe I did. I believe when he
4750 sent it to me he asked me and I said, sure, I'll
4751 take a look. He asked me to take a look at it,
4752 and I said that I would.

4753 Q And so there was some sort of
4754 intervening phone call, potentially?

4755 A Potentially.

4756 Q And is it regular practice for an EPA
4757 employee to provide edits or feedback on a
4758 petition to the agency?

4759 Ms. Garde. Object. You haven't established
4760 a practice. You can ask about his practice.

4761 Mr. North. If somebody asked me to look at
4762 something and they were -- you know, they were
4763 going to engage with the agency, just as we did
4764 with the Pebble Partnership, then I would as just
4765 a service, a public service to help people
4766 interact with the government more efficiently.
4767 Again, just as we did spending thousands of hours
4768 of agency hours with Pebble Partnership.

4769 BY [REDACTED]:

4770 Q So had you -- other than this

4771 particular instance noted in Exhibit 11 and
4772 Exhibit 13, had you ever edited documents prepared
4773 by third-party groups that appeared to be petition
4774 letters in the past?

4775 A I don't know that I got a petition
4776 letter per se such as this. I did interact with
4777 different groups and help them -- you know, give
4778 them feedback in preparing things, but I don't
4779 think I ever got a petition letter of this nature
4780 except for in the -- say, in the 404 process where
4781 somebody comes to the agency before -- or to all
4782 the agencies to the corps, before an application
4783 goes in and wants to get feedback so they can
4784 refine their application to the government.

4785 Q And did you inform anyone that you
4786 provided edits for this letter?

4787 A Not that I know of.

4788 Q You didn't tell your immediate
4789 supervisor, Michael Szerlog --

4790 A No. I did forward the -- I did forward
4791 the letter to my -- EPA and I informed them that
4792 this letter's coming, but I don't think I told
4793 them that I provided edits to it.

4794 Q So you gave other EPA employees on your
4795 team a heads-up that a petition letter may be

4796 forthcoming?

4797 A Yes, I believe I did.

4798 Q And are you aware if the EPA Office of
4799 Inspector General investigated the editing of the
4800 petition letter as a possible misuse of position?

4801 A I am aware of that, yes.

4802 Q And are you aware if the EPA Office of
4803 Inspector General asked EPA ethics officials if
4804 this action may have been a misuse of position?

4805 A I read the report. So yes, I am aware
4806 of that.

4807 Q And are you -- are you aware of what
4808 their finding was?

4809 A That they thought it may be.

4810 Q May be a misuse of position?

4811 A Yes.

4812 Ms. Garde. I think I need to clarify that
4813 the Inspector General never interviewed him about
4814 that topic when they interviewed him.

4815 BY [REDACTED]:

4816 Q And I just want to clarify something
4817 you said. I don't want to put words in your
4818 mouth. So did -- is it your position that you
4819 would -- would have provided edits if a -- say a
4820 mining company were asking you to, hey, edit this

4821 document, would you have provided edits for them?

4822 A Well, okay, I just need to clarify.

4823 Jeff Parker didn't call me and say, "Would you

4824 edit these" -- "this letter for me." He just

4825 said, "Would you give me some feedback," and just

4826 asked me to give feedback. And yes, I would do

4827 that for a mining company. And if it meant going

4828 through and suggesting a few word changes like I

4829 did for Jeff Parker, yes, I would do that. And I

4830 did do that on many occasions because they would

4831 come to us preapplication routinely.

4832 Q And let's take a look at Exhibit 13

4833 here. You wrote to Jeff Parker. I quote, "I keep

4834 trying to include ecological impacts, but if they

4835 make the sentences awkward then delete."

4836 What exactly did you mean by that?

4837 A Well, there was that one -- that one

4838 suggestion of including ecological effects, not

4839 just commercial and subsistence fishing. So

4840 that's -- I think that's -- I mean, this is a long

4841 time ago, so I don't remember specifically, but I

4842 assume that's what I was talking about.

4843 Q And did you feel that would strengthen

4844 the petition letter?

4845 A Yes.

4846 Q And in your opinion, did the petition
4847 letter that Jeff Parker sent to EPA on behalf of
4848 his clients, did -- did that change the
4849 perspective of people at the EPA?

4850 A The letter?

4851 Q Yes.

4852 A Yes. Yes, I -- I believe so.

4853 Q And as someone who felt that the EPA
4854 should undertake a Section 404(c) action, did you
4855 feel that that helped or sort of bolstered your
4856 position on the matter?

4857 A Well, I guess I would answer that
4858 question by saying that I felt like I had a good
4859 argument without anything coming from the tribes,
4860 and I was a little bit bewildered why it took --
4861 why it took a letter from the tribes for them to
4862 apparently change -- change direction and decide
4863 to actually take this more seriously. So --

4864 Q Because essentially it had been a
4865 position that you had had for a few years?

4866 A It had been, yes. Or a couple anyway.
4867 Yeah, that's right.

4868 (Exhibit No. 14 was marked for
4869 identification.)

4870 BY [REDACTED]:

4871 Q I'm going to mark this Exhibit 14. And
4872 it is a -- it is a rather lengthy document, but I
4873 will really just ask you about these first four
4874 pages here.

4875 A Okay.

4876 Q And this appears to be an e-mail that
4877 is sent from Michael Szerlog to a wide-ranging
4878 group of people of which you are included. And
4879 the attachment appears to be denoted as the,
4880 "Bristol Bay - Administrator Brief 10-28-10 Final"
4881 and there's a PowerPoint attached.

4882 And the first page of the PowerPoint, does it
4883 say, "Bristol Bay Alaska 404(c) briefing for
4884 Administrator Jackson, November 4, 2010"?

4885 A Yes, it does.

4886 Q And did you contribute to this
4887 PowerPoint?

4888 A I did, yes.

4889 Q And did you participate in the briefing
4890 for Administrator Jackson?

4891 A I listened in, but I didn't speak.

4892 Q Who was the lead --

4893 A At least not that I recall.

4894 Q Who was the lead briefer?

4895 A I believe it was Patty McGrath.

4896 Q And I'd like you to turn to page -- the
4897 next page, which the title is "Purpose." And does
4898 this document state, "To recommend an advance
4899 404(c) process and receive Administrator Jackson's
4900 input and approval"?

4901 A It does, yes.

4902 Q And to your knowledge, was this Region
4903 10's recommendation to the administrator?

4904 A I don't -- I didn't recall that that's
4905 actually what that call was, but it appears to
4906 have been.

4907 Q So you believe from this document that
4908 this was the recommendation that was put forward
4909 to Administrator Jackson?

4910 A Yes.

4911 Q And do you happen to recall what her
4912 feedback was after this briefing by Region 10,
4913 which I believe took place on November 4th, as the
4914 document --

4915 A Well, my -- to the best of my
4916 recollection, she was positive. I don't recall
4917 that she gave a response, a definitive response,
4918 but -- but my recollection is that she -- her
4919 response was favorable, but not definitive.

4920 Q Did --

4921 A So she didn't say, "Okay. Let's go
4922 forward with the 404(c)." I don't believe she
4923 said anything like that.

4924 Q To your knowledge, did she ever express
4925 a decision?

4926 A During this call?

4927 Q After the call. So maybe she didn't
4928 give a -- make a decision right on the call, but
4929 was there one that was given later on?

