ALASKA MINERS ASSOCIATION

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May 12, 2025

Russell Vought, Director
Office of Management and Budget
Attn: Kelsi Feltz, Office of Information and Regulatory Affairs
725 17th St NW
Washington, DC 20503
Submitted via https://regulations.gov

RE: Executive Office of the President, Office of Management and Budget, Notice of Request for Information, 90 Fed. Reg. 15,481

Dear Director Vought:

The Alaska Miners Association (AMA) appreciates the opportunity to comment on the Office of Management and Budget's ("OMB") request for information (RFI) to identify rules to rescind or replace regulations *"that are inconsistent with statutory text or the Constitution, where costs exceed benefits, where the regulation is outdated or unnecessary, or where regulation is burdening American businesses in unforeseen ways."* 90 Fed. Reg. 15,481

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

The RFI is a nationwide ask to identify regulations inconsistent with statutes and the Constitution and where the costs exceed benefits and are a burden to American businesses. To that end, AMA wishes to support and incorporate by reference comments submitted by the National Mining Association and the American Exploration & Mining Association. These national organizations are our partners, eyes and ears on federal government issues and policy, and do a terrific job of representing all fifty states in their mining industry advocacy. We would appreciate the ability to reference their comments in ours, and the remainder of comments to follow are specific to Alaska regulations that we would like to bring to your attention.

Alaska issues: Environmental Protection Agency

Waters of the United States (WOTUS) Rule following *Sackett* decision

The lack of clarity surrounding the regulatory definition of WOTUS has caused uncertainty in Alaska and nationwide for decades. While the U.S. Supreme Court issued a clear decision in *Sackett v. EPA* that

narrowed the scope of federal jurisdiction over WOTUS, the previous administration failed to truly implement the Court's decision, and we urge the EPA and the Corps to undergo a targeted, one-step notice-and-comment rulemaking to revise the regulatory text and preamble of the 2023 Conforming Rule to align with *Sackett*.

Policy regarding the definition of WOTUS will, without doubt, have the most significant impact to the State of Alaska and the regulated community working in the state. We encourage you to review the comments submitted by AMA here.

As we have stated multiple times in comment periods pursuant to WOTUS policy and rulemaking proposals, the definition of "waters of the United States" is especially important to Alaskans. 175 million acres of land in Alaska are classified wetlands, which constitutes 43% of our land base. Alaska's coastline and tidally influenced waters exceed that of the rest of the nation combined. In addition, Alaska is the only state with permafrost. Therefore, any rule addressing waters, wetlands, and coastal environments will very likely have a greater effect on Alaska than anywhere else in the Nation.

AMA suggests that EPA and Corps adopt a regional implementation approach for the *Sackett* standard that accounts for the unique hydrology of Alaska. Alaska's waters frequently lack the "continuous surface connection" required for adjacency for purposes of federal CWA jurisdiction, and such an approach would avoid unreasonable jurisdictional presumptions. It should be grounded in a common understanding that agencies shall refrain from applying any presumption that wetlands are jurisdictional "adjacent wetlands," absent a site-specific showing of an actual continuous surface connection to a traditional navigable water at typical conditions. If there is any doubt, the burden should be on the agencies to demonstrate a continuous surface connection in fact, not on local communities nor project proponents to prove a negative. This conforms with *Sackett* and will prevent the kind of over-inclusive assertions of jurisdiction that the Supreme Court sought to curtail.

We also encourage the agencies to defer to state and local water resource regulators for management of these isolated features. The State of Alaska, through its Department of Environmental Conservation and other bodies, is well-equipped to oversee the protection and reasonable use of Alaska's wetlands. In the wake of *Sackett*, Alaska officials have already begun evaluating which waters remain subject to CWA Section 404 and which will be managed under state law. We maintain that local and state regulators, being intimately familiar with the unique environment and realities of Alaska, are best positioned to craft permitting solutions that protect the environment without stifling community development. To that end, we encourage the EPA to consider federal funding for implementation of primacy programs for States with primacy authorization. Such state-specific flexibility is needed now more than ever to help achieve the goals of President Trump's Executive Orders specific to Alaska, as well as the Executive Orders on energy and mineral dominance.

