

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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February 22, 2017

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

Dear Administrator Pruitt:

The Committee on Science, Space, and Technology congratulates you on your confirmation as Administrator of the U.S. Environmental Protection Agency. As the Committee with primary jurisdiction over the science underpinning policy and regulatory decisions at EPA, we look forward to working with you to ensure that the agency's decision-making is based on sound and transparent science. In furthering this mandate, I would like to bring to your attention the rigorous oversight this Committee has conducted regarding the EPA's 2014 decision to preemptively use Section 404(c) of the Clean Water Act to limit the scope of the development of the Pebble Mine in Bristol Bay, Alaska before any permit applications were submitted for the project.¹ Based on this oversight, as well as President Trump's commitment to swift and lawful permitting decisions, the Committee urges you to rescind the 2014 decision and pursue the regular order of permitting for this and all projects that require permits under Section 404(c).

The Committee has determined that the preemptive action taken for the Pebble Mine Project was unprecedented under the Clean Water Act and was justified by a questionable scientific assessment that relied on predetermined conclusions developed by EPA officials.² In the course of Committee hearings, document reviews, interviews, and depositions, the Committee learned that EPA employees inappropriately assisted outside groups in petitioning the agency to change the way they operate and use Section 404(c) to stop this project.³ Furthermore,

¹ U.S. EPA, 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.

² *Examining EPA's Predetermined Efforts to Block the Pebble Mine: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2015); *Examining EPA's Predetermined Efforts to Block the Pebble Mine Part II: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2016).

³ *Id.*

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the Committee determined that EPA officials charged with preparing the scientific assessment, which influenced the agency's final action, acted with bias and predetermined conclusions aimed to prevent this project and improperly expand EPA's authority under the Clean Water Act.⁴

Using Section 404(c) in this preemptive fashion is a de facto veto of this specific project and establishes a dangerous precedent of expansive federal agency powers that may be used in the future to prevent projects that would contribute positively to the American economy. The Committee recommends that the incoming Administration rescind the EPA's proposed determination to use Section 404(c) in a preemptive fashion for the Pebble Mine in Bristol Bay, Alaska. This simple action will allow a return to the long-established Clean Water Act permitting process and stop attempts by the EPA to improperly expand its authority. Moreover, it will create regulatory certainty for future development projects that will create jobs and contribute to the American economy. The Committee stands ready to provide you and your staff with any additional information you require on this matter to better inform your decision.

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

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

⁴ *Examining EPA's Predetermined Efforts to Block the Pebble Mine: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2015); *Examining EPA's Predetermined Efforts to Block the Pebble Mine Part II: Hearing Before the H. Comm. on Science, Space, and Technology*, 114th Cong. (2016).