

ALASKA DEPARTMENT OF NATURAL RESOURCES

- INITIATIVES, PROGRESS, & CHALLENGES -

CACFA Federal Overreach Summit

Monday, August 12, 2013 •
Anchorage, Alaska

Deputy Commissioner
Ed Fogels
Alaska Department of Natural
Resources



STATEWIDE PERMITTING REFORM - COMPREHENSIVE STRATEGY -

The State of Alaska is undertaking comprehensive permitting reform to create a *timely, predictable* and *efficient* permitting process while safeguarding the environment

DNR has been working with a team from DEC, ADF&G, and LAW to develop and advance strategies that aim to:

- Improve agencies' internal permitting structure to create a more efficient, timely, and certain process
- Enhance coordination within different state departments and with different entities and stakeholders throughout the state
- Seek input from the public about the permitting process including input from municipalities, industry and non-governmental organizations
- Improve coordination between the state and the federal government—federal permitting issues have a strong influence on state projects
- Anticipate and plan for permitting the next phases of resource development

ASSUMING WETLANDS PRIMACY

- SB 27 -

- SB27 authorized the State to evaluate assuming primacy of the permitting program under Section 404 of the Clean Water Act, which requires permits for dredge and fill activities in surface waters (ocean, lakes, rivers, streams) and wetlands
- Directs the State to study 404 primacy by evaluating costs, benefits and consequences of the state assuming primacy and to prepare an application for assumption of the program
- Provides resources to begin capacity building for the program
- Provides the authority for DNR and DEC to administer the program and provides the authority for DEC to apply to the EPA, the federal approval authority, for authorization for the state-run program

ASSUMING WETLANDS PRIMACY

- CURRENT STATUS -

- DEC & DNR are working to fill the positions authorized by SB 27 (4 in DEC & 2 in DNR)
- State has been working on a Draft MOU with the Army Corps of Engineers and the EPA to establish how the state and federal agencies will work together as the State proceeds with its evaluation of 404 primacy
- DEC, DNR & DOL met with State of Oregon officials to learn about Oregon's efforts to obtain 404 primacy (OR has been investigating 404 primacy, on and off, since 1995)
- State agencies are scheduling meetings with representatives from Michigan and New Jersey, the only two states that have obtained 404 primacy
- DEC has prepared a draft timeline of the steps to achieving State 404 primacy
- DOL has begun its review of the regulatory requirements for the State to assume primacy

BRISTOL BAY WATERSHED ASSESSMENT

External Review Draft | EPA 910-R-12-004a | May 2012



An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska

Volume 1 – Main Report



U.S. Environmental Protection Agency, Seattle, WA
www.epa.gov/bristolbay

External Review Draft Do Not Cite or Quote



EXECUTIVE SUMMARY

The Bristol Bay watershed in southwestern Alaska supports the largest sockeye salmon fishery in the world. It is home to 25 Federally Recognized Tribal Governments, and contains large mineral resources. The potential for large-scale mining activities in the watershed has the potential to impact the sustainability of Bristol Bay's world-class salmon fishery, which has been sustained for at least 4,000 years. The U.S. Environmental Protection Agency (EPA) is conducting an assessment to determine the significance of Bristol Bay's ecological resources to the fishery. This assessment will consider the potential impacts of large-scale mining on these resources. The USEPA is considering options consistent with its role to provide a scientific and technical foundation for use of its regulatory authority until the assessment is complete. This document is a draft for

