No. _____, Original

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.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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July 26, 2023

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Plaintiff, the State of Alaska, respectfully moves this Court for leave to file the attached Bill of Complaint. The grounds for this Motion are set forth in an accompanying brief.

Respectfully submitted,

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BILL OF COMPLAINT

Plaintiff, the State of Alaska, brings this action against Defendants, the United States of America and Michael S. Regan, Administrator of the U.S. Environmental Protection Agency, and for its causes of action asserts as follows:

NATURE OF THE ACTION

1. This Court has repeatedly recognized "the simple truth" that "Alaska is often the exception, not the rule." *Sturgeon v. Frost*, 577 U.S. 424, 440 (2016) (*Sturgeon I*).

2. Sparsely populated and thousands of miles from the contiguous states, Alaska has earned its nickname as the Last Frontier. Because of these realities, the federal government has long granted Alaska unique property rights and regulatory powers to ensure the success of the State.

3. But the United States is now going back on its promises, depriving Alaska of sovereignty over its state-owned lands and the means of sustaining its prosperity.

4. In 1976, the United States, the State of Alaska, and an Alaska Native corporation—the Cook Inlet Region, Inc. (CIRI)—agreed to the largest land exchange in American history. Through the Cook Inlet Land Exchange, the State relinquished its land rights to nearly 700,000 acres of land.

5. With the State's and CIRI's relinquished land selections, the United States created the Lake Clark National Park and Preserve, a jewel of the National Park System, and CIRI secured oil and gas rights that have allowed it to thrive for decades.

6. The State, in return, received federal lands that had previously been set aside for conservation purposes but were known to have enormous mineral potential. These lands were critical to the continued well-being of Alaska, which has long relied on its resource-rich lands to fund the State and local governments and provide for the needs of its people.

7. To secure these rights, the parties agreed that the land grants to Alaska "shall include mineral deposits" and the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct."

8. Decades later, Alaska hit pay dirt, discovering the largest undeveloped copper deposit in the world on the lands the State received.

9. Known as the Pebble deposit, the State's land contains more than 57 *billion* pounds of copper, in addition to enormous quantities of gold, silver, and rare earth elements.

10. Mining these minerals would provide thousands of jobs to Alaskans and billions of dollars in taxes and royalty payments to the State. And because of strict state environmental regulations—derived from mandatory protections enshrined in Alaska's

constitution—the State would ensure that its lands and resources are fully protected.

11. But the United States is now reneging on the deal. Despite the parties' agreements, the EPA recently issued an order effectively prohibiting any mining from occurring on these state-owned lands—a restriction covering about 309 square miles, which is more than 13 times the size of Manhattan and twice the size of Denver.

12. Through administrative fiat, the EPA effectively created *another* federal preserve in Alaska, one that was never contemplated by the parties.

13. The United States has breached its contracts with Alaska and violated federal law. At a minimum, it has taken Alaska's property without just compensation.

14. This case meets all the requirements for this Court's original jurisdiction, which extends to all disputes "in which a State shall be Party." U.S. Const. art. III, §2, cl.2. The EPA's order strikes at the heart of Alaska's sovereignty, depriving the State of its power to regulate its lands and waters.

15. Alaska also has no alternative forum for its claims to be heard and resolved: Its Administrative Procedure Act claims would go to a federal district court, while its contract and takings claims would go to the Court of Federal Claims.

16. Moreover, the State of Alaska cannot file its action in the Court of Federal Claims for monetary

damages while its action in the district court is pending. *See* 28 U.S.C. §1500.

17. The State thus "face[s] a choice between equally unattractive options: forgo injunctive relief in the district court to preserve [its] claim for monetary relief in the [Court of Federal Claims], or pursue injunctive relief and hope that the statute of limitations on [its contract and] takings claim does not expire before the district court action is resolved." *United States v. Tohono O'Odham Nation*, 563 U.S. 307, 323-24 (2011) (Sotomayor, J., concurring in the judgment) (citation omitted). Neither is tenable.

18. This Court has not hesitated to exercise its original jurisdiction over similar disputes involving Alaska. Indeed, since Alaska joined the Union, no state has had more original actions against the United States than Alaska. This case fits squarely within the Court's original-jurisdiction criteria.

JURISDICTION

19. This Court has original jurisdiction because the dispute is "between the United States and a State," and the action is brought "by a State against [a] citize[n] of another State." 28 U.S.C. §1251(b); *see* U.S. Const., art. III, §2, cl.2. ("In all Cases … in which a State shall be Party, the supreme Court shall have original Jurisdiction.").

PARTIES

20. Plaintiff is the State of Alaska.

21. Defendants are the United States of America and Michael S. Regan, Administrator of the U.S. Environmental Protection Agency.

FACTUAL ALLEGATIONS

A. The Alaska Statehood Act

22. The United States purchased Alaska from Russia in 1867. It thereby acquired "in a single stroke 365 million acres of land—an area more than twice the size of Texas." *Sturgeon v. Frost*, 139 S.Ct. 1066, 1073 (2019) (*Sturgeon II*) (cleaned up).

23. For the next 90 years, the Federal Government owned all of Alaska. *Id.* But Alaska's distant location and few inhabitants led to an "'era of total neglect,'" and the purchase was roundly mocked as "Seward's Folly" and President Johnson's "Polar Bear Garden." *Id.*

24. It was not until the 1950s, after "[o]pportunities to mine, trap, and fish attracted tens of thousands more settlers," that Congress seriously considered admitting Alaska as a State. *Id.* But there was a problem: 98 percent of the land was still owned by the Federal Government. *Sturgeon I*, 577 U.S. at 429.

25. As a result, "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." *Id.* Indeed, one of the principal objections to statehood was that Alaska would not survive unless it was "'heavily subsidized by the other 48 States of the Union.'" *Trustees for Alaska v. State*, 736 P.2d 324, 335 (Alaska 1987) (quoting 104 Cong. Rec. 9498 (1958)).

26. A solution was struck. In 1958, Congress passed—and the people of Alaska ratified—the Alaska Statehood Act, making Alaska the 49th state in the Union.

27. To "propel private industry and create a tax base," Congress made an enormous land grant to the new State. *Sturgeon II*, 139 S.Ct. at 1074. Over the next 35 years, Alaska could select for itself more than 103 million acres of "vacant, unappropriated, and unreserved" federal land, about a quarter of all land in Alaska. Statehood Act §6(a)-(b).

28. Importantly, the Act promised that the land grants to Alaska "shall include mineral deposits," and that the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." *Id.* §6(i).

29. These mineral rights were essential because only a fraction of the land in Alaska was suitable for agriculture, and "the federal government had already reserved the most valuable land" for itself. *Trustees for Alaska*, 736 P.2d at 336 n.23. Given the severe challenges facing the new State, these mineral rights were seen as "'the foundation upon

which Alaska'" could become a "'full and equal' State." *Id.* at 336 (quoting 104 Cong. Rec. 9361 (1958)).

30. The Statehood Act also made clear that Alaska—not the Federal Government—would have "regulatory authority over 'navigation, fishing, and other public uses'" on the navigable waters within the State. *Sturgeon II*, 139 S.Ct. at 1074.

31. By incorporating the Submerged Lands Act of 1953, "the Statehood Act gave Alaska 'title to and ownership of the lands beneath navigable waters.'" *Id.* (quoting 43 U.S.C. §1311); *see* Statehood Act §6(m).

32. In granting these powers and land rights, Congress recognized that Alaska would "'develo[p] . . . its resources by making them available for maximum use consistent with the public interest.'" *Sturgeon I*, 577 U.S. at 429 (quoting Alaska Const. art. VIII, §1).

B. The Cook Inlet Land Exchange

33. The Statehood Act did not determine the rights of the Alaska Natives, who asserted aboriginal title to much of the same land now claimed by the State. *Id.*

34. To address these issues, Congress in 1971 passed the Alaska Native Claims Settlement Act (ANCSA), which extinguished aboriginal land claims but also allowed corporations organized by Alaska Natives to select more than 40 million acres of federal land. *Id.* at 429-30; *see ANCSA Conveyances*, U.S. Bureau of Land Mgmt., bit.ly/3O3GlPa. ANCSA

further directed the Secretary of Interior to withdraw up to 80 million acres of land from selection by the State to set aside for conservation purposes. 43 U.S.C. §1616(d)(2).

35. Although the law worked well throughout much of the State, "severe difficulties arose" in the Cook Inlet region of southcentral Alaska. *State v. Lewis*, 559 P.2d 630, 633 (Alaska 1977).

36. Much of the land desired by the new Alaska Native corporation (Cook Inlet Region, Inc. or CIRI) had already been selected by the State or set aside by the Federal Government for public purposes. *See* House Rep. 104-643, at 3-4 (June 27, 1996). The land available to CIRI under ANCSA thus was "largely comprised of mountains and glaciers, hardly the settlement contemplated by Congress." *Id.* at 4.

37. To resolve these issues, there was a "series of intense discussions" among the United States, Alaska, CIRI, and "various other interested groups," including "mining interests." House Rep. 94-729, at 30 (Dec. 15, 1975). The United States, the State of Alaska, and CIRI ultimately signed a contract agreeing to "the largest land exchange in American history." House Rep. 104-643, at 4.

38. Titled the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area," it was enacted by Congress as Public Law 94-204, an amendment to ANCSA, and subsequently approved by the Alaska legislature. *Id.* at 4-5; *see* Pub. L. 94-204, 89 Stat. 1145 (1976). The three-way

agreement is now commonly known as the Cook Inlet Land Exchange.

39. All parties stood to benefit under the Land Exchange.

40. For the United States, the "centerpiece" of the land exchange was the creation of the Lake Clark National Park and Preserve. House Rep. 104-643, at 4. To create a contiguous park, both the State and CIRI gave their land rights to the United States and "contractually bound themselves to support [the] creation of the [park]." *Id.*

41. Today, the park spans more than 4 million acres and is a "'land of stunning beauty,'" containing "glaciers, volcanoes, forested coasts," and other "distinctive Alaskan landscapes." Joe Yogerst, *How to Visit Lake Clark National Park and Preserve*, National Geographic (Mar. 30, 2023), bit.ly/4598Np6.

42. For CIRI, the Land Exchange was a "profound" success that "formed the basis of CIRI's future." *Celebrating 30 Years of the Cook Inlet Land Exchange* at 1, CIRI (Oct. 2006), bit.ly/3Impgwy. CIRI obtained "resource-rich lands in the region" that "laid the foundation for [CIRI's] unprecedented financial success, especially as [it secured] rights to oil and gas royalties." *Id.*

43. Over the last five years, CIRI has had an average yearly net income of more than $47 million, and its total assets amount to more than $1 billion. *Financials*, CIRI, bit.ly/3pNuwCQ.

44. For the State of Alaska, it gained access to approximately 525,000 acres in the Lake Iliamna area and the Nushagak River and Koksetna River drainages of Bristol Bay. Smith Decl. at 6, Dkt. 25, *Pebble Ltd. P'ship v. EPA*, 3:14-cv-97 (D. Alaska). These lands had previously been withdrawn from selection by the State under ANCSA. *Id.*; *see* 43 U.S.C. §1616(d)(2)(A); Pub. L. 94-204, §12(d)(1).

45. Like much of Alaska, the lands the State received in the Exchange contained extensive wetlands and streams. *See* Jonathan V. Hall et al., *Status of Alaska Wetlands* at 3, U.S. Fish & Wildlife Serv. (1994), bit.ly/3ME9cYa (wetlands cover "43.3 percent of Alaska's surface area," compared to just "5.2 percent of the surface area" for the lower 48 States).

46. Although most of these lands had previously been set aside by the federal government for conservation purposes, the United States opened these lands to Alaska with the full knowledge that the State would "utiliz[e]" and "develo[p]" the land "for the maximum benefit of its people." Alaska Const. art. VIII, §2.

47. In fact, the parties knew that the lands "had significant mineral development potential," and the State wanted "to explore them and ultimately to obtain economic benefit from them." Smith Decl. at 8, *Pebble Ltd. P'ship*, 3:14-cv-97.

