



National Association of Wetland Managers

“Dedicated to the Protection and Restoration of the Nation’s Wetlands”

August 26, 2022

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Regional Administrator, Region 10
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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 [Docket ID: EPA-R10-OW-2022-0418]

Dear Administrator Sixkiller:

The National Association of Wetland Managers (NAWM) submits the following comments in response to the above referenced proposed determination.

NAWM (formerly the Association of State Wetland Managers) is a national 501(c)(3) professional organization established in 1983, with a mission to build capacity for state and tribal members and foster collaboration among the wetland community of practice by encouraging the application of sound science to wetland management and policy, promoting the protection and restoration of wetlands and related aquatic resources, and providing training and education for members and the general public.

First, NAWM wishes to affirm that the Clean Water Act 404(c) regulations effectively provide careful and thoughtful use of the “veto authority” which allows the U.S. Environmental Protection Agency (EPA) to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material. EPA has generally taken 404(c) actions in response to unresolved U.S. Army Corps of Engineers (USACE) permit applications,¹ and since 1972, EPA has made only 13 final determinations under this authority. Only occasionally does the typical 404 permitting process warrant interruption, and this provision remains an important measure for those extremely rare instances. NAWM understands the proposed Pebble deposit mine to be a prudent and judicious example of EPA exercising its 404(c) authority and that the agency is doing so within the framework of a diligent, inclusive, and transparent process.

¹ USEPA (U.S. Environmental Protection Agency). Clean Water Act Section 404(c) “Veto Authority” Factsheet. <https://www.epa.gov/sites/default/files/2016-03/documents/404c.pdf>

NAWM recommends that EPA Region 10 prepare a recommended determination with equal or greater protections as the proposed determination.²

NAWM supports EPA Region 10's proposed action to protect the watersheds underlain by the Pebble deposit for three primary reasons: (1) to protect the wetlands, streams, and other waters which provide critical habitat to salmon, other aquatic life, and a diversity of wetland-dependent wildlife; (2) to preserve the subsistence livelihood of Indigenous peoples and tribal values and culture associated with this region; (3) and for the economic value of the Pacific wild salmon fisheries which are inextricably linked to the health of the Bristol Bay watershed.

(1) Ecological Protection

The pristine wetlands and waters in the Bristol Bay watershed support and sustain a uniquely diverse and productive wild salmon population unlike any other in North America (and likely the entire world), largely due to the intact and connected aquatic habitat from headwaters to the ocean.³ Bristol Bay boasts the world's largest Sockeye salmon runs (making up about half of the world's total Sockeye), one of the world's largest runs of Chinook salmon, and significant populations of Coho, Chum, and Pink salmon. This highly productive ecosystem includes at least 29 species of fish, over 190 species of birds, and more than 40 terrestrial mammals.⁴

EPA finds that Pebble Limited Partnership's (PLP) 2020 Mine Plan would result in significant degradation to waterways and aquatic habitat and thus cause permanent and irreversible damage to local fisheries for which **no known compensation measures would adequately mitigate the aquatic impact.**⁵

EPA Region 10 evaluated two compensatory mitigation plans submitted in 2020 by the project proponent, PLP, and found that neither plan adequately mitigated the adverse impacts on anadromous fishery areas to an acceptable level. As an extra step, EPA Region 10 evaluated potential compensation measures not incorporated in the plan, including but not limited to ideas proposed in public comments to the 2014 Proposed Determination, but EPA still concluded that "available information demonstrates that known compensation measures are unlikely to adequately mitigate effects described in this proposed determination to an acceptable level."⁶

In the Pebble Project Record of Decision, USACE concluded that the "proposed discharge does not comply with 404(b)(1) Guidelines [for Specification of Disposal Sites] because the proposed project will result in significant degradation of the aquatic ecosystem" and "the proposed project is contrary to the public interest."⁷ Referencing the project alternatives analysis evaluated in the Final Environmental

² USEPA Solicitation of Comments #1: "Comments regarding whether the EPA Region 10 Regional Administrator should withdraw the proposed determination or prepare a recommended determination for review by the Assistant Administrator for the Office of Water."

