



Governor Mike Dunleavy
STATE OF ALASKA

September 6, 2022

Mr. Casey Sixkiller
Regional Administrator
Environmental Protection Agency - Region 10
Water Docket
Mail Code 2822T
Pennsylvania Avenue NW
Washington, DC 20460

Re: May 26, 2022 Proposed Determination of EPA Region 10 Pursuant to Section 404(c) of the CWA Pebble Deposit Area, Southwest Alaska (87 FR 39091); Dkt. # EPA-R10-OW-2022-0418

Dear Regional Administrator Sixkiller:

Thank you for the opportunity to comment on the May 26, 2022 Proposed Determination of E.P.A. Region 10 Pursuant to Section 404(c) of the Clean Water Act ("CWA") for the Pebble Deposit in Southwest Alaska ("proposed veto"), which would use § 404(c) of the CWA to veto a proposed mining project and effectively impose a blanket prohibition on future mining within 309 square miles of primarily Alaska-owned land. This proposal is deeply concerning to Alaska.

The proposed veto injects EPA into the very heart of Alaska politics. Region 10 makes quintessential policy decisions about whether, how, and which resources Alaska can develop, and how to accommodate Alaskans' many and diverse interests in so developing. It does this by positing a (false) choice between preserving Alaska's fishery resources or allowing for development of the Pebble deposit.¹ Championing the importance of salmon in Bristol Bay, and the interests of some Alaska Natives, it selects the former.

¹ The Pebble deposit is the world's largest undeveloped copper deposit. It is estimated to contain 6.5 billion tonnes of Measured and Indicated mineral resources, containing: 57 billion pounds of copper; 71 million ounces of gold; 3.4 billion pounds of molybdenum; 345 million ounces of silver; and 2.6 million kilograms of rhenium. In addition, it contains an estimated 4.5 billion tonnes of Inferred mineral resources, containing: 25 billion pounds of copper; 36 million ounces of gold; 2.2 billion pounds of molybdenum; 170 million ounces of silver; and 1.6 million kilograms of rhenium. IHS Markit, *Economic Contribution Assessment of the Proposed Pebble Project to the US National and State Economies* (February 2022) ("2022 IHS Markit Analysis"), at 3, 7, retrieved from https://northerndynastyminerals.com/site/assets/files/4289/ndm_economic_impact_of_the_pebble_project_-_february_20.pdf.

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In so selecting, Region 10 diminishes the importance of mineral resource development to Alaska and its people. It also disregards Alaska's ability to—and history of—ensuring the protection of its own fishery resources through the State's permitting system.

Ensuring Alaska's ability to develop its resources was a key concern to the State and Congress during statehood negotiations. The centerpiece of the Alaska Statehood Act is the State's right to select lands to be managed for the public's benefit. To this end, Congress conferred upon Alaska all rights and title to the lands it selected and agreed that “[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct.”² These lands provide the revenues necessary to support state and local governments and to sustain Alaska's economy, culture, and way of life.³

The lands containing the Pebble deposit were conveyed to Alaska subject to these same conditions, by way of the Cook Inlet Land Exchange. The mineral deposits that Region 10 would now close off for development, in other words, are precisely those that are Alaska's to use “as the State legislature may direct.”

Both the mining and fishing industries are important to Alaska. In 2021, Alaska's mining industry contributed approximately 10,800 jobs and \$985 million in annual wages to the Alaska economy.⁴ The proposed Pebble mine would contribute an estimated 6,166 jobs for Alaskans⁵ and generate \$2.8 billion to \$5.39 billion in State revenue.⁶ The importance of the fishing industry is well-documented in the proposed veto. Bristol Bay, too, is very important to Alaska, which is why Alaska has already taken so many steps—unacknowledged by Region 10—to protect the area.

² Alaska Statehood Act, 72 Stat. 339, Pub. Law 85–508, 85th Congress, H.R. 7999 (July 7, 1958) (“Statehood Act”), § 6(i); see S. Rep. No. 1028, 83rd Cong. 2d Sess. 6 (1954) (“[T]he State is given the right to select lands known or believed to be mineral in character”).

³ See, e.g., Alaska Const. art. VIII, §§ 1, 2, 6; Alaska Stat. (“A.S.”) §§ 38.04.005–.015 (setting out the State's land management policies); A.S. § 44.99.100(a) (declaring the State's economic development policy: “To further the goals of a sound economy, stable employment, and a desirable quality of life, the legislature declares that the state has a commitment to foster the economy of Alaska through purposeful development of the state's abundant natural resources and productive capacity.”); A.S. § 44.99.110 (declaring the State's mineral policy to “further the economic development of the state, to maintain a sound economy and stable employment, and to encourage responsible economic development within the state for the benefit of present and future generations through the proper conservation and development of the abundant mineral resources within the state . . .”); *Trustees for Alaska v. State*, 736 P.2d 324, 335 (Alaska 1987) (“The primary purpose of the statehood land grants contained in section 6(a) and (b) of the Statehood Act was to ensure the economic and social well-being of the new state.”).

⁴ This figure considers direct, indirect, and inducted employment. See McKinley Research Group, LLP, *The Economic Benefits of Alaska's Mining Industry (May 2022)*, at 3, retrieved from <https://www.mcdowellgroup.net/publications/>. These figures include workers engaged in production (metals, coal, and industrial materials), exploration activities, and mine development. This employment also includes self-employed miners (often found in placer mines). *Id.*

⁵ These numbers are estimated for the initial 4.5-year capital phase. *2022 IHS Markit Analysis* at 4.

⁶ See *infra* Section (2)(d)(ii) of the Alaska Section of this Letter for a discussion of costs.

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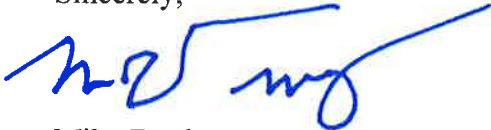
Whether, and how, Alaska develops Bristol Bay's mineral resources or its fishery resources—or both, responsibly—is Alaska's decision to make, considering the input of all stakeholders and working through the standard permitting process. EPA would instead choke off further discussion, usurping for itself this important decision affecting so many Alaskans.

This decision reflects poor judgment by Region 10. It is also legally indefensible. Among other foundational defects, Region 10 has made no threshold jurisdictional determination delineating WOTUS, and therefore has not established EPA's authority to act. Region 10 has failed to identify the "fisheries" to which its action purportedly applies, and therefore has not met § 404(c)'s statutory or regulatory prerequisites for acting. Region 10 inadequately considers the costs of its proposed veto, and improperly inflates its benefits. Region 10 relies on factors it may not legally consider. Throughout it all, Region 10 portrays Alaska Natives as a monolith, flattening their diverse viewpoints into a single narrative of unwavering support.

In the unlikely event of its validity, exercise of this veto would constitute a regulatory taking, for which compensation, in the billions, is due.

Accordingly, Alaska requests that Region 10 withdraw its proposed veto following the close of this comment period. Rest assured my Administration will stand up for the interests of Alaskans, Alaskan property owners, and Alaska's future.

Sincerely,



Mike Dunleavy
Governor

Enclosure: State of Alaska Comments to May 26, 2022 EPA Region 10 Proposed Decision