

# The Pebble Promise in Bristol Bay:



Assessing Potential Environmental Harm and Evaluating the Tactics of Pebble Limited Partnership's Plans to Build One of the World's Largest Open-Pit Copper and Gold Mines in Bristol Bay, Alaska

A Minority Staff Report  
Prepared for Democratic Members of the  
Committee on Science, Space & Technology

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## Executive Summary

For more than one decade, in the heart of Bristol Bay, Alaska, home to the largest natural salmon fishery in North America, Pebble Limited Partnership, a wholly owned subsidiary of Canadian mining company Northern Dynasty Minerals Ltd., has been planning to build one of the world's largest open-pit copper and gold mines. Efforts by the Environmental Protection Agency (EPA) to examine the potential environmental impact the proposed Pebble Mine would have on the Bristol Bay region have come under intense criticism by the company and mine proponents. More recent actions by EPA to limit the size and scope of Pebble's highly controversial mine have been condemned by some Members of Congress.

The Committee on Science, Space & Technology has held two hearings on the Pebble Mine in August 2013 and November 2015. A third hearing on this issue is scheduled for April 28, 2016. Some of the key criticisms levied against the EPA at these previous hearings demonstrate a clear misunderstanding of decades-old federal environmental laws. Supporters of the mine have accused the EPA of being "biased" in its assessment of the Pebble Mine from the start. They have alleged that the EPA and its employees have "colluded" with environmental groups and that the EPA has engaged in "unprecedented" and unjustified use of the Clean Water Act's Section 404(c) process to limit the negative environmental consequences the mine would have on the Bristol Bay watershed.

These criticisms of EPA, and the Congressional hearings that have provided a forum for the mining company's complaints, are consistent with Pebble's multi-pronged strategy to win the public relations war they have waged against the numerous critics of the proposed mine.<sup>2</sup> (See **APPENDIX #1: Pebble's "Multi-Prong Strategy" - Page 26**). The Pebble Partnership has done this with amazing success and has pushed the assertion that the EPA and some of its employees have engaged in unethical conduct and inappropriately interfered with the company's efforts to design and build a mine in Bristol Bay across the media landscape, into the courts, and through the halls of Congress.

The two primary leaders of Pebble overseeing the company and this strategy are Mr. John T. Shively, the Chairman of the Board of Pebble and Mr. Thomas C. Collier, Pebble's Chief Executive Officer (CEO). Both Shively and Collier have been embroiled in ethical scandals of their own prior to joining Pebble Limited Partnership.<sup>3</sup> In 1985, as the Chief of Staff to Alaskan Governor William Sheffield, Shively admitted to a grand jury that he lied to state prosecutors and destroyed evidence to protect the governor.<sup>4</sup> Shively resigned as the Governor's Chief of Staff two weeks after his grand jury testimony. This episode, described in more detail in the body of this report, became known as Alaska's Watergate.<sup>5</sup>

In the late-1990s Mr. Collier also found himself at the center of an ethical controversy regarding lobbying against a gambling casino at the Hudson Dog Track in Wisconsin for a Minnesota Indian tribe that opposed it.<sup>6</sup> Collier had been the Chief of Staff to Secretary of the Interior Bruce Babbitt. Soon after he left Interior to return to his law firm of Steptoe & Johnson, he was hired by the Shakopee Mdewakanton Sioux Community to lobby the Department of Interior.<sup>7</sup> Under federal ethics laws it is illegal to lobby your former federal office for one year after leaving government service.<sup>8</sup> However, there is an exception for representing Native American Tribes.

Collier's actions fell within these guidelines, but he still found himself at the center of a lobbying controversy.<sup>9</sup> Collier provided a deposition to the Senate Committee on Governmental Affairs and testified under oath to the House Committee on Oversight and Government Reform.<sup>10</sup> The Committee's Chairman, Dan Burton (R-IN), acknowledged that Collier had not broken any laws. But, Burton added, "Now, although there may not be anything legally wrong with it, the appearance of impropriety is very real even according to Mr. Babbitt, the Secretary of the Interior" and your former boss, said Burton.<sup>11</sup>

Both Shively and Collier have led the Pebble Limited Partnership's forceful use of a zealous multifaceted strategy against EPA's actions regarding the proposed Pebble Mine in Bristol Bay, including the use of litigation as a tactic to silence private citizens who have spoken out against their proposed mining project.<sup>12</sup> Pebble has brought three separate lawsuits against EPA, although one of those cases has been dismissed.<sup>13</sup> The two others, regarding the Freedom of Information Act (FOIA) and another alleging that EPA violated the Federal Advisory Committee Act (FACA) by establishing secret advisory committees with non-federal entities are winding their way through the courts.<sup>14</sup> The FACA case seems geared towards silencing their critics. As part of this case, Pebble sought to issue 72 third-party subpoenas against non-EPA individuals and organizations who have opposed the mine, including Tiffany & Company, the world-renowned jewelry store, Pew Charitable Trusts, and three universities including Oregon State.<sup>15</sup>

Pebble also filed 15 separate FOIA requests with EPA. They hired a consultant and international law firm with a large mining practice to write an "independent" report on the EPA's actions in Bristol Bay for an undisclosed amount of money.<sup>16</sup> They paid for a filmmaker to produce a documentary film on the proposed mine CK.<sup>17</sup> Two law firms hired by Pebble also wrote 17 individual letters to the EPA's Inspector General over the past 27 months requesting investigations of various allegations against the EPA's conduct related to the Pebble Mine. In response to some of these letters and others from Members of Congress, the OIG investigated whether the EPA was "biased" in its scientific review of Bristol Bay, known as the Bristol Bay Watershed Assessment (BBWA). The IG's report released in January 2016, "found no evidence of bias or a predetermined outcome," contrary to what Pebble's senior leaders have alleged on numerous occasions.<sup>18</sup>

Pebble's efforts to dominate the public narrative regarding the EPA's actions in Bristol Bay have not come cheaply. Since 2010, Pebble has spent more than \$4 million on its lobbying efforts, hiring seven lobbying firms. In addition, recent filings with the Securities and Exchange Commission (SEC) show that Northern Dynasty has spent an estimated \$13.4 million on legal fees last year alone and a total of around \$20 million on legal fees from 2013-to-2015, "in response to the EPA's activities surrounding the Pebble Project."<sup>19</sup><sup>20</sup> Separately, Pebble's parent company Northern Dynasty, has a contingency arrangement regarding the pending court cases against the EPA that would require the company to pay an additional \$6 million in legal fees if Pebble wins its lawsuits against the EPA.<sup>21</sup> Steptoe & Johnson is Pebble's primary law firm.

Despite the large sums the Pebble Partnership is spending on legal fees, its parent company Northern Dynasty Minerals apparently has no current income, although both John Shively and Tom Collier earn an estimated \$1 million each per year.<sup>22</sup> In addition, a recent audit of Northern Dynasty by the Deloitte accounting firm shows the company incurred a net loss of more than \$31

million in 2014, nearly \$34 million in 2015, and has a deficit of \$379 million.<sup>23</sup> Deloitte concluded that, “there is material uncertainty that casts substantial doubt about the Company’s ability to continue as a going concern.”<sup>24</sup>

The Pebble Partnership used to have more financial support. However, in September 2013 Northern Dynasty’s 50-percent partner in the Pebble Project, British mining company Anglo American plc announced its departure from the project.<sup>25</sup> In April 2014, the British-Australian global mining giant Rio Tinto announced it was divesting of its 19.1% stake in Northern Dynasty and providing its shares to two Alaskan charitable foundations.<sup>26</sup> This escape may have been inevitable, as two years before Rio Tinto withdrew from the project its CEO, Tom Albanese, told the company’s shareholders that he was only interested in exploring an underground mine in Bristol Bay. “An open pit mine is not the way to go ... in my opinion,” he said.<sup>27</sup>

In the end, placing a mine in Bristol Bay is not about the EPA, or its employees, or the legal authorities the EPA has legitimately used under the Clean Water Act to initiate the 404(c) process. The Pebble Partnership has attempted to focus on those issues to help distract the public from their controversial goal of building one of the world’s largest open pit copper and gold mines in the Nation’s most productive and pristine natural salmon fisheries, a goal with obvious environmental risks to an American treasure. This report provides a brief history of “Pebble’s Promise,” the mining company’s stated commitment to the residents of Bristol Bay. It describes a portion of the environmental concerns about building an open-pit copper mine in the Bristol Bay Watershed and provides some key examples of mines that have had serious impacts on the environment as a result of accidents. In some cases, these mines were either organizationally linked to the Pebble Limited Partnership or extensively cited by Pebble as having the sort of high-end technical standards Pebble’s leadership envisions for its Pebble Mine in Bristol Bay.

At nearly every turn, Pebble has successfully engaged in misdirection, deflecting attention away from examining the Pebble Limited Partnership’s plans for the mine. This report also begins to explore some of the tactics utilized by Pebble’s leaders, lawyers and lobbyists to stave off any challenge to its proposed mine in Bristol Bay.

## **Bristol Bay Background**

The “Pebble deposit” in Bristol Bay contains massive amounts of copper, gold and molybdenum. The mineral deposits are on land owned by the state of Alaska, but the rights to the minerals beneath the land have been leased to the Pebble Limited Partnership (PLP), the wholly owned subsidiary of Northern Dynasty Minerals Ltd., headquartered in Vancouver, British Columbia. If Pebble’s estimates are accurate, the deposits contain at least 57 billion pounds of copper, 3.4 billion pounds of molybdenum, 70 million ounces of gold and 344 million ounces of silver.<sup>28</sup> Extracting all of those minerals could be worth an estimated \$500 billion, would create thousands of jobs and generate millions of dollars in tax revenue for both the state and federal government.<sup>29</sup>

### The Nushagak River:



The Nushagak River is one of nine rivers that flows into Bristol Bay and is a spawning ground for salmon each year.<sup>30</sup>

However, the area is also home to the largest wild sockeye salmon fishery in the world. Nine separate rivers flow into Bristol Bay, and the region is dotted with scores of streams and tributaries. A metal mine in this areas would present serious environmental risks, such as acid drainage and other hazards that could profoundly impair Bristol Bay's wildlife and aquatic habitat. With its labyrinth of idyllic freshwater resources and expansive tundra, this region accounts for more than half of the world's production of sockeye salmon. In 2010 commercial fishermen harvested 29 million salmon from the area, generating \$1.5 billion in economic output and creating 10,000 jobs across the United States, particularly in Alaska, Washington, California and Oregon.<sup>31</sup> The Bristol Bay salmon fishery has operated continuously for more than 120 years and has been an integral part of the social and cultural way of life for native Alaskans for an estimated 4,000 years.<sup>32</sup> Jeopardizing the health and sustainability of this natural resource by placing a mine in Bristol Bay would have serious and long-lived economic and environmental consequences.

### **Summary of EPA's Actions Involving 404(c) in Bristol Bay**

In May 2010 the Environmental Protection Agency (EPA) was petitioned by six Native Alaskan Tribes to implement Section 404(c) of the Clean Water Act (CWA) to ban or limit construction of the proposed Pebble Mine in Bristol Bay.<sup>33</sup> Since then, many others have joined that call and asked EPA to prohibit construction of a large open-pit metal mine in the Bristol Bay watershed.<sup>34</sup> Despite these requests, the EPA chose not to initiate the 404(c) process at that time, and instead

conducted three extensive scientific assessments, known as the Bristol Bay Watershed Assessment (BBWA) that evaluated the potential damage to Bristol Bay and its natural fisheries from various types of open-pit copper and gold mine.<sup>35</sup> Those studies began in 2011 and the final assessment was completed in January 2014. In those three years, the studies underwent an extensive public comment period and scientific peer review.

In February 2014, Dennis McLerran, the Regional Administrator for EPA's Region 10 (which includes Alaska), released a "15-day letter" providing public notice of his intention to issue a Proposed Determination under Section 404(c) of the Clean Water Act. Section 404(c) "authorizes EPA to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas"<sup>36</sup>

On July 21, 2014, Mr. McLerran issued his Proposed Determination to restrict the adverse impact to the multiple waterways surrounding the Pebble deposit from construction of a proposed mine. Importantly, the Proposed Determination did not ban a mine outright in the Bristol Bay region, but set restrictions on how many miles of streams could be damaged and how many acres of wetlands, lakes and ponds could be adversely impacted by a mine. If the Pebble Partnership is able to document that they can construct a mine that would limit its damage to the environment within those specific parameters than a proposed mine could proceed under the Section 404 permitting process with the U.S. Army Corps of Engineers.

