



ALASKA

NORTH TO OPPORTUNITY

REPORT OF THE ALASKA MINERALS COMMISSION

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State of Alaska

Julie Anderson, Commissioner
Department of Commerce, Community,
and Economic Development

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Alaska Minerals Commission

The 11-member Alaska Minerals Commission (AMC) serves in an advisory capacity to the governor and the Alaska State Legislature. Five members are appointed by the governor (one of whom must reside in a rural community), three members are appointed by the president of the Senate, and three members are appointed by the speaker of the House of Representatives. The State of Alaska Division of Economic Development supports the AMC by facilitating their annual meetings and assisting with the annual report.

The Commission's role is to recommend strategies to mitigate constraints on mineral development in Alaska. Created by the Legislature in 1986, the AMC's authorization was extended through 2024 by the Legislature in 2013 via House Bill 99. For over 30 years, the AMC has worked with the state and Legislature to successfully implement key recommendations that support a strong and sustainable Alaska minerals industry. This report builds upon past work with the intent to identify state and federal issues that can block responsible development.

Commissioners

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Train Exiting Healy Coal Mine, DED Archive

Introduction

Minerals and mining have played a significant role in Alaska's history, from the first use by Alaska Natives for tools and trade to our current modern mining facilities. Today, Alaska ranks among the top ten known global reserves of coal (2nd), lead (6th), zinc (7th), Gold (9th), and silver (10th)¹, providing the critical elements needed to build the technology we use every day, from cell phones and computers to electric vehicles and solar panels. The mining industry has demonstrated its ability to diversify the state's economy and provide wide-ranging employment opportunities in both rural and urban areas, supporting rural infrastructure and lowering the cost of living, all while operating at the highest environmental standards.

Alaska's mineral wealth is known worldwide, with the state ranked 5th out of 91 jurisdictions worldwide for mineral potential by mining and exploration companies.² Despite Alaska's expanse being mostly unexplored, there are 7,200 known mineral occurrences, not including coal or construction material deposits.³ So it should be no surprise that mining exploration expenditures in the state have more than doubled, to \$120.8 million, up from \$58.9 million in 2016.² The minerals industry remains one of the underpinnings of Alaska's long-term strategic economic development plan to diversify and strengthen the state's economy. Alaska is, indeed, "Open For Business."

The Alaska Minerals Commission commends state leadership on actions taken to improve the minerals exploration, development, and production climate in Alaska, and looks forward to continued progress over the next year. The Alaska Minerals Commission presents this 2019 report highlighting one Top Priority, six State Priorities, and four Federal Priorities, along with recommended actions for the governor's administration and the Legislature.

1 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska's Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 1

2 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska's Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 2

3 McDowell Group, March 2018, The Economic Benefits of Alaska's Mining Industry, prepared for the Alaska Miners Association, p. 6

Industry highlights

- Six major mines – Greens Creek (silver, gold, lead, zinc), Red Dog Operations (zinc, lead, silver), Fort Knox (gold), Pogo (gold), and Kensington (gold) – operate in Alaska, along with the Usibelli Coal Mine.³
- Approximately 236 placer mines, where precious metals are extracted from surface deposits using only gravity and water, produced 51,800 ounces of gold in 2016.⁴
- \$17 million in production value was reported by 120 operations extracting sand and gravel for construction materials.⁶
- In 2016, Alaska mines generated roughly \$2.5 billion in total gross revenue.¹
- \$1.81 billion worth of minerals and coal were exported from Alaska to markets around the globe in 2017 – up 17% from 2016.⁵
- The value of Alaska’s mineral industry – a composite of yearly expenditures on exploration, development, and revenue earned by operators – totaled \$3.15 billion in 2017.¹
- The bulk of exploration expenditure focused on: Graphite Creek (graphite), Livengood (gold), Palmer (copper zinc, gold, silver), Pebble (copper, gold, molybdenum), Upper Kobuk Mineral Projects/Arctic & Bornite (copper, zinc, gold, silver, Cobalt).⁶

