

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ALASKA

3 ----- X

4 PEBBLE LIMITED PARTNERSHIP, :

5 Plaintiff, :

6 v. : Civil Action No.

7 ENVIRONMENTAL PROTECTION : 3:14-cv-00171-HRH

8 AGENCY, et al., :

9 Defendants. :

10 ----- X

11 Washington, D.C.

12 Wednesday, March 30, 2016

13 Videotaped deposition of PHILLIP A. NORTH,

14 a witness herein, called for examination by counsel

15 for Defendants in the above-entitled matter, pursuant

16 to notice, the witness being duly sworn by MARY GRACE

17 CASTLEBERRY, a Notary Public in and for the District

18 of Columbia, taken at the offices of Steptoe, 1330

19 Connecticut Avenue, N.W., Washington, D.C., at

20 9:46 a.m., Wednesday, March 30, 2016, and the

21 proceedings being taken down by Stenotype by MARY

22 GRACE CASTLEBERRY, RPR, and transcribed under her

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1 direction.

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1 APPEARANCES:

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3 On behalf of the Plaintiff:

4 ROGER W. YOERGES, ESQ.

5 PATRICIA PALACIOS, ESQ.

6 BRIGIDA BENITEZ, ESQ.

7 CHRISTOPHER RE, ESQ.

8 TOM BARRY, ESQ. (Via Live Streaming)

9 MARK MURPHY, ESQ. (Via Live Streaming)
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18 On behalf of Defendant:
19 STUART ROBINSON, ESQ.
20 ROBIN THURSTON, ESQ.
21 BRAD P. ROSENBERG, ESQ.
22 U.S. Department of Justice

1 20 Massachusetts Avenue, N.W.
2 Washington, D.C. 20530

3 (202) 616-8188

4 and

5 HEIDI NALVEN, ESQ.

6 U.S. Environmental Protection Agency

7 1200 Pennsylvania Avenue, N.W.

8 Washington, D.C. 20460

9 (202) 564-3189

10

11 On behalf of the deponent, Philip A. North:

12 BILLIE PIRNER GARDE, ESQ.

13 JOHN M. CLIFFORD, ESQ. (Morning Session)

14 Clifford & Garde

15 1036-C East Green Tree Court

16 Appleton, Wisconsin 54915

17 (920) 730-5538

18

19 ALSO PRESENT:

20 JASON AQUI, Videographer

21 MAGDALENA WIELKOPOLSKA, Legal Assistant

22 (Via Live Streaming)

- 1 SHAWN MCGEE (Via Live Streaming)
- 2 BRUCE JENKINS (Via Live Streaming)
- 3 MIKE HEATWOLE (Via Live Streaming)
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1 C O N T E N T S

2 WITNESS EXAMINATION BY COUNSEL FOR

3 PHILLIP A. NORTH ^ PLAINTIFF ^ DEFENDANT

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6 Afternoon Session - Page ^

7

8 E X H I B I T S

9 SEAL EXHIBIT NO. PAGE NO.

10 1 - July 7, 2010 email from Phil and Amanda to Phil

11 North

12 2 - October 15, 2014 email from Geoffrey Parker

13 3 - A Joint Letter from Six Federally-Recognized

14 Tribes

- 15 4 - A Joint Letter from Six Federally-Recognized
- 16 Tribes
- 17 5 - June 10, 2010 email from Jeff Parker to Phil
- 18 North
- 19 6 - September 14, 2010 email to G Parker from Phil
- 20 North
- 21 7 - September 23, 2010 email from Phil Brna to
- 22 Frances Mann

- 1 8 - December 13, 2011 email from Phil North to
- 2 Barbara Butler
- 3 9 - February 7, 2011 email from David Evans to
- 4 Palmer Hough
- 5 10 - July 1, 2010 email from Patricia McGrath to Phil
- 6 North
- 7 11 - May 11, 2010 email from Michael Szerlog to Phil
- 8 North

- 9 12 - June 29, 2010 email from Phil North to Michael
- 10 Szerlog
- 11 13 - 404(c) Substantive Option: Geographic Area by
- 12 Type of Activity; June 29, 2010 email from Jeff
- 13 Parker to Phil North
- 14 14 - May 3, 2011 email from Judy Smith to Bill
- 15 Dunbar, et al
- 16 15 - Bristol Bay Watershed Assessment Technical
- 17 Subgroups, July 14, 2011
- 18 16 - March 1, 2011 email from Phil North to Thomas P.
- 19 Quinn
- 20 17 - August 31, 2011 email to Michael Wiedmer from
- 21 Phil North
- 22 18 - September 26, 2011 email to Phil North from

- 1 Chris Frissell
- 2 19 - February 9, 2011 email from Palmer Hough to

3 David Evans

4 20 - November 4, 2010 email from Shoren Brown to

5 Julia McCarthy

6 21 - December 21, 2010 email from Phil North to Gwen

7 Kittel

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1 PROCEEDINGS

2 THE VIDEOGRAPHER: We are now on the
3 record in the matter of Pebble Limited Partnership v
4 Environmental Protection Agency and Gina McCarthy.
5 Today's date is March 30, 2016. The time is 9:46.
6 This is the video recorded deposition of Phillip
7 North being taken at 1330 Connecticut Avenue,
8 Northwest, Washington, D.C. 20036. I am the camera
9 operator. My name is Jason Aqui in association with
10 Alderson Reporting located at 1155 Connecticut
11 Avenue, Northwest, Washington, D.C. The court
12 reporter is Mary Grace Castleberry also in
13 association with Alderson Reporting. Will all
14 attorneys please identify themselves and the parties
15 they represent beginning with the party noticing this
16 proceeding.

17 MR. YOERGES: I'm Roger Yoerges with
18 Steptoe & Johnson representing the plaintiff, Pebble
19 Limited Partnership.

20 MS. PALACIOS: Patricia Palacios with

21 Steptoe & Johnson also representing the plaintiff,
22 Pebble Limited Partnership.

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1 MS. BENITEZ: Brigida Benitez of Steptoe &
2 Johnson also representing the plaintiff.

3 MR. RE: Christopher Re also with Steptoe
4 & Johnson also representing the plaintiff.

5 MS. PALOMAKI: Ashley Palomaki with the
6 Environmental Protection Agency representing the
7 Environmental Protection Agency.

8 MS. NALVEN: Heide Nalven, EPA,
9 representing EPA.

10 MS. THURSTON: Robin Thurston, Department
11 of Justice, civil division, federal programs branch,
12 representing defendants.

13 MR. ROSENBERG: Brad P. Rosenberg, U.S.
14 Department of Justice, civil division, federal

15 programs branch, representing defendants, EPA, and
16 its administrator, who has been sued in her official
17 capacity.

18 MR. CLIFFORD: John Clifford, Clifford and
19 Garde, representing the deponent.

20 MS. GARDE: Billie Garde, Clifford &
21 Garde, representing Mr. North.

22 THE VIDEOGRAPHER: Will the court reporter

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1 please administer the oath.

2 Whereupon,

3 PHILLIP A. NORTH,

4 was called as a witness by counsel for PARTY, and

5 having been duly sworn by the Notary Public, was

6 examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR

8 ^ PLAINTIFF ^ PLAINTIFFS ^ DEFENDANT ^ DEFENDANTS

9 BY MR. YOERGES:

10 Q. Good morning, Mr. North.

11 A. Good morning.

12 Q. My name is Roger Yoerges and I represent

13 Pebble Limited Partnership in a lawsuit that my

14 client has brought against the Environmental

15 Protection Agency arising out of events that took

16 place and are still taking place up in Alaska

17 involving the Pebble Mine. Are you generally

18 familiar with the lawsuit?

19 A. Generally, yes.

20 Q. Have you actually read the amended

21 complaint or the first complaint filed in the case?

22 A. I may have. I actually don't recall for

1 sure.

2 Q. Have you had your deposition taken before?

3 A. Yes, I have.

4 Q. On how many occasion?

5 A. One.

6 Q. On one occasion?

7 A. (Witness nodding.)

8 Q. Was it in a civil litigation or a criminal

9 litigation?

10 A. It was -- I don't remember if it was civil

11 or criminal. Could have been either one.

12 Q. Were you a party to that case or were you

13 a witness?

14 A. I was a technical expert.

15 Q. So you were called by one of the parties

16 to be an expert in the case?

17 A. Yes.

18 Q. Were you paid for that?

19 A. I was an employee of the government.

20 Q. I understand.

21 A. Doing it in my capacity as an employee.

22 Q. When was that?

1 A. I believe '91, '2, early '90s.

2 Q. Do you remember the name of the case?

3 A. Yes. It was the Copper River Highway. It
4 was the Department of Justice versus the -- or, yeah,
5 Department of Justice versus the state of Alaska on
6 the Copper River Highway. I don't know if -- that's
7 not the name but --

8 Q. Was it the Department of Justice
9 representing EPA, your employer at the time?

10 A. No, the Corps of Engineers.

11 Q. Well, let me just quickly go through my
12 ground rules for a deposition. I'm sure your counsel
13 has had a discussion along these lines with you but
14 today I'm going to be asking you a series of
15 questions to try to seek discovery, to try to learn
16 what you know about the lawsuit that we filed on
17 behalf of our client and I'll be asking you questions
18 and I'll be showing you documents and asking you
19 questions about them. A deposition is a little
20 different from normal conversation where people

21 sometimes will start speaking before the other person

22 finishes because you're anticipating what they're

14

1 going to say. It's a little more formal than that

2 and as a result, what I would ask you is let me

3 finish my question before you provide your answer and

4 I'll do my best to allow you to finish your answer

5 before I ask the next question. There is also

6 another sort of unusual thing that happens in a

7 deposition and that is sometimes after I ask a

8 question, somebody in the room is going to object to

9 it, which doesn't normally happen when you have a

10 conversation, and so Ms. Garde, your lawyer, may

11 object to it, or Mr. Rosenberg, who is representing

12 the Department -- who is here from the Department of

13 Justice representing the EPA, may also have an

14 objection. Let them state their objection for the

15 record. It's something important for the Court to be
16 able to see. But unless one of them tells you not to
17 testify in response to my question, you can go ahead
18 and give your answer after they object. And I may
19 just prod you a little bit and say, "You may answer"
20 or something like that but the objections are being
21 made for the record for legal purposes that are
22 really of no concern of yours. They're a concern of

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1 the lawyers and the Court.

2 It's important during a deposition -- as
3 you can see to your right here, there is a court
4 reporter who is taking down everything that we're
5 saying. You've had your deposition taken before so
6 you're probably familiar with that. And we're also
7 having the deposition videotaped and that's what the
8 camera is down there. So the official record of the

9 deposition, though, is being taken by this court
10 reporter here and you're under oath right now and all
11 of your answers are to be truthful to the best of
12 your knowledge. For this court reporter to be able
13 to make an accurate record, it's important that your
14 answers be audible and that they be verbal so if, in
15 a normal conversation, you might nod your head or
16 shake your head to indicate yes or no, in a
17 deposition, you have to say yes or no because she
18 can't take down nods of the head. She can't take
19 down things like uh-huhs and those sorts of less than
20 verbal sounds. So I'll try to remind you if it turns
21 out that you don't give an audible answer and a
22 verbal answer but try to do your best to keep that in

16

1 mind as you're responding to my questions, okay? Do
2 you understand everything I've said so far.

3 A. Yes.

4 Q. Okay. Let's just stop the deposition and
5 go off the record for a second?

6 THE VIDEOGRAPHER: Off the record at 9:53.

7 (Discussion off the record.)

8 THE VIDEOGRAPHER: On the record at 9:54.

9 BY MR. YOERGES:

10 Q. I'm sorry about that interruption. Just
11 to put on the record, we are attempting to live
12 stream this deposition to another conference room
13 here in the office where I've got people on the
14 Steptoe & Johnson team who are interested in seeing
15 the deposition, camped out with popcorn and soda
16 watching it, but they may not be able to hear it
17 right now based on the technical glitches but I want
18 to proceed nevertheless.

19 MS. GARDE: Could we identify who those
20 people are?

21 MR. YOERGES: I could give you a list of
22 those people. I'm not sure who is actually there.

1 MS. GARDE: All right.

2 MR. YOERGES: But I'll find it who it is

3 during a break.

4 BY MR. YOERGES:

5 Q. Mr. North, I received an email from

6 Mr. Rosenberg who represents EPA indicating that he

7 had met with you yesterday and with your counsel,

8 Ms. Garde, but I just want to find out from you, did

9 you meet yet with anyone to prepare for this

10 deposition?

11 A. Yes.

12 Q. And who was that?

13 A. With my counsel as well as with DOJ and

14 EPA attorneys.

15 Q. And was there anyone in the room other

16 than you and the attorneys?

17 A. No.

18 Q. And where did that meeting take place?

19 A. At Billie and John's office.

20 Q. And how long did you meet?

21 A. From about -- I believe it was about 9:30
22 to 3:00, something like that.

18

1 Q. Did you take a break for lunch?

2 A. We took a few breaks during the time so
3 yes.

4 Q. Did anybody show you any documents during
5 that meeting?

6 A. No.

7 Q. Did anybody from the DOJ discuss with you
8 what to do in the event that they made an objection?

9 A. Yes.

10 Q. What did they say?

11 A. To just wait, listen, listen to the
12 objection, wait until it was completed and then
13 proceed or not or whatever was appropriate.

14 Q. Did they say anything about the nature of

15 their objections, in other words, let me be more
16 specific --

17 MR. ROSENBERG: I think we're getting a
18 little bit close to work product on this. I mean,
19 what's the purpose of that question in terms of our
20 preparation of this witness?

21 MR. YOERGES: Let me ask the question. I
22 haven't asked it yet.

19

1 BY MR. YOERGES:

2 Q. Did they indicate if they raise a
3 particular objection, you should listen to that and
4 think about whether, for example -- let me give you
5 an example. Strike what I just said. If they say
6 objection, speculation, that you should then think
7 about your answer and not guess? Did they say
8 anything along those lines?

9 MR. ROSENBERG: I'm going to object to
10 that because that is part of our preparation process
11 and an answer to that question would reveal our work
12 product and our strategy regarding depositions and I
13 would instruct the witness not to answer that.

14 MR. YOERGES: How does that apply to a
15 witness who you are not defending?

16 MR. ROSENBERG: I am defending the
17 interests of the Environmental Protection Agency and
18 its administrator. You're deposing Mr. North for
19 purposes of his actions when he was an EPA employee
20 and not based on anything at least that I can
21 identify relating to his personal actions and so the
22 Department of Justice in many cases, including this

1 one, has an interest in representing EPA's interests
2 including EPA's privileges as they may apply in the

3 context of this deposition.

4 MR. YOERGES: I take your point with
5 regard to the privilege because the privilege applies
6 for the matters that took place when he was employed
7 by the Agency but for purposes of this deposition, I
8 don't think it's a good objection. I don't think
9 it's -- you're instructing him not to answer the
10 question?

11 MR. ROSENBERG: No. Can you explain to me
12 why it's not a good objection?

13 MR. YOERGES: Sure. He's not your client.
14 There is no attorney-client privilege regarding
15 what's happening in this deposition today. There is
16 no attorney-client privilege regarding what happened
17 yesterday during your prep session. There would be
18 between Ms. Garde and him but not between you and
19 him.

20 MR. ROSENBERG: I disagree. I agree there
21 is attorney-client privilege to the extent that we
22 were discussing information that was within the scope

1 of his employment and his knowledge while he was at
2 EPA and to the extent that he's being deposed in the
3 context of him being a former EPA employee.

4 MR. YOERGES: I understand that but
5 instructions about how he should behave in the
6 deposition today are entirely different, are they
7 not?

8 MR. ROSENBERG: I don't think that they're
9 different at all.

10 MR. YOERGES: Well, if you're instructing
11 him not to answer, you can do that. You're free to
12 do that.

13 MR. ROSENBERG: Okay. I'm instructing him
14 not to answer.

15 MR. YOERGES: You're instructing him not
16 to answer. Okay.

17 BY MR. YOERGES:

18 Q. So other than meeting for roughly five and
19 a half hours or so, did you do anything else to
20 prepare for the deposition?

21 A. I spoke with my attorney the day before.

22 Q. So that would have been -- today is

22

1 Wednesday. That was Monday?

2 A. Yes.

3 Q. You're appearing here in response to a

4 subpoena that was served on you in Australia?

5 A. That's correct.

6 Q. And when did you fly into the country?

7 A. A week ago today. Yes, that's correct, a

8 week ago today.

9 Q. In preparation for the deposition, did you

10 read any of the deposition transcripts for anybody

11 who has had their deposition taken already in the

12 case?

13 A. No.

14 Q. So you worked for EPA for roughly 28

15 years, is that right?

16 A. 23.

17 Q. 23 years, okay. And when you left the

18 Environmental Protection Agency, what was your

19 position at the time?

20 A. I'm not sure. Can you be more specific --

21 Q. Sure.

22 A. -- about what --

23

1 Q. Were you in a particular unit or a

2 particular division or something like that?

3 A. Yes. I was in the aquatic resources unit.

4 Q. And within the aquatic resources unit,

5 were you the chief, were you the deputy, were you a

6 scientist? What was your position?

7 A. I was a staff person.

8 Q. A staff person?

9 A. In the aquatic resources unit, yes.

10 Q. And for how long did you hold that

11 position?

12 A. For 23 years.

13 Q. So you came in as a staff person in the

14 aquatic resources unit?

15 A. Yes.

16 Q. And you stayed in that position throughout

17 the entire time?

18 A. That's correct.

19 Q. And just generally speaking, what were

20 your responsibilities as a staff person in the

21 aquatic resources unit?

22 A. I think they were fourfold. One was under

1 section 404 of the Clean Water Act, I worked with the

2 Corps of Engineers and reviewed development projects

3 where someone might submit a permit application to
4 the Corps. I was an inspector under -- for
5 enforcement of section 404. I was a grants manager
6 under the 404 program and I was also -- part of my
7 job was to engage the community and in helping to
8 implement the law more effectively at a local level.

9 Q. You mentioned section 404 of the Clean
10 Water Act. What's your understanding of what that
11 section is?

12 A. That's a big question.

13 Q. I know.

14 A. So, okay. I'm not sure how to answer it
15 briefly.

16 Q. Do you want me to break it down?

17 A. Sure.

18 Q. Okay. So you testified that you did
19 inspections, for example, as one of the four things,
20 the four groups of responsibilities you just
21 testified about.

22 A. Uh-huh.

1 Q. And you did inspections under 404. Tell
2 me a little bit more about what that entailed.

3 A. If I was aware of a violation where
4 someone had filled waters of the United States
5 without a permit, then I would follow through and do
6 inspections, I would follow through with restoration,
7 I would participate in any administrative or legal
8 action against that person.

9 Q. So I heard you say two things, Mr. North.
10 You said dredging or fill material and you said
11 something about permits so does section 404 of the
12 Clean Water Act have something to do with both of
13 those topics?

14 A. It does, yes.

15 Q. In what respect?

16 A. That if you would like to put dredge or
17 fill material into waters of the U.S., you're
18 required to get a permit from the Corps of Engineers.

19 Q. And that permit is under section 404?

20 A. Under section 404, yes.

21 Q. Understood. You also indicated that you
22 were involved in -- I'm going to use the word

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1 outreach but I don't think that's the word you used
2 but something to do with community relations. Tell
3 me a little bit more about that.

4 A. I worked with tribes and communities and
5 NGOs, basically anyone in the community to try to
6 make implementation of or protection of waters of the
7 U.S., protection of waters more effective within that
8 community and that sometimes was with tribes and it
9 might -- in one case, it involved working with a
10 tribe to develop a natural resources plan in their
11 area on their lands. In another case, it was working
12 with the city of Homer to develop a wetlands
13 regulatory program for their city. It involved
14 working with agencies to do research to better inform

15 the implementation of wetland protection programs. I
16 worked with a small -- an unincorporated community to
17 develop a watershed plan, those kinds of things.
18 Q. I probably should have asked this before.
19 You know, we feel like we all kind of know you a bit
20 from reading all the documents and being as involved
21 in this case as we have over the course of the past
22 year plus. You worked for the EPA. Where did you

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1 work?

2 A. Initially I worked in Anchorage and then I
3 worked in Soldotna.

4 Q. Soldotna, and that's also in Alaska, I
5 assume?

6 A. Yes, it is.

7 Q. And what region of EPA is that?

8 A. Region 10.

9 Q. So for your entire career, you've worked
10 in Region 10 and in Alaska, is that correct?

11 A. That's correct.

12 Q. Before you came to EPA -- I assume you
13 have a college degree?

14 A. I do.

15 Q. And what is that in?

16 A. I have a bachelor's degree in botany and a
17 masters degree in natural resource management with a
18 fisheries emphasis.

19 Q. With a fisheries emphasis?

20 A. Yes, that's correct.

21 Q. Do you have any degree in mining or --

22 A. No.

1 Q. -- in minerals or anything like that?

2 A. No, I do not.

3 Q. No degree in geology?

4 A. No.

5 Q. Have you ever worked for a mining company?

6 A. I never have.

7 Q. Have you ever consulted with a mining

8 company?

9 MR. ROSENBERG: Objection, vague.

10 BY MR. YOERGES:

11 Q. You can answer.

12 A. It depends on what you mean by consulting.

13 I've worked on mines for the entire 23 years of my

14 time at EPA.

15 Q. Okay. So if a mining company was

16 interested in developing a mine and needed to get a

17 section 404 permit, you would get involved with

18 something like that if it was within your region?

19 A. That's correct.

20 Q. And did that apply to every mine that was

21 in Region 10 or only ones that were assigned to you

22 or how did that work?

1 A. Generally if they were assigned to me.

2 Q. Were there other people in your unit who

3 had similar responsibilities who a mine might be

4 assigned to them rather than you?

5 A. Yes.

6 Q. Can you name any of those people?

7 A. If they were in Idaho, it might be Carla

8 Fromm. If they were in Washington, it might be Linda

9 Storm. If they were in Oregon, it might be -- I

10 shouldn't forget people's names, my colleagues'

11 names, but I'm drawing a blank. But the Oregon

12 person that was my equivalent. And even if it was in

13 Alaska, it might be somebody else.

14 Q. So you were not the only person in Alaska

15 who would do this kind of work?

16 A. That's correct.

17 Q. And were you actually the person -- with

18 respect to mines that you actually did work on, were

19 you actually the person who would issue the permit?

20 A. No.

21 Q. What kind of work did you do then

22 regarding a permit?

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1 A. My work was to analyze the likely effects
2 of the mine and to advise the Corps of Engineers as
3 well as my managers what those effects would likely
4 be and what mitigation might be addressed, might
5 address those effects.

6 Q. And how did you go about doing that? Did
7 you do studies? Did you go out in the field? How
8 would one go about trying to figure out what the
9 effects would be of a proposed mine?

10 A. Well, we would take the information that
11 was either presented by the company, the mining
12 company, or any other source that might be available
13 and we would essentially go out and just seek
14 whatever other information might be available that

15 would give us insight into what those effects would
16 be. And generally that would be scientific
17 information but it could be -- I mean, it might be
18 published scientific information, it might be
19 information from publications that are put out by
20 agencies or really anyone else as long as it gave us
21 insight into what the effects would be. That's
22 pretty much how I would do it.

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1 Q. You said that it might include
2 publications put out by agencies. Would it also
3 include publications put out by environmental groups
4 who generally are opposed to mining?

5 A. It could.

6 Q. And did it ever?

7 A. Yes.

8 MR. ROSENBERG: Objection, vague.

9 BY MR. YOERGES:

10 Q. But that was yes, it did?

11 I told you at the outset that the lawsuit

12 that my clients have brought against the EPA involves

13 something called the Pebble Mine or the Pebble

14 deposit. Are you familiar with the Pebble Mine or

15 the Pebble deposit.

16 A. Yes.

17 Q. What is your understanding of what the

18 Pebble Mine or deposit is?

19 A. It's a copper, gold and molybdenum deposit

20 that's at the headwaters of the Kaktuli and -- well,

21 the headwaters of the Kaktuli and Talarik Creeks,

22 Kaktuli River. I'm sorry, my memories -- I have to

1 think back a few years now to all these rooms.

2 Kaktuli River and Talarik Creek which are tributaries

3 to the Nushagak River and the Kvichak River in the
4 Bristol Bay watershed in southwestern Alaska.

5 Q. And did you work on anything to do with
6 that mine?

7 A. I did.

8 Q. You mentioned before that you worked in
9 permit applications when you were part of the aquatic
10 resource unit. Did you work on a permit application
11 that had been submitted by the mining company with
12 respect to that mine?

13 MR. ROSENBERG: Objection, misleading.

14 BY MR. YOERGES:

15 Q. You can answer.

16 A. No.

17 Q. And why is that?

18 A. Because there wasn't a permit application.

19 Q. Had there ever been a permit application
20 filed with regard to that mine that you know of?

21 A. Well, yes.

22 Q. A section 404 application?

1 A. Yes.

2 Q. When was that?

3 A. For exploration.

4 Q. For exploration?

5 A. Related to that mine.

6 Q. What about for actual development of the

7 mine?

8 A. No.

9 Q. I'm going to sort of put the mine to the

10 side for a second and ask you just a few questions

11 about emails. In this case we've asked the

12 government to produce a lot of different kinds of

13 documents associated with our claims and one category

14 of documents that we asked for were emails that EPA

15 people had either written or received regarding our

16 claims. In connection with that, we received some

17 emails that we think were from you and the email

18 address -- or they could have been to you. The email

19 address said Phil and Amanda on it. It didn't look

20 like an official EPA address. Did you have a

21 personal email address with Phil and Amanda on it at

22 the time that you were working at the EPA?

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1 A. Yes, I did.

2 Q. I take it Amanda is your spouse?

3 A. That's correct.

4 Q. And that email was through some local

5 Internet service provider in Alaska?

6 A. That's correct.

7 Q. And did you use that email to conduct any

8 EPA business?

9 MR. ROSENBERG: Objection, vague.

10 BY MR. YOERGES:

11 Q. Go ahead.

12 A. At times, yes.

13 Q. Why?

14 A. Because -- I think there were two reasons.

15 One was that because the -- my EP -- at times I
16 worked at home and my connection to my EPA account
17 was very poor. It just didn't work sometimes. And
18 so I would -- it was easier just to tell people to
19 send it to my home email and I would get it if I was
20 working at home. And then -- actually, that's the
21 reason. That's the two reasons, is because the
22 system didn't always work the way it was supposed to

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1 and because it was just convenient.

2 Q. When you used your personal email address
3 to conduct the EPA business, is there anything you
4 did with emails that you sent out or that you
5 received from anybody from the outside to that
6 personal address?

7 A. I don't understand the question.

8 Q. Was there any kind of protocol that you

9 understood that your agency required if you ever used
10 personal email addresses?

11 A. I'm not aware of any protocol.

12 Q. We've seen some indication of a protocol
13 that would require you to forward the personal email
14 exchange that you had to your official EPA address.

15 Are you familiar with that?

16 A. I -- well, I guess I'm not sure how to
17 answer that question.

18 Q. Why not?

19 A. Because there were records rules on making
20 sure that records were maintained but there weren't
21 protocols on forwarding emails that I know of.

22 Q. Okay. How often did you use your personal

1 email to conduct EPA business?

2 A. Oh, I don't know how to quantify it. Not

3 all the time but not infrequently.

4 Q. Not infrequently. So I had understood

5 what you said is one of the reasons why you used a

6 personal email address is because you worked from

7 home and you had connectivity issues with regard to

8 your EPA address?

9 A. That's correct.

10 Q. And how frequently did those connectivity

11 issues pop up with you?

12 A. Frequently.

13 Q. And do you know what the reason for that

14 was? Was it because you were in a remote location or

15 what?

16 A. I don't know. I don't know why.

17 Q. So when that happened and you had to

18 conduct business, you would just conduct it on your

19 personal account, right?

20 A. That's correct.

21 Q. And did you do that during your entire

22 time you were using email while you were working with

1 EPA?

2 MR. ROSENBERG: Objection, vague.

3 BY MR. YOERGES:

4 Q. You were there for 23 years, correct?

5 A. At EPA, yes.

6 Q. At EPA for 23 years?

7 A. Right.

8 Q. Did you have email for all 23 years?

9 A. No, I don't believe so.

10 Q. So email probably came on a little bit

11 after you --

12 A. That's right.

13 Q. -- had done your job there?

14 A. Yes, that's right.

15 Q. And during the time that you had email,

16 you had a personal email account and an EPA email

17 account, whenever you had a situation where there

18 were connectivity issues with your official email

19 account, your EPA email account, would you then use

20 your personal account?

21 A. It would depend.

22 Q. On what?

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1 A. If I needed to or not. I mean, it would
2 depend how important is it that I actually do what
3 I'm doing, do what I'm trying to get done, you know,
4 how urgent is it. I might just let it go, if it
5 didn't work.

6 Q. And you used your personal email account
7 only when you worked from home?

8 A. I believe so.

9 Q. Did you actually have an office too?

10 A. I did, yes.

11 Q. And was that located in the -- you say you
12 started out working in Anchorage?

13 A. That's correct.

14 Q. That would have been what year?

15 A. That I started working at Anchorage?

16 Q. Yes.

17 A. In 1989.

18 Q. And then you moved to -- I'm going to
19 mispronounce the name but Soldotna?

20 A. Soldotna.

21 Q. And when was that?

22 A. In 1998.

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1 Q. So nine years later. And that was all

2 prior to the time that you had anything to do with

3 Pebble Mine, correct?

4 A. That's correct.

5 Q. When was it that you first used your

6 personal email account to do EPA business?

7 A. I believe it was when I was in Soldotna.

8 Q. So sometime from '98 afterwards?

9 A. Right. Correct.

10 Q. Did you have an office in Soldotna?

11 A. I did.

12 Q. And did you use the personal email account
13 when you worked in that office as well as using it
14 from home?

15 A. No.

16 Q. And is that because you didn't have
17 connectivity issues when you were in the office but
18 you did at home?

19 A. I believe that, yes, that's correct.

20 Well, there is -- and I'm not particularly computer
21 savvy and so I wouldn't know how to connect to my
22 personal email from my home, from my office, so I

1 probably wouldn't be able to do it.

2 Q. So based on that, you believe that when

3 you were in your office, you used your official EPA

4 email account?

5 A. That's correct.

6 Q. This is going to be a little tedious and

7 I'll do this as quickly as I can but I'm going to ask

8 you if you know somebody on the list of people I'm

9 going to read and if you have any recollection of

10 having communicated with them using your personal

11 email account. Do you understand?

12 A. Yes.

13 Q. So the first person is someone by the name

14 of Jeff Parker. Do you know that person?

15 A. I do.

16 Q. And who is Jeff Parker?

17 A. He is an attorney in Anchorage.

18 Q. Anything more about him? Was he involved

19 at all in the Pebble Mine matter?

20 A. He was, yes.

21 Q. And did you have any communications with

22 him using your personal email account?

1 A. I did.

2 Q. And do you know whether he ever e-mailed
3 to you using your personal email account?

4 A. He did.

5 Q. How about Shoren Brown. Does that name
6 ring a bell?

7 A. I do. Yes, it does. I'm sorry, it does
8 ring a bell.

9 Q. And who does Shoren Brown work for?

10 A. He works for or he did work for Trout
11 Unlimited.

12 Q. And he worked on matters relating to the
13 Pebble Mine?

14 A. That's correct.

15 MR. ROSENBERG: Objection, vague as to
16 worked on matters.

17 BY MR. YOERGES:

18 Q. Did you ever email him using your personal
19 email account?

20 A. I don't think so.

21 Q. Do you know whether he sent an email to
22 you using your personal email account?

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1 A. Not that I recall.

2 Q. The next person is Wayne Nastri. Does
3 that name ring a bell to you?

4 A. Yes.

5 Q. And who is Wayne?

6 A. He is a consultant for Trout Unlimited.

7 Q. And did he work on matters relating to the
8 Pebble Mine?

9 A. He did.

10 Q. And do you know whether you ever used your
11 personal email address to email him or to receive an
12 email from him?

13 A. Not that I recall.

14 Q. Peter Van Tuyn. Does that name sound

15 familiar to you?

16 A. Yes.

17 Q. And who is Peter?

18 A. Peter is an attorney for Bristol Bay

19 Regional Corporation.

20 Q. Is that Bristol Bay Native Corporation?

21 A. Native Corporation, that's right.

22 Q. BBNC?

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1 A. BBNC, yes, native corporation.

2 Q. And did he work on matters relating to the

3 Pebble Mine?

4 A. Yes, he did.

5 Q. And did he have interaction with you

6 regarding the Pebble Mine?

7 A. Yes, he did.

8 Q. And do you know whether you ever used your

9 personal email address to send or receive emails?

10 A. Not that I recall.

11 Q. How about Joel Reynolds. Does that name

12 ring a bell?

13 A. Yes.

14 Q. And who is Joel?

15 A. He is the -- my understanding is that he

16 is the lead attorney for the Natural Resources

17 Defense Council.

18 Q. And did you deal with Joel at all in

19 matters relating to the Pebble Mine?

20 A. No, I never did.

21 Q. So I assume you didn't email him?

22 A. Correct. Not that I recall anyway.

1 Q. How about Carol Ann Woody. Does that name

2 sound familiar?

3 A. Yes.

4 Q. And who is Carol Ann Woody?

5 A. She's an independent fishery ecologist who
6 works as a consultant for Trout Unlimited and others.

7 Q. When you say she's independent, what do
8 you mean? She's not with an agency or --

9 A. No, that she has her own company.

10 Q. Okay. And did you ever email with Carol
11 Ann Woody using your personal account or her to
12 yours?

13 A. Not that I recall.

14 Q. How about Ann Maest. Is that name
15 familiar to you?

16 A. Yes.

17 Q. And who is Ann?

18 A. She is a -- I don't know if she's water
19 quality or hydrology specifically but she is an
20 independent consultant who works for various people.

21 Q. And did she work on matters relating to
22 the Pebble Mine?

1 A. Yes.

2 Q. And did you ever communicate with her?

3 A. Not that I recall.

4 MS. GARDE: Objection. Is your question
5 "did you ever communicate with her" intended to ask
6 if he had communications with her through his
7 personal email or is this a different question?

8 MR. YOERGES: Let me ask that question.

9 BY MR. YOERGES:

10 Q. Did you communicate with her using your
11 personal email or vice versa, her sending something
12 to you using your personal email?

13 A. I don't believe so.

14 Q. Let me stop for a moment and ask this
15 question. Other than Mr. Parker who you do recall
16 using your personal email account, did you email
17 anyone else during your entire time with the EPA
18 using your -- anyone else from outside the EPA using
19 your personal email account?

20 MS. GARDE: Object, overbroad.

21 MR. ROSENBERG: And objection, vague.

22 THE WITNESS: Well, to answer your

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1 question as you asked it, many, many people.

