

**Written Testimony  
Submitted by**

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**before the**

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

**“EPA’s Bristol Bay Watershed Assessment:  
A Factual Review of a Hypothetical Scenario”**

**August 1, 2013**

Chairman Broun, Ranking Member Maffei, Members of the Committee:  
Thank you for the opportunity to testify today. My name is Daniel McGroarty, and I am president of the American Resources Policy Network, an experts organization dedicated to exploring and informing the American public and American policy-makers of the importance of U.S. resource development – and the dangers of unnecessary foreign resource dependence.

The Pebble deposit, the clear subject of the EPA assessment, is the largest potential copper mine in the United States – a critical metal, the lack of which has been cited in a Defense Department report as causing “a significant weapon system production delay for DoD.” Pebble is potentially a multi-metal mine, with prospects beyond copper for the recovery of Molybdenum -- used in alloy form in gun-barrels of many types, Rhenium -- used in high-performance jet fighters, and Selenium and Tellurium, both of which are used in photovoltaic solar panels that could not only lead the Green Revolution – but provide a portable power source for U.S. troops in the field.

As a matter of sound public policy, Pebble should be treated no differently than any other potential mineral resources project under the well-established environmental permitting process. But even before the permitting process has

begun, Pebble has been subject to inconsistent and unprecedented treatment by the EPA -- creating a troubling trend in public policy, with strategic implications. Given these factors, this Committee is right to examine the EPA's actions in greater detail.

American permitting needs to be predictable -- not as to outcome, but in terms of process -- in order to encourage investment in American resources. The hallmark of that process -- in terms of environmental permitting and public participation -- is the National Environmental Policy Act (NEPA).

Yet, the very act of EPA conducting the Bristol Bay Watershed Study (hereinafter, the "Watershed Study") -- prior to Pebble submitting a mine plan or seeking a single permit -- creates a chilling effect on investment in U.S. resource extraction. The likelihood that mine opponents are gearing up to use the Watershed Study as a reason to trigger a pre-emptive permit denial -- before NEPA even begins -- could deprive the U.S. of reliable sources of critical metals, responsibly extracted under American regulations.

Every issue raised to justify the Watershed Study could easily and amply be raised and reviewed within the existing permitting process, with input from experts of all kinds, and community input as well. Put another way, there is no issue I see that requires the construction of a wholly new "pre-permitting process," with the power to prevent a proposed project from even having the opportunity to be judged within the NEPA process.

An unprecedented watershed assessment of a hypothetical mine -- and even the minor contemplation of a preemptive permit veto -- warrants an extremely high bar for the scientific method, the validity of source material, and the impartiality that must be met by this study.

On all those counts, Mr. Chairman, we believe this assessment fails and falls short.

At this point, two caveats: I am a policy analyst, not a scientist. The substantive points I will raise are detailed by experts, but should give all non-scientists reason for pause.

So far, the most substantive review of one of the key studies in the Watershed Assessment -- the EARTHWORKS-funded study, "Kuipers Maest, 2006, "Comparison of predicted and actual water quality at hardrock mines" led by Dr. Ann Maest (hereinafter, the "Kuipers Maest 2006 report") -- is an

analysis conducted by global water and environmental management firm Schlumberger, on behalf of the NorthWest Mining Association, and submitted to the EPA as part of NWMA's Watershed Study comments. As the Schlumberger reports says, one of the fundamental tenets of scientific research is that its findings can be replicated by others, provided they have access to the data set. Schlumberger states that it cannot replicate the hydrological data presented in the Kuipers Maest 2006 report relied on by EPA.

Second, Schlumberger finds what I have elsewhere noted as "backward bias" inherent in any hypothetical construct. Schlumberger notes that the Kuipers Maest 2006 report draws on a "preponderance" of case studies drawn from mines that operated before the modern regulatory era.

If the "data set" consists of a preponderance of mines permitted and operated before the modern era of regulatory limits – is it any surprise that these mines fell short of the modern limits?

What does the failure of past mines have to do with a proposed mine, using current and perhaps even cutting-edge processes – and whether it will meet modern requirements?

