

SR

||

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

2-23-87

MEMO

TO: SENATE JUDICIARY MEMBERS

FROM: Beth Kerttula, Staff Co-counsel

For your information: Richard I. Pegues, Director of Administrative Services, says that the cost for one hour of an attorney's time and over-head for the Department of Law to do Legal work is \$90.00.

For a seven and one-half hour work day the amount would equal \$675.00. For one week's worth of work the amount would equal \$3,375.00. For two week's worth of work the amount would equal \$6,750.00.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SR 11
Publish Date: _____

Revision Date: _____
Title: "Requesting the Governor to direct the filing of an amicus brief..."
Sponsor: Sen. Coghill
Requestor: Senate Judiciary Committee

Agency Affected: Department of Law
BRU: Legal Services

Components: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: Feb. 23, 1987

Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: Feb. 23, 1987

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SR 11

This resolution requests the Governor to direct the attorney general to file an amicus curiae brief on behalf of the state, in Sierra Club v. Bureau of Land Management, which is now before the United States Court of Appeals for the Ninth Circuit. Preparation and filing of the brief can be handled using existing staff and resources within one to two weeks time, once work begins.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Coghill

FROM: Resource Committee Staff

RE: Sierra Club vs. Bureau of Land Management

DATE: February 5, 1987

A handwritten signature in black ink, appearing to be "J. Coghill", written over the "FROM" and "RE" lines of the memorandum.

As per your request for further information regarding the status of recent development in this case, following U.S. District Court Judge James von der Heydt's ruling in this matter.

1. Yesterday, February 4, 1987, von der Heydt ruled on the Sierra Clubs motion for an injunction stopping mining activity while their appeal of his ruling (allowing mines affecting five acres or less to proceed under BLM present approval process) was heard by the Ninth Curcuit Court.

2. Sierra Club is still expected to ask the Ninth Curcuit for an injunction stopping mining until this court rules on the merits of their appeal.

3. The State of Alaska has two opportunities to file an Amicus Curiae brief. Mining interests and their legal council, James Burling with Pacific Legal Foundation, feel it is extremely important for the state to enter a position, in the form of an Amicus Curiae brief, now.

4. The first opportunity would be to file an Amicus Curiae on the motion for an injunction to shut down mining. This brief would have to be submitted to the court within the next two weeks. It should address the importance of mining to Alaska's Economy and the adverse impacts that would result to the to the state if mining was shut down.

5. The second opportunity would be to file an Amicus Curiae on the merits of the Sierra Clubs appeal. This brief would have to be filed within the next couple of months. If the brief described in 4 is not filed, this brief should address those points, as well as others presented in the appeal. Such as mining's historical significance, its compatibility with other resource uses in a multiple-use management scenario and the insignificance of mining activities impacts to the environment. There are probable other points but staff has not had the opportunity to review Sierra Clubs appeal brief yet.

6. The state is under no liability to become an intervenor in this case if it files Amicus Curiae motions. And in fact could file both motions, 4. and 5. if the administration was inclined to do so.

7. The parties to the Sierra Club vs. BLM et.al. lawsuit are:

Plaintiffs: 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

3 environmental organizations
5 native organizations

Defendants: Micheal 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. Rundberg, Acting District Manager of the
Fairbanks District Office of the Alaska
State Office of the BLM;
Wayne A. Boden, District Manager of the Anchorage District
Office of the Alaska State Office of the
BLM;
Department of the Interior; and
Bureau of Land Management.

Intervenors: Alaska Miners Association
Miners Advocacy Council
Resource Development Council
Joseph Vogler

8. The Sierra Clubs "Motion for Preliminary Injunction" filed February 18, 1986, ask the U.S. District Court for Alaska to "prohibit the federal defendants from taking the following actions:"

1. approving any mining operations on public lands in Alaska;
2. issuing long-term camping permits to miners in the Wild and Scenic River corridors;
3. approving any mining operations on any tributaries or streams which flow into the Minto Flats;

The complain further requested that the court "order the federal defendants to stay every mine on the public lands in Alaska, whether previously approved or not, until such time as the federal defendants complete the following reviews:"

1. an environmental assessment of the mine;
2. a comprehensive environmental impact statement analyzing cumulative impacts, on the rivers and tributaries of the wild river systems;
3. subsistence evaluations of the mines under title VIII of ANILCA;
4. and hold public hearings in relation to subsistence reviews under title VIII of ANILCA