2 BY MR. YOERGES:

3 Q. Okay. I'll go back to the list then.

4 Alan Boraas. Do you know who that is?

5 A. I do.

6 Q. And who is Alan?

7 A. Alan is a professor at Kenai Peninsula

8 College.

9 Q. And did he work on any matters relating to

10 the Pebble Mine?

11 A. He did.

12 Q. And did you communicate with him using

13 your personal email address?

14 A. I did.

15 Q. How frequently?

16 A. He was someone that I knew personally and

17 so I don't -- not very -- not often but I knew him so

18 it could have been -- I could have had communications

19 with him at any time.

20 Q. And did those communications involve

21 Pebble Mine?

22 MR. ROSENBERG: Objection, vague.

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1 THE WITNESS: I would say generally not

2 but it's possible.

3 BY MR. YOERGES:

4 Q. Sitting here today, you don't have any

5 specific recollection of a particular email you sent

6 to Mr. Boraas?

7 A. Correct.

8 Q. Regarding the Pebble Mine?

9 A. Correct.

10 Q. But it's possible?

11 A. It's possible.

12 Q. Dan Rinella. Is that name familiar to

13 you?

14 A. Yes.

15 Q. And who is Dan?

16 A. He is an employee of the University of

17 Alaska.

18 Q. Did he work on matters relating to the

19 Pebble Mine?

20 A. He did.

21 Q. And did you communicate with him using

22 your personal email address?

1 A. It's possible but I don't have a specific

2 recollection.

3 Q. And when I say did you communicate with
4 him using your personal email address, I'm referring
5 to the Pebble Mine, Pebble Mine matters.

6 A. Okay.

7 Q. Okay?

8 A. Okay.

9 Q. Same answer?

10 A. Yes.

11 Q. Jason Metrokin. Does that name sound
12 familiar?

13 A. Yes.

14 Q. And who is Jason?

15 A. I believe he's the chair of the Bristol
16 Bay Native Corporation.

17 Q. That's the name organization that Peter
18 Van Tuyn is the lawyer for?

19 A. Yes.

20 Q. And Jason Metrokin, was he involved on
21 matters relating to the Pebble Mine?

22 A. I believe so.

1 Q. And did you communicate with him regarding
2 the Pebble Mine using your personal email address?

3 A. No.

4 Q. David Chambers, does that name sound
5 familiar?

6 A. It does, yes.

7 Q. And who is David Chambers?

8 A. He is the director, the executive director
9 of an organization called Center for Science and
10 Public Participation.

11 Q. Did he work on matters relating to the
12 Pebble Mine?

13 A. Yes, he did.

14 Q. And did you communicate with him regarding
15 matters relating to the Pebble Mine using your
16 personal email address?

17 A. It's possible but I don't recall any
18 specific time.

19 Q. Thomas Quinn, is that name familiar?

20 A. Yes.

21 Q. And who is he?

22 A. He is a professor at the University of

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1 Washington.

2 Q. Did he work on matters relating to Pebble

3 Mine?

4 A. It depends on what you mean by "work on,"

5 I guess.

6 Q. Was he involved at all in EPA's

7 consideration of --

8 A. Yes.

9 Q. -- matters relating to the Pebble Mine?

10 A. Yes.

11 MR. ROSENBERG: Objection, vague and

12 confusing.

13 BY MR. YOERGES:

14 Q. Were you confused by that?

15 A. It does seem a little vague but I took

16 meaning from it.

17 Q. Thank you. And did you communicate with

18 Thomas Quinn regarding the Pebble Mine using your

19 personal email address?

20 A. I don't believe so.

21 Q. David Schindler, is that name familiar?

22 A. Yes.

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1 Q. And who is David?

2 A. He's also a professor at the University of

3 Washington.

4 Q. And did he work on matters regarding the

5 Pebble Mine?

6 A. Yes.

7 Q. And did you have communications with him

8 using your personal email address on matters relating

9 to the Pebble Mine?

10 A. I don't believe so.

11 Q. Getting close to the end of the list here.

12 A. Okay.

13 Q. Tim Troll. Do you know who Tim Troll is?

14 A. Yes.

15 Q. And who is he?

16 A. He works for the Nature Conservancy.

17 Q. The Nature Conservancy?

18 A. Yes.

19 Q. Is that sometimes referred to as TNC?

20 A. Yes.

21 Q. And was Tim Troll involved in matters

22 relating to the Pebble Mine?

1 MR. ROSENBERG: Objection, vague.

2 THE WITNESS: I actually don't know.

3 BY MR. YOERGES:

4 Q. Was the Nature Conservancy involved in
5 matters relating to the Pebble Mine?

6 MR. ROSENBERG: Same objection.

7 THE WITNESS: I don't know specifically.

8 BY MR. YOERGES:

9 Q. Do you remember whether you communicated
10 with Mr. Troll on matters relating to the Pebble Mine
11 using your personal email address?

12 A. I don't believe so.

13 Q. William or Bill Reilly. Does that name
14 sound familiar?

15 A. Yes.

16 Q. And I don't think this is the former EPA
17 administrator.

18 A. No.

19 Q. This is another Bill Reilly, correct?

20 A. It is.

21 Q. And did this Bill Reilly work on matters
22 relating to the Pebble Mine?

1 A. He did.

2 Q. And did you communicate with him relating
3 to the Pebble Mine using your personal email address?

4 A. Not that I know of.

5 Q. Four more to go. Actually, three more.

6 Tom Yocom. Does that name sound familiar?

7 A. Yes.

8 Q. And who is Tom Yocom?

9 A. He is a private consultant now in the Bay
10 Area, I believe.

11 Q. And did he work on matters relating to the
12 Pebble Mine?

13 A. Yes.

14 Q. In fact, he did a report with Mr. Reilly,
15 correct?

16 A. That's correct.

17 Q. And did you ever communicate with
18 Mr. Yocom regarding anything to do with the Pebble
19 Mine using your personal email account?

20 A. Not that I recall.

21 Q. And when you say not that I recall, as
22 you've done with several of these things, I

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1 understand that you're not saying that you didn't.

2 You just don't recall that you did?

3 A. That's correct.

4 Q. Catherine Knott, K-n-o-t-t. Does that
5 name sound familiar to you?

6 A. Yes.

7 Q. And who is Catherine?

8 A. She's an associate professor at the Palmer
9 branch of Kenai Peninsula College.

10 Q. The same place where Alan Boraas works?

11 A. Yes.

12 Q. Same university or college?

13 A. Yes.

14 Q. And Catherine Knott, did she work on

15 matters relating to the Pebble Mine?

16 A. Yes.

17 Q. And did you have communications with her

18 regarding those matters on your personal email

19 accountTiel

20 A. Not that I know of.

21 Q. And I think you pronounce this teal, Tiel

22 Smith. Is that correct?

55

1 A. Yes.

2 Q. I say he. I'm not sure if it's a he.

3 A. It's a he.

4 Q. And do you know Tiel Smith?

5 A. Yes, I know who he is.

6 Q. Who is Tiel Smith?

7 A. He works for Bristol Bay Native

8 Corporation.

9 Q. Did he work on any matters relating to
10 Pebble Mine?

11 A. I believe so.

12 Q. And did you have any communications with
13 teal using your personal email account on matters
14 relating to Pebble Mine?

15 A. Not that I know of.

16 Q. How about Tim Bristol. Do you know Tim
17 Bristol?

18 A. I do.

19 Q. And who is Tim Bristol?

20 A. Tim Bristol was the director for the
21 Alaska branch, I suppose, of Trout Unlimited.

22 Q. And did Tim Bristol work on matters

1 relating to the Pebble Mine?

2 A. Yes, he did.

3 Q. And did you have any communications with
4 Mr. Bristol relating to the Pebble Mine using your
5 personal email account?

6 A. Not that I -- not that I know of.

7 Q. Bob Waldrop, W-a-l-d-r-o-p. Does that
8 name sound familiar?

9 A. Yes.

10 Q. And who is Bob Waldrop?

11 A. He works for a commercial fishing
12 marketing organization that I can never remember
13 exactly the name of.

14 Q. Would it be the Bristol Bay Regional
15 Seafood Development something or other?

16 A. Yes, that sounds right.

17 Q. And did he work on matters relating to
18 Pebble Mine?

19 A. Yes, he did.

20 Q. And did you communicate with him regarding
21 those matters using your personal email address?

22 A. Not that I recall.

1 Q. Can you recall whether you communicated
2 with any other federal agency official outside of EPA
3 using your personal email address on matters relating
4 to the Pebble Mine?

5 A. I really don't know if I did or not.

6 Q. Somebody whose name pops up pretty
7 frequently named Phil Brna. Do you know Phil Brna?

8 A. I do know Phil Brna.

9 Q. Fish and wildlife service, right?

10 A. That's correct.

11 Q. And mentioning his name, does that refresh
12 your recollection as to whether you e-mailed him
13 using your personal email account?

14 A. I don't recall if I did or not.

15 Q. If my recollection is correct, you've
16 identified now Jeff Parker and Alan Boraas as two
17 people who you do recall having used your personal
18 email account and these other people you don't
19 recall.

20 A. Right.

21 Q. Is there anyone else that you can recall
22 working on matters relating to the Pebble Mine where

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1 you used your personal email account?

2 A. Well, I don't know if I communicated with
3 Alan about the Pebble Mine.

4 Q. So subject to that clarification, is there
5 anyone else?

6 A. Not that I recall.

7 Q. Now, there came a time, Mr. North, when
8 you, in the aquatic resources unit, started focusing
9 on the Pebble Mine and considering whether a
10 particular subsection of 404 should apply to the
11 Pebble Mine. I'm referring to 404(c). Do you recall
12 that?

13 MR. ROSENBERG: Objection, assumes facts
14 not in evidence.

15 MR. YOERGES: Nothing is in evidence right
16 now. It's just a deposition.
17 MR. ROSENBERG: You just said that you --
18 you just said that there came a time when he started
19 focusing. He has not testified how he started foe
20 cushioning or whether he started focusing or what the
21 context of, you know, how he became aware of a
22 circumstance involving Pebble Mine are.

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1 MR. YOERGES: That's why I asked.
2 MR. ROSENBERG: Well, you didn't ask. You
3 sort of told him what your view of what his testimony
4 will be so that's assuming facts not in evidence so
5 that's arguably misleading.
6 BY MR. YOERGES:
7 Q. Can you answer the question?
8 A. Can you ask it again?

9 Q. Sure. Sorry about the interruption. Did
10 there come a time when you started considering
11 whether section 404(c) should apply to the Pebble
12 Mine?

13 A. Yes.

14 Q. And when was that?

15 A. I believe it was in -- I mean, in 2007 or
16 '8.

17 Q. 2007 or '8.

18 A. I believe.

19 Q. So let's talk a little bit about section
20 404(c). What do you understand section 404(c) is?

21 A. Section 404(c) gives the administrator of
22 the Environmental Protection Agency the authority to

1 designate an area as unsuitable for fill.

2 Q. And thus, what's the consequence of that?

3 A. And thus preclude or restrict permits that
4 are issued by the Corps of Engineers.

5 Q. And how is it that you became familiar
6 with what 404(c) does?

7 A. It was in my training to work in the 404
8 program.

9 Q. What sort of training was that?

10 A. Initially it was, here's section 404, read
11 it, and then after that, there was various trainings
12 where we sat as a group with experts and discussed
13 the program and how it was implemented.

14 Q. So you said sometime in the 2007-2008
15 period, the issue of applying 404(c) to Pebble Mine
16 first came up?

17 A. No, I didn't say that.

18 Q. When was the first time the issue of
19 applying 404(c) at Pebble Mine, when did that first
20 come up?

21 A. Well, I would say the first time that it
22 came up was before that and I don't know the time but

1 it was a little bit more casual nature than talking
2 about Bristol Bay and the importance of Bristol Bay.

3 Q. What was the context of that?

4 A. I don't actually -- I couldn't -- I can't
5 give you any details.

6 Q. But you said it was a more casual nature.

7 It sounded like you might have had something in mind
8 that you can recall having occurred or an event or
9 something like that. How did that happen?

10 A. Well, I believe there was just -- you
11 know, and I have no recollection of detail but just a
12 conversation with colleagues and I believe at EPA
13 headquarters just -- and really and just the idea of
14 the importance of Bristol Bay was discussed and
15 that's about as much detail as I can really -- and
16 really actually even -- I think I'm actually even
17 kind of speculating on that because I really don't
18 remember. But I do remember -- I do know that there
19 was something, some discussion before that but it was
20 not of a -- it wasn't of an official or serious

21 nature.

22 Q. So in 2007-2008 -- what happened in

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1 2007-2008 where the issue of 404(c) and Pebble Mine

2 came up again?

3 MR. ROSENBERG: Objection, vague.

4 THE WITNESS: To say that it came up is

5 probably not characterizing it correctly.

6 BY MR. YOERGES:

7 Q. How would you characterize it?

8 A. That I started to consider that this area

9 was exceptional and that a potential large copper

10 mine at the headwaters of these streams was probably

11 not a good idea and perhaps we should use our

12 authority to not let it happen.

13 Q. And what is it, Mr. North, that kind of

14 got you to that point?

15 A. In 2005, I started working on the Pebble
16 Mine. It was assigned to me. And I went -- and
17 between 2005 when I started and 2007-2008, whenever I
18 came to that conclusion, I went to many meetings, had
19 many discussions with -- you know, with Pebble. We
20 had the technical working groups so we got lots of
21 information, went to many post-field season briefings
22 that the Pebble partnership put on for all the

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1 agencies and essentially I just learned a lot more
2 about Bristol Bay, learned a lot more about copper
3 mining and I came to the conclusion that the risks
4 were just simply too high to have a copper mine at
5 that location.

6 Q. Was there anybody else at the EPA who
7 attended these working groups and these kind of
8 field -- what did you call them, post-field?

- 9 A. Yeah, post-field season.
- 10 Q. Post-field season?
- 11 A. Briefings essentially.
- 12 Q. What does that mean, post-field season?
- 13 A. Well, the summer is the field season and
- 14 in the fall, the Pebble partnership would put on
- 15 these big presentations at the Captain Cook Hotel and
- 16 invite all the Agency staff as well as all their
- 17 consultants.
- 18 Q. In Anchorage?
- 19 A. In Anchorage, yes.
- 20 Q. And you attended these?
- 21 A. And I attended those, yes.
- 22 Q. Did anyone else from the EPA, anyone else

- 1 from your office in Region 10 attend these briefings?
- 2 A. Yes.

3 MR. ROSENBERG: Objection, vague.

4 BY MR. YOERGES:

5 Q. Who else?

6 A. Other people that were involved in the
7 technical working groups and maybe involved in
8 mining.

9 Q. Can you name some people?

10 A. Yeah, well, actually, to tell you the
11 truth, I don't remember exactly who. I can just
12 probably speculate on who they were.

13 Q. Did Patty McGrath attend any of these?

14 A. Probably.

15 Q. Rick Parkin, did he attend any of these?

16 A. He may have. I don't actually recall if
17 he did or not.

18 Q. How about Michael Szerlog. Do you know
19 him?

20 A. I do.

21 Q. Who was Michael Szerlog?

22 A. He was my supervisor.

1 Q. In the ARU?

2 A. In my area, yes.

3 Q. Who did he report to?

4 A. He reported to the manager of the office

5 of ecosystems, tribal and public affairs.

6 Q. Who was that?

7 A. That changed over time.

8 Q. In 2007-2008, do you recall who that was

9 at the time?

10 A. Actually, I don't recall.

11 Q. So after going to these working group

12 meetings and listening to these presentations

13 presented by Pebble, you came to the conclusion or

14 you came to the -- well, was it a conclusion you

15 reached that the idea of building a copper mine in

16 the headwaters of the Bristol Bay was not a good one?

17 A. Yes, it was a conclusion.

18 Q. And did anyone else reach that conclusion

19 that you know of within your region at that time,

20 2007-2008?

21 A. No, not that I know of.

22 Q. So you didn't have discussions about it

66

1 with anybody?

2 A. I did, yes.

3 Q. And who did you discuss that with? Who

4 did you discuss your concerns about the building of a

5 copper mine at the headwaters of the Bristol Bay?

6 A. I discussed it with the Region 10 mining

7 team and I discussed it with my supervisor in that

8 time frame.

9 Q. That being Michael Szerlog?

10 A. Yes.

11 Q. And you said the Region 10 mining team.

12 Is that a different unit or a different team than the

13 team you were in?

14 A. It's a group of people from all the

15 different units who have -- who work on mining issues

16 and who have some expertise around mining.

17 Q. Were you part of the Region 10 mining

18 team?

19 A. I was, yes.

20 Q. And who else was on the Region 10 mining

21 team?

22 A. Patty McGrath --

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1 MR. ROSENBERG: Objection, vague.

2 BY MR. YOERGES:

3 Q. Patty McGrath?

4 A. -- chaired it and then there were, I don't

5 know, several other people from around the region.

6 And now you're asking me to recall names of people

7 that I don't remember.

8 Q. If you can.

9 A. I actually am not -- I'm drawing a blank.

10 Q. You say around the region though. You're
11 not limiting that to Alaska. You're talking about
12 the entire Region 10?

13 A. That's correct.

14 Q. And you said that you discussed your
15 conclusion regarding 404(c) with people in the
16 mining -- what did you call it, the mining group
17 or --

18 A. The mining team.

19 Q. Mining team?

20 A. Uh-huh.

21 Q. And you discussed it at that time period,
22 2007-2008, with those people?

1 A. I believe so. I believe it was that time
2 period.

3 Q. From the period of time of 2007-2008 when
4 you first reached this conclusion to -- well, let me
5 ask this question. Are you familiar with something
6 called the Bristol Bay watershed assessment?

7 A. Yes.

8 Q. And what is that to your understanding?

9 A. It is an assessment of the likely effects
10 of mining, of mining copper on the fisheries of
11 Bristol Bay.

12 Q. Is it a written assessment or --

13 A. It is, yes.

14 Q. You were involved in preparing that
15 document, yes or no?

16 A. I was, yes.

17 Q. And do you know when that document was
18 first made available to the public?

19 MR. ROSENBERG: Objection, vague.

20 THE WITNESS: I don't remember the date.

21 BY MR. YOERGES:

22 Q. Do you remember the year?

1 A. I believe it was --

2 MR. ROSENBERG: Same objection.

3 THE WITNESS: I believe it was 2012 was
4 the draft, the first draft came out.

5 BY MR. YOERGES:

6 Q. Right. And that's what I was referring
7 to. Sorry. The first draft of it. Between the time
8 period 2008 and 2012 -- well, let me go back one
9 second. So you said in 2007-2008, you reached this
10 conclusion, and by the conclusion, was the conclusion
11 that the EPA should exercise its authority under
12 404(c) to prevent copper mining in the Bristol Bay
13 watershed?

14 A. The conclusion was that the risks of
15 mining were significant and that EPA should use its
16 404(c) process to evaluate it and to I guess decide
17 whether or not to stop mining there. And just to be
18 honest, I mean, my expectation is that it would
19 decide that.

20 Q. It would decide to use --

21 A. Yeah, I don't want to just seem
22 disingenuous about that.

70

1 Q. I appreciate that. And your personal
2 opinion at the time, if you were running the EPA,
3 would be that to use the 404(c) authority and not
4 permit copper mining in Bristol Bay, correct?

5 MR. ROSENBERG: Objection, vague.

6 BY MR. YOERGES:

7 Q. Do you understand what I meant?

8 A. I think so. Yes.

9 Q. I mentioned the name Patty McGrath a
10 little earlier. You said Patty was the chair of the
11 regional mining team?

12 A. Yes.

13 Q. Patty McGrath gave a deposition in this
14 case -- I'm looking for the transcript that I'm

15 interested in asking you about -- just this past
16 Friday. And I'm going to read you a question and
17 answer back and forth that I had with -- I took the
18 deposition -- that I had with Ms. McGrath that was
19 testifying under oath and I'm going to ask you a
20 question or two about it. This is on page 93 of the
21 deposition. I asked Ms. McGrath, "Let me ask this
22 question. Phil North was an advocate for using

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1 404(c) to stop the Pebble Mine from ever happening,
2 isn't that right?" And there was an objection and
3 then Ms. McGrath said, "I would say that Phil was
4 passionate about the potential to use the 404(c)."
5 Would you agree with Ms. McGrath that you were
6 passionate about the potential to use 404(c)?
7 MR. ROSENBERG: Objection, vague.
8 THE WITNESS: I was definitely the

9 advocate initially and --

10 BY MR. YOERGES:

11 Q. The advocate?

12 A. Yes. And I definitely had a level of

13 enthusiasm about it. I mean, I felt that we

14 should -- to use the word passionate? I mean, I was

15 the one who was advocating it and trying to convince

16 people in the region that we should do it, so I could

17 see why she would use that word. I'm not sure that I

18 would use that word but possibly.

19 Q. Enthusiastic?

20 A. Yes, definitely. Enthusiastic for sure.

21 Q. And then I asked again on -- this is

22 beginning on page 94. I said, "He," referring to

1 you, "provided reasons why he felt it was the right

2 approach." And Ms. McGrath said, "He provided

3 reasons why he felt it was the right approach." I
4 said, "And do you recall what any of those reasons
5 were?" And here's her answer. "He felt that even if
6 the project went through, the permitting process,
7 that at the end, the environmental impacts and the
8 degradation to wetlands would be so significant that
9 the project probably would not get a 404 permit."
10 Does that accurately reflect what your belief was at
11 the time?

12 A. I would really have to think about that
13 because I don't recall --

14 Q. Well, let me --

15 A. -- whether or not I thought it would get a
16 404 permit if it went through the permitting process.

17 Q. You were expecting, though, that it
18 wouldn't, correct?

19 A. I can't say that I was expecting that it
20 wouldn't.

21 Q. You were hoping that it wouldn't?

22 A. I might hoped it wouldn't.

1 MR. ROSENBERG: Objection.

2 THE WITNESS: But I don't know that I
3 could say that I was expecting that it wouldn't. I
4 actually don't recall what I was thinking at that
5 time.

6 BY MR. YOERGES:

7 Q. Whether the permit was issued or not --
8 and I think we discussed this earlier in your
9 deposition -- that ultimately was not your decision
10 to make, correct?

11 A. That's correct.

12 Q. So she characterized once again -- well,
13 let me ask the question and I'm going to ask you if
14 you agree with this. After she said that you felt
15 that even if the project went forward, it would not
16 receive a 404 permit because of the significant
17 degradation to wetlands, I said, "Do you know how
18 Phil North could have come to that conclusion without
19 there being an application from the mining company
20 that went through the environmental impact statement

21 process?" And Ms. McGrath said, "I don't want to
22 guess so do you want me to guess?" And I said, "I

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1 do. You're an educated person. You worked with him.
2 I think it can be your educated guess." There was an
3 interjection and this is what Ms. McGrath said. She
4 said, "I will speculate or guess that he felt that
5 there was just no way that that project could be
6 built or operated that would not cause significant
7 harm. And he also felt that that area being the
8 Bristol Bay watershed was so important that harm to
9 part of it could affect the rest of it. That's what
10 I heard when I would talk to him." ^ Q.
11 Does that accurately reflect your beliefs
12 about the Bristol Bay watershed and about the
13 operation of a mine in that watershed?
14 MR. ROSENBERG: Objection, vague,

15 misleading and confusing.

16 THE WITNESS: Yes, that's correct.

17 BY MR. YOERGES:

18 Q. Thank you. So from what I understand, and

19 correct me if I'm wrong about this, it sounds like

20 the idea of the use of 404(c) with regard to the

21 Pebble Mine in the Bristol Bay watershed was yours to

22 start off?

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1 A. That's correct.

2 Q. And it's a matter of public record that

3 the Region 10 administrator, then Dennis McLerran,

4 actually submitted a proposed determination under

5 404(c) several years down the road so I want to kind

6 of see how we got from the original idea to the

7 proposed determination. Do you understand the

8 context I'm talking about?

9 A. I do, yes.

10 Q. So why don't you explain in your own words
11 how you built up the support within the region and
12 then we're going to go beyond the region after that.
13 How did you build up the support for 404(c)?

14 MR. ROSENBERG: Objection.

15 MS. GARDE: Objection. Go ahead.

16 MR. ROSENBERG: Assumes facts not in
17 evidence, misleading. And actually can we have a
18 standing rule that any objection made by one of the
19 attorneys, that we can automatically join? Make it
20 easier for you.

21 MR. YOERGES: It's actually easier for
22 her, the court reporter.

1 BY MR. YOERGES:

2 Q. So tell me how you built up support in the

3 region.

4 MR. ROSENBERG: Same objection.

5 MS. GARDE: Objection.

6 BY MR. YOERGES:

7 Q. Go ahead.

8 MS. GARDE: I would actually like to go a

9 little bit further. We know that by the time

10 McLerran made his decision, he was already gone so I

11 think if you're going to go down the support of the

12 region, I think you really need to disconnect it from

13 the final decision and ask him if he did build up

14 support in the region.

15 BY MR. YOERGES:

16 Q. Let's do this. Let's put aside McLerran.

17 I was just trying to give some context. And you

18 don't disagree that McLerran ultimately issued a

19 proposed determination?

20 A. That's correct.

21 Q. And that happened after you left?

22 A. Yes.

1 Q. And when did you leave EPA?

2 A. April of 2013.

3 Q. And do you know when the proposed
4 determination was issued, publicly issued?

5 MR. ROSENBERG: Objection, misleading.

6 BY MR. YOERGES:

7 Q. I don't want to mislead you. I'm just
8 asking you if you know that date on which the
9 proposed determination was publicly issued.

10 A. I don't know the date.

11 Q. Do you know the year?

12 A. I believe it was 2014. I believe it was
13 February or March something, sometime in there.

14 Q. So we talked about the Bristol Bay
15 watershed assessment and I think you testified that
16 the first draft of that came out sometime in 2012?

17 A. I believe so.

18 Q. Did you say February 2012?

19 A. No, I didn't say that.

20 Q. Do you know when it was in 2012?

21 A. I don't remember.

22 Q. You were there at that time, though?

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1 A. I was, yes.

2 Q. Between the time that, in 2007-2008, when
3 you had reached this conclusion that 404(c) should be
4 something that EPA considers regarding the Pebble
5 Mine to the time that the Bristol Bay watershed
6 assessment first came out, tell me how you built up
7 the support within the region to go forward with the
8 Bristol Bay watershed assessment?

9 MR. ROSENBERG: Objection.

10 MS. GARDE: Same objection.

11 MR. ROSENBERG: Assumes facts not in
12 evidence.

13 BY MR. YOERGES:

14 Q. Go ahead. You can testify.

15 A. Okay.

16 MS. GARDE: Do you want to talk to me?

17 THE WITNESS: No, not necessarily.

18 MS. GARDE: Okay.

19 THE WITNESS: I came to that conclusion

20 based on information that I got over those couple of

21 years prior to that and the first time that I

22 broached it -- actually, I believe I broached it with

1 Patty McGrath and my manager, probably my manager at

2 first, and just we had probably a phone conversation

3 to say, I think we should do this, this is -- you

4 know, this is significant, that we should do this.

5 BY MR. YOERGES:

6 Q. And your manager is Michael Szerlog?

7 A. That's correct, yes. And then I would

8 have talked to Patty also because she was the

9 regional mining coordinator so -- and tell her that I
10 think that we should use our 404(c) tool. And then
11 around that time, we had a regional mining team
12 retreat and at that retreat, we talked about what the
13 priorities were for the next year and I said I
14 thought this should be a priority, using the 404(c)
15 in regard to the Pebble Mine. And then after that, I
16 started to put together briefing presentations to
17 educate other managers about it and so then I would
18 schedule briefings for them and I kind of evolved
19 those briefing presentations over time as I would
20 give to different people and I think I ended up
21 giving it to all the relevant managers as well as
22 Dennis McLerran before it was all done.

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1 Q. When you say the relevant -- let me go
2 back to Szerlog. So you first broached this issue

3 with Szerlog, you said it might have been over the
4 telephone?

5 A. Yes. Probably was.

6 Q. You were located up in Soldotna and he was
7 in Seattle?

8 A. That's correct.

9 Q. And do you have any recollection as to
10 what Szerlog's reaction was when you raised this with
11 him?

12 MR. ROSENBERG: Objection, vague.

13 THE WITNESS: Well, he was receptive to
14 the idea.

15 BY MR. YOERGES:

16 Q. How did you know that?

17 A. He probably told me.

18 Q. Certainly one way to know it. And you
19 said you raised it with Patty McGrath right around
20 the same time?

21 A. Probably.

22 Q. And by the way --

1 MR. ROSENBERG: Same objection, vague.

2 BY MR. YOERGES:

3 Q. What time period is this? You said

4 2007-2008 but is there anything that you can be --

5 can you be more specific about that?

6 A. I really can't because I'm not sure.

7 Q. But you raised it with Patty McGrath and

8 what was her reaction when you raised it with her?

9 MR. ROSENBERG: Objection, vague.

10 THE WITNESS: She was more, I'll say

11 cautious about going that direction.

12 BY MR. YOERGES:

13 Q. By that direction, you mean 404(c)?

14 A. Correct.

15 Q. And what led you believe she was more

16 cautious?

17 A. Just the conversation we had. You know, I

18 mean, she just --

19 Q. And then you said you put together -- over

20 time you put together briefing presentations or a

21 presentation?

22 A. Yes, PowerPoints.

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1 Q. PowerPoints?

2 A. Uh-huh.

3 Q. And what was the sort of nature and

4 substance of that PowerPoint?

5 MR. ROSENBERG: Objection, vague.

6 THE WITNESS: It was to tell them about

7 the resources of Bristol Bay and tell them about the

8 risks of copper mining and the details of Pebble as

9 well as the probably information about other deposits

10 that were being explored in the Bristol Bay area.

11 BY MR. YOERGES:

12 Q. So the first thing you mentioned was

13 resources of Bristol Bay. Where did you get that

14 information from that went into your presentation?

15 MR. ROSENBERG: Objection, vague.

16 THE WITNESS: I got it from probably on
17 line and fish and game documents. I imagine that's
18 primarily it. It would be primarily in fish and game
19 documents.

20 BY MR. YOERGES:

21 Q. And you talked about another thing the
22 presentation covered was the risks of mining?

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1 A. Yes.

2 Q. And where did you get that information
3 from?

4 A. Also on line and probably from EPA
5 documents and my own experience of the prior, you
6 know, 15 years working on mines.

7 Q. And did Patty McGrath help you with that
8 part of the presentation dealing with the risks of

9 mining?

10 A. Not that I recall.

11 MR. ROSENBERG: Objection, vague.

12 BY MR. YOERGES:

13 Q. And you also talked about details from

14 Pebble. I think that's what you said. What are you

15 referring to there?

16 A. Just the -- Pebble had released a

17 significant amount of information up to that point

18 about how that mine might look so it would have

19 been -- and how much ore there was, what the nature

20 of the ore was, things like that.

21 Q. And when you say they released

22 information, in what context?

1 A. They had many briefings over time about

2 the mine so we had pictures. There was lots of

3 online information about the mine and what the ore
4 deposit looked like at that time.

5 Q. And you mentioned something earlier in
6 your testimony about working groups or something like
7 that. Did you get any information from those
8 technical working groups as well?

9 A. Probably. The technical working groups,
10 yeah, probably.

11 Q. And did the presentations cover anything
12 else?

13 A. Which presentations.

14 MR. ROSENBERG: Objection, vague.

15 BY MR. YOERGES:

16 Q. You said that you did these briefing
17 presentations for management and you mentioned
18 resources of Bristol Bay and the risks of mining,
19 details from Pebble. Is there anything else that the
20 presentation covered?

21 A. No.

22 Q. And you said that you put these --

1 A. I want to back up.

2 Q. Sure.

3 A. Because that's not quite correct. They
4 would have covered what 404(c) is because most of
5 these managers wouldn't be familiar with it.

6 Q. So who were the managers that you're
7 talking about here that you gave these presentations
8 to?

9 A. Rick Parkin would have been one, Marcia
10 Combs and then there were -- we had a series of --
11 the office called ETPA, Ecosystems, Tribal and Public
12 Affairs. We had a director for that office and
13 whoever was the director at the time would have been
14 briefed.

15 Q. Tami Fordham, was she one?

16 A. No.

17 Q. Was there somebody above Tami Fordham?

18 A. Yes. Tammy was not a manager.

19 Q. She wasn't a manager, okay. So you
20 mentioned Rick Parkin. Who was Rick Parkin the

21 manager of?

22 A. He was the deputy director of ETPA.

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1 Q. And what about Marcia Combs?

2 A. Marcia Combs was the director of the
3 Alaska operations office.

4 Q. Any other managers who you gave these
5 presentations to?

6 MR. ROSENBERG: Objection, vague.

7 THE WITNESS: Yes, but I can't recall the
8 names.

9 BY MR. YOERGES:

10 Q. Were they all Region 10 managers?

11 A. Yes.

12 Q. And how did these presentations take
13 place? Were they in person? Were they -- you know,
14 how did they -- sort of describe that to me, how the

15 presentations actually took place.

16 A. They would have either have been on the
17 phone or on the computer and I would have been going
18 through the slides from my desk and projecting I
19 suppose either to a conference room or their desk, or
20 I would have gone to Anchorage where I would have sat
21 with Marcia in the same room and then we would have
22 projected it over the computer to Seattle.

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1 Q. And can you give me the time frame in
2 which these presentations took place?

3 A. Well, to the best of my recollection, that
4 would have been 2008-2009, possibly 2010.

5 Q. And what was your purpose in giving these
6 presentations to these managers?

7 A. I'm not a decision maker. I can't decide
8 to do 404(c) by myself. The region has to decide to

9 do it so I have to give the information to the region
10 and the managers have to decide whether they want to
11 do it or not.

12 Q. And I think you testified that you also
13 gave a briefing presentation to the regional
14 administrator, is that right?

15 A. That's correct.

16 Q. And when did that take place?

17 A. Well, that took place after he got there.

18 He wasn't there early on because we had an
19 administration change in 2008 and so he would have
20 come on some time after that and when he got there,
21 he was briefed on all kinds of issues including this
22 one.

1 Q. And do you know when it was that Dennis
2 McLerran came on board?

3 A. I don't remember.

4 Q. Do you remember when you gave the
5 presentation regarding the 404(c) to Dennis McLerran?

6 A. I actually don't remember.

7 Q. So you gave the presentation to these
8 various managers in Region 10 and what was the -- if
9 you can testify in this manner, what was sort of the
10 general reaction that the regional managers had to
11 using 404(c)?

