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September 6, 2022

Mr. Casey Sixkiller, Administrator
Region 10, Environmental Protection Agency
Submitted via www.regulations.gov

Re: Proposed Determination to Prohibit and Restrict the Use of Certain Waters Within Defined Areas as Disposal Sites; Pebble Deposit Area, Southwest Alaska; 87 Fed. Reg. 32021; Docket ID No. EPA-R10-OW-2022- 0418.

Dear Mr. Sixkiller,

The Alaska Miners Association (AMA) writes to express concerns on the EPA Region 10 2022 Proposed Determination to prohibit and restrict the use of certain waters within defined areas as disposal sites within the Pebble Deposit Area under Section 404(c) of the Clean Water Act.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, and major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

The EPA's Proposed Determination to restrict the use of waters within 309 square miles around the Pebble Deposit is yet one more occurrence in a decade-long string of actions by the agency that have put politics above science and process.

In 2012, EPA Region 10 released the Bristol Bay Watershed Assessment (EPA-HQ-ORD-2012-0276), one the agency conducted prior to the Pebble Partnership submitting any sort of mining plan or permit application. Instead, EPA designed a hypothetical mine scenario intentionally crafted to attempt to show negative impacts to the environment. A watershed assessment is not a step in permitting and was introduced arbitrability for the Pebble Project. In 2013, EPA released its revised assessment which continued a biased and scientifically specious review of the proposed project. Using the two flawed assessments, EPA ultimately released a Proposed Determination concluding mining cannot be done safely at Pebble and initiated a Section 404c veto process. Again, this was done in the absence of a permit application for mining in the area and without any formal, established environmental review. You will find AMA's comments on these actions as attachments to this letter.

Following both litigation and a change in the federal Administration, EPA began a process to withdraw its Proposed Determination and federal permitting for the Pebble Project began. From 2018 to 2020, the Pebble EIS scoping, draft, and final took place, in which we provide more detail below. Following a Final Environmental Impact Statement (EIS) that concluded the mine plan as proposed would not have negative impacts to the environment, the United States Army Corps of Engineers (Corps) denied a 404 permit to the

project. This denial is still under appeal today, however, in May 2022, EPA announced a new Proposed Determination to again begin a Clean Water Act Section 404(c) veto.

The roller coaster of actions based on politics, and not science and law at Pebble has put Alaska, and the United States in a perilous position with investors questioning whether to expend major capital into resource and economic projects. Actions that go outside of the normal permitting process are precedent setting and they have placed giant red flags before our future opportunities. If Pebble is ultimately stopped by a political agenda, make no mistake, the next project on the horizon with any sort of opposition associated with it will be next. This could apply to a mine, a road, an oil exploration project, a wastewater treatment plant, a wind farm – it makes no difference. The EPA's actions have started a slippery slope and those that oppose development in our nation are paying attention. The arguments used against Pebble will become the norm for stopping development as many in the mining industry are already seeing similar arguments and actions at other projects in the U.S.

There is an established permitting process to evaluate any development project in our nation and it is rooted in science and follows dozens of laws and regulations. This process, despite having politics injected along the way, is still ongoing at Pebble. After submitting its permit application, the Pebble Project underwent scoping in which a comment period and many public meetings resulted in hundreds of thousands of comments outlining areas for an EIS to consider. A draft EIS also provided for public participation in the extensive science-based evaluation, of which EPA was a cooperating agency. During this time, EPA raised no major objections, and ultimately the Corps published an Environmental Impact Statement for the Pebble Project that shows it can be done without harm to the Bristol Bay fishery.

The following citations from the EIS demonstrate that project will not harm the fishery:

- *There would be no measurable change in the number of returning salmon and the historical relationship between ex-vessel values and wholesale values. In addition, there would be no changes to wholesale values or processor operations expected for Alternative 1a. Under normal operations, the Alternatives would not be expected to have a measurable effect on fish numbers and result in long-term changes to the health of the commercial fisheries in Bristol Bay.(ES 87)*
- *Under normal operations, the alternatives would not be expected to have a measurable effect on fish numbers or result in long-term changes to the health of the commercial fisheries in Bristol Bay. (4.6-3)*
- *The mine site area is not connected to the Togiak, Ugashik, Naknek, and Egegik watersheds and is not expected to affect fish populations or harvests from these watersheds. (Table 4.6-1, P4.6-4)*
- *This alternative would not be expected to have measurable effects on the number of adult salmon, and therefore would have no impact to commercial fisheries. (Table 4.6-1, P. 4.6-4)*
- *As with Alternative 1a, Alternative 3 would not be expected to measurably affect the health or value of Bristol Bay salmon fishery, including permit holder earnings, permit holder value, crew earnings, fishery first wholesale values, processor earnings, or local fiscal contributions. (4.6-18)*
- *However, considering the physical characteristics and current fish use of habitat to be removed, the consequently low densities of juvenile Chinook and coho observed in the affected tributaries, and the few numbers of spawning coho observed (see Section 3.24, Fish Values), impacts to anadromous and resident fish populations from these direct habitat losses would not be measurable, and would be expected to fall within the range of natural variability. (4.24-46)*
- *Other salmon fisheries in Alaska exist in conjunction with non-renewable resource extraction industries. For example, the Cook Inlet salmon fisheries exist in an active oil and gas basin and have developed headwaters of Anchorage and the Matanuska-Susitna areas. The Copper River salmon fishery occurs in a*

watershed with the remains of the historic Kennecott Copper Mine and the Trans Alaska Pipeline System in the headwaters of portions of the fishery. Both fisheries average higher prices per pound than the Bristol Bay Salmon Fishery. (ES 86)

Following the EIS concluding the project could be done safely, the Corps changed its wetlands mitigation requirements and ultimately issued a final decision to deny the permit. The process to appeal that decision has been significantly delayed by the Corps, and today the appeal is still underway, making the Proposed Determination an unquestionable preemptive action.