The Memorandum in support of the requested injunction above, argues aesthetic, subsistence, and wildlife values are being adversely impacted. As well as claiming mines violate water quality and reclamation regulations. Basically they argue that while a mine is in operation a person should not know it is there, and the areas disturbed by the mines should be returned to "natural conditions" on an annual basis.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senator Coghill

FROM: Resource Committee Staff

RE: Progress of Sierra Club vs. Bureau of Land Management Lawsuit

DATE: February 4, 1987

As reported in the media recently, U.S. District Court Judge James von der Heydt has issued a ruling in this case, which favors the BLM and therefore is good news for the states mining industry.

Basically, von der Heydt's ruling says that the BLM is not required to perform environmental and subsistence studies on placer mining operations that disturb five acres or less, before allowing these types of mines to proceed. This ruling did not address whether the BLM must perform cumulative Environmental Impact Statements on Alaska's three Wild and Scenic rivers. But we should remember that the out come of this suit may have severe economic consequences for Alaskan placer miners.

Yesterday (February 3, 1987), we learned that the Sierra Club and the Native organizations which filed this lawsuit in '86 about this time, have appealed von der Heydt's decision to the U.S. Ninth Circuit Court. In the mean time, Sierra Club has asked the District Court to issue an injunction to stop all mining, while their appeal is heard by the Ninth Circuit.

Once again the environmentalists are asking the court in their appeal to remove a valuable segment of Alaska's economy, until their agenda is met. This agenda, according to materials published by the Sierra Club, includes stopping all strip mining in this state.

Memorandum
page 2
February 4, 1987

We expect that if Sierra Club does not receive their requested injunction on mining from the District Court, they will ask the Ninth Circuit Court to issue the injunction, as part of their appeal.

Although a panic atmosphere is likely to be experienced with in the mining community at this time, it would be prudent for this Administration, with the support of the Legislative bodies, to file an Amicus Curiae brief, regarding the States position on mining and the adverse impacts to our economy that would be realized if mining was stopped. This action should be taken immediately with the Ninth Circuit Court. An Amicus Curiae legal brief is basically a "friend of the court" action that interested parties, which are not directly named in a lawsuit, may use to notify the court of impacts that may result to them, through any actions the court may take.



Miners Advocacy Council

P.O. Box ⁷³⁸²⁴ ~~83909~~

Fairbanks, Alaska 99708?

February 10, 1987

Grace Schaible, Attorney General
State of Alaska, Dept. of Law
Room 412, State Capitol Bldg.
Pouch K
Juneau, Alaska 99801

FEB 17 1987

Re: Sierra Club v. BLM

Dear Attorney General Schaible:

The Miners Advocacy Council (MAC) would like to express our immediate concern for the lawsuit filed against BLM which seeks an immediate injunction against mining on BLM lands in Alaska. This lawsuit affects the entire Alaska mineral industry threatens its already struggling survival.

Most of Alaska's placer mining occurs on BLM lands. The injunction filed by the Sierra Club against the National Park Service caused active NFS mines to decline from 30 in 1985 to 1 in 1986. Gold production from these mines dropped 90 percent, and 175 jobs were lost according to state statistics. If similar results follow from the BLM injunction, most placer mining in Alaska will cease and venture capital for any Alaskan mineral exploration and development will dry up.

MAC hereby requests that the State of Alaska intervene on behalf of the defendant (BLM) to protect the State's interests from such environmental extremism. The State of Alaska and the BLM standing together would be a strong message. To stand idle and watch Alaska's BLM lands be stripped of their mineral development potential would demonstrate blatant complacency toward the ills of the mineral industry and those affected by declines in the mineral economy.

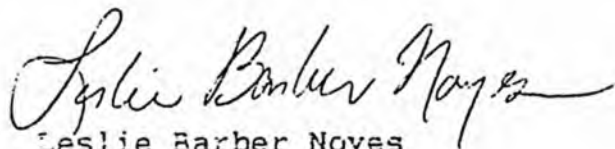
page 2

The Alaska Senate has already acted in response to this threatened injunction by passing a resolution (SR!!) asking for the Governor's participation.