Benefits to Alaska

- Alaska Government revenue totaled \$120.6 million in 2017, and municipalities earned \$48.4 million in revenue, through minerals-industry-specific fees, rents, sales, royalties, and taxes.⁷
- In 2017, total mineral industry employment was estimated at 3,392 full-time jobs, up 5% from 2016.⁸
- Wages for these jobs averaged \$107,820, more than twice average private-sector wages and some of the highest among major industries in the state.⁷
- The Alaska Permanent Fund earned \$5.2 million from the mining industry in 2017.⁹
- Mining and minerals companies purchased \$580 million of goods and services from Alaska vendors in 2016.
- The mining industry paid about \$276.5 million in royalty payments to Native Corporations in 2017.⁹
- More than \$2.9 million in charitable donations was given to communities around the state by the mining industry.⁹

4 McDowell Group, March 2018, The Economic Benefits of Alaska’s Mining Industry, prepared for the Alaska Miners Association, p. 2

5 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska’s Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 62

6 McDowell Group, March 2018, The Economic Benefits of Alaska’s Mining Industry, prepared for the Alaska Miners Association, p. 1

7 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska’s Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 6

8 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska’s Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 4

9 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska’s Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 7

Top Priority

Defend and promote the minerals and mining industry in Alaska

Alaska is well-known for its excellent geologic potential. However, the state's reputation as a hospitable location for investment has suffered from inconsistent support for mineral resource development by state leadership. Alaska may rank 5th out of 91 jurisdictions internationally for mineral potential by mining and exploration companies, but it is only 10th for overall investment attractiveness.¹⁰

This perception is not set in stone. The Legislature and the governor's administration need to work together to ensure industry leaders in the United States, and around the world, know that mining and minerals development is welcome in Alaska. Clear, concise, and proactive communication to prospectors, family miners, small mining companies, major mining companies, and investors from the governor's administration and the legislature will help attract the mineral investment needed for development of Alaska's future mines.

Increased investment in minerals exploration and mining is essential to diversify the state's economic underpinnings. "More than 190 million acres of federal, state, and Native-owned lands are open for minerals-related activities and mining."¹⁰ However, just having a resource isn't enough to bring outside business to Alaska. Attracting that investment requires companies have faith in the state's economic stability, reasonable regulatory environment, and ongoing support of the minerals industry at the highest levels of government.

Recommendations:

The Alaska Minerals Commission recommends that the governor's administration and Legislature create a shared message of welcoming investment in, and development of, Alaska's mineral resources that can be distributed to minerals and mining companies.

The Alaska Minerals Commission recommends increased outreach by the Alaska Department of Natural Resources Commissioner, the Division of Economic Development, and the governor's administration to major mining companies and industry associations, describing the advantages of investing and exploring in Alaska and inviting these companies to explore and develop in the state.

The following state and federal priorities, coupled with actions recommended by this commission, support the open-door policy welcoming investment from all of Alaska's leadership.

¹⁰ Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska's Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 2



Courtesy of NANA Regional Corporation

Attracting that investment requires companies have faith in the state's economic stability, reasonable regulatory environment, and ongoing support of the minerals industry at the highest levels of government.

State Priorities:

- 1: Support the Division of Geological & Geophysical Surveys (DGGS)
- 2: Establish and maintain a stable state fiscal policy
- 3: Address key state regulations governing water use
- 4: Support for a proposed mining statute change
- 5: Reallocate portions of the state mining license tax to communities, while precluding targeted local severance taxes
- 6: Encourage the governor's administration to continue challenging ballot initiatives that seek to regulate natural resource development

Federal Priorities:

- 1: Ensure the state defends Alaska's navigable waters and access corridors
- 2: Continue lifting onerous public land orders (PLOs)
- 3: BLM Resource Management Plans (RMPs) must not violate the "no-more clauses" in the Alaska National Interest Lands Conservation Act (ANILCA)
- 4: Support progress towards defining Waters of the US in accordance with the intent of the Clean Water Act

Courtesy of Tripple Creek Mine



State Priorities

1. Support the Division of Geological & Geophysical Surveys (DGGS)

The Minerals Commission recognizes the key role that the DGGS plays in identifying Alaska's mineral resources, collecting earth science data and working with exploration and mining companies. Basic science, especially geologic and geophysical mapping, often leads to discoveries and eventually to production. Beginning in 2019, the DGGS will increasingly focus on identifying metals considered strategic for national security, research which will benefit overall minerals exploration in Alaska as well.

