

Senator Don Bennett  
April 22, 1985  
Page 2

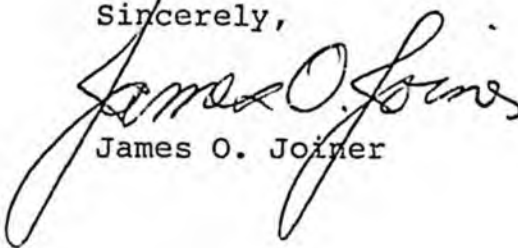
This is a simple change and should meet with very little resistance as this will not allow the State to charge, only private operators.

I would appreciate your response to this proposal and hope you can find the opportunity to do something with this during the present session.

If additional information is needed, please do not hesitate to contact me.

Thank you for taking the time to read and consider this proposal. Also, enclosed per your request, is a copy of planned development and operation of the Chena Wayside Campground.

Sincerely,

A handwritten signature in cursive script that reads "James O. Joiner". The signature is written in dark ink and is positioned above the printed name.

James O. Joiner

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# Alaska State Legislature

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POUCH V  
JUNEAU, ALASKA 99811  
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## Senate Committee on Resources

MEMORANDUM

April 1, 1985

TO: Senate Resource Committee Members

FROM: Senate Resource Committee Staff *MSL*

RE: Senate CS for CS for HB 273 (Resources)  
"An Act relating to extralateral rights of federal lode  
mining claims; and providing for an effective date"

The doctrine of extralateral rights was first codified under federal law in the Federal Mining Law of 1872. It provides that the owner of a federal lode mining claims is entitled to follow a vein downward outside the vertical boundaries of his claim if the top or apex of the vein is within his claim.

The doctrine only relates to the title to the minerals contained in the specific vein. It does not entitle the owner to any surface use outside his claim, does not relieve the owner from obtaining all the necessary permits required by law before conducting operations, and does not apply to placer claims.

Extralateral rights are clearly applicable to all uplands in the United States, including Alaska. The law is not clear, however, on whether the doctrine applies to lands underneath navigable waters, such as tidelands and submerged lands.

The purpose of the proposed legislation is to clarify the law in Alaska and confirm that owners of federal lode mining claims located prior to statehood, are entitled to extralateral rights under shorelands, tidelands, and submerged lands. This will ensure that the owners of such claims have secure title to these deposits so that they may obtain development financing.

The principal areas in the State which will be affected by this legislation are Southeast and Prince William Sound, although the legislation will also have some impact on the Interior and other regions where veins may trend under bodies of navigable water.

The proposed Senate CS would replace the house bill's language with wording from SB 237 plus an immediate effective date. SB 237 is an extralateral rights companion bill that this committee introduced and it is believed to possess slightly superior wording. A letter in this packet from Legislative Counsel speaks to this issue.

Also in this packet, is a zero fiscal note from the Department of Natural Resources; the section of federal law dealing with extralateral rights; a five page discussion of extralateral rights furnished by supporters of the bill; and, the relevant section of a 1901 court case that is the only known court case to deal with this issue.

CS HB 273 (Resources) passed the House this past Thursday with forty votes.

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY


POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

March 28, 1985

SUBJECT: Extralateral rights  
(CSHB 273 (Resources))

TO: Senator Arliss Sturgulewski  
Chair, Senate Resources Committee

FROM: Randall J. Moen   
Legislative Counsel

Upon review of CSHB 273 (Resources) I recommend deleting from page 1, line 15 the following phrase: "subject to AS 38.05.275". This is necessary because AS 38.05.275 applies only to mining locations made on state land and CSHB 273 (Resources) applies only to mining locations on federal land.