48. The State insisted that the Land Exchange explicitly recognize its mineral rights.

49. The new lands the State obtained were thus designated "for all purposes as if conveyed to the State under and pursuant to Section 6 of the Alaska Statehood Act." Pub. L. 94-204, §12(d)(1). That meant the State would, among other things, own the new lands' "mineral deposits" and have the right to "lease [them] as the State legislature may direct." Statehood Act §6(i).

50. These mineral-rich lands thus would help the young State—which was still the least populated in the union despite its vast size—receive "the income that [it] needed to meet the costs of statehood." *Trustees for Alaska*, 736 P.2d at 336.

51. In fact, some of the land was ultimately conveyed directly under the Statehood Act. Under the Land Exchange, the State was entitled to select "no more than 27 townships of land." Pub. L. 94-204, §12(d)(1). When the State later determined that it had over-designated the amount of land that could be conveyed under the Land Exchange (selecting 28.1 townships), the United States allowed the State to redesignate some of the lands so they would be conveyed under the Statehood Act. *See* Dkt. 185-5, *Pebble Ltd. P'ship*, 3:14-cv-97 (1988 letter).

C. The Bristol Bay Area Plan of 1984

52. Following the Land Exchange, the State spent years developing the Bristol Bay Area Plan, a comprehensive land-use plan designating each area of land in the Bristol Bay region to its best uses, including mining, hunting, fishing, conservation, and

others. *See Bristol Bay Area Plan for State Lands*, State of Alaska (1984), bit.ly/431V1CS.

53. The State developed the plan with the goal of "preserv[ing] . . . fish and wildlife resources" on the State's new lands while also "allowing for the exploration and development of other resources such as oil[,] gas, [and] minerals." *Id.* at Ch. 1, 2.

54. To accomplish its dual environmental and economic goals, the State created a strict environmental and regulatory regime governing all mining on the new lands. *Id.* at Ch. 2, 19-26.

55. For example, to "protect the fisheries and recreational resources" in the region, the State closed dozens of streams, lakes, and navigable waters to any use in potential mining. *Id.* at Ch. 2, 20.

56. In addition, the State prohibited "dredging . . . , filling, or shoreline alteration in fish habitat[s]" unless the State "determined that the proposed activity will not have a significant adverse impact on fish or fish habitat or that no feasible and prudent alternative site exists to meet the public need." *Id.* at Ch. 2, 24. And no mining could occur without an "approved mining plan of operation," which requires compliance with a strict set of environmental controls. *Id.* at Ch. 2, 24-25.

57. Importantly, the Plan designated for mineral exploration a portion of land that would later be known as the Pebble deposit. *Id.* at Ch. 2, Map 3, Ch. 3, 21-24, 27-30, 35-38.

58. By designating this land (and others) for mineral exploration, the State sought to both "develop the region's mineral and material resources" while also "protect[ing] the fisheries and recreational resources, as well as water quality." *Id.* at Ch. 2, 20-23.

D. The Pebble Deposit

59. In 1987, an Alaskan geologist, Phil St. George, was piloting an airplane in a remote area of the Bristol Bay region when he made "the biggest discovery of his career." *The Pebble Deposit 30 Years Later*, Pebble Watch (Oct. 17, 2018), bit.ly/3nQyBFH.

60. Seeing rust-colored earth (an indication of gold), St. George identified the land as worthy of mineral exploration. After initial tests indicated that the land contained gold and copper, St. George named the area after Pebble Beach, the famous golf course, because his discovery felt "like getting a hole in one." *Id.*

61. Cominco Alaska, the company that employed St. George, quickly staked a mineral claim on the land. *See* Lang Decl. at 4, Dkt. 32, *Pebble Ltd. P'ship*, 3:14-cv-97.

62. Despite its potential, the Pebble deposit remained largely unexplored due to low metal prices and the large costs involved in any mining operation. Thiessen Decl. at 2, Dkt. 26, *Pebble Ltd. P'ship*, 3:14-cv-97.

63. But in 2002, after a different company acquired the mineral claim for the Pebble deposit, significant resources were devoted to exploring the Pebble deposit. *Id.* After years of exploration and analysis, the world began to understand the Pebble Deposit's enormous potential.

64. Located about 200 miles southwest of Anchorage and accessible only by helicopter or snowmachine, the Pebble deposit is now recognized as the "largest undeveloped copper deposit" in the world. *Economic Contribution Assessment of the Proposed Pebble Project to the U.S. National and State Economies* ("*Pebble Assessment*"), IHS Markit, at 3 (Feb. 2022), bit.ly/3MAERej.

65. The Pebble deposit contains an astounding 57 billion pounds of copper. *Id.* It also contains copious mineral riches in addition to copper, including 71 million ounces of gold, 3.4 billion pounds of molybdenum, 345 million ounces of silver, and 2.6 million kilograms of rhenium. *Id.*

66. The importance of this discovery of copper and rare earth minerals cannot be overstated. "Electric vehicles, solar and wind power, and batteries for energy storage all run on copper" and rare earths. Pippa Stevens, *A Coming Copper Shortage Could Derail the Energy Transition, Report Finds*, CNBC (July 14, 2022), cnb.cx/3opW158.

67. Because of the worldwide push to transition to renewable energy, copper demand is expected to soar in the coming years. Stevens, *supra*. But a "lack of new mining activity" will cause severe

shortages of copper worldwide. Yusuf Khan, *Copper Shortage Threatens Green Transition*, WSJ (Apr. 18, 2023), on.wsj.com/3oiFMa6.

68. Unless significant new supplies of copper become available, global climate goals will be "'short-circuited and remain out of reach.'" Stevens, *supra*.

69. A further problem for the United States is that China holds the "preeminent position" in copper resources and is a leading producer of rare earths, likely requiring the United States to import much of its copper and rare earth needs in the coming years. *See, e.g.*, *The Future of Copper* at 12-13, IHS Markit (July 2022), bit.ly/42XLpJy.

70. As the owner of the Pebble deposit, Alaska stands to benefit enormously from the mining of its land.

71. The proposed mine would provide the State with more than $100 million a year through state taxes, licensing fees, and royalty payments. *Pebble Project: Final Environmental Impact Statement* ("*Pebble EIS*"), U.S. Army Corps of Eng'rs, at §4.3, 11 (July 2020), bit.ly/43ss7MA.

72. Over a five-year construction phase and 20-year operations phase, these payments would ultimately provide between $2.82 and $5.38 billion in revenue to the State. *See Pebble Assessment*, *supra* at 4-5, 20-21.

73. The proposed mine would also create employment opportunities in a remote part of Alaska where economic development is otherwise limited.

74. One study estimated that the mine, just in the initial capital phase, would create more than 12,000 jobs. *See id.* at 4, 19.

75. Simply put, the proposed mine would do exactly what was intended by the Land Exchange and the Statehood Act: It would "provide the revenues necessary to support state and local governments and to sustain Alaska's economy, culture, and way of life." Gov. Mike Dunleavy, *Re: May 26, 2022 Proposed Determination*, at 2 (Sept. 6, 2022), bit.ly/4377GEv.

E. The EPA's Veto of the Pebble Deposit

76. Around 2010, various environmental groups began urging the EPA to preemptively "veto" the mining of the Pebble deposit under Section 404(c) of the Clean Water Act of 1972. *See* Final Determination, U.S. EPA, at §2, 9-10 (Jan. 2023), bit.ly/3ofUIFM; *see also* Pebble Ltd. P'ship Comments, EPA-R10-OW-2022-0418, at 4-9 (Sept. 6, 2022), bit.ly/3pOGI6c.

77. A rarely used provision, Section 404(c) allows the EPA Administrator to "prohibit" or "restrict" the use of a "disposal site" for "dredged or fill material" when the discharge will "have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." 33 U.S.C. §1344(c).

78. Despite the United States' promise that the Pebble deposit "shall be subject to lease by the State as the State legislature may direct," Statehood Act §6(i); Pub. L. 94-204, §12(d)(1), the EPA in 2014 announced its intention to restrict discharges associated with mining the Pebble deposit, *see* 79 Fed. Reg. 42314, 42317-18 (July 21, 2014).

79. Because no permit application had been filed with the U.S. Army Corps of Engineers, *see* 33 U.S.C. §1344(a), the EPA took these preemptive steps based on notifications that the Pebble Limited Partnership (the company with mineral rights over the Pebble deposit) filed with the Securities and Exchange Commission. 79 Fed. Reg. at 42315.

80. The Pebble Limited Partnership quickly sued, alleging, among other things, that the proposed veto violated the Cook Inlet Land Exchange and the Statehood Act. *Pebble Ltd. P'ship v. EPA*, 3:14-cv-97 (D. Alaska) (Dkt. 22).

81. On November 25, 2014, the U.S. District Court for the District of Alaska issued a preliminary injunction prohibiting the EPA from completing its Section 404(c) process until the case was resolved. Dkt. 90, *Pebble Ltd. P'ship*, 3:14-cv-171.

82. In May 2017, after a change in administration, the EPA settled the lawsuit, agreeing to initiate a process to withdraw the Proposed Determination. Dkt. 299, *id.* The EPA officially withdrew the Proposed Determination in August 2019. 84 Fed. Reg. 45749 (Aug. 30, 2019).

83. Although that withdrawal was later challenged, the district court found that the EPA's withdrawal was not subject to judicial review and dismissed the case. *See Bristol Bay Econ. Dev. Corp. v. Hladick*, 454 F. Supp. 3d 892, 909-10 (D. Alaska 2020).

84. In June 2020, after years of discussions with the Corps and the EPA, the Pebble Limited Partnership submitted a permit application with the Corps to develop the Pebble deposit. *See* Pebble Project Department of the Army Application for Permit ("PLP Permit App."), POA-2017-271 (June 2020), bit.ly/3WBZhH2.

85. The company's application acknowledged that wetlands were "present throughout the Pebble Project area, including the mine site." *Id.* at 16. Because the Corps asserted jurisdiction over wetlands as "waters of the United States" under the Clean Water Act, discharges into regulated waters were "unavoidable." *Id.*

86. But, as the Corps would later confirm, the proposed removal of wetlands would "not . . . have a measurable effect on fish." *Pebble EIS*, at Exec. Summary, 87.

87. And while the footprint of the mine would encompass streams and other waters, this "loss of habitat is not expected to have a measurable impact on fish populations based on physical habitat characteristics and fish density estimates in the affected reaches." *Pebble EIS*, at §4.24, 1; *see also id.* at §4.6, 9 (construction "would not have measurable

effects on . . . adult salmon . . . due [to] the limited . . . habitat affected").

88. In fact, "less than 0.01% of the streams in Bristol Bay stand to be adversely affected by the proposed project." State of Alaska Comments, EPA-R10-OW-2022-0418, at 23 (Sept. 6, 2022), bit.ly/3WnCMWn.

89. Consistent with the public interest, the company promised to take "numerous measures to avoid and minimize impacts to wetlands and other [waters], air quality, wildlife and aquatic habitat, areas of cultural significance, and areas of known subsistence use." PLP Permit App. at 36-53.

90. For example, the company would contain and treat water on the mine site, construct over waters only where necessary, and design the project to cause the least possible impact. *Id.*

91. The company would also, as required by state law, construct all necessary fishways to ensure proper protection of anadromous fish. *See* Alaska Stat. §§16.05.841, 16.05.871.

92. The company further agreed to undertake extensive reclamation efforts to restore the area after mining was completed. PLP Permit App. at 41-43.

93. Despite its environmental impact statement finding that the project plan would adequately protect fisheries, the Corps initially denied the company's application. *See* Pebble Project EIS,

U.S. Army Corps of Eng'rs, bit.ly/3JIedOE. The decision was recently reversed on appeal for failing to adequately explain the denial, and it remains pending with the Corps. *See* Administrative Appeal Decision, U.S. Army Corps of Eng'rs, POA-2017-271 (Apr. 24, 2023), bit.ly/3pT7ryO.

94. While the Pebble Limited Partnership was seeking approval from the Corps, litigation continued over the challenge to the EPA's withdrawal of its 2014 proposed determination. In June 2021, the Ninth Circuit reversed the district court's decision, holding that the withdrawal was judicially reviewable. *See Trout Unlimited v. Pirzadeh*, 1 F.4th 738 (9th Cir. 2021).

