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united
TRIBES OF BRISTOL BAY

July 27, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004
regan.michael@epa.gov

Re: United Tribes of Bristol Bay Request for Immediate Voluntary Remand

Administrator Regan,

The 15 federally recognized Tribes that comprise the United Tribes of Bristol Bay (UTBB) represent more than 80% of the people who call the bay home, just as our ancestors have for millennia. Our sacred lands and waters that sustain our salmon-based cultures and a robust sustainable fishing economy should not be open to mining development.

The importance of protecting our watershed couldn't be more clear. This year, fishermen in the Nushagak district broke commercial harvest records - and the season has yet to come to a close. Also a new Bay wide record was set- the best since 1884 - with more than 63 million salmon returning to Bristol Bay waters to date. This record run comes as we have watched drought and extreme temperatures decimate salmon runs all across the west coast. While the Bristol Bay fishery is breaking records, the CEO of the Pebble Mine has recommitted to developing the mine and pledged that they haven't given up on the project. Until the Bay is protected, our people, communities, and livelihoods remain at risk.

Since our tribes first petitioned the EPA in 2009, we have been clear in our request of the agency: issue a Section 404(c) determination under your Clean Water Act authority and protect our watershed from large-scale mining like the proposed Pebble Mine. After extensive scientific study and public process, in 2014 Administrator McCarthy initiated the 404(c) process and in 2015 when he visited, President Obama recognized Bristol Bay as a "national treasure" that needed permanent protections. Unfortunately, the EPA process was not completed before the change in administrations, and, for purely political reasons, the 2014 Proposed Determination (PD) was withdrawn in 2019 under the Trump administration.

The recent decision by the Ninth Circuit Court of Appeals in *Trout Unlimited et al. v. Pirzadeh et al.*, provides an opportunity for the EPA, under your leadership, to complete the Section 404(c) process begun in 2014 and provide the lasting protections that President Biden and President Obama promised to deliver. We implore the Biden administration to take the following immediate steps to resume the 404(c) process that was prematurely and arbitrarily withdrawn by the prior administration.

First, we request that you promptly ask the Court of Appeals for an immediate voluntary remand of the 2019 withdrawal decision to enable the EPA to reconsider that decision in light of the standard articulated by the court: *whether discharge of materials associated with mining the Pebble deposit "would be unlikely to have an unacceptable adverse effects."*

Second, we ask that you incorporate into the review the extensively documented scientific record. That record undeniably shows that the proposed Pebble Mine would have devastating impacts on the watershed and that these effects are not only “likely” but virtually assured to happen if development is allowed to proceed. The 2019 withdrawal decision must be reversed based on this unequivocal scientific record.

Finally, we urge you to reinstate the 2014 PD withdrawn by the Trump Administration in 2019. The EPA public comment period for Bristol Bay generated over a million public comments in support of 404(c) action and the science developed in the intervening years provides ample support for the agency to move toward a final Section 404(c) determination -- with the 2014 PD as a starting point.

Salmon are the lifeblood of Bristol Bay’s Native people, not just holding deeply rooted religious and cultural significance, but providing the primary present day economic resource for the Native communities of the region. Any disruption of the waters, such as Pebble Mine’s projected destruction of more than 80 miles of streams and 3,500 acres of wetlands, would devastate our communities. Similarly, the construction of a 230 megawatt power plant and installation of a 188-mile long natural gas pipeline and accompanying transportation corridor would directly burden the Tribes’ ability to continue our sacred cultural practices that sustain our way of life.

UTBB believes strongly that proper application of the law and the science to the current circumstances allows only one acceptable result: permanent protections for the Bristol Bay watershed through Section 404(c).

Please act expeditiously to make this result a reality.

Sincerely,

A handwritten signature in blue ink that reads "Robert Heyano". The signature is written in a cursive, flowing style.

Robert Heyano, President
United Tribes of Bristol Bay