12 MR. ROSENBERG: Objection, vague.

13 THE WITNESS: I would characterize it as
14 fairly nonresponsive. I could not tell what they
15 thought.

16 BY MR. YOERGES:

17 Q. Was that discouraging to you or how did
18 you react to that?

19 A. Yes, that was discouraging to me.

20 Q. Anything that you did in response to that
21 since you weren't getting a response?

22 A. Continued to refine my presentations and

1 continued to collect information to give to them so
2 that was it.

3 Q. So moving now on to 2009-2010, I would
4 like you to kind of keep telling the story, if you
5 will, in other words, did there come a time when the
6 managers got to the point where they supported using
7 404(c) with respect to the Bristol Bay?

8 MR. ROSENBERG: Objection, vague,
9 confusing and narrative.

10 BY MR. YOERGES:

11 Q. Go ahead.

12 A. I would say that Rick Parkin kind of came
13 around, if you will, and started showing support.
14 There were managers who didn't show support,
15 specifically Marcia Combs. I don't know that she was
16 ever actually supportive of the idea. I believe
17 that -- actually, I guess really -- I really can't
18 speak to anybody else, any of the other managers
19 specifically about who was actually supportive or
20 not. Eventually it became something that my manager

21 told me to kind of step up my work on it and --

22 Q. What do you mean by that?

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1 A. You know, he had -- he wanted me -- he had
2 funds for when we had a project that we needed more
3 information on and more work on that we could hire a
4 contractor to help us gather that information and so
5 he told me to go ahead and find a contractor to start
6 doing that.

7 Q. And did you do that?

8 A. I did, yes.

9 Q. And what contractor did you find?

10 A. I was told to use NatureServe, that that
11 was the contractor that we had in place and that --
12 so we should just add to their contract.

13 Q. So there was an existing contract with

14 NatureServe at the time?

15 A. That's correct.

16 Q. And again, can you give me a time frame,

17 even if it's just a year?

18 A. 2010.

19 Q. 2010?

20 A. Yes.

21 Q. So there is an existing contract and your

22 manager told you to use that contractor to help

91

1 you -- to help you do what?

2 A. To help me gather information to -- you

3 know, the first step of a 404(c) is to evaluate

4 whether or not it's worthwhile to go forward with the

5 404(c) and so to collect the information that would

6 educate that process. So that's what the contract

7 would be for.

8 Q. And what did you do with respect to

9 NatureServe after that conversation with your
10 manager?

11 A. I found out -- I had no idea how to do
12 that and I found out how to do that and I talked to
13 the people in NatureServe and I developed that
14 contract, took the training so that I could actually
15 legally develop the contract.

16 Q. You took training?

17 A. Yes, on contracts, became a contract
18 officer.

19 Q. Is that online training or how is that --

20 A. It's online training, yes.

21 Q. That the EPA provides?

22 A. Yes.

1 Q. And who is it at NatureServe that you
2 first had those contacts with?

3 MR. ROSENBERG: Objection, vague.

4 THE WITNESS: I don't remember her name.

5 She was here. I think she was in Virginia. I don't

6 remember her name.

7 BY MR. YOERGES:

8 Q. Gwen Kittel?

9 A. Very possibly. She was certainly one of

10 the first people that I talk to. If not -- I don't

11 know if she was the first but one of the first.

12 Q. And specifically what was it that you

13 assigned to NatureServe to do?

14 MR. ROSENBERG: Objection, lack of

15 foundation, misleading, vague.

16 BY MR. YOERGES:

17 Q. Go ahead.

18 A. You know, if you want me to say

19 specifically, I would have to look at the contract

20 because I don't have --

21 Q. How about generally, what did you ask --

22 MR. ROSENBERG: Same objection.

1 THE WITNESS: So generally it was to just
2 collect the information about fisheries, about
3 geology, about anthropology of the area, the native
4 people, about the effects of different features of a
5 mine and, you know, how they might affect the natural
6 resources of the area and just to collect information
7 about those things. That's what it was.

8 BY MR. YOERGES:

9 Q. And did NatureServe in fact do that work
10 for you?

11 MR. ROSENBERG: Objection, misleading,
12 vague.

13 THE WITNESS: We started to or they
14 started to. I mean, it was a team effort. I was
15 involved.

16 BY MR. YOERGES:

17 Q. Who else was involved in that?

18 MR. ROSENBERG: Objection, vague.

19 THE WITNESS: NatureServe said that they
20 typically contract with the heritage programs of

21 states when they have something specific like of that

22 kind of nature in an area and so they went to the

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1 Alaska natural heritage program at the University of

2 Alaska and they got involved.

3 BY MR. YOERGES:

4 Q. And do you know the names of anybody

5 specifically who --. Yes. Dan Rinella. I don't

6 know if Dan Bogan was involved or not.

7 Q. Christopher Frissell, is that a name

8 that --

9 A. Christopher --

10 Q. Frissell?

11 A. They contracted with him and they

12 contracted with Allen Boraas. And there was a woman

13 in that office that I was trying to think of her name

14 and I shouldn't forget but --

15 Q. Kendra Zamzow?

16 A. No, they didn't contract with her. I

17 shouldn't forget this woman's name but I'm having

18 trouble recalling it.

19 Q. It is 20 after --

20 MS. GARDE: Yeah, I was just going to

21 ask --

22 MR. YOERGES: Would you like to take a

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1 break?

2 MS. GARDE: We need to break.

3 MR. YOERGES: 10 minutes?

4 THE VIDEOGRAPHER: Off the record at

5 11:05.

6 (Recess.)

7 THE VIDEOGRAPHER: On the record at 11:21.

8 BY MR. YOERGES:

9 Q. Mr. North, before we broke, we were
10 talking about -- you were testifying about the
11 different managers who you gave briefing
12 presentations to regarding 404(c) and the Pebble Mine
13 and you mentioned Rick Parkin, Marcia Combs. I don't
14 think you specifically mentioned Michael Szerlog.
15 Was he a manager that you gave a presentation to?

16 MR. ROSENBERG: Objection, vague.

17 THE WITNESS: He is my immediate
18 supervisor and I think he was present probably for
19 those but I don't know that I gave him a presentation
20 initially. It was probably just a conversation.

21 BY MR. YOERGES:

22 Q. And was he supportive of using 404(c) in

1 the manner that you were thinking?

2 MR. ROSENBERG: Objection, vague, lack of

3 personal knowledge.

4 THE WITNESS: Yes, he was supportive.

5 BY MR. YOERGES:

6 Q. How do you know that?

7 A. Because he told me.

8 Q. So I want to focus now on the 2010 time

9 frame. When in 2010 -- again, if you can't -- you

10 don't have to give me dates and times but if you

11 would give me months, that would be great. When in

12 2010 were you giving these presentations to the

13 different managers within Region 10 regarding 404(c)?

14 MR. ROSENBERG: Objection, vague.

15 THE WITNESS: I don't really recall. I

16 mean --

17 BY MR. YOERGES:

18 Q. Time of year? Spring, summer, fall?

19 A. Yeah, it could have been summer, fall,

20 could have been spring. I actually don't really

21 recall.

22 Q. And you mentioned NatureServe as an EPA

1 contractor that you used to help you pull together
2 information regarding this effort?

3 MR. ROSENBERG: Objection, vague and
4 misleading.

5 BY MR. YOERGES:

6 Q. Is that right?

7 A. Yes.

8 Q. Is there anyone else that you reached out
9 to to help you pull together information?

10 MR. YOERGES: Objection, vague.

11 THE WITNESS: That I reached out to?

12 BY MR. YOERGES:

13 Q. Yes.

14 A. I would have to say no, that I reached out
15 to to help me pull together information, I would have
16 to say no.

17 Q. Is there anyone else outside the federal
18 government who reached out to you to provide
19 information?

20 A. Yes.

21 MR. ROSENBERG: Objection, vague.

22 BY MR. YOERGES:

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1 Q. And who would that be?

2 A. Trout Unlimited offered to provide
3 information.

4 Q. And do you have any understanding of how
5 it was that Trout Unlimited knew that you were
6 considering a 404(c) at this point in time?

7 MR. ROSENBERG: Objection, assumes facts
8 not in evidence.

9 BY MR. YOERGES:

10 Q. So I'm asking.

11 MR. ROSENBERG: That's not what you asked.

12 MS. GARDE: Do you want to rephrase the
13 question?

14 MR. YOERGES: No.

15 MS. GARDE: Could you restate the
16 question?

17 BY MR. YOERGES:

18 Q. Sure, do you have any understanding of how
19 it was that Trout Unlimited knew that you were
20 considering a 404(c) at this time?

21 MR. ROSENBERG: Same objection.

22 THE WITNESS: Yes, I do know, because I

1 had a conversation with people at Trout Unlimited and
2 I told them that I was -- that that's what I was
3 working on.

4 BY MR. YOERGES:

5 Q. And what was the context of that
6 conversation? Where did it take place? With whom?

7 MR. YOERGES: Objection, vague and
8 compound.

9 THE WITNESS: It took place in Anchorage
10 and I don't actually even remember the place. I
11 don't remember where I was. And I had met -- I met
12 with them so that I could ask them what they were
13 doing because I didn't know what the NGO community
14 was doing. Part of my responsibilities at EPA was to
15 be aware of what was going on and to be able to tell
16 the managers this is what this person is -- what this
17 group is doing, this is what that group is doing, and
18 I didn't know, so I had a conversation with them to
19 find out what they were doing and I told them what I
20 was working on.

21 BY MR. YOERGES:

22 Q. And did you reach out to Trout Unlimited

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1 and set up a meeting or did they reach out to you?

2 How did that go down?

3 A. No, I reached out.

4 MR. ROSENBERG: Objection, vague.

5 THE WITNESS: I reached out to them.

6 BY MR. YOERGES:

7 Q. And who did you call or email at Trout

8 Unlimited to have them --

9 A. I don't recall.

10 Q. Shoren Brown?

11 A. I don't think so. I don't think it was

12 Shoren.

13 Q. Tim Troll?

14 A. Could have been. More likely Tim Troll.

15 No, no, no, he's not Trout Unlimited.

16 Q. What is he?

17 A. He's at Nature Conservancy. Tim Bristol

18 is who you're thinking of.

19 Q. That's who I'm thinking, Tim Bristol.

20 Thank you. Was it Tim Bristol you reached out to?

21 A. Could have been.

22 Q. Do you know if Trout Unlimited worked with

1 the Nature Conservancy with regard to anything to do
2 with the Pebble Mine?

3 MR. ROSENBERG: Objection, vague.

4 THE WITNESS: I think it is vague. I
5 don't know what you mean by worked with them.

6 BY MR. YOERGES:

7 Q. Do you know whether Trout Unlimited and
8 the Nature Conservancy did studies together regarding
9 potential effects of the Pebble Mine on the Bristol
10 Bay watershed assessment?

11 A. I know that the Nature Conservancy did
12 studies in Bristol Bay regarding copper mining, of
13 which there are many deposits or several anyway. And
14 I know that Trout Unlimited worked in Bristol Bay,
15 more specifically on Pebble, and how closely they
16 actually worked -- I'm sure they were aware of each
17 other but how closely they actually worked, I'm not
18 clear.

19 Q. So when you reached out to Trout Unlimited
20 and told them what you were doing, they told you what

21 they were doing too regarding Pebble Mine?

22 A. Yes.

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1 Q. And what did they say?

2 A. Well, I actually don't recall. I don't

3 recall any details about what they said.

4 Q. Can you recall generally what they said?

5 Did they -- just let me finish the question. You

6 know, did they say, we don't have any idea about a

7 thing called the Pebble Mine, this is all new to us,

8 or was it different from that?

9 A. Yeah, it was different from that.

10 Q. And so describe it just generally.

11 A. I'm sure that they said that they were

12 working -- that they were opposing the Pebble Mine or

13 a Pebble Mine and that they were opposing it and that

14 they were actively working against it. The details

15 of that activity I don't recall.

16 Q. And did you ask them at that time or any
17 time during 2010 to provide you with any information
18 regarding what they were doing?

19 MR. ROSENBERG: Objection, vague.

20 THE WITNESS: I did not ask them.

21 BY MR. YOERGES:

22 Q. You did not ask them?

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1 A. Correct.

2 Q. You did not ask them for any kind of
3 scientific studies or anything else that they were
4 working on regarding any kind of assessment of the
5 Pebble Mine matter?

6 A. I didn't.

7 MR. ROSENBERG: Objection, vague.

8 MS. GARDE: Slow down a little.

9 THE WITNESS: Yeah, okay. I didn't ask
10 them. They offered and I said -- and I told them
11 that if they wanted to provide me information, that
12 would be great.

13 BY MR. YOERGES:

14 Q. So did there come a time in 2010,
15 Mr. North, when some sort of a presentation was made
16 to the regional administrator regarding different
17 options that EPA could choose with respect to the
18 Pebble Mine, 404(c) being one, maybe the normal
19 permitting process being another. Did there come a
20 time when such a presentation was made to the
21 regional administrator?

22 MR. ROSENBERG: Objection, vague.

1 THE WITNESS: I believe so.

2 BY MR. YOERGES:

3 Q. Were you involved in that presentation?

4 A. I believe I was or at least I would have

5 been. Makes sense.

6 Q. You said that whether to proceed with a

7 404(c) proceeding was the region's decision to make,

8 correct?

9 A. Yes, that's correct.

10 Q. The regional administrator sits at the top

11 of the region, I assume?

12 A. Yes, that's correct.

13 Q. And so if a decision is made by the region

14 to proceed with a 404(c), I assume that the regional

15 administrator has to be behind that decision?

16 MR. ROSENBERG: Objection, vague.

17 BY MR. YOERGES:

18 Q. Do you understand what I'm saying?

19 A. I believe so. Yes.

20 Q. So that's correct?

21 A. Yes. They have to be behind that

22 decision, yes.

1 Q. And you can recall that a presentation was
2 made to Dennis McLerran at some time in 2010?

3 A. Yes.

4 MR. ROSENBERG: Objection, vague.

5 THE WITNESS: Yes, that's right.

6 BY MR. YOERGES:

7 Q. Can you describe that presentation?

8 MR. ROSENBERG: Objection, vague.

9 BY MR. YOERGES:

10 Q. What was discussed and the like?

11 MS. GARDE: Have we established that he
12 was there?

13 MR. YOERGES: I think he said he was
14 involved.

15 BY MR. YOERGES:

16 Q. Were you at the presentation?

17 A. Yes.

18 Q. Okay. Can you describe what happened at
19 the presentation?

20 A. Well, I don't know which presentation

21 you're talking about.

22 Q. There was more than one?

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1 A. Well, you asked me a minute ago about
2 whether there was a presentation having to do with
3 options.

4 Q. Right.

5 A. And before that, there was a
6 presentation -- and I said I believed that there was
7 but actually I don't have -- I can't picture that
8 presentation in my mind or that discussion in my
9 mind.

10 Q. Which presentation are you talking about
11 that you can't picture in your mind?

12 A. The one that talked about what the options
13 are.

14 Q. What the options are?

15 A. Right.

16 Q. Is there any presentation that was made to

17 Dennis McLerran regarding Pebble Mine and how the

18 region should proceed that you can remember?

19 A. Yes.

20 Q. Which one is that?

21 A. Well, and how the region should proceed?

22 There was a briefing for Dennis about issues and I

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1 gave the briefing about Bristol Bay and the Pebble

2 Mine and that one was just -- wasn't about options,

3 if I remember correctly. It was just about the

4 situation.

5 Q. And that briefing took place shortly after

6 Dennis McLerran came on board as regional

7 administrator?

8 A. That's correct.

9 MR. ROSENBERG: Objection.

10 BY MR. YOERGES:

11 Q. And I take it that the purpose of that
12 briefing was to just give him what the lay of the
13 land was for all matters involving Region 10, right?

14 MR. ROSENBERG: Objection, vague, lack of
15 personal knowledge, assumes facts not in evidence.

16 THE WITNESS: My purpose in that
17 presentation was just to tell him about the Pebble
18 Mine and Bristol Bay.

19 BY MR. YOERGES:

20 Q. Did there come a time later on in 2010
21 when a more specific presentation was made to Dennis
22 McLerran about the options that the region could

1 select regarding how to proceed with the Pebble Mine?

2 MR. ROSENBERG: Objection, misleading,

3 lack -- let me clarify. Objection, misleading,

4 assumes facts not in evidence.

5 THE WITNESS: I actually don't recall such

6 a briefing that I was involved in and so I actually

7 don't know.

8 BY MR. YOERGES:

9 Q. I've got some documents I'll show you

10 later. We'll get into that shortly.

11 A. Okay.

12 Q. Did there come a time in year 2010 when

13 anyone from the outside, any group or any individual

14 from the outside made a formal request of the EPA

15 that the EPA initiate a 404(c) action under the Clean

16 Water Act?

17 MR. ROSENBERG: Objection, vague.

18 THE WITNESS: Yes.

19 BY MR. YOERGES:

20 Q. Tell me about that.

21 A. The -- well, six tribes from Bristol Bay

22 as well as the organization that you mentioned

1 earlier that you said the name of that I couldn't

2 remember --

3 Q. Bristol Bay Native Corporation?

4 A. No, it was the fishing --

5 Q. Bristol Bay Regional Seafood Development

6 Association?

7 A. Yes, or corporation or something like

8 that, yes.

9 MR. ROSENBERG: Objection, form.

10 THE WITNESS: They wrote a letter to the

11 EPA requesting that we use our 404(c) authority.

12 BY MR. YOERGES:

13 Q. Do you know who the signatory was to that

14 letter?

15 A. Yes.

16 Q. Who?

17 A. It was Jeff Parker -- well, I believe Jeff

18 Parker and his partner signed it.

19 Q. And did you ever see that petition or that

20 letter?

21 A. I did.

22 Q. And when was that?

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1 MR. ROSENBERG: Objection, vague. When
2 did he see it or when was the petition?

3 BY MR. YOERGES:

4 Q. When did you see it?

5 A. In the spring of 2010.

6 Q. May 2010, does that sound about right?

7 A. I think it was before that that I saw it
8 the first time.

9 Q. Okay. Tell me about that.

10 A. It was just Jeff Parker asked me to look
11 at it to give him feedback on whether they were on
12 the right track or not.

13 Q. This was before the petition was formally
14 submitted to EPA?

15 A. That's correct.

16 Q. And how did Jeff Parker go about asking

17 you that? Did he telephone call, email, personal

18 conversation? How did that happen?

19 A. I believe he gave me a phone call and then

20 sent it.

21 Q. What did he say during that phone call if

22 you remember?

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1 MR. ROSENBERG: Potentially calls for

2 hearsay.

3 THE WITNESS: Yeah, I don't recall what he

4 said.

5 BY MR. YOERGES:

6 Q. Did he make clear at that point in time

7 that he was going to send the draft of the petition

8 to you?

9 A. Undoubtedly, yes.

10 Q. And what was your reaction when he told
11 you he was going to do that?

12 A. I told him okay, I would be happy to just
13 look it over and give him some feedback.

14 Q. And did he send it to you?

15 A. Yes, he did.

16 Q. And what did you do?

17 A. I looked it over and made a few comments
18 and sent it back to him.

19 Q. Do you recall what the nature of your
20 comments was?

21 A. I believe I had a few word changes and
22 kind of a general comment about the nature of -- I

1 believe it had to do with, you know, emphasizing
2 wildlife or ecosystems a little more.

3 Q. Did you have any understanding at the
4 time, Mr. North, why Jeff Parker would submit to you,
5 an employee of the EPA, a draft of a petition he was
6 going to send to EPA?

7 A. Are you asking me to say what he was
8 thinking?

9 Q. No. Just asking you about any
10 understanding. The understanding could be from what
11 he said to you.

12 A. Oh.

13 Q. Could be from what you inferred from --

14 A. So why he said something to me rather than
15 somebody else?

16 Q. Yes.

17 A. Yes, because I had known Jeff for a long
18 time. He had worked on fish issues in Alaska for a
19 long time and so had I in my official capacity and I
20 had talked to him earlier. There was one point at
21 the same time that I had wanted to find out what the
22 NGOs were doing, I also wanted to find out what the

1 tribes were doing and I asked around to find who
2 should I ask about that and I was told that Jeff
3 Parker represented six tribes so I went -- and I knew
4 him so I went to ask him, so what's going on? And so
5 he knew me as somebody who was involved and who was
6 involved on the 404 side.

7 Q. When you say the 404 side, let's be more
8 specific. I want to ask a question more specific
9 about that. Did Jeff Parker know, prior to the time
10 that he provided this draft of the petition to you,
11 that you had concluded that 404(c) was the way to go
12 with regard to Pebble Mine?

13 MR. ROSENBERG: Objection, lack of
14 personal knowledge.

15 MS. GARDE: You're asking him what Jeff
16 knew?

17 BY MR. YOERGES:

18 Q. Yeah, did you ever -- let me ask it
19 differently. Fair objection. Did you ever tell
20 Jeff, prior to the time that he gave you that draft

21 to take a look at, did you ever tell him, in words or
22 substance, you know, Jeff, I'm really interested in

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1 using 404(c) on the Pebble Mine, I think it's
2 something that the EPA should think about using?

3 A. I didn't use those words, I'm sure, but
4 yes, I did tell him that that was something that I
5 was working toward.

6 Q. Do you remember when the first time it was
7 that you told Jeff that you were working toward
8 404(c) with regard to the Pebble Mine?

9 A. Certainly prior to that but I don't recall
10 when. I believe it was in -- it was maybe in the
11 fall of 2009 perhaps.

12 Q. Is there a particular event that sticks in
13 your mind right now at which you --

14 A. I'm just imagining walking through the

15 streets of Anchorage and what the feel was and I
16 believe it was before Christmas and it was cold and I
17 believe it was in the fall of -- and it would have
18 been -- make sense that it would have been 2009.
19 Q. And then from the time that you first told
20 him about that to the time that he sent the draft to
21 you, did you have any other conversations about
22 404(c) and the Pebble Mine with Jeff?

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1 A. I'm sure we did.
2 Q. How frequently did you talk about that
3 issue with him?
4 A. He called me fairly often to talk about
5 it. He's a person who likes to bounce ideas off of
6 people. And he's very smart. He's an attorney. And
7 I called him on occasion to ask him questions about
8 things. He has a lot of experience on fishery issues

9 in Alaska.

10 Q. Do you recall calling him on occasion to
11 ask him about anything regarding 404(c) and the
12 Pebble Mine?

13 MR. ROSENBERG: Objection, vague.

14 THE WITNESS: It's possible that I could
15 but I can't imagine that I would need to call him to
16 ask him about things like that but I'm sure that we
17 had conversations about 404(c). He had lots of legal
18 theories and liked to discuss them.

19 BY MR. YOERGES:

20 Q. And you discussed these legal theories
21 with him?

22 A. Yes.

1 Q. So when you received that draft of the
2 petition, did you let anyone else know, in your

3 office or elsewhere at EPA, that someone from the
4 outside had reached out to you and provided that to
5 you?

6 A. I did, yes.

7 Q. Who did you let know?

8 A. I sent my personal email home, I mean,
9 from home, because that's where I got it, to the
10 office and so I would have a record there, and then I
11 told -- I don't recall who I told but I informed
12 people in the region that this was -- that I had
13 gotten this and this was coming.

14 Q. When you say this was coming, be more
15 specific.

16 A. Well, that the tribes were at least
17 considering petitioning EPA to use 404(c).

18 Q. Did you forward that email along to
19 anybody else in the office in connection with telling
20 them about the petition?

21 A. It's possible that I did but I don't
22 recall.

1 Q. Do you have any recollection who it was
2 that you told that this petition was coming?

3 A. I don't have specific recollection.

4 Q. Would you have told Michael Szerlog, your
5 supervisor?

6 A. Probably.

7 Q. And how about -- do you know who Cara
8 Steiner-Riley is?

9 A. I do, yes.

10 Q. The lawyer in the EPA Region 10 office?

11 A. Yes.

12 Q. Did you tell her about it?

13 A. I could have. I might have told her. I
14 really don't recall.

15 Q. You have no specific recollections of
16 telling anybody specifically that, again, in words or
17 substance, I received this draft of this petition and
18 it's on its way?

19 A. Right.

20 Q. You don't have any specific recollection

21 about that?

22 A. No. I mean, it could be that I was in a

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1 conference call with multiple people and I might have

2 said it in that kind of an environment where it was

3 kind of delivered to multiple people at the same time

4 and there were many, many calls/discussions. I mean,

5 we had meetings all the time so I -- not necessarily

6 on Pebble. And so I could have said it in any of

7 those environments. I just don't remember.

8 Q. Do you have any recollection of a reaction

9 that any of these people had to you telling them that

10 there was a petition on its way?

11 A. I don't.

12 MR. ROSENBERG: Objection, vague.

13 BY MR. YOERGES:

14 Q. So when you first got that draft petition

15 from Jeff Parker, did you ever consider whether it
16 was appropriate for someone from the outside to be
17 sending you a petition as an EPA employee for
18 comment?

19 MR. ROSENBERG: Objection, vague.

20 THE WITNESS: Yes, I did consider that

21 and --

22 BY MR. YOERGES:

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1 Q. Tell me about your thought process.

2 A. Part of my job --

3 MR. ROSENBERG: Objection, vague.

4 THE WITNESS: -- was to reach out to the

5 community and help the community to essentially be

6 more effective in environmental protection and to

7 engage with EPA and I did that all the time and

8 coached people on how to engage with EPA. And so for

9 someone to send me a letter and say, can you look at
10 it? Are we on the right track? That was perfectly
11 natural as far as I was concerned.

12 BY MR. YOERGES:

13 Q. So you saw this instance of Jeff Parker
14 providing you this petition regarding asking EPA to
15 initiate a 404(c) as kind of falling in the same
16 category as others where people would ask you, how
17 should we interact with the Agency, how should we go
18 about asking for things from the Agency? You saw
19 that the same way?

20 A. Yes.

21 Q. And you thought it was appropriate to,
22 using your word, to coach them, to coach Jeff Parker

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1 on how to do that?

2 MR. ROSENBERG: Objection, vague.

3 THE WITNESS: I actually don't think I

4 used the word coach, did I?

5 BY MR. YOERGES:

6 Q. I think you did. You can use a different

7 word if you would like.

8 A. Okay. But yes, to help them more

9 effectively engage with the EPA, yes.

10 Q. So did there come a time when Jeff Parker

11 submitted a -- I'm going to call it a final petition

12 on behalf of these tribes to the EPA seeking 404(c)

13 action?

14 MR. ROSENBERG: Objection, vague,

15 misleading.

16 MS. GARDE: You're asking him does he

17 know?

18 MR. YOERGES: Does he know, yes.

19 THE WITNESS: Yes.

20 BY MR. YOERGES:

21 Q. And that happened in May 2010 sometime?

22 A. Yes.

1 Q. And do you have any knowledge about what
2 the region did, Region 10, I mean, after it received
3 that petition?

4 MR. ROSENBERG: Objection, vague.

5 THE WITNESS: I was not involved in those
6 discussions so --

7 BY MR. YOERGES:

8 Q. You were aware of the petition coming in,
9 though?

10 A. Yes.

11 Q. And did anybody at Region 10 ask you about
12 what your thoughts were on it?

13 A. I don't know that anybody came to me and
14 said, Phil, what are your thoughts on this? But, as
15 I was saying, as I said, you know, we had meetings
16 where we discussed things and I imagine that I had an
17 opportunity to express my thoughts probably at a
18 meeting like that but I don't have a specific
19 recollection of a time.

20 Q. And what were your thoughts when you saw

21 that petition? Agree with it, disagree with it?

22 MR. ROSENBERG: Objection, vague.

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1 THE WITNESS: Well, I don't think it's a
2 question of agreeing with it or disagreeing with it.

3 It's a --

4 BY MR. YOERGES:

5 Q. Let me put it differently. Were you in
6 favor of what the petition was seeking?

7 MR. ROSENBERG: Objection, vague.

8 THE WITNESS: If you're asking me did I
9 think the Agency should do a 404(c) --

10 BY MR. YOERGES:

11 Q. Sure.

12 A. -- and engage in the 404(c) process, yes.

13 MR. ROSENBERG: Objection, assumes facts
14 not in evidence.

15 BY MR. YOERGES:

16 Q. So you had reached that conclusion

17 personally yourself in 2007-2008, right?

18 A. That's right.

19 Q. So there was nothing that changed your

20 mind between that time and the time the petition came

21 in two years later which led you to a different

22 conclusion, correct?

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1 MR. ROSENBERG: Objection, assumes facts

2 not in evidence, misleading and misstates prior

3 testimony.

4 BY MR. YOERGES:

5 Q. If I've misstated anything you've said in

6 my question, please tell me. I'm not trying to do

7 that. I'm just trying to summarize what you said.

8 A. There was nothing that made me change my

9 mind.

10 Q. So you said that -- when I asked the
11 question about what happened in Region 10 after this
12 petition came in, you said you weren't involved in
13 those discussions. Were you aware the discussions
14 were happening?

15 A. Well, in the sense that, you know,
16 tribal -- I mean, EPA takes tribal involvement very
17 seriously and Region 10 has a large tribal program so
18 if tribes come to EPA and ask anything, EPA pays
19 attention. So it was clearly -- you know, that was
20 not going to be ignored. So there was going to be
21 discussions going on.

22 Q. Prior to the point in time in May of 2010,

1 Mr. North, when the tribes petitioned the EPA to
2 proceed under 404(c), had any other group from the

3 outside, outside of EPA I mean, ask the EPA either
4 formally or informally to consider a 404(c) action
5 that you know of?

6 MR. ROSENBERG: Objection, vague.

7 THE WITNESS: Prior to the tribes asking?

8 BY MR. YOERGES:

9 Q. Right.

10 A. Not that I know of. Not that I can
11 recall. I don't think so.

12 Q. I mean, the fact that somebody like the
13 tribes reached out and asked EPA to engage in a
14 404(c) proceeding or at least consider a 404(c)
15 proceeding was a game changer for you, wasn't it?

16 MR. ROSENBERG: Objection, vague.

17 THE WITNESS: Can you tell me what you
18 mean by game changer?

19 BY MR. YOERGES:

20 Q. Yes. I sure can. Up until this time, it
21 sounds to me like you were advocating that 404(c),
22 that the Agency do a 404(c), you're meeting with

1 managers, you're trying to convince them that they
2 should do it. You said that the reaction was
3 nonresponsive by some people. Some people may have
4 been coming around. And was that the state of
5 affairs at the time in May of 2010 when this petition
6 came in, that the region was still sort of ambivalent
7 about 404(c)?

8 MS. GARDE: I object to the way you've
9 mischaracterized, conflated his testimony which has
10 been going on for the last two hours into a summary.
11 I understand what your question is but why don't you
12 just restate the question instead of using the word
13 game changer which may mean something to you which
14 doesn't mean to him. So --

15 MR. YOERGES: I didn't use game changer in
16 that part of the question.

17 MR. ROSENBERG: I also want to interpose
18 an objection that the question is vague and
19 misleading.

20 MS. GARDE: So try again.

21 BY MR. YOERGES:

22 Q. Do you understand the question?

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1 A. Well, I kind of feel like you

2 mischaracterized it also.

3 Q. Well, correct me if I mischaracterized it.

4 In what way did I mischaracterize it?

5 A. And I may have used a word and now when

6 you use it, I think, oh, that's not really quite

7 correct. I think you used a word about how the

8 managers were feeling about it and I guess it's

9 more -- I wouldn't say that they were ambivalent. Is

10 that the word you used?

11 Q. You used ambivalent, right.

12 A. I don't know that I used that word. But

13 they were certainly -- I think there were managers

14 that were noncommittal. They weren't saying that,

15 yes, we should go forward with this but they weren't
16 saying no, let's stop either. So it was kind of an
17 ongoing discussion among them, I think, and so I
18 wanted to say that. And now you're going to have to
19 ask your question again because I don't remember it.

20 Q. Let me put it this way. Prior to the time
21 that you received the first draft of the tribe's
22 petition -- can I call it the tribe's petition? Will

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1 you understand what I mean by that?

2 A. Yes.

3 Q. Prior to the time that you received the
4 first draft of the tribe's petition, did you have any
5 conversations, either by phone or by email or in
6 person, with Jeff Parker where the two of you
7 discussed that the way to get the EPA to move on this
8 is to get somebody from the outside like the tribes

9 to petition the EPA to do it

10 MR. ROSENBERG: Objection, vague.

11 MS. GARDE: Objection.

12 BY MR. YOERGES:

13 Q. Go ahead.

14 A. I would say no, we did not have a

15 discussion that the way to get EPA to move on this

16 would be that the tribes ask. No, we did not have

17 that conversation.

18 Q. No conversation that was anything even

19 like that? And by like that, I mean seeking to get

20 some outside request or the like to get EPA to move

21 this thing along?

22 A. Right.

1 MR. ROSENBERG: Objection, vague.

2 MS. GARDE: Assumes petitioning the

3 government would make any difference to the
4 government and I object to that question.

5 MR. YOERGES: Unfortunately, it did in
6 this case, though, but I take your objection.

7 MR. ROSENBERG: This is Mr. North's
8 testimony and not yours, Roger.

9 MR. YOERGES: I'm not under oath. I'm not
10 testifying.

11 MS. GARDE: Sorry.

12 BY MR. YOERGES:

13 Q. Please.

14 A. When I talk to people at tribes, with
15 tribes, I typically encourage them to participate,
16 that the tribes that I told -- I would tell them that
17 EPA takes tribes very seriously and, you know,
18 whatever your involvement is is actually quite
19 meaningful, you should be involved, you should
20 engage. And so I would have said that to Jeff. As a
21 representative of the tribes, I would have said that
22 to him. And I believe I did say that to him one

1 time.

2 Q. And by engaging, what do you mean, when
3 you said that you encouraged him to engage, what do
4 you mean?

5 A. Whatever. I wouldn't be more specific
6 than that. It would just be to tell him the tribes
7 -- EPA takes tribal involvement very seriously so
8 don't think we're going to ignore you.

9 Q. Did you encourage him to submit their
10 404(c) petition?

11 MR. ROSENBERG: Objection, vague.

12 THE WITNESS: Not that I recall. If he
13 had said -- if he had told me that he was going to
14 submit a 404(c) petition, I would have probably said,
15 you know --

16 BY MR. YOERGES:

17 Q. Go for it?

18 A. Go for it, yeah, exactly.

19 (North Exhibit No. 1 was
20 marked for identification.)

21 BY MR. YOERGES:

22 Q. I've asked the court reporter to mark as

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1 North Exhibit 1 an email and I'm identifying these
2 emails by what appears at the top of it so it's from
3 Phil and Amanda to north.phii@epa.gov, subject
4 drafts. Have you had a chance to look at this email,
5 sir?

