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Via E-Mail

**Comments of the Competitive Enterprise Institute, 60 Plus Association, Heritage Action for America, Freedom Works, Project 21, Reaching America, American Lands Council, American Business Defense Council, John Lock Foundation, Rio Grande Foundation, New Mexico Federal Lands Council, Protect Americans Now**

**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**

**Docket No. EPA-R10-OW-2022-0148  
87 FR 32,021 (May 26, 2022)**

The undersigned free market organizations are pleased to have the opportunity to comment regarding the Environmental Protection Agency's Revised Notice of Proposed Determination related to the Pebble Mine in Alaska (2022 Proposed Determination). Several of us have previously commented in favor of approving this mine and against adverse actions taken by both the Obama and Trump Administrations. Our focus has been on ensuring that this important mine is subject to a fair permitting process under the National Environmental Policy Act (NEPA), and that the conduct of this evaluation by the Army Corps of Engineers (Army Corps) not be subject to unwarranted and unjustified interference from the Environmental Protection Agency (EPA). These concerns persist with the 2022 Proposed Determination.

**I. EPA Continues To Needlessly Interfere In The Army Corps' NEPA Process**

We were particularly concerned about EPA's 2014 Bristol Bay Watershed Assessment (BBWA), both regarding its quality and objectivity as well as its timeliness given that it was conducted before any mine application had been submitted and thus was based on purely hypothetical mine scenarios. The BBWA provided the basis for the original "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," (2014 Proposed Determination). The 2014 Proposed Determination served as a pre-emptive veto of the project, effectively circumventing the Army Corps' NEPA process just as it was commencing.

In November of 2018, the Competitive Enterprise Institute filed a Notice of Correction, pursuant to the Information Quality Act, detailing the factual errors in the BBWA.<sup>1</sup> The agency

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<sup>1</sup> Competitive Enterprise Institute, "Information Quality Act Request for Correction or Withdrawal Regarding the Bristol Bay Watershed Assessment," November 14, 2018, [https://cei.org/sites/default/files/RFC\\_20181114\\_Bristol\\_Bay.pdf](https://cei.org/sites/default/files/RFC_20181114_Bristol_Bay.pdf).

delayed responding to this petition and then declared the issue moot with the withdrawal in 2019 of the 2014 Proposed Determination (subsequently vacated by a federal court). However, the BBWA itself was never withdrawn and has continued to be cited by mine critics, and its content provides part of the support for the 2022 Proposed Determination that is the subject of this comment.

Although the 2014 Proposed Determination was made in the absence of any mine permit application, one has since been filed in 2017 and revised in 2020, and thus our previous concern that the BBWA was premature is no longer relevant. However, our other concerns with the factual content of the BBWA, as well as similar ones repeated in subsequent materials relied upon by EPA, remain valid. This includes a bias towards extreme scenarios, selective use of inputs, and failure to acknowledge the full range of mitigation options.<sup>2</sup> They provide ample reason to oppose the 2022 Proposed Determination.

Separately, the Army Corps has issued a Final Environmental Impact Statement (FEIS) and rejected the mine permit application in 2020, and the matter is currently subject to the appeals process under NEPA.<sup>3</sup> Thus, once again, a flawed EPA Notice of Proposed Determination is circumventing the Army Corps' process.

There are reasons to believe that the Army Corps may reverse its rejection of the mine, especially given the key findings in the FEIS that its environmental impacts would be minimal, and especially those on the salmon fishery.<sup>4</sup> This includes the conclusion that “there would be no measurable change in the number of returning salmon....”<sup>5</sup> In any event, the appeal should be Army Corps' decision, free from EPA interference in the form of the 2022 Proposed Determination.

## II. The Potential Benefits Of The Pebble Mine Have Grown Since The 2014 Proposed Determination

In terms of identifying any genuine environmental concerns with the Pebble Mine, little has changed with the EPA's 2022 Proposed Determination. It is every bit as deficient as the agency's 2014 Proposed Determination and BBWA upon which it was based. What has changed is the growing demand for the minerals that the Pebble Mine could provide.

The 2022 Proposed Determination would not only make certain that the Pebble Mine project won't go forward no matter the outcome of the pending appeals process at Army Corps,

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<sup>2</sup> Ibid. at 7-9.

<sup>3</sup> U.S. Army Corps of Engineers Press Release, “USACE POD Receives Pebble Mine Appeal Administrative Record,” May 27, 2021, <https://www.pod.usace.army.mil/Media/News-Releases/Article/2637978/usace-pod-receives-pebble-mine-appeal-administrative-record/>.