95. On remand, the EPA—again under a new administration—asked the district court to vacate the agency's 2019 decision withdrawing the 2014 proposed determination. Dkt. 103, *Bristol Bay Econ. Dev. Corp. v. Leopold*, 3:19-cv-265 (D. Alaska). The court granted the motion in October 2021. Dkt. 109, *id.*

96. On January 30, 2023, over strong objections from the State of Alaska, the EPA issued a new and expanded veto over the Pebble deposit. *See* Final Determination; *see also* 88 Fed. Reg. 7441 (Feb. 3, 2023).

97. Pointing to an expected loss of wetlands and streams, the EPA concluded that the mine would lead to "unacceptable adverse effects on anadromous fishery areas." Final Determination at Exec. Summary, 15-16.

98. The EPA therefore issued a "prohibition" over the Pebble deposit (a 13.1 square mile area), which prohibited the planned discharge of dredged or fill material for the construction and operation of the mine, as well as any similar "future proposals." *Id.*

99. The EPA, however, went even further, concluding that the types of discharges proposed would have "unacceptable adverse effects" if done "anywhere" within the surrounding region. *Id.* at 16.

100. The EPA thus issued a new "restriction" on any similar level of discharges over a 309-square-mile area of land, encompassing the Pebble deposit and covering a land area more than 23 times the size of the proposed project. *Id.*

101. Given the realities of mining in Alaska, it is "virtually certain" that "any future economically viable mining plan" in the area will be prohibited under the veto. Alaska Comments at 30.

F. Alaska's Unique Sovereign and Fiscal Interests in Challenging the EPA's Veto

102. Alaska has a strong interest in reclaiming its right to the mineral resources on its lands.

103. "Regulation of land and water use lies at the core of traditional state authority." *Sackett v. EPA*, 143 S.Ct. 1322, 1341 (2023); *Rapanos v. United States*, 547 U.S. 715, 738 (2006) (plurality) (the "[r]egulation of land use," such as "through the issuance of . . .

development permits," is "a quintessential state and local power").

104. It is the States, not the federal government, that have "traditional and primary power over land and water use." *SWANCC v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001); *Sackett*, 143 S.Ct. at 1357 (Thomas, J., concurring) ("The baseline under the Constitution, the [Clean Water Act], and the Court's precedents is state control of waters.").

105. And it is the States, not a distant federal bureaucracy, that know best the needs of their citizenry. "Those who are closest to the land—whose quality and way of life depend upon healthy ecosystems—care most about the land and know best how to maintain its legacy, conservation, and uses for years to come." *Western Conservation Principles*, Senate & Cong. Western Caucuses, at 1 (Oct. 5, 2021), bit.ly/3BUdQMX.

106. These principles hold especially true for Alaska. From the beginning, Alaska has depended heavily on its state-owned lands to obtain the resources necessary to fund the State and local governments and provide for its citizenry.

107. This control over its lands—including its valuable minerals—has long been an essential feature of Alaska's sovereignty. *See Sturgeon II*, 139 S.Ct. at 1074.

108. Indeed, no other state in the Union depends so greatly on its lands for its prosperity.

Alaska remains sparsely populated and often inaccessible except by plane, boat, or snowmachine.

109. To put it in perspective, if Manhattan contained the same population density as Alaska, fewer than 30 people would live on the entire island.

110. Not surprisingly, then, Alaska's economy "relie[s] heavily on resource extraction industries." *WIOA State Plan* at 4, U.S. Dep't of Educ. (2020-2023), bit.ly/3PwIhk8. The concentration of jobs in "natural resources and mining" is unquestionably the "biggest difference between Alaska's labor market and the nation's." *Id.* at 5.

111. In 2022, Alaska' mining industry provided $186 million in tax revenue to the State and localities and $266 million in royalty payments to Alaska Native corporations, and it supported 11,400 jobs and $1 billion in wages statewide. *Alaska's Mining Industry*, Alaska Miners Ass'n, Inc. (Mar. 2023), bit.ly/45xUHOs.

112. No land-use project in recent memory is more important to the State than the Pebble deposit.

113. It would generate billions of dollars in revenue for the State and tens of thousands of jobs for Alaskans, many of whom are rural residents with limited economic opportunities. And it would produce essential mineral resources for the emerging energy market, positioning Alaska as a leader in the coming renewable energy transition.

114. To obtain the benefits of the Pebble deposit, Alaska has exercised its traditional power to regulate and control its lands. The State has spent decades gathering and analyzing data to create a regulatory regime that allows mineral development while also protecting the environment. *See* 1984 Bristol Bay Area Plan; *Bristol Bay Area Plan for State Lands*, State of Alaska (2005), bit.ly/45A8TpS; *Bristol Bay Area Plan for State Lands*, State of Alaska (2013), bit.ly/42a9Nqp.

115. These efforts reflect Alaska's constitutional requirement 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.

116. The EPA veto completely disregards Alaska's sovereign choices. Inherent in the EPA's decision is the notion that Alaska will not adequately protect its lands, waters, and other natural resources. That is false.

117. Alaska devotes significant resources to protecting its lands and waters because its economy is "heavily dependent on the fishing industry and related maritime activity." *WIOA State Plan*, *supra*, at 7.

118. Indeed, unlike most States, Alaska is constitutionally *required* to protect its natural resources.

119. The State must provide for the "conservation of all natural resources belonging to the

State, including land and waters, for the maximum benefit of its people." Alaska Const. art. VIII, §2. Fish, wildlife, and waters are "reserved to the people for common use." *Id.* §3. And all replenishable resources belonging to the State "shall be utilized, developed, and maintained on the sustained yield principle," *id.* §4, which requires "'maximum use of natural resources with their continued availability to future generations,'" *West v. State*, 248 P.3d 689, 696 (Alaska 2010) (quoting The Alaska Const. Convention, Proposed Const. for the State of Alaska: A Report to the People of Alaska (1956)).

120. Alaska has implemented this constitutional mandate through extensive environmental regulations that govern the mining of the Pebble deposit.

121. For example, streams in the Bristol Bay area are already statutorily protected as fishery reserves. *See* Alaska Stat. §38.05.140(f).

122. For the streams that would be affected by the project—which comprise less than 0.01% of the streams in the Bristol Bay watersheds—the mining operator would be required to take mitigation steps to protect the habitats of fish and to ensure their free passage through freshwater bodies. *See* Alaska Stat. §§16.05.871-.901; 5 AAC 95.900 (imposing upon permittees a duty to "mitigate any adverse effect upon fish or wildlife, or their habitat"); 5 AAC 95.902 (imposing strict liability upon anyone who fails to mitigate).

123. And that is just one of countless steps the mining operator will have to take to protect Alaska's natural resources. Yet the EPA has cast aside the State's laws and regulations and instead imposed its own bureaucratic judgment as to the best use of the Pebble deposit and the surrounding lands.

124. The State's sovereign and economic interests warrant the exercise of the Court's original jurisdiction. Whether Alaska's actions, "undertaken in its sovereign capacity," can be overridden by a federal agency "precisely 'implicates serious and important concerns of federalism fully in accord with the purposes and reach of [this Court's] original jurisdiction.'" *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992).

125. Indeed, the Court has repeatedly invoked its original jurisdiction to resolve cases implicating state interests in sovereignty and property. *See* Supreme Court Practice §10.I.4; *see, e.g.*, *Alaska v. United States*, 545 U.S. 75 (2005); *Cal. ex rel. State Lands Comm'n v. United States*, 457 U.S. 273 (1982); *Utah v. United States*, 403 U.S. 9 (1971). This important dispute falls squarely within this line of precedents.

126. The State's claims are also serious and dignified. To begin, the United States has breached the Cook Inlet Land Exchange, which is plainly a contract. "All the elements of a contract [are] met in the transaction." *McGee v. Mathis*, 71 U.S. 143, 155 (1866).

127. There were "competent parties": the United States, the State of Alaska, and CIRI. *Id.* There was "sufficient consideration": the State gave CIRI its land rights to 12,000 acres of land and the United States its land rights to 675,000 acres, and, in return, the State received lands encompassing the Pebble deposit. *Id.* And there was "consent of minds": the Land Exchange was bargained for, reduced to writing, and signed by all three parties. *Id.*

128. The Court has long recognized that these types of agreements "constitut[e] a contract." *Id.*; *cf. Oklahoma v. New Mexico*, 501 U.S. 221, 242 (1991) (Rehnquist, C.J., concurring in part and dissenting in part) ("An interstate compact . . . ratified by Congress" is "nonetheless essentially a contract between the signatory States.").

129. The Statehood Act is also a binding contract. *See* Statehood Act §4 (describing the Act as "a compact with the United States"); *e.g., Andrus v. Utah*, 446 U.S. 500, 507 (1980) (describing the Utah Enabling Act as "a 'solemn agreement' which in some ways may be analogized to a contract between private parties."). Its terms were presented as a "[p]roposa[l] . . . to the inhabitants of" Alaska as a means "to become a sovereign community." *Cooper v. Roberts*, 59 U.S. (18 How.) 173, 178 (1855). After both Congress and Alaska approved the terms, they established "an unalterable condition of the admission, obligatory upon the United States." *Beecher v. Wetherby*, 95 U.S. 517, 523 (1877).

130. The EPA's veto, in turn, constitutes a breach of contract. Under general contract principles, a breach of contract occurs when there is a "[f]ailure by the promisor to perform" a contractual duty. *Franconia Assocs. v. United States*, 536 U.S. 129, 142-43 (2002) (citing Restatement (Second) of Contracts §235(2) (1979)).

131. A party also violates the covenant of good faith and fair dealing when it "act[s] so as to destroy the reasonable expectations of the other party regarding the fruits of the contract." *Centex Corp. v. United States*, 395 F.3d 1283, 1304 (Fed. Cir. 2005) (citing Restatement (Second) of Contracts §205 (1981)); *see, e.g.*, *id.* at 1304-05, 1311, 1314 ("[A]n implied promise of good faith and fair dealing . . . was breached when Congress passed targeted legislation that effectively appropriated to the government a substantial portion of the benefits that the plaintiffs reasonably expected from the operation of the Agreement.").

132. Here, the United States promised that the land Alaska was receiving "shall include mineral deposits" and that the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." Statehood Act §6(i); *see* Pub. L. 94-204, §12(d)(1).

133. As reflected by these terms, all parties understood that the State was being given the regulatory power to use its new lands—when it deemed it appropriate—for mining purposes.

134. Indeed, a primary reason that Alaska participated in the Land Exchange was to "select lands in the Bristol Bay region that the federal government had previously placed off-limits to state selections" and which contained enormous "mineral potential." Smith Decl. at 6-8, *Pebble Ltd. P'ship*, 3:14-cv-97.

135. But the EPA's veto effectively prevents any mining from ever occurring on the Pebble deposit and the surrounding area.

136. If the United States wanted to "conserve and restore [Alaska's] most cherished lands and waters, many of which are sacred to Tribal Nations," *Biden-Harris Administration Announces Action to Help Protect Bristol Bay Salmon Fisheries*, U.S. EPA (Jan. 31, 2023), bit.ly/3WBmRnn, it shouldn't have given this land to Alaska in exchange for consideration, *cf. ASARCO, Inc. v. Kadish*, 490 U.S. 605, 632 (1989) ("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.").

137. Indeed, the EPA has essentially used the Clean Water Act to create *another* federal preserve, in addition to the Lake Clark National Park and Preserve, the subject of the parties' agreement, which it has no authority to do. *See* 16 U.S.C. §3213(a) (prohibiting the "executive branch [from] withdraw[ing] more than five thousand acres [about 8

square miles] of public lands within the State of Alaska" without a joint resolution of approval from Congress).

138. By changing the deal to make more state-owned lands off limits to development—through an administrative agency, no less—the United States has unquestionably deprived the State of "the benefit of [its] bargain." *Mobil Oil Expl. & Producing Se., Inc. v. United States*, 530 U.S. 604, 621 (2000) (citing Restatement (Second) of Contracts §243 (1981)).

