

Congress of the United States
House of Representatives
Washington, DC 20515-0301

May 3, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code: 1101A
Washington, D.C. 20460

Dear Administrator Pruitt,

We write to express our concerns with regards to the EPA's decision not to scrap the Obama Administration's preemptive veto, also known as the Proposed Determination, for the prospective Pebble Limited Partnership mining project in Bristol Bay, Alaska. It is our view that the process has deviated into improper and irregular territory for having engaged in a repeated, economically damaging back-and-forth as to whether the EPA would exercise a preemptive veto of the project under Section 404(c) of the Clean Water Act. This has already set a harmful precedent which has the potential to undercut the standard National Environmental Policy Act (NEPA) review processes for years to come.

In a future administration, this dangerous precedent could be utilized as a tyrannical tool to restrict entire territories of the United States based on unilateral zoning edicts of the EPA on the basis of "unacceptable adverse" environmental effects – and decided under a paucity of evidence or before a project has even been proposed. It therefore poses a threat to the integrity of our entire project review system while casting the spectre of a double standard over this particular project.

We the undersigned understand and value the dual role EPA has to play in exercising its Congressionally-mandated task of ensuring environmental and ecological integrity right alongside its obligation to ensure strict due process in its regulatory actions. We would also not miss the chance to recognize that you, Administrator Pruitt, are a longtime friend of responsible economic and resource development. In this case, you have taken numerous steps to facilitate a holistic fact-finding process and right wrongs of the past administration which will allow Pebble ample opportunities to propose and defend a mining plan that is consistent with environmental protection of Bristol Bay. That is a world of improvement over the tenure of those who served at EPA prior to you.

It is because we recognize the above points that we raise the below concerns. The EPA's January 26, 2018 decision not to overturn what was widely considered a preemptive veto of the Pebble Limited Partnership mining project by the Obama Administration has sowed tumult for interested companies like Pebble and Northern Dynasty Minerals, for capital markets and for multiple mining stocks and indexes. Northern Dynasty Minerals' stock dropped more than 40% in the five trading days following EPA's announcement, and there is concern that the industry partnership comprising the potential project could fall apart due to this regulatory uncertainty, before a project proposal has even been fully analyzed.

This is surely inconsistent with the intent of our project review processes enshrined in law, and the due process that is accorded to participants thereof. Our system is designed to facilitate the proposal of credible projects and sift the acceptable from the unacceptably adverse. What we have seen in this instance, however, is unpredictable regulatory action imperiling private entities and whole industries before a project has been sufficiently reviewed, a mere few weeks after an actual mine plan was finally allowed to be proposed.

If EPA's actions in this regard were necessary in order for it to execute its statutory mandate of environmental protection, then they would likely represent the proper steps having been taken. The public interest comes first as the mission of our federal agencies, and as Members of Congress we absolutely support that mission. However, it is well-known that the environmental protection of Bristol Bay is not dependent on the withdrawal of the Proposed Determination being suspended. Those conditions are independent of one another because the Pebble Limited Partnership mining project has yet to undergo the rigors of the Environmental Impact Statement (EIS) which requires the analysis of in-depth plans as well as intensive ecological, chemical and geological study.

As such, we respectfully question your premise when you stated during the announcement of the suspension, "Today's action allows EPA to get the information needed to determine what specific impacts the proposed mining project will have on those critical resources." Such an outcome is secured regardless of the suspension and as a consequence of the EIS, insofar as its scoping will encompass concerns surrounding the Bristol Bay Watershed. *That the necessary safeguards are already in place makes the damage that has been done to the interested parties all the more regrettable.*

The effect of suspending this withdrawal of the Proposed Determination is to retain an arbitrary and unnecessary "failsafe" against the Pebble Mine project. But if we believe our NEPA project review process is sufficiently fair and robust so as to constitute federal policy towards environmental review and mineral development, we should abstain from abruptly interjecting options which diverge from it in order to respond to a perceived threat. That law exists to analyze and deal with such a threat on its own, in a fair and comprehensive manner. In the case of its general failure as a protective statute, the proper remedy is legislative rather than agency action.

To our knowledge, there has been no such general failure of NEPA to establish scoping and criteria that ensures environmental integrity. As such, in taking this dramatic and rare step, the burden is on EPA to demonstrate that its mandate of environmental stewardship is substantially unlikely to be fulfilled following the completion of an EIS, such that queuing a disruptive preemptive veto at this stage is a compelling necessity for the public good. With a project only having just been proposed and not fully analyzed, this is simply not possible at this juncture under even the best scientific scrutiny.