6 MS. GARDE: Which is not stamped
7 confidential, is that correct?

8 MR. YOERGES: No, it's not stamped
9 confidential.

10 THE WITNESS: Yes.

11 BY MR. YOERGES:

12 Q. You notice at the bottom of this email --

13 MS. GARDE: Have we marked this?

14 MR. YOERGES: Yes, marked Exhibit 1.

15 BY MR. YOERGES:

16 Q. At the bottom of this email, Mr. North,
17 you notice there is an email from Jeff Parker to Phil
18 North.

19 A. Uh-huh.

20 Q. And the subject is drafts. And it's dated
21 January 8th, 2010. Do you see that?

22 A. Yes.

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1 Q. And he says, "I would appreciate your
2 suggestions, revisions or edits. Thanks, Jeff." So
3 this is the Jeff Parker we've been talking about who
4 was the counsel to the six tribes?

5 A. Yes.

6 Q. And you notice that in the top part of the
7 email, this is the email from Phil and Amanda to
8 north.Phil, there is a list of attachments. Do you

9 see that?

10 A. I do, yes.

11 Q. And the bottom attachment says draft

12 tribes letter to EPA-7-doc. Do you see that?

13 A. Yes.

14 Q. Let's just talk about this email for a

15 second. So this bottom part of the email, the Jeff

16 Parker to Phil North, what happened here, if you can

17 recall?

18 MR. ROSENBERG: Objection, vague.

19 THE WITNESS: What do you mean by what

20 happened here?

21 BY MR. YOERGES:

22 Q. What is this email?

1 MR. ROSENBERG: Same objection.

2 THE WITNESS: It's an email from Jeff

3 Parker to me.

4 BY MR. YOERGES:

5 Q. And do you recall getting this email?

6 A. Not specifically.

7 Q. Do you have any reason to doubt that you

8 received the email?

9 A. No.

10 Q. And did this email -- and then the top

11 email is an email from Phil and Amanda. That's your

12 personal email address?

13 A. Yes, that's correct.

14 Q. And so you're sending that to your EPA

15 address?

16 A. That's right.

17 Q. And are you forwarding the email that Jeff

18 Parker sent to you?

19 A. It appears so.

20 Q. So is it your belief that Jeff Parker's

21 email had attached these various drafts that you're

22 seeing under the subject line of your email?

1 A. Yes.

2 Q. And one of those is the defendants tribes
3 letters to EPA, correct?

4 A. Correct.

5 Q. So was this on January 8th the first time
6 that you saw a draft of the tribes letter to EPA?

7 MS. GARDE: Objection, assumes facts not
8 in evidence. If he got this with attachments, we
9 don't know if he opened any attachments and you're
10 asking him specifically did he see a letter, which
11 assumes that he would have opened and read a letter
12 at 7:35 p.m..

13 MR. ROSENBERG: And also vague as to
14 letter.

15 MR. YOERGES: Really?

16 MR. ROSENBERG: Well, what are you
17 referring to? I mean, am I understanding --

18 MR. YOERGES: I'm referring to the draft
19 tribes letter to EPA.

20 MR. ROSENBERG: Right, but all I see is an

21 email. I don't know what the form of that letter is.

22 MR. YOERGES: Neither do I. I didn't ask

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1 anything about that.

2 MR. ROSENBERG: Well, you referred to it

3 as a letter.

4 BY MR. YOERGES:

5 Q. Do you think LTR stands for letter,

6 Mr. North? Is that what your understanding LTR, in

7 all likelihood, probably to about a 99.9 certainty,

8 LTR stands for letter?

9 A. I don't know the probability but yes, I

10 would assume.

11 MS. GARDE: So let's figure out if he

12 opened it.

13 BY MR. YOERGES:

14 Q. Let's ask that question. Did you review

15 any of this when you it came in from Mr. Parker?

16 A. I actually have some recollection of

17 receiving this in general and I believe I did not

18 open it.

19 Q. You didn't open it --

20 A. Right.

21 Q. -- ever?

22 A. No, I think I eventually did.

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1 Q. When do you think you did?

2 A. I don't recall. But I do recall that he

3 had to send it to me a few times before I opened it

4 and I felt -- I recall feeling bad about kind of

5 neglecting his email.

6 Q. So I can tell you this is the only one

7 that we've received so far but you're saying you

8 recall him having sent this letter to you several

9 times before you opened it up?

10 A. Well, I don't know about several times, or
11 that he contacted me asking me about it.

12 Q. Fair enough. But there came a time when
13 you actually opened it up and read it?

14 A. Yes.

15 Q. And you think that was sometime in
16 January? This came to you on January 8th?

17 A. Right.

18 Q. Was it was months later?

19 A. I believe it was.

20 Q. You believe it was months later?

21 A. Yeah, I believe it was.

22 (North Exhibit No. 2 was

1 marked for identification.)

2 MS. GARDE: Don't answer any questions

3 about this until I've had a chance to look at it.

4 What exhibit number is this?

5 MR. YOERGES: It's Exhibit Number 2, tab

6 8.

7 MS. GARDE: Okay. Hold on a minute.

8 Okay.

9 BY MR. YOERGES:

10 Q. I've asked the court reporter to mark as
11 North Exhibit Number 2 a one-page document and the
12 first email that's at least shown on here -- there is
13 one that is redacted out -- is one from Jeffrey
14 Parker dated October 15th, 2014 to somebody who is
15 blacked out and it says, subject, forward, three
16 decisions for tribes, AIFMA and TU to make. And then
17 down at the bottom of this one-page document, there
18 is an email from Jeff Parker to you, Mr. North, dated
19 March 11th, 2010 forwarding three decisions for
20 tribes, AIFMA and TU to make. It says, "Sorry,
21 slipped my mind. Jeff." Do you recall receiving an
22 email from Jeff Parker on or around March 11th

1 regarding this subject?

2 A. I do not recall.

3 Q. Do you know what the subject is, this

4 three decisions for tribes, AIFMA and TU to make?

5 A. I don't. I don't know what that is.

6 Q. What is AIFMA, do you know?

7 A. Is that the -- actually, isn't that the

8 organization that the gentleman that you mentioned

9 works for? Not the Bristol Bay --

10 Q. Waldrop?

11 A. Yeah, Waldrop?

12 Q. I don't know.

13 A. I think he might -- I think that might be

14 his organization but I don't remember what it stands

15 for.

16 Q. And what about TU. Do you know what that

17 stands for?

18 A. TU is Trout Unlimited.

19 Q. So above that, again, there is an email

20 from Jeff Parker and it's to Phil and, and then it's

21 blacked out. I take it that's Phil and Amanda?

22 That's your personal email address?

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1 A. Yes.

2 Q. And he says, "This is what I sent on March

3 11." So it looks like he's sending it to you again,

4 is that what this appears to be? Whatever it is he

5 sent to you on March 11th, he's sending to you again

6 on April 11th?

7 A. Yes.

8 Q. So when you testified a little bit ago

9 regarding the draft petition and how you didn't open

10 it up right away and were you perhaps confusing that

11 situation with this situation where he's sending you

12 something on March 11th that he then had to send you

13 a month later?

14 A. I would say that that's possible.

15 Q. And then right above that --

16 MS. GARDE: Just a minute. I want to
17 clarify that when you're asking him about the bottom
18 part of the email string, you're starting with Phil
19 and Amanda. Did you ask him about whether or not the
20 bottom email was from Phil and Amanda or did that go
21 to his EPA address? Or did you not ask him about
22 that?

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1 MR. YOERGES: I didn't ask him about that.

2 I didn't ask him about that.

3 MS. GARDE: So you're only -- your
4 personal email question only goes to the --

5 MR. YOERGES: One just above it.

6 MS. GARDE: Okay.

7 BY MR. YOERGES:

8 Q. Do you in fact -- let me ask you this,

9 Mr. North, and I'm not sure you have an answer to
10 this but do you see the first email from Jeff Parker
11 and it says to Phil North and Phil North has at least
12 one little quote around it?

13 A. Yes.

14 Q. Do you know whether that designates your
15 EPA email address or does it designate your personal
16 email address or do you have any way of knowing?

17 A. I have no way of knowing.

18 Q. But we know when we look up to the one
19 from Jeff Parker to you where again it says Phil is,
20 and has a little quotation mark around -- single
21 quotation right before Phil, that is to your personal
22 email address?

1 A. That appears to be.

2 Q. And then the next email up is an email

3 from Phil and blank. Again, do you think that's your
4 personal email address?

5 A. It appears to be.

6 Q. So the next day, on April 12th in the
7 evening, you sent the email to Jeff Parker and you
8 say, "A few suggested edits. I keep trying to
9 include ecological impacts but if they make the
10 sentences awkward then delete. Of course ignore any
11 suggestions anyway." Do you know what edits you're
12 talking about?

13 A. Yeah, I believe I --

14 MR. ROSENBERG: Objection.

15 BY MR. YOERGES:

16 Q. Go ahead.

17 A. I believe I offered a few, you know, word
18 changes.

19 Q. And was that on the tribal petition?

20 A. That's my understanding.

21 Q. That's all I have about that.

22 A. Okay.

1 (North Exhibit No. 3 was
2 marked for identification.)

3 BY MR. YOERGES:

4 Q. This is going to be North Exhibit 3. I've
5 marked as North Exhibit 3 a --

6 MS. GARDE: Don't answer anything about
7 this yet.

8 BY MR. YOERGES:

9 Q. Can I see your exhibit, Mr. North, just to
10 make sure I've got the right one here? Do we have
11 one that -- I'm looking at page 8 of -- 9 of 12,
12 guys, on this one. Do we have one where the red is
13 not so badly bleached out?

14 MS. GARDE: I don't have any red on page
15 9.

16 MR. YOERGES: Yeah, I know. The one the
17 witness has, though, the red is illegible.

18 MR. ROSENBERG: Ours is black.

19 MS. GARDE: Ours is black.

20 MR. ROSENBERG: Is it the same letter.

21 MR. YOERGES: I think it's the same
22 letter. We can confirm that.

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1 MR. CLIFFORD: Is it stamped at the end
2 page 5-9?

3 MR. YOERGES: Yes.

4 MS. GARDE: Okay.

5 MR. YOERGES: Yeah, just the printer.

6 MS. GARDE: I just want to make sure you
7 go through the pieces here to establish that this
8 was -- what this is.

9 MR. YOERGES: I will do that.

10 MS. GARDE: Okay.

11 MR. ROSENBERG: And to the extent that
12 there is a discrepancy, I would just interpose an
13 objection for lack of authentication and best
14 evidence.

15 MS. GARDE: So just listen carefully to
16 his question so we can figure out what it is clearly
17 before you make any assumptions about it.

18 THE WITNESS: Okay.

19 BY MR. YOERGES:

20 Q. I'm putting before you -- what do we call
21 this, Exhibit 3? This is a copy of it. Do you
22 recognize this, Mr. North?

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1 MS. GARDE: That's an okay question.

2 THE WITNESS: It appears --

3 MR. YOERGES: What was that? Hold on.

4 What was that?

5 MS. GARDE: I said it's an okay question.

6 MR. YOERGES: Thank you.

7 MS. GARDE: I want to take this one by

8 one.

9 MR. YOERGES: I understand. But let's be
10 careful about the side bars you're having with your
11 client while I'm questioning him, okay? So far so
12 good but I think it's improper to be talking with him
13 about the document as I'm giving it to him.

14 BY MR. YOERGES:

15 Q. Do you recognize this?

16 A. It appears to be the letter from the
17 tribes to EPA.

18 Q. Okay.

19 A. Petitioning for a 404(c).

20 Q. Do you recognize it as a draft or as a
21 final letter that you saw?

22 A. It looks like a draft to me.

1 Q. Turn to page 3 of 12 of this which is

2 Bates stamped 145-3 at the bottom. I'm sorry, number

3 4 which is Bates stamped 145-4. Do you see that?

4 A. Yes.

5 Q. Can you see that there is a little sort of

6 like a balloon blown up on the right hand side in the

7 margin?

8 A. Yes.

9 Q. It says "commented" and in brackets it

10 says PAN with a number 1 after it, closed brackets?

11 A. Yes.

12 Q. Is PAN your initials?

13 A. Yes.

14 Q. What does the middle initial stand for?

15 A. Anthony.

16 Q. So do you have any idea why it would be

17 the commented PAN would appear on this page of the

18 document?

19 A. Yes.

20 Q. Why is that?

21 A. Because I would have made that comment.

22 Q. Okay. Can you tell me with a reasonable

1 degree of certainty whether this Exhibit Number 3 is
2 a draft of the joint letter from the six tribes to
3 the EPA that was provided to you that you then
4 commented on?

5 A. Yes.

6 Q. And it is?

7 A. That it is, yes.

8 Q. And Jeff Parker would have provided this
9 to you?

10 A. Yes.

11 Q. Do you know -- there is no date on this.
12 Do you have any idea when he provided this to you?

13 A. Well, based on what you've shown me so
14 far, it appears that it's sometime between January
15 and May.

16 Q. Okay. So go to the first page of this, if
17 you would, sir, and I'm just trying to get a sense of
18 what these various strike-throughs are and the like.
19 So on the second full paragraph of the letter, the
20 last sentence in that paragraph says, "EPA may do so

21 prior to any" -- and there is "mining company's" is
22 struck through. Do you see that on your draft?

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1 A. Yes.

2 Q. "Mining company's application for permits
3 to discharge such material." So at some point in
4 time, somebody struck out mining companies. Was that
5 you?

6 A. Probably.

7 Q. Let's go to the next page. So at the top
8 paragraph, there is a list of things here and I'm
9 looking at number 4 on the list where it says, "Doing
10 so is consistent with EPA's national priority of
11 increased," and then there is something underlined
12 that says "attention to environmental justice and"
13 and then the sentence picks back up with "oversight
14 of mineral processing." Do you see where I'm talking

15 about?

16 A. I do.

17 Q. And the underlined words "attention to
18 environmental justice and," is that something you
19 would have added to the letter?

20 A. It appears so.

21 Q. So you can page through this if you like
22 but it appears to me based on that what's struck

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1 through are things you recommended being struck
2 through and what is underlined is what you suggested
3 being added, correct?

4 MR. ROSENBERG: Objection, vague. And
5 Roger, I only mention this because there are hyper
6 links in this document that are underlined and so I
7 want to be clear that -- how we're addressing that.

8 MR. YOERGES: Fair point.

9 BY MR. YOERGES:

10 Q. With the exception of the hyper links
11 which are in the footnotes, those being to different
12 URLs on the Internet, I'm talking about materials
13 that appear in the text of the letter itself.

14 MR. ROSENBERG: And the hyper links don't
15 appear in the footnotes in what appears to be the
16 appendix.

17 MR. YOERGES: Okay. I'm just talking
18 about the letter itself.

19 BY MR. YOERGES:

20 Q. So my question is, what's underlined is
21 what you had and what's struck through is what you
22 recommended be struck out?

1 A. Apparently so.

2 Q. And then on page 4 of 12 of the letter,

3 which is the page I showed you a second ago, there is
4 a comment on the right that says, "Is there room here
5 for ecological impacts not directly related to
6 commercial or subsistence fisheries?" Do you see
7 that?

8 A. Yes.

9 Q. That's your comment?

10 A. I believe it is, yes. Yes, it appears to
11 be.

12 Q. And what are you asking there?

13 A. Well, what it says.

14 Q. What does that mean, though?

15 A. It means --

16 MR. ROSENBERG: Objection, vague. Are you
17 asking him what he thinks it means now or what he
18 thought it meant then?

19 BY MR. YOERGES:

20 Q. Is there a difference?

21 A. Well, I mean, I would have to --

22 Q. I mean, we don't have a time travel

1 machine for sure so I guess I'm just asking you --

2 A. My best knowledge after three years or
3 whatever, however many, five, six years?

4 Q. I understand that.

5 A. Okay.

6 Q. I'm asking what did you mean when you
7 wrote this?

8 A. I would have meant that there is -- he's
9 got a list of things that he's done and that other
10 ecological impacts could be among that list.

11 Q. So you think that there weren't ecological
12 effects or ecological impacts were not in this list?

13 A. I don't know.

14 Q. Well, looking at it now?

15 MS. GARDE: Give him a minute to read it.

16 MR. YOERGES: Sure. Absolutely.

17 THE WITNESS: It doesn't appear that
18 ecological impacts are explicitly there.

19 BY MR. YOERGES:

20 Q. And you are recommending that they be

21 placed in there if there is room, right?

22 MR. ROSENBERG: Objection, misleading.

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1 THE WITNESS: I was suggesting that that's

2 something he could add.

3 BY MR. YOERGES:

4 Q. Why? Why would you suggest that he add

5 that?

6 A. Because he's listing concerns and that

7 would be a concern.

8 Q. You think the ecological impacts not

9 directly related to commercial or subsistence

10 fisheries would be important to add to this petition?

11 MR. ROSENBERG: Objection, vague.

12 THE WITNESS: Well, I don't know exactly

13 what I was thinking at that time but evidently, in

14 looking at this, you know, I evidently thought he

15 could have added ecological impacts to that list.

16 Beyond that, I couldn't tell you. I don't remember

17 what I was thinking six years ago.

18 BY MR. YOERGES:

19 Q. Well, was it your view that adding

20 ecological impacts to this list would improve the

21 letter?

22 A. Undoubtedly --

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1 MR. ROSENBERG: Objection, vague and

2 misleading.

3 BY MR. YOERGES:

4 Q. Did you say undoubtedly?

5 A. Undoubtedly, I mean, that appears to be

6 what I was suggesting, that there would be value.

7 Q. Did you make any recommendations to

8 Mr. Parker as to whom he should address this letter,

9 sir?

10 A. Yes.

11 MR. ROSENBERG: Objection, vague.

12 THE WITNESS: I'm sure I did. Actually,

13 I'm going to back up on that. I mean, I'm assuming

14 that if he asked me, I would have told him.

15 BY MR. YOERGES:

16 Q. Do you have a recollection of that?

17 A. I have a recollection of him asking me,

18 you know, who should I talk to at EPA? But I don't

19 have a recollection of having him ask me specifically

20 for this but he may have and if he did, I would have

21 told him.

22 MR. YOERGES: Chris, do you have the

1 1/7/09 draft? Okay, we'll get that after a break.

2 (North Exhibit No. 4 was

3 marked for identification.)

4 BY MR. YOERGES:

5 Q. I'm going to ask the court reporter to

6 mark as the next exhibit a January 7th, '09 draft of

7 a joint letter from the six federally-recognized

8 tribes, et cetera, the first page of which shows a

9 Bates stamp of 37846. And before I ask any questions

10 about that, I would like to just go back for a

11 moment, if you would, Mr. North, to the very first

12 exhibit I showed you which is North Exhibit 1 and do

13 you see the bottom of that email? Do you see the

14 date at the bottom of that email where Jeff Parker

15 addresses the email to you?

16 A. Yes, I do see the date.

17 Q. What's the date on that?

18 A. January 8th, 2010.

19 Q. Okay. And do you think it's reasonable to

20 say that in that email that he sent to you on January

21 8th, 2010, he sent to you -- whether you opened it up

22 or not, he accept to you the documents that you have

1 listed under your email on the top of that Exhibit 1?

2 MS. GARDE: I object to --

3 MR. ROSENBERG: Objection as to lack of
4 personal knowledge and calls for speculation.

5 THE WITNESS: Can you repeat the question?

6 BY MR. YOERGES:

7 Q. Yes, the top email.

8 A. Yes.

9 Q. It's like pulling teeth. I apologize.

10 The top email, they're forwarding to you the email
11 that Jeff Parker sent to you --

12 A. Right.

13 Q. -- the day before, correct? That would
14 include the attachments that he sent to you, correct?

15 A. The day before? January --

16 Q. Yes, maybe the same day.

17 A. No, it's not even close.

18 Q. Sorry about that. You're right. It's in
19 July. It's not even close. So let me ask you this
20 question. So he sends you an email in January of

21 2010?

22 A. Right.

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1 Q. Doesn't show attachments on that

2 particular one, right?

3 A. Right.

4 Q. But the email up top is you forwarding

5 something to your personal email address?

6 A. No. From my personal email address.

7 Q. From your personal email address to your

8 EPA address?

9 A. Right.

10 Q. Do you think there is any relationship at

11 all between that email on the top and that email on

12 the bottom?

13 MR. ROSENBERG: Objection, vague and also

14 objection to the extent that it's unclear where the

15 attachments belong in that email.

16 MR. YOERGES: I don't know what that

17 objection is but go ahead.

18 THE WITNESS: Do I -- can you repeat the

19 question?

20 BY MR. YOERGES:

21 Q. Do you think you were forwarding

22 Mr. Parker's email to you?

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1 A. Yes.

2 Q. To your personal address?

3 A. Yes. No, from my personal address.

4 Q. From your personal address. Do you think

5 you were forwarding the attachments to Mr. Parker's

6 email to your --

7 A. To my office, I believe so.

8 Q. Do you see the date of Mr. Parker's email

9 to you in January?

10 A. Yes.

11 Q. Does that appear to be the day after the

12 date of this draft that I handed to you as North

13 Exhibit 4?

14 MS. GARDE: I think you're asking if

15 January 8th follows January 7th?

16 MR. YOERGES: Correct.

17 THE WITNESS: Well --

18 MR. ROSENBERG: Objection, misleading.

19 THE WITNESS: Except that the years seems

20 to be --

21 BY MR. YOERGES:

22 Q. The year is different?

1 A. Yes.

2 Q. So this is January 8th, 2010?

3 A. Yes.

4 Q. And what's the year on this one?

5 A. '09.

6 Q. '09?

7 A. Yeah.

8 Q. Are you aware of a draft of a petition
9 that was circulated by anybody as early as January
10 2009?

11 A. I don't recall. I don't recall that there
12 was.

13 Q. Do you recall any discussions in January
14 of 2009 or December 2008 with Mr. Parker about a
15 draft tribes petition under 404(c)?

16 A. I have no recollection of it.

17 Q. Did you ever personally, when the year
18 changes in January, use the prior year's year when
19 you're putting the date down?

20 A. Yes, quite often.

21 Q. Kind of happens to all of us, right?

22 A. Yes.

1 MR. ROSENBERG: Not all of us.

2 BY MR. YOERGES:

3 Q. Not all of us. But do you think that that
4 may explain why '09 is on this document --

5 MS. GARDE: Objection, calls for
6 speculation.

7 MR. ROSENBERG: Join.

8 BY MR. YOERGES:

9 Q. Is that a reasonable inference to draw?

10 A. I can speculate that he might have done
11 that.

12 Q. So let's just assume for purposes of this
13 question that that date was really meant to be
14 1/7/2010.

15 A. Uh-huh.

16 Q. And that whoever put that on there forgot
17 that the year had changed seven days earlier, okay?
18 Let's just assume that. Notice -- the only question
19 I have about this exhibit, believe it or not, after
20 all that wind-up, is do you see who it's addressed

21 to?

22 MS. GARDE: You haven't established that

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1 the draft tribes letter is this letter. So I object

2 to your whole line of questioning --

3 MR. YOERGES: Okay.

4 MS. GARDE: -- which assumes this is this.

5 I mean, don't you have something else to tie it up?

6 MR. YOERGES: Nope.

7 MR. ROSENBERG: And can I --

8 BY MR. YOERGES:

9 Q. And do you see who this is addressed to?

10 MR. ROSENBERG: Let me just -- I think

11 your use of the word "this," can you be clearer what

12 you're referring to?

13 BY MR. YOERGES:

14 Q. What exhibit are we working on here?

15 A. 4.

16 Q. Exhibit 4, is that the one dated '09?

17 A. '09.

18 Q. Do you see who Exhibit 4 is addressed to?

19 A. I do.

20 Q. Who is that?

21 A. Michelle Pirzadeh.

22 Q. Do you know who she was in January of

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1 2010?

2 A. Yes.

3 Q. Who was she?

4 A. She was the -- well, acting regional

5 administrator.

6 Q. Was she the acting regional administrator

7 in January of '09?

8 A. I don't remember. She could have been.

9 Q. But she was in 2010?

10 A. Right.

11 Q. So on the face of this letter, this draft

12 letter, it was addressed to Michelle?

13 Pirzadeh, is that how you pronounce it?

14 A. Pirzadeh.

15 Q. Did there come a time when you -- do you

16 know who drafted this letter, number 4? Was it you?

17 MS. GARDE: Take a minute to look at it.

18 THE WITNESS: Okay. No, I did not draft

19 this letter.

20 MS. GARDE: The question is do you know

21 who.

22 THE WITNESS: He just asked if it was me.

1 It was not me and I believe this is Jeff Parker's

2 letter.

3 BY MR. YOERGES:

4 Q. And did you ever have a discussion with

5 Jeff Parker where you told him or he asked you should

6 I address this to Pirzadeh or should I address this

7 to somebody else?

8 A. He may have asked me that.

9 Q. Do you have any recollection of that?

10 A. Not specifically. He did ask me that kind

11 of question and so --

12 Q. Do you have any recollection of ever

13 telling him that you should address this letter to

14 the administrator and the regional administrator of

15 the EPA?

16 A. I don't have a recollection of that.

17 Q. That's all I have.

18 A. But again, if he asked me, I would have

19 told him. I mean --

20 Q. You would have told him what?

21 A. I would have told him who I thought he

22 should address it to.

1 Q. Who would you have told --

2 A. I probably would have said the

3 administrator.

4 MR. ROSENBERG: And I'm going to --

5 MR. YOERGES: Let me ask a question. The

6 record is getting jumbled.

7 THE WITNESS: Sorry.

8 BY MR. YOERGES:

9 Q. If he had asked you who he should address

10 the tribes letter to, what would you have told him?

11 MR. ROSENBERG: Objection, calls for

12 speculation.

13 THE WITNESS: I probably would have told

14 him the administrator but --

15 BY MR. YOERGES:

16 Q. Which at the time was Lisa Jackson?

17 A. No, no, I mean the regional administrator,

18 I'm sorry.

19 Q. Which at the time was who?

20 A. Well, looks like it was Michelle.

21 Pirzadeh at that time.

22 Q. That ended up changing at some point in

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1 time?

2 A. Yes.

3 Q. To whom?

4 A. To Dennis McLerran.

5 Q. Did you make any recommendation that he

6 also send the letter to Lisa Jackson, the

7 administrator of the EPA?

8 A. I have no --

9 MR. ROSENBERG: Objection, vague and

10 misleading, assumes facts not in evidence.

11 THE WITNESS: And I have no recollection

12 of that.

13 BY MR. YOERGES:

14 Q. Okay. That's all I have about that. Do

15 you recall, Mr. North, on how many occasions you made
16 suggestions to Jeff Parker about edits and revisions
17 that should be made in the tribal petition before it
18 was actually submitted to the EPA?

19 A. I believe it was just the one draft but I
20 actually don't recall.

21 Q. And by the one draft, you're referring to
22 the draft that you testified about, number 4, where

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1 you can see the strike-throughs and underscores?

2 MS. GARDE: Exhibit 3.

3 BY MR. YOERGES:

4 Q. Exhibit 3?

5 A. That's correct.

6 (North Exhibit No. 5 was

7 marked for identification.)

8 BY MR. YOERGES:

9 Q. Mr. North, I've given you what the court
10 reporter has marked as North Exhibit 5 and it's an
11 email chain the top of which is an email from Jeff
12 Parker dated June 10, 2010 to Phil North.

13 MS. GARDE: Counsel, can you please
14 explain the information that's on here which I'm
15 assuming was not original which is the references
16 that says Exhibit 6 PII Jeff Parker?

17 MR. YOERGES: Right.

18 MS. GARDE: Where that came from or what
19 that --

20 MR. YOERGES: So I think the best way I
21 can explain it is that many of these documents were
22 produced by the government either pursuant to a FOIA

1 action or in this case and there was certain personal
2 identifier information that was redacted by the

3 government pursuant either to the protective order or
4 pursuant to an exemption in FOIA. I think it might
5 be exemption 6 which is why you see EX period 6. So
6 what I assume happened -- we didn't do this but I
7 assume that the government redacted some information
8 here asserting that it was personal identifier
9 information which is what I guess PII stands for.

10 MR. ROSENBERG: That's correct.

11 MR. YOERGES: All that correct?

12 MS. GARDE: Thank you.

13 MR. YOERGES: Okay.

14 BY MR. YOERGES:

15 Q. So looking at the -- go to the second page
16 of this, if you would. There is an email that starts
17 this chain from Alannah Hurley to the Bristol Bay
18 working group. Do you know who Alannah Hurley is?

19 A. No, I don't.

20 Q. Do you know what the Bristol Bay working
21 group is?

22 A. My understanding is that it's a group of

1 nonprofit organizations that are environmental
2 groups.

3 Q. And are they in favor of the mine, opposed
4 to the Pebble Mine?

5 MR. ROSENBERG: Objection, vague.

6 THE WITNESS: I believe they are opposed.

7 BY MR. YOERGES:

8 Q. Opposed to the Pebble Mine? So that email
9 from Alannah to the Bristol Bay working group says,
10 "Shoshone leaders meet Alaskan native leaders to talk
11 about open pit mining." Do you see that?

12 A. I do.

13 Q. And underneath that it says new executive
14 director for Nunamta --

15 A. Aulukestai.

16 Q. Thank you, Aulukestai. Do you see that?

17 A. I do.

18 Q. And underneath that it says, "Mining
19 company explores Groundhog Mountain." Do you have
20 any idea looking at this email what those various

21 references are to?

22 A. Yes, I do.

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1 Q. What is that?

2 A. Well, starting at the top, I mean, it
3 looks like Shoshone leaders came to Alaska and to
4 talk about mining.

5 Q. Okay. So that -- see the URL that appears
6 below that?

7 A. Yes.

8 Q. Kdlg.org, is KDLG a radio station?

9 A. Yes.

10 Q. Is it for local NPR?

11 A. Yes.

12 Q. National Public Radio station?

13 A. In Dillingham.

14 Q. In Dillingham, okay. So right above that,

15 there is an email from Jeff Parker to you. It might
16 go from the first page to the second page. Dated
17 6/9/2010 and it says, "Phil, FYI, you might want to
18 listen to the third piece re Kennicott planning
19 areal" -- it says areal but that may be a typo --
20 "magnetic survey at Groundhog Mountain on northeast
21 edge of Pebble area. Jeff." Do you remember
22 receiving this email from him?

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1 A. I have a vague memory. And it is not a
2 typo. That's what it is, aerial.

3 Q. It's aerial, a-r-e-a-l? Just misspelled?

4 That's sort of a typo too.

5 A. Oh, yeah, yeah, yeah. You're right.

6 Yeah.

7 Q. So you said you have a vague recollection

8 of it?

9 A. I do have a vague recollection of it.

10 Q. What's your understanding of what he was

11 referring to?

12 A. It's the last one, the mining company

13 explores Groundhog Mountain, that he's referring to

14 that.

15 Q. What does that have to do with Pebble

16 Mine?

17 MR. ROSENBERG: Objection, vague.

18 BY MR. YOERGES:

19 Q. If you know.

20 A. Groundhog Mountain is adjacent to the

21 Pebble claims.

22 Q. So do you have any understanding of why he

1 would want you to listen to the third piece regarding

2 this Groundhog Mountain?

3 A. Yes.

4 Q. And what is that?

5 A. Because the magnetic survey had produced
6 positive results at Groundhog Mountain with the
7 potential of there being minerals there.

8 Q. And that also would be in the Bristol Bay
9 watershed, is that right?

10 A. That's correct.

11 Q. And then above that is an email from you
12 to Jeff Parker dated June 9th, 2010 and you say,
13 "Thanks, Jeff. This is a strong argument for a broad
14 approach to 404(c) and to separate it from the Pebble
15 project." What did you mean by that?

16 A. What I meant by that is that by this time,
17 my feeling was that the 404(c) should not just apply
18 to the Pebble project. It should apply to the
19 Nushagak and the Kvichak watersheds and because there
20 were multiple mineral deposits that were being
21 explored in the area and so if there was going to be
22 an application of 404(c), to not just focus on Pebble

1 but to focus more broadly. That's what I meant.

2 Q. And you said that at this time you felt
3 that way. Was that what you always felt, that the
4 404(c) should focus on the entire watershed and not
5 on a particular mine or was that some thinking that
6 evolved?

7 A. I think it was thinking that evolved.

8 Q. And why did your thinking evolve to the
9 point where you thought that 404(c) should apply to
10 the whole watershed?

11 A. Because as I gathered information,
12 starting in 2005 before I even thought that we should
13 use 404(c), that there was reason to think that there
14 was risk throughout the watershed. But that took
15 time to gather that information and so my thinking
16 evolved.

17 Q. In June 2010, had any mining company filed
18 any kind of a development application under 404 to
19 develop a mine in the Bristol Bay watershed?

20 A. Exploration applications.

21 Q. And who was that?

22 A. Well, Pebble.

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1 Q. Anyone else?

2 A. I believe so.

3 Q. Who?

4 A. I've got to remember the names of the

5 mining companies. I don't -- well, I have to say I

6 don't remember the exact time when the different

7 mining companies started exploring but there was more

8 exploration going on in the watershed.

9 Q. You just don't recall specifically --

10 A. No, I don't.

11 Q. -- what other companies there were?

12 A. Well, Kinross was one that was doing some

13 exploration and -- well, Kennicott was doing this,

14 was involved in Groundhog Mountain.

15 Q. Kennicott is a mining company?

16 A. Yes. And there were others and I

17 actually -- I don't recall.

18 Q. Had there been any other mining company,

19 to the best of your knowledge, that had invested as

20 much into the Bristol Bay watershed at that time in

21 June of 2010 as Pebble Mine had?

22 MR. ROSENBERG: Objection.

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1 MS. GARDE: Lack of foundation. You

2 haven't established that he knows how much was

3 invested by anybody.

4 MR. ROSENBERG: Also lack of personal

5 knowledge, vague and assumes facts not in evidence.

6 BY MR. YOERGES:

7 Q. So let me restate the question. I said to

8 the best of your knowledge -- may be that you have no

9 knowledge, may be that you don't know, which is okay
10 to answer that way. Just say I don't know. To the
11 best of your knowledge, do you know whether there was
12 any other mining company that was seeking to develop
13 a mine in the Bristol Bay watershed that had invested
14 as much money as the Pebble Mine?

15 MR. ROSENBERG: Objection, vague.

16 MS. GARDE: Objection.

17 THE WITNESS: To the best of my knowledge,
18 the Pebble exploration was the most extensive.

19 MR. YOERGES: Lunch?

20 MR. ROSENBERG: Sure.

21 MS. GARDE: Great.

22 MR. YOERGES: Let's take a lunch break.

1 Let's go off the record.

2 THE VIDEOGRAPHER: Off the record at

3 12:32.

4 (Whereupon, at 12:32 p.m., the deposition

5 in the above-entitled matter was recessed, to

6 reconvene at 1:44 p.m., this same day.)

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1 AFTERNOON SESSION

2 (1:44 p.m.)

