Community, the Ninth Circuit reached the same conclusion: "In granting lands to a state for the purpose of funding schools, the federal government must have intended some right of access to the land or the purpose of the land grants would fail."[146] Here, the federal government has not merely restricted use of or access to State land; it has asserted authority that would thwart any meaningful use of the State's mineral grant and destroy its economic value.

That EPA has decided to act even before a permit application has been submitted, or an environmental impact statement is undertaken, underscores the true character of EPA's action as an attempt to override Congress's specific statutory conveyance. This is not an exercise of narrowly tailored permit authority. Here, EPA's assertion of veto authority functions as federal land use planning that precludes the state from exercising its role as sovereign and proprietor of its own land.[147] Congress specifically granted the State of Alaska control over mineral resources in State land, Statehood Act § 6(i); only the State has the authority to close state land to mining.[148] While the federal government may reasonably regulate with respect to state land, pursuant to Congressionally-delegated authority, EPA's sweeping exercise of land use planning

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indeed had such a right, the court recognized that while the federal government could reasonably regulate with respect to the state's access, "the regulation may not . . . prevent the state or its lessee from gaining access to its land, nor may it be so prohibitively restrictive as to render the land incapable of full economic development." 486 F. Supp. at 1010. Here, EPA's veto process—exercised with respect to *state* land—threatens to thwart all economic development of the mineral resources granted under the Statehood Act.

[146] 626 F.3d at 1073; *cf. Dep't of State Lands v. Pettibone*, 702 P.2d 948, 956 (Mont. 1985) (relying on *Utah v. Andrus* and other case law for proposition that "any infringement on the use or management prerogatives of the State that effectively devalue[s] school lands is impermissible.").

[147] *See, e.g.*, Ex. 13 (US EPA, Bristol Bay 404(c) Discussion Matrix, HQ Briefing (Sept 8, 2010)), at 1, *available at* http://oversight.house.gov/wp-content/uploads/2014/03/09-08-2010-EPA-Bristol-Bay-HQ-Briefing.pdf ((referring to the veto process as "proactive watershed planning for sustainability").

[148] *Pebble Ltd. P'ship v. Lake & Peninsula Borough*, No. 3DI-11-00053 CI, Order and Decision slip op. at 24 (Alaska Sup. Ct. Mar. 19, 2014) (citing AS 38.05.300); *see also* 33 U.S.C. § 1251(b) (declaring Congress's policy under the Clean Water Act "to recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use (including restoration, preservation, and enhancement) of land and water resources").

authority, wiping out the State's Congressionally-intended management of state mineral land, goes too far.

3. Construing the Clean Water Act to Allow EPA's Veto Proceeding Revokes Authority Specifically Granted to the State, Intrudes on State Sovereignty, and Runs Afoul of Constitutional Principles.

In addition to violating compact terms and impermissibly overriding Acts of Congress, EPA's presumed power would unconstitutionally usurp authority that rests within the fundamental, express jurisdiction of the State. The U.S. Supreme Court has explained that "[w]e ordinarily expect a 'clear and manifest' statement from Congress to authorize an unprecedented intrusion into traditional state authority."[149] No such intent is manifest here. Here, EPA is asserting the authority to renege on Congress's bargain with the State. As the Supreme Court has recognized, "Congress could not . . . 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."[150] If Congress could not do that, clearly then, EPA—an administrative agency—could not do so either.[151]

EPA's assertion of veto authority makes it impossible for the State to avail itself of its mineral resources, as contemplated under the Statehood Act and Cook Inlet Land Exchange, and to control land use historically and traditionally within the State's realm. The Supreme Court has

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[149] *Rapanos*, 547 U.S. at 738; *see also SWANCC*, 531 U.S. at 172-73 ("Where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result. . . . This concern is heightened where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.").

[150] *Asarco Inc. v. Kadish*, 490 U.S. 605, 632 (1989); *see also Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 176 (2009) (Congress cannot "create a retroactive 'cloud' on the title that Congress granted to the State of Hawaii").

