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EPA's Work in the Bristol Bay Watershed

Presentation for Office of Federal Activities

January 31, 2018

Overview

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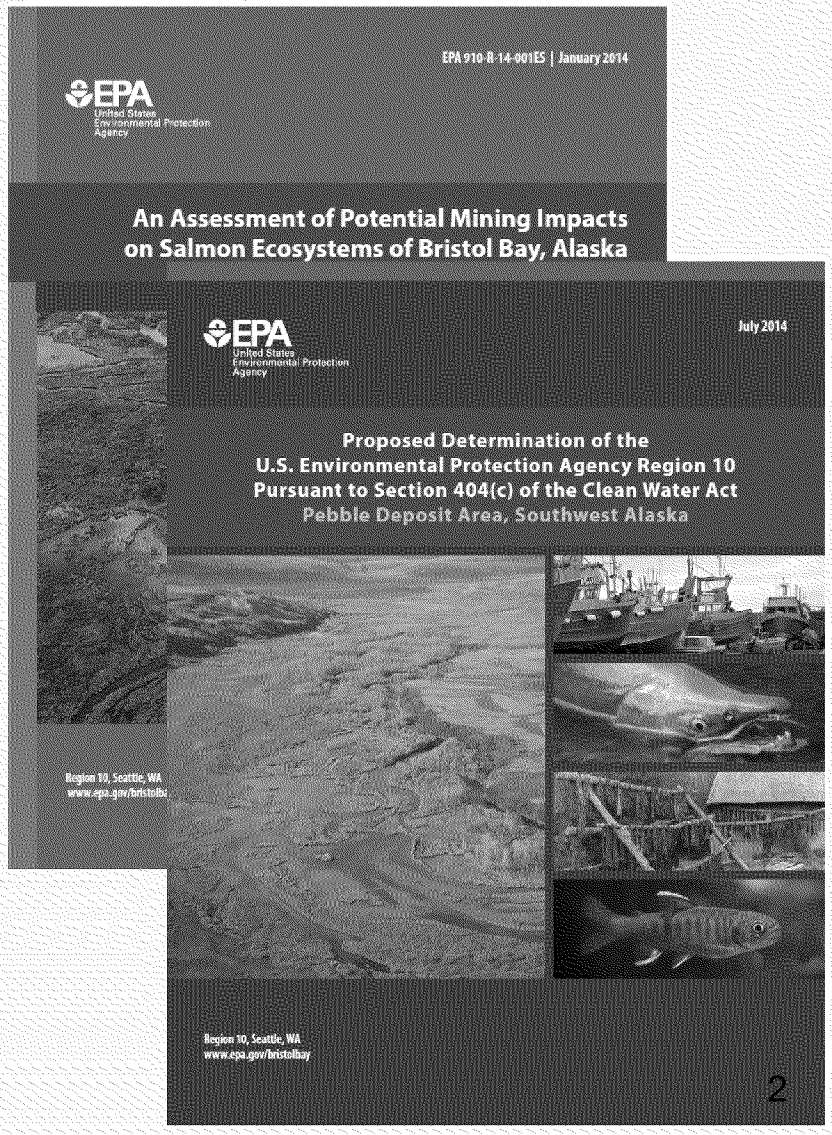
- EPA's Involvement History
- Science
- Section 404(c) Regulatory Response
- Section 404 Permitting



