North provided legal analysis for Parker's clients. Cohon also highlighted ethical concerns about Parker's conversations with Parkin and North. Cohon wrote:

> We are engaged in a potentially adverse proceeding with them (the petition, possible litigation), and he's a lawyer who's kind of pumping us (me included) for information he can use to help his client. It sounds like he is talking to Phil about their 404(c) petition, the status of it, and how to help it move forward – he certainly did so with me (see below). He's also using Rick and Phil (and me) as legal authorities.[48]

Keith Cohon attorney-client communication privileged; do not... 12/22/2010 11:35:54 AM

From: Keith Cohon[redacted]
To: Cara Steiner-Riley, [redacted] Parkin.Richard[redacted] Phil North[redacted]
Date: 12/22/2010 11:35 AM
Subject: Phone conversation with Jeff Parker

attorney-client communication privileged; do not relase

I had a conversation with Jeff Parker about the trust responsibility and other stuff, and I wanted to fill you in.

The conversation was yesterday (12/21).

1. My observation: Jeff is talking straight to Rick and Phil, regarding a matter in which EPA is represented by counsel (Cara). I'm sure the Rules of Professional Responsibility in Alaska are like they are everywhere, and that they prohibit Jeff from talking to either Rick or Phil without Cara's consent. It's kind of up to Cara to call him on this, if we care; we also might want to have an internal discussion about whether whether Phil and/or Rick want to refer him to Cara as well. We are engaged in a potentially adverse proceeding with them (the petition, possible litigation), and he's a lawyer who's kind of pumping us (me included) for information he can use to help his client. It sounds like he's talking to Phil about their 404(c) petition, the status of it, and how to help move it forward -- he certainly did so with me (see below). He's also using Rick and Phil (and me) as legal authorities.

A few hours later, Cohon replied to his own email and clarified his concerns. He stated:

> I just want to clarify that I'm not against helping Jeff or his clients, or siding with them on the substantive issues. . . . I just have some concerns that [Parker] is mining his conversations with Phil and Rick for legal principles and arguments, and also getting second hand info from Phil about what Rick is saying in internal e-mail messages.[49]

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[48] Email from Keith Cohon, EPA, to Cara Steiner-Riley, Richard Parkin & Phil North, EPA (Dec. 22, 2010), EPA-BBL-6076.
[49] *Id.*

Keith Cohon | I just want to clarify that I'm not against helping... | 12/22/2010 12:23:35 PM

From: Keith Cohon[redacted]
To: Phil North[redacted] Cara Steiner-Riley[redacted]
Parkin.Richard[redacted]
Date: 12/22/2010 12:23 PM
Subject: Re: Phone conversation with Jeff Parker

I just want to clarify that I'm not against helping Jeff or his clients, or siding with them on the substantive issues. I just have some concerns that Jeff is mining his conversations with Phil and Rick for legal principles and arguments, and also getting second hand info from Phil about what Rick is saying in internal e-mail messages. Both of these create a lot of risk of Jeff misunderstanding and misstating the law and/or EPA's position on the law, which isn't in anyone's interest.

Keith Cohon, Assistant Regional Counsel
EPA Region 10
phone: [redacted]

Cohon's email creates the appearance that North's contacts with Parker included passing along internal EPA information, and that those contacts were fairly well known within EPA. Ultimately, Parkin and North agreed that they would forward Parker's emails to Steiner-Riley instead of contacting him directly.

Documents obtained by the Committee also show EPA attempted to hide information from the public via an end-run around the Freedom of Information Act (FOIA). On December 29, 2010, Parkin asked Steiner-Riley if it is possible to protect email from the FOIA process. In fact, Parkin wanted to "routinely" mark emails about the 404(c) petitions as privileged so they would not be released to FOIA requesters. Parkin wrote:

> Cara, in terms of the record for the decision making on the 404(c) petitions, are message chains such as this one, protectable from FOIA? should we be concerned with that? Should are [sic] subject line include something like Atty/Client Privileged or what ever? Should we just do that routinely? For example the message chain between me and Patty that I cc'd you on showed disagreement within the agency about the 404(c) so I added a privileged statement to it and sent it to you. Should we implement something like that among the team for all messages in which we are deliberating about the 404(c)?[50]

[50] Email from Richard Parkin, EPA, to Cara Steiner-Riley, EPA (Dec. 29, 2010), EPA-BBL-6076.

