

S

B

2

16

Proposed amendment to CSSB 126 (REsources)

Page 2, line 7:

Add a new section to read:

* Sec. 3. AS 38.04.020 is amended by adding a new subsection to read:

(e) Notwithstanding other provisions of this title, lands within the disposal bank not proposed for disposal under (d) 2-4 of this section within the following three years shall be available for staking under the remote parcel program, provided that entries under this provision not be allowed within one-quarter mile of any existing private land or other remote parcel entry.

Offered: 4/20/83
Referred: Rules

Original sponsors: Fahrenkamp and Bennett

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 216 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to mining lease locations on, and
7 classification of, state land; and providing for an
8 effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. Section 5, ch. 108, SLA 1981, is amended to read:

11 Sec. 5. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwith-
12 standing AS 38.05.205(a), until December 31, 1985 [1983], minerals may
13 be mined, marketed, or used on a location for mineral leasing under
14 AS 38.05.205 on state land [TENTATIVELY APPROVED OR PATENTED TO THE
15 STATE UNDER SECTION 6(a) OR 6(b) OF THE ALASKA STATEHOOD ACT (P.L. 85-
16 508, 72 STAT. 339, AS AMENDED)] upon discovery, location, and record-
17 ing in accordance with AS 38.05.195. However, this section does not
18 apply to a locator who does not file an application for a lease within
19 90 days after receipt of the application form as required by AS 38.-
20 05.205.

21 * Sec. 2. AS 38.04.020(c) is amended to read:

22 (c) Land to be retained in state ownership may be classified by
23 the commissioner into multiple-use management categories under AS 38.-
24 05.300. [LAND WITHIN A MUNICIPALITY RETAINED IN STATE OWNERSHIP
25 CONSISTS OF LAND CLASSIFIED FOR RETENTION IN STATE OWNERSHIP AS OF
26 DECEMBER 31, 1980.] Land outside a municipality to be retained in
27 state ownership consists of land classified for retention in state
28 ownership by the commissioner by ^{DEC 1, 1983} July 1, 1985 [1983]. Land conveyed
29 to the state by the federal government that is to be retained in state

1 ownership consists of land classified by the commissioner within two
2 years of receipt of tentative approval or patent, whichever occurs
3 first. State land not classified for retention in state ownership or
4 selected by the municipality under this section shall be classified
5 and included in the land disposal bank. The commissioner shall ensure
6 that the bank includes at least 500,000 acres.

7 * Sec. ³. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).⁴

Sec 3 38.04

1 ownership consists of land classified by the commissioner within two
2 years of receipt of tentative approval or patent, whichever occurs
3 first. State land not classified for retention in state ownership or
4 selected by the municipality under this section shall be classified
5 and included in the land disposal bank. The commissioner shall ensure
6 that the bank includes at least 500,000 acres.

7 * Sec. ~~3~~⁴. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).

Add new Section 3 Remember meaning Section

*38.040.020 add. more (e) remember remember
to reflect addition*

*(e) Notwithstanding other provisions of this
title lands within the disposal bank not
proposed for disposal under (d) 2-4 of this
section within the following three years
shall be available for leasing under the
remote parcel program provided that under
under this provision not be allowed within
the limits of any existing private land or
other remote parcel entry.*

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

555 Cordova Street
Pouch 7-005
Anchorage, AK 99510
(907) 276-2653

Briefing Statement on CSSB 216

"An Act relating to mining lease locations on, and classification of, state land; and providing for an effective date."

CSSB 216 would extend two deadlines, one for the issuance of mining leases and the other for classifying land in the unorganized borough, and would make related housekeeping changes.

Mining Leases Under AS 38.05.185, about 15% of state lands have been designated as having "potential use conflicts" that require mining claims to be converted to leases before mineral production begins. (The department can also designate land for leasing if it was "mineral in character" at the time of state selection, but this authority has never been exercised.) The lease terms can then be designed to minimize conflicts with multiple use development occurring at the same site: gravel extraction, logging, recreational use, oil production, etc. However, no leases have been issued yet, and a backlog of perhaps 60-100 mine sites awaits conversion to leases. So that mining development would not be delayed, legislation was passed in 1981 to provide a special grace period allowing many miners to produce without a lease until Dec. 31, 1983. The department supported that legislation and hoped to be able to draft a lease form, update its leasing regulations, complete title research, give public notice, and issue all the necessary leases before the deadline arrived.

But because of other new mineral programs undertaken during the same period (coal and geothermal lease sales, noncompetitive coal disposals, initiation of the coal surface mining program, and offshore mining leases), that schedule has proven impossible to meet. To avoid interrupting or delaying production from existing mines, the department urges that the grace period be extended to the end of 1985. The department also favors the other mining lease-related change CSSB 216 would accomplish: making the grace period applicable to leasehold locations on all state lands. The current postponement of the leasing requirement applies only to "community grant" and "general grant" lands, omitting mines on mental health lands, placer mines on the beds of navigable rivers, etc. This potential inequity should be corrected so that production can legally continue while the department completes the necessary steps in the leasing process.

Land Classification in the Unorganized Borough AS 38.04.020(c) required classification by December 31, 1980, of all land that was to be retained in state ownership within municipalities. For land in the unorganized borough, it sets a classification deadline of July 1, 1983. A multi-agency special project enabled the 1980 deadline to be met on schedule. (Since that provision is now obsolete, CSSB 216 would repeal it.) However, two factors have convinced the department that a similar effort to meet the 1983 unorganized borough deadline would not be an efficient use of staff time.

First, in the unorganized borough the department lacks the detailed resource information necessary for knowledgeable classifications. Much of this information will be developed over the next two years as the Susitna, Tanana, and Bristol Bay area plans are completed and new planning projects are undertaken in the Kuskokwim and Copper River regions. Classifying that land now would be premature and would soon have to be done over again as the data becomes available. Secondly, the department has recently adopted new land planning and classification regulations, but they are still being reviewed by the Department of Law and have not yet gone into effect. The amended regulations eliminate certain classifications (including greenbelt and resource assessment), combine others, and add several new mineral classifications. The department would prefer that any extensive classification project in the unorganized borough be based on its new regulations, rather than on the system currently in effect. A two-year extension of the deadline will allow this change to take place.