Governor Cowper stated in a press conference today that you would be examining the Senate resolution. He said he would act to respond as needed--based on your conclusions. MAC would like to see the Cowper administration demonstrate a willingness to achieve positive policies toward mineral resource development by action now. We all know that if the Sierra Club wins a suit of this magnitude, such detrimental defeat could surely mark the "death" of mining in Alaska.

Please keep the Miners Advocacy Council immediately informed of your actions and decisions regarding this critical matter. Thank you.

Sincerely,



Leslie Barber Noyes
Executive Director

cc: Judy Brady, Commissioner DNR
Alaska Senator Jack Coghill
U.S. Senator Frank Murkowski

Sierra Club to re-appeal on mine study

The Sierra Club Legal Defense Fund has appealed its lawsuit seeking to have the Bureau of Land Management perform environmental assessments on small placer mining operations to the Ninth Circuit Court of Appeals in San Francisco.

Last Friday, U.S. District Court Judge James von der Heydt ruled that BLM was not required to do the assessments before allowing miners working five acres or less to proceed.

On Wednesday the Sierra Club

defense fund, representing a coalition of environmental and Native groups, suffered a second, and expected, setback when von der Heydt issued an order denying its motion for an injunction prohibiting any mining during the appeal process.

The lawsuit had argued that the BLM erred by failing to perform environmental assessments on each mining operation on federal land before allowing it to begin production.

Von der Heydt ruled that the BLM is not required to perform such studies on placer mining operations that disturb five acres or less. About 242 mining operations on federal land fall into that category, according to the BLM.

"Those mines are 80 percent of the mines BLM regulates," said

Philip Barnett, attorney for the defense fund. "They cause most of the damage."

"The denial by the district court (of the motion for injunction) is only to be expected," he said. "After all, he denied us on the merits (of the case) . . ."

Barnett said he probably will make the same request of the appeals court. "We'd like to see the review process in place for this summer. That's what we've been asking for all along," he said.

James Burling, attorney for the Pacific Legal Foundation, which has been involved in the litigation, said the appeal was expected, but not so soon after the initial decision. He said it appears Barnett will "do anything he can to get mining shut down before the 1987 season proceeds."

NEWSPAPER BUNDLES

For Sale

ONE to 9 BUNDLES

\$1.00
Per Bundle

10 to 19 BUNDLES

85¢
Per Bundle

20 to 25 BUNDLES

75¢
Per Bundle



\$200 rebate

We just made it easier to pick up a wood stove.

From now until February 16, you can walk into the dealer listed below, buy a Vermont Castings Stove, and get a rebate of \$200.

Snowmachine said to cause house fire

A snowmachine, brought inside to thaw out, caused a \$10,000 house fire early Wednesday morning.

According to the city fire inspector, the snowmachine was brought inside 1500 Aurora Drive and propped on its side in the furnace room. Although the owner didn't realize it, fuel leaked out of the snowmachine's tank and evaporated. When the furnace kicked on, it ignited the fumes.

The home is owned by Debbie Van Huezen.

The owner of a house that burned down in North Pole last month was jailed at Fairbanks Correctional Center, after fire officials discovered an outstanding felony warrant for his arrest.

Jessie Hasha was charged with being a fugitive from justice and is awaiting extradition to Texas.

According to state fire officials, the wood frame house at 587 Florence Road caught fire because an oil-fired, forced-air furnace was improperly installed on a plywood floor. The floor eventually ignited.

It was during the routine investigation of the fire that the warrant was discovered.

Black

tonight

The Fairbanks Month Committee the Eielson Air I History Month Co soring several ev

The first event Miss Black He tonight at 7 p.m. a theater. The cor Miss Black Hei several prizes reign at each of t Month activities A \$2 donation to College Scholar quested.

Friday and Satu plays about the l produced and dir sons, will be hel Schaible Auditor iversity of Alaska ets are \$10 for ad students. Money the Black History ward program..

The youth awa highlight scholas ing arts achiev young people. A t be given to juni school students w essay writing co show. The talent s for Feb. 16 at 7 p Fairbanks Comm awards presentat youth social will l iversity Feb. 28 at

New governor can help open mines again

News Miner 1/28/87

Guest Opinion

By ROGER C. BURGGRAF

According to the Alaska Department of Commerce and Economic Development, Alaska has the capacity for a \$1 billion mining industry, which would add several thousand jobs to the economy.