Finally, Alaska needs to be given special consideration by the agencies in light of the 1994 Alaska Wetlands Initiative. The (MOA) signed by the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) in February 1990 clarifying the "no net loss of wetlands" was not realistic or practicable in Alaska. Since over 43% of the surface area of the state is designated as wetlands, there is little justification for implementing a mitigation program designed for the Lower-48 states in Alaska. EPA and USACE assembled a panel of stakeholders in 1994 and solicited public input in Alaska to determine how the Clean Water Act Section 404 was to be implemented in Alaska. As a result of the

outreach efforts, EPA, USACE, U.S. Fish and Wildlife Service and National Marine Fisheries Service issued the above linked Alaska Wetland Initiative. The Initiative was a commitment by the Federal agencies to "work more effectively with all stakeholders and the public to improve the Section 404 regulatory program in (a) manner that makes this program more fair, flexible, and effective." Alaska is a special case in which local flexibility is needed because there are limited opportunities to create or restore wetlands because of the extent of wetlands in Alaska and other environmental conditions. Corps regulations must provide flexibility and discretion to district engineers to determine Alaska compensatory mitigation and other requirements for USACE permits.

Clean Water Act Section 404(c) veto at the Pebble Project

The EPA's Clean Water Act Section 404(c) veto of the Pebble Project is a major step outside of the statute and Congressional intent. In late 2018, the Pebble Project permit application was submitted and in July 2020, a Final EIS was published concluding that the project could be done without negative impacts to the Bristol Bay fishery. That November, the United States Army Corps of Engineers issued a decision that the Pebble project would not be permitted as proposed. Today, the appeal has not been fully resolved and the Pebble Project's permitting process remains ongoing, therefore, the EPA's actions by the Biden Administration are preemptive and very similar to the action that was taken by the agency in 2014, that blocks development prior to completion of a permitting process. This sets a dangerous precedent far beyond Pebble, far beyond mining, and far beyond Alaska, and has sent a red flag to investors looking for permitting certainty in the United States. EPA must rescind the veto, and the Administration should work with Congress to place appropriate limitations on when and how Section 404(c) should be applied to projects.

Water Quality Standards Regulatory Revisions to Protect Tribal Reserve Rights

Another issue affecting the nationwide regulated community is the 2024 EPA final rule revising its water quality standards regulations to require states to consider Tribal reserved rights when setting Water Quality Standards (WQS).

EPA should repeal this rule, and when considering this specific policy in the future, it must keep in mind that with the passage of the Alaska Native Claims Settlement Act in 1971, Congress gave specific direction that we must treat Alaska's indigenous people and their lands differently, and that right must be considered when developing policy in land and water issues. To that end, we would like to refer the EPA to two letters the State of Alaska wrote to ensure predictability and compliance on the permitting front here and here.

Toxics Release Inventory (TRI)

The EPA's TRI program requires metal mines to report naturally occurring metals/minerals in waste rock and tailings that are permanently stored in engineered and permitted facilities as toxic releases to land. EPA has cited metal mining as accounting for most of the reported releases to land (72 percent) in the entire nationwide inventory. A large percentage of these releases to land are metals/minerals found in waste rock and tailings. As EPA acknowledges, the generation and management of waste rock and tailings does not constitute the manufacture, production, or otherwise use of TRI-listed chemicals, i.e., which are unchanged from their natural form in the rock. The relevant court decisions do not

indicate otherwise, i.e., that reporting of TRI-listed chemicals is not explicitly required by statute or regulation. Finally, waste rock and tailings reporting goes against the broader principles of The Emergency Planning and Community Right-to-Know Act (EPCRA) in that it is completely unrelated to community planning for chemical emergencies. Therefore, the decision for the EPA to require reporting of TRI-listed chemicals as releases to land in waste rock and tailings over the past several decades has strictly been a policy decision by the agency and should be changed. The mining industry is unfairly stigmatized because of these guideline requirements and TRI reporting for mining is very misunderstood. Noteworthy is the Environmental Council of the States TRI resolution. https://www.ecos.org/documents/resolution-23-1-improving-the-toxics-release-inventory/