Former EPA Administrator Lisa P. Jackson's Role

Finding 5: Former EPA Administrator Lisa Jackson dodged advocates for the mining venture and communicated the agency's decisions regarding Bristol Bay at an event sponsored by anti-mine groups.

A delegation representing the Iliamna Corporation, an Alaskan native group that supports the Pebble Mine project, requested a meeting with Administrator Jackson in Washington, D.C. in December 2010. Iliamna Corporation representatives traveled to Washington to meet with the Administrator because they felt they were excluded from the Administrator's trip to Alaska in July 2010, when she met only with tribal groups near Dillingham, Alaska, home to tribes supportive of a preemptive veto for Pebble Mine. Administrator Jackson refused to meet with the Iliamna Corporation delegation.[51]

In one instance, a staffer for then-Senator Mark Begich of Alaska forwarded the request to meet with Administrator Jackson to Arvin Ganesan, who was then head of EPA Congressional and Intergovernmental Relations.[52] Ganesan forwarded the request to EPA Senior Policy Advisor Bob Sussman, and asked: "this is not a good meeting for lpj, right?"[53]

Sussman replied: "She [Jackson] shouldn't take this. She'll end up mtg with everyone."[54] It is not clear whether Administrator Jackson met with anyone who advised against using a preemptive veto to stop Pebble Mine.

On March 30, 2011, former U.S. Supreme Court Justice Sandra Day O'Connor hosted a reception at the U.S. Supreme Court to "celebrate the economic, cultural and ecological values of Alaska's Bristol Bay Watershed."[55] The event was sponsored by a coalition of Pebble Mine opponents who supported EPA's use of a preemptive 404(c) veto. This coalition included the Wild Salmon Center, Trout Unlimited, Natural Resources Defense Council, Tiffany & Co. Foundation, and others.[56] Administrator Jackson delivered a speech at the event outlining EPA's plan for the recently announced Bristol Bay Watershed Assessment. However, other high-level EPA officials declined to attend the reception, citing concerns about creating the appearance of bias.[57] Region 10 Administrator Dennis McLerran voiced concerns about attending the event in an email. McLerran stated: "I need to retain objectivity during the time we are conducting the

[51] Email from Bob Sussman, EPA, to Arvin Ganesan, EPA (Jan. 3, 2011), EPA-BBL-260.
[52] Email from Bob King, Staffer for Senator Mark Begich, to Arvin Ganeson, EPA (Dec. 23 2010), EPA-BBL-226.
[53] Email from Arvin Ganeson, EPA, to Bob Sussman, EPA (Dec. 23 2010), EPA-BBL-226.
[54] Email from Bob Sussman, EPA to Arvin Ganesan, EPA (Jan. 3, 2011), EPA-BBL-260.
[55] Email from Trozell Weaver, Wild Salmon Center, to EPA (Mar. 7, 2011), EPA-1184.
[56] *Id.*
[57] Email from Nancy Stoner, EPA, to Gregory Peck, EPA (Mar. 31, 2011), EPA-3088.

assessment of the Bristol Bay watershed and have the 404(c) petitions in front of us."[58] Acting Administrator for the Office of Water Nancy Stoner also declined the event and was "surprised" Administrator Jackson attended.[59]

