

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6301
(202) 225-6371
www.science.house.gov

August 6, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Jackson:

On May 18, 2012, the U.S. Environmental Protection Agency (EPA) released for public comment a “draft scientific study of the Bristol Bay watershed and its natural resources”¹ entitled ‘*An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.*’ The public comment period for the assessment ended on July 23, 2012, and EPA has scheduled a peer review panel meeting on August 7, 8, and 9, 2012 to “review the scientific and technical merit of the draft watershed assessment”² in Anchorage.

According to EPA’s website on Bristol Bay, this assessment was initiated “in response to petitions from nine federally recognized tribes and other stakeholders who asked us to take action to protect Bristol Bay’s salmon populations. They have expressed concern that the significant Bristol Bay salmon fishery would be at risk from large-scale mining.”³ It is well known that these actions were taken because of the potential development of the so-called Pebble Mine or Pebble Project - even though no permit application has been filed.

EPA claims the authority to conduct this scientific watershed assessment is granted by Section 104(a) of the Clean Water Act, which directs the agency to “...conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.”⁴ EPA also maintains that its “focus in the assessment is scientific and technical; the agency has made no judgments about the use of its regulatory authority under the Clean

¹ U.S. EPA, News Releases from Region 10, May 18, 2012, available at: <http://yosemite.epa.gov/opa/admpress.nsf/d96f984dfb3ff7718525735900400c29/6979fe30fc6583f385257a020061b472%21OpenDocument>.

² U.S. EPA, Region 10: The Pacific Northwest, Bristol Bay, available at: <http://yosemite.epa.gov/R10/ecocomm.nsf/bristol+bay/bristolbay> (hereinafter Bristol Bay).

³ U.S. EPA, Bristol Bay: Frequently Asked Questions, last updated June 10, 2011, available at: <http://yosemite.epa.gov/r10/ecocomm.nsf/bristol+bay/faq>.

⁴ Ibid.

Water Act and the draft study in no way prejudices future consideration of proposed mining activities.”⁵

Yet, during a June 4, 2012 public hearing in Anchorage, attended by Mr. Dennis McLerran, Administrator of EPA’s Region 10, agency officials at the hearing said that “EPA did no scientific fieldwork on the assessment other than a literature review and interviews in the region with 54 tribal elders to gather traditional knowledge on the salmon fisheries.”⁶ I am concerned by these agency officials’ comments from the hearing because they raise questions about how EPA can conduct a “scientific and technical” assessment with “no scientific fieldwork.”

I am not alone with these concerns as evidenced by comments made by Alaska’s Senior Assistant Attorney General, who in a June 5, 2012 statement explained, “We’re looking closely at the data, methodologies and assumptions used, whether the assessment is based on appropriate modeling for that region and whether it contains any unfounded bias for or against any particular development.”⁷ In fact, in a letter addressed to Mr. Dennis McLerran on March 9, 2012, the Attorney General for the State of Alaska wrote:

“The State has previously advised EPA that EPA may not currently have sufficient scientifically vetted water quality and hydrological data for the area to conduct the review EPA proposes for its watershed assessment. EPA also proposes to use inappropriate modeling and documents that are internal or commissioned reports that have limited distribution and that have not been subject to external peer review. Further, in arranging for the preparation of various portions of the watershed assessment, EPA has contracted with at least one consultant who has publicly expressed actual bias against the Pebble project in particular. These aspects of the assessment are troubling, will undermine the scientific credibility of the watershed assessment, and will yield unreliable conclusions.”⁸

Further, in a July 12, 2012 letter to you, Representative Mike Chenault, Speaker of the Alaska State House, said, “Unfortunately, the hastily prepared draft Bristol Bay Watershed Assessment, the unnecessarily rushed public review process, and serious flaws in the scientific methods relied upon in the draft assessment only serve to continue to undermine the validity of the entire undertaking. As such, there is growing concern that this is not a scientific risk assessment - but merely a politically predetermined conclusion.”⁹

⁵ Bristol Bay, *supra*, note 2.

⁶ Tim Bradner, “EPA Names Review Panel for Bristol Bay Watershed Study,” *Alaska Journal of Commerce*, June 7, 2012, available at: <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/June-Issue-2-2012/vEPA-names-review-panel-for-Bristol-Bay-watershed-study>.

⁷ *Ibid.*

⁸ Letter to Dennis McLerran, Regional Administrator, EPA Region X, from Michael C. Geraghty, Attorney General, State of Alaska, March 9, 2012, available at: http://www.eenews.net/assets/2012/03/28/document_pm_01.pdf (hereinafter AG Letter).

⁹ Letter to Lisa Jackson, EPA Administrator, from Representative Mike Chenault, Speaker, Alaska State House, July 12, 2012, available at: http://insideepa.com/iwpfile.html?file=jul2012/epa2012_1410d.pdf.

These are serious concerns. If EPA ultimately uses this watershed assessment as justification to preemptively veto mining permits in Bristol Bay - notwithstanding EPA's legal authority to do so - the scientific credibility of the assessment will need to be beyond reproach. This is obviously not the case when, in addition to the concerns highlighted above, you keep in mind Alaska Attorney General Michael Geraghty's concluding comment in his letter to Mr. McLerran that "[t]he State asks that EPA cease its work on the Bristol Bay Watershed Assessment."¹⁰

As Chairman of the Investigations and Oversight Subcommittee, I take my oversight responsibilities very seriously, especially when it involves scientific studies and assessments by federal agencies within the Committee's jurisdiction - such as the EPA. To that end, I would appreciate your assistance in scheduling a briefing for Committee staff on the Bristol Bay watershed assessment by the end of this month. Issues to be addressed at the briefing should include:

- clarification of the statutory authority relied upon by EPA to conduct the watershed assessment;
- description of the methodology and charge questions of the study, including how they were developed;
- explanation of how the study complies with the Administrative Procedure Act;
- explanation of how the members of the peer review panel were selected and how were the charge questions for the August 7-9 panel meeting determined;
- detailed explanation as to how EPA intends to treat this assessment as highly influential scientific assessment under EPA's *Peer Review Handbook*; and
- clarification as to how this draft study qualifies as, in the words of your recently-appointed Science Advisor, "a good example of EPA's sustainable approach,"¹¹ including all steps taken to implement the National Academy of Sciences report, *Sustainability and the U.S. EPA*, in developing and disseminating this assessment.

If you have any questions, please feel free to have your staff contact Raj Bharwani with the Investigations and Oversight Subcommittee at (202) 225-6371.

Sincerely,



Rep. Paul Broun, MD
Chairman
Subcommittee on Investigations
and Oversight

¹⁰ AG Letter, *supra*, note 8.

¹¹ Jenny Hopkinson, "EPA Sees Alaska Study As 'Example' of Sustainable Approach," *Inside EPA*, June 6, 2012, available at: <http://insideepa.com/Inside-EPA/Inside-EPA-06/08/2012/epa-sees-alaska-watershed-study-as-example-of-sustainable-approach/menu-id-153.html>.