Alaska issues: United States Department of Interior

Ambler Road Record of Decision

The proposed industrial access road connecting the Dalton Highway to the Ambler Mining District, along a right of way that is provided for in the Alaska National Interest Lands Conservation Act (ANILCA). The Ambler Road was analyzed in an Environmental Impact Statement (EIS) and received a favorable Joint Record of Decision (JROD) by the Bureau of Land Management (BLM) and National Park Service (NPS) in August 2020. A subsequent lawsuit was filed and the Department of the Interior (DOI) requested a voluntary remand in February 2022, necessitating the creation of a Supplemental EIS. In June 2024, the Biden Administration selected a No-Action Alternative, a flat refusal to grant access to the Ambler Mining District that was mandated by Section 201(4)(b) of ANILCA. The Ambler Road is needed to provide access to important zinc, lead, silver, cobalt and copper deposits and provide much-needed jobs (5,000 direct and indirect) and revenue ($1.1 billion to Alaska and $193 million to local governments, including Alaska Natives). Without the road, mineral development projects are not viable. The selection of the No Action Alternative was based on flawed analyses in the Supplemental Environmental Impact Statement and Alaska National Interest Lands Conservation Act (ANILCA) evaluation. None of the benefits of providing road access were cited in the analyses. It was also inconsistent with the explicit grant of right-of-way to the Ambler Mining District provided in ANILCA.

While the previous Record of Decision and following policy actions for the Ambler Access (road) Project are referenced in the January 20, 2025 *Unleashing Alaska's Extraordinary Resource Potential* Executive Order, it is worth identifying under regulatory actions to be identified. The Ambler Mining District should already have access to the Alaska Haul Road (Dalton Highway) pursuant to the mandatory requirement of ANILCA Section 201 4(b). The June 2024 Record of Decision should be rescinded and the Section 404 permit revoked in January 2025 should be re-instated

ANCSA 17(d)(1) withdrawals

With the enactment of the Alaska Native Claims Settlement Act (ANCSA) in 1971, temporary Public Land Orders (PLOs) were instituted to allow for the land to be classified to be made available for selection by Alaska Native Corporations organized under the Act. The State of Alaska and Alaska Native Corporations have since selected their lands agreed upon at Statehood, and the Alaska National Interest Lands Conservation Act (ANILCA) established national conservation system units that removed lands from development. Yet, 50 years later, the 17 (d)(1) withdrawals remain in place,

keeping as much as 57 million acres of lands in a status that precludes multiple use management, including mineral development. In 2024, the Bureau of Land Management chose to continue the withdrawals and failed to resolve this longstanding inappropriate management of public lands. AMA's comments which provide a full background can be seen here.

Central Yukon Resource Management Plan (RMP) (and all Resource Management Plans)

Also in the *Unleashing Alaska's Extraordinary Resource Potential* Executive Order, BLM must pursue a revision to the 2024 Central Yukon RMP to adopt an Alternative that allows for more mineral entry and multiple use could incentivize mining investment on significant acreage in Interior Alaska. AMA's comments which provide a full background can be seen here and here.

Public Land Order 5150

Section 3 (b)(7) of the *Unleashing Alaska's Extraordinary Resource Potential* Executive Order, that directs the lifting of Public Land Order (PLO) 5150 could maximize investment in mineral deposits, as well as oil and gas activity, along a significant portion of the Trans-Alaska Pipeline and Dalton Highway route. BLM must lift the order, as directed by Secretarial Orders.

Bureau of Land Management (BLM) Conservation and Landscape Rule

In 2024, BLM issued a final "lands rule" prioritizing conservation over multiple uses of public lands under the Federal Land Policy and Management Act's (FLPMA) multiple-use and sustained-yield framework. BLM also prioritized designating Areas of Critical Environmental Concern (ACEC) and avoidance of impacts to federal lands. Together, these actions caused great uncertainty for federal land users like mining. The rule is similar to the BLM's Planning 2.0 in 2016 which Congress voided under the Congressional Review Act. AMA filed comments on the rule emphasizing the importance of BLM lands in providing access both to resources on BLM lands, and even more significantly, the importance of BLM lands in providing access to state and private lands, including Alaska Native Corporation lands, in Alaska.

Congress, in 1980, determined that ANILCA provided the proper balance between conservation and resource development in Alaska. ANILCA designated 135 million acres, approximately 60% of ALL Federal lands in Alaska into National Parks and Preserves, National Wildlife Refuges, and National Wilderness areas, and National Wildlife and Scenic Rivers. In addition to six BLM-managed Wild and Scenic Rivers, ANILCA set aside over 2 million acres of BLM lands as the Steese National Conservation Area and White Mountains National Recreation Area. Remaining BLM lands were intentionally left as multiple use lands, part of the balance of "public lands necessary and appropriate for more intensive use and disposition."

