

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 Thursday, March 31, 2016

13 Continue videotaped deposition of PHILLIP

14 A. NORTH, a witness herein, called for examination by

15 counsel for Plaintiff in the above-entitled matter,

16 pursuant to notice, the witness being duly sworn by

17 MARY GRACE CASTLEBERRY, a Notary Public in and for

18 the District of Columbia, taken at the offices of

19 Steptoe, 1330 Connecticut Avenue, N.W., Washington,

20 D.C., at 9:41 a.m., Thursday, March 31, 2016, and the

21 proceedings being taken down by Stenotype by MARY
22 GRACE CASTLEBERRY, RPR, and transcribed under her

2

1 direction.

3

1 APPEARANCES:

2

3 On behalf of the Plaintiff:

4 ROGER W. YOERGES, ESQ.

5 BRIGIDA BENITEZ, ESQ.

6 CHRISTOPHER RE, ESQ.

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12

13 On behalf of Defendant:

14 BRAD P. ROSENBERG, ESQ.

15 ROBIN THURSTON, ESQ.

16 U.S. Department of Justice

17 20 Massachusetts Avenue, N.W.

18 Washington, D.C. 20530
19 (202) 616-8188
20 and
21 HEIDI NALVEN, ESQ.
22 U.S. Environmental Protection Agency

4

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2 Washington, D.C. 20460
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4

5 ALSO PRESENT:

6 JASON AQUI, Videographer
7 BRUCE JENKINS (Via Live Streaming)

5

1 CONTENTS

2 WITNESS EXAMINATION BY COUNSEL FOR

3 PHILLIP A. NORTH ^ PLAINTIFF ^ DEFENDANT

4

5

6 Afternoon Session - Page ^

7

8 EXHIBITS

9 SEAL EXHIBIT NO.	PAGE NO.
10 22 - Subpoena to Testify at a Deposition in a Civil	
11 Action	
12 23 - October 16, 2015 letter to Wendy Blake from	
13 Billie Garde	

6

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 31st, 2016. The time is 9:41.
6 This is the video recorded deposition of Phillip
7 North being taken at 1330 Connecticut Avenue,
8 Northwest, Washington, D.C. 20036. I'm the camera
9 operator. My name is Jason Aqui in association with
10 Alderson Reporting located at 1155 Connecticut Avenue
11 Northwest, Washington, D.C. The court reporter is
12 Mary Grace Castleberry also in association with
13 Alderson Reporting. Will all attorneys please
14 identify themselves and the party they represent
15 beginning with the party noticing this proceeding.

16 MR. YOERGES: Roger Yoerges, Steptoe and
17 Johnson, representing the plaintiff.

18 MS. PALACIOS: Patty Palacios, Steptoe &
19 Johnson, representing the plaintiff.

20 MS. BENITEZ: Brigida Benitez with Steptoe
21 & Johnson representing the plaintiff.

22 MR. RE: Christopher Re with Steptoe &

7

1 Johnson, representing the plaintiff.

2 MS. PALOMAKI: Ashley Palomaki with the
3 USEPA representing the the defendants.

4 MS. NALVEN: Heide Nalven with U.S. EPA
5 representing defendants.

6 MS. THURSTON: Robin Thurston, Department
7 of Justice, civil division, federal programs branch,
8 also representing defendants.

9 MR. ROSENBERG: Brad P. Rosenberg, U.S.
10 Department of Justice, civil division, federal
11 programs branch representing the defendants, EPA, and
12 its administrator sued in her official capacity.

13 MS. GARDE: Billie Garde representing the
14 deponent.

15 THE VIDEOGRAPHER: Will the court reporter
16 please administer the oath.

17 Whereupon,

18 PHILLIP A. NORTH,
19 was called as a witness by counsel for Plaintiffs,
20 and having been duly sworn by the Notary Public, was
21 examined and testified as follows:

22 MR. ROSENBERG: Before we begin with

8

1 questions, I would like to ascertain and/or confirm
2 whether anyone else is listening to this deposition
3 or is participating via a live stream.

4 MR. YOERGES: You want to ascertain or
5 confirm?

6 MR. ROSENBERG: I mean, is anyone else
7 listening in?

8 MR. YOERGES: Bruce Jenkins is listening
9 and Tom Barba is listening and watching in our
10 overflow room. That's two room.

11 MR. ROSENBERG: Anyone else?

12 MR. YOERGES: No, that's it.

13 MR. ROSENBERG: Thanks for that

14 confirmation.

15 EXAMINATION BY COUNSEL FOR PLAINTIFFS

16 BY MR. ROSENBERG:

17 Q. Mr. North, thank you for making yourself
18 available for a second day of depositions. We at the
19 Department of Justice appreciate that. I hope that
20 plaintiff appreciates that as well. It's a little
21 bit unusual. I do want to talk to you about
22 something that's also a little bit unusual and it's

9

1 an event that took place yesterday afternoon after
2 the first day of the deposition took place. We
3 finished our deposition late yesterday afternoon and
4 can you tell me what if anything occurred after you
5 left this deposition within these offices?

6 A. When we walked out of the elevator down in
7 the lobby, we walked around the corner and we were
8 approached by two young men who said my name and then
9 handed a packet that contained a subpoena from a
10 House committee, from a Congressional House
11 committee, and they took a picture of -- the one took
12 the picture of the other one handing over the packet.

13 Q. Okay. And you said you went down the
14 elevator. Were you handed the subpoena in this
15 building?

16 A. Yes.

17 Q. Do you know whose offices are located in
18 this building?

19 A. The law firm of Steptoe & Johnson.

20 Q. Is there a security desk in this building?

21 A. Yes.

22 Q. When you came to yesterday's deposition,

10

1 were you able to enter the building without moving
2 past the security desk?

3 A. No.

4 Q. What information if any did you need to
5 provide to the security guard at the security desk in
6 order to enter the building?

7 A. I had to provide my driver's license.

8 Q. And what if anything did the security
9 guard do with your driver's license when you entered
10 the building?

11 A. Put it in a machine that scanned it and
12 produced a pass, a visitor pass.

13 Q. And did you need to wear a visitor pass in
14 order to remain in this building?

15 A. I had it. I didn't wear it.

16 Q. Did you go through the same procedure this
17 morning?

18 A. Yes.

19 Q. And that same procedure being that you had
20 to go to a security guard in this building in order
21 to enter the building?

22 A. Yes.

11

1 Q. And did you hand your ID to the security
2 guard again?

3 A. Yes.

4 Q. Do you have any understanding as to why
5 there was a photographer in the building yesterday?

6 A. No.

7 Q. Do you have any views as to whether it was
8 appropriate to have a photographer at the point in
9 time when you were handed the subpoena?

10 A. It's a bit -- I mean, it's bewildering. I
11 don't know why they would take a picture.

12 Q. Do you know who took a picture?

13 A. One of the two young men.

14 Q. So let's go ahead and mark this as our

15 next exhibit.

16 (North Exhibit No. 22 was

17 marked for identification.)

18 BY MR. ROSENBERG:

19 Q. Mr. North, the court reporter has handed

20 you a document that has been marked as Exhibit Number

21 22. I would like to ask you to take a moment to take

22 a look at that document and then let me know once you

12

1 have had an opportunity to review it.

2 A. Okay. Yes, I've had a chance to look at

3 it.

4 Q. Do you recognize this document?

5 A. I do.

6 Q. Have you seen it before?

7 A. I have.

8 Q. When have you seen it before?

9 A. When it was handed to me when I was

10 staying at a house in Australia.

11 Q. And where in Australia was that?

12 A. It was in Bicton near Perth, Australia in

13 western Australia.

14 Q. And when you say it was handed to you, was

15 that a colloquial way of saying you were served with

16 a subpoena?

17 A. Yes, it is.

18 Q. And is it your understanding that this is

19 the subpoena that requires you to provide testimony

20 in this case?

21 A. That is my understanding.

22 MR. YOERGES: Let me just make an

13

1 objection for the record. I'm not sure this is the

2 complete document.

3 MR. ROSENBERG: Okay.

4 BY MR. ROSENBERG:

5 Q. I would like to direct your attention to

6 the middle of the first page of the subpoena which

7 identifies the location for the deposition. Do you

8 see on the subpoena there is a block that says place?

9 A. Yes, I do.

10 Q. And this is under the portion of the

11 subpoena that indicates that you are commanded to

12 appear at a given place. Do you see that?

13 A. Yes, I do.

14 Q. Can you read for me the place where this

15 deposition is supposed to take place?

16 A. Reeves Amodio LLC, 500 L Street, Suite

17 300, Anchorage, Alaska, 99501.

18 Q. Now, we're not at Reeves Amodio, are we?

19 A. We're not.

20 Q. We're not even in Anchorage, Alaska, are

21 we?

22 A. No, we're not.

14

1 Q. Are you aware of any public information

2 that has been released regarding the location of

3 today's and yesterday's deposition?

4 A. I am not aware of any.

5 Q. Have you shared with anyone in the media

6 or the public at large the location of yesterday's

7 and today's deposition?

8 A. No, I haven't.

9 Q. By the way, where did you come from? You

10 said you were in Perth, Australia when you were
11 served with the subpoena. Is that where you're
12 currently residing?

13 A. No.

14 Q. Where are you currently residing?

15 A. In Bali, Indonesia.

16 Q. How long did it take to get from Bali,
17 Indonesia to Washington, D.C. for this deposition?

18 A. About 36 hours.

19 Q. And Mr. North, let me move on to another
20 topic. We discussed -- we being everyone in this
21 room -- your role as an ecologist in EPA Region 10.
22 Can you describe for me in a little bit of -- as much

15

1 detail as you can what an ecologist in EPA Region 10
2 does?

3 A. Well, it depends on what program you're
4 in, of course.

5 Q. Okay. So what program were you in?

6 A. I was in the aquatic resources unit.

7 Q. Can you describe for me the role of an
8 ecologist in the aquatic resources unit of EPA Region
9 10?

10 A. Yes.

11 Q. Please do.

12 A. There are multiple responsibilities. I

13 would say the first one I would describe would be to

14 participate in the 404 permitting program which EPA

15 shares responsibility with the Corps of Engineers.

16 The Corps of Engineers actually issues the permits

17 but the EPA reviews proposals for projects that are

18 subject to permits and evaluates and advises the

19 Corps of Engineers on the likely effects, ecological

20 effects of those proposals. And then we have other

21 responsibilities such as issuing grants to local

22 entities and tribes and states to develop local

16

1 programs for protecting waters of the U.S. and we

2 work with those entities on those programs as well as

3 provide the grants.

4 We also do enforcement and so if someone

5 discharges dredge or fill material into a water of

6 the U.S. without receiving a permit from the Corps

7 first, then we'll follow up with that. We'll

8 evaluate what the ecological effects have been.

9 We'll recommend restoration. We'll work with either
10 EPA attorneys or Department of Justice attorneys to
11 find a remedy to that violation.

12 And we also essentially do, I guess it
13 would be called outreach to communities, to tribes,
14 states, local communities to engage them in ways to
15 protect or to develop programs, I suppose, or protect
16 waters of the U.S. more on a local level, other than
17 the federal government doing it.

18 And then one other thing is that we -- the
19 way our program is set up is that we typically -- we
20 have geographic areas and so we're the local people
21 on the ground for our program and for EPA and so we
22 essentially keep in touch with the local entities and

17

1 understand what's going on in terms of environmental
2 protection and that feeds back to multiple programs.
3 And in my particular case, I was a one-person place
4 based office on the Kenai Peninsula and so I was the
5 one who got -- I was kind of the front person for EPA
6 in many cases and the public would interact with me.
7 They would call me. And it didn't matter what the
8 program was. If it wasn't something I knew about, I

9 would forward them on to the right program but I was
10 kind of the face of EPA.

11 Q. You mentioned that you were located
12 physically in the Kenai Peninsula. Was your
13 geographic area of responsibility limited to the
14 Kenai Peninsula?

15 A. No, it wasn't.

16 Q. What other areas -- let me back up for a
17 second. Did your geographic area of responsibility
18 include the Kenai Peninsula?

19 A. It did, yes.

20 Q. What other areas other than the Kenai
21 Peninsula did your geographic area of responsibility
22 include?

18

1 A. And of course it depends on when you're
2 talking about because it changed in time.

3 Q. Okay. I'm thinking of -- why don't we ask
4 about the time period that is at the heart of
5 plaintiffs' lawsuit, during the 2009 to 2013 time
6 period, did your geographic area of responsibility
7 change at all to the best of your recollection during

8 that time period?

9 A. Not during that time period, no.

10 Q. And what is your recollection of your

11 geographic area of responsibility during that time

12 period?

13 A. It was the Kenai Peninsula or actually

14 really the Kenai Peninsula Borough, Kodiak Island and

15 southwest Alaska including Bristol Bay, the Alaska

16 peninsula and the Aleutian Islands.

17 Q. And when you say including Bristol Bay,

18 does that also include the Bristol Bay watershed?

19 A. Yes, it does.

20 Q. You also spoke about outreach. I have a

21 couple of questions regarding that. You mentioned

22 outreach to I believe state, local and tribal

19

1 officials, is that correct?

2 A. That is correct.

3 Q. Can you describe for me the type of

4 outreach activities that you would engage in with

5 state officials during this -- in your responsibility

6 as an ecologist?

7 A. Yes. I would maintain a rapport and I
8 guess communication with state officials, whether it
9 was fish and game or department of environmental
10 conservation or Department of Natural Resources and
11 just I would essentially, I mean, get to know them, I
12 suppose, talk to them in meetings and maintain a
13 relationship with them and interaction with them. If
14 there was any kind of announcement or information, I
15 might share it with them. If there was something
16 like, you know, a grant announcement coming out, a
17 grant opportunity, I would send them that
18 information. I interacted with -- if I was going
19 into the field and I thought they might be
20 interested, I would call them, tell them I was going
21 into the field and if they were interested or wanted
22 to come along, they were welcome to.