139. Moreover, the Land Exchange and Statehood Act are not just contracts. They are binding federal law that the EPA has violated. *See* Pub. L. 85-508, 72 Stat. 339 (1958); Pub. L. 94-204; 89 Stat. 1145 (1976).

140. They are thus "both a contract and a statute." *Oklahoma*, 501 U.S. at 235 n.5; *cf. Texas v. New Mexico*, 482 U.S. 124, 128 (1987) ("[A] compact when approved by Congress becomes a law of the United States."). The EPA's veto thus also violates federal law. 5 U.S.C. §706(2); *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (agencies cannot violate "*any* law, and not merely those laws that the agency itself is charged with administering").

141. It is not surprising that the parties would have reached this agreement concerning Alaska's mineral rights.

142. This Court has repeatedly recognized "[t]he 'simple truth' . . . that 'Alaska is often the exception, not the rule.'" *Yellen v. Confederated Tribes*

of the Chehalis Rsrv., 141 S.Ct. 2434, 2438 (2021) (citing cases). "Congress views Alaska as unique and [often] intends Alaska-specific laws to trump more general laws." *Wilderness Soc. v. U.S. Fish & Wildlife Serv.*, 316 F.3d 913, 928 (9th Cir. 2003).

143. Indeed, federal law "repeatedly recognizes that Alaska is different"—from its "'unrivaled scenic and geological values,' to the 'unique' situation of its 'rural residents dependent on subsistence uses,' to 'the need for development and use of Arctic resources.'" *Sturgeon I*, 577 U.S. at 438-39.

144. Given Alaska's unique history, EPA needed a "'clear and manifest' statement from Congress" before it could deprive Alaska of the benefit of its bargain. *Rapanos*, 547 U.S. at 738 (plurality); *see In re Binghamton Bridge*, 3 Wall. 51, 74 (1866) ("All contracts are to be construed to accomplish the intention of the parties.").

145. In its order, the EPA asserted (without authority) that its veto was proper because "nothing in the [Statehood Act] or the [Land Exchange] precludes the application of a duly enacted federal law." Final Determination, Ch.2, 22.

146. But the Statehood Act and the Land Exchange contain "specific provision[s] applying to a very specific situation," while the Clean Water Act "is of general application." *Morton v. Mancari*, 417 U.S. 535, 550 (1974).

147. Thus, without "'*clear* intention otherwise,'" these "'specific'" terms cannot "'be

controlled or nullified by a general'" statute like the Clean Water Act. *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987); *see also* Restatement (Second) of Contracts §203(e) (1981) ("[I]n case of conflict the specific or exact term [in a contract] is more likely to express the meaning of the parties with respect to the situation than the general language.").

148. Yet the EPA discounted the Land Exchange and Statehood Act entirely, giving these agreements no weight whatsoever in its analysis. *See* Final Determination at §2, 20, 22.

149. But agencies must "'conside[r] . . . the relevant factors,'" *Judulang v. Holder*, 565 U.S. 42, 53 (2011), and "[c]onclusory statements such as [these] do not fulfill the agency's obligation" to engage in reasoned decisionmaking, *In re Sang-Su Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002).

150. Given the history of these agreements, the mine's importance to Alaska and its people, and the significant environmental protections already in place, the EPA, at a minimum, made a "'clear error of judgment.'" *Judulang*, 565 U.S. at 53.

151. The parties' agreements also "must be interpreted in light of Congress' traditional authority over navigable waters." *Sackett*, 143 S.Ct. at 1356 (Thomas, J., concurring).

152. The federal government's authority over certain navigable waters is granted and limited by the Commerce Clause, which allows Congress to "regulate

Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, §8, cl. 3.

153. Consistent with this limitation, the term "navigable waters" has long referred to waters that are "navigable in fact," meaning that "they are used, or are susceptible of being used . . . as highways for commerce." *The Daniel Ball*, 10 Wall. 557, 563 (1870). But the EPA never "attempted to establish" that any waters on the Pebble deposit fit this traditional definition of "navigable waters." *Sackett*, 143 S.Ct. at 1357 (Thomas, J., concurring).

154. EPA needed "'exceedingly clear language'" before it could "'significantly alter the balance between federal and state power and the power of the [Federal] Government over [State] property.'" *Id.* at 1341 (majority). "The phrase 'the waters of the United States' hardly qualifies" for the enormous intrusion into Alaska's sovereignty that the EPA has asserted. *Rapanos*, 547 U.S. at 738 (plurality).

155. Even if the EPA's veto were valid, it is still an unconstitutional taking of Alaska's property "without just compensation." U.S. Const. amend. V.

156. The prohibition on uncompensated takings "goes back at least 800 years to Magna Carta." *Horne v. Dep't of Agric.*, 576 U.S. 350, 358 (2015). The Takings Clause "'preserve[s] freedom'" and empowers property owners (like the States) "'to shape and to plan their own destiny in a world where'" the federal

government is "'always eager to do so for them.'" *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2071 (2021).

157. Takings are not limited to physical appropriations of property. A taking can occur when the government "imposes regulations that restrict an owner's ability to use [its] own property." *Id.*

158. To determine whether a use restriction effects a taking, this Court has generally applied a flexible test, "balancing factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action." *Id.* at 2072 (citing *Penn Cent. Transp. Co. v. NYC*, 438 U.S. 104, 124 (1978)).

159. These factors all demonstrate that the EPA's veto here "goes too far." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

160. *First*, the EPA's veto wipes away all the value of the Pebble deposit and the other lands covered by the EPA's restriction. *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987) ("[O]ur test for regulatory taking requires us to compare the value that has been taken from the property with the value that remains in the property.").

161. Before the veto, the Pebble deposit alone was expected to generate billions of dollars in revenue for the State. But now, the lands have "no economically viable use." Alaska Comments at 52.

162. The lands are "undeveloped" and "not served by any transportation or utility infrastructure," accessible only by helicopter or snowmachine. Final Determination, at §2, 4.

163. The "closest communities are the villages of Iliamna, Newhalen, and Nondalton, each of which is approximately 17 miles from the deposit." *Id.* at §2, 2.

164. Due to its climate and barren landscape, crops and other agricultural uses are not feasible. *See* 2013 Bristol Bay Area Plan, at Ch. 3, 90-91, 129-30, 150 (describing the land as "tundra" "underlain by isolated masses of permafrost" with "little in the way of agricultural resources . . . except for village gardens").

165. And because the restricted lands contain remote wetlands and small streams, there are no commercial, subsistence, or recreational fisheries there. *See* Final Determination at §3, 57.

166. Simply put, there is *nothing* the State can now do with these lands for economic purposes.

167. *Second*, as explained, Alaska received the Pebble deposit and the other restricted lands with the express understanding that the State would be able to lease them to mining companies that would pay taxes and royalties to financially support the State.

168. Indeed, the State relinquished its own land rights to obtain the property, expecting that it would be a long-term financial investment.

169. The EPA's obliteration of the State's "reasonable investment backed expectations" in developing the Pebble deposit thus goes "far beyond ordinary regulation or improvement." *Kaiser Aetna v. United States*, 444 U.S. 164, 175, 178 (1979).

170. *Finally*, the "'character of the governmental action'" weighs in favor of a taking because it "'forc[es] [the State] alone to bear public burdens which, in all fairness and justice, should be borne by the [American] public as a whole.'" *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 537, 539 (2005).

171. Due to its remoteness and lack of infrastructure and development, the only economically productive use for the land is mining. But by making it impossible for the State to utilize the land's mineral resources, the EPA has effectively confiscated the land and created a *de facto* national park contrary to federal prohibition. *See* 16 U.S.C. §3213(a).

172. Accordingly, even if the EPA's actions were lawful, Alaska would still be entitled to just compensation for the loss of its property.

CAUSES OF ACTION

COUNT I
Breach of Contract

173. Plaintiff incorporates all its prior allegations.

174. The United States has waived sovereign immunity over claims for damages "founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. §1491(a)(1).

175. The Cook Inlet Land Exchange and the Alaska Statehood Act are binding, enforceable contracts. *See McGee*, 71 U.S. at 155; *Andrus*, 446 U.S. at 507.

176. Per these agreements, the United States promised that the land Alaska was receiving "shall include mineral deposits" and that the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." Statehood Act §6(i); Land Exchange §12(d)(1).

177. In the Final Determination, however, Defendants breached these agreements by effectively preventing any mining from ever occurring on the Pebble deposit and the surrounding area. Indeed, the EPA discounted the Land Exchange and the Statehood Act entirely, giving these agreements no weight whatsoever in its analysis.

178. Defendants also violated the covenant of good faith and fair dealing by "act[ing] so as to destroy the reasonable expectations of the other party regarding the fruits of the contract." *Centex Corp.*, 395 F.3d at 1304 (citing Restatement (Second) of Contracts §205).

179. Because the United States has breached the Cook Inlet Land Exchange and the Statehood Act, the State of Alaska is entitled to contractual remedies, including monetary damages.

COUNT II
Administrative Procedure Act

180. Plaintiff incorporates all its prior allegations.

181. The Administrative Procedure Act requires courts to "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or that are "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. §706(2)(A), (C).

182. The Land Exchange and the Statehood Act are "both a contract and a statute." *Oklahoma*, 501 U.S. at 235 n.5.

183. Agencies cannot violate "*any* law, and not merely those laws that the agency itself is charged with administering." *NextWave Pers. Commc'ns*, 537 U.S. at 300.

184. Under federal law, the land Alaska received "shall include mineral deposits" and the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." Statehood Act §6(i); Land Exchange §12(d)(1).

185. In the Final Determination, however, Defendants violated federal law by effectively

preventing any mining from ever occurring on the Pebble deposit and the surrounding area.

186. Indeed, the EPA discounted the Land Exchange and the Statehood Act entirely, giving these agreements no weight whatsoever in its analysis.

187. Because the Final Determination is "arbitrary, capricious, an abuse of discretion, . . . not in accordance with law," and "in excess of statutory jurisdiction, authority, or limitations," it must be held unlawful and set aside.

COUNT III
The Takings Clause of the Fifth Amendment

188. Plaintiff incorporates all its prior allegations.

189. The Fifth Amendment of the United States bars the United States from taking property "for public use, without just compensation."

190. A taking can occur when the government "imposes regulations that restrict an owner's ability to use [its] own property." *Cedar Point Nursery*, 141 S.Ct. at 2071.

191. The Final Determination wipes away all the value of the State's lands, destroys its reasonable investment-backed expectations, and forces the State alone to bear burdens which should be borne by the American public as a whole.

192. Because Defendants have taken the State's property, the State is entitled to just compensation.

PRAYER FOR RELIEF

WHEREFORE, Alaska requests that the Court order the following relief:

a) Declare that the Final Determination is arbitrary, capricious, an abuse of discretion, not in accordance with law, and in excess of statutory jurisdiction, authority, or limitations;

b) Vacate and set aside the Final Determination;

c) Enjoin the Defendants from enforcing the Final Determination;

d) Award damages for breach of contract and just compensation for the taking of the State's property;

e) Award costs and reasonable attorney's fees; and

f) Grant any other relief available at law or equity that is just and proper.

Respectfully submitted,

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No. _____, Original

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.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTRODUCTION

This Court has repeatedly recognized "the simple truth" that "Alaska is often the exception, not the rule." *Sturgeon v. Frost*, 577 U.S. 424, 440 (2016) (*Sturgeon I*). Sparsely populated and thousands of miles from the contiguous states, Alaska has earned its nickname as the Last Frontier. Because of these realities, the federal government has long granted Alaska unique property rights and regulatory powers to ensure the success of the State. But the United States is now going back on its promises, depriving Alaska of sovereignty over its state-owned lands and the means of sustaining its prosperity.

In 1976, the United States, the State of Alaska, and an Alaska Native corporation—the Cook Inlet Region, Inc. (CIRI)—agreed to the largest land exchange in American history. Through the Cook Inlet Land Exchange, the State relinquished its land rights to nearly 700,000 acres of land. With the State's and CIRI's relinquished land selections, the United States created the Lake Clark National Park and Preserve, a jewel of the National Park System, and CIRI secured oil and gas rights that have allowed it to thrive for decades.

