Congress of the United States
Washington, DC 20515

March 7, 2018

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

Dear Administrator Pruitt:

The Committees on Science, Space, and Technology and Natural Resources continue our oversight of the U.S. Environmental Protection Agency's (EPA) 2014 proposed determination to use Section 404(c) of the Clean Water Act to pre-emptively limit the scope of the development of the Pebble Mine in Bristol Bay, Alaska. As the Committees with primary jurisdiction over the science underpinning policy and regulatory decisions at EPA, we are committed to ensuring that the agency's decision-making is based on sound and transparent science. While the Committees are encouraged by your assertion that the agency will carry out its decisions based on due process and the rule of law, recent developments regarding the consideration of the 2014 proposed determination raise serious concerns about the commitment to this goal.

As you are aware, the Committees have 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.[1] In the course of Committee hearings, document reviews, interviews, and depositions, the Committees learned that EPA employees inappropriately assisted outside groups in petitioning the agency to change the way it operates and to use Section 404(c) to stop this project.[2] Furthermore, the Committees 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.[3]

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[1] *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).
[2] *Id.*
[3] *Id.*

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In light of these concerns, in February 2017, the Science Committee recommended that the incoming Administration rescind the EPA's proposed determination to use Section 404(c) in a preemptive fashion for the proposed Pebble Mine in Bristol Bay, Alaska. While it was encouraging that EPA announced in July 2017 that the agency was considering a withdrawal, it is unfortunate that on January 26, 2018, EPA announced that it was withdrawing its consideration of rescinding the 2014 proposed determination. Despite this decision by the EPA, the Committees believe that the agency can continue to uphold the principles of due process and the rule of law by proceeding with a specific course of action.

The Pebble Limited Partnership submitted a permit application to the U.S. Army Corps of Engineers (Corps) in December 2017 to begin the process for a section 404 permit.[4] This rigorous process includes the development of an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. The Corps will soon engage with an independent third party to conduct the EIS, an action that reflects the most robust analysis of environmental impacts of the proposed project.[5]

In light of these developments, and in a commitment to the principles of due process and the rule of law, the Committees recommend that before taking any further action, EPA recognize that a permit application has been completed by Pebble and that the Corps is carrying out a rigorous EIS process. Moreover, we suggest that EPA clearly states that in the event the EIS scoping process undertaken by the Corps addresses all of the major issues identified in the 2014 proposed determination, that EPA will withdraw the proposed determination. To further alleviate any environmental concerns that you may have regarding this process, the Committee recommends that EPA Region 10 monitor the Corps' scoping process and review any public comments filed therein. After consultation with Region 10, the EPA can make a final informed decision on the status of the proposed determination.

Using the Corps EIS process to inform the decision on the proposed determination will allow a return to the long-established Clean Water Act permitting process, enforcing the principles of due process and the rule of law. Moreover, it establishes a commitment to regulatory certainty and environmental protection while advancing the Administration's commitment to streamlining the permitting process based on sound science. We look forward to working with you further throughout this process.

If you have any questions about this request, please contact the relevant staff of the Committees. Thank you for your attention to this matter.

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[4] *E.g.*, Press Release, Northern Dynasty Minerals Ltd., Northern Dynasty: Pebble to Initiate Federal and State Permitting on December 22, 2017 (Dec. 21, 2017), *available at* https://www.northerndynastyminerals.com/news/news-releases/2017/northern-dynasty-pebble-to-initiate-federal-and-state-permitting-on-december-22-2017/.

[5] Press Release, Northern Dynasty Minerals Ltd., Northern Dynasty: National Environmental Policy Act Permitting Process for Southwest Alaska's Pebble Project Advances with Selection of 3rd Party EIS Contractor (Feb. 5, 2018), *available at* https://www.northerndynastyminerals.com/news/news-releases/2018/northern-dynasty-national-environmental-policy-act-permitting-process-for-southwest-alaskas-pebble-project-advances-with/.

Sincerely,

Lamar Smith
Chairman
Committee on Science, Space,
and Technology

Rob Bishop
Chairman
Committee on Natural Resources

Paul Gosar
Chairman
Congressional Western Caucus

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

The Honorable Raul Grijalva, Ranking Minority Member, House Committee on Natural Resources