20

1 Q. Mr. North, I'm not a scientist. I'm not
2 even an environmental lawyer. Can you tell me what
3 you mean when you say going to the field?

4 A. If I was going out of the office, going to
5 a site someplace on a stream or a wetland or a lake
6 or the shore line to do anything, I mean, might be to

7 investigate an enforcement case, it might be to go
8 check out a site where there was a permit being
9 proposed, it might just -- I mean, it could be really
10 anything. Somebody could have told me about
11 something going on there and I wanted to go
12 understand what was going on, of any number of
13 natures may be affecting waters, then I might call
14 them and invite them to go along or see if they were
15 interested.

16 Q. And on these -- this may not be quite the
17 right term -- field trips that you would embark on
18 with state officials, would you be discussing the
19 matters that you're investigating as part of the
20 field trip --

21 A. Yes.

22 Q. -- with those state officials?

21

1 A. Yes.

2 Q. You also discussed outreach to local
3 officials?

4 A. Yes.

5 Q. Can you describe that for me, please?

6 A. My office on the Kenai Peninsula was
7 located in a Kenai Peninsula Borough building and the
8 purpose of that building was to allow state, federal
9 and local personnel that are working on environmental
10 issues to coordinate and so right next to me on one
11 side was a Kenai Peninsula borrow employee, on the
12 other side was a fish and game employee, there was a
13 Department of Natural Resources employee down the
14 hall --

15 Q. Let me just stop you for one second. When
16 you say Department of Natural Resources, is that a
17 state or a federal or a local entity?

18 A. That's a state entity.

19 Q. The Alaska Department of Natural
20 Resources?

21 A. Alaska department, yes, that's correct.

22 And so I could talk to them and really it was a

22

1 moment to moment thing where something's come up,
2 something's interesting, we would walk down the hall
3 and chat with them.

4 Q. And how frequently would you have these
5 chats with Alaska Department of Natural Resources

6 officials?

7 A. Oh, I mean, really every day because it

8 was so casual because we were housed together, we

9 could just very casually talk to each other.

10 Q. And during these chats, would Alaska

11 Department of Natural Resources officials share

12 information with you?

13 A. Yes.

14 Q. What type of information would they share?

15 A. It could be -- I mean, just news, you

16 know, what's going on, what happened here, what

17 happened there. Could be news from within the

18 Department of Natural Resources. It could be

19 something that just, you know -- I don't know, a

20 ranger did this or a deputy director did that or, I

21 mean, it really could be anything. It's a very broad

22 question because it really could be anything.

23

1 Q. Would you share EPA information with

2 Alaska Department of Natural Resources officials as

3 parts of these chats?

4 A. Yes, I would.

5 Q. And what type of information would -- EPA
6 information would you share?

7 A. Again, it could be anything. It was
8 really what I was doing, you know, what I was working
9 on, kind of what the latest events were, what the
10 latest events were. It could really be anything.

11 Q. I believe that you also mentioned outreach
12 to tribal officials?

13 A. Yes.

14 Q. Can you describe that for me, please?

15 A. Okay. I maintained a rapport -- on the
16 Kenai Peninsula, there are three -- there were three
17 main tribes that I worked with on a regular basis.
18 Kanaitze, the Ninilchik tribe and the Port Graham
19 tribe. And there were a couple of others that I
20 interacted with on a less frequent basis but these
21 were the three that actually expressed the most
22 interest so I responded to that interest.

24

1 Q. And when you say expressed the most
2 interest, what do you mean by that? Interest in
3 what?

4 A. In the grant programs, in working with me

5 to try to find ways to enhance protection of waters
6 on the Kenai Peninsula, to work with them so that
7 their tribal programs meshed with EPA programs or
8 other programs or to help them develop their tribal
9 programs for, you know, to protect resources that
10 they were interested in.

11 Q. And did you view these types of
12 discussions that you had with tribal entities to be
13 part of your responsibility as an EPA ecologist?

14 A. Absolutely.

15 Q. Is there anything unique about EPA's
16 relationship with tribal entities in Alaska?

17 A. Unique compared to what?

18 Q. Its relationship with, for example, state
19 or local officials.

20 A. Yes. EPA has a trust responsibility with
21 tribes. The tribal governments in EPA's view are
22 kind of -- if the federal government is kind of the

1 top level of government, the tribes are next and then
2 the states are next. The tribes are considered to be
3 sovereign nations under a trust responsibility of the

4 federal government and so EPA approaches it that way,
5 whereas the states have a different relationship. I
6 mean, the states are more within the body, I suppose,
7 of the United States whereas the tribes are not in
8 the same way, is my understanding. I suppose it's
9 the trust responsibility and the sovereignty that's
10 the difference but actually I guess we're kind of
11 beyond my complete understanding of it.

12 Q. And I don't want to go beyond your
13 understanding. I'm only interested, for purposes of
14 my questions today, in your understanding. You
15 mentioned, I believe in yesterday's proceedings, that
16 you have been involved with various mining projects
17 in Alaska?

18 A. Yes.

19 Q. Do you recall generally providing that
20 testimony?

21 A. Yes, I believe I do.

22 Q. I have a couple of follow-up questions

1 regarding your experience with mining projects but
2 let me start by asking you this. Can you describe
3 for me how -- let me back up for a second. Why would

4 you as an EPA ecologist in the aquatic resources unit

5 in Region 10 be involved with mining projects

6 generally?

7 A. Because mining projects have the potential

8 to affect waters, the integrity, the ecological

9 integrity of waters and so under the Clean Water Act,

10 we're required to maintain and protect the physical,

11 biological and ecological integrity of the waters, or

12 physical, chemical and biological integrity of the

13 waters, and so we would be -- and in my program in

14 particular, we would be reviewing projects to

15 evaluate the likely or the possible ecological

16 effects.

17 Q. And in what context would you be

18 evaluating mining projects? How would that

19 information come to you?

20 A. It would usually come not in the form of

21 an application but in a pre-application process where

22 the mining would be encouraged to reach out to the

27

1 agencies and to engage in early discussions about and

2 to receive information about a project to get

3 feedback so that when it comes time to submit an

4 application to the federal government or to the state
5 government, then the information that had been
6 developed would be refined based on feedback from
7 usually state and federal agencies and with the idea
8 that when it goes through the actual process, it
9 would be a lot smoother because the state and federal
10 personnel have already had a chance to review it and
11 help the company refine it.

12 Q. You say that mining companies would be
13 encouraged to reach out to agencies. You used
14 passive voice there and I want to dig into that a
15 little bit. Who would encourage mining companies to
16 reach out to agencies?

17 A. The agencies would.

18 Q. And when you say the agencies, would that
19 include EPA?

20 A. Yes.

21 Q. So in your experience, was it EPA's
22 practice to communicate with mining companies in

1 order to encourage them to have informal discussions
2 with the agencies before a formal permitting process?

3 A. Yes.

4 MR. YOERGES: Object to form.

5 BY MR. ROSENBERG:

6 Q. How often have you seen EPA encouraging
7 mining companies to have informal discussions with
8 EPA?

9 A. Every project.

10 Q. And when you say every project, how many
11 projects have you worked on?

12 A. I don't know the number but I've worked on
13 every major mine in Alaska in one capacity or
14 another.

15 Q. And let's clarify that a little bit. When
16 did you become an ecologist in EPA Region 10 in
17 Alaska?

18 A. In December of 1989.

19 Q. And so is it your testimony that you
20 worked on every major mine project in Alaska from
21 1989 until the time that you left EPA?

22 A. In one capacity or another, yes.

1 Q. Do you have a rough estimate as to
2 approximately how many projects that might be?

3 A. Well, with the major mines, I mean,
4 it's -- I could count them up. For the mines that
5 actually exist, I think there's nine of them. Wait.
6 Maybe there is six major mines right now but there
7 has been some that have come and gone and then there
8 is a number of them that the process got started and
9 then the mine was not developed or not yet in some
10 cases.

11 Q. Okay. So let's unpack this a little bit.
12 You seem to be thinking in your head of major mine
13 projects and, as I said, I'm not a scientist, I'm not
14 an environmental lawyer, I'm not an expert on mines
15 and so I don't know what you mean by major mining
16 project. Can you identify for me by name the major
17 mining projects that you're thinking of?

18 A. Sure. Greens Creek in southeast, Alaska
19 in Kensington; Pogo Mine; Fort Knocks; Red Dog.
20 Those are probably -- I think those are the active
21 major mines right now. And then there's a number of
22 others, I think. There is a Nixon Fork that -- I

1 don't know, people would probably at the beat where

2 you draw the line, whether you draw them major mine
3 or not, but these are hard rock mines that are
4 continuing right now, although I don't know if Nixon
5 Fork is.

6 There have been others like -- I'm drawing
7 a blank on the name. There was the one Juneau
8 something that got into the process but then was not
9 developed. There is one in Canada just up the Taku
10 River and now I'm going to draw a blank on the name
11 on that one. So there is a number of them kind of
12 around the state.

13 Q. And in each of the mines that you
14 mentioned, do you recall if EPA employees provided
15 feedback to those entities that were pursuing the
16 mining projects, either formally or informally, in
17 advance of the submission of a permit application?

18 A. Yes, in every case.

19 Q. Do you recall if you provided feedback to
20 those same entities, either formally or informally,
21 in advance of the submission of a permit application?

22 A. On those where I was in my 404 role, yes,

1 I did.

2 Q. Do you recall the nature of the feedback

3 that you provided?

4 A. It could be sitting around a table like

5 this and talking, it could be talking on the phone,

6 it could be exchanging an email, it could be writing

7 letters, kind of formal responses to things. So it

8 could be in a number of forums.

9 Q. Was the feedback substantive in nature?

10 A. Generally.

11 Q. Why would you provide substantive feedback

12 to an entity that has not yet submitted a permit

13 application to EPA?

14 A. As I said, so that they could refine their

15 project and so that when they finally submitted

16 something to the government, it was something that

17 would be more likely to be accepted and passed

18 through the process smoothly.

19 Q. Does that bother you at all?

20 A. No. Seems like a very good idea.

21 Q. You referred to, I think a few moments

22 ago, your 404 role. Do you recall providing that

1 testimony?

2 A. I do.

3 Q. What did you mean by that?

4 A. In my official capacity in the dredge and

5 fill permitting program that the EPA co-administers

6 with the Corps of Engineers. And that's section 404

7 of the Clean Water Act.

8 Q. I'm going to ask you to unpack that a

9 little bit more because I'm a simple fella and I'm

10 trying to understand, when you say, "In my official

11 capacity in the dredge and fill permitting program,"

12 what is the dredge and fill permitting program?

13 A. The dredge and fill permitting program is

14 a program that is section 404 of the Clean Water Act

15 that directs the Corps of Engineers to -- I don't

16 know if it's not -- they don't direct them to issue

17 permits but they direct them to have a permit program

18 so that if someone wants to fill, place fill or

19 dredge material into waters of the U.S., so wetlands,

20 streams, lakes, near shore ocean waters, that they

21 are required to submit an application to the Corps

22 and then the Corps would review it according to

1 criteria that were developed by the EPA, which is the
2 404(b)(1) guidelines, and then receive feedback from
3 EPA, the Fish and Wildlife Service, National Marine
4 Fisheries Service and the states about that permit
5 application and then either issue the permit or issue
6 it with continues or don't issue it or deny it.

7 Q. We discussed the feedback that you
8 provided to various other mining entities during your
9 time at EPA. Have you ever provided any feedback to
10 either Pebble Limited Partnership or Northern Dynasty
11 Minerals?

12 A. Yes, I have.

13 Q. Let me back up for a second. When did you
14 first become involved with matters relating to a
15 potential mine at the Pebble Mine site?

16 A. In 2005.

17 Q. And how did you become involved in 2005?

18 A. It was assigned to me by Rick Parkin.

19 Q. Do you have any understanding as to why it
20 was assigned to you?

21 A. Yes, because it was in my geographic area.

22 Q. Was there anyone else in your geographic

1 area who had similar responsibilities as you?

2 A. No.

3 Q. So you didn't seek out work on the Pebble

4 project, did you?

5 A. That's correct.

6 Q. And after -- you say it was assigned to

7 me. What is the "it"?

8 A. The "it" is the project that -- it was --

9 it needed to be addressed. Our program needed to be

10 engaged in the project and there was a process going

11 on already with other federal agencies and state

12 agencies with the Pebble project and they were

13 engaged and they were already talking but EPA wasn't

14 yet involved in that and so I was assigned to be the

15 person that would be in that process for my program.

16 Q. Now, had Pebble submitted a permit

17 application at that point in time?

18 A. To the Corps of Engineers, you mean?

19 Q. Well, how does the permitting process

20 work?

21 A. Well, that's the 404 permitting.

22 Q. Right.

1 A. There's many permits that they have to
2 submit but the 404 permit, no, they had not submitted
3 that yet.

4 Q. So why were there discussions amongst
5 Pebble and other federal agencies and presumably you
6 from EPA once you became involved in 2005?

7 A. In anticipation of permitting at a future
8 date, they were entering the process to talk about
9 the project as it develops so that they could get
10 feedback from the agencies and to refine the project
11 again so that when they apply, it goes through the
12 process more smoothly.

13 Q. Now, I want to focus on that 2005 time
14 period when you first became involved. Do you recall
15 the nature of the discussions -- let me back up. Do
16 you recall having any discussions with any
17 representatives from Pebble Limited Partnership in
18 2005?

19 A. In 2005? Well, yes, I do recall having
20 discussions.

21 Q. Do you recall the nature of the
22 discussions?

1 A. I guess initially it was just about what
2 the project was or could be or would be and what
3 information they had at that point.

4 Q. And did they provide you with any
5 information regarding a potential project at that
6 point?

7 A. Yes, they did.

8 Q. What was the nature of the information
9 that they provided?

10 A. It was information about the deposit, you
11 know, how big it is and what kind of minerals they're
12 finding there and what's the nature of the deposit in
13 terms of geochemistry and spatial position and then
14 also what kind of environmental information they had
15 collected to date. I suppose generally that was what
16 they were talking about.