The State, in return, received federal lands that had previously been set aside for conservation purposes but were known to have enormous mineral potential. These lands were critical to the continued well-being of Alaska, which has long relied on its resource-rich lands to fund the State and local governments and provide for the needs of its people. To secure these rights, the parties agreed that the

land grants to Alaska "shall include mineral deposits" and the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct."

Decades later, Alaska hit pay dirt, discovering the largest undeveloped copper deposit in the world on the lands the State received. Known as the Pebble deposit, the State's land contains more than 57 *billion* pounds of copper, in addition to enormous quantities of gold, silver, and rare earth elements. Mining these minerals would provide thousands of jobs to Alaskans and billions of dollars in taxes and royalty payments to the State. And because of strict state environmental regulations—derived from mandatory protections enshrined in Alaska's constitution—the State would ensure that its lands and resources are fully protected.

But the United States is now reneging on the deal. Despite the parties' agreements, the EPA recently issued an order effectively prohibiting any mining from occurring on these state-owned lands—a restriction covering about 309 square miles, which is more than 13 times the size of Manhattan and twice the size of Denver. Through administrative fiat, the EPA effectively created *another* federal preserve in Alaska, one that was never contemplated by the parties. The United States has breached its contracts with Alaska and violated federal law. At a minimum, it has taken Alaska's property without just compensation.

This case meets all the requirements for this Court's original jurisdiction, which extends to all

disputes "in which a State shall be Party." U.S. Const. art. III, §2, cl.2. The EPA's order strikes at the heart of Alaska's sovereignty, depriving the State of its power to regulate its lands and waters. Alaska also has no alternative forum for its claims to be heard and resolved: Its Administrative Procedure Act claims would go to a federal district court, while its contract and takings claims would go to the Court of Federal Claims. Moreover, the State of Alaska cannot file its action in the Court of Federal Claims for monetary damages while its action in the district court is pending. *See* 28 U.S.C. §1500.

The State thus "face[s] a choice between equally unattractive options: forgo injunctive relief in the district court to preserve [its] claim for monetary relief in the [Court of Federal Claims], or pursue injunctive relief and hope that the statute of limitations on [its contract and] takings claim[s] does not expire before the district court action is resolved." *United States v. Tohono O'Odham Nation*, 563 U.S. 307, 323-24 (2011) (Sotomayor, J., concurring in the judgment) (citation omitted). Neither is tenable.

This Court has not hesitated to exercise its original jurisdiction over similar disputes involving Alaska. Indeed, since Alaska joined the Union, no state has had more original actions against the United States than Alaska. This case fits squarely within the Court's original-jurisdiction criteria. The Court should grant the motion for leave to file the bill of complaint.

STATEMENT OF THE CASE

A. The Alaska Statehood Act

The United States purchased Alaska from Russia in 1867. It thereby acquired "in a single stroke 365 million acres of land—an area more than twice the size of Texas." *Sturgeon v. Frost*, 139 S.Ct. 1066, 1073 (2019) (*Sturgeon II*) (cleaned up). For the next 90 years, the Federal Government owned all of Alaska. *Id.* But Alaska's distant location and few inhabitants led to an "'era of total neglect,'" and the purchase was roundly mocked as "Seward's Folly" and President Johnson's "Polar Bear Garden." *Id.*

It was not until the 1950s, after "[o]pportunities to mine, trap, and fish attracted tens of thousands more settlers," that Congress seriously considered admitting Alaska as a State. *Id.* But there was a problem: 98 percent of the land was still owned by the Federal Government. *Sturgeon I*, 577 U.S. at 429. As a result, "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." *Id.* Indeed, one of the principal objections to statehood was that Alaska would not survive unless it was "'heavily subsidized by the other 48 States of the Union.'" *Trustees for Alaska v. State*, 736 P.2d 324, 335 (Alaska 1987) (quoting 104 Cong. Rec. 9498 (1958)).

A solution was struck. In 1958, Congress passed—and the people of Alaska ratified—the Alaska Statehood Act, making Alaska the 49th state in the Union. To "propel private industry and create a tax

base," Congress made an enormous land grant to the new State. *Sturgeon II*, 139 S.Ct. at 1074. Over the next 35 years, Alaska could select for itself more than 103 million acres of "vacant, unappropriated, and unreserved" federal land, about a quarter of all land in Alaska. Statehood Act §6(a)-(b).

Importantly, the Act promised that the land grants to Alaska "shall include mineral deposits," and that the "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." *Id.* §6(i). These mineral rights were essential because only a fraction of the land in Alaska was suitable for agriculture, and "the federal government had already reserved the most valuable land" for itself. *Trustees for Alaska*, 736 P.2d at 336 n.23. Given the severe challenges facing the new State, these mineral rights were seen as "'the foundation upon which Alaska'" could become a "'full and equal' State." *Id.* at 336 (quoting 104 Cong. Rec. 9361 (1958)).

The Statehood Act also made clear that Alaska—not the Federal Government—would have "regulatory authority over 'navigation, fishing, and other public uses'" on the navigable waters within the State. *Sturgeon II*, 139 S.Ct. at 1074. By incorporating the Submerged Lands Act of 1953, "the Statehood Act gave Alaska 'title to and ownership of the lands beneath navigable waters.'" *Id.* (quoting 43 U.S.C. §1311); *see* Statehood Act §6(m). In granting these powers and land rights, Congress recognized that Alaska would "'develo[p] . . . its resources by making them available for maximum use consistent with the

public interest.'" *Sturgeon I*, 577 U.S. at 429 (quoting Alaska Const. art. VIII, §1).

B. The Cook Inlet Land Exchange

The Statehood Act did not determine the rights of the Alaska Natives, who asserted aboriginal title to much of the same land now claimed by the State. *Id.* To address these issues, Congress in 1971 passed the Alaska Native Claims Settlement Act (ANCSA), which extinguished aboriginal land claims but also allowed corporations organized by Alaska Natives to select more than 40 million acres of federal land. *Id.* at 429-30; *see ANCSA Conveyances*, U.S. Bureau of Land Mgmt., bit.ly/3O3GlPa. ANCSA further directed the Secretary of Interior to withdraw up to 80 million acres of land from selection by the State to set aside for conservation purposes. 43 U.S.C. §1616(d)(2).

Although the law worked well throughout much of the State, "severe difficulties arose" in the Cook Inlet region of southcentral Alaska. *State v. Lewis*, 559 P.2d 630, 633 (Alaska 1977). Much of the land desired by the new Alaska Native corporation (Cook Inlet Region, Inc. or CIRI) had already been selected by the State or set aside by the Federal Government for public purposes. *See* House Rep. 104-643, at 3-4 (June 27, 1996). The land available to CIRI under ANCSA thus was "largely comprised of mountains and glaciers, hardly the settlement contemplated by Congress." *Id.* at 4.

To resolve these issues, there was a "series of intense discussions" among the United States, Alaska, CIRI, and "various other interested groups," including

"mining interests." House Rep. 94-729, at 30 (Dec. 15, 1975). The United States, the State of Alaska, and CIRI ultimately signed a contract agreeing to "the largest land exchange in American history." House Rep. 104-643, at 4. Titled the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area," it was enacted by Congress as Public Law 94-204, an amendment to ANCSA, and subsequently approved by the Alaska legislature. *Id.* at 4-5; *see* Pub. L. 94-204, 89 Stat. 1145 (1976). The three-way agreement is now commonly known as the Cook Inlet Land Exchange.

All parties stood to benefit under the Land Exchange. For the United States, the "centerpiece" of the land exchange was the creation of the Lake Clark National Park and Preserve. House Rep. 104-643, at 4. To create a contiguous park, both the State and CIRI gave their land rights to the United States and "contractually bound themselves to support [the] creation of the [park]." *Id.* Today, the park spans more than 4 million acres and is a "'land of stunning beauty,'" containing "glaciers, volcanoes, forested coasts," and other "distinctive Alaskan landscapes." Joe Yogerst, *How to Visit Lake Clark National Park and Preserve*, National Geographic (Mar. 30, 2023), bit.ly/4598Np6.

For CIRI, the Land Exchange was a "profound" success that "formed the basis of CIRI's future." *Celebrating 30 Years of the Cook Inlet Land Exchange* at 1, CIRI (Oct. 2006), bit.ly/3Impgwy. CIRI obtained "resource-rich lands in the region" that "laid the foundation for [CIRI's] unprecedented financial

success, especially as [it secured] rights to oil and gas royalties." *Id.* Over the last five years, CIRI has had an average yearly net income of more than $47 million, and its total assets amount to more than $1 billion. *Financials*, CIRI, bit.ly/3pNuwCQ.

For the State of Alaska, it gained access to approximately 525,000 acres in the Lake Iliamna area and the Nushagak River and Koksetna River drainages of Bristol Bay. Smith Decl. at 6, Dkt. 25, *Pebble Ltd. P'ship v. EPA*, 3:14-cv-97 (D. Alaska). These lands had previously been withdrawn from selection by the State under ANCSA. *Id.*; *see* 43 U.S.C. §1616(d)(2)(A); Pub. L. 94-204, §12(d)(1). Like much of Alaska, the lands the State received in the Exchange contained extensive wetlands and streams. *See* Jonathan V. Hall et al., *Status of Alaska Wetlands* at 3, U.S. Fish & Wildlife Serv. (1994), bit.ly/3ME9cYa (wetlands cover "43.3 percent of Alaska's surface area," compared to just "5.2 percent of the surface area" for the lower 48 States). Although most of these lands had previously been set aside by the federal government for conservation purposes, the United States opened these lands to Alaska with the full knowledge that the State would "utiliz[e]" and "develo[p]" the land "for the maximum benefit of its people." Alaska Const. art. VIII, §2. In fact, the parties knew that the lands "had significant mineral development potential," and the State wanted "to explore them and ultimately to obtain economic benefit from them." Smith Decl. at 8, *Pebble Ltd. P'ship*, 3:14-cv-97.

The State insisted that the Land Exchange explicitly recognize its mineral rights. The new lands the State obtained were thus designated "for all purposes as if conveyed to the State under and pursuant to Section 6 of the Alaska Statehood Act." Pub. L. 94-204, §12(d)(1). That meant the State would, among other things, own the new lands' "mineral deposits" and have the right to "lease [them] as the State legislature may direct." Statehood Act §6(i). These mineral-rich lands thus would help the young State—which was still the least populated in the union despite its vast size—receive "the income that [it] needed to meet the costs of statehood." *Trustees for Alaska*, 736 P.2d at 336.[1]

C. The Bristol Bay Area Plan of 1984

Following the Land Exchange, the State spent years developing the Bristol Bay Area Plan, a comprehensive land-use plan designating each area of land in the Bristol Bay region to its best uses, including mining, hunting, fishing, conservation, and others. *See Bristol Bay Area Plan for State Lands*, State of Alaska (1984), bit.ly/431V1CS. The State developed the plan with the goal of "preserv[ing] . . .

[1] In fact, some of the land was ultimately conveyed directly under the Statehood Act. Under the Land Exchange, the State was entitled to select "no more than 27 townships of land." Pub. L. 94-204, §12(d)(1). When the State later determined that it had over-designated the amount of land that could be conveyed under the Land Exchange (selecting 28.1 townships), the United States allowed the State to redesignate some of the lands so they would be conveyed under the Statehood Act. *See* Dkt. 185-5, *Pebble Ltd. P'ship*, 3:14-cv-97 (1988 letter).

fish and wildlife resources" on the State's new lands while also "allowing for the exploration and development of other resources such as oil[,] gas, [and] minerals." *Id.* at Ch. 1, 2.