Pebble, however, did not attempt to provide such information and instead initiated litigation against EPA.<sup>37</sup> In November 2014, in the FACA lawsuit filed by Pebble against the EPA in the U.S. District Court for the District of Alaska the judge issued a preliminary injunction ordering EPA to halt all work connected to the 404(c) process.<sup>38</sup> No final decision has yet been made in this case, and while Pebble may still file an application permit whenever they would like, EPA is prevented from completing the 404(c) process while the court's injunction is still pending. (See **APPENDIX #2: EPA 404(c) Process Description- Page 27.**)

The language of the law is clear and unambiguous as to EPA's authority to initiate a 404(c) action even prior to an individual or organization filing for a permit. The "purpose and scope" section of the law makes it clear:

"The [EPA] Administrator may also prohibit the specification of a site under section 404(c) with regard to any existing or potential disposal site **before a permit application has been submitted** to or approved by the Corps or a state."<sup>39</sup> (Emphasis added).

### **The EPA's use of the Clean Water Act's 404(c) Process**

The Pebble Limited Partnership and Majority Members of the House Committee on Science, Space & Technology have attempted to paint a portrait of an Administration that has crippled mining throughout the nation and that has misused its environmental authority in initiating the 404(c) process regarding the construction of a proposed open-pit copper and gold mine in Bristol Bay, Alaska. Those descriptions are inaccurate. In truth, the Environmental Protection Agency has used it



404(c) authority under the Clean Water Act (CWA) sparingly over the past four decades. In fact, since President Obama took office, 214 hard rock mining permits have been issued by the Army Corps of Engineers under 404 permit authority.<sup>40</sup> In addition, under President Obama the 404(c) process has been initiated just twice, once in October 2009 and more recently in February 2014 regarding the proposed Pebble Mine in Bristol Bay. No final determination in that latter case has been made, however. (**APPENDIX #3: History of Section 404(c) Initiation - Page 28**).

In contrast, President Ronald Reagan’s Administration utilized the 404(c) process on nine separate occasions, including one instance where the EPA preemptively used it in the Florida Everglades, as the law clearly states that it can, to veto a project before a permit had been filed. The notion that the EPA has engaged in “unprecedented” actions in its initiation of the 404(c) process in Bristol Bay before Pebble has filed an application for a mine permit, is simply not true. In addition, since 1980 Republican Administrations have initiated the 404(c) process on 11 occasions, while Democratic Administrations have initiated the process just three times.



Sockeye salmon in the Wood River  
(Thomas Quinn, University of Washington)<sup>41</sup>



Landscape near the Pebble deposit location  
(Joe Ebersole – USEPA)<sup>42</sup>

In the Florida case mentioned above, the EPA utilized its 404(c) authority to prevent three separate property owners from “rock plowing” wetlands in the Everglades to turn it into farmland. The Army Corps of Engineers had determined they would issue a permit at the “Rem site;” the Corps had not yet made a decision at the “Senior Corp. site;” and no permit had been filed in the case of the third site, known as the “Becker site.” In February 1988, EPA’s Acting Region IV Administrator, Lee A. DeHihns III, issued a recommended 404(c) determination regarding the three rock plowing properties.

EPA Region IV believes that inclusion of the Becker site in this 404(c) action is appropriate, even though no application for rockplowing this site has yet been made.”<sup>43</sup>

The final determination in the Florida case was issued in June 1988 by the EPA’s Acting Assistant Administrator for Water, Rebecca W. Hanmer. She concluded it was “appropriate” that the “404(c) action should include all three properties.”<sup>44</sup>

The Pebble Partnership has consistently, and repeatedly, said the EPA's preemptive actions regarding the initiation of its 404(c) action in Bristol Bay is "unprecedented." But in testimony to the Science Committee, Tom Collier, Pebble's CEO admitted that there was precedent for the EPA's actions, but that it had only happened in one previous case, which is true. "The sole instance in which EPA vetoed a project that had yet filed a 404 application occurred in Florida in 1988," Mr. Collier said in his prepared statement, "when an agricultural developer had proposed substantially similar development proposals on three adjacent plots of land."<sup>45</sup> Mr. Collier then argued that the use of EPA's 404(c) action in Florida involves "a fundamentally different set of circumstances than we have at Pebble...." His argument is that in Florida two of the three sites that EPA vetoed under its 404(c) authority had pending permits with the U.S. Army Corps of Engineers and that development plans had been submitted on all three sites. That is also true, but simply not relevant at all to interpreting the legal authority that the EPA has to engage in preemptive action under Section 404(c) to ban or restrict development, as the EPA has appropriately done in the Pebble case in Bristol Bay. **(APPENDIX #4: Pebble v. The Law - Regarding 404(c) Authority - Page 29).**

The EPA's legal authority to use Section 404(c) of the Clean Water Act to prohibit development on the three Florida properties was not mischaracterized at the time and it was applauded by some. For example, Florida's *Sun Sentinel* newspaper published an editorial praising the EPA for its decision to utilize Section 404(c) to halt the rock plowing threat to the Everglades.<sup>46</sup>

The Reagan-era EPA was not alone in using 404(c) or in understanding the full scope of the tools the law laid out regarding the ability to preemptively use 404(c). In 1989, under President George H. W. Bush, the EPA re-emphasized that the Agency had the legal authority to initiate the 404(c) process before a permit application had been filed. In the publication, "Highlights of Section 404 Federal Regulatory Program to Protect Waters of the United States," the EPA wrote:

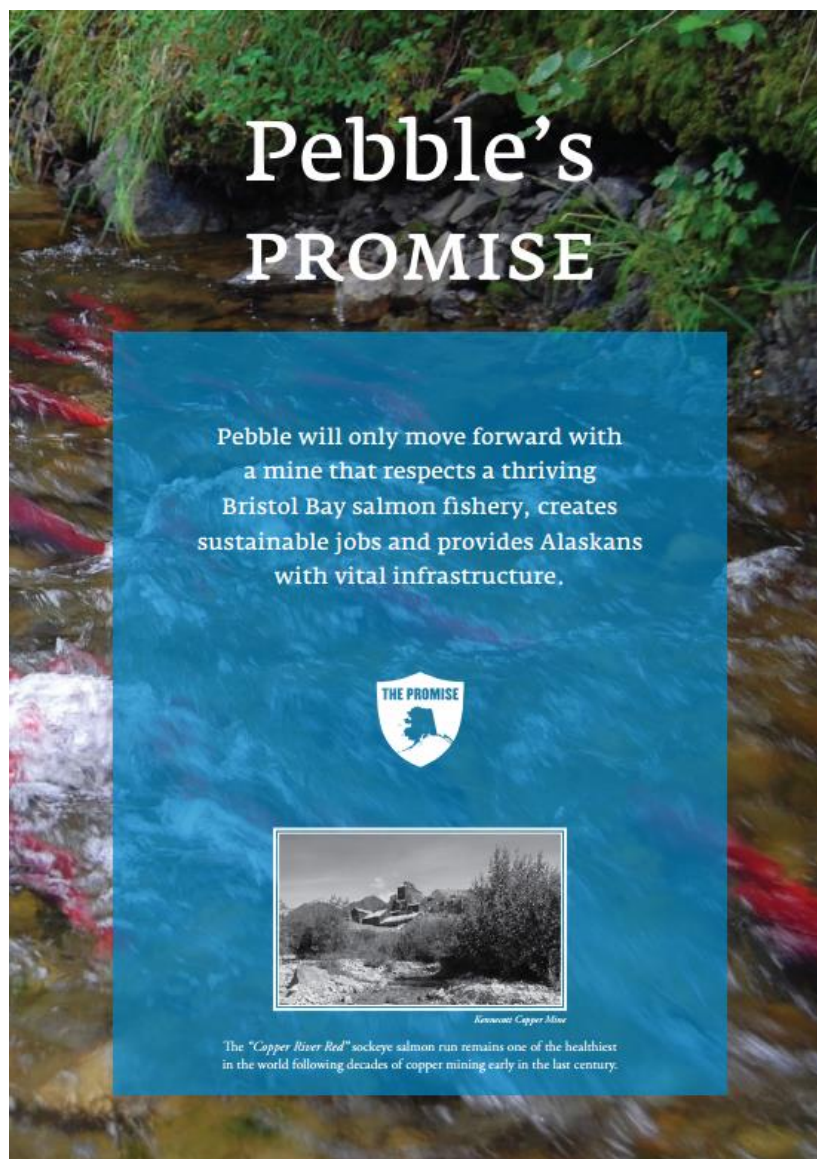
This authority may be used before, during or after Corps action on a permit application. EPA may also exercise this authority in the absence of a specified permit application or Corps regulatory action.<sup>47</sup>

Mr. Shively and Mr. Collier, however, continue to proffer their own characterizations of the law to the media and Congress. Both have repeatedly claimed, erroneously, that the use of the 404(c) process prior to the filing of a permit application has never been used in the history of the Environmental Protection Agency. As Mr. Collier said in his testimony to the Science Committee on November 5, 2015, "EPA has sought to implement the first-ever pre-emptive veto in the 43-year history of the Clean Water Act at Pebble, utilizing a little used provision, Section 404(c), in a novel and unprecedented way."<sup>48</sup> Section 404(c) was never meant to be widely used. It was intended to provide the EPA with the legal authority to prevent development that would have a significant adverse impact on the waters of the United States. The EPA's Proposed 404(c) Determination does not exclude a mine in Bristol Bay altogether, it simply limits the environmental damage a proposed mine could cause to the Bristol Bay watershed.<sup>49</sup> But many of Pebble's critics believe the proposed Pebble Mine, as envisioned by the Pebble Partnership, is the wrong mine for the wrong place. They believe its massive size and scope would forever

disrupt the unspoiled natural habitat of the region, cause environmental damage to the Bristol Bay Watershed, and endanger the economic livelihood of thousands of individuals.

### **Pebble's Promise and the Reality of Metal Mining**

The Pebble Limited Partnership (PLP) has repeatedly tried to assuage the fears of Alaskans, Congress, and other interested parties by indicating that it will only move forward with building the Pebble Mine if it can assure the public that the mine will cause virtually no harm to the local environment and its critical fish habitats. They have suggested that they will be transparent with federal and state regulators, cooperative and honest with local residents and above all safe in their efforts to develop, build and operate their planned mine in Bristol Bay. In various presentations, Pebble touts its commitment to these concepts as part of "Pebble's Promise."



