



BRISTOL BAY WATERSHED ASSESSMENT A PERSPECTIVE

INTERSTATE MINING COMPACT COMMISSION
NON-COAL SYMPOSIUM
SALT LAKE CITY, UTAH

MARCH 27, 2013

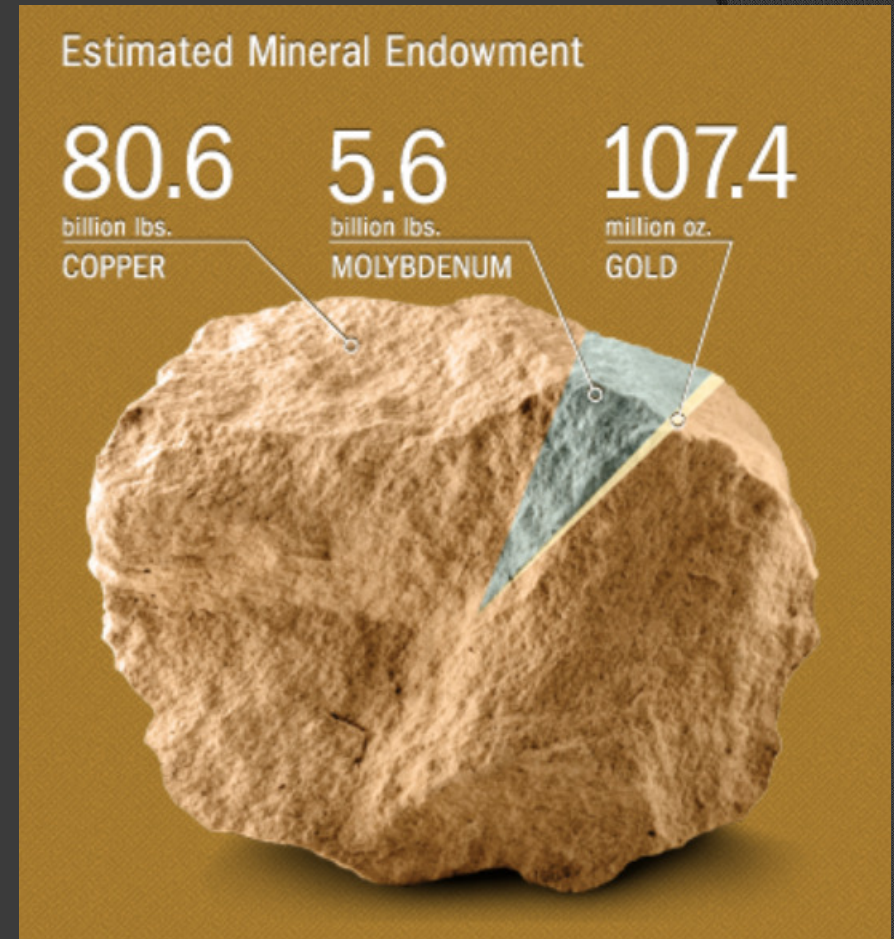
Allan S. Nakanishi, P.E.
Alaska Department of Environmental Conservation
Division of Water

The Pebble Project



The Pebble Project

- World-Class Copper & Gold Porphyry Deposit
- Located on State of Alaska owned lands (mostly)
- Estimate of the deposit value range from \$300 billion to \$500 billion



The Pebble Project



The Pebble Project



Project Opposition



Project Opposition



Image by Alaskan artist [Ray Troll](#)



Enter Stage Left - EPA

EPA initiation of events – Chronology

- Feb 2011 - EPA launches the Bristol Bay Assessment.
- Aug 2011 - Draft assessment approach and conceptual models presented to Intergovernmental Technical Team.
- Feb 2012 - EPA invited the public to nominate qualified experts to be considered for the external peer review panel. [[Federal Register Notice Feb 24, 2012](#)] and [[Federal Register Notice Mar 8, 2012](#)]
- May 2012 - EPA announced the release of the draft report, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*, ([Press Release May 18, 2012](#)) for public review and comment. [[Federal Register May 25, 2012](#)]
- Jun 2012 - EPA announced an independent scientific peer review panel to review the draft Bristol Bay Watershed Assessment. In addition, EPA announced the draft charge questions, which will guide the panel's review. Public comment period on these draft charge questions was from June 5 to June 26, 2012. [[Federal Register Notice Jun 5, 2012](#)]
- Jul 2012 - EPA announced the external peer review meeting for the review the draft report that would be open to the public. [[Federal Register Notice Jul 6, 2012](#)]
- Aug 2012 - EPA held public meetings on August 7-9, 2012 in Anchorage, Alaska to provide comment on the peer review panel on the draft *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska* (EPA/910/R-12/004/a-d).
- Nov 2012 - EPA released the [final peer review report](#) from the independent expert external peer review meeting held in August .


