HB

99

(File 2)

Alaska State Legislature

Please enter into the record my testimony to the House Resources
committee name

committee on House Bill 99 , dated 1-27-'89 .
bill/subject

The Best Solution to the "6(i)" problem
To have that provision "6(i)" of the Statehood Act set-aside by Congress so the primary intent of the State Constitution and Alaska Statute Mining Law (based on the U.S. mining law of 1872) can continue. This basic system has worked very well for over 100 years and much of America's greatness and Alaska as we know it today is as a result of the basic concepts of Ownership embodied in the old Fed. + Ak. mining law.
I fear that if the basic American tenant of ownership is taken away + replaced with the more socialistic concept - that mining activity will decrease just when the state needs mining.

Signed: James H. Hansen.
Testifier

Representing (Optional)

Box 246, Nome Alaska 99762
Address

907--443-5425
Phone No.

1

Alaska State Legislature

Please enter into the record my testimony to the House Resources
committee name

committee on House Bill 99 , dated 1-26-89 .
bill/subject

If the mineral industry must try to bear with a leasing system, I hope it can be temporary until such time as Section "6(i)" can be modified. Until then: Every State Claim is worth Less to the Owner Under a leasing situation, either the Annual Labor Sec 38.05.210 or Annual Rental Sec 38.05.211 or Production Royalty 38.05.212 should be deleted. Do not have all three! It is unnecessary & unfair burden. If the Annual Rental is retained it should never go above $100/acre. 10 or more years is very common to hold & develop claims (for many reasons) and an excessive rental would make the claims less valuable & perhaps even force an owner to eventually drop the property after having spent much time, effort & money on exploration.

Signed: James H. Hansen
Testifier

Self.
Representing (Optional)

Box 246, Nome AK. 99762
Address

907-443-5425
Phone No.

2

3

Alaska State Legislature

Please enter into the record my testimony to the House Resources
committee name

committee on House Bill 99 , dated 1-26-89 .
bill/subject

Are these Lease rights transferable? (Sellable - Sub leaseable etc) I hope so.
Now the requirement for payment should fall on the Operator not on the original state lessee! - (If they are not one in the same) The operator may not for one reason or another be able to pay the production royalty to the state or make his payment to the original lease hold in which case the orig. lease hold is responsible to the State & could loose everything through the Abandonment Provision.
Now how much will he owe? - which claims how many etc? make the operator responsible.
Be aware of snowballing administrative costs. Also be careful lest we loose much of what so richly was & can be. Alaska

Signed: James H. Hansen
Testifier

Box 246 Nome Ak 99762
Representing (Optional)

Self
Address

907-443-5425
Phone No.

3

Alaska State Legislature

Please enter into the record my testimony to the House Resources committee name [redacted] committee on House Bill 99 bill/subject dated 1/27/88

I listened to your explanation on house bill 99 and was wondering why there couldn't be either a (production) royalty or a annual rental (not both) according to [illegible] "Section 61". Also I am not clear as to the royalty payments on claims that are not producing. Is it a minimum of $200.00 per claim or $200 per person who owns claims? Please give my congradulations to Richard Foster for resigning the resility of the

Signed: Marilyn Pushcar
Testifier

Marilyn + Jerry Pushcar
Representing (Optional)

Nome Alaska
Address

2754
Phone No.

(1)

Information Office

Alaska State Legislature

Please enter into the record my testimony to the House Resources committee name [redacted] committee on Senate Int 99 bill/subject, dated 1/26/88

situation) for the family operation and the small time) prospector that will be doomed to eventual extinction if this) bill becomes law. As a rural resident I am sure he realizes the potential damage absorbed by the struggling miner, opposed to his occasional visiting counterparts) from bigger areas who bruit passify special interest groups. The state obviously can not conduct its affairs without big business revenue but why must it do so at the) expense of the few remaining individuals) who chose to maintain) a lifestyle) that Alaskan tradition) and tourism is built around.

Signed: [redacted] Testifier

Representing (Optional)

Address

Phone No.

(2)

Legislative Information Office

TO: 1989 Alaska Legislature

FROM: Curtis J. Freeman, President
Fairbanks Exploration Inc.

DATE: January 31, 1989

SUBJECT: SB 129 and HS 99: Proposed 6i legislation.

On January 19 and 20, SB 129 and companion bill HB 99 were introduced to address the establishment of rental or royalty payments on certain mineral lands in Alaska. These bills were introduced at the request of Governor Cowper in response to the findings of the Alaska Supreme Court on the 6i lawsuit. Our firm has had considerable experience with foreign and domestic mining concerns who are interested in investing in Alaska's mineral resources. With this experience in mind, I have reviewed the proposed legislation and would like to offer my recommendations.

Alaska is an extremely risky place to explore for and develop mineral properties. This observation is not a perception, it is a fact. The 6i legislation as proposed would only increase that risk. Recent developments in Alaska exemplify the effect of excessive risk on mineral exploration and development: in 1988 one of the top ten US gold and silver producers pulled out of Alaska after nearly 20 years in the state. In another case, a world-class Alaskan mineral deposit which constitutes the largest deposit of its kind in North America was put up for sale in 1988 by its owners. What can cause such drastic action at a time when the rest of the free world is in the midst of a major mining boom? You can be certain that the extremely complex and expensive nature of Alaskan mining regulations played a significant role in the above decisions.

The proposed legislation pertaining to the 6i issue must be complemented for its focus and brevity. However, in order to comply with the directives of the Alaska Supreme Court while at the same time minimizing the negative effects of additional regulations, the following changes are recommended:

1. Under certain conditions in the U.S. mining industry, lessees or operators may be required by contract to pay nominal rental or advanced royalty payments to property owners prior to production. Once production is reached, production royalties replace rental or advance royalty payments. Furthermore, pre-production payments are usually deductible from production payments. I recommend that rental payments should cease when production begins and previously paid rental payments should be deductible from production royalties.

FAIRBANKS EXPLORATION INC.
P.O. Box 82549 • Fairbanks, Alaska 99708 • (907)479-7547

2. Rental or royalty rates should be established by statute and should be fixed at a flat rate for the life of the claim. Long-term planning can not be conducted unless such security is present. Please remember that many mineral properties are leased to corporations or individuals who must already pay advance royalties or production royalties to the claim owner. Additional royalties levied by the state must not impose an unreasonable burden on prospective development. I recommend a rental rate of not more than ten cents per acre and a net income production royalty of not more than one percent. Gross revenue royalties should not be considered under any circumstances due to the small profits which are common in the mining industry, particularly during initial production years.

3. If rental fees are assessed on mining lands, annual labor requirements on those lands should be eliminated entirely.

4. The question of whether reclamation requirements should be addressed in the proposed 6i legislation is outside the scope of the Supreme Court's ruling and should not be considered in any form by the legislature. This point aside, I think you should be made aware that representatives of Trustees for Alaska and the Northern Alaska Environmental Center presented false information to you when they testified that there are no reclamation requirements on mining activities conducted on state lands. The two principal permits which are required when ground disturbance is planned on state lands are the Miscellaneous Land Use Permit (MLUP) and the Annual Placer Mining Application (APMA). Both permits require stringent reclamation requirements on lode or placer projects prior to approval. If you have any doubts about this subject, I urge you to contact Mr. Judd Peterson or Mr. Bruce Campbell with the Division of Mining in Fairbanks. These gentlemen help miners fill out hundreds of APMA and MLUP applications each year.

5. A critical clause in 6i legislation pertains to lands which are mineral in character at the time of state selection. The proposed legislation intends to levy rental and royalty fees from all state lands. This is far beyond the intent of the Supreme Court's ruling and should be corrected by restricting rental or royalty payments to only those lands which were known to be mineral in character at the time of state selection. The Division of Geological and Geophysical Surveys and the Division of Mining should be directed to produce maps at an appropriate scale which outline those areas known to be mineral in character at the time of state selection. If a claim is within such an area, rent or royalty payments should be applied. The presently existing location system should be retained for all other claims on state ground.

6. Any new legislation passed to comply with the Supreme Court's directives concerning 6i should contain wording that repeals the Alaska Mining License Tax for any property which is found to be mineral in character at the time of state selection.

7. Any rental payment that is due the State should be payable within a reasonable amount of time after its due date without penalty to

the owner or lease-holder. Since exploration and production often are not completed until September or October of a given year, the claim owner or lessee should have ample time to analyze the current year's findings to determine whether a specific claim is worth retaining. Wording should be such that rental payments for the following year are due within 90 days after noon, on September 1 of the current year. This same wording already is in place for filing of annual labor documents.

8. Lines 15 through 17 on page 4 of SB129 should be eliminated. Ignoring the considerable expense of monitoring inventoried metals, it is not in the best interest of the state to assign a prevailing market value to unsold inventory since most unsold inventory is stockpiled because of unfavorably low metal prices. The wording in SB129 would force the state to accept lower production royalties while at the same time interferring in the internal marketing prerogatives of private industry. Production royalties should be calculated based on the actual sale price at the time metals are sold.

I urge you to consider the impact of this legislation carefully, not only from a simple monetary standpoint, but from a public relations standpoint as well. Many potential investors are monitoring the progress of mineral exploration and development in Alaska, including the evolution of the regulatory environment in the state. Since Alaska's mineral industry must compete in a world economy, we must be careful not to send the wrong signals at a time when Alaska is just beginning to recover from a prolonged metals slump. If you believe that Alaska should encourage the responsible development of its natural resources, as our statehood act dictates, then please incorporate the changes I have recommended above. If I can be of further assistance as you formulate this legislation, please contact me.

xc: Governor Cowper
Commissioner Boston-Gorsuch

FAIRBANKS EXPLORATION INC.
P.O. Box 82549 • Fairbanks, Alaska 99708 • (907)479-7547

SB129/HB 99 RENTS AND ROYALTY PAYMENTS FOR MINING CLAIMS ON STATE LANDS

SB 129 Public Testimony - Monday, Jan. 30, 1989 - Anchorage
HB 99 Public Testimony - Friday, Feb. 3, 1989 - Anchorage

Good afternoon chairmen and members of the Senate/House Resource Committee and thank you for providing me the opportunity to comment on SB129/HB99.

My name is **Kevin Adler,** and my address is **11976 Wilderness Drive, Anchorage, AK 99516.** I am a minerals consultant (mining engineer) and am employed by ON-LINE EXPLORATION SERVICES, INC.; a family owned Alaskan consulting firm. For the past ten years, I have been active in the exploration and development of mineral resources in the state of Alaska. The following are my personal observations and comments:

In the recent past, Alaska has seen an increase in mining development with the Red Dog operation slated for production in 1990, Greens Creek in a month or so, the Bima dredge at Nome, and the Valdez Creek Mine, to list the new operations. None of these projects are operating on lands effected by this legislation and aside from a few small placer mines, the only major producer on state lands at this time, to my knowledge, is the Grant Mine cutside of Fairbanks; although considerable exploration is currently being conducted.

The state of Alaska has entitlement to 104 million acres and the Division of Mining has reported that some 90% of this land is open to mineral location. Lands that can provide wealth and jobs to the citizens of Alaska as the state constitution provides.

Most of you on this committee have been involved and have followed the developments at Red Dog and Greens Creek over the past three years. The increase in jobs because of these operations have provided positive impacts to the Kotzebue and Juneau areas. The returns to the state from these operations come from many areas including, payroll taxes, corporate income taxes, projected mining license taxes, and the reduction of social services to a region. A few more of these operations in other depressed portions of Alaska is what is needed to help diversify and stabilize our current economy.

In 1982, the Alaska Department of Commerce and Economic Development compared Alaska's mineral taxation with eleven other mineral producing states. The comparison did not take into account the higher costs of doing business in Alaska. These additional costs are due in part to the colder climate, remote location, higher wages, and the lack of infrastructure. Without the higher costs of doing business in Alaska, the report indicated the Alaska mineral tax burden is average when compared with the eleven other mineral producing states.

mineral tax burden is average when compared with the eleven other mineral producing states.

In reviewing this legislation there are three areas that can be measured as having a direct impact on the mining industry. First, the direct costs to locate a mineral claim will go up son 10% at a minimum through the rental costs being based on an advance payment basis; Second, the rental fees raises the yearly maintenance fee on mineral claims for the miner; and third, the 3% royalty on net income is truly and additional tax.

The special tax currently levied on the mining industry, the mining license tax, already is an extra tax above what most other industries must pay in Alaska. It is not paid in lieu of corporate income tax, property tax, unemployment tax and other state and local taxes; it is paid in addition to these already significant taxes. The current corporate income tax alone in Alaska is higher than for nearly all states that has mining as an economic base. The current rate of special taxation (essentially 7% of net income for larger operations) is high. To add another 3% to this as is proposed by this legislation is to have a total tax of 10% on net income for the right to work on state lands.

At this time, Alaska is experiencing a resurgence on not only the projects discussed previously, but also in mineral exploration and property developments. In Juneau alone, you are seeing the A-J Mine and the Kensington Mine developments along with other properties moving ahead.

The state of Alaska's Alaska Mineral Industry Report for 1988 has yet to be published but a good guess is that the dollars expended by this segment of the industry will more than double that of 1987. A good sign that the industry as a whole is beginning to believe in the state of Alaska for investment.

These exploration and development expenditures alone, represent a lot of jobs and economic benefits for Alaskan's. Also, this exploration effort locates new mines like the Greens Creek and Red Dogs that add even more benefits to Alaskans.

The length of time for a mineral deposit to go from exploration to development typically is longer than ten years and will often exceed twenty years. The Greens Creek deposit was initially discovered in the early 1970's and is just now reaching the productions stage. During exploration only a small percentage of lands are actually disturbed.

The impression I perceive from earlier testimony is that the miners are using all of the lands covered by their mining claims. While the mining claim reserves the miners right to develop their mineral discovery, these lands are still available for public use. Forestry, hunting, fishing, trapping, and recreational uses come

immediately to mind. This is a multiple use concept that the mining industry has always endorsed. These uses are often extended through the mining phase of a deposit. An underground mine uses only a small percentage of the surface lands for operational infrastructure. For example, the Homestake mine at Lead, South Dakota has operated for over 100 years supporting the economic base of the surrounding communities while these communities have expanded around the mine.

In summary, this legislation needs to provide a clear answer to the courts mandate with out placing additional burdensome taxation on the industry. In effect, SB129/HB99 would place Alaska above average in terms of total taxation if the state report is the base of comparison. If a mining industry is desired for Alaska, caution is given in developing rents and royalties that are too high.

I thank you for providing me the opportunity to give these comments on this legislation.

Kevin P. Adler

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802 907-586-2345

Representative Bill Hudson
P.O. Box V
Juneau Alaska 99811

7 February, 1989

Dear Representative Hudson-

I was not well prepared to answer your questions concerning reclamation during my testimony at the House Resources Committee hearing Friday, February 2. I would like to take this opportunity to respond with more detail here.

What will have to be done to effectively reclaim land? Topsoil must be returned to promote vegetation, settling ponds drained, stream channels reestablished to allow unobstructed flow, and equipment and debris removed from mining sites. Many miners fail to mix leftover coarse with leftover fine materials, though this practice would go a long way in speeding up soil formation. A number of different kinds of petroleum products are used in mining operations and any spills or leakage of these should be cleaned up; likewise for any other solid or liquid wastes.

Many miners have already proven that they can successfully and affordably reclaim mining lands. Some have developed operations that use 100% recycled water, while others have developed methods that use only a scant amount of water. Such practices must be recognized and encouraged. But statutory reclamation language is still needed to guarantee that the land will retain its multiple use capacity after mining is complete.

For more specific information on how mining operations have significantly effected stream and land-use quality I would refer you to a draft report on nonpoint source pollution prepared by ADF&G for DEC. I have enclosed a copy of the executive summary of that report.

I have enjoyed working with the Resource Committee on this issue, but regret that my month as a volunteer lobbyist is over and I will be going home soon. I hope that all the groups involved may continue the dialog begun in the teleconference hearings and that such dialog will ultimately result in a rent, royalty, and reclamation program acceptable and affordable to all.

Sincerely,

Claire Holland

Volunteer Lobbyist
Home address: P.O. Box 53
Delta, AK 99737

cc: House Resource Comm.
Members

From: "Nonpoint-Source Pollution Related to Placer Mining: Impacts, Existing Management, Data Gaps, and Recommendations"
Prepared for the Department of Environmental Conservation by ADF&G, 12/88

EXECUTIVE SUMMARY

This report has been prepared by the Alaska Department of Fish and Game under a Reimbursable Services Agreement with the Alaska Department of Environmental Conservation as part of the latter department's efforts to develop a management plan for controlling nonpoint-source pollution in Alaska as mandated by recent (1987) amendments to the Clean Water Act (Section 319). The Act requires the states to submit their plans, including implementation schedules, to the Environmental Protection Agency for approval. Placer mining is one of the major categories of nonpoint-source pollution to be addressed by Alaska's management plan.

