

Field Hearing Before the  
United States Senate on Indian Affairs

To Address Health, Food Security and Viability of Alaska Native Villages.

Testimony of Heather Kendall-Miller  
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Good afternoon, my name is Heather Kendall-Miller and I am a senior staff attorney with the Native American Rights Fund, a non-profit law firm that represents Alaska Natives and Federally Recognized Tribes to protect subsistence rights, tribal sovereignty, voting rights, and cultural resources.

Let me begin by first thanking you for holding this field hearing today in Fairbanks to listen to the concerns of your constituents and Alaska Native people in particular who are intimately connected to the lands and water from which they take natural resources for sustenance and enrichment of their way of life.

As a Native American Rights Fund attorney, I have spent the better part of the last twenty years involved in the subsistence struggles of Alaska's Native peoples. In this capacity, I have had the great honor and privilege of representing the revered Ahtna elder Katie John who successfully litigated in federal court to establish a federal priority to take fish in navigable waters in which the federal government owns an interest. The most recent Katie John decision upholding the federal priority to take fish was issued in July of this year. *Katie John v. Alaska*, 720 F.3d 1214 (9<sup>th</sup> Cir. 2013) (*Katie John III*).

Unfortunately, the State of Alaska continues to fight the outcome of that victory and has hired a top notch D.C. law firm at great expense to seek certiorari review by the United States Supreme Court. The State of Alaska's petition is due next week on November 4<sup>th</sup>.

In addition to defending the federal priority from attack by the State of Alaska in litigation, Alaska's Native people and the subsistence resources that they rely on are under threat for other reasons. Whether it is from large-scale resource extraction, limited or restricted access to fish and game, or the increased scarcity of subsistence species, there is, at present, a dark reality facing Alaska Native people: the loss of subsistence resources correlates directly to the decline of health and wellness.

As the United States Supreme Court noted in the seminal case *U.S. v. Winans*, 198 U.S. 371 (1905) "the right to fish is no less necessary to the existence of [Native] people than the atmosphere they breath." This statement made in 1904 is true today of Alaska's Native people.

Indeed, the factual findings of Senator Begich's recently introduced "Traditional Foods Nourishment Act of 2013" attests to the fact that:

*"Consumption of traditional foods is proven to benefit health, physical well-being, and fitness;*

*The leading cause of death among Alaska Natives is diet-related health problems resulting in cancer and heart disease;*

*Traditional foods such as wild salmon, marine mammals, migratory birds, moose, caribou, berries, and plants can have a positive health impact when consumed regularly; and*

*Food plays an incredibly large part in the culture and lifestyle of a community."*

In addition to these findings in the Traditional Foods Nourishment Act of 2013, the importance of fish to the health and wellness of Alaska Native people has recently received heightened attention from the Environmental Protection Agency in its Revised Watershed Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay,

Alaska.

As this Committee is well aware, Bristol Bay's salmon culture and the salmon species it depends on, is under threat of large scale hard rock mining – the most notable project being the proposed Pebble Mine.

EPA initiated the Bristol Bay Watershed Assessment when it received a petition in 2010 from Bristol Bay Tribes requesting that the agency take action under section 404(c) of the Clean Water Act to prevent potential mining projects that would negatively impact the Nushagak and Kvichak rivers. These rivers are part of a watershed that supports the largest single spawning run of sockeye salmon in the world, and one of the largest single Chinook runs.

In answering the Tribe's petition, EPA engaged in the process of developing a comprehensive science-based watershed assessment addressing the potential mining related impacts to Bristol Bay's waters, salmon, wildlife, and most importantly, its Native people.

The petitioning Tribes have since formed a tribal consortium, the United Tribes of Bristol Bay, to address threats to the traditional way of life and subsistence resources posed by large-scale mining proposals. The United Tribes of Bristol Bay, or UTBB, possesses a unique power, separate from any other grassroots organization in Bristol Bay: it is a unified political subdivision of the tribes, exercising delegated tribal governmental powers. With its delegated governmental authority, UTBB is able to engage the federal government in direct government-to-government consultation on behalf of its member-tribes.