Bristol Bay Watershed

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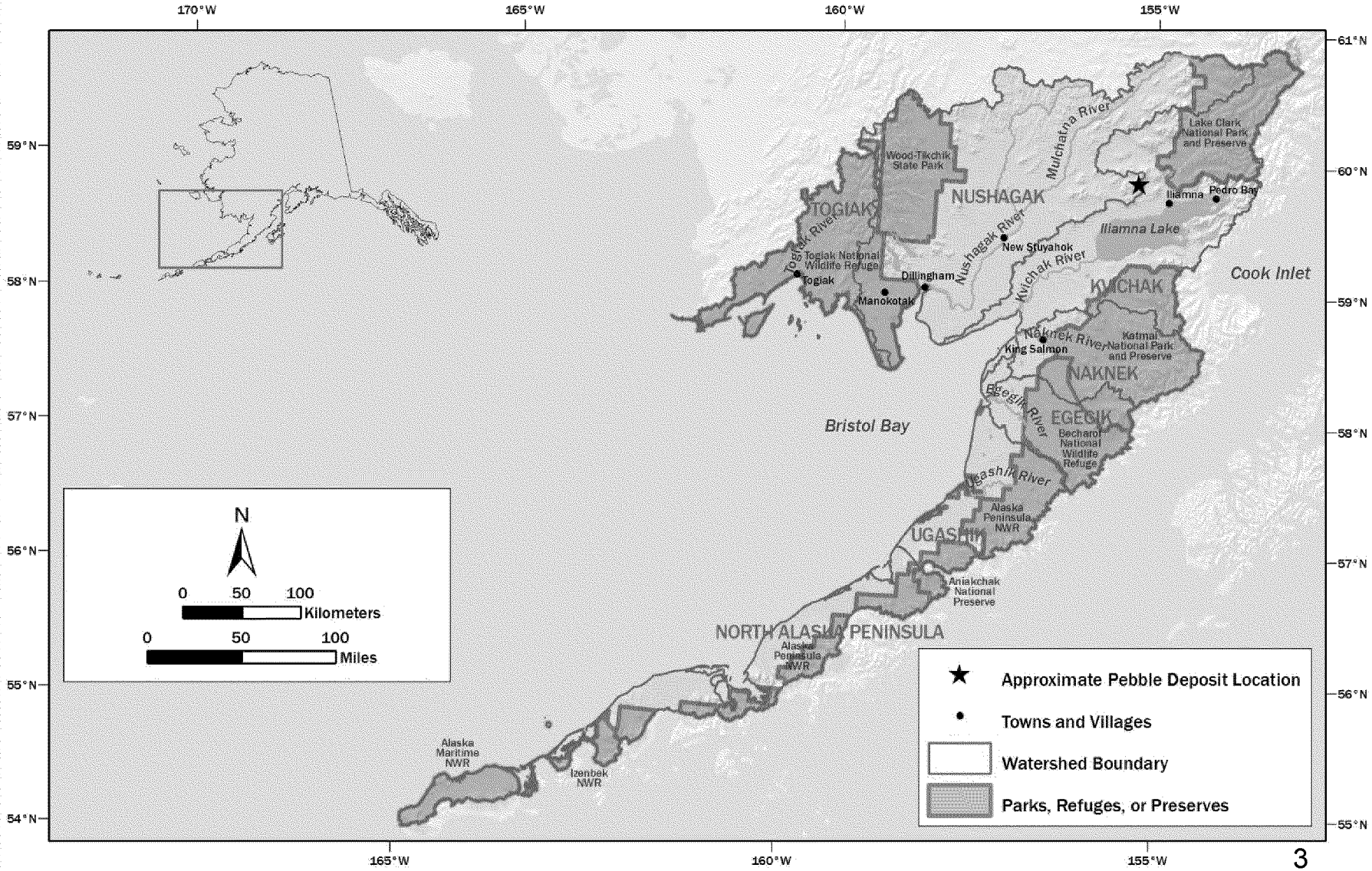

Timeline 2003 - 2014

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2004-2010: Pre-NEPA inter-governmental working groups that included the Corps and State

February 2011: EPA announced intent to conduct Assessment

February 2011: NDM submitted preliminary plans for mining Pebble deposit to SEC

April 2013: EPA released second draft of Assessment for public comment and follow-on peer review

January 2014: EPA released final Assessment and response to peer review comments

2003 2004 2007 2010 2011 2012 2013 2014

2003: EPA met with NDM in advance of NEPA process

2007: PLP created by co-owners NDM and Anglo American

Mid-2010: EPA received petitions from Tribes and others regarding Pebble Mine

May 2012: EPA released first draft of Assessment for public comment and external peer review

February 2014: EPA initiated section 404(c) process

July 2014: EPA issued Proposed Determination

NDM = Northern Dynasty Minerals Ltd.
PLP = Pebble Limited Partnership
NEPA = National Environmental Policy Act
SEC = U.S. Securities and Exchange Commission