Placer mining has affected water quality on more than 3,000 kilometers of Alaska's streams and rivers to the extent that they are not supporting designated uses (ADEC 1986a). The effects of mining on water quality and fish and wildlife resources are caused by waterborne particulates and trace elements (metals) contained in mine effluent. These substances modify aquatic physical environments, reduce productivity of aquatic communities, and reduce or eliminate aquatic species through a variety of mechanisms. Waterborne particulates, and perhaps trace elements, are generated by nonpoint sources as well as point sources related to placer mining.

Point sources are defined in the federal Clean Water Act (33 U.S.C. 1251 et seq.) to include "any discernible, confined and discrete conveyance, . . . from which pollutants are or may be discharged." Nonpoint sources comprise the remaining pollutant discharges, usually area-wide or plant-site runoff and often associated with stormwater discharges. Placer mines normally discharge process water and thus are regulated as point sources. In addition, placer mining often produces expanses of highly disturbed terrain and highly altered stream channels that, if not properly rehabilitated, constitute nonpoint sources of pollution, which may persist for periods in excess of 20 years (Singleton et al. 1978).

Four categories of nonpoint-source pollution are related to placer mining in decreasing order of importance: erosion of abandoned settling ponds, overburden piles, and fine tailings by stream flow; resuspension of point-source deposits; erosion of destabilized stream channels; and surface runoff from disturbed terrain. Storms and consequent high flows increase the magnitude of these sources. Mining-related nonpoint sources are difficult to manage because they occupy large areas, are diffuse in nature, and no person or entity is necessarily responsible for implementing controls on a given site.

Federal programs for managing mining-related pollution include the Clean Water Act (National Pollutant Discharge Elimination System - NPDES - permits and Section 319 nonpoint-source management plans), Bureau of Land Management regulations governing surface management and mine reclamation, U.S. Army Corps of Engineers Section 404 permits (dredge and fill) for mining in wetlands, U.S. Forest Service requirements for compliance with forest management plans, and National Park Service regulations governing mining and mine reclamation within the National Park System. State programs for managing mining-related pollution include the Alaska Water Quality Standards administered by the Department of Environmental Conservation, fish habitat permits issued by the Department of Fish and Game, Department of Natural Resources regulations governing miscellaneous land use and leaseholds, Department of Environmental Conservation certification

Department of Environmental Conservation; (2) revise existing Department of Environmental Conservation regulations to cover nonpoint sources related to mining; and (3) strengthen NPDES, Section 404, Department of Fish and Game, and Department of Natural Resources permits for controlling nonpoint-source pollution.

In terms of procedural mechanisms and management practices, we recommend that state agencies take the following actions to control mining-related nonpoint sources: (1) implement improved point-source controls to eliminate resuspension of point-source deposits as a source of nonpoint pollution, (2) emphasize rehabilitation of stream channels and floodplains as the primary nonpoint-source control, and (3) provide improved field enforcement of permit requirements. These actions are important and should be pursued independently of other recommendations in this report.

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office - (907) 452-4448 Fax - (907) 456-3348

TO: Anne FAX: _____ PHONE: _____

FROM: Roger Burggraf PHONE: _____

INSTRUCTIONS: For Senate & House Resources: Written Testimony

Senators: Fahrenkamp, Kerttula, Eliason, Frank, Halford, Stevens, Zharoff

Repo: Davidson, Menard, Jacko, M. Davis, Foster, Navarre, Furnace, Hudson, Sharp

RECEIVED: Date _____ Time _____

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NUMBER OF PAGES: 4 (Not counting cover sheet)

SENT BY: Anne

TESTIMONY 6-I SENATE RESOURCES COMMITTEE - SB-129
January 30, 1989

STATE HOUSE RESOURCES COMMITTEE-HB 99
February 3, 1989

Mr. and Madam Chairpersons:

I appreciate the opportunity to testify on the above bill today. I am Roger C. Burggraf, Mine property owner, mining consultant and miner, 830 Sheep Creek Rd., Fairbanks, AK 99709

1. I agree with the comments submitted by Earl Beistline, Chairman of the Minerals Commission.
2. Paul Glavinovich representing the Alaska Miners Associates, Inc.
3. Kevin Adler

SENATE BILL 129 and HB 9 represent a good stab at trying to work up legislation to resolve the court mandated decision. We in the industry have appreciated the opportunity to give input to the Division of Mining in its effort to develop legislation.

The basic approach taken by HB 99 has merit, but there are areas in the bill that I, as a mine property owner, and mining consultant disagree with.

The state's approach in the bill will tend to discourage mineral development on state land rather than encourage exploration and development on properties which will lead to production.

The point that the environmental community knows full well and the administration has not taken into consideration is that economics will dictate when a mine will go into production. The high rental rates and high royalties, combined with the existing mining license tax, will stop mining on state lands dead in its tracks if HB 99 is approved in its existing form. Some world class mines located on state land might be able

to operate under the high rentals and royalties proposed. Not all are world class mines, but can be productive, extracting minerals, providing needed jobs, taxes for the borough, the state and nation. Mining is a labor intensive industry which provides resources and jobs benefiting society. The margin of profit in the mining industry cannot be compared to the petroleum industry, and should not be.

Senator Fahrenkamp made the right observation when she was quoted in a Fairbanks Daily News-Miner editorial recently. She said that too high a rents and royalties will force mining companies who have state mining claim holdings to drop them and look elsewhere in Alaska on Federal or Native lands.

The bill, the way it is now, is a disincentive for developing state mining lands. If you want to stop mining on state lands, SB 129/HB 99 in its present form will do so. The 6-1 court decision has given the state an opportunity to send the right signals to the world and its people that it favors mineral development. The 6-1 issue is not one of the state demanding maximum revenues or adding on a whole Christmas tree of new rules and regulations which further discourage the development of our resources on state lands. The court ruled that the state did not have a leasing system in place. It did not say how much should be charged for rents or royalties or say that reclamation should be included in any legislation proposed to comply with the directives of the court.

The rental rates are too high as proposed. The escalating rents as proposed take monies that would be better invested in exploration and development on state lands. The state should be doing things to encourage mining on its lands so that its people can have jobs.

The royalty provisions penalize the mine operator for trying to develop a mine. A new mine operation that employs people and has high capital costs resulting in low profitability will be forced to pay royalties based on gross income. The clause could cause existing mines to close down and stop new mines from going into production. Is the state's policy to maximize revenues to support its bureaucracy or to encourage the development of private industry that puts people to work and produces wealth?

A small mom and pop operation may be able to make it for a few years on 40 acres, but any operation must have sufficient reserves, acreage, and claim blocks in the same area to justify the investment of equipment to operate. The cost to move an operation, which includes logistics and permitting, is high and contributes to instability.

Larger companies will not move into an area unless there is a sufficient land position to justify an investment of time, money and labor to develop a mine.

Fairbanks has a potential of 3 or 4 large mining ventures. The Grant Mine operation would not have developed if they had not been able to pull a large block of claims together. If the land position had been split up, no development would have occurred.

Cleary Hill, Pedro Dome, Gilmore Dome, the Scrafford Mine off the old Murphy Dome Rd., all have a potential. The development of these areas for hard rock is contingent upon large blocks of land being made available for consolidation by a larger company if the opportunities appear right. High rents will discourage claim blocks from being maintained and will further hinder the larger companies from pulling claim blocks together to develop mines.

If the intent of this bill is to stop mining on state lands and put existing mining operations out of business, then I recommend you approve SB 129/HB99 as written.

Recommendations:

1. MINING LICENSE TAX: This should stay in place. It provides revenues from Federal, private and Native lands.
2. RENTS: These should be scaled down and not escalated to encourage investment in development of property.
3. ROYALTIES: The royalty on gross revenues should be deleted.
4. 6-I: This should not apply to lands which were not mineral in character at the time of selection, as directed by the court decision, and should only address the 6-I issue, which is the state's failure to have a leasing system in effect.

I realize that legislation needs to be passed. We want reasonable rents or royalties. You can act and fulfill the court decision. You do not have enact confiscatory legislation. If you do, it will deny the orderly t of Alaska's mineral resources.

or loses if SB 129/HB99 is enacted as is? The environmentalists miners lose, and the state, its people and the nation will lose, an ded jobs in the State of Alaska will be lost.

Roger C. Burgess

1-30-89
Date

Feb. 2, 1989

House Resource Committee
Pouch V Juneau

Re: HB-99

Mr Chairman/ Resource Committee,

After waiting two days in the LAO office to testify on this bill it became apparent that time was running out on me again. So was requested by their staff to submit this in writing.

My name is Del Ackels, PO Bx 2151 Fairbanks, Alaska 99707. I would like this read into the record.

There are several points in this bill that I can not support. First I would like to point out that the reason the House and Senate was directed by Federal Court action to prepare this bill was because of the 6I issue. No where in this or the Senate version is 6I even mentioned. This should be corrected.

The State in this action spent a lot of money and time defending what it thought was it's States rights in this issue and in the end won some points and lost some points. In the end the Fed. Courts found that the State did indeed have some lands subject to location but also had some lands subject to 6I which had special qualifications which the court directed the State to identify. The qualification for these special 6I lands were they had to be **KNOWN** to be mineral in character at time of selection, and such lands were subject to Rents and/or Royalties. The Plaintiffs (Trustees for Alaska) in this case against the State, lost some on both these points. They wanted All lands to be included and both Rents and Royalties paid.

At this point I became a little confused because both these Bill's address the Plaintiffs point of view and not what the State fought so hard for and won in court. Is it because the State cannot identify these lands? Or is it because the State Feels it doesn't have money or time to do this? If this is the case this State may lose a tremendous amount of future revenues over the long run in development spin-offs by pushing this development on to more favorable lands and should reconsider it's position in this Bill. If not the question should be asked, Why did the State fight this in the first place?

Let's now look at what will happen if the Plaintiffs

point of view is taken, as both these bills suggest. Alaska will now have 104 million acres of land that is automatically more expensive to develop then it's adjacent lands. These other lands are Native Lands, Private Lands, and Fed. Lands as you know. If a average size Co. is on these other lands and enjoying a 15% net profit over the long run of 10 years or so, this Co. would be an exception to the rule and above average. If it was subject to 6I fees that were either to high or that would escalate over time, this mine life would be limited if on State land. If this same mine was located on State lands subject to location, the mine life would be the same as other lands and would produce more income to the State over the long haul in taxation and spin offs.

How does this affect me? My wife and I are what you have been hearing as Mom and Pop type of business. We located 200 State mining claims in the Circle area in 1983. In the last 6 years we have put all our savings and what moneys we could save out of our budget to develop this prospect. This prospect has a strong promise to be a large mine in this area which would provide a badly needed income base for this part a Alaska. These claims were not on lands at the time of State selection that were known to be mineral in character. I found this mineral discovery through hard persistent work on lands open to location that were not subject to sales, grants, deeds, or patents.

Since H.B. 99 or S.B. 129 assumes there are for some reason no longer any location lands on State lands, where does this leave my wife and myself? Come this fall we will be assessed over $4,000.00 that we don't have (if we did we would have put it into more exploration) and will most likely have to let this deposit drop from lack of funds. This would be a tremendous let down for us. Even if we could come up with this rent money there is no where in either one of these bills a provision that even would suggest once productions begins the rent would be dropped. One sad thing for us in this bill is there is already enough information known about our deposit that when we are force to drop it, a larger out of State Co. would be there to grab it. This would be a bitter blow to us.

I believe it is important that when you folks are forced to make a rushed, major decision such as this, that care be taken to view the overall picture. 6I should apply only to those State lands that qualified, that rents or royalties be charged. I know that extra moneys are hard to come by for you to spend in Juneau, but you have to keep in mind that 81% of all Federal Lands in this State are forever closed to mineral development, and this State will never develop revenues from. 17% of State lands are now closed to

mineral development, and what this State ended up with after ANLCA as far as mineral selection, is considered by your own departments (DNR and DDGS) as "DOG MEAT".

So it is important that you don't hinder what is left for a buck. That when you do put this in statute, it is as good as you can achieve. I would hate to be sitting in your chair when Gas and oil runs out. Right now only 9% of your current revenues would be covered with what is left. Who knows what it would be then? And where would you turn?

As a parting note, I saw a very appropriate bumper sticker on me way to the LAO office.....

IF DOLLY PARTON WAS AN ALASKA MINER
SHE WOULD BE FLAT BUSTED.

Sincerely,

Del Ackels

cc; Senate Resource Committee

Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS. ALASKA 99701
(907) 452-5021

TESTIMONY OF REX BLAZER, EXECUTIVE DIRECTOR OF THE NORTHERN ALASKA ENVIRONMENTAL CENTER, BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
FEBRUARY 2,1989.

The State Supreme Court has determined that the State must collect rents and royalties from mining claims on State land under Section 6(i) of the Alaska Statehood Act. The U.S. Solicitor General has recommended that these lease payments apply to all State lands, not only those found to be mineral in character at the time of statehood. The opinion further held that the Federal Courts, rather than the State Court, had the ultimate jurisdiction over the issue. Rents discourage speculation and encourage efficient use of public resources. Royalties pay the people of the State for the extraction of non-renewable resources, as is done with coal, oil, and gas.

The legislature must determine how this is to be done. There is a possibility that mining on State lands for the 1989 season might be severely curtailed if adequate legislation does not pass this session. The State Division of Mining under Gerald Gallagher prepared these bills which were introduced by the Rules Committees for the Governor.

The legislation applies to all state lands and charges annual rents on a sliding scale from $ .50 per acre

($20.00/claim) for the first five years to $5.00 per acre ($200.00/claim) after twenty-one years. Production Royalties will be assessed as a sliding scale percentage of net income or a minimum royalty based on gross income, whichever is higher. The state gives a big break to the miners in that the
annual labor requirement will be reduced from $200.00 to $100.00.

The major positive aspects of this bill are that the state will apply both rents and royalties to all state lands. Furthermore, revenues would help defray the cumulative costs to the state of regulating this industry. The negative aspects are that the bill does not go far enough. The bill does not insure an adequate basis for the condition in which state lands will be returned to the people of the state - hence no basis of foregone uses from which to calculate fair royalty.

The Northern Alaska Environmental Center opposes this bill as it is written and strongly supports the following amendments.

Reclamation -

The State is currently the only public land manager in Alaska that does not require reclamation on its lands. Miners on state land should not be exempt from requirements that apply to all other miners. For the State to truly put the 6(i) issue to rest, reclamation, which is inextricably linked rents and royalties, must be resolved as part of the bill.

Single use by mining without reclamation destroys the value of the land for other uses and users. When the State gives away non-renewable resources and foregoes other resource values in return for royalties and commits land held in the public trust to a single use, statutory reclamation requirements will guarantee that the land will retain its multiple use capacity after mining is complete and royalties paid. There will be no real, clear basis upon which to base royalties unless there is a reclamation standard to assure the public of the condition of the land subsequent to mining. An acceptable bill must, therefore at the minimum, (1) require reclamation; and (2) direct DNR to develop adequate reclamation standards and regulations.

Rents and Royalties -

We feel that for the public as well as the Natural Resources Committees of both the Senate and the House to make an informed decision on rent and royalty structures, the state Division of Mining (D.O.M.) should produce sufficient

information on the basis and implications of the numbers in the current version of the state bill.

Where, for instance, did the $ .50 minimum rent figure come from? What basis does the state have to make the determination that this figure is any thing other than nominal? - particularly in light of the fact that under this legislation all miners will receive a $100.00 break on their annual labor requirement? Will the state lose money on this aspect of the proposal?

The majority of miners on state land hold less than ten claims. For rents to achieve their purpose - that of discouraging speculation and promoting timely production - the state should direct its efforts toward this majority by raising the minimum rental to a leval commensurate with that goal. Mariculture sites average 5 times the states proposed minimum rent. In light of the fact that other western states average far higher than the current state proposal, we recommend $1.50 per acre ($60.00/claim) with a $200.00 minimum. This scale would slide to $2.50 and $5.00 as in the state proposal.

At bottom, however, we need information from the D.O.M to compare and legitimize these sorts of different scenarios.

Likewise we feel there is insufficient information upon which

to base an informed decision on the states royalty recommendation. All royalties should be based on gross, rather than net figures. We support the premise that royalties based on gross figures result in increased business efficiency while those based on net figures tend to do just the opposite. The ridiculously low figures in the state bill are rendered almost totally nominal by the fact that these royalties can be written off against the Mining License Tax.

The Court was not joking when it mandated royalties in its decision. The statethere fore should set realistic royalty figures upwards of five to eight percent on a gross basis in order to put this matter to rest.

Once again, there can be no real basis for royalties without reclamation.

We feel strongly that a decision on these royalty numbers cannot be made until D.O.M. can provide the committee and the public with more information. Again, what kinds of "exemptions" will constitute the difference between a net versus gross royalty basis? Will miners be able to write off losses on one claim against others? I am told that in 1987 out of 572 permits issued, only 87 tax returns were filed. What kinds of reporting problems have the Department of

Revenue and D.O.M. had with the mining community and how do these very real problems factor into the equation? What Royalties are charged other extractive industries in our state?, in other states?