3 Whereupon,

4 PHILLIP A. NORTH,

5 the witness testifying at the time of recess, having

6 been previously duly sworn, was further examined and

7 testified further as follows:

8 EXAMINATION BY COUNSEL FOR PLAINTIFFS (RESUMED)

9 (Mr. Clifford exits deposition room.)

10 (North Exhibit Nos. 6-8 were

11 marked for identification.)

12 THE VIDEOGRAPHER: On the record at 13:44.

13 BY MR. YOERGES:

14 Q. Thank you. Mr. North, did you have a good

15 lunch?

16 A. Yes, I did. Thank you.

17 Q. Glad to hear that. Before we get into

18 questioning for this afternoon's session, I want to

19 respond to a question that both your counsel and

20 counsel for the government asked and that is who is

21 reviewing the video feed or who is on the video feed
22 or whatever that verb is for that. So from Steptoe &

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1 Johnson here in our office is Tom Barba, Mark Murphy,
2 lawyer by a name of Zorba Leslie, L-e-s-l-i-e, and a
3 legal assistant named Magdalena -- so it's spelled
4 W-i-e-l-k-o-p-o-l-s-k-a. We call her Magda. And
5 they're all people who work on this case, for what
6 it's worth.

7 There are also four people who are
8 listening from my client. Three of them are
9 listening and watching. One of them has just got the
10 transcript feed. Tom Collier who is the CEO of PLP
11 and then three other PLP people, Shawn McGee, Bruce
12 Jenkins and Mike Heatwole and that's H-e-a-t-w-o-l-e.

13 MS. GARDE: Hi, Mike. I know him.

14 MS. PALACIOS: And I just got an email

15 that one of our other associates here at Steptoe,
16 Raisa Daigneault, has also stepped in for the
17 afternoon.

18 MR. YOERGES: And her last name is --

19 MS. GARDE: Who is Bruce?

20 MR. YOERGES: He's in corporate
21 development.

22 MS. GARDE: What's his last name?

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1 MR. YOERGES: Jenkins, Bruce Jenkins.

2 Mike Heatwole, Tom Collier, Bruce Jenkins and Shawn
3 McGee.

4 MR. ROSENBERG: Thank you.

5 MS. GARDE: So just to be clear, there is
6 no one here from the republican staffers on the
7 science committee and they're not listening by feed?

8 MR. YOERGES: That's correct.

9 MS. GARDE: Thank you.

10 MR. YOERGES: Unless the NSA is up to

11 something that I don't know but --

12 MS. GARDE: They probably are.

13 MR. ROSENBERG: Different division.

14 MR. YOERGES: Okay. With that being said,

15 may we proceed, everybody?

16 MS. GARDE: Uh-huh.

17 MR. YOERGES: Okay.

18 BY MR. YOERGES:

19 Q. I would like to show you what we've marked

20 as Exhibit Number 6, Mr. North. And I'll ask Billie

21 to take one and pass it down. And while you're

22 looking at that, let me just identify it for the

1 record as an email chain. The top email is to a

2 gparker@alaska.net from Phil North sent on 9/14/2010,

3 subject matter, thoughts for the Bristol Bay
4 discussion tomorrow. And Mr. North, I've got
5 actually some questions about the email below that so
6 I'm going to give you a second to --

7 A. Okay.

8 Q. As much time actually as you need to read
9 it.

10 MS. GARDE: Read the whole thing. Okay,
11 have you read that.

12 A. Yes. I'm not quite done looking at it.

13 Q. Sorry. Thought you said yes.

14 A. I just want to -- I did say yes to reading
15 it but -- okay. Yes.

16 Q. So focusing your attention first on the
17 first email which appears starting about halfway down
18 the page, that's an email from you to Szerlog and
19 Parkin. Szerlog was your supervisor at the time?

20 A. Correct.

21 Q. And tell me again who Rick Parkin was.

22 A. Rick Parkin is the deputy director for

1 ETPA.

2 Q. And that's a different group from your
3 group?

4 A. No, it's the next level up in
5 organization.

6 Q. And the subject is thoughts for Bristol
7 Bay discussion tomorrow. First of all, do you recall
8 having written this email?

9 A. Vaguely.

10 Q. When you say thoughts for Bristol Bay
11 discussion tomorrow, do you have a recollection as to
12 what discussion you're referring to?

13 A. I don't remember, no.

14 Q. Do you remember whether it's a discussion
15 that you were involved in or were you giving Szerlog
16 and Parkin sort of some talking points for discussion
17 that they were going to be involved in or don't you
18 remember one way or the other?

19 A. I really don't remember one way or the
20 other.

21 Q. So in this, you say -- and I'm looking at
22 the first sentence -- "I hope that at this point

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1 everyone has gotten their minds around the idea that
2 our focus is on the resource and not on any
3 particular project." What did you mean by that?

4 A. What I meant by that was that this is
5 about the resource in Bristol Bay and not any one
6 mine.

7 Q. And you testified about that a little
8 earlier today.

9 A. Yes, I did.

10 Q. And then in the first sentence of the next
11 paragraph, you say, "Not to be predecisional, but
12 looking ahead, of the six Bristol Bay watersheds all
13 but the Nushagak and Kvichak are mostly federal
14 conservation land (wildlife refuge or national

15 park)." I'm focusing on the first four words of that
16 sentence, "Not to be predecisional." What did you
17 mean by that?

18 A. What I meant by that, there is a process
19 to go through and you don't make decisions before you
20 actually go through the process. And so if we were
21 going to do a 404(c), which it had not been
22 determined that we would, but if we were going to,

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1 then we would have to identify the area that we would
2 address and I wasn't -- and so I didn't want to get
3 ahead of that process but I wanted to address this
4 particular issue.

5 Q. And the issue that you're addressing in
6 that sentence about, of the six, all but two are
7 mostly federal conservation land, what was the point
8 you were making there?

9 A. The point that I was making was that we
10 could probably not include them in anything we did
11 because they were pretty well protected already.

12 Q. In light of the fact that they were
13 wildlife refuge and national parks?

14 A. Yes.

15 Q. Understood. So turning your attention to
16 the top of this, the to line of this email,
17 gparker@alaska.net, is that Jeff Parker?

18 A. That is.

19 Q. And of course the from, Phil North, I take
20 it is you?

21 A. That's right.

22 Q. And it's dated 9/14/2010. Looks like it's

1 time stamped 11:19 and 33 seconds in the evening,

2 correct?

3 A. Yes, it is.

4 Q. So that, at least by virtue -- by what it

5 says on here, looks like about 12 hours after you

6 sent the email to Szerlog and Parkin?

7 A. Right.

8 Q. On the same day. Why did you forward this

9 email that you had sent to Szerlog and Parkin

10 regarding your thoughts about 404(c) to Jeff Parker?

11 A. I really don't recall. I don't know.

12 Q. Do you think it was appropriate to do

13 that?

14 A. I think it was okay.

15 Q. On what basis?

16 A. There is nothing secretive here. There is

17 nothing, you know, nothing that I've really felt like

18 needed to be hidden. It was probably conversations

19 that Jeff and I had had so it was just nothing

20 unusual.

21 Q. That's all I have about that. Let me show

22 you what we've marked as North Exhibit 7. Let me

1 take that other one from you so you're not getting a
2 bunch of paper in front of you. Let me just identify
3 this for the record. It's an email from Phil Brna,
4 Fish and Wildlife Service, to Frances Mann with a cc
5 to an Ann Rappoport, both at FWS.gov or FWS email
6 addresses. I'll represent for the record that you at
7 least on the face of this are not shown as a cc or
8 shown as a recipient of this email but have you ever
9 seen this email before today?

10 A. I haven't read it yet. I'm -- I believe I
11 have seen this.

12 Q. You've seen this?

13 A. Yes.

14 Q. In what context?

15 A. I actually don't remember but it looks
16 familiar.

17 Q. So who's Phil Brna?

18 A. Phil Brna is a biologist at the Fish and
19 Wildlife Service.

20 Q. And you know him personally?

- 21 A. Yeah, I do know him personally.
- 22 Q. And are you communicating with him about

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- 1 EPA's potential 404(c) proceeding?
- 2 A. I was, yes.
- 3 Q. On a regular basis or how often?
- 4 A. Probably regularly.
- 5 Q. Do you know whether he was someone who
- 6 believed that EPA should proceed under 404(c)?
- 7 MR. ROSENBERG: Objection, vague.
- 8 THE WITNESS: I think he did think that
- 9 EPA should proceed with a 404(c), Phil Brna.
- 10 BY MR. YOERGES:
- 11 Q. So that's a yes?
- 12 A. That's a yes.
- 13 Q. And he starts off saying, "I spoke with
- 14 Phil North. He's now briefed people in EPA all the

15 way up to the assistant administrator." Do you see

16 that, in the first couple of sentences of the email?

17 A. Yes.

18 Q. Did you brief everybody in the EPA all the

19 way up to the assistant administrator?

20 A. I think he misspoke a bit because no, I

21 didn't. I was not the one briefing.

22 Q. Did you brief the assistant administrator?

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1 A. No.

2 MR. ROSENBERG: Objection, vague.

3 BY MR. YOERGES:

4 Q. Do you know who the assistant

5 administrator is he's referring to here?

6 A. I don't actually.

7 Q. Do you know who Palmer Hough is?

8 A. Do I know who Palmer Hough is? I do.

9 Q. What's Palmer Hough's position, do you
10 know?

11 A. He's a staff person here in Washington,
12 D.C. in my program.

13 Q. Not an assistant administrator?

14 A. No.

15 Q. Had you ever talked to Palmer Hough about
16 the 404(c) action and the Pebble Mine?

17 MR. ROSENBERG: Objection, vague.

18 THE WITNESS: Yes, I did.

19 BY MR. YOERGES:

20 Q. Do you know whether Palmer Hough was
21 someone who agreed with you that 404(c) should be the
22 way that you go?

1 MR. ROSENBERG: Objection, vague.

2 THE WITNESS: I believe that Palmer

3 agreed.

4 BY MR. YOERGES:

5 Q. So the next sentence says, "He believes

6 EPA leaders" -- he, referring to you again --

7 "believes EPA leaders have decided to proceed and

8 they are just deciding when." Do you agree that on

9 September 2010, the EPA leaders had decided to

10 proceed, I assume under 404(c), and they are just

11 deciding when?

12 MR. ROSENBERG: Objection, vague.

13 THE WITNESS: I agree that I probably

14 believed that at the time.

15 BY MR. YOERGES:

16 Q. But came not to believe it later?

17 A. That's possible because I was sometimes

18 disappointed when the things they did, they decided

19 to do.

20 Q. He goes on to say, "He is sending me

21 contact info for the TU person so we can talk with

22 them." Again "he" referring to you. Do you have any

1 understanding what he's referring to there with

2 regard to the contact info for the TU person?

3 A. I guess I'm assuming that he asked me who

4 the TU person was that was working on this and I knew

5 that so he asked me for the information.

6 Q. And who was that?

7 A. It would have been Shoren Brown.

8 Q. By the way, do you recall the conversation

9 that Phil Brna seems to be writing about here? Do

10 you recall the conversation you had with him?

11 A. Not specifically, no.

12 Q. The next paragraph says, "Phil says DC is

13 opposed to his plan to do a year of outreach before

14 they make a decision. He thinks they are just going

15 to do this in accordance with the regs and as quickly

16 as they can." So when it says Phil says DC is

17 opposed, do you have any understanding what he's

18 referring to when he says DC is opposed?

19 A. This I do remember.

20 Q. Oh, you do? Why don't you tell me about

21 this then.

22 A. Well, I remember -- I don't remember the

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1 conversation with Phil Brna about this but I remember

2 this issue.

3 Q. Okay. Why don't you explain the issue.

4 A. Well, I guess I kind of have a background

5 that's not just science, although that's my primary

6 responsibility is related to science but I also

7 decided early in my career at EPA that working with

8 communities and reaching out and getting consensus

9 was an important part of what we should be doing and

10 I did a lot of training that EPA paid for around that

11 and so this is a big controversial project so I

12 really liked the idea of rather than just jumping

13 into more controversy, to actually trying to do some

14 consensus building around it. And that's what this

15 is about.

16 Q. So that would refer to the first sentence,

17 "Phil says DC is opposed to a plan to do a year of

18 outreach before they make a decision"?

19 A. Right.

20 Q. So you wanted to do a year of outreach to

21 the communities before any 404(c) decision was made?

22 A. Yes.

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1 Q. And it says, "Phil says DC is opposed to

2 that." Did you come to learn that DC was opposed to

3 that year of outreach?

4 MR. ROSENBERG: Objection, vague.

5 THE WITNESS: I guess I -- I think I

6 probably proposed it and they said, that's not what

7 we're going to do. I mean, I'm assuming that

8 that's -- I believe that's how it unfolded to the

9 best --

10 MR. ROSENBERG: And on that basis, assumes
11 facts not in evidence.

12 MR. YOERGES: We'll see if we can get them
13 in evidence.

14 BY MR. YOERGES:

15 Q. Do you remember having conversations with
16 people at headquarters where you made that proposal
17 but they decided to go in a different direction?

18 A. I actually don't remember, no, not
19 specifically.

20 Q. And it goes on to say, "He," again
21 referring to you, "thinks they're just going to do
22 this in accordance with the regs and as quickly as

1 they can." Do you have an understanding as to what
2 that might mean?

3 A. Well, it seems pretty evident and I
4 obviously made a statement to that effect. Obviously
5 at the time, that's probably what I believed, with my
6 limited information about what they were thinking.

7 Q. That's all I have about that, sir. I'm
8 going to hand to you a two-page exhibit, North Number
9 8, with copies to counsel. While you're looking at
10 that, let me just identify it as a two-page email
11 chain. The top email is an email from Phil North,
12 December 13th, 2011 to Barbara Butler at EPA with
13 several ccs. Subject line, please visit Bristol Bay
14 watershed assessment-mitigation section_BAB_version
15 3.

16 MR. ROSENBERG: And I would just note that
17 there does not appear to be a Bates Number on this
18 document.

19 MR. YOERGES: It's up in the top left
20 corner, EPA 3296.

21 MR. ROSENBERG: Okay. Thank you for that.

22 MR. YOERGES: You're welcome.

1 MS. GARDE: Take a minute to read this.

2 MR. YOERGES: Absolutely.

3 MS. GARDE: Okay.

4 BY MR. YOERGES:

5 Q. Okay, have you had a chance to look at

6 that?

7 A. I did, yes.

8 Q. Before I ask any questions about that, let

9 me focus you on the date which is December 13th,

10 2011.

11 A. Yes.

12 Q. Do you recall that there was a briefing of

13 Administrator Lisa Jackson at headquarters on

14 November 4th, 2010, November 4th, 2010, about the

15 options to proceed with a 404(c) in the Pebble Mine

16 ^ and deposit?

17 MR. ROSENBERG: Objection, assumes facts

18 not in evidence.

19 THE WITNESS: I actually have no idea what

20 the date of any briefing for Lisa Jackson would have

21 been.

22 BY MR. YOERGES:

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1 Q. Well, did you participate in a briefing of
2 the administrator where the region made a
3 recommendation to proceed with a advance 404(c)
4 action?

5 A. I don't recall a briefing where that
6 recommendation was made, which isn't to say that it
7 wasn't. It's just that I don't recall it.

8 Q. Do you recall whether there ever came a
9 time when Lisa Jackson as the administrator of the
10 EPA approved a recommendation by Region 10 regarding
11 how to proceed under section 404(c)?

12 A. No.

13 MR. ROSENBERG: Objection.

14 BY MR. YOERGES:

15 Q. You don't recall that?
16 A. I don't recall any such approval.
17 Q. You testified earlier today that you knew
18 what the Bristol Bay watershed assessment is?
19 A. Yes.
20 Q. Was there Bristol Bay watershed assessment
21 an endeavor that was approved at the headquarters
22 level or was that approved only at the regional

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1 level?
2 MR. ROSENBERG: Objection, assumes facts
3 not in evidence and misleading.
4 THE WITNESS: I wasn't involved in that
5 discussion of doing the -- of making the decision to
6 do an assessment so I have no idea.
7 BY MR. YOERGES:
8 Q. So you have no idea whether the Bristol

9 Bay watershed assessment was approved at the
10 headquarters level?

11 MR. ROSENBERG: Same objection.

12 THE WITNESS: I think you just asked a
13 different question.

14 BY MR. YOERGES:

15 Q. Okay. Did you have any idea whether the
16 Bristol Bay watershed assessment was approved at the
17 headquarters level?

18 MR. ROSENBERG: Same objection.

19 THE WITNESS: Okay. And I think the way I
20 have to answer that is as far as I know, the region
21 made the decision and, I mean, perhaps headquarters
22 went along with it but again, I wasn't involved in

1 those discussions. We did it. They never object --

2 I mean, headquarters didn't say don't do it, as far

3 as I know. They didn't put a quash on it and it was
4 completed including with headquarters resources so, I
5 mean, you could draw conclusions from that but I was
6 not party to those discussions.

7 BY MR. YOERGES:

8 Q. Did you have any understanding of whether
9 headquarters was aware that the region was doing
10 something called the Bristol Bay watershed
11 assessment?

12 A. Oh, yes. I'm --

13 Q. There is no question in your mind about
14 that?

15 A. Yeah, right.

16 Q. Were you, Phil North, opposed or in favor
17 of going forward with the Bristol Bay watershed
18 assessment?

19 MR. ROSENBERG: Objection, vague.

20 THE WITNESS: I would say that I was a
21 little disappointed when it was announced because I
22 didn't think it was necessary because the 404(c)

1 process includes a process to evaluate what the
2 likely effects would be. So I didn't think it was
3 necessary. But then it became what we were going to
4 do so, okay, I'm part of the team, I'll do with the
5 decision -- I'll follow along with the decision.

6 BY MR. YOERGES:

7 Q. Sorry about that. I didn't mean to
8 interrupt. Do you know when the Bristol Bay
9 watershed assessment was approved?

10 MR. ROSENBERG: Objection, assumes --

11 BY MR. YOERGES:

12 Q. And by approved, I mean actually go
13 forward with the undertaking.

14 A. I don't think I do know when that was --
15 when that decision was made. I don't think I do.

16 Q. You said you didn't think it was
17 necessary. Why?

18 A. I --

19 Q. Because the 404(c)?

20 A. Right.

21 Q. And did you already believe that you were
22 developing the information that was necessary under

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1 404(c) to be able to proceed?

2 MR. ROSENBERG: Objection, vague.

3 BY MR. YOERGES:

4 Q. At the time the Bristol Bay watershed
5 assessment was determined to go forward with that?

6 MR. ROSENBERG: Same objection.

7 BY MR. YOERGES:

8 Q. Bad question. Let me rephrase it. So the
9 Region 10 decides at some point in time to go forward
10 with the Bristol Bay watershed assessment, correct?

11 MR. ROSENBERG: Objection, assumes facts
12 not in evidence and misleading.

13 BY MR. YOERGES:

14 Q. That's not correct?

15 A. Could you say it again?
16 Q. Did Region 10 at some point approve the
17 Bristol Bay watershed assessment?
18 MR. ROSENBERG: Same objection.
19 BY MR. YOERGES:
20 Q. To undertake the Bristol Bay watershed
21 assessment?
22 MR. ROSENBERG: Same objection.

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1 THE WITNESS: At some point Region 10
2 decided to go forward with a Bristol Bay watershed
3 assessment, yes.
4 BY MR. YOERGES:
5 Q. Who made that decision in Region 10 if you
6 know?
7 A. I don't know.
8 Q. Who Dennis McLerran have made that

9 decision?

10 MR. ROSENBERG: Objection.

11 MS. GARDE: Asked and answered.

12 MR. ROSENBERG: He just testified that he
13 didn't know.

14 BY MR. YOERGES:

15 Q. Could the Bristol Bay watershed assessment
16 have proceeded without Dennis McLerran's approval?

17 A. I don't think so.

18 Q. So at some point in time, as you
19 testified, Region 10 decided to go forward with the
20 Bristol Bay watershed assessment. You said you
21 didn't think it was necessary for the reasons you
22 gave.

1 A. (Witness nodding.)

2 Q. Did you believe you were already in the

3 process of collecting the information that you would

4 need to inform a decision about 404(c) --

5 MR. ROSENBERG: Objection --

6 BY MR. YOERGES:

7 Q. -- prior to the Bristol Bay watershed

8 assessment being undertaken?

9 MR. ROSENBERG: Objection, misleading and

10 vague.

11 THE WITNESS: We had started to collect

12 information for the purpose of applying that

13 information to a decision about 404(c).

14 BY MR. YOERGES:

15 Q. You testified earlier that you had used

16 folks from NatureServe, for example, to gather

17 fisheries information and other kinds of ecological

18 information, correct?

19 A. That's correct, yes.

20 Q. And that's what you're referring to when

21 you're saying you believe you were already collecting

22 information to inform a decision to proceed under

1 404(c), right?

2 A. Yes.

3 MR. ROSENBERG: Objection.

4 BY MR. YOERGES:

5 Q. But somebody along the way in Region 10

6 says we're going to do a watershed assessment,

7 correct?

8 MR. ROSENBERG: Objection, vague.

9 THE WITNESS: Somebody did.

10 BY MR. YOERGES:

11 Q. Somebody did?

12 A. At some point.

13 Q. And you came to learn of that?

14 A. That's correct.

15 Q. And notwithstanding the fact that you

16 disagreed with the need for it, you're a staff member

17 of the ARU and you proceeded with it?

18 A. That's correct.

19 MR. ROSENBERG: Objection, vague.

20 BY MR. YOERGES:

21 Q. And you worked on it, correct?

22 A. Yes, that's right.

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1 Q. In fact, you were the technical team lead

2 on the Bristol Bay watershed assessment, right?

3 MR. ROSENBERG: Objection, vague, assumes

4 facts not in evidence.

5 THE WITNESS: For a period of time, I was.

6 BY MR. YOERGES:

7 Q. And you were also the person responsible

8 for drafting the mining scenario section for the

9 Bristol Bay watershed assessment, right?

10 MR. ROSENBERG: Objection, vague.

11 THE WITNESS: I was one -- I was a

12 co-author so I was one of two people doing that.

13 BY MR. YOERGES:

14 Q. Was there a mining scenario team that was

15 put together by Region 10?

16 MR. ROSENBERG: Objection, vague.

17 THE WITNESS: Not that I recall. Not a

18 team. Nothing that we identified as a team.

19 BY MR. YOERGES:

20 Q. Nothing that was like a group or something

21 like that? I don't mean to limit it to team. There

22 wasn't a mining scenario group that was assembled?

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1 A. Not so identified.

2 Q. Do you know whether there had ever been a

3 public announcement by EPA that the Agency intended

4 to proceed with a watershed assessment for Bristol

5 Bay?

6 A. Yes, there was.

7 Q. And do you remember when that was?

8 A. Yes, I do.

9 Q. When was that?

10 A. On my birthday in 2011. That's why I

11 remember it. February 7th.

12 Q. February 7th, 2011, okay. I remember it

13 being a day before my wife's birthday.

14 A. Oh, okay.

15 Q. Just kidding. It is the day before her

16 birthday but I don't remember.

17 MR. ROSENBERG: Objection, TMI.

18 MR. YOERGES: That's your first good

19 objection today, even though it's not to form.

20 BY MR. YOERGES:

21 Q. So just again to provide context for this

22 exhibit that's in front of you right now -- and I

1 can't remember the number anymore. Is it 8?

2 A. Yes.

3 Q. North Exhibit 8. So this is December
4 2011. The announcement that the Agency was going to
5 proceed with the Bristol Bay watershed assessment
6 happened in February of that year, earlier that year?

7 A. Yes, that's correct.

8 Q. And you testified a little bit about what
9 the purpose of the BBWA -- or I'm calling it the
10 BBWA, Bristol Bay watershed assessment, is that okay
11 with you?

12 A. Yes.

13 Q. Bristol Bay watershed assessment. I would
14 like you to take a look at what we're going to
15 mark -- just leave that exhibit there because I'm
16 going to have another question about that. Could you
17 mark this next exhibit, please? It's 9. And Chris,
18 it's the press release, the Murkowski press release.

19 (North Exhibit No. 9 was
20 marked for identification.)

21 MS. GARDE: Is this a confidential
22 document?

1 MR. ROSENBERG: No.

2 MS. GARDE: Okay.

3 BY MR. YOERGES:

4 Q. So while you're taking a look at this,
5 Mr. North, I just want to identify it for the record
6 as a document, first page Bates Number 25164.000128
7 and it's an email chain but the top email is from
8 David Evans to Palmer Hough dated on your birthday,
9 February 7, 2011.

10 MS. GARDE: All right. So can we have a
11 minute to read it?

12 MR. YOERGES: Absolutely.

13 MS. GARDE: Thank you.

14 MR. ROSENBERG: And while we're reviewing
15 the document, I would just note for the record that
16 it is my understanding at least that this was not a
17 document that EPA has released and the document notes
18 at the top with the header that it contains internal
19 deliberative and/or privileged information. That
20 disclosure was authorized only to Congress for

21 oversight purposes in response to subpoena and that
22 privilege claims are not waived for any other

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1 purpose.

2 MR. YOERGES: So noted.

3 MS. GARDE: Well, who is asserting that?

4 MR. ROSENBERG: Not asserting anything

5 yet.

6 BY MR. YOERGES:

7 Q. And Mr. North, while you're looking at
8 that, let me just put a bow on what Mr. Rosenberg
9 said. These were documents, as I understand it, that
10 were submitted by the EPA to Congress and once
11 Congress received them, they made them all available
12 to the public at large on a website so they're all
13 publicly available at this point in time, my
14 understanding.

15 Have you had a chance to look at this,
16 Mr. North?
17 A. Yes.
18 Q. Turning your attention specifically to the
19 Murkowski press release which appears on page 2 and
20 goes over to page 3, do you know who senator
21 Murkowski is?
22 A. I do.

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1 Q. And who is she?
2 A. She's a senior -- currently the senior
3 senator for Alaska.
4 Q. Have you ever met her?
5 A. I never have, no.
6 Q. And this press release is dated February
7 7th, 2011, correct?
8 A. February 7th, 2011, yes.

9 Q. And that's the date that the EPA publicly
10 announced they were going to proceed with the Bristol
11 Bay watershed assessment?

12 A. Right.

13 Q. And look at the first quote from
14 Murkowski. She says, and I'm quoting, "The EPA's
15 decision to withhold judgment on the potential
16 environmental impact of projects like the Pebble Mine
17 until all scientific information has been collected
18 and analyzed is a prudent decision," attributed to
19 Murkowski. Do you see that?

20 A. Yes.

21 Q. And again, a couple of paragraphs down,
22 and I'm quoting from her again, from the press

1 release, "I am committed to letting the science
2 decide whether mining is right for the Bristol Bay

3 region but any attempt to prejudge a project before
4 the environmental work is finished would be a
5 troubling signal as well as a clear violation of the
6 environmental review process." Do you see that?

7 A. I do.

8 Q. Do you disagree with any of the two
9 statements I just read?

10 MR. ROSENBERG: Objection, vague.

11 MS. GARDE: Are you asking him if he
12 disagrees that that's what it says?

13 BY MR. YOERGES:

14 Q. No, do you disagree with any of the
15 substance of the sentences I just read?

16 MR. ROSENBERG: Objection, vague,
17 misleading.

18 THE WITNESS: I guess I feel like that's a
19 really loaded question.

20 BY MR. YOERGES:

21 Q. Well, when the EPA announced the Bristol
22 Bay watershed assessment, did you see that as a

1 decision by the EPA to withhold judgment on the
2 potential environmental impact of projects like the
3 Pebble Mine until all scientific information had been
4 collected and analyzed?

5 A. Well, I guess I'm going to reword what you
6 said.

7 Q. Sure.

8 A. And I think it was a decision by EPA to
9 withhold judgment until sufficient scientific
10 information was collected and analyzed.

11 Q. As opposed to all scientific information?

12 A. Yes.

13 Q. And what's the distinction you're making
14 there?

15 A. Because there is a very, very large body
16 of scientific information in the world and you could
17 always argue that -- or someone could always argue
18 that, no, you need this bit more or this bit more or
19 this is too uncertain, we need to do a bit more
20 research but there does come a point when you say,

21 no, it's clear, the body of evidence is clear and we

22 can make a decision.

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1 Q. I understand. And subject to that change,
2 which is essentially substituting the word
3 "sufficient" for "all" in that quote from Murkowski,
4 she goes on to say it's a prudent decision. Do you
5 think it's a prudent decision to proceed that way?

6 MR. ROSENBERG: Objection, vague. Which
7 quote are you talking about?

8 MR. YOERGES: I think he knows which quote
9 I'm talking about.

10 THE WITNESS: The second quote?

11 BY MR. YOERGES:

12 Q. No, the first quote. EPA's decision to
13 withhold judgment until all scientific information
14 has been collected is a prudent decision. I'm

15 paraphrasing.

16 A. Can you ask the question again?

17 Q. Sure. Do you think it's prudent decision

18 to withhold judgment until sufficient scientific

19 information has been collected and analyzed?

20 A. Yes.

21 Q. And you agree with Murkowski in the second

22 quote that any attempt to prejudge a project before

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1 the environmental work is finished would be a

2 troubling signal?

3 MR. ROSENBERG: Objection, vague.

4 BY MR. YOERGES:

5 Q. As well as a clear violation of the

6 environmental review process? Would you agree with

7 that?

8 MR. ROSENBERG: Objection, vague and calls

9 for a legal conclusion.

10 THE WITNESS: I don't know that I do agree
11 with that completely. The way it's stated, I'm not
12 sure that I do completely agree with it.

13 BY MR. YOERGES:

14 Q. Why is that?

15 A. Well, let me read it again. The first
16 part, I agree.

17 Q. Okay, the first part is, "I am committed
18 to letting the science decide whether mining is right
19 for the Bristol Bay region."

20 A. Right.

21 Q. And you would agree with that too? You
22 would say you would be committed to letting the

1 science decide whether or not mining is right for the
2 Bristol community?

3 A. Yes, I would agree. And the second one,
4 it just seems like that's a really -- that's highly
5 subject to interpretation about what do you mean by
6 prejudice, what do you mean by the environmental work.
7 I think that those -- I think if you talk to
8 different people that are in different parts of this
9 discussion, they would all have different
10 interpretations of what that means so it's hard for
11 me to agree with that simply as a statement.

12 Q. Sure. And I understand. So let me put my
13 interpretation on and ask you some questions about
14 that.

15 A. All right.

16 Q. Let's assume prejudice means that whatever
17 the science shows you, you're going to head down a
18 particular path regardless of what the science shows
19 you, in other words, you've judged the outcome before
20 all the science is in or before sufficient science is
21 in. That's how I'm using prejudice, okay?

22 MS. GARDE: Object.

1 MR. ROSENBERG: Objection.

2 MR. YOERGES: I'm asking a question.

3 MR. ROSENBERG: Well, you said all and
4 sufficient.

5 BY MR. YOERGES:

6 Q. Sufficient. Let's go with your word, is
7 sufficient.

8 MS. GARDE: It's getting a little
9 complicated.

10 MR. YOERGES: No, let me simplify it.
11 I'll simplify it.

12 BY MR. YOERGES:

13 Q. Do you know what the word prejudice means?

14 A. Yes.

15 Q. It means to judge something before you
16 have the evidence regarding the matter that is under
17 consideration, right?

18 A. Right.

19 MS. GARDE: That's what you think prejudice
20 is.

21 BY MR. YOERGES:

22 Q. Would you agree with that?

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1 A. I would go along with that.

2 Q. Is there some other definition of
3 prejudge?

4 A. I don't know. But I'll go along with it.

5 Q. All right. So what she's saying here is
6 that prejudging a project before the environmental
7 work is finished would be a troubling signal. And
8 I'm saying that let's assume that means that making a
9 decision about 404(c) and whether it should apply
10 before sufficient scientific evidence would be
11 troubling, something you shouldn't do?

12 MR. ROSENBERG: Objection, vague,
13 misleading and compound.

14 MS. GARDE: What's the question?

15 BY MR. YOERGES:

16 Q. Is that right?

17 A. To prejudge before sufficient -- say it

18 again.

19 Q. Scientific evidence.

20 A. Okay. Okay. Would be troubling? Yeah, I

21 would agree with that.

22 Q. Let's go to the email from David Evans to

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1 Palmer Hough. Who is David Evans?

2 A. David Evans is the head of the -- or at

3 least he was, when I last knew, the head of the

4 wetlands program nationally.

5 Q. So he's the national -- is he the director

6 of the division of wetlands? Is that what he is?

7 A. I believe so. You probably actually know

8 better than I do.

9 Q. I've seen that title --

10 A. Okay.

11 Q. -- in places. And Palmer Hough, you've
12 already testified who he is. And both of these folks
13 worked in headquarters in Washington?

14 A. Yes, that's correct.

15 Q. David Evans, on the same day as the
16 Murkowski press release, says, "Interesting spin on
17 EPA's announcement/decision. Her communications
18 would suggest no 404(c) would be done until all the
19 science is in." Then he's got EIS in parentheses
20 with a question mark. "Obviously that's not what we
21 have in mind. Dave."

22 Sitting here today and understanding what

1 you know about the Pebble Mine and the 404(c)
2 process, do you have any idea what Dave Evans is

3 trying to tell Palmer Hough here?

4 A. I really can only speculate.

5 Q. Why don't you do that.

6 MS. GARDE: I don't want him to speculate.

7 MR. YOERGES: No, I would like him to

8 speculate.

9 MS. GARDE: Wait just a minute. I object.

10 You're calling for speculation, infers beyond what

11 he -- you've established any kind of foundation for.

12 You can answer the question.

13 THE WITNESS: This gets to what the

14 problems I had with the quote in the Murkowski memo

15 or press release in that I'm guessing that what he

16 means is that the threshold for deciding to do a

17 404(c) is -- and I don't remember the words actually

18 in the regulations but it's -- it has to do with the,

19 you know, the opinion of the deciding official. If

20 that person feels like there is sufficient

21 information, then they can make that decision. And

22 so that doesn't require that you have, you know, all

1 the science. And that's why I kind of object to that
2 word "all." And then he also says, you know, EIS in
3 parentheses and so I think he's suggesting that, you
4 know, we don't have to wait until an EIS is done.

5 BY MR. YOERGES:

6 Q. What is an EIS?

7 A. Environmental impact statement.

8 Q. In what context would an environmental
9 impact statement be done with respect to a 404
10 application?

11 MR. ROSENBERG: Objection, misleading.

12 THE WITNESS: An EIS was required for a
13 federal action and a permit for a mine such as Pebble
14 is a federal action that would require an EIS.

15 BY MR. YOERGES:

16 Q. Okay. So keep going.

17 A. That's all I had to say.

18 Q. All right. Thanks. That's all with that
19 one. Let's go back to the previous exhibit. I'll
20 take that from you there. So we're going back to

21 north number 8. So the top email here, Mr. North, is
22 from you, December 2011, and you start out by saying,

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1 "This and Bob's piece." Are you referring to Bob

2 seal there?