Timeline 2014 - Present

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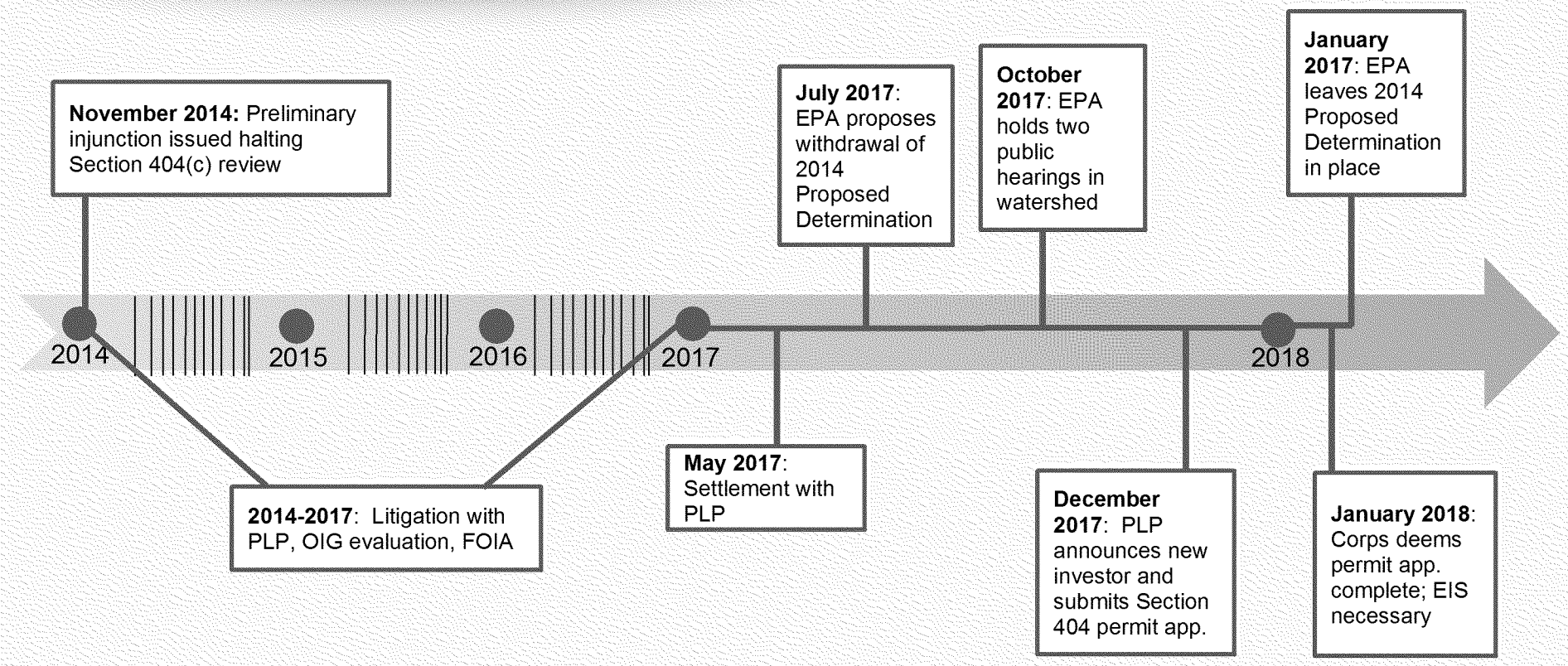

OIG = EPA Office of Inspector General
PLP = Pebble Limited Partnership
Corps = U.S. Army Corps of Engineers
EIS = Environmental Impact Statement

Bristol Bay Watershed Assessment

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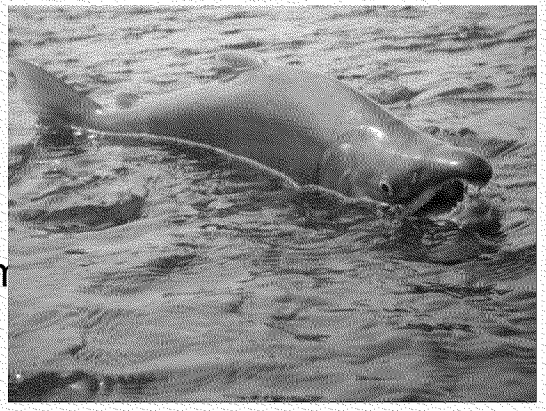
- Purpose:
  - Characterize the biological and mineral resources of the Bristol Bay watershed
  - Increase understanding of the potential impacts of large-scale mining on the region's fish resources
  - Inform future decision-making
- Scientific Ecological Risk Assessment evaluating potential impacts associated with:
  - Large-scale mine construction and operation
  - Accidents and failures
- Three-year scientific assessment effort
  - Independent external peer review
  - Stakeholder and public engagement
    - 8 public meetings
    - 2 rounds of public comment – over 1.1 million comm
  - Tribal consultations