In developing the Bristol Bay Watershed Assessment, EPA incorporated the comments and suggestions of the tribes and expanded the scope of the Watershed Assessment to include potential mine related impacts on such things as: non-salmonid fish species, waterfowl, terrestrial wildlife, edible plants, and Native salmon cultures. Incorporating work done by the noted anthropologist, Dr. Alan Borras, EPA's Watershed

Assessment Plan found that,

The Yup'ik Eskimos and Dena'ina Indians of Bristol Bay represent two of the last remaining “salmon cultures” in the world. Today, Bristol Bay salmon make up of nearly 82% of the subsistence diet in the region.

Salmon are more than just a food source for Bristol Bay's residents. Salmon are the foundation of a culture which has existed with little interruption for nearly 4,000 years. These “salmon people” incorporate all 5 species of pacific salmon into their language, visual art, songs, and dance. They observe annual salmon-based ceremonies such as the “First Salmon Ceremony” (a summer event celebrating the return of the salmon run and thanking the first salmon caught in a set net) and the “Blessing of the Waters Ceremony” (a winter event blessing the river and cleansing it for the safe return of the summer salmon). These examples are only a small sampling of the salmon-centric universe existing in Bristol Bay, but they demonstrate the unique value that salmon have to the region's Native people.

However, I urge this Committee to take pause and to not simply think of Bristol Bay and the Pebble Mine as an environmental or mining issue. It is in fact a food security issue as well.

The proposed location for the Pebble Mine is directly on top of the wetlands that form the head waters of the Koktuli River – which flows into the Mulchatna River – which flows into the Nushagak River – which flows directly into Bristol Bay. I want this committee to understand the concept of interconnectedness. From headwaters to ocean, these watersheds form a sustainable web allowing salmon to complete their life-cycle year after year. Just as those waters are interconnected, so are the people to the resource. Salmon are the primary food source in the region. But, Bristol Bay's salmon are also the source of sharing practices, seasonal cycles that are generations old, cultural expressions of wellness, employment, art – in sum – salmon are the basis for an entire way of life in Bristol Bay.

The threat to our Native salmon cultures and the food security posed by Pebble mine is real. During the comment period to the Watershed Assessment Plan, Dr. Donald Macalady submitted a report that stated that:

“there can be little doubt that the construction and operation of the Pebble mine will cause extensive damage to and diminishment of salmon spawning and reproduction in the Nushagak and Kvichak watersheds. **It is, in my opinion, likely that the entire spawning runs will be eliminated in a large portion of these watersheds and that this elimination will be essentially irreversible. This will be especially evident in the Lake area, and will affect villages in this area more than any others.**

Diminished salmon spawning means diminished wildlife in the area. The USEPA report discusses the fact that brown bears, wolves, eagles and other wildlife depend critically on spawning salmon for their survival, as do other fish populations such as rainbow trout. **These effects will have significant bearing on the viability of Alaska Naïve Villages.**” Page 11 of 17 of Macalady Report.

Senator Begich, the Traditional Foods Nourishment Act of 2013 recognizes that “food plays an incredibly large part in the culture and lifestyle of a community.” Only by recognizing the interconnectedness of Bristol Bay’s salmon and its people can you truly approach the Pebble Mine issue for what it is: a direct threat to the security of the region’s primary subsistence resource.

If, as the Traditional Foods Nourishment Act of 2013 indicates, this Committee takes issues of food security for indigenous people seriously—then I urge you to support the United Tribes of Bristol Bay in their request that the EPA finalize its Revised Watershed Assessment Plan by the end of 2013. The United Tribes of Bristol Bay further asks

that you, Senator Begich and this Committee, publically support EPA's use of its 404(c) authority under the Clean Water Act to prohibit and prevent the Pebble mine development.

On behalf of UTBB, we thank you for the opportunity to testify.