Critical minerals – including bauxite, graphite, platinum group metals, germanium, cobalt, antimony, tin, tungsten, and rare earth minerals such as yttrium and dysprosium¹¹ – are crucial to the production of everything from advanced military technology, to the automotive field, and energy products. Currently, the United States is dependent on unreliable foreign producers such as China, Russia and the Democratic Republic of the Congo for many of its critical mineral supplies. This poses an unacceptable risk to the national and economic security of the United States. Created by President Donald J. Trump's Critical Minerals Executive Order, the Three-Dimensional Mapping and Economic Empowerment Program (3DEEP) focuses on improving the topographic, geologic and geophysical maps of the United States.

Fortunately, "Alaska consists of more than 663,000 square miles (1,717,000 square kilometers) of land – more than a sixth of the total area of the United States – and large tracts of it have not been systematically studied or sampled for mineral resource potential."¹² DGGS has been instrumental in establishing and maintaining Alaska as a priority region for this national effort. Since critical minerals are mainly by-products

11 U.S. Department of the Interior, May 28, 2018, Final List of Critical Minerals 2018, Vol. 83, No. 97, p. 23295 - 23296

12 U.S. Geological Services, 2017, Geospatial Analysis Identifies Critical Mineral-Resource Potential in Alaska Fact Sheet

Courtesy of Pebble Partnership



from mining base and precious metals, conducting new geological and geophysical surveys will facilitate exploration and development of a much broader spectrum of commodities. State matching funds will be necessary to maximize the federal funding allocation to Alaska, and the principal benefit for the broader mineral industry in this state. Previous critical minerals initiatives were funded through the State of Alaska's Airborne Geophysical/Geological Mineral Inventory (AGGMI) program and augmented by capital funds. This program was eliminated by budget cuts to the division in 2015.

Focus on critical minerals is only one of the many ways the DGGs supports the mining and minerals industry in Alaska. The division's Geologic Materials Center (GMC) hosts the state's archive of geologic samples collected by mineral and oil and gas exploration companies, as well as state and federal agencies, dating back to the early 1900s. Since moving to a new location, usage has tripled to 1400-1500 visits per year. The archive contains core samples and cuttings of 16.7 million feet of oil and gas exploration and production drill samples, and 354,000 linear feet of diamond-drill mineral exploration core samples.¹³ The collection is growing rapidly and becomes more valuable for resource development as it expands. The sample collection is the first stop for nearly all geologic resource exploration projects in Alaska yet recent reductions in staff levels, coupled with the increase in usage, are impacting the state's ability to properly manage and curate this invaluable asset.

Finally, DGGs' role in promoting the State of Alaska at international mining conferences – where local experts can showcase our mineral potential, investment climate, and interact with investors – needs ongoing support. Roughly 80 percent of the funding for mineral exploration in Alaska is from companies housed outside of Alaska, most recently from Canada and Australia. These outreach activities are how Alaska lets the world know that Alaska welcomes mineral and mining investment.

Recommendations:

- The Alaska Minerals Commission recommends that the governor and Legislature support the President's critical minerals initiative by re-funding the Airborne Geophysical/Geological Mineral Inventory (AGGMI) program within DGGs at greater than \$1,000,000 per year.
- The Alaska Minerals Commission recommends that the governor and Legislature increase funding to the Alaska Geologic Materials Center facility to allow for increased personnel, additional storage, and services.
- The Alaska Minerals Commission recommends that the governor and Legislature reinstate funding to the DGGs and the Division of Economic Development to support attendance at international mineral and mining conferences.



Courtesy of Trilogy Metals



¹³ Division of Geological & Geophysical Surveys, accessed January 2018, dggs.alaska.gov/gmc/inventory.php

2. Establish and maintain a stable state fiscal policy

Establishing and maintaining a stable state fiscal policy was the top priority in 2016, 2017, and 2018 Minerals Commission reports. While some forward progress has been made, the commission believes that Alaska's leaders must continue moving forward, on a bipartisan basis, to establish the stable fiscal climate needed to encourage investment in the state's resources.

