

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER

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The Honorable Representative Bill Stoltze, Co-Chair House Finance Committee
State Capitol Room 519
Juneau AK, 99801

March 28, 2012

Dear Representative Stoltze and members of the House Finance Committee,

The following questions were asked during House Finance on 3/21/12. I have attempted to answer the questions to the best of my ability while attempting to provide a timely response. I have also included one clarification statement.

1. How much time and cost savings will be realized if the bill passes?

Because of unknown future statistics, it is difficult for the Division of Mining, Land and Water to predict the total time and cost savings that would be gained if the bill passes; however, here are some examples that may help shed some light on the issue. To provide an example of time saved by the new process explained in AS 38.05.550-555 for material sales, a chart explaining approximate time allocations for the existing material sale process is shown below. Total time for processing a new material sale is about 160 days. However if DMLW sells material from an existing designated site, the time is shortened to about 30 days because an adjudicator would only have to review the application, double check to insure that no conflicts will be created within the material site, prepare the contract and collect any required deliverables such as proof of insurance or bond.

Consider that DMLW issues 30-50 material sales per year. Most of these are not from new sites. Even considering only half of the sites would be sales out of existing sites: 20 sites x 130 day time savings per sale = 2600 days of time savings to the applicants in a year. The savings to staff would be less because the time factors do not represent someone working 100% of the time on those cases. In this scenario, the average applicant will also save approximately \$300 for public notice posting costs x 20 sales = \$6,000 saved by applicants in a year because the initial area was already publicly noticed for sale of material. Cost for publishing in Anchorage Daily news is significantly higher.

To reiterate, the table below shows the current process and time estimates for material sales. This process would remain the same for the initial designation of a material site; however, subsequent sales of material from that site would not warrant this process. Instead, because we have gone through this process of designating all materials in a site for sale, we would allow the sale of additional material from this site without needing additional decisions by the Division.

"To responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest."

	Task	Notes	Time	Cumulative time
1	DMLW Receives Application	Need complete application. Time increases if not complete.		
2	Send to Agency Review	2 days to send out after review of completeness – often requires follow up from applicant.	2 days	2 days
3	Agency Review Period	Process could be shortened to 15 days but not getting appropriate feedback from agencies can lead to delays further in process, especially for larger projects. Often comments come back at end of period.	30 days	32 days
4	Review and address comments	There may need to be internal and external meetings, revisions from applicant, address issues	30 days	62 days
5	Draft Preliminary Decision	Address the issues raised	1 week	69 days
6	Public Notice Period	Statutory 30 day requirement. May need to do public meetings. Would request interest in competitive sale.	30 days	99 days
7	Write Final Decision	Review and deal with issues raised. Hopefully have a full development plan for accurate review. DMLW would have to address the potential of how to deal with the existing mining claims under the proposed area if they exist. Notify all who commented and post on website.	30 days	129 days
8	Appeal Period	Open to all who commented.	20 days	149 days
9	Reconsideration period	Additional 10 days that can be waived by Commissioner if no appeals are brought forward.	10 days	159 days
10	Auction	99% of sales will have no competitive interest, however if there is interest we would have to give an additional 30 day notice for auction and hold the auction before issuing the contract. Plus there will need to be a 5 day auction appeal period.	35 days	
11	Issue Contract	Unless Appeal received. If appeal received it automatically stays decision. Appeal and court action could significantly lengthen the process to allow work to begin.	1 day	160 days

Another cost savings is in appraisals. A typical appraisal would cost around \$5,000. If we issue 20 material sites in a year that need appraisals, by using the representative regional sales price we can eliminate that appraisal cost to the applicant, which is savings of \$100,000 per year for applicants that would have been paid to third party appraisers. DMLW would have to issue appraisal instruction for each of those appraisals and then review and approve each one taking about 3 days each. Therefore we could save 60 days per year of our appraiser's time.

2. What prevents miners from switching their royalty reporting production year back and forth?

The proposed language requires that miners file per calendar year unless they don't file the mining license tax on a calendar year basis, in which case they can use fiscal year. This means that the only way to change the filing is if they have changed their filing year with the Department of Revenue for mining license tax reporting.

Under federal law, a person must seek approval from the IRS before changing their tax year from a fiscal year to calendar year and vice versa. Also under federal law, a person who changes its tax period must also file a transition period return ensuring that no period of activity goes unreported.

The Department of Revenue's mining license tax regulation 15 AAC 65.030(b) states that "the mining license tax year is the same as that person's tax year for federal income tax purposes." Our intent is to allow miners to report and pay mining royalty on a fiscal year only if that is the year used on their mining license tax filing. Given the tie in to the federal tax filing requirements through the Department of Revenue's regulations, DMLW believes that a person would not be able to switch back and forth between calendar and fiscal year and effectively "game" the system. Instead, if we keep the statute as is, there are miners who file their MLT on a fiscal year basis and have to redo their accounting system entirely in order to comply with our statutes.

3. How much benefit does the state get from doing sealed bid versus outcry auction?

Unfortunately, it is impossible to tell how an auction would have turned out if done another way. I can however state some figures from past auctions. During the last two sealed bid auctions we conducted for land leases: one parcel sold for 200% of the market value and another sold for 120% of market value. After speaking with our appraiser, it would be safe to say that the majority of sealed bid auctions produce 20-70% above the market value. In the last outcry land lease auction we held, only one bidder attended and the lease went for the minimum bid. The outcry auction previous to that had the same results. Also if the state had to conduct its land sales by outcry auction, the program would suffer as many people participate remotely in the sealed bid auctions. As mentioned before, these revisions for consistency are to limit litigation risk.

4. How many leases that need to be offered competitively under AS 38.05.070 would be moved to negotiated lease after lack of competitive interest is established?

We issue approximately 10 leases per year. Approximately half of those leases would have to be offered competitively without this change. Going negotiated saves approximately 30 days and \$300 in display ads for each lease. On average, this change would save total applicants 300 days per year and \$3,000 in cost over the course of a year.

5. To correct something stated in earlier testimony. The language for the Temporary Water Use Authorization being issued for another 5 years does not substantially reduce the processing time and there is no public notice required in law or given for TWUAs. There are other statutes that still require notice to other agencies. The department believes that we have existing authority to issue another TWUA in the same location to the same entity for another 5 years after the first one expires. However, by legislatively clarifying the ability to offer another TWUA to the same company in the same location does remove a potential legal challenge. The mining, oil and gas, and construction are the primary industries that may benefit from this change.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wyn Menefee', with a stylized, flowing script.

Wyn Menefee
DMLW Chief of Operations