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Native Community*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

VILLAGE OF SOLOMON, NATIVE VILLAGE OF )  
COUNCIL, and KING ISLAND NATIVE ) Case No.  
COMMUNITY, )  
 )  
 *Plaintiffs,* )  
 )  
 v. )  
 )  
 U.S. ARMY CORPS OF ENGINEERS PACIFIC )  
 OCEAN DIVISION; and BRIGADIER GENERAL )  
 JOSEPH C. GOETZ, in his official capacity as )  
 Commanding General and Division Engineer, Pacific )  
 Ocean Division, )  
 )  
 *Defendants.* )

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
(5 U.S.C. §§ 701-06; 33 U.S.C. § 1344; 42 U.S.C. § 4332)**

## INTRODUCTION

1. This action challenges Defendants' environmental analysis and decision to authorize IPOP, LLC, (IPOP) to conduct a suction dredge mining project (project) for gold in the pristine estuarine environment of Bonanza Channel, approximately 25 miles east of Nome, Alaska. The project would be the largest-volume contemporary placer mine, and the first such suction dredge mine project in an estuary or lagoon system, in Alaska. It would also be located in an important area for subsistence practices. Plaintiffs Village of Solomon, Native Village of Council, and King Island Native Community (the Tribes) bring this case under the Clean Water Act and the National Environmental Policy Act (NEPA). The Tribes challenge Defendants' environmental analysis and decision to issue a Clean Water Act section 404 permit for IPOP's project.

2. Bonanza Channel is part of a pristine, ecologically valuable estuary as well as a haven for subsistence users. This estuary extends through Safety Sound, and is influenced by four rivers, including the Bonanza River, before it empties into Norton Sound. The estuary, including Bonanza Channel, is a transitional area that absorbs floods and tides, filters water, sequesters carbon in sediments, and supports people, plants, and wildlife including birds, fish, invertebrates, and benthic organisms.

3. Alaska Native peoples have lived and thrived in the Bering Strait region (located in northwest Alaska, just south of the Arctic Circle) for millennia. The Tribes, their members, citizens, relatives, and social relations rely on Bonanza Channel and other lands and waters around Safety Sound for traditional cultural practices, subsistence

resources, education, economic activity, tourism-related business, and more. The project threatens these uses and resources.

4. The project as proposed will cause significant impacts to the Bonanza Channel ecosystem, including the people, birds, fish, and wildlife that rely on it. IPOP plans to use a 36-inch-diameter cutting device that will dislodge materials from the estuarine beds and suck the materials through a 10-inch-diameter hose attached to a diesel-powered water pump. The slurry will be run through a device to separate the unwanted debris (*e.g.*, grasses, gravel, dirt) from the gold. Processed materials will then be re-distributed either into disposal sites or back into the dredged channel. The result is highly turbid water that can kill young fish and eggs, smother spawning gravel for salmonids, disturb the food web for migratory birds and wildlife, and disrupt and harm subsistence activities and traditions. In addition to dredging specifically for gold, the project also involves dredging two access channels and creating four disposal sites. The project will result in permanent loss of habitat functions.

5. Defendants' approval of the project is unlawful. Defendants failed to fully evaluate the effects of IPOP's suction dredge gold mining project pursuant to the requirements of NEPA and the Clean Water Act.

6. Defendants violated NEPA by failing to take a hard look at the effects of the action and failing to prepare an environmental impact statement (EIS). Defendants violated the Clean Water Act by failing to support their factual determinations under

section 404; failing to ensure against significant degradation of the aquatic estuarine system from the project; and failing to avoid, minimize, and compensate for aquatic impacts to Bonanza Channel. The Court should vacate Defendants' Memorandum for Record (Decision Document) issued March 19, 2024, and Clean Water Act section 404 permit (Permit) approving the IPOP suction dredge gold mining project on March 20, 2024.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (civil actions against United States), and 1362 (civil actions by federally recognized tribes). This Court may issue a declaratory judgment and grant further relief pursuant to 28 U.S.C. §§ 2201-02. Judicial review, vacatur, and injunctive relief are available under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-06.

8. Venue is proper in this Court under 28 U.S.C. § 1391(e).

### **PLAINTIFFS**

9. Plaintiff Village of Solomon is a federally recognized sovereign tribe. Solomon is located on the west bank of the Solomon River, one mile north of Norton Sound, 34 miles east of Nome on the Nome-Council Highway, and about two miles from the site of IPOP's proposed mining. The Solomon Traditional Council is the governing body of the Village of Solomon and is based in Nome, where many tribal members now live. The primary mission of the Village of Solomon is to increase cultural awareness and promote the well-being of its tribal members while protecting the environment.