"Pebble's Promise" is part of the Pebble Partnership's public relations campaign that peddles all of the positive aspects of the proposed Pebble Mine while ignoring any of the dangers.<sup>50</sup>

“Pebble must co-exist alongside healthy fisheries, wildlife & other resources,” the brochure says. “Pebble will only move forward with a plan that fulfills its promise,” it claims.<sup>51</sup>

But those reassurances are not very compelling when one examines the history of metal mining operations. Metal mining is an inherently dirty, dangerous and environmentally damaging process. According to the Toxic Release Inventory that tracks releases and disposal of 650 toxic chemicals in the U.S., the metal mining industry accounted for 45% of all toxic releases in the U.S., followed by electric utilities with just 13% of the nation’s toxic releases.<sup>52</sup>

### **Potential Impact of a Pebble Mine**

The proposed Pebble Mine would operate on a scale unlike any other in Alaska. The mine would sit nestled in-between the Wood Tikchik State Park, Lake Clark National Park and Katmai National Park. If constructed, the Pebble Mine complex would include one of the biggest open pit mines in the world and would be so large that every other mine in the State of Alaska could fit inside of it with room to spare.<sup>53</sup> The mine would be two miles across and deep enough to hold the Empire State Building [FN], stretching down for  $\frac{3}{4}$  of a mile. The mine site would include underground mining operations as well and would cover an area of 14 square miles. It would require the construction of a new deep-water shipping port in the Cook Inlet, four pipelines, an electric utility corridor and an 86-mile long two-lane 30-foot wide gravel road from the new port to the mine site, north of Lake Iliamna. The mine corridor would cross or closely approach more than 70 streams known to support resident fish populations and require the construction of 20 bridges ranging in size from 40 to 600 feet long, in addition to a 1,880-foot long causeway on the northern end of the Iliamna Bay. Scores of massive trucks would haul tons of minerals unearthed from the Pebble Mine site along the transportation corridor, which would include a five-mile stretch of a newly installed embankment along two separate bays in the Cook Inlet to reach the deep-water port.<sup>54</sup>

Although it has been more than one decade since Pebble first promised it would be filing an application for a mine permit, the people of Bristol Bay are still hoping that Pebble abandons the project and leaves the watershed unharmed. They worry about the future of the region and the impact a mine would have on their way of life and economic prosperity that has come from the natural salmon fisheries in Bristol Bay for well over one hundred years.<sup>55</sup> However, Pebble’s exploratory efforts for metal deposits in the area have already begun to have an environmental impact, and Pebble has already violated Alaskan state environmental and mining laws. The Pebble Partnership paid a penalty of \$45,000 to Alaska’s Division of Mining, Land and Water, part of the Department of Natural Resources for withdrawing water in 2007, 2008 and 2009 from areas outside the scope of its permit for Temporary Water Use Authorizations.<sup>56</sup> [FN] More recently, in July 2015, the Alaska Department of Natural Resources issued a report on Pebble’s exploratory efforts in the Pebble deposit. The report noted that Pebble already has 1,300 drill sites and a review of just 24 of them indicated that one-third of them were leaching.<sup>57</sup>

Even under the best circumstances, the problem with constructing a mine and its related infrastructure in such a remote and unspoiled natural habitat is not just the potential accidents or mishaps that could cause unexpected and lasting damage to the local environment and ecology, but that the everyday operations of the mine would undoubtedly have an impact. The EPA’s final

Bristol Bay Watershed Assessment of the Pebble Mine pointed out that even if there was no failure of the tailings dam and no accidents at the site *at all* that there would be environmental effects on the Bristol Bay region from the mine's normal operations. The final BBWA report estimated that due to the potential mine footprint (the area covered by the mine pit, waste rock piles, tailings storage facilities and other mine-related facilities) that between 24 and 94 miles "of streams would be lost—that is, eliminated, blocked, or dewatered" which translates to losses of between 5 and 22 miles "of streams known to provide spawning or rearing habitats for coho salmon, sockeye salmon, Chinook salmon, and Dolly Varden."<sup>58</sup>



Tailings ponds used to hold waste from mining operations at the Pebble Mine site would cover an area between 10-15 square miles. The area shown above where Pebble intends to place one of its largest tailing ponds includes Frying Pan Lake which drains into the Kaktuli River and eventually Bristol Bay. [FNs]

<https://sites.google.com/site/thepebblemine/classroom-pictures>

Because of that reality, the prospect of building a mine in the Bristol Bay region has sparked the emergence of some unlikely allies who together oppose construction of the mine. The local fisherman and Native Alaskan tribes, for instance, have been joined by more than 100 jewelry retail companies and jewelers who have pledged not to purchase any gold, silver or other gems that are mined in Bristol Bay, including jewelers such as Zales and Tiffany & Company. In December 2010, Tiffany took out a full-page ad in *National Geographic* opposing construction of the Pebble Mine. In part, the ad said: "The Bristol Bay watershed is the spectacular home of America's greatest wild salmon fishery and one of the most beautiful and pristine places on earth. This is why Tiffany & Co. is so concerned about the proposal to locate an enormous gold and copper mine in the very heart of this watershed. Tiffany & Co. and other jewelers have publicly announced that we will not use gold from the proposed Pebble Mine."<sup>59</sup>

## Tailings Dam Dangers

Tailings dams are one of the most potentially hazardous features of a mining operation. This would be particularly true at the Pebble Mine. Mines of all kinds generate millions of tons of waste each year called “tailings.” This is the material they discard after fishing out the mine’s valuable metals. The vast majority of the material includes rock and ore dredged out of the mine. But tailings also contain a brew of toxic chemicals that have been used to separate the precious minerals from the rocks or contain naturally occurring radioactive substances. The combination of these chemicals can include arsenic, mercury, sulfuric acid and cyanide. This mine waste or tailings is most often stored in a pond or dam surrounded by man-made impoundments or embankments to keep the tailings confined. The Pebble Limited Partnership has indicated it envisions constructing tremendous tailing ponds at the proposed Pebble Mine site that combined would be capable of holding up to 10 billion tons of debris. One of the embankments at one of the tailing dams would reach a height of up to 740 feet high, making it 185 feet taller than the Washington Monument in Washington, D.C.

This permanent structure would change the natural landscape of the region *forever* and pose imminent and continuous potential danger to all of the Bristol Bay watershed’s aquatic life. The Bristol Bay region is a water wonderland with rivers, streams and creeks crisscrossing the landscape that serves as a thriving habitat for salmon and other fish. Even with the best technology, tailings dams can leach material harming local vegetation, contaminating groundwater, and injuring fish and other wildlife. These impacts can occur even if the structural integrity of the dam remains intact. But when a dam breaches or fails environmental disaster usually follows in its wake.

Dozens of tailings dams have failed in the past, but the Pebble Partnership has said their tailings dams will be different because of modern engineering standards they intend to use in the design of the Pebble Mine. After the EPA issued a draft of its Bristol Bay Watershed Assessment (BBWA) in May 2012 that highlighted some of the potential dangers of constructing a mine in Bristol Bay, Pebble’s then Chief Executive Officer, John Shively (now the Chairman of the Board of Directors of PLP), essentially scolded EPA for its lack of understanding of “modern engineering” practices.

“The Assessment relies on an array of uninformed and inaccurate statements that ignore environmental standards of best practices and modern engineering design”.  
... “The [EPA] Assessment is based almost completely on assumptions and hypothetical scenarios.... EPA appears to have focused almost exclusively on past mine failures in its Assessment rather than on mine successes, particularly those currently operating under modern engineering design standards. This approach suggests an inherent bias in EPA’s Assessment....”<sup>60</sup>

Mr. Shively’s six-page letter contained seven White Papers, including three from the international engineering and design firm Knight Piesold and two touting the co-existence of mining and commercial fisheries in the Fraser River Basin in British Columbia, Canada.<sup>61</sup> One of those papers specifically examined four “modern” mines along the Fraser River Basin, including

the Mt. Polley Mine, an open-pit copper and gold mine. One of the paper's by Knight Piesold said: "Tailings dams can be built to stand indefinitely provided the right procedures, protocols, checks and monitoring are in place...."<sup>62</sup> Another said, "Large embankment dams have a proven performance of successful operation for a variety of extreme events...."<sup>63</sup> A separate paper submitted by Pebble suggested, "No engineering design related failures that resulted in significant downstream effects to the receiving environment at any of these four mines were identified. The engineered structures located at these mine sites are the result of modern engineering design and construction standards... They are no more likely to fail than modern high rises, hydroelectric dams, or highway bridges." "[T]he overall risk of the Mount Polley Mine to fisheries is very low," the paper concluded.<sup>64</sup> (Emphasis added.)

### **The Fraser River Basin & The Mt. Polley Mine**

Pebble has liked comparing its proposed Pebble Mine to the Mt. Polly Mine and other mines along the Fraser River Basin. In a video presentation, Pebble has attempted to assuage any fears the public – or residents of Bristol Bay – may have about their proposed mine by showing there are examples of the mining industry and commercial fisheries living in harmony alongside each other. "Like the Fraser River, it's not about trading one resource for another," says the voiceover of the Pebble Partnership produced video, "it's about mining and fisheries co-existing."<sup>65</sup> A March 2016 power-point presentation on "The Pebble Project" by Northern Dynasty Minerals, Pebble's parent company says, "Fraser River basin is [a] close analogue to [the] Bristol Bay basin." The title of the slide reads, "Hard Rock Mining & Salmon Do Co-Exist" and it lists the Fraser River Basin. It claims in the slide that mining activity over the past 50 years there has had:

No negative effect on salmon populations  
No negative effect on commercial salmon fishery  
No large scale effects on salmon habitat.<sup>66</sup>

Perhaps, not surprisingly, what Northern Dynasty and the Pebble Limited Partnership neglected to mention in this presentation or in several similar presentation in 2015 and 2016 that included an identical "Fraser River" slide, was that the Mt. Polley mine that sits along the Fraser River Basin suffered from a massive tailings dam break in August 2014. The dam failure resulted in the release of an estimated 17 million cubic meters of wastewater and 8 million cubic meters of mine slurry.<sup>67</sup> It is, however, understandable why Pebble did not mention this incident. Knight Piesold, the same company that John Shively touted for its "modern engineering" design practices, was the same company that designed the Mt. Polley mine tailings dam.<sup>68</sup> An expert panel issued a report on the Mt. Polley tailings dam collapse in January 2015 and concluded "the design was doomed to failure" from the start.<sup>69</sup> "The Panel concluded that the dominant contribution to the failure resides in the design. The design did not take into account the complexity of the sub-glacial and pre-glacial geological environment associated with the Perimeter Embankment foundation."<sup>70</sup>



71

The wall of the tailings dam, that contains toxic mine waste, at the Mount Polley Mine in British Columbia ruptured on August 4, 2014, sending an estimated 8 million cubic meters of mine waste into surrounding waterways.

As the *Guardian* newspaper reported at the time of the Mt. Polley tailings dam collapse, “the full extent of the damage may remain unknown for years or even decades, as toxins from the mine slowly build up in the environment.”<sup>72</sup> However, there were disturbing reports immediately following the accident of skin falling off salmon in the Fraser River Basin.<sup>73</sup>



74

Reports of skin falling off salmon emerged soon after the Mount Polley Mine accident



75

Water bans were put into effect after the mine spill for several nearby waterways

The fact that Northern Dynasty and Pebble continue to ignore this 2014 accident in presentations they have prepared for potential investors and the public in 2015 and 2016 is troubling. Some might call this selective information sharing deceptive. When the EPA has raised issues about mine safety or potential impacts to the environment from the proposed Pebble Mine, Pebble’s leadership has accused the EPA of being “uninformed,” making “inaccurate statements,”



ignoring “modern engineering design” and having an “inherent bias.”<sup>76</sup> In reality, the Mt. Polley Mine disaster shows the potential real-world dangers that could result from placing the Pebble Mine in Bristol Bay.

But Mr. Shively is not backing down from his position that the EPA and concerned residents of Bristol Bay are making a tremendous fuss about nothing at all. He has been adamant in his position that concerns about the Pebble Mine have been vastly overblown, that it will be completely safe and those that disagree are simply misinformed. In November, 2015, he told the *Alaska Journal of Commerce* that the EPA’s mine scenarios it described in its Bristol Bay Watershed Assessment were “fantasy mine plans” and Shively said:

The idea that you could build something (on) several thousand acres, with the kind of grade that we have – over 99 percent of what we take out of the ground is basically just dirt – how we could devastate a fishery is beyond me, but that’s what people have been told.<sup>77</sup>

### **Red Dog Mine: A Model for Pebble Mine?**

Aside from the Mount Polley Mine, the Pebble Partnership and John Shively, have pointed to other examples of “model mines” that would help inform the mine design for their proposed Pebble Mine. In the Pebble’s Promise brochure the mining company cites the Red Dog Mine as a “modern mine” that has “led to cleaner water in the stream, which enhanced surrounding habitat and expanded fish spawning habitat downstream,” it claims.<sup>78</sup> “Mines and fisheries in Alaska can work side by side as demonstrated by modern mines such as Red Dog Mine, Greens Creek Mine and Fort Knox Mine,” the brochure says.<sup>79</sup>

The Red Dog Mine is an open-pit zinc and lead mine, located in Northern Alaska, that has been operational since 1989.<sup>80</sup> John Shively, Chairman of the Board of Pebble, often boasts of his involvement in the original development of the Red Dog Mine.<sup>81</sup> But over the last 27 years the mine has had significant difficulty limiting its release of toxic material, and has subsequently caused great environmental damage.