Bristol Bay Watershed Resources

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Biological Resources:

- Bristol Bay produces almost half of world's sockeye salmon
- Kvichak watershed world's largest producer of sockeye salmon
- Nushagak watershed frequently at or near world's largest producer of Chinook salmon

Biological Resources Support:

- 14,000 jobs, generates $480 million annually in direct economic expenditures and sales
  - Salmon fishery valued at $1.5 billion annually
- 4,000-year-old subsistence fishery for Alaska Natives

Geological Resources:

- At least 10 claims with more than minimal exploration, including Pebble.
- Pebble deposit: low-grade, with copper, gold, and molybdenum
- According to NDM, Pebble could:
  - Be largest mine of its type in North America
  - Produce 3,000 jobs in AK
  - Contribute $2.7 billion to US GDP annually
- Economics of mining the Pebble deposit are speculative
- Since 2001, four major mining companies have walked away from Pebble project

Bristol Bay Watershed Assessment

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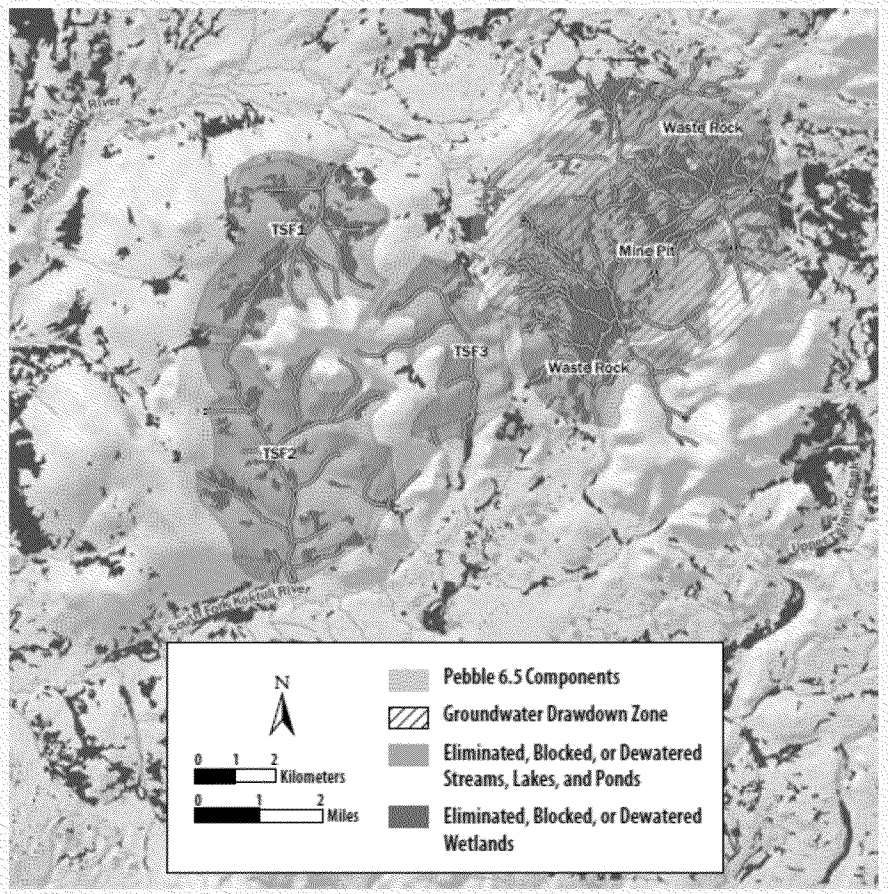
Mine Footprint Impacts:

- 24-94 miles of salmon-supporting streams destroyed
- 1,300-5,350 acres of wetlands, ponds, lakes destroyed
- 9-33 miles of salmon-supporting streams with altered streamflow likely to affect ecosystem structure and function

Other Impacts:

- Tailings dams need maintenance in perpetuity
- Routine operations and accidents would increase impacts on salmon habitat quality, both at the mining site and along the 86-mile transportation corridor.