Lastly we are still unsure of the loophole accorded off-shore operations under AS 38.05.250 and feel the D.O.M owes the public a fuller explanation in terms of the foregone revenues of this aspect of the equation.

Thank you for this opportunity to testify.

House Bill 99
A Bill
Testimony: Terry Burrell

PO Box 8
Anchorage,
99510

We should have a severance tax if royalty payments are considered and function the same as a severance tax. I support royalty payments. We must spread the income base of our natural resources over a larger base. We will not always be fortunate, as you know, to have such a large income from oil. I don't believe this bill will cause, by charging rent, a resource will not be turned over to foreign powers any more than now there is an ability to bring in foreign capital all over the United States and all over the world to finance our own mining interest.

As to Section 1. C I would like to suggest an initial 20 year period followed by a possible 10 year period to adjust rental rate. Also a mining lease shall be for any period up to 50 years.

By charging rent, this will move non-production miners off the land. Some miners ~~sit~~ sit on claims for various reasons, other than to mine, they want to control the land - for some reason or other. This would free the land from non producers so that the claims can be released and production. It's necessary to have royalty and rent both, not either/or. We need to spread our income base for the State.

Thank you.

TESTIMONY OF RANDALL M. WEINER
EXECUTIVE DIRECTOR OF TRUSTEES FOR ALASKA

BEFORE THE HOUSE RESOURCES COMMITTEE

ON LEGISLATION PROVIDING FOR RENT AND ROYALTY PAYMENTS FOR MINING CLAIMS, LEASEHOLD LOCATIONS, OR MINING LEASES.

HOUSE BILL No. 99

FEBRUARY 2, 1989 3:30pm

I. Introduction.

Trustees for Alaska commends the state for moving responsibly in drafting legislation required by court order in a case which was brought by Trustees for Alaska, Nunam Kitlutsisti, Dinyea Corporation, Village of Minto, Alaska Independent Fishermen's Marketing Association, Alaska Center for the Environment, Southeast Alaska Conservation Council, and Friends of the Earth. After three years, the courts ultimately ruled that a system which permits the extraction of hard-rock minerals while failing to collect rents and royalties therefrom violates Section 6(i) of the Alaska Statehood Act.

The legislation now being considered is appropriate because it requires that rents and royalties will be paid for a mining claim, leasehold location, or mining lease on all state lands. As I will be discussing, this will protect the state from needless litigation with the parties in the original lawsuit and remove the potential for the forfeiture of state lands by the federal government.

It is insufficient, however, because it fails to include a provision for reclamation of mining sites when operations have ceased, thereby significantly diminishing the availability of that land for other purposes in a state whose Constitution and Supreme Court require common use of the state's natural resources. Moreover, it exempts too much state land from its provisions, since miners say that only land chosen under the Alaska Statehood Act should be subject to rents and royalties. Offshore operations, like the profitable one near Nome, would be exempt. But why does the manner in which our land was acquired have anything to do with the return to which we citizens are entitled? Such an exemption makes no sense.

725 Christensen Drive, Suite 4 Anchorage, Alaska 99501 (907) 276-4244

Rents paid under the bill are also too low, starting at 50 cents an acre per year which equates to only $20 per mining claim. One dollar per acre would bring this law more into line with other states. Finally, the royalty payments are based on net income, and numerous loopholes could be used to lower revenue to the state. Payments based on gross income would be much more fair. And frankly, citizens are entitled to a return on their mineral wealth regardless of whether the operation is efficient or "profitable."

II. Reasons for Lawsuit.

The so-called "6(i) lawsuit" was originally brought to assure that the State of Alaska would not continue to hemorrhage away revenues under an improper leasing system for gold, silver and other hardrock minerals. It was clear to the unprecedented and diverse coalition of environmental, fishing and Native rights groups and villages that a mineral leasing system in Alaska must be fair to all interested parties -- the miners, the other concurrent and future users of the land and water affected by the mining operations, and the citizens of Alaska whose resources are being acquired by a select few.

Those plaintiffs insisted that the State meet the conditions under which it was granted statehood. Section 6(i) expressly enabled the State to obtain title to mineral lands it selected after statehood, but prohibited the disposal of such land except under lease. The purpose of this leasing requirement was to enable the State to derive revenues from its mineral lands on a long-term basis, since many in Congress were concerned that the State could ill afford the costs of statehood. Assuring the State an adequate source of revenue went a long way towards alleviating Congressional concern and guaranteeing that Alaska would become the nation's 49th State.

The Supreme Court of Alaska agreed with the environmental, fishing, Native rights groups and villages, and as a result, the case was remanded to Judge Douglas Serdahely in the Superior Court who declared that the state's present mineral extraction system "violates Section 6(i) of the Alaska Statehood Act because it does not require the payment of rents or royalties from state lands."

III. Injunction.

On remand, the plaintiffs asked the Superior Court to enjoin the State from allowing the extraction of any mineral deposits from state lands after May 15, 1988 if a leasing system conforming to the Supreme Court's interpretation of Section 6(i) had not been adopted. The Superior Court decided that the issuance of such an injunction would be premature until the Alaska Legislature had been

given the opportunity to enact an appropriate leasing system during the next (this) legislative session. As Judge Serdahely wrote, "The Court thus declines to issue any injunctive relief in connection with the instant declaratory judgment. Should the State and/or Legislature fail to adopt an appropriate leading system by the time the next mining season is about to commence, any party is free to return to this Court with a proper application for injunctive relief at such time." The Superior Court could not be clearer; the Legislature must enact this legislation in this session.

IV. Federal Enforcement.

There are other compelling reasons why this legislation must be enacted. When some of the parties to the lawsuit were seeking a hearing before the U.S. Supreme Court, the U.S. Solicitor General, the third highest ranking law enforcement officer in the country, analyzed Section 6(i) of the Statehood Act and submitted a brief on behalf of the United States. He pointed out that because the issues primarily involved an interpretation of a federal law -- the Alaska Statehood Act -- any party was free to relitigate the issue in federal court. As stated by the Solicitor General in his brief, "[i]n any future suit in federal court -- including a forfeiture action brought by the Attorney General of the United States -- both petitioners and respondents presumably would be free to relitigate the issues of federal law that were addressed by the Alaska Supreme Court in this case, since the district court in any such suit could not accept a proceeding in state court that did not constitute a case or controversy 'as the basis for conclusive disposition of an issue of federal law' (citation omitted)." [Solicitor General brief at 17.]

Thus, if the Legislature doesn't act, parties may seek an interpretation of Section 6(i) in federal court. Moreover, the environmental, fishing, and Native rights groups and villages know that in federal court the Solicitor General, representing the U.S. Government, will likely continue to disapprove of the current mineral leasing system and continue to disapprove of any new leasing system that does not apply to all state lands. [Solicitor General brief at 28.]

Not only can a party seek and injunction in state court or relitigate these issues in federal court if not adequately resolved by the Legislature, but the Solicitor General alluded to his ultimate authority to seek a forfeiture of state land as provided for in Section 6(i). As he states, "Nor does private litigation -- and especially a declaratory judgment action -- interfere with the Attorney General's enforcement authority under Section 6(i)... Forfeiture under Section 6(i) obviously was intended as an ultimate sanction to protect the interests of the United States if the restrictions it imposed are violated; respondents, by contrast, [meaning the environmental, fishing, and Native rights groups and

villages] seek to prevent a violation of those restrictions from occurring and thereby to avoid any occasion for forfeiture, so that the land may be preserved for the State and its citizens, as Congress intended." [Solicitor General brief at 23.]

Injunctive relief, federal enforcement, and forfeiture. These are strong incentives for this Legislature to act. But it must nonetheless act correctly. Since it is clear in court decisions and the opinion of the Solicitor General that Section 6(i) was intended to provide Alaska with sufficient compensation for its mineral resources, the amount charged cannot be too low. It cannot provide only nominal revenue. Although the rents needn't reflect fair market value for the minerals, they should reflect a reasonable rate sufficient to compensate Alaska's citizens for the loss of resources that are their heritage. And doesn't that make sense in this current economy? Other speakers will address whether the rents suggested are too low, and whether a royalty fee relying in large part on "net" income provides too many opportunities for liberal deductions and fails to provide Alaska and Alaska's citizens with an adequate return.

V. Reclamation.

But by far the most serious deficiency in this legislation is its failure, so far, to include a provision requiring the reclamation of land when mining operations have terminated. Reclamation has become the accepted procedure across the nation for the past few decades. Federal law requires that every coal mine operation be restored so that the land affected is capable of supporting the uses it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood. What applies to coal mines should applies equally to other operations, especially in a state that constitutionally requires that leases be "subject to reasonable concurrent use" [Art. VIII, Sec. 8], that its forests, wildlife, grasslands, and other replenishable resources be managed on a sustained yield basis [Art. VIII, Sec. 4], and that legislation governing development and conservation of natural resources provide for the maximum benefit of its people [Art. VIII, Sec. 2].

Reclamation is the only way to apply a multiple and common use framework to development of Alaska's resources. Reclamation is not only constitutionally supported, it's not only fair, but recent Supreme Court cases suggest that the common use concept is expanding. In the recent case of Owsichek v. Alaska, ruling on the constitutionality of exclusive guiding areas, the Supreme Court held that the common use provision of the State Constitution strongly protected public access to natural resources. This case is rapidly becoming a landmark case. It noted the importance of the common use clause of the Alaska Constitution, and, citing the Alaska Constitutional Convention Papers, it pointed out that the term "for common use" implies that resources are not to be subject to

exclusive grants or special privilege.

Without reclamation, there can be no common use. The environmental, fishing and Native rights groups and villages who brought the 6(i) lawsuit know that reclamation is the only way that they will get their own opportunity to utilize the resources after the mining operations are terminated. Common use would be an empty term if there is no guarantee that topsoil will be returned to promote natural revegetation, that settling ponds will be drained, that stream channels will be reestablished to allow unobstructed flow, and that equipment and debris will be removed from the mine site when operations have terminated. Reclamation allows for different interests to co-exist in this State, and provides for the common, and efficient, use of resources.

The reclamation requirement will not present a hardship to miners. Many of them already reclaim their sites when operations have concluded, and mining representatives suggest that most miners could comply with reasonable reclamation requirements without difficulty. Indeed, the mining industry has modernized, and most miners are becoming more responsible in their use of settling ponds, recirculation of waste water, and reclamation.

VI. Conclusion.

Thus, to conclude, the Legislature should only pass this rent and royalty legislation after the serious deficiencies are resolved. The starting rents should be increased, the royalty payments should be based on net income, and all lands should be covered by its provisions. The 6(i) lawsuit, the Alaska Constitution, the unappealing prospect of federal enforcement and forfeiture actions, and the evolving common use doctrine, all compel this Legislature to move forcefully in passing an appropriate bill that, in the end, will bring Alaska much needed revenue while ensuring the wise management of its resources for all its citizens.

Tanana Chiefs Conference, Inc.

201 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251

February 13, 1989

Members of the House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Members of the House Resources Committee:

The Tanana Chiefs Conference, Inc. represents villages affected by the implementation of Section 6(i) of the Alaska Statehood Act. At this time we would like to reiterate concerns expressed by our village people about this issue:

- Above all, it is an appropriate time to make a clean and simple mandate to reclaim land used for mining to restore the multiple use values of the land. The leasing procedures cannot be complete without a clear mandate for this critical element.

- Both rents and royalties should apply to all state lands for equitable and expedient processing of the mining leases.

- The rents and royalties should be high enough to satisfy the concerns of the State Supreme Court as well as to satisfy the public interest. A realistic royalty based on gross revenues rather than net revenues would better satisfy the public interest.

Enclosed is a letter generated by a variety of interests to Governor Cowper last summer for your information. We appreciate your attention to our concerns.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Will Mayo

Mitch Demientieff
President

LJ:af

289-113.1

Rural Alaska Community Action Program, Inc.

August 16, 1988

Governor Steve Cowper
State of Alaska
P.O. Box A
Juneau, AK 99811-0101

Dear Governor Cowper:

As you know, last year the Alaska Supreme Court held that section 6(i) of the Alaska Statehood Act requires the State to lease all of its "mineral lands." The State currently is out of compliance with this ruling. We understand that your Administration is now in the process of preparing a proposal on how to implement section 6(i). Because this issue is of such importance to the undersigned organizations, we are writing you now to let you know our basic position.

Basically, we believe that implementation of section 6(i) should be guided by the following three principles:

1. The leasing requirement should apply to all state lands, not just those which were known to be mineral in character at the time they were selected by the State. The federal government told the U.S. Supreme Court that it believed that the Alaska court interpreted the law too restrictively in this respect and that all state lands should be leased. In addition, it will be very difficult and time-consuming to figure out what the State knew about its lands when it selected them, which will only delay things still further. And of course, the more land that is covered by leasing, the more money the State will make.

2. The State should charge both rents and royalties. Again, the whole idea is to maximize revenue. To charge both rents and royalties also will avoid any future problems with the federal government. This is important, because the federal government can take lands back from the State if the State uses those lands in violation of section 6(i).

3. This is an excellent opportunity for the State to require that miners reclaim their land, and mine in an environmentally responsible manner. Right now, there is no explicit reclamation requirement on state lands; there ought to be one. The legislation implementing section 6(i) should contain provisions requiring state review of mining operations and reclamation.

Administration • P.O. Box 200908, Anchorage, Alaska 99520 • (907) 279-2511, FAX (907) 279-6343

We realize that the last point might be controversial. It nonetheless is very important. At present, the State is the only public land manager in Alaska that does not require reclamation on its lands. Yet unreclaimed lands are a major source of pollution, for they erode easily and hence cause considerable sedimentation in streams. This both pollutes the water and destroys fish and wildlife habitat. In addition, these lands formerly provided good habitat for moose and other wildlife.

There is no good reason why miners on state land should be exempt from requirements that apply to all other miners -- indeed, it is unfair to those other miners if reclamation is not required of miners on state land. Reclamation therefore is an integral part of any implementation of section 6(i). Of course, it also is a very complicated issue. Accordingly, we suggest that any legislation simply require reclamation, and provide that you appoint a committee (composed of state officials, miners, and downstream users) to prepare a proposal, within one year, to flesh out precisely what must be done.

Thank you for your attention to this matter.

Sincerely,

Jeanine Kennedy, Executive Director
Rural Alaska Community Action Program, Inc.

Mitch Demientieff, President
Tanana Chiefs Conference, Inc.

Don Charles Calrea
Nuham Kitlutsisti

for Henry Mitchell, Executive Director
Bering Sea Fishermen's Assn.

Patti J. Saunders
Trustees for Alaska

Rex Blazer
Northern Alaska Environmental Center

Stephanie Kessler, Executive Director
Alaska Center for the Environment

cc: Commissioner Brady, DNR
Commissioner Collinsworth, ADF&G
Commissioner Kelso, DEC
Senator Johne Binkley
Rep. Kay Wallis
Rep. Lyman Hoffman
Rep. Mike Davis
Rep. Mark Boyer
Rep. Niilo Koponen
Rep. Heinrich Springer
Rep. Adelheid Herrmann
Rep. Steve Frank

NATIVE AMERICAN RIGHTS FUND
310 "K" Street, Suite 708
Anchorage, Alaska 99501
(907) 276-0680
(907) 276-2466 (FAX #)

#945

TELECOPIER COVER SHEET

DATE: 2/13/89 COVER SHEET + 2 PAGES

ATTENTION: Legislative House - Resources

FIRM: _____

CITY: Juneau

FROM: Anna Phillip
NATIVE AMERICAN RIGHTS FUND

RE: _____

_____

If you do not receive all the pages, please call back as soon as possible.

Telephone No. (907) 276-0680

Telecopier operator: Martina

NOTES:

TO: House Resources Committee; Mr. Davidson, Mr. Menard, Mr. Davis, Mr. Hudson, Mr. Sharp, Mr. Foster, Mr. Navarre and Mr. Furnace

FROM: Anna Phillip
P. O. Box 1312
Bethel, Alaska 99559

I feel that I am being cheated or left out. All land should be used equally by miners and people that depend on the land to survive. Once the miners mine and turn the land upside down, we have no use for it. The land that once was abundant and resourceful is unfruitful and bare. It makes us live a more difficult life. We travel to further places to meet our needs. The miners on the other hand have gathered whatever they need and are living comfortably.