The EPA's decision is also at odds with the Administration's stated policy on mineral development. Interior Secretary Ryan Zinke, in conjunction with the President, has made mineral development a top policy priority. In December 2017, the President signed an Executive Order promoting natural resource development to reduce foreign dependence on strategic minerals, including copper, by "increase[ing] in private-sector domestic exploration" and "streamlining leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals." Overwhelmingly, the Administration's stance towards mining projects and minerals has been to treat them as issues of economic and national security, because they are.

As such, we have two requests. Firstly, we ask that the Proposed Determination be withdrawn, as was originally planned. Going forward with the withdrawal of the preemptive veto makes a return to the due process track and goes towards repairing the harm caused to interested parties by process uncertainty to date. It retains the protections of a full review process without setting forth a terrible precedent as well as further damaging entities and industry.

Secondly, we ask that the EPA act in accordance with the outcomes of the normal NEPA process, which requires rigorous and scientific environmental review, before deciding whether or not to let the Pebble Limited Partnership mining project proceed.

We are honored to have the support of the following organizations and individuals that agree with our position and have endorsed this letter: American Exploration & Mining Association, National Mining Association, Women's Mining Coalition, Competitive Enterprise Institute, Americans for Limited Government, Arizona Mining Association, Alaska Miners Association, American Resources Policy Network, Arizona Pork Council, Arizona Rock Products Association, AZ BASS Nation, Bass Federation-AZ, Hibbing Area Chamber of Commerce, Hudbay Rosemont Copper Project, Idaho Mining Association, MiningMinnesota, New Mexico Cattle Growers' Association, New Mexico Wool Growers Inc., Southern Arizona Business Coalition, SRT Outdoors, Sulphur Springs Valley Electric Cooperative, Utah Mining Association, Yavapai Cattle Growers Association, Arizona District 6 Senator Sylvia Allen, Apache County Supervisor Doyel Shamley and Yavapai County Supervisors Thomas Thurman and Rowle Simmons.

Thank you for your thoughtful consideration of our comments. We look forward to your timely response.

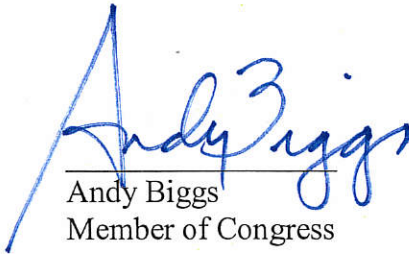
Sincerely,



Paul A. Gosar, D.D.S.
Member of Congress



Doug Lamborn
Member of Congress



Andy Biggs
Member of Congress



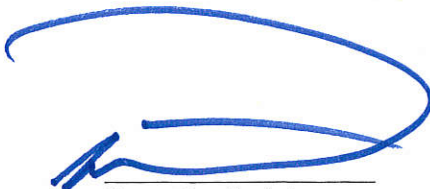
Rob Bishop
Member of Congress



Lamar Smith
Member of Congress



Bob Gibbs
Member of Congress




Scott DesJarlais
Member of Congress



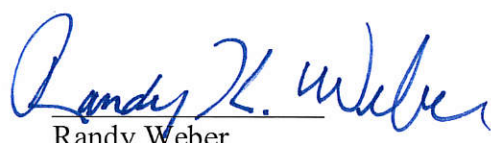
David B. McKinley, P.E.
Member of Congress



Jeff Duncan
Member of Congress



John Duncan
Member of Congress




Randy Weber
Member of Congress



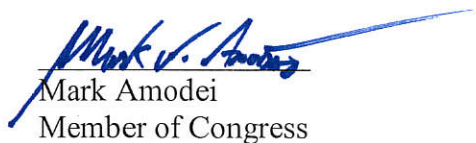
Alex Mooney
Member of Congress



Scott Perry
Member of Congress



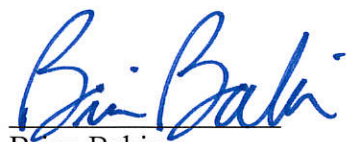
Ted S. Yoho, D.V.M.
Member of Congress



Mark Amodei
Member of Congress



Doug LaMalfa
Member of Congress

A handwritten signature in blue ink that reads "Brian Babin".

Brian Babin
Member of Congress

A handwritten signature in blue ink that reads "Roger W. Marshall M.D.". The signature is written in a cursive style.

Roger Marshall
Member of Congress

Cc: President of the United States Donald J. Trump

Secretary of the Department of the Interior Ryan Zinke