According to the EPA, the Red Dog Mine is the single largest polluter in the United States out of the more than 21,000 industrial facilities releasing or disposing of toxic chemicals.<sup>82</sup> The mine released or disposed of more than *1 billion pounds* of toxic chemicals in 2014 alone.<sup>83</sup>

Despite its anti-pollution measures, Red Dog has repeatedly run afoul of pollution standards:

- In 1989 and 1990, fish kills in a nearby creek were attributed to high levels of zinc leached from the mine. The EPA issued an “Administrative Complaint” and the mine’s owner, Teck Cominco Alaska Inc. (TCAK), spent \$11 million to re-route the creek away from the mine.<sup>84</sup>
- In 1992, the Alaska Department of Environmental Conservation (DEC) issued a “compliance order by consent” against the mine relating to “fugitive dust.” Fugitive dust

is metal-laden dust, potentially lethal to plant and wildlife, that emanates beyond a mine's boundary. TCAK spent approximately \$4 million on operational improvements to better manage the fugitive dust at the mine.<sup>85</sup>

- In 2001, TCAK agreed to pay the Alaska DEC \$827,000 for air quality violations at the mine related to the use of large diesel generators.<sup>86</sup>
- In 2003 and 2004, fugitive dust with elevated levels of lead and zinc was discovered downwind of the mine. In 2007, the Alaska DEC and TCAK signed a Memorandum of Understanding "Relating to Fugitive Dust at the Red Dog Mine."<sup>87</sup>
- In 2008, Red Dog received a notice of violation of the Clean Water Act (CWA) from the State of Alaska, and in 2009 it was issued a federal penalty of \$120,000 for another CWA violation.<sup>88</sup>
- In 2010, Red Dog was issued a notice of violation by the state of Alaska for violating the Clean Air Act (CAA) and paid the state \$20,000 in a formal enforcement action for violating the CAA.
- The EPA found Red Dog in violation of the Clean Water Act during the last reported quarter—the fourth quarter of 2015.<sup>89</sup> Additionally, the mine was in violation of the Clean Water Act for six of the previous ten reported quarters, dating back to the third quarter of 2013.<sup>90</sup>

It is unclear why the Pebble Limited Partnership believes the Red Dog Mine is a model of effective environmental stewardship given this, non-exhaustive, litany of violations. However, it may be telling that part of Pebble's Promise is to bring the residents of the Bristol Bay region another mine modeled after Red Dog.

### **The Bingham Canyon Mine**

Another mine often compared to the proposed Pebble Mine by some because of its sheer size is the Bingham Canyon Mine that sits 28 miles southwest of Salt Lake City, Utah. The mine is described as the largest man-made excavation on earth.<sup>91</sup> Like the proposed Pebble Mine the Bingham Canyon Mine is an open pit gold and copper mine. It would be of similar size and employ a similar number of workers. In 2011, Nunamta Aulukestai village association, which represents Alaska Native corporations that oppose development of the Pebble Project visited the Bingham Canyon Mine because of the similarities it poses to the proposed Pebble Mine in Bristol Bay.<sup>92</sup> But unlike the Mt. Polley Mine or the proposed Pebble Mine, the Bingham Canyon Mine is located in a dry area which makes unintentional dispersal of mining waste and the consequences of a major accident or mishap much more manageable and less environmentally risky than constructing a similarly sized mine in the midst of the wetlands and waterways of the Bristol Bay watershed.

The Bingham Mine, owned by Kennecott Utah Copper Corporation, a subsidiary of Rio Tinto, has been in operation for more than 150 years.<sup>93</sup> Today it is the largest open pit mine in the world.<sup>94</sup> It has had a long history of environmental contamination. In February 2008, for instance, the U.S. Fish and Wildlife Service took legal action against its owner, Kennecott Utah Copper Corporation, a subsidiary of Rio Tinto, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for releasing a variety of toxic chemical substances from the mine's operations, including selenium, copper,

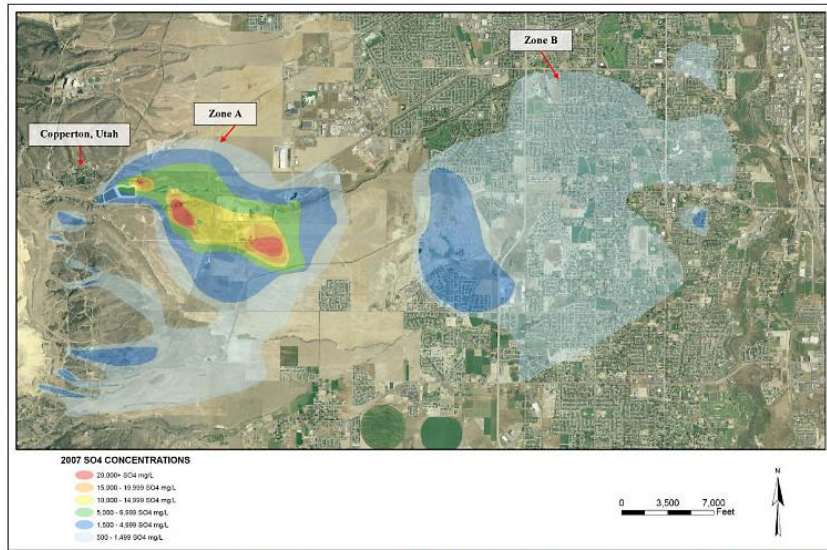


Figure 2-1. Zone A and B Groundwater Plumes of Operable Unit No. 2 (Southwest Jordan Valley Groundwater Plumes) of the Kennecott South Zone.

cadmium, lead, zinc and arsenic.<sup>95</sup> As a result of mining operations at the site, there are also two contaminated groundwater plumes from the mine that contain elevated levels of sulfate, total dissolved solids (TDS) and heavy metals above the State of Utah's primary drinking water standards. These contaminated groundwater plumes cover an area of 60 square miles and represent an estimated 25 percent of the potential drinking water for the Salt Lake Valley.<sup>96</sup> Similar contamination in Bristol Bay could have a serious impact on the region's fisheries.

### **Bingham Canyon Mine Slide.**

The contamination of groundwater has occurred over the long-term operation of the Bingham Mine. But, like the tailings pond breach at the Mt. Polley Mine, safety hazards at metal mines can emerge quickly and the impact can be immediate and severe. On April 10, 2013, more than 165 million tons of rock and dirt careened down the side of the Bingham Canyon Mine.<sup>97</sup> The mine measures 2 ½ miles across at the top and is ¾ of a mile deep. It is comparable in size to the proposed Pebble Mine which is envisioned to be two miles wide and less than ½ a mile deep. The Bingham Canyon Mine slide raced down the side of the mine at 100 miles per hour and was only stopped – two miles later – when it ran into the wall of the mine. The landslide destroyed industrial roads at the mine, ruined buildings, damaged three 100-ton electric shovels, fourteen 320-ton haul trucks, and other equipment at the site. The Bingham Mine's owner, Kennecott, has a virtual tour of its site on-line that provides a vivid image of the massive potential size and scope of a Pebble Mine in Bristol Bay.<sup>98</sup>



Bingham Canyon Mine Landslide, April 10, 2013



Bingham Canyon Mine Landslide, April 10, 2013

According to the National Aeronautics and Space Administration (NASA) the Bingham Canyon landslide was the largest, non-volcanic landslide in the history of North America.<sup>99</sup> One estimate suggested that the volume of dirt and rock that tumbled down the side of the mine could have filled 735,000 school buses. A similar accident at the Pebble Mine could lead to inestimable environmental damage. Seismologists measured the brute force of the Bingham Canyon landslide to be equivalent to a 2.4 magnitude earthquake.<sup>100</sup> According to a January 2014 journal article in *GSA Today*, published by the Geological Society of America (GSA), scientists found that the landslide caused 16 earthquakes. It was the first time ever that a landslide is known to have caused an earthquake [FN]. The Pebble Mine also would sit in a seismic zone. Alaska and the Bristol Bay region do experience earthquakes. Last year, for instance, an earthquake measuring 6.4 on the richter scale rattled the region and in January, another seismic event was felt in the region, this one measuring 7.1 on the richter scale. The headline at KDLG, “Public Radio for Alaska’s Bristol Bay,” said “Big quake brings little shakes to Bristol Bay.”<sup>101</sup>

On April 15, 2013, five days after the Bingham Canyon landslide Kennecott created a “fact sheet” on the event. It concluded: “We do not anticipate any additional slides.”<sup>102</sup> However, two smaller landslides occurred at the mine in September 2013 and January 2014.<sup>103</sup> Those incidents should serve as warnings to the leaders of Pebble Limited Partnership that despite the fact that they may not “anticipate” any accidents at the Pebble Mine, mishaps do occur. A similar incident at the Pebble Mine could lead to inestimable environmental damage in the Bristol Bay region.

### **Pebble’s Technical Working Groups (TWGs)**

While the Pebble Partnership has made expansive promises about its proposed mine, their own actions have sparked little confidence about the mine’s future operation or the management’s willingness to engage the public or public regulators honestly and openly. In mid-2007, the Pebble Project Technical Working Groups (TWGs) were created by Pebble “to facilitate pre-application state and federal agency discussions with the Pebble Limited Partnership (PLP),” according to archived information maintained by the Alaska Department of Natural Resources.<sup>104</sup> Despite allegations by Pebble that the EPA was “colluding” with environmental groups because the agency and its employees met with these groups to hear their concerns about the proposed Pebble Mine, the Pebble Partnership had open and broad access to the EPA as well through the Technical Working Group meetings as well as in other avenues. The TWGs held at least 30

meetings between July 2007 and January 2010 with Pebble officials. These meetings were attended not just by the EPA, but by officials from the U.S. Fish & Wildlife Service (FWS), National Oceanic Atmospheric Administration (NOAA), and Alaska Department of Fish and Game among others. The meetings examined a wide array of topics, including environmental studies, project design options and mine permitting issues. Many of the officials from these agencies voiced deep frustration with Pebble's lack of candor, honesty and openness regarding their planned mine.<sup>105</sup> In January 2010, in the wake of these criticisms, Pebble unilaterally suspended these meetings.<sup>106</sup>

According to the e-mails of frustrated participants at these meetings, Pebble provided limited details about the mine's design, they were unwilling to share information with regulators, and they did not respond to specific requests from federal and state regulators for data. These officials said Pebble also ignored their suggestions about conducting studies to evaluate potential environmental impacts from their proposed mine on the area's critical salmon habitat. Before the TWG's suspension one frustrated fisheries biologist from NOAA wrote, "this entire process is a diversion. It only benefits [Pebble's] public relation[s] campaign."<sup>107</sup> Another research biologist from the Alaska Department of Fish and Game wrote that PLP seemed "intent to do only the minimum legally required ... to gain the permits required to develop the mine and associated infrastructure.... I personally find that to be disconcerting," wrote the official, "given the 'WE WILL DO NO HARM' doctrine PLP has long preached in their PR campaigns."<sup>108</sup> These and other Pebble related documents are posted on-line by the Public Broadcasting Service's (PBS's) premier investigative television show FRONTLINE. The show aired a documentary in July 2012 on the Bristol Bay mine project called "Alaska Gold."<sup>109</sup>

## **Pebble's Leaders**

Mr. John T. Shively, the Chairman of the Board of the Pebble Limited Partnership (PLP) and its former Chief Executive Officer (CEO), and Thomas C. Collier, Pebble's current CEO are the public faces of the Canadian owned-mining company. (**APPENDIX #5: Pebble's Leadership - Page 30**). Both of them have attacked the EPA's actions initiating the 404(c) process in Bristol Bay. Mr. Shively described it as "unprecedented and legally dubious."<sup>110</sup> The information contained in this report, and the Florida case regarding the EPA's pre-emptive use of the 404(c) process, demonstrate that Mr. Shively's public comments on this issue have been either uninformed or intentionally misleading. Both of Pebble's leaders have also argued that the EPA's Bristol Bay Watershed Assessment (BBWA) was "biased." However, the independent EPA Office of Inspector General (OIG) released its examination of these allegations earlier this year and "found no evidence of bias or a predetermined outcome."<sup>111</sup>

The EPA IG report also investigated allegations that Phil North, a former EPA scientist, "colluded" with groups opposed to the Pebble Mine. The IG's review found that in 2010 Mr. North used personal email to provide comments on a draft Section 404(c) petition from six Native Alaskan tribes before the tribes submitted the petition to the EPA. The OIG "found this action was a possible misuse of position, and the EPA's Senior Counsel for Ethics agreed." Indeed, some of these actions may have been inappropriate, but the IG's office also acknowledged that Mr. North's job description included a liaison role with environmental groups as well as native Alaskan tribes.<sup>112</sup> An EPA position description for Mr. North states clearly that

part of his job duties were to provide “advice and assistance to agency, federal, state, local and/or tribal governments on matters relating to the development, execution, and monitoring of adequate environmental protection policies, plans and programs.”<sup>113</sup>

Mr. Collier, however, has made public comments that completely mischaracterize Mr. North’s actions regarding his role in suggesting minimal edits to the draft 404(c) petition. Commenting on the edits recently Mr. Collier said, “They weren’t just minor edits. He helped draft it. His language ended up in the petition. This is just not proper conduct for a federal employee. This is outrageous conduct.”<sup>114</sup> Based on an examination of the actual edits, it is clear that Mr. Collier’s characterization of Mr. North’s edits is simply false. There is no evidence to suggest he “drafted” the petition, and he made a total of 6 minor edits to the petition and offered one comment. His edits included removing a coma, fixing a misspelling, and crossing out two words.