³ USEPA. 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. [hereafter "USEPA. 2022 Proposed Determination."] p. ES-1

⁴ USEPA. 2014. *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*. Executive Summary. Region 10, Seattle, WA. [hereafter "USEPA. 2014. Bristol Bay Assessment."] p. 6

⁵ USEPA. 2022 Proposed Determination. p. ES-16

⁶ *Ibid.*

⁷ United States Army Corps of Engineers. November 20, 2020. *Record of Decision for Application Submitted by Pebble Limited Partnership* (Army Permit #POA-2017-00271). p.7-1

Impact Statement, USACE determined the project proponent’s compensatory mitigation plan to be noncompliant with nine specific requirements of rule and therefore inadequate to make up for the substantial devastation of streams, wetlands, and other waters.⁸ These findings resulted in USACE denying PLP’s permit application.

The proposed determination’s three “restricted” watersheds—South Fork Kaktuli River (SFK), North Fork Kaktuli River (NFK), and Upper Talarik Creek (UTC)—include at least 42,111 acres of wetlands covering 18% of the watershed area.⁹ These are conservative estimates, and actual wetland acreage may be as high as 40% greater.¹⁰ The proposed mine is projected to permanently remove 99.7 miles of high value stream habitat, 2,052 acres of mostly pristine wetlands, and 61 additional acres of other waters (totaling 2,113 acres of wetlands, lakes, and ponds).¹¹ Secondary effects of the discharge would additionally alter flow of at least 29 miles of anadromous fish streams downstream with over 20% change to average monthly streamflow.¹²

Moreover, the projected impact of the “reasonable expansion” to the mine site would cause much greater devastation, resulting in total and permanent loss of 430 stream miles and over 10,800 acres of wetlands and other waters.¹³ That roughly equals stream loss the same distance as driving from Washington, D.C. to Boston, MA and wetland loss that exceeds the combined area of Bethesda and Chevy Chase, MD or almost the size of Olympia, WA.

The proposed determination effectively summarizes why protecting these watersheds is critical to sustaining the local wild salmon populations:

*Headwater streams and wetlands play a vital role in maintaining diverse, abundant fish populations—both by providing important fish habitat and by supplying the energy and other resources needed to support fishes in connected downstream habitats. Headwater streams and wetlands are abundant in the Pebble deposit area and likely play a crucial role in supporting local and downstream fish populations.*¹⁴

Through decades of research—and as synthesized in EPA’s 2015 Connectivity Report¹⁵—the scientific literature has documented the effect of small headwater streams, wetlands, and ephemeral waters in maintaining the chemical, physical, and biological integrity of larger downstream waters.

NAWM understands that the likely adverse effects on fishery areas and other ecological resources either directly or indirectly affected by discharges of dredged or fill material associated with mining the Pebble deposit are significantly detrimental and unable to be mitigated adequately. Therefore, NAWM agrees with the proposed prohibited and restricted protections as a base level of protection.

⁸ *Ibid.* p. 6-5

⁹ USEPA. 2022 Proposed Determination. p. 3-8 (Data source: USFWS 2021 NWI Wetlands data)

¹⁰ *Ibid.* p. 3-8

¹¹ *Ibid.* pp. ES-10, 4-49

¹² *Ibid.* p. ES-10

¹³ *Ibid.* pp. ES-16– ES-17

¹⁴ *Ibid.* p. 3-11

¹⁵ USEPA. 2015. *Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of the Scientific Evidence*. EPA/600/R-14/475F. Office of Research and Development, Washington, DC.

Proposed Prohibition and Restriction:¹⁶ Notably, the proposed determination is limited in that it only applies to discharges of dredged or fill material associated with mining the Pebble deposit. The proposed “prohibited” defined area only pertains to the mine site footprint located in the SFK and NFK watersheds (the mine site proper). In defining the prohibited area, EPA should additionally consider potential aquatic impacts of discharges associated with the complete project, including construction and operation of mine infrastructure (e.g., port, pipelines, and transportation corridors).¹⁷ Construction of major infrastructure will cause additional and potentially significant ecological impacts similar to those of the mine site footprint, and spills or other failures of this infrastructure could result in “severe impacts to aquatic resources” in the SFK, NFK, and UTC watersheds.”¹⁸

The proposed “restricted” defined area includes “any future plan to mine the Pebble deposit that would either individually or collectively result in adverse effects similar or greater in nature and magnitude to those described...in the 2022 Proposed Determination.”¹⁹ The restriction includes four findings of unacceptability, each of which relates to anadromous fish habitat, and where any project plan triggering any one of these findings would be subject to the restriction. NAWM supports this restriction as proposed because it provides future protection of critical anadromous fish habitats.