I request the Alaska legislatures to add reclamation to SB 129 and HB 99, so the miners will reclaim the land for other land users to use in the future. I am asking on behalf of all the people who depend on the land a small favor that is very important to us. We do not want to feel that we are being cheated or left out. Accept our request as you accept the other requests. We also ask that offshore land be added, rents and royalties be increased and royalties be based solely upon gross income.

cc: Mr. Hoffman
Ms. Wallis
Mr. Binkley

TO: Senate Resources Committee; Ms. Fahrenkamp, Mr. Kerttula, Mr. Eliason, Mr. Frank, Mr. Halford, Ms. Sturgulewski, Mr. Zharoff

FROM: Anna Phillip
P. O. Box 1312
Bethel, Alaska 99559

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I request the Alaska legislatures to add reclamation to SB 129 and HB 99, so the miners will reclaim the land for other land users to use in the future. I am asking on behalf of all the people who depend on the land a small favor that is very important to us. We do not want to feel that we are being cheated or left out. Accept our request as you accept the other requests. We also ask that offshore land be added, rents and royalties be increased and royalties be based solely upon gross income.

cc: Mr. Binkley

Making Alaska mining pay in a responsible way

For those of you who follow the state legislature, there's one bill in Juneau that's as close to a sure thing as you can find. It's known as the 6(i) bill, Bill No. 129 in the Senate and No. 99 in the House, and Alaska citizens can only profit by its passage. The bill would provide for rent and royalty payments for mining claims, leasehold locations or mining leases.

It's a bill that Alaska's courts are compelling the legislature to pass this session. If the legislature doesn't act, every mining operation in the state might be shut down until the law passes. As if that isn't bad enough, the federal government might even step in and take the state's mineral lands away if no bill makes it out of Juneau.

How did the state get into such a mess? Well, in a nutshell, state officials were misreading a provision in the Alaska Statehood Act, the law which granted us our statehood over three decades ago. The provision requires the state to collect rents and royalties when it grants mineral leases on state lands. For many years, the state practically gave away its lands for mining operations, until a diverse coalition of environmentalists, fishing and native groups and villages brought a lawsuit that went all the way up to the U.S. Supreme Court before the state called it quits.

(Just why the state was wasting all of its money fighting to keep money out of the state's coffers is beyond me, but sometimes logic is sorely lacking in natural resource politics.)

The lawsuit — Trustees for Alaska v. State of Alaska — was brought to assure that the state of Alaska would not hemorrhage away revenues under an improper leasing system for gold, silver and other hardrock minerals. It was clear to the groups that sued that a mineral leasing system in Alaska must be fair to all interested parties — the miners, the other concurrent and future users of the land and water affected by the mining operations, and the citizens of Alaska whose resources are being acquired by a select few.

Anyway, with a court order staring the state in the face, it began to do what it should have done originally, drafting a law requiring miners to pay the state (i.e. the public) a reasonable fee for the right to take away its mineral resources. Since Alaska's hardrock mineral wealth is a sleeping giant (even coal reserves vastly exceed oil and gas reserves), the law put into place today will become much more crucial in the coming decades.

In the past year, there have been informal negotiations between all the interested parties — the miners on one side of the table, the environmentalists, native community and fishermen on the other. One thing became immediately clear. Miners didn't want to have to spend a lot more money, and environmentalists, natives, fishermen and village leaders wanted to see a reclamation provision put into the bill so that the lands and streams damaged by the miners would be returned to a form that would permit other uses after the minerals had been taken out.

And you know what, they're both right! Miners deserve the right to make a living, and the rest of us deserve an environment that continues to be useful for other purposes. Responsible and effective reclamation is the answer.

Reclamation has become common practice among coal miners, and most other miners are beginning to follow the practice. Reclamation requirements, in a sense, are anti-litter ordinances, for they require miners to return the mined sites to the condition in which they found them, rather than leave the land despoiled.

The legislation now being considered by the House and Senate fails to include a provision for reclamation of mining sites when operations have ceased, but the environmental, fishing and native interests are hoping legislators come to their senses and add a reclamation requirement.

The 6(i) bill has other problems. It exempts too much state land from its provisions, since miners say that only land chosen under the Alaska Statehood Act should be subject to rents and royalties. Offshore operations, like the profitable one near Nome, would be exempt. But why does the manner in which our land was acquired have anything to do with the return to which we citizens are entitled? Such an exemption makes no sense.

Rents paid under the bill are also too low, starting at 50 cents an acre per year which equates to only $20 per mining claim. One dollar per acre would bring this law more into line with other states. Finally, the royalty payments are based on net income, and numerous loopholes could be used to lower revenue to the state. Payments based on gross income would be much more fair. And frankly, citizens are entitled to a return on their mineral wealth regardless of whether the operation is efficient or "profitable."

Without reclamation, there will be some pretty unhappy fishermen, natives and environmentalists. They know that reclamation is the only way that they will get their own opportunity to use the natural resources after the mining operations close down.

And just what will have to be done to effectively reclaim land? Well, most importantly, topsoil must be returned to promote natural revegetation, settling ponds must be drained, stream channels must be reestablished to allow unobstructed flow and equipment and debris must be removed from the mine site when operations have terminated. All this is affordable and must become a part of doing business on our public lands and in our public waters.

Reclamation allows for different interests to co-exist in this state, and provides for the common, and efficient, use of resources for all of Alaska's citizens. And isn't that only fair?

NUNAM KITLUTSISTI

Protectors of the Land, Inc.
P.O. Box 2068 • Bethel, Alaska 99559
907/543-2856

February 13, 1989

TO: Chairman Menard & House Resources Committee
RE: 6(i) Legislation
Dear Sirs;

Nunam Kitlutsisti, translated from the Yup'ik language as Protectors of the Land, is a Yup'ik organization dedicated to the maintenance of the subsistence lifestyle through the wise use and protection of natural resources on the Yukon-Kuskokwim Delta. We write to comment on the administration's 6(i) bill concerning rents and royalties on state owned mining lands.

Our biggest problem with the bill is that it does not deal with reclamation. This is a very important issue to the people of our region. The issue was sorely brought to our attention several years ago when careless mining on the Kuluksak River ruined water quality and severely degraded salmon spawning, rearing, and migration habitat. Salmon runs plummeted and are still in the stages of recovery. The mining remains a source of continued controversy and litigation that has still not subsided. Reclamation in mines such as these is absolutely necessary to prevent non-point source pollution from degrading our lands and rivers in the years to come.

Like many other people in Alaska, fish are our highest priority. Salmon are the backbone of our subsistence and commercial economies. The people along the Yukon and Kuskokwim rivers utilize salmon more than any other subsistence food source. Our commercial salmon fisheries provide more jobs than any other sector of the economy by a wide margin. It is unfortunate that salmon and mining interests are almost always in direct competition for the same specific water resource, but such is the case. We believe that mining is a legitimate use of the land, but consider it imperative that all mining lands be restored to a condition that will support fish and wildlife resources.

Under the current state regime, reclamation efforts are seriously hampered because they are scattered among DNR, ADF&G, and DEC, and because Alaska statutes do not give them enough authority to handle reclamation effectively. We urge you to amend the present bill to include reclamation. Developing reclamation regulations will be a complicated issue. We recommend that the final legislation simply require reclamation and set the framework for a committee of state officials, miners, fisherman, and other downstream users to be established to handle these matters.

We also feel that Alaskans should receive a fair return on minerals which are taken from our public lands. Thus, the bill should apply to all state lands, INCLUDING those offshore. Additionally, the rents and royalties should be significantly increased. The present rates strike us as very low and not reflective of the benefits received by the miners (particularly the larger operations), the cost to the state of administering the mining program, or the potential threat mining poses to fishermen and other downstream users. Similarly, royalties should be based solely on gross income, because it accords most closely to the amount of minerals actually produced.

As your committee considers this legislation, they must keep in mind the conflicting issues of the miner's "right to mine" vs. "the greatest common good". Historically the balance has been skewed to support only the interests of development and exploitation. The surrounding region reaps the negative impacts with little or no economic benefit or compensation to those who rely on the resources for their very survival. You must remember as well that mining is a relatively short term activity with a destructive potential and benefits only a few. Whereas fisheries, and other dependant wildlife populations, will provide sustenance and economic benefits for generations to come.

Reclamation is an integral and necessary requirement to ensure a higher level of habitat maintenance for the future of our fisheries and wildlife resources. In all fairness and equity it is your duty to see that all possible efforts to protect these affected resources are achieved. The reclamation issue must be addressed and included within this legislation. Our thanks for your just and positive consideration on this matter.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

STEVE COWPER, GOVERNOR

P.O. BOX 107016
ANCHORAGE, ALASKA 99510-7016
PHONE: (907) 561-2020

3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709
PHONE: (907) 451-2790

400 WILLOUGHBY #400
JUNEAU, ALASKA 99801-1000
PHONE: (907) 465-3400

CERTIFIED MAIL # P 126 771 521
RETURN RECEIPT REQUESTED

February 2, 1989

Martin M. Herzog
14250 Sabine Street
Anchorage, AK 99516

MISCELLANEOUS LAND USE PERMIT
MLUP A896073

The Alaska Department of Natural Resources, Division of Mining, in accordance with and subject to the requirements and general stipulations of Alaska Statute 38.05 (Alaska Land Act) and the Alaska Administrative Code, Title 11, Chapters 86 (Mining Rights) and 96 (Miscellaneous Land Use), does hereby grant a Miscellaneous Land Use Permit to Martin M. Herzog for activities upon State-managed lands described in Annual Placer Mining Application No. A896073 for ADL 74488, "Almark Mine" and ADL 503514, "Heavy Duty Mine" only. No activities are authorized on claims or any portions of claims staked on State-Selected ground or topfiled on any Federal mining claims.

TERMS OF PERMIT

Effective dates of permit shall be March 1, 1989 through December 31, 1989.

sec. 1. GENERAL PROVISIONS. Operations under this permit shall be conducted in conformance with applicable federal, state, and local laws and regulations now, or hereafter, in effect during the life of the permit.

sec. 2. SURFACE USE. A locator does not have exclusive use of the surface of the location. A locator may not restrict public access to the surface without approved authorization [11 AAC 86.145(1)]. Issuance of this permit is not automatic authorization to restrict public access.

sec. 3. SURFACE STRUCTURES. Surface structures built or placed within the boundaries of a mining property must be necessary for mineral prospecting and development. The building or placing of surface structures must be approved through a plan of operation or land use permit [11 AAC 86.145(2)]. Issuance of this permit is not automatic authorization to construct or place surface structures.

sec. 4. OTHER OPERATIONS. (a) The granting of this permit does not preclude the issuance of other permits or leases on the same lands. Valid existing prior rights acquired on the lands described herein will not be adversely affected by this permit. (b) Where this permit grants the right to enter land owned, leased or otherwise lawfully occupied by another, the permittee shall make provisions before entering the land to pay for all damages sustained by said owner, lessee or lawful occupant by reason of entering upon said land (AS 38.05.130).

sec. 5. DEFAULT. If permittee should fail to comply with the terms and stipulations contained in this permit, or the provisions of the Miscellaneous Land Use Regulations, and after receiving written notice, fails to remedy such default within the time specified in the notice, the Director may cancel this permit.

sec. 6. SPECIAL STIPULATIONS. In accordance with AS 38.05 (Alaska Land Act), approval of your application is hereby granted subject to the following stipulations:

1) Top soil and fines (including overburden muck and settling pond silts) shall be protected from erosion. No top soil or fines shall be disposed of in natural water bodies. When practicable, top soil and fines should be spread over the graded tailings to encourage natural revegetation and slope stability.

2) Tailings and strippings shall be graded at the close of each season to approximate the surrounding ground contours.

Completion reports are no longer required. Please be advised our approval of a Miscellaneous Land Use Permit does not relieve the applicant of the responsibility of securing other permits as required by federal, state or local authorities. Neither does this approval constitute certification of any property right or land status claimed by the applicant.

Attached is a partial summary of regulations applying to this permit. Questions concerning these regulations or this permit should be directed to Mitch Henning at 762-2109.

Sincerely,

Mitch Henning

Mitch Henning
Minerals Geologist

Attachment

cc: DNR/DL&WM (Mat-Su Area Office)(Keith Quintavell)
DEC (Wasilla)(Kevin K. Kleweno)
ADF&G (Habitat Division/Permitting)

Stu/379S

ATTACHMENT TO
MISCELLANEOUS LAND USE PERMIT

Mining rights of locatable minerals on State lands are addressed in the Constitution of Alaska; Title 38 of the Alaska Statutes; and Chapters 86, 88 and 96 of Title 11, Alaska Administrative Code (State regulations). In summary, these laws and regulations state that rights to deposits of locatable minerals on State land, open to claim staking, may be acquired by discovery, location, and filing.

The locator will have exclusive right of extraction of the minerals, subject to provisions set forth in the above referenced statutes and regulations. These provisions establish the rights of the locator, protect the rights of the general public on public domain land, and provide controls over activities on State land to minimize adverse effects on the land and its resources. For example: (a) all operations are subject to inspection without notice (11 AAC 96.080); (b) bonding may be required (11 AAC 96.060); and (c) timber and gravel on a State mining claim belong to the State. Regulations allow their use for mining or development of the claim. Procedures permitting the sale of timber and gravel from a mining location are also addressed in the regulations. (A.S. 38.05.225)

All operations are subject to the following general stipulations (11 AAC 96.140):

GENERAL STIPULATIONS. All land use activities are subject to the following provisions:

1) Activities employing wheeled or tracked vehicles shall be conducted in such a manner as to minimize surface damage.

2) Existing roads and trails shall be used whenever possible. Trail widths shall be kept to the minimum necessary. Trail surface may be cleared of timber, stumps, and snags. Due care shall be used to avoid excessive scarring or removal of ground vegetative cover.

3) All activities shall be conducted in a manner that will minimize disturbance of drainage systems, changing the character, polluting, or silting of streams, lakes, ponds, water holes, seeps, and marshes, or disturbance of fish and wildlife resources. Cuts, fills, and other activities causing any of the above disturbances, if not repaired immediately, are subject to such corrective action as may be required by the Director.

4) The Director may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated stream crossings.

5) The Director may prohibit the use of explosives within one-fourth mile of designated fishery waters as prescribed in 11 AAC 96.010(2).

6) Trails and campsites shall be kept clean. All garbage and foreign debris shall be eliminated by removal, burning, or burial, unless otherwise authorized.

7) All survey monuments, witness corners, reference monuments, mining claim posts, and bearing trees shall be protected against destruction, obliteration, or damage. Any damaged or obliterated markers shall be reestablished in accordance with accepted survey practice of the division.

8) Every reasonable effort shall be made to prevent, control, or suppress any fire in the operating area. Uncontrolled fires shall be immediately reported.

9) Holes, pits, and excavations shall be filled, plugged, or repaired to the satisfaction of the Director. Holes, pits and excavations necessary to verify discovery on prospecting sites, mining claims, and mining leasehold locations may be left open but shall be maintained as required by the Director.

10) No person may engage in mineral exploratory activity on land, the surface of which has been granted or leased by the State of Alaska, or on land for which the State has received the reserved interest of the United States until good faith attempts have been made to agree with the surface owner or lessee on settlement for damages which may be caused by such activity. If agreement cannot be found within a reasonable time, operations may be commenced on the land only with specific approval of the Director, and after making adequate provision for full payment of any damages which the owner may suffer.

11) Entry on all lands under mineral permit, lease, or claim, by other than the holder of the permit, lease, or claim, or his authorized representative, shall be made in a manner which will prevent unnecessary or unreasonable interference with the rights of the permittee, lessee, or claimant. (Eff. 1/1/70. Reg. 32)

Authority: AS 38.05.020, AS 38.05.035, AS 38.05.130.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 16, 1989

MEMORANDUM

TO:

FROM: Ginny Fay
Legislative Analyst

RE: **Mining in Other Western States: Reclamation and Taxation Policies**
Research Request 89.207

You requested information regarding other states' mining reclamation policies and statutes. You asked which state reclamation programs are authorized by statute rather than by regulation. You asked also for information regarding taxes paid by miners in other states in addition to specific mining taxes. To answer your questions, the first part of this memorandum discusses reclamation in other western states. This is followed by information on other state taxes.

Mining Reclamation in Other States

Generally speaking, the purpose of mining reclamation is to return land to its beneficial and productive use after mining operations have occurred. The state of Nevada, as part of an extensive overhaul of its mining statutes and programs, is conducting a comparative analysis of mining practices in the western states. Information from their final draft report on reclamation is summarized in this section.[1]

Not all western states have reclamation laws and those that do differ widely in the administration, organization, and implementation of their programs. Of the eleven western states reviewed by the Nevada study (which included Alaska but not Nevada), eight states have reclamation statutes. In contrast, Alaska, Arizona, and New Mexico reclamation standards are set by regulation and are part of the mining permit process (see Attachment A).

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[1]Wanda Jo Gallaher and Susan Lynn, "A Comparison of Western States Reclamation and Bonding Regulations, Programs, and Practices for Discussing A Nevada Program," Final Draft Report, Public Resource Associates, January 1989.

State reclamation statutes also vary considerably with regard to enforcement and penalties for noncompliance. Penalties include lease or permit cancellation, bond forfeitures, and civil and criminal penalties and fines. See Attachment A for state specifics.

State Taxes in Addition to Specific Mining Taxes

Information on state taxes collected in addition to specific mining taxes was obtained from ten western states--Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. The results are presented in Table 1. Except Wyoming and Nevada, these states have corporate income taxes applicable to miners.[2] Tax rates range from five percent in Colorado and Utah to 10.5 percent in Arizona.