Mr. North had a 23-year career with the EPA as an ecologist before retiring from his one-person office in Soldotna, Alaska, southwest of Anchorage, in April 2013. He has been travelling around the world with his family since then, but returned to the U.S. last month after he was served with a subpoena to testify in a deposition regarding Pebble’s FACA lawsuit against the EPA. He was served with another subpoena issued by the Chairman of the Science Committee while leaving the Pebble deposition at the Washington, D.C. offices of the Steptoe and Johnson law firm and provided a deposition to the Committee on April 14, 2016.

In July 2013, *The Redoubt Reporter*, a weekly newspaper in Soldotna, published a lengthy article about Phil North, his career at the EPA and his role in advocating for his Agency to initiate the 404(c) process in regard to the Pebble Mine.<sup>115</sup> The article described how North and his family “plan to spend the next couple of years sailing around the world, following North’s retirement from the Environmental Protection Agency.” Weeks later the House Committee on Oversight and Government Reform began attempts to interview North for an investigation they were conducting on the EPA’s actions regarding the proposed Pebble Mine. North was not interviewed by Congress until he was issued a subpoena by the Science Committee.

The Pebble Partnership asserted in court filings that Mr. North “fled the country” to avoid being interviewed by Congress, a claim that was repeated by Majority Members of the Science Committee.<sup>116</sup> While those statements don’t fit the facts, they do fit the narrative that the Pebble Limited Partnership has been so anxious to pursue regarding the EPA, its employees, and their actions regarding the implementation of the 404(c) process in Bristol Bay.

It is important that Mr. Shively and Mr. Collier’s statements regarding their proposed Pebble Mine and any criticisms they have or allegations they would like to make against the EPA be accurate and factual. It is also important that the residents of Bristol Bay, the citizens of Alaska, and the public, be aware of questions regarding Mr. Shively and Mr. Collier’s own past conduct to be able to help determine if they are comfortable believing the promises that Pebble’s leaders make in the future.

## John T. Shively & Alaska's "Watergate"

In 1985, as Chief of Staff to Alaskan first-term Democratic Governor William Sheffield, John Shively found himself at the center of what came to be called Alaska's Watergate.<sup>117</sup> He admitted to lying to state prosecutors and destroying evidence to protect the Governor. The scandal began when Shively told state Department of Administration officials to eliminate a competitive clause on a Fairbanks office building lease so that a sole source \$9.1 million Alaskan state government contract could be awarded to Governor Sheffield's political ally and fund-raiser Joseph "Lenny" Arsenault, a billionaire hotel chain owner.<sup>118</sup> Arsenault raised \$92,000 for Sheffield's 1982 campaign for Governor. In two days of testimony to a grand jury in the Superior Court in Juneau, Alaska, on June 25 and June 26, 1985, Shively admitted that he lied to state investigators in several instances and threw out official state documents related to the lease after a reporter had asked about them. Shively refused to testify at first, but he was granted immunity from prosecution for his testimony. He resigned from office two weeks after his testimony on July 10, 1985.<sup>119</sup>

According to a Grand Jury Report on this case:

"On April 8, 1985, after the preliminary investigation in this matter was started by the Chief Prosecutor's Office, but before a grand jury was convened, a lengthy tape-recorded statement was taken from Mr. Shively. Mr. Shively has subsequently admitted under oath before the Grand Jury that during this statement he knowingly lied with respect to a number of material matters concerning the Governor's participation in this matter, as well as his own, and that he did so to protect the Governor from embarrassment and exposure."<sup>120</sup>

However, as a matter of Alaskan state law it is not a crime to knowingly make false statements even during an official investigation if the statements are not made under oath. This was the case with Mr. Shively. As a result, he was not prosecuted for his actions in this case. But, the grand jury wrote: "Nonetheless, the Grand Jury believes that such conduct [by John Shively] is unconscionable by anyone, particularly by a high-level public official being questioned by government investigators with respect to his official duties, during an official investigation."<sup>121</sup>

During his second day of testimony before the grand jury Mr. Shively said, "It was a tough day for me yesterday to come in here and tell people I lied, even tougher when I went home and told my wife. But ... it was a strong feeling I had," said Shively. The Governor is "a friend of mine. He's treated me very well. And I was trying to protect him. That was wrong."<sup>122</sup>

Although the grand jury did not indict anyone in this case it issued a scathing public report that called on Alaskan lawmakers to consider impeaching Governor Sheffield for his handling of the office lease. Shively at the time contended that he was not proud of what he did, but “I stand by what I’ve always said,” he told the *Associated Press*, “I didn’t break any laws.”<sup>123</sup>

### **Silencing Pebble’s Critics**

Mr. Shively went to great lengths to protect his boss and friend, the former Alaskan Governor. It seems he has also gone to great lengths to protect the Pebble Partnership and its prospects of building an open-pit copper and gold mine in Bristol Bay. One of the tactics the mining company has used to silence its critics is litigation. To that end, the mining company has sought to issue 72 subpoenas to non-EPA third-parties, related to the Federal Advisory Committee Act (FACA) law suit they filed against the EPA, which alleges that the EPA violated FACA and formed secret advisory committees with environmentalists and other opposed to the Pebble Mine.<sup>124</sup>

But in a November 2015 ruling by Judge H. Russel Holland, U.S. District Judge, in the U.S. District Court in Alaska, regarding some of these subpoenas, he found some of Pebble’s subpoena requests needlessly broad, burdensome and irrelevant to Pebble’s litigation against the EPA. “Simply put,” Judge Holland wrote, “proof of a FACA violation comes from the agency conduct, and proof of plaintiff’s contentions are most likely to be found (if at all) in EPA records.”<sup>125</sup> “Statements of opposition are not evidence of a FACA violation,” Judge Holland continued, “nor are they likely to lead to any such evidence.” He clearly said that Pebble’s efforts to compel production of third-party subpoenas in this case was an unjustified overreach on the part of Pebble. Judge Holland said groups that oppose the Pebble Mine “have the right to communicate with one another on matters of joint interest and, if they wish, to make joint presentations to the EPA. Their doing so does not violate FACA. These private entities cannot violate FACA,” he said.<sup>126</sup>

However, Pebble has been allowed to issue subpoenas and depose some individuals in this litigation. Last September, Ms. Sue Aspelund, Executive Director of the Bristol Bay Regional Seafood Development Association, gave a deposition in this case. She said that Pebble’s tactics of attacking its critics would diminish future efforts by concerned citizens to seek action of the federal government to take a position that might upset wealthy interests. In her deposition to Pebble, she said:

***“Nonetheless, the grand jury believes that such conduct [by John Shively] is unconscionable by anyone, particularly by a high-level public official being questioned by government investigators with respect to his official duties, during an official investigation.”***

### **Grand Jury Report**

Superior Court of the State of Alaska

First Judicial District at Juneau

July 1, 1985



This subpoena has the effect of limiting our communications with other Americans and non-profits about matters of public importance because of the fear that such otherwise confidential communications will be forced to be disclosed. . . . No one should be compelled to pay for the privilege of raising matters of public concern to *our* government.<sup>127</sup>

In Judge Holland’s November decision, in which he quashed discovery demands by Pebble against several non-EPA third parties, he seemed to agree. He wrote that Pebble’s actions:

has the tendency to chill the free exercise of political speech and association which is protected by the First Amendment.<sup>128</sup>

### **The Independence of the “Independent” Cohen Report**

One of the recent strategies by Mr. Shively and the leaders of the Pebble Partnership was to hire an “independent” consultant to evaluate allegations by Pebble regarding EPA’s actions in Bristol Bay. On October 6, 2015, former Senator and Secretary of Defense William S. Cohen released a report regarding the EPA and the proposed Pebble Mine produced by his consulting company, The Cohen Group and DLA Piper, a law firm with which his company has a “strong strategic relationship.”<sup>129</sup> The report, known as “The Cohen Report,” was requested and paid for by Pebble. The report provided the impetus for a hearing held on November 5, 2015, by the Committee on Science, Space & Technology, titled: “Examining EPA’s Predetermined Efforts to Block the Pebble Mine.”<sup>130</sup> Secretary Cohen and his DLA Piper co-author, Mr. Charles Scheeler, both testified at this hearing along with Pebble’s CEO Tom Collier.

In The Cohen Report, Secretary Cohen wrote, “For the purposes of this review, I assume both that EPA had the authority to conduct a study of the Bristol Bay watershed and that EPA may invoke Section 404(c) at any time.” He concluded, however, that the EPA should have waited for Pebble to file a permit application and then gone through the National Environmental Policy Act or NEPA review process that considers potential environmental impacts, rather than invoking the Clean Water Act’s Section 404(c) process. That is a legitimate policy discussion to have, but it does not indicate that initiating the 404(c) process was a misguided act by the EPA.

As discussed above, any thorough research on the historic application of the 404(c) process should have revealed the Florida Everglades case that initiated the 404(c) process *before* an application permit was filed. The authors of The Cohen Report chose instead to rely on cherry picked e-mails and documents to make their case that the EPA’s actions were “unprecedented.” The report did not mention the Reagan Administration’s preemptive 404(c) veto in the Florida case a *single* time in the 346-page report. Despite this significant hole in the “independent” Cohen Report, the Pebble Partnership may have gotten their money’s worth. The report was widely cited by the media, particularly conservative bloggers. The Cohen Report is also cited in Northern Dynasty’s March 2016 presentation on “The Pebble Project” under the company’s “Multi-Prong’ Strategy in Action” slide. It is described as “Highly critical, independent report.”<sup>131</sup>

Interestingly, on a separate page of this same presentation under the heading “Discussion Topics,” the presentation says: “EPA Watershed Report – A biased document under investigation by the EPA Inspector General.”<sup>132</sup> The problem is that the IG’s investigation had concluded six weeks before this presentation was published. The IG report concluded there was “no evidence of bias or a predetermined outcome.” These inconvenient facts, as in many other instances, appear to have simply been ignored by the Pebble Limited Partnership.

Released in January 2016, the EPA’s Office of Inspector General’s report contradicted many of the findings of The Cohen Report. The IG’s report, which had been requested by the Pebble Partnership, contradicted much of what The Cohen Report said and concluded that they “found no evidence of bias in how the EPA conducted its assessment of the Bristol Bay watershed, or that the EPA predetermined the assessment outcome.”<sup>133</sup> The EPA IG report said:

We also found that the EPA’s assessment appropriately included sections on the three primary phases discussed in the agency’s ecological risk assessment guidelines. Further, the EPA met requirements for peer review, provided for public involvement throughout the peer review process, and followed procedures for reviewing and verifying the quality of information in the assessment before releasing it to the public.<sup>134</sup>

However, the Committee’s Majority vehemently disagreed with those conclusions. In a letter dated February 2, 2016, Chairman Smith asked Secretary Cohen to provide his own “analysis” of the EPA OIG report. Secretary Cohen responded on February 17, 2016 with a two-page cover letter. “Assisted by my staff at The Cohen Group and the law firm DLA Piper LLP,” he wrote, “I reviewed the IG Report and prepared my observations in response to your request.” Mr. Cohen’s enclosure was a 13-page report titled: “Analysis of The Office of the Inspector General’s Report Concerning the United States Environmental Protection Agency’s Assessment of the Bristol Bay Watershed.” Not surprisingly, it strongly contested many of the EPA OIG’s findings.