Yet, in 1986, Alaska's mining industry fell from \$270 million to \$231 million. In comparison, British Columbia's mining industry approached almost \$2 billion in 1986.

The mineral industry spent only \$8.9 million on Alaskan exploration—89.5 percent less than its 1981 high of \$76 million. In British Columbia, the industry spent \$100 million—24 percent more than last year.

The state Division of Mining and Geological and Geophysical Surveys reports that 1986 gold production in Alaska dropped 16 percent, 390 jobs were lost statewide, and 27 percent of Alaska's miners closed their doors. In the neighboring Yukon Territory, gold production rose 5 percent.

In Alaska's Interior alone:

- mine employment dropped 52 percent—from 750 jobs to 375;
- the number of active operations declined 39 percent, from 135 to 83;
- mine expenditures fell 53 percent, from \$27 million to \$12.6 million.

Rural Alaska lost many of those jobs. Thirty-five percent of the placer mining payroll goes to employees who live in rural Alaska. Mining was Nome's largest private-sector employer this year.

In past years, low metal prices could be blamed for declines. However, in 1986 metal prices were up while fuel costs and interest rates were down. The price of gold rose 25 percent.

State economic geologist Tom Bundtzen credited declines in mineral industry expenditures in Alaska to: (1) the dramatic reduction in sand and gravel production due to slumping construction and oil field development; and (2) the negative effects of several lawsuits and strict state water quality regulations on the placer mining industry.

Due to the Sierra Club vs. National Park Service lawsuit, active placer mining operations in national parks declined from 30 in 1985 to one in 1986.

The Sierra Club vs. Bureau of Land Management lawsuit dampened mining on BLM lands. Of the 88 active operations in the Circle Mining District in 1985, only 18 operated in 1986. Only 11 plan on mining in 1987—down from 91 in 1984. About 80 percent of Alaska's placer mining occurs on federal lands managed by the BLM.

The water quality lawsuit, filed against the state by the Miners Advocacy Council and joined by the Northern Alaska Environmental Center, seeks to address flaws in state procedures for promulgating

water quality standards. The state sandbagged resolution of this issue, refusing to grant an administrative hearing until after the lawsuit was filed.

Lawsuits drain industry funds from research, development, and exploration. They drain environmental funds that could be more productively used.

Alaska's former governor had the opportunity to intervene in these lawsuits and chose not to.

On Dec. 17, Nerco announced that its corporate headquarters will be moved from Fairbanks to Vancouver, Wash., leaving only its exploration office in Alaska.

Prior to this announcement, Nerco President Lonny Heiner gave a speech to the Fairbanks Rotary on the pros and cons of mineral development in Alaska. He said that although Nerco's corporate headquarters were in Alaska, its mines were elsewhere—and the company needed to have a mine in Alaska. Nerco has spent \$60 million on mineral exploration in Alaska but has yet to develop an operating mine here.

The "pros" Heiner saw to Alaska mine development were:

- the potential for discovering large, rich deposits in largely unexplored Alaska;
- the prices of metals are beginning a recovery;
- the costs of operating including fuel, labor and interest rates are down.

The "cons" he noted against Alaska mine development were:

- high capital costs;
- lack of existing transportation and infrastructure;
- lack of detailed geologic mapping;
- an industry-wide perception of a negative political and regulatory climate.

Heiner noted that mineral prices are recovering for Alaska's competitors as well—continuing to make it difficult to compete for investment capital.

To begin to address some of the problems with mining in Alaska, Heiner recommended a public education program to let the world mining industry know which of Alaska's perceived regulatory problems were real and which weren't. He recommended that the state set up trade booths at mining conventions, such as the Northwest Mining Convention.

This convention was most recently held in December and Alaska had a display there, provided and staffed by the Alaska Division of Minerals and Forest Products, Department of Commerce and Economic Development, and competed with booths from Montana, Idaho, Oregon, Washington, and British Columbia.

Alaska's display may be missing next year—if future budget and travel cuts are made—just as industry money is beginning to flow again.

Over 83 major mining companies have left Alaska since the early 1980s. Heiner pointed out that disinvestment by mining companies will

continue in Alaska until government policies change.

Our new governor and legislators have the power to create the political and regulatory environment where a billion dollar mining industry is possible.