17 Q. And when you say they, who are you
18 referring to?

19 A. The Pebble project people.

20 Q. And I know that there has been -- do you
21 understand the distinction between Pebble Limited
22 Partnership and Northern Dynasty Minerals?

1 A. I do, yes.

2 Q. So when you say Pebble Limited

3 Partnership, what do you mean?

4 A. I mean the entity that existed at that

5 time to develop the Pebble Mine.

6 Q. Do you know at that time if the entity --

7 and let's refer to it as Pebble Limited Partnership.

8 A. Okay.

9 Q. Since that is your understanding. Do you

10 know if the entity had any paid contractors or

11 representatives who were also providing information

12 to EPA?

13 A. I believe that they did, yes.

14 Q. Did you have any communications with those

15 contractors or paid representatives regarding the

16 Pebble Mine project?

17 A. I believe I did, yes.

18 Q. Do you recall, during the 2005 time

19 period, the nature of those communications?

20 A. I don't remember exactly when they started

21 but it might have been around that time that PLP,

22 although I understand that Northern Dynasty became

38

1 PLP at some point and I don't remember exactly when
2 that was so they had annual meetings where they would
3 actually present the results of the previous field
4 season where they had collected -- they had been out
5 in the area, the area of the deposit, and collecting
6 information and they would present that to the
7 agencies. And then somewhere around that time, and I
8 don't remember exactly when, they started to have
9 technical working groups where the agencies would get
10 together with the company people, the mining company
11 people as well as consultants as relevant and discuss
12 information that they had generated and then to get
13 advice on what to do next.

14 Q. I want to get back to the technical
15 working groups in a moment.

16 A. Okay.

17 Q. But before I do, at this time period in
18 2005 when you were first assigned to this Pebble
19 project, did you have any views as to the propriety
20 of a mine at the Pebble site?

21 A. I assumed at that time that the mine was
22 going to happen, that the mine would go through the

39

1 process and it would be permitted, the way it was
2 talked about anyway. Most mines don't turn -- I
3 mean, most deposits don't turn into mines but I
4 assumed that this would.

5 Q. And why did you assume that?

6 A. Because the way they talked about it, that
7 it was kind of like they had done a lot of
8 exploration, they had a solid grasp on what minerals
9 were there. I don't know if they had done their
10 economics yet but it just seemed that they were very
11 confident that the mine could be developed and so I
12 assumed that it would be.

13 Q. Let's talk about the technical working
14 groups for a moment. And you gave an overview of
15 them but I think it would be helpful if you could
16 describe -- let's start with this. Who was on the
17 technical working groups to the best of your
18 recollection that related to the Pebble Mine project?

19 A. There was -- you mean you want names or
20 just entities?

21 Q. Let's start with entities.

22 A. Okay. So it was Pebble, the Pebble folks

40

1 were there, and then there were consultants depending
2 on the topic that we were going to discuss that day
3 and then there were representatives from fish and
4 game, Department of Natural Resources, National
5 Marine Fisheries Service, Fish and Wildlife Service,
6 EPA. That's probably everybody.

7 Q. And when do you recall the technical
8 working groups began to work?

9 A. It seems like it was shortly after I got
10 involved. We had, it seems to me -- and again, my
11 recollection is sketchy from this time frame but we
12 had meetings where we discussed things before the
13 technical working groups were officially designated
14 and then sometime in there, 2005, shortly after I
15 started, they formed these technical working groups.

16 Q. And you say that they were officially
17 designated. Do you recall how they were designated?

18 A. Well, I believe it's just that the
19 company, the mining company, said we're going to have
20 these technical working groups and we invite

21 everybody to come and participate in them.

22 Q. Do you recall where the meetings took

41

1 place?

2 A. They took place -- they generally took

3 place in the state office building in Anchorage, the

4 state where the agencies are, such as DNR.

5 Q. Do you recall if they took place anywhere

6 else?

7 A. The technical working groups, I think they

8 were always in that state office building.

9 Q. When you say -- you testified that, as

10 part of the technical working groups, we had meetings

11 where we discussed things. What was discussed?

12 A. The methodology mostly and their intention

13 in terms of what environmental data they were going

14 to collect and they would present what they had done

15 and what they wanted to do and then their intention

16 that they said was that they wanted feedback from the

17 agencies on what they were going to do on their

18 methodology and -- yeah, on their methodology and

19 what they actually proposed.

20 Q. Now, do you recall if the agencies that

21 were participating in the technical working groups

22 provided feedback to Pebble?

42

1 A. Yes.

2 Q. Do you recall generally or do you recall

3 specifically by agency?

4 A. I recall that every agency participated

5 and provided feedback.

6 Q. Do you recall generally the nature of the

7 feedback that was provided?

8 A. Yes.

9 Q. Can you describe that for me, please?

10 A. It was -- I mean, there was feedback about

11 what they were proposing to look at, whether they

12 were actually looking at the right thing, and then

13 there was feedback on the methodology for what they

14 were looking at.

15 Q. And do you recall roughly by year during

16 what time period this feedback was provided?

17 A. I don't remember what time it -- when it

18 exactly started. It went on for a couple of years, I

19 believe, in that time frame between 2005 and 2010 and

20 it didn't end somewhere in there.

21 Q. So there were five years' worth of
22 meetings?

43

1 A. No, I don't think so. I think there was a
2 couple of years' worth of meetings but I don't recall
3 exactly what the spread was but it was somewhere --
4 between 2005 and 2010, there was a couple of years'
5 worth of meetings but I don't remember exactly how
6 long they lasted or which years they were.

7 Q. During the couple of years' worth of
8 meetings, do you recall how frequently the technical
9 working groups met?

10 A. Fairly often. It seems like I was driving
11 up to Anchorage constantly. You know, I don't know
12 if it was once a month or, you know, a few times a
13 year. I'm not sure. I'm not sure exactly how many
14 times we met. It seems like it was fairly often
15 though.

16 Q. Do you recall if feedback was provided at
17 all of the meetings of the technical working groups?

18 A. I believe so. That was the purpose of
19 them.

20 Q. Other than the technical working groups --
21 actually, let me back up for a second. I'm not quite
22 done. Do you recall any specific individuals from

44

1 Pebble Limited Partnership who participated in the
2 technical working groups?

3 A. Charlotte McKay was the chair of the
4 technical working groups.

5 Q. Okay. Anyone else?

6 A. I don't recall other people from PLP. The
7 other people were generally their contractors.

8 Q. Did you ever communicate directly with
9 Ms. McKay?

10 A. Yes, I did.

11 Q. Can you describe the nature of those
12 communications?

13 A. Well, it would be, you know, the back and
14 forth that was going on in the meeting. That's
15 generally what it would be. There was one particular
16 time when EPA was going to be -- was designating a
17 team lead for the Pebble team because we had people
18 from multiple programs and they wanted to designate

19 somebody who would coordinate that and interact, be
20 the primary contact interacting with the Pebble
21 partnership. I know at one point I thought that
22 would be me because the people who were making the

45

1 decision suggested that, you know, I was probably the
2 right person for that job and I told Charlotte that
3 one time and she expressed pleasure with that and
4 commented that I tended to have a calming effect on
5 the meetings, which sometimes people would -- some of
6 the Agency folks can get a little passionate about
7 things so I think she appreciated my calming effect,
8 I guess.

9 Q. Do you think you have a calming effect?

10 A. I don't know. Maybe.

11 Q. Do you know what that means?

12 A. A calming effect?

13 Q. Yes.

14 A. Oh, I don't know. I'm just guessing that
15 it's kind of keep the emotion level down to a
16 reasonable level.

17 Q. Do you think that's important?

18 A. I think so, yes.

19 Q. Why?

20 A. Because if you don't, you can't have a
21 discussion at the table and you're never going to get
22 anywhere. You just, you know, butt heads and you

46

1 never get to discuss anything.

2 Q. Why is that important though?

3 A. Well, because you need to -- I mean, I
4 guess the whole purpose of our being there is to work
5 through these problems and come to a resolution of
6 one form or another and, to come to a resolution
7 regardless of where that resolution is, you have to
8 be able to talk.

9 Q. Outside of the context of the technical
10 working groups, have you had any communications
11 directly with any Pebble employees?

12 A. Yes, I have.

13 Q. Do you recall who those employees were?

14 A. Well, I guess there were other meetings
15 that I actually don't recall the specifics. I know
16 there were other meetings but I don't recall the
17 specifics of those other meetings.

18 Q. Do you recall the nature of those other

19 meetings?

20 A. Actually, I don't even recall the nature
21 of them. Yeah, I can't think of a specific. I just
22 recall that we had other meetings. But then there

47

1 were the -- we had the fall briefings where they
2 would have -- rent a ballroom at the Captain Cook
3 Hotel and they would invite all the agencies to come
4 and all their consultants and then they would present
5 over a couple of days the season's results so that
6 that happened every year.

7 Q. So you referred to the season's results?

8 A. Yes.

9 Q. When I hear season, I think of baseball
10 season so what does that mean to an ecologist?

11 A. From their field work doing environmental
12 studies over the course of the summer, they would
13 present the results of that.

14 Q. And is that because it's really cold in
15 Alaska in the winter?

16 A. That's exactly right. They're not out
17 there in the winter. Actually, they were out there
18 in the winter but much lower intensity of study. And

19 then there were times that I can think of that -- one
20 that I can think of that specifically was the
21 Keystone meetings that happened later in the process
22 where I interacted with people like John Shively and

48

1 others and Charlotte would certainly be somebody and
2 other people that I don't recall who.

3 Q. Let's park the Keystone meetings for a
4 minute and discuss the fall briefings.

5 A. Okay.

6 Q. Do you recall -- I'm going to ask you
7 approximately when they took place but you're going
8 to say fall. Do you recall the approximate years
9 that these fall briefings took place?

10 A. I don't recall if there was one in 2005
11 but it very well could have been. And I believe, you
12 know, 2006, '7, '8, '9. At some point they stopped
13 doing them and I don't remember what year that was.

14 Q. And during these briefings -- can you just
15 describe for me what took place at these briefings?

16 A. Yeah, it was kind of a conference
17 typesetting, like a scientific conference where you

18 have lots of seats where everybody can sit and then a
19 podium and a big screen and whoever -- and then each
20 consultant would in turn get up and tell what their
21 study was and, you know, describe the purpose,
22 methodology and what they had discovered to some

49

1 degree.

2 Q. And in the audience were whom?

3 A. In the audience were all the rest of the
4 consultants as well as all the Agency people that
5 were involved, and that was quite a few.

6 Q. I'm just curious, were these meetings open
7 to the public, if you recall?

8 A. I don't believe so but I don't know for
9 sure.

10 Q. During these presentations, do you recall
11 whether individuals from the various agencies were
12 able to ask questions about the presentation?

13 A. Yes.

14 Q. Do you recall the nature of the questions?

15 A. They were always of a technical nature,
16 you know, asking the scientist who was the consultant
17 some aspect of methodology or results.

18 Q. Do you recall if individuals in the
19 audience were able to provide feedback on the
20 presentation?

21 A. I don't recall if it was a feedback
22 situation.

50

1 Q. Do you recall if any of the questions that
2 were asked could be construed to be in the form of
3 feedback?

4 MR. YOERGES: Object to the form.

5 BY MR. ROSENBERG:

6 Q. Do you understand the question?

7 A. Yeah, I think so.

8 Q. I mean, if somebody asks, well, don't you
9 think that you need to look at, you know, whether the
10 sludge will kill the salmon, you know, that could
11 be --

12 A. Or, I mean, even a more technical question
13 than that could be -- it's not a comment about the
14 question.

15 MS. GARDE: Yeah, it is.

16 THE WITNESS: There is always a message in

17 a question and so, yes.

18 BY MR. ROSENBERG:

19 Q. And in fact, it sounds like a lot of the
20 questions were highly technical?

21 A. Yes, that would be the case.

22 Q. And do you believe that those highly

51

1 technical questions would be useful to the
2 presenters?

3 A. I would think so.

4 Q. Why is that?

5 A. Because they could gain insight into what
6 they were doing from a colleague who might have an
7 idea about how they should approach what, you know,
8 their project or research project.

9 Q. And in fact, if somebody asks a highly
10 technical question or -- let me ask it this way. If
11 somebody asks a skeptical question, do you think that
12 would signal an area of concern?

13 A. Yes.

14 Q. And did these questions, to the best of
15 your recollection, occur at the fall briefings that
16 took place during each of the years that you

17 identified?

18 A. Could you ask the question again?

19 Q. Did these types of questions occur during

20 each of the fall briefings in each of the years that

21 you identified?

22 A. I believe they did, yes.

52

1 Q. Did anything else happen at the fall

2 briefings?

3 A. Well, yes. I mean, we had lunch and

4 mingled and talked and, you know, visited with

5 colleagues and spoke -- you know, talked informally

6 about the projects that they were working on.

7 Q. When you say we had lunch, mingled and

8 talked, do you recall whether representatives of

9 various agencies spoke with representatives of

10 Pebble?

11 A. Yes.

12 Q. And do you recall the nature of those

13 conversations?

14 A. Oh, not specifically. Just informal, you

15 know, small talk or opportunity to ask a question

16 about what was going on with this or that and maybe a

17 comment about a study or, you know, how are your

18 kids. Could be anything.

19 Q. So you mentioned a few moments ago the

20 Keystone meetings?

21 A. Yes.

22 Q. What are the Keystone meetings?

53

1 A. Keystone is an organization in Colorado

2 that -- exactly what do they do? They facilitate, I

3 guess discussions and help people, I think -- I think

4 their intention is to help people reach consensus on

5 issues. And so in this case, Pebble engaged them to

6 review the environmental studies that they had done.