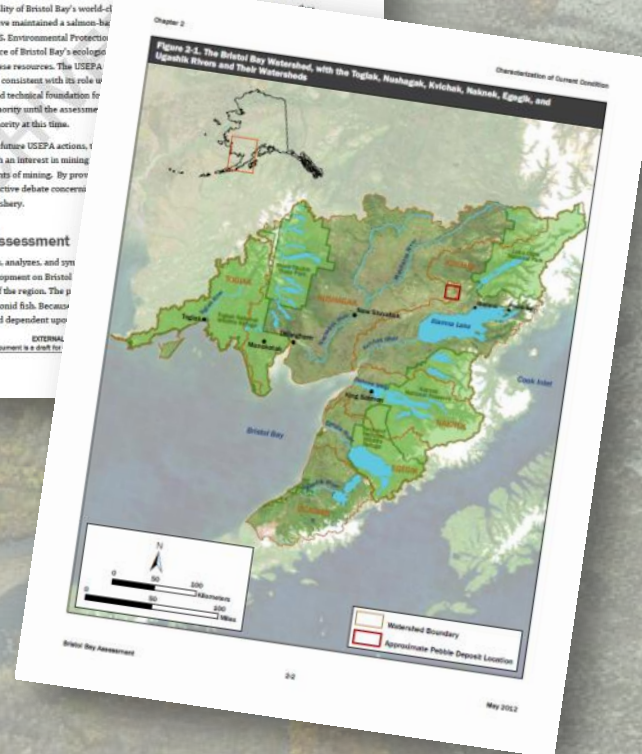
Chapter 2
Figure 2-1. The Bristol Bay Watershed, with the Tugidak, Husabagak, Kivichik, Nainok, Egigik, and Ugnalik Rivers and Their Watersheds

In addition to informing future USEPA actions, government entities with an interest in mining projects and opponents of mining. By providing an assessment of the potential impacts of large-scale mining on the Bristol Bay salmon fishery.

Scope of the Assessment

This assessment reviews, analyzes, and synthesizes information on large-scale mining development on Bristol Bay Alaska Native cultures of the region. The potential impacts of large-scale mining on the genetic diversity of salmonid fish. Because of the genetic diversity of salmonid fish, the assessment is intimately connected and dependent upon

EXTERNAL
Bristol Bay Assessment
This document is a draft for



INTERSTATE MINING COMPACT COMMISSION

Interstate Mining Compact Commission

Who We Are	Member States Alabama Alaska Arkansas Illinois Indiana Kentucky Louisiana Maryland Missouri New York North Carolina North Dakota Ohio Oklahoma Pennsylvania South Carolina Tennessee Texas Utah Virginia West Virginia
What We Do	
Member States	
Publications	
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COALEX Information	
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INTERSTATE MINING COMPACT COMMISSION

CERCLA 108(b) Rulemaking for Hardrock Mining

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund
- EPA is in the process of promulgating regulations to assume responsibility for financial assurances for industrial projects, beginning with hardrock mining
- Alaska currently integrates financial assurances from multiple different regulatory programs into a single bond amount, which serves to extend the applicability of the financial assurances should they be needed
- Under CERCLA, new federal bonding regulations would preempt the state's mine bonding programs. EPA has said it would need to hold the financial assurances, since CERCLA has no provision for states to assume primacy
- These efforts could undermine Alaska's stringent and technically sound financial assurance program, and reduce our ability to protect our land and water
- The EPA rationale is based on the impacts and Superfund expenditures for older mines developed and operated prior to the modern era of environmental regulation. Modern mines simply do not need federal CERCLA oversight

OSM: WISHBONE HILL MINING PERMITS



THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

Department of Natural Resources

Division of Mining, Land & Water
Director's Office

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August 2, 2012

Ken Walker
Office of Surface Mining Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050

RE: Ten-Day Notices (TDNs) numbered #X11-141-182-005 and #X11-141-182-006 regarding
Usibelli Coal Mine, Inc.'s Wishbone Hill Mining Permits

Mr. Walker:

This letter serves as our response to your correspondence dated July 19, 2012. In that correspondence, you stated that you had completed an initial evaluation of the response by the Alaska Department of Natural Resources (DNR) to your Ten-Day Notices (TDNs) numbered #X11-141-182-005 and #X11-141-182-006. You requested that DNR conduct a permit file review and advise the federal Office of Surface Mining Reclamation and Enforcement (OSM) if additional pertinent permitting information was available for OSM evaluation.

DNR has conducted a record search in response to your request. By doing so it does not concede that the OSM has the authority to conduct this TDN process to review alleged permit defects in the Wishbone Hill permits.

OVERVIEW

OSM's issuance of the two TDNs were a result of citizen's complaints filed with OSM regarding surface coal mining operations and permits at the Wishbone Hill coal mine near Sutton, Alaska.¹ Advocacy groups and the Chickaloon Village Traditional Council (collectively "the complainants") have asked OSM to invalidate permits approved for the mine 20 years ago.