[151] *United States v. 111.2 Acres of Land in Ferry Cty.*, 293 F. Supp. 1042, 1048 (E.D. Wash. 1968), *aff'd*, 435 F.2d 561 (9th Cir. 1970) (federal administrative agency could not act to amend Washington's Enabling Act, for "[a]dministrative practice cannot amend an act having the force of law.").

rejected far less egregious invasions of state sovereignty.[152] Here, EPA's assumption of veto authority requires Alaska to forever forego land use activities and economic benefits it was expressly entitled—and in fact obligated—to avail itself of. EPA has overstepped the limits of its constitutional authority, and undermines principles of federalism underlying the Constitution. Against this background, EPA simply does not have the authority it purports to exercise and, thus, cannot be permitted to invoke its veto process.

4. No Deference Is Owed to EPA In Interpreting the Statehood Act, ANCSA, or the Cook Inlet Land Exchange.

EPA's views of the terms and conditions of land grants made under the Statehood Act and the Cook Inlet Land Exchange, or of the federal government's obligations pursuant to them, merit no deference from this Court. "A precondition to deference under *Chevron* is a congressional delegation of administrative authority."[153] EPA has no delegated authority under the Statehood Act, ANCSA, or the Cook Inlet Land Exchange. Even if EPA were entitled to deference, basic administrative law principles deny deference where "the statute, as a whole, clearly expresses Congress' intention[.]"[154] Here, as discussed above, Congress's relinquishment of its ANCSA § 17(d)(2) ownership and control over the Pebble lands and its conveyance of these lands to the State under Section 6 of the Statehood Act clearly express Congress's decision that the State be allowed to pursue mineral development, subject only to reasonable regulation not unduly prohibitive in nature. EPA's broad assumption of pre-permit application veto authority over the land at issue here overrides that decision. Accordingly, and for the additional

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[152] *See, e.g.*, *Printz v. United States*, 521 U.S. 898, 933 (1997); *New York v. United States*, 505 U.S. 144, 174-75 (1992) (proscribing federal commandeering of state legislative or administrative apparatus for federal purposes); *see also Rapanos*, 547 U.S. at 739 (quoting *SWANCC*, 531 U.S. at 172-73) (rejecting agency interpretation of the Clean Water Act that would "result in a significant impingement of the States' traditional and primary power over land and water use"—"a quintessential state and local power"—and finding no support for the agency's "function[ing] as a *de facto* regulator of immense stretches of intrastate land").

[153] *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649 (1990) (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)); *see also, e.g.*, *United States v. Ibarra-Galindo*, 206 F.3d 1337, 1340 n.2 (9th Cir. 2000) (deference is only warranted with respect to "an agency's interpretation of the 'statute which it administers'").

[154] *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 42 (1990).

reasons discussed above, a finding of likely success on the merits is clearly warranted in this case.

II. Plaintiffs Will Suffer Irreparable Harm Absent a Preliminary Injunction

EPA's decision to initiate the veto process under Section 404(c) causes the Plaintiffs irreparable harm. EPA's decision threatens the viability of the Pebble Partnership, and therefore, its parent, Northern Dynasty Minerals. It also threatens the continued existence of the Alaska Peninsula Corporation. These grave harms cannot be remedied absent an injunction. In addition, the Pebble Partnership will be permanently denied the ability to control the timing of initiating its own permitting process, its ability to complete proper engineering and environmental documentation in preparation for that process, and will be deprived of the benefit of collaboratively developing an environmentally responsible mining plan with the Corps and State of Alaska regulators—the agencies with primary authority over permitting and mitigating environmental harm from mining projects.

This process, and the collective intelligence and information that it will develop, cannot be duplicated by EPA's veto-first approach that purports to evaluate a project before it has been proposed. EPA has shut down critical participation and input by the Corps and the State—key participants in a true permitting process. EPA has eliminated the NEPA environmental impact statement process—a multi-year, intensive evaluation of potential environmental impacts led by the Corps, with the participation of a wide array of state and federal agencies, independent engineers, and scientists. EPA's veto evaluation will not have the benefit of the vast majority of the robust analysis that would otherwise result from the permitting process. Without a single *real* mining proposal, EPA effectively claims the authority to veto the innumerable *potential* mining proposals that might be submitted.

