

HJR

70

HOUSE
COMMITTEE REPORT

H/C

(9)

Date referred: 4/1/86

FURTHER REFERRALS: JUDICIARY

DATE: April 9, 1986

The RESOURCES Committee has considered HJR 70

Relating to placer mining in the state.

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
- replace with _____ new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note
- First

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Shultz Dick Shultz

Cato Bette Cato

Miller (NP) M.W. Miller

Pearce Rue

Edelrich Herrmann Do Not Pass

Herrmann Needs to be updated

Kay Wallis needs to be

Wallis rewritten

Dick Shultz
Co-Chairman Shultz

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HJR 70
 Title : Relating to placer mining
in the state.
 Sponsor : House Resources Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : _____
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : House Resources Committee Staff Phone : 465-3715

Division : _____ Date : _____

Approved by Commissioner : *Dick Shultz* Date : April 9, 1986

Agency : Representative Dick Shultz

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SIERRA CLUB, NORTHERN ALASKA)
ENVIRONMENTAL CENTER,)
WILDERNESS SOCIETY, BIRCH)
CREEK VILLAGE COUNCIL, MINTO)
VILLAGE COUNCIL, GOLOVIN)
TRADITIONAL COUNCIL, NUNAM)
KITLUTSISTI, and CENALIULRIIT)
COASTAL MANAGEMENT DISTRICT,)

Plaintiffs,)

v.)

MICHAEL PENFOLD, Director of)
the Alaska State Office of the)
Bureau of Land Management;)
DONALD P. HODEL, Secretary)
of the Interior; ROBERT F.)
BURFORD, Director of the)
Bureau of Land Management;)
DONALD E. RUNBERG, Acting)
District Manager of the Fair-)
banks District Office of the)
Alaska State Office of the)
Bureau of Land Management;)
WAYNE A. BODEN, District Man-)
ager of the Anchorage District)
of the Alaska State Office)
of the Bureau of Land Manage-)
ment; DEPARTMENT OF THE)
INTERIOR and BUREAU OF LAND)
MANAGEMENT,)

Defendants.)

Case No. A86-083 Civil

STIPULATION

WHEREAS, plaintiffs Sierra Club, et al. and defendants Michael Penfold, et al. desire to bring the claims asserted in the plaintiffs' pending motion for a preliminary injunction to a fair interim resolution that provides a framework under which mining can occur in the 1986 mining season, while at the same time providing for expeditious final resolution of the claims asserted by plaintiffs;

AND WHEREAS, defendants Michael Penfold, et al., hereinafter referred to as BLM, have agreed that they are or will be doing the following for the 1986 mining season commencing immediately:

A. Procedures Governing Plans of Operations

1. Prior to approving a plan of operations, pursuant to 40 C.F.R. § 3809.1-6, BLM will prepare an environmental assessment of the plan of operations, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 and its implementing regulations set forth in 40 C.F.R. Part 1500.

2. Prior to approving a plan of operations, BLM will prepare a subsistence evaluation of the plan of operations pursuant to the requirements of § 810 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120.

3. Within ten (10) working days after approving a plan of operations in 1986, BLM shall serve, at no cost to plaintiffs, upon plaintiffs' counsel copies of the following

documents except for confidential information as provided in 43 C.F.R. § 3809.5:

- (a) The plan of operations;
- (b) The environmental assessment of the plan of operations;
- (c) The subsistence evaluation of the plan of operations; and
- (d) If not previously provided to plaintiffs, all correspondence and documents in BLM's possession that are related to the plan of operations, including the letter of approval.

B. Procedures to Insure Reclamation

1. Between May 1, 1986 and September 30, 1986, BLM shall conduct an on-site inspection of every mining operation operating pursuant to a plan of operations.

2. Between May 1, 1986 and September 30, 1986, BLM shall conduct an on-site inspection of every mining operation operating pursuant to a notice of operations.

3. During the on-site inspections, BLM shall inspect whether the operator is reclaiming disturbed areas in compliance with the reclamation requirements set forth in 43 C.F.R. § 3809.1-3(d).