¹ Attachment A, Letter from K. Strong, B.Brisson to A.Klein dated December 14, 2011; Letter from T.Waldo to A.Klein dated December 14, 2011.



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050

July 19, 2012

Russell Kirkham, Coal Regulatory Program Manager
Alaska Department of Natural Resources
Division of Mining Land and Water
550 West 7th Avenue, Suite 900B
Anchorage, Alaska 99501

Dear Mr. Kirkham:

The Office of Surface Mining Reclamation and Enforcement (OSM) evaluation of the response by the Alaska Department of Natural Resources (DNR) to your Ten-Day Notices (TDNs) numbered #X11-141-182-005 and #X11-141-182-006. For the reasons set forth below, OSM finds that DNR's response is not in accordance with the Alaska Surface Coal Mining Control Act (ASCMCRA) and associated regulations. Because the record that OSM has reviewed contains gaps in permitting information, we are requesting your office to advise OSM if additional pertinent permitting information is available for OSM evaluation.

BACKGROUND

Overview of Applicable Ten-Day Notice Regulations

A TDN is a form that OSM uses to notify a state regulatory authority that there is a violation of the state's approved regulatory authority. The regulatory authority has 10 days to take "appropriate action" to correct or to show "good cause" for failing to do so. "Appropriate action" includes enforcement of the violation. See 30 C.F.R. § 842.11(b)(1)(ii)(B)(3). Circumstances for not taking appropriate action are set forth in 30 C.F.R. § 842.11(b)(1)(ii)(B)(2). If the regulatory authority's response to a TDN is arbitrary or capricious, the regulatory authority may request OSM's determination. See 30 C.F.R. § 842.11(b)(1)(iii). If OSM's final determination is that the regulatory authority's response is arbitrary or capricious, OSM will conduct an appropriate action or demonstrate good cause. OSM will conduct an appropriate action or demonstrate good cause if the Federal inspection reveals that a violation of the state's approved regulatory authority exists.



ANILCA ISSUES

- Since 2009, nine large management plans have been released or will soon be initiated by the four federal land management agencies that affect the majority of federal lands in Alaska
- State has been repeatedly told that decisions are being made in D.C. and not at the regional level; regional staff therefore have no authority or incentive to discuss or work through issues
- Growing trend in NEPA processes to avoid exposing agency intent, thus discouraging dialogue
- Important provisions of ANILCA are often marginalized or ignored

NPS General Management Plan Amendments, Refuge Revised Comprehensive Conservation Plans, BLM Resource Management Plans/NPR-A Integrated Activity Plan, and USDA FS Revised Forest Plans

NPR-A, ANWR, Delta WSR Appeals, and BLM policy manuals revised without input from AK State BLM Office

No or late identification of preferred alternative, and new hybrid alternatives in final

“No More” clause and BLM plans, such as Eastern Interior RMP and the Delta WSR management plan, provide little to no recognition or guidance on the ANILCA provisions that apply to CSU’s and other ANILCA designated areas within the planning areas

FEDERAL PLANNING EFFORTS

Since 2009, nine large management plans have been released or will soon be initiated that affect the majority of federal lands in Alaska:

1. BLM's Central Yukon Resource Management Plan (RMP)
2. BLM's Bering Strait Western Interior RMP
3. BLM's Eastern Interior RMP
4. BLM's NPR-A IAP
5. USFS's Chugach National Forest plan revision
6. USFS's Tongass National Forest Plan revision
7. NPS's Gate of the Arctic National Park General Management Plan Amendment
8. NPS's Lake Clark National Park and Preserve General Management Plan Amendment
9. USFWS' Arctic National Wildlife Refuge Comprehensive Conservation Plan

OTHER FEDERAL INITIATIVES

Rapid Ecoregional Assessments (REA):

BLM initiative to inventory vast geographical areas, including State and Native lands.

1. Seward Peninsula
2. Yukon Kuskokwim
3. North Slope

Landscape Conservation Cooperatives (LCC):

USFWS initiative to develop long-term science plans.

1. Arctic - *State participating and funded by USFWS, ADF&G chair*
2. Northwest Boreal
3. Western Alaska – *State participating and funded by USFWS, ADF&G chair*
4. North Pacific

ACCESS TO PUBLIC LANDS



- RS2477s
- Navigability



THANK YOU!