Bristol Bay Watershed Assessment

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

EPA
United States
Environmental Protection
Agency

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

Executive Summary



Four small inset images: a brown bear, a fishing boat, a landscape with mountains, and a salmon.

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

External Review Draft – Do Not Cite or Quote

EPA “Veto Authority”

Clean Water Act Section 404(c)

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

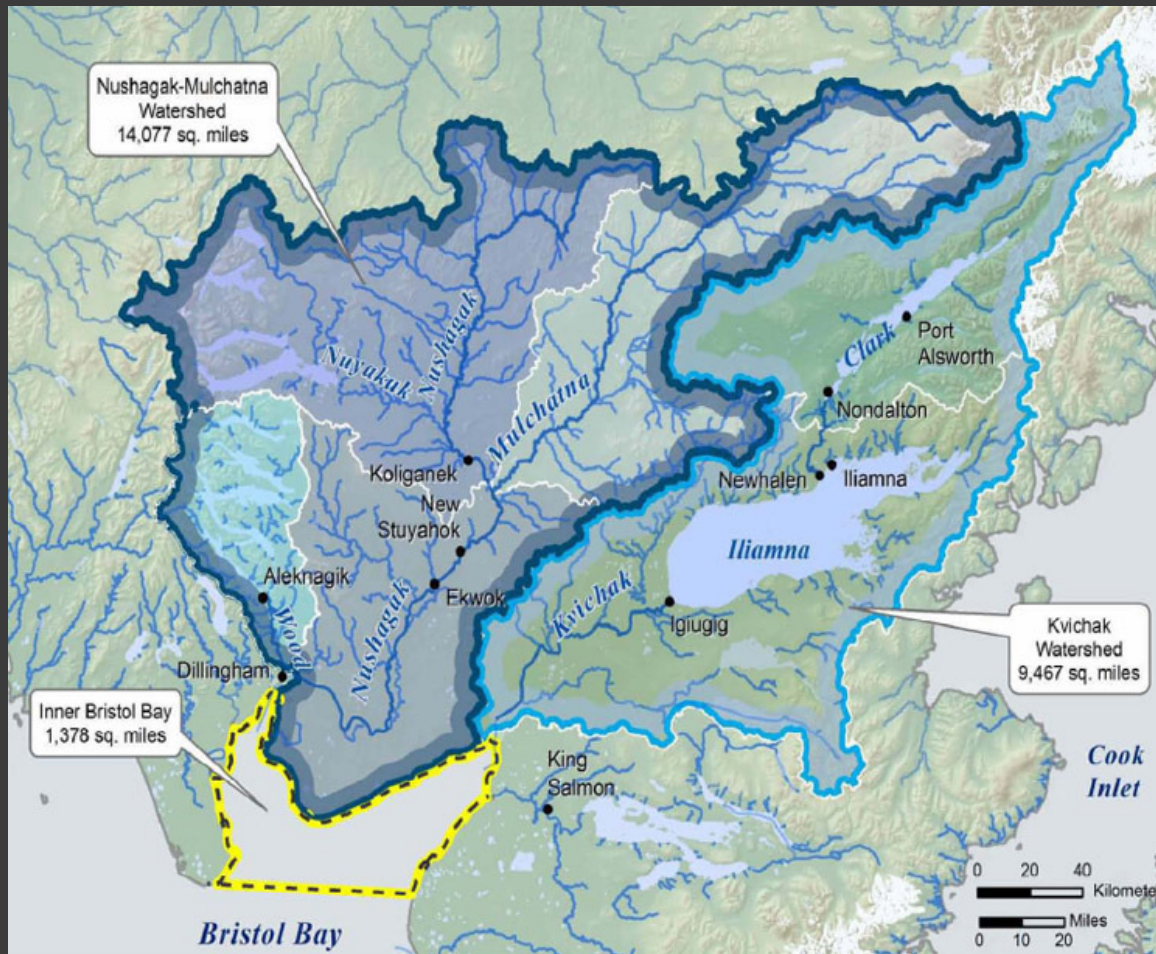
40 CFR Part 231

Section 404(c) Procedures

Outline the following steps:

- ① (1) The Regional Administrator's proposed determinations to prohibit or withdraw the specification of a defined area as a disposal site, or to deny, restrict or withdraw the use of any defined area for the discharge of any particular dredged or fill material;
- ① (2) The Regional Administrator's recommendation to the Administrator for determination as to the specification of a defined area as a disposal site.
- ① (3) The Administrator's final determination to affirm, modify or rescind the recommended determination after consultation with the Chief of Engineers or with the state.

Bristol Bay Watershed Assessment



State Involvement & Response

- State staff attended public meetings in Anchorage, Seattle, Dillingham, Naknek, New Stuyahok
- Attorney General's office and OPMP submitted comment on document to EPA.
- 88 pages of detailed technical comments from State team
- AG's letter comments focused on legal and process issues.
- State staff attended the external peer review panel hearing.

State BBWA Review

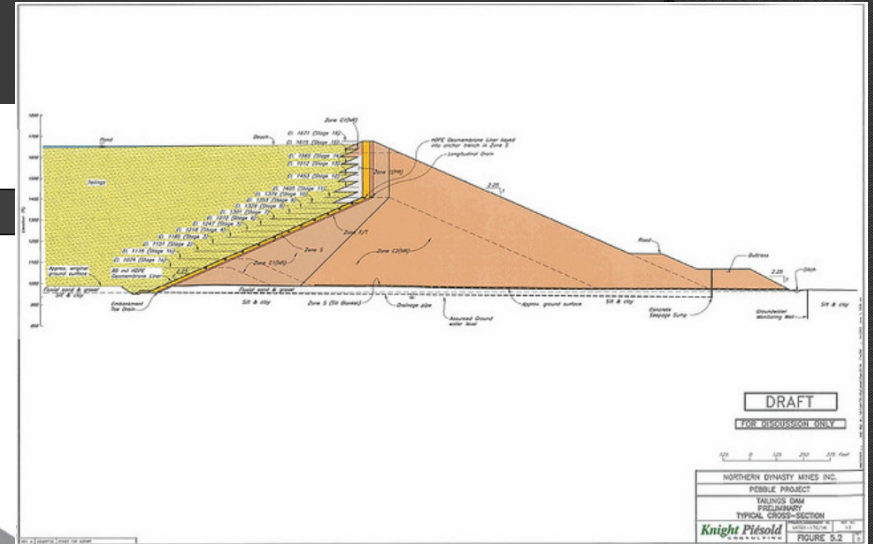
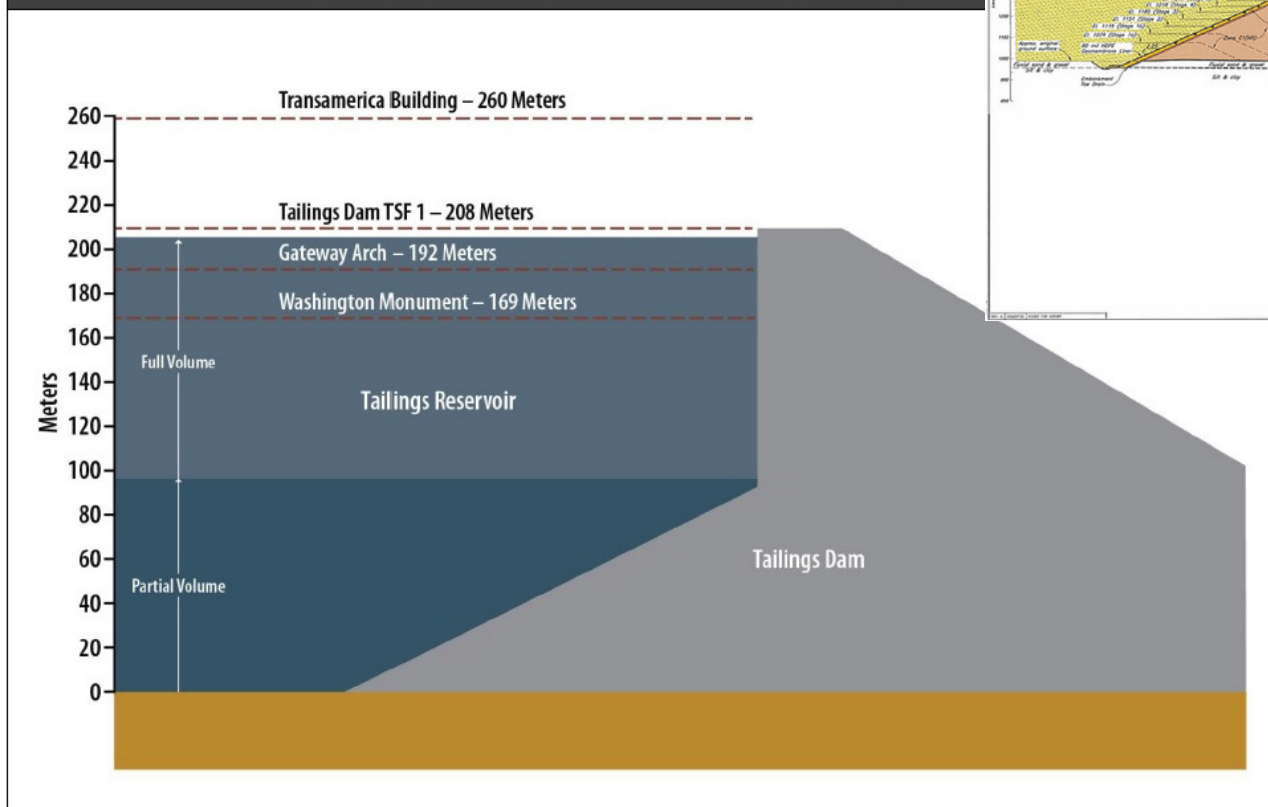
Technical Comment Summary