Now is the opportune time for the state to:

1. Settle the water quality lawsuit and develop reasonable, attainable water quality standards for placer mining;
2. Intervene in the Park Service and BLM lawsuits;
3. Create an attractive political and regulatory environment for mining;
4. Support the efforts of the Department of Commerce and Economic Development to attract and promote mineral development in Alaska.

If water quality problems and the current lawsuits are not resolved, Alaska's placer mining industry will continue its rapid decline. If the regulatory and political climate has not changed, new investment in the exploration for mineral resources in Alaska will continue to shift to other states and countries where the risks are lower and the business climate more hospitable.

The future of a large segment of Alaska's mineral industry is at stake and the problems that confront us are problems that can be resolved through strong leadership from the governor's office.

Fairbanksan Roger Burggraf is president of the Alaska Placer Miners Association.

2/24/87

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-0862



GOOD AFTERNOON MR. CHAIRMAN AND FELLOW SENATORS THANK YOU FOR SCHEDULING MY RESOLUTION IN SUCH A TIMELY MANNER.

SENATE RESOLUTION 11, IS GOOD POLICY, I HOPE THE MEMORANDUMS WHICH HAVE BEEN SUPPLIED THIS COMMITTEE FROM MY OFFICE HAVE BEEN HELPFUL IN YOUR COMING TO THE SAME CONCLUSION.

AS YOU WILL NOTE IN MY MEMO, THE INTENT OF THIS RESOLUTION IS TO REMIND THE GOVERNOR THAT 80 PERCENT OF THE STATES MIKING INDUSTRY IS STILL IN JEOPARDY OF BEING ELIMINATED FROM OUR ECONOMY.

THE RESOLUTION ITSELF HAS A LOT OF ROOM TO BE MADE STRONGER, BUT I HOPE THIS GENTLE PROD WILL ENCOURAGE THE GOVERNOR TO TAKE THE INITIATIVE AND ADDRESS THE ISSUE RAISED HERE AGGRESSIVELY.

THE PROBLEM THIS RESOLUTION ADDRESSES IS WHAT OUR PEOPLE IN THE RESOURCE AGENCIES CALL ENVIRONMENTAL BANKS SHOT LITIGATION. THIS TYPE OF COURT ACTION IS NOT AIMED AT ANY ONE DEVELOPMENT OPERATION, IT TARGETS AN ENTIRE INDUSTRY INDIRECTLY BY TAKING A GOVERNMENT AGENCY TO TASK.

ALL TO OFTEN OVER THE PAST 10 OR 15 YEARS, THE ENVIRONMENTAL COMMUNITY HAS FILED SUIT AGAINST STATE OR FEDERAL AGENCIES, FOR FAILURE TO PROPERLY IMPLEMENT REGULATIONS OR OVER THE REGULATIONS THEMSELVES. IN MANY CASES THEIR CONCERNS WHERE

NOBLE AND SUPPORTABLE PUBLIC INTEREST ACTIONS. IN THIS CASE HOWEVER, THEY ARE SHOT GUNNING EVERY MINER ON BUREAU OF LAND MANAGEMENT LANDS, REGARDLESS OF GUILT.

THERE IS NO DOUBT THAT THERE ARE A FEW BAD APPLES IN THE MINING COMMUNITY, WHO PERHAPS DON'T FOLLOW OUR ENVIRONMENTAL LAWS OR PROPER ENGINEERING TECHNIQUES IN THEIR MINING OPERATIONS, BUT THIS IS NO REASON TO PENALIZE THOSE MINERS THAT DO FOLLOW THE RULES AND HAVE ENVIRONMENTALLY SOUND OPERATIONS. BUT SIERRA CLUB IS, ATTEMPTING TO ~~TO~~ STOP ALL MINING UNTIL THE NINTH CIRCUIT COURT RULES ON THEIR APPEAL. THIS IS DIRTY POOL. IF THEY TRUELY HAVE A PROBLEM WITH A SPECIFIC MINING OPERATION WHY DON'T THEY ADDRESS THAT PARTICULAR MINE, RATHER THAN SHOOTING A BANK SHOT THAT WILL IMPACT ALL MINING?