Clean Water Act Section 404

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- §404(a) authorizes the Secretary of the Army to issue **permits**
  - For the discharge of dredged or fill material into waters of the U.S. at specified disposal sites
- §404(b) directs the Secretary of the Army to apply **environmental criteria** developed by EPA when specifying disposal sites
  - §404(b)(1) Guidelines [40 CFR Part 230]
- §404(c) authorizes EPA to prohibit, deny or restrict (withdraw) the placement of dredged or fill material at defined sites in waters of the U.S.

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Limits of Section 404(c)

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- **Whenever** it determines, after notice and opportunity for public hearing, that the discharge of such materials into such area will have an **unacceptable adverse effect(s)** on:
  - Municipal water supplies; or
  - Shellfish beds and **fishery areas**; or
  - Wildlife; or
  - Recreation areas.

Pebble Deposit 404(c) Process

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Step

Step

Step

Step

) by EPA Assistant Administrator for Water

ion released (PD) by EPA Region 10

ion 10 – "15-day letter

ion Alaska

ion Alaska

ion (RD)

ion 99% (86% unique) supported Proposed Determination

- 7/8/14 proposed Determination
- NDM/MIP, and State public comments
- 8/ 2/14 public comments
- 8/ 2/14 public comments
- RD issue FD affirming proposed Determination
- >15,000 000 written comments

What Are the Proposed Restrictions?

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Restrict the discharge of dredged or fill material related to mining the Pebble deposit into waters of the U.S. that would, individually or collectively, result in the following:

1. **Loss of Streams.**
   a. The loss of 5 or more linear miles of streams with documented anadromous fish occurrence; **or**
   b. The loss of 19 or more linear miles of streams where anadromous fish are not currently documented, but that are tributaries of streams with documented anadromous fish occurrence; **or**

2. **Loss of Wetlands, Lakes, and Ponds.** The loss of 1,100 or more acres of wetlands, lakes, and ponds contiguous with either streams with documented anadromous fish occurrence or tributaries of those streams; **or**

3. **Streamflow Alterations.** Streamflow alterations greater than 20% of daily flow in 9 or more linear miles of streams with documented anadromous fish occurrence

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Response to Section 404(c) Proceeding

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- Office of Inspector General (OIG) Review
  - 17-month in-depth evaluation found no evidence of bias or a pre-determined outcome
  - Possible misuse of position for retired Region 10 employee noted
- PLP broad Freedom of Information Act (FOIA) requests
  - Approximately 18,000 documents produced
- PLP filed three lawsuits in 2014
  - Administrative Procedure Act (APA) challenge to initiation of 404(c) process
  - FOIA litigation
  - Federal Advisory Committee Act (FACA) litigation
- May 2017 settlement agreement
  - Resolved FOIA and FACA litigation and PLP's outstanding FOIA requests

Settlement Agreement

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- Key terms of the May 11, 2017 settlement agreement between PLP and EPA:
  - EPA may use its Bristol Bay Watershed Assessment without limitation
  - EPA agrees to initiate a process to propose to withdraw its 2014 Proposed Determination by July 11, 2017
  - EPA agrees not to forward a Recommended Determination (the next step in the 404(c) review process) to EPA HQ until a Final EIS is noticed for the project or May 11, 2021, whichever is earlier
  - PLP drops remaining lawsuits and fee requests against EPA and agrees to file no new FOIA requests during the 2.5- to 4-year hiatus period

Proposal to Withdraw 2014 Proposed Determination

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- July 2017: Withdrawal proposed based on policy rationale
  - EPA did not solicit comment on the proposed restrictions or on science or technical information underlying the Proposed Determination
- Outreach and Consultation
  - Proposal generated >1 million comments (~99% opposed)
  - 2 public hearings in watershed
  - Tribal and ANCSA Consultation
    - 16 tribal governments and 1 ANCSA Regional Corp. opposed
    - 1 tribal government and 2 ANCSA Village Corps. supported

Section 404(c) Next Steps

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- EPA decided not to withdraw and suspended Section 404(c) process pending further review

- Settlement agreement obligations
  - EPA can issue a new/modified Proposed Determination at any time
  - EPA Region 10 cannot forward a Recommended Determination to EPA HQ until May of 2021 or until a final EIS is noticed, whichever comes first