3 A. Yes, I am.

4 Q. Bob seal is with the U.S. geological

5 service?

6 A. Survey, yes.

7 Q. Survey, sorry. And was he involved in

8 helping prepare the Bristol Bay watershed assessment?

9 A. Yes, he was.

10 Q. And in what respect?

11 A. He helped -- he provided information and I

12 think he even wrote some pieces that we incorporated

13 into the mining scenario.

14 Q. So the third sentence there says, "Both

15 reflect a problem that up to this point we have not
16 overcome. This assessment is not about Pebble but
17 the mine we are assessing is Pebble." Explain what
18 you mean by that.

19 A. What we were saying in Region 10 was that
20 this wasn't about Pebble. This was about mining in
21 Bristol Bay. And all of the mine scenario up to that
22 point was from Pebble and it was what they had

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1 proposed. And so that's what that is is, you know,
2 we're using their information, it's what they
3 proposed but we say it's not about that, which is a
4 little bit of a conflict.

5 Q. And did you propose, at least tentatively
6 propose a way to resolve that conflict?

7 MR. ROSENBERG: I'm going to object.

8 BY MR. YOERGES:

9 Q. In this email?

10 MR. ROSENBERG: I'm going to object at
11 this point because we're getting into internal
12 deliberative information that goes beyond what's on
13 the face of this document and that deliberative
14 information has nothing to do with the FACA claims in
15 this lawsuit and so I would instruct the witness not
16 to answer to the extent it reveals any internal
17 deliberative discussions as to the scope of the
18 Bristol Bay watershed assessment or the science
19 underpinning it. If you can answer the question more
20 generally or if you can rephrase the question, that
21 would be okay.

22 BY MR. YOERGES:

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1 Q. Well, let me ask the question with respect

2 to this particular document here which has no

3 deliberative stamp on it or anything. It seems to me
4 that in this document -- you tell me if I'm wrong.
5 In this document, you're proposing a way to deal with
6 the issue that you raised which is the assessment is
7 not about Pebble but the mine we are assessing. It
8 looks to me like you're proposing some way to address
9 that. Is that right?

10 A. Yes, I am.

11 Q. And what is the proposal you're making in
12 this particular email?

13 A. The proposal is that we address potential
14 mines other than Pebble, which is smaller mines.
15 Yeah, just smaller mines.

16 Q. And that's all you do, just address
17 smaller mines and not address a larger mine or --

18 A. No.

19 Q. Is that what you're saying?

20 A. No, I'm just saying include smaller mines,
21 the potential for smaller mines in our assessment.

22 Q. But not disregard the Pebble data?

1 A. That's correct.

2 Q. So you would also be assessing the data

3 submitted by Pebble, is that right?

4 A. That's correct. Although I wouldn't

5 characterize --

6 Q. How would you put it?

7 A. It's not data. It's the mine plans that

8 they had developed and submitted in various fora up

9 to that point.

10 Q. By the way, just by way of a real quick

11 question on the second page of that exhibit, do you

12 see where it says, between the two dashed lines,

13 notification from Lotus Quickr, Q-u-i-c-k-r?

14 A. Yes.

15 Q. Do you know what that is?

16 A. I do.

17 Q. What is that?

18 A. Quickr is a software that allows people to

19 share documents and go back in and take them out,

20 edit them, put them back in for others to look at so

21 without having multiple versions lying around.

22 Q. Did you use it with respect to the Bristol

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1 Bay watershed assessment?

2 A. Yes, I did.

3 Q. Okay. That's all I have on that. I'm

4 going to take you -- we've just been dealing in the

5 December 2011 time period. I'm going to now take you

6 back into 2010 again. I'm jumping around a little

7 bit here but I'm going to ask some questions about

8 something we've seen referred to as the options

9 paper. So I just want to give you some context and

10 reorient you because I realize we're going back in

11 time here.

12 A. Okay.

13 Q. Let me just ask you, have you ever heard

14 of a document that addresses the question of 404(c)

15 and other things that people from EPA refer to as the
16 options paper?

17 MR. ROSENBERG: Objection, vague.

18 BY MR. YOERGES:

19 Q. You can answer.

20 A. Yes, I have.

21 Q. You have. And in your words, what is the
22 options paper?

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1 A. The options paper is a document that was
2 prepared for -- to consider what are our options in
3 this -- to deal with this particular issue. And that
4 issue is a large mine in the Bristol Bay watershed
5 that could have significant effect.

6 Q. And do you recall whether you had any
7 responsibility for drafting any part of the options
8 paper?

9 A. Yes, I was involved.

10 Q. And what was your role in that?

11 A. As the 404 person, I was -- I'm trying to
12 decide if I was actually tasked with it or if I took
13 it on on my own initiative, and I don't recall. But
14 I believe I was involved. I might have been the one
15 who originated it.

16 Q. I was just about to ask that question,
17 whether you were the principal author of the options
18 paper.

19 A. I may have been initially, perhaps the
20 very first draft.

21 Q. And then was it circulated around the
22 office to other people within Region 10?

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1 MR. ROSENBERG: Objection, vague.

2 THE WITNESS: I wasn't working by myself

3 so I undoubtedly showed it to other people and said,

4 okay, let's fill it out, go ahead, add to it, do

5 whatever.

6 BY MR. YOERGES:

7 Q. Do you recall -- and again, I'm sort of

8 focusing your attention on the 2010 time period.

9 A. Okay.

10 Q. Do you recall when it was that you did the

11 first draft of the options paper?

12 A. I do not recall.

13 Q. Do you know whether it was before or after

14 May 21st, which is the day that the tribes petition

15 was mailed to EPA?

16 MR. ROSENBERG: Objection, it

17 mischaracterizes his testimony. I don't know if he

18 testified he did the first draft.

19 MR. YOERGES: So you're objecting to the

20 prior question?

21 MR. ROSENBERG: Yeah, actually I am. My

22 apologies.

1 BY MR. YOERGES:

2 Q. My question now is do you know whether the
3 first draft of the options paper was prepared by you
4 or anyone else before or after May 21st which is the
5 day that the tribe petition says it was mailed to
6 EPA?

7 A. I do not recall.

8 (North Exhibit No. 10 was
9 marked for identification.)

10 BY MR. YOERGES:

11 Q. And while that's being circulated around
12 the room and while you're taking a look at it, let me
13 just identify this as EPA 1093. The top email on the
14 first page is one from Patricia McGrath dated July
15 1st, 2010 to Phil North with cc to several people,
16 subject, re: Bristol Bay options paper.

17 MR. ROSENBERG: And while we're reviewing
18 this document, I'll just note for the record that
19 this is a document that was inadvertently released by
20 another agency in response to a FOIA request.

21 MS. GARDE: Are you asserting privilege on
22 this?

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1 MR. ROSENBERG: Not at this time on this
2 document itself.

3 BY MR. YOERGES:

4 Q. And I have very few substantive questions
5 about this if any, Mr. North. I'm just going to
6 really ask you whether this is a draft of the options
7 paper that you were referring to.

8 MS. GARDE: Okay, because if you're going
9 to ask substantive questions, I want him to take the
10 time to read it.

11 MR. YOERGES: Sure. And I get that.
12 That's why I wanted to ask him to cut through that
13 ^ .

14 MS. GARDE: There is no question.

15 BY MR. YOERGES:

16 Q. Starting on -- I guess it's the second
17 page of this exhibit, this Exhibit being number 10,
18 where it says options for EPA involvement in mining
19 activity in the Bristol Bay watershed, June 8th,
20 2010. Do you see where I'm referring to there?

21 A. Yes.

22 Q. And it goes on to the end of that exhibit.

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1 Is this a draft of the options paper you were
2 referring to earlier?

3 A. I actually don't remember this.

4 Q. You don't remember this document?

5 A. I don't. And it doesn't mean that I
6 didn't work on it. It's just that I don't remember
7 it.

8 Q. So take a look at the first page of this

9 exhibit, email. And down toward the bottom there, do

10 you see it says -- an email from Phil North to

11 several people including Patricia McGrath. Do you

12 see that?

13 A. I do.

14 Q. And it says, subject, Bristol Bay options

15 paper?

16 A. Uh-huh.

17 Q. And then just read what you wrote there,

18 the first paragraph.

19 A. "Attached is the latest version of the

20 options paper for Bristol Bay/Pebble Mine. The main

21 edits are the addition of a guess at resource needs

22 and the beginning of an information available/data

1 gaps list. If you have edits to suggest please get

2 them back to me as soon as you can."

3 Q. And then read the next paragraph too.

4 A. "The only time the RA is available to
5 discuss the options paper before he visits Bristol
6 Bay is Thursday, July 8 at 11:00 a.m. PST. Most of
7 those on the distribution list for this message are
8 not available at that time."

9 Q. Let me just ask this question. So you
10 remember writing this email?

11 A. I don't remember writing it.

12 Q. You don't remember.

13 A. I mean, I don't have a recollection of, in
14 my head, writing it.

15 Q. Sure. Do you have any reason to believe
16 you didn't write this email?

17 A. I have no reason to believe I didn't.

18 Q. And the subject matter says Bristol Bay
19 options paper, right?

20 A. That's right.

21 Q. Do you have any reason to believe that --
22 well, let me go up to the top of the email. Sorry

1 about that. I don't mean to jump around. So this is

2 an email from Patricia McGrath dated July 1st.

3 That's the day after the email that you sent,

4 correct?

5 A. Yes.

6 Q. And it's addressed to you?

7 A. Yes.

8 Q. It says, "Phil, attached are my comments.

9 Give me a brief call if you have questions. I'm

10 planning on attending the RA briefing." By the RA is

11 the regional administrator?

12 A. That's correct.

13 Q. At the time, that's Dennis McLerran?

14 A. I believe so.

15 Q. And then it says, "Thanks for asking,

16 Patty." And you can see a little icon of a Word

17 document there saying Bristol Bay options paper final

18 draft-PM.doc. Do you see that?

19 A. I do see that, yes.

20 Q. And then if you turn to the first page of

21 this, just take a look at that comment. We saw one
22 of these comments that appear before one with the

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1 little balloon blowout there.

2 A. Yes.

3 Q. Do you see where it says comment (PM1)?

4 A. Yes.

5 Q. Is PM Patty McGrath?

6 A. I believe it would be.

7 Q. So do you have any reason to believe that

8 the attachment here -- well, let me ask you this.

9 Isn't it reasonable to believe that the attachment

10 here, options for EPA involvement in mining activity,

11 are the comments that Patricia McGrath sent back to

12 you regarding the options paper?

13 A. Yes, I think that's reasonable.

14 Q. Do you remember having gotten those

15 comments and reviewing them after she sent them?

16 A. It's hard to know the difference between
17 our talking about it and that idea getting put into
18 my head versus actually remembering it.

19 Q. Right.

20 A. So I don't know.

21 Q. Do you recall -- again, the second
22 paragraph of your email, halfway down the page of the

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1 front page, "The only time the RA is available to
2 discuss the options paper before he visits Bristol
3 Bay is Thursday, July 8 at 11:00 PST." Do you recall
4 there being a briefing of the regional administrator,
5 Dennis McLerran, on this options paper at or around
6 July 8th of 2010?

7 MR. ROSENBERG: Objection, assumes facts
8 not in evidence.

9 MR. YOERGES: That's why I'm asking if he
10 recalls.

11 MR. ROSENBERG: You didn't say if.

12 MR. YOERGES: I said whether.

13 BY MR. YOERGES:

14 Q. Do you recall whether there was a
15 briefing?

16 A. I don't want to imply that there wasn't a
17 briefing but I don't recall that briefing. It's not
18 a memory in my head so --

19 Q. Did you ever share a draft of the options
20 paper with Jeff Parker?

21 A. I might have.

22 Q. Do you have a recollection of that?

1 A. I don't have a recollection of that but I
2 might have.

3 Q. I just want to show you the next exhibit.

4 I'm done with that.

5 (North Exhibit No. 11 was

6 marked for identification.)

7 BY MR. YOERGES:

8 Q. Exhibit 11. I'm showing the witness a

9 two-page exhibit that is marked 11 and it's an email

10 from -- at least the top email is from Michael

11 Szerlog. That's your supervisor, correct?

12 A. Yes, that's correct.

13 Q. To Phil North dated May 11th, 2010. And

14 it says, subject, Bristol Bay options paper.

15 Attachments, option paper on Pebble Mine CSR with

16 W -- I shouldn't say with. Just w-pan V5-11-2010.

17 And then below that is an email from you to Cara

18 Steiner-Riley, subject matter re Bristol Bay options

19 paper. You say, "Thanks, Cara. I'm wondering if it

20 is too long. Is an options paper supposed to be a

21 few pages? I answered your questions and filled in

22 some information you flagged." And then the second

1 page looks to me just to be like an icon with the

2 Word document. Is that fair to say?

3 A. Yes.

4 Q. Do you recall back in May 11th, you were

5 working on providing comments and edits on an options

6 paper?

7 A. I recall that I did work on an options

8 paper, yes.

9 Q. And back as far as May of 2010?

10 A. Well, it suggests that. I don't know the

11 dates. And I'm not suggesting that what you're

12 saying is not accurate. It's just that it's a while

13 ago and I've retired and moved on and I haven't

14 thought about these things anymore. So my --

15 Q. Completely fair.

16 A. -- my memory is probably pretty leaky.

17 (North Exhibit No. 12 was

18 marked for identification.)

19 BY MR. YOERGES:

20 Q. I've put before you Exhibit North 12 which

21 is, on the top, an email from Phil North to Mike
22 Szerlog. The subject matter, and has FW, which I

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1 think we all can agree means forward, options paper.
2 And then there is some text that is blacked out that
3 says Phil. Let me just ask you to take a look at the
4 email that's beneath that if you would. Did you have
5 a chance to read that, Mr. North?

6 A. Yes.

7 Q. So you see that the email down in the
8 bottom of that from Jeff Parker to Cara Steiner-Riley
9 and to you dated June 28th, 2010, subject matter,
10 options paper. And I asked you a question a little
11 ago whether you ever shared the options paper with
12 Jeff Parker.

13 A. Yes.

14 Q. And I think you said you might have. You

15 didn't have a specific recollection.

16 A. Right.

17 Q. Does this help refresh your recollection
18 as to whether you did or didn't share that options
19 paper with him?

20 A. No, it really doesn't. But -- it doesn't
21 but I believe that Jeff Parker had put together
22 options that he considered -- that he thought we

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1 should consider, I believe, if I remember correctly.

2 Q. Well, did Jeff Parker have any involvement
3 in drafting the options paper, a draft of which we
4 saw a couple of exhibits ago?

5 MR. ROSENBERG: Objection.

6 THE WITNESS: Not that I know of.

7 BY MR. YOERGES:

8 Q. So do you think the options paper he's

9 referring to is not the same options paper as that?

10 MS. GARDE: Objection.

11 MR. ROSENBERG: Objection, misleading,

12 assumes facts not in evidence.

13 MR. YOERGES: That's why I'm asking him.

14 BY MR. YOERGES:

15 Q. Did he draft his own options paper? Is

16 that a completely separate document?

17 A. I can't speak definitively to that

18 question but I believe -- my recollection is that he

19 had put together options and Jeff was routinely

20 making suggestions and offering things to us and I

21 think that if he had a suggestion that seemed like a

22 good suggestion, we might just adopt it but not

1 necessarily.

2 Q. And I take your point on that but I want

3 to focus specifically on the subject, options paper.

4 A. Yes.

5 Q. And I saw other emails internal to EPA

6 where the Bristol Bay paper is referred to as an

7 options paper.

8 A. Right.

9 Q. He's not just saying options. He's saying

10 options paper. Doesn't it seem like he is referring

11 to something specific there?

12 MS. GARDE: Object. Go ahead and --

13 MR. ROSENBERG: Objection, calls for

14 speculation, lack of personal knowledge.

15 THE WITNESS: I think I would have to

16 speculate on it. I mean, perhaps but I don't know

17 exactly what he's referring to there.

18 BY MR. YOERGES:

19 Q. And then whatever it was he's referring

20 to, including the text here, you then forward it on

21 to Mike Szerlog?

22 A. Evidently.

1 Q. Why did you do that, do you know?

2 A. To keep Mike Szerlog in the loop.

3 Q. Would you say Jeff Parker was in the loop
4 too?

5 MR. ROSENBERG: Objection, vague.

6 MS. GARDE: Argumentative.

7 THE WITNESS: No, I would say Jeff Parker
8 was not in the loop.

9 (North Exhibit No. 13 was
10 marked for identification.)

11 MR. YOERGES: This is a two pager, guys.

12 It's not stapled together. So take the first two
13 pages and pass it on.

14 BY MR. YOERGES:

15 Q. Mr. North, while you're looking at that,
16 let me identify Exhibit 13 as a two-page email from
17 Jeff Parker dated June 29th, 2010 to Phil North,
18 subject, an idea. And then it says, "Attachments:
19 Grid of prohibit versus restrict by locale by
20 activity-2.doc." And the text says, "Phil, see if

21 this helps." And then there is an icon of a Word
22 document which says grid or prohibit versus restrict

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1 by locale.

2 MS. GARDE: Do you need to read --

3 THE WITNESS: I don't think I need to read

4 all the details.

5 BY MR. YOERGES:

6 Q. Just tell me when you're through taking a

7 look at that, please.

8 A. Yes, I'm ready.

9 Q. Turning your attention to the first page

10 of the email itself, do you know when Jeff Parker

11 sent this email to you on or about June 9th, 2010?

12 A. I don't have a recollection of it.

13 Q. Do you remember -- when it says subject

14 matter and idea and then it's got an attachment, do

15 you remember receiving this attachment?

16 A. I don't recall.

17 Q. He says in the top of the attachment, "You
18 could separate options into procedural options and
19 substantive options. This identifies a substantive
20 option." You don't recall anything to do with this?

21 A. It has -- it's vaguely familiar to me but
22 I don't recall receiving it. I don't have a memory

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1 of getting it on my email.

2 Q. Did you read the email as it came in from

3 Mr. Parker about --

4 A. I did.

5 Q. -- about Pebble Mine?

6 A. I did, yes.

7 MR. ROSENBERG: Objection, vague.

8 MR. YOERGES: I'm not sure I could correct

9 that. Did you read the emails coming --

10 MR. ROSENBERG: All emails read? Which
11 emails?

12 MR. YOERGES: To read ^ ?

13 MR. ROSENBERG: No. I mean, well,
14 attachments.

15 MS. GARDE: That's a very broad question.

16 Did you read the emails? He can answer that
17 generally but if you want to ask him about one
18 specifically, ask him about one specifically.

19 MR. YOERGES: Well, since he doesn't
20 remember, I want to know what his general practice
21 was when an email came in.

22 MS. GARDE: Okay. That's a fair question.

1 BY MR. YOERGES:

2 Q. When an email came in from Mr. Parker, did

3 you read it?

4 A. And my general practice would be to read

5 it, yes.

6 Q. To read it?

7 A. Yes.

8 Q. And was your general practice to consider

9 what it is that he said in an email?

10 A. Yes, as it would be for anyone that sent

11 me something.

12 Q. Okay. I'm done with that.

13 MR. YOERGES: Do you want to take a short

14 break? We've within at it for about an hour.

15 MS. GARDE: Fine.

16 THE VIDEOGRAPHER: Off the record at

17 14:56.

18 (Recess.)

19 (North Exhibit No. 14 was

20 marked for identification.)

21 THE VIDEOGRAPHER: On the record at 15:21.

22 MR. ROSENBERG: I want to take a moment to

1 discuss the live feed that's being provided to both
2 Steptoe attorneys as well as representatives from
3 plaintiff. When we began this deposition this
4 morning, we were informed off the record that the
5 live feed was being provided to individuals who were
6 Steptoe attorneys who were not able to participate in
7 this room in this deposition principally because the
8 room is pretty full. After several hours of the
9 deposition had taken place, we were informed for the
10 first time that among the individuals who are
11 receiving either a live feed or a real time
12 transcript feed of this deposition are four
13 individuals from either Pebble Limited Partnership
14 and/or Northern Dynasty Minerals.

15 It is also our understanding that at least
16 one of those individuals who is participating in the
17 live feed serves as a spokesperson, either formally
18 or informally, for either Pebble Limited Partnership
19 or Northern Dynasty Minerals and that causes us some
20 concern about the potential use or, in the

21 government's view, misuse of a transcript from this
22 deposition.

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1 In addition, it is also our understanding
2 that plaintiffs' counsel may soon show a witness that
3 has been stamped as a confidential document pursuant
4 to the protective order in this case and it is
5 unclear to us at this point whether the witness will
6 in fact sign the confidentiality provision of the
7 protective order that Judge Holland has entered in
8 this case. To the extent that the witness is
9 nonetheless shown a document that is subject to the
10 terms and provisions of the protective order, we
11 would inquire first whether all of the
12 representatives of Pebble and/or Northern Dynasty
13 Minerals have also signed the protective order in
14 this case because they would be receiving, in real

15 time, discussion of information that is subject to
16 the confidentiality provisions of this protective
17 order. And we would also ask that the transcript
18 from this deposition, any documents attached thereto
19 and any other information that is obtained from this
20 deposition be limited in its use to the context of
21 this case at least until we can determine how to
22 treat this confidential document and, more generally,

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1 that it not be used for public relations purposes
2 which we think is not only inconsistent with the
3 protective order but is also inconsistent with
4 certainly the spirit of discovery. And the
5 government would reserve its rights to go to the
6 Court if any information from this deposition were,
7 in the government's view, misused.
8 MR. YOERGES: Okay. Was there anything I

9 need to do to follow up on that?

10 MR. ROSENBERG: I would be curious whether
11 any of the individuals from Pebble and Northern
12 Dynasty have signed the confidentiality agreement.

13 MR. YOERGES: I don't know the answer to
14 that but I can say that the protective order deals
15 with disclosure, permissible disclosures to a
16 category of people who work for the parties. Parties
17 and counsel for the parties in the action are
18 permitted to receive confidential documents as are
19 key employees which are defined by those employees,
20 managing agents or directors who have responsibility
21 for this litigation. And it includes parent company
22 and nonparties subject to this order. I take it, on

1 your point earlier, that subparagraph D of the
2 protective order would require all those people to

3 sign attachment A. I'm not sure I agree with that
4 but be that as it may, all four of the people who are
5 either listening in or watching and listening in
6 would be prepared to sign the acknowledgment and
7 agreement. I don't know whether they have or haven't
8 at this point in time. They may have.

9 MR. ROSENBERG: Okay.

10 MR. YOERGES: I just don't have personal
11 knowledge of that. And so we've been prepared to do
12 that and of course we would keep those
13 acknowledgments, attachment A acknowledgments
14 pursuant to the protective order.

15 MR. ROSENBERG: Are they all prepared to
16 treat this transcript as confidentiality time if
17 we're going to be showing the witness confidential
18 documents?

19 MR. YOERGES: I have not discussed that
20 with them but I'm sure that it's certainly the
21 sections of the deposition that where I'm showing him
22 confidential documents that we would be prepared to

1 do so.

2 MR. ROSENBERG: What about the remainder?

3 MR. YOERGES: I don't think the remainder
4 of the deposition is confidential.

5 MR. ROSENBERG: Okay. So is the purpose
6 of taking the deposition and having numerous
7 representatives including a public relations
8 representative of your client on the phone to use the
9 deposition for purposes other than this litigation?

10 MR. YOERGES: No, that is not the purpose.
11 I think the purpose was everybody being quite
12 interested in Mr. North who has been in Australia for
13 the past couple of years and, as the Court has said,
14 is central to this case and is interested in seeing
15 what he has to say.

16 MR. ROSENBERG: Is it plaintiffs' view,
17 setting aside the issue of purpose, that the effect
18 of having those individuals, including the public
19 relations individuals, listen in on this deposition
20 so as to allow them to disclose this deposition to

21 third parties or to the public at large?

22 MR. YOERGES: Say that again. I'm sorry.

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1 MR. ROSENBERG: Is the effect of having
2 those individuals, including a public relations
3 representative of your client, listen in to this
4 deposition, even if it wasn't the purpose, to allow
5 them to disclose the deposition to third parties or
6 to the public at large? Because even if it wasn't
7 the purpose of having them listen in, in the
8 government's view, it would still violate the rules
9 of discovery or at least the spirit of discovery in
10 this case.

11 MR. YOERGES: So my answer to that is I
12 have no answer to that question and if there is some
13 disclosure that's made -- I literally have no answer
14 to that question because this hasn't been a topic

15 that has even come up, period. And if there is some
16 disclosure that's made after this deposition that you
17 feel like violates the spirit or the terms of the
18 protective order, you can take actions you see fit.

19 MR. ROSENBERG: Okay.

20 MR. YOERGES: Okay?

21 MR. ROSENBERG: All right.

22 MR. YOERGES: But I've had no discussion

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1 whatsoever about this topic at all. Okay. Anything
2 else?

3 MR. ROSENBERG: That's all I have for now.

4 Thank you.

5 MR. YOERGES: Billie, do you have anything
6 on that point?

7 MS. GARDE: Nope.

8 BY MR. YOERGES:

9 Q. Back to you, Mr. North.

10 A. All right. So prior to the break, we
11 talked a little bit about the Bristol Bay watershed
12 assessment, and did there come a time when a decision
13 was made to proceed with the Bristol Bay watershed
14 assessment that a group of individuals from EPA was
15 put together to work on that assessment?

16 A. Yes.

17 Q. And was that group referred to as anything
18 that you can think of now?

19 A. I believe it was referred to as the
20 Bristol Bay assessment team.

21 Q. The Bristol Bay assessment team?

22 A. I believe.

1 Q. So I may say Bristol Bay assessment team
2 or Bristol Bay team. I'm going to use those

3 interchangeably.

4 A. Okay.

5 Q. And when I say those, I mean the group of
6 people who worked on the Bristol Bay watershed
7 assessment. Is that acceptable?

8 A. Sure, yes.

9 Q. And who established the Bristol Bay
10 assessment team?

11 MR. ROSENBERG: Objection, misleading,
12 vague, assumes facts not in evidence. Forward Garde
13 well, what do you mean by established?

14 BY MR. YOERGES:

15 Q. Well, who created it? Who formed the
16 team?

17 MR. ROSENBERG: Same objections.

18 THE WITNESS: Well, since it wasn't me, I
19 can -- the managers that were tasked with managing
20 this whole process, I assume.

21 BY MR. YOERGES:

22 Q. EPA employees or non --

1 A. Yes.

2 Q. -- EPA employees?

3 A. No, EPA employees.

4 Q. So did EPA establish Bristol way water

5 assessment team to work on the watershed assessment ?

6 MS. GARDE: Objection.

7 MR. ROSENBERG: Objection to form.

8 THE WITNESS: The EPA established this

9 team, yes.

10 BY MR. YOERGES:

11 Q. And who set the agenda for this team? In

12 other words, who told the team what to do? Was that

13 EPA or was that somebody outside of EPA?

14 MR. ROSENBERG: Objection, misleading,

15 assumes facts not in evidence.

16 THE WITNESS: It was EPA.

17 BY MR. YOERGES:

18 Q. Anybody from outside of -- well, first of

19 all, who constituted the team?

20 MR. ROSENBERG: Objection, vague.

21 THE WITNESS: Can you be more specific in
22 that question?

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1 BY MR. YOERGES:

2 Q. Who was on the team?

3 MR. ROSENBERG: Same objection.

4 THE WITNESS: Do you want me to name all
5 the people? I couldn't.

6 BY MR. YOERGES:

7 Q. I have a list of them so I'll show that to
8 you. Don't even bother with that.

9 A. Okay.

10 Q. Do you know anybody who was not employed
11 by EPA, in other words, not on the payroll of EPA?
12 Do you know if anybody in that category was on the
13 Bristol Bay assessment team?

14 A. Yes, there were contractors.

15 Q. Anyone else other than contractors?

16 A. No.

17 Q. Let's go to -- you've got the exhibit in

18 front of you. This is the confidential --

19 MS. GARDE: This is confidential?

20 MR. YOERGES: Well, it's subject to the

21 protective order.

22 MS. GARDE: Okay. All right. Let's be

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1 clear. We're not signing this protective order and

2 we therefore do not feel bound to protect this

3 document.

4 MR. ROSENBERG: And since we're all being

5 clear, the government notes that the document is

6 stamped confidential subject to the protective order.

7 We will allow the document to be shown to the witness

8 and for him to answer questions about the document

9 without waiver of the ability of the government to
10 continue to claim that this document is in fact
11 confidential and shall not be further disclosed.

12 MR. YOERGES: So noted.

13 BY MR. YOERGES:

14 Q. So this is Exhibit 14, Mr. North. Would
15 you take a moment to look at it?

16 A. Okay.

17 Q. The first couple of pages are just dozens
18 and dozens of repetitive email addresses and we still
19 haven't gotten to the bottom of why that happens when
20 we print these documents out but I'm obviously most
21 interested in the material that appears on page 3
22 going to page 4 of the exhibit.

1 A. Okay.

2 Q. So this is an email from Judy Smith. Who

3 is Judy?

4 A. Judy Smith was the community relations

5 person that was on the Bristol Bay team.

6 Q. And she was in Region 10, correct?

7 A. That's correct.

8 Q. And there is a signature block that
9 indicates that she was working out of the Portland,
10 Oregon office, is that right?

11 A. Yes, I believe so.

12 Q. Did you know Judy?

13 A. I met her.

14 Q. And she writes this email on May 3rd,
15 2011.

16 A. Okay.

17 Q. So this is what -- this is about three
18 months after the EPA's announcement of the Bristol
19 Bay watershed assessment, yes?

20 A. Yes.

21 Q. And you are shown as a recipient of this
22 email. Do you see that?

1 A. Yes, I see that.

2 Q. I see your name show up a bunch of times

3 but that's a glitch in the production system. So the

4 subject matter showing on page 3 of the email is

5 agenda for Bristol Bay team meeting. And then there

6 is an agenda here. First of all, do you recall

7 having attended a meeting of the Bristol Bay

8 assessment team or Bristol Bay team sometime around

9 the time that this email was sent?

10 A. At the risk of being repetitive, I

11 attended lots of meetings and I don't remember a

12 specific meeting.

13 Q. Do you recall attending meetings of the

14 Bristol Bay assessment team?

15 A. Yes.

16 Q. And how frequent did those meetings happen

17 when the whole team got together or a substantial

18 position of the team got together and you discussed

19 the Bristol Bay watershed assessment?

20 A. I don't know the frequency but it seemed

21 like it was fairly often.

22 Q. Like once a week?

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1 A. No, not that often.

2 Q. Maybe once every other week?

3 A. I don't know. Might have been that often

4 or a little more, a little less frequent but I don't

5 remember exactly.

6 Q. So take a look at the agenda here and a

7 couple of things I want to draw your attention to.

8 First, the section that says preparation for upcoming

9 meetings. Do you see that locate kind of --

10 A. Yes.

11 Q. -- second to the bottom of headings?

12 A. Yes.

13 Q. And it says May TBD and then it says PLP

14 data meeting and then in parentheses it says, "Phil

15 and Dave will coordinate." Do you have any

16 understanding what PLP data meeting is?

17 A. I'm imagining it's to discuss PLP's data

18 from their environmental studies.

19 Q. And is the Phil referred to there, to the

20 best of your understanding, you?

21 A. Yes.

22 Q. And who is the Dave who is referred to

251

1 there, do you know?

2 A. I believe that would be --

3 Q. Dave Athons maybe?

4 A. I don't think so but maybe.

5 Q. Was Dave Athons or Athons, was he an EPA

6 employee?

7 A. David Athons was a SEE employee.

8 Q. SEE?

9 A. Is that how you say it? I'm not sure.

10 Maybe it is SEE.

11 Q. What is a SEE employee to your knowledge?

12 A. Like I said -- yes, a senior environmental

13 employee, that's SEE. It's a person that is usually

14 a retired professional who is asked to come back and

15 help us with various things. And there is a federal

16 program to allow retired professionals come back and

17 help and be part of the federal government as

18 employees.

19 Q. Are you a SEE employee now for EPA?

20 A. I am not, no.

21 Q. Are you interested in becoming one?

22 A. No, not really.

1 Q. So the PLP data meeting -- maybe I asked

2 this and I'm sorry but what was the PLP data meeting

3 about, do you know?

4 A. It would have been to discuss PLP's

5 environmental data.

6 Q. And where did that data come from?

7 A. PLP.

8 Q. Was that data they had submitted in

9 connection with these working groups described

10 earlier on?

11 A. I'm not sure if they had submitted it by

12 then. No, that would not be. It would be -- I think

13 it would be the data that we asked them for and maybe

14 this was just about what we wanted to ask them for.

15 I don't actually -- I don't recall.

16 Q. Up above that, there is a heading that

17 says technical issues/updates. Do you see that?

18 A. Yes.

19 Q. And there is an entry that says contract

20 update.

21 A. Okay. Yes.

22 Q. Do you know what that refers to?

1 A. I imagine it has to do with the contract
2 for the contractors working on the team but I don't
3 know for sure.

4 Q. These are the contractors you referred to
5 that were on the Bristol Bay assessment team?

6 A. That's what I would -- I'm assuming that
7 that's what it means but I don't know for sure.

8 Q. And then there is another topic that says,
9 "How to deal with past advocacy by current
10 contractors."

11 A. Okay.

12 Q. Do you know what that refers to?

13 A. Yes, I do.

14 Q. What is that?

15 A. That we had a couple of contractors who
16 had expressed opinions either -- or their -- either
17 expressed opinions about the Pebble project or their
18 organizations had been advocacy organizations on
19 other topics, not necessarily this one.

20 Q. Do any particular contractors come to mind

21 or organizations come to mind?

22 A. Yes.

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1 MR. ROSENBERG: Objection, vague.

2 BY MR. YOERGES:

3 Q. Which ones?

4 A. The Chris Frissell at the Pacific Rivers

5 Council. The Pacific Rivers Council had taken

6 positions on other issues. I don't think they ever

7 took a position on Pebble Mine as far as I know. And

8 then I believe Chris had written about -- written for

9 some of those positions. And then Alan Boraas had

10 written some opinion pieces in Alaska newspapers and

11 Anchorage Daily News.

12 Q. And were those opinion pieces anti-mine?

13 A. I think I would characterize them as

14 distrustful of the mine. I don't think they ever

15 said don't let the mine happen, in my reading of
16 them.

17 Q. Was Alan Boraas in favor of the mine based
18 on your understanding at the time?

19 A. I don't think so.

20 Q. What about Chris Frissell. Was he in
21 favor of the mine or against the mine?

22 MR. ROSENBERG: Objection, lack of

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1 foundation, lack of personal knowledge.