- The assessment draws speculative conclusions about potential impacts from a hypothetical large mine.
- Insufficient technical and scientific support for conclusions based on groundwater/surface water interconnections in the study area.
- Inadequate consideration of mitigation measures.
- Data presented are not representative, complete or current.
- Incomplete and selective discussions of socio-economic impacts and potential benefits of mining.
- Unclear risk assessment methodology
- Inconsistent scale and scope of project area.
- Non-scientific presentation of the assessment

Bristol Bay Watershed Assessment

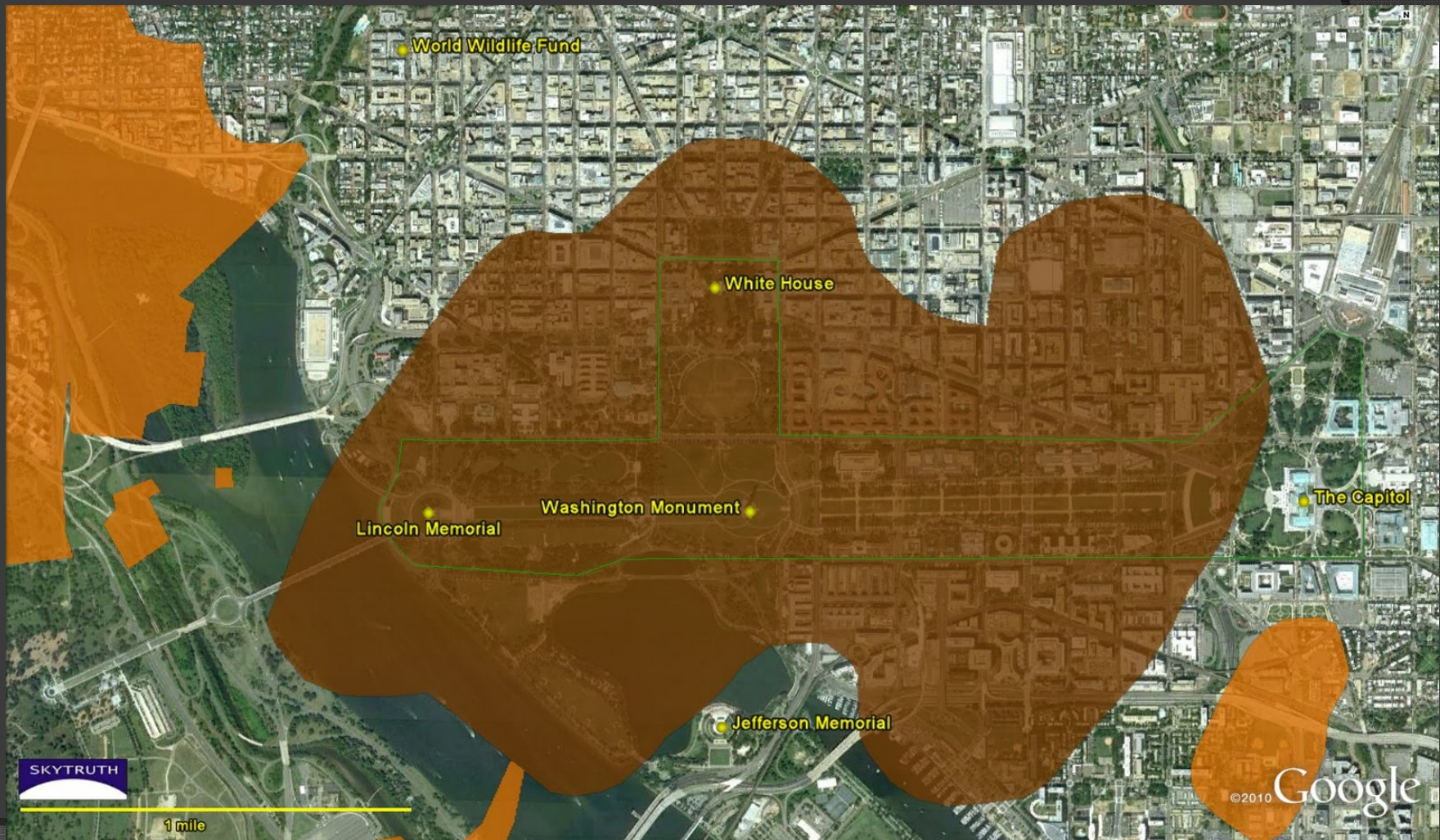
Chapter 4

Figure 4 8. Height of the Partial and Full Volume Dams at TSF 1, Relative to Common Landmarks



EXTERNAL REVIEW DRAFT—DO NOT CITE OR QUOTE
 This document is a draft for review purposes only and does not constitute Agency policy.

Bristol Bay Watershed Assessment



State BBWA Review

Legal Comment Summary

- ◉ EPA's decision to prepare the assessment and related efforts are an unlawful expansion of EPA's Section 404(c) regulatory process, in violation of the CWA, Administrative Procedure Act (APA), and the 1992 Memorandum of Agreement (1992 MOA) between EPA and the U.S. Army Corps of Engineers (Corps).
- ◉ EPA's assessment is based on 1998 guidance that unlawfully circumvents other applicable state and federal regulatory authorities, and reliance on the guidance in this context is arbitrary and capricious.
- ◉ The assessment and EPA's reliance upon it in any exercise of CWA Section 404(c) authority usurps the State's land and water resource management prerogatives and public interest considerations preserved under, inter alia, the CWA and the Alaska Statehood Act.