<sup>4</sup> Army Corps of Engineers, “Pebble Project Environmental Impact Statement, Executive Summary,” July 2020, <https://www.arlis.org/docs/vol1/Pebble/Final-EIS/Pebble-FEIS-summary.pdf>.

<sup>5</sup> Ibid. at 87.

but it would also prejudice any future proposed mines throughout the 42,000 square mile (Indiana-sized) Bristol Bay Watershed. In so doing, it seriously jeopardizes any chance of expanding domestic production of copper, molybdenum, rare earths, and other minerals that will continue to be in high demand in the years ahead. This would be true in any event but particularly so to the extent the U.S. pursues a so-called clean energy transition in the name of addressing climate change.

A recent report from the International Energy Agency (IEA) finds that “a typical electric car requires six times the mineral inputs of a conventional car and an onshore wind plant requires nine times more mineral resources than a gas-fired plant.”<sup>6</sup> This includes several of the minerals for which the Pebble Mine would be an important source of additional domestic supply. Of course, the extent of the increased demand for mined materials depends on the stringency of the climate change targets. The IEA finds that “our bottom-up assessment suggests that a concerted effort to reach the goals of the Paris Agreement ... would mean a quadrupling of mineral requirements for clean energy technologies by 2040. An even faster transition, to hit net-zero globally by 2050, would require six times more mineral inputs in 2040 than today.”<sup>7</sup> Note that net-zero by 2050 is a goal that has been embraced by the Biden Administration.<sup>8</sup>

It should be emphasized that this comment in no way endorses these or any other climate goals. Nonetheless, these goals are currently being pursued by the Biden Administration and will be rendered prohibitively costly (if not completely unachievable) without increased supplies of needed minerals.

The source of minerals supplies is also a concern. The U.S. Geological Survey’s recent report, “Mineral Commodity Summaries, 2022,” highlights the extent to which these minerals must be imported.<sup>9</sup> The study notes that, “in 2021, imports made up more than one-half of the U.S. apparent consumption for 47 nonfuel mineral commodities, and the United States was 100% net import reliant for 17 of those. Of the 35 minerals or mineral material groups identified as ‘critical minerals’ published in the Federal Register on May 18, 2018 (83 FR 23295), the United States was 100% net import reliant for 14, and an additional 15 critical mineral commodities had a net import reliance greater than 50% of apparent consumption.”<sup>10</sup> The study further notes that

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<sup>6</sup> International Energy Agency, “The Role of Critical Minerals in Clean Energy Transitions,” March 2022, p. 5, <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf>.

<sup>7</sup> Ibid. at 8.

<sup>8</sup> See, White House Fact Sheet, “President Biden Sets 2030 Greenhouse Gas Pollution Targets Aimed At Creating Good Paying Union Jobs And Securing U.S. Leadership on Clean Energy Technologies, April 22, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

<sup>9</sup> U.S. Geological Survey, “Mineral Commodity Summaries, 2022,” <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022.pdf>.

<sup>10</sup> Ibid. at 5.

America is dependent on China for the more than 50 percent of its supply of 25 different minerals.<sup>11</sup>

This dependence is avoidable, as the U.S. has vast deposits of many such minerals, but they are currently off limits to production.<sup>12</sup> The Pebble Mine would likely be the single largest addition to domestic minerals production in several decades.

The Biden Administration has repeatedly articulated the goal of predominantly domestic minerals to meet its climate objectives. For example, the recently-enacted Inflation Reduction Act of 2022 extends the \$7,500 tax credit for electric vehicles but makes the full tax credit contingent on the vehicle batteries being made with a minimum content of minerals either sourced from the U.S. or a nation for which the U.S. has a free-trade agreement. Virtually no electric vehicles made today would qualify.

Thus, the 2022 Proposed Determination would deprive the American economy of several important minerals, and is at odds with many other elements of the Biden Administration's environmental and economic agenda.

### III. Conclusion

EPA's 2022 Proposed Determination on the Pebble Mine is every bit as factually suspect as the 2014 version, continues to interfere unnecessarily with Army Corps' ongoing NEPA process, and precludes the production of minerals of great value to the American economy. For these reasons, we once again urge EPA to withdraw the 2022 Proposed Determination and refrain from interfering in the Army Corps proceedings currently underway. Thank you for your consideration.

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<sup>11</sup> Ibid. at 5.

<sup>12</sup> Ned Mamula, "Federal Land Withdrawals: Endangering the Nation," Green Watch, Capital Research Center, January 2020, <https://capitalresearch.org/article/federal-land-withdrawals-part-1/>.

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