

HJR

70

H/C

**HOUSE
COMMITTEE REPORT**

(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
- _____ 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 M.W. Miller

Pearce Rue Pearce

Edelheid Herrmann, Do Not Pass
Herrmann Needs to be updated

Kay Wallis needs to be
Wallis rewritten

Dick Shultz
Co-Chairman Shultz

ALEX SHADURA

PRESENTATION BEFORE THE
JOINT HOUSE AND SENATE FINANCE SUBCOMMITTEE
FEBRUARY 27, 1986

I AM HERE BEFORE YOU TODAY BECAUSE I AM DISTRESSED AND CONCERNED WITH THE DIRECTION THE STATE IS TAKING WITH REGARD TO ECONOMIC DEVELOPMENT.

ECONOMIC GROWTH REQUIRES INVESTMENT IN THE FUTURE.

CONTINUED ECONOMIC GROWTH IS ESSENTIAL FOR THE WELL-BEING OF THE STATE OF ALASKA AND ITS PEOPLE. WE HAVE ALL THE BASIC RESOURCES NECESSARY FOR ECONOMIC GROWTH AND THERE IS NO REASON WHY ALASKA CANNOT SUSTAIN ITS GROWTH HAVING ALL THE INGREDIENTS AND ESSENTIALS.- IN ORDER FOR RESOURCES TO BE DEVELOPED TO SUSTAIN ECONOMIC GROWTH, THEY MUST BE NURTURED AND SOMETIMES INJECTED WITH A STIMULANT. THE STIMULUS CAN BE FROM A DISCOVERY THROUGH RESEARCH. RESEARCH AND ENHANCEMENT ARE ESSENTIAL TO RESOURCE DEVELOPMENT.

BEING A CONCERNED AND DEDICATED CITIZEN OF ALASKA, MY INTERESTS ARE WIDE-SCOPED. FISHERIES PRODUCTS PROCESSING, MARKETING, FARMING OF BOTH LAND AND SEA, RURAL DEVELOPMENT, MINING, CONSTRUCTION, URBAN DEVELOPMENT, ALASKA NATIVES' AFFAIRS, HEALTH AND SOCIAL PROBLEMS, INCLUDING DRUG AND ALCOHOL - I HAVE BEEN INVOLVED IN ALL.

MY CONCERN TODAY IS WITH THE REDUCED EFFORT OF THE STATE TO SUSTAIN A CONTINUED RESEARCH AND ENHANCEMENT PROGRAM FOR OUR FISHERIES. I UNDERSTAND THE BUDGET CONSTRAINTS AND CONTINUED PRESSURE TO REDUCE COST OF GOVERNMENT. THE UNCERTAINTY BECAUSE

OF OUR DEPENDENCY ON A RESOURCE IN WHICH THE STATE OF ALASKA HAS LIMITED CONTROL.

I NEED NOT REMIND YOU THAT THE FISHING INDUSTRY FOR MANY YEARS WAS THE PRINCIPAL INDUSTRY IN ALASKA, AND MANY YEARS HENCE IT PROBABLY WILL BE AGAIN IN THE NUMBER ONE POSITION. I HAVE RECENTLY HEARD MANY ACCOLADES ABOUT THIS INDUSTRY THAT IT IS THE SECOND LARGEST INDUSTRY OF THE STATE WITH A VALUE OF 700 MILLION DOLLARS TO THE ECONOMY. THE FISHING INDUSTRY ALSO EMPLOYS MORE PEOPLE THAN ANY OTHER INDUSTRY IN ALASKA AND MANY COMMUNITIES ARE IMPACTED AND DEPENDENT ON THIS INDUSTRY.

WHY THEN, WHEN A SYSTEM IS FUNCTIONING WELL AND PROGRESSIVELY IMPROVING, DOES IT HAVE TO BE INTERFERED OR TAMPERED WITH? ISN'T THERE AN AXIOM: TO LEAVE THINGS THAT ARE GOING WELL - LEAVE WELL ENOUGH ALONE."

THE FISHERIES RESOURCE IS HEALTHY TODAY BECAUSE MANY PEOPLE DURING THE EARLY DAYS OF STATEHOOD MADE GREAT EFFORTS. THEY WORKED HARD TO IMPROVE AND ENHANCE THE RESOURCE BY WHATEVER MEANS NECESSARY.

FIRST, THEY CONCENTRATED ON BRINGING TO OUR STATE GOVERNMENT HIGHLY QUALIFIED FISHERY MANAGERS AND SCIENTISTS TO DEVELOP A RESEARCH AND MANAGEMENT PLAN FOR THE RESOURCE. PARALLEL TO THIS WERE THE CITIZENS WHO SAW WHAT HAD TO BE DONE AND THEN DID IT, EVEN TO THE POINT OF PERSONAL SACRIFICE.

TOGETHER WITH SENATOR FRANK PERATROVICH (SECOND PRESIDENT OF THE STATE SENATE), SENATOR OWENS OF KODIAK, MR. DEGNAN OF UNALAKLEET, I SAT ON THE FISHERIES COMMITTEE OF THE FIRST

DEMOCRATIC STATE CONVENTION HELD IN NOME IN 1960. WE WROTE A NUMBER OF RESOLUTIONS WHICH I WAS PRIVILEGED TO PRESENT TO THE CONVENTION. THE PRIME RESOLUTION WAS TO DEVELOP A RESEARCH AND ENHANCEMENT PROGRAM FOR OUR FISHERIES. SINCE THAT TIME, I HAVE SAT TOGETHER WITH JOHN WIESE OF CORDOVA AND OTHERS ON A NUMBER OF SUCH COMMITTEES AND THERE WAS ALWAYS A RESOLUTION FOR THE RESEARCH AND ENHANCEMENT OF OUR FISHERIES.