4930 A To my knowledge, I don't recall that
4931 she ever -- that she ever made a decision and said
4932 move forward with 404(c). I don't recall that
4933 ever happening.

4934 Q It would probably be something that you
4935 would remember --

4936 A Yeah.

4937 Q -- if the administrator had made that
4938 determination?

4939 A Probably so, yes.

4940 Q And do you ever recall if Administrator
4941 Jackson's decision was to conduct a watershed
4942 assessment?

4943 A I don't know. I don't know about that.

4944 Q To your knowledge, was -- strike that.
4945 To your knowledge, was there still anyone in

4946 the period of time of November 4th, 2010, that was
4947 against doing a 404(c) action?

4948 A To my knowledge, Patty McGrath did not
4949 agree with the idea of moving forward with the
4950 404(c), nor did Marcia Combes, to my knowledge.

4951 Q And as of November 4, you were engaged
4952 in the -- what you've stated as the information
4953 gathering for a 404(c) action?

4954 A I believe so, yes.

4955 Q I'm going to show you a document in a
4956 second, but did anyone at EPA ever instruct you
4957 not to speak with Jeff Parker?

4958 A Cara Steiner-Riley told Jeff Parker
4959 that he needed to call her, but I don't think she
4960 ever told me not to talk to him.

4961 Q All right. We're going to mark this
4962 Exhibit 15.

4963 (Exhibit No. 15 was marked for
4964 identification.)

4965 BY [REDACTED]:

4966 Q And this is an e-mail chain of -- which
4967 you're a part of with Keith Cohon, Richard Parkin
4968 and Cara Steiner-Riley.

4969 Ms. Garde. Read it from the back.

4970 BY [REDACTED]:

4971 Q And the subject is, "Phone conversation
4972 with Jeff Parker." And it's dated December
4973 22nd -- well, the first e-mail in the chain is
4974 dated December 22nd, 2010.

4975 A (Witness complies.)

4976 [REDACTED]. We're going to go off the
4977 record while you review that.

4978 (Discussion off the record.)

4979 [REDACTED]. We'll go back on the record.

4980 BY [REDACTED]:

4981 Q So as I said before, this is an e-mail
4982 chain at various times between Keith Cohon,
4983 yourself, Richard Parkin, Cara Steiner-Riley, and
4984 Michael Szerlog is also copied on it as well. And
4985 Cara Steiner-Riley and Keith Cohon, those were
4986 attorney at the EPA?

4987 A Yes, that's right.

4988 Q And this e-mail chain discusses
4989 communications that you and Rick Parkin were
4990 having with Jeff Parker; is that correct?

4991 A Yes, it seems to be.

4992 Q And this e-mail seems to suggest that
4993 Jeff Parker gained information about internal EPA
4994 actions in conversations with regard to the Pebble
4995 Mine that he had with you.

4996 Were you discussing these internal
4997 deliberations with Jeff Parker?

4998 A Well, I actually think you're
4999 mischaracterizing the e-mail exchange here.

5000 Q Well, please explain, then, how you
5001 interpret this document.

5002 A Well, it's Keith Cohon is expressing
5003 concern because evidently Jeff Parker called him
5004 and was characterizing the -- yeah, characterizing
5005 conversations that he had with me and with Rick
5006 Parkin, and I guess perhaps verifying the legal
5007 status of what he heard from me or from Rick
5008 Parkin. And Keith was concerned about kind of
5009 this, I guess, Jeff Parker kind of pumping us for
5010 legal information, especially with -- Rick and I
5011 are, we're not attorneys and so we can't really
5012 give legal information or legal opinions.

5013 I -- that's how I would characterize this.

5014 Q Okay. Does the e-mail state that,
5015 "Jeff was particularly interested in Phil's
5016 comment that Rick supposedly says that tribes get
5017 precedence over the state"?

5018 A Yes, it does say that.

5019 Q And did Keith Cohon's e-mail make you
5020 reconsider any of your conversations or your

5021 decision to provide information to Jeff Parker?

5022 A Well, again, I don't know about
5023 decisions to decide -- to provide information to
5024 Jeff Parker, but I think -- I suspect -- I mean, I
5025 don't really recall exactly my response to this.
5026 I generally recall this time and that I needed to
5027 be more careful about my conversations with Jeff
5028 Parker. He called a lot and asked me lots of
5029 questions and I -- I recall that I realized that I
5030 needed to be more careful in my conversations with
5031 him.

5032 Q And on page 2 of this e-mail chain did
5033 you write back to Keith and Cara and Rick and your
5034 manager, "I will forward Jeff to Cara per your
5035 suggestion"?

5036 A I did say that, yes.

5037 Q And do you recall if that meant in all
5038 matters or only when matters were discussing legal
5039 principles?

5040 A I don't -- I don't recall.

5041 Q Did you speak with Jeff Parker after
5042 this e-mail took place?

5043 A I am sure I did because he called me
5044 many times.

5045 Q Do you believe that you may have

5046 e-mailed him after this?

5047 A It's quite possible.

5048 Q I should -- let me clarify that. That
5049 you e-mailed with him. I'm not asking you
5050 specifically about this e-mail chain yet.

5051 A Okay. It's quite possible that I did.

5052 Q And it's possible that you used your
5053 personal e-mail account to speak with Jeff Parker
5054 after this?

5055 A It's possible.

5056 Q And were there any times that you
5057 referred Jeff Parker to Cara Steiner-Riley?

5058 A I believe I did.

5059 Q And had you ever spoken with Jeff
5060 Parker specifically about the request that you
5061 refer him to Cara Steiner-Riley in the future?

5062 A I probably did. I don't recall
5063 specifically but I probably did.

5064 Q I want to call your attention to the
5065 top e-mail here, which is -- I will note is
5066 between Rick Parkin and Cara Steiner-Riley. You
5067 have been removed from the e-mail chain.

5068 This particular e-mail discusses if this
5069 e-mail chain would be subject to FOIA and should
5070 they be concerned about that. Did -- is that a

5071 discussion that you ever participated in about
5072 your e-mail chains being protected from FOIA?

5073 A No, I don't believe I did.

5074 Q And Rick never discussed that with you?

5075 A Not -- not directly, no. I'm aware of
5076 his expressing concern about these kinds of things
5077 over the years, but he never talked to me that I
5078 can recall about FOIA or -- and related to Bristol
5079 Bay.

5080 Q Are you aware of anyone taking
5081 precautions to prevent documents from being
5082 captured in FOIA requests?

5083 A No. I mean, as I just said, Rick
5084 Parkin expressed concern about those kinds of
5085 things at different times, but -- but I don't
5086 recall a specific time --

5087 Q And --

5088 A -- when everybody did.

5089 Q And was his concern to -- did he say to
5090 mark those e-mails? Did he say to be careful what
5091 you say in an e-mail? Did he say to use the phone
5092 instead of an e-mail?

5093 A No. No, nobody ever gave me any
5094 direction on avoiding FOIA.

5095 Q And just to be clear, as far as you

5096 know, anyone on this e-mail chain did not know
5097 that you had, as you've said, provided feedback on
5098 the draft petition letter that Jeff Parker
5099 prepared?