7 And then I think they also had a role of going out

8 and creating dialogue in Bristol Bay and perhaps in

9 Anchorage also -- I don't remember -- to engage

10 people in dialogue about the Pebble project. Exactly

11 what the purpose of that was, I'm not sure. So they

12 had these meetings in Anchorage where they had panels

13 of experts to discuss the environmental information

14 and then give an opportunity for people to ask

15 questions of those experts.

16 Q. When you say they had panel of experts, is

17 the "they" referring to Keystone or is the "they"

18 referring to Pebble or is the "they" referring to

19 something else?

20 A. They is referring to Keystone.

21 Q. So did Keystone to your knowledge choose

22 the experts who would be on this panel?

54

1 A. Yes, to my knowledge, they did.

2 Q. And was Keystone retained by Pebble?

3 A. Yes, they were.

4 Q. I can't recall if you told us when these

5 Keystone meetings took place.

6 A. I believe they took place in 2012 and 2013

7 because initially I went as an EPA employee and then

8 afterwards I went in my own capacity because I had

9 retired. Or later after April 2013 anyway.

10 Q. Let's go back to the fall briefings and

11 the technical working groups pre-Keystone. As part

12 of your participation in the fall briefings, did you

13 receive information from Pebble?

14 A. Yes. We received a big binder.

15 MS. GARDE: I'm confused about whether

16 you're asking about the technical working groups or

17 the fall briefings.

18 MR. ROSENBERG: That's fair.

19 BY MR. ROSENBERG:

20 Q. Let's start with the technical working

21 groups.

22 A. Okay.

55

1 Q. Do you have a recollection as to how much
2 information you received from the technical working
3 groups?

4 A. Yes. There was generally a presentation
5 at each meeting of the information or the studies
6 that they wanted to discuss and what their purpose
7 and what their methodology had been to date and then
8 they would ask for feedback from the agencies on that
9 and how to proceed.

10 Q. And you provided that feedback?

11 A. I, among others, yes. I mean, we had
12 discussions. Generally we had sometimes fairly
13 heated discussions about methodologies and purpose
14 and so that discussion was feedback.

15 Q. So when you say we had discussion, who is
16 the we?

17 A. We is everyone at the table, meaning
18 Charlotte McKay for the company and their consultants
19 as well as the Agency folks from the state and the
20 federal government.

21 Q. Did you review the information that was
22 provided to you by Pebble as part of the technical

56

1 working groups?

2 A. Yes.

3 Q. Did you review it with an open mind?

4 A. Yes.

5 Q. Did you have an open mind regarding the
6 Pebble project?

7 A. During that term, during that part, yes, I
8 actually was still under the assumption that it would
9 eventually be permitted.

10 Q. And as you reviewed additional information
11 that Pebble provided, did your views change?

12 A. Yes, they did.

13 Q. How did they change?

14 A. As I got to know more about Bristol Bay
15 and as I got to know more about mining copper sulfide
16 deposits and that one in particular and where it was

17 situated and juxtaposed with resources of Bristol
18 Bay, I came to the conclusion that it was unlikely
19 that a mine could be developed there without
20 significantly affecting the aquatic resources of that
21 area.

22 Q. And you testified that you got to know

57

1 more about Bristol Bay. What was the primary source
2 of inferring that you received regarding Bristol Bay
3 during this time period?

4 A. There was no primary source. I was
5 investigating, I was calling experts, I was, you
6 know, doing literature research, I was looking on
7 line, I was collecting information everywhere that I
8 could find it.

9 Q. Do you believe that that was part of your
10 job?

11 A. Absolutely.

12 Q. Why do you believe that that was part of
13 your job?

14 A. Because it's my job to make an educated
15 decision and give educated advice with good

16 background information to the Corps as well as to my
17 managers on how we should respond to a project.

18 Q. Now, you said make an educated decision
19 but I believe yesterday you testified that you're not
20 a decision maker.

21 A. That's right.

22 Q. What does that mean?

58

1 A. That means on what I think we should do,
2 what I think the outcome should be, whether it's
3 to -- you know, this is great, this is a great
4 project, just let the permit go through. It could
5 be, you know, here are some conditions that we should
6 put on this to mitigate some of the effects that it
7 could have or, in this case, my conclusion was, you
8 know, this is really a project that cannot be done
9 without significant adverse effect and that we should
10 probably use our authority to say no.

11 Q. And that's part of your job?

12 A. And that is absolutely my job.

13 Q. Did you also review inferring that was
14 provided to you as part of the Keystone meetings?

15 A. Yes, I did.

16 Q. I think you mentioned John Shively.

17 A. I did mention John Shively.

18 Q. Who is John Shively?

19 A. John Shively was the CEO of the Pebble
20 partnership.

21 Q. Have you had communication directly with

22 Mr. Shively?

59

1 A. I have.

2 Q. Verbal communications?

3 A. Yes.

4 Q. Any written communications?

5 A. No.

6 Q. Do you recall how often -- we lawyers tend
7 to use words like verbal communications. Why don't
8 we just say spoke with.

9 A. Uh-huh.

10 Q. Do you recall how often you spoke with
11 Mr. Shively?

12 A. Not often. It would have been always in
13 that kind of forum. The first time that I recall was
14 there was a forum that was put on that was an
15 educational forum and he was the speaker just before

16 me and so he actually introduced himself to me. He
17 saw my name go up on the screen as the next speaker
18 and he came over and said, hi, Phil.

19 Q. Do you recall what he spoke about?

20 A. He just said, hello, how are you.

21 Q. No, but you said he was a speaker?

22 A. Oh, yeah, yeah, yeah.

60

1 Q. What was the subject of his speech?

2 A. He was on a panel with a number of people

3 and the topic of the panel -- I think I came in

4 toward the end of the panel discussion so I don't

5 remember what they were talking about. I just

6 remember it was a heated discussion to the very end

7 of it but I don't remember what it was about.

8 Q. And then you said that you were the next

9 speaker?

10 A. Yes.

11 Q. Do you recall the subject of your speech?

12 A. My speech was to explain the 404 program

13 as it related to mining.

14 Q. Do you recall if Mr. Shively was present

15 at your speech?

16 A. I don't think so. I think he left.

17 Q. Do you recall if other members of Pebble
18 Limited Partnership were present for your speech?

19 A. I don't know.

20 Q. You testified a few moments ago that you
21 had reached a conclusion regarding the adverse
22 effects of a potential Pebble Mine?

61

1 A. Yes.

2 Q. At that point in time, had you had
3 communications with NGOs regarding Pebble Mine?

4 A. No.

5 Q. Do you know what I mean by NGO?

6 A. I do, yes. Nongovernmental organizations.

7 Q. Because I was going to ask that question
8 next because I might ask if you know what I mean and
9 you might think you do but you don't but you've
10 clarified that. Let me ask a similar question. Had
11 you been speaking with representatives of Alaska
12 tribes prior to the point at which you had reached a
13 conclusion in your mind regarding the potential
14 adverse impacts from a mine on the Pebble site?

- 15 A. I assume you mean Bristol Bay tribes?
- 16 Q. No, I mean generally.
- 17 A. Generally? About Pebble?
- 18 Q. No, I'm asking you just --
- 19 A. Absolutely, yes.
- 20 Q. So let's take it one step at a time.
- 21 A. Okay.
- 22 Q. Do you recall if you spoke with any tribal

62

1 entities regarding the Bristol Bay watershed prior to
2 the point that you reached your conclusion regarding
3 the potential mining impacts of a mine at the Pebble
4 site?

5 MS. GARDE: I object to that question as
6 confusing.

7 MR. ROSENBERG: You are correct. I
8 welcome objections.

9 MS. GARDE: Try to clean it up in terms of
10 time. You've got too much in there.

11 BY MR. ROSENBERG:

12 Q. All right. Let me ask it to you this way.
13 At some point you reached a conclusion in your mind
14 at least as to the potential mining impacts of a mine

15 at the Pebble site?

16 A. Yes.

17 Q. Before you reached that conclusion, did
18 you have any communications with tribal entities
19 regarding a potential mine at the Pebble site?

20 A. With tribal entities in general?

21 Q. Regarding a potential mine at the Pebble
22 site.

63

1 A. I don't recall any specific communications
2 but it's possible that I talked to somebody from a
3 tribe and we talked about a potential mine at the
4 Pebble site.

5 Q. I mean, anything is possible, Mr. North.

6 A. Right.

7 Q. But you don't recall a specific
8 communication?

9 A. No, I don't recall a specific
10 communication.

11 Q. And in fact, at multiple points during
12 your deposition yesterday, you alluded to
13 possibilities but you didn't -- strike that. Now,

14 you did testify yesterday that you provided some
15 feedback to Mr. Parker regarding a letter that he was
16 preparing regarding a potential petition. Do you
17 recall that testimony?

18 A. I do, yes.

19 Q. And do you recall the nature of the
20 feedback that you provided to Mr. Parker?

21 A. Yes.

22 Q. Other than in the one letter that you were

64

1 shown during yesterday's proceedings, do you recall
2 providing any other feedback to Mr. Parker regarding
3 the letter?

4 A. No.

5 Q. Would you describe the feedback that you
6 provided to Mr. Parker as substantive or procedural?

7 MR. YOERGES: Object to form.

8 THE WITNESS: I'm not sure that I could
9 make a distinction --

10 BY MR. ROSENBERG:

11 Q. Okay.

12 A. -- in this instance.

13 Q. Would you describe the feedback that you

14 provided to Mr. Parker as being significant or minor?

15 MR. YOERGES: Object to the form.

16 BY MR. ROSENBERG:

17 Q. Do you have an understanding of those
18 terms at all?

19 A. I believe so. I would call it minor.

20 Q. Do you recall the nature of the feedback
21 that you provided?

22 A. I do.

65

1 Q. Do you believe that feedback to be smaller
2 in scope than the feedback that you provided to
3 Pebble Limited Partnership?

4 MR. YOERGES: Object to the form.

5 THE WITNESS: Yes, I would say it was
6 smaller in scope.

7 BY MR. ROSENBERG:

8 Q. I mean, you only provided feedback to
9 Mr. Parker that one time, right?

10 MR. YOERGES: Object to the form.

11 THE WITNESS: On that letter?

12 BY MR. ROSENBERG:

13 Q. Yes.

14 A. Yes.

15 Q. And you provided feedback to Pebble

16 Limited Partnership during the fall briefings, is

17 that correct?

18 A. Yes.

19 Q. And those took place over the course of

20 many years, is that correct?

21 A. That is correct.

22 Q. And you provided feedback to Pebble

66

1 Limited Partnership during the Keystone meetings, is

2 that correct?

3 A. That's correct.

4 Q. And you provided feedback to the Pebble

5 Limited Partnership during the technical working

6 group meetings, is that correct?

7 A. That is correct.

8 Q. And there were many technical working

9 group meetings, is that correct?

10 A. That is correct.

11 Q. Are there more technical working group

12 meetings than you can remember during today's

13 deposition?

14 A. Yes, there are.

15 Q. I want to take a step back. You discussed

16 yesterday the concept of a decision maker. What does

17 that mean to you, decision maker within an agency?

18 A. The decision maker is the person who

19 decides how the agency will proceed.

20 Q. Using that definition and regarding the

21 matters as you understand them that are at issue in

22 this lawsuit, did you view yourself as a decision

67

1 maker?

2 A. I viewed myself as decidedly not a

3 decision maker.

4 Q. And why is that?

5 A. Because I had no authority to decide how

6 the Agency was going to respond or proceed really on

7 virtually anything.

8 Q. Did you view it as your role to provide

9 your views and opinions to officials within EPA who

10 are more senior to you?

11 A. Yes, that was my role.

12 Q. Why is that?

13 A. Why was it my role?

14 Q. Yeah.

15 A. Because I was the staff ecologist working
16 on this so I was a technical person collecting the
17 information and digesting that information and then
18 providing it to the managers.

19 Q. And during the 2009 to 2011 time period,
20 who was your supervisor?

21 A. Michael Szerlog.

22 Q. And do you recall his title?

68

1 A. Actually, he became my supervisor -- in
2 2005, it was Gary Borman and then shortly after that,
3 it changed to Michael Szerlog.

4 Q. Do you recall Mr. Szerlog's title?

5 A. Supervisor of the aquatic resources unit.

6 Q. Was he a decision maker?

7 A. To some degree, yes.

8 Q. All right. How so?

9 A. For example, when I went to him and said,
10 I think we should start pursuing 404(c), he could
11 have said, no, we're not going to, don't spend your
12 time on that, and then that would have been that.

13 Q. Right, but that's not a decision by the

14 Agency per se, is it?

15 MR. YOERGES: Object to the form, calls
16 for a legal conclusion this witness is not qualified
17 to give.

18 BY MR. ROSENBERG:

19 Q. You can answer.

20 A. I mean, various people at various levels
21 of the Agency represent the Agency so I would say
22 that it is, I mean, because it's going to determine

69

1 the action of the Agency.

2 MR. YOERGES: Withdraw my objection.

3 THE WITNESS: At least to that degree.

4 BY MR. ROSENBERG:

5 Q. Let's unpack that a little bit.

6 A. Okay.

7 Q. Are you familiar with Section 404(c) of
8 the Clean Water Act?

9 A. I am, yes.

10 Q. What is your understanding of Section
11 404(c) of the Clean Water Act?

12 A. That it gives the administrator of the

13 Environmental Protection Agency the authority to
14 either limit or prohibit the discharge of dredge or
15 fill material into waters of the United States at a
16 designated site.

17 Q. And in order to exercise its authority
18 under Section 404(c), do you know if EPA is required
19 to public a notice in the Federal Register of a
20 decision to begin 404(c) proceedings?

21 A. Yes.

22 Q. Does Michael Szerlog have the ability to

70

1 publish a notice in the Federal Register?

2 A. No, he doesn't.

3 Q. Do you know who makes the decision -- let
4 me back up. Do you know whether that decision has
5 been delegated to any one, the decision of the
6 administrator?