YOU MAY ASK, AS I DID, IF THERE IS ACTUALLY A POSSIBILITY THE COURT MIGHT GRANT SIERRA CLUB THEIR REQUESTED INJUNCTION? THE ANSWER TO THAT RESULTED IN THIS RESOLUTION. COURT HISTORY IN MATTERS OF THIS NATURE INDICATES THAT THE POSSIBILITY IS VERY REAL, UNLESS, THE STATE, AS A REPRESENTATIVE PUBLIC ENTITY, NOTIFIES THE COURT OF THE STATES INTEREST IN THE MATTER, AS OUTLINES IN THE RESOLUTION.

LET'S FACE IT, MINING CREATES NEW WEALTH FOR THE STATE, THROUGH THE HARVEST OF MINERAL RESOURCES. MINING CREATES

JOB, AND THESE PEOPLE PAY TAXES, PROPERTY TAXES, SALES TAXES, FUEL TAXES, INCOME TAXES, BUSINESS TAXES AND THE LIKE. MINERS HAVE CREATED ACCESS ROUTES TO MANY REGIONS OF OUR STATE, THERE BY IMPROVING THE VALUE OF STATE RESOURCES ALONG THESE ROUTES. SOME EVEN ARGUE THAT MINING ENHANCES WILDLIFE HABITAT AND IMPROVES SOME AGRICULTURAL OPPORTUNITIES, LIKE CREATING SUITABLE GRAZING TOPOGRAPHIES FOR LIVESTOCK BY REMOVING MUSKEG AND PERMAFROST.

MINING IS NOT INCOMPATIBLE WITH ALASKAN'S OR ALASKA'S ENVIRONMENT. MINERS ARE IMPROVING THEIR OPERATIONS AND THERE BY LESSENING ANY IMPACTS WHICH MAY OR MAY NOT DISAPPOINT US. IF ALLOWED TO CONTINUE TO IMPROVE THEIR OPERATING TECHNIQUES, I'M CONFIDENT THEY WILL SOLVE ALL THE ENVIRONMENTAL PROBLEMS TO THE SATISFACTION OF ALASKA'S ENVIRONMENTAL COMMUNITY.

I DON'T THINK IT IS NECESSARY FOR ME TO REMIND YOU OF OUR NEED TO DIVERSIFY OUR STATE WIDE ECONOMY, OR OF THE BLOW SIERRA CLUB'S EFFORTS WOULD INFLICT ON THIS ECONOMY IF MINING IS STOPPED. BUT I WOULD LIKE TO RETURN TO A COMMENT I MADE AT THE OUTSET OF MY REMARKS. NAMELY, THIS RESOLUTION COULD BE STRONGER.

WE COULD BE ASKING THE GOVERNOR TO INTERVENE ON BEHALF OF THE MINERS IN THIS CASE, OR TO FILE AN AMICUS BRIEF ON THE MERITS OF SIERRA CLUBS APPEAL, BOTH WOULD REQUIRE

SUBSTANTIALLY MORE TIME TO BE INVESTED BY THE DEPARTMENT OF LAW. BUT, I WOULD RATHER SEE THE GOVERNOR BE ALLOWED TO MAKE THAT DECISION. I THINK THE STATE'S INVESTMENT HOWEVER LARGE OR SMALL WILL BE INSIGNIFICANT IN COMPARISON TO WHAT THE STATE'S ECONOMY WILL LOSE IF SIERRA CLUB ULTIMATELY WINS THEIR APPEAL. BUT THIS RESOLUTION IS ONLY A REMINDER, THE ISSUE OF COURT ORDERED MINE CLOSURES IS STILL OUT THERE.

I HOPE MY INTENTIONS ARE CLEAR ON THIS RESOLUTION, AND THAT YOU WILL TAKE TIMELY ACTION TODAY. THE WINDOW OF OPPORTUNITY TO FILE A REPUTABLE BRIEF IS CLOSING RAPIDLY, AND THIS MEASURE HAS ONE MORE COMMITTEE TO GO THROUGH.

THANK YOU AGAIN FOR QUICKLY ADDRESSING THIS RESOLUTION MR. CHAIRMAN.

ANY QUESTIONS?

Comments made in Judiciary Feb. 24, 1987

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

TOM-FYI

February 25, 1987

United States Court of Appeals for
the Ninth Circuit
United States Court of Appeals &
Post Office Building
P.O. Box 547
Seventh & Mission Street
San Francisco, CA 94101

RE: Sierra Club, et al v. Penfold, et al,
No. A86-083 (D. Alaska Jan. 29, 1987)
(Order granting partial summary judgment),
appeal docketed, No. 87-3597 (9th Cir. February
12, 1987).