To accomplish its dual environmental and economic goals, the State created a strict environmental and regulatory regime governing all mining on the new lands. *Id.* at Ch. 2, 19-26. For example, to "protect the fisheries and recreational resources" in the region, the State closed dozens of streams, lakes, and navigable waters to any use in potential mining. *Id.* at Ch. 2, 20. In addition, the State prohibited "dredging . . . , filling, or shoreline alteration in fish habitat[s]" unless the State "determined that the proposed activity will not have a significant adverse impact on fish or fish habitat or that no feasible and prudent alternative site exists to meet the public need." *Id.* at Ch. 2, 24. And no mining could occur without an "approved mining plan of operation," which requires compliance with a strict set of environmental controls. *Id.* at Ch. 2, 24-25.

Importantly, the Plan designated for mineral exploration a portion of land that would later be known as the Pebble deposit. *Id.* at Ch. 2, Map 3, Ch. 3, 21-24, 27-30, 35-38. By designating this land (and others) for mineral exploration, the State sought to both "develop the region's mineral and material resources" while also "protect[ing] the fisheries and recreational resources, as well as water quality." *Id.* at Ch. 2, 20-23.

D. The Pebble Deposit

In 1987, an Alaskan geologist, Phil St. George, was piloting an airplane in a remote area of the Bristol Bay region when he made "the biggest discovery of his career." *The Pebble Deposit 30 Years Later*, Pebble Watch (Oct. 17, 2018), bit.ly/3nQyBFH. Seeing rust-colored earth (an indication of gold), St. George identified the land as worthy of mineral exploration. After initial tests indicated that the land contained gold and copper, St. George named the area after Pebble Beach, the famous golf course, because his discovery felt "like getting a hole in one." *Id.* Cominco Alaska, the company that employed St. George, quickly staked a mineral claim on the land. *See* Lang Decl. at 4, Dkt. 32, *Pebble Ltd. P'ship*, 3:14-cv-97.

Despite its potential, the Pebble deposit remained largely unexplored due to low metal prices and the large costs involved in any mining operation. Thiessen Decl. at 2, Dkt. 26, *Pebble Ltd. P'ship*, 3:14-cv-97. But in 2002, after a different company acquired the mineral claim for the Pebble deposit, significant resources were devoted to exploring the Pebble deposit. *Id.* After years of exploration and analysis, the world began to understand the Pebble Deposit's enormous potential.

Located about 200 miles southwest of Anchorage and accessible only by helicopter or snowmachine, the Pebble deposit is now recognized as the "largest undeveloped copper deposit" in the world. *Economic Contribution Assessment of the Proposed Pebble Project to the U.S. National and State Economies* ("*Pebble Assessment*"), IHS Markit, at 3

(Feb. 2022), bit.ly/3MAERej. The Pebble deposit contains an astounding 57 billion pounds of copper. *Id.* It also contains copious mineral riches in addition to copper, including 71 million ounces of gold, 3.4 billion pounds of molybdenum, 345 million ounces of silver, and 2.6 million kilograms of rhenium. *Id.*

The importance of this discovery of copper and rare earth minerals cannot be overstated. "Electric vehicles, solar and wind power, and batteries for energy storage all run on copper" and rare earths. Pippa Stevens, *A Coming Copper Shortage Could Derail the Energy Transition, Report Finds*, CNBC (July 14, 2022), cnb.cx/3opW158. Because of the worldwide push to transition to renewable energy, copper demand is expected to soar in the coming years. Stevens, *supra.* But a "lack of new mining activity" will cause severe shortages of copper worldwide. Yusuf Khan, *Copper Shortage Threatens Green Transition*, WSJ (Apr. 18, 2023), on.wsj.com/3oiFMa6. Unless significant new supplies of copper become available, global climate goals will be "'short-circuited and remain out of reach.'" Stevens, *supra.* A further problem for the United States is that China holds the "preeminent position" in copper resources and is a leading producer of rare earths, likely requiring the United States to import much of its copper and rare earth needs in the coming years. *See, e.g.*, *The Future of Copper* at 12-13, IHS Markit (July 2022), bit.ly/42XLpJy.

As the owner of the Pebble deposit, Alaska stands to benefit enormously from the mining of its land. The proposed mine would provide the State with

more than $100 million a year through state taxes, licensing fees, and royalty payments. *Pebble Project: Final Environmental Impact Statement* ("*Pebble EIS*"), U.S. Army Corps of Eng'rs, at §4.3, 11 (July 2020), bit.ly/43ss7MA. Over a five-year construction phase and 20-year operations phase, these payments would ultimately provide between $2.82 and $5.38 billion in revenue to the State. *See Pebble Assessment*, *supra* at 4-5, 20-21. The proposed mine would also create employment opportunities in a remote part of Alaska where economic development is otherwise limited. One study estimated that the mine, just in the initial capital phase, would create more than 12,000 jobs. *See id.* at 4, 19. Simply put, the proposed mine would do exactly what was intended by the Land Exchange and the Statehood Act: It would "provide the revenues necessary to support state and local governments and to sustain Alaska's economy, culture, and way of life." Gov. Mike Dunleavy, *Re: May 26, 2022 Proposed Determination*, at 2 (Sept. 6, 2022), bit.ly/4377GEv.

E. The EPA's Veto of the Pebble Deposit

Around 2010, various environmental groups began urging the EPA to preemptively "veto" the mining of the Pebble deposit under Section 404(c) of the Clean Water Act of 1972. *See* Final Determination, U.S. EPA, at §2, 9-10 (Jan. 2023), bit.ly/3ofUIFM; *see also* Pebble Ltd. P'ship Comments, EPA-R10-OW-2022-0418, at 4-9 (Sept. 6, 2022), bit.ly/3pOGI6c. A rarely used provision, Section 404(c) allows the EPA Administrator to "prohibit" or "restrict" the use of a "disposal site" for "dredged or fill material" when the discharge will "have an unacceptable adverse effect on

municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." 33 U.S.C. §1344(c).

Despite the United States' promise that the Pebble deposit "shall be subject to lease by the State as the State legislature may direct," Statehood Act §6(i); Pub. L. 94-204, §12(d)(1), the EPA in 2014 announced its intention to restrict discharges associated with mining the Pebble deposit, *see* 79 Fed. Reg. 42314, 42317-18 (July 21, 2014). Because no permit application had been filed with the U.S. Army Corps of Engineers, *see* 33 U.S.C. §1344(a), the EPA took these preemptive steps based on notifications that the Pebble Limited Partnership (the company with mineral rights over the Pebble deposit) filed with the Securities and Exchange Commission. 79 Fed. Reg. at 42315.

The Pebble Limited Partnership quickly sued, alleging, among other things, that the proposed veto violated the Cook Inlet Land Exchange and the Statehood Act. *Pebble Ltd. P'ship v. EPA*, 3:14-cv-97 (D. Alaska) (Dkt. 22). On November 25, 2014, the U.S. District Court for the District of Alaska issued a preliminary injunction prohibiting the EPA from completing its Section 404(c) process until the case was resolved. Dkt. 90, *Pebble Ltd. P'ship*, 3:14-cv-171. In May 2017, after a change in administration, the EPA settled the lawsuit, agreeing to initiate a process to withdraw the Proposed Determination. Dkt. 299, *id.* The EPA officially withdrew the Proposed Determination in August 2019. 84 Fed. Reg. 45749 (Aug. 30, 2019). Although that withdrawal was later

challenged, the district court found that the EPA's withdrawal was not subject to judicial review and dismissed the case. *See Bristol Bay Econ. Dev. Corp. v. Hladick*, 454 F. Supp. 3d 892, 909-10 (D. Alaska 2020).

In June 2020, after years of discussions with the Corps and the EPA, the Pebble Limited Partnership submitted a permit application with the Corps to develop the Pebble deposit. *See* Pebble Project Department of the Army Application for Permit ("PLP Permit App."), POA-2017-271 (June 2020), bit.ly/3WBZhH2. The company's application acknowledged that wetlands were "present throughout the Pebble Project area, including the mine site." *Id.* at 16. Because the Corps asserted jurisdiction over wetlands as "waters of the United States" under the Clean Water Act, discharges into regulated waters were "unavoidable." *Id.* But, as the Corps would later confirm, the proposed removal of wetlands would "not . . . have a measurable effect on fish." *Pebble EIS*, at Exec. Summary, 87. And while the footprint of the mine would encompass streams and other waters, this "loss of habitat is not expected to have a measurable impact on fish populations based on physical habitat characteristics and fish density estimates in the affected reaches." *Pebble EIS*, at §4.24, 1; *see also id.* at §4.6, 9 (construction "would not have measurable effects on . . . adult salmon . . . due [to] the limited . . . habitat affected"). In fact, "less than 0.01% of the streams in Bristol Bay stand to be adversely affected by the proposed project." State of Alaska Comments, EPA-R10-OW-2022-0418, at 23 (Sept. 6, 2022), bit.ly/3WnCMWn.

Consistent with the public interest, the company promised to take "numerous measures to avoid and minimize impacts to wetlands and other [waters], air quality, wildlife and aquatic habitat, areas of cultural significance, and areas of known subsistence use." PLP Permit App. at 36-53. For example, the company would contain and treat water on the mine site, construct over waters only where necessary, and design the project to cause the least possible impact. *Id.* The company would also, as required by state law, construct all necessary fishways to ensure proper protection of anadromous fish. *See* Alaska Stat. §§16.05.841, 16.05.871. The company further agreed to undertake extensive reclamation efforts to restore the area after mining was completed. PLP Permit App. at 41-43. Despite its environmental impact statement finding that the project plan would adequately protect fisheries, the Corps initially denied the company's application. *See* Pebble Project EIS, U.S. Army Corps of Eng'rs, bit.ly/3JIedOE. The decision was recently reversed on appeal for failing to adequately explain the denial, and it remains pending with the Corps. *See* Administrative Appeal Decision, U.S. Army Corps of Eng'rs, POA-2017-271 (Apr. 24, 2023), bit.ly/3pT7ryO.

While the Pebble Limited Partnership was seeking approval from the Corps, litigation continued over the challenge to the EPA's withdrawal of its 2014 proposed determination. In June 2021, the Ninth Circuit reversed the district court's decision, holding that the withdrawal was judicially reviewable. *See Trout Unlimited v. Pirzadeh*, 1 F.4th 738 (9th Cir. 2021). On remand, the EPA—again under a new

administration—asked the district court to vacate the agency's 2019 decision withdrawing the 2014 proposed determination. Dkt. 103, *Bristol Bay Econ. Dev. Corp. v. Leopold*, 3:19-cv-265 (D. Alaska). The court granted the motion in October 2021. Dkt. 109, *id.*

On January 30, 2023, over strong objections from the State of Alaska, the EPA issued a new and expanded veto over the Pebble deposit. *See* Final Determination; *see also* 88 Fed. Reg. 7441 (Feb. 3, 2023). Pointing to an expected loss of wetlands and streams, the EPA concluded that the mine would lead to "unacceptable adverse effects on anadromous fishery areas." Final Determination at Exec. Summary, 15-16. The EPA therefore issued a "prohibition" over the Pebble deposit (a 13.1 square mile area), which prohibited the planned discharge of dredged or fill material for the construction and operation of the mine, as well as any similar "future proposals." *Id.*

The EPA, however, went even further, concluding that the types of discharges proposed would have "unacceptable adverse effects" if done "anywhere" within the surrounding region. *Id.* at 16. The EPA thus issued a new "restriction" on any similar level of discharges over a 309-square-mile area of land, encompassing the Pebble deposit and covering a land area more than 23 times the size of the proposed project. *Id.* Given the realities of mining in Alaska, it is "virtually certain" that "any future economically viable mining plan" in the area will be prohibited under the veto. Alaska Comments at 30.

ARGUMENT

The Court should grant Alaska leave to file a bill of complaint. Article III provides that this Court "shall have original jurisdiction" over "all Cases . . . in which a State shall be Party." U.S. Const. art. III, §2, cl. 2. This case meets all the criteria under this Court's discretionary approach to its original jurisdiction. Alaska has a strong sovereign and economic interest in preserving its control over state lands. It raises serious claims alleging unlawful agency action, breach of contract, and a taking without just compensation. And there is no adequate forum in which Alaska's claims can be raised and its remedies awarded. In the alternative, this Court should grant leave to file a bill of complaint because, despite its precedent, the Court's original jurisdiction is mandatory.

