

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

January 22, 2018

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator John Coghill, Vice Chair
Senator Natasha von Imhof
Senator Bill Wielechowski
Senator Click Bishop
Senator Kevin Meyer

MEMBERS ABSENT

Senator Bert Stedman

COMMITTEE CALENDAR

OVERVIEW: ALASKA'S MINING FILING CLAIM PROCESS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

ED KING, Special Assistant to the Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Presented an overview on how mining claims function in the State of Alaska.

BRENT GOODRUM, Director
Division of Mining, Land, and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Briefly commented on mining claim history.

ASHLEY BROWN, DNR Attorney
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered a question regarding filing of mining claims.

ACTION NARRATIVE

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CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Bishop, Coghill, von Imhof, Wielechowski, and Chair Giessel. Senator Stedman is excused.

Overview: Alaska's Mining Filing Claim Process

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CHAIR GIESSEL said the only order of business today would be the overview of Alaska's mining filing claim process and how the state administers its mineral properties. Alaska's history is built on gold rushes and prospectors, reminding her of the Trail of '98, Skagway, Nome, Girdwood, Hope, and Fairbanks. There are six large-scale mines, but over 600 small placer miners in the State of Alaska, more than in any other state. Modern equipment and techniques make placer mining a 21st Century practice. Laws and traditions underpinning it date back to the American Civil War. Alaska's Constitution with its unique mandate of common ownership of the state's natural resources charges the Department of Natural Resources (DNR) with the management of the mineral wealth of the state lands. Today, they would hear from the department and the division that takes up that responsibility. She welcomed Mr. Ed King to the committee.

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ED KING, Special Assistant to the Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, said he would lay the ground work for how mining claims function in the State of Alaska. This is an informational hearing for the public as well as the legislature and doesn't represent department views.

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Mineral rights in Alaska: recreational mining is a generally allowed use on public land. No permit is needed; you can just do it. If a person is successful, the state allows staking the deposit and prevents anyone else from accessing the minerals. This is what a "mining claim" is.

In Alaska, the 100+ million acres of state lands are generally open for claiming unless they are closed: if they are designated

legislatively or conveyed to a municipality, for instance. They have about 5 million acres of residual land entitlement from the Statehood Act.

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SENATOR VON IMHOF asked if a miner has to pay for his claim when he stakes it and how big it can be.

MR. KING replied there is no fee for the generally allowed use of prospecting. However, if one files a claim it has to be recorded, which has a fee. Also, he must also maintain the claim, which has a financial component.

SENATOR BISHOP asked if it would be safe to say that it is a good idea to check to see if there isn't already a claim in good standing from another miner before a recreational miner goes out.

MR. KING said that would be a good idea; one would be violating someone else's claim by doing a generally allowed use on someone else's claim.

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History of how we got to where we are today, and the differences between minerals and oil and gas. In the 1840s, the Southwest region of the U.S. was a territory acquired from Mexico. California and Colorado didn't exist, but mining activity was going on in those areas. There were no federal laws on how mining was to be conducted in those territories. In that case, people would do things in a traditional way. They would go out and mine and if they found something they would put stakes around it. During the gold rush of 1848/49 when a lot of people were moving into the California region, and gold mining was becoming a very big business, this tradition of claims staking became the norm.

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SENATOR MEYER joined the committee.

MR. KING said past 1849 and through the next decade as Colorado, Nevada, and some of the other states began to get statehood there started to be federal interest in management of public lands and the extraction of minerals. So, a handful of laws were passed after the Civil War in the 1860s: The Load Law was passed and a couple of others that were dealt with the issue of allowed uses on public lands. In 1872, the General Mining Act, a comprehensive bill codifying that tradition was passed. It was

called the "Location System." It encouraged people to go out and mine in the underdeveloped areas. It was a generous system in that those miners were also allowed to purchase that land from the federal government. This is important for Alaska's context, because whenever the state laws are silent or unclear on an issue, those federal laws are still referred to. That federal law of 1872 is still the guiding principle.

At the turn of century big development came with the discovery of oil. As the U.S. entered WWI, our military converted from steam to diesel, so oil became a very important strategic resource for the country. The federal government started to put aside "Naval Petroleum Reserves." They also realized that the Mining Act of 1792 didn't prohibit someone from staking claim to oil or coal resources.

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So, the Mineral Leasing Act of 1920 separated those two types of strategic minerals from other resources that they called locatable minerals (gold, silver, tin, zinc, and other metallic minerals). A different suite of "strategic minerals" that included coal, gas, and oil, were dealt with in the Mineral Leasing Act of 1920 and demanded that if you were going to get access to those, it had to be done through a lease. That land could not be "claimed." The General Mining Act of 1872 was still in place for the locatable minerals.