The Majority staff forwarded Secretary Cohen’s new report, as well as a separate detailed 38-page critique of the EPA IG’s report prepared by Pebble’s law firm Steptoe & Johnson, to the EPA Inspector General on February 29, 2016. Since January 2014, two law firms representing Pebble, including Steptoe & Johnson, have written 17 letters to the EPA Inspector General, which appears to be part of Pebble’s persistent strategy to control the public message regarding the Pebble Mine and the EPA’s actions in Bristol Bay.

At the November 5, 2015, hearing the Science Committee had on the Pebble Mine the Majority’s key message seemed to be to stress the “independence” of The Cohen Report. Both Secretary Cohen and his DLA Piper co-author Charles P. Scheeler, went to great lengths to tout the “independence” of their report. DLA Piper is one of the world’s largest law firms, and its attorneys conduct a substantial amount of work in the mining sector. The firm has also sponsored mining conferences around the globe, including the “Mines & Money London conference” in

December 2014 that brought together 3,000 investors, financiers, brokers and mining developers, for a week of business matching, knowledge sharing and deal-making.”<sup>135</sup>

The Cohen Report was publicly released on October 6, 2015.<sup>136</sup> In responses to Questions for the Record (QFR) from the November 2015 hearing from Secretary Cohen, Mr. Scheeler and Mr. Collier it is evident that in the two and one-half week period between September 14<sup>th</sup> and October 1<sup>st</sup>, 2015, DLA Piper’s Mr. Scheeler and officials from The Cohen Group briefed Pebble officials on the draft Cohen Report on at least three separate occasions and provided Pebble officials with portions of drafts of the report on at least three other occasions. It is also unclear who was at each of these meetings, although Secretary Cohen and DLA Piper’s Scheeler were present at some of them. Mr. Collier also made clear that he could not be positive the Pebble Partnership identified every meeting or interaction with The Cohen Group and DLA Piper, so there could be more meetings that were not disclosed to the Committee. (**APPENDIX #6: The Independence of the Independent Cohen Report – Page 31**).

In addition, despite comments by Pebble’s CEO Tom Collier about the EPA’s lack of transparency in their Bristol Bay Watershed Assessment, Mr. Collier, refused to disclose to Congress how much the Pebble Limited Partnership paid both The Cohen Group and DLA Piper to produce their “independent” report. Secretary Cohen and DLA Piper’s Mr. Scheeler also refused to answer the same question about how much they were compensated for producing the “independent” Cohen Report. Mr. Scheeler responded that this information was “confidential.”

## **Conclusion**

Bristol Bay, Alaska, is an unspoiled and spectacularly beautiful natural treasure. For centuries, thousands of individuals have relied upon its remarkable watershed environment, where millions of sockeye salmon spawn each year, for their economic livelihood and cultural sustenance. Diverse individuals and organizations from commercial fishermen to high-end jewelers and Native Alaskan Tribes have come together to oppose the potential construction of a massive open-pit copper and gold mine there that would pose a grave threat to Bristol Bay’s pristine environment and to the public health of those who live and work there.

Pebble Partnership has waged a public relations battle over the future of Bristol Bay from Washington to Alaska and they have taken extreme steps to create and conduct the public relations campaign surrounding their proposed Pebble Mine and the EPA’s actions to use its four decades old legal authority under Section 404(c) of the Clean Water Act to protect the environment and the public health of the Bristol Bay region. Pebble, however, has hired lawyers and lobbyists, hoping they can convince others to ignore the obvious environmental realities and potential dangers of placing one of the world’s largest open-pit copper mines in the heart of one of the nation’s most pristine waterways. By any measure, that appears to be a recipe for disaster and one that cannot be reversed once the damage is done.

The Clean Water Act’s Section 404(c) was written specifically with technically unstable and environmentally unwise projects like the Pebble Project in mind. Mines *do* fail, regardless of their modern design or high-tech engineering techniques. Tremendous investments in creating a narrative that one of the world’s most important natural salmon fisheries can co-exist side-by-

side with one of the world's largest open-pit copper and gold mines, cannot make that fantasy a reality.

This report explores that inevitably dangerous reality and it examines the “Multi-Prong Strategy” and tactics the Pebble Limited Partnership has used to convince the public that *they* are the victims of a grand environmental conspiracy, led by the EPA, to thwart Pebble's efforts to bring the residents of Bristol Bay one of the largest open-pit copper and gold mines in the world.

## APPENDIX #1: Pebble’s “Multi-Prong’ Strategy”

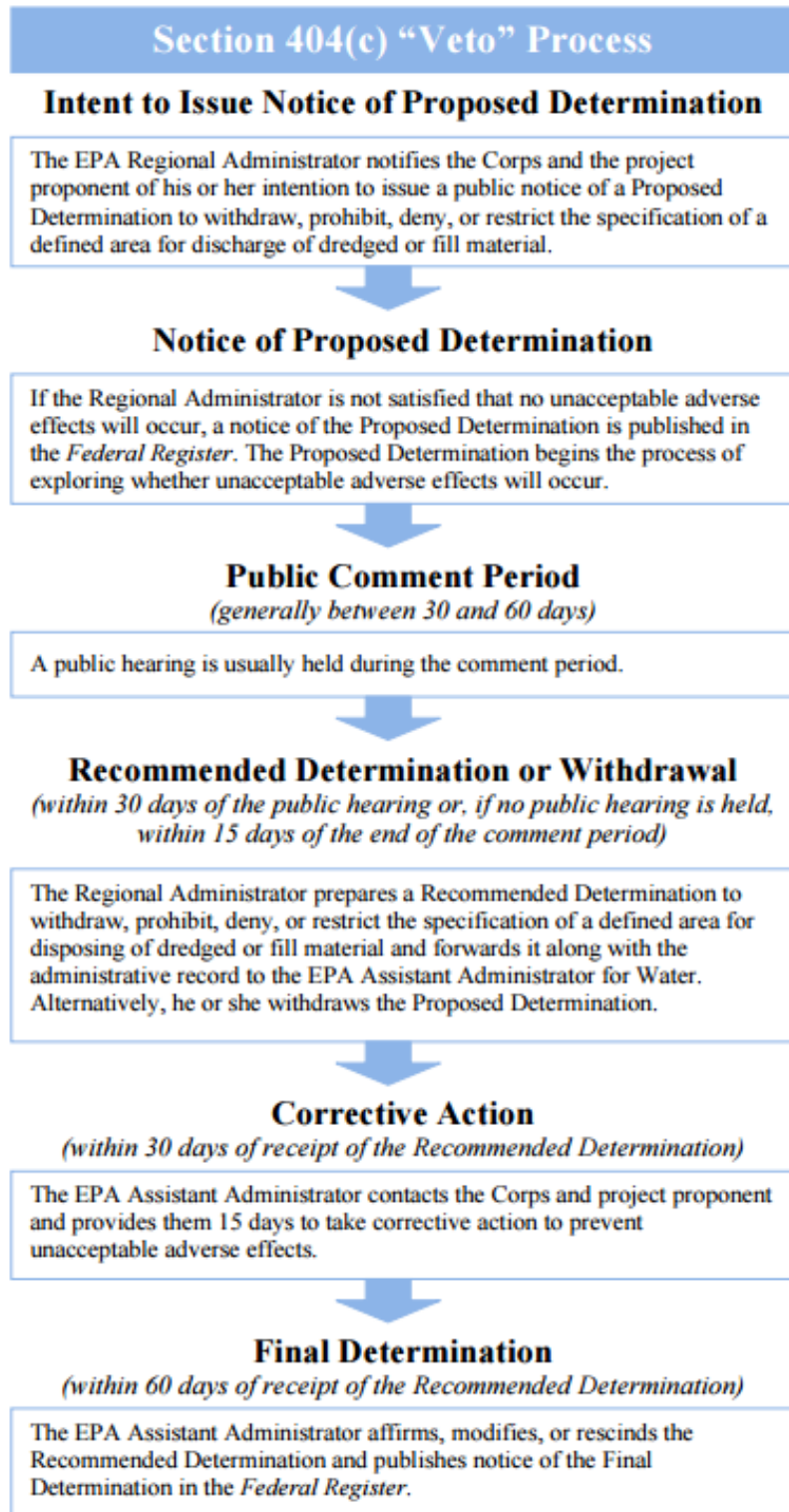
The Pebble Limited Partnership and its parent company, Northern Dynasty Minerals Ltd., have been engaged in a “Multi-Prong’ Strategy” regarding their efforts to build a Pebble Mine in Bristol Bay, Alaska, as can be seen from a March 2016 publication by the company.<sup>137</sup>



### Pebble – ‘Multi-Prong’ Strategy in Action

- **Federal Advisory Committee Act (FACA) litigation**
  - Preliminary Injunction granted
  - EPA Motion to Dismiss denied
  - Discovery ongoing – Depositions have begun
- **Freedom of Information Act litigation – additional EPA disclosures expected**
- **Cohen / DLA Piper – Highly critical, independent report – released October 2015**
- **Media Strategy – Washington Post, WSJ – beginning to lay bare EPA misconduct**
- **Inspector General report – a disappointing “whitewash”**
- **Congressional Activity**
  - House Science, Space and Technology Committee – hearing ongoing
  - Several other congressional committees considering hearings
- **Objective of resolution with EPA remains top priority**

## APPENDIX #2: EPA 404(c) Process Description



### APPENDIX #3: History of Section 404(c) Initiation

The chart below provides a chronology of the Environmental Protection Agency's (EPA's) use of the Clean Water Act's Section 404(c) process since it was first utilized in 1980.<sup>139</sup>

	Project Name	Initiation and Final Determination Dates	Presidential Administration	Location	
				EPA Region	State
14	<b>Pebble Mine</b> Open Pit Gold-Copper Mine	<ul style="list-style-type: none"> <li>Initiated Feb. 28, 2014</li> <li>No Final Determination</li> </ul>	President Barack Obama	10	AK
13	<b>Spruce No. 1 Surface Mine</b> Surface Coal Mine	<ul style="list-style-type: none"> <li>Initiated October 16, 2009</li> <li>Final Determination issued January 13, 2011</li> </ul>	President Barack Obama	3	WV
12	<b>Yazoo Pumps</b> Flood Control Project	<ul style="list-style-type: none"> <li>Initiated February 1, 2008</li> <li>Final Determination issued August 31, 2008</li> </ul>	President George W. Bush	4	MS
11	<b>Two Forks</b> Water Supply Impoundment	<ul style="list-style-type: none"> <li>Initiated March 24, 1989</li> <li>Final Determination issued November 23, 1990</li> </ul>	President George H. W. Bush	8	CO
10	<b>Big River</b> Water Supply Impoundment	<ul style="list-style-type: none"> <li>Initiated August 24, 1988</li> <li>Final Determination issued March 1, 1990</li> </ul>	President Ronald Reagan	1	RI
9	<b>Ware Creek</b> Water Supply Impoundment	<ul style="list-style-type: none"> <li>Initiated August 4, 1988</li> <li>Final Determination issued July 10, 1989</li> </ul>	President Ronald Reagan	3	VA
8	<b>Lake Alma</b> Dam and Recreational Impoundment	<ul style="list-style-type: none"> <li>Initiated June 8, 1988</li> <li>Final Determination issued December 16, 1988</li> </ul>	President Ronald Reagan	4	GA
7	<b>Henry Rem Estates</b> Agricultural Conversion - Rockplowing	<ul style="list-style-type: none"> <li>Initiated April 22, 1987</li> <li>Final Determination issued June 15, 1988</li> </ul>	President Ronald Reagan	4	FL
6	<b>Russo Development Corps</b> Warehouse Development (After-the-fact permit)	<ul style="list-style-type: none"> <li>Initiated May 26, 1987</li> <li>Final Determination issued March 21, 1988</li> </ul>	President Ronald Reagan	2	NJ
5	<b>Attleboro Mall</b> Shopping Mall	<ul style="list-style-type: none"> <li>Initiated July 23, 1985</li> <li>Final Determination issued May 13, 1986</li> </ul>	President Ronald Reagan	1	MA
4	<b>Bayou Aux Carpes</b> Flood Control Project	<ul style="list-style-type: none"> <li>Initiated December 17, 1984</li> <li>Final Determination issued October 16, 1985</li> </ul>	President Ronald Reagan	6	LA
3	<b>Jack Maybank Site</b> Duck Hunting- Aquaculture Impoundment	<ul style="list-style-type: none"> <li>Initiated April 15, 1984</li> <li>Final Determination issued April 5, 1985</li> </ul>	President Ronald Reagan	4	SC
2	<b>Norden Co.</b> Waste Storage-Recycling Plant	<ul style="list-style-type: none"> <li>Initiated Sept. 30, 1983</li> <li>Final Determination issued June 15, 1984</li> </ul>	President Ronald Reagan	4	AL
1	<b>North Miami</b> Landfill/Municipal Recreational Facility	<ul style="list-style-type: none"> <li>Initiated June 25, 1980</li> <li>Final Determination issued January 19, 1981</li> </ul>	President Jimmy Carter	4	FL