Miners pay property taxes in all states contacted. Generally, this tax is administered by the state but collected by local governments. Mill rates are locally determined. In addition, six of the ten western states charge a sales or use tax on equipment. The state sales tax applies if items are purchased in-state. For items purchased out-of-state, a use tax, generally set at the same rate as the state sales tax, is charged on the market value of the item or equipment. Sales and use rates ranged from three to 6.8 percent.

* * *

I hope this information answers your questions. If you would like additional information, please do not hesitate to contact us.

Attachments

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[2]A number of contacts in Nevada stated that their state's tax rates and policies are likely to change during the current legislative session; numerous tax bills have been introduced, some of which apply to miners.

ATTACHMENT A
Comparison of Features by State for
Reclamation and Bonding

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
STATE STATUTE	Miscellaneous Land Use T 11, C 96, AAC	no state reclamation law under leasing	Surface Mining and Reclamation Act	Colorado Mined Land Reclamation Act	Idaho Surface Mining Act Title 47, chpt 15	Metal Mine Reclamation Act Title 82, chpt. 4	reclamation standards set by State Land Office	Oregon Mined Land Reclamation Act OAR C 632 - 35	Mined Land Reclamation Act Chpt.8, Title 40	Surface Mined Land Reclamation Act, Chpt. 64	Environmental Quality Act, T 35, C 11, WSA
COVERING BODY	none	State Land Commissioner	State Mining and Geology Board	Mined Land Reclamation Board	State Board of Land Commissioners	Board of Land Commissioners	elected Commissioner of Public Lands	Governing Board - Department of Geology & Mineral Industries	Board of Oil, Gas, and Mining	Commissioner of Public Lands	Environmental Quality Council & Admin.-Land Quality Division
Administering State Agency	Department of Natural Resources Division of Mining	State Land Department	County review by: Mine Reclamation Program, Div. of Mines & Geology	Mined Land Reclamation Div. Department of Natural Resources	Bureau of Mines Dept. of Lands	Department of State Lands	State Land Office, Mineral Division	Department of Geology and Mineral Industries	Department of Natural Resources Division of Oil, Gas, and Mining	Department of Natural Resources Lands & Minerals, Geology & Earth Resources Divs.	Department of Environmental Quality, Land Quality Division
State Requires Notice of Intent or Permit	miscellaneous land use permit	prospecting permit or lease	County permit	notice to explore, permit to operate	permit or notice	exploration license or permit		operating permit	notice, permit, lease	prospecting permit, lease, or mining contract	app. - drilling license - dozing permit - mining
1. On Federal Lands	yes	no	if have NOD's	yes	yes	yes	no	yes	notice/permit	yes	yes
2. On State Lands	yes	permit or lease	yes	yes	yes	yes	competitive lease	yes	both + lease	yes	yes
3. On Private Lands	yes	no	yes	yes	yes	yes	no	yes	notice/permit	yes	yes
Exemptions on Permits or Notices	no	no	none for permits	under 5 acres & little or no disturbance	for exploration if no motorized earth moving equipment is used	application for Small Miner's Exclusion	no	county permit, limited exemption; total exemption	yes for < 5 acres no approval & no bond under notice	yes land examination Report of Survey	yes
MEMORANDUM OF UNDERSTANDING											
With Forest Service	no	no	some, by county	yes	yes	yes	no	yes	yes, bonding	yes	bonds and permits
With Bureau of Land Management	no	no	none, by county	yes	yes	yes	no	by BLM districts	yes, bonding	no	bonds and permits
EXPLORATION Defined	separately	separately	defined as part of surface mining	as prospecting	separately	separately	separately	separately	as part of mining activities	as part of surface mining	separately
Lead Agency	Natural Resources Div. of Mining	State Land Dept.	county or cities	Mined Land Reclamation Div.	Bureau of Mines Dept. of Lands	Department of State Lands	State Land Office	Dept. Geology & Mineral Indus.	Div. of Oil, Gas and Mining	Department of Natural Resources	Land Quality Division
Permit or Notice Required	miscellaneous land use permit	location notice exploring permit	permit	prospecting notice	prospecting notice within 7 days of start	exploration license	lease application	operating permit	notice of intent	prospecting permit, or lease	notice - drilling license - dozing
1. Terms	one year, renewable	renew up to 5 yrs	prior to activity	duration, bond, and reclamation	duration	duration	prior, 3 years, renewable	duration plus reclamation time	agree to reclaim lands	7 year lease	prior, yearly bond, reclamation
Reclamation Required	case by case	yes	yes	yes	yes	after 2 years	yes	yes	yes	yes	yes
1. Drill Holes	sometimes	sometimes	yes	in all cases	yes	yes	yes	yes	yes	yes	yes
2. Roads	sometimes	yes	if temporary road	if not used	yes	yes	yes	yes	yes, if not used		left if requested
Bonding Required	discretionary	discretionary	by county request	yes	yes	yes	yes	yes	yes	no	yes
1. Terms				$2000/acre/claim $25,000 statewide	cost basis	$263-$2500/acre	$2000 - $5000	except for exemptions	5 acres or more		$10,000 minimum
Small Miner Exception Allowed	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes
1. Type	certain equipment types & vehicles		1000 cubic yards/ acre/location	1600 sq ft/acre 5 acres [illegible]	acre limits	under 5 acres/yr or 36,500 tons/yr		acre limits 5000 cu yds/year	under 5 acres	under 3 acres or 10 ft. [illegible]	minor disturbance one time only

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
DEVELOPMENT AND OPERATION Lead Agency	Natural Resources Div. of Mining	State Land Dept.	county or cities	Mined Land Reclamation Div.	as outlined in MOB	Department of State Lands	State Land Office	Dept. of Geology & Mineral Indus.	Division of Oil, Gas, & Mining	Department of Natural Resources	Land Quality Division
Permit Required 1. Terms	yes one year, renewable	mineral lease 20 years renewal option	yes duration of mine	yes duration of mine	yes annual renewable	yes yearly	lease application renewable terms	operating permit duration plus reclamation time	yes life of mine	contract or lease 20 year mining contact	permit & license annual report life of operation
Plan of Operation Required 1. Reclamation Included	yes yes	yes yes	yes yes	for over 5 acres yes	yes required	yes yes	yes yes	yes yes	yes yes	yes yes	yes yes
Bonding 1. Dollar Amount 2. Per Ton/Cubic Yard Basis 3. Per Acre Basis 4. Worse Case Scenario 5. Estimated Engineering Costs 6. Clean-up Costs 7. Agency Signoff	discretionary level of activity yes	yes $2000/acre	by county request	performance up to $5000 for small miners; costs for large no no yes for larger mines yes yes	performance up to $1000/acre no yes no costs + 10% included yes	performance $1500-$8000/acre costs + 15% yes	performance and damages $5000 minimum no no no no no no	performance and chemical $25,000-$500,000 on chemical bond credible accident costs-performance yes	performance $1500-$5000/acre yes yes yes	performance cost of recovery yes yes yes	performance variies dirt/cubic yard reseeding yes yes yes
Exemptions for Small Miners 1. Volume Basis 2. Acreage Basis 3. Other	yes recreation mining season	no	yes 1000 cubic yards or 1 acre	yes 70,000 tons and 10 acres	no	yes 36,500 tons/year 5 acres	no no no	yes 5000 cu yds/year 1 acre lands disturbed prior to 7/1/72	variances 5 acres or less	yes under 3 acres or 30 ft. pit wall	yes (10,000 tons 10 acres or less
Scheduled Monitoring or Inspections for Reclamation Compliance	seasonal inspections	periodic	periodic	annual report	periodic	yes 1 to 4 times/yr.	no	yes	annual	periodic	annual inspection
Closure Regulations	no specifics	no	no	mandatory	no	no	no	seasonal & final	10 years inactive	no	guidelines
Action for Noncompliance 1. Bond Forfeitures 2. Civil Penalties 3. Misdemeanor if willful 4. Criminal penalty	yes	lease cancelled	permit cancelled	yes forfeiture $50-$200/day fine closure	yes forfeiture $500-$2500/day $1000-$5000 fine or 1 year prison	yes case by case $100-$1000/day	yes yes yes yes	yes yes $10,000 fine	yes yes no $10,000 max. fine	cancellation yes property lien	yes yes + nonrenewal fines to $10,000 yes
TYPES OF BONDING Surety Bond Certificate of Deposit Letter of Credit Deeds of Trust 1. Remaining Property 2. Personal Property Savings Account Cash Certified Financial Statements Self-Bonding Government Bonds/Bills Assignable Bonds & Notes Other Nonspecified	Alaska has the authority to request a bond, but policy is to not request; will ask for bond if receive complaints or based on past poor performance	yes yes yes yes	varies by county	yes yes yes yes yes yes yes yes yes yes	yes yes yes no no no yes no no no yes	yes yes yes	yes no no no no yes no no no no no	on performance yes yes yes yes yes	yes yes yes yes yes yes yes yes board yes	yes yes yes yes yes	yes yes yes yes yes yes any combination

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
GUIDELINES FOR RECLAMATION											
Reclamation Practices	yearly										complete except
1. Time Allowed	prefer end of season, or first of next season	concurrent	5 yrs each phase encouraged		1 year recommended	2 years encouraged	2 years case by case	up to 3 years	3 yrs - 70% revege encouraged	2 years 1 season	up to 10 years
a. Concurrent			yes		yes	yes	yes	yes	yes	1 season	yes
b. Upon Closure			yes		yes	yes	yes	yes	yes	1 season	yes
Contouring/Reslooping	stipulated	yes	yes	yes	yes	yes	yes	yes	yes		yes
Topsoil Replacement	site specific	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Pit Backfill		yes					yes		yes	unacceptable	varies
Revegetation	natural reseeding	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Stabilization of Soils			yes	yes	yes	ongoing	yes	yes	yes	yes	yes
Restoration To	minimize damage	not required	usable condition	beneficial use	former use	former use	state standards	greatest degree	stable condition	beneficial use	equal use
1. Years to Complete	natural growth			5 years	3 years			3 years	3 years		5 years
Cyanide Ponds Neutralized	yes	yes		yes	yes	yes	yes	yes	yes	no	yes
Leach Pads Leveled/Neutralized	yes	yes		yes	yes	yes	yes	yes	yes	no	yes
Water/Water Systems Protected	yes	yes	yes	yes	yes		yes	monitored	yes	yes	yes
Roads											
1. Left in Place	case by case			if needed or used	if Board requests	if used	case by case		if requested		if justified
2. Reclaimed		yes	yes	otherwise yes	otherwise yes	after 2 years		yes	yes	yes	yes
Other Toxic Materials	handled by DEC	yes	protected, buried or removed	buried	removed	yes	yes	removed and isolated	removed or isolated	removed	removed or buried
Environmental Checklist	no	native plants	part of RIR	no	no	guidelines and NEPA	in terms of lease	as part of permit application	archaeological clearances	yes	in guidelines
State Requires Reclamation On:											
1. Private	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes
2. State	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
3. Federal	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes
RECLAMATION FUND	yes	no	not for surface mining	no	yes	yes	no	no	no	no	yes
Funding Source											
1. Bond Forfeiture					yes	yes					yes
2. Fines					yes	yes					yes
3. State grant	yes				no						
4. Budgeted					no	yes					yes
5. Mine Tax					no	yes					
Monies Spent Expenditures For	$99,000 for 1989 abandoned gold mine				no exact figures forfeited sites	yes forfeited sites, research, and reclamation					yes forfeited sites
CONSISTENCY WITH LOCAL PLANS											
County Planning	no counties state, local & Coastal Zone management plans	yes	yes	not required local government approval	yes	impact plan for large operations	not required	mandatory under Land Conservation & Development Act	yes	yes county approval	yes
Agricultural Zoning										no	
Public Hearing	sometimes	sometimes	required	if cont[illegible]	public response			required	comment period	public [illegible]se	public response

ATTACHMENT B

Oregon Administrative Rules, Chapter 632, Division 35
Department of Geology and Mineral Industries; Montana's Title 82,
Chapter 4; An Act, Senate Bill 162; Washington State, Chapter 78.44 RCW
and Department of Natural Resources Division of Oil, Gas and
Mining State of Utah

OREGON ADMINISTRATIVE RULES

CHAPTER 632, DIVISION 35 - DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES

DIVISION 35

OREGON MINED LAND RECLAMATION ACT

Applicable to Coal and Metal-Bearing Ore Operations

Obtaining Permits After August 16, 1981

Purpose of These Rules and Regulations

632-35-005(1) For Coal and Metal-bearing Ores these rules implement the purposes of ORS 517.750 to 517.955 and 517.990(3), (4), and (5) as declared by the Legislative Assembly:

(a) To provide that the usefulness, productivity, and scenic values of all lands and water resources affected by surface and underground mining within this state receive the greatest practical degree of protection and reclamation necessary for their intended subsequent use.

(b) To provide for cooperation between private and government entities in carrying out the purposes of ORS 517.750 to 517.955 and 517.990(3), (4), and (5).

(2) These rules prescribe procedures for obtaining an Operating Permit and for complying with the other requirements of the Oregon Mined Land Reclamation Act; ORS 517.750 to 517.955 as amended and subsections (3), (4), (5) and (6) of ORS 517.990.

(3) Applicants seeking Operating Permits from the Department should be aware that other state, federal and local agencies may require the applicant to obtain approval prior to operation. For example, the Department of Environmental Quality (DEQ) may require contaminant discharge permits for air, waste water and solid waste disposal. Where feasible the Department shall coordinate with other agencies to avoid duplication on the part of applicants. An Operating Permit from the Department does not constitute authorization to proceed without approval of other agencies if required. It is the applicant's responsibility to obtain other necessary permits.

Definitions

632-35-010 The definitions in ORS 517.750 apply to these regulations.

(1) "Affected", as used in ORS 517.750(13)(a) means the disturbance by excavation or any other surface mining or milling on any land surface during any stage of mineral production, or the covering of any land surface by surface mining refuse.

(2) "A period of 12 consecutive calendar months", as used in ORS 517.750(13) begins on the date surface mining begins.

(3) "Board" means the Governing Board of the State Department of Geology and Mineral Industries.

(4) "Chemical Processing Bond or Other Approved Security" is the bond or other approved security an operation capable of chemically leaching more than 5,000 cubic yards/year of material shall post. The bond shall be posted in an amount not less than $25,000 or more than $500,000 and shall be applied specifically to the reclamation procedures associated with the credible accident or decommissioning of an ore processing facility.

(5) "Closure Order" is a written notice from the Department requiring the operator to cease and desist from mining or processing mined material at the site described in the written notice.

(6) "Credible accident" is defined as an unplanned discharge of ore processing solutions, ore processing solution contaminated water, or chemicals from a mine facility into the surface water, ground water, soil, overburden, or living resources in sufficient quantities to impair the existing quality or pre-mine use of the receiving water, soil, overburden, or living resources which would exceed the discharge standards of DEQ.

(7) "Department" means the Department of Geology and Mineral Industries.

(8) "Disturbed area" is any area within permit area boundary where surface or ground water resources are impacted as a result of mining, milling or mine facilities.

(9) "Expansion" as used in these rules means lateral expansion consequential to surface mining into land surfaces previously not affected by surface mining.

(10) "Limited exemption" means surface mining which although not entitled to a "total exemption" is eligible for certain grandfather rights under ORS 517.770 and operates under a limited exemption certificate issued by the Department.

(11) "Mine facilities" as used here includes but is not limited to the following:

(a) leach pads and vats
(b) recovery plants or mill
(c) process solution ponds and storage ponds
(d) impoundments and diversions
(e) tailing disposal facility

(12) "Nonaggregate minerals" means coal and metal-bearing ores, including but not limited to ores that contain or are purported to contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chromium, copper or mercury.

(13) "Operating Permit" is the permit issued by the Department that allows for the mining and processing of coal and metal-bearing ores as

described in ORS 517.790 and provides for reclamation as specified in ORS 517.750(11).

(14) "Ore processing" means milling, heap leaching, flotation, or other mineral concentration process.

(15) "Ore processing solutions" are defined as those solutions which are used directly or indirectly to recover minerals.

(16) "Permit Area" is the area of surface mining and exploration as defined in ORS 517.750(13). Permit area is defined by boundaries submitted on a map acceptable to the Department and means the area to be covered by an Operating Permit. The permit area will generally be a contiguous parcel or parcels which are available to the permittee for surface mining. Areas used for the storage or disposition of any product or waste material from the surface mining operation even though separate from the area of extraction shall be included in the permit area. The permit area may be redefined as mining progresses. In the case of exploration, the permit area includes, but is not limited to, areas proposed for surface disturbance by drilling, drill pad construction, trenches and any roads newly constructed or improved with heavy equipment other than the road used to access the permit area.

(17) "Pre-mine use" when used in reference to surface or ground water means pre-mine uses that include but are not limited to:

(a) drinking water
(b) fishery
(c) agriculture
(d) recreation

(18) "Prospecting" and/or "exploration" means all activities conducted on or beneath the earth's surface for the purpose of determining presence, location, extent, depth, grade, or economic viability of a deposit.