I. This case warrants the exercise of the Court's original jurisdiction.

When deciding whether to exercise original jurisdiction, the Court has looked to "the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim[s]." *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (cleaned up). The Court has also examined "the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had." *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972). Both inquiries are satisfied here.

A. This case implicates Alaska's unique sovereign and fiscal interests and raises serious claims on the merits.

1. Alaska has a strong interest in reclaiming its right to the mineral resources on its lands. "Regulation of land and water use lies at the core of traditional state authority." *Sackett v. EPA*, 143 S.Ct. 1322, 1341 (2023); *Rapanos v. United States*, 547 U.S. 715, 738 (2006) (plurality) (the "[r]egulation of land use," such as "through the issuance of . . . development permits," is "a quintessential state and local power"). It is the States, not the federal government, that have "traditional and primary power over land and water use." *SWANCC v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001); *Sackett*, 143 S.Ct. at 1357 (Thomas, J., concurring) ("The baseline under the Constitution, the [Clean Water Act], and the Court's precedents is state control of waters."). And it is the States, not a distant federal bureaucracy, that know best the needs of their citizenry. "Those who are closest to the land—whose quality and way of life depend upon healthy ecosystems—care most about the land and know best how to maintain its legacy, conservation, and uses for years to come." *Western Conservation Principles*, Senate & Cong. Western Caucuses, at 1 (Oct. 5, 2021), bit.ly/3BUdQMX.

These principles hold especially true for Alaska. From the beginning, Alaska has depended heavily on its state-owned lands to obtain the resources necessary to fund the State and local governments and provide for its citizenry. This control over its lands—including its valuable minerals—has long been an essential feature of Alaska's sovereignty.

See Sturgeon II, 139 S.Ct. at 1074. Indeed, no other state in the Union depends so greatly on its lands for its prosperity. Alaska remains sparsely populated and often inaccessible except by plane, boat, or snowmachine. To put it in perspective, if Manhattan contained the same population density as Alaska, fewer than 30 people would live on the entire island.

Not surprisingly, then, Alaska's economy "relie[s] heavily on resource extraction industries." *WIOA State Plan* at 4, U.S. Dep't of Educ. (2020-2023), bit.ly/3PwIhk8. The concentration of jobs in "natural resources and mining" is unquestionably the "biggest difference between Alaska's labor market and the nation's." *Id.* at 5. In 2022, Alaska' mining industry provided $186 million in tax revenue to the State and localities and $266 million in royalty payments to Alaska Native corporations, and it supported 11,400 jobs and $1 billion in wages statewide. *Alaska's Mining Industry*, Alaska Miners Ass'n, Inc. (Mar. 2023), bit.ly/45xUHOs.

No land-use project in recent memory is more important to the State than the Pebble deposit. It would generate billions of dollars in revenue for the State and tens of thousands of jobs for Alaskans, many of whom are rural residents with limited economic opportunities. And it would produce essential mineral resources for the emerging energy market, positioning Alaska as a leader in the coming renewable energy transition.

To obtain the benefits of the Pebble deposit, Alaska has exercised its traditional power to regulate

and control its lands. The State has spent decades gathering and analyzing data to create a regulatory regime that allows mineral development while also protecting the environment. *See* 1984 Bristol Bay Area Plan; *Bristol Bay Area Plan for State Lands*, State of Alaska (2005), bit.ly/45A8TpS; *Bristol Bay Area Plan for State Lands*, State of Alaska (2013), bit.ly/42a9Nqp. These efforts reflect Alaska's constitutional requirement 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.

The EPA veto completely disregards Alaska's sovereign choices. Inherent in the EPA's decision is the notion that Alaska will not adequately protect its lands, waters, and other natural resources. That is false. Alaska devotes significant resources to protecting its lands and waters because its economy is "heavily dependent on the fishing industry and related maritime activity." *WIOA State Plan*, *supra*, at 7. Indeed, unlike most States, Alaska is constitutionally *required* to protect its natural resources. The State must provide for the "conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." Alaska Const. art. VIII, §2. Fish, wildlife, and waters are "reserved to the people for common use." *Id.* §3. And all replenishable resources belonging to the State "shall be utilized, developed, and maintained on the sustained yield principle," *id.* §4, which requires "'maximum use of natural resources with their continued availability to future generations,'" *West v.*

State, 248 P.3d 689, 696 (Alaska 2010) (quoting The Alaska Const. Convention, Proposed Const. for the State of Alaska: A Report to the People of Alaska (1956)).

Alaska has implemented this constitutional mandate through extensive environmental regulations that govern the mining of the Pebble deposit. For example, streams in the Bristol Bay area are already statutorily protected as fishery reserves. *See* Alaska Stat. §38.05.140(f). For the streams that would be affected by the project—which comprise less than 0.01% of the streams in the Bristol Bay watersheds—the mining operator would be required to take mitigation steps to protect the habitats of fish and to ensure their free passage through freshwater bodies. *See* Alaska Stat. §§16.05.871-.901; 5 AAC 95.900 (imposing upon permittees a duty to "mitigate any adverse effect upon fish or wildlife, or their habitat"); 5 AAC 95.902 (imposing strict liability upon anyone who fails to mitigate). And that is just one of countless steps the mining operator will have to take to protect Alaska's natural resources. Yet the EPA has cast aside the State's laws and regulations and instead imposed its own bureaucratic judgment as to the best use of the Pebble deposit and the surrounding lands.

The State's sovereign and economic interests warrant the exercise of the Court's original jurisdiction. Whether Alaska's actions, "undertaken in its sovereign capacity," can be overridden by a federal agency "precisely 'implicates serious and important concerns of federalism fully in accord with the purposes and reach of [this Court's] original

jurisdiction.'" *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992). Indeed, the Court has repeatedly invoked its original jurisdiction to resolve cases implicating state interests in sovereignty and property. *See* Supreme Court Practice §10.I.4; *see, e.g.*, *Alaska v. United States*, 545 U.S. 75 (2005); *Cal. ex rel. State Lands Comm'n v. United States*, 457 U.S. 273 (1982); *Utah v. United States*, 403 U.S. 9 (1971). This important dispute falls squarely within this line of precedents.

2. The State's claims are also serious and dignified. To begin, the United States has breached the Cook Inlet Land Exchange, which is plainly a contract. "All the elements of a contract [are] met in the transaction." *McGee v. Mathis*, 71 U.S. 143, 155 (1866). There were "competent parties": the United States, the State of Alaska, and CIRI. *Id.* There was "sufficient consideration": the State gave CIRI its land rights to 12,000 acres of land and the United States its land rights to 675,000 acres, and, in return, the State received lands encompassing the Pebble deposit. *Id.* And there was "consent of minds": the Land Exchange was bargained for, reduced to writing, and signed by all three parties. *Id.* The Court has long recognized that these types of agreements "constitut[e] a contract." *Id.*; *cf. Oklahoma v. New Mexico*, 501 U.S. 221, 242 (1991) (Rehnquist, C.J., concurring in part and dissenting in part) ("An interstate compact . . . ratified by Congress" is "nonetheless essentially a contract between the signatory States.").

The Statehood Act is also a binding contract. *See* Statehood Act §4 (describing the Act as "a compact

with the United States"); *e.g., Andrus v. Utah*, 446 U.S. 500, 507 (1980) (describing the Utah Enabling Act as "a 'solemn agreement' which in some ways may be analogized to a contract between private parties."). Its terms were presented as a "[p]roposa[l] . . . to the inhabitants of" Alaska as a means "to become a sovereign community." *Cooper v. Roberts*, 59 U.S. (18 How.) 173, 178 (1855). After both Congress and Alaska approved the terms, they established "an unalterable condition of the admission, obligatory upon the United States." *Beecher v. Wetherby*, 95 U.S. 517, 523 (1877).

The EPA's veto, in turn, constitutes a breach of contract. Under general contract principles, a breach of contract occurs when there is a "[f]ailure by the promisor to perform" a contractual duty. *Franconia Assocs. v. United States*, 536 U.S. 129, 142-43 (2002) (citing Restatement (Second) of Contracts §235(2) (1979)). A party also violates the covenant of good faith and fair dealing when it "act[s] so as to destroy the reasonable expectations of the other party regarding the fruits of the contract." *Centex Corp. v. United States*, 395 F.3d 1283, 1304 (Fed. Cir. 2005) (citing Restatement (Second) of Contracts §205 (1981)); *see, e.g.*, *id.* at 1304-05, 1311, 1314 ("[A]n implied promise of good faith and fair dealing . . . was breached when Congress passed targeted legislation that effectively appropriated to the government a substantial portion of the benefits that the plaintiffs reasonably expected from the operation of the Agreement.").

Here, the United States promised that the land Alaska was receiving "shall include mineral deposits" and that the "[m]ineral deposits in such lands shall be

subject to lease by the State as the State legislature may direct." Statehood Act §6(i); *see* Pub. L. 94-204, §12(d)(1). As reflected by these terms, all parties understood that the State was being given the regulatory power to use its new lands—when it deemed it appropriate—for mining purposes. Indeed, a primary reason that Alaska participated in the Land Exchange was to "select lands in the Bristol Bay region that the federal government had previously placed off-limits to state selections" and which contained enormous "mineral potential." Smith Decl. at 6-8, *Pebble Ltd. P'ship*, 3:14-cv-97.

But the EPA's veto effectively prevents any mining from ever occurring on the Pebble deposit and the surrounding area. If the United States wanted to "conserve and restore [Alaska's] most cherished lands and waters, many of which are sacred to Tribal Nations," *Biden-Harris Administration Announces Action to Help Protect Bristol Bay Salmon Fisheries*, U.S. EPA (Jan. 31, 2023), bit.ly/3WBmRnn, it shouldn't have given this land to Alaska in exchange for consideration, *cf. ASARCO, Inc. v. Kadish*, 490 U.S. 605, 632 (1989) ("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."). Indeed, the EPA has essentially used the Clean Water Act to create *another* federal preserve, in addition to the Lake Clark National Park and Preserve, the subject of the parties' agreement, which it has no authority to do. *See* 16 U.S.C. §3213(a) (prohibiting the "executive branch

[from] withdraw[ing] more than five thousand acres [about 8 square miles] of public lands within the State of Alaska" without a joint resolution of approval from Congress). By changing the deal to make more state-owned lands off limits to development—through an administrative agency, no less—the United States has unquestionably deprived the State of "the benefit of [its] bargain." *Mobil Oil Expl. & Producing Se., Inc. v. United States*, 530 U.S. 604, 621 (2000) (citing Restatement (Second) of Contracts §243 (1981)).

Moreover, the Land Exchange and Statehood Act are not just contracts. They are binding federal law that the EPA has violated. *See* Pub. L. 85-508, 72 Stat. 339 (1958); Pub. L. 94-204; 89 Stat. 1145 (1976). They are thus "both a contract and a statute." *Oklahoma*, 501 U.S. at 235 n.5; *cf. Texas v. New Mexico*, 482 U.S. 124, 128 (1987) ("[A] compact when approved by Congress becomes a law of the United States."). The EPA's veto thus also violates federal law. 5 U.S.C. §706(2); *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (agencies cannot violate "*any* law, and not merely those laws that the agency itself is charged with administering").

It is not surprising that the parties would have reached this agreement concerning Alaska's mineral rights. This Court has repeatedly recognized "[t]he 'simple truth' . . . that 'Alaska is often the exception, not the rule.'" *Yellen v. Confederated Tribes of the Chehalis Rsrv.*, 141 S.Ct. 2434, 2438 (2021) (citing cases). "Congress views Alaska as unique and [often] intends Alaska-specific laws to trump more general laws." *Wilderness Soc. v. U.S. Fish & Wildlife Serv.*,

316 F.3d 913, 928 (9th Cir. 2003). Indeed, federal law "repeatedly recognizes that Alaska is different"—from its "'unrivaled scenic and geological values,' to the 'unique' situation of its 'rural residents dependent on subsistence uses,' to 'the need for development and use of Arctic resources.'" *Sturgeon I*, 577 U.S. at 438-39. Given Alaska's unique history, EPA needed a "'clear and manifest' statement from Congress" before it could deprive Alaska of the benefit of its bargain. *Rapanos*, 547 U.S. at 738 (plurality); *see In re Binghamton Bridge*, 3 Wall. 51, 74 (1866) ("All contracts are to be construed to accomplish the intention of the parties.").