5100 A To my knowledge, they didn't know. I
5101 don't want to say that I didn't tell anybody
5102 because it's possible that I did, but I don't
5103 recall telling anybody that I had provided
5104 feedback to Jeff Parker on that petition.

5105 Q This is going to be Exhibit 16.

5106 (Exhibit No. 16 was marked for
5107 identification.)

5108 BY [REDACTED]:

5109 Q And this is an e-mail from Palmer Hough
5110 to yourself and Michael Szerlog, Heide Karp,
5111 Christopher Hunter, Brian Frazer and David Evans.
5112 And the subject is, "Call from Jeff Parker
5113 regarding Bristol Bay 404(c) action," dated
5114 November 4th, 2010.

5115 And does this -- does the e-mail that Palmer
5116 sent you, does it reference a call from Jeff
5117 Parker to himself?

5118 Ms. Garde. What?

5119 BY [REDACTED]:

5120 Q Does the e-mail from Palmer reference a

5121 call that Jeff Parker made?

5122 Ms. Garde. Read it.

5123 Mr. North. Yeah.

5124 Yes, it does. Not to me, I don't think.

5125 BY [REDACTED]:

5126 Q And Palmer Hough, as I believe you

5127 stated before, works at the EPA headquarters

5128 office.

5129 A Yes, that's right.

5130 Q Do you know how Jeff Parker knew to

5131 call Palmer Hough about this particular -- the

5132 petition letter?

5133 A I -- I do not know. I do not. If I

5134 talked to Jeff Parker about this, I don't recall.

5135 So I don't know how he would know to call Palmer

5136 Hough.

5137 Q So you never directed Jeff Parker to

5138 call anyone -- or, sorry, excuse me. Let me

5139 strike that.

5140 Did you ever direct Jeff Parker to contact

5141 Palmer Hough?

5142 A Ever? I might have. I might have --

5143 if he asked me a question and I didn't know the

5144 answer, I might have said, "Call Palmer Hough.

5145 He's" -- "He would be the person who would know

5146 the answer to that question." And I'm -- I think
5147 I did do that.

5148 Q And at this time, November 4th, 2010, I
5149 believe you stated before that Palmer Hough was
5150 assisting you on the information gathering on the
5151 404(c)?

5152 A I don't know that he was so much
5153 assisting me, but he was my headquarters contact
5154 for this issue. So --

5155 Q And was Palmer Hough a contributor on
5156 the Bristol Bay watershed assessment?

5157 A Yes, I believe he was. Yes.

5158 Q Do you recall ever speaking to anyone
5159 about this particular e-mail at any time?

5160 A This particular e-mail?

5161 Q Yes.

5162 A I don't recall.

5163 Q Previously you were talking about your
5164 retirement and your travels, and I just want to
5165 clarify a couple things. Do you recall in July
5166 2013 receiving a letter from the House Oversight
5167 and Government Reform Committee requesting that
5168 you be interviewed by the Committee?

5169 A I recall initially getting phone calls
5170 from you. I'm trying to remember the letter. I

5171 guess -- I mean, I don't recall the letter, but I
5172 believe if you say that I did, I believe that I
5173 did.

5174 Q And did you ever have -- did you ever
5175 assert that you would be willing to be interviewed
5176 by the Committee voluntarily?

5177 A I did, yes.

5178 Q But at some point did your position on
5179 that change?

5180 A It did, yes.

5181 Q And why did it change?

5182 A Because as I talked to people who I
5183 considered more knowledgeable on these kinds of
5184 things than I am, they recommended that I not talk
5185 to the Committee voluntarily.

5186 Q And who had you spoken to?

5187 A Oh --

5188 Q And I want to be very clear that I'm
5189 asking who you spoke to before you retained your
5190 counsel.

5191 A Right. Okay. I believe I talked to
5192 Tim Bristol at Trout Unlimited, and this is after
5193 I retired. I believe I talked to Bob Shavelson at
5194 Cook Inletkeeper. Those are two people that I can
5195 remember. I talked to other people, also, and I

5196 don't -- I don't recall specifically who.

5197 Q Did you talk to Jeff Parker about that?

5198 A I may -- I may have. I don't remember.

5199 Q And they -- and as -- their advice was

5200 not to voluntarily be interviewed by the

5201 Committee?

5202 A Yes, that's right.

5203 Q And what was their reasoning, if you

5204 can recall?

5205 A I can recall. They said that -- they

5206 essentially said, you know, nothing good could

5207 come out of it. It's going to be one way in terms

5208 of the questions. The questions are going to be

5209 leading questions, they're going to be pointed

5210 questions. Doesn't matter what you say, things

5211 will be extracted out of what you say and used in

5212 whatever context is deemed useful. And as I said,

5213 you know, don't do it without counsel and don't do

5214 it voluntarily. That's what people said.

5215 Q And as you said before, you said that

5216 you recalled speaking with me on the phone --

5217 A Yes.

5218 Q -- in July or August 2013?

5219 A Yes, I recall that.

5220 Q Do you recall telling me that you felt

5221 that the Committee's inquiry was a, quote,
5222 "witch-hunt"?

5223 A I do recall that, yes.

5224 Q And that -- was that -- that term was
5225 used based on the input you received from those --
5226 those two and your own thought processes on the
5227 matter?

5228 A Yes. Well, and probably not just those
5229 two. Other people probably, also.

5230 Q The other people that you can't recall?

5231 A Right. Right.

5232 Q Is there a reason that you didn't
5233 inform the Committee at the time that you would be
5234 in Florida in 2014?

5235 A I guess I just didn't consider it to be
5236 in my best interests to do that.

5237 Q And at some point you went to
5238 Australia; is that correct?

5239 A Yes, that's right.

5240 Q Were you attempting to conceal your
5241 location in Australia from anyone while you were
5242 there?

5243 A No. We went to New Zealand first, and
5244 no, we were not attempting to conceal our -- my
5245 wife had a Facebook page that described where we

5246 were pretty much all the time. So no, we were not
5247 trying to conceal it.

5248 Q And you mentioned that you had one
5249 crashed hard drive, is that correct, when you were
5250 at the EPA?

5251 A That -- I had -- I actually had two
5252 over the course of my career.

5253 Q That's what I thought.

5254 A Yeah.

5255 Q Was the -- was the first one in 2007?

5256 A 2007? I don't think so. I think it
5257 was before that.

5258 Q Okay. So one you said was in 2010
5259 previously.

5260 A I actually don't remember when. That
5261 could be. That sounds right.

5262 Q Approximately -- it could have been
5263 2009 --

5264 A Yeah, right. Right. And the one --
5265 previous one was, I think, significantly before
5266 that.

5267 Q And can -- thinking back to the
5268 2009-2010 hard drive crash, would you just explain
5269 the circumstance of that crash?

5270 A I don't know what to tell you. I mean,

5271 I'm not -- I'm not an IT-savvy person, and my
5272 computer quit working. So --

5273 Q So there was no -- no -- as far as you
5274 understand, there was no action that cautioned it,
5275 it was just one take your computer stopped
5276 working?

5277 A As far as I know, that's right.

5278 Q And to your knowledge, has the EPA been
5279 able to produce any of your e-mail communications
5280 from the time period of 2007 to 2009?