On the other side of the scale, by accelerating the veto process ahead of any proposal from the proponent, the agency and the public gain no benefit. No harm is prevented, because no harm is posed by allowing the project development process to occur during permitting, or by deferring a potential veto process to a time when an actual proposal is before the agency. No public interest is advanced, because there is no public interest in a rushed evaluation of an ill-defined activity based on incomplete information. The public interest is better served by an

open, complete analysis of potential environmental consequences posed by an actual proposed project.

A. EPA's Veto Decision Threatens the Survival of Plaintiffs' Businesses

Economic injury that threatens the very existence of a business constitutes irreparable harm sufficient to support a preliminary injunction.[155] Here, the Plaintiffs face such irreparable injury. A preliminary injunction is therefore warranted.

Without a preliminary injunction against EPA's veto proceedings, Plaintiff APC faces "the potential loss of its ability to develop its lands and resources" and its very existence is in jeopardy.[156] APC owns approximately 400,000 acres of lands, including the lands riparian to Upper Talarik Creek.[157] Under ANCSA, Congress extinguished Alaska Natives' aboriginal hunting and fishing rights and directed Native corporations created under ANCSA to select lands for the maximum benefit to the Native shareholders.[158] APC made its final and irrevocable selections in 2009, giving up eight sections of subsistence lands for eight sections nearer the Pebble deposit in order to increase its economic opportunities.[159] APC's lands include over

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[155] *See, e.g.*, *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) (threat of substantial loss of business and certainly bankruptcy qualified as the sort of irreparable harm needed to support preliminary injunction); *Am. Passage Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1474 (9th Cir. 1985) ("The threat of being driven out of business is sufficient to establish irreparable harm."); *Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 255 (3d Cir. 2011); *John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc.*, 588 F.2d 24 (2d Cir. 1978), *cert. denied*, 440 U.S. 960 (1979) (possibility of going out of business is irreparable harm); *Warren v. City of Athens, Ohio*, 411 F.3d 697, 712 (6th Cir. 2005) (If "lost profits were of such a magnitude that the viability of their business were threatened (thereby giving rise to an irreparable injury . . . , then the Warrens would indeed have no adequate remedy at law and a permanent injunction would be appropriate."); *Tri–State Generation & Transmission Ass'n v. Shoshone River Power, Inc.*, 805 F.2d 351, 356 (10th Cir. 1986) (threat to trade or business viability is irreparable harm).

[156] Angason Decl. ¶ 20.

[157] *Id.* ¶¶ 3, 8.

[158] *Id.* ¶ 9.

[159] *Id.* ¶ 14

90,000 acres immediately adjacent to the Pebble deposit. The lands were selected to provide economic opportunities, as Congress intended under ANCSA.[160]

Until the advent of Pebble's exploration activities, APC's villages were dying as a result of high fuel costs, the economically depressed Bristol Bay fishery and few alternative economic opportunities.[161] The promise of alternative income sources and a sustainable economy through resource development spurred APC to develop an environmental services company, APC Services. APC Services contracted with Pebble to perform hydrology work, and the company was extremely profitable, providing vital employment to the Native Village of Newhalen and providing APC with the ability to pay dividends to its shareholders.[162] Wetaviq, Ltd., another APC subsidiary, contracted with resource development companies to engage APC's over 800 Alaska Native shareholders through community outreach, in order to educate the shareholders regarding the EPA process.[163]

Following EPA's announcement of the veto, the APC subsidiaries laid off employees and significantly downsized.[164] The EPA decision has resulted in an economic disaster, forcing APC Shareholders to relocate away from the village, accelerating the loss of opportunity and culture.[165] The EPA decision also threatens to render APC's irrevocable selections of lands near the Pebble deposit valueless.[166] The Bristol Bay fishery does not provide a sustainable economy for APC and its owners; rather, over 95% of the jobs in the salmon processor industry and 82% of all limited entry permits for the Bristol Bay fishery are held by persons living outside the

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[160] *Id.* ¶ 8.

[161] *See id.* ¶¶ 4, 5, 16, 19.

[162] *See id.* ¶¶ 10-12.

[163] *Id.* ¶¶ 11-12.

[164] *Id.*

[165] *Id.* ¶ 13

[166] *Id.* ¶ 14; *cf. Minard Run Oil Co.*, 670 F.3d at 256 ("where interests involving real property are at stake, preliminary injunctive relief can be particularly appropriate because of the unique nature of the property interest").

Bristol Bay region.[167] Consequently, the EPA veto has already significantly and irreparably harmed APC.

Likewise, the Pebble Partnership is suffering irreparable harm because EPA's unlawful assertion of preemptive veto authority fundamentally alters the Partnership's business and threatens its viability.[168] If EPA's veto "proceeding is not resolved within a reasonable time, the ongoing proceeding itself could destroy the Pebble Limited Partnership."[169] Given its anticipated scale, the Pebble Project will require a new partner or partners because Northern Dynasty cannot develop the project on its own.[170] EPA's decision to undertake this unprecedented preemptive veto has disrupted business expectations and chilled potential investment.[171] Executives at some multi-national mining corporations simply "will not invest in the Partnership while EPA is conducting a proceeding to veto it," while others are reluctant to invest because, although they "understand normal permitting processes and the risks they entail, they do not know how to gauge the risks posed by an unprecedented EPA pre-emptive veto proceeding that is carried on in the absence of a permit application, and in the absence of a detailed Project Description as prescribed by the federal and Alaska Large Mine Permitting processes."[172] Without such an investor, the Partnership "does not have the resources required to fund further design and planning for the multiple years that permitting will take."[173]

Even if the viability of the entire project were not threatened, the economic damages caused by the initiation of the EPA veto process would still cause irreparable harm because the Pebble Partnership could never collect damages against the United States government.[174] In the

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[167] *See id.* ¶¶ 17-18.

[168] Thiessen Decl. ¶¶ 15-19.

[169] *Id.* ¶¶ 19.

[170] *Id.* ¶ 16.

[171] *See id.* ¶ 17.

[172] *Id.*

[173] *Id.* ¶ 18.

[174] A district court in this Circuit has observed that "[t]he majority of district courts addressing this issue have concluded that a loss of at least thirty percent of a plaintiff's business can

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typical private business situation, economic damages are "not traditionally considered irreparable *because the injury can later be remedied by a damage award.*"[175] Here, the Partnership could never recoup the damage caused by EPA's decision because the United States is immune from such damage claims.[176]

B. The Permitting Process for the Pebble Mine will be Altered Irrecoverably in the Absence of an Injunction.

If EPA's assertion of preemptive veto authority is allowed to stand, the Pebble Partnership will also be irreparably harmed because it will be denied the benefit of a permitting process that fully analyzes environmental impacts and permitting issues pertaining to a potential Pebble mine with the federal and state agencies that are experts in this area: the Corps and the Alaska Department of Natural Resources ("DNR"). This standard collaborative permitting process involving the Partnership and the agencies would benefit the Partnership by allowing it to develop the most environmentally responsible—and, therefore, most likely to be successfully permitted—mine project.

The Corps is the sole issuer of CWA Section 404 permits.[177] The Corps, unlike EPA, has expertise in specifying disposal sites, in considering project alternatives, in evaluating engineering approaches, and in assisting applicants with environmental mitigation for mine projects. At the state level, the DNR and its sister agencies have comprehensive authority over mineral exploration, permitting, and development and have extensive experience in permitting

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constitute irreparable harm." *Poeng v. United States*, 167 F. Supp. 2d 1136, 1143 (S.D. Cal. 2001).

[175] *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 852 (9th Cir. 2009) (emphasis in original) (citing cases).

[176] *Id.* at 852; *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 770–71 (10th Cir. 2010) ("Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitute irreparable injury.").

[177] *See* 33 U.S.C. § 1344(a); 33 C.F.R. § 325.2(a); *see also Res. Investments, Inc. v. U.S. Army Corps of Eng'rs*, 151 F.3d 1162, 1166 (9th Cir. 1998) ("Congress gave the Corps the responsibility of regulating the discharge of dredged or fill material into navigable waters").

large mining projects in Alaska.[178] To develop a mine at the Pebble deposit, the Pebble Partnership would need several state permits and authorizations.