Administrator Jackson's comments at the reception showed EPA's predisposition toward using the watershed assessment to inform her decision whether to take action under 404(c).[60] In an email chain started by Palmer Hough, an Environmental Scientist in the Wetlands Division at EPA, EPA employees discussed the concept of linking the Watershed Assessment directly to a 404(c) decision. At issue was the fact that EPA headquarters intended the Watershed Assessment to identify options to improve environmental protections in Bristol Bay; whereas, Region 10 assumed the purpose of the document was to inform on the use of a preemptive 404(c) determination.[61] Hough and others specifically discussed the use of specific language to respond to letters asking about the watershed assessment. The language in question was:

> The short term goal of this assessment will be to inform my decision whether to initiate a 404(c) action in advance of permitting. The ultimate goal, of course, is the protection and sustainability of the Bristol Bay fishery and ecosystem.[62]

However, Hough noted that the Administrator connected the assessment to Pebble Mine when she addressed the audience at the Supreme Court reception the night before. Hough stated:

> LPJ [Administrator Jackson] did make this kind of direct connect during her talk last night at the Supreme Court but that was verbally and to a very small crowd which is very much in favor of EPA action.[63]

From this point forward, EPA publicly acknowledged that the Watershed Assessment would inform its decision on a preemptive 404(c). The fact that a critical component of EPA's posture toward the Pebble Mine project appears to have been developed based on a remark by the Administrator at a social event organized by mine opponents raises concerns that the outcome of the assessment was pre-determined.

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[58] Email from Dennis McLerran, Adm'r, EPA Region 10, to Kendra Tyler & Matthew Magorrian, EPA, et al. (Mar. 8, 2011), EPA-1184.
[59] Email from Nancy Stoner, EPA, to Gregory Peck, EPA (Mar. 31, 2011), EPA-3088.
[60] Email from Palmer Hough, EPA, to Denise Keehner, David Evans & Jim Pendergast, EPA (Mar. 31, 2011), EPA-2552.
[61] Email from Gregory Peck, EPA, to Palmer Hough, EPA, et. al. (Mar. 31, 2014), EPA-2552.
[62] Email from Palmer Hough, EPA, to Denise Keehner, David Evans & Jim Pendergast, EPA (Mar. 31, 2011), EPA-2552.
[63] *Id.*

EPA Did Not Maintain Neutrality With Respect to Pebble Mine

By February 2011, EPA had decided to prepare an assessment of the Bristol Bay ecosystem before announcing a decision on a 404(c) preemptive veto. In a February 7, 2011 press release announcing the Bristol Bay Watershed Assessment, EPA stated:

> This action today does not represent any regulatory decision by the agency; instead it represents EPA's proactive steps to better understand the watershed and gather important scientific information. This information gathered will inform any future guidelines or actions about how to protect the waters and promote sustainable development.[64]

On the day of that announcement, Trout Unlimited's Shoren Brown, a mine opponent, forwarded a press release from Senator Lisa Murkowski (R-AK) that welcomed further study in advance of a final decision by EPA to EPA employees Palmer Hough, Phil North, and Bill Dunbar.[65] Hough then forwarded Brown's email to several other EPA employees. One responded: "Interesting spin on EPA's announcement/decision - her communications would suggest no 404(c) would be done until all the science is in (EIS?). Obviously, that's not what we have in mind. . . ."[66]

This statement creates the appearance that the EPA employees working on the BBWA assessment were never interested in conducting an objective review of all the studies on the impact of the proposed mine.

Documents show that employees in Region 10 favored using the preemptive 404(c) action from the early stages of this process. For example, a draft presentation for then-Administrator Lisa Jackson from late October 2010 stated, under the heading "Purpose": "To recommend and advance 404(c) process and receive Administrator Jackson's input and approval."[67]

On January 28, 2011, Phil North and others at EPA received an email with a self-described "rant" from a Region 10 employee against Alaska state fishery management practices.[68] North forwarded the email to Hough with further criticism of the state's habitat protection policies and stated: "This is directly relevant to why we need to use 404(c) in Bristol Bay."[69]

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[64] Press Release, EPA, EPA plans scientific assessment of Bristol Bay Watershed, (Feb. 7, 2011 http://yosemite.epa.gov/opa/admpress.nsf/e51aa292bac25b0b85257359003d925f/8c1e5dd5d170ad99852578300067d3b3!OpenDocument&Highlight=0,bristol,bay

[65] Email from Shoren Brown, Trout Unlimited, to Bill Dunbar, Phil North & Palmer Hough, EPA (Feb. 7, 2011), EPA-BBL-6416.