5281 A As far as I know, no. But I don't --
5282 I'm not in touch. I don't know what they're doing
5283 and what they've done.

5284 Q And after these hard drive crashes, did
5285 you or the agency take any steps to ensure that
5286 your computer's hard drive would be backed up in
5287 the future?

5288 A Yes, we actually did.

5289 Q And so that was after the 2009 or '10
5290 crash?

5291 A Yes. Yes.

5292 (Exhibit No. 17 was marked for
5293 identification.)

5294 BY [REDACTED]:

5295 Q I will mark this Exhibit 17. And this

5296 is an e-mail from -- I believe it's Hanady Kader
5297 to yourself with the subject "Bristol Bay Press
5298 Release" sent February 3rd, 2011. And then you
5299 e-mailed her back with what appears to be an
5300 edited press release with a title of, "EPA to
5301 assess condition of Bristol Bay watershed, gauge
5302 impacts of potential development"; is that
5303 correct?

5304 A Yes.

5305 Q And is Hanady Kader -- she's a public
5306 affairs specialist in EPA Region 10?

5307 A Yes. And you pronounce her name
5308 Hanady.

5309 Q My apologies.

5310 A No problem.

5311 Q And did you work with Hanady often?

5312 A Yes, fairly often.

5313 Q And in this e-mail, is she -- was she
5314 asking you to provide edits to a press release?

5315 A Yes.

5316 Q And this press release is about the
5317 announcement of the Bristol Bay Watershed
5318 Assessment?

5319 A It seems to be, yes.

5320 Q And I just want to call your attention

5321 to the third-to-last paragraph there.

5322 A Okay.

5323 Q Was one of your edits to include a line
5324 that said, "The area may be the last major
5325 watershed in North America that produces historic
5326 numbers of wild salmon"?

5327 A Yes.

5328 Q And is that -- is that something that
5329 you already understood or was that something the
5330 EPA was attempting to determine at the time?

5331 A No, that was something that I
5332 understood.

5333 Q And how about the Agency? Had they
5334 made an official position on that yet?

5335 A Well, when you ask some of these
5336 questions, it implies that they would make an
5337 official position on something like that. And, I
5338 mean, I'm -- I'm the aquatic resources biologist
5339 and I would, you know, state things like that, and
5340 I'm representing the Agency as far as it goes. I
5341 mean, if more decisions are to be made in the
5342 future based on this kind of thing, then that's
5343 another issue.

5344 But -- so I just want to clarify, you know,
5345 the way you're asking your question implies

5346 something that may not actually be true.

5347 Q Was one of the purposes of the Bristol
5348 Bay Watershed Assessment to determine essentially
5349 something along these lines, that the area may be
5350 the last major watershed that produces historic
5351 numbers of wild salmon?

5352 A Actually, I would say, no, it wasn't so
5353 much to establish that. It would be more to -- I
5354 think that -- that might have been a given and it
5355 would be more to determine what the effect of
5356 mining in the area would be on this. I think that
5357 would probably be a more accurate description.

5358 Q Do you recall why you were asked to
5359 edit this particular press release?

5360 A Probably because I was the most
5361 familiar with Bristol Bay of anybody at EPA at
5362 that point.

5363 Q And your e-mail back to Hanady says,
5364 "Call when you get this, please."

5365 Do you recall your phone conversation with
5366 her?

5367 A I do not.

5368 [REDACTED]. We should go off the record.

5369 (Discussion off the record.)

5370 (Exhibit No. 18 was marked for

5371 identification.)

5372 [REDACTED]. We'll go back on the record.

5373 BY [REDACTED]:

5374 Q This is Exhibit 18, and it is an e-mail
5375 sent from Jeff Parker to Palmer Hough, Richard
5376 Parkin and yourself, the subject, "Schedule for
5377 watershed assessment and 404(c)." And it has
5378 attached a memo that appears to -- is on the
5379 letterhead of Jeff Parker's law -- Geoffrey
5380 Parker's law offices.

5381 A Okay.

5382 Q Are you familiar with this memo?

5383 A It looks familiar.

5384 Q All right. And does this memo lay
5385 out -- does this memo contain what Geoffrey Parker
5386 writes as -- let me restart.

5387 Does this memo state from Geoffrey Parker
5388 that, "I understand that the schedule looks
5389 something like this," with a table on the first
5390 page?

5391 A Where does it say that?

5392 Q Right there.

5393 A Oh, yeah. Okay. Yes.

5394 Q And did you understand this to be the
5395 schedule of the watershed assessment?

5396 A I can't say that I did know that or
5397 that I understood that. If it was, I don't recall
5398 that that was the case.

5399 Q So you don't recall if -- or do you
5400 know if you sent this particular information to
5401 Jeff Parker?

5402 A I don't recall that I sent it to him.
5403 And I'll qualify that by saying that if Jeff
5404 called me and he asked me, "So what's the
5405 schedule," I don't know that I would have any
5406 reason not to tell him, so --

5407 Q On the third page of this memo, Jeff
5408 Parker discusses the 2012 presidential elections.
5409 Is that -- do you notice that?

5410 A Where is that?

5411 Q It's at the paragraph that begins with
5412 "Third"?

5413 Ms. Garde. (Indicating.)

5414 Mr. North. Okay. Oh, yeah, okay.

5415 BY [REDACTED]:

5416 Q Was the impending 2012 presidential
5417 elections something that you ever discussed with
5418 regard to the Pebble Mine situation?

5419 A With?

5420 Q Did you -- sorry. Did you discuss it

5421 internally at EPA?

5422 A I believe that we were aware of it
5423 and -- and yes, we probably discussed that that
5424 could change the landscape of what we were doing.

5425 Q Were you attempting to finish what I
5426 presume was the draft watershed assessment at that
5427 point before the presidential elections?

5428 A I would have to say that at -- say,
5429 between Palmer Hough and I, we probably discussed
5430 that that would be a good idea, but I would also
5431 have to say that I don't think EPA -- no, EPA was
5432 not trying to finish it before that time frame.
5433 At least not that I'm aware of.

5434 Q And do you recall if you discussed the
5435 impending presidential election with Jeff Parker?

5436 A I don't doubt that we talked about it.
5437 As I said, and I'll probably say more again, he
5438 called me quite often and talked to me about lots
5439 of things, and this certainly would have been
5440 something that he would have been thinking about
5441 and brought up.

5442 Q Just out of curiosity, how often would
5443 Jeff talk to you on the phone?

5444 A Oh -- oh, I don't know. I don't know
5445 if I could say once a week or maybe once every

5446 couple weeks or maybe even less than that. But
5447 over the course of this time frame, he called me
5448 many times.

5449 Q Did he only call you at your office or
5450 did he have your personal cell phone?

5451 A No, I think -- did we ever talk --

5452 Q And I shouldn't say this. I think
5453 you've asserted that you had a landline. So when
5454 I say cellphone, I also mean landline.

5455 A Okay. Yeah. I didn't have a personal
5456 cellphone.

5457 Q Okay.

5458 A He -- he may very well have called me
5459 at home, as -- as did many people from the public
5460 call me at home because I was the local person and
5461 I was in the phonebook, and I got calls from the
5462 public for my official business.