This preemptive veto also goes further than just the Pebble Project. The EPA is clear in its intent to preclude any activity in the watershed around the Pebble site (these are the watershed boundaries of the North Fork Koktuli, South Fork Koktuli, and Upper Talarik Creek) regardless of action by the USACE. This results in a total of 309 square miles (nearly 200,000 acres) of Alaska's land that will be fully blocked from any development. These lands were specifically selected as part of Alaska's selections authorized when it achieved statehood, an opportunity it was granted to select 105 million acres for the purpose of helping the young state's economy. Permanent federal action blocking development of 309 square miles of Alaska's selected lands is a violation of this agreement, and it is a violation of the "No More" clause of the Alaska National Interest Lands and Conservation Act (ANILCA).

In Alaska, more than 56% of federal lands are set aside as Conservation System Units (CSUs) that are off limits to any extractive resource use or potential development. The Alaska National Interest Lands and Conservation Act (ANILCA) defines CSUs to include "any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument" (see ANILCA Sec 102(4)). Millions of acres of state lands are in "protected status" such as State Parks, State Recreation Areas, State Wildlife Sanctuaries and Refuges, and more. In Alaska, over 40% of the state's entire land mass is already in areas that by definition should be considered managed exclusively for Conservation (see table below). This is an area larger than the entire states of California and Washington combined.

When Congress passed ANILCA in 1980, it declared that no more land withdrawals were necessary in Alaska, and placed specific limits on the federal administration's efforts to withdraw additional lands. These are often referred to as ANILCA's "No More" clauses. Congress' intent is stated in ANILCA Section 101(d):

"This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent the proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and this Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby."

Congress included in ANILCA two very specific restrictions on federal administrative actions:

1. ANILCA Section 1326(a) limits federal administrative authority (e.g., limits size of Antiquities Act withdrawals) to 5,000 acres without Congressional approval; and

2. ANILCA Section 1326(b) prohibits single purpose studies to establish new conservation areas in Alaska.

EPA's Proposed Determination to block development in the entire watershed is a gross violation of the Congressional intent and statutory requirements associated with ANILCA.

The Proposed Determination takes another dangerous precedent-setting step in which it intentionally elevates one natural resource at the expense of another, rather than working within existing environmental framework that has for years provided for mining to coexist with fisheries. It ignores the scientific reality at Pebble, in which the mine-impacted anadromous streams amount to less than 1/10th of 1% of all mapped anadromous streams in the Bristol Bay watershed (9819 miles). As the EIS acknowledges, impacts to salmon species are so small that they cannot be measured. The habitat disturbance at Pebble is underutilized by anadromous fish. While fish presence has been observed, it is not well utilized when compared with similar habitat downstream or in other parts of the watershed. By example, the South Fork Koktuli (SFK) goes dry each year just below Frying Pan Lake thus preventing spawning salmon from utilizing the lake (additionally, the lake is full of salmon killing pike). While the lake could conceivably be productive habitat for salmon, it is underutilized because of the natural conditions in the area. The North Fork Koktuli (NFK) is also not significant habitat for Sockeye salmon.

The claim that filling the Pebble Impact area will harm the genetic diversity of the local Chinook and Coho salmon runs is not supported. The record does not establish these small populations as 'unique' and ignores the likelihood that returning salmon will spawn in nearly identical, but underutilized, habitat in the immediate area. However, the Proposed Determination touts and embellishes the genetic diversity of salmon populations in an attempt to justify its political action. The justification for this Pebble action could be applied to any watershed in Alaska including the Copper River, Yukon River or Kuskokwim River, and curb any attempts at development in those regions as well.

It is astonishing that the Biden Administration can publicly recognize the growing need for mineral production and outline domestic sources of minerals needed to achieve its renewable energy goals, yet issue actions that block development of the domestic mineral deposits that would significantly contribute to the nation's mineral needs. Copper is an essential mineral for any renewable energy source, and Pebble is one of the most significant sources of copper in the nation and around the world. Improperly shutting down the opportunity at Pebble puts the nation's green goals at risk, and the biggest beneficiary of this will be China.

The Proposed Determination also robs the region, state, and country of jobs and opportunity. The economic activity and revenue brought by Pebble would be especially important for communities closest to the project that have few year-round jobs and face extremely high costs of living. Pebble could provide thousands of jobs, generate hundreds of millions of dollars in economic activity, and make important contributions to the state and local government in Alaska (over \$150 million according to the EIS). The EPA action takes none of this into account, especially the positive impact this could have for the communities around Iliamna Lake. Conversely, the Proposed Determination does little to recognize that the commercial fishery is a seasonal employer with many permits fished by people outside of Alaska and processing work staffed by many from other countries. While the commercial fishery is an important employer, the jobs associated with Pebble would be year-round and in ranges of \$115,000 annually – a game changer for those living in Southwest Alaska.



There are critical legal, scientific, economic, and moral reasons to follow the normal permitting process and allow for an objective evaluation to take place at the Pebble Project. The Proposed Determination is an inexcusable diversion from that process. It should be rejected, and the process be allowed to proceed to completion prior to any 404(c) decision.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Skibinski".

Deantha Skibinski
Executive Director