The Corps' and State's permitting processes are qualitatively different from and more probative of impacts than EPA's preemptive veto process in several ways:

First, for the normal Corps-administered Section 404 permitting process, the applicant controls the timing and content of the proposal. This is also true for any State permits or authorizations. The Section 404(c) preemptive veto process, by contrast, proceeds on EPA's schedule. The normal Section 404 permitting process would begin when the Partnership files an application with the Corps. EPA's inversion of the review process (review before proposal), and the concomitant loss of control over timing and content of the proposal, fundamentally undermine both the validity of the permitting process and the Partnership's business operations: the Partnership has not yet completed all site investigations and other planning that is necessary to propose a mining project with robust environmental protections and mitigation measures.[179] Simply put, the Partnership needs more time to investigate the site and prepare a comprehensive mining plan.

Second, under EPA's preemptive veto scheme—unlike the normal Section 404 and NEPA processes—there is no collaboration with the Corps and the State to develop a mine plan. The Partnership loses the opportunity to work cooperatively with the Corps' and State to integrate their input into the mine design and development plan.[180] This normal Section 404 permitting process allows the Corps and the State to analyze a concrete proposal, to impose limitations, to consider alternatives, and to evaluate, in detail, the environmental impacts and compensatory habitat mitigation plans associated with the requested permit through the

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[178] *See, e.g., Pebble Ltd. P'ship v. Lake & Peninsula Borough*, No. 3DI-11-00053CI, Order and Decision slip op. at 9-10 (Alaska Sup. Ct. Mar. 19, 2014) (discussing DNR's mine permitting expertise); *see also* Dkt. No. 18 (Fogels Decl.) ¶¶ 5-10 (cataloguing all of the DNR's responsibilities during the permitting and authorization of mines in Alaska).

[179] *See* Thiessen Decl. ¶¶ 20-24.

[180] *See id.* ¶¶ 21, 23; *see also* Declaration of Charlotte Maccay (June 26, 2014) ("Maccay Decl.") ¶¶ 14-28; Declaration of Timothy J. Gallagher (June 19, 2014) ("Gallagher Decl.") ¶¶ 16, 18, 21-22.

Environmental Impact Statement process under the NEPA.[181] EPA's approach short-circuits these steps and denies the Pebble Partnership the benefit of these agencies' expertise.[182] Indeed, even EPA recognizes that "[t]here is no real public discussion" during the veto process; rather, "public involvement is to comment then sue if they have the resources (NEPA, 404 permit, 404(c))."[183]

Third, in the EPA-administered preemptive veto process, there is no administrative record developed with the Corps and the State that the Pebble Partnership could use to permit and to defend the project.[184] The Corps-administered process would involve the development of an extensive record assessing the Partnership's *actual* proposal for a mine project and the assessment of impacts from the Corps' *actual* specification of disposal sites.[185] In contrast, EPA will control the development of the record in the veto proceeding. EPA's preemptive veto process will address the impacts from a *speculative* Pebble mining project of EPA's own creation.[186] The inability of the Partnership to develop, with the Corps and the State, a defensible record of its actual mining project irretrievably undermines the Partnership's business and fundamentally alters the way the project and the Partnership can operate.

These harms, caused by EPA's premature Section 404(c) veto process, will be permanent. The normal Section 404 process cannot be recreated, and having to go through both processes would cause the Partnership to incur double, unrecoverable, expenses.

III. <u>The Equities Strongly Favor the Pebble Partnership</u>

In evaluating the balance of the equities, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the

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[181] *See* Maccay Decl. ¶¶ 16, 20-28; Gallagher Decl. ¶¶ 10, 12-13, 16-22.

[182] *See* Thiessen Decl. ¶¶ 20-24.

[183] Ex. 13 (US EPA, Bristol Bay 404(c) Discussion Matrix, HQ Briefing (Sept 8, 2010)), at 2.

[184] *See* Thiessen Decl. ¶¶ 23-24.

[185] Gallagher Decl. ¶ 8; Thiessen Decl. ¶¶ 21-22; Hodgson Decl. ¶¶ 7-9.