5463 Q And do you ever recall discussing the
5464 contents of this memo internally with the people
5465 on your team at EPA?

5466 A I don't recall discussing this. And
5467 again, I'll say that Jeff called often, offered
5468 many things, many suggestions, wrote up -- spent a
5469 lot of time writing things up and submitting them
5470 to us. And quite often -- actually I would say

5471 almost always, we just said, "Okay. We got it.
5472 Thanks," and then that was the last we did
5473 anything with it. So --

5474 Q Did you ever -- did you ever consider
5475 the appropriateness of the frequency of these
5476 calls? And I know that you've said previously
5477 that you were pretty open with responding to
5478 people as part of your job duties, right?

5479 A Right.

5480 Q And so what I'm curious to know is once
5481 the tribes officially petitioned the EPA and their
5482 attorney was Jeff Parker, did you ever consider
5483 whether it was appropriate to continue to give him
5484 the same level of responsiveness now that there
5485 was an official petition?

5486 A Well, there was no legal action so
5487 there was no kind of, you know, "I've got an
5488 attorney. You have to call my attorney." So I
5489 considered it to be perfectly appropriate. He
5490 calls me, I respond. I'm a public servant, he is
5491 part of the public. And I respond, just as I
5492 would for if somebody called from Pebble or any
5493 other project that I was working on.

5494 Q So I just want to maybe clarify and sew
5495 up a couple things. So it's a correct statement

5496 that in the time frame of 2007 to 2009 that you
5497 came to the conclusion that -- that the Pebble
5498 Mine should not be developed?

5499 A I believe that it was that time frame
5500 that I came to that conclusion, yes.

5501 Q And additionally, during that same time
5502 period you came to the conclusion that EPA should
5503 use its authority under Section 404(c) to stop the
5504 potential development of the Pebble deposit?

5505 A Yes.

5506 Q And also during that period of time,
5507 2007 to 2009, you spoke with a number of parties
5508 outside of the EPA with regard to the potential
5509 Pebble Mine; is that correct?

5510 A Well, I think during that 2007 to 2009,
5511 mainly I was speaking to the mining companies --
5512 or the mining company, and the other agency
5513 people. I don't think I started to speak to
5514 people outside the government or industry probably
5515 until 2009.

5516 Q And to be clear on that -- on this
5517 point, you were using your -- you believe that you
5518 were using your personal e-mail and your official
5519 EPA e-mail to communicate with people with regards
5520 to the Pebble deposit?

5521 A I don't think so. I mean, it's
5522 possible that I might have been working at home
5523 and I would send somebody within EPA or within a
5524 state agency something from my personal e-mail if
5525 I was working at home or receive something from
5526 them at home. But in that time frame, 2007 to
5527 2009, I was -- that's when I was coming to the
5528 conclusion that we should use 404(c).

5529 And so -- and it wasn't until I believe --
5530 and again, you know, after remembering the dates
5531 and exactly the order of things is difficult, so I
5532 could be wrong, but it was in that time frame that
5533 I initially -- that I was briefing people within
5534 EPA.

5535 So I was interacting with agencies -- I don't
5536 think at that time I had interacted with anybody
5537 outside of government or industry.

5538 Q So the outside-of-government
5539 communications, from what you can recall, began
5540 late 2009?

5541 A I believe so, yes. That's right.

5542 Q And --

5543 A And that's when I realized that I
5544 didn't have the information to brief the managers
5545 on what else is going on. I knew what the

5546 agencies were doing, I knew what industries were
5547 doing, but I didn't know what communities were
5548 doing, I didn't know what the tribes were doing, I
5549 didn't know what the NGOs were doing. And so I
5550 realized I needed to find out and so I started to
5551 ask.

5552 Q And when you were, I guess -- there's
5553 something I'm a little confused on with regard to
5554 your personal e-mail versus official e-mail usage.

5555 A Okay.

5556 Q It seems what you're saying -- and if
5557 I'm incorrect, please correct me, but that it
5558 wasn't until you were reaching out to groups
5559 outside of the EPA that you started to use your
5560 personal e-mail account with regard -- more
5561 frequently with regards to the Pebble deposit.

5562 A I don't think -- no, I don't think
5563 that's true. I think -- I mean, as I said,
5564 periodically if I was working at home and I needed
5565 to communicate with somebody in a state agency,
5566 Fish and Game, I wouldn't hesitate to use my
5567 personal e-mail if I knew their e-mail address.

5568 And then in 2009 really what I think -- if I
5569 was using it more frequently, it was simply
5570 because, as I said, Jeff Parker communicated

5571 frequently. He was -- he was calling regularly,
5572 and by regularly I don't mean every day, but as I
5573 said, maybe once a week, maybe once every other
5574 week. I'm not sure.

5575 And he started -- so he started sending
5576 e-mail.

5577 But my recollection is he actually mainly
5578 sent me e-mail at my office and he sent me a few
5579 things at home, but I don't think he did that very
5580 often. So I don't think really I had all that
5581 many work-related e-mails at home. And to the
5582 degree that they increased, I used my personal
5583 e-mail to communicate with people from EPA, as I
5584 said from other agencies, possibly even industry
5585 people if I knew their address. But to the degree
5586 that it increased, it was probably Jeff Parker
5587 sending stuff. So --

5588 Q So in this 2007 to 2009 sort of
5589 decision-making time period, both your personal
5590 e-mails and your official EPA e-mails from that
5591 period are unavailable for review; is that
5592 correct?

5593 A Right. That's correct.

5594 Q And do you understand that sort of
5595 given of the unavailability of these records in

5596 that very specific time frame when you were coming
5597 to your decision with regard to the Pebble deposit
5598 and a decision to use Section 404(c), that that
5599 lack of information raises suspicions?

5600 A Well, I understand that people have
5601 kind of taken this lack of information and filled
5602 in -- and raised suspicions. So I understand
5603 that. I -- you know, I don't know what to do
5604 about that other than -- because, you know, there
5605 was no reason for me to keep my personal e-mail
5606 and my work hard drive crashed. So --

5607 Q The EPA and other people have been -- I
5608 would say have frequently mentioned that you were
5609 not a decision maker at the agency. Would you
5610 consider that -- with regard to this particular
5611 Pebble issue, that you were a facilitator?

5612 A Not the way I would use the word
5613 "facilitator." Perhaps in the role of -- my role
5614 as -- to the degree that I played a leadership
5615 role in the assessment, then I was a facilitator
5616 of -- along with other people, of gathering that
5617 information and helping decide what information we
5618 needed.

5619 But in terms of facilitating a decision, no,
5620 I don't think so. I was more a technical person

5621 providing information to the people that were the
5622 decision makers, and even the facilitators.

5623 Q So as a technical -- as you
5624 characterize yourself as a technical person and
5625 sort of given your stance on the Pebble project,
5626 that it should not be allowed to move forward and
5627 Section 404(c) usage, et cetera, did you ever
5628 consider whether it was appropriate for you to
5629 participate in the watershed assessment, the
5630 undertaking of that document?

5631 A Yeah, I think it was absolutely
5632 appropriate for me to do that, because my job is
5633 based on the science and my conclusions were based
5634 on the science. When they decided to do the
5635 assessment, it just meant that they were going to
5636 do more science. And so it's completely
5637 appropriate for me as the local technical person,
5638 and knowledge on the ground, if you will -- I know
5639 more about Bristol Bay than anybody else -- to
5640 participate in those discussions and provide that
5641 information.