MR. KING explained that another tranche of minerals is called "materials," and includes things like gravel and sand. Those don't get leased or claimed, but are sold by the state. With those two laws in place, the General Mining Act governing locatable minerals and the Mineral Leasing Act governing strategic minerals, approaching statehood in 1959 the state already had a lot of people who were either leasing from the federal government or proclaiming locatable minerals in the state. Protecting those rights became an important issue when drafting the Statehood Act and the Constitution. Article 8, Sections 11 and 12, of the Constitution are almost a reflection of the General Mining Act and the Mineral Leasing Act in separating those two types of minerals. The location system was protected, as well.

He answered Senator von Imhof's earlier question saying that 40 acres is the typical mining claim, but one can have more than one claim and "quarter section claims," which are 160 acres.

So, the Constitution really adopted and embodied the federal standard for how things were already happening when the state entered the Union. Congress also inserted Section 6(i) in the Statehood Act saying that the minerals of the state belong to the state, the idea being that is how the state was going to fund itself. It prohibited the state from divesting of its mineral interests. This is important because in 1989 an Alaska Supreme Court case, Trustees of Alaska v. the State, found that if the state was not charging something for those claims that meant it was divesting them, which is against the Constitution. It basically said to the legislature that it had to charge rents or royalties or some sort of recurring payment, and so, in 1989 the legislature passed HB 99 introducing rents and royalties into the mining claim system. "So, that's where we are today."

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Terminology: "Mining claim" means the exclusive rights to the minerals, themselves. It doesn't give the miner exclusive rights to the surface. However, they are allowed to use the surface insofar as they need to in order to reach those minerals, but it doesn't mean if you have a mining claim that you can tell somebody else that they can't walk across it. You don't have any exclusive rights to the surface.

SENATOR VON IMHOF asked if a miner can build a cabin.

MR. KING answered no. A mining claim itself does not give any authority to put up any kind of permanent structures. A land authorization would be needed. As a generally allowed use, one is allowed to be on a property for 14 consecutive days, but he can't erect a permanent structure.

SENATOR VON IMHOF asked when someone brings equipment in in the spring, mines over the summer, if he is required to remove it in the fall and leave no trace.

MR. KING answered that those types of activities need a miscellaneous land use permit and it would likely have a provision requiring the removal at some point.

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He said that a "leasehold location" is like a mining claim, but it's a claim in a place that is only open for leasing not mining claims. So, if an area was closed for claims, but open for leasing, one can go in and stake a claim that would be called a "leasehold location." Municipal entitlements would be on lease-only area. Then the department would adjudicate the application

and then issue that lease if it was deemed to be in the best interest of the state. That is a very different process than a mining claim, which is the department does not adjudicate.

A "prospecting site" is very similar to a claim; it gives exclusive right to an individual to look for minerals prior to a discovery.

The term "at-risk state-selected location" refers to some of the 5 million acres that have not been conveyed and patented to the state, although the state has already selected them. A claim can be staked and one is first in line once the land is conveyed to the state. So, it's an "at-risk location."

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He said mining locations can come in all shapes and sizes. A "mining claim" is the actual piece of land and a "location" is a document that someone files. The Meridian Township Range Section and Claims System (MTRSC), are the "tight little boxes," on residential maps, and that is how claims are typically filed in modern times. Prior to that, "traditional claims," were filed and weren't tight little boxes. They could be no greater than 40 acres nor longer than 1,320 feet in one direction. The boundaries are supposed to be in cardinal directions, but sometimes rivers and other things cause exceptions.

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CHAIR GIESSEL asked if some claims are still non-MTRSC.

MR. KING answered yes.

BRENT GOODRUM, Director, Division of Mining, Land, and Water, Department of Natural Resources (DNR), agreed that yes; today there are still some traditional non-MTRSC-located mining claims within the state.

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MR. KING continued that the requirements for making a claim are laid out in statute. AS 38.05.190 contains the qualifications of the individual: 18 or older, a U.S. resident, and things like that. Once the claims are staked, they need to be recorded (certificate of location) at the Recorder's Office.

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CHAIR GIESSEL asked how much recording costs.

MR. KING replied \$20 for the first document and \$2 for every additional piece of paper. As a rule, most people pay \$20-30 when they record their fees, but some individuals have a lot of claims that result in much higher fees.

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In order for the claim to be valid, the land must not be already claimed. Then the land must be open for claiming. So, if all those four things are in order, one has a claim. Mr. King underscored the importance of that point: the DNR doesn't have to approve or award mining claims, but are bound by statute to issue the claim once legal criteria are met.

MR. KING said once one has a claim, it is his responsibility to maintain it, and under the General Mining Act of 1872 the only requirement for maintenance is to continue working the claim. When you stop, someone else has the right to take over that claim. Alaska's statutes have that same provision; you must do at least \$100 of annual labor. That was set in statute in 1989 when the rents and royalties requirement was introduced and it hasn't been adjusted since. Before 1989, it was \$200, but that was reduced because of the rents and royalties burden.