[186] *See* Thiessen Decl. ¶¶ 23-24; Hodgson Decl. ¶ 8.

requested relief."[187] The equities in this case strongly favor the Pebble Partnership. As described above, the Partnership is harmed by losing control over the timing and development of its mining plan and mitigation measures. It is further harmed by being deprived of the collaborative permitting process with the Corps and the State of Alaska. And the Partnership has already suffered serious economic damages that threaten the viability of its business, which could never be recovered from the federal government. The injunction is also in the Pebble Partnership's interest because, should it prevail, the injunction preserves the Court's ability to grant it full relief.[188] The harms to Alaska Peninsula Corporation are equally stark. Its existence is threatened, which means not only the continuation of its business enterprises, but the livelihoods of its employees and their communities, along with the development rights and underlying value associated with their land holdings.

In sharp contrast, a preliminary injunction will not injure EPA in any way. If, during the pendency of this litigation (while the preliminary injunction is in place), EPA must wait until the Pebble Partnership actually submits a Section 404 permit application and until the Corps and the State evaluate it, EPA would suffer no harm (and arguably would benefit). First, as EPA acknowledges, *no mine construction or other activities could go forward until a final permit is issued*, so there is absolutely no risk of any environmental damage in the meantime. Second, EPA would retain its statutory power to initiate a veto proceeding at any time after the Corps has specified disposal sites. EPA cannot point to *any* harm that it would suffer from a preliminary injunction: there is simply no reason that the agency must proceed with the veto process now.

IV. A Preliminary Injunction is in the Public Interest

When the government is a party, the equities and public interest factors merge.[189] As explained above, a preliminary injunction on EPA's Section 404(c) veto proceedings would not

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[187] *Winter*, 555 U.S. at 24.

[188] *See Alto v. Black*, 738 F.3d 1111, 1120 (9th Cir. 2013) ("a preliminary injunction issued regarding APA review of agency decisionmaking preserves the court's jurisdiction to grant complete relief by simply suspending the implementation of challenged agency action pending full court review.").

[189] *Drakes Bay Oyster Co. v. Jewell*, No. 13-15227, 2013 WL 114669, -- F.3d –, at *14 (9th Cir. Jan. 14, 2014) (citing *Nken v. Holder*, 556 U.S. 418, 453 (2009)).

harm EPA and thus, the public interest factor weighs in the Pebble Partnership's favor. Moreover, a preliminary injunction would actually serve the public interest for several reasons.

First, there is a strong public interest in requiring EPA to properly exercise its Clean Water Act authority by exercising the 404(c) veto authority in the permitting context, as well as for EPA to fulfill, not renege on, obligations of the federal government that are embodied in acts of Congress such as the Cook Inlet Land Exchange.[190] With respect to the Cook Inlet Land Exchange in particular, it was plainly the decision of Congress to allow Alaska to select the lands in question, which were previously off-limits to state selections, and to derive economic benefits from those lands from activities such as mining.[191] Because EPA's decision to use a preemptive Section 404(c) action as a land use planning tool runs directly contrary to that decision, an injunction halting EPA's proceeding is in the public interest.

Second, an injunction would increase local employment and benefit the struggling community because the Pebble Partnership could continue to employ local residents as it continues to investigate the site and opportunities for environmental mitigation, such as adding or enhancing fish habitat.[192] Prior to EPA's initiation of the veto process, the Pebble Project brought economic opportunities as "[n]ew lodges and other businesses opened, and good jobs became available that enabled people to support their families, buy new cars and trucks, take trips, and enjoy a sustainable lifestyle."[193] In particular, the Iliamna Development Corporation provided a "range of services [for the Pebble Partnership], including fuel transport, van shuttles, and catering, among other things."[194] EPA's assertion of preemptive veto authority destroyed those economic benefits and, in the absence of an injunction, the veto process threatens the

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[190] *See Sherley v. Sebelius*, 704 F. Supp. 2d 63, 73 (D.D.C. 2010) ("It is in the public interest for courts to carry out the will of Congress and for an agency to implement properly the statute it administers.").

[191] *See supra* at 21-27.

[192] *See* Reimers Decl. ¶¶ 15-17.

[193] *See id.* ¶ 18; *see also* Declaration of Robert Loeffler (June 20, 2014) ("Loeffler Decl.) ¶¶ 5-6 & Attachment (describing economic impact of the Pebble project on local employment).

[194] Reimers Decl. ¶ 16.