**APPENDIX #4: Pebble v. The Law - Regarding 404(c) Authority**

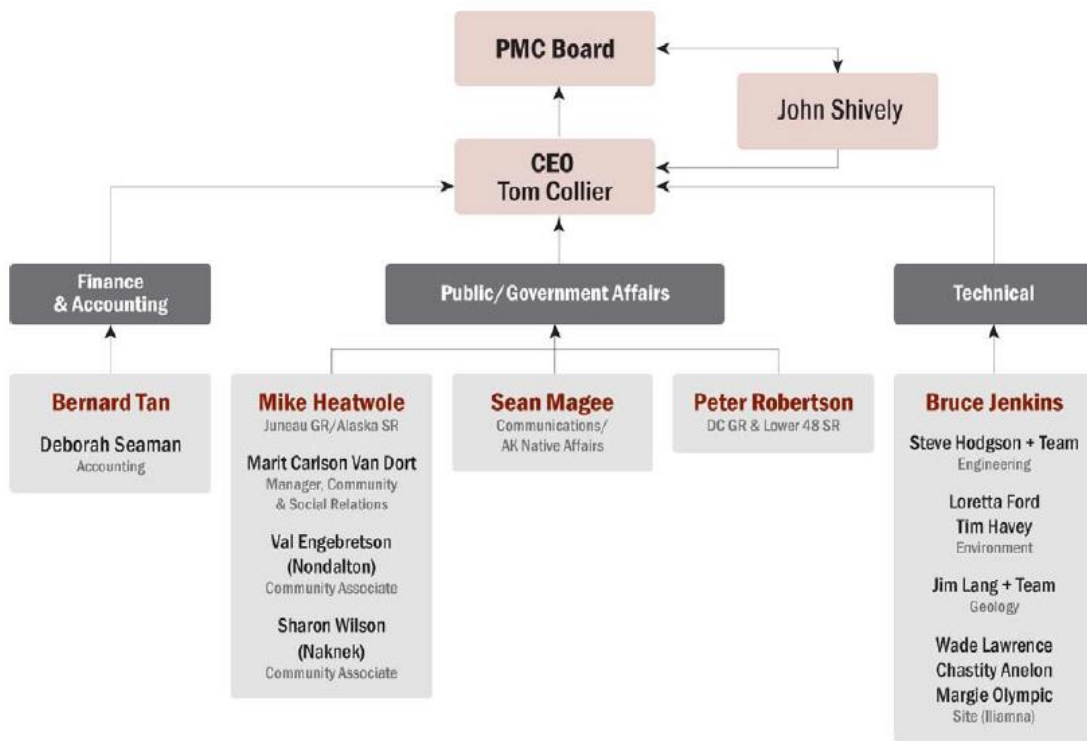
Pebble’s interpretation of EPA’s regulatory authority under Section 404(c) of the Clean Water Act is consistent with Federal law or the history of its use by EPA

Pebble Limited Partnership’s Position as presented by Tom Collier, Pebble CEO	Federal Law makes clear that the EPA may initiate a 404(c) action before, during or after a 404 permit has been applied for by a potential developer
<p>“EPA has sought to implement the first-ever pre-emptive veto in the 43-year history of the Clean Water Act at Pebble, utilizing a little used provision, Section 404(c), in a novel and unprecedented way.”<sup>140</sup></p>	<p>“The [EPA] Administrator’s Section 404(c) authority may be used either to ‘veto’ a permit which the Corps has determined it would issue ... or to preclude permitting either before the Corps has made its decision ... or in the absence of an application. ... EPA Region IV believes that inclusion of the Becker site in this 404(c) action is appropriate, even though no application for rockplowing this site has yet been made.”<sup>141</sup></p>
<p>“However, Section 404(c) authorizes EPA to veto a USACE [U.S. Army Corps of Engineers] 404 permit if it determines that the project as permitted “will have an unacceptable adverse effect” on certain aquatic resources, including fish habitat.”<sup>142</sup></p>	<p>“In effect, section 404(c) authority may be exercised before a permit is applied for, while an application is pending, or after a permit has been issued.”<sup>143</sup></p>
<p>“However, it is clear that Congress intended to allow EPA to rule on specific 404 permits as granted by the Corps only, rather than to use the statute to impose <i>a priori</i> blanket restrictions on development over large areas of land.”<sup>144</sup></p>	<p>EPA’s use of 404(c) “authority may be used before, during or after [Army] Corps action on a permit application. EPA may also exercise this authority in the absence of a specified permit application or Corps regulatory action.”<sup>145</sup></p>



## APPENDIX #5: Pebble’s Leadership

Mr. John Shively and Mr. Tom Collier are the two most senior leaders of the Pebble Limited Partnership (PLP).<sup>146</sup> In April 2007, Shively joined PLP as its President and CEO.<sup>147</sup> In February 2014, he became Chairman of the Board of PLP and Thomas C. Collier was hired as Pebble’s CEO. Collier was a partner at the Steptoe & Johnson law firm, based in Washington, D.C., where he remains a Senior Counselor in the Regulatory & Industry Affairs Department today.<sup>148</sup>



**APPENDIX #6: The Independence of the Independent Cohen Report<sup>149</sup>**

<b>DATE</b>	<b>Meetings Between Pebble Limited Partnership (PLP) and The Cohen Group or DLA Piper</b>	<b>Dates When The Cohen Group or DLA Piper Shared Portions of The Cohen Report with PLP</b>
October 9, 2014	Mr. Collier and Mr. Scheeler meet	
November 14, 2014	Secretary Cohen and Mr. Collier meet	
March 4, 2015	Secretary Cohen and Mr. Collier meet	
September 14, 2015	Mr. Scheeler briefs Pebble officials on the Cohen Report	
September 16, 2015	Mr. Scheeler briefs Pebble officials on the Cohen Report	
September 18, 2015		Staff from The Cohen Group provide portions of the draft report to Pebble officials
September 21, 2015		DLA Piper's Mr. Scheeler provides portions of the draft Cohen Report to Pebble's CEO, Tom Collier
September 24, 2015	Mr. Scheeler briefs Pebble officials while an EPA representative is present	
October 1, 2015		Staff from The Cohen Group provide portions of the draft report to Pebble officials
October 6, 2015	<b>The Cohen Report is officially released to the public</b>	

## Endnotes

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- <sup>1</sup> This photo is taken from the Save BioGems web-site, a project of the Natural Resources Defense Council (NRDC), accessed here: <http://www.savebiogems.org/stop-pebble-mine>
- <sup>2</sup> “The Pebble Project: The Future of U.S. Mining and Metals,” Northern Dynasty Minerals Ltd., March 2016, available here: [http://www.northerndynastyminerals.com/i/pdf/ndm/NDM\\_DA\\_Corp\\_Mar2016.pdf](http://www.northerndynastyminerals.com/i/pdf/ndm/NDM_DA_Corp_Mar2016.pdf)
- <sup>3</sup> See: “Report of the Grand Jury Concerning the Investigation Conducted Into the Fairbanks Consolidated State Office Lease with the Fifth Avenue Center,” Superior Court of the State of Alaska, First Judicial District at Juneau, In the Matter of the First Judicial District at Juneau for the Term of Proceedings Commencing in April, 1995, July 1, 1985 (Hereafter referred to as **Sheffield Grand Jury Report**) and Carol Elder Bruce, Independent Counsel, “Final Report of Independent Counsel In Re: Bruce Edward Babbitt,” U.S. Court of Appeals for the District of Columbia Circuit, August 22, 2000 (Hereafter referred to as **Babbitt Independent Counsel Report**) and “The Department of the Interior’s Denial of the Wisconsin Chippewa’s Casino Applications: Volume I,” Hearings before the Committee on Government Reform and Oversight, U.S. House of Representatives, January 21, 22, 28 and 29, 1998, Serial No. 105-92 (Hereafter referred to as **Collier Testimony to Oversight Committee**).
- <sup>4</sup> Sheffield Grand Jury Report, July 1, 1985.
- <sup>5</sup> “Alaska’s ‘Watergate’ begins,” *The Stanford Daily*, July 19, 1985, Compiled from the Associate Press and the Lost Angeles Times/Washington Post wire services.
- <sup>6</sup> Frank A. Aukofer, “Lobbyist in casino case questioned,” *Milwaukee Journal Sentinel*, January 29, 1998.
- <sup>7</sup> *Ibid.*
- <sup>8</sup> “18 U.S.C. § 207: Restrictions on former officers, employees, and elected officials of the executive and legislative branches,” U.S. Office of Government Ethics (OGE), accessed here: [www.oge.gov/Web/oge.nsf/Resources/18+U.S.C.+§+207:++Restrictions+on+former+officers,+employees,+and+elected+officials+of+the+executive+and+legislative+branches](http://www.oge.gov/Web/oge.nsf/Resources/18+U.S.C.+§+207:++Restrictions+on+former+officers,+employees,+and+elected+officials+of+the+executive+and+legislative+branches)
- <sup>9</sup> Babbitt Independent Counsel Report, August 22, 2000.
- <sup>10</sup> Collier Testimony to Oversight Committee, January 28, 1998.
- <sup>11</sup> *Ibid.*
- <sup>12</sup> “Pebble Limited Partnership vs. Environmental Protection Agency (EPA), U.S. District Judge H. Russell Holland, U.S. District Court for the District of Alaska, ORDER. Motion to Quash; Motion to Compel, No. 3:14-cv-0171-HRH, accessed here: <https://www.adn.com/sites/default/files/200%20Holland%20Order.pdf>
- <sup>13</sup> Pebble Limited Partnership and Alaska Peninsula Corporation (Plaintiffs) vs. U.S. Environmental Protection Agency, ORDER, No.3:14-cv-0097-HRH, U.S. District Judge H. Russel Holland, September 26, 2014, accessed here: <http://trustees.org/wp-content/uploads/2014/09/2014-09-26-257-Order-granting-motion-to-dismiss.pdf>
- <sup>14</sup> “PLP vs. EPA: an update,” PEBBLEWATCH, March 30, 2016, accessed here: <http://www.pebblewatch.com/index.php/665-plp-vs-epa-an-update>
- <sup>15</sup> See: Pebble Limited Partnership vs. Environmental Protection Agency, U.S. District Court for the District of Alaska at Anchorage, Oral Argument Requested Pursuant to Local Rule 7.2, Case No. 3:14-cv-00171-HRH, September 25, 2015.
- <sup>16</sup> See: “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,” Secretary William S. Cohen, The Cohen Group, DLA Piper LLP, October 6, 2015, (Hereafter referred to as **The Cohen Report**), accessed here: <http://files.cohengroup.net/Final/Final-Report-with-Appendices-compressed.pdf>
- <sup>17</sup> Alaska State Legislature, Senate Resources Standing Committee, “Opportunities for Resource Development to Address Economic Challenges in Rural Alaska,” Meeting Minutes, March 31, 2014, accessed here: <http://www.legis.state.ak.us/pdf/28/M/SRES2014-03-311532.PDF>
- <sup>18</sup> “EPA’s Bristol Bay Watershed Assessment: Obtainable Records Show EPA Followed Required Procedures Without Bias or Predetermination, but a Possible Misuse of Position Noted,” Report No. 16-P-0082, Office of Inspector General (OIG), U.S. Environmental Protection Agency (EPA), January 13, 2016, (Hereafter referred to as **EPA OIG Bristol Bay Report**) accessed here: <https://www.epa.gov/sites/production/files/2016-01/documents/20160113-16-p-0082.pdf>
- <sup>19</sup> Deloitte audit. Northern Dynasty Minerals Ltd., Consolidated Financial Statements for the years ended December 31, 2015, 2014 and 2013, Deloitte LLP, Chartered Professional Accountants, March 29, 2016, (Hereafter referred to as **Deloitte Audit of Northern Dynasty**) accessed here: [www.sec.gov/Archives/edgar/data/1164771/000106299316008770/exhibit99-1.htm](http://www.sec.gov/Archives/edgar/data/1164771/000106299316008770/exhibit99-1.htm)