4. During the on-site inspections, if the operator disturbed, since January 1, 1981, the same or adjacent areas of public lands while conducting mining operations in prior years, BLM will inspect whether the operator reclaimed the previously disturbed areas in compliance with the

reclamation requirements set forth in 43 C.F.R. § 3809.1-3(d).

5. If the inspection shows that the operator either is not fully complying or has not in the past fully complied with the reclamation requirements of 40 C.F.R. § 3809.1-3(d), BLM will issue a notice of noncompliance to the operator pursuant to 43 C.F.R. § 3809.3-2(d). However, no notice of noncompliance need be issued if past noncompliance has been corrected by the time of inspection.

6. Within two (2) weeks after the period for correction of the noncompliance specified in the notice of noncompliance has expired, if BLM has not received photographic proof of corrective action, or has not determined by on-site or aerial inspection that the operator has corrected the noncompliance, or has not been notified by another federal or State agency that the noncompliance has been corrected, BLM will take the following actions:

- (a) If the operator is operating under a plan of operations, BLM will require that the operator correct the noncompliance and post a bond in an amount equal to the cost of completing the unperformed reclamation and the reclamation of the future operations proposed under the plan of operations before recommencing operations; and
- (b) If the operator is operating under a notice of operations, BLM will require that the

operator correct the noncompliance, file and obtain approval of a plan of operations, and post a bond in an amount equal to the cost of completing the unperformed reclamation and the reclamation of the future operations proposed under the plan of operations before recommencing operations.

7. BLM will prepare a written report of its inspections, which reports where applicable will report on the items listed in 43 C.F.R. § 3809.1-3(d)(4), and report on compliance with 43 C.F.R. § 3809.1-3(d)(3).

8. BLM will also prepare a written report on any follow-up inspections conducted pursuant to paragraph 6. Each report will describe the steps taken by the operator to correct the noncompliance, and will state whether the steps taken adequately corrected the noncompliance.

9. At each operation subject to an on-site inspection, BLM will test for compliance with the federal and State standards for settleable solids. BLM will not take these tests if these tests are simultaneously being conducted by either the Environmental Protection Agency (EPA) or the Alaska Department of Environmental Conservation (ADEC). The entry by BLM is not intended by the members to this agreement to provide the basis for enforcement action against miners without independent investigation and inspection by EPA, ADEC or any other person.

10. BLM shall record the results of the tests in reports. These reports shall be provided to the EPA and to the ADEC.

11. If EPA or ADEC should issue a notice of violation, notice of noncompliance, other form of administrative order which finds, or if EPA or ADEC should commence a civil action based on a finding, that a mining operator operating under either a notice of operations or an approved plan of operations has violated applicable federal or State water quality standards, and if EPA or ADEC inform BLM of the issuance of such administrative orders or notices, or the commencement of such civil actions, BLM will issue a notice of noncompliance to the same operator pursuant to 43 C.F.R. § 3809.3-2(d).

12. If the operator does not correct the noncompliance within the period provided for correction, BLM shall also take the additional steps set out in paragraph 6.

13. If for any mining operation within a wild and scenic corridor or on a tributary to a wild and scenic river, any of the settleable solids' tests taken pursuant to paragraph 9 show suspected noncompliance with water quality standards, BLM will immediately report this to EPA and ADEC and ask that these agencies give priority to and conduct an inspection to determine if such violations are occurring.

14. If within two (2) weeks after the period for correction of noncompliance specified in the notice has

expired the operator has not corrected the noncompliance, BLM will take the additional steps set out in paragraph 6.

C. Procedures Governing Access

1. If existing access is adequate and feasible, BLM will exercise its authority under 43 C.F.R.

§ 3809.3-3(b) to require all operators under a notice of operations to use the existing access.

2. If existing access is not adequate and feasible, BLM will exercise the authority of 43 C.F.R. § 3809.3-3(b) to require operators under a notice of operations to construct new access, if practicable, within an existing transportation or utility corridor.

