Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE – PO Box 40100 – Olympia, WA 98504-0100

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Sent via U.S. and Electronic Mail, and Electronic Submission

Administrator Michael S. Regan
Regional Administrator Casey Sixkiller
Water Docket
Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
ow-docket@epa.gov

Attention: Docket ID No. EPA-R10-OW-2022-0418

RE: Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(c) of the Clean Water Act, Pebble Deposit Area, Southwest Alaska (May 26, 2022): Comments submitted by Washington State Attorney General's Office

Dear Administrator Regan and Regional Administrator Sixkiller:

As Attorney General of a state with close cultural and economic ties to Alaska and an important economic stake in the Alaska salmon fishery, I support EPA Region 10's Proposed Determination to establish reasonable limits on mining at the Pebble deposit in the Bristol Bay watershed.[1] I encourage EPA to take the strongest possible action to protect the extraordinary Bristol Bay ecosystem and its iconic salmon runs for current and future generations. Bristol Bay is a priceless resource that will remain vibrant and productive for generations – but only if we take care of it today.

In 2014, EPA concluded that mining at the Pebble deposit would have unacceptable impacts on the Bristol Bay watershed and its salmon.[2] In 2020, the Army Corps of Engineers reached the

[1] U.S. Environmental Protection Agency, 2022. Proposed Determination of the U.S. Environmental Protection Agency Region 10 Pursuant to Section 404(C) of the Clean Water Act, Pebble Deposit Area. Region 10, Seattle, WA ("Prop. Determination").

[2] After extensive study and consultation with stakeholders, EPA published its Proposed Determination to Restrict the Use of an Area as a Disposal Site; Pebble Deposit Area, Southwest Alaska. 79 FR 42314, July 21, 2014. The 2014 Proposed Determination would have restricted discharge of dredged or fill material related to mining within

same conclusion, denying a permit for mining-related activity.[3] And now, in 2022, EPA's detailed review[4] once again compels the same conclusion: risking Bristol Bay and its unparalleled salmon runs for short-term, uncertain profits from mining simply doesn't make sense.[5]

The Bristol Bay environment, from its headwaters to the ocean, is one of the last pristine salmon-bearing watersheds on Earth.[6] Bristol Bay supports healthy runs of all five Pacific salmon species, including one of the largest remaining runs of Chinook salmon.[7] The Bristol Bay fishery now generates approximately half of the world's supply of wild sockeye salmon.[8]

Discharge of fill and dredged material associated with mining of the Pebble deposit would permanently and unavoidably destroy habitat at the headwaters of two major Bristol Bay rivers, and adversely affect downstream reaches by harming water quality and altering stream flows.[9] Failure of a pipeline or tailings dam that released mineral concentrates or mining waste would have devastating environmental consequences, including destruction of spawning habitat by sedimentation and contamination of rivers with arsenic, cadmium, lead, copper, and other toxic

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the boundaries of the mining claims held by Northern Dynasty Minerals subsidiaries (the proponents of the Pebble Mine). *Id.*

[3] United States Army Corps of Engineers, *Record of Decision for Application Submitted by Pebble Limited Partnership to USACE (Department of the Army Permit #POA-2017-00271)* (November 2020).

[4] Since 2014, EPA has considered extensive new information including updated data on the Bristol Bay fishery resources, new scientific and technical publications, the Final Environmental Impact Statement on the 2020 Mine Plan, and more than 670,000 public comments. *See* Prop. Determination at A.3 ("Information Available Since Issuance of the 2014 Proposed Determination.")

[5] An independent review of the Pebble Mine proposal found that the project was likely to be unprofitable. Midgard Environmental Services, LLC, *Review of the Pebble Mine Project Preliminary Economic Assessment* 8 (December 2021).

[6] Prop. Determination at ES-1. Importantly, the Bristol Bay salmon runs are entirely wild; there are no hatcheries in the watershed. *Id.* at 3-2. Hatcheries are thought to threaten wild salmon populations, partly by competition with the natural stocks adapted to particular rivers. *See* Evenson, D. F., C. Habicht, M. Stopha, A. R. Munro, T. R. Meyers, and W. D. Templin. 2018. *Salmon Hatcheries in Alaska - A Review of the Implementation of Plans, Permits, and Policies Designed to Provide Protection for Wild Stocks*. Special Publication No. 18-12. Anchorage, AK: Alaska Department of Fish and Game, Divisions of Sport Fish and Commercial Fisheries.

[7] The Chinook run on the Nushagak River, one of the watersheds that would be affected by the proposed mining, is "at or near the size of the world's largest." Prop. Determination at 3-20.

[8] *About Bristol Bay*, EPA, https://www.epa.gov/bristolbay/about-bristol-bay (last visited June 21, 2022).