(19) "Reclamation" means the employment in surface mining of procedures reasonably designed to minimize as much as practicable the disruption from surface mining and to provide for the rehabilitation of any surface resources through the use of plant cover, soil stability techniques, and through the use of measures to protect the surface and subsurface water resources, including but not limited to domestic water use and agricultural water use, and other measures appropriate to the subsequent beneficial use of such mined and reclaimed lands.

(20) "Surface mined prior to July 1, 1972", means land affected by surface mining before July 1, 1972, which has not been adequately reclaimed.

(21) "Surface mined prior to January 1, 1981" means: land affected by surface mining, milling or ore processing before January 1, 1981, under the provisions of the valid contract clause of ORS 517.770(1)(c) which has not been adequately reclaimed.

(22) "Total Exemption" means surface mining that is exempted from the requirements of these rules. The Department may require certain information

to be provided under OAR 632-35-016(2) to establish exemptions.

General Information

632-35-015(1) Information Requirements. The Department may require any information needed to determine the status of any surface mining. Proprietary information includes but is not limited to trade secrets, business records and production figures, and shall be held confidential. Information concerning ownership, location, and the identity of the operator are matters of public record as are actions taken by the Department with regard to any mining operation or permit application.

(2) Inspections. As provided by ORS 517.850 the Department may, after reasonable notice, inspect any surface mining site to determine status or compliance. The Department will report the results of these inspections to the permittee in writing.

(a) Initial inspections shall be conducted by the Department. Reasons for the inspections include but are not limited to:

(A) determining existing environmental conditions
(B) reviewing the proposed mine operation
(C) reviewing the proposed reclamation plan
(D) collecting data to calculate a bond
(E) monitoring the construction of facilities

(b) Annual and non-scheduled inspections may be conducted by the Department. Reasons for the inspection include but are not limited to:

(A) reviewing operating permit compliance
(B) investigating public complaints
(C) evaluating the site bond level

(3) County Authority:

(a) The Department shall recognize permits issued under county ordinances in lieu of permits required by these rules if such county ordinances have been approved by the Board before July 1, 1984. The Board may approve a county ordinance provided the ordinance meets the administrative and reclamation standards contained in ORS 517.750-517.955 and 517.990(3), (4), (5) and (6), and these rules and provision is made for the reclamation to be secured by an adequate reclamation bond or alternate security. Examination for approval of proposed county ordinances shall include, but is not limited to, the following criteria:

(A) Fully qualified professional personnel to administer the ordinance.

(B) Circulation for review of all applications and supporting documents to all appropriate natural resource public agencies, including the Department.

(C) Provision for completed processing and issuance of permits in the same or less time as the state.

(D) Provision for annual field inspections and for preparation and

maintenance of permanent records and reports.

(E) Provision for prior mined (grandfathered) sites as provided in state law.

(F) Provision for regulation of expansion (as defined in OAR 632-35-010(5)) of grandfathered sites.

(G) Adoption of the criteria regarding final slopes and water depths contained in these rules and regulations.

(H) Provision for bonding or adequate alternate security.

(I) Provision for confidentiality of information as provided for in state law.

(J) A statement of penalties.

(K) A complete mined land reclamation document which does not require reference to other documents for compliance and which is freestanding and not merely a part of a zoning ordinance.

(L) Provision to assume administration of all surface mining within the local agency's jurisdiction except municipalities within the county unless the city consents thereto as provided in ORS 517.780(2). Sites for which authority is not assumed, such as those on federal land, should be clearly exempted and left in state jurisdiction within the language of the ordinance. On those lands for which the county proposes to assume authority, the county must provide for reclamation of all categories of surface mining regulated under state law.

(M) Provision for incorporation of future changes of the state law into the local ordinance.

(N) Provision for review by the Board of future proposed changes in the local ordinance.

(O) Description of transition mechanism for transfer from state to county or city authority shall be provided for either in the ordinance or in a memorandum of understanding.

(b) The Board may rescind approval of a county ordinance if the county does not enforce its ordinance as approved by the Board or at the request of the county. When the Board recognizes county authority to issue surface mining permits in lieu of the permits required by these rules, the county will provide the Department with copies of all such applications, permits, denials, reclamation plans, and inspection reports. The Department may inspect those sites after giving reasonable notice to the operator and appropriate county authority.

(c) Umatilla and Clackamas counties may continue to operate their own reclamation programs as long as they maintain the standards specified in their approved ordinances. Changes to the reclamation ordinances in those counties must be approved by the Board. Changes to the reclamation ordinances must be consistent with state law and must be submitted to the

Board for approval. Routine audits of the county programs shall be conducted by the Department to ensure compliance with state laws, rules, and county ordinances. Any deficiencies noted during the audit will be given in writing to the county along with a reasonable date to reach compliance. Authorization will be withdrawn by the Board if a county fails to maintain an adequate reclamation program.

(4) Surface Mining on Federal Lands. Surface mining conducted on federal lands, is subject to ORS 517.750-517.990 (3), (4), and (5) and these rules. The Department shall coordinate with agencies of the federal government to minimize conflict or duplication in operating, reclamation and security requirements. The board may enter into formal agreements with federal agencies to establish the means by which these rules are carried out.

(5) Fees. Maximum fees are established by law and specific fees are set by the Department.

(a) Each application for an Operating Permit or Limited Exemption Certificate for coal or metal-bearing ores shall be accompanied by an application fee equal to that specified under ORS 517.800. For sites requiring special review and monitoring the Department shall assess a processing fee sufficient to cover costs of the Department in processing the application and regulating the site annually, as determined by the Department. The application fee from ORS 517.800 must accompany the application; any balance due will be requested by the Department in writing and must be submitted prior to issuance of the permit.

(b) Each permit and certificate holder shall pay an annual fee on or before the last day of the month shown on the permit as the anniversary month. The annual fee shall be in accordance with ORS 517.800(2), plus the balance of any additional actual cost the Department incurs from inspections or review in accordance with 517.920. The annual report form (SMLR-7) must be submitted to the Department by the last day of the anniversary month. As a courtesy, the Department may notify the permittee with a notice of these requirements at least 45 days prior to the due date. Failure of the permittee to pay the fee may result in the issuance of a Closure Order by the Department.

(c) Application fees are not refundable. Unspent balances of processing fees are refundable.

(d) Fees may be prorated at the applicant's request in order to adjust the anniversary date. The prorated fee will be on the basis of 1/12th the annual fee per month.

(e) For sites on which a processing fee is assessed a specific cost center for accounting purposes shall be established and the operator shall be provided with periodic cost summaries.

(f) The Department may require a lesser fee, upon completion of all reclamation, with the exception of vegetation establishment, per the approved Operating Permit.

(6) Closure Orders and Invalidation.

(a) The Department may issue a Closure Order when it finds that an operator is conducting surface mining:

(A) for which a permit is required but has not been obtained,

(B) where a site has expanded outside the approved permit area without approval by the Department, or

(C) that is in violation of ORS 517.750-900 and the rules adopted thereunder, the reclamation plan, or permit conditions,

(D) Without having submitted the annual fee

The Department may refer violations of Closure Orders to the Attorney General for legal proceedings under the provisions of ORS 517.880 or to the District Attorney for prosecution according to the provisions of 517.990(3) and (4).

(b) An Operating Permit becomes invalid upon the anniversary date if the fee and annual report form have not been received by the Department, or at any time if any bond or alternate security has expired, or has been cancelled without replacement. Reclamation obligations incurred prior to the date of cancellation of any bond or other security continue until the site is reclaimed.

(c) A Limited Exemption Certificate becomes invalid upon the expiration date if renewal has not been made.

(7) Reclamation by the Department.

(a) Upon a finding of abandonment, the Department may perform the reclamation outlined in the reclamation plan to the extent possible, given the condition of the site when abandoned.

The Department may perform alternative reclamation depending on site conditions. For example, the Department shall not construct a lake if the excavation has not reached the watertable; the Department shall not complete a proposed housing development.

(b) The Department may reclaim the site to:

(A) eliminate or minimize hazards to the health and safety of the public

(B) eliminate or minimize any pollution or erosion

(C) rectify abuses of natural resources, including fish and wildlife habitat and restoring drainage

(D) reach a condition compatible with local comprehensive plan and with federal and state laws.

(8) Applicability of laws and rules.

(a) Permittees, at all times during the terms of the permit, are subject to the provisions of statutes and rules in effect at that time.

Total Exemptions

632-35-016(1) The following excavation, processing or grading activities are exempt from these rules and do not require the payment of fees, posting of bond or submittal of reclamation plans.

(a) Beds and Banks. Excavations of materials from the beds and banks of any waters of this state are exempt from these rules when conducted pursuant to a permit issued under ORS 541.605 to 541.625 and 541.627 to 541.660.

(b) Operations producing less than 5,000 cubic yards of material per year and disturbing less than one acre of land are exempt from these rules but may require a permit from DEQ and other government agencies.

(c) Exploration. Mineral exploration activities are exempt until the cumulative area affected by one operation exceeds one of the following:

(A) More than one acre within any 8 contiguous acres explored including road construction.

(B) A total of five acres is disturbed.

(C) More than one contiguous acre per year is affected.

(D) More than 5,000 cubic yards of material is extracted or processed per year, or the site has the capacity to process more than 5,000 cubic yards per year.

(d) Surface effects, created by underground mining prior to October 1, 1983, which have not been reclaimed.

(2) Applications for total exemption certificate if desired shall be made to the Department using the established form. The Department may require the applicant claiming this exemption to provide data to establish the validity of the exemption. The data required may include but is not limited to, the name of the operator, location of the surface mine, size of the site, date of commencement of the surface mining, a summary of the previous 12 months' surface mining, and an estimate of the activity for the succeeding 12 months.

Limited Exemption

632-35-017(1) Limited exempt status is applicable to land surfaces which were affected by surface mining before July 1, 1972, and which are not reclaimed.

(2) To receive a Limited Exemption Certificate the applicant must:

(a) submit the appropriate application form and fee

(b) document with aerial photographs or other acceptable information that the site was affected by surface mining before July 1, 1972.

(c) demonstrate that the site has not stabilized to the point where it

is at least revegetated to 50 percent of original cover, when compared to adjacent lands, or has not reverted to any beneficial use such as wildlife habitat or grazing.

(3) The Department will review each request and make a determination based on the documentation provided, and on-site inspection, if necessary. If it refuses to approve the application for a limited exemption certificate, the Department will notify the applicant in writing specifying the reasons for the refusal and giving the applicant opportunity to supply additional documentation to support the application.

(4) The holder of a limited exemption certificate must renew the limited exemption annually by submitting the renewal form and fee before the certificate expires. As a courtesy the Department may notify the holder that the certificate is due for renewal by mailing the necessary renewal form and fee schedule at least 45 days before the renewal date. The Department may request information to determine continued eligibility.

(5) Expansion of surface mining under limited exempt status into previously unmined land, which exceeds 5,000 cubic yards per year of material disturbed or one acre affected in any period of 12 consecutive months, requires an Operating Permit. Any land mined under a valid Limited Exemption Certificate is exempt from the bonding and reclamation requirements for the life of the mine. An Operating Permit must be obtained before any expansion occurs. Expansion of a site before an Operating Permit is issued constitutes surface mining without a permit and is prohibited by ORS 517.790.

Procedures for Applying for an Operating Permit

632-35-020 Obtaining an Operating Permit:

(1) The applicant shall submit an Operating Permit application as defined in rule 632-35-025 including a map acceptable to the Department which delineates the proposed permit area.

(2) The application for an Operating Permit shall be accompanied by the fee authorized in ORS 517.800, 517.920 and determined by the Department. The balance of the actual cost of processing the application, if any, shall be submitted prior to issuance of the permit.

Requirements of an Operating Permit Application

632-35-025 (1) Prior to initiating any permitting action the applicant is encouraged to meet with the Department and with the Department of Environmental Quality (DEQ) for conceptual understanding and coordination of plans of study, baseline data collection and the permit application process. Division 35 rules do not apply to recycling or non-mining related facilities. These rules do apply to mine areas with ore processing facilities at or removed from the mine site, and apply to monitoring facilities. The Department shall closely coordinate it's permit requirements with DEQ so as to avoid duplication of effort and unnecessary delay. All waste water treatment and/or pollution control systems require DEQ permitting.

(2) An Operating Permit application shall contain five sections. Those sections are:

(I) Existing Environment
(II) General Information
(III) Operating Plan
(IV) Reclamation Plan
(V) Bonding

(a) Existing Environment

(A) The Department may require environmental baseline information including characterization of the following:

(1) vegetation
(2) soil/overburden
(3) climate/air quality
(4) fish and aquatic biology*
(5) wildlife* (terrestrial, avian)
(6) surface and ground water
(7) area seismicity
(8) geologic hazards
(9) noise

* These characterizations may be necessary for determinations by the Oregon Department of Fish and Wildlife.

(B) Other state and federal agencies may have similar baseline requirements. Where possible the Department shall coordinate with agencies that have similar baseline needs in order to avoid duplication for the applicant.

(C) The level of detail required for (2)(a)(A) 1-9 of this rule may vary depending on location, size, scope, and type of mining operation. The applicant should contact the Department prior to baseline data collection to determine the level of detail necessary for the applicant's proposal.

(b) General Information

(A) The name(s) and address(es) of all owners of the surface estate.

(B) The legal structure (e.g. corporation, partnership, individual) of the applicant.

(C) The name and mailing address of the facility for correspondence.

(D) The name and mailing address of the applicant's resident agent.

(E) The proposed starting date and expected life of the proposed operation.

(F) A description of the present land use and the proposed post-mine use of the site following mining. The proposed post-mine use must be compatible with the local comprehensive plan as determined by local land use planning agencies.

(G) Maps, aerial photographs or design drawings of appropriate scale may be required by the Department. Information that typically may be required on maps, aerial photographs or design drawings includes but is not limited to:

(i) permit area boundary
(ii) mine location
(iii) waste rock or overburden stockpiles
(iv) processing facilities location
(v) ancillary facilities location
(vi) haul road location
(vii) topsoil stockpile locations
(viii) typical cross sections
(ix) plan views and profiles
(x) existing watercourses and ponds
(xi) interim watercourses and ponds
(xii) reconstructed watercourses and ponds
(xiii) post-mining topography
(xiv) property lines
(xv) general orebody location

(H) The applicant should contact the Department for recommendations regarding scale and amount of detail required. The applicant may be required to submit extra copies of materials to be circulated to other agencies.

(I) Written evidence that the surface estate and mineral estate owners concur with the reclamation plan and the proposed use after reclamation and that they will allow the Department access to complete reclamation within the permit area if the permittee fails to comply with the approved reclamation plan. If the applicant can document a legal right to mine without the consent of the surface estate owner, and the applicant can assure the Department will have a right to enter upon the permit area to complete the reclamation within the permit area if the permittee fails to complete with the approved reclamation, the Department may issue an Operating Permit.

(c) Operating Plan

The Department may require the following in an operating plan.

(A) A detailed description of the proposed mining methods

(B) A general list of equipment required for operation

(C) A general schedule of construction and operation starting with the beginning of construction and ending with the completion of mining

(D) General design assumptions plus plans profile, typical cross sections and capacities for mine facilities including but not limited to:

(i) leach pads
(ii) impoundments
(iii) ponds
(iv) diversion systems

(v) disposal systems
(vi) stockpiles and dumps
(vii) pits
(viii) tailing disposal facilities

(E) When appropriate, mine facilities must be designed conceptually as zero discharge/leak facilities. Leaching facility design and construction materials are at the discretion of the applicant. A coefficient of permeability for facilities shall be agreed to by the applicant, DEQ and the Department prior to construction. The applicant must provide for the conservation of the pre-mine quantity and maintenance of the pre-mine quality of the surface and ground water resource so as not to degrade the pre-mine use. Any discharge of ore processing solutions off-site would be required to meet DEQ discharge permit standards.

(F) A water budget analysis including but not limited to:

(i) precipitation/evaporation data

(ii) make-up water needs

(iii) make-up water source

(iv) procedures to dispose of precipitation water in excess of designed capacities to include but not be limited to solution treatment facilities or proposed irrigation strategies. This section should be coordinated with procedures for seasonal closure and decommissioning of the operation.

(v) surface water runoff determination for the watershed containing the mine operation

(vi) As a minimum, projects shall be designed to handle the 100-year, 24-hour precipitation event.

(G) Seasonal closure procedures if applicable including but not limited to:

(i) target seasonal storage volumes
(ii) total system storage capacity
(iii) procedures to handle volumes of water in excess of seasonal storage capacities
(iv) estimated target dates for closure

(H) Credible accident contingency plan including but not limited to:

(i) accidental discharge scenarios
(ii) immediate response strategy
(iii) procedures to mitigate impacts to ground water
(iv) procedures to mitigate impacts to surface water
(v) procedures to mitigate impacts to soil/overburden
(vi) procedures to mitigate impacts to living resources
(vii) notification procedures
(viii) chemical constituents representative of ore processing solutions

(I) Operational monitoring programs including but not limited to, surface and ground water monitoring systems within and outside the permit boundary, water balance of the process system and leak detection systems. Monitoring may be required after cessation of mining or milling operations to insure compliance with decommissioning performance standards.