The four essential steps to establishing this environment have remained unchanged. The state must maintain a strong regulatory permitting program necessary to manage responsible mineral development and maintain access to critical mineral resources. The state must also enforce sovereignty in the management of natural resources in Alaska and, finally, provide the long term fiscal certainty necessary to attract investment and development to Alaska.

Recommendation:

- The Alaska Minerals Commission recommends that state leaders act in a bipartisan manner to develop a long-term plan to sustain a deficit-free budget, and establish a fiscal regime that can provide a stable investment climate for mineral investment in Alaska.

Courtesy of Niblack Mining Company



3. Address key state regulations governing water use

The State of Alaska is required by the Clean Water Act, and other federal regulations, to have an anti-degradation policy and a process for the nomination and designation of Tier 3 waters, also known as Outstanding National Resource Waters (ONRWs). The purpose of a Tier 3 designation is to offer special protection for waters of “exceptional recreational or ecological significance.”¹⁴ Designation of a Tier 3 waterbody results in a prohibition of any discharge that could degrade water quality, regardless of whether or not the discharge meets state water quality standards. This prohibition applies to discharges into tributaries or waterbodies upstream of the designated Tier 3 waters that could affect downstream waters, preventing industrial, municipal, or private activities that would require a water discharge permit.

There are currently no designated Tier 3 waters in the state, but the Alaska Department of Environmental Conservation (ADEC) is currently working on developing a process for the nomination and designation of Tier 3 waters. Options under consideration for Tier 3 designation authority include the Alaska Legislature, a Tier 3 Board, the Alaska Department of Environmental Conservation, or the Governor.

However, once waters are designated as Tier 3, there is no recognized process to remove that designation. “Currently, there is no precedent for removing an ONRW [designation] once in place; neither is there federal regulation or policy prohibiting such an action. ... However, in practice, once a water [body] has been determined to be of exceptional significance warranting Tier 3 protection, it would be presumed to be extremely difficult to show at some time in the future that it is no longer exceptional and justify removal of the Tier 3 designation and protection level.”¹⁴

Additionally, a reservation of water for instream flow reservation (IFR) use is a form of water right that protects specific instream water uses, such as use by fish, for recreation, navigation, or water quality. It sets aside the water necessary for these activities and keeps later, junior water reservations from appropriating water that may affect the instream activity. Private individuals – including those who are not Alaska residents – organizations, and government agencies may apply for a reservation of water for instream use. Under current Alaska Department of Natural Resources regulations, IFRs are granted to the applicant, including to private individuals and organizations.

Finally, the U.S. Environmental Protection Agency has updated national human health criteria (HHC) to recommend a significantly higher fish consumption rate as the basis for calculating water quality standards. The Alaska Department of Environmental Conservation



Courtesy of SAM AK

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¹⁴ Alaska Department of Environmental Conservation (ADEC) Division of Water, March 20, 2018, dec.alaska.gov/media/4800/tier-3-factsheet-032018.pdf



Courtesy of Greens Creek Mine

is working to revise the Alaska-specific fish consumption rate and thereby revise the HHC in the Alaska Water Quality Standards. ADEC recently completed a process to identify the complex issues related to fish consumption and implementation of associated water quality regulations. One of the key issues for Alaska is whether or not salmon and marine animals should be excluded from the fish consumption rate, as both groups spend a substantial part of their life cycle in marine waters that are not regulated by the state. The ongoing concern is that utilizing significantly elevated fish consumption levels has the potential to result in higher water quality standards with pollutant thresholds so low that they cannot be attained, or even detected, hindering minerals development. In addition, lower water quality criteria would not address discharges of pollutants or reduce public health risks from degradation that occurs in non-regulated waters.

