PEBBLE LIMITED PARTNERSHIP LITIGATION AND SETTLEMENT (BRISTOL BAY WATERSHED CWA 404(c) PROCESS)

ISSUE/TOPIC: Bristol Bay CWA 404(c) litigation process with Pebble Limited Partnership.

BACKGROUND:

- On July 21, 2014, the agency used a little-known statutory provision to issue a "proposed determination" of the environmental impact of the Pebble Limited Partnership Mine project, which circumvented the traditional permit process and effectively prevented the project from moving forward.
- A federal district court judge in November 2014 ordered the EPA to stop all work connected to the Clean Water Act 404(c) proposed limitation while a challenge to the EPA's actions with regard to the Bristol Bay watershed was litigated.
- On January 13, 2016, the EPA OIG released its final report from a 17-month in-depth evaluation of the EPA's Bristol Bay Watershed Assessment finding:
    - No evidence of bias in how the EPA conducted the Bristol Bay Watershed Assessment.
    - No evidence that the EPA pre-determined the outcome of the assessment to initiate a Clean Water Act Section 404(c) process in the Bristol Bay watershed.
    - All policies and procedures for ecological risk assessment, peer review and information quality in conducting the Bristol Bay Watershed Assessment were appropriately followed.
    - In spite of a potential ethics lapse by a remotely located staffer who retired before the EPA completed the Bristol Bay Watershed Assessment, there is "no evidence that any law was violated."
- Senator Murkowski (R-AK) has written the EPA in concern over their watershed assessment, and opposes what she sees as the EPA's overreach in this case.

TALKING POINTS:

- In May 2017, the EPA entered into a settlement agreement with Pebble Limited Partnership under which the EPA agreed to begin the procedure specified in its regulation to consider whether to withdraw the proposed determination. In exchange, Pebble will withdraw its claims under Freedom of Information Act (FOIA) and the Federal Advisory Committee Act, as well as its request for attorney's fees.
- Pebble also agreed to file no new FOIA requests while the settlement is in effect. The settlement will be dissolved if Pebble does not file its application with the Army Corps within 30 months of the settlement.
- The settlement ensures that Pebble will be able to submit its application and have the application considered within the regular course of business. The settlement does not guarantee any particular outcome or determination with respect to Pebble's application.

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