RJM:ojb  
J13/033

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

*DS*

Revision Date: \_\_\_\_\_

**REQUEST**  
 Bill/Resolution No.: CS (RES) HB 273  
 Title: Extralateral rights of lode mining claims  
 Sponsor: Duncan  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**  
 Agency Affected: Natural Resources  
 Program Category Affected: NRMEC  
 BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400  
 Division: Commissioner's Office Date: March 13, 1985  
 Approved by Commissioner: William D. Arnold Deputy Date: March 13, 1985  
 Agency: Natural Resources

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

FEDERAL LAW REGARDING  
EXTRA-LATERAL RIGHTS

30 USC § 26

**§ 26. Locators' rights of possession and enjoyment**

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

R.S. § 2322.

Purpose and Effect of Proposed  
Extralateral Rights Legislation

SUMMARY

The purpose of the proposed extralateral rights legislation is to clarify the law in Alaska and confirm that the owners of federal lode mining claims located prior to statehood may pursue their extralateral rights into lands under navigable waters which are owned by the State ("submerged lands"). The effect of the proposed legislation will be to remove a potential cloud on the title to many lode claims located prior to statehood in Alaska, thereby facilitating additional private investment in the exploration and development of such claims.

DISCUSSION

Extralateral rights are the rights granted to the owner of a lode mining claim located under the federal mining laws to follow and mine any vein or lode the apex of which lies within the surface boundaries of his claim, notwithstanding that the down-dip course of the vein of lode may so far depart from the perpendicular as to extend into lands outside of and beyond the sidelines of his claim.

Not all federal mining claims are entitled to extralateral rights. Extralateral rights attach only to a lode deposit contained within an identifiable vein or lode structure having (1) a definite downward dip and (2) its apex within a properly located federal lode claim. Extralateral rights do not exist in connection with placer deposits, flat-lying lode deposits, or disseminated lode deposits not contained within an identifiable vein or lode structure.

It is important to note that the doctrine of extralateral rights relates only to the title to the minerals contained in the vein or lode structure. A claimowner who is entitled to extralateral rights is not entitled to use the surface of any lands outside his claim, nor is he relieved from obtaining all necessary permits required by law before conducting operations.

The current extralateral rights provision of the federal mining laws was enacted as part of the General Mining Law of 1872, and has been in effect for over 100 years. Even before this, the early mining laws and customs of England, Germany, France, Spain, and Mexico recognized extralateral rights in one form or another. Extralateral rights were also recognized in the miners' rules and customs adopted in California in the mid-1800's prior to the enactment of the federal mining laws. That Congress saw fit to recognize

extralateral rights when it enacted the General Mining Law of 1872 shows that Congress believed extralateral rights to be an important attribute of federal lode mining claims.

For the most part, the lode claims and mines which have utilized the doctrine of extralateral rights have been situated on federal land well removed from the coastlines and navigable rivers of our country. This especially has been the case in the Rocky Mountain states, where hardrock mines have been developed entirely on uplands. The applicability of the doctrine of extralateral rights on uplands is clear and not disputed.

In Alaska, many hardrock mines are situated immediately adjacent to navigable waters along Alaska's extensive coasts. The owners of these mines have consistently held and developed their claims with the understanding and belief that the federal mining laws afforded them extralateral rights, regardless of the direction their lode deposits may take in their downward course. Naturally, some of these lode deposits extend into submerged lands, and in the years prior to statehood a great deal of mining was conducted in Alaska under submerged lands by miners exercising their extralateral rights (e.g., Treadwell Mine at Juneau).

The good faith activities and beliefs of these claimowners notwithstanding, the law is unclear on whether extralateral rights can be asserted in submerged lands. In the only case addressing the issue, the Federal District Court for the Territory of Alaska stated that:

the law giving a party the right to follow all veins, the apices of which are within the limits of his claim, even outside of the sidelines thereof, (should) permit him to go below the waters of the sea in following such vein without trespassing any law of property existing in the United States.

Alaska United Gold Mine. Co. v. Barbridge, 1 Alaska 311, 329 (1901). This early lower court decision has not been overruled, but it is inadequate assurance of the current state of the law for any claimowner seeking to make a substantial investment in developing a mine where ownership of the valuable minerals may depend in part on the existence of extralateral rights.