Section 404 Permit Application

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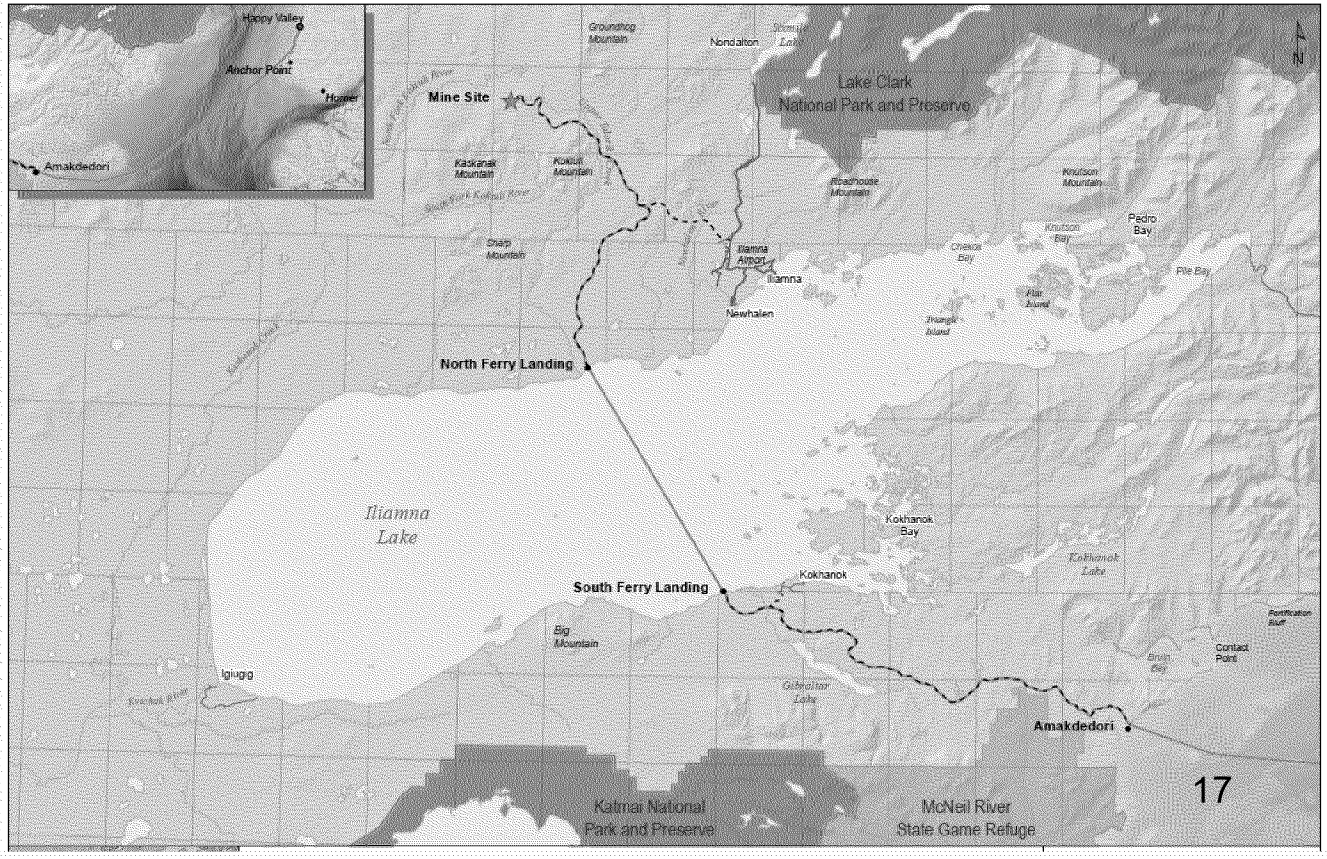
- PLP filed permit application in December 2017
- Corps deemed permit application complete; EIS is necessary
- Timing
  - Final EIS mid-2020
  - FAST-41



Initial Corps Process

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- Corps invited EPA to cooperate
  - Currently proposing to limit EPA's involvement to Section 404(b)(1) issues
  - Framework for coordination is atypical
  - No commitment to preliminary draft EIS
- EPA requested higher-level meeting to discuss concerns

Pebble deposit area.

Questions

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Upper Talarik Creek, one of three streams flowing from the Pebble deposit site