[9] Prop. Determination at 4-4 – 4-11; *Id.* at 4-38 – 4-41.

metals for miles downstream.[10, 11] Damage to the Bristol Bay fishery could persist for decades,[12] and would far outweigh the dubious economic gains from mining.

Commercial fishing has long played an important role in Washington's culture, and the Alaska fishery is a major driver for the Puget Sound economy. Washingtonians have a particularly important relationship with Bristol Bay, holding approximately 760 Bristol Bay fishing permits.[13] As of 2013, Washington residents also owned approximately 1000 boats participating in the Alaska commercial fishery, of which 526 are homeported in Puget Sound.[14] Most of the larger vessels that bring Alaska salmon to market are homeported in Seattle.[15] These vessels use Port of Seattle facilities for maintenance, repair, and loading/offloading. Including economic multiplier effects, Alaska-related commercial fishing generated 10,150 jobs and $600 million in labor earnings in the Puget Sound region in 2013.[16]

Beyond those directly involved in fishing, seafood processing supports thousands of Washingtonians. In 2013, Alaska-related seafood processing created 13,100 jobs and $690 million in earnings in the Puget Sound region.[17] Overall, the Alaska seafood industry generates almost 24,000 jobs and $1.3 billion in labor earnings for the Puget Sound region.[18] By threatening this unique fishery, mining in the Bristol Bay watershed would put an important part of the Puget Sound economy and Washington's culture of fishing at risk.

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[10] *Id.* at 6-6 through 6-13. The Draft Environmental Impact Statement noted that a tailings spill would be "extremely difficult" to recover, and that water quality could be impacted "on a timescale of decades." U.S. Army Corps of Engineers, *Pebble Project Draft Environmental Impact Statement* (2019) at 4.27-65. In the case of a large spill, naturally flushing tailings out of the drainages might require "decades to centuries." Prop. Determination at 6-13.

[11] The proposed tailings dam is "nearly unprecedented in scale relative to historical dam failures." Lynker Technologies, LLC, *A Model Analysis of Flow and Deposition from a Tailings Dam Failure at the Proposed Pebble Mine* at ES-a. (2019).

[12] Prop. Determination at 4-4 – 4-11; *Id.* at 4-38 – 4-41; U.S. Envtl. Protection Agency, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, EPA910-R-14001ES, Executive Summary 19-23 (Jan. 2014).

[13] McKinley Research Group, *The Economic Benefits of Bristol Bay Salmon* 24 (February 2021).

[14] McDowell Group, *Ties That Bind: The Enduring Economic Impact of Alaska on the Puget Sound Region* 19 (Feb. 2015) (prepared for Seattle Metro. Chamber of Commerce).

[15] *Id.*

[16] *Id*. at 2.

[17] *Id*.

[18] *Id.*

Climate change poses a major threat to salmon and to the fishing industry, but Bristol Bay stocks have fared relatively well in recent decades.[19, 20] This has been attributed to the complexity of the Bristol Bay ecosystem, which supports hundreds of individual salmon populations adapted to differing local conditions.[21, 22] Because this variability has been preserved, Bristol Bay fish have retained the capacity to adapt to changing environmental conditions, and the region continues to support Washington's commercial fishing economy.[23] Maintaining the diversity of Bristol Bay salmon by preserving the intact ecosystem will be even more important in the future to ensure that the salmon fishery, along with the economic benefits that it provides in Washington, will be resilient to climate change.

Mining in any part of the Bristol Bay watershed, whether at the Pebble deposit or elsewhere, poses a grave threat to Washington's economy and culture. I cannot stand by and witness the destruction of the priceless resource that is Bristol Bay. I have participated in the Pebble Mine environmental review process in the past,[24] and will continue to oppose any development threatening Bristol Bay's environment. I urge EPA Region 10 to act to preserve the irreplaceable Bristol Bay watershed, by forwarding to EPA Headquarters a recommended determination consistent with the Proposed Determination.

Sincerely,



BOB FERGUSON
Washington State Attorney General

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[19] Crozier LG, McClure MM, Beechie T, Bograd SJ, Boughton DA, Carr M, et al. (2019) Climate vulnerability assessment for Pacific salmon and steelhead in the California Current Large Marine Ecosystem. PLoS ONE 14(7): e0217711. https://doi.org/10.1371/journal.pone.0217711 (last accessed June 21, 2022).

[20] Prop. Determination at 3-61.

[21] *Id*. at 3-43.

[22] *See* Hilborn, R., T. P. Quinn, D. E. Schindler, and D. E. Rogers. 2003. Biocomplexity and fisheries sustainability. *Proceedings of the National Academy of Sciences of the United States of America* 100:6564–6568.

[23] *Id.* at 6567.

[24] Letter from Attorney General Ferguson, commenting on the Pebble Limited Partnership Draft Environmental Impact Statement (EIS No. 20190018), July 1, 2019.