In its order, the EPA asserted (without authority) that its veto was proper because "nothing in the [Statehood Act] or the [Land Exchange] precludes the application of a duly enacted federal law." Final Determination, Ch.2, 22. But the Statehood Act and the Land Exchange contain "specific provision[s] applying to a very specific situation," while the Clean Water Act "is of general application." *Morton v. Mancari*, 417 U.S. 535, 550 (1974). Thus, without "'*clear* intention otherwise,'" these "'specific'" terms cannot "'be controlled or nullified by a general'" statute like the Clean Water Act. *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987); *see also* Restatement (Second) of Contracts §203(e) (1981) ("[I]n case of conflict the specific or exact term [in a contract] is more likely to express the meaning of the parties with respect to the situation than the general language.").

Yet the EPA discounted the Land Exchange and Statehood Act entirely, giving these agreements no weight whatsoever in its analysis. *See* Final Determination at §2, 20, 22. But agencies must "'conside[r] . . . the relevant factors,'" *Judulang v. Holder*, 565 U.S. 42, 53 (2011), and "[c]onclusory statements such as [these] do not fulfill the agency's obligation" to engage in reasoned decisionmaking, *In re Sang-Su Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002). Given the history of these agreements, the mine's importance to Alaska and its people, and the significant environmental protections already in place, the EPA, at a minimum, made a "'clear error of judgment.'" *Judulang*, 565 U.S. at 53.

The parties' agreements also "must be interpreted in light of Congress' traditional authority over navigable waters." *Sackett*, 143 S.Ct. at 1356 (Thomas, J., concurring). The federal government's authority over certain navigable waters is granted and limited by the Commerce Clause, which allows Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, §8, cl. 3. Consistent with this limitation, the term "navigable waters" has long referred to waters that are "navigable in fact," meaning that "they are used, or are susceptible of being used . . . as highways for commerce." *The Daniel Ball*, 10 Wall. 557, 563 (1870). But the EPA never "attempted to establish" that any waters on the Pebble deposit fit this traditional definition of "navigable waters." *Sackett*, 143 S.Ct. at 1357 (Thomas, J., concurring). EPA needed "'exceedingly clear language'" before it could "'significantly alter the

balance between federal and state power and the power of the [Federal] Government over [State] property.'" *Id.* at 1341 (majority). "The phrase 'the waters of the United States' hardly qualifies" for the enormous intrusion into Alaska's sovereignty that the EPA has asserted. *Rapanos*, 547 U.S. at 738 (plurality).

3. Even if the EPA's veto were valid, it is still an unconstitutional taking of Alaska's property "without just compensation." U.S. Const. amend. V. The prohibition on uncompensated takings "goes back at least 800 years to Magna Carta." *Horne v. Dep't of Agric.*, 576 U.S. 350, 358 (2015). The Takings Clause "'preserve[s] freedom'" and empowers property owners (like the States) "'to shape and to plan their own destiny in a world where'" the federal government is "'always eager to do so for them.'" *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063, 2071 (2021).

Takings are not limited to physical appropriations of property. A taking can occur when the government "imposes regulations that restrict an owner's ability to use [its] own property." *Id.* To determine whether a use restriction effects a taking, this Court has generally applied a flexible test, "balancing factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action." *Id.* at 2072 (citing *Penn Cent. Transp. Co. v. NYC*, 438 U.S. 104, 124 (1978)). These factors all demonstrate that the EPA's veto here "goes too far." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

First, the EPA's veto wipes away all the value of the Pebble deposit and the other lands covered by the EPA's restriction. *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987) ("[O]ur test for regulatory taking requires us to compare the value that has been taken from the property with the value that remains in the property."). Before the veto, the Pebble deposit alone was expected to generate billions of dollars in revenue for the State. But now, the lands have "no economically viable use." Alaska Comments at 52. The lands are "undeveloped" and "not served by any transportation or utility infrastructure," accessible only by helicopter or snowmachine. Final Determination, at §2, 4. The "closest communities are the villages of Iliamna, Newhalen, and Nondalton, each of which is approximately 17 miles from the deposit." *Id.* at §2, 2. Due to its climate and barren landscape, crops and other agricultural uses are not feasible. *See* 2013 Bristol Bay Area Plan, at Ch. 3, 90-91, 129-30, 150 (describing the land as "tundra" "underlain by isolated masses of permafrost" with "little in the way of agricultural resources . . . except for village gardens"). And because the restricted lands contain remote wetlands and small streams, there are no commercial, subsistence, or recreational fisheries there. *See* Final Determination at §3, 57. Simply put, there is *nothing* the State can now do with these lands for economic purposes.

Second, as explained, Alaska received the Pebble deposit and the other restricted lands with the express understanding that the State would be able to lease them to mining companies that would pay taxes

and royalties to financially support the State. Indeed, the State relinquished its own land rights to obtain the property, expecting that it would be a long-term financial investment. The EPA's obliteration of the State's "reasonable investment backed expectations" in developing the Pebble deposit thus goes "far beyond ordinary regulation or improvement." *Kaiser Aetna v. United States*, 444 U.S. 164, 175, 178 (1979).

Finally, the "'character of the governmental action'" weighs in favor of a taking because it "'forc[es] [the State] alone to bear public burdens which, in all fairness and justice, should be borne by the [American] public as a whole.'" *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 537, 539 (2005). Due to its remoteness and lack of infrastructure and development, the only economically productive use for the land is mining. But by making it impossible for the State to utilize the land's mineral resources, the EPA has effectively confiscated the land and created a *de facto* national park contrary to federal prohibition. *See* 16 U.S.C. §3213(a). Accordingly, even if the EPA's actions were lawful, Alaska would still be entitled to just compensation for the loss of its property.

B. There is no alternative forum in which the State's claims can be resolved.

The Court should exercise its original jurisdiction because there is not one "alternative forum in which the issue[s] tendered can be resolved." *Mississippi*, 506 U.S. at 77. The State seeks a declaration that the EPA's veto is unlawful and an order setting it aside and enjoining its enforcement.

Compl., Prayer for Relief. Alternatively, the State seeks damages for breach of contract and just compensation for a taking. *Id.* But there is no single court in which these claims can be heard and these remedies sought. *See, e.g., Maryland v. Louisiana*, 451 U.S. 725, 743 n.19 (1981) (exercising original jurisdiction where the state court was an "imperfect forum" due to its inability to award "injunctive relief prior to the determination on the merits"). An action seeking injunctive relief to set aside agency action would go to a district court. 28 U.S.C. §1331; *Bowen v. Mass.*, 487 U.S. 879, 891 n.16 (1988). But a claim for damages for breach of contract or for just compensation under the Takings Clause would go to the Court of Federal Claims. 28 U.S.C. §1491(a)(1); *see, e.g., Alaska v. United States*, 32 Fed. Cl. 689, 692 (1995).

This approach is problematic not just because it requires the State to engage in "piecemeal litigation." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976). The State also risks losing relief entirely. Because the Court of Federal Claims "lacks jurisdiction over an action 'for or in respect to' a claim that is also the subject of an action pending in another court,'" the State cannot file its action in the Court of Federal Claims for monetary damages while its action in the district court is pending. *Tohono O'Odham Nation*, 563 U.S. at 309-10 (quoting 28 U.S.C. §1500). The State thus "face[s] a choice between equally unattractive options: forgo injunctive relief in the district court to preserve [its] claim for monetary relief in the [Court of Federal Claims], or pursue injunctive relief and hope that the

statute of limitations on [its contract and] takings claim[s] does not expire before the district court action is resolved." *Id.* at 323-24 (Sotomayor, J., concurring in the judgment) (citation omitted).

Neither option is tenable. Forgoing the district court route is unacceptable because the State has meritorious claims that the EPA's veto violates the terms of the Land Exchange and the Statehood Act. Moreover, the State prefers retaining sovereignty over its lands rather than ceding authority to the United States, even if it is awarded contract damages or just compensation. *Cf. Kentucky v. Biden*, 23 F.4th 585, 611 n.19 (6th Cir. 2022) ("[I]nvasions of state sovereignty . . . cannot be economically quantified.").

Nor is sequencing the two lawsuits a workable alternative. It is far from clear that a district court lawsuit could be completed within the six-year statute of limitations. The dispute over the Pebble deposit has been ongoing for more than a decade. And recent history has shown that challenges to agency actions can stall in the courts for years and even decades. *See, e.g.*, *Sackett*, 143 S.Ct. at 1331 (resolving, after nearly two decades, a 2004 dispute with the EPA); *West Virginia v. EPA*, 142 S.Ct. 2587, 2602 (2022) (resolving the legality of a 2015 rule seven years later).

Given the unique nature of this case, granting jurisdiction here would not "pu[t] this Court into a quandary" where it must "pick and choose arbitrarily among similarly situated litigants." *Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 504 (1971). It is "the

simple truth" that "Alaska is often the exception, not the rule." *Sturgeon I*, 577 U.S. at 440. Indeed, since it joined the Union in 1959, no State has had more litigation against the United States through this Court's original jurisdiction than Alaska. *See Alaska v. United States*, 546 U.S. 413 (2006) (resolving dispute over property rights); *United States v. Alaska*, 530 U.S. 1021 (2000) (same); *United States v. Alaska*, 503 U.S. 569 (1992) (same). In fact, this Court previously expressed confusion as to why a dispute between the United States and Alaska was *not* brought before the Court as an original action. *See United States v. Alaska*, 422 U.S. 184, 186 n.2 (1975) (explaining that the Court had not been "enlightened as to why the United States chose not to bring an original action in this Court"). The Court should once again exercise its discretion to hear this dispute.

II. The case must be heard because the Court's original jurisdiction is mandatory.

Alternatively, the Court should grant leave to file the bill of complaint because the Constitution's grant of original jurisdiction is mandatory. Article III provides that "the Supreme Court *shall* have original jurisdiction" over "all Cases . . . in which a State shall be Party." U.S. Const. art. III, §2, cl.2 (emphasis added). This Court faithfully exercised the jurisdiction given by the Constitution for almost two centuries. But that changed in 1971 when the Court held that its original jurisdiction is "discretion[ary]." *Ohio*, 401 U.S. at 499. This understanding of the Court's original jurisdiction should be revisited.

Chief Justice Marshall long ago recognized that the Court has "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). This understanding reflects the "time-honored maxim of the Anglo-American common-law tradition that a court possessed of jurisdiction generally must exercise it." *Ohio*, 401 U.S. at 496-97. Simply put, "[j]urisdiction existing, . . . a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Colorado River*, 424 U.S. at 817).

The Court's decision to "transfor[m] its mandatory, original jurisdiction into discretionary jurisdiction" is "rooted in policy considerations." *Nebraska v. Colorado*, 136 S.Ct. 1034, 1035 (2016) (Thomas, J., dissenting from the denial of motion for leave to file complaint). But the Court has never offered "any analysis of the Constitution's text to justify [its] discretionary approach." *Arizona v. California*, 140 S.Ct. 684, 685 (2020) (Thomas, J., dissenting from the denial of motion for leave to file complaint). Nor could it. The text and original understanding of Article III demonstrate that the Court's original jurisdiction is mandatory. *See Nebraska*, 136 S.Ct. at 1034-35 (Thomas, J., dissenting).

Stare decisis does not support adhering to the Court's flawed approach. "The doctrine is at its weakest when [the Court] interpret[s] the Constitution . . . because only this Court or a constitutional amendment can alter [such] holdings."

Knick v. Twp. of Scott, Pa., 139 S.Ct. 2162, 2177 (2019) (cleaned up). The discretionary approach has not created any "reliance interests." *Id.* at 2179. And the discretionary approach lacks "consistency" with this Court's decisions recognizing that courts have a duty to exercise their jurisdiction. *Id.* at 2178.

CONCLUSION

For these reasons, Alaska respectfully requests that the Court grant the motion for leave to file a bill of complaint.

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