And how does it constitute "sound science" to argue against a proposed mine based on what happened at other mines operated to other standards 20, 30 or 40 years ago?

Would we use such a backwards-biased yardstick to judge the safety of a new airplane? A new car? A new medicine?

Is it "sound science" to say that poor performance in the past proves that we cannot achieve superior performance now and in the future?

Now I will turn from the substance to sourcing -- serious questions concerning the impartiality of experts relied upon by the EPA.

My organization expressed these concerns in a letter sent to members of the House, Senate and administrators at EPA, which I include in my written testimony but will summarize here.

Once again, the subject of concern is work done by Dr. Ann Maest and Stratus Consulting.

Many of us saw the coverage of the Chevron environmental case in Ecuador, where plaintiffs were awarded an \$18 billion dollar judgment against the oil company. This judgment has been the subject of extensive federal litigation in U.S. courts, where, among other charges, Chevron brought racketeering claims against members of the plaintiff's team – including against Dr. Maest and Stratus. At the heart of these suits were claims that the plaintiff's litigation team manipulated data to show contamination where no data existed -- and created a report written by the plaintiff's team, including Maest and Stratus, that was then passed off as being written by a court-appointed independent consultant.

How do we know this? For what must have been public relations reasons, the plaintiff's team actually invited a film crew to document the behind-the-scenes events in a major environmental lawsuit for a favorable documentary. This documentary also generated hours of tape on the cutting-room floor that was uncovered during Chevron's discovery process.

Here is one such clip:

PLAY VIDEO

<http://www.youtube.com/user/TexacoEcuador?feature=watch>

“Facts do not exist. Facts are created.” That's the lawyer who directed the supposedly independent research. The woman chuckling in the seat next to him is Dr. Ann Maest: the scientist who conducted the Ecuador study, and later disavowed its findings...

...The very same scientist whose work is cited multiple times in the Bristol Bay Watershed Study.

And while the Chevron litigation is still ongoing, Maest and Stratus settled claims against them by submitting sworn statements that “renounced all of the scientific findings” in their report.

Stratus and Maest have numerous contracts with EPA and Maest's work is cited 11 times in the Watershed Study – 7 of those in reference to the Stratus consulting firm.

EPA -- apparently understanding the controversy surrounding this work -- ordered a quasi-peer review of the Kuipers Maest 2006 report as part of addendum to the second draft of the Watershed Study. I call it a quasi-peer

review because EPA's last-minute effort falls seriously short of basic peer review standards.

Case in point: the review relied on one scientist who was a former colleague at the Stratus firm, who had coauthored studies with Dr. Maest. The Committee can consider for itself whether this constitutes the kind of independent assessment that defines peer review.

So, to sum up: In the Ecuador incident, the scientist has disavowed her work.

Her firm has cut its ties to her.

And yet EPA builds its Watershed Study on her work.

I want to be clear on this point: I do not know whether the work used in the Watershed Study will prove to show issues similar to the Ecuador studies that the author disavowed. My point is that this question needs to be examined – impartially, independently – and that absent that, EPA's reliance on work done by this scientist or her firm in the Watershed Study puts the entire study under a cloud.

In closing, there's a quote I'd like to share with the Committee:

“NEPA is democratic at its core. In many cases, NEPA gives citizens their only opportunity to voice concerns about a project's impact on their community... And because informed public engagement often produces ideas, information, and even solutions that the government might otherwise overlook, NEPA leads to better decisions -- and better outcomes -- for everyone. The NEPA process has saved money, time, lives, historical sites, endangered species, and public lands while encouraging compromise and cultivating better projects with more public support.

...because of NEPA -- ...we are guaranteed a voice.”

That quote is from the website of the NRDC. They love NEPA -- just not this time, for this project.

That's a dangerous departure from the law. This time, the mine is Pebble and the metal is copper. But if we allow this precedent, there will be many mines

and projects that don't get built – and many metals we'll be forced to import, many times from nations that wish us harm.

We have a process in place to determine whether a mine should or shouldn't be built. We should follow that process – to lead us to a policy based on science, and projects made better by the even-handed scrutiny they receive.

Thank you.

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