Bob Arnold

Bob Arnold, Deputy Commissioner
Department of Natural Resources

May 2, 1983

Date

STATE OF ALASKA

MAY 9 1983

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

555 Cordova Street
Pouch 7-005
Anchorage, AK 99510
(907) 276-2653

Briefing Statement on CSSB 216

"An Act relating to mining lease locations on, and classification of, state land; and providing for an effective date."

CSSB 216 would extend two deadlines, one for the issuance of mining leases and the other for classifying land in the unorganized borough, and would make related housekeeping changes.

Mining Leases Under AS 38.05.185, about 15% of state lands have been designated as having "potential use conflicts" that require mining claims to be converted to leases before mineral production begins. (The department can also designate land for leasing if it was "mineral in character" at the time of state selection, but this authority has never been exercised.) The lease terms can then be designed to minimize conflicts with multiple use development occurring at the same site: gravel extraction, logging, recreational use, oil production, etc. However, no leases have been issued yet, and a backlog of perhaps 60-100 mine sites awaits conversion to leases. So that mining development would not be delayed, legislation was passed in 1981 to provide a special grace period allowing many miners to produce without a lease until Dec. 31, 1983. The department supported that legislation and hoped to be able to draft a lease form, update its leasing regulations, complete title research, give public notice, and issue all the necessary leases before the deadline arrived.

But because of other new mineral programs undertaken during the same period (coal and geothermal lease sales, noncompetitive coal disposals, initiation of the coal surface mining program, and offshore mining leases), that schedule has proven impossible to meet. To avoid interrupting or delaying production from existing mines, the department urges that the grace period be extended to the end of 1985. The department also favors the other mining lease-related change CSSB 216 would accomplish: making the grace period applicable to leasehold locations on all state lands. The current postponement of the leasing requirement applies only to "community grant" and "general grant" lands, omitting mines on mental health lands, placer mines on the beds of navigable rivers, etc. This potential inequity should be corrected so that production can legally continue while the department completes the necessary steps in the leasing process.

Land Classification in the Unorganized Borough AS 38.04.020(c) required classification by December 31, 1980, of all land that was to be retained in state ownership within municipalities. For land in the unorganized borough, it sets a classification deadline of July 1, 1983. A multi-agency special project enabled the 1980 deadline to be met on schedule. (Since that provision is now obsolete, CSSB 216 would repeal it.) However, two factors have convinced the department that a similar effort to meet the 1983 unorganized borough deadline would not be an efficient use of staff time.

First, in the unorganized borough the department lacks the detailed resource information necessary for knowledgeable classifications. Much of this information will be developed over the next two years as the Susitna, Tanana, and Bristol Bay area plans are completed and new planning projects are undertaken in the Kuskokwim and Copper River regions. Classifying that land now would be premature and would soon have to be done over again as the data becomes available. Secondly, the department has recently adopted new land planning and classification regulations, but they are still being reviewed by the Department of Law and have not yet gone into effect. The amended regulations eliminate certain classifications (including greenbelt and resource assessment), combine others, and add several new mineral classifications. The department would prefer that any extensive classification project in the unorganized borough be based on its new regulations, rather than on the system currently in effect. A two-year extension of the deadline will allow this change to take place.

Bob Arnold

Bob Arnold, Deputy Commissioner
Department of Natural Resources

May 2, 1987

Date

required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 — 38.05.280 and regulations adopted under it does not invalidate his rights if it appears to the satisfaction of the commissioner that the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person. Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 — 38.05.280. (§ 1 art IX ch 169 SLA 1959; am § 19 ch 61 SLA 1960; am § 1 ch 123 SLA 1961; am § 1 ch 108 SLA 1981)

Effect of amendments. — The 1981 amendment added the fourth through sixth sentences of subsection (a).

Sec. 38.05.205. Mining leasing. (a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 — 38.05.280 in or on state lands, other than submerged lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located lands are not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 — 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) Beginning on the date established by the commissioner under AS 38.05.210 there shall accrue an annual rental for each leasehold location or portion thereof whether or not under lease, not less than the value of annual labor improvements required for mining claims. The value of work done on, or for the benefit of, the leasehold in compliance with AS 38.05.210 may be credited against the rental.

(c) A mining lease shall be for any period up to 55 years, and the lessee has a right to a new lease at the end of each lease period. The

commissioner may make reasonable adjustments of the rental rate at the end of each 20 year period, based upon changed conditions in production costs and markets. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the director. No rights granted by a mining lease may be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981)

Effect of amendments. — The 1981 amendment in subsection (a), added "the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued" at the end of the third sentence, added the present fourth sentence, added "unless a conflicting location exists, no later than two weeks after publication of the notice" at the beginning of the fifth sentence, deleted "upon request or upon receipt of notice that the location has been made on lands open only for leasing" at the end of the fifth sentence, substituted "the locator's" for "his" preceding "prior rights" in the sixth sentence and added "or location" following "lease" in the seventh sentence.

Editor's notes. — Section 5, ch. 108, SLA 1981 provides: "SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1983, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on land tentatively approved or patented to the state under section 6(a) or 6(b) of the Alaska Statehood Act (F.L. 85-508, 72 Stat. 339, as amended) upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205."

Sec. 38.05.207. Production license [Effective January 1, 1983].

