BRISTOL BAY, ALASKA LITIGATION (PEBBLE MINE)

ISSUE SUMMARY:

For well over a decade, Pebble Limited Partnership (PLP), a mining company, has been exploring building a large-scale mine in Bristol Bay. In May of 2010, a group of federally recognized Alaska Native tribes from the Bristol Bay region petitioned EPA to use its authority under Section 404(c) of the Clean Water Act to protect the watershed's fishery resources. In response to competing requests, EPA conducted a multi-year scientific assessment of the potential impacts of large-scale mining in the watershed. In July 2014 EPA Region 10 issued a Proposed Determination under Section 404(c), proposing to restrict the use of certain waters as a disposal site. PLP sued EPA for alleged violations of the Federal Advisory Committee Act (FACA) in preparing the assessment and obtained a preliminary injunction of all 404(c) activities while the litigation proceeds.

UPCOMING MILESTONES:

- **March 20, 2017** **Stay of litigation ends**

BACKGROUND:

The potential Pebble Mine in Bristol Bay, Alaska, is an issue of national significance and the subject of intense public interest. Based on information from PLP, mining the Pebble deposit is likely to involve excavation of the largest open pit ever constructed in North America. The Bristol Bay watershed supports the largest runs of sockeye salmon fishery in the world, and its Chinook salmon runs are frequently at or near the world's largest. The watershed's salmon fishery supports about 14,000 part-time and full-time jobs and generates an estimated $480 million in direct economic expenditures and sales. In addition, 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.

PLP or its representatives have also filed more than a dozen FOIA requests with EPA, and related FOIA litigation is currently ongoing in the District of Alaska before the same judge in the FACA case.

KEY EXTERNAL STAKEHOLDERS:

☒ Congress ☐ Industry ☒States ☒ Tribes ☐ Media ☐ Other Federal Agency ☒ NGO
☐ Local Government ☒ Other (name of stakeholder) Pebble Limited Partnership

Congress: EPA has received inquiries and document requests about this matter from the U.S. Senate Committee on Environment and Public Works and the U.S. House Committees on Science, Space and Technology and Oversight and Government Reform.

NGOs and Tribes: NRDC, the Bristol Bay Native Corporation and other Alaska native communities support action under CWA section 404(c).

Pebble Limited Partnership and affiliated Northern Dynasty Mining: Seek to develop the mine.

Alaska: The State has been critical of EPA in the past and participated in previous litigation challenging EPA's authority under the CWA regarding Pebble. But a new governor who has expressed opposition to the mine assumed office in December 2014. The State is not currently a major actor.

MOVING FORWARD:

The case is currently stayed until March 20, 2017. At various times throughout the litigation, the parties have conducted settlement discussions but have been unable to come to an agreement. The parties' joint motion for the stay indicated that the purpose of the stay is for the parties to "continue to pursue ways to resolve this case without the press of litigation, including through the continued exploration of mediation."

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