- environmental assessment reports.[80]

NEPA then requires the Corps to "take a hard look" at potential impacts of the development application and prepare an EIS evaluating, among other things: environmental effects and strategies to mitigate them; economic considerations; comments from relevant federal agencies, such as impacts on endangered species and essential fish habitat; historic property matters; and the Clean Water Act 404(b)(1) guidelines.[81] Specifically, the CEQ regulations provide: "[w]hen an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the environment."[82] In the case of a proposed mine development project, social and economic benefits are typically detailed in the draft and final EIS documents to inform the public and decision-makers. These economic effects normally include:

- direct jobs associated with the development project;
- indirect jobs in the local regions using a standard multiplier.
- annual local payrolls;
- annual capital and operating expenditures;
- state and local tax payments; and
- royalty payments to government entities.

Thus, as even EPA Region 10 has admitted, "[t]he permit and NEPA processes could generate a great deal more detailed environmental information and analysis upon which to base a [regulatory] decision" than proceeding with a preemptive Section 404(c) action.[83]

In addition to evaluating a much broader set of factors than examined in the BBWA, the NEPA process also considers the views of a much broader group of constituents. For example, under NEPA the Corps is required to notify relevant federal agencies of the EIS process, including the Secretary of the Interior, FWS, EPA, the National Marine Fisheries Service, the state Historic Preservation Officer, and the Coast Guard. These agencies may then weigh in with any comments or objections as the permitting process unfolds. Beyond federal agencies, the public has a considerable role in the EIS process, one that is far superior to the public process developed by EPA for the BBWA. For example, beyond commenting on the scope of the EIS and the EIS itself, the State and local communities with a stake in the economics of the area can become cooperating agencies and provide needed input concerning the economic and social impacts of the Pebble Project. This participation is crucial because the EIS considers the salutary

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[80] *See* Section 404(b)(1) Guidelines for Specification of Disposal Sites For Dredged or Fill Material, 40 C.F.R. §§230.1-230.98.
[81] Cohen Report at 9.
[82] 40 C.F.R. § 1508.14.
[83] Cohen Report at 15.

economic impact of expanded employment opportunities and the augmentation of social services afforded by the project.

A fully developed record, including the CWA permit application and EIS, consultation with interested state, tribal, and federal agencies, and public comment and involvement, gives EPA all of the information necessary to decide whether to invoke Section 404(c). This is why NEPA is one of the few national programs on which environmentalists, decision-makers, and industry are on the same page. It is widely considered the gold standard of environmental assessment. As the National Academy of Sciences/National Research Council advised the U.S. Congress: "The NEPA process is the key to establishing an effective balance between mineral development and environmental protection."[84] It further stated:

> The Committee believes that the NEPA process and its various state equivalents provide the most useful and efficient framework for evaluating proposed mining activities for three reasons. First, the NEPA process provides the most comprehensive and integrated framework for undertaking these evaluations. . . . It allows for clear identification of tradeoffs between different and sometimes competing values, and promotes a better understanding by all stakeholders of the implications of the many decisions involved in the preparation and approval of a mine's operating plan. . . . No other regulatory program provides such a comprehensive, integrated mechanism for decision making. Second, the NEPA process ensures that the decisions are based on careful analyses of site-specific conditions. . . . Third, mining technology for a site can vary substantially, depending on the type of ore, the nature and extent of the ore deposit, and many other site-specific conditions. . . . For all these reasons, the Committee believes that the agencies should continue to rely to the maximum extent possible on the flexible, comprehensive NEPA evaluation process for making permitting decisions.[85]

Even the Natural Resources Defense Council, one of the Pebble Project's most vocal opponents, has endorsed the NEPA process as the country's "environmental Magna Carta."[86] The organization praised NEPA because "[m]uch like the Magna Carta protected people from the dangers of monarchical rule, NEPA protects people by providing transparency in federal projects. Both the Magna Carta and NEPA espouse the ideals of public participation and

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[84] NAS/NRC, *Hardrock Mining on Federal Lands* at 6 (Nat'l Academy Press 1999).
[85] *Id.* at 108-10.
[86] *See, e.g.*, NRDC, *Policy Basics: Environmental Reviews* 1 FS:13-01-Q at 1 (Feb. 2013), https://www.nrdc.org/sites/default/files/policy-basics-environmental-reviews-FS.pdf.

democracy by giving citizens a voice in government decisions."[87] It has also stated:

> In many cases, NEPA gives citizens their only opportunity to voice concerns about a project's impact on their community. When the government undertakes a major project such as constructing a dam, highway, or power plant, it must ensure that the project's impacts – environmental and otherwise – are considered and disclosed to the public. 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.[88]

Other environmental organizations have likewise touted the benefits of the NEPA process. Below is just a small sample of the praise NEPA has received:

- ***Earthworks***: "NEPA makes sure that in addition to government and industry input, everyday citizens can take part in the development and oversight of projects that affect our social, economic, and environmental health. The NEPA process provides citizens an opportunity to learn about proposed federal actions and offers agencies an opportunity to receive valuable input from the public;"[89]

- ***The Wilderness Society***: "Just as Congress envisioned 40 years ago, NEPA, when properly implemented, truly does lead to more informed and improved government decision-making;"[90]

- ***National Wildlife Foundation***: "The resulting National Environmental Policy Act (NEPA) was designed not to halt new federal construction, but to ensure that their impacts on the environment were known and understood beforehand and that every federal project was in the public interest. . . . The National Environmental Policy Act is our chance to see the consequences of federal action laid out before us, and gives the public and government a chance to

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[87] NRDC, *NEPA: The Magna Carta of Environmental Law* (Jul. 26, 2013), https://www.nrdc.org/experts/amanda-jahshan/nepa-magna-carta-environmental-law.
[88] Cohen Report at 12.
[89] *Id.*
[90] *Id.*

decide whether we want to proceed."[91]

Given the wide support NEPA receives, there is no reason to depart from it here. The breadth of the NEPA process ensures the creation of sound policy. By prioritizing the gathering and analysis of as much information as necessary, the statutory process elevates scientific reasoning and allows for a full and objective assessment of the potential impacts of a particular project. Thus, EPA should withdraw the Proposed Determination and allow the NEPA process to proceed so that the Corps, and the public, can fully evaluate the Pebble Project.

## VII. EPA Must Withdraw the Proposed Determination to Signal to the Investing Community That There Will be a Return to Normal Order in the CWA Permitting Process

The federal environmental permitting process under the CWA and NEPA has worked for decades because it is predictable, it is based on objective science, and it carefully balances environmental protection and economic growth. EPA's unprecedented preemptive veto threatens this long-standing system and must be undone.

EPA's decision to issue the Proposed Determination sent shock waves through the entire regulated community and unsettled the legitimate business expectations of potential project proponents. The American Exploration & Mining Association warned that EPA's actions at Pebble are "sending a chilling message to the business and investment community, and has had a negative impact on exploration and mining projects not only in Alaska, but the entire United States. In fact, the world and its investment community are watching. EPA's action at Pebble will clearly indicate whether the United States is open for investment, or closed to innovation, opportunity and job creation."[92] The National Mining Association echoed this sentiment, stating that: "The EPA is deciding it can do whatever it wants. If it can decide to (preemptively veto a project) for this industry, there is no reason it can't ignore the legal process and preempt other projects from going forward."[93]

EPA's actions do not just affect Pebble. They set a dangerous and far-reaching precedent that could affect many other companies and industries. The Corps processes approximately

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[91] *Id.* at 12-13.

[92] *Comments of the American Exploration and Mining Association on EPA Region 10's Proposed Determination Pursuant to Section 404(c) of the Clean Water Act Regarding the Pebble Deposit Area, Southwest Alaska* at 2, EPA Docket No. EPA-R10-OW-2014-0505 (September 18, 2014).

[93] M.D. Kittle, *Could EPA's Alaska 'overreach' spell disaster for due process nationwide?*, Watchdog.org (Mar. 4, 2014), https://www.watchdog.org/national/could-epa-s-alaska-overreach-spell-disaster-for-due-process/article_2e8cc30d-a802-54a1-88aa-b45dee2483b8.html.

60,000 permits a year, representing some $220 billion of investment in our economy per year.[94] If a precedent is established whereby EPA can veto any of these projects before they are proposed, before they have applied for permits and before they have been comprehensively and objectively reviewed under NEPA, the chilling effect on our economy will be profound. We will have substantially reduced the regulatory certainty that investors expect from an advanced legal system, and further eroded our competitiveness as a nation.