5642 Q So it may be asserted that because you
5643 had close contact with Jeff Parker and that you
5644 had provided feedback, your words, on the draft
5645 petition letter, that it would have been

5646 inappropriate for you to participate in the
5647 watershed assessment. What's your reaction to
5648 that?

5649 A I don't agree with that. I think that
5650 my feedback to Jeff Parker was so minimal it did
5651 not affect the substance of his letter really at
5652 all. I mean, very, very little.

5653 And, you know, my job in EPA is to do --
5654 is -- one of them was to be that technical person.
5655 And so I came to a conclusion based on an
5656 appropriate process during that time -- you know,
5657 I was assigned the project in 2005. It was then
5658 my job to learn about the project, to gain
5659 information, to decide how we should proceed from
5660 my own perspective with -- in the 404 program.

5661 So I came to conclusions and I decided -- and
5662 probably shouldn't use the word "decided" because
5663 I was not a decision maker, but I came to the
5664 conclusion that EPA should go a certain direction,
5665 and then it was my job to inform the managers of
5666 that. And then it's their job to take it from
5667 there and decide what to do. They decided to do
5668 an assessment.

5669 So, okay, now my job changes, and my job now
5670 is to participate in that assessment as the same

5671 scientist that I was before. Now we're not
5672 looking at a decision or a recommendation on my
5673 part at the end. That document has to speak for
5674 itself. Before that it was me. I had to collect
5675 the information, make the recommendations. After
5676 that now it's a large team of scientists, among
5677 which I'm one, and that document is the thing that
5678 has to speak for itself.

5679 So I think it was perfectly appropriate me to
5680 take the process where I took it, and then switch
5681 roles. And as the scientist that I am, adhering
5682 to the scientific processes and scientific
5683 integrity, to then move forward with the process.

5684 ██████████. We'll go off the record.

5685 (Discussion off the record.)

5686 ██████████. We'll go back on the record.

5687 BY ██████████:

5688 Q So I do want to ask you a question
5689 about scientific assessments and -- and your
5690 opinion on whether or not they can be reliably
5691 conducted by those who have already made up their
5692 minds on a particular action. Do you believe that
5693 they can?

5694 A Yes, absolutely.

5695 Q And do you believe that an EPA

5696 scientist such as yourself should be held to a
5697 certain standard of impartiality with regard to
5698 Agency decisions?

5699 A It depends on what you mean by
5700 impartiality. The Clean Water Act has a purpose,
5701 and the purpose is to protect and restore the
5702 physical, chemical, and biological integrity of
5703 the nation's waters. So that's not exactly
5704 impartial. I mean, it has a purpose to protect
5705 waters.

5706 So if I'm working on a project and I see that
5707 that project won't meet that purpose, then -- then
5708 I'm being -- I'm -- I'm violating my impartiality
5709 if I say -- if I just let go, because that's what
5710 I've been tasked to do.

5711 And so as a scientist, if I'm saying, look,
5712 the scientist -- the science points in this
5713 direction and I just ignore that, then I'm
5714 violating my -- my job, my -- I'm violating what
5715 I've been tasked to do.

5716 Q Would you agree with a statement that
5717 the Clean Water Act provides measures whereby sort
5718 of the environment and development can -- can
5719 both -- can both happen at the same time? Do you
5720 understand --

5721 A Yeah, I do understand the question.
5722 And yes, I agree with that. I mean, there's a lot
5723 of -- there's a lot to that question and if you
5724 get down -- I mean, you could really get down into
5725 the specifics of the Clean Water Act and 404(b)(1)
5726 guidelines and where are those measures and what
5727 do they mean. So you could really have a deep
5728 discussion on that, but on a surface level, yes, I
5729 generally agree with that statement.

5730 Q And you've made some statements in the
5731 past here today that -- about how you feel about
5732 groups reaching out to you and you helping them
5733 and giving them information. And so I want you to
5734 think about this, specifically with regard to this
5735 instance here with the Pebble matter.

5736 Did you see that the information that you
5737 were providing to Jeff Parker and other -- and I
5738 shouldn't say "other," but NGOs as -- I'll use the
5739 term "leveling the playing field" with what you
5740 regarded or interpreted as EPA being helpful to
5741 the Pebble Limited Partnership?

5742 A I would not call it leveling a playing
5743 field. I would call it just simply being
5744 responsive. I'm not in conversation with people
5745 from industry, from mining companies. I would do

5746 exactly the same thing. If they asked me -- if
5747 they called me and we got in a conversation about
5748 things, I would tell them -- I would be candid
5749 about what we were doing.

5750 Q Do you think that the agency -- the EPA
5751 is overly helpful to development companies?

5752 Ms. Garde. Object. That's -- are you asking
5753 for his personal opinion or are you asking him
5754 about the Agency?

5755 BY [REDACTED]:

5756 Q I'm asking for your personal opinion.

5757 Is it your personal opinion that the Agency
5758 is --

5759 A Overly helpful? No, I don't think the
5760 Agency is overly helpful.

5761 Q Do you think they're helpful to
5762 development companies?

5763 A Yes. Yes, I think EPA is helpful to
5764 development companies.

5765 Q Did you believe that there was a
5766 disparity in the assistance given to development
5767 companies versus other groups that may be opposed
5768 to the development?

5769 A I think that development companies have
5770 more access to government than people who are

5771 opposed to development, as an example, or any
5772 other community members. And so -- and as an
5773 example, during the TWG meetings, the technical
5774 working group meetings, the public was allowed,
5775 but, frankly, discouraged from -- from attending
5776 and not allowed to talk when they did attend. And
5777 yet, you know, the Pebble Partnership had
5778 literally got thousands of hours of Agency time to
5779 sit and talk freely back and forth.

5780 So I think that industry has more access to
5781 the government, to EPA, but I don't know that --
5782 and I forgot what your question was now. I don't
5783 remember what you said.

5784 Q I think -- I think you've answered it.

5785 A Okay. Okay.

5786 Q Just a couple quick questions on this
5787 and then I think I maybe just have one additional
5788 question and then I think we should be pretty good
5789 to go to the other side.

5790 What is -- what is an organization called
5791 Public Employees for Environmental Responsibility?

5792 A That's an organization here in
5793 Washington, D.C. that when there's a -- as far as
5794 I know, they're just federal, but maybe they're
5795 state, also -- a whistleblower or some public

5796 employee who does environmental work is -- gets in
5797 some sort of difficulty because of their -- of
5798 doing their job, then this organization helps them
5799 and could provide legal assistance or, in my case,
5800 they did a little press -- press work. So --

5801 Q So the only thing that they -- that --
5802 I'll call them "PEER"?

5803 A PEER, yes.

5804 Q The only thing that PEER has done for
5805 you is provide press work; is that correct?

5806 A Up to this point, yes.

5807 Q And did you pay for that service?

5808 A No. No, I don't pay for that.

5809 Q Have you asked them to cover any other
5810 services?

5811 A They are doing a crowd sourcing. They
5812 did -- they're doing a crowd sourcing plea to help
5813 me cover the legal costs of all of this.