Recommendations:

- The Alaska Minerals Commission recommends that Tier 3 designation authority should reside with the Alaska Legislature. This will assure the most objective decision-making process.
- The Alaska Minerals Commission recommends that the Alaska Department of Natural Resources promulgate regulations to ensure that IFRs are only granted to State of Alaska departments, regardless of the original applicant.
- The Alaska Minerals Commission recommends that the Alaska Department of Environmental Conservation fully evaluate the biologic and economic impact on associated water quality standards before proposing any changes to fish consumption rates.

4. Support for a proposed mining statute change

During the past few years, problems have emerged with the statutes regulating recording affidavits of labor. Long-standing mining claims have been declared null and void because of minor clerical errors, known as fatal flaws, on current and historical affidavits of labor.

Currently there are five steps miners are required to take each year to preserve their state mining claims – pay rent to the Department of Natural Resources (DNR), pay a royalty on removed minerals to the DNR, file and pay state mining taxes, perform annual labor on held claims, and record an Affidavit of Labor with the State Mining Recorder’s Office. Missing, or incorrectly performing, any of these steps results in statutory abandonment, or loss of the claim.¹⁵

After the first of September every year, a minimum amount of work – such as mining, exploration, or reclamation – must be made to each claim, or contiguous claim block, to keep it in good standing under the annual labor requirement. This provision compels miners and explorers to develop the land, or relinquish it so that successive claimants can do so. The amount of labor required varies according to the size of the claim, and any excess performed over the minimum requirement can be carried forward to subsequent years. By November 30, after each mining year, an affidavit describing the labor or improvements must be recorded in the district where the claims are located. The affidavit of labor has a list of essential facts, required by statute, including serial number of the mining claim; every meridian, township, range, and section the claim is located in; a description of the labor performed; and more.¹⁶

While most requirements to maintain a claim are relatively straightforward, simple clerical errors – such as reversed numbers, a misplaced decimal, or an incorrect zip code – at any stage of the recording the labor affidavit can result in statutory abandonment, and the miner can lose the claim. These types of errors can go unnoticed for years, but if they are brought to the DNR by a competing claimant, the state has no choice but to void the senior claim. Clerical errors that may have occurred decades ago have resulted in loss of claims, despite the miner or explorer performing the necessary labor, paying taxes and royalties to the state, and performing all other duties necessary to keep a claim in good standing. Some claim holders have restaked their own claims, at significant expense, to protect themselves from losing mineral rights.

This type of regulatory uncertainty results in a chilling effect on mining investment, both large and small, as claim ownership can be disrupted by a historic paperwork error. Clarification and amendments to the statutory language are needed for the DNR to fairly and effectively manage mineral rights, and maintain investor confidence in Alaska. During the last year, the Alaska Miners Association (AMA) has been working with DNR, the governor’s office and members of the Legislature to create a bill to amend the statutes that control mining, exploration and development of Alaska’s mineral resources to address these issues.

Recommendation:

- The Minerals Commission recommends that the Legislature pass a bill which will amend the mining statutes to, among other items, address the ongoing issues created by errors in submitted Affidavits of Labor.

15 Department of Natural Resources, accessed January 2019, Mineral Property Management, dnr.alaska.gov/mlw/mining/min_prop.cfm

16 Department of Natural Resources, 2018, Affidavit of Annual Labor for Mining, dnr.alaska.gov/mlw/forms/mining/Affidavit-of-Annual-Labor-for-Mining-Form-and-Instructions-2018b.pdf

5. Reallocate portions of the state mining license tax to communities, while precluding targeted local severance taxes

The Alaska Minerals Commission believes that communities should benefit when natural resource exploration and development is done nearby. Whether related to large scale long-term mining or short-term seasonal prospecting, the economic boost to local economies from mining development can be accompanied by increased challenges in providing local government services. Communities could be assisted by a reallocation of the State of Alaska Mining License Tax (AS 43.65). Mining License Tax collections were more than \$41 million in 2017, and the tax does not have loss carryforward or carryback provisions.¹⁷

Presently there is no uniform mechanism to allocate a portion of the tax revenue back to communities associated with mineral development. Such a revenue-sharing model could provide needed assistance to communities.

Sharing portions of state revenue from mineral resource development with local communities in a predictable fashion reduces the need for local governments to impose their own industry targeted taxes, such as severance taxes. The uncertainty of the timing and size of a local tax could discourage mineral development. Moreover, allowing local governments to impose potentially onerous severance taxes shifts control of development decisions away from the state.