Gentlemen:

On February 12, 1987, the plaintiffs in the above-entitled litigation filed an appeal from the United States District Court's January 29, 1987 order which denied plaintiffs' motion for partial summary judgment. On February 17, 1987, plaintiffs also filed with this court a motion for injunctive relief pending appeal. The State of Alaska has not participated in this litigation. However, the state may wish to submit an amicus curiae brief pursuant to Fed. R. App. P. 29 at an appropriate time during appellate briefing.

Although the state is not a current participant in the litigation, the state wishes to share with the court and the parties the state's concern over the pending motion for injunctive relief. The state shares plaintiffs' legitimate desire to ensure adequate protection of Alaska's unique land and water resources. The state also recognizes that one must understand potential environmental harms before one can properly balance such harms against the need for economic development. Environmental assessments and environmental impact statements may provide one method to assess and understand such harms. However, the mining activities

February 25, 1987

plaintiffs seek to enjoin play a significant role in Alaska's economy. Alaska's current economic plight, caused by sharply reduced world oil prices, increases the importance of a viable placer mining mineral industry. In short, the state has a substantial interest in the continuance of placer mining operations in an environmentally responsible manner.

A blanket injunction against mining operations on Bureau of Land Management ("BLM") land would not serve the interest of Alaska and its citizens. The injunction would also penalize the individual miners for BLM's alleged legal errors. If BLM has misapplied federal law, the burden for BLM's mistakes should not fall solely on the individual miners.

During the 1986 mining season, while the district court action was pending, the state helped the various parties negotiate a compromise interim settlement agreement. The interim settlement agreement allowed mining to proceed during 1986, but also required BLM to institute comprehensive measures to assess and respond to environmental problems caused by placer mining.

If plaintiffs' position warrants injunctive relief, the state urges the court to fashion relief in a manner consistent with the 1986 interim settlement agreement. In the alternative, the court might request the parties to negotiate a revised interim agreement and to submit the revised agreement to the court for approval. As in 1986, the state stands ready to assist the parties in any such negotiations.

The State of Alaska appreciates the court's consideration of the views expressed in this letter. Copies of this letter have been mailed to all parties of record.

Sincerely,



Pete Jeans
Chief of Staff

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-0862



MEMORANDUM

TO: Senator Jay Kerttula
Chairman, Senate Judiciary Committee

FROM: Senator Coghill

RE: SR 11; Requesting the Governor to direct the filing of an amicus
brief in Sierra Club v. Bureau of Land Management to advise
the court of the state's position.

DATE: February 19, 1987

SR 11 is a clear, concise request of the Governor to follow through on some of the statements he made along the campaign trail. I realize the governor is a very busy man right now, so this resolution is primarily intended to be a reminder.

Although the resolution does not go as far as the mining community would like, namely full intervention in the lawsuit, it does address their primary concern - that the state support their legitimate position as a segment of our economy.

The state must take this opportunity to support, at no liability, an industry which has such deep roots in the history of the development of Alaska.

I have included with this memorandum, two others which were prepared by my staff before we filed this resolution. Also included is a letter from the Miners Advocacy Council, and two articles from the Fairbanks Daily News-Miner.

I strongly urge do pass recommendations.



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

February 27, 1987

Senator Jay Kerttula
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Senator Kerttula:

Recently a small delegation representing the Alaska Miners Association visited Juneau. We joined with the Alaska Truckers Association in hosting a brunch and did have an opportunity to meet and present our program to several legislators. We realize not everyone was in Juneau and also there were other commitments.

Since we prepared a briefing paper for our presentation I have enclosed it for your information.

Please do not hesitate to call me if you have questions or need to relay information to Alaska's miners.

Sincerely,

ALASKA MINERS ASSOCIATION

Curtis V. McVee
Executive Director

Encl: AMA Briefing Paper

Handwritten notes:
Hunt
file
on
Coyhill Pass
MAR 3 1987
Sent



ALASKA MINERS ASSOCIATION, INC.

ALASKA MINERS ASSOCIATION

BRIEFING PAPER

The Association:

- It represents over 1000 members who are miners, professionals, business people and support industries.
- It represents Hard Rock, Placer, Coal, Sand and Gravel as well as Recreational Miners.
- It was incorporated in 1939.
- It is a Statewide organization with five Branches located in Alaska's major communities.