5814 Ms. Garde. That would be me.

5815 BY [REDACTED]:

5816 Q Do you consider yourself a
5817 whistleblower?

5818 A No.

5819 Q Has anyone -- I believe that you
5820 testified that you have not received any -- sorry,

5821 let me scratch that.

5822 You have received some income through your
5823 private consulting service, but have you received
5824 anything -- any other monetary payments from any
5825 other group since you've retired from the EPA?

5826 A I have not.

5827 Q And my last question here. In your
5828 opinion, if you had left the EPA in 2005, do you
5829 believe that the Pebble Mine would have been able
5830 to proceed through the permitting process?

5831 A No, I don't think so. I think whoever
5832 was in my position would have come to the
5833 conclusion that Bristol Bay is an exceptional
5834 resource and that Section 404(c) was made for that
5835 kind of situation. And in fact, an EPA manager
5836 when I was first going around saying, you know, I
5837 think we really should consider 404(c), there was
5838 one manager in Alaska who said, "If there's
5839 anyplace else on earth where 404(c) is
5840 appropriate, it's Bristol Bay."

5841 So, that was before I -- that was just when I
5842 was very, very -- at the very beginning of
5843 mentioning the idea. So I think it probably would
5844 have come up with somebody else if I hadn't
5845 brought it up.

5846 [REDACTED]. All right. We'll go off the
5847 record.

5848 (Recess.)

5849 [REDACTED]. All right. So I guess we're
5850 back on record. This is [REDACTED], again with
5851 minority counsel.

5852 Before we get started with just a few
5853 follow-up questions, I did want to state for the
5854 record relevant to my comments at the beginning of
5855 this process that exhibits that were introduced
5856 14, 15, 16, and 17 at least, are marked Privileged
5857 at the top of the documents. I just wanted to
5858 note that for the record.

5859 BY [REDACTED]:

5860 Q Referring to Exhibit 14, which I think
5861 you have in front of you, if you'd go -- there's
5862 no page numbers, but 1, 2, 3 -- I think it's the
5863 fifth page, but it's the -- it's on the PowerPoint
5864 labeled 4 of 7 -- and again, this is Exhibit 14 --
5865 this slide says at the top, "We have received 13
5866 more requests to implement 404(c), with more
5867 coming."

5868 Can you explain what's meant by that? Did
5869 other people other than Jeff Parker and the people
5870 he represented submit requests for the 404(c)

5871 action to the EPA?

5872 A People other than Jeff Parker --

5873 Q Yes.

5874 A -- I believe you said? Yes, other
5875 people did.

5876 Q So this is a partial list of those
5877 people?

5878 A Yes.

5879 Q Was Jeff Parker, on behalf of the
5880 tribes he represented, the first person to --
5881 outside parties to submit that?

5882 A Yes.

5883 Q This is a little bit complicated of a
5884 question, so -- in the course of your dealings
5885 with Pebble Limited Partnership while you were at
5886 EPA --

5887 A Yes.

5888 Q -- explicitly not after you left EPA --

5889 A Okay.

5890 Q -- did you ever hear complaints
5891 yourself or through your supervisors or coworkers
5892 from the mining company about your conduct in your
5893 dealings with Pebble Limited Partnership?

5894 A No, I never did.

5895 Q I wanted to clarify one thing you said

5896 earlier in the deposition, which was that when you
5897 were discussing your job responsibilities, that it
5898 wasn't your duty to review press releases,
5899 something like that. I'm paraphrasing, I'm not
5900 reading the record back, but obviously Exhibit 17
5901 is a press release that has edits you made on it
5902 at the request of Ms. -- Miss --

5903 A Hanady. No.

5904 Q -- Mister?

5905 A Ms. Miss, yeah. Sorry.

5906 Q Could you please clarify -- I mean, did
5907 you review press releases from time to time?
5908 Could you clarify what you meant by your original
5909 comments?

5910 A Okay. If somebody sent me a press
5911 release and asked me to review it, I would
5912 certainly review it. Pretty much if they sent me
5913 anything and asked me to review it, I would review
5914 it.

5915 Q Okay. I'm jumping around and I
5916 apologize.

5917 A No problem.

5918 Q I believe it was Exhibit 18 has on the
5919 second page a time line of actions, Mr. Parker --
5920 in Mr. Parker's e-mail, and he characterizes it as

5921 EPA's current schedule. Would it be typical in
5922 the course of your employment if you had internal
5923 agencies sort of timelines for completing tasks,
5924 to communicate that freely with people who
5925 inquired, whether they were participants like a
5926 mining company or interested groups?

5927 A Yes. Yeah, I would communicate those
5928 freely.

5929 Q One additional question about a
5930 possible timeline for the Bristol Bay Watershed
5931 Assessment. Would you have had any role in
5932 establishing that timeline or would that have been
5933 done by somebody else if there was one?

5934 And when I say that, I mean decision-making
5935 authority about that.

5936 A Yeah. Okay. Okay. No, I had no
5937 decision-making authority. And to my knowledge --
5938 to my knowledge, there wasn't a timeline, that I
5939 recall anyway.

5940 Q Okay. We had talked earlier about your
5941 interactions with Pebble in advance of the 404(c)
5942 action and the -- particularly in the technical
5943 working groups that part of the action was
5944 providing feedback or advice based on what the
5945 mining company was relaying to the federal

5946 agencies involved. Is that a fair
5947 characterization?

5948 A Yes, that's correct.

5949 Q And would that have been unusual for, I
5950 guess, a large mine where they're asking for
5951 advice? Would it have been unusual in the course
5952 of your career to do that, or was that normal
5953 practice?

5954 A That was typical.

5955 Q To your knowledge, is Pebble Limited
5956 Partnership or their parent company, are they a
5957 Canadian mining company?

5958 A To my knowledge, yes.

5959 Q Did that affect the consideration of
5960 their -- well, they didn't submit a permit, but
5961 the consideration of their mine in any way?

5962 A No.

5963 Q This is more of a general question.
5964 Certainly some in the press, Pebble Limited
5965 Partnership, some other people, have characterized
5966 the 404(c) process as it occurred in this case as
5967 having been predetermined, biased.

5968 How would you react to that characterization?

5969 A I think it's completely incorrect. It
5970 was -- not only was it not predetermined, we went

5971 through the whole assessment process not knowing
5972 whether they were going to do it at all and not
5973 knowing which direction a decision about going
5974 forward with it or not, not knowing which
5975 direction that would go, with lots of -- by the
5976 way, with lots of different opinions about how
5977 that should shake out.

5978 Q And just to reiterate, you had no
5979 ultimate decision-making authority on whether or
5980 not to initiate the watershed assessment in this
5981 case, correct?

5982 A Correct.

5983 Q You had no authority to initiate the
5984 404(c) process, the formal 404(c) process,
5985 correct?

5986 A That's correct.

5987 Q And although you were retired when the
5988 actual 404(c) proposed determination was made,
5989 correct?

5990 A That's right.

5991 Q If you had not been retired and you
5992 were in your same position, you would not have had
5993 the authority to issue that determination,
5994 correct?

5995 A That's correct.

5996 [REDACTED]. I don't have any further
5997 questions, so we can go off the record.

