

Congress of the United States
Washington, DC 20515

September 2, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The House Committee on Oversight and Government Reform (OGR) and the Senate Environment and Public Works Committee (EPW) are engaged in a joint investigation into allegations that the EPA and the Natural Resources Defense Council (NRDC) are colluding to craft regulatory policy and shape agency action outside of the normal regulatory process. According to recent news reports, it appears that NRDC played an outsized role in drafting EPA's proposed regulations for carbon emissions from existing power plants. Furthermore, documents obtained by OGR confirm that the NRDC significantly shaped EPA's decision to severely limit the operation of the proposed Pebble Mine in Bristol Bay, Alaska under section 404(c) of the Clean Water Act. It appears that the NRDC's unprecedented access to high-level EPA officials allowed it to influence EPA policy decisions and achieve its own private agenda. Such collusive activities provide the NRDC, and their financial backers, with an inappropriate opportunity to wield the broad powers of the executive branch. Such unprecedented access also violates the due process principles found in the Administrative Procedure Act (APA). Accordingly, these practices must cease immediately.

On July 6, 2014, *The New York Times* reported on the NRDC's pivotal role in developing EPA's Clean Power Plan Proposed Rule, which represents new regulations that control carbon emissions from existing power plants.¹ The article focused on the role of three key senior NRDC officials in creating the framework for the proposed rule - David Doniger, Daniel Lashof, and David Hawkins.² Doniger and Hawkins both spent a considerable portion of their careers at the EPA, and Lashof is the COO of NextGen Climate America, which is affiliated with Tom Steyer's hyper-partisan NextGen Action.³ Specifically, *The New York Times* stated:

¹ Coral Davenport, *Taking Oil Industry Cue, Environmentalists Drew Emissions Blueprint*, THE N.Y. TIMES, July 6, 2014, available at http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?_r=0 (last visited August 21, 2014); Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34,830 (June 18, 2014) (to be codified at 40 CFR Part 60).

² Coral Davenport, *Taking Oil Industry Cue, Environmentalists Drew Emissions Blueprint*, THE N.Y. TIMES, July 6, 2014, available at http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?_r=0 (last visited Aug. 21, 2014).

³ About NRDC, Meet NRDC's Experts, available at <http://www.nrdc.org/about/staff/david-doniger> (last visited Aug. 25, 2014); Press Release, Natural Resources Defense Council, *Top Environmental Lawyer David Hawkins*

“On June 2, President Obama proposed a new Environmental Protection Agency rule to curb power plant emissions that used as its blueprint the work of the three men and their team.”⁴

The article further noted that the rule “was a remarkable victory for the Natural Resources Defense Council....”⁵ The *Times* was not the only source to emphasize the NRDC’s heavy influence in creating the proposed rule. According to an energy expert at Resources for the Future, “The N.R.D.C. proposal has its fingerprints throughout this, for sure.”⁶

The NRDC’s effort to influence EPA policy is heavily financed by a select group of billionaires and millionaires, including unknown offshore sources, according to a recent report released by EPW minority staff.⁷ According to the report, the NRDC has a reputation of placing high level staff in the Obama Administration who then act as agents of their former employer to achieve the NRDC’s policy objectives within the Administration.⁸ Moreover, NRDC’s strong ties to the Administration provide the NRDC and its funders with enhanced access to key decision-makers.⁹

In light of these facts, we are alarmed that EPA pushed a rule that was drafted behind closed doors by powerful Washington lawyers and lobbyists at the NRDC. Moreover, the fact that an ideological and partisan group drafted a rule that places a tremendous cost on everyday Americans through increased electricity prices is harmful and outrageous.