The Legislature is in a position today to clarify this uncertainty in the Law because on January 3, 1959, title to all submerged lands in Alaska vested in the State. In 1960 the Legislature enacted similar legislation which confirmed and granted title to the surface of submerged lands to those persons who in good faith had occupied or developed the lands before statehood. AS 38.05.820 (1984). Now with lode mining

making a significant comeback in Alaska, the Legislature can enact a comparable law governing extralateral rights. By enacting the proposed legislation the State will recognize that the owners of federal lode mining claims located prior to statehood are entitled to extralateral rights under state-owned submerged lands.

The areas of the State which will be most affected by this legislation are Southeast and Prince William Sound, although the Interior and other regions of the State where veins or lodes may trend into submerged lands also may be affected if federal lode claims were located on the veins or lodes prior to statehood.

THE ALASKA GOLD MIN. CO. V. BARBRIDGE. 311

le 16, subd. C. C. A. also provides  
 that respondent docket in the Circuit Court  
 of Appeals and file a copy of the record any time  
 after the appeal has been docketed in the lower court and  
 have the same heard upon its merits. It would  
 enable the plaintiff in this cause to have determined the  
 question of the appeal's nature or order confirmed  
 of upon the failure of the appellants to perfect their appeal  
 within the 30 days. The attorneys who now seek to vacate  
 the order allowing the appeal have been the respondent's  
 attorneys since April 6th, and could have adopted the cor-  
 rect practice during the open season, but did not do so.  
 The reason for the cause has been regularly appealed to the  
 Circuit Court of Appeals, and the want of jurisdiction to  
 do so in this court is a very competent to overrule the motion to  
 vacate, and leave the respondent his remedy in the Cir-  
 cuit Court of Appeals. The motion to vacate is denied.

THE ALASKA GOLD MIN. CO. V. BARBRIDGE et al.

(First Division. Juneau. December Term, 1901.)

No. 49a.

1. TIDE LANDS—MINES AND MINING.

Lands lying below ordinary high tide on the shore of the ocean and arms of the sea in the District of Alaska are not subject to location under the mining laws of the United States.

2. MINES AND MINERALS—EVIDENCE—PATENT.

As a general rule the recitals in a mining patent are conclusive evidence of the extent and boundaries of the claim; other evidence may be admitted to determine the location of the monuments and boundaries called for by the patent.

3. INJUNCTION—TRESPASS.

One who, within the District of Alaska, trespasses upon the tide lands not subject to location under the mineral laws of the United States, may be enjoined from sinking shafts thereon, and

case, the court is compelled to the conclusion that the defendants should be restrained and enjoined from further continuing the sinking of their shaft, or further interfering in this behalf with the rights of the plaintiff.

It may be said in this connection that the situation of the parties plaintiff and defendant are not the same. The plaintiff has a lawful location, and, under the mining laws of the United States, a lawful right to pursue its vein on its dips beyond the side lines of its claim and wherever it may run; and while, as before observed, the lands below mean high tide are reserved from sale, it is believed that the law giving a party the right to follow all veins, the apices of which are within the limits of his claim, even outside of the side lines thereof, would permit him to go below the waters of the sea in following such vein, without trespassing any law of property existing in the United States.

The temporary injunction heretofore issued under the order of this court will therefore be made perpetual, and the plaintiffs are awarded their costs and disbursements.

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FOX, Administrator, et al. v. MACKAY et al.

(2d Circuit, Division, No. 10,000, December 10, 1901.)

No. 10,000.

1. ABATEMENT—ADMINISTRATOR—ADVERSE CLAIMS—PRIORITY.

Under section 2309, Rev. St. (U. S. Comp. St. 1901, p. 697), an action may be commenced by one party plaintiff against a suit defendant with or without abatement. The administrator can neither sue nor defend in an action of this character.

ADVERSE CLAIMS—ADVERSE CLAIMS—PUBLIC LANDS.

When an application is made to the United States Land Department for a patent to a mining claim and an adverse claim