7 A. Yes, it has.

8 Q. And who has it been delegated to?

9 A. To the regional administrator.

10 Q. And when you say regional administrator,
11 you know EPA is divided into regions, is it not?

12 A. That's correct.

13 Q. And you are in which region?

14 A. Region 10.

15 Q. And who was the regional administrator

16 during this time period?

17 A. Dennis McLerran.

18 Q. So is Dennis McLerran the decision maker

19 for purposes of exercising Section 404(c) authority?

20 A. At the first steps of 404(c), yes.

21 Q. What do you mean by the first steps?

22 A. There are multiple steps and so there is a

71

1 proposed determination and Dennis McLerran is the

2 person who decides whether to make a proposed

3 determination. There is a --

4 Q. Let's pause for a second there. Do you

5 know whether a proposed determination has been issued

6 regarding the Pebble Mine project or the Bristol Bay

7 watershed?

8 A. I believe it has, yes.

9 Q. Do you know who issued the proposed

10 determination?

11 A. Dennis McLerran.

12 Q. And did he issue that proposed

13 determination on behalf of EPA?

14 A. He did, yes.

15 Q. And he's the individual who has been
16 delegated with the authority to make that decision,
17 correct?

18 A. That's correct.

19 Q. You were about to step us through the
20 additional steps in the process and I would love to
21 hear that.

22 A. Okay. So then the next step is I

72

1 recommend a determination and that is Dennis McLerran
2 recommending to the, I believe, assistant
3 administrator for water. I'm not sure of the title
4 there but the person who runs the water below the
5 administrator, the water programs, make a
6 recommendation to that person that they go ahead and
7 either don't issue a 404(c) or go ahead and follow
8 through and issue a 404(c). And "issue" is probably
9 the wrong word. And that decision whether to make a
10 recommended determination is Dennis McLerran but then
11 finally it's the assistant administrator who makes
12 the final determination.

13 Q. And so let's go back to the proposed

14 determination. Is it your understanding that's the
15 first step in the leg process?

16 A. Yes.

17 Q. Now, before Mr. McLerran or any other
18 regional administrator may choose to exercise their
19 delegated authority to issue a proposed
20 determination, I would imagine it's typical for
21 Agency employees to discuss the relative merits of
22 having a regional administrator issue a proposed

73

1 determination. Is that your experience?

2 MR. YOERGES: Object to the form. You
3 haven't established what his experience is and I
4 don't think anything is typical in a 404(c) situation
5 given the fact that there were 13 over a 42-year
6 period.

7 BY MR. ROSENBERG:

8 Q. Okay. Let's talk about that. Do you
9 recall your testimony yesterday regarding the process
10 that EPA engaged in during the 2009 to 2011 time
11 period regarding whether or not the regional
12 administrator should issue a proposed determination?

13 A. Could you ask the question again?

14 Q. Yeah. That was a bad question so let me
15 get at it this way. Before an agency makes a
16 decision, are the relative merits of the decision
17 discussed within the agency?

18 A. Yes.

19 Q. Why is that?

20 A. To discuss the pros and cons of any
21 particular decision.

22 Q. And is it typical just generally in your

74

1 experience at an agency that some employees will
2 advocate within the agency for a particular Agency
3 action to take place?

4 A. Yes.

5 Q. And is it also your experience that some
6 employees within an agency will advocate that a
7 particular agency action should not take place?

8 A. Yes.

9 Q. Is that unusual in any way?

10 A. No.

11 Q. Do you think that's healthy?

12 A. Absolutely.

13 Q. Why?

14 A. Because you can have a good decision about
15 why you should do something and why you shouldn't do
16 something and really air it out instead of kind of
17 have everybody just join a bandwagon that goes along.

18 Q. And the fact that a discussion is taking
19 place doesn't mean that a decision has taken place on
20 behalf of the agency, does it?

21 A. That's correct.

22 MR. YOERGES: Objection. How is this

75

1 witness possibly going to know that? If he's not the
2 decision maker, how is he going to know whether the
3 decision has been made or not?

4 MR. ROSENBERG: That's exactly the point.

5 MR. YOERGES: That's not the question.

6 MR. ROSENBERG: That's exactly the point.

7 MR. YOERGES: That's not the question,

8 though.

9 MR. ROSENBERG: I asked whether -- well,
10 the transcript speaks for itself.

11 MR. YOERGES: The question you asked was
12 whether the fact that there was back and forth means
13 a decision has been made or not or means that it

14 hasn't been made, is I think what you said. He has
15 no idea.

16 MR. ROSENBERG: I'm not talking about the
17 specific decision. I'm talking about the process of
18 deliberation. So the transcript speaks for itself.

19 MR. YOERGES: You're asking this witness
20 about the process of deliberation in the
21 Environmental Protection Agency?

22 MR. ROSENBERG: As a general matter, yes.

76

1 MR. YOERGES: Does he know anything about
2 the process of deliberation in the Environmental
3 Protection Agency?

4 BY MR. ROSENBERG:

5 Q. Let's talk about that. Have you ever
6 deliberated about matters within the Environmental
7 Protection Agency?

8 A. Yes.

9 Q. How long have you been at the EPA?

10 A. I was there for 23 years.

11 Q. Have you deliberated on other matters with
12 others at EPA?

13 A. Yes.

14 Q. On how many matters do you believe that

15 you've deliberated?

16 A. I have no idea.

17 Q. Can you count them up?

18 A. No, I cannot.

19 Q. Are they matters relating to mining?

20 A. Many of them, yes.

21 Q. Are they matters relating to watersheds?

22 A. Yes.

77

1 Q. Are they matters relating to protection of

2 the environment generally?

3 A. Yes.

4 Q. Any other categories of matters in which

5 you've been involved in Agency deliberations?

6 A. Yes.

7 Q. Can you think of them?

8 A. Grants, personnel issues, what work we

9 should be doing or we shouldn't be doing,

10 innumerable. There is many.

11 Q. Do you think that it's -- so let's go back

12 to Michael Szerlog. Did Michael Szerlog have the

13 ability to issue a proposed determination under

14 Section 404(c) of the Clean Water Act?

15 A. No.

16 Q. Who is Michael Szerlog's supervisor?

17 A. It changed over time. I believe right now
18 it is David Allnutt.

19 Q. Do you recall who it was during the time
20 period of 2009 to 2011?

21 A. I believe it changed. There were a few
22 people during that time frame.

78

1 Q. Do you recall who they were?

2 A. Let's see. I've got to remember their
3 names. There was Kate and I actually don't remember
4 Kate's last name. Let's see. I can picture the
5 people but I'm so bad with names. I saw some of
6 their names yesterday. But I think there were at
7 least three different managers for ETPA during that
8 period of time.

9 Q. So is the position that all of these
10 people held manager of ETPA?

11 A. Yes.

12 Q. And what is ETPA again?

13 A. Ecosystems, Tribal and Public Affairs.

14 Q. Did the manager of Ecosystems, Tribal and

15 Public Affairs have the ability to issue a Section

16 404(c) proposed determination?

17 A. No.

18 Q. Do you recall who if anyone is higher up

19 in the management chain than the manager of ETPA?

20 A. Yes.

21 Q. Who would that be?

22 A. The regional administrator.

79

1 Q. So that's the regional administrator,

2 okay. I have an obvious question but I just want to

3 make sure I understand -- I appreciate your

4 understanding of the facts because this is about your

5 understanding of the facts. Did EPA issue a Section

6 404(c) proposed determination in 2010 regarding the

7 Pebble Mine project?

8 A. No.

9 Q. Did it issue a Section 404(c) proposed

10 determination in 2011 regarding the Pebble Mine

11 project?

12 A. No.

13 Q. Did EPA Region 10 issue a Section 404(c)

14 proposed determine neigh in 2012 regarding the Pebble

15 Mine project?

16 A. No.

17 Q. You were still employed at EPA in 2013 for

18 at least part of the year?

19 A. That's correct.

20 Q. Do you know whether EPA Region 10 issued a

21 proposed determination in 2013 under Section 404(c)

22 of the Clean Water Act regarding the Pebble Mine

80

1 project?

2 A. I don't believe so.

3 Q. Now, have you read the letter that

4 Mr. Parker ultimately submitted to EPA in 2010 in his

5 capacity as a representative of various tribal

6 entities?

7 A. Yes, I have read it.

8 Q. Do you recall what Mr. Parker asked EPA to

9 do in his letter?

10 A. There is a good deal of detail that I

11 don't think I could recall.

12 Q. If you could summarize it, how would you

13 summarize it?

14 A. That he asked that EPA use its 404(c)

15 authority in Bristol Bay and I don't recall if it was
16 in regard to the Pebble Mine or more generally.

17 Q. But as we just established, EPA did not
18 exercise its 404(c) authority in 2010, did it?

19 A. That's correct.

20 Q. What did it do instead?

21 A. In 2010?

22 Q. Yes.

81

1 A. In 2010, my supervisor told me to start --
2 to engage a contractor and start collecting
3 information.

4 Q. And collecting what type of information?

5 A. Scientific information on Bristol Bay that
6 would go into a discussion and a decision about
7 404(c).

8 Q. And about when was that?

9 A. That was in -- I think he started to tell
10 me to do that in the summer of 2010 and I didn't
11 actually do anything with it until the fall of 2010.

12 Q. Are you familiar with -- and I believe you
13 testified that you are familiar with the Bristol Bay
14 watershed assessment?

15 A. Yes, I am.

16 Q. Why do you believe EPA conducted the
17 Bristol Bay watershed assessment? Let me back up.
18 Do you have a belief as to why EPA conducted the
19 Bristol Bay watershed assessment?

20 A. Yes, I do.

21 Q. What is that belief?

22 A. I believe that the managers at EPA wanted

82

1 to make sure that we had a very solid scientific
2 footing for proceeding with 404(c) and not just that
3 it existed but that we actually had the document that
4 said it.

5 Q. So let me unpack that a little bit in a
6 couple of different ways. You have experience with
7 Section 404(c) of the Clean Water Act?

8 A. Now?

9 Q. Then.

10 A. No, I had no experience with Section
11 404(c) up to that point.

12 Q. And were you familiar with Section 404(c)
13 of the Clean Water Act?

14 A. I was familiar with it, yes.

15 Q. How were you familiar with it?

16 A. Because I had read it. And I received
17 training on it. I guess that part too.

18 Q. Can you tell me about the training that
19 you received on it?

20 A. Periodically we just -- we received
21 training on our program and how to implement it
22 essentially and that included Section 404(c).

83

1 Q. Do you recall anything from your training
2 indicating that a watershed assessment must be
3 conducted before a proposed determination is issued
4 under Section 404(c) of the Clean Water Act?

5 A. Can you ask that question again?

6 MR. ROSENBERG: May I ask the court
7 reporter to read it back?

8 THE REPORTER: "Question: Do you recall
9 anything from your training indicating that a
10 watershed assessment must be conducted before a
11 proposed determination is issued under Section 404(c)
12 of the Clean Water Act?"

13 THE WITNESS: Thank you. No.

14 BY MR. ROSENBERG:

15 Q. Do you have any understanding -- you
16 referred to EPA managers a few moments ago as to --
17 let me ask that more cleanly. I asked you about your
18 belief as to why you thought EPA chose to conduct the
19 Bristol Bay watershed assessment and you provided an
20 answer to my question. Do you recall that?

21 A. Yes.

22 Q. And do you recall discussing managers

84

1 within EPA in the context of your answer?

2 A. Yes.

3 Q. Do you recall whether you were referring
4 to managers at EPA headquarters or managers in Region
5 10?

6 A. Actually, now I'm not sure. I don't know.

7 You would have to refresh my memory about what that
8 exchange was.

9 Q. So why don't we ask the question again
10 since you're unsure of your prior answer. Do you
11 have an understanding as to why EPA conducted the
12 Bristol Bay watershed assessment?

13 A. Yes.

14 Q. What is the basis for that understanding?

15 A. That I was involved in -- well, I wasn't
16 involved in the decision to do the watershed
17 assessment but I was involved in discussions kind of
18 leading up to that point and then I was involved in
19 the watershed assessment.

20 Q. So any understanding that you may have as
21 to why EPA conducted the Bristol Bay watershed
22 assessment was not based on any personal knowledge

85

1 that you have as to the decision to conduct the
2 watershed assessment, is it?

3 A. That's correct.

4 MR. YOERGES: Object to the form.

5 BY MR. ROSENBERG:

6 Q. Well, you just testified that you weren't
7 involved in the decision to do the watershed
8 assessment, is that --

9 A. That's correct.

10 Q. Mr. North, why don't we take a break.
11 We've been going at this about -- you know, time goes
12 faster when you're sitting in this seat so why don't
13 we take about a 10-minute break.

14 A. Okay.

15 MR. ROSENBERG: All right, thanks.

16 THE VIDEOGRAPHER: Off the record at

17 11:09.

18 (Recess.)

19 THE VIDEOGRAPHER: On the record at 11:28.

20 BY MR. ROSENBERG:

21 Q. Mr. North, I believe that you testified

22 yesterday that you were disappointed that EPA decided

86

1 to conduct the Bristol Bay watershed assessment. Do

2 you recall that being your testimony?

3 A. I do, yes.

4 Q. Why were you disappointed?

5 A. Because I didn't think it was necessary.

6 I thought the information existed that justified our

7 entering into the 404(c) process. And because the

8 404(c) process contains -- that first part of it is

9 to -- that's the purpose of it is to evaluate the

10 information available and decide should you proceed.

11 It's a deliberative process.

12 Q. Do you believe that EPA could have

13 proceeded in 2010 by issuing a proposed determination

14 under Section 404(c) regarding the Pebble Mine

15 project?

16 A. Well, the first step is a letter, I mean,
17 that says you're going to enter it going to the Corps
18 of Engineers and I believe the EPA could have done
19 that. That's the beginning of the 404(c) process.