- ◉ Notwithstanding EPA's contention that the assessment does not constitute "final agency action," EPA's assessment renders conclusions that mark the consummation of agency action on specific issues and impacts, these conclusions are not subject to appeal, and these conclusions will have essentially binding effect on future regulatory reviews, including EPA's consideration of Section 404(c) action in response to the pending petition.
- ◉ The credibility of the assessment is significantly undermined by the rushed nature of its development, as well as the time allowed for public and peer review.
- ◉ EPA's assessment appears to violate the Data Quality Act.

Excerpted from the July 23, 2012 letter by Alaska AG Michael Geraghty to EPA
Administrator Lisa Jackson

Current Status

- EPA is updating the assessment in response to over 230,000 public comments and the comments received from expert peer reviewers.
- EPA plans to have a group of qualified experts review the revised draft assessment prior to completion of the assessment.
- The Agency is working to determine the schedule, scope, and methodology of this additional review. No deadline for completing the assessment has been set.

For More Information

Allan Nakanishi, PE

Wastewater Discharge – Mining Section
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99501
Phone: 907.269.4028

Allan.Nakanishi@alaska.gov

<http://www.dec.state.ak.us/water/wwdp/index.htm>

- ◎ Alaska Department of Natural Resources – Large Mine Permit Team:

<http://dnr.alaska.gov/mlw/mining/largemine/pebble/>