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SENATOR VON IMHOF said she assumed the amount is low because gold and other minerals are commodities and the prices go up and down. And one doesn't want to necessarily abandon a mine for a year just because prices are down. So, the miner could do a minimum of work and wait, hoping the prices will recover next year.

MR. KING replied that was a fair representation. Another provision allows one to simply pay a fee in lieu of doing the labor. If one doesn't do either of those things, the claim becomes abandoned. If one makes money on a claim and doesn't pay rent or royalty to the state, the claim also becomes abandoned. The department doesn't have to make any decision: by your actions you have abandoned the claim.

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CHAIR GIESSEL asked if the fees or the activity are due at a certain time.

MR. KING answered September 1 is the deadline for most of these activities, and one has 90 days to complete it.

SENATOR VON IMHOF asked if the annual rental payment is \$100.

MR. KING replied the annual rental payment was set originally by statute (AS 38.05.211), and every 10 years the payment is adjusted for inflation. The updated rental fee is in regulation. For a 40-acre claim, if it's fairly new, the fee is \$35. As the claim ages, the rental payment increases. Part of the reason for that is if you are sitting on a claim for a long time, you're denying access to somebody else. If you are not actively working on the claim, then it might be in the state's interest to have a different claimant. Rental payments are deductible against royalty.

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CHAIR GIESSEL noted they were looking at slide 11.

SENATOR VON IMHOF asked if the market is depressed for 3-5 years and claims remain idle, could a miner (whose fee has gone from \$140 to \$280) choose to abandon the mine for a year, hope that no one re-stakes assuming the commodity price remains low, and then go back the next year and re-stake it, resetting the price back down to \$140.

MR. KING answered yes, though the miner in that hypothetical example is taking the risk of someone else taking that claim in the intervening time.

SENATOR VON IMHOF asked if the fee schedule could be based on the market versus an arbitrary time frame outside of the market, because gold going up and down makes a real difference in activity level.

MR. KING said he would be happy to have that conversation, but he couldn't speculate on what the administration's position would be. The next inflation adjustment is due to happen next year. It looks like the 0-5 years will increase to \$40; the 6-10 years will increase to \$80; and over 10 years will increase to about \$190.

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Back to slide 7, Mr. King reiterated that the inaction of a claimant is what abandons the claim under AS 38.05.265.

CHAIR GIESSEL asked if paperwork is filed each year, which also sustains that claim.

MR. KING turned to slide 8 that said the annual labor requirement is that the locator must either perform \$100 worth

of work or pay cash in lieu of that for up to four consecutive years; on the fifth year they have to submit an affidavit of annual labor. He noted that the statute says, "statement of annual labor," but the regulations says, "affidavit of annual labor," but they are talking about the same thing.

MR. KING explained that every year, because that work is required, there has to be a way for the department to know the requirement was actually met, and since it's unreasonable to send staff out to every claim, an affidavit is required of annual labor. That document acts as "prima facie evidence" that the annual labor was conducted. Part of the abandonment provision in the statute uses this sentence: "A statement of annual labor that does not accurately set the essential facts is void and has no effect." It is a potential issue for a miner if some other miner wants to fight them on whether that affidavit was void or not and whether that claim was abandoned or not. Those requirements are outlined in 11 AAC 86.220(c) that says the recorded document must have the name or number of the location; every meridian, township, range, section and recording district has to have the name and mailing address of every owner and it has to have the correct dates, character, and value of the labor performed. An error in any of those could theoretically constitute an inaccuracy and failure to accurately set out the essential facts, so someone might argue that those claims are void.

MR. KING said the statement of annual labor must be completed on September 1, and that must be recorded within 90 days.

CHAIR GIESSEL asked if that meant 90 days before and/or after September 1.

MR. KING replied that he was almost positive that it is after, but he would ask.

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MR. GOODRUM replied that it's 90 days after September 1.

CHAIR GIESSEL asked if they get until November 30.

MR. GOODRUM said that was correct.

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MR. KING said opportunities to cure for a statement or affidavit error is an issue that has come to his attention more in the last few years (slide 10). When an error occurs, or someone

makes the accusation that the essential facts weren't laid out, there are ways to fix those errors. In some cases, a corrected affidavit can be made within two years. It will record over the previous affidavit.

SENATOR BISHOP asked what that costs.

MR. KING replied that one would have to pay the recording fee again if one is using AS 38.05.210(c). The other way to repair an affidavit is to re-record an affidavit that is more than two years old, but you have to pay the equivalent of one-year annual rent along with the recording fee.

CHAIR GIESSEL asked if an error is in the labor report and they have two years to correct it, but in that period, someone could come forward and make a claim, would the original claimant have priority and the opportunity to make the correction.