3. BLM will send back as incomplete, pursuant to 43 C.F.R. § 3809.1-3(c)(3), any notice which indicates that any operator will construct any new access routes where that notice does not describe the construction including the location of the access routes to be constructed and the equipment to be used and measures to prevent unnecessary or undue degradation. If the construction involves slopes which require cuts on the inside edge in excess of three (3) feet, BLM will pursuant to 43 C.F.R. § 3809.1-3(c)(3) require the operator to consult with BLM over the most appropriate access route location.

D. Long-Term Camping Permits

1. Prior to approving a long-term camping permit for a mining operation within the Fortymile National Wild and Scenic River corridor, BLM shall prepare an

environmental assessment of the camping permit pursuant to NEPA, 42 U.S.C. § 4321 and its implementing regulations set forth in 40 C.F.R. Part 1500.

2. If BLM issued long-term camping permits for mining operations within the Fortymile National Wild and Scenic River corridor for camping in 1986 prior to the signing of this stipulation, BLM shall stay all activities under the permits until it prepares an environmental assessment.

3. Within ten (10) working days after issuing a long-term camping permit for a mining operation within the Fortymile National Wild and Scenic River Corridor in 1986, BLM shall serve, at no cost to plaintiffs, upon plaintiffs' counsel copies of the following documents:

- (a) The permit issued;
- (b) The environmental assessment prepared on the permit; and
- (c) If not previously provided to plaintiffs, all correspondence and documents in BLM's possession that are related to the permit including the application for the permit.

E. Documentation

BLM has agreed to provide, at regular two-week intervals throughout 1986, plaintiffs' counsel with copies of the following documents except for confidential information as provided in 43 C.F.R. § 3809.5:

- (1) The notices received by BLM;

- (2) All correspondence and documents in BLM's possession that are related to the notices;
- (3) The reports produced by BLM pursuant to paragraphs 7, 8 and 10 of section B.

BLM will not charge plaintiffs for any of these documents, nor will BLM charge Sierra Club Legal Defense Fund for any documents previously provided pursuant to Freedom of Information requests relating to BLM's regulation of mining in Alaska.

WHEREAS, upon being informed of the foregoing commitments by BLM, plaintiffs have agreed that their Motion for Preliminary Injunction may be withdrawn,

WHEREAS, the parties are in agreement that this action should be handled as expeditiously as possible,

IT IS HEREBY STIPULATED that:

1. Plaintiffs' Motion for Preliminary Injunction is withdrawn without prejudice;

2. Plaintiffs and defendants shall follow the following briefing schedule:

By April 14, 1986 Plaintiffs shall file and serve their motion for summary judgment or partial summary judgment.

By April 14, 1986 Defendants shall serve their initial written discovery, if any, on plaintiffs.

By May 14, 1986 Defendants shall file and serve

their response to plaintiffs'
motion for summary judgment.

By May 14, 1986

Plaintiffs shall file and serve
their response to defendants'

Motion to Dismiss filed on March
12, 1986.

By May 30, 1986

Plaintiffs shall file their reply,
if any, to defendants' response to
plaintiffs' motion for summary
judgment.

By May 30, 1986

Defendants shall file and serve
their reply, if any, to plaintiffs'
response to defendants' Motion to
Dismiss.

3. That any party may move to modify or extend
any date in the foregoing briefing schedule for good cause,
including discovery responses which do not permit adequate
briefing of the motion for summary judgment or motion to
dismiss.

4. Plaintiffs shall not, in their motion for
summary judgment, seek injunctive relief to be effective for
the 1986 Alaska mining season.

DATED: April 4, 1986

Respectfully submitted,
*Dean K. Dunsmore on telephonic
authorization for*
PHILIP BARNETT

Attorney for Plaintiffs

DATED: 4 April 1986

Dean K. Dunsmore
DEAN K. DUNSMORE

Attorney for Federal Defendants

IT IS SO ORDERED this _____ day of _____, 1986
at Anchorage, Alaska.

U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 1986, a copy of the foregoing STIPULATION was served by United States mail, first class, postage paid, to the following counsel of record:

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