2 BY MR. YOERGES:

3 Q. If you know.

4 A. And I don't know that I ever asked him or
5 he ever expressed an opinion to me.

6 Q. Anyone else, any other contractor that
7 worked on the Bristol Bay assessment team that would
8 have fallen in this category of how to deal with past

9 advocacy by current contractors?

10 A. I don't think so.

11 Q. By the way, it says current contractors

12 here. Do you notice that?

13 A. Yes.

14 Q. So were there contractors already in place

15 by May -- whatever the date of this was -- May 3rd,

16 2011?

17 A. Yes.

18 Q. And for how long had they been in place?

19 A. Since December.

20 MR. ROSENBERG: Objection, vague.

21 BY MR. YOERGES:

22 Q. Of 2010?

1 A. Of 2010, I believe. Or perhaps January

2 but --

3 MR. ROSENBERG: Objection, vague and
4 misleading.

5 BY MR. YOERGES:

6 Q. And were these the same contractors that
7 you were using through may NatureServe to pull
8 together some of the data that you were working on
9 prior to the announcement of the Bristol Bay
10 watershed assessment?

11 MR. ROSENBERG: Objection, vague and
12 misleading.

13 BY MR. YOERGES:

14 Q. These were the -- that was the contract?

15 A. Yes.

16 Q. They were one and the same?

17 A. Yes.

18 Q. Do you know if in this agenda, which seems
19 to deal with this meeting that's going to be taking
20 place some time I assume at or around the time this
21 email went out, do you know whether the topic of past
22 advocacy by current EPA employees on the team was

1 ever discussed?

2 MR. ROSENBERG: Objection, vague,
3 misleading and mischaracterizes the document.

4 MS. GARDE: I join in that objection. Are
5 you asking if that was on the top, on the subject for
6 the meeting or if it's ever been a subject?

7 BY MR. YOERGES:

8 Q. Let me ask the first question. I see it's
9 not listed here but I'm asking the question, was the
10 question whether past advocacy of current EPA
11 employees, vis-a-vis their work on the Bristol Bay
12 assessment team, ever discussed at this meeting?

13 MR. ROSENBERG: Objection, vague,
14 misleading, assumes facts not in evidence and still
15 mischaracterizes the document that's in front of the
16 witness.

17 THE WITNESS: I'm not aware that we ever
18 had a discussion of advocacy, past advocacy by EPA
19 employees on the Pebble Mine.

20 BY MR. YOERGES:

21 Q. Okay.

22 (North Exhibit No. 15 was

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1 marked for identification.)

2 BY MR. YOERGES:

3 Q. So this is North 15. And just to identify

4 this, this is a three-page document dated July 14th,

5 2011 and the title is Bristol Bay Watershed

6 Assessment Technical Subgroups. And what I'm going

7 to do with this, Mr. North, is I'm going to go down

8 the individuals on here and just ask you a question

9 or two about each one of them, okay?

10 A. All right.

11 Q. So I'll start with the first one which

12 says fisheries including hydrology and recreation.

13 Before I get into a question, though, was the Bristol

14 Bay assessment team divided up into technical

15 subgroups?

16 A. Yes.

17 Q. And I think you said yes to this question

18 before but let me ask it again. Were you considered

19 the technical lead for the Bristol Bay watershed

20 assessment?

21 A. I was for a while.

22 Q. What period of time?

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1 A. Well, from before the assessment was

2 announced, I was the lead. And then it went on and

3 when office of research and development got involved,

4 I was still designated the lead but I was

5 uncomfortable in that role because I felt that it was

6 beyond my knowledge and abilities. And as time went

7 on, I might have been on the paper the lead but in

8 fact the lead really switched over the office of

9 research and development.

10 Q. The office of research and development, is
11 that an office within Region 10 or is that a head
12 quarters based office?

13 A. It's a headquarters based office.

14 Q. And just on a time line here, you said
15 before the announcement of the Bristol Bay watershed
16 assessment, you were the lead and then when it was
17 announced, you were the technical lead?

18 A. Uh-huh.

19 Q. And then there was sort of -- it sounded
20 to me like you said there was kind of an evolution or
21 something where eventually ORD took over?

22 A. Correct.

260

1 Q. And when did that happen, sometime in
2 2011, 2012?

3 A. Probably, I don't know, spring, early
4 summer perhaps, probably spring 2011. I'm just --
5 I'm really guessing.

6 Q. Fine. So going back to this document for
7 a second, there is a fisheries including hydrology
8 and recreation. Do you remember in July 2011 whether
9 fisheries including hydrology and recreation was one
10 of the technical subgroups of the Bristol Bay
11 watershed assessment team?

12 A. I would say yes but I've got to qualify
13 that in that I'm not sure how rigorously the
14 technical subgroups were identified. So I mean, even
15 got these and so they're grouped but, you know -- I
16 mean, this is sort of an organizational description
17 but I'm not sure how rigorously they were actually
18 described or even adhered to. As you can probably
19 see, there are people that overlap.

20 Q. So let's take the first person, Dan
21 Rinella. I think you mentioned Dan Rinella before
22 but for the record, let's be clear, was Dan Rinella

1 an EPA employee?

2 A. No.

3 Q. He was a contractor?

4 A. He was a contractor, yes.

5 Q. Did he work with a particular group or --

6 A. He worked for the University of Alaska.

7 Q. And he's shown as the lead, the fisheries

8 and hydrology and recreation lead, correct?

9 A. Yes, that's right.

10 Q. And is that as you understood him to be,

11 the lead of that group?

12 A. Yes.

13 Q. And then Rebecca Shaftel, what about her.

14 Is she an EPA employee?

15 A. No.

16 Q. Is she a contractor as well?

17 A. Yes.

18 Q. And who is she with?

19 A. She was with the University of Alaska.

20 Q. Same as Dan?

21 A. Yes.

22 Q. And a Michael -- I'm going to say Wiedmer

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1 but it could be Wiedmer?

2 A. It is Wiedmer.

3 Q. And Michael Wiedmer, is he an EPA

4 employee?

5 A. No.

6 Q. Who is he?

7 A. He was a contractor working for

8 NatureServe.

9 Q. And there is Dave Athons showing up. Now,

10 you said he was an SEE employee?

11 A. Yes, that's correct.

12 Q. Doug Limpinsel, he was an EPA employee,

13 correct?

14 A. No.

- 15 Q. He's not?
- 16 A. He's a National Marine Fisheries Service
- 17 employee.
- 18 Q. So a federal government employee?
- 19 A. Yes.
- 20 Q. Joe Ebersole?
- 21 A. He is an EPA employee.
- 22 Q. Jim Wigington?

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- 1 A. He's an EPA employee.
- 2 Q. Glenn Suter?
- 3 A. An EPA employee.
- 4 Q. And lastly, Chris Frissell?
- 5 A. He's a contractor.
- 6 Q. Working with --
- 7 A. With NatureServe.
- 8 Q. And did you have any understanding as to

9 why any of these people was assigned to the fisheries

10 including hydrology and recreation technical

11 subgroup?

12 A. Yes.

13 Q. Why?

14 A. Well, because for Dan and Rebecca, he

15 worked for the University of Alaska which was

16 subcontracted with NatureServe and they're aquatic

17 ecologists with fisheries expertise. Michael Wiedmer

18 has particular expertise in Bristol Bay and so

19 NatureServe picked him up to apply that particular

20 expertise. Dave Athons -- I mean, he answered the

21 add to become a SEE employee and he has the

22 expertise. He's a fish biologist. Doug Limpinsel is

1 a fish biologist with NMFS.

2 Q. What?

3 A. NMFS, nationally fisheries service.
4 Sorry, that's the acronym that I've always used. Gee
5 Ebersole is a fish ecologist at the lab in Oregon
6 and -- yeah, at the EPA lab in Oregon. Jim Wigington
7 is a hydrologist at the EPA lab in Oregon. Glenn
8 Suter is a risk assessment expert in Cincinnati and
9 Chris Frissell is a roads expert.

10 Q. A what?

11 A. He's written about the interaction of
12 roads and streams and fish.

13 MR. ROSENBERG: And Roger, I'm going to
14 impose a lack of foundation objection on that answer.
15 He gave you an understanding but it's unclear what
16 the basis is for that understanding, whether it's his
17 belief or whether he has an understanding as to how
18 other people may or may not have assigned those
19 individuals.

20 MR. YOERGES: Okay.

21 BY MR. YOERGES:

22 Q. So let's go to the next group, mining

1 scenarios including mitigation. Do you see that?

2 A. I do.

3 Q. And that's you shown as the lead of that,

4 correct?

5 A. Yes.

6 Q. Now, I had asked before you had an

7 opportunity to see this document, and it wasn't meant

8 to be a gotcha or anything, I had asked you whether

9 there was any kind of mine scenario subgroup under

10 the Bristol Bay assessment team that was formed and

11 you weren't sure that there was.

12 A. Right.

13 Q. Does this refresh your recollection about

14 that?

15 A. Well, like I said, it's separated out this

16 way I think basically to say who is involved in what

17 tasks but I don't think that we considered these to

18 be subgroups as such because you can see there are

19 people all over the place. But basically assigned

20 people to say you're going to help with this task.

21 So I don't think I would characterize these as
22 subgroups.

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1 Q. Is it your understanding that the
2 assignment to these subgroups, whatever one wants to
3 call them --

4 A. Informal subgroups.

5 Q. Informal subgroups, that the assignments
6 were made on expertise that the individuals had with
7 regard to the matter in that subgroup?

8 A. Yes.

9 Q. So mining scenarios, you're listed as the
10 lead on there. Do you have an understanding why you
11 were the lead in the mining scenarios subgroup?

12 A. Because I had -- at that point, I had 20
13 years of experience working on mines. I had reviewed
14 many mines, was working on other mines at the time

15 and I was -- you know, at that time, I was still in a
16 leadership role in terms of the assessment, not -- I
17 wouldn't call myself the lead probably by this date
18 but I was at least in a leadership role and so I was
19 assigned with making sure that this task happened.

20 Q. And Bob seal we talked about being with
21 the USGS, correct?

22 A. Correct.

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1 Q. Sydney Godsey, who is she?

2 A. Cindi Godsey is a mining engineer and her
3 job is to -- she's in the wastewater program for EPA
4 and mining is her thing.

5 Q. So she's an EPA employee?

6 A. Yes, she's an EPA.

7 Q. Lorraine Raymond?

8 A. She's a hydrologist for EPA in Seattle.

9 Q. Patty McGrath, she was the mining
10 coordinator?

11 A. Right.

12 Q. By July 2011, Patty McGrath was on her way
13 out of the EPA, wasn't she?

14 A. I don't know. Was she by then?

15 MR. ROSENBERG: Objection.

16 BY MR. YOERGES:

17 Q. I'm just asking you.

18 A. I don't recall.

19 Q. How about Glenn Suter?

20 A. As I said above, he's a risk assessment
21 expert.

22 Q. Right.

1 A. Wrote the book.

2 Q. So then there is a subgroup called

3 analogous mines. Do you see that?

4 A. Yes.

5 Q. All right. And we've talked about all

6 three of them before so there is no need to do that.

7 Then there is a wildlife subgroup. So Phil Brna you

8 testified is employees by the Fish and Wildlife

9 Service?

10 A. Fish and Wildlife Service, yes.

11 Q. What about Ann Rappoport?

12 A. She was also Fish and Wildlife Service,

13 Phil Brna's supervisor.

14 Q. Chris Frissell you testified was a

15 contractor, correct?

16 A. Yes.

17 Q. How about Lorie Verbrugge?

18 A. She worked for the Fish and Wildlife

19 Service also.

20 Q. Glen Suter you mentioned already and then

21 it says others from the U.S. Fish and Wildlife

22 Service. Were there others that aren't mentioned

1 here that you can recall worked on wildlife issues

2 with regard to the water assessment?

3 MR. ROSENBERG: Objection, vague.

4 THE WITNESS: Fish and Wildlife Service

5 prepared a wildlife document and I'm not clear about

6 all who worked on that.

7 BY MR. YOERGES:

8 Q. And then another technical subgroup is

9 culture including subsistence, health and culture.

10 Do you see that?

11 A. Yes.

12 MR. ROSENBERG: Objection, misleading.

13 BY MR. YOERGES:

14 Q. Alan Boraas is the lead. And Alan Boraas

15 was not an EPA employee, correct?

16 A. Correct, he was a contractor.

17 Q. He was a contractor. And he was at the

18 University of Washington, is that what you said?

19 A. No, Alaska.

20 Q. Alaska, that's right. Catherine Knott,

21 she was a contractor as well, correct?

22 A. Correct.

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1 Q. And she was also at --

2 A. University of Alaska.

3 Q. -- University of Alaska. David Athons we

4 talked about. Tami Fordham, she is an EPA employee?

5 A. Yes.

6 Q. And then Glen Suter, we talked about him.

7 And there is another heading, economics including

8 recreation, fish/wildlife/ subsistence, perception.

9 John Duffield is the lead. Who is John Duffield?

10 A. He's an economist and he was a private

11 consultant that was engaged by the -- what's it

12 called -- Institute of Social -- what is it? ISER,

13 Institute of Social and Economic Research, I believe,

14 at the University of Alaska.

15 Q. So he's not an EPA employee or not a
16 federal government employee?
17 A. No, contractor.
18 Q. Gunnar Knapp?
19 A. He's the University of Alaska and ISER and
20 he's a contractor.
21 Q. Tobias Schwoerer.
22 A. He's also University of Alaska and in ISER

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1 as a contractor.
2 Q. And there is somebody who seems to just go
3 by one name, Virginia. Do you know who that is?
4 A. I don't know who that is.
5 Q. And then it says the prologue. Do you
6 have any idea what prologue might refer to here?
7 A. I think this was an early idea of how it
8 might be structured and I don't think the prologue

9 was carried through.

10 Q. Had the Bristol Bay watershed assessment

11 structure ^ ?

12 A. Correct.

13 Q. In other words, the written product?

14 A. Right.

15 Q. So Palmer Hough is written there and it

16 has introduction. You're listed there. Did you

17 write the introduction?

18 A. I did not.

19 Q. But there was some thought early on that

20 you might?

21 A. I guess so.

22 Q. Do you recall that?

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1 A. I vaguely do recall that.

2 Q. Then there is a cumulative

3 effects/conclusions/effective summary. Did you have
4 any involvement in drafting that section of the
5 Bristol Bay watershed assessment?

6 MR. ROSENBERG: Objection, assumes facts
7 not in evidence.

8 BY MR. YOERGES:

9 Q. Was there a section of the Bristol Bay
10 watershed assessment that addressed cumulative
11 effects, conclusions and executive summary?

12 A. There was an executive summary, there was
13 cumulative effects. I don't know if there was
14 conclusions.

15 MR. ROSENBERG: Objection, vague,
16 because -- objection, vague and lack of foundation to
17 the extent the witness has not reviewed the final
18 Bristol Bay watershed assessment.

19 BY MR. YOERGES:

20 Q. So you're listed as somebody who was at
21 least at some point in time assigned to this informal
22 technical group, correct?

1 A. Yes.

2 Q. And then there is a peer review section

3 which says Jeff -- well, I didn't ask about these

4 people. So Kate --

5 A. Schofield.

6 Q. All of these people are EPA employees,

7 aren't they, under cumulative effects?

8 A. Yes.

9 Q. And then per review, Jeff Frithsen is the

10 lead. He's an EPA employee, right?

11 A. Yes.

12 Q. Region 10 or --

13 A. No, ORD.

14 Q. ORD? Did Jeff ultimately become the lead,

15 if you will, of the Bristol Bay watershed assessment?

16 A. Yes, he did.

17 Q. Schedule, logistics, document control.

18 Sheila Ekman, she was the project manager for this,

19 right?

20 A. That's correct.

21 Q. Is that out of Region 10?

22 A. Yes.

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1 Q. And then you're listed here, Frithsen,
2 Seal, Rappoport, Dan Rinella. So he's the only
3 non-EPA that's listed under schedule, logistics,
4 document control, right?

5 A. Yes.

6 Q. Do you have any idea what schedule,
7 logistics, document control refers to?

8 A. No, I really don't. And I think this is
9 another thing that didn't really get carried through
10 into practice.

11 Q. Thank you, sir. I'm done with that.

12 (North Exhibit No. 16 was
13 marked for identification.)

14 BY MR. YOERGES:

15 Q. The court reporter is handing you Exhibit
16 Number 16. While you're looking at that, let me just
17 identify it for the record as an email that on top,
18 looks like it's an email from Phil North to Thomas
19 Quinn with a cc to Daniel Schindler and a BCC to an
20 ANDJR. That's all it says there. Subject, re EPA
21 Bristol Bay technical team. I'm going to have some
22 questions about this so why don't you take some time

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1 to read this one.

2 A. All right.

3 MS. GARDE: Let me advise you to start at

4 the back of the email chain.

5 THE WITNESS: Oh, yeah. Okay.

6 MR. YOERGES: While the witness is reading

7 that, I would like to make a correction for the

8 record on the list of people who are listening in or

9 watching the field. So I'm told that Tom Collier was
10 and is doing neither.

11 MR. ROSENBERG: Okay.

12 MR. YOERGES: Okay?

13 MR. ROSENBERG: Thank you for the
14 clarification.

15 MR. YOERGES: You're welcome. I aim to
16 please. You realize that, right?

17 MR. ROSENBERG: We all do.

18 BY MR. YOERGES:

19 Q. Through?

20 A. Yes.

21 Q. I've got some questions about this. Let
22 me ask this as sort of a preface to it. Is it fair

1 for me to say that one of the substantial concerns
2 that the EPA had about mining development in the

3 Bristol Bay watershed was the effect that it may have
4 on the salmon fishery?

5 MR. ROSENBERG: Objection, vague.

6 MS. GARDE: Objection, form of the
7 question.

8 THE WITNESS: I would say that EPA was
9 concerned about the effects of development on the
10 salmon fishery, yes.

11 BY MR. YOERGES:

12 Q. Was it the most important concern?

13 MR. ROSENBERG: Objection, lack of
14 foundation.

15 THE WITNESS: Well, in a complex way, I
16 suppose. I mean, meaning that the fishery affects
17 lots of people so effects to the fishery affect a lot
18 of people so in that sense, yes.

19 BY MR. YOERGES:

20 Q. Meaning that there are people who fish
21 commercially and rely on the salmon fishery, correct?

22 A. Right.

1 Q. And there are people who rely on salmon
2 for their own subsistence, right?

3 A. That's right.

4 Q. And then there are also game fishermen who
5 rely on the salmon fishery to have fun, right?

6 A. Yes, right.

7 Q. And I take it there are probably fish who
8 rely on the salmon fishery because it's part of the
9 whole ecosystem?

10 A. And much more.

11 Q. And much more, okay. And you did exactly
12 the right thing when I think your counsel said start
13 at the back of this and read forward. That's how a
14 lot of these are, by the way. They're email chains
15 so the first of the email chain that I'm interested
16 in asking about actually appears at the back of the
17 document and then we'll move forward. I'm sure you
18 picked up on that by now. But there is an email
19 from -- looks like from you to Thomas Quinn dated
20 February 28th, 2011 that's on the second to last page

21 and then it spills over to the last page. Do you see
22 that?

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1 A. I do.

2 Q. So who is Thomas Quinn?

3 A. He is a professor at the University of
4 Washington who is an expert on Bristol Bay salmon.

5 Q. And is that also true of Dan Schindler?

6 A. It is, yes. I would say between the two
7 of them, they are the world's experts on Bristol Bay
8 salmon.

9 Q. So you are writing an email to them.
10 What's the purpose of this email you sent to Tom
11 Quinn on February 28th, 2011?

12 MR. ROSENBERG: Objection, vague.

13 THE WITNESS: I spent a lot of time
14 finding information, digging up information from

15 wherever I could find it about Bristol Bay salmon and
16 these two are the world's experts so I was interested
17 in see if they had time to talk to the team and
18 answer our questions, answer any questions we might
19 have about Bristol Bay salmon and any insights they
20 might have on the effects of development. I remember
21 this.
22 BY MR. YOERGES:

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1 Q. So by this email, were you reaching out to
2 Tom Quinn to see if he could come up and talk to the
3 technical team about his expertise in salmon?
4 A. Yes, I was.
5 Q. And when you refer to the EPA technical
6 down there, do you see that, in the last line of the
7 penultimate page?
8 A. Uh-huh.

9 Q. It says, "Of course we will wait if need
10 be. If you can only come once I wonder if the EPA
11 technical team" -- and then you start a parentheses,
12 "which consists of Dr. Dan Rinella, UAA." Is that
13 University of Alaska Anchorage?

14 A. Yes.

15 Q. Dr. Alan Boraas, same thing. Becky
16 Shaftel, UAA. Dr. Chris Frissel, Pacific River
17 Council. Dr. Bob Seal, USGS. Heather Dean, EPA.
18 Dave Athons, EPA. Gary Sonnevil, EPA, and me. There
19 is a couple of names which I think did not appear on
20 that list we looked at a little bit ago. One would
21 be Heather Dean. Who is Heather Dean?

22 A. Heather Dean is a colleague of mine in the

1 Alaska operations office or at least she was at that
2 time.

3 Q. Is she in the ARU?

4 A. Yes, she is.

5 Q. And is she in a college just like

6 yourself?

7 A. Yes, she is.

8 Q. And then what about Gary Sonnevil, who was

9 he?

10 A. Gary Sonnevil was a SEE employee for a

11 brief time and then he discontinued.

12 Q. This technical team you're referring to in

13 this email, what technical team is this?

14 A. Well, this is the technical team that I

15 put together initially or at least -- actually, I

16 misstated that. This is a technical team that I

17 contracted through NatureServe so I put it together

18 in the sense that I went to NatureServe and said, we

19 need to do this, and they said okay.

20 Q. Some of these people, though, aren't

21 contractors, right?

22 A. That's correct.

1 Q. So it's not just contractors. It's also
2 EPA employees?

3 A. That's correct.

4 Q. And who made the decision about putting
5 those people on the team?

6 A. It would have been my supervisor.

7 Q. Mike Szerlog?

8 A. Mike Szerlog, yes.

9 Q. So you're asking whether he can come up
10 and then there is an exchange back and forth and we
11 don't need to get into that but it looks like it's
12 talking about scheduling and whether he can make it,
13 et cetera, et cetera. So let's just go to the very
14 first email on this exhibit which is the last in the
15 chain.

16 A. Okay.

17 Q. And that's one dated March 1st, 2011 from
18 you to Quinn and copy to Schindler and then there is
19 a BCC to ANDJR. That's Daniel Rinella, right?

20 A. Oh, yeah, probably is.

21 Q. DJR, I think DJR is his initials, aren't
22 they?

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1 A. I don't know. But it makes sense that it
2 would be.

3 Q. Did they ever come up and have this
4 meeting with you?

5 A. Yes, they did.

6 Q. Did you invite the public to this meeting?

7 A. No, I didn't.

8 Q. Why not?

9 MR. ROSENBERG: Objection, misleading.

10 THE WITNESS: Because I wouldn't typically
11 invite the public just to a meeting where we're
12 talking to somebody, inviting an expert to come in
13 and talk to us about some issue.

14 BY MR. YOERGES:

15 Q. Do you recall any other occasions where
16 anybody from your technical -- no, let me strike
17 that. Do you recall any other occasions where you
18 invited other experts from the outside to come and
19 talk to your technical team about issues relating to
20 the Bristol Bay watershed assessment?

21 A. Where I invited them?

22 Q. Where you or somebody else invited them.

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1 MR. ROSENBERG: Objection, vague.

2 THE WITNESS: I think it -- I'll stick
3 with I invited them. I don't believe -- I think this
4 was the only time I invited experts. And it was
5 exceptional because these two are the world experts.
6 So that's the only time I recall. Whether other
7 people invited other experts to come, I don't have
8 knowledge of that. I don't know.

9 BY MR. YOERGES:

10 Q. Do you remember any Bristol Bay assessment
11 team meetings where experts who were not on the
12 assessment team came to speak to you folks?

13 A. Yes.

14 Q. Tell me what you can remember about that.

15 A. We had a number of meetings -- I don't
16 know what that number is -- with people that
17 generally -- Trout Unlimited put the meeting together
18 and invited experts to come and talk to us, talk to
19 the technical team. This is way past this phase of
20 the technical team.

21 Q. When you say way past this phase, we're
22 talking about way past March 2011?

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1 A. No, way past the -- you know, this group
2 of people that was my original contract.

3 Q. I see. When you say way past, was it
4 before the first draft of the Bristol Bay watershed
5 assessment?

6 A. I believe so.

7 Q. So you say Trout Unlimited put experts
8 together and brought them in to speak with you folks?

9 A. Yes.

10 Q. Were those meetings open to the public?

11 A. I don't know. I didn't organize those
12 meetings.

13 Q. Well, did you see any members from the
14 public there?

15 A. No, I never did.

16 Q. So can you remember any of those experts
17 that came in that Trout Unlimited brought before you
18 guys?

19 A. Yes. Carry Ann Woody was one.

20 Q. Let's stop at each one. So Carol Ann
21 Woody, where is she from?

22 A. She's in Alaska and she's another salmon

1 expert. She used to work for the USGS and she is a
2 private consultant and I believe she was working for
3 Trout Unlimited. So she's one.

4 Q. Okay.

5 A. And Dave Chambers would be one.

6 Q. He's a mining expert?

7 A. And he's a mining expert.

8 Q. And he came in to speak with your group?

9 A. He came in with Trout Unlimited to offer
10 whatever information. Let's see, who else?

11 Q. Ann Maest?

12 A. Ann Maest, yes, she was there on I think
13 once or twice if I recall correctly. I was usually
14 on the phone.

15 Q. And why is that, because you weren't down
16 in Anchorage?

17 A. Because I was in Seattle where things
18 usually happened. Let's see, who else might have
19 been there? There was somebody who worked for Ann
20 Maest and I would recognize his name if I heard it

21 but I don't remember. Yeah, that's it.

22 Q. Cam Wobus?

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1 A. Yes, that's it, Cam Wobus. Let's see, who
2 else might have been there? There was a woman named
3 Sarah something that worked for -- yeah, ONeal.
4 That's it.

5 Q. You're good at reading upside down.

6 A. She worked for -- she worked with Carol
7 Ann Woody. Do you want to give me a list and I'll
8 tell you?

9 Q. No, no. You're doing a pretty good job
10 yourself. So these people were all brought in by
11 Trout Unlimited, you say?

12 A. Yes.

13 Q. And do you have any understanding why
14 Trout Unlimited was bringing these various experts

15 before the Bristol Bay assessment team?

16 A. Because they were interested in -- I

17 suppose they were interested in offering EPA

18 technical information.

19 Q. And I might have asked this with regard to

20 all of these meetings that you just testified about

21 or I may have only asked it with regard to one but

22 now I'm going to ask it with regard to all and that

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1 is, all these meetings that Trout Unlimited brought

2 an expert in, whether it's Maest or Chambers or Wobus

3 or Woody or any of these people who you just

4 testified about, is it your recollection that those

5 meetings were open to the public or that there was

6 nobody from the public who attended those?

7 MR. ROSENBERG: Objection, vague.

8 THE WITNESS: When a member of the public

9 asks to meet with EPA and present something, I don't
10 know that there is any process for EPA to then
11 advertise it to the public and make it a public event
12 and that's what was happening and so whether they're
13 open to the public per se, I think if -- as far as I
14 know, if somebody wanted to show up, they could. It
15 wasn't advertised so it's not likely anybody would
16 know about it unless they were informed by somebody
17 that was involved.

18 BY MR. YOERGES:

19 Q. Do you know whether Jeff Parker showed up
20 at any of these meetings?

21 MR. ROSENBERG: Objection, vague.

22 THE WITNESS: I don't think he showed up

1 to any technical meetings. But I don't know. I
2 mean, I could be wrong about that. I just don't have

3 a recollection that he did.

4 BY MR. YOERGES:

5 Q. Was Trout Unlimited -- you mentioned

6 something called the Bristol Bay working group before

7 or at least we had a document that referred to the

8 Bristol Bay working group.

9 A. Yes, that's correct.

10 Q. Was Trout Unlimited part of that?

11 MR. ROSENBERG: Objection, lack of

12 personal knowledge, lack of foundation.

13 BY MR. YOERGES:

14 Q. If you know.

15 A. I would believe that they would be but I

16 don't know that. I mean, I don't have personal

17 knowledge on that.

18 (North Exhibit No. 17 was

19 marked for identification.)

20 BY MR. YOERGES:

21 Q. While you're taking a look at that,

22 Mr. North, let me just identify it for the record.

1 It's a one-page email from you, Phil North, to
2 Michael Wiedmer dated August 31st, 2011 and the
3 subject is another overflight, question mark. Just
4 let me know when you've had a chance to read that.
5 Have you?

6 A. I have, yes.

7 Q. So here you're sending an email to Mike
8 Wiedmer August 31st dealing with an overflight. Do
9 you recall generally the subject matter of this?

10 A. I do.

11 Q. You say, "Hi, Mike, are you interested in
12 being the tour guide again on another overflight of
13 Bristol Bay. This time it would be the hydrologist
14 and salmon biologist from the EPA Corvallis Lab on
15 September 27." Where is the EPA Corvallis Lab?

16 A. In Corvallis, Oregon.

17 Q. Oregon, okay. "Some of the newer
18 contractors engaged by Jeff and Glenn would also
19 likely go along." So Jeff and Glenn, who are you
20 referring to there?

- 21 A. Jeff Frithsen and Glenn Suter.
- 22 Q. And those are both in EPA headquarters?

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- 1 A. Yes. No, no. Jeff is. Glenn is in
- 2 Cincinnati.
- 3 Q. Cincinnati, right. What region is that,
- 4 by the way?
- 5 A. I don't know.
- 6 Q. So there is a reference to newer
- 7 contractors. What are you referring to there?
- 8 A. That at some point along in the process,
- 9 ORD engaged another contractor to provide --
- 10 Q. ICF?
- 11 A. I believe so, yes, to provide expertise
- 12 that wasn't already on the team.
- 13 Q. Were you involved in the selection of ICF
- 14 at all?

15 A. No.

16 Q. So did this happen at a point when the
17 leadership of the technical moved sort of away from
18 you to Frithsen?

19 A. Yes, I think so.

20 Q. Did you agree or disagree with the
21 decision to retain ICF?

22 A. I didn't do either.

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1 Q. Did you work with any of the people from
2 ICF?

3 A. I did, yes.

4 Q. And can you name any of those folks?

5 A. I couldn't. I could pick them out of a
6 list but I couldn't recall their names.

7 Q. Is it your understanding that by this
8 time, the end of August 2011, these new contractors

9 had been on boarded?

10 MR. ROSENBERG: Objection, vague.

11 THE WITNESS: That they were working with

12 us?

13 BY MR. YOERGES:

14 Q. Yes.

15 A. That would be my understanding.

16 Q. That's all I have on that. Do you recall

17 whether you had telephone calls with the Bristol Bay

18 assessment team, the technical team, every other

19 Thursday?

20 MR. ROSENBERG: Objection, vague.

21 THE WITNESS: I believe at one time that

22 was our attention.

1 BY MR. YOERGES:

2 Q. Did it actually happen?

3 A. I think it did for a while. And it may
4 have consistently.

5 Q. Do you remember whether you ever developed
6 any agenda for any of these technical team meetings?

7 A. Personally?

8 Q. Personally, yes.

9 A. I believe I did.

10 Q. Did you ever see an environmental risk
11 assessment that was prepared by the Nature
12 Conservancy dealing with Bristol Bay and the Pebble
13 deposit?

14 MR. ROSENBERG: Objection, vague.

15 THE WITNESS: I think -- I have to qualify
16 my answer because I don't recall -- I did see a risk
17 assessment prepared by the Nature Conservancy for
18 Bristol Bay but my recollection is that it was for
19 copper sulfide deposits and didn't specifically
20 address the Pebble Mine, the Pebble project but I
21 haven't looked at that in a long time and so I don't
22 recall just what it actually was addressing.

1 BY MR. YOERGES:

2 Q. Do you recall having looked at it in
3 connection with your work on the Bristol Bay team,
4 technical team?

5 MR. ROSENBERG: Objection, misleading.

6 THE WITNESS: I would have looked at it in
7 that relation but I also would have just looked at it
8 anyway because that was my geographic area. And if
9 something like that came out, it would be valuable
10 information to look at.

11 BY MR. YOERGES:

12 Q. Do you recall whether -- you were
13 mentioning or testifying before about Trout Unlimited
14 arranging to bring various experts before the Bristol
15 Bay assessment team to discuss their areas of
16 expertise. Do you recall whether Trout Unlimited
17 ever brought representatives of the Nature
18 Conservancy before the Bristol Bay assessment team to
19 discuss the environmental risk assessment that the
20 Nature Conservancy had prepared?

21 A. I don't recall if Trout Unlimited did that
22 or if the Nature Conservancy offered to do that. I

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1 don't remember.

2 Q. Do you recall it having been done, though?

3 A. I think so.

4 Q. Do you recall an actual presentation where
5 someone from the Nature Conservancy or maybe more
6 than one person actually presented, did a
7 presentation on their risk assessment?

8 A. I believe I recall that that happened.
9 It's fuzzy in my memory but I think that it happened.

10 Q. Did that happen before the issuance of the
11 first draft of the Bristol Bay watershed assessment
12 in your memory?

13 A. I don't recall. I imagine but I don't
14 remember how those two juxtaposed to each other.

15 Q. Do you know whether the Nature Conservancy
16 environmental risk assessment in any way, shape or
17 form formed the basis of the Bristol Bay watershed
18 assessment?

19 A. I think it did not.

20 MR. ROSENBERG: Objection, vague.

21 BY MR. YOERGES:

22 Q. You think it did not?

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1 A. Right.

2 Q. Do you think that the format of the Nature
3 Conservancy's environmental risk assessment bore any
4 resemblance to the format of the Bristol Bay
5 watershed assessment?

6 MR. ROSENBERG: Objection, vague.

7 THE WITNESS: Okay. So just to be clear,
8 your question is do the two formats resemble each

9 other.

10 BY MR. YOERGES:

11 Q. Correct.

12 A. And I do not recall what the format of the

13 Nature Conservancy's document looked like so I don't

14 know.

15 Q. Who came up with the formatting for the

16 Bristol Bay watershed assessment? And by formatting,

17 I mean the various different sections that are

18 addressed and the appendices and the likes of how the

19 whole thing was put together. Who came up with that?

20 MR. ROSENBERG: Objection, lack of

21 foundation and vague.

22 THE WITNESS: Glenn Suter is the risk

1 assessment guru of the world.

2 BY MR. YOERGES:

3 Q. He wrote the book?

4 A. He wrote the book. So the format was

5 undoubtedly based on his work and establishing what a

6 risk assessment should be. Whether he was actually

7 the one who decided on the format that we actually

8 ended up with or not or somebody else kind of in that

9 higher level managers assessment, I don't know.