(a) An application for a production license must be filed with the commissioner when a locator of a mining claim under AS 38.05.195 or a lessee of a mining location under AS 38.05.205 is prepared to produce minerals for sale in commercial quantities. The application shall state under oath the location of the land and ownership of the mineral deposits involved in the mining operation and the date production began or is expected to begin. Upon receipt of an application, the commissioner shall publish in a paper of general circulation in the area of the location notice of the application and notice that a production license will be issued. The notice may be combined with notices of other applications either in the same general area or statewide. Pending completion of this public notice requirement and issuance of the production license, the locator or lessee has the right to produce minerals from the property.

(b) If the commissioner determines under AS 38.05.185(b) that a locator or lessee has complied as nearly as possible under the circumstances of the case with the provisions of AS 38.05.185 — 38.05.280 and that no conflicting rights are asserted by any other person, the commissioner shall issue a transferable production license for mineral extraction. If conflicting rights are asserted the commissioner may resolve the conflict. (§ 2 ch 87 SLA 1982)

(6) corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state, except that if more than 50 per cent of the stock of a corporation is owned or controlled by aliens who are not qualified, the corporation is not qualified to acquire or hold such rights.

(b) If an unqualified person acquires an interest in exploration or mining rights by operation of law, he shall be allowed two years in which to become qualified or to dispose of his interest to a qualified person. (§ 2 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961)

Sec. 38.05.195. Mining claims. Rights to deposits of minerals subject to §§ 185 — 280 of this chapter in or on state lands which are open to claim staking may be acquired by discovery, location and filing as prescribed in §§ 185 — 280 of this chapter. The locator has the exclusive right of possession and extraction of all such minerals lying within the boundaries of his claim. A location may not exceed 1,320 feet in its longest dimension, and its boundaries shall run in the four cardinal directions. A location shall be distinctly marked on the ground in the manner prescribed by the commissioner and a notice of location shall be posted on the claim in the manner and containing the information required by the commissioner. Within 90 days after the date of posting the notice of location on the claim, the locator shall file for record in the recording district where the claim is located a certificate of location. The certificate of location shall contain the information required by the commissioner. Locations may be amended in the manner and with the effect prescribed in § 200 of this chapter. Annual labor shall be performed and statements of annual labor recorded as prescribed in §§ 216 — 235 of this chapter. (§ 3 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961)

Cited in *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Sec. 38.05.200. Changes in locations and amended notices. Notices may be amended at any time and monuments changed to correspond with the amended location but no change may be made which interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be filed for record in the same manner and with the same effect as the original certificate. (§ 47-3-34 ACLA 1949)

Revisor's note (1962). — This section was applied to state-owned lands by ch. 123, SLA 1961. Am. Jur. reference. — 36 Am. Jur., Mines and Minerals, § 99 et seq.

Sec. 38.05.205. Mining leasing. (a) Prior discovery location and filing shall initiate prior rights to mineral deposits subject to §§ 185 — 280

Sec. 38.05.300. Classification of lands. (a) The commissioner shall classify for surface use lands in areas where he considers it necessary and proper. This section does not prevent reclassification of lands where the public interest warrants reclassification, nor does it preclude multiple purpose use of lands whenever different uses are compatible. No state land, water, or land and water area shall, except by act of the state legislature, be closed to multiple purpose use, if the area involved contains more than 640 acres.

(b) Not later than February 1 of each year, the commissioner shall submit a written report to each house of the legislature which describes and shows the location of all classifications of state land made under (a) of this section during the preceding year. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964; am §§ 33, 34 ch 85 SLA 1979)

Effect of amendments. — The 1979 amendment added the subsection (a) designation, and in that subsection, substituted "commissioner shall classify for surface use lands" for "director shall make a preliminary classification for surface use of all land" in the first sentence, deleted "for future development" from the end of the first sentence, and deleted the former second sentence, which read: "The classification, together with a land use plan, shall be transmitted to the commissioner for his approval, modification, or rejection." The

amendment also added subsection (b).

Editor's notes. — As to effect of redesignating mental health land as general grant land on use classifications under this section, see § 3(b), ch. 181, SLA 1978 in the 1978 Temporary and Special Acts and Resolves.

As to effect of redesignating mental health land and school land as general grant land on use classifications under this section, see §§ 1 — 2, ch. 182, SLA 1978 in the 1978 Temporary and Special Acts and Resolves.

Sec. 38.05.301. Land disposal in the unorganized borough. Before a sale, lease under AS 38.05.070 — 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If he finds it necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of AS 38.05.005 — 38.05.370. (§ 33 ch 113 SLA 1981)

Sec. 38.05.305. Notice and review.

Repealed by § 45 ch 113 SLA 1981.

Cross references. For provisions on notice requirements, see AS 38.05.345.

Editor's notes. — The repealed section

derived from § 2, art. III, ch. 169, SLA 1959; § 11, ch. 257, SLA 1976; §§ 35, 36, ch. 85, SLA 79; § 3, ch. 108, SLA 1981.

Sec. 38.05.310. Appraisal. (a) No land may be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and

AN ACT

Relating to mineral leasing; and providing for
an effective date.

• Section 1. AS 38.05.185(a) is amended to read:

(a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 - 38.05.280. Nothing in AS 38.05.185 - 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

* Sec. 2. AS 38.05.205(a) is amended to read:

(a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 - 38.05.280 in or on state lands, other than submerged lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director [UPON REQUEST OR UPON RECEIPT OF NOTICE THAT THE LOCATION HAS BEEN MADE ON LANDS OPEN ONLY FOR LEASING]. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the locator's lands are not available for leasing, notice shall be given the locator by the director and the locator's [HIS] prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 - 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

* Sec. 3. AS 38.05.305 is amended by adding a new subsection to read:

(e) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 4. AS 38.05.345 is amended by adding a new subsection to read:

(h) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 5. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1983, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on land tentatively approved or patented to the state under section 6(a) or 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339, as amended) upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.070(c).

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Resources

April 15, 1983

Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: Hearing, Instream Flow Oversight; SB 216, Mineral leasehold extension; SJR 24, Natural Gas Deregulation and Contract Abrogation.