[66] Email from David Evans, EPA, to Palmer Hough, EPA (Feb. 7, 2011), EPA-BBL-6416.

[67] Email from Michael Szerlog, EPA, to Allyn Stern, EPA, et. al. (Oct. 28, 2010), EPA-BBL-4224.

[68] Email from Matthew LaCroix, EPA, to Tracy Degering, EPA, et. al. (Jan. 28, 2011), EPA-PNL-1623.

[69] Email from Phil North, EPA, to Palmer Hough, EPA (Jan. 28, 2011), EPA-PNL-1623.

In a May 2010 email, North wrote: "It seems that nobody disagrees with the likelihood of a 404(c). Within Region 10 we seem to only disagree on the process for getting there."[70]

In other emails from 2010 with Michael J. Szerlog, Manager of the Aquatic Resources Unit in Region 10 and other EPA employees, North referenced "part of our effort to advance 404(c) sooner than later"[71] and that "[t]he only conservation provision on the list that is timely and effective is 404(c)."[72]

Opposition toward the Pebble Mine project was widely referenced among Region 10 employees. This fact raises questions about the objectivity and reliability of the BBWA, which many of these employees made major contributions to. Moreover, since the BBWA appears to be the primary driver of EPA's preemptive 404(c) action, the entirety of EPA's actions in Bristol Bay is called into question.

Conclusion

At a hearing before the Committee in 2014, Administrator McCarthy was asked about potential collusion between EPA and Pebble Mine opponents.[73] The Administrator admitted that she had heard that "people expressed concerns about [collusion] and it has been referred to the inspector general and he is looking into it."[74] Administrator McCarthy was then asked if EPA would be willing to cease its 404(c) action until all the facts regarding collusion were known. She replied: "No sir. I don't see any evidence that there was collusion here."[75]

Proof of collusion is in fact a basis to reconsider EPA's 404(c) action against Pebble Mine. EPA's actions with respect to Pebble Mine, and especially the conduct of Phil North, represent an unprecedented change in the agency's process for regulating resource and development projects. Based on this new information, EPA should withdraw the Proposed 404(c) Determination for the Pebble Deposit and the Bristol Bay Watershed Assessment; cease all preemptive 404(c) activity; and, allow for project proposals in Bristol Bay to undergo the conventional CWA and NEPA processes.

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[70] Email from Phil North, EPA, to Michael Szerlog, EPA (May 20, 2010), EPA-BBL-4284.
[71] Email from Phil North, EPA, to Michael Szerlog, EPA (May 25, 2010), EPA-BBL-4728.
[72] Email from Phil North, EPA, to Michael Szerlog, EPA (Nov. 22, 2010), EPA-BBL-4441.
[73] *Management Failures: Oversight of the EPA: Hearing before the H. Comm. on Oversight and Gov't Reform. 113th Cong. 113-138* (2014).
[74] *Id.*
[75] *Id.*

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October 17, 2017

Via *regulations.gov and Electronic Mail*

Water Docket
Environmental Protection Agency, Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention: Docket ID No. EPA-R10-OW-2017-0369

Re: **Comments of the Pebble Limited Partnership on the Proposal to Withdraw Proposed Determination to Restrict the Use of an Area as a Disposal Site; Pebble Deposit Area, Southwest Alaska**

To whom it may concern:

Attached please find the comments of the Pebble Limited Partnership on the U.S. Environmental Protection Agency's proposal to withdraw the Proposed Determination to restrict the use of the Pebble Deposit Area in Southwest Alaska as a disposal site, which was noticed in the Federal Register on July 19, 2017.