20 Q. And when you say the EPA could have done
21 that, do you believe the EPA would have been
22 justified in doing that at that point in time?

87

1 A. I believe so, yes.

2 Q. But EPA did not issue a letter -- and I
3 believe it's sometimes referred to as a 15-day
4 letter?

5 A. Yes, the 15-day letter.

6 Q. EPA did not issue a 15-day letter in 2010,
7 did it?

8 A. No.

9 Q. It did not issue a 15-day letter in 2011,
10 did it?

11 A. That's correct.

12 Q. Did it issue a 15-day letter in 2012?

13 A. No.

14 Q. Did it issue a 15-day letter in 2013?

15 A. Not to my knowledge.

16 Q. It decided to conduct the Bristol Bay
17 watershed assessment instead?

18 A. Yes.

19 MR. YOERGES: Object to the form of that
20 question. Instead what? I mean, we know a proposed
21 letter has been issued. That's why I say that.
22 Misstates that.

88

1 MS. GARDE: Asked and answered.

2 MR. ROSENBERG: In 2014.

3 MS. GARDE: It's asked and answered.

4 BY MR. ROSENBERG:

5 Q. You were involved in the preparation of
6 the Bristol Bay watershed assessment. Do you recall
7 providing testimony yesterday to that effect?

8 A. Yes.

9 Q. And just because it's been a day since
10 you've provided that testimony, can you just describe
11 for me in very general terms the nature of your
12 involvement?

13 A. Initially I was -- okay, and so the

14 assessment so we're starting in February of 2011.
15 Initially I was designated as the technical lead and
16 so I was involved in discussions about how to proceed
17 with that. I had already established a contract so
18 we already had some contractors on board so I was
19 working with those contractors in developing outlines
20 to fulfill their work plan. I had -- and so -- and
21 then I became -- I was a co-author on two chapters.
22 One of them was the mine scenario and then the other

89

1 one was describing the local environment. And so --
2 and then, I mean, I reviewed drafts, I've reviewed
3 drafts of other people's work. I participated in
4 response to comments so --

5 Q. Did you review the first draft of the
6 Bristol Bay watershed assessment?

7 A. I did, yes.

8 Q. Do you recall if you reviewed the second
9 draft of the Bristol Bay watershed assessment?

10 A. I reviewed at least parts of it.

11 Q. And you said that you were an author of or
12 co-author of two chapters of the Bristol Bay
13 watershed assessment?

14 A. Yes.

15 Q. Was that of a draft of those chapters for
16 the Bristol Bay watershed assessment?

17 A. I suppose, yes.

18 Q. Was the final version of the Bristol Bay
19 watershed assessment released after you left EPA?

20 A. Yes, that's correct.

21 Q. Did you review the final version of the
22 Bristol Bay watershed assessment?

90

1 A. Small portions of it. Not the whole
2 thing.

3 Q. Do you believe that you had the ability to
4 steer the assessment to a given outcome?

5 A. No.

6 Q. Why not?

7 A. Because, first of all, I was not the
8 person managing it after -- well, I was really never
9 the person managing it, although I was the technical
10 lead nominally at the beginning. And secondly
11 because there were a lot of people, a lot of experts
12 with a lot of -- well, that I really had no control
13 over what they wrote or what the final -- what their

14 chapters, their final chapters would look like.

15 Q. You referred to being nominally the

16 technical lead. What did you mean by that?

17 A. Well, at the very beginning, we had

18 meetings on, you know, meetings with ORD and, I mean,

19 between ORD and Region 10 on how this thing was going

20 to proceed and who was going to do what and who was

21 going to be in charge and it kind of went back and

22 forth between ORD's in charge or Region 10 is in

91

1 charge. And then I -- you know, people, Jeff

2 Frithsen in particular pointed at me and said, okay,

3 you're the technical lead but I never really felt

4 like I was the technical lead because there were

5 people like him who were much more qualified, much

6 more experienced in doing a study like this, putting

7 together technical information like this and so I

8 really never felt like I was the de facto lead. I

9 was just really nominally the lead.

10 Q. And Jeff Frithsen worked for ORD?

11 A. He did, yes.

12 Q. What is ORD?

13 A. Office of research and development.

14 Q. What do they do? Well, let me back up.

15 Do you know what they do?

16 A. I guess I don't know specifically what

17 they do. I couldn't describe their mission or

18 anything like that.

19 Q. All right. So then let's leave it at

20 that. Do you have an understanding of whether the

21 Bristol Bay watershed assessment was peer reviewed?

22 A. Yes.

92

1 Q. Do you know what peer review is?

2 A. Yes, I do.

3 Q. In a general context, what is peer review?

4 A. It's where you get a panel of peers, of

5 technical experts that are familiar with that body of

6 knowledge and they look at it, look at the document

7 and see if the document was done according to

8 scientific methods and processes.

9 Q. What is the benefit of peer review as a

10 general matter? I'm not talking about the BBWA.

11 A. To make sure that a scientific work is

12 done according to accepted standards of science.

13 Q. Do you have any knowledge as to whether

14 the BBWA was peer reviewed?

15 A. Yes, it was.

16 Q. What is the basis for that knowledge?

17 A. I was involved in various steps of --

18 well, of the peer review. I mean, I saw the peer

19 review panel, I heard them speak, I saw who was on

20 the peer review panel. I reviewed the peer review

21 panel's comments and helped generate or develop

22 responses to those as well as I had to take their

93

1 comments to my work and incorporate their comments

2 into my work.

3 Q. Is that the way that peer review in your

4 experience typically works?

5 A. Yes, it is.

6 Q. You referred to the peer review panel. Do

7 you have an understanding of who was on that panel?

8 A. I do. I don't know that I could name

9 names at this point.

10 Q. I'm not asking for names. Just a general

11 understanding. Do you have an understanding as to

12 how the peer reviewers were selected?

13 A. I have a general understanding.

14 Q. And what is the basis for that general
15 understanding?

16 A. And just that I saw -- I was aware of the
17 process, I saw kind of the steps as they were
18 implemented.

19 Q. You said that you saw the process and were
20 aware of the process. Were you involved in the
21 process of selecting peer reviewers?

22 A. I was not. And I should qualify that.

94

1 Maybe I should say I was perhaps tangentially
2 involved but I was not -- I did not help select
3 anybody.

4 Q. How were you tangentially involved?

5 A. In that I just saw what was going on and,
6 you know, they might say, you know, so do you know
7 these people? And say, yeah, I'm familiar with some
8 of them.

9 Q. Why didn't you read the final version of
10 the Bristol Bay watershed assessment?

11 A. Because I had retired and I think by that
12 time, I was really moving on.

13 Q. Didn't you care about it?

14 A. I did, yes. I cared.

15 Q. But not enough to read it?

16 A. Well, I had looked at -- I looked at parts

17 of it. I think there were specific things that I

18 could not recall now that I was interested in. But I

19 knew what it said. I mean, I had seen the two prior

20 drafts. And it's a big document.

21 Q. I think everyone in this room would agree

22 with that.

95

1 MR. YOERGES: Not really.

2 MR. ROSENBERG: That being it's a big

3 document.

4 MR. YOERGES: Not really.

5 THE WITNESS: Yeah?

6 BY MR. ROSENBERG:

7 Q. Did you read the proposed determination

8 that's been challenged in this lawsuit? Let me back

9 that up. It has not been challenged but it has

10 been -- on which a preliminary injunction has been

11 issued in this lawsuit? And let me be clear about

12 that because that was not a good way of asking the

13 question. Are you aware that a proposed
14 determination was issued by Region 10 in 2014
15 regarding the Bristol Bay watershed and/or the Pebble
16 Mine site?

17 A. Yes, I'm aware of it.

18 Q. Did you read it?

19 A. I'm trying to remember if I read it or
20 not. I think I did read it but I actually do not
21 recall. I couldn't swear to having read it because I
22 don't recall.

96

1 Q. Mr. North, are you aware -- you provided
2 some testimony yesterday regarding your views of a
3 personal email account on which you would at times
4 conduct Agency business. Do you recall that
5 testimony?

6 A. Yes, I do.

7 Q. I would like to show the witness an
8 exhibit which we could mark as north 23.

9 (North Exhibit No. 23 was
10 marked for identification.)

11 BY MR. ROSENBERG:

12 Q. Is the exhibit that I've shown you one

13 that has a Bates number? Yes?

14 MR. YOERGES: 121954?

15 MR. ROSENBERG: Yes.

16 BY MR. ROSENBERG:

17 Q. I'll ask you to take a moment to look at
18 this exhibit and then I'll have a few questions for
19 you about it.

20 MS. GARDE: Read it. Mr. North, have you
21 reviewed the letter that is marked as Exhibit Number
22 23.

97

1 A. Yes.

2 Q. And this is a letter dated October 16th,
3 2015 from Billie Garde who is sitting next to me at
4 this deposition today and is your personal attorney,
5 to Wendy Blake who is the associate general counsel
6 at the general law office of EPA. Does that appear
7 to be the document that is in front of you?

8 A. Yes.

9 Q. I'm going to ask you a couple of questions
10 but before I do, I want to be absolutely clear that I
11 do not want you to reveal any information that you
12 shared with Ms. Garde who is your attorney in the

13 context of seeking or receiving any legal advice. I
14 am not at all interested in that. In fact, I have
15 relatively few questions and they relate primarily to
16 the footnote number 1 that appears at the bottom of
17 the first page of the letter. So I would ask you to
18 focus your attention on that footnote for a moment
19 and let me know when you're ready for a few
20 questions.

21 A. Okay. Go ahead.

22 Q. Does that footnote -- that footnote I'm

98

1 going to read -- can you read that footnote actually
2 into the record?

3 A. Sure. "Mr. North previously discussed
4 with EPA Region 10 employees as part of his
5 retirement exit discussions that it was his practice
6 to forward any emails that dealt with government
7 business he may have sent or received at his personal
8 email account to his government EPA account, but
9 acknowledged that there may have been occasions in
10 which he missed emails that he may not have forwarded
11 into his government email. As he explained at the

12 time, that was an exception which may have occurred
13 during times his EPA email system was not available,
14 or that were received at his home email and he missed
15 and didn't forward."

16 Q. Does that footnote refresh your
17 recollection as to your practice of forwarding any
18 emails used to conduct Agency business from a
19 personal email account?

20 A. Yes.

21 Q. Was it your practice to forward any emails
22 from your personal email account that dealt with

99

1 government business that you may have sent or
2 received from that personal email account to your
3 government EPA account?

4 A. That was my practice.

5 Q. Mr. North, I just have a few additional
6 questions and then I think I'm done. There have been
7 a lot of allegations that have been leveled against
8 you personally in the context of this lawsuit and
9 more generally and some of those allegations relate
10 to your departure from EPA and the circumstances
11 surrounding your departure from EPA and I want to

12 explore that a little bit with you. When did you

13 depart EPA?

14 A. End of April in 2013.

15 Q. Why did you depart EPA?

16 A. Because I had a chance to retire early.

17 Q. And so did you retire?

18 A. I did, yes.

19 Q. And how many years had you worked at EPA

20 again?

21 A. 23 at EPA. 28 for the federal government.

22 Q. Did your retirement from EPA have anything

100

1 at all to do with anything relating to the Pebble

2 Mine project?

3 A. No, it did not.

4 Q. Are you familiar with the allegations in

5 this lawsuit?

6 A. Yes, I am.

7 Q. Did your departure from EPA have anything

8 at all to do with any of the allegations relating to

9 this lawsuit?

10 A. No, they had nothing to do with it.

11 Q. Did you have any plans at the time that

12 you retired from EPA as to what you wanted to do with

13 this next phase of your life?

14 A. Yes, I definitely had plans.

15 Q. I assume that those plans did not include

16 showing up at this deposition.

17 A. No, they didn't.

18 Q. What were those plans?

19 A. For a very long time, I had planned to

20 take my family as soon as I retired and go sail

21 around the world, not circumnavigate but just around.

22 Q. And when you say sail, do you mean in your

101

1 own boat, on a Carnival Cruise line?

2 A. No, on our own boat, which we had at that

3 time.

4 Q. And what type of boat was that?

5 A. It was a sailboat, a 50-foot sailboat.

6 Q. And I assume that you're -- are you an

7 experienced sailor?

8 A. I am.

9 Q. Is that something that you enjoy?

10 A. Very much.

11 Q. And presumably that's why you wanted to do

12 that when you retired?

13 A. Yes. I had been thinking about it for

14 about 40 years.

15 Q. Did you in fact go sailing on your

16 sailboat after you retired from EPA?

17 A. No, we didn't.

18 Q. Why did you not?

19 A. Over the course of the summer of 2013, we

20 cleaned out our house and sold all of our stuff and

21 so that we would be divested of something so we could

22 move on to the boat and quite literally we were

102

1 standing in an empty house and we got a -- I don't

2 remember if it was a call or an email from the boat

3 yard where the boat was being kept and they called us

4 and said, we have a bit of a problem with your boat.

5 And long story short, it had some damage that had

6 happened long before we owned it that had just shown

7 up and we consulted with various engineers on how to

8 fix that damage and naval architects and it was going

9 to be just more than we could afford and so we sold

10 the boat for a small portion of what we paid for it

11 and we went looking for another boat which we didn't

12 find and so we just decided to move on and continue

13 our travels by other means.

14 Q. So I assume that the damage to the boat

15 was such that the boat was not seaworthy?

16 A. That's correct.

17 Q. Did insurance cover the cost of the damage

18 to the boat?

19 A. No, they didn't. They said that it was

20 pre-existing condition, if you will.