Background information on Instream Flow is being sent under separate cover.

SB 216

AS 38.05.185 provides that on state lands of mineral character or lands where significant land use conflicts exist mining claims would convert to leases prior to production. Because of the numbers of claims on such lands going into the production of placer gold and the inability of the Department of Natural Resources to convert the claims to leases, in 1981 the Legislature passed a bill to permit production on regular claims to proceed until December 31, 1983 without having to convert to a lease.

Attached is a memorandum from Kay Brown, Director of DMEM, explaining the difficulties the Department is having in complying with the lease provisions for the large number of claims by the 1983 deadline. SB 216 would move the deadline for such conversions to December 31, 1985 to enable the Department to prepare the lease form and procedures, to process the mining claims on affected state lands, and to study the entire leasehold system and recommend possible changes in existing law and regulation.

Amendment to SB 216

- Adopted

Another provision of Title 38 dealing with land issues which involves a deadline which can not be administratively met is AS 38.04.020(c). This section requires the Department to classify all state lands to be retained in state ownership by July 1, 1983. Lands not so classified would be included in the land disposal bank for possible disposal.

The classification process is lengthy and normally done in conjunction with land use plans for certain regions or areas of the state. This planning and classification process is not yet completed for several areas of the state and the identification of all lands which might be recommended for retention in state ownership has not been done nor will it be done by July of this year.

The attached letter from the DNR requests an amendment to SB 216 to extend the deadline for the classification of land to be retained in state ownership from July 1, 1983 to July 1, 1985. In addition, it is recommended that language pertaining to state lands recommended for retention in municipalities be deleted. This work has already been completed and the language is moot.

SJR 24

The Reagan Administration has introduced legislation (S 615) amending the Natural Gas Policy Act of 1978. The Administration's proposal attempts to combine phased decontrol of gas prices with measures enabling pipelines and producers to get out of long-term contracts that are believed to be keeping gas prices high. A summary of the key points of this legislation is attached.

SJR 24 requests that Congress exempt the State of Alaska from section 316 of the Administration bill. Section 316 allows the abrogation of existing natural gas supply contracts. Section 316 is also attached for your information.

The current price of gas sold to Chugach Electric for example is 26¢. It is estimated that if the Administration's proposal passed intact as now drafted, this price could increase to \$2.50 and above. The Department of Natural Resources has stated that the request for this exemption is consistent and in accord with official State position.

Additional attachments have been included for your information.

STATE OF ALASKA
FISCAL NOTE

Revision Date 1983

I. REQUEST

Bill/Resolution No.: SB 216
 Title: Extending deadline for leasehold locations
 Sponsor: Fahrenkamp and Bennett
 Requestor: Senate Resources

II. FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: Mgmt. of Min. BRU, Program of Subprogram(s) Affected: Mineral Development

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
	0	0	0			

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mark Wittow *Mark Wittow* Phone: 465-2400
 Division: Commissioner's Office Date: 4/13/83
 Approved by Commissioner: Maurice Hallman Date: 4/13/83
 Department: Natural Resources

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor

MEMORANDUM

State of Alaska *M*

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO:

ESTHER C. WUNNICKE
Commissioner

DATE:

February 2, 1983

FILE NO:

TELEPHONE NO:

FROM:

KAY BROWN
Director

SUBJECT: 276-2553

Mining Leasing under
AS 38.05.205

to Pat Burchett

This memorandum is intended as an update on our progress toward implementation of the mining lease statute (AS 38.05.205) and to notify you of the major problems we have encountered. At a minimum, legislative action is needed this session to extend the implementation deadline; a provision to accomplish this is included in DNR's Title 38 housekeeping bill. Additional amendments may be necessary to correct the ambiguities we have found and to make the program workable.

Background

Alaska law allows the appropriation of locatable minerals through three different methods:

- ° on tidelands and submerged lands, a leasing process similar to that for coal or other leasable minerals is used;
- ° on most uplands open to mining, ordinary mining claims can be staked;
- ° on uplands identified as mineral lands or where conflicts with other land uses could occur, "leasehold locations" are required. They are initiated in the same way as mining claims--with discovery, location, and filing--but must be converted to leases before production can occur. Few or no such conversions have ever taken place. In 1981, with many placer mines producing or ready to produce because of rising gold prices, the Legislature passed ch. 108, SLA 1981, which allowed production to continue until Dec. 31, 1983, or until the miner receives a lease application from DNR, whichever comes first.

With the lease exemption due to expire, DMEM has been working to prepare a basic lease form, to estimate the workload involved (DMEM calculates that 4,500 to 6,000 of the total 44,000 state mining claims are on land designated for leasehold locations; these locations are in approximately 300-600 contiguous blocks that could each eventually require a lease; if the deadline is not extended, probably 60-100 of these will need a lease this year in order to produce or continue production in 1984), and to determine the legal requirements that must be met before issuing the leases (see attached request for an attorney general's opinion).

Problems and Potential Legislative Solutions

We do not yet have final answers to our legal questions, but preliminary analysis by DNR and the Department of Law has pointed out the following obstacles.