Sincerely,

TMBarba

Thomas M. Barba
Counsel to Pebble Limited Partnership

Attachments

THE pebble PARTNERSHIP

COMMENTS OF THE PEBBLE LIMITED PARTNERSHIP ON EPA AND EPA REGION 10'S PROPOSAL TO WITHDRAW THE PROPOSED DETERMINATION TO RESTRICT THE USE OF AN AREA AS A DISPOSAL SITE; PEBBLE DEPOSIT AREA, SOUTHWEST ALASKA

EPA DOCKET NUMBER EPA-R10-OW-2017-0369

Submitted by:

Thomas C. Collier
Chief Executive Officer
Pebble Limited Partnership

Dated: October 17, 2017

THE pebble PARTNERSHIP

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THE pebble PARTNERSHIP

Exhibit List

Exhibit A	The Cohen Group, *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).
Exhibit B	Staff of House Committee on Oversight & Government Reform, 114th Congress, *The U.S. Environmental Protection Agency's Unprecedented 404(c) Action in Bristol Bay, Alaska* (Nov. 4, 2015).
Exhibit C	House Committee on Science, Space & Technology, 114th Congress, Hearing - *Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II*, Documents for the Record (April 2016).
Exhibit D	Proposed EPA Budget for 2011.
Exhibit E	Letter From House Committee on Oversight & Government Reform to EPA Administrator Gina McCarthy (Nov. 4, 2015).

THE pebble PARTNERSHIP

I. Introduction

These comments are submitted on behalf of the Pebble Limited Partnership ("PLP") in response to the U.S. Environmental Protection Agency ("EPA") and EPA Region 10's proposal to withdraw the July 21, 2014, Proposed Determination ("Proposed Determination") for the Pebble Deposit Area located in Southwest Alaska that was issued pursuant to Section 404(c) of the Clean Water Act ("CWA"). As explained in detail in these comments, EPA should withdraw its Proposed Determination for numerous, independent reasons.

To begin with, EPA's Proposed Determination must be withdrawn because it exceeds EPA's authority. Section 404(c) grants EPA only very limited authority with respect to dredge and fill permits. In particular, Congress only granted EPA the authority to veto permits for *specified disposal sites* under Section 404(c), not to effectively veto any development within a large region prior to the submission of an application. Nothing in the statute permits EPA to act preemptively and thereby short-circuit the important regulatory and public review steps included in the Section 404 permit process, including the United States Army Corps of Engineers' ("Corps") alternatives analysis, the State of Alaska ("State") Section 401 water quality certification, and the National Environmental Policy Act ("NEPA") review process.

Additionally, EPA must withdraw the Proposed Determination because it is based on EPA's *Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska* ("BBWA" or "Assessment") – a document designed and authored by individuals that were determined to prevent any development of the Pebble Deposit.[1] In the absence of a permit application, officials at EPA crafted three hypothetical mining scenarios that were demonstrably un-permittable and then conducted a purported risk assessment to gauge the environmental effects of these three scenarios. The analysis was infused with unreasonable assumptions aimed at maximizing the appearance of environmental harm associated with these three scenarios. Nevertheless, EPA used this flawed study as the basis for its Proposed Determination.

Rather than rely on its own *ad hoc* analysis, EPA should have and must use the traditional, legally-mandated NEPA process to evaluate a proposed development. EPA, like many environmental conservation groups, has long hailed the NEPA review process as the gold standard for environmental impact assessment. This is because the NEPA process provides a thorough and detailed evaluation of a proposed project, one that assesses not just environmental effects, but also mitigation strategies, economic impacts, and more.

In the absence of a proposed development plan with project-specific mitigation (including compensatory mitigation) and a robust environmental impact assessment with

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[1] *See* EPA, Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska, EPA 910-R-14-001A-C (Jan. 2014) ("BBWA"), https://cfpub.epa.gov/si/si_public_record_report.cfm?direntryid=253500.

comprehensive site-specific data and robust alternatives analyses, it simply is not possible for EPA to rationally define a disposal site or impose development restrictions based on demonstrated unacceptable adverse environmental effects – the standard required by Section 404(c). Accordingly, EPA must withdraw its Proposed Determination and allow the NEPA process to conclude before considering whether to veto a Section 404 permit application, as required by Congress.