And, if EPA chooses not to withdraw the Proposed Determination, the denial of due process will not just affect private interests that have invested hundreds of millions of dollars with the expectation of a fair, objective hearing under the law, it will also affect the State of Alaska, which owns the land where the Pebble deposit sits, and the people of the region. For example, the State of Alaska has already developed a comprehensive land use plan for the Bristol Bay region. Drafted in 1985 and updated in 2005 following extensive public consultation, the Bristol Bay Area Plan "determines management intent, land-use designations, and management guidelines that apply to all state lands in the planning area."[95] EPA's attempt to use the 404(c) process in the Bristol Bay area will effectively preempt Alaska's plans for the state lands surrounding Pebble, which are specifically designated for mineral exploration and development.

EPA's Proposed Determination, if not withdrawn, may also have dire consequences for the region surrounding Pebble. Over one-third of the population in many of the villages near the Pebble Project lives in poverty.[96] Indeed, high unemployment levels have forced significant migration to Anchorage and other cities.[97] For example, the population of the Lake and Peninsula Borough declined 17% between 2000 and 2010, while the Bristol Bay Borough lost more than 23% of its population.[98] In several communities, schools have closed or are threatened with closure as a result of diminishing enrollment.[99] These issues were not considered by EPA in its BBWA, but must be considered in the NEPA process. EPA should return the Pebble Project to the normal course of permitting to ensure that the concerns of these citizens as well as the State of Alaska are heard.

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[94] *See* David Sunding, *Economic Incentive Effects of EPA's After-the-Fact Veto of a Section 404 Discharge Permit to Arch Coal* 1 (May 30, 2011), http://www.chamberlitigation.com/sites/default/files/cases/files/2011/Mingo%20Logan%20Coal%20Co%20Inc%20v.%20EPA%20%28Sunding%20Economic%20Study%29.pdf.

[95] *See* Alaska Dep't of Natural Res., *Bristol Bay Area Plan for State Lands* (Apr. 2005), http://dnr.alaska.gov/mlw/planning/areaplans/bristol/pdf/bbap_complete.pdf.

[96] *See* IHS Study at 17.

[97] *Id.* at 17-18.

[98] *See* Alaska Dep't of Labor, *Alaska Economic Trends* at 7 (Apr. 2013), http://labor.alaska.gov/trends/trends2013.htm.

[99] *See* Lake and Peninsula Borough Comprehensive Plan Update at 5, 14-15, (Sept. 2012), http://www.lakeandpen.com/search_results?q=Comprehensive%20Plan%20Update.

THE pebble PARTNERSHIP

For all of the reasons discussed herein, EPA should withdraw its Proposed Determination. The benefits of such a withdrawal are considerable, while the drawbacks are nonexistent. Allowing the NEPA process to proceed as intended by Congress poses absolutely no risk of harm to the environment or the public interest. Mine construction and operations simply cannot proceed prior to the conclusion of an EIS, a positive Record of Decision from the Corps (which EPA will have an opportunity to veto, if justifiable), as well as dozens of other permits granted by other federal and state regulatory agencies. No harm will occur if EPA withdraws the Proposed Determination. However, if allowed to stand, the Proposed Determination will threaten every major development project in the United States.

April 25, 2018

VIA ELECTRONIC MAIL

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

Re: EPA's Continued Reliance on the Bristol Bay Watershed Assessment

Dear Administrator Pruitt,

I am writing on behalf of my client Pebble Limited Partnership in response to your decision in January to suspend the withdrawal of the Proposed Determination to restrict the discharge of dredged or fill material in Alaska's Bristol Bay watershed related to the Pebble copper and gold deposit. Your decision was surprising and disappointing, especially in light of your public statements upon your confirmation affirming that preemptive federal vetoes – which the Proposed Determination unquestionably is – "could undermine both the administrative process and rule of law."[1] But even more concerning is the fact that your decision is based entirely and misguidedly upon the Bristol Bay Watershed Assessment ("BBWA"), a flawed and biased study that remains EPA's only attempt to evaluate the environmental impacts of a potential Pebble mine. Despite what some in EPA may have led you to believe, it is highly inaccurate to conclude "that any mining projects in the region will likely pose a risk to [Bristol Bay's] abundant natural resources."[2] That conclusion was in fact the starting point for the previous Administration's approach to the Pebble matter, and the BBWA was merely a tool to fulfill it. The document is the result of an unfair, pre-determined process and shoddy scientific work by "scientists" of questionable reputation determined to kill Pebble at all costs. As the attached materials demonstrate in even greater detail, the BBWA is the ultimate example of bad science, and I encourage you to carefully examine EPA's record and consider allowing the normal legal permit application process to unfold without the cloud cast by a study as woefully inadequate as the BBWA.