- ° Timing of lease issuance is critical. As it stands, the law might be interpreted to require DMEM to initiate the leasing process within a few weeks or months after it learns of a new leasehold location, rather than waiting until production plans are underway (usually many years later). Since the majority of locations lapse without ever being developed, most such leases would serve no purpose. And the mining lease workload would be 300-600 leases instead of a more manageable 60-100. With the ambitious schedule facing DMEM in its other mineral programs (new or newly reopened coal, geothermal, and offshore mining lease projects, plus a DMEM processing backlog of some 4,000 mining claims, and almost 11,000 additional mining claims that have been awaiting adjudication for up to eight months because DTS does not have the staff to enter them onto the state status plats and other land records), we cannot afford to tackle a years-old backlog of mining lease conversions all at once. Possible solutions: Amending AS 38.05.205 may be necessary to let us delay leasing until the locator specifically requests a lease or is ready to go into production. In addition, the Dec. 31, 1983 deadline should be postponed. DNR's Title 38 housekeeping bill would extend the deadline only one year, but the actual time needed to implement the program will depend on funding. After the housekeeping bill was drafted, the department's proposed FY84 increment for mining leasing was eliminated from the budget.
- ° Issuance of a mining lease is probably a "disposal" of an interest in land.* Moore v. State, 553 P.2d 8, 26 (Alaska 1976). If so, DNR must make a "best interest" determination under AS 38.05.035(a)(14) before issuing a lease. Disposal procedures must also meet the constitutional requirements of "prior public notice and other safeguards of the public interest as may be prescribed by law." Art. VIII, sec. 10. The Department of Law's tentative legal conclusion is that the notice provided for in AS 38.05.205 satisfies the minimal constitutional notice requirements.

However, timing of notice under AS 38.05.205 (it must be given before the locator applies for the lease) limits its utility somewhat. A more logical time for public notice is after the locator's lease application has been received and the "best interest" determination has been drafted. Yet for administrative reasons, DMEM does not want to give notice twice. (For nearly all other disposals, notice is handled under AS 38.05.345. This statute requires only one public notice for

* Another view is that, since the lease application cannot be denied, the disposal has already taken place. Lack of discretion to deny the lease raises issues too complex to set out in this memorandum.

noncompetitive disposals, given when the best interest determination is ready to review; local government receives notice at the same time. Mining leases are specifically exempted from AS 38.05.345.) Another complication is that after the lease is issued, the lessee must get a separate production license (AS 38.05.207) before production can occur. This statute requires still another notice. Possible solutions: The early notice provision could be deleted from AS 38.05.205 and the mining lease exemption removed from AS 38.05.345, allowing notice of mining leases to be given in the same way as for other noncompetitive disposals. At the same time, AS 38.05.207 could be amended to allow the production license to be issued simultaneously with the lease, so that no extra notice would be necessary. Alternatively, all references to mining leases could be dropped from AS 38.05.207, leaving it applicable only to ordinary locations. That statute was intended to satisfy the "6(i)" leasing mandate under the Statehood Act, but to require both a lease and a production license seems superfluous.

- ° Discovery, location, and filing are the prerequisites to leasing. Whether the proper documents have been timely recorded can readily be checked, but it would be difficult and expensive to do a "validity determination" (to establish whether each location contains a discovery) before issuing the lease. DNR has never done a validity determination. The discovery requirement should not be dropped--in fact it could not be without a constitutional amendment--but it does create a serious administrative problem. Possible solutions: AS 38.05.205 could be amended to give the locator the option of either paying for a validity determination before the lease is issued, or accepting a short-term lease (perhaps five years) that would expire if no production took place. If production occurred, it would provide retroactive proof that at least one discovery existed within the leasehold, and the lease would automatically be renewed. As another option, it might be sufficient for the locator to sign an affidavit that he or she had made a discovery within each location. This alternative could probably be put into effect by regulation, without having to amend AS 38.05.205.

- ° A field check would also be necessary to determine whether the location had been properly staked. Here again, DNR has never done such field checks, although this sort of investigation would be much easier and cheaper than a validity determination. Possible solutions: Perhaps the locator could simply sign an affidavit attesting to proper staking. Alternatively, DNR could either seek funding to check for proper staking before converting the location to a mining lease, or AS 38.05.205 could be amended to require the locator to supply such proof. A more costly but ultimately more satisfactory solution would be to require a survey of the staked boundaries, which would also ensure the accuracy of the legal description stated in the lease. (Without a survey, the location must be plotted on the status plats, and its legal description written, on the basis of the miner's sketch map.)

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Barbara Herman
Assistant Attorney General, DOL

DATE: October 29, 1982

FILE NO:

TELEPHONE NO 276-2653

FROM: Kay Snow, Director
DMEM

SUBJECT: Mining Leasing under
AS 38.05.205

The Division of Minerals and Energy Management is preparing to implement AS 38.05.205 and the special provision for mining leasehold locations passed by the 1981 legislature (Sec. 5, Ch. 108; SLA 1981). We would appreciate receiving your thoughts on the following issues as soon as possible.

- Extent of discretion. In an area open to leasing, we assume that the director must issue a mining lease for a location filed under AS 38.05.205(a); the director's authority extends only to choosing the lease's terms and conditions within statutory limits. Similarly, we assume that he or she cannot refuse to convert a valid mining claim to a lease under AS 38.05.205(c). Is this interpretation correct?
- Director's finding. We assume that issuance of a mining lease under AS 38.05.205 is a disposal of an interest in land under AS 38.05.035(a)(14) and therefore requires a best interest finding under that section. Is this correct? We assume that the finding should cover discretionary issues such as the stipulations that will be imposed to resolve conflicts with other uses. Are there any issues that must be addressed in every .035 finding for a mining lease? If the best interest determination shows that issuance of the lease would not serve the best interests of the state, what is the resolution if the director does not have the discretion to deny a lease?
- Validity determination. Prior discovery, location, and filing in a leasehold location area, or a valid mining claim anywhere, entitles the locator to convert to a lease. By implication, a locator who has not fulfilled these three requirements is not entitled to a lease. Prior to the issuance of a mining lease under 38.05.205, should a validity determination be made?
- Rent accrual. The department interprets AS 38.05.205(b) to mean that beginning on Sept. 1 following staking of a leasehold location (the date is set by 11 AAC 86.220), annual rental begins to accrue at the minimum rate of \$200 per location per year, whether or not a lease has already been issued. Payment must be made each year, either in cash or (far more typically) in the form of annual labor benefitting the leasehold location. If the locator neither pays the rent nor offsets it by recording an annual labor affidavit, and does not correct the situation after notice from DMEM, the leasehold location is deemed abandoned. Is this procedure, which is reflected in 11 AAC 86.300, a reasonable and supportable interpretation of the statute? (Should 11 AAC 86.300 be amended to be consistent with the statute by changing the last "or" to an "and"?)