Maintaining a subsistence way of life is an important component of the Tribe's success. The Tribe's traditional territory includes the Bonanza Channel area that IPOP plans to mine.

10. Plaintiff Native Village of Council is a federally recognized sovereign tribe of Inupiat peoples who originated in the Niukluk River and Fish River. Council is located about 35 miles to the northeast of Bonanza Channel. Council lies within the Tribe's traditional territory, where Inupiaq lifeways included sites for villages, homes, camps, fishing, hunting, gathering of traditional foods, historical gravesites, and seasonal homes as people migrated with fish and animals. The Tribe's present-day members live in Nome and continue to use their traditional territory, including the Bonanza Channel area.

11. Plaintiff King Island Native Community is a federally recognized sovereign tribe. King Island is located approximately 100 miles northwest of Nome, in the Bering Strait. The Tribe is governed out of Nome and its present-day citizens live in Nome, but its citizens' ancestors historically resided on King Island in the winter and lived near Nome in the summers. The Tribe's citizens rely on the natural environment threatened by the project, including the Bonanza Channel area.

12. Like their ancestors before them, members and citizens of the Tribes harvest fish, birds, bird eggs, berries, greens, salt, seal, bear, moose, beluga, and reindeer in and around Bonanza Channel and the Safety Sound estuary and adjacent areas. These

harvesting activities are inextricably linked to cultural practices that are passed down from generation to generation. Food exchange is part of their cultural practice. For example, the Tribes share traditional foods with the elderly, those living in areas where they cannot engage in traditional subsistence practices, and those without the ability to engage in traditional subsistence practices. The Tribes use and enjoy—and intend to continue to use and enjoy—these areas for traditional subsistence practices, as well as aesthetic and spiritual enjoyment, reindeer herding, recreation, wildlife viewing, education, research, and photography, among other things. The project, as described and approved, will directly and irreparably injure these interests.

13. The Tribes work to protect and support their members' and citizens' well-being and ability to engage in subsistence and traditional ways of life, among other things. They advocate on their members' and citizens' behalf to achieve these goals. They educate their members and citizens, particularly youth, on cultural practices, natural resource protection, and other issues. They carry out programs to clean up and protect the environment. The Tribes often collaborate on these issues. For example, the Tribes along with 17 other tribes in the Bering Strait region are represented by a regional tribal nonprofit corporation, Kawerak, Inc. (Kawerak), which provides services in the region and, among other things, works to improve the region's social, economic, educational, cultural, and political conditions. Kawerak's organizational vision includes a goal of ensuring traditional ways of life are passed on to future generations and subsistence

resources are protected. Kawerak, on behalf of the 20 tribes it represents and, in particular, the Tribes, has opposed the project and engaged in administrative processes relating to the project.

14. The Tribes participated in multiple administrative processes relating to the project and have publicly expressed their opposition to the project. They commented on the project and met with federal and state agencies. They attended hearings about the project and permits held by the agencies. They have held community events and meetings and responded to media inquiries. They have issued resolutions and press releases opposing the project. Through all these efforts, they expressed opposition to and concerns about the project and its impact on, among other things, the species that inhabit the area and subsistence practices.

15. The project, as permitted by Defendants, poses a significant threat to the cultural practices and subsistence resources upon which the Tribes and their members and citizens rely. The Tribes seek declaratory and injunctive relief preventing Defendants from proceeding with unlawful actions that directly and irreparably injure the Tribes' and their members' or citizens' interests.

### **DEFENDANTS**

16. Defendant U.S. Army Corps of Engineers (Corps) Pacific Ocean Division is a branch of the U.S. Army and part of the U.S. Department of Defense. The Corps is authorized to issue permits for the discharge of dredged or fill material into waters of the United States under section 404 of the Clean Water Act. 33 U.S.C. § 1344(d).

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17. Defendant Brigadier General Joseph C. Goetz is sued in his official capacity as Commanding General and Division Engineer, Pacific Ocean Division, Corps. Defendant Brigadier General Goetz is currently in the highest position within the Pacific Ocean Division. Defendant Brigadier General Goetz has ultimate responsibility for overseeing appeals of permitting decisions by Corps districts and ensuring their compliance with all applicable federal laws, and specific responsibilities related to the administration of the Clean Water Act section 404 permitting program. Defendant Brigadier General Goetz assumed command of the Pacific Ocean Division in June 2024. Defendant Brigadier General Goetz's predecessor, Brigadier General Kirk E. Gibbs, signed the Decision Document and the Permit approving the IPOP suction dredge gold mining project.

### **STATEMENT OF FACTS**

#### **I. Bonanza Channel, the Safety Sound estuary, and special aquatic sites.**

18. The Bonanza Channel is part of the Safety Sound estuary, which extends 28 miles on the Norton Sound coastline near Nome, Alaska. Safety Sound is made up of a network of wetland islands separated by shallow, interconnecting channels. It is sheltered from the ocean by a barrier island that extends along the length of the estuary.

19. There are four types of special aquatic sites located in or adjacent to the project area: sanctuaries and refuges, wetlands, vegetated shallows, and mud flats. Special aquatic sites "are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily

disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.” 40 C.F.R. § 230.3(m).

20. Non-contiguous parcels of the Alaska Maritime National Wildlife Refuge (Refuge) are located adjacent to or in the vicinity of the project.

21. Wetlands are located immediately adjacent to the project area.

22. The project area is comprised of approximately 91 percent vegetated shallows. Vegetated shallows provide important habitat for fish and food for migratory birds and other wildlife.

23. The project area also includes mud flats. These areas are typically exposed during low tide conditions and flooded during high tides. Mud flats are ecologically valuable for both terrestrial and aquatic species as a transitional zone in estuaries. Nine percent of the project area is comprised of mud flats along with a small amount of open water.

24. Safety Sound and Bonanza Channel support anadromous fish, including coho, chum, king, sockeye, and pink salmon; Dolly Varden; and whitefish.

25. Safety Sound, including Bonanza Channel, provides important habitat for many species of migratory birds. In recognition of its significant value to birds, Audubon Alaska has designated the area as an Important Bird Area. The U.S. Fish and Wildlife Service (FWS) has also affirmed the importance of Bonanza Channel because it is in near

pristine condition and provides feeding and nesting habitat for many migratory birds.

26. Numerous species of seabirds, shorebirds, waterfowl, and other birds utilize the Safety Sound Important Bird Area, including species that are listed as declining on Audubon Alaska's Watchlist and others that are formally listed under the Endangered Species Act. These bird species include, for example, the Arctic tern, spectacled eider, and Steller's eider.

27. Bonanza Channel provides excellent foraging and nesting habitat for a diverse range of avian species. For example, Bonanza Channel supports thousands of tundra swans during spring and fall migration, and non-breeding swans may remain there all summer.

28. Because Safety Sound and Bonanza Channel are rich in biological diversity, providing important habitat for aquatic and avian species, wildlife, and flora, they are also important areas for subsistence, cultural, recreational, and other uses.

29. Tribal and community members from Nome use Safety Sound, including Bonanza Channel, year-round to gather eggs, fish, and hunt birds and seals. In the spring and fall, the area is used for moose and bear hunting. Summer is the time of berry picking and gathering greens.

30. There are approximately 10 Native Allotments and over 100 campsites all along Bonanza Channel, and residents of the Nome area use the area due to its prime location for hunting, fishing, and gathering, helping to ensure food security of Alaska

Native peoples and other residents in the Bering Strait region. These important activities are part of the cultural identity of the Tribes and other Alaska Native communities in the area, and they value being able to continue passing down these traditions to future generations.

31. Safety Sound and Bonanza Channel also provide world-class birdwatching opportunities. IPOP's proposed man camp is located on state lands adjacent to the Refuge. During comment periods, community members identified the area as "one of the premier bird-watching locations in Alaska, with visitors from around the country and the world witnessing the confluence of North American and Asian species." The part of the Refuge adjacent to the project is critically important to bird-watching and wildlife-viewing because it is one of the few locations in the Refuge accessible to the public. Nome's tourism industry relies on birding and other wildlife tour companies, which generate substantial revenue.

## **II. The IPOP project.**

32. IPOP holds 32 mining claims in the Safety Sound area.

33. The Permit at issue here would involve suction dredge gold mining on ten of IPOP's mining claims in Bonanza Channel.

34. The project would involve dredging and discharging 4.5 million cubic yards of fill (*i.e.*, dredged material such as gravel, sand, silt) into 159.4 acres of waters of the United States over a five-year period.

35. Mining operations would occur 24 hours a day from approximately June 1 to November 1 each year for five years.

36. The full-scale mining channel would be 31 feet deep, between 200 and 365 feet across, and 13,000 feet long. One section of the mining channel will be dredged each year for five years. Some dredged materials will be discharged back to the mined channel in an attempt to restore pre-project bathymetry. The rest of the dredged materials will be discharged at adjacent disposal sites.

37. The project also requires the dredging of two access channels, which would be maintained at 10 feet deep. One access channel would be approximately 2,200 feet long and 85 feet wide. The other would run along the south side of the 13,000-foot-long full-scale mining channel.

38. The access channels would not be backfilled to pre-project bathymetry until after project operations cease.

39. Dredged materials would be placed in four dredged material disposal sites spanning either 32 or 46.7 acres (both figures are cited in the Decision Document) adjacent to the dredged areas. Dredged materials would cover and destroy vegetated shallows; Defendants maintain that the vegetated shallows covered by dredged materials would convert to mud flats.

40. Some of the dredged materials from the disposal sites would be used to refill the access channels to pre-project bathymetry after project completion. This would

require the re-dredging of disposal sites, resulting in new impacts to substrate and special aquatic sites both within the access channels and at the disposal sites. New turbidity impacts would also occur.

41. IPOP would use silt curtains to attempt to control turbidity during dredging of the access channels, placement of dredged material into the disposal sites, during re-dredging of the disposal sites, and during reclamation of the access channels.

42. The use of silt curtains to control turbidity resulting from placer mining in an estuarine environment in Alaska is a novel, untested approach.

43. The project also includes a launch ramp, a staging area, and a man camp.

### **III. The permitting process.**

44. On March 16, 2018, IPOP submitted its first application to “dredge an unspecified area of 100 acres during one year within” its 32 mining claims.

45. A year later, in March 2019, IPOP applied for two nationwide permits for surveying and other activities on 37 acres.

46. Starting in May 2018 and stretching into June 2020, the Corps Alaska District made a series of requests for information before it could deem the individual permit application complete. A complete application for an individual permit was received on July 3, 2020.

47. On July 31, 2020, the Alaska District issued its first public notice for a five-year mining proposal from IPOP. The project consisted of a multi-year phased placer gold mine dredging project within Bonanza Channel that would have affected

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approximately 195 acres.

48. At a December 10, 2020, meeting and in a written submittal on February 1, 2021, IPOP proposed additional work.

49. On February 12, 2021, the Alaska District informed IPOP that the modified application was incomplete and suspended further action until IPOP provided additional requested information.

50. The Alaska District submitted another request for information on March 16, 2021, and the modified application was deemed complete with IPOP's March 26, 2021, update. With the modified application, IPOP stated that it no longer sought authorization to mine in all 32 claims at the present time. Instead, IPOP requested authorization for mining activities on 10 of its 32 claims.

51. The Alaska District issued a revised public notice detailing the proposed changes to IPOP's application on April 16, 2021.

52. The revised plan included a five-year mining project plus an additional year of full-scale mining that was termed "the case study." The five-year mining project involved dredging approximately 4.5 million cubic yards, and it would affect approximately 168.1 acres of waters of the United States.

53. The case study would create an additional 294,000 cubic yards of dredged materials and affect an additional 26.8 acres of waters of the United States, for a total over the six-year period of 195 acres of affected waters of the United States and

approximately 4.8 million cubic yards of dredged materials. IPOP proposed the case study in response to concerns from the U.S. Environmental Protection Agency (EPA), FWS, and National Marine Fisheries Service (NMFS) about the dearth of scientific information on ecosystems like Bonanza Channel and potential impacts from this novel project. The case study was intended to provide proof of concept relating to the effectiveness of proposed reclamation, quantification of impacts, and an estimate of waste bulking and disposal space, among other things. Despite the recognized need for more information, IPOP still sought authorization to carry out the full planned mining project.

54. On September 8, 2022, the Alaska District denied issuance of a section 404 permit for the project on the grounds that the project did not avoid or minimize impacts to waters of the United States to the maximum extent practicable, was not the least environmentally damaging practicable alternative, and would be contrary to the public interest.

55. On November 2, 2022, IPOP appealed the permit denial to Defendants.

56. In its appeal, IPOP claimed that the Alaska District showed “extreme bias” and “illegal bias”; that “Alaska is a company town, the company is Alaskan Native Corporations, and the decision making by local Corps officials has become astoundingly biased, if not corrupted, in favor of local Alaska Native interests”; that “[t]he decision also gives great weight to alleged Alaska Native subsistence use of the Bonanza Channel,

almost entirely a fiction propagated by the wealthy Alaska Native Corporations and their allies with whom the Alaska District regularly does business”; that “[i]t is obviously illegal discrimination against the activities in which non-Alaska Natives choose to engage”; that “Alaska Native Corporations have diligently slandered IPOP in support of bogus subsistence claims in every available forum”; and that opposition to the project was really “an attempt to steal IPOP’s gold through regulatory claim jumping.”

57. On August 18, 2023, Brigadier General Gibbs found that additional review of the permit application was warranted, vacated the Alaska District’s decision, and elevated review of the permit application to Defendants.

58. In an August 18, 2023, letter to IPOP, Brigadier General Gibbs terminated the administrative appeal process and requested transmittal of the permit application to Defendants for decision. Brigadier General Gibbs stated further that he would be making the permit decision after a comprehensive review of the application file.

59. Defendants conducted an appeal conference with the Alaska District and IPOP from July 18 to July 20, 2023.

60. Defendants did not provide a new public notice or public comment period during the permit reevaluation.

61. On March 20, 2024, Defendants issued a section 404 permit to IPOP, along with the Decision Document that constituted their environmental assessment under NEPA, as well as their Clean Water Act section 404(b)(1) Guidelines (Guidelines)

Evaluation, Public Interest Review, and Statement of Findings under the Clean Water Act.

#### **IV. Expert federal agencies' concerns.**

62. As required by the Clean Water Act, the Alaska District sought and received comments from expert agencies throughout its permitting process. Between September 2020 and May 2022, EPA, FWS, and NMFS submitted multiple comments to the Alaska District on IPOP's plans. The agencies expressed substantial concern about significant impacts across multiple resources, including aquatic resources and the benthic environment, birds, and subsistence users. Their comments highlighted missing information and warned that the agencies were unable to make required legal findings due to the lack of adequate information. The concerns persisted throughout the process before the Alaska District. As the Alaska District stated in denying IPOP a permit, "[s]everal of the resource agencies . . . have maintained their objections after considering your reclamation plan and revised proposal . . . ." Defendants did not seek additional input from the expert agencies or from the public, stating that "there were no substantial changes to the project as described in" the second and final Alaska District public notice, indicating that the agencies' prior comments continued to be relevant to the 2024 decision.

63. EPA, FWS, and NMFS all recommended that the Corps consider preparing an EIS due to the potential for IPOP's activities to have significant impacts. In 2020, FWS recommended that the Corps prepare an EIS because of the "significant loss of the

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physical, chemical, and biological functions of the special aquatic sites in this estuary, and because it is unknown how well these functions can be restored.” FWS reiterated this request in 2021. In 2020, EPA noted “the potential for significant environmental impacts” and suggested that “an EIS would be the appropriate venue to analyze the current proposal and these reasonably foreseeable future actions due to the size of the proposal, environmental significance of these lease areas, and potential magnitude of impacts.” In 2021, EPA reiterated that “it appears that it will be unlikely the applicant will be able to mitigate the impacts to these resources to a less than significant threshold and the Corps may need to determine an EIS will be required.” In 2020, NMFS stated its concern that IPOP’s activities had “the potential for significant environmental impacts,” and it requested that the Corps consider preparing an EIS. NMFS reiterated its request in 2021 and asked for an update on the preparation of an EIS and timelines for review. In 2022, NMFS expressed continued concern about significant impacts, stating that the project would “result in substantial adverse effects to [essential fish habitat] for federally managed species, as well as special aquatic sites under 404 of the Clean Water Act, and will result in permanent and irretrievable impacts on the local aquatic ecosystem and fishery resources.”

64. Consistent with their concerns about significant impacts under NEPA, the expert agencies also repeatedly expressed concern that the project could result in significant degradation under the Clean Water Act. In 2021, EPA stated that it could not

“make a reasonable and defensible judgment” that the project complied with the Guidelines, including the requirement that it not cause significant degradation of waters of the United States. Similarly, in its May 2022 comment letter, after reviewing the most current version of the reclamation plan, FWS stated that “[t]he proposed discharge will likely result in substantial degradation of the aquatic ecosystem under § 230.10(c).”

65. The expert agencies repeatedly pointed out the inaccurate or unreliable information provided by IPOP. For example, IPOP implied that the “water temperature in Safety Sound is too warm for juvenile chum salmon.” This despite the area being recognized with the presence of all five species of Pacific salmon, including chum, and for pink salmon spawning. FWS noted that IPOP provided a bird survey, which was largely inaccurate because the survey was not conducted using proven scientific methods during the proper season by bird experts. Finally, in another non-exhaustive example, NMFS highlighted that IPOP’s application referenced an “Eelgrass Study . . . that *‘leaves no doubt that these areas have minimal to no vegetation, being extremely shallow.’*” NMFS, however, went on to demonstrate that in fact, according to the ““Bonanza Channel Bathymetric Mapping and Seagrass Study . . . *the submerged aquatic vegetation community is robust in the study area.*”

66. The expert agencies also repeatedly commented on the lack of important information about the project itself and the affected environment, emphasizing the inability to make the required determinations under the Clean Water Act, NEPA, and

other authorities. For example, in 2020, EPA stated that there was not “sufficient information to address the factual determinations required by 40 C.F.R. § 230.11 or to make a reasonable and defensible judgment that the proposed discharges will comply with the Guidelines under 40 C.F.R. § 230.12.” In 2021, EPA specified that “more information and analysis is needed regarding impacts to suspended particulates/turbidity, sediment characterization and chemistry, threatened and endangered species, fish, other aquatic organisms in the food web, and special aquatic sites.” In 2022, NMFS succinctly summed up the problem with the lack of information when it stated that “[m]anagement decisions made based on significantly limited data are difficult to defend and more importantly may cause harm to the fishery resource, rural subsistence users, and commercial fishermen who depend on the resource.”

67. EPA, FWS, and NMFS also expressed concern with IPOP’s proposed avoidance, minimization, and mitigation. In 2021, EPA stated that “additional avoidance and minimization actions would be needed to minimize adverse impacts” and that “the proposed compensatory mitigation [was] not commensurate with the level of proposed impacts.” In March 2022, FWS recommended “additional avoidance and minimization measures for nesting birds.” It also reiterated its prior comments that it did “not consider destroying current fully functioning nesting and feeding habitat an appropriate form of minimization mitigation.” In its May 2022 comment letter, after reviewing the most current version of the reclamation plan, FWS stated that “[t]he project proponent has not

thoroughly investigated alternatives to reduce or minimize impacts,” and FWS recommended the Corps “deny the permit for the proposed project based on the potentially substantial adverse effects to the special aquatic sites and the lack of proven mitigation and reclamation measures.” In 2022, NMFS stated that “[m]itigations of the potential impacts caused by the project have a questionable likelihood of success because the design of the proposed mitigation is unproven.” NMFS recommended compensatory mitigation be required and that a plan be developed in consultation with relevant agencies.

**V. Defendants’ decision.**

68. Following the Alaska District’s denial of the permit and IPOP’s appeal, Defendants determined, in their Decision Document, that IPOP’s preferred alternative would not be the least environmentally damaging practicable alternative. Instead, Defendants found that a new alternative, On-Site Alternative 2a, was the least environmentally damaging practicable alternative. On-site Alternative 2a was not an alternative considered by the Alaska District.

69. The alternative Defendants adopted as the least environmentally damaging practicable alternative involves the discharge of 4.5 million cubic yards of fill into 159.4 acres of waters of the United States. The approved alternative eliminates the case study IPOP had proposed including in its revised application.

70. In the Decision Document, Defendants determined that an EIS was not required based on the “scope of analysis, the context and intensity of the impacts

considering available mitigation,” and the significance of effects. Specifically, Defendants determined impacts would not extend substantially beyond the project site, which they deemed “mostly unpopulated” and a small portion of a larger estuary. Defendants characterized the impacts as “not significant and adverse,” and found the project would not have a significant impact on the quality of the human environment.

71. Defendants also made factual determinations, as required by the Guidelines, but only found major effects for two of the required factors: aquatic ecosystems and organisms and proposed disposal sites. Defendants downplayed the significance of those two factors by pointing to purported mitigation measures. Defendants did not grapple with substantial record information that undermined their reliance on those mitigation measures or their determinations on the other factors.

72. Based in part on the factual determinations in the Decision Document, Defendants concluded that the project would comply with the Guidelines and would not cause or contribute to significant degradation of waters of the United States.

73. Defendants acknowledged that there would be degradation of functions and services on special aquatic sites.

74. The Alaska District and Defendants both concluded the impacts to the functions and services of affected special aquatic sites to be permanent.

75. Defendants also determined that the selected alternative would avoid, minimize, and mitigate impacts to aquatic resources in compliance with the Guidelines.

76. By eliminating the case study, Defendants approved an alternative that avoided an additional 33.1 acres of impacts to waters of the United States compared to the alternative the Alaska District had considered, but it rejected other alternatives that potentially had fewer or different impacts.

77. Defendants determined IPOP's proposed minimization measures, including best management practices, silt curtains, and development and implementation of various plans would minimize project impacts.

78. Defendants acknowledged the process of returning to pre-project bathymetry would itself generate new impacts and require dredged areas to re-start the process of revegetating. Defendants described the requirement to return to pre-project bathymetry as a "minimization measure" to reduce impacts to waters of the United States. Additionally, because the dredged material would bulk (expand in volume), Defendants acknowledged there would still be remaining dredged materials in the disposal sites.

79. The Defendants determined compensatory mitigation would be "required to offset environmental losses resulting from proposed unavoidable impacts to waters of the United States."

80. The compensatory mitigation Defendants approved entails "implementation of a reclamation plan that requires post activity monitoring of impacted areas to track their recovery and implementation of adaptive measures in the event the recovery of functions and services lags behind expected levels." Defendants based this approval on

IPOP's March 2022 reclamation plan, finding it acceptable and requiring revision to match the selected alternative, which eliminated the case study and required a return to pre-project bathymetry.

81. The March 2022 reclamation plan involves harvesting, storing, and reinstalling submerged aquatic vegetation, developing pools intended for thermal refugia for fish, and using dredged materials to create mud flat features that could serve as shorebird habitat, which IPOP maintains will result in "uplift," or the improvement of shorebird habitat over the current conditions. The reclamation plan also involves monitoring a range of environmental parameters and proposes developing corrective action through adaptive management as needed based on monitoring results. These measures, as well as the efforts to return the mined areas to pre-project bathymetry, would all occur after mining.

82. Defendants expect that implementation of the reclamation plan will fully compensate for the degradation to special aquatic sites.

83. Defendants rejected IPOP's compensatory mitigation proposal to replace a culvert in another location to purportedly improve fish passage.

84. Defendants' Decision Document does not reflect consideration of other compensatory mitigation measures or explain whether other such measures were available.

85. Throughout their Decision Document, Defendants dismissed concerns about the significance of impacts, degradation of waters, success and sufficiency of mitigation measures, and other issues that had been raised by numerous expert agencies, the Tribes, and the public throughout the permitting process. Defendants did this without adequate explanation or record support. Instead of grappling with these concerns, Defendants repeatedly made bare assertions and conclusory statements without citation to meaningful support.

## **CLAIMS FOR RELIEF**

### **Count I**

#### **(NEPA—Failure to take a hard look and failure to prepare an EIS.)**

86. Plaintiffs incorporate by reference each of the allegations in the preceding paragraphs.

87. NEPA requires federal agencies to prepare an EIS for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

88. For proposals that an agency has not determined normally require an EIS, but that also do not fall within established categorical exclusions from NEPA review, the agency must prepare an environmental assessment (EA) to assess impacts and determine whether an EIS is necessary. 42 U.S.C. § 4336(b)(2).

89. If there are substantial questions whether the action may have a significant effect on the environment, the agency must prepare an EIS.

90. If an agency decides not to prepare an EIS for a major federal action, it must supply a convincing statement of reasons to justify its conclusion that a project will not have significant impacts on the environment.

91. The decision to issue a section 404 permit for IPOP's suction dredge mining project is a major federal action.

92. During the administrative process, EPA, FWS, NMFS, and the Tribes raised substantial questions about potentially significant impacts to the benthic environment, birds, fish, and subsistence and recreational users from the project. The Alaska District denied IPOP's permit application because of the seriousness of these potentially significant impacts.

93. Subsequently, Defendants issued an EA and a Finding of No Significant Impact (FONSI).

94. In reaching the FONSI, Defendants responded to the multiple, substantial questions about the project's potentially significant impacts with unsupported, conclusory statements, many of which were contrary to the evidence before the agency.

95. Defendants' failure to prepare an EIS in the face of substantial questions regarding significant environmental impacts was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the APA, 5 U.S.C. § 706(2).

96. Alternatively, Defendants' decision to issue a FONSI without taking a hard

look at the project's impacts and without providing a convincing statement of reasons to justify its conclusion that the impacts would be insignificant was arbitrary, capricious, and not in accordance with law, in violation of NEPA, 42 U.S.C. § 4332(2)(C), and the APA, 5 U.S.C. § 706(2).

## Count II

### **(Clean Water Act—Defendants failed to make rational factual determinations required by the Clean Water Act.)**

97. Plaintiffs incorporate by reference each of the allegations in the preceding paragraphs.

98. The Clean Water Act requires that section 404 permits be issued through application of the Guidelines. 33 U.S.C. § 1344(b).

99. To ascertain compliance with the Clean Water Act, the Corps must make factual determinations and findings of compliance. *See* 40 C.F.R. §§ 230.10(c), 230.11.

100. Factual determinations include an assessment of the effects of the discharge on: (a) physical substrate; (b) water circulation, fluctuation, and salinity; (c) suspended particulate/turbidity; (d) contaminants; (e) aquatic ecosystems and organisms; (f) disposal sites; (g) cumulative effects; and (h) secondary effects. 40 C.F.R. § 230.11. Findings of compliance require the Corps to demonstrate that the discharge will comply with the Guidelines (including all subparts) and thus the Clean Water Act.

101. Defendants found major effects for just two factors: aquatic ecosystems and organisms and proposed disposal sites but downplayed the significance of those factors.

102. Defendants failed to support multiple factual determinations of minimal or no effects. Their conclusions about the magnitude of effects are unsupported by the record, and the agency did not grapple with the significant concerns raised by EPA, FWS, and NMFS about the lack of information and unsubstantiated information provided in IPOP's permit application, despite the project being substantially the same as when their concerns were raised.

103. Therefore, Defendants violated the Clean Water Act by failing to make appropriate factual determinations to support their conclusion. Defendants' failure to make rational factual determinations is a foundational mistake that infects other findings, including their finding of no significant degradation. For these reasons, Defendants' Decision Document and the resulting Permit violate Clean Water Act section 404, *id.* §§ 230.10 and 230.11, and are arbitrary, capricious, and contrary to law, 5 U.S.C. § 706(2).

### **Count III**

**(Clean Water Act—The project may cause or contribute to significant degradation.)**

104. Plaintiffs incorporate by reference each of the allegations in the preceding paragraphs.

105. The Clean Water Act prohibits issuance of a section 404 permit for discharge of dredged or fill material if it would cause or contribute to significant degradation of aquatic resources. 40 C.F.R. § 230.10(c).

106. The Clean Water Act requires that a finding of significant degradation be based on factual findings about the project's effects. *Id.*; *id.* § 230.11. Defendants, with insufficient record support and no rational explanation, concluded the project would not cause or contribute to significant degradation of waters of the United States.

107. For these reasons, Defendants' Decision Document and the resulting Permit violate Clean Water Act section 404, *id.*; *id.* § 230.10(c), and are arbitrary, capricious, and contrary to law, 5 U.S.C. § 706(2).

#### **Count IV**

#### **(Clean Water Act—The project fails to avoid, minimize, or mitigate impacts to aquatic resources.)**

108. Plaintiffs incorporate by reference each of the allegations in the preceding paragraphs.

109. The Clean Water Act requires IPOP to take all appropriate and practicable steps to mitigate proposed aquatic impacts through a sequence: avoidance, minimization, and compensation. 40 C.F.R. § 230.10(a), (d); *id.* § 230.91(c).

110. Defendants' determination that IPOP avoided, minimized, and compensated aquatic impacts to the maximum extent practicable is not justified by the record and does not meaningfully address concerns raised in the record about these factors.

111. Defendants did not demonstrate compliance with the Clean Water Act in their finding that the selected alternative would avoid and minimize aquatic impacts.

112. Defendants' compensatory mitigation determination fails to achieve the objective of compensatory mitigation; to account for or follow the order required for considering compensatory mitigation types; to provide the required amount of mitigation; or to provide for necessary permit conditions. 40 C.F.R. § 230.93(a)(1), (b), (f), (k).

113. Thus, IPOP's Permit does not meet the fundamental objective of the Clean Water Act and its Guidelines to successfully "offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by [section 404] permits." 40 C.F.R. § 230.93(a)(1).

114. For these reasons, Defendants' Decision Document and resulting Permit violate the Clean Water Act section 404, 33 U.S.C. § 1344(a); 40 C.F.R. § 230, and are arbitrary, capricious, and contrary to law, 5 U.S.C. § 706(2).

### **PRAYER FOR RELIEF**

Plaintiffs respectfully request that the Court:

115. Declare that Defendants' decision to issue a Clean Water Act section 404 permit was arbitrary, capricious, and not in accordance with the Clean Water Act and NEPA;

116. Vacate Defendants' Decision Document and Permit;

117. Grant appropriate injunctive relief as needed;

118. Award Plaintiffs the costs, fees, and other expenses of this action, including reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

119. Grant such other relief as this Court deems just and proper.

Respectfully submitted this 10th day of April, 2025.

*s/ Carole A. Holley*

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