## The BBWA Sprung from Early EPA Efforts to Veto Pebble

Although EPA has repeatedly touted a petition purportedly submitted by six Alaska Native Tribes as the impetus for action in Bristol Bay, that petition was in fact the result of collusion between an EPA employee and the Tribes' attorney. That employee, Phil North, had been vocally advocating within EPA for a Pebble veto as early as 2009, and by 2010 had recruited at least two high-ranking EPA Region 10 officials to his cause. Officials in the region

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[1] Response to Questions for the Record from Scott Pruitt (Jan. 18, 2017), at 196.
[2] Press Release, EPA, *EPA Administrator Scott Pruitt Suspends Withdrawal of Proposed Determination in Bristol Bay Watershed, Will Solicit Additional Comments* (Jan. 26, 2018).

began drafting policy memoranda and budgets preparing for a veto and even convinced U.S. Fish and Wildlife Service employees to join the efforts. By the time the tribal petition was submitted in June 2010, which EPA's Inspector General concluded was the result of a "possible misuse of position," the Agency had already been getting a running start on its veto efforts.

**The BBWA Process Was Designed from the Start to Justify a Pebble Veto**

The BBWA was never meant to be an objective study of the effects of copper mining on Bristol Bay. All of EPA's words and actions prove otherwise. A 2010 memorandum outlined steps EPA could take to provide the appearance of public involvement to "deflect political backlash" and "derail opposition." Knowing that it needed a scientific record but unwilling to engage in a comprehensive and statutorily-required environmental impact statement upon Pebble's submission of a permit application, EPA instead developed a plan for its own "information gathering and analysis…in order to support a decision to formally initiate…404(c)." And when Senator Lisa Murkowski of Alaska suggested that EPA's decision to conduct the BBWA in February 2011 meant no pre-emptive action would occur until all the science had been evaluated, an EPA official stated "her statement would suggest no 404(c) would be done until all the science is in (EIS?). Obviously, that's not what we have in mind…"

EPA's close collaboration with environmental activists further demonstrate its bias. EPA officials communicated hundreds of times with anti-Pebble activists and scientists to share information, technical studies, and public relations strategies. One EPA employee even shared an outline of the BBWA with an anti-Pebble scientist a year before the Assessment was even announced. In particular, EPA became obsessed with a biased risk assessment conducted by The Nature Conservancy and scheduled several briefings to determine how that study could support EPA's efforts. All these communications stand in stark contrast to EPA's treatment of Pebble, as then-Administrator Lisa Jackson repeatedly refused to meet with Alaska Native interests close to the proposed mine that support due process for the project.

**The BBWA Evaluates Fake, Unpermittable Mines to Bolster EPA's Case against Pebble**

The BBWA analyzed hypothetical and implausible mine designs that did not reflect modern engineering or environmental standards. EPA knew that doing so would result in exaggerated environmental impacts and overstated risks, ensuring it could justify its preordained pre-emptive action. For example, any mine of Pebble's size would necessarily involve compensatory mitigation, which EPA's hypothetical mines conspicuously omitted. Peer reviewers noted this weakness, stating that the overall utility of the BBWA was "questionable" because of the inherent uncertainty involved with studying hypothetical design plans.

**The BBWA is Rife with Fake Science**

EPA stacked the BBWA deck with anti-Pebble personnel and material. Richard Parkin, who not only admitted under oath to favoring a preemptive Pebble veto but also stated in a public meeting that politics were "as big or [a] bigger factor" than science in a Pebble decision, was installed as BBWA team leader. Phil North, fresh off his secret collusion that resulted in the tribal petition, was the BBWA's "technical lead." From outside EPA, the Agency brought in several other anti-Pebble extremists, most notably Ann Maest, who admitted in litigation related

to the infamous *Chevron* case in Ecuador to having falsified scientific reports to fit her preferred, anti-development agenda. In perhaps its most brazen move, EPA carefully selected 7 vehemently anti-Pebble studies and subjected them to an unannounced peer review so that their conclusions could be included in the BBWA. Despite the resulting peer review's scathing criticisms, EPA nonetheless incorporated their findings.

Not surprisingly, these selections led to biased results, which peer reviewers repeatedly questioned, even concluding that the BBWA's conclusions were "not appropriate for a document that is intended to provide a scientific and technical foundation for future decision making." To further the bias of the BBWA's contents, EPA completely ignored the comprehensive environmental baseline studies that Pebble had conducted, the result of eight years of evaluation by 35 professional organizations and comprising about 27,000 pages and $150 million in investment.