October 29, 1982

5. ACMP consistency. If the location is within the coastal zone, is the issuance of a lease under AS 38.05.205 subject to review for consistency with the Alaska Coastal Management Program? What is the result if it is not consistent?

6. Secrecation. Is our interpretation that the filing of an offshore prospecting permit application segregates the tidelands and submerged lands involved, so that a mining claim or leasehold location cannot be staked on top of it under 11 AAC 66.135(c), a correct one?

7. Timing. The department's past practice has been not to immediately send a lease application to a locator who has filed in a leasehold location area. The department prefers to postpone the leasing process until the locator is actually ready to go into production. Can this procedure be continued under the amended AS 38.05.205(a), or does the statute force DMSM to publish notice of the leasehold location as soon as it learns of it?

8. Procedures. The following is our understanding of the major legal requirements that must be satisfied in issuing a lease under AS 38.05.205(a).

- o As soon as the location notice is received, or at an appropriate time thereafter (the timing depends on your answer to our previous question), the director publishes a notice in compliance with AS 38.05.205(a). Only one notice is required; it advertises that the location was filed and that, if there is no conflicting location, a lease will be issued.
- o No later than two weeks after the notice was published, but allowing as much of that two-week period as possible for other locators to respond to it, the division sends a lease application form to the locator if it has not learned of any conflicting claim. AS 38.05.205(a).
- o Within 90 days after receipt of the application, the locator must fill it out and file it with the director. AS 38.05.205(a).
- o After the application is received, a director's decision under AS 38.05.035(a)(14) is drafted. If the location is in the coastal zone, a determination that the lease is consistent with the Alaska Coastal Management program is also made. If the location is within the unorganized borough, a commissioner's finding as to the disposal's effects on population density, and its potential for conflicts with traditional land uses, is also written under AS 38.05.301. If the location includes or is adjacent to waters, the department determines whether those waters are navigable or public under AS 38.05.127. If they are, and if surface development in connection with the lease might

Barbara Herman
Page 3
October 29, 1982

restrict public access rights to and along those waters, easements or rights-of-way are reserved in accordance with the implementing regulations (11 AAC 53.) (However, if the department does not yet know how the lease will be developed, it will not specify the easements in the conveyance document, but as a lease stipulation will retain the right to reserve them later if necessary to protect public access. This is the procedure DNEM has been following with other mineral leases.)

- o We cannot determine whether notice of the director's decision is supposed to be given, and if so, under what procedures. Director's decisions for all other types of disposals are advertised under AS 38.05.34(A)(3), but AS 38.05.345(e) certainly seems to exempt decisions in connection with mining leases from this requirement. Does this mean that, even though the director's decision must be written, no notice need be given that it is available for review? Is the original notice under AS 38.05.205(a)--which was given well before the terms of the disposal and conditions were decided on (in fact, before the lease application was filed)--the only public notice legally and constitutionally required? Would this original notice also serve as notice to the municipality or, in the unorganized borough, to local residents?
- o If you determine that AS 38.05.345 notice of the decision is required, AS 38.05.346 would presumably also apply.
- o If notice must be given under AS 38.05.345, at least 30 days must pass before the lease is issued. If no notice is required, presumably the only time limit is that at least 21 days must pass after the director's decision is written.
- o We assume that, although a mining lease will include certain surface use rights, it is not a disposal of the surface estate and the survey requirements of AS 38.04.055(b) do not apply. It is also exempt from the appraisal requirement of AS 38.05.310.

Is our understanding of these requirements correct and comprehensive? What have we missed?

9. Voluntary conversions. Which of these procedures would apply to a voluntary conversion of a mining claim to a lease under AS 38.05.205(c)? For instance, would the director be required to give a preliminary notice under AS 38.05.205(a) that the location had been filed and that a lease would be issued? Would the locator be bound by the 90-day application deadline?

10. University lands. If the location is on university lands, the Board of Regents must be notified before the lease is issued (AS 38.05.030(a)). What happens if it withholds its approval?

cc: John Katz

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY


POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 19, 1983

SUBJECT: Classification of state land
(SB 216)

TO: Representative Richard Shultz
Chairman, House Resources Committee

FROM: Richard C. Folta 
Legislative Counsel

It is my opinion that adding to the above referenced bill the proposed provisions for sale of a leasehold by the state to a leaseholder requires a title amendment in SB 216. Under Uniform Rule 24(c), a bill title may not be amended in the second house unless the amendment is a clerical or technical change. The amendment, in this instance, could only be accomplished in the Senate.

RCF:ljb
20/027

Sen. Betty Fahrenkamp

TESTIMONY BEFORE THE HOUSE RESOURCES COMMITTEE

SB 216, MAY 13, 1983

Mr. Chairmen, members of the Committee, I apologize for not being able to testify today in person but I am chairing a meeting of the Senate Resources Committee during this same time period.

However, I would like give my strong endorsement to SB 216 and urge the Committee to take swift action on this measure. The bill simply extends the moratorium currently in existence for converting mining claims to mineral leases for another two years. This extension is necessary for the Department of Natural Resources to continue to develop the leasehold system prescribed by law and to identify additional legal and technical problems which have surfaced. Within two years it is quite possible that the Department will recommend to the legislature changes which may be needed in current law regarding the leasehold system.

In addition, the Senate Resources Committee adopted an amendment to the bill which would also extend another deadline in Title 38 for an additional two years. Current statutes call for the state to identify all state lands to be retained in state ownership by July 1, of this year. Lands not identified would fall automatically into the land disposal bank. Land identification by the state has proceeded after land use planning has been completed which has taken some time. There simply is not sufficient time to complete the planning and the subsequent classification process by the July 1, 1983 deadline. Rather than interrupting this reasoned, phased process to land classification, an extension is warranted. Such an extension will have no impact on the amount of land to be disposed of as current lands in the disposal bank far exceed annual disposals well into the future.

