

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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October 14, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

This letter follows the Committee on Science, Space, and Technology's September 3, 2015, letter to the U.S. Environmental Protection Agency requesting documents and communications regarding EPA's action to limit the Pebble Mine in Bristol Bay, Alaska under section 404(c) of the Clean Water Act. EPA has taken numerous steps signaling its intention to carry out the 404(c) process on the Pebble Mine. On February 28, 2014, EPA Region 10 Administrator Dennis McLerran released a 15-day letter announcing the process to invoke the section 404(c) process with regard to the Pebble Mine.¹ In July 2014, EPA Region 10 released its proposed determination to invoke a 404(c) action.² These actions taken by the EPA have all preceded any formal permit applications submitted by Pebble Mine.

Since the Committee's September 3 letter, a report (Cohen report) was prepared by former Secretary of Defense William Cohen raising questions about the fairness of the process EPA undertook in its decision to invoke the section 404(c) process for the Pebble Mine.³ The Cohen report suggests that Administrator McLerran was presented with an options paper outlining various steps EPA should take to invoke the section 404(c) process to stop the Pebble

¹ Letter from Hon. Dennis McLerran, Administrator, U.S. EPA, Region 10, to Mr. Thomas Collier, CEO, Pebble Limited Partnership, et. al., Feb. 28, 2014, *available at* <http://www2.epa.gov/sites/production/files/2014-02/documents/bristol-bay-15day-letter-2-28-2014.pdf>.

² Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act, Pebble Deposit Area, Southwest Alaska, July 2014, *available at* http://www2.epa.gov/sites/production/files/2014-07/documents/pebble_pd_071714_final.pdf.

³ Sec. William S. Cohen, Report of An Independent Review of the United States Environmental Protection Agency's Actions in Connection with its Evaluation of Potential Mining in Alaska's Bristol Bay Watershed, Oct. 6, 2015, *available at* <http://files.cohengroup.net/Final/Final-Report-with-Appendices-compressed.pdf>.

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Mine – conclusions reached before any science based reports were produced.⁴ Most troubling, the Cohen report found that this document was inappropriately prepared by EPA staff with input from the counsel representing groups opposed to the Pebble Mine.⁵ The Cohen report suggests that Administrator McLerran was provided the options paper in advance of making a decision on whether to move forward with the 404(c) process.⁶

According to statements made to the *Wall Street Journal*, Administrator McLerran disputes that he reviewed the options paper and further states that it was not prepared by decision-makers at EPA.⁷ However, documents obtained by the Committee contravene Administrator McLerran's statements, instead suggesting that he was provided the options paper and was the chair of an options paper briefing on July 8, 2010.⁸ Administrator McLerran's recent statements raise many questions about the decisions that were made by EPA to pursue a section 404(c) action. In order for the Committee to better understand the process that EPA followed in invoking a 404(c) action; please make Region 10 Administrator Dennis McLerran available for a transcribed interview by Committee staff on November 2, 2015. Please confirm the date for Administrator McLerran's transcribed interview by October 27, 2015.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

If you have any questions about this request, please contact Joseph Brazauskas or Richard Yamada of the Science, Space, and Technology Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



Lamar Smith
Chairman

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Kimberley Strassel, Opinion, *The EPA's Pebble Blame Game*, WALL ST. J., May 21, 2015, available at <http://www.wsj.com/articles/the-epas-pebble-blame-game-1432250642>

⁸ Meeting Invitation, Broadcast: Briefing on options paper for Bristol Bay Watershed, July 8, 2010 *on file with author.*

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cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member, House Committee on Science, Space and Technology

The Honorable Dennis McLerran, Administrator, U.S. Environmental Protection Agency, Region 10