Recommendations:

- The Alaska Minerals Commission recommends that portions of the statewide mining license tax be allocated to communities located near mining operations in order to create a stable economic regime that can provide an attractive investment climate in Alaska.
- The Alaska Minerals Commission recommends that the municipal tax code be revised to preclude local municipal severance taxes on mineral resources. This revision should not prevent a local government's ability to utilize a property tax.

17 Athey, Jennifer E., and Werdon, Melanie B., 2018, Alaska's Mineral Industry 2017: Alaska Division of Geological & Geophysical Surveys Special Report 73, p. 7





Courtesy of Kinross Fort Knox

6. Encourage the governor's administration to continue challenging ballot initiatives that seek to regulate natural resource development

Ballot initiative processes are intended to solve the problem, which can arise in democracies, of governmental action that is inconsistent with the will of the majority of citizens, and which cannot be resolved by elections of representation alone. A ballot initiative can bring about a public vote on a proposed statute or constitutional amendment if the petition receives a certain number of registered voters' signatures. However, the Alaska Minerals Commission does not believe that natural resource regulation should be done through the ballot initiative process, which lies outside of both legislative and constitutional control.

Although the Stand for Salmon ballot initiative did not pass, it could have prevented the use of even a single waterway for a major development project. Only the State of Alaska should have authority to control and develop its natural resources. Additional ballot measures of this kind could set a dangerous precedent for natural resource policy in Alaska.

Recommendation:

- The Alaska Minerals Commission recommends that the governor's administration continue opposing ballot measures which would prevent the State of Alaska from following its constitutional mandate of developing natural resources for the maximum benefit of Alaskans.

Federal Priorities

1. Ensure the state defends Alaska's navigable waters and access corridors

Access by land, air, or water, is fundamental to almost all activity in Alaska, from mining to recreation and subsistence. Land selections across the state have created a checkerboard of land ownership, meaning access across public lands must be maintained, and expanded if necessary. The State of Alaska was granted title to submerged lands under all navigable waters within state boundaries by the Alaska Statehood Act and the Submerged Land Act. However, asserting title to these navigable waters and securing other access rights often requires legal action.

One way that the Alaska Department of Natural Resources (DNR) protects this vital access is through the work of the Public Access Assertion and Defense Unit (PAAD) within the Division of Mining, Land and Water. PAAD has the dual mission of asserting and defending both state title to its submerged lands and navigable waters, in addition to its interests in its RS 2477 rights-of-way and other public trail networks statewide.

PAAD has achieved considerable success over the past few years with both objectives. In connection with the Alaska Department of Law, PAAD has also won several victories against the federal government through the United States Quiet Title Act. High-profile wins in recent years granted the state title to navigable waters on the Mosquito Fork of the Fortymile River, the Stikine River, and the Knik River. The threat of litigation has led to further federal concessions for the Delta River, and both the Denison and West forks of the Fortymile River. The state scored another significant victory when the Alaska Supreme Court recognized RS 2477 right of way access for the Historic Iditarod Trail.

PAAD presently has other pending significant RS 2477 litigation – including a Quiet Title Act action seeking confirmation of state rights-of-way over federal lands. This federal litigation will have a lasting impact on mining statewide since frequently the only access to natural resources crosses large swaths of federal lands.

Recommendation:

- The Alaska Minerals Commission recommends that the governor's administration and the Legislature continue to fund and support the DNR's Public Access Assertion and Defense Unit's mission to pursue corridors across all public lands, as appropriate, to ensure everyone can legally access the land.