21 Q. Jeesh.

22 A. And they did not cover it.

103

1 Q. I'm sorry about that.

2 A. Yeah, thanks.

3 Q. So then what did you do next?

4 A. Well, as I said, we went looking for

5 another boat. We spent most of that winter in

6 Florida, kind of camping out, seeing Florida, looking

7 at a few boat, then we drove across the country and

8 visited national parks and kind of saw a bit of the

9 southern United States. I can highly recommend Big

10 Bend. And then we went on back to the West Coast and

11 looked at a couple more boats there and then we

12 just -- and they weren't going to work and so we just

13 said, well, what are we going to do now? And we
14 always had a plan B which was not travelling by boat.
15 It was -- and going and living for a period of time
16 in another country and Spain, Chile and New Zealand
17 were on our list and when we said New Zealand, the
18 whole family said, yay, let's do that, let's go to
19 New Zealand, and kind of let's go to middle Zealand
20 as they call it or middle earth is actually what the
21 kids said and so we didn't to New Zealand and we
22 spent 10 months in New Zealand driving around and

104

1 doing some house sitting so we could stay in one
2 place for periods of time, driving around, touring
3 New Zealand, did some trekking. And then once we
4 had -- we had been in New Zealand and our visa was --
5 we either had to extent our visa or leave and so we
6 decided to go ahead and we thought, we're this close,
7 we might as well go to Australia and so we went over
8 to Australia and we did the same thing. We drove
9 around, did some house sitting but mainly drove
10 around and toured Australia. That lasted for a year
11 because Australia will give you a longer visa than
12 New Zealand will.

13 Then at the end of a year, we sold the car
14 and the trailer and the camper trailer that we had
15 bought for purposes of touring Australia and then we
16 went up to Indonesia, which is where we are right
17 now.

18 Q. There have been some allegation that have
19 swirled around you alleging that you have fled the
20 country. Are you familiar with those allegations
21 generally?

22 A. I am, yes.

105

1 Q. Is there any truth to those?

2 A. There is no truth at all to those.

3 Q. Why?

4 A. Because we had a plan to travel and see
5 the world and that's exactly what we did and that
6 plan existed for decades before we started to do it.

7 Q. You testified earlier that it took you a
8 very long time to fly here for this deposition.

9 A. Yes.

10 Q. I think it took more than a day of travel.

11 A. (Witness nodding.)

12 Q. You are nodding and I think one of Roger's
13 initial instructions at the beginning was not to nod.

14 A. Yes. Sorry.

15 Q. Was coming here to attend this deposition
16 also expensive?

17 A. Yes, it was.

18 Q. Do you know whether all of your travel
19 costs have been covered to come here for this
20 deposition?

21 A. Up to this point. I don't think it will
22 cover everything. What I've been provided, which is

106

1 \$2,400, I don't think that will cover everything.

2 Q. And to the extent that your travel
3 expenses are not covered by plaintiff, who pays for
4 your travel expenses then?

5 A. I do.

6 Q. Out of your own pocket?

7 A. Yes.

8 MS. GARDE: I just want the record to
9 reflect at this point that I do think plaintiff is
10 responsible for all the expenses and we'll gather up
11 all the receipts, we'll take out anything that is

12 unattributable directly to the deposition and we'll
13 submit a copy to you and hopefully we'll work it out.

14 MR. YOERGES: I'm sure we will.

15 MS. GARDE: I understand the judge said
16 \$2,400. We'll just see how that all works.

17 MR. ROSENBERG: And with that, I have no
18 further questions.

19 EXAMINATION BY COUNSEL FOR PLAINTIFFS

20 BY MR. YOERGES:

21 Q. Okay. I have just a few follow-up
22 questions, Mr. North. And I'm going to try to go in

107

1 order of the questioning that Mr. Rosenberg started
2 this morning. He opened up asking you some questions
3 about what your responsibilities were as an ecologist
4 for the aquatic resources unit in Region 10 and is
5 there a written job description for your job?

6 A. Yes, there is.

7 Q. And were you ever provided that?

8 A. Yes, I was.

9 Q. And does that written job description
10 address the issue of outreach that you testified
11 about?

12 A. Yes, it does.

13 Q. It does?

14 A. Yes.

15 Q. You don't happen to have a copy of that
16 written job description in your possession anymore,
17 do you?

18 A. No, I don't.

19 Q. The working groups that you testified
20 about that -- or the technical working groups, I
21 should say. I've seen them referred to as TWGs which
22 I imagine is an acronym for the working group.

108

1 A. Yes, or twigs.

2 Q. Or twigs. So the working groups that you
3 testified about, was that something that the EPA put
4 together or was that something that Pebble put
5 together?

6 A. That was something that Pebble put
7 together.

8 Q. And in those meetings that you had with
9 the working groups, give me the rough timing of that
10 if you can remember it.

11 A. Well, it's like I said, I think. I think

12 I testified to that that it was between 2005 and 2010

13 and I don't recall exactly where in there.

14 Q. Well, do you recall any happening in 2010

15 at all?

16 A. Well, I don't recall. So I don't recall

17 that any happened in 2010 and that's what I'm saying

18 is that I don't remember exactly when they ended and

19 I don't remember exactly when they started.

20 Q. And in those working group meetings, do

21 you recall whether Pebble discussed actual mine

22 development plans and mitigation plans or was it

109

1 discussion of environmental data?

2 A. It was a discussion of environmental data.

3 Q. In fact, there were no discussions at all

4 of plans, were there?

5 A. That's correct.

6 Q. We've seen reference in I believe a report

7 that was prepared by EPA's inspector general that

8 there were roughly two years of emails that belong to

9 you I think from 2007 to 2009 that have gone missing.

10 Are you familiar with that?

11 A. I am familiar with that, yes.

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

14 A. Yes, because my computer hard drive
15 crashed.

16 Q. And the only place those emails existed
17 was on that hard drive to the best of your knowledge?

18 A. To the best of my knowledge, that's
19 correct.

20 Q. And no one successfully was able to
21 recover what was on that hard drive to the best of
22 your knowledge?

110

1 A. To the best of my knowledge, yes.

2 Q. These various fall briefings, I'm going to
3 refer to them as that, that Pebble gave post-field
4 season --

5 A. Yes.

6 Q. -- did you take notes at those meetings?

7 A. I'm not a good note taker and so I
8 probably -- I might have taken some but it's not my
9 general habit to take extensive notes.

10 Q. But do you recall taking any notes?

11 A. I might have.

12 Q. I mean, I'm a horrible notetaker but I do
13 take them.

14 A. Yes.

15 Q. Did you take those notes using a pen or
16 paper?

17 A. If I did at all, it would have been with a
18 pen and paper.

19 Q. And what did you do with those notes if
20 you recall?

21 A. You know, I probably would not have kept
22 them because they would have been for kind of

111

1 immediate recall purposes but I did not typically
2 take notes and then file them away.

3 Q. When you left the EPA in 2013, did you
4 have paper copies of any documents that you had
5 collected over the years?

6 A. You mean -- I'm not sure of your question.

7 MR. ROSENBERG: Objection, vague.

8 MS. GARDE: You mean paper?

9 BY MR. YOERGES:

10 Q. Yeah, paper, marked copies.

11 MS. GARDE: Hard copies.

12 THE WITNESS: I don't understand the part
13 of when I left.

14 BY MR. YOERGES:

15 Q. You said you left in April 2013?

16 A. Yes.

17 Q. And at that time, did you still have an
18 office?

19 A. Right up to the last day, yes.

20 Q. Did you have file cabinets in the office
21 where there were paper documents?

22 A. Not on the last day. They had gone by

112

1 then.

2 Q. Where did they go?

3 A. Well, the paper had gone to Seattle and
4 the file cabinets had been sold by GSA to somebody
5 who wanted them.

6 Q. Really cleared you out, didn't they?

7 A. They did. It was empty. I had an empty
8 office.

9 Q. So you say the paper had gone to Seattle.
10 Had you boxed them up and sent them to Seattle?

11 A. That's correct.

12 Q. And that was pursuant to instructions you
13 had been given?

14 A. That's correct.

15 MS. GARDE: Let him finish the question.

16 BY MR. YOERGES:

17 Q. What was the general volume of the papers
18 that you had that you sent up to Seattle when that
19 happened?

20 A. I had three file cabinets that were
21 about -- I guess they were, I don't know, I think
22 they were four-drawer file cabinets so about this

113

1 tall.

2 Q. So you're holding your hand up about four
3 and a half feet high?

4 A. Yes, four and a half feet. So I had three
5 file cabinets like that. I guess two of them were
6 actually my files.

7 Q. What was the third?

8 A. The third was stuff, some of my field
9 equipment, office supplies, things like that.

10 Q. Did you box that up and send that off too?

11 A. Yes, I did actually.

12 Q. In any of those file cabinets, were there
13 any documents relating to the Pebble Mine?

14 A. There were, yes.

15 Q. You gave some testimony yesterday and
16 again today about the time that you came to the
17 conclusion that no mine could be built in the Bristol
18 Bay watershed that wouldn't cause significant damage
19 to the environment. Do you recall that testimony
20 generally?

21 A. Did I say no mine?

22 Q. Well, that's what I was actually going to

114

1 ask you. Did you come to the conclusion that no mine
2 could be built that wouldn't cause significant
3 damage?

4 MR. ROSENBERG: Objection to the extent
5 it's misleading or misstating prior testimony.

6 THE WITNESS: I don't know -- I don't
7 think that I would have said no mine.

8 BY MR. YOERGES:

9 Q. So when you came to the conclusion that
10 significant damage would result from a mine, what
11 sort of mine did you have in mind at that time?

12 A. I think it was a mine at the site and of

13 the magnitude of the Pebble Mine.

14 Q. And what was the basis of your knowledge
15 about the magnitude of the mine at the Pebble Mine at
16 that time?

17 A. I had received information over the years
18 from the Pebble partnership about how big the ore
19 body was and the nature of the ore body and, in some
20 cases, potential alternatives at least for disposing
21 of waste. So that was my basis for how big the mine
22 was.

115

1 Q. But at that time that you reached that --
2 when you first reached that conclusion, you did not
3 have a formal mine plan in hand submitted by Pebble,
4 correct?

5 A. That's correct.

6 Q. You gave some testimony --

7 A. Actually, I want to back up on that
8 question.

9 Q. Yes, sure.

10 A. Because actually there were formal mine
11 plans that were in existence. There was no
12 application to the Corps of Engineers but there were

13 formal mine plans that had within floated.

14 Q. Well, there was one in 2006 that was
15 submitted to the state but then withdrawn, right?

16 A. That's correct.

17 Q. Was there any other that hadn't been
18 within withdrawn at that point in time?

19 A. Well, what time frame are you talk about?

20 Q. At the time you reached your conclusion
21 that significant damage was likely to occur to the
22 watershed.

116

1 A. No, I think it was that one that had been
2 submitted and then withdrawn.

3 Q. And then withdrawn?

4 A. Yes.

5 MS. GARDE: Just to make sure the record
6 is clear, the time period you're talking about is
7 between 2005-2007?

8 THE WITNESS: I think you said up to --

9 MS. GARDE: You're saying when he decided.

10 MR. YOERGES: I thought he gave some
11 testimony on that yesterday that it was in the
12 2008-2009 time frame when he reached out --

13 MS. GARDE: Let's try and establish that.

14 BY MR. YOERGES:

15 Q. Do you know when you reached that
16 conclusion where you said I've heard enough and I
17 think there is going to be a problem building a mine,
18 a sulfide mine in this watershed?

19 MR. ROSENBERG: Objection, misleading. I
20 don't think he's ever said "I've heard enough."

21 BY MR. YOERGES:

22 Q. You can put it in your own words.

117

1 A. Okay. I think that's a reasonable
2 characterization that I've heard enough.

3 Q. I thought so too.

4 A. And I don't -- no, I cannot say
5 specifically when I came to that conclusion. I can
6 just say that in 2005, '6, probably '7, maybe longer
7 than that, I was assuming that the mine was going to
8 be built. I was evaluating collecting information.
9 And it was someplace in that, you know -- I don't
10 know when it was, 2008, 2009, 2010, somewhere in
11 there, there is probably a record that somebody could
12 build to show when I started to talk about that but

13 it was right in there that I started to say, you
14 know, maybe we really should be using our authority
15 to say no.

16 Q. Which is 404(c)?

17 A. 404(c), that's right.

18 Q. That gets me to my next few questions

19 which Mr. Rosenberg asked you some questions about

20 the 404(c) process and about preliminary

21 determination letters and this sort of thing. Then

22 you testified that you had never done a 404(c) prior

118

1 to this Pebble Mine situation, is that right?

2 A. That's correct, yes.

3 Q. So where does your knowledge come about

4 how the 404(c) process works?

5 A. By reading the regulations and talking to

6 colleagues who have done 404(c) and training that I

7 had.

8 Q. By the way, did you work on the Donlin

9 mine at all?

10 A. I did, yes.

11 Q. In what respect?

12 A. I inspected the site every year starting

13 early in the 1990s and then, because my -- I was the
14 regional mining coordinator for my program and so it
15 was part of my job is to keep tabs on mining in
16 general from exploration to mines that were being
17 developed and operational mines and so I did and I
18 was very familiar with the Donlin mine. I kept tabs
19 on it, paid attention to information that was
20 generated about it.

21 Q. Were you assigned to the Donlin mine in
22 the same way that you testified you were assigned to

119

1 the Pebble Mine?

2 A. I was not, no.

3 Q. Do you know who was?

4 A. Yes, his name was Mark Jen.

5 Q. Mark Jen?

6 A. Yes.

7 Q. How do you spell that last name?

8 A. J-e-n.

9 Q. Donlin mine is a gold mine and a copper
10 mine as well?

11 A. No, it's not a copper mine.

12 Q. Just a gold?

13 A. Yes.

14 Q. Have you ever worked on an environmental
15 impact statement in connection with a copper mine?

16 A. I never have, no.

17 Q. Have you worked on an environmental impact
18 statement in connection with any mine?

19 A. Yes, I have. Well, what do you mean by
20 worked on an environmental impact statement?

21 Q. Got involved in doing any of the science
22 or anything that supports the environmental impact

120

1 statement.

