

## **EXPOSING THE EPA**

### **Documents reveal a lawless attempt to block an Alaska mine project.**

A basic precept of American democracy is that petitioners before their government receive a full and fair hearing. The Obama Environmental Protection Agency is in urgent need of that remedial civics lesson.

The EPA inspector general's office last week announced it will investigate the agency's February decision to commence a pre-emptive veto of the Pebble Mine project, a jobs-rich proposal to develop America's largest U.S. copper and gold mine in southwest Alaska. EPA Administrator Gina McCarthy says her decision to strike down Pebble *before* it received a hearing shouldn't worry other developers because Pebble is a "unique" threat. She needs to say this because the truth might chill billions of dollars in investment in the U.S.

The IG is looking into internal EPA documents that we've also obtained that show agency officials were maneuvering to kill Pebble more than five years ago, and that EPA's main concern was building a façade of science and procedure to justify it.

This story goes back to the debate over the 1972 Clean Water Act, which gave the Army Corps of Engineers the power to evaluate projects and issue permits. Congress gave EPA only a secondary role of reviewing and potentially vetoing projects (with cause) under Section 404c. EPA has long chafed at this secondary role, which has made it harder to nix projects approved by the Corps.

EPA's decision to initiate a veto process before Pebble had even received an Army Corps review is a disturbing first—and a flouting of the law. The internal documents refute EPA's repeated claims that it began this process only in "response to petitions" from local Native American tribes in May 2010, and that peer-reviewed science drove its veto.

Emails show that EPA biologist Phillip North, based in Alaska and working on Pebble, was in 2008 advocating that his agency bring down the 404c hammer. "The 404 program has a major role" with Pebble, wrote Mr. North to Patricia McGrath, EPA's regional mining coordinator for Alaska, in August 2008. By August 2009, Mr. North was pushing for EPA's annual mining retreat to include a discussion about vetoing the project: "As you know, I feel that [Pebble] merit[s] consideration of a 404C veto." The retreat included that discussion, though Pebble's developer hadn't yet applied for a permit.

By early 2010 EPA staff made a Power Point presentation for former EPA Administrator Lisa Jackson about Pebble that lists a "pre-emptive" veto under "future options." Emails also show that Mr. North was actively engaging outside critics of Pebble. When the Bristol Bay Native Corp. filed a veto request in August 2010, Mr. North responded in an email to the group's lawyer: "Hi Peter, We have been discussing 404c quite a bit internally at all levels of EPA. The letter will certainly stoke the fire."

The EPA veto decision looks to have been made by mid-2010. A Fish and Wildlife briefing paper dated that summer reads: "The [EPA] is seeking [Fish and Wildlife] support as they initiate a formal process to issue a determination that [the wetlands] within the potential pebble Mine action are unsuitable for the placement of fill material. This action would be conducted under the authority of Section 404(C) of the Clean Water Act."

A September 2010 email from U.S. Fish and Wildlife biologist Phil Brna to colleagues—under the subject heading "Pebble and 404c"—reads: "I spoke with Phil North. . . . He believes EPA leaders have decided to proceed and they are just deciding when." All this happened before the EPA had done any scientific review.

There's also an internal EPA document from September 2010 laying out the "pros" and "cons" of the EPA vetoing in the "traditional" fashion, rather than pre-emptively. Listed under the many "pros" of ignoring the law is that a pre-emptive Pebble veto can serve as a "model of proactive watershed planning." So much for Ms. McCarthy's claim that this veto is a one-timer.

Only after all of this did EPA concoct its sham watershed study that provided the scientific cover for its veto. That study invented a hypothetical Pebble mine, then assumed outdated mining practices to predict environmental harm. The study included contributions from obvious opponents of the mine, including Mr. North. The EPA's own peer-review experts ridiculed the study; one pronounced its key sections "pure hogwash."

These documents depict an agency willing to do anything necessary to gut the permitting process that the Clean Water Act guaranteed for developers. The Pebble veto model sets up EPA as the sole regulator of watersheds across the country, trumping the authority of the Army Corps and state regulators. The EPA's actions on Pebble make clear why Congress was right not to trust it with the power it has now seized.

EPA has been trying to keep this record hidden. Pebble Partnership received some of these documents through a freedom of information request, but CEO Tom Collier confirms to us that the EPA didn't turn over others that we are reporting here. EPA Inspector General Arthur Elkins has clearly decided that there is enough to warrant an investigation, and that's a start. This is merely the latest in the EPA's growing record of dishonesty aimed at denying U.S. companies their rights under the law.