**EPA Even Tried to Short-Circuit the BBWA's Peer Review to Conceal its Flaws**

EPA designed a peer review process that was contrary to its own regulations and guidelines so the many flaws in its BBWA study would remain hidden. For example, EPA officials had excessive contact with peer reviewers during the review period and limited oral and written submissions during public peer review meetings. When the second draft of the BBWA expanded from 339 pages to 618, and included an entirely new hypothetical mine scenario, EPA ignored requests that it conduct a full peer review of the new document. Several peer reviewers complained that the time given to review the Assessment was far too short to enable them to reach sound conclusions.

* * *

It is thus no surprise that virtually every independent investigation of EPA's conduct with respect to Pebble and the BBWA has concluded that there was wrongdoing. The U.S. House Committee on Oversight and Government Reform concluded that "EPA employees had inappropriate contact with outside groups and failed to conduct an impartial, fact-based review of the proposed Pebble mine" and that the pre-emptive veto was "without legal basis." Former U.S. Senator and Secretary of Defense William Cohen determined that the circumstances "raise serious concerns as to whether EPA orchestrated the process to reach a predetermined outcome; had inappropriately close relationships with anti-mine advocates; and was candid about its decision-making process." A federal court in Alaska granted a preliminary injunction halting all EPA work on the 404(c) veto after seeing just a fraction of the evidence of EPA misconduct. And the U.S. House Committee on Science, Space, and Technology found EPA's actions rife with misconduct and "determined that the pre-emptive action taken for the Pebble Mine Project was unprecedented under the Clean Water Act and was justified by a questionable assessment that relied on predetermined conclusions developed by EPA officials."

In addition to the BBWA's obvious flaws, the use of a preemptive veto under Section 404(c) of the Clean Water Act sets a dangerous precedent. In the history of the Clean Water Act, EPA has only exercised its veto authority 13 times. In each instance, EPA invoked Section 404(c) only after receipt of a permit application that described the scope and details of the project being proposed, the anticipated environmental impact, and techniques to be employed to mitigate or control that impact. EPA's campaign against Pebble throws that entire process into

uncertainty, unsettling the legitimate business expectations of potential developers. By going its own way, EPA has sent the message, in the words of the National Mining Association, that "it can do whatever it wants. If it can decide to (preemptively veto a project) for this industry, there is no reason it can't ignore the legal process and preempt other projects from going forward."

In light of this overwhelming record and potentially catastrophic precedent, Pebble strongly urges you to reconsider your reliance on such an obviously flawed study. You have not been shy to point out the errors made in the previous Administration's environmental policies and overreach. This is another opportunity for you to restore the rule of law and sound scientific analysis into environmental decision-making.

Sincerely,

Thomas M. Barba

Attachments: *EPA's Abuse of Due Process, Science, and its CWA 404(c) Veto Authority*

*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* (Oct. 17, 2017)

# EPA's Abuse of Due Process, Science and its CWA 404(c) Veto Authority

## Summary

The Obama-era EPA's actions toward Alaska's Pebble Project were an insult to science and to any American who believes in fair and due process.

As long as this dangerous precedent remains in place, resource projects will suffer under the threat of a weaponized EPA undermining the transparent, scientific process established by the National Environmental Policy Act.

This paper outlines the many problems with the Obama-era EPA's secret collusion with environmental activists and its egregious abuses of due process, science and legal authority in its targeting of Pebble – abuses that need to be fully discredited.

## 1. Fake Impetus

**Under President Obama, EPA determined it would take the extraordinary and unprecedented step of taking pre-emptive action against Pebble before an Environmental Impact Statement (EIS) was complete under NEPA, and before project developers had even applied for permits. EPA made this decision without even a pretense of scientific analysis.**

*EPA's action was initiated not by the public as claimed, but by a rogue EPA staffer who colluded with a known anti-mining activist to improperly petition his own agency.*

- In 2009, EPA Region 10 ecologist Phil North concluded his agency should use its authority under Section 404(c) of the Clean Water Act to veto Pebble.
- North advocated for a pre-emptive 404(c) veto throughout the agency, including to then-Administrator Lisa Jackson in early 2010.
- According to sworn deposition testimony, by 2010 North had convinced two high ranking EPA Region 10 staff members that the project should be pre-emptively vetoed.