The Association Goals Are:

- To increase access to mineralized lands.
- To reduce unreasonable constraints on mineral development.
- To increase public awareness of the importance of mineral development.
- To provide services to membership to assist them in their mining activities.
- To increase minerals production in Alaska with attendant revenues and jobs.

Current Status of Minerals Industry in Alaska:

- 85 Exploration companies have left the State or gone out business in the past few years. This represents about a 76 million dollar annual reduction in expenditures since 1981.
- In 1986 the Placer mining industry suffered a 27% decrease in the number of mines, a loss of 390 jobs and a 16% decrease in gold production.
- In contrast the placer gold production in the Yukon Territory set a new record.
- Nevada opened up 14 new mines in 1986 employing 1560 more people.
- Exploration activities in B.C. increased 24% in 1986 - 10 times greater than Alaska.
- Alaska with all it's mineral reserves ranks 41st among all the states in mineral production and 11th among the 15 Western states.
- Eight major projects now in the permitting stage together. with gravel production and a 60 million dollar per year placer industry could bring mineral gross sales to over one billion dollars annually by 1992.
- It is not unrealistic to anticipate a 2 - 3 billion dollar mineral industry in Alaska by the late 1990's.
- Mineral reserves in Alaska represents near 100 billions of dollars.



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- Alaska (not including offshore) encompasses 375 million acres - - 144 million acres of Federal land is closed to mineral entry - - 1.8 million acres of the States land is closed to mineral entry. Only 10% of the land open is considered favorable mineral terrains (24 million acres) - - only 7% of Alaska has been investigated for minerals in detail.

What has to be done:

- Improve the mineral investment climate in Alaska by stabilizing regulatory requirement and making the permit processes predictable and reduce duplication.
- Improve the international trading environment.
- Bring domestic cost structures in line with international realities. (Look as costs generated by unnecessary legal and regulatory requirements).
- Keep lands available for mineral exploration and development.

Legislation:

The Alaska Miners Association has some general as well as specific legislative priorities. The theme accompanying our legislative program is stability in laws and regulations effecting management of land and natural resources, reduction of duplication, realistic laws which balance between all uses, multiple use of State lands, and access to mineralized areas.

Specific proposals:

- Water Quality - State Legislation which establishes direction for realistic water quality guidelines considering current scientific knowledge, economics and achievable standards. We feel that a policy/guidance statement concerning water quality is necessary. The AMA recognizes that the State must comply with the Federal Clean Water Act but feel that to go farther than this must involve some consideration of scientific/technical capabilities as well as economic feasibility.
- Minerals Policy Act - Alaska needs to establish a policy/philosophy concerning mineral development. Outside financing and investment capital will only be available if State Government expresses a positive attitude about minerals development.

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The Policy Act will also serve as guidance to the Executive Branch of State Government. This legislation is the key to expanding the industry and diversification of the States economy through utilization of our mineral reserves.

- Coastal Zone Management -

This program designed to provide protection to the Coastal Zone had done two things which have the potential to restrict mineral development in a major way. First the boundaries of the coastal zone are being extended far inland based solely on the range of anadromous fish. Second, the local Coastal Policy Councils are functioning as another government entity and can assume veto power over any project. These actions could be economically detrimental to the local Borough Government, States and even National interests.

- Mineral Closures - AMA has taken a strong position against DNR or other land designations closing land to mineral entry unless there is a showing that closure is necessary first, to protect other values and current laws and regulations are not sufficient and second, there is an analysis of mineral values which could be foregone if closure is effected, third there is a competent analysis of the unmitigable impacts of a mineral development scenario.

- Mining License Tax - This authority originates from a 1959 Act. Regulations were finally issued in 1986 by the Department of Revenue. About \$400,000 worth of revenues are collected annually through this tax. Revenues are declining as production primarily of sand and gravel decreased in 1986. Operator's on the Kenai Peninsula report a 40 to 60% reduction in sales. The new regulation layer the tax with the pit operator, the processing company and in some instances even a third party being taxed on the same commodity. In addition the base for computing the tax is gross revenues, hence it is a form of income tax. This does not appear to be the intent of the original law. The Alaska Miners Association recommend that the the Legislature re-evaluate this law. As currently administered it has the potential to destroy many of the sand and gravel businesses, a very undesirable objective.