Thank you for this opportunity to present my views on this legislation.

Fahrenkamp

SB 216, MINING LEASE LOCATION MORATORIUM EXTENSION

BACKGROUND

STATE LAW PROVIDES THAT ^{ON} STATE LANDS OF MINERAL CHARACTER OR WHERE LAND USE CONFLICTS EXIST MINING CLAIMS WHICH ARE STAKED WOULD CONVERT TO MINING LEASES PRIOR TO PRODUCTION.

IN 1981 THE LEGISLATURE EXTENDED THE DEADLINE FOR CONVERSION OF CLAIMS TO LEASES UNTIL DEC. 31, 1983 BECAUSE OF THE DRAMATIC INCREASE IN PLACER GOLD CLAIMS ENTERING PRODUCTION WITH THE RISE IN GOLD PRICES AND THE ABSENCE OF MINERAL LEASE PROCEDURES AT THAT TIME,

CURRENT SITUATION

DNR REPORTS THAT WITH THE PROSPECTS OF HAVING TO CONVERT HUNDREDS, IF NOT THOUSANDS OF CLAIMS, AND THE TECHNICAL PROBLEMS WHICH STILL EXIST WITH THE MINERAL LEASE LOCATION SYSTEM, THE DEPARTMENT WOULD BE UNABLE TO MEET THE DEC^{ember} DEADLINE THIS YEAR. THEY ARE REQUESTING AN EXTENSION TO FURTHER STUDY AND EXPLORE THE PROBLEMS AND PROCEDURES OF MINERAL LEASE LOCATION SYSTEM AND POSSIBLY TO RECOMMEND CHANGES IN THE LAW,

ADDITIONALLY, ANOTHER PROVISION OF TITLE 33 REQUIRES DNR TO CLASSIFY ALL STATE LANDS TO BE RETAINED IN STATE OWNERSHIP BY JULY 1, 1983. LANDS NOT SO CLASSIFIED WOULD BE INCLUDED IN THE LAND DISPOSAL BANK FOR POSSIBLE DISPOSAL. BECAUSE OF DNR'S PLANNING PROCESS PRIOR TO CLASSIFICATION, THIS DEADLINE IS NOT GOING TO BE MET. HAVING THE LANDS GO TO THE DISPOSAL BANK SERVES NO USEFUL PURPOSE AND IN NO WAY WOULD REDUCE THE ANNUAL LAND DISPOSALS (THERE ARE OVER 600,000 ACRES IN THE DISPOSAL BANK CURRENTLY FROM WHICH 60,000 WILL BE DISPOSED THIS YEAR).

BILL'S PROVISIONS

THE BILL EXTENDS THE LEASE CONVERSION MORATORIUM FOR TWO MORE YEARS UNTIL DEC. 1985. THE BILL ALSO EXTENDS THE LAND CLASSIFICATION DEADLINE TWO YEARS UNTIL JULY 1, 1985.

added in Committee Substitute

AN ACT

Relating to mineral leasing; and providing for
an effective date.

• Section 1. AS 38.05.185(a) is amended to read:

(a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 - 38.05.280. Nothing in AS 38.05.185 - 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

• Sec. 2. AS 38.05.205(a) is amended to read:

(a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 - 38.05.280 in or on state lands, other than submerged lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director [UPON REQUEST OR UPON RECEIPT OF NOTICE THAT THE LOCATION HAS BEEN MADE ON LANDS OPEN ONLY FOR LEASING]. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located lands are not available for leasing, notice shall be given the locator by the director and the locator's [HIS] prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 - 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

* Sec. 3. AS 38.05.305 is amended by adding a new subsection to read:

(e) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 4. AS 38.05.345 is amended by adding a new subsection to read:

(h) The provisions of this section do not apply to a lease issued under AS 38.05.205.

* Sec. 5. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1983, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on land tentatively approved or patented to the state under section 6(a) or 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339, as amended) upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.070(c).

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Barbara Herman
Assistant Attorney General, DOL

DATE: October 29, 1982

FILE NO:

TELEPHONE NO: 276-2653

FROM: Kay Brown, Director
DMEM

SUBJECT: Mining Leasing under
AS 38.05.205

The Division of Minerals and Energy Management is preparing to implement AS 38.05.205 and the special provision for mining leasehold locations passed by the 1981 legislature (Sec. 5, Ch. 108; SLA 1981). We would appreciate receiving your thoughts on the following issues as soon as possible.

1. Extent of discretion. In an area open to leasing, we assume that the director must issue a mining lease for a location filed under AS 38.05.205(a); the director's authority extends only to choosing the lease's terms and conditions within statutory limits. Similarly, we assume that he or she cannot refuse to convert a valid mining claim to a lease under AS 38.05.205(c). Is this interpretation correct?
2. Director's finding. We assume that issuance of a mining lease under AS 38.05.205 is a disposal of an interest in land under AS 38.05.035(a)(14) and therefore requires a best interest finding under that section. Is this correct? We assume that the finding should cover discretionary issues such as the stipulations that will be imposed to resolve conflicts with other uses. Are there any issues that must be addressed in every .035 finding for a mining lease? If the best interest determination shows that issuance of the lease would not serve the best interests of the state, what is the resolution if the director does not have the discretion to deny a lease?
3. Validity determination. Prior discovery, location, and filing in a leasehold location area, or a valid mining claim anywhere, entitles the locator to convert to a lease. By implication, a locator who has not fulfilled these three requirements is not entitled to a lease. Prior to the issuance of a mining lease under 38.05.205, should a validity determination be made?
4. Rent accrual. The department interprets AS 38.05.205(b) to mean that beginning on Sept. 1 following staking of a leasehold location (the date is set by 11 AAC 86.220), annual rental begins to accrue at the minimum rate of \$200 per location per year, whether or not a lease has already been issued. Payment must be made each year, either in cash or (far more typically) in the form of annual labor benefitting the leasehold location. If the locator neither pays the rent nor offsets it by recording an annual labor affidavit, and does not correct the situation after notice from DMEM, the leasehold location is deemed abandoned. Is this procedure, which is reflected in 11 AAC 86.300, a reasonable and supportable interpretation of the statute? (Should 11 AAC 86.300 be amended to be consistent with the statute by changing the last "or" to an "and"?)

