

September 6, 2022

The Honorable Michael R. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Submitted electronically via regulations.gov

Re: Notice of extension of public comment period and public hearing comment period, Environmental Protection Agency; 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 (June 30, 2022)

Dear Administrator Regan:

The undersigned organizations write to express our concerns with the U.S. Environmental Protection Agency (EPA) Region 10's 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 (CWA).

We represent a large and diverse cross-section of America's construction, home building, mining, manufacturing, and energy sectors, as well as the broader business community. Our members are vital to building a thriving national economy and are essential to achieving the Biden administration's ambitious climate, infrastructure, supply chain, transportation, and energy goals. Our members create much needed and well-paying jobs in communities across the country, including in Tribal communities and communities with environmental justice concerns. Fair, consistent, and predictable permitting processes are essential for our members to conduct these activities. If finalized as proposed, EPA's preemptive veto of the Pebble Project in Alaska will set harmful precedent and create significant regulatory uncertainty for the business community.

We therefore urge EPA to withdraw the proposed determination to allow the Pebble Project to move through the established regulatory process. We also offer the following comments.

- 1.) **The business community relies on fair, consistent, and predictable permitting processes.** EPA's Proposed Determination, if finalized as proposed, will preemptively veto the Pebble Project before the project has had the opportunity to go through the permitting process. All project proponents deserve a fair and objective review through the U.S. Army Corps of Engineers' (Corps) established permitting processes, that importantly include extensive environmental reviews, mandatory consideration of reasonable alternatives, and numerous opportunities for public engagement as required pursuant to the CWA and the National Environmental Policy Act.

- 2.) **EPA should allow the established legal and regulatory processes to proceed.** As EPA is aware, an administrative appeal of the Corps' denial of the project's CWA Section 404 permit is ongoing. EPA should respect the Corps' processes and allow the administrative appeal to be decided before taking this preemptive action. EPA also should act consistent with the Memorandum of Agreement (MOA) it signed with the Department of the Army under Section 404(q) of the CWA. The MOA provides a predictable process within the existing permitting regulations for elevating and working through EPA concerns with a Corps permit.
- 3.) **EPA's preemptive Section 404(c) veto will set damaging precedent and inject significant regulatory uncertainty into a broad swath of the U.S. economy.** The regulatory uncertainty from EPA's action regarding the Pebble Project will set damaging precedent. If EPA can preemptively veto this project while in the middle of an administrative appeal to the Corps and before the project has gone through the permitting process, it could do so for any development project in any sector. Any business that must obtain a CWA Section 404 permit from the Corps will be forced to run the risk that its project could be preemptively blocked by EPA without a fair evaluation through the established Corps permitting processes.
- 4.) **The permitting system is designed to provide due process for project consideration. The process alone does not authorize any activities on the ground and therefore, should not be characterized as creating the potential for environmental harm.** Indeed, EPA does not give up any authority to use its powers under Section 404(c) by waiting until the permitting process is complete. Given that, EPA should defer any further action under Section 404(c) until the permitting process is done.
- 5.) **EPA's preemptive Section 404(c) veto will chill investment in U.S. operations and thwart our members' ability to conduct important development projects domestically.** The regulatory uncertainty created by EPA's preemptive veto will chill investment in U.S. operations. Investors will not want to risk investing in a U.S. project if EPA can preemptively veto it. Moreover, the U.S. business community and industrial sectors represented operate under the highest environmental standards, labor protections, and health and safety standards. As the Biden administration seeks ways to achieve its ambitious goals, it should encourage rather than block domestic minerals mining, manufacturing, construction, energy production, and other development.
- 6.) **EPA should respect the state of Alaska.** Cooperative federalism is the cornerstone of the CWA. The federal government, states, and Alaska Native organizations must work together to balance environmental protection and responsible development. EPA's preemptive veto of the Pebble Project will block development on hundreds of acres of Alaska state land. The agency must respect the state's authority to facilitate responsible development on its own land.

We appreciate your consideration of these comments and welcome the opportunity to discuss these concerns further.

Sincerely,

Alaska Chamber of Commerce
Alaska Miners Association
American Exploration and Mining Association
American Farm Bureau Federation
American Petroleum Institute
Associated General Contractors of America
Associated General Contractors of Alaska
Copper Development Association
Essential Minerals Association
Independent Petroleum Association of America
National Mining Association
National Stone, Sand & Gravel Association
Resource Development Council for Alaska, Inc.
The Alaska Support Industry Alliance
The Fertilizer Institute
U.S. Chamber of Commerce