



December 13, 2022

Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Re: Clean Water Act 404(c) Final Determination for Bristol Bay

Dear Assistant Administrator Fox,

As you know, the Environmental Protection Network (EPN) is an organization of over 550 U.S. Environmental Protection Agency (EPA) alumni volunteering their time to protect the integrity of EPA, public health, and the environment. EPN harnesses the expertise of former EPA career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators with decades of historical knowledge and subject matter expertise. Many of EPN members have been involved with the issuance of most, if not all, of the Section 404(c) Determinations issued by the EPA over the history of this program. As discussed below, EPN fully supports the issuance of a Final Determination for the Bristol Bay watershed under Section 404(c) of the Clean Water Act.

On September 6, 2022, EPN submitted comments¹ in support of EPA Region 10's issuance of a Proposed Determination under Section 404(c) of the Clean Water Act to prohibit and restrict the designation of the areas in the Bristol Bay watershed for the discharge of dredged or fill material into jurisdictional waters of the U.S. as part of the Pebble Mining operation in Bristol Bay, Alaska. The watershed in Bristol Bay, including the rivers, streams, and wetlands in the area, supports the world's largest sockeye salmon fishery and provides for a subsistence-based way of life that has sustained Alaska Native communities for thousands of years. The 2022 Bristol Bay Proposed Determination provided a detailed analysis of the potential impacts of the mining with supporting documentation and met the criterion for issuing a Section 404(c) Final Determination. EPN agreed with and supported the conclusions that the proposed mine operation would have unacceptable adverse effects on the anadromous fisheries and other natural resources in the watershed and supported the Region 10 issuance of the Section 404(c) Proposed Determination prohibiting the specification of the site identified in the 2020 Mining Plan. EPN also supported the restriction on the specification of any other mining activities in the Pebble deposit in the identified Bristol Bay watershed that would have the same, similar, or more extensive impacts. EPN encouraged the Region 10 Regional Administrator to submit a Recommended Determination to you for consideration.²

¹ <https://www.environmentalprotectionnetwork.org/wp-content/uploads/2022/09/EPN-comments-on-Pebble-Mine-2020-Proposed-Determination.pdf>

² Under the regulations, the Regional Administrator is authorized to sign and issue the proposed determination and the recommended determination. Although there had been a one-time delegation from the Administrator to the EPA General Counsel for the earlier 404(c) actions related to Pebble, on May 17, 2022, that delegation was withdrawn and the existing delegation from the Administrator to the Assistant Administrator for water remains effective. See fn11, Proposed Determination at Pp 1-2.

The EPA Region 10 Regional Administrator has now taken the next step in the Section 404(c) process, submitting a Recommended Determination to you along with supporting documentation. The Recommended Determination reached the same conclusions as the Proposed Determination and includes a Recommended Prohibition and a Recommended Restriction. The Recommended Determination, based on the extensive Administrative Record and a review of information and comments submitted during the lengthy public comment period, continued to find that the proposed project would have unacceptable adverse effects on the anadromous fisheries and other natural resources in the watershed. EPN has reviewed the Recommended Determination and continues to support the issuance of the Section 404(c) Final Determination and urges you to issue a Final Determination.

Thank you for your attention to our recommendation. We would be happy to discuss this with you or your staff at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Roos".

Michelle Roos
Executive Director
Environmental Protection Network

cc: Casey Sixkiller, Regional Administrator, EPA Region 10
Juan Sabater, Special Assistant to the Assistant Administrator, EPA Office of Water