No. 22O157

In the Supreme Court of the United States

STATE OF ALASKA,
Plaintiff,
v.
UNITED STATES OF AMERICA;
MICHAEL S. REGAN, ADMINISTRATOR OF THE
U.S. ENVIRONMENTAL PROTECTION AGENCY,
Defendants.

ON MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT

BRIEF FOR ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for *Amicus Curiae*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*

The Alaska Industrial Development and Export Authority (AIDEA) is a public corporation of the State of Alaska, constituting a political subdivision under its laws "but with separate and independent legal existence." Alaska Stat. § 44.88.020. The Alaska Legislature created AIDEA "to promote, develop, and advance the general prosperity and economic welfare of the people of the state, to relieve problems of unemployment, and to create additional employment." *Id.* § 44.88.070. AIDEA encourages economic growth and diversification in Alaska by providing means of financing and assistance to Alaska businesses, including through its Credit and Development Finance Programs. *Id.* § 44.88.080. Revenue generated by AIDEA investments is allocated towards reinvestment in AIDEA programs, AIDEA projects, and dividends to the State's general fund.*

AIDEA has a significant interest in this case, which implicates Alaska's economic development. AIDEA has an important role in developing Alaska's mineral deposits, offered to the residents of Alaska as part of a statehood compact. Unlike other state economic development corporations, AIDEA is set up to own or operate infrastructure projects tied to the development of state and natural resources that were granted to Alaska. It invests in, owns, or finances

---

* Under Rule 37.2, *amicus* provided timely notice of its intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

infrastructure development projects that pave the way for retrieving these natural resources, such as industrial roads and ports. *Id.* §§ 44.88.070, 44.88.172. This long-term infrastructure is needed for the growth and diversification of the Alaskan economy.

For example, AIDEA issued bonds and provided financial support for what is known as the Delong Mountain Transportation System, the route that allows the Red Dog Mine in Northwest Alaska to export its ore (primarily zinc) to market. Red Dog Mine is one of the largest zinc mines in the world and creates hundreds of good-paying jobs, many of which are filled by locals. AIDEA did not invest directly in the Red Dog Mine but provided the necessary infrastructure for the mine to operate economically, and AIDEA earns a return on that investment. The project has brought in billions in revenue for Alaska Native shareholders, the State, and schools and villages in the Northwest Arctic Borough.

In the same way, financing infrastructure needed to operate the proposed Pebble Mine, such as roads or power plants, would generate economic value for the State, create thousands of new jobs, and earn AIDEA a return on its investment in accord with its statutory directives. Depriving the State of its natural resource rights, on the other hand, destroys value, makes infrastructure development infeasible, depresses family-wage job creation, and financially harms AIDEA. Last, AIDEA has active projects on other state lands that could be affected by § 404(c) vetoes by the federal Environmental Protection Agency. Thus, the legality of EPA's veto is of significant concern.

SUMMARY OF THE ARGUMENT

The Court should exercise its original jurisdiction to answer the pressing question of whether Alaska's citizens have the right to develop Alaska-owned resources granted to the State as a condition of statehood. Alaska's creation as a new State was premised on a grant of land and mineral rights agreed to in a compact with Congress. Once those rights were granted to the State, the federal government lost the right to interfere with them. The legislative history confirms that is how both Congress and Alaska understood the compact. This compact—a federal law known as the Statehood Act—binds the federal government, including its agencies. And the federal government pledged decades ago in the Alaska National Interest Lands Conservation Act (ANILCA) that it would not withdraw any more lands from Alaska as federal preserves. Post-statehood, federal control and withdrawals of more lands to make new reserves was so out of balance with human use and resource development that Congress said "no more" and included language to that effect in ANILCA. *See* 16 U.S.C. §§ 3101(d), 3213.

Because Alaska validly selected the Pebble land here and obtained the rights over mineral deposits on that land, the federal government cannot renege on its agreement by taking away those rights. Yet that is exactly what the federal government has done through EPA's purported veto, which contradicts the Statehood Act's agreed right for Alaska "to prospect for, mine, and remove" minerals from its lands. Alaska's benefit from its statehood bargain is eviscerated if its ability to access minerals is up to

federal bureaucratic whim. EPA's § 404(c) veto simultaneously contradicts ANILCA by creating a new de facto federal reserve. Alaska and AIDEA, Alaska's economic development corporation established to develop these resources, have strong legal claims for redress.