Courtesy of Trilogy Metals



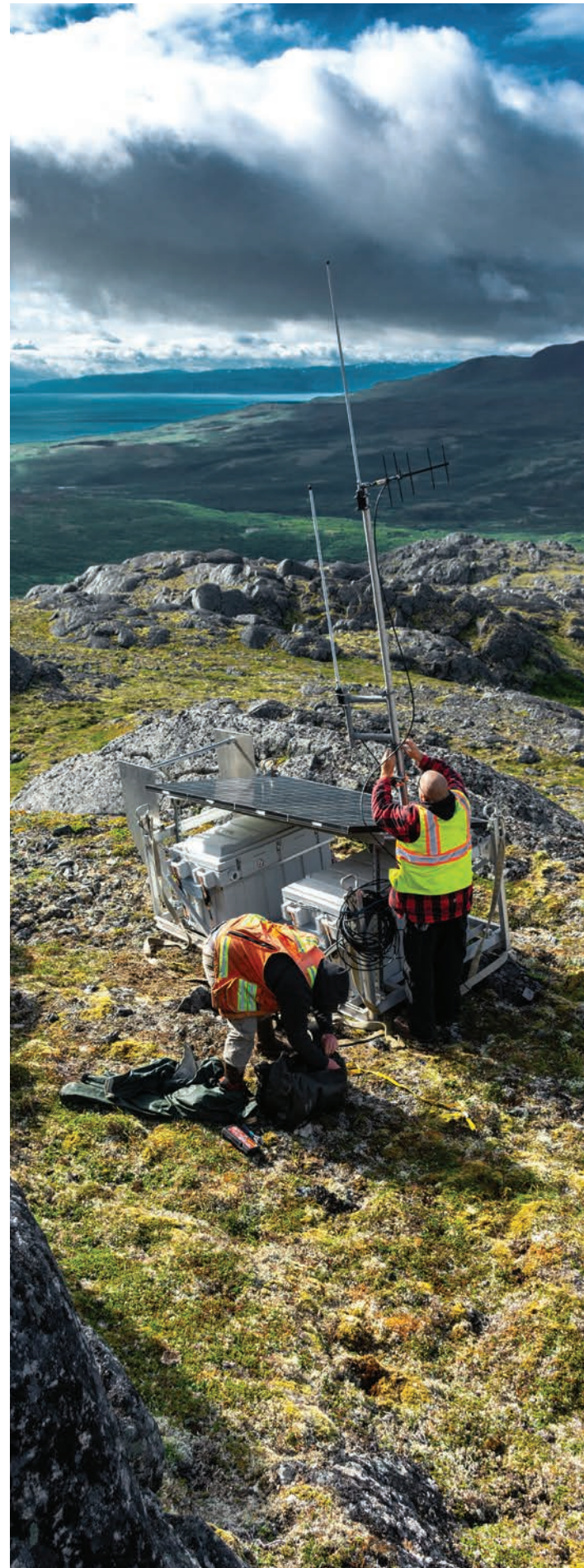
2. Continue lifting onerous public land orders (PLOs)

The federal government has approximately 2,600 PLOs across the state of Alaska. PLOs are actions implemented by the Secretary of the Interior to make, modify, extend, or revoke land withdrawals. Many of the major PLOs issued in Alaska derive from the Alaska Native Claims Settlement Act (ANILCA) under Section 17(d)(1), signed nearly 50 years ago in 1971. These PLOs preclude mineral exploration from taking place in many areas of the state, and they often place regulatory burdens on valid, existing federal mining claims.

For the first time, the Alaska Bureau of Land Management (BLM) offices are now moving forward to lift, or extinguish, the first of two batches of PLOs that lie within selected Resource Management Plan (RMP) areas. While these efforts by the current federal administration should be recognized and appreciated, this process will require constant vigilance and participation by the State of Alaska.

Recommendations:

- The Alaska Minerals Commission recommends that the governor work with Department of Interior (DOI) leadership to continue lifting PLOs that no longer serve their intended purpose. However, the process of defining an RMP must not undermine the 'no-more clauses' in ANILCA. This is further explained under Federal Recommendation #3 in this report.
- The Alaska Minerals Commission recommends the governor and Legislature work together to ensure that Department of Natural Resources' (DNR) Office of Project Management and Permitting (OPMP) is adequately staffed to respond to the large expected volume of federal plans and regulations.