II. Background

The Pebble Deposit, located in Southwest Alaska, is among the most significant accumulations of metals ever discovered in this country. It is one of the world's largest deposits of copper, gold, and molybdenum. In total, the current Pebble resource estimate includes 6.44 billion tonnes in the measured and indicated categories, containing 57 billion pounds of copper, 70 million ounces of gold, and 3.4 billion pounds of molybdenum; and 4.46 billion tonnes in the inferred category, containing 24.5 billion pounds of copper, 37 million ounces of gold, and 2.2 billion pounds of molybdenum.[2]

PLP and its parent company Northern Dynasty Minerals Ltd. ("NDM"), have invested more than $750 million in the proposed Pebble Project, principally on geological, environmental, engineering, and other technical studies, toward the development of an environmentally sound and socially responsible mine plan.[3] Both PLP and NDM are committed to designing a mine that follows best mining practices and incorporates sound and effective mitigation measures. Indeed, PLP has promised that it will only move forward with a mine that respects a thriving Bristol Bay salmon fishery, creates sustainable jobs, and provides Alaskans with vital infrastructure. Thus,

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[2] The Canadian Institute of Mining, Metallurgy and Petroleum classifies mineral resources based on increasing levels of geological knowledge and confidence, into Inferred, Indicated, and Measured categories. An Inferred Mineral Resource is that part of a mineral resource for which quantity and grade or quality are estimated based on limited geological evidence and sampling. The geological evidence is sufficient to imply, but not verify, geological and grade or quality continuity. An Inferred Mineral Resource has a lower level of confidence than that applied to an Indicated Mineral Resource. An Indicated Mineral Resource is that part of a mineral resource for which quantity, grade or quality, densities, shape and physical characteristics are estimated with sufficient confidence to allow the application of certain factors in sufficient detail to support mine planning and evaluation of the economic viability of the deposit. An Indicated Mineral Resource has a lower level of confidence than a Measured Mineral Resource. A Measured Mineral Resource is that part of a mineral resource for which quantity, grade or quality, densities, shape, and physical characteristics are estimated with confidence sufficient to allow the application of certain factors to support detailed mine planning and final evaluation of the economic viability of the deposit.

[3] *See* The Pebble Partnership, *Pebble's Promise*, http://corporate.pebblepartnership.com/publications.

options for mining and associated infrastructure are being developed to ensure protection of the environment. From mitigation and reclamation to water quality and tailings management, PLP will set a high standard for sustainable mining practices.

At the same time, the Pebble Project has immense economic potential for the region and beyond. The mine has the potential to create up to 15,000 U.S. jobs, contribute up to $64 billion to U.S. gross domestic product, and generate up to $18 billion in federal, state, and local tax revenues.[4] This would provide much-needed economic relief to Southwest Alaska, a region plagued with low employment and a high cost of living.[5]

III. EPA Must Withdraw the Proposed Determination Because the CWA Does Not Permit a Preemptive Veto

In evaluating the proposed Pebble Project, EPA decided to set aside the NEPA process and instead sought to implement the first-ever preemptive veto in the history of the CWA. EPA did so by invoking a rarely-used provision, Section 404(c), in a novel and unprecedented way. And it did so before PLP even filed a permit application with the Corps, or the completion of an Environmental Impact Statement ("EIS") under NEPA. In so doing, EPA has cut the Corps out of the permitting process and upset the delicate balance of power that Congress imposed in Section 404. These facts alone warrant withdrawal of the Proposed Determination.