Only this Court can provide complete redress. Such redress is important to Alaska's economic development and future. Projects like the Pebble Mine provide employment, create value, and are an economic engine promoting infrastructure development and growth. AIDEA regularly helps develop the infrastructure necessary for similar projects, which have significant downstream positive benefits in terms of jobs, value-creation, and human capital development. The roads and other infrastructure that make these projects possible can then be used in many other economically productive ways.

The EPA's use of a § 404(c) veto to stop the development of the Pebble Mine disrupts this positive feedback loop of economic activity. It threatens similar resource development projects on state lands in Alaska, including those that involve the development of strategically important metals. And Alaska cannot fully prevent these negative consequences without this Court's plenary review. Alaska needs relief now, but bringing an injunctive claim in district court risks foreclosing any damages claim. And even if a damages claim were eventually possible in the Court of Federal Claims, assessing at that point all the derivative, downstream consequences of the EPA's unlawful action would be a great challenge.

Because the State's action fits within this Court's original jurisdiction, implicates a grave matter of national importance, involves a strong merits claim, and cannot be adequately resolved elsewhere, the Court should grant the motion and file the complaint.

ARGUMENT

I. EPA's purported veto reneges on the United States' legal commitments to Alaska.

The Court should exercise original jurisdiction because Alaska has a strong claim against the federal action, which violates the binding compact that made Alaska a State. Congress offered Alaska statehood on certain terms, including that Alaska would receive not only lands but also the minerals on those lands, the right to develop those resources, *and* the right to regulate that development. Alaskans accepted the offer. This compact binds all components of the United States—including Congress and federal agencies—and cannot be unilaterally changed by the federal government. The Statehood Act's text, context, and legislative history all confirm that Congress's intent was to give Alaska the prerogative to use and develop natural resources on the lands granted to the State. And Congress reiterated in the later Alaska National Interest Lands Conservation Act that no more federal withdrawals of land from resource development would occur.

The EPA's § 404(c) veto contradicts these legal obligations. It takes away the right to develop resources guaranteed by the Statehood Act compact. It contravenes congressional intent to make Alaska self-sufficient. And it effectively creates a new federal

withdrawal of state lands from state control not authorized by Congress. These serious legal deficiencies warrant this Court's immediate review.

A. Congress has authority to enter binding compacts.

The Property Clause of the U.S. Constitution gives Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. This clause "gives Congress plenary power to legislate" about "federal land." *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 581 (1987). "The disposal must be left to the discretion of Congress," and this power is "without limitation." *United States v. Gratiot*, 39 U.S. (14 Pet.) 526, 537–38 (1840); *see also Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976); *Alabama v. Texas*, 347 U.S. 272, 273 (1954) (same).

One way Congress may exercise this power is to enter into binding agreements disposing of federal property, including statehood agreements. These are "solemn agreement[s]" that "may be analogized to a contract between private parties," *Andrus v. Utah*, 446 U.S. 500, 507 (1980), "unalterable except by consent." *Cooper v. Roberts*, 59 U.S. (18 How.) 173, 177 (1855). Thus, "Congress cannot, after statehood, reserve or convey" "lands that have already been bestowed upon a State." *Hawaii v. Off. of Hawaiian Affs.*, 556 U.S. 163, 176 (2009) (quoting *Idaho v. United States*, 533 U.S. 262, 280 n.9 (2001)). "[T]he consequences of admission are instantaneous." *Id.* (quoting *Idaho*, 533 U.S. at 284 (Rehnquist, C.J., dissenting)). "Congress could not, for instance, grant lands to a State on

certain specific conditions and then later, after the conditions had been met and the lands vested, succeed in upsetting settled expectations through a belated effort to render those conditions more onerous." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 632 (1989).

Befitting Congress's unlimited, discretionary power over federal land, its statehood agreements differ from state to state, with different levels and types of property rights conveyed to different states. That states are generally "admitted into the Union 'on an equal footing with the original states'" "does not affect Congress' power to dispose of federal property." *Alabama*, 347 U.S. at 275 (Reed, J., concurring). The "equal footing" doctrine guarantees new states a floor of certain sovereign political rights. "While the ownership of certain lands within state boundaries has been held to be an inseparable attribute of the political sovereignty guaranteed equally to all States, the geographic extent of those boundaries, and thus of the lands owned, clearly has nothing to do with political equality." *United States v. Louisiana*, 363 U.S. 1, 77 (1960) (cleaned up).