5998 [REDACTED]. I don't think -- we don't
5999 have any other questions at this time. So we'll
6000 just say a few sentences to close out the
6001 deposition.

6002 [REDACTED]. Actually, you know what? I do
6003 have one more question, is that all right?

6004 [REDACTED].: Sure.

6005 [REDACTED]. Can we go back on record? And I
6006 apologize. Just a general question I always like
6007 to ask at the end.

6008 BY [REDACTED]:

6009 Q Do you have anything that you don't
6010 feel like we've asked you today that you feel is
6011 relevant that you want to add to the record?

6012 Ms. Garde. Go ahead.

6013 (Witness confers with counsel.)

6014 Mr. North. Trying to think of what wasn't
6015 covered. Any ideas?

6016 BY [REDACTED]:

6017 Q And to be clear, I'm not fishing. It's
6018 just I always try and ask something like that.

6019 (Witness confers with counsel.)

6020 THE WITNESS: Okay. I guess there is --

6021 there's a couple things I'd like to say.

6022 BY [REDACTED]:

6023 Q Sure.

6024 A That in my -- when I started at the
6025 EPA, I quickly discovered that -- I actually
6026 started to work on a Ph.D. and I quickly
6027 discovered that more science was not what I needed
6028 to do my job effectively. What I needed to do was
6029 to learn how to engage with people. Because I had
6030 all these people saying, "Oh, I know what you
6031 think and you think this," not unlike what's been
6032 happening here recently.

6033 And so I sought out facilitation training and
6034 collaborative process and, you know, just all the
6035 alternative dispute resolution and, you know, how
6036 to come -- how to get groups of people to come to
6037 consensus.

6038 And that was a -- kind of a passion of mine
6039 for a long time. And it was actually even
6040 mentioned in one of these -- one of these exhibits
6041 where there was a discussion about doing outreach
6042 for a year. I don't know if that part of it was
6043 in here, but -- and that was something I wanted to
6044 do, was do outreach in Bristol Bay for a year and
6045 try to gain -- develop consensus within Bristol

6046 Bay on what should happen with mining in Bristol
6047 Bay.

6048 And so I started out on working on that with
6049 the Placer Mining where I gathered together the
6050 industry people and the agency people and the
6051 academics to try to come up with solutions for the
6052 fact that Placer Mining was continuing to pollute
6053 these rivers even long after it was done and the
6054 miners had left.

6055 And then when I moved down to the Kenai
6056 Peninsula, I worked with tribes, I worked with
6057 local communities, I described some of those
6058 projects, and with the idea of working with people
6059 to develop solutions to the problems and have
6060 those solutions come from the local people.

6061 But during all of that I really developed a
6062 very open-door policy. Anybody who wanted to come
6063 and talk to me could come and talk to me. I had
6064 people calling me on weekends, evenings, and I
6065 never said, "Call me on Monday." I always talked
6066 to them. I felt like as a public servant it was
6067 my job to be available to the public.

6068 And so I was, and so, you know, the idea that
6069 somebody like Jeff Parker who wants to -- who
6070 really wants to engage you, that he would call me

6071 and he would offer advice, he would offer
6072 suggestions, you know, wanted to talk about ideas.
6073 You know, I'm not going to hang up on him. I'm
6074 not going to say, "No, I can't talk to you."
6075 There were times when I said, "You've got to call
6076 Cara. If you want to talk about this, Cara's the
6077 person you have to talk to, Cara Steiner-Riley."

6078 But other times, it's like, "Okay, I'll
6079 listen and I'll talk to you and I'll give you my
6080 ideas." And "Well, you know, you mentioned this,
6081 and by the way, we're doing that."

6082 So I felt that that was my responsibility to
6083 do that. And so -- as just a -- as part of
6084 delivering good government. So that was one
6085 thing.

6086 And the other thing was this whole idea that
6087 I left the country, or fled, when it is clear from
6088 the Redoubt Reporter article, and it was decades
6089 that I had been planning to go, and our boat fell
6090 apart and we couldn't do it that way. And so --
6091 but we weren't going to let that stop us, so we
6092 kept going. And we went. We went to New Zealand.

6093 I kind of feel like I should apologize to Joe
6094 because when I first talked to him I was actually
6095 going to -- I mean, my intention was to go talk to

6096 him because I thought it would be really
6097 interesting. And people said, "You're naive.
6098 You're crazy. Don't do it." And so I thought,
6099 these people know better than I do, I should
6100 probably listen to them. And I apologize for
6101 that. I was just listening to people who I
6102 thought knew better than me.

6103 And so -- but this whole idea that we fled to
6104 get away from things, you know, I actually --
6105 probably Billie could verify -- more than once
6106 said maybe we should go talk to them. You know,
6107 let's get this story out. Let's get it over with
6108 and get the real story out, stop the speculation,
6109 and filling in, you know, taking scant facts and
6110 filling in the story. Let's stop that by telling
6111 the story.

6112 But the advice I generally got was, no, don't
6113 do that.

6114 So -- so we continued on with our life plans
6115 while all this other stuff was going on. So I
6116 guess that's what I want to say.

6117 Q Okay.

6118 A Thank you for that opportunity.

6119 Q Sure.

6120 ██████████. I have no further questions. We

6121 can go off record.

6122 [REDACTED]. Can we just go back on the
6123 record so --

6124 [REDACTED]. Sure.

6125 [REDACTED]. This concludes the
6126 deposition of Phil North. We appreciate your
6127 testimony. I'd like to remind you to keep the
6128 matters discussed today confidential. I don't
6129 believe there's anything else you'd like to add.
6130 If there is --

6131 Mr. North. No.

6132 [REDACTED]. Thank you. We can go off
6133 the record.

6134 Ms. Garde. Okay. I jut want to on the
6135 record say that I understand your request for him
6136 to keep things confidential and we certainly won't
6137 have the transcript to disclose, but I don't
6138 consider him bound by rules to keep things
6139 confidential. There isn't a rule to that in
6140 effect.

6141 [REDACTED]. Well, there is. It's Rule 10 of
6142 the deposition procedures.

6143 Ms. Garde. It talks about the deposition.

6144 [REDACTED]. Yes, and we take that to mean --

6145 [REDACTED]. The content.

6146 [REDACTED]. -- the content.

6147 Ms. Garde. I'm not holding a press

6148 conference, but --

6149 [REDACTED]. We appreciate that.

6150 Ms. Garde. -- but I don't read the rule that

6151 way.

6152 [REDACTED]. Okay. We can have the Chairman

6153 make an official ruling. That is also provided

6154 for in the deposition procedures of the House.

6155 Ms. Garde. Okay. So we'll ask for you to do

6156 that and we'll be bound by it until we get the

6157 ruling.

6158 [REDACTED]. Okay.

6159 Ms. Garde. We'll comply with it until we get

6160 the ruling.

6161 [REDACTED]. So we'll go off the record.

6162 (Whereupon, at 6:01 p.m. the deposition was

6163 concluded.)

6164 Certificate of Deponent/Interviewee

6165

6166

6167 I have read the foregoing _____

6168 pages, which contain the correct transcript of the

6169 answers made by me to the questions therein

6170 recorded.

6171

6172

6173

6174

6175 _____

6176

6177 Witness Name

6178

6179

6180

6181 _____

6182

6183 Date