# STATE *of* ALASKA
# DEPARTMENT *of* NATURAL RESOURCES

## *Mine Permitting & Wetlands Issues in Alaska*

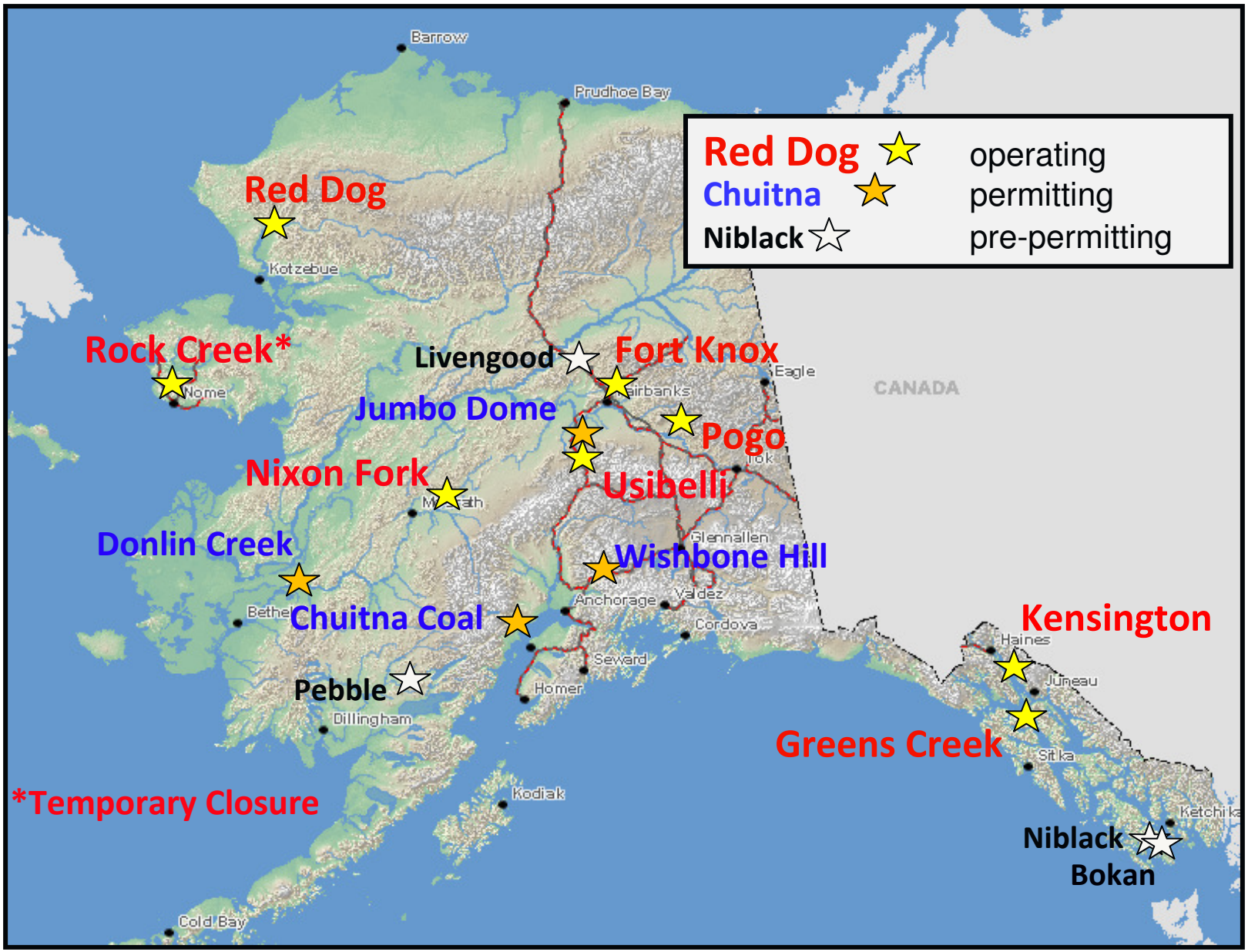
**IMCC – NonCoal/Hardrock Symposium**

*March 27-28, 2013 | Salt Lake City, UT*

**Tom Crafford**
Director, Office of Project Management and Permitting
Tom.crafford@alaska.gov

Fort Knox Mine

# Large mining projects in Alaska



# CWA 404

- With completion of State assumption of NPDES program in 2012, CWA 404 “dredge and fill” permit remains the major federal (i.e., NEPA) “hook” for most projects in AK
- Permit required for placement of fill into “Waters of U.S.”
- General Permits & Individual Permits
- USACE can only permit “Least Environmentally Damaging Practicable Alternative” (LEDPA)

Red Dog Mine
(Nana/Teck)

# NEPA & 404

- State participates in NEPA as a Cooperating Agency through OPMP
  - Not a "Full" Seat at the Table
- USACE is de facto Lead Agency for an EIS in AK
- Trend to transfer "Preferred Alternative" from EIS to Record of Decision (ROD)
- State does not get to participate in "permitting decision-making, only in NEPA analysis.
- State has information that could help to inform permitting decisions, but no Seat at that Table

**Kensington Mine (Coeur)**

# Compensatory Mitigation

- CM Required for “unavoidable adverse impacts to aquatic resources”
- “No Net Loss” Policy
- 2008 Mitigation Rule requires perpetual protections for mitigation sites; monitoring plans; financial assurances; ecological performance standards; etc.
- Watershed approach
- Restoration, Enhancement, Creation, Preservation
- Mitigation Banks > In Lieu Fee Programs> Permittee Responsible (in order of declining risk of mitigation success)
  - State sponsored ILF?
- CM really targeted at private lands

# Alaska Specific Issues

- Alaska has more wetlands than the rest of the nation combined, ~50% of State is wetlands, ~174 million acres
- Permafrost ~ Wetlands
- AK has little private land
- AK has had little wetlands disturbance, so few opportunities to Restore or Enhance
- Nearly all CM in Alaska accomplished via Preservation
- Only lands with development potential are eligible to satisfy CM requirements via Preservation (else, why Preserve)
- Preservation typically involves ratios > 1:1, often 3:1 or 5:1 or higher

# U.S. Army Corps of Engineers

Concerns regarding USACE:

- Declining budgets
- Declining positions
- Loss of Senior Staff
- Funding Uncertainty
  - Includes but not restricted to sequestration
- Capacity Issues
- Emphasis not on Regulatory Branch, but on Military, Civil and, now, Foreign Aid Projects
- Colonel who heads District rotates out every 2 years

# 404 PRIMACY?
# STATE PROGRAMMATIC GENERAL PERMITS?

**Primacy**

- CWA specifically provides for State Primacy
- EPA makes State primacy decision
- Primacy would give the State greater control/role – but costly – no federal $
- USACE retains Sec 10 R&H Act Navigable waters & tidal-influenced waters and adjacent wetlands
- Many State have looked/are looking; only MI & NJ have assumed primacy
- Program required to be "at least as stringent" as federal
- EPA & USACE oversight; EPA right to object

**SPGP's**

- Impacts must be individually & cumulatively minimal
- For recurring types of activities
- Can be regional or statewide, and can apply to state & federal primacy waters

**Greens Creek Mine (Hecla)**

# Future?

- Alaska has begun to look hard a 404 Primacy – Governor's Bill (SB27) currently working its way through Legislature – calls for evaluation of options
- Oregon is also investigating 404 Primacy

**Information**

- Association of State Wetland Managers (www.aswm.org)
- Association of Clean Water Administrators (www.acwa-us.org)