WE ALSO RECEIVED HELP THROUGH VARIOUS CONGRESSIONAL LEADERS WHERE A SIMILAR PROGRAM WAS INVOKED IN THE U.S. CONGRESS. ALASKA FISHERIES WERE BLESSED BY THE SUPPORT OF SENATORS SALTONSTALL, JOHN KENNEDY, BOB BARTLETT, ERNEST GRUENING, MIKE GRAVEL, TED STEVENS, "SCOOP" JACKSON, WARREN MAGNUSON AND REPRESENTATIVE RALPH RIVERS. SENATOR MAGNUSON OF THE STATE OF WASHINGTON WAS A REAL FRIEND OF THE ALASKA FISHING INDUSTRY.

IN ORDER TO ACCOMPLISH WHAT WE WERE ADVOCATING REQUIRED FUNDING. SINCE ONLY LIMITED REVENUE WAS AVAILABLE THROUGH OIL REVENUE AND OTHER SOURCES, FUNDING THROUGH BONDING WAS ENACTED. DURING THE EGAN ADMINISTRATION THE ISSUE OF FISHERY RESEARCH AND ENHANCEMENT WAS PLACED ON THE BALLOT AND THE VOTE WAS HEAVILY FOR ENACTMENT. PARALLEL TO THIS WAS A PROGRAM INTRODUCED BY OUR CONGRESSIONAL DELEGATION WITH THE SUPPORT OF THE OREGON AND WASHINGTON SENATORS FOR FISHERIES RESEARCH AND ENHANCEMENT.

THESE WERE THE FUNDING SOURCES THAT HELPED OUR FISHERIES INDUSTRY DEVELOP TO A 700 MILLION DOLLAR INDUSTRY.

WE CANNOT UNDO THIS GREAT EFFORT BY SO MANY, IN THE DESIRE TO PROMOTE A SAVINGS ACCOUNT AND DIVIDEND PROGRAM. WE

MUST CONSIDER ALL THE ASPECTS OF OUR PRESENT AND FUTURE WELL-BEING. WHAT IS NECESSARY TO HOLD FOR A RAINY DAY, IF AND WHEN OUR STATE INCOME FALTERS? SHOULD WE SALT IT ALL AWAY SO THAT IT IS UNAVAILABLE NOW, OR SHOULD WE USE SOME OF IT FOR FURTHER DEVELOPMENT OF OUR RESOURCES WHICH WILL ULTIMATELY LEAD TO FUTURE ECONOMIC GROWTH.

I MAINTAIN THAT SUCH A USE OF STATE INCOME MAY BRING EQUAL OR HIGHER RETURN THAN ANY INTEREST FROM STOCKS OR BONDS.

PROGRAMS IN LIMNOLOGY AND LAKE FERTILIZATION SHOULD BE CONTINUED. TO BREAK THE CONTINUITY WOULD LEAVE A VACUUM IN THE ENHANCEMENT PROGRAM. OTHER ENHANCEMENT PROGRAMS SUCH AS THE ONES AT PORT GRAHAM, ENGLISH BAY, DESIRE LAKE AND PAINT RIVER SHOULD BE GIVEN CONSIDERATION AND BE INCLUDED IN THE APPROPRIATIONS OF THIS FOURTEENTH LEGISLATURE. ANY INVESTMENTS INTO THESE PROGRAMS WOULD BE RETURNED MANY FOLD AND IN ADDITION WOULD PROVIDE FISHING OPPORTUNITY FOR COMMERCIAL, SPORTS, AND SUBSISTENCE FISHERIES IN THE LOWER COOK INLET.

I AM ASKING THAT THE REDUCTIONS TO THE F.R.E.D. (FISHERIES RESEARCH AND ENHANCEMENT) DIVISION BE RECONSIDERED BY THE DIRECTOR OF F.R.E.D. AND THE COMMISSIONER OF THE ALASKA DEPARTMENT OF FISH AND GAME. THESE PROGRAMS ARE ESSENTIAL TO THE CONTINUING DEVELOPMENT AND PROGRESS OF THE FISHING INDUSTRY.

I WISH TO THANK THE MEMBERS OF THIS COMMITTEE FOR LISTENING TO MY PLEA.

**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						
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REVENUE						
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FUNDING : (Thousands of Dollars)

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

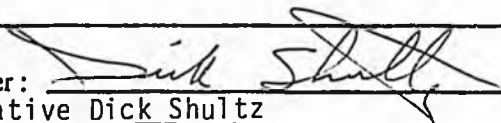
POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : House Resources Committee Staff
 Division : _____

Phone : 465-3715
 Date : _____

Approved by Commissioner : 
 Agency : Representative Dick Shultz

Date : April 9, 1986

Distribution (by Agency preparing fiscal note):

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

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REGINA R. BELT
Land and Natural Resources Division
Department of Justice
Room F-249, Mail Box 69
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Anchorage, Alaska 99513-0067
(907) 271-5452

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;

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 informs 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 per 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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