Here, as shown next, Alaska bargained for and received some of the most extensive property rights in land granted by Congress.

B. The Statehood Act is a binding compact that gives development rights to Alaska.

Before statehood, a unique problem confronted Alaska: "absent a land grant from the Federal Government to the State, there would be little land available to drive private economic activity and contribute to the state tax base." *Sturgeon v. Frost*,

577 U.S. 424, 429 (2016) ("*Sturgeon I*"). This solution to this problem was "a unique and generous land selection formula" that was viewed as "a novel and bold precedent shattering way in determining how land should be transferred to the new state." Claus M. Naske & Herman E. Slotnick, *Alaska: A History* 229 (2011). This Court has explained the details of this solution:

> The 1958 Alaska Statehood Act permitted Alaska to select 103 million acres of "vacant, unappropriated, and unreserved" federal land—just over a quarter of all land in Alaska—for state ownership. [Pub. L. No. 85-508,] §§ 6(a)–(b), 72 Stat. [339,] 340. That land grant included "mineral deposits," which were "subject to lease by the State as the State legislature may direct." § 6(i), *id.* at 342. Upon statehood, Alaska also gained "title to and ownership of the lands beneath navigable waters" within the State, in addition to "the natural resources within such lands and waters," including "the right and power to manage, administer, lease, develop, and use the said lands and natural resources." § 3(a), 67 Stat. 30, 43 U.S.C. § 1311(a); § 6(m), 72 Stat. 343. With over 100 million acres of land now available to the new State, Alaska could begin to fulfill its state policy "to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Alaska Const., Art. VIII, § 1 (2014).

Sturgeon I, 577 U.S. at 429.

Several facets of this agreement—which describes itself as "a compact with the United States" (§ 4)—are especially relevant. The compact contained an offer by Congress to Alaska: to transfer to the new state ownership and control over resource development decisions in 102,550,000 acres of federal lands (millions of acres of submerged lands), the minerals in those lands, and (critically) the "right to prospect for, mine, and remove" those minerals if Alaska voters accepted statehood. §§ 6(b), (i); *see* § 6 (m) (incorporating Submerged Lands Act's grant of property rights to states in 43 U.S.C. § 1311(a)).

Confirming the scope of this offer, in § 1 of the Statehood Act, Congress "accepted" Alaska's Constitution, including Article VIII, § 2: "The [Alaska] legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." *See also* Alaska Const. art. VIII, § 12 ("The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law."). Thus, the compact delegates authority over resource development decisions on state land to the Alaska Legislature.

The compact also contained valuable consideration. Among other things, Alaska gave up rights to other lands. *E.g.*, § 4, 72 Stat. 339.

Unlike in other western states, where admittance to the Union depended on a later state constitutional

convention,[1] Congress gave Alaskans the ability to accept (or reject) statehood by direct vote, and the offer incorporated Alaska's preexisting Constitution. Congress's offer was accepted through a state ballot proposition on August 26, 1958:

> Proposition 3: All provisions of the Act of Congress approved July 7, 1958, reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

Alaska Division of Elections, *Statehood Election Final Results*, https://perma.cc/86TW-CHAB. Alaskans voting on whether to accept the offer of statehood from Congress knew that land grants with minerals and the right to control development decisions were parts of the bargain, and that the agreement was irrevocable if they voted for statehood. And they did, overwhelmingly.

Last, under the later Cook Inlet Land Exchange that resulted in Alaska receiving the Pebble Mine lands (among much else), those lands are "regarded for all purposes as if conveyed to the State under the pursuant to section 6 of the Alaska Statehood Act." Pub. L. No. 94-204, § 12(d)(1), 89 Stat. 1145, 1153 (1976). That land exchange too is a valid, binding compact, as Alaska explains. *See* Brief in Support of Motion for Leave to File Bill of Complaint 23 ("Brief").

---

[1] *E.g.*, Pub. L. No. 50-180, 25 Stat. 676, 676 (1889) (Dakotas, Montana, and Washington).

All this means that the Pebble lands were conveyed in a binding compact by the United States to Alaska, which received rights to both the land and its mineral deposits. Alaska also received authority to permit resource development on that land. And the United States gave up its ability to set the terms of how Alaska would lease, develop, or otherwise use the land and its resources.

C. Legislative history confirms this reading of the Statehood Act.

Though there is no ambiguity in the Statehood Act's text, its legislative history confirms that the federal government intended to convey not only the relevant lands to Alaska but also the authority to determine resource development on those lands. "If legislative history is to be considered, it is preferable to consult the documents prepared by Congress when deliberating." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 580 (1995). In particular, "[i]n surveying legislative history," this Court has "repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76 (1984) (cleaned up); *see also Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226–27 (1959) (taking judicial notice of a bill's legislative history).

The House Committee emphasized the "unprecedented" "condition" that "[o]ver 99 percent of the land area of Alaska is owned by the Federal Government." H.R. Rep. No. 624, 85th Cong., 1st

Sess., at 5 (June 25, 1957). "[T]his tremendous acreage of [federal] withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people." *Id.* at 6. These withdrawals left the future State with no way to "financ[e] the basic functions of State government," particularly road construction "because of the heavy cost." *Id.*

"To alter the present distorted land ownership pattern in Alaska under which the Federal Government owns 99 percent of the total area," the committee proposed extensive land grants. *Id.* To make these grants, the committee proposed to let the State choose lands:

> If the resources of value are withheld from the State's right of selection, such selection rights would have limited value to the new State. The committee members have, therefore, broadened the right of selection so as to give the State at least an opportunity to select lands containing real values . . . . To attain this result, the State is given the right to select lands known or believed to be mineral in character (sec. 6(i)).

Id. at 7. These grants would encourage the development of "basic industries," "including the forest industries, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry," which had been suppressed by the State's existence "as tenant[] of the Federal government, *and on the sufferance of the various Federal agencies*." *Id.* at 8 (emphasis added). The land and resource grants would remedy this "unhealthy situation," "permit[ting] and

encourag[ing] a much more rapid growth in the [State's] economy" by "open[ing] up many of [its] resources." *Id.* at 8–10. More, "when Alaska's resources are unlocked for development, as this bill provides, it may open the way to a great new boom in population." *Id.* at 13.

The Senate Committee Report is to the same effect. S. Rep. No. 1163, 85th Cong., 1st Sess. (Aug. 29, 1957). According to that report, the land grants would give Alaska a way to "raise money" not only "by selling the granted lands," but also by exercising its ownership and leasing rights over mineral deposits: "any such mineral deposits shall remain in State ownership subject only to lease by the State." *Id.* at 2. For this reason, "the granted lands will constitute an asset of continuing value to the State," leaving the State "as master in fact of a reasonable portion of the natural wealth within its borders—as a self-sustaining and virile state." *Id.* The report described the eventual § 6(i) as "requir[ing] that all State conveyances of lands granted shall be subject to a reservation in favor of the State of all minerals and the right to remove the same." *Id.* at 19.

In hearings on earlier iterations of the Statehood Act, Alaska expressed similar understandings. Alaska's primary delegate to Congress, Bob Bartlett, introduced the Statehood Act. He emphasized that "Alaska is a country in brief with great resources that lie waiting for development, and which we believe can only be developed under the kind of local government that statehood will bring." Hearings Before the Committee on Interior & Insular Affairs on Alaska Statehood, 84th Cong., 1st Sess., Serial No. 1, at 99

(1955). "[I]n statehood," he said, "the Government of Alaska would prosper and progress, and one of the reasons for that would be because for the first time, the land would have been made available for use." *Id.* at 136.

In sum, the House and Senate Committee Reports confirm the language of the Statehood Act: Alaska has both ownership of and the right to develop the lands it obtained from the federal government, including the mineral deposits on those lands.

D. ANILCA reinforces the Statehood Act's grant of authority to Alaska.

Beyond granting rights to and agreeing to allow Alaska to develop minerals on state land, Congress later prohibited further federal actions that amount to a "withdrawal" of lands in Alaska from resource development. In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. No. 96-487, 94 Stat. 2371. Known as "The Great Compromise," the Act created massive areas of federal parks and preserves with limits on resource development in those areas. "[A]t the same time," the Act sought to "provide[] adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people." 16 U.S.C. § 3101(d).

Because ANILCA "provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska," Congress said in the Act "that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated." *Id.* To

that end, the Act generally prohibited any "future executive branch action which withdraws more than five thousand acres, in the aggregate, of public lands within the State of Alaska" without a joint congressional "resolution of approval." *Id.* § 3213(a). The Act even prohibited any "further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a" conservation area. *Id.* § 3213(b); *see* Eric Todderud, *The Alaska Lands Act: A Delicate Balance Between Conservation and Development*, 8 Pub. Land L. Rev. 143, 149 (1987) ("ANILCA's drafters sought to keep mining areas out of the conservation system and to protect existing mining claims.").

Thus, ANILCA further reinforces that Congress considered its Alaska statehood land grants to turn over lands and resource development to the State, without future limitation by the federal government or its agencies. ANILCA's promise of no more withdrawals is a dead letter if the United States has complete control over Alaska's lands regardless and can make those lands de facto preserves through a misapplication of the Clean Water Act.

E. EPA's purported veto deprives Alaska of the benefit of its agreements and violates federal law.

Because the Statehood Act is a binding compact—and a federal law—any federal infringement of the Act unlawfully deprives Alaska of "the benefit of the bargain." *Andrus*, 446 U.S. at 508. As both text and history show, a primary purpose of the Alaska Statehood Act was to allow Alaska to decide whether and when to develop its natural resources on state

lands—after the federal government had failed to develop those resources for nearly a century. This development, in Congress's view, would benefit both Alaska and the nation. Sections 6(b), 6(i), and 6(m) of the Statehood Act gave Alaska the relevant lands and the rights to prospect for, develop, and use their mineral deposits. And Section 1 incorporated the Alaska Constitution, including Article VIII that gives the Alaska Legislature full authority and control over resource development decisions on statehood lands.

In its § 404(c) purported veto of the Pebble Mine, the EPA asserted that "[n]othing" in the above laws and compacts "precludes the application of a duly enacted federal law, including Section 404(c) of the [Clean Water Act]." Env't Prot. Agency, 2-20, Final Determination of the U.S. Environmental Protection Agency Pursuant to Section 404(c) of the Clean Water Act, Pebble Deposit Area, Southwest Alaska (Jan. 2023), http://bit.ly/3ofUIFM. But what would be the point of the United States giving Alaska these lands, their minerals, *and* the right to use and develop those minerals if the federal government could turn around and prohibit practically all economically-beneficially use of the land, including the very type of development allowed in the Statehood Act? "[I]nterpretation always depends on context," "context always includes evident purpose," and "evident purpose always includes effectiveness." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012). Interpretation should thus "further[], not hinder[]" the text's "manifest purpose." *Id.* The EPA's theory conflicts with both the specific grants agreed to by the United States and the overarching purpose that is textually evident.

The EPA's theory also conflicts with other provisions of the Statehood Act. Section 8(d) of the Statehood Act provided that "[a]ll of the laws of the United States shall have the same force and effect within [Alaska] as elsewhere within the United States." 72 Stat. 345. The Act defined "laws of the United States" as "all laws or parts thereof enacted by the Congress that" (in relevant part) "apply to or within Alaska at the time of the admission of the State of Alaska into the Union" and "are not in conflict with any other provisions of this Act." *Id.*

This provision makes the Statehood Act supreme over conflicting federal law—confirming Alaska's argument that its specific terms govern over any more general sources of law. *See* Brief 27. So even if some general federal law later purported to regulate the State's use of mineral deposits on the granted lands, that law could not supersede the Statehood Act's plain terms.[2]

Next, even if a "typical" land grant agreement by the United States might be subject to later-enacted EPA rules on the granted lands, the Statehood Act must be interpreted in light of its own text and context. Nothing in the Act suggests that the rights conveyed to Alaska were conditioned on later federal law—or any conflicting federal law. And beyond the statutory text noted above, the context matters. "Alaska is different—from its 'unrivaled scenic and

---

[2] Section 404 of the Clean Water Act was not enacted until 1972, long after the Alaska Statehood Act was enacted. *See* Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, § 404, 86 Stat. 816, 884 (codified at 33 U.S.C. § 1344).

geological values,' to the 'unique' situation of its 'rural residents dependent on subsistence uses,' to 'the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment.'" *Sturgeon I*, 577 U.S. at 438–39 (quoting 16 U.S.C. §§ 3101(b), 3111(2), 3147(b)(5)).

The "simple truth" is "that Alaska is often the exception, not the rule." *Id.* at 440. So whatever might be true elsewhere, under the Alaska Statehood Act's terms, the EPA cannot rescind via a later-enacted federal law the rights granted to Alaska—the "exception" state. Congress's intent in the Statehood Act was to ensure that Alaska as a state was no longer subservient to the federal government, but master of its resources and thus self-supporting.

Last, EPA's purported veto has essentially created a new, broad federal land withdrawal on state land in violation of ANILCA. *See* 16 U.S.C. § 3213. Such a withdrawal of state land use must be accomplished by Congress, not a federal agency. Instead, the EPA has deprived Alaska of practically all productive use of its land.

For all these reasons, Alaska's complaint raises a serious legal issue warranting the exercise of this Court's original jurisdiction.

II. EPA's action disrupts Alaska's economic viability and national security interests.

The Court should also take jurisdiction because the legality of EPA's action is a grave matter of importance for both Alaska and the nation. *See Illinois v. Milwaukee*, 406 U.S. 91, 93 (1972) (highlighting "the

seriousness and dignity of the claim"). EPA's cancellation of one of the most important mines in Alaska before state environmental permitting even took place is a matter of substantial concern—both economically and strategically—to Alaska, AIDEA, and even the nation. This cancellation would cost thousands of jobs in an area of Alaska subject to high seasonal unemployment. It would depress the infrastructure development necessary for Alaska's economic growth, depriving residents of the opportunity to obtain living wage jobs. It would also deprive the nation of a large source of natural resources that would reduce our dependence on foreign countries. And it threatens many other economically significant projects in Alaska. This Court should file the complaint.

A. Developing Pebble is critical.

EPA's action deprives Alaska (and AIDEA) of the opportunity to develop Pebble's two adjacent deposits—the near-surface Pebble West deposit and the deeper, richer Pebble East deposit that is one of the most significant concentrations of copper, gold, molybdenum, and silver in the world. Developing these areas would be an economic engine for Alaska in terms of direct job and industry creation, as well as indirect infrastructure development and economic activity. The minerals that Alaska would produce would be beneficial to consumers. And having an American source of these minerals would strengthen our national security by reducing our dependence on foreign sources.

In official findings that prompted AIDEA's creation, the Alaska Legislature noted that "seasonal

and nonseasonal unemployment" has persisted in Alaska, with "this unemployment [being] a serious menace to the health, safety, and general welfare." Alaska Stat. § 44.88.010(a)(1)–(2). Employment remains a problem. Many Alaskans—about 35% of the State's population—are not working.[3] And the labor force participation rate in rural Alaska appears to be even worse. "Rural Alaska poverty rates have averaged around 20 percent," and "[s]ince the cost of living is higher in rural Alaska," the true rate is likely much higher.[4]

More, "the state lacks the basic manufacturing, industrial, energy, export, small business, and business enterprises," and other facilities "necessary to permit adequate development of its natural resources and the balanced growth of its economy." Alaska Stat. § 44.88.010(a)(3). For instance, Alaska has only 36,009 miles of road. That is less than Connecticut (45,916) and far less than the next largest State, Texas (683,533). Establishing enterprises is "essential to the development of the natural resources and the long-term economic growth of the state, and will directly and indirectly alleviate unemployment in the state." *Id.* § 44.88.010(c)(4).

Thus, Alaska has placed a high priority on supporting new and expanded natural resource development. These projects provide significant

---

[3] *See* St. Louis Federal Reserve, *Labor Force Participation Rate for Alaska* (Aug. 18, 2023), https://perma.cc/6LTN-4XPW.

[4] Matthew Berman & Random Reamey, *Permanent Fund Dividends and Poverty in Alaska* 14 (Nov. 2016), https://perma.cc/3RGT-QYPH.

economic development by growing and diversifying the economy, together with creating jobs for Alaskans. As part of its strategic planning process, AIDEA has identified natural resource extraction as a particularly significant sector for opportunities for growth and jobs.

The Pebble Mine project is a perfect example of how beneficial such development could be for Alaska, and the nation as a whole. Mining the mineral deposits would directly create jobs and value. The indirect benefits of mining the Pebble deposits may be even greater. Developing the capability for in-state processing of minerals would create added value and family-wage jobs. Further, AIDEA supports the development of intermodal transportation systems, the intermix of industrial roads, rail, and ports needed to bring natural resources, refined products, and goods to market. Road and port access to development sites and the availability of power at those sites are two critical infrastructure types needed to spur viable natural resource development. Once these transportation systems are created, they can be used in many other ways beyond the original purpose. For instance, a transportation hub may have multiple uses: public needs and public wants to deliver goods to and from a community; support for military and research vessels; and support for further resource development (fish, timber, oil and gas, minerals, and tourism).

More, the minerals obtained through development are strategic commodities that would lead to value in many industries and reduce America's dependence on foreign sources for these critical materials. Among

other things, mining plays a crucial role in supporting clean energy and technology for the emerging and future economies, as minerals are necessary for many energy components. From smart phones and solar panels to electric vehicles and airplanes, we are surrounded by the products of critical minerals. Despite the abundant uses of critical minerals, these naturally occurring elements are scarce and often found in geopolitically contentious areas. Political instability and distortionary trade practices pose an increasing threat to disrupt America's critical minerals supply chain. Domestic development is the solution. Recognizing this issue, the United States itself has issued executive orders focused on ensuring secure, reliable supplies of critical minerals. Developing domestic mineral deposits aligns with the national plan to reduce America's dependence on critical minerals imports.[5]

All these beneficial effects of developing the Pebble lands disappear with EPA's veto of the mining project. That veto will depress wages, reduce employment, limit infrastructure development, raise consumer prices, and keep America dependent on foreign countries for key minerals. This Court's review is needed of this grave matter of national importance.

---

[5] *See generally* The White House, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth* (June 2021), https://perma.cc/9TMU-5246.

B. EPA's action sets a dangerous precedent for other important Alaska projects.

Beyond preventing all beneficial use of the Pebble lands, EPA's § 404(c) determination casts a long shadow on many other mine-related projects in Alaska, including the development of the Ambler Mining District. If EPA's action here is not vacated—or if it is tied up in various courts so long that a conclusion about the scope of EPA's authority over Alaska's lands is not timely reached—these investment projects will be discouraged. EPA's drastic veto of all development operates as a significant disincentive to resource investigation and development.

Take the Ambler Mining District in northwestern Alaska, a large prospective copper-zinc mineral source. With extensive mineral resources, including copper, silver, gold, lead, and other elements, the Ambler Mining District has been characterized as one of the largest undeveloped copper-zinc mineral belts in the world. This district will be a secure, reliable American supply-chain resource, essential for our nation's tech-focused economy, green-energy products, and military effectiveness.

Though the area has been explored for decades, it lacks the transportation infrastructure necessary for the development, construction, and operations of mines in the district. Enabling access to the mine is the Ambler Access Project, a proposed 211-mile, controlled industrial-access road supported by AIDEA. Like the mine itself, the road project would create new, good-paying jobs for families throughout north-central and northwestern Alaska. It would also

create other economic opportunities for local communities. Once complete, it will enable further exploration and development of the area's resources.

According to a report by the University of Alaska Center for Economic Development, developing access to four major deposits in the Ambler district is expected to result in new jobs across multiple industries. Mine construction is expected to result in 2,777 direct jobs with $286 million in wages annually, as well as 2,034 additional indirect and induced jobs with $108 million in wages annually.[6] Mining operations are expected to result in 494 direct jobs with $72 million in wages annually, and 3,437 additional indirect and induced jobs with $228 million in wages annually.[7] Road construction and operations are expected to result in an annual average of 360 direct jobs over the road construction period, and up to 81 direct annual jobs for road operations and maintenance over the life of the road.[8] On top of these jobs—which do not include all the jobs enabled by other uses of the road—Alaska itself expect to receive $393 million in mining license tax revenues, $524 million in corporate income taxes, $214 million in production royalties, and $13 million in claim rents.[9]

Once again, these beneficial outcomes are at risk because of the EPA's use of § 404(c) to purportedly

---

[6] Univ. of Alaska Ctr. for Econ. Dev., *Economic Impacts of Ambler Mining District Industrial Access Project and Mine Development* 12 (2019), https://perma.cc/56NR-8VT5.
[7] *Id.* at 13.
[8] *Id.* at 10–11.
[9] *Id.* at 17.

veto mining projects on land given decades ago by the United States to Alaska. The Pebble veto alone chills future research and development projects. Allowing that veto—or leaving it in litigation in multiple courts for years—would irretrievably harm Alaska's ability to develop its natural resources.

CONCLUSION

The Court should grant the motion and file Alaska's complaint.

Respectfully submitted,

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for *Amicus Curiae*

SEPTEMBER 25, 2023