It is even more troubling that NRDC’s influence over EPA does not stop there. Rather, it appears that this powerful Washington lobby also influenced other areas of EPA’s policy decision-making processes. According to documents obtained by OGR, the NRDC exerted its influence on EPA’s July 17, 2014, decision to issue a *de facto* pre-emptive veto of the proposed Pebble Mine in Bristol Bay, Alaska.¹⁰ The NRDC has publically supported a pre-emptive veto of the proposed Pebble Mine.¹¹ In June 2010, an NRDC attorney requested a meeting with former Acting Assistant Administrator for Water Nancy Stoner, who formerly worked as the Co-

Earns EPA Lifetime Achievement Award, available at <http://www.nrdc.org/media/pressreleases/060405a.asp> (last visited Aug. 25, 2014).

⁴ Coral Davenport, *Taking Oil Industry Cue, Environmentalists Drew Emissions Blueprint*, THE N.Y. TIMES, July 6, 2014, available at http://www.nytimes.com/2014/07/07/us/how-environmentalists-drew-blueprint-for-obama-emissions-rule.html?_r=0 (last visited August 21, 2014).

⁵ *Id.*

⁶ *Id.*

⁷ See U.S. Senate Committee on Environment and Public Works, *The Chain of Environmental Command: How a Club of Billionaires and Their Foundations Control the Environmental Movement and Obama’s EPA*, July 30, 2014.

⁸ *Id.*

⁹ *Id.* at p. 25-9.

¹⁰ Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act Pebble Deposit Area, Southwest Alaska, U.S. EPA Region 10, July 17, 2014.

¹¹ Taryn Kiekow, Check out NRDC’s Stop Pebble Mine ad in the Washington Post, available at http://switchboard.nrdc.org/blogs/tkiekow/check_out_nrdcs_stop_pebble_mi.html (last visited August 21, 2014).

Director of the NRDC's Water Program.¹² Referring to her pledge to not participate in any particular matter that is directly and substantially related to her former employer,¹³ Assistant Administrator Stoner stated, "I am not supposed to set up meetings with NRDC staff." Even so, she facilitated the meeting by forwarding the NRDC's request and circumvented the ethics restriction barring her participation so long as "there are enough others in attendance."¹⁴

In another series of emails obtained by OGR, it appears that the NRDC met with a number of EPA employees regarding a pre-emptive veto of the proposed Pebble Mine on August 30, 2010.¹⁵ This meeting included key EPA decision-makers Bob Sussman, Senior Policy Counsel to the Administrator, Heidi Karp and Steven Neugeboren from the Office of the General Counsel, and Greg Peck, Chief of Staff in the Office of Water. After the meeting, Sussman remarked to Region 10 Administrator Dennis McLerran in an e-mail that a pre-emptive veto of the Pebble Mine under Clean Water Act section 404(c) was an "intriguing" idea.¹⁶ Accordingly, it appears that the NRDC's access to senior leadership at EPA was effective in directing EPA towards its ultimate decision to preemptively curtail the ability of the proposed Pebble Mine to move forward in permitting.

In order for the Committees to understand the facts, circumstances, and the extent of the NRDC's influence over EPA's recent policy decisions, please provide the following:

1. All documents and communications referring or relating to the work of the EPA and the NRDC in creating the proposed rule for carbon emissions from existing power plants from January 20, 2009, to the present.
2. All documents and communications between EPA and NRDC referring or relating to the proposed Pebble Mine in Bristol Bay, Alaska from January 20, 2009, to the present.

We ask that you provide the requested information no later than 5:00 p.m. on September 16, 2014. When producing documents to the Committees, please deliver production sets to the Majority Staff of the House Oversight and Government Reform Committee in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. When producing documents to the Environment and Public Works Committee, please deliver production sets to 415 Hart Senate Office Building. The Committees prefer, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at

¹² E-mail from Joel Reynolds, Senior Attorney, Natural Resources Defense Council, to Nancy Stoner, Acting Assistant Administrator for Water, U.S. EPA (June 14, 2010, 6:47 p.m. EST) (on file with the Committee).

¹³ Nancy Stoner Ethics Pledge, Signed Feb. 2, 2010 (on file with the Committee).