10 Q. Was there a group of people who was

11 responsible for building the mine scenario that was

12 ultimately used in the first draft of the Bristol Bay

13 watershed assessment?

14 MR. ROSENBERG: Objection, vague.

15 THE WITNESS: It was Barbara Butler and

16 me.

17 BY MR. YOERGES:

18 Q. And Barbara Butler?

19 A. She is a mine engineer who works in the

20 Cincinnati lab.

21 Q. And is there a section of the Bristol Bay

22 watershed assessment that deals with the mining

1 scenario?

2 A. Yes, there is.

3 Q. And you're familiar with that section, at
4 least in the first draft?

5 A. Yes.

6 Q. Did you actually ever read the final draft
7 of the Bristol Bay watershed assessment?

8 MR. ROSENBERG: Objection, vague. Do you
9 mean the final BBWA or the second draft?

10 MR. YOERGES: I mean the final.

11 MR. ROSENBERG: Okay.

12 MR. YOERGES: Final BBWA.

13 THE WITNESS: Not cover to cover.

14 BY MR. YOERGES:

15 Q. All right. Did you read the mining
16 scenario section of it?

17 A. Boy. Probably. But actually, to tell you
18 the truth, I've really kind of moved on. I don't
19 remember.

20 Q. So in the mining scenario section that you

21 recall -- let's just take the first draft. You were

22 involved in helping draft that, correct?

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1 A. Yes, that's right.

2 Q. And Barbara Butler?

3 A. Yes.

4 Q. You were co-authors of that section?

5 A. That's right.

6 Q. And in that section, how many mining

7 scenarios, if you recall, do you analyze or do you

8 lay out? Let me put it that way.

9 A. In which version?

10 Q. In the first one.

11 A. In the first one, I believe we had two.

12 Q. And can you describe them?

13 A. Yeah. One was, if I remember correctly --

14 I mean, you should correct me if I'm wrong because I

15 really -- as I said, I've moved on. I don't remember
16 a lot of the details. But one of them would be the
17 kind of the full 10 billion ton mine and one of them
18 would be I believe -- no, wait, maybe it was -- maybe
19 that's not right.

20 MS. GARDE: If you don't remember, you
21 shouldn't guess.

22 THE WITNESS: Yeah.

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1 BY MR. YOERGES:

2 Q. Just to the best of your recollection.

3 Were there two mining scenarios?

4 A. I believe there were two mining scenarios.

5 Q. Was one larger than the other?

6 A. Yes, that's right.

7 Q. Was one of them based on the data that

8 Pebble had submitted?

9 A. I think they were both based on what
10 Pebble submitted in terms of mine plans.

11 Q. And that was the first draft, based on
12 your best recollection, of the BBWA?

13 A. Yes.

14 Q. Did there come a time when the number of
15 mining scenarios changed between the first draft and
16 second draft?

17 A. Yes.

18 MR. ROSENBERG: Objection, vague.

19 BY MR. YOERGES:

20 Q. And what change was made?

21 MR. ROSENBERG: And confusing.

22 THE WITNESS: The smaller mine was added

1 that was more like a typical or an average world -- a
2 world average copper sulfide mine according to the

3 USGS.

4 BY MR. YOERGES:

5 Q. So let me get this straight. So in the
6 first draft, your best recollection was there were
7 two mines, two mining scenarios that were laid out?

8 A. Yes.

9 Q. Both based on Pebble data?

10 A. Pebble plants.

11 Q. Pebble plants?

12 A. Yes.

13 Q. And then in the second draft, there was a
14 third mining scenario that was added?

15 MR. ROSENBERG: Objection, lack of
16 foundation.

17 BY MR. YOERGES:

18 Q. Is that what you said?

19 A. Yes. There was a third one added, yes.

20 Q. And that was based on what again?

21 A. That was based on a paper that the U.S.

22 Geological Survey wrote that described copper sulfide

1 deposits around the world and how big they are, which
2 one -- you know, what size is in what percentile of
3 size and the 50th percentile was a certain size mine
4 and so we added that because that would be more
5 typical of -- or would be closer to what other mines
6 in the Bristol Bay watershed might end up being if
7 they were developed.

8 Q. And was that third mine that was added,
9 was that larger than or smaller than the other two
10 mines that you had --

11 A. It was smaller.

12 MR. ROSENBERG: Objection, ^ , lack of
13 foundation.

14 BY MR. YOERGES:

15 Q. So it was the smallest of the three?

16 A. Correct.

17 Q. And do you know whether, in the final
18 Bristol Bay watershed assessment, whether all three
19 mines were addressed in there or was there another
20 one added or something deleted? How did that work?

21 MR. ROSENBERG: Objection, confusing.

22 BY MR. YOERGES:

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1 Q. Are you confused by that question?

2 A. I believe that there were three.

3 Q. Three?

4 A. Yeah.

5 Q. The same three that were addressed in the

6 second draft?

7 A. I believe so.

8 Q. Did you ever have any meetings with

9 anybody, including Barbara Butler, where the purpose

10 of the meeting was to discuss the mining scenarios

11 that would be included in the Bristol Bay watershed

12 assessment?

13 A. Yes.

14 Q. How many such meetings did you hold if you

15 can recall?

16 A. One meeting specifically for that purpose.

17 Q. And who was at that meeting if you can

18 recall?

19 A. I think I can recall fairly well. It was

20 Jeff Frithsen chaired the meeting.

21 Q. What was the second one?

22 A. Jeff Frithsen, he chaired the meeting.

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1 Q. He chaired the meeting, okay.

2 A. Cindi Godsey was there, I was there, Bob

3 Seal was there, I believe Glenn Suter was there,

4 Barbara Butler was there, and it seems like there was

5 somebody else but I'm not -- I'm having trouble kind

6 of recalling that face. So I don't -- I think there

7 was somebody else but I don't know.

8 Q. Was there a contractor there?

9 A. I think there was. Maybe an ICF
10 contractor. That's probably who that other person
11 was.

12 Q. And where did that meeting take place if
13 you recall?

14 A. Here in Washington, D.C.

15 Q. Oh, really? Okay.

16 A. Yeah.

17 Q. At EPA headquarters?

18 A. No. At the ORD offices which is
19 actually -- I don't know if that's in Washington,
20 D.C. or not but down -- I forget what it's called but
21 it's down near National Airport.

22 Q. Crystal City maybe?

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1 A. No.

2 Q. Pentagon City?

3 A. No. It's like the Navy yard, the old Navy
4 yard or something like that.

5 Q. Right.

6 A. Something like that.

7 Q. I think that's actually in Washington,
8 D.C.?

9 A. Okay.

10 Q. And when did that meeting take place? Do
11 you have a memory of that?

12 A. Do you want a date?

13 Q. Or month and year sort of thing.

14 A. I don't think I could give you that.

15 Toward the end of -- I mean, into the second draft
16 sometime. I don't know. I don't know when.

17 Q. Were there any other meetings of the group
18 that was involved in developing the mining scenario
19 that took place other than that one meeting that you
20 just mentioned?

21 A. There were discussions of the mining
22 scenario in other meetings, yes. Probably many.

1 Q. You mentioned that Trout Unlimited
2 arranged to have David Chambers come speak to your
3 group at one point in time, is that right?

4 A. Yes.

5 Q. And how many times did he come speak to
6 the group?

7 A. I don't know. More than once.

8 Q. More than once?

9 A. Yes.

10 Q. And did you personally have communications
11 with him either before or after he spoke to the
12 group?

13 A. Yes.

14 MR. ROSENBERG: Objection, vague.

15 BY MR. YOERGES:

16 Q. You did?

17 A. Yes.

18 Q. And those communications were about the
19 mining scenario?

20 A. Probably not specifically about the mining

21 scenario but about mining.

22 Q. So do you recall, for example, discussing

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1 with him issues about tailings dams, for example?

2 A. Yes.

3 Q. And those discussions were in connection

4 with the work that you were doing on the Bristol Bay

5 watershed assessment, correct?

6 A. Yes.

7 (North Exhibit No. 18 was

8 marked for identification.)

9 BY MR. YOERGES:

10 Q. I have handed to you North Exhibit Number

11 18 which on the top says to Phil North from Chris

12 Frissell dated September 26, 2011. Subject, re

13 Pebble road. I ask if you could take a look at this.

14 Go ahead and spend some time actually reading it if

15 you will.

16 A. Okay.

17 Q. Because I have some questions about it and

18 if you want to read it from the back forward, like

19 you've done with some of the other emails, that would

20 be great. I think it would make more sense when I

21 ask my questions.

22 A. Okay.

307

1 Q. Okay. Through with that?

2 A. Not quite.

3 Q. Okay.

4 A. Okay.

5 Q. So the email on top from Chris Frissell to

6 you -- so Chris Frissell is the person you mentioned

7 before. He's the -- I hate to say he's a roads

8 scholar. Is that right, he's a road expert?

9 A. Yes.

10 Q. So let's go back to the beginning of this
11 email chain where you see that Tom Quinn wrote an
12 email to you to Dan Rinella on April 13th, 2011 and
13 he copies someone named Harry Rich. Do you know who
14 Harry Rich is?

15 A. I do not, no.

16 Q. By the way, Thomas Quinn also addresses
17 Shoren Brown on this email.

18 A. Uh-huh.

19 Q. Was that typical practice to involve
20 Shoren Brown on emails related to work you were doing
21 in the Bristol Bay watershed assessment?

22 MR. ROSENBERG: Objection, vague.

1 THE WITNESS: Since I didn't originate the
2 email, I can't tell Tom Quinn who he should send it

3 to. I guess he must have felt it was useful to

4 Shoren Brown so he sent it to him also.

5 BY MR. YOERGES:

6 Q. Right. So do you have any general memory

7 of the matters that's discussed in this email chain

8 here?

9 A. Yeah, I have a vague memory.

10 Q. A vague memory of it?

11 A. Uh-huh.

12 Q. And can you just describe for the record

13 what your memory is of the matter that's discussed in

14 this email chain?

15 A. Just says there was information about the

16 road and kind of -- there were issues about how do we

17 quantify issues related to the road and how do we get

18 information about what the effects could be and so I

19 remember when this came out, you know, I was like,

20 oh, somebody has actually quantified it and maybe

21 it's useful, is the best that I can recall anyway.

22 Q. And do you recall that ultimately Harry

1 rich's study was provided to you?

2 A. Not to me.

3 Q. Who was it provided to if you recall?

4 A. It would have been provided to Chris and
5 probably the NatureServe team. It might have been
6 provided to me. And then I would have just tucked it
7 away.

8 Q. So you notice on the front page of this,
9 there is an email from Chris Frissell, down at the
10 bottom, to you and Rebecca Shaftel and Dan Rinella
11 saying, "FYI, here is what Harry Rich from UW sent."
12 Do you see that?

13 A. Yes, I do.

14 Q. Would you say if you had gotten that, you
15 would have tucked this away?

16 A. Yes.

17 Q. That's because this wasn't your area, so
18 to speak?

19 A. Yes. I would have looked at it just to
20 become familiar with it and then I would have tucked

21 it away, yeah.

22 Q. Then up top, there is an email that

310

1 says -- it's from Chris Frissell to you?

2 A. Yes.

3 Q. And it says, "Hi, I need to know what you
4 think of my just referring to Harry's analysis rather
5 than having Becky do a fresh one." I take it Becky
6 is Rebecca Shaftel?

7 A. Yes.

8 Q. And do you recall having that question put
9 to you by Chris, can we rely on Harry's analysis or
10 do we have to have Becky do a fresh one?

11 A. I do recall that.

12 Q. And do you remember what you said in
13 response to that?

14 A. Yes. This gets to the issue of what

15 information can we use and what information can we
16 not use and really we can't use information that's
17 not gone through the peer review process and so
18 whether it was Trout Unlimited or University of
19 Washington or, you know, if they provide us with
20 information but it hasn't been peer reviewed, then
21 it's really not something we can use and so -- or we
22 can take the -- basically do the same thing over

311

1 again but if we do it and we've done the analysis,
2 then we're controlling the, you know, quality control
3 and all that and then we can say these are our
4 results and then we can use it. And so Chris is
5 asking do we need to do it over. And the answer
6 would have been yes.
7 Q. And do you know whether Harry rich's work
8 was used in the Bristol Bay watershed assessment?

9 A. I don't think so. I think -- I have a
10 recollection that Becky did it over again.

11 Q. Okay.

12 MR. ROSENBERG: Hey, Roger, when you --
13 we've been going for a while. When you hit a
14 breaking point.

15 MR. YOERGES: Yes, let's do one more
16 exhibit.

17 MR. ROSENBERG: Okay.

18 MR. YOERGES: So we're going to mark North
19 19.

20 (North Exhibit No. 19 was
21 marked for identification.)

22 BY MR. YOERGES:

1 Q. I think I've kind of hit a second wind,
2 Brad, so I forgot we were going so long?

3 MR. ROSENBERG: My iPad is at 13 percent

4 so I think when we're at zero, we have to end.

5 MR. YOERGES: You can charge it somewhere

6 if you like.

7 BY MR. YOERGES:

8 Q. So I'm handing to you -- and this is going

9 to be the last exhibit we talk about before we take a

10 short break and we'll see if we want to continue or

11 pick up tomorrow after the break or maybe before the

12 break we'll have that discussion. A two-page email.

13 The top of it says from Palmer Hough to David Evans,

14 subject, rescheduled scenario building for Bristol

15 Bay. It's two pages.

16 MS. GARDE: Start from the back. Are you

17 through reading that.

18 A. Yes.

19 Q. I would like to take you to the first

20 email in the chain which is the last one on the

21 second page and that's an email from you to several

22 people dated February 8th, 2011 so this is the day

1 after the announcement of the Bristol Bay watershed

2 assessment, right?

3 A. Yes.

4 Q. By the way, just the time stamp there is

5 4:04 p.m. YST. What's YST, do you know?

6 A. Yukon standard time? I don't know.

7 Q. You get your own time zone.

8 A. No, I don't know.

9 Q. So you address this email, which the

10 subject of the email is rescheduled scenario building

11 for Bristol Bay.

12 A. Yes.

13 Q. And it's got a date, February 18, 11:00

14 a.m. YST. And so this is addressed to Gwen Kittel at

15 NatureServe and to Jeff Frithsen. He's at EPA,

16 correct?

17 A. Palmer Hough is also at headquarters EPA.

18 A. Uh-huh.

19 Q. Dan Rinella who is a contractor at

20 University of Alaska Anchorage, right?

21 A. Uh-huh.

22 Q. And then there's three people from the

314

1 TNC.org. Who are those three people?

2 A. L. Hildreth, she was a staff person at

3 TNC, I believe. Randy Hagenstein was the director,

4 the Alaska director for TNC.

5 Q. And the first one is that David Albert?

6 A. I believe so, David Albert.

7 Q. Also with TNC?

8 A. Yes.

9 Q. And do you know what was his role?

10 A. I believe he was a hydrologist and

11 modeler, I believe.

12 Q. And then you go on to say, "The purpose of

13 this call is for EPA ORD folks" -- and those are

14 folks at headquarters, right?

15 A. Right.

16 Q. -- "to get acquainted with the TNC report,

17 see the presentation and ask questions about how the

18 scenario presented by assembled" -- that's a little

19 garbled to me?

20 A. It is a little garbled. That was probably

21 a typo.

22 Q. Do you know what word --

315

1 A. Presented -- how the scenario presented --

2 oh, was assembled perhaps?

3 Q. How the scenario presented was assembled,

4 that would make sense. "What other scenarios might

5 be possible and what data might be available. We

6 anticipate that this will" be -- I'm adding "be" in

7 there -- be "the first in a series of calls to

8 discuss scenario building in Bristol Bay."

9 A. Yes.

10 Q. What is this about?

11 A. What it's about is that when you do a risk
12 assessment, you have scenarios and you're assessing
13 the risk of those scenarios and now I guess this puts
14 the TNC report into some time context because I guess
15 they had already finished theirs and I think it was
16 for TNC -- to discuss with TNC how they establish
17 their scenarios in their own risk assessment so that
18 if there was anything to be gleaned from it, we
19 could. I think that's what this is about.

20 Q. Okay. So then there is an email that
21 appears above that that I have to admit to you I'm a
22 little confused about.

316

1 A. I am too.

2 MR. ROSENBERG: I am three.

3 BY MR. YOERGES:

4 Q. Because it would appear that the email
5 finishes with Phil North as if a Phil North signed it
6 but the email appears from Rick Parkin to David
7 Evans. You're copied on it but --

8 A. Yeah. It's strange.

9 Q. Do you recall having written this email?

10 A. No. And it doesn't really look like -- I
11 mean, it doesn't really look like --

12 Q. Something you would write?

13 A. Yeah, something I would write.

14 Q. In fact, the first sentence says, "Dave, I
15 don't know what marching orders you guys may have
16 been given and in fact, I'm not sure the purpose of
17 this meeting."

18 A. Right.

19 Q. Do you see that?

20 A. Yes.

21 Q. But the email before that from you says,
22 "The purpose of this call is to" --

1 A. Exactly.

2 Q. So it doesn't make sense that that would
3 be from you, is that fair to say?

4 A. No, I think so.

5 Q. And there seems to be sort of a scheduling
6 back and forth that's going on. Do you know whether
7 that meeting ever took place, whether the TNC report
8 was presented by the TNC folks?

9 A. I think it did. I don't recall for sure
10 but I think it did.

11 Q. And would that have been a meeting that
12 you came to Washington to participate in?

13 A. No.

14 Q. Or did you participate by phone or did you
15 participate at all?

16 A. I probably participated in that. I either
17 would have driven to Anchorage or I would have done
18 it by phone.

19 MR. YOERGES: Take a break?

20 MS. GARDE: Yes, it's 4:49. Let's take a

21 break and we'll talk about what we're doing.

22 THE VIDEOGRAPHER: Off the record at

318

1 16:49.

2 (Recess.)

3 (North Exhibit Nos. 20 and 21 were

4 marked for identification.)

5 THE VIDEOGRAPHER: On the record at 17:15.

6 BY MR. YOERGES:

7 Q. Mr. North, I've got two more documents I

8 would like to show you and then just a few wrap-up

9 questions and then I'll be done for the day.

10 A. All right.

11 Q. So I would like to show you North Number

12 20 and I'll give copies over to your counsel and she

13 can hand them around to the -- one for myself and

14 hand them around to the rest of the gang. And while

15 they're doing that, I'll just identify it as a
16 one-page couple of emails here. It's EPA document
17 617.0070. The first email is from Shoren Brown to
18 Julia McCarthy and others regarding dates for OWOW
19 briefing on Bristol Bay. Done with it, sir?

20 A. Yes, yes.

21 Q. At the bottom of this, toward the bottom
22 of this, the first email, if you will, is from Palmer

319

1 Hough and we've talk about him before. He's an EPA
2 headquarters employee, correct?

3 A. Correct.

4 Q. And he's sending you an email on November
5 4th, 2010 to Shoren Brown. Shoren Brown is with
6 Trout Unlimited, correct?

7 A. Correct.

8 Q. And he's copying several people from EPA

9 including you. Do you see your address there?

10 A. Yes.

11 Q. And the subject is dates for OWOW briefing

12 on Bristol Bay and OWOW is the Office of Water,

13 Oceans and Wetlands?

14 A. Correct.

15 Q. And let me just read into the record what

16 Mr. Palmer is saying there. He's saying, Shoren,

17 I've checked with Denise Keehner's staff and she is

18 available the following times during the week of

19 December 13 for a follow-up briefing on Bristol Bay.

20 December 16 from 9:00 to 11:00 and December 17 in the

21 afternoon. Please let me know what works for your

22 folks. At a minimum, I think it would be very useful

1 to have reps from TNC walk us through its October

2 2010 Bristol -- BB, which I assume is Bristol Bay --

3 risk assessment and to hear an update on any
4 literature compilations that your coalition is
5 working on. Thanks, Palmer.

6 MR. ROSENBERG: And Roger, just
7 technically, I think you read it would be very useful
8 to have relps. The email says it would be very
9 helpful to have relps.

10 MR. YOERGES: Correct. You're very
11 helpful.

12 BY MR. YOERGES:

13 Q. So do you recall receiving this email in
14 November of 2010 from Palmer Hough to Shoren Brown?

15 A. I do not recall.

16 Q. Do you know what the 2010 Bristol Bay risk
17 assessment is that's referred to here, the October
18 2010 Bristol Bay risk assessment?

19 A. I'm assuming that it's TNC's risk
20 assessment.

21 Q. Do you recall anything to do with this
22 meeting that Palmer Hough is referring to with TNC?

1 A. I'm not specifically recalling this

2 meeting.

3 Q. This occurred before the -- whatever

4 meeting may or may not have occur, you'll agree with

5 me that it predates the formal announcement of the

6 Bristol Bay watershed assessment, is that correct?

7 A. Yes, that's correct.

8 Q. And let me show you North -- that's all I

9 have on that.

10 A. And actually, it's Office of Wetlands,

11 Oceans and Watersheds.

12 Q. And watersheds?

13 A. Watersheds.

14 Q. Thank you.

15 A. I had to think about it for a minute.

16 Q. You may be the only person who actually

17 remembers that so far of all the people being

18 deposed. I'm going to give you number 21 and I'll

19 hand copies to your counsel. This is my last

20 exhibit. I may have one other after this. I don't

21 want to misrepresent myself. If I do, it will only
22 be one more. So just take a look at this and while

322

1 you are, I'll identify it by the first email that
2 appears on the first page. It's from Phil North to
3 Gwen Kittel with a copy to Palmer Hough, subject,
4 Bristol Bay question.

5 A. Okay.

6 Q. Are you generally familiar with the
7 subject matter of this email exchange?

8 A. Yes.

9 Q. Gwen Kittel, she's a contractor that
10 worked with NatureServe, is that right?

11 A. That's correct.

12 Q. And the email starts out from the back
13 moving forward with an exchange between you and David
14 Chambers regarding his recommendations about a couple

15 of potential mining experts, right?

16 A. Yes.

17 Q. Did you ever end up using, in the Bristol

18 Bay watershed assessment, did you ever end up using

19 Johnnie Moore from University of Montana or David

20 Dzombak from the University of Pittsburgh?

21 A. No.

22 MR. ROSENBERG: Objection, vague.

323

1 BY MR. YOERGES:

2 Q. Did you ever end up relying on any of

3 their information?

4 MR. ROSENBERG: Same objection.

5 THE WITNESS: No, not that I recall.

6 BY MR. YOERGES:

7 Q. And then as you move to the next page,

8 sort of toward the -- forward of the exhibit, there

9 is a question from Gwen to you asking whether you
10 would like to be trained on running scenario runs
11 yourself using the Bristol Bay cumulative watershed
12 assessment, correct? Is that right?

13 A. Yes.

14 Q. And then if you go to the next page toward
15 the front, there is an email from you to Gwen with a
16 copy to Palmer Hough. Incidentally, it looks like
17 Palmer Hough is copied on all of these. What role
18 did Palmer Hough have before the formal announcement
19 of the Bristol Bay watershed assessment with regard
20 to the work you were doing at this time?

21 MR. ROSENBERG: Objection, vague, assumes
22 facts not in evidence.

1 THE WITNESS: We had coordinated with
2 headquarters, you know, our program in headquarters

3 about the idea of a 404(c) and so Palmer was the
4 person. He was the staff person that was assigned to
5 us.

6 BY MR. YOERGES:

7 Q. So you're keeping him in the loop?

8 A. Exactly, yes.

9 Q. So the email back at the second page of
10 this exhibit, this is the North email to Gwen Kittel
11 dated December 20th, 2010. Now again, this is before
12 the formal announcement of the Bristol Bay watershed
13 assessment, is that right?

14 A. Yes, that's right.

15 Q. And a couple of things about this. The
16 third paragraph of your email, you say, "The mining
17 company." You're referring to Pebble Mine there?

18 A. Yes. Yes, I am.

19 Q. Pebble Limited Partnership, Pebble Mining?

20 A. Yes.

21 Q. "With the currently proposed mine,
22 submitted a plan in 2006. They then discovered the

1 deposit was much bigger. They withdrew that proposal
2 and have not submitted a new plan. We don't expect
3 to get a new plan until 2012." Do you see that?

4 A. I do.

5 Q. So at this time in December 20 of 2010,
6 the mining proposal, the plan proposal that Pebble
7 had submitted in 2006, that had been withdrawn,
8 correct?

9 A. Yes.

10 Q. And there was no pending mining proposal
11 by Pebble at this time?

12 A. At this time, I believe that's correct.

13 Q. And then you say, "That's not to say we
14 have no information." And you refer to a couple of
15 things. But I'm most interested in that next
16 paragraph. "TNC has spatial data they are willing to
17 share but I don't know what is included." What are
18 you referring to there?

19 A. I believe they had some GIS layers they
20 had developed.

- 21 Q. What are GIS layers?
- 22 A. Gee graphic information system layers.

326

- 1 Q. What is that?
- 2 A. It's just spatial information from the
- 3 area.
- 4 Q. So you thought they had spatial data
- 5 regarding the Pebble deposit?
- 6 A. No. This isn't about the Pebble deposit
- 7 per se.
- 8 Q. What is it?
- 9 A. It's about Bristol Bay.
- 10 Q. About the watershed in general?
- 11 A. Yes.
- 12 Q. What made you think that they had spatial
- 13 data that they were willing to share?
- 14 A. Because I had talked to them.

15 Q. And did you ask them whether they would
16 share it with you?

17 A. I probably did or perhaps they just
18 offered. I don't know.

19 Q. And did they share it with you?

20 A. I don't know.

21 MR. ROSENBERG: Objection, vague.

22 BY MR. YOERGES:

327

1 Q. You don't have a recollection of that?

2 A. Right, I don't have a recollection.

3 Actually, no, I think they did. I think they did
4 share it. I think I remember having computer
5 problems with it.

6 Q. Problem opening it up or something like
7 that?

8 A. Yeah, uh-huh.

9 Q. I take it they're really large files?

10 A. They're very large files, yes.

11 Q. What sort of files are they? Are they

12 Word files?

13 A. No, no. They're special files of their

14 own. I don't even -- it's been a while. I haven't

15 done that in a while so I don't remember what, you

16 know, the dot --

17 Q. Dot something?

18 A. Something, yes, but they're special files

19 that are unique to GIS.

20 Q. And then the first email that appears on

21 page number 1 which is the last of this chain is

22 December 21st, 2010. It's from you to Gwen Kittel,

1 again, subject, Bristol Bay question. Do you see

2 that?

3 A. Yes, I do.

4 Q. And in it, you say, "The HUCs." What does
5 that stand for?

6 A. Hydrographic unit codes.

7 Q. "Are about right." And down below, just
8 by way of explanation, Gwen Kittel sends an
9 information to you with these various numbers,
10 19030302, et cetera, et cetera. Are those the unit
11 codes you just referred to?

12 A. Yes, that's right.

13 Q. So she's identifying the unit codes for
14 the part of the watershed that would be subject to
15 assessment?

16 MR. ROSENBERG: Objection, vague.

17 THE WITNESS: No.

18 BY MR. YOERGES:

19 Q. What is she doing?

20 A. This is preassessment. And this is -- we
21 were going to do an analysis or they had a -- I'm
22 actually gathering from reading this, because I don't

1 recall, but they had a methodology for doing an
2 analysis in the watershed and so we were talking
3 about using that methodology and you had to have a
4 geographic area and you had to have maps, you know,
5 what's called a digital elevation model and all
6 that -- you know, just data. And so we needed to
7 bound that with HUCs, is what you call them.

8 Q. And she's proposing the HUCs that you
9 would use to bound area that you were going to study?

10 A. Yes.

11 Q. And so you respond by saying, "These HUCs
12 are about right. We will probably start our
13 analysis" -- with a HUC maybe?

14 A. Yes, with a HUC.

15 Q. "With a HUC out to the west, north and
16 south." West, north and south of what?

17 A. Probably of what she's proposing but I
18 don't know for sure.

19 Q. "But we know there is not much human
20 activity in those areas that will meet our

21 'unacceptable adverse impact' threshold." You put

22 unacceptable adverse impact in quotes. Is that

330

1 referring to 404(c)?

2 A. It is, yes.

3 Q. "So will probably drop them." So what are

4 you saying in that first paragraph?

5 A. I think what I'm saying is this is the

6 area that, if we were to do a 404(c), this is the

7 area we would probably do it in and it's the area

8 where we believe that there is a risk.

9 Q. So if there is an area that there is not

10 much human activity, there is less risk there, is

11 that what you're saying?

12 A. Yes.

13 MR. ROSENBERG: Objection, vague,

14 mischaracterizes his testimony.

15 BY MR. YOERGES:

16 Q. Is that yes?

17 A. Yes.

18 Q. And then it goes on to say, "We are

19 meeting with TNC next Wednesday the 29th." I take it

20 that is December 29th?

21 A. Yes.

22 Q. Given that this is dated December 21st.

331

1 "At 10:00 a.m. Alaska standard time to discuss
2 spatial data." And there is a call-in number which
3 is deleted if you want to participate. "I won't have
4 anything from them before that." Do you recall
5 having set up a meeting with TNC on Wednesday the
6 29th of December which would have happened right
7 before the new year to discuss spatial data with
8 them?

9 MR. ROSENBERG: Objection, vague,
10 misleading, assumes facts not in evidence.

11 THE WITNESS: I do have a vague
12 recollection of this, yes.

13 BY MR. YOERGES:

14 Q. And did somebody from TNC come in to
15 discuss their spatial data?

16 A. I believe we went to them.

17 Q. You went to them. And who was it at TNC

18 -- or if it was more than one person, identify

19 them -- who was the spatial data person who made that
20 presentation?

21 A. It would have been Dave Albert.

22 Q. Dave Albert?

332

1 A. Uh-huh.

2 Q. Anyone else?

3 A. I think he was the primary person but
4 there could have been others. I don't recall.

5 Q. That's all I have on that.

6 A. Okay.

7 Q. I said at the beginning of this deposition
8 that this case is about -- this case was filed by
9 Pebble Limited Partnership against the EPA and its
10 administrator and the case revolves around claims
11 we've made under something called the Federal
12 Advisory Committee Act. Do you know what the Federal
13 Advisory Committee Act is?

14 A. Yes.

15 Q. And what is it?

16 A. Well, my understanding of it --

17 Q. Sure.

18 A. -- is that the federal government has
19 procedures for setting up advisory committees and
20 that it outlines those procedures and says what you
21 have to do and what is or isn't an advisory
22 committee.

1 Q. It specifies what is and isn't an advisory
2 committee?

3 A. That's my understanding.

4 Q. Did you have any training with regard to
5 the Federal Advisory Committee Act during any of your
6 years at the EPA?

7 A. Did I ever have any training on -- I don't
8 think so.

9 Q. Do you recall any conversations at all,
10 Mr. North, where the question of Federal Advisory
11 Committee Act compliance came up in connection with
12 any of the work you did on the Bristol Bay matter?

13 A. Yes.

14 MR. ROSENBERG: Objection vague.

15 BY MR. YOERGES:

16 Q. You do? Tell me what you recall.

17 A. I recall that there was discussion
18 about -- primarily around the -- I think the -- what
19 was it? The groups with the agencies and the tribes.
20 I forgot what we called them.

21 Q. The intergovernmental technical team?

22 A. Yes. Oh, wait, is that right?

334

1 Q. IGGT?

2 A. Was it the technical team?

3 MR. ROSENBERG: Objection.

4 BY MR. YOERGES:

5 Q. Just asking.

6 A. I believe that was it. Sounds right.

7 Q. Okay.

8 A. How that related to FACA. I was not

9 really a significant player in those discussions. I

10 was just listening.

11 Q. Do you recall whether any issues about

12 FACA, Federal Advisory Committee Act, were raised in

13 connection with any of the meetings that you

14 participated in regarding the Bristol Bay assessment

15 team?

16 A. No, I don't believe so.

17 Q. And do you recall whether any issues

18 relating to FACA ever were discussed in your presence

19 regarding any of the meetings that you had with TNC

20 or others prior to the official announcement of the

21 Bristol Bay watershed assessment?

22 MR. ROSENBERG: Objection, vague.

335

1 THE WITNESS: Not that I know of.

2 BY MR. YOERGES:

3 Q. Did you personally have any concerns that

4 the meetings that you were having as a member of the

5 Bristol Bay assessment team might have run afoul of

6 FACA?

7 A. I did not have personal concern about

8 that.

9 Q. Did you hear anyone else say that they had
10 personal concerns about it?

11 A. Not that I recall.

12 Q. And I ask that same question with regard
13 to meetings that you had with various different
14 groups including TNC prior to the announcement of the
15 Bristol Bay watershed assessment. Did you have
16 personal concerns that those meetings might run afoul
17 of FACA?

18 A. I didn't have personal concerns.

19 Q. And did you hear whether anyone else
20 voiced any personal concerns?

21 A. I did not hear it. It would have been --
22 I mean, FACA is an issue for the attorneys. I mean,

1 it's not something that a technical person like me
2 thinks about.

3 Q. Mr. North, thank you very much. I know it
4 was a long trip to make here. I appreciate your
5 testimony today.

6 A. Okay. You're welcome.

7 MR. YOERGES: Your witness.

8 MR. ROSENBERG: I think we would like to
9 continue the deposition until tomorrow morning. It's
10 after 5:30 at this point and I know that Mr. North
11 has agreed to make himself available tomorrow
12 morning. I don't anticipate that my questions will
13 take more than a couple of hours but I do think that
14 at this point in the day, it would be longer than
15 would be appropriate to have this witness continue to
16 sit here so I would suggest that we reconvene at 9:30
17 a.m. tomorrow.

18 MR. YOERGES: Is that acceptable to you,
19 Billie?

20 MS. GARDE: It is.

21 MR. YOERGES: Okay.

22 BY MR. YOERGES:

1 Q. Acceptable to you?

2 A. It is.

3 MR. YOERGES: So why don't we plan to meet
4 back here at 9:30 in the morning and we'll all
5 proceed at pace and see if we can't get as close to
6 after lunch as possible.

7 MS. GARDE: All right.

8 MR. ROSENBERG: And I anticipate that we
9 will be able to do so.

10 MR. YOERGES: Okay.

11 MS. GARDE: Thank you.

12 MR. YOERGES: Thank you very much. Until
13 then, we remain adjourned.

14 THE VIDEOGRAPHER: Off the record at
15 13:36.

16 (Whereupon, at 5:36 p.m., the deposition
17 adjourned to reconvene at 9:30 a.m. on Thursday,
18 March 31, 2016.)

19

20

21 Signature of the Witness

22 SUBSCRIBED AND SWORN to before me this _____ day of

338

1 _____, _____.

2

3 _____

4 Notary Public

5 My Commission Expires: _____

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