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<sup>20</sup> Data compiled from United States Senate Lobbying Disclosure Act Database, accessed here:

<http://soprweb.senate.gov/>

<sup>21</sup> Deloitte Audit of Northern Dynasty

<sup>22</sup> See, “Northern Dynasty ramps up financing efforts to pay for litigation, EPA investigations,” PEBBLEWATCH, April 1, 2016, accessed here: <http://www.pebblewatch.com/index.php/666-northern-dynasty-ramps-up-financing-efforts-to-pay-for-litigation-epa-investigations> and “Executive Profile, Thomas Cleveland Collier, Chief Executive Officer of Pebble Limited Partnership, Northern Dynasty Minerals Ltd.,” accessed here:

[www.bloomberg.com/research/stocks/private/person.asp?personId=114392669&privcapId=875165](http://www.bloomberg.com/research/stocks/private/person.asp?personId=114392669&privcapId=875165)

<sup>23</sup> Deloitte Audit of Northern Dynasty, March 29, 2016, accessed here:

[www.sec.gov/Archives/edgar/data/1164771/000106299316008770/exhibit99-1.htm](http://www.sec.gov/Archives/edgar/data/1164771/000106299316008770/exhibit99-1.htm)

<sup>24</sup> Ibid.

<sup>25</sup> Cecilia Jamasmie, “Anglo American abandons Alaskan copper project Pebble,” *MINING.com*, September 16, 2013, accessed here: <http://www.mining.com/anglo-american-abandons-alaskan-copper-project-pebble-75602/>

<sup>26</sup> “Rio Tinto gifts stake in Northern Dynasty Minerals to Alaskan charities,” Rio Tinto Press Release, April 7, 2014, Accessed here: [http://www.riotinto.com/media/media-releases-237\\_10183.aspx](http://www.riotinto.com/media/media-releases-237_10183.aspx)

<sup>27</sup> Craig Medred, “Pebble stakeholder’s CEO: ‘No interest’ in open-pit design,” Alaska Dispatch, April 20, 2012, accessed here: [www.adn.com/article/pebble-stakeholders-ceo-no-interest-open-pit-design](http://www.adn.com/article/pebble-stakeholders-ceo-no-interest-open-pit-design)

<sup>28</sup> “The Pebble Project: The Future of U.S. Mining and Metals,” Northern Dynasty Minerals Ltd., March 2016, available here: [http://www.northerndynastyminerals.com/i/pdf/ndm/NDM\\_DA\\_Corp\\_Mar2016.pdf](http://www.northerndynastyminerals.com/i/pdf/ndm/NDM_DA_Corp_Mar2016.pdf)

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<sup>29</sup> See: Edward W. Lempinen, “Proposed Pebble Mine Has Alaskan Community Focused on Critical Science and Policy Issues,” American Association for the Advancement of Science (AAAS), October 18, 2011, accessed here:

[http://www.aaas.org/news/releases/2011/1018arctic\\_div\\_pebble.shtml](http://www.aaas.org/news/releases/2011/1018arctic_div_pebble.shtml) and “The Economic and Employment Contributions of a Conceptual Pebble Mine to the Alaska and United States Economies,” Prepared for: The Pebble Limited Partnership, Submitted by: IHS, Englewood, Colorado, May 2013, accessed here: <http://corporate.pebblepartnership.com/files/documents/study.pdf>

<sup>30</sup> Photo accessed here: <https://sites.google.com/site/thepebblemine/classroom-pictures>

<sup>31</sup> “The Economic Importance of the Bristol Bay Salmon Industry,” Bristol Bay Regional Seafood Development Association, April 2013, accessed here: [http://www.iser.uaa.alaska.edu/Publications/2013\\_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf](http://www.iser.uaa.alaska.edu/Publications/2013_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf)

<sup>32</sup> See, Gunnar Knapp, Mouhcine Guettabi and Scott Goldsmith, “The Economic Importance of the Bristol Bay Salmon Industry,” Institute of Social and Economic Research, University of Alaska at Anchorage, April 2013, accessed here: [http://www.iser.uaa.alaska.edu/Publications/2013\\_04-TheEconomicImportanceOfTheBristolBaySalmonIndustrySummary.pdf](http://www.iser.uaa.alaska.edu/Publications/2013_04-TheEconomicImportanceOfTheBristolBaySalmonIndustrySummary.pdf)

And “Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act, Pebble Deposit Areas, Southwest Alaska, U.S. Environmental Protection Agency, July 2014, (Hereafter referred to as “EPA’s Proposed 404(c) Determination.”) accessed here:

<https://www.epa.gov/bristolbay/proposed-determination-pursuant-section-404c-clean-water-act-pebble-deposit-area>

<sup>33</sup> The six tribes that originally petitioned the EPA to use its 404(c) authority regarding the proposed Pebble Mine in Bristol Bay were: Nondalton Tribal Council, New Stuyahok Traditional Council, Levelock Village Council, Ekwok Village Council, Curyung Tribal Council, and the Koliganek Village Council. The petition written by Geoffrey Parker, the Alaska attorney representing the six tribes can be found here: <http://www.ourbristolbay.com/pdf/tribes-letter-to-epa-on-404-c.pdf>

<sup>34</sup> A wide range of organizations have opposed the development of the Pebble Mine and have supported the EPA’s use of the 404(c) process in Bristol Bay, including the Bristol Bay Native Corporation, Bristol Bay Regional Seafood Development Association, Alaska General Seafoods, North Pacific Seafoods, Inc., Commercial Fishermen of America, Wegmans, L.L. Bean, Woolrich, Tiffany & Co., Zales and Fortunoff, among others. For a more complete list see: <http://www.ourbristolbay.com/EPA-404c.html>.

<sup>35</sup> The first draft of the Bristol Bay Watershed Assessment was released in May 2012, the second revised draft was released in April 2013 and the final BBWA report was released in January 2014. Links to these reports are available here: <https://www.epa.gov/bristolbay/about-epas-bristol-bay-assessment>

<sup>36</sup> “Clean Water Act Section 404(c) ‘Veto Authority,’” EPA, March 2016, accessed here: <https://www.epa.gov/sites/production/files/2016-03/documents/404c.pdf>

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- <sup>37</sup> Pebble Limited Partnership and Alaska Peninsula Corporation (Plaintiffs) vs. U.S. Environmental Protection Agency, ORDER, No.3:14-cv-0097-HRH, U.S. District Judge H. Russel Holland, September 26, 2014, accessed here: <http://trustees.org/wp-content/uploads/2014/09/2014-09-26-257-Order-granting-motion-to-dismiss.pdf>
- <sup>38</sup> Josh Edge, “Judge Temporarily Halts EPA’s 404(c) Process on Pebble Mine,” *Alaska Public Radio Network*, November 24, 2014, accessed here: [www.alaskapublic.org/2014/11/24/judge-temporarily-halts-epas-404c-process-on-pebble-mine](http://www.alaskapublic.org/2014/11/24/judge-temporarily-halts-epas-404c-process-on-pebble-mine)
- <sup>39</sup> 231.1 Purpose and scope, Title 40, “Protection of Environment,” Chapter I, Subchapter H, PART 231-Section 404(c) PROCEDURES, 231.1 Purpose and scope,” accessed here: [https://ecfr.io/Title-40/se40.25.231\\_11](https://ecfr.io/Title-40/se40.25.231_11)
- <sup>40</sup> E-mail to Democratic Staff of the House Committee on Science, Space & Technology from the U.S. Army Corps of Engineers, Thursday, April 07, 2016.
- <sup>41</sup> “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska,” EPA 910-R-14-001ES, Environmental Protection Agency (EPA), January 2014, accessed here: [https://www.epa.gov/sites/production/files/2015-05/documents/bristol\\_bay\\_assessment\\_final\\_2014\\_es.pdf](https://www.epa.gov/sites/production/files/2015-05/documents/bristol_bay_assessment_final_2014_es.pdf)
- <sup>42</sup> Ibid.
- <sup>43</sup> “Recommended 404(c) Determinations for Three East Everglades Properties Owned by Henry Rem Estate, Senior Corporation and Marion Becker, et al.,” Acting Regional Administrator Lee A. DeHihns III, U.S. Environmental Protection Agency, Region IV, February 9, 1988, available here: <https://www.epa.gov/sites/production/files/2015-05/documents/remrd.pdf>
- <sup>44</sup> “Final Determination of the U.S. Environmental Protection Agency’s Assistant Administrator for Water, Concerning Three Wetland Properties,” Acting Assistant Administrator for Water, Rebecca W. Hanmer, U.S. Environmental Protection Agency, June 15, 1988, available here: [www.epa.gov/sites/production/files/2015-05/documents/remfd.pdf](http://www.epa.gov/sites/production/files/2015-05/documents/remfd.pdf)
- <sup>45</sup> Testimony of Thomas C. Collier, Chief Executive Officer (CEO), Pebble Limited Partnership, before hearing on “Examining EPA’s Predetermined Efforts to Block the Pebble Mine,” Committee on Science, Space & Technology, November 5, 2015, accessed here: <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY-WState-TCollier-20151105.pdf>
- <sup>46</sup> “Everglades Deserve Better From EPA,” *Sun Sentinel*, November 23, 1987, available here: [http://articles.sun-sentinel.com/1987-11-23/news/8702070248\\_1\\_east-everglades-everglades-national-park-east-side](http://articles.sun-sentinel.com/1987-11-23/news/8702070248_1_east-everglades-everglades-national-park-east-side)
- <sup>47</sup> “Highlights of Section 404 Federal Regulatory Program to Protect Waters of the United States,” Office of Wetlands Protection, U.S. Environmental Protection Agency (EPA), October 1989, available here: <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=200053QX.TXT>
- <sup>48</sup> Testimony of Thomas C. Collier, Chief Executive Officer (CEO), Pebble Limited Partnership, before hearing on “Examining EPA’s Predetermined Efforts to Block the Pebble Mine,” Committee on Science, Space & Technology, November 5, 2015, accessed here: <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-114-SY-WState-TCollier-20151105.pdf>
- <sup>49</sup> EPA’s Proposed 404(c) Determination, July 2014.
- <sup>50</sup> “Pebble’s Promise,” Pebble Limited Partnership, accessed here: [http://corporate.pebblepartnership.com/files/documents/Pebble\\_promise.pdf](http://corporate.pebblepartnership.com/files/documents/Pebble_promise.pdf)
- <sup>51</sup> “The Pebble Promise,” The Pebble Partnership, available here: [http://corporate.pebblepartnership.com/files/documents/Pebble\\_promise.pdf](http://corporate.pebblepartnership.com/files/documents/Pebble_promise.pdf)
- <sup>52</sup> <https://www.epa.gov/sites/production/files/2016-01/documents/2014-tri-na-exec-summary.pdf>
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