When the CWA was enacted in 1972, Congress agreed to a framework of "checks and balances" for authorizing Section 404 dredge and fill permits between the Corps and EPA, with the former provided authority to grant permits and the latter granted authority to veto them. However, it is clear that Congress intended to allow EPA to rule only on specific 404 permits as granted by the Corps. Congress did not grant EPA the authority to use the statute to impose *a priori* blanket restrictions on development over large areas of land, as EPA has attempted to do in Bristol Bay.

Section 404 of the CWA is explicitly and entirely about permits. In particular, under Section 404, the Corps is authorized to "issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at *specified* disposal sites."[6] Thus, if a development would result in the discharge of dredged or fill materials

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[4] *See* IHS, *The Economic and Employment Contributions of a Conceptual Pebble Mine to Alaska and United States Economies* iv (May 2013) ("IHS Study"), http://corporate.pebblepartnership.com/files/documents/study.pdf. These figures are based on Measured Indicated and Inferred Mineral Resources in the Pebble Deposit, as estimated in 2010, and a conceptual mine plan using an iteration of the ongoing engineering work undertaken by PLP at the time.

[5] *Id.* at 21.

[6] 33 U.S.C.A. § 1344(a) (emphasis added).

in the nation's waters, the developer must first receive a permit from the Corps. The Corps evaluates a permit application (proposing a specific mine with specific control and mitigation measures) using guidelines it developed in conjunction with EPA and complies with NEPA and regulations developed by the Council on Environmental Quality.[7]

EPA, on the other hand, was delegated a much narrower window of authority. As the D.C. Circuit explained, under Section 404(c) "EPA may (1) 'prohibit the *specification* (including the withdrawal of *specification*) of any *defined area* as a disposal site' or (2) 'deny or restrict the use of any *defined area* for *specification* (including the withdrawal of the *specification*).'"[8] And EPA may take such action only after determining "that the discharge of *such materials* into *such area* will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas."[9]

The legislative history of Section 404 confirms this view. Originally, the Senate bill proposing the regulation of dredge or fill activities delegated to EPA complete authority to issue permits. However, the House and Senate later agreed to allocate decisions on dredge or fill projects *between* the Corps and EPA. The Senate Debate on the Conference Report explained that the Committee found that EPA "should have the veto over the *selection of the site for dredged soil disposal* and over any *specific soil* to be disposed of in any *selected site*."[10] Thus, under the enacted bill, EPA's duties to evaluate the permit application would not be duplicative of the Corps' duties "because *the permit application* transmitted to [EPA] for review will set forth *both the site to be used and the content of the matter of the soil to be disposed*."[11] The House Debate on the Conference Report similarly provided that "it is expected that disposal site restrictions or prohibitions *shall be limited to narrowly defined areas*."[12] Congress, therefore, intended to allow EPA to rule on *specific proposals*, not to allow EPA to create blanket restrictions over large areas of land. And the United States Supreme Court has agreed, concluding that the Clean Water Act "gives EPA authority to 'prohibit' *any decision by the Corps* to issue a permit for *a particular disposal site*."[13]

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[7] *Id.* at § 1344(b).

[8] *Mingo Logan Coal Co. v. EPA*, 714 F.3d 608, 614 n.2 (D.C. Cir. 2013) (*quoting* 33 U.S.C. § 1344(c)) (emphasis added).

[9] 33 U.S.C. § 1344(c) (emphasis added).

[10] *Senate Consideration of the Report of the Conference Committee* (Oct. 4, 1972), *reprinted in* 1 A Legislative History of the Water Pollution Control Act Amendments of 1972, at 161, 177, Cong. Research Serv. (Jan. 1973) (emphasis added).

[11] *Id.* (emphasis added).

[12] *House Consideration of the Report of the Conference Committee* (Oct. 4, 1972), *reprinted in* 1 A Legislative History of the Water Pollution Control Act Amendments of 1972, at 236 (Jan. 1973) (emphasis added).

[13] *Coeur Alaska Inc. v. Southeast Alaska Conservation Council*, 557 U.S. 261, 274 (2009) (emphasis added).