Barbara Herman

Page 2

October 29, 1982

5. ACMP consistency. If the location is within the coastal zone, is the issuance of a lease under AS 38.05.205 subject to review for consistency with the Alaska Coastal Management Program? - What is the result if it is not consistent?

6. Secrecation. Is our interpretation that the filing of an offshore prospecting permit application segregates the tidelands and submerged lands involved, so that a mining claim or leasehold location cannot be staked on top of it under 11 AAC 86.135(c), a correct one?

7. Timing. The department's past practice has been not to immediately send a lease application to a locator who has filed in a leasehold location area. The department prefers to postpone the leasing process until the locator is actually ready to go into production. Can this procedure be continued under the amended AS 38.05.205(a), or does the statute force DMEM to publish notice of the leasehold location as soon as it learns of it?

8. Procedures. The following is our understanding of the major legal requirements that must be satisfied in issuing a lease under AS 38.05.205(a).

- o As soon as the location notice is received, or at an appropriate time thereafter (the timing depends on your answer to our previous question), the director publishes a notice in compliance with AS 38.05.205(a). Only one notice is required; it advertises that the location was filed and that, if there is no conflicting location, a lease will be issued.
- o No later than two weeks after the notice was published, but allowing as much of that two-week period as possible for other locators to respond to it, the division sends a lease application form to the locator if it has not learned of any conflicting claim. AS 38.05.205(a).
- o Within 90 days after receipt of the application, the locator must fill it out and file it with the director. AS 38.05.205(a).
- o After the application is received, a director's decision under AS 38.05.035(a)(14) is drafted. If the location is in the coastal zone, a determination that the lease is consistent with the Alaska Coastal Management program is also made. If the location is within the unorganized borough, a commissioner's finding as to the disposal's effects on population density, and its potential for conflicts with traditional land uses, is also written under AS 38.05.301. If the location includes or is adjacent to waters, the department determines whether those waters are navigable or public under AS 38.05.127. If they are, and if surface development in connection with the lease might

Barbara Herman
Page 3
October 29, 1982

restrict public access rights to and along those waters, easements or rights-of-way are reserved in accordance with the implementing regulations (11 AAC 53.) (However, if the department does not yet know how the lease will be developed, it will not specify the easements in the conveyance document, but as a lease stipulation will retain the right to reserve them later if necessary to protect public access. This is the procedure DHEM has been following with other mineral leases.)

- o We cannot determine whether notice of the director's decision is supposed to be given, and if so, under what procedures. Director's decisions for all other types of disposals are advertised under AS 38.05.34(A)(3), but AS 38.05.345(e) certainly seems to exempt decisions in connection with mining leases from this requirement. Does this mean that, even though the director's decision must be written, no notice need be given that it is available for review? Is the original notice under AS 38.05.205(a)--which was given well before the terms of the disposal and conditions were decided on (in fact, before the lease application was filed)--the only public notice legally and constitutionally required? Would this original notice also serve as notice to the municipality or, in the unorganized borough, to local residents?
- o If you determine that AS 38.05.345 notice of the decision is required, AS 38.05.346 would presumably also apply.
- o If notice must be given under AS 38.05.345, at least 30 days must pass before the lease is issued. If no notice is required, presumably the only time limit is that at least 21 days must pass after the director's decision is written.
- o It is possible that, although a mining lease will include certain surface use rights, it is not a disposal of the surface estate and the survey requirements of AS 38.04.055(b) do not apply. It is also exempt from the appraisal requirement of AS 38.05.310.

Is our understanding of these requirements correct and comprehensive? What have we missed?

9. Voluntary conversions. Which of these procedures would apply to a voluntary conversion of a mining claim to a lease under AS 38.05.205(c)? For instance, would the director be required to give a preliminary notice under AS 38.05.205(a) that the location had been filed and that a lease would be issued? Would the locator be bound by the 90-day application deadline?

10. University lands. If the location is on university lands, the Board of Regents must be notified before the lease is issued (AS 38.05.030(a)). What happens if it withholds its approval?

cc: John Katz

- (1) the cash value offered;
- (2) the projected effects of the sale, exchange or other disposal on the economy of the state;
- (3) the projected benefits of refining or processing the oil or gas in the state;
- (4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and
- (5) the criteria listed in AS 38.06.070(a). (§ 1 ch 56 SLA 1970; am § 3 ch 9 SSSLA 1974; am §§ 9, 10 ch 112 SLA 1980)

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "after prior written notice to" for "with the prior written approval of" and "under AS 38.06.050" for "where applicable," near the end of the subsection; in subsection (b), substituted "after prior written notice to" for "with the prior written approval of"; in subsection (c), substituted "has been notified in writing of" for "where applicable has approved"; in subsection (d), deleted "with the approval of the Alaska Royalty Oil and Gas Development Advisory Board" following "until the commissioner"; and added subsection (e).

NOTES TO DECISIONS

Waiver of competitive bidding. — An initial waiver of competitive bidding and a second waiver at the time of amendment removed any obligation to open the contract to competitive bidding. *McKinnon v. Alpetco Co.*, Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Article 7. Mining Rights.

<p>Section 185. Generally 205. Mining leasing</p>	<p>Section 207. Production license 250. Tide and submerged lands</p>
--	---

Sec. 38.05.185. Generally. (a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 — 38.05.280. Nothing in AS 38.05.185 — 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations