BRISTOL BAY, ALASKA (PEBBLE MINE)

ISSUE SUMMARY:

The Pebble Limited Partnership (PLP) has proposed to develop a large open pit gold and copper mine in the headwaters of the Bristol Bay watershed in southwest Alaska. As proposed, the open pit would be the largest ever in North America, at a mile deep and covering up to seven square miles. In **July 2014**, based in part on the results of the Agency's watershed assessment, EPA issued a Clean Water Act (CWA) Section 404(c) action proposing to restrict discharges based on concerns about environmental impacts of large-scale mining in the Bristol Bay watershed. In **November 2014**, a Federal District Court Judge ordered EPA to stop work connected to this review. This litigation is currently stayed until March 20, 2017.

UPCOMING MILESTONES:

- Litigation deadlines are likely after March 20, 2017
- Potential for court-ordered mediation in early 2017

BACKGROUND:

The Bristol Bay watershed supports the largest sockeye salmon fishery in the world, and its Chinook salmon runs are frequently near the world's largest. The salmon fishery supports about 14,000 part-time and full-time jobs and generates an estimated $480 million in economic expenditures and sales. For over 4,000 years, it has served as a significant subsistence fishery for Alaska Native people who may be among the last remaining salmon-based, subsistence cultures in the world.

Since at least **2001**, Northern Dynasty Minerals (NDM) and its subsidiary, PLP, have been exploring the possibility of developing a mine in this location. Stakeholders, including Alaska Natives and commercial and sport fishermen, have expressed significant concerns about the potential for adverse impacts on the watershed's ecological resources, particularly its salmon fishery, which is central to their livelihood, economy, and way of life.

In **May 2010**, a group of federally-recognized Alaska Native Tribes from the area petitioned EPA to use its CWA authority to protect the watershed's valuable fishery resources. That petition was followed by similar requests from other stakeholders from across the country.

In **February 2011**, EPA announced it would conduct an ecological risk assessment to characterize the watershed and the potential impacts of large-scale mining on the region's fishery resources. This three-year effort included two public comment periods that generated over one million written comments, eight public meetings, and two rounds of independent external peer review. The assessment used scenarios based on company plans, which showed a proposed mine with the largest open pit ever constructed in North America covering up to seven square miles and one mile in depth, three mine waste impoundments covering up to 19 square miles, and waste rock piles covering nine square miles.

The final assessment, released in **January 2014**, confirmed the immense ecological value of the watershed and concluded that building, operating, and maintaining the mine would pose risks to the ecosystem and potential impacts to salmon and salmon habitat. Those risks include: destroying 24 to 94 miles of streams and two to seven square miles of wetlands; altering stream flows in nine to 33 miles beyond the mine footprint; and polluting streams from mine drainage and wastewater failures.

On **July 21, 2014**, based in part on the results of the assessment, and after considering the available literature, the Agency issued a CWA Section 404(c) "Proposed determination" that concluded that unacceptable adverse effects on Bristol Bay's sensitive and valuable fishery could result from the discharge of dredged or fill material associated with construction and routine operation of a mine at the Pebble deposit that is a fraction of the size of the smallest mine NDM proposed to the U.S. Securities and Exchange Commission. Accordingly, the proposal would restrict the discharge of dredged or fill material related to impacts from the proposed project that would result in: the loss of five or more miles of salmon-bearing streams or 19 or more miles of tributaries; the loss of 1,100 or more acres of wetlands, lakes, and ponds that connect with salmon-bearing streams or tributaries; or alterations to stream flows greater than 20 percent of daily flow in nine or more miles of salmon-bearing streams.

During the public comment period on the proposed action, EPA received more than 670,000 public comments and held seven public hearings in **August 2014** in Alaska.

In **November 2014**, a Federal District Court Judge ordered EPA to stop all work connected to the proposed determination. Since that time, EPA has not done any work on this issue.

In **January 2016**, EPA's OIG released a final report which found no evidence of bias in how EPA conducted the Bristol Bay watershed assessment or that EPA predetermined the outcome of the assessment to result in initiating a CWA Section 404(c) process.

KEY EXTERNAL STAKEHOLDERS:

☒ Congress ☒ Industry ☒ States ☒ Tribes ☒ Media ☒ Other Federal Agency
☒ NGO ☐ Local Governments ☐ Other (name of stakeholder) _____

- Many stakeholders (including a majority of tribal representatives and Bristol Bay residents, fishing community) support EPA's 404(c) action. Other stakeholders (NDM/PLP, small number of tribal representatives, some members of Congress) are opposed.

MOVING FORWARD:

- Before work on the Section 404(c) action was halted in November 2014, EPA was reviewing the more than 670,000 public comments it received during the comment period on its Proposed Determination and the testimony it received during the seven public hearings it conducted in Alaska in August 2014.
- Based on input EPA receives during the Section 404(c) process, in the event that the court allows EPA to proceed, the Agency could decide that further pursuit of the Section 404(c) veto is not necessary.
- Alternately, to complete the proposed action, EPA would need to issue a "Final Determination."

LEAD OFFICE/REGION: REGION 10 OTHER KEY OFFICES/REGIONS: OW, ORD, OGC