(2) Tribal Traditional Values & Culture

NAWM firmly believes in protecting the tribal traditional values, culture, health, and social connections centered on salmon fishing and other subsistence and cultural resources in the Nushagak and Kvichak River watersheds. Large-scale mining such as the 2020 Mine Plan puts both the salmon and Native peoples at extreme risk. Habitat destruction or modification associated with mining discharge will inevitably and directly affect all subsistence and cultural resources—including fish and other sources (e.g., wildlife, waterfowl, and plants). The impact will be incurred most severely and unfavorably by Alaska Native communities who live in the affected areas and depend on subsistence foods for their basic nutrition as well as cultural and social connections.²⁰

Fourteen Alaska Native villages are within the Nushagak and Kvichak River watersheds, and essentially every household uses subsistence resources.²¹ The Yup’ik and Dena’ina Indigenous peoples who live in these watersheds have a 12,000-year history of collecting wild subsistence resources (at least 4,000 years harvesting salmon)²² and are “two of the last intact, sustainable, salmon-based cultures in the world.”²³ Subsistence foods comprise a substantial part of their diet, and their language and culture are inseparably connected to wild salmon and subsistence.²⁴ The proposed determination helps safeguard tribal traditional values and culture from damages by mining discharge.

¹⁶ USEPA Solicitation of Comments #9: “Comments regarding whether the discharge of dredged or fill material associated with mining the Pebble deposit should be prohibited, prohibited/restricted as proposed, prohibited/restricted in another manner, or not prohibited/restricted at all.”

¹⁷ USEPA Solicitation of Comments #10: “Comments on whether and how EPA Region 10’s proposed action under CWA Section 404(c) should consider discharges of dredged or fill materials beyond those associated with the mine site and include discharges associated with the construction of other mine infrastructure (e.g., port, pipelines, transportation corridors).”

¹⁸ USEPA. 2022 Proposed Determination. p. 6-6

¹⁹ *Ibid.* p. ES-13

²⁰ *Ibid.* p. 6-25

²¹ USEPA. 2014. Bristol Bay Assessment. p. 9

²² USEPA. 2022 Proposed Determination. p. 6-20

²³ USEPA. 2014. Bristol Bay Assessment. p. 8

²⁴ USEPA. 2022 Proposed Determination. pp. 6-20, 6-24

(3) Economic Value

Beyond the irreplaceable ecological and cultural roles that salmon play, the salmon fishery provides a significant economic value to the region and beyond. Salmon resources are Bristol Bay's largest source of economic activity, with an estimated annual value of \$2.2 billion.²⁵ Fisheries provide about half of all jobs, with commercial salmon fishing generating an estimated 15,000 jobs. Bristol Bay residents earn almost 28% of the income linked to the Bristol Bay salmon fisheries,²⁶ and over half of Bristol Bay salmon permit holders are residents of Alaska.²⁷ Losing this economic resource would be a tremendous loss to the people and state of Alaska.

For these enumerated reasons, NAWM recommends that EPA Region 10 prepare a recommended determination with equal or greater protections as the proposed determination.

NAWM appreciates the opportunity to comment on this matter. While these comments have been prepared with input from the NAWM Board of Directors, they do not necessarily represent the individual views of all our members. Please contact me should you wish to further discuss these comments.

Sincerely,



Marla J. Stelk

Executive Director

Cc: NAWM Board of Directors

²⁵ *Ibid.* p. ES-3

²⁶ *Ibid.* p. 6-23. (*Note:* this income figure excludes subsistence activities.)

²⁷ *Ibid.* p. 3-51 (2019 data)