(J) Surface water management procedures to provide for protection against contamination of ground water and the off-site discharge of sediments into adjacent waterways.

(K) Stable storage of overburden. A vegetative cover of overburden stockpiles may be required by the Department to prevent erosion of the overburden storage or spoils area.

(L) Isolation and stable storage of the topsoil or equivalent growth media material maintained for use in revegetation.

(M) Stable storage of mine dumps. The pre-dump topography, ground preparation, method of emplacement of dump material, height of lifts, total height and final slopes shall be described. The Department may require design and review by a registered professional engineer or certified engineering geologist.

(N) Stable storage of mill tailings. Plans and specifications of all dams or impoundments proposed to be constructed for the purpose of storing mill tailings or other materials consequent to the mining and milling operation may be required by the Department to be prepared by a registered professional engineer or certified engineering geologist. Plans shall be reviewed by the Department and other regulatory agencies. Construction of such dams may be required to be reviewed by a registered professional engineer. Procedures to prevent pollution of air, water, and land shall be described. Depending upon the the commodity to be mined, tailings impoundments must meet various requirements of the Department of Environmental Quality, the Health Division of the Department of Human Resources, the Department of Fish & Wildlife, the Oregon Department of Energy, Department of Water Resources, Army Corps of Engineers and the U.S. Nuclear Regulatory Commission. Details on how each tailings disposal facility will be reclaimed must be submitted.

(O) Stable storage of mined ore. Plans and specifications prepared by a registered professional engineer or certified engineering geologist of all ore storage facilities may be required by the Department. Storage facilities as used here include but are not limited to stored ore on leach pads, stored ore on permanent leach pads, ore stockpiles, storage bins and silos.

(P) Subsidence Control Plan for Underground Mines.

(i) At the discretion of the Department an application for underground mining activities must include an inventory which shows whether structures, renewable or nonrenewable resources, or water resources exist within the proposed permit area and adjacent area and whether subsidence might cause material damage to, or diminution of reasonably foreseeable uses of the structures, or renewable or nonrenewable resources, or water resources.

(ii) If the Department finds, after reviewing the survey, that no structure or renewable or nonrenewable resources exists or no material damage or diminution could be caused in the event of mine subsidence, no further information need be provided under this subsection. (iii) If the Department finds, after reviewing the survey, that any structure, renewable or nonrenewable resources, or water resources exist and that subsidence could cause material damage or diminution of value of foreseeable use of the land, then the applicant shall submit a subsidence control plan which contains:

(I) a detailed description of all proposed methods of operation which may cause subsidence, including

(I-a) the technique of ore removal, and

(II-b) the extent, if any, to which planned and controlled subsidence is intended;

(II) a detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably foreseeable use of the surface including

(I-a) the anticipated effects of planned subsidence, if any,

(II-b) measures to be taken in the mine to reduce the likelihood of subsidence, and

(III) measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface;

(IV) a detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as

(IV-a) the results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence, and

(IV-b) monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

(Q) A list and procedures for the handling and storage of any chemicals, acid-forming materials or radioactive material generated from or required for mining or processing at the proposed operation.

(R) Prior to operation, a signed registered engineer's or certified engineering geologist's report, complete with and accurate drawings and specifications depicting the actual construction shall be submitted. It shall be submitted by the permittee to the Department within 30 days after the completion of the construction. Alternatively, if the construction proceeded in substantial compliance with the approved plans and specifications, a statement to that effect may be submitted by the registered professional engineer or certified engineering geologist. In either case, specific provisions shall be made for agency inspection during construction or installation of mine facilities.

(d) Reclamation Plan

The Department may require the following in a reclamation plan:

(A) Provisions for recontouring, stabilization and/or topsoil replacement of all disturbed areas

(B) Provisions for the revegetation of all disturbed areas consistent with future use. This shall include seedbed preparation, mulching, fertilizing, species selection, plus seeding or planting rates and schedules. The Department shall, in most instances, consider revegetation successful if it is comparable in stability and utility to adjacent analogous areas. In arid or semi-arid regions, the Department may allow three years of growth prior to evaluation of revegetation. Otherwise revegetation will be evaluated after one growing season. Vegetation test plots and chemical/physical soil and subsoil analysis may be required to ensure establishment feasibility. If applicable the applicant must include a plan for the control of noxious weeds.

(C) Provisions for protection of public health and safety.

(D) Provisions specifying adequate setbacks.

(E) Procedures for all stream channels and stream banks to be rehabilitated so as to minimize bank erosion, channel scour, and siltation. Disturbance within the beds and banks of streams may require a permit from the Division of State Lands.

(F) The Department may require the applicant to provide for the prevention of stagnant water.

(G) Final slopes shall be stable.

(H) Reclaimed cutbanks shall not have slopes exceeding 1-1/2 horizontal to 1 vertical (1-1/2:1). The Department may grant exceptions for steeper slopes when the applicant can document that the slopes will be stable and if the steeper slopes:

(i) blend into adjacent terrain features or
(ii) existed prior to mining or
(iii) are consistent with approved subsequent beneficial use

(I) Fill slopes shall be 2:1 or flatter unless steeper slopes are approved by the Department. Technical data supporting steeper slope stability may be required by the Department.

(J) Procedures for the salvage, storage and replacement of topsoil or acceptable substitute.

(K) Provisions for the establishment of 3:1 in-water slopes to six feet below low water level for permanent water impoundments. Reasonable alternatives may be approved by the Department when they are consistent with the reclamation plan. For example, safety benches no more than two feet below low water level and five feet wide may be substituted for the slope requirement where the Department determines that sloping is not

practical.

(L) Visual screening of the proposed operation may be required, if economically practical, when the operating area is visible from a public highway or residential area. Techniques for visual screening include, but are not limited to, vegetation, fencing or berms.

(M) Procedures for the removal or disposal of all equipment, refuse, structures and foundations from the permit area. Permanent structures may remain if they are part of an approved reclamation plan.

(N) Provisions to maintain access to utilities when a utility company right-of-way exists.

(1) Procedures or information for decommissioning mine facilities including but not limited to:

(i) procedures for ore storage sites to meet decommissioning performance standards for protection of surface and ground water quality, living resources, and to achieve revegetation requirements

(ii) procedures for tailing disposal facility to meet decommissioning performance standards for long-term stability, protection of surface and ground water quality, living resources, and provide for attainment of site land use objectives

(iii) procedures for solutions to meet decommissioning performance standards for discharge, containment and evaporation, or other ultimate disposal methods

(iv) removal of all process chemicals

(v) appropriate isolation or removal of waste material

(vi) monitoring system by which the success of the proposed reclamation can be measured for bond release

(vii) Performance standards for spent ore leachate shall be established by DEQ unless the applicant can demonstrate to DEQ that the limits cannot be achieved practicably. Demonstration can be laboratory trials or field evaluations.

(e) Bonding

(A) The applicant shall submit a performance bond or other adequate security deposit for the purpose of assuring performance of the reclamation plan, other requirements of ORS 517.750 to 517.955, and all rules and permit conditions. The bond amount shall be determined and transmitted to the operator after comments by reviewing agencies on the proposed reclamation plan have been received and evaluated. All disturbed land must be bonded prior to disturbance. The Department shall determine the amount of the bond or other security required by estimating the cost of reclamation if the Department were to perform the reclamation.

(B) Factors the Department will consider in determining the amount of

security may include, but are not limited to, the following:

(i) Supervision
(ii) Mobilization
(iii) Costs of equipment
(iv) Equipment capability
(v) Costs of labor
(vi) Removal or disposition of debris, junk, equipment, structures, foundations and unwanted chemicals
(vii) Reduction of hazards such as: in-water slopes, highwalls, and landslides or other mass failure
(viii) Disposition of oversize, rejects, scalpings, and overburden
(ix) Backfilling, contouring or regrading and topsoil replacement
(x) Draining, establishment of drainage, and erosion control
(xi) Soil tests
(xii) Seedbed preparation, seeding, mulching, fertilizing, netting, tackifiers or other stabilizing agents
(xiii) Tree and shrub planting
(xiv) Fencing
(xv) Liability insurance
(xvi) Long-term stabilization, control, containment or disposal of waste solids and liquids (xvii) Final engineering design

(C) Cost estimate information shall be derived from sources such as:

(i) Comparable costs from similar projects
(ii) Catalog prices
(iii) Guides and cost estimates obtained from appropriate government and private sources
(iv) Operator estimates
(v) Equipment handbooks

(D) Seedmixes, fertilizer rates, and other requirements will be derived from departmental experience combined with advice from such sources as the Oregon Department of Agriculture, Soil Conservation Service, Oregon State University Extension Service, the Department of Transportation, the Bureau of Land Management or United States Forest Service and private sector experts.

(E) The security amount shall be based on the cost of reclamation at the time of an inspection plus the predicted disturbance within the next 12 months. Security amounts shall not include construction of structures or comparable features such as housing developments or industrial construction even if included in a reclamation plan.

(F) In addition to the performance security required for the mine site, applicants having the capacity to cyanide leach or chemically process more than 5,000 yards of minerals per year shall post a chemical processing bond or appropriate security in an amount not less than $25,000 and not more than $500,000. The Chemical Processing Bond or appropriate security may only be used by the Department for the detoxification or disposal of solutions used in ore processing or for the detoxification or restoration of soil, overburden, surface and ground water, or living resources contaminated by ore processing solutions, on or off the permit area.

(G) The Department shall consider the following factors in determining the amount of security required for the Chemical Processing Bond.

(i) The estimated cost of detoxification or disposal of ore processing solutions and solution contaminated ore so as to meet the performance standards for reclamation approved for the operation in the Operating Permit issued by the Department.

(ii) The estimated cost of restoration of contaminated soil, surface and ground water, or living resources within the performance standards should an accident occur at the site.

(iii) The estimated cost of removal and/or disposal of chemicals used on site.

(iv) The operator's credible accident contingency plan.

(v) Estimated agency contracted service expenses including but not limited to supervision, mobilization, labor and equipment needs of the agency for decontamination and restoration should the agency be required to perform such restoration.

(H) The amount of the bond or other security may be reduced upon completion of ore processing and decontamination, provided documentation substantiates the reduction of risk to the environment. Some amount of the bond or other security, not less than $25,000, shall be maintained through any post closure monitoring which may be required.

(I) Chemical Processing Bond or Other Approved Security release standards and schedules for any specific site shall be established in consultation with the DEQ prior to operation.

(J) The applicant may be required to submit reclamation/decommissioning cost estimates and/or estimated costs for mitigation, reclamation and/or disposal associated with a credible accident for consideration by the Department.

(K) No permit shall be issued or renewed until both performance and chemical processing bonds or other securities for a surface mining site are on file with the Department. The bonds or other securities must be maintained until operations have ceased, reclamation has been completed, and all decommissioning performance standards have been met. The Department may accept performance bonds, security deposit assignments, letters of credit or other security as authorized by ORS 517.810. Performance bonds must be provided by surety companies authorized to do business in Oregon. The security document submitted must be in a form acceptable to the Department. A security submitted for multiple surface mining sites under the provisions of ORS 517.810(4) must be accompanied by a list showing the permits covered by the security, the amount of the bond applicable to each surface mining site, and the number of acres bonded at each site.

Department Action on Operating Permit Application

632-35-030(1) The Department shall approve or deny a complete

application in writing within 120 days of receipt. If an application is incomplete, the Department shall notify the applicant of that fact in writing within 30 days of receipt and the department will specify the deficiencies therein. Within 60 days of receipt of a notice of incompleteness the applicant may appeal the determination of incompleteness or may resubmit the application with deficiencies corrected.

(2) The Department will submit the Operating Permit application to local planning authorities and other appropriate public agencies for review. If the Operating Permit cannot be reviewed and accepted or rejected by the department within 120 days after receipt, the department will notify the applicant.

(3) If the Department refuses to approve the Operating Permit for any reason, the department will notify the applicant in writing within five days of refusal stating the reasons, and including additional requirements as may be prescribed by the department for inclusion in the reclamation plan. Within 60 days after the receipt of a deficiency list or permit conditions, the applicant shall comply with the additional requirements prescribed by the Department or file a written notice of appeal of the decision to the Department in accordance with OAR 632-35-056. Failure to comply with the additional requirements or file a notice of appeal within the 60-day period, unless an extension is granted by the Department, shall result in the application for an Operating Permit being denied. Informal requests for reconsideration may be submitted as provided for in OAR 632-35-056.

(4)(a) The Department will approve the applicant's Operating Permit if it adequately provides for reclamation of surface mined lands as required by these rules.

(b) If the Department finds that reclamation cannot be accomplished it shall not issue an Operating Permit. The applicant shall be notified in writing within 5 days of the decision.

(5) The Department may attach conditions to the Operating Permit. These conditions may be added to reflect special concerns which are not adequately addressed in the reclamation plan and fall within the scope of these rules. The permittee may appeal these conditions by filing a written notice of appeal in accordance with OAR 632-35-056.

(6) The approval of the reclamation plan and the issuance of the Operating Permit by the Department do not constitute a finding of compliance with statewide planning goals or local regulations implementing acknowledged comprehensive land use plans. The Operating Permit may be issued prior to the local land use agency making such a determination. The permittee is responsible for obtaining local land use approval before commencing the proposed surface mining activity. When issuing the permit, the Department will inform the permittee that:

(a) Issuance of the Operating Permit is not a finding of compliance with the Statewide Planning Goals (ORS 197.225) or the acknowledged comprehensive plan; and

(b) The applicant is responsible for compliance with the requirements of

all other agencies including land use determination by local government and compliance with the Statewide Planning Goals before commencing surface mining under the approved Operating Permit.

Modification of an Operating Permit

632-35-035 Modification may be initiated at any time by the permittee or by the Department. An Operating Permit may be modified by approval of the Department after timely notice and opportunity for review as provided by ORS 517.830(4) in order to modify the requirements so that they comply with existing laws, or to accommodate unforeseen developments which may affect the reclamation plan as previously approved. Expansion of an operation beyond original permit area or significant intensification of activity may require recirculation to interested agencies for additional comment.

Maintaining an Operating Permit

632-35-040(1) As provided by ORS 517.830(4) an Operating Permit issued by the Department shall be granted for the period of time required to mine and reclaim the land described in the permit and subject to the requirements of the law. Each operating permit is to be renewed prior to the anniversary date by submitting the required annual fee and filing the annual report. As a courtesy, the Department may notify the permittee by mail at least 45 days prior to the anniversary date of the permit and will provide the necessary renewal forms and fee schedule for permit renewal. In cases of nonrenewal, a second notice may be sent prior to issuance of a Closure Order. The permittee shall maintain an Operating Permit until mining and reclamation, including revegetation (if required), have been completed.

(2)(a) If the Department determines from inspections conducted pursuant to ORS 517.850 or from any other source, that the operation is not in compliance with the approved Operating Permit, permit conditions, ORS 517.750-900, or the rules adopted thereunder, the Department shall give written notice of noncompliance to the operator.

(b) The permittee must begin rectifying all deficiencies within 30 days of receipt of the notice of noncompliance as required in ORS 517.860(1), or file a written appeal to the notice of noncompliance in accordance with OAR 632-35-056. If the permittee appeals the notice within 30 days of receipt, the Department will not issue a Closure Order or revoke the permit pending the appeal, except in cases of reasonable probability of danger to human life, property, water resources, or wildlife. The Department will provide the permittee a written statement of the specific facts leading to that finding and corrective action for the elimination of such danger.

(c) The Department will notify the permittee in writing within 10 days of verification of compliance.

Obtaining Bond Releases

632-35-045(1) The permittee shall notify the Department when the reclamation has been completed.

(2) The Department shall inspect the reclaimed site. If the permittee

has fulfilled the requirements of the approved reclamation plan or decommissioning performance standards, the bonds or other securities shall be released. The Department may authorize bond or other security reduction if the reclamation or decommissioning is partially completed.

Appeals

632-35-050(1) Prior to the initiation of a formal appeal of any department order, notice, or other action, made pursuant to ORS 517.750-517.955 or the rules adopted thereunder, the applicant or permittee shall first request that the State Geologist informally review and resolve the matter. The State Geologist will provide a written decision within 20 days of receipt of such an informal request. If the State Geologist is unable to resolve the informal request, the applicant or permittee may request a contested case hearing the Board or its designee for final resolution of the matter. Appeals must be filed within 30 days of receipt of the State Geologist's written decision except as otherwise provided by OAR 632-35-030(2) of these rules and by the applicable provisions of ORS 183.310 thru 183.550. A final determination by the Board must be made before any appeal for judicial review under ORS 183.480 is allowed.

(2) An applicant or permittee requesting a hearing for consideration of any appeal shall state the reasons for requesting the hearing and the objections to the department's order, notice, or other action in accordance with ORS 183.430 thru 183.470.