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ASHLEY BROWN, DNR Attorney, Department of Law (DOL), Anchorage, Alaska, answered that if someone else over-staked a claim, under AS 38.05.265, a person cannot cure that error. There is an intervening right.

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SENATOR BISHOP clarified that the first claimant can't cure the so-called essential facts breach.

MS. BROWN responded if there has been an error in essential fact and the claim is abandoned and someone else stakes a claim, the first claimant cannot cure the error in the essential fact under AS 38.05.265.

SENATOR BISHOP asked who makes the call that there is a failure of essential facts.

MR. KING replied the decision ultimately needs to be made by the court.

SENATOR BISHOP said, so then it's a civil case between the top filer and the original claimant.

MR. KING said that was correct.

CHAIR GIESSEL asked what if someone accidentally puts in the wrong birthdate, is he informed of the opportunity to cure it.

MR. KING replied that the abandonment of a claim happens as a self-initiated process. So, when someone makes an error, if somebody else finds that error, they can make that accusation that the affidavit is void, and the claim is abandoned, and they can stake that claim. They would have to go to court and make their case. The department doesn't go through affidavits and ensure they are in compliance, because it doesn't make a decision on whether a claim is abandoned or not. When someone finds an error or someone fails to pay rents or royalties, the department will give a notice to that claimant that his claim has been abandoned.

CHAIR GIESSEL asked if the person has two years to make the correction.

MR. KING replied that failure to file is incurable. If you fail to record, as long as no one else intervenes, the claim can be revived. As a general matter, as soon as someone else top-files that claim, the ability for the department to intervene becomes very limited.

SENATOR VON IMHOF asked if a person or family is "mining the heck" out of this claim, and then between September 1, they file their paperwork and make one small paperwork error, they have no intention of abandoning it and have paid everything current, what is the issue at that point.

MR. KING replied there would potentially be an opportunity for someone else to make that claim to the court.

SENATOR VON IMHOF remarked that it behooves the miner to file the paperwork extremely carefully and accurately.

MR. KING agreed with that conclusion.

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CHAIR GIESSEL asked how often abandonments occur due to clerical error.

MR. KING replied he didn't have that number, but he could try to put something together.

CHAIR GIESSEL agreed to that.

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MR. KING said another opportunity a claimant might have is to request from the commissioner a certificate of substantial compliance, which can be used in a limited scope of

circumstances. For instance, if you're on the way to the recorder's office and get into a car accident and end up in the hospital and miss your deadline, maybe you can petition the commissioner with the accident report, the hospital admission records, and ask for forgiveness. That is what a certificate of substantial compliance would be. If one abandons a claim, it can be re-staked, but there is a one-year waiting period.

SENATOR VON IMHOF asked if there is an updated list that people can look at on line to monitor lands when they become available for any reason.

MR. KING replied that the Alaska Mapper System has land claim status and the Recorder's Office records the documents that are publicly available. So, someone could watch the claim status and go to the Recorder's Office and make sure everything is recorded correctly.

MR. GOODRUM added that both are excellent resources to find that information.

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MR. KING said the next requirement to maintain a mining claim is to pay one's production royalty. Royalty in the context of mining is different than oil and gas. The production royalty on mining is 3 percent of the net income. Oil and gas is 12.5 percent of one's gross income.

SENATOR VON IMHOF asked if what constitutes allowable expenses is in statute.

MR. KING replied that it is enumerated within the Department of Revenue (DOR) under the mining tax law.

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SENATOR BISHOP asked if one has to file tax returns in order to get a mining license.

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MR. KING replied yes, - and added that rental payment is a deductible expense against one's royalty payment. It does not reduce income, but it reduces one's liability.

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He said the mineral property management team consists of seven people who do a tremendous job with limited resources. They

manage 34,461 active state mining claims, in addition to 47 upland and 80 offshore mining leases.

CHAIR GIESSEL asked if the 34,461 active state mining claims include placer and large mines.

MR. KING replied that the large mines, by and large, will convert their claims to a lease before they go into actual development. In reality, only one of those mines is on state land and is being operated under a state lease.

CHAIR GIESSEL asked if they are under the 47-upland mining lease number.

MR. KING said he thought that was the case.

CHAIR GIESSEL commented that it looks like many of them have multiple claims.

MR. KING said that was correct. He said that the Mineral Management Section administered 3,848 mining locations and 1,839 ownership transfers. In addition, they issued 47 prospecting site licenses and 2 mining leases last year and collected over \$7 million in rental payments. That concluded his presentation.

CHAIR GIESSEL thanked Mr. King for being available today and the simplicity and basic level of his presentation.

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There being no further business to come before the committee, Chair Giessel adjourned the Senate Resources Standing Committee meeting at 4:26 p.m.