¹⁴ E-mail from Joel Reynolds, Senior Attorney, Natural Resources Defense Council, to Nancy Stoner, Acting Assistant Administrator for Water, U.S. EPA (June 14, 2010, 6:47 p.m. EST) (on file with the Committee).

¹⁵ Email from Bob Sussman to Dennis McLerran, Peter Silva, Nancy Stoner (Aug. 30, 2010, 6:22 p.m. ESD) (on file with the Committee).

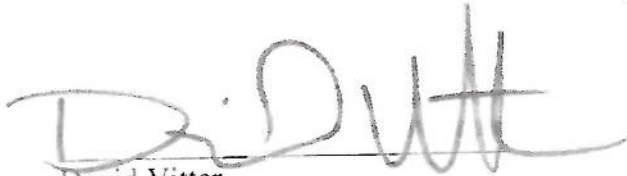
¹⁶ *Id.*

The Honorable Gina McCarthy
September 2, 2014
Page 4

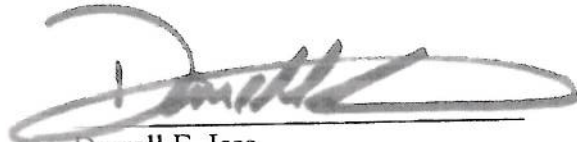
“any time” under House Rule X. The U.S. Senate Committee on Environment and Public Works focuses on federal energy and environmental policy and our nation’s transportation and infrastructure systems.

If you have any questions about this request, please contact Joseph Brazauskas with the House of Representatives Committee on Oversight and Government Reform at (202) 225-5074 or Kristina Moore of the Senate Environment and Public Works Committee at (202) 224-6176. Thank you for your attention to this important matter.

Sincerely,



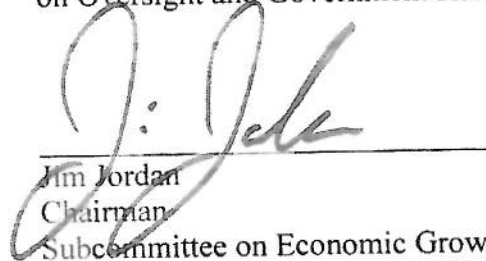
David Vitter
Ranking Member
Senate Committee on
Environment and Public Works



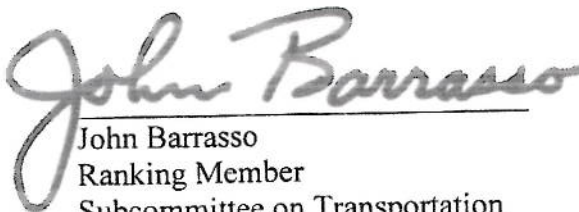
Darrell E. Issa
Chairman
House of Representatives Committee
on Oversight and Government Reform



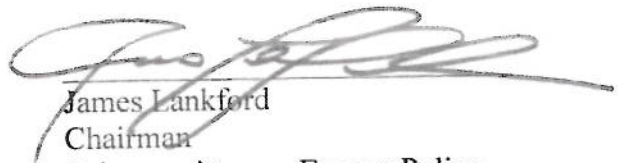
James M. Inhofe
Ranking Member
Subcommittee on Oversight



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs



John Barrasso
Ranking Member
Subcommittee on Transportation
And Infrastructure



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements

cc: The Honorable Barbara Boxer, Chairman, Committee on Environment and Public Works

The Honorable Elijah E. Cummings, Ranking Member, Committee on Oversight
and Government Reform

The Honorable Cory A. Booker, Chairman, Subcommittee on Oversight

The Honorable Gina McCarthy
September 2, 2014
Page 5

The Honorable Matt Cartwright, Ranking Member, Subcommittee on Economic Growth
Job Creation and Regulatory Affairs

The Honorable Thomas R. Carper, Chairman, Subcommittee on Transportation
and Infrastructure

The Honorable Jackie Speier, Ranking Member, Subcommittee on Energy Policy,
Health Care and Entitlements