*EPA determined it needed political cover to kill Pebble, so it conspired with anti-mine activists to orchestrate a "tribal petition" as a pretext to initiate a process.*

- North worked secretly with Jeff Parker, a known Pebble critic and attorney for several Alaska Native tribes, to draft a petition for submission by some tribes.
- EPA's Inspector General concluded that North's clandestine efforts to petition his own agency constituted a "possible misuse of position."

- EPA "lost" Phil North's computer hard drive for a critical two-year period when North and others regularly used personal email to conduct Pebble-related business.

*Even before receiving the petition and without any scientific study, EPA started drafting internal policy documents to facilitate pre-emptive action against Pebble.*

- In 2010, a budget was prepared to secure funds to pre-emptively veto Pebble.
- EPA developed an "options paper" in consultation with Parker outlining the various paths EPA could take to a veto.
- Other federal agencies were looped in: a 2010 US Fish & Wildlife Service (USFWS) memo describes how EPA had made up its mind to veto the project.

## 2. Fake Process

**EPA concocted the Bristol Bay Watershed Assessment (BBWA) study as the pretext for taking pre-emptive action against Pebble, prior to completing the science required by an Environmental Impact Study under NEPA. While EPA had an open-door policy for anti-mine activists, Pebble was kept in the dark and was routinely denied opportunities to present information in support of its project.**

*From the beginning, EPA lied about the BBWA's true purpose of taking pre-emptive action prior to the NEPA process.*

- A 2010 memo outlined steps EPA could take to provide the appearance of public involvement to "deflect political backlash" and "derail opposition."
- To minimize its "litigation risk," EPA concocted its own process, outside of standard scientific procedures under NEPA, for "information gathering and analysis...in order to support a decision to formally initiate...404(c)."
- When Alaska Senator Lisa Murkowski suggested that EPA's decision to conduct the BBWA meant no pre-emptive action would occur until all the science had been evaluated, an EPA official stated "her statement would suggest no 404(c) would be done until all the science is in (EIS?). Obviously, that's not what we have in mind..."
- EPA stated 67 times that the BBWA was not intended to be a decision document, even though it ultimately relied on it exclusively in issuing pre-emptive restrictions on Pebble.

*The BBWA began with anti-mine material, drawing heavily on the resources of ENGOs and activists in close coordination with them.*

- EPA shared with ENGOs an outline of the BBWA nearly a year before it announced the study.

- EPA planned to mimic a "risk assessment" by The Nature Conservancy (TNC) that had an extreme, negative view of Pebble. Before the launch of the BBWA in early 2011, EPA scheduled several briefings with anti-Pebble groups and invited anti-mine scientists to "summarize the TNC risk assessment and how it supports 404(c)." TNC has bragged that its "science work is flowing directly into EPA's assessment of mining risk."
- Over the course of the BBWA (2011-2014), EPA communicated hundreds of times with anti-Pebble activists and scientists to share campaign information, technical studies and other intelligence relevant to EPA's 404(c) strategy.

*Pebble only learned of the BBWA study the day it was announced in 2011. Throughout the BBWA, EPA continued to marginalize Pebble and those in support of due process.*

- When Pebble was finally granted an opportunity to brief Administrator Jackson in July of 2010, no one from EPA told Pebble about its intentions or that it had received the tribal petition.
- Administrator Jackson met with anti-Pebble tribes located far from the Pebble Project site, but refused to meet with Alaska Native interests located near Pebble, who support due process for the project.
- EPA declined to meet with a Pebble consultant to discuss "fishery resource science problems" with the BBWA, noting it was outside the public comment window. This concern was never raised when meeting with Pebble opponents.

## 3. Fake Mine

**The BBWA analyzed hypothetical and implausible mine designs that did not reflect modern engineering or environmental standards. EPA knew that doing so would result in exaggerated environmental impacts and overstated risks, ensuring it could justify its preordained pre-emptive action.**

*With no actual permit application to review, EPA designed hypothetical mining scenarios that it knew would have adverse impacts.*

- EPA admits the scenarios "are not based on a specific mine permit application and are not intended to be the detailed plans by which the components of a mine would be designed."
- EPA's hypothetical mine scenarios did not include the standard robust compensatory mitigation that is required for any project.
- Peer reviewers criticized the reliance on hypothetical mine scenarios, stating "because of the hypothetical nature of the approach employed, the uncertainty associated with the assessment, and therefore the utility of the assessment, is questionable."
- EPA continued to use hypothetical mine scenarios that did not reflect modern engineering or environmental management because it knew