2 A. Well, in my regulatory capacity, which is
3 primarily to review and to review drafts to discuss
4 what would go into an environmental impact statement,
5 yes, I have.

6 Q. In your mind, based on that experience and
7 based on your experience working on the Bristol Bay
8 watershed assessment, can you draw any comparisons
9 between an environmental impact statement and the
10 watershed assessment, in other words, are they the
11 same kind of thing, are they different? Can you draw
12 any kind of comparisons between the two?

13 A. I would say that they are different.

14 Q. In what way?

15 A. That's a really good question.

16 Q. Thank you.

17 A. They're of a different nature. I think

18 that the assessment --

19 Q. The Bristol Bay watershed assessment?

20 A. Yes, the Bristol Bay watershed assessment,

21 the purpose of it was for EPA to gather scientific

22 information about that particular site and analyze it

121

1 as to the effects that would likely happen from

2 putting the mine that we described at that site. An

3 EAS, an environmental impact statement, I think is

4 more -- I would say that it's more of a disclosure

5 document that, from the project proponent, about

6 describing their project and then what they think the

7 likely effects will be under a very proscribed -- to

8 a very proscribed set of values, if you will, you

9 know, cultural values and environmental values. I

10 know that doesn't distinguish them very well.

11 Q. Let me follow up a little bit on one point

12 that you made and that is from the proponent's

13 perspective. Patty McGrath gave testimony that the

14 environmental impact statement was actually a
15 document that was put together by, in a mining
16 situation under 404, most frequently by the Army
17 Corps of engineers, not by the proponent of the mine.

18 A. Well, actually, I would --

19 MR. ROSENBERG: Objection. I'm not sure
20 that that accurately characterized her testimony. If
21 you want to show him the transcript --

22 BY MR. YOERGES:

122

1 Q. I'm representing that it accurately
2 characterizes your testimony. I actually said I
3 thought it was the mining company that put the EIS
4 statement together and she corrected me and said, no,
5 it's the Army Corps of Engineers that does that.

6 MS. GARDE: Why don't you ask him his
7 opinion about that? If you want to ask him if she's
8 correct, then you should show him the testimony.

9 BY MR. YOERGES:

10 Q. Is she correct?

11 A. No, I think she's not correct.

12 Q. Your understanding is that environmental
13 impact statement is a document that's put together by

14 the proponent of the mine?

15 A. It's not quite that straightforward. The
16 proponent of a mine -- well, actually the Agency
17 hires a contractor but then the contractor works very
18 closely -- I mean, from all appearances, I would say
19 the contractor works for -- even though they're paid
20 by the proponent, the project proponent, and really
21 they're working very closely with the project
22 proponent but they're answerable to the agency that's

123

1 in charge, the agency that's issue or doing the
2 action, whatever the action was, in this case issuing
3 a permit, so there may be kind of the -- technically
4 perhaps they're working in this case it would be for
5 the Army Corps of engineers but I guess the last one
6 I worked on was they were working for EPA initially
7 and technically but it was really that -- I mean, I
8 would say that in practice, they're working so
9 closely with the proponent, the project proponent,
10 that I would say they're working for the project
11 proponent.

12 Q. Okay. I'm going to move to the subject
13 matter of peer review for just a moment.

14 Mr. Rosenberg asked you several questions about peer
15 review generally and about peer review in connection
16 with the Bristol Bay watershed assessment and let me
17 ask you this question. Have you ever been a peer
18 reviewer of an article that was published in a peer
19 reviewed journal?

20 A. I never have, no.

21 Q. Have you ever had an article of yours that
22 was published in a journal that was peer reviewed?

124

1 A. No. No, I guess not.

2 Q. He asked you whether several of the
3 questions he asked you were typical or normal in peer
4 review and you answered that. How would you know
5 that?

6 A. Because I'm a scientist and I know the
7 peer review process.

8 Q. Toward the end of your testimony when
9 Mr. Rosenberg asked you a question about Ms. Garde's
10 letter to the EPA about your documents and emails and
11 the like, you said yes to the question of whether it
12 was your practice to forward emails regarding
13 official EPA matters to your EPA account from your

14 personal account. Do you remember that?

15 A. Yes, I do.

16 Q. Do you remember testifying about that
17 yesterday?

18 A. I don't remember. Well, I remember we
19 talked about it. I don't remember what my testimony
20 was.

21 Q. I asked you yesterday whether there was a
22 practice that you had to forward your official EPA

125

1 emails from your personal account to your EPA account
2 and do you recall that line of questioning?

3 A. I believe I do.

4 Q. Do you recall what you said yesterday
5 about that?

6 A. I should have said yes, that it was my
7 practice.

8 Q. If you didn't say yes, you should have
9 said yes?

10 A. Yes, that's right.

11 Q. Are you currently employed anywhere or are
12 you officially retired?

13 A. No, well, I'm not -- I don't think those

14 things are mutually explicit.

15 Q. No, unfortunately these days they are not.

16 A. I'm retired from the EPA but I'm not

17 currently employed, although I do have a consulting

18 company with no clients.

19 Q. So you're not receiving any compensation

20 from that consulting company, I assume?

21 A. That's correct.

22 Q. Is it your own personal consulting

126

1 company?

2 A. Yes.

3 Q. What's it called?

4 A. North Ecology.

5 Q. Is it a corporation or is it --

6 A. No.

7 Q. -- an LLP?

8 A. No, it's just me.

9 Q. Sole proprietorship?

10 A. Yes.

11 Q. Who is paying your legal fees in

12 connection with this deposition?

13 MS. GARDE: Objection. You mean answer.

14 THE WITNESS: At this point, no one.

15 BY MR. YOERGES:

16 Q. No one?

17 A. Right.

18 Q. So the United States Government is not

19 paying your legal fees as far as you know?

20 A. No, they are not. I know that they're

21 not.

22 Q. Do you know whether you made a request to

127

1 have them do that?

2 A. Yes.

3 Q. Did they turn that request down?

4 A. Yes, they did.

5 Q. When did that happen?

6 A. I believe it happened a couple of months

7 ago.

8 Q. Do you recall what the basis was for them

9 turning it down?

10 A. I can't claim to understand what the basis

11 was so, no, I don't think I can answer that question.

12 Q. How are you supporting yourself right now?

13 A. I guess a small pension from my retirement

14 from my service in the federal government and we are

15 using our savings.

16 Q. You said something about having the chance
17 to retire early. I think that was the word you used,
18 "chance."

19 A. Yes.

20 Q. Was there an offer for some sort of early
21 retirement that existed at the time that you decided
22 to take advantage of?

128

1 A. Well, there were -- because of the budget
2 cuts at the time, I was a one-person office and I
3 believe I was the most expensive office in Region 10
4 and so they were considering closing my office so I
5 just said, well, if you close my office, I'm going to
6 retire and I think they got two strokes with one pen
7 because they not only closed the most expensive
8 office but I had been there a long time so I was
9 fairly high on the pay grade and they got to lower
10 that down.

11 Q. Were you on the GS pay grade?

12 A. Yes.

13 Q. Or were you on executive service?

14 A. No, GS.

15 Q. What level?

16 A. GS-13.

17 Q. And what level 13, do you know? There are
18 levels within the --

19 A. I believe I was step 8. I'm not sure.

20 Q. GS-13, step 8?

21 A. Yes, something like that.

22 MR. YOERGES: That's all I have.

129

1 MS. GARDE: Thank you very much. I'm not
2 actually sure if I have a right to do any cross but I
3 would like to ask for a couple of minutes to review
4 my notes.

5 MR. YOERGES: Absolutely. I think you do
6 have a right to do that.

7 MS. GARDE: To see if there is anything I
8 want to ask him. So I'm going to sit out here on the
9 couch.

10 THE WITNESS: Okay.

11 THE VIDEOGRAPHER: Off the record at
12 12:16.

13 (Recess.)

14 THE VIDEOGRAPHER: On the record at 12:30.

15 EXAMINATION BY COUNSEL FOR THE DEPONENT

16 PHILLIP A. NORTH

17 BY MS. GARDE:

18 Q. Mr. North, you were asked a question about
19 your life plans post-retirement and described a
20 somewhat exciting and I'm sure envious set of
21 activities as an ex pat. My question is, were those
22 plans known to the public in Alaska before you left

130

1 Alaska?

2 A. Yes. Yes, they were.

3 Q. And how do you know they were known to the
4 public?

5 A. Because there was an article that
6 described it in the Redoubt Reporter which is a local
7 paper on the Kenai Peninsula.

8 Q. And do you remember what it included?

9 A. Yes. It described our intention at that
10 time to go sailing, to go move on to our sailboat and
11 go sail around the world.

12 Q. Thank you. During the deposition, you
13 were asked a series of questions by both Mr. Yoerges
14 and Mr. Rosenberg about your communications and
15 relationships with Jeff Parker, Trout Unlimited and

16 other people generally described in these depositions
17 as anti-mine activists. Do you recall those series
18 of questions?

19 A. Yes, I do.

20 Q. Did anyone in your chain of command, your
21 supervisor or manager, ever advise you not to have
22 contact with those individuals?

131

1 A. No, no one ever did.

2 Q. There was a series of questions about the
3 technical working group meetings that Pebble led.
4 Again, those questions came from both Mr. Rosenberg
5 and Mr. Yoerges. Do you recall those questions
6 generally?

7 A. Yes, I do.

8 Q. And as I recall, you testified that the
9 technical working group meetings were held at the
10 government or the office buildings in Anchorage, the
11 state office building in Anchorage?

12 A. Yes, that's correct.

13 Q. Do you know whether or not those meetings
14 were noticed and open to members of the public?

15 A. I don't believe that they were noticed and
16 they were -- I recall one occasion when a member of

17 the public showed up and was told that they could not

18 speak or ask questions.

19 Q. And who was it --

20 A. But they were not denied entry.

21 Q. Who was the person?

22 A. Carol Ann Woody.

132

1 Q. You've been asked a lot of questions about

2 your personal email account?

3 A. Yes.

4 Q. And I just want to flesh that out a little

5 bit. I want to ask you first about the hardware,

6 that is, the actual computers, hard drive of the

7 computer that you used in your home on the Kenai

8 Peninsula and then about your email account that

9 we've seen in the deposition, the Phil and Amanda

10 personal email account. What happened to the hard

11 drive, that is, the actual computers that you used?

12 A. When we -- as I testified earlier, we

13 cleaned out our house literally. I mean, it was

14 completely empty when we left. And that included our

15 computers and we recycled them.

16 Q. Second, you had an email account and we've

17 seen that email account on a number of the exhibits,

18 Phil and Amanda. What happened to that account?

19 A. That account was associated with our phone

20 account and when we closed our phone account, we let

21 that email account go.

22 Q. Did you then initiate a new email account?

133

1 A. Yes, we --

2 Q. And when was that?

3 A. That was I believe in July of 2013. We

4 got a new email account with a Gmail account because

5 it was free.

6 MR. ROSENBERG: I have no other questions.

7 Thank you very much.

8 EXAMINATION BY COUNSEL FOR PLAINTIFFS

9 BY MR. YOERGES:

10 Q. Just one follow-up on the Gmail account.

11 Have you communicated with anybody about the Pebble

12 Mine or the Bristol Bay watershed on your Gmail

13 account since you've left the EPA?

14 A. No, I have not.

15 Q. Has anybody sent an email to you on that

16 Gmail account?

17 A. No.

18 MS. GARDE: I assume both the question and
19 answer means besides me, besides counsel.

20 MR. YOERGES: Yes, besides counsel. I'm
21 sorry, you're absolutely right.

22 BY MR. YOERGES:

134

1 Q. And I should have asked this question
2 before but since I've got the floor, I'll ask it now.
3 So yesterday you testified and you came back this
4 morning. In between the time you finished testifying
5 yesterday and this morning, did you talk to
6 Mr. Rosenberg?

7 A. I don't believe so, except for perhaps
8 casually while we were waiting for the -- to get our
9 tags.

10 Q. Downstairs in the lobby of this building?

11 A. Yes. But I don't think we spoke other
12 than that.

13 Q. You didn't talk about the substance of the
14 testimony that you gave in response to his questions
15 today?

16 A. No, I did not.

17 MR. YOERGES: Thanks. That's it.
18 MS. GARDE: Thank you.
19 MR. YOERGES: Brad, do you have anything
20 in follow-up?
21 MR. ROSENBERG: One second.
22 MS. GARDE: While we're still on the

135

1 record, I do want him to read and sign the
2 deposition.

3 MR. ROSENBERG: I just want to clarify one
4 thing. I did speak with Mr. North at the reception
5 desk. I did -- I would characterize it as casual
6 conversation. And I think Mr. North's
7 characterization of it is correct. I did start to
8 ask him a question and then I stopped and I said,
9 never mind.

10 MR. YOERGES: Self-policed?

11 MS. GARDE: Well, I was there.

12 MR. ROSENBERG: But nothing -- there was
13 no substantive exchange of information either this
14 morning or nothing that I would characterize as
15 substantive either this morning or since yesterday's
16 proceedings.

17 MR. YOERGES: Okay. I appreciate your

18 clarifying that.

19 MR. ROSENBERG: No problem.

20 MR. YOERGES: Anything you want to ask of

21 the witness based on Ms. Garde's cross?

22 MR. ROSENBERG: No. I think we're done.

136

1 I would like to thank Mr. North for his time.

2 MR. YOERGES: I'm going to second that. I

3 appreciate your coming over here.

4 THE WITNESS: Sure. You're welcome.

5 MR. YOERGES: Good luck with the rest of

6 your retirement.

7 THE WITNESS: Thanks. And the next job.

8 THE VIDEOGRAPHER: Off the record at

9 12:36.

10 (Whereupon, at 12:36 p.m., the taking of

11 the instant deposition ceased.)

12

13 _____

14 Signature of the Witness

15 SUBSCRIBED AND SWORN to before me this _____ day of

16 _____, _____.

17

18

19

Notary Public

20 My Commission Expires: _____

21

22