In our comments, AMA argued that RMPs for BLM's Alaska lands have demonstrated that the existing federal statutes, regulations and rules provide more than adequate protection for conservation of resources, additional restrictions on development in the proposed rule were not necessary. While the Rule made general statements about the ongoing and future degradation of BLM lands, it cited no specific evidence that it is actually occurring due to existing and likely future uses. This is especially the case where such uses encompass only very small areas of otherwise undisturbed lands, like in Alaska. These realities again must be acknowledged and addressed before radically changing how Federal lands are managed, and rules must be consistent with other federal laws like ANILCA. We are

aware that OMB is reviewing the BLM's proposal to rescind this rule, supported by SO 3418, and we applaud this action.

Alaska Issues: Department of Agriculture, United States Forest Service

Exemption of Roadless Rule application to Tongass National Forest

The Final Environmental Impact Statement (FEIS) for the 2008 Tongass Land and Resource Management Plan pointed out that the U.S. Bureau of Mines had identified 148 locatable mineral deposits in the Tongass. Of these 52 were ranked as having the highest mineral potential. Seven were ranked as having the next highest potential and at least one "critical" and "strategic" mineral. (2008 FEIS at 3-356).

In addition to the 148 Identified Mineral Deposits the 2008 FEIS described 930 "Undiscovered Mineral Resource" tracts estimated in the 1991 USGS Report. The potential for many more high-paying mining jobs on the Tongass is enormous. A 1991 United States Geologic Survey (USGS) study estimated a value for Discovered Minerals of $37.1 billion (expressed as 1988 dollars) and a value for Undiscovered Minerals of $28.3 billion (expressed as 1988 dollars). (This report was revised in 1996 in USGS Report 96-716).The escalation in metals prices that has taken place since 1991 and 2008 has dramatically increased these values.

Only the Greens Creek, Kensington, and Dawson Mines are operating on this West Virgina sized federal land. To properly access its extensive mineral deposits, the Tongass must be exempt from the 2001 Roadless Rule (which the President identified for exemption in Section 3(c) of the *Unleashing Alaska's Extraordinary Resource Potential* Executive Order). In addition, road (not helicopter) access to the mineralization described above must be authorized to unleash the potential to explore, develop, and open additional mines.

The uncertainty caused by the failure to durably resolve this issue after 25 years, the failure to assure road access to mining exploration and development areas of the Tongass, the lack of assurance that bulk samples can be removed by road, and the cost of using helicopters for access have limited the ability of the United Staes to realize the incredible mineral wealth to the Tongass. 36 CFR Part 294 §§ 294.10 – 294.14 must be statutorily repealed.

Alaska Issues: Department of the Army, United States Corps of Engineers

United States Corps of Engineers (USACE) Appendix C procedures relating to NHPA Section 106, which were abandoned during the prior administration in favor of the Advisory Council on Historic Preservation's Section 800, should be reinstated. They could cause significant expansion of the areas of potential effects and consultation requirements, creating greater permitting burdens on USACE and project proponents and increasing risk of litigation. The move changed decades of precedence for consultation that have worked effectively and inevitably will lead to general and individual permitting delays for critical mineral projects, especially given the lack of USACE's expertise in cultural resource management.

Section 106 consultations required within the U.S. Army Corps of Engineers permit as part of the National Historic Preservation Act have resulted in significant delays to the mine obtaining key

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permits to do exploration activity: U.S. Army Corps of Engineers, National Park Service. Section 106 is expanding into a separate, multi-level, mini-NEPA process. This process must be reformed, clarified, and improved to make the procedures transparent and shorten timelines. The process appears to be weaponized by non-governmental organizations to create delays and leverage. There is an opportunity to eliminate or clarify the interpretation and use of Traditional Cultural Landscapes (TCL), as defined by National Park Service, rather than Historic Property as defined by the Act, or to provide some clarity on the how TCLs should be considered in permitting actions to focus on what Congress intended.

Thank you for the opportunity to provide these comments.

Sincerely,

Deantha Skibinski
Executive Director