Penalties

632-35-055(1) Any landowner or operator who conducts a surface mining operation, for coal or a metal-bearing ore, without a valid Operating Permit as required by ORS 517.750-517.955 shall be punished, upon conviction, by a fine of not more than $10,000.

(2) Violation of any provision of ORS 517.750 to 517.955, or of any rule or order made pursuant to ORS 517.910 to 517.950, or of any conditions of an Operating Permit, is punishable, upon conviction, by a fine of not more than $10,000.

Montana

TITLE 82

Chapter 4

RECLAMATION

Part 3 - Metal Mine Reclamation

Part 3

Metal Mine Reclamation

Part Cross-References

Prospecting permits and mining leases on state lands, Title 77, ch. 3, part 1.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-301. Legislative findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in

this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide:

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other

processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(12) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(13) "Underground mining" means all methods of mining other than surface mining.

(14) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(15) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 386 in (11)(b) near end, after "mining", deleted "or exploration".

Chapter 453 in (4) after "overburden", inserted "tailings, waste materials"; inserted (8); in (9) after "exploration for", deleted "or development" and after "earth", inserted "reprocessing of tailings or waste materials, or operation of a hard-rock mill"; in (11)(a) after "business of mining", inserted "or reprocessing of tailings or waste materials".

82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. No provision of this part is applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at such a mill that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219, amd. Sec. 4, Ch. 201, L. 1979; amd. Sec. 2, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: At end of first sentence, after "82-4-321", inserted "relating to exploration and mining"; and inserted second and third sentences.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985.

Compiler's Comments

1965 Amendment: In (2) substituted present language for "Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners or operators of said project to a fine of not less than $10 or more than $100, payable to the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine."

Cross-References

Penalty for violation of conditions of small-miner exemption, 82-4-361.

82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under an operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by

the department or by judicial order. Failure to comply with the secrecy provisions of this part shall be punishable by a fine of up to $1,000.

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221; am l. Sec. 193, Ch. 575, L. 1981.

Co mpiler's Comments

1981 Amendment: Substituted "an operating permit" for "a development or an operating permit" at the end of the first sentence.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Proof of official records, Rule 44, M.R.Civ.P. (see Title 25, ch. 20).

Admissibility of public records, Rule 803(8), Montana Rules of Evidence (see Title 26, ch. 10).

Disposition of fines and forfeitures, 46-18-603, 82-4-311.

Administrative procedure, 82-4-353.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

82-4-308. Release by waiver. An applicant may release the board and department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2.

82-4-309. Exemption — operations on federal lands. This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

Cross-References

Jurisdiction of the state, Title 2, ch. 1, part 1.

State jurisdiction in federal enclaves, 2-1-201.

82-4-310. Exemption — sample collectors. This part shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year.

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224.

82-4-311. Hard-rock mining account. All fees, fines, penalties, and other uncleared moneys which have been or will be paid to the department of state lands under the provisions of this part shall be placed in the state special revenue fund in the state treasury and credited to a special account to be designated as the hard-rock mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

No money expended except upon appropriation, Art. VIII, sec. 14, Mont. Const., 17-8-101.

"Fiscal year" defined, 17-2-110.

Reversion of unexpended appropriation, 17-7-304.

82-4-312 through 82-4-320 reserved.

82-4-321. Administration. The board is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The board may delegate such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part. The board shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204.

Cross-References

Board of Land Commissioners created, Art. X, sec. 4, Mont. Const.

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

Department of State Lands created, 2-15-3201.

82-4-322. Investigations, research, and experiments. The board shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205.

82-4-323. Interagency cooperation — receipt and expenditure of funds. The board shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206.

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required — employees included. (1) No person shall engage in exploration in the state without first obtaining an exploration license from the board to do so, such license to be issued for a period of 1 year from date of issue and to be renewable from year to year on application therefor filed at any time within the 30 days next preceding the expiration of the current license and payment of like fee as required for a new license, provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license shall be subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part shall be deemed included in and covered by such license.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the board;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of the certificate to the board.

(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979.

Cross-References

Certificate of claim location to be filed, [illegible]

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(3), (4).

82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979.

82-4-335. Operating permit. (1) No person shall engage in mining, ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill or disturb land in anticipation of those activities in the

state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that such structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (4), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the hard-rock mining impact board approves the impact plan under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has

obtained a waiver of the impact plan requirement from the hard rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 345 inserted (1)(h) through (1)(k).

Chapter 453 in (1) near beginning, after "engage in mining", inserted "ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill" and after "anticipation of", substituted "those activities" for "mining"; at end of second sentence of (1) substituted "complex" for "mine complex"; at end of (1)(d) substituted "operations" for "mining"; in (1)(g) after "plan" deleted "of mining" and after "completion of", substituted "the operation" for "mining and associated land disturbances".

Chapter 582 in (2) changed "subsection (3)" to "subsection (4)"; and inserted (3).

1983 Amendment: Near beginning of (2), substituted "activities under the permit" for "mining".

1981 Amendment: Added subsections (2) and (3) (now (4)).

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with the operation and in any case shall be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable

effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover shall meet county standards for noxious weed control.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the board shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan shall provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan shall also provide measures to prevent objectionable postmining ground water discharges.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 345 in (6) inserted second sentence; in (7) substituted "shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the board shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands" for "need not reclaim the areas to a better condition or different use than that which existed prior to development or mining"; and inserted (9).

Chapter 453 throughout (1) substituted "the operation" for "mining"; at end of first sentence of (1), after "disturbance", deleted "by the mining operation"; and in middle of first sentence and at end of (1), substituted "the complex" for "mine complex".

Cross-References

Denial of operating permit for failure of reclamation plan to comply with air quality, water quality, or public water treatment criteria, 82-4-351.

82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall

notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to complete the operation and shall be valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 201, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 19- 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(b) in two places, substituted "plan of operation" for "plan of mining"; in (2) after "period required to", substituted "complete the operation" for "mine the land covered by the plan" and after "until the",

substituted "operation" for "surface or underground mining".

Cross-References
Contested administrative cases, Title 2, ch. 4, part 6.

82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

(2) No bond filed in accordance with the provisions of this part shall be released by the department until the provisions of this part, the rules adopted pursuant thereto, and this reclamation plan have been fulfilled.

(3) No bond filed for an operating permit obtained under 82-4-335 may be released until the public has been provided an opportunity for a hearing.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985.

Compiler's Comments
1985 Amendment: Inserted (3).

Cross-References
Surety bonds and companies, Title 28, ch. 11, part 4; Title 33, ch. 26, part 1.

82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4); and

(e) update any maps previously submitted or specifically requested by the board. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985.

Compiler's Comments

1985 Amendment. Inserted (1)(d) and (2).

82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3); amd. Sec. 6, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning after "uncompleted", deleted "mining".

82-4-341. Compliance with reclamation plan — reclamation by board. (1) Following receipt of the permittee's report and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the board, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said

area shall be released or decreased proportionately to the acreage included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the board or if reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

(5) The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond. The permittee shall be liable for the remainder of the cost.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the board may permit on permittee's application therefor or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213.

Cross-References

Public contracts generally, Title 18, ch. 1.

82-4-342 through 82-4-350 reserved.

82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979; amd. Sec. 7, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment In (1)(a) substituted "plan of operation or reclamation" for "plan of development, mining, or reclamation".

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215.

82-4-353. Administrative remedies — notice — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

82-4-354. Mandamus to compel enforcement. (1) Any person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform his duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with

this part against any person for the violation of this part or any rule, order, or permit issued under it. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order or permit issued under it. Any person having an interest that is or may be adversely affected may intervene as a matter of right in any such civil action.

(4) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

History: En. Sec. 4, Ch. 345, L. 1985.

Cross-References

Mandamus — Writ of Mandate, Title 27, ch. 26.

82-4-355. Action for damages to water supply — replacement. (1) An owner of an interest in real property who obtains all or part of his supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in a mining or exploration operation to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until such time as the operator provides substitute water, except that nothing in this section preempts Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of his senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program, water quantity monitoring program, or both, which must

be approved by the department prior to the commencement of exploration or mining.

History: En. Sec. 5, Ch. 345, L. 1985.

82-4-356 through 82-4-360 reserved.

82-4-361. Violation — penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part, except 82-4-339, or conditions of a small-miner exemption shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222; amd. Sec. 1, Ch. 284, L. 1985; amd. Sec. 3, Ch. 386, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 284 near beginning of (1) after "this part", inserted "except 82-4-339".

Chapter 386 in (1) near beginning, after "under this part", inserted "or conditions of a small-miner exemption".

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Criminal responsibility of corporations, 45-2-311.

Disposition of fines and penalties, 45-15-601, 82-4-311.

"Person" defined, 82-4-303(8).

Small-miner exemption, 82-4-305.

82-4-362. Suspension of permits. (1) If any of the requirements of this part or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this part, the rules, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply

within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225; amd. Sec. 2, Ch. 284, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3).

1988

An Act

SENATE BILL NO. 162.

BY SENATORS Bishop, Cole, DeNier, McCormick, Norton, Rizzuto, Strickland, and Winkler;
also REPRESENTATIVES Fleming, Allison, Anderson, Carpenter, Chlouber, Entz, Masson, Paulson, Ruddick, Taylor-Little, D. Williams, and S. Williams.

CONCERNING REVISIONS TO THE MINED LAND RECLAMATION ACT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 34-32-102, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

34-32-102. Legislative declaration. (1) It is declared to be the policy of this state that the extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities. It is further declared to be the policy of this state that both such activities should be and are compatible. It is the intent of the general assembly by the enactment of this article to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state. It is the further intent of the general assembly by the enactment of this article to conserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites, and to protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that it is the intent of this article to require the development of a mined

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

land reclamation regulatory program in which the economic costs of reclamation measures utilized bear a reasonable relationship to the environmental benefits derived from such measures. The mined land reclamation board or the division, when considering the requirements of reclamation measures, shall evaluate the benefits expected to result from the use of such measures. It is also the intent of the general assembly that consideration be given to the economic reasonableness of the action of the mined land reclamation board or the division. In considering economic reasonableness, the financial condition of an operator shall not be a factor.

SECTION 2. 34-32-103 (1) and (13), Colorado Revised Statutes, 1984 Repl. Vol., are amended, and the said 34-32-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

34-32-103. Definitions. (1) "Affected land" means the ~~disturbed~~ surface of an area within the state where a mining operation is being or will be conducted, ~~including~~, WHICH SURFACE IS DISTURBED AS A RESULT OF SUCH OPERATION. AFFECTED LANDS SHALL INCLUDE, but SHALL not BE limited to, ~~on-site~~ private ways, roads, EXCEPT THOSE ROADS EXCLUDED PURSUANT TO THIS SUBSECTION (1), and railroad lines appurtenant to any such area; land excavations; prospecting sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise ~~includable~~ INCLUDED as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board. AFFECTED LAND SHALL NOT INCLUDE OFF-SITE ROADS WHICH EXISTED PRIOR TO THE DATE ON WHICH NOTICE WAS GIVEN OR PERMIT APPLICATION WAS MADE TO THE DIVISION AND WHICH WERE CONSTRUCTURED FOR PURPOSES UNRELATED TO THE PROPOSED MINING OPERATION AND WHICH WILL NOT BE SUBSTANTIALLY UPGRADED TO SUPPORT THE MINING OPERATION.

(4.5) "Director" means the director of the division of mined land reclamation or such officer as may lawfully succeed to the powers and duties of such director.

(4.7) "Division" means the division of mined land reclamation or such agency as may lawfully succeed to the powers and duties of such division.

(13) "Reclamation" means the employment during and after a mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the ~~rehabilitation of affected~~

~~land-through-the-rehabilitation~~ ESTABLISHMENT of plant cover, STABILIZATION OF soil, ~~stability,~~ THE PROTECTION OF water resources, or other measures appropriate to the subsequent beneficial use of such ~~mined-and-reclaimed~~ AFFECTED lands. RECLAMATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERFORMANCE STANDARDS OF THIS ARTICLE.

SECTION 3. 34-32-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

34-32-104. Administration. In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the ~~department~~ DIVISION has the full power and authority to carry out and administer the provisions of this article.

SECTION 4. 34-32-105 (1) and (2), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-105. Division of mined land reclamation - mined land reclamation board - created. (1) There is hereby created, ~~as-a-part-of-the-office-of-the-executive-director,~~ in the department of natural resources, THE DIVISION OF MINED LAND RECLAMATION AND the mined land reclamation board.

(2) The board shall consist of seven members: The executive director, who shall serve as secretary to the board; a member of the state soil conservation board appointed by such board; and five persons appointed by the governor with the consent of the senate. Such appointed members shall be: Three individuals with substantial experience in agriculture or conservation no more than two of whom shall have had experience in agriculture or conservation; and two individuals with substantial experience in the mining industry. Effective July 1, 1976, the terms of office of the existing members of the MINED land reclamation board shall terminate, and, prior thereto, the governor shall appoint two members of the board, effective July 1, 1976, whose terms of office shall expire March 1, 1977, and three members of the board, effective July 1, 1976, whose terms of office shall expire March 1, 1979. Subsequent appointments shall be made for a term of four years. Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term. All members of the board shall be residents of the state of Colorado. Appointed members of the board shall receive no compensation for their service on the board but shall be reimbursed for necessary expenses incurred in the performance of their duties on the board. The board shall, by majority vote of all members, elect its chairman from among the appointed members at its first meeting in July, 1976, and the board shall elect its chairman from among the appointed members biannually thereafter.

SECTION 5. 34-32-107, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

34-32-107. Powers of board. (1) The board may initiate and encourage studies and programs through the department and in other agencies and institutions of state government relating to the development of less destructive methods of mining operations, better methods of land reclamation, more effective reclaimed land use, and coordination of the provisions of this article with the programs of other state agencies dealing with environmental, recreational, rehabilitation, and related concerns.

(2) THE BOARD MAY DELEGATE AUTHORITY TO THE DIVISION AS NECESSARY TO EFFICIENTLY CARRY OUT AND ADMINISTER THE PROVISIONS OF THIS ARTICLE. ANY PERSON AGGRIEVED BY ANY FINAL ACTION OF THE DIVISION MAY FILE AN APPEAL OF SUCH ACTION WITH THE BOARD. SUCH APPEALS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.

SECTION 6. 34-32-109, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

34-32-109. Necessity of reclamation permit - application to existing permits. (1) RECLAMATION permits for mining operations shall be obtained as specified in this article.

(2) After June 30, 1976, any operator proposing to engage in a new mining operation must first obtain from the board OR DIVISION a RECLAMATION permit as specified in this article.

(3) (a) Applications for RECLAMATION permits filed under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" prior to and pending on July 1, 1976, shall be processed in accordance with the provisions of this article. RECLAMATION permits granted under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" prior to July 1, 1976, are valid RECLAMATION permits for the purposes of this article and are subject to the provisions of this article for the purpose of renewal. An application for renewal shall be filed at least ninety days prior to the expiration of the RECLAMATION permit. Such applications shall be in accordance with section 34-32-112; except that the applicant need not supply information, materials, and undertakings previously supplied. The application for renewal of a RECLAMATION permit shall show the area mined or disturbed and the area reclaimed since the original RECLAMATION permit or the last renewal.

(b) (I) An operator with an existing RECLAMATION permit granted under the provisions of the "Colorado Open Mining Land

Reclamation Act of 1973" may apply for the conversion of his existing RECLAMATION permit to a RECLAMATION permit for the life of the mine under the provision for renewal set forth in this subsection (3) at any time on or after July 1, 1976. The fee for the conversion of such an existing RECLAMATION permit shall not exceed one hundred dollars if the conversion is made during the first year of the RECLAMATION permit.

(II) Thereafter, the provisions of section 34-32-112 (6) shall apply; except that the fee shall not exceed five hundred dollars for conversion during the second year of the RECLAMATION permit, one thousand dollars for conversion during the third year of the RECLAMATION permit, one thousand five hundred dollars for conversion during the fourth year, and two thousand dollars thereafter.

(4) Mining operations which were lawfully being conducted prior to July 1, 1976, without a RECLAMATION permit may continue to be so conducted until October 1, 1977, if, between July 1, 1976, and October 1, 1977, the operators of such existing mining operations apply for a RECLAMATION permit as specified in this article. Any such operator, having made application by October 1, 1977, but not having received a RECLAMATION permit by that date, shall be permitted to continue his mining operation until such RECLAMATION permit is either granted or denied. Any such operator who is denied a RECLAMATION permit and continues operations after such denial or who has not applied for a RECLAMATION permit by October 1, 1977, and continues operations after October 1, 1977, shall be considered in violation of this article and subject to the provisions of section 34-32-123. An operator of an existing operation who is in compliance with all requirements of the statutes in effect prior to July 1, 1976, and the rules, regulations, and orders issued thereunder, and any applicable stabilization and reclamation agreements shall not be denied a RECLAMATION permit if he provides performance and financial warranties and undertakes such new reclamation program as may reasonably be required in relation to his existing operation