Red Dog Mine, Courtesy of NANA Regional Corporation

3. BLM Resource Management Plans (RMPs) must not violate the “no-more clauses” in the Alaska National Interest Lands Conservation Act (ANILCA)

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) establishing more than 100 million acres of federal land in Alaska as new or expanded conservation system units (CSUs). Congress included many provisions in ANILCA to balance the national interest in Alaska’s scenic and wildlife resources with recognition of the state’s fledgling economy and infrastructure, and its distinctive rural way of life. To ensure that no further executive or administrative actions could be taken in Alaska to establish new CSUs, Alaska’s delegation included several “no more clauses” into the statute (sections 101(d), 1326(a) and (b), and 708(b)(4)).

The U.S. Bureau of Land Management (BLM) has been in the process of updating several Resource Management Plans (RMP) in Alaska. Normally these updates would involve modest changes. But, under the previous presidential administration, the BLM used the RMPs as a tool that could severely restrict development on, and access across, federal lands. Even though the BLM’s mandate is to manage for multiple use, their recent plans have mainly included proposals and alternatives that provide extensive conservation, while essentially ignoring resource development.



The BLM is using management tools within the RMPs – including Areas of Critical Environmental Concern (ACEC), Research Natural Areas (RNA), and other special designations – to essentially close large areas to development. The BLM is attempting to avoid the withdrawal limitations of ANILCA without congressional approval by claiming the RMP restrictions are not withdrawals. However, since the RMPs are managed like a CSU, the Alaska Minerals Commission sees them having the same effect as a withdrawal and consider such moves a breach of the congressional intent in ANILCA.

In addition to resource development, these management plans also present a significant obstacle to infrastructure development and access. In addition, the RMP system of managing and restricting lands is complex, restricting most Alaskans' abilities to participate meaningfully in the process and provide input.

Recommendation:

- The Alaska Minerals Commission recommends the Legislature pass a resolution urging Alaska's congressional delegation work to prevent the BLM from imposing new RMPs in Alaska until the multiple-use mandate is reflected in the plans and there are no de facto withdrawals that violate the intent of the ANILCA.

4. Support progress towards defining Waters of the US in accordance with the intent of the Clean Water Act

The U.S. Constitution and the intent of the Clean Water Act provide reasonable limits on federal authority on Waters of the United States (WOTUS). A revised 2015 regulatory definition of the Waters of the U.S. (commonly called the WOTUS rule) was suspended by the U.S. Court of Appeals for the Sixth Circuit, and in response the Environmental Protection Agency (EPA), Department of the Army, and the Army Corps of Engineers are currently using prior regulations defining the WOTUS.

A Presidential Executive Order published in February 2017 – “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Waters of the United States Rule” – was intended to increase predictability and consistency of the scope of the Clean Water Act. The orders stated that it is in the national interest to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the states under the U.S. Constitution.¹⁸ The Alaska Minerals Commission supports the goal of clean water, while also supporting the removal of the broad and unwarranted expansion of federal jurisdiction and regulatory burden.

Moving this process forward, the EPA and the Army signed a proposed rule in December 2018 clarifying the definition of WOTUS, “while respecting the role of states and tribes in managing their own land and water resources.” The proposed rule has been submitted to the Federal Register, and a comment period will open after publication.¹⁹

Recommendation:

- The Alaska Minerals Commission recommends that the State of Alaska continue to monitor and support federal legislation that defines WOTUS according to the intent of the Clean Water Act and limits federal agency jurisdiction of navigable waters.

¹⁸ Environmental Protection Agency, December 1018, www.epa.gov/sites/production/files/2018-12/documents/wotus_2040-af75_nprm_frn_2018-12-11_prepublication2_1.pdf

¹⁹ Environmental Protection Agency, January 7, 2019, EPA and Army Postpone Public Hearing on Proposed New ‘Waters of the United States’ Definition

Courtesy of Pebble Project



The Alaska Minerals Commission appreciates the public's interest in these issues and the support of the Alaska minerals industry. Please feel free to contact the Alaska Minerals Commission with comments or concerns at any time.

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[https://www.commerce.alaska.gov/web/ded/DEV/MineralsDevelopment/
AlaskaMineralsCommission](https://www.commerce.alaska.gov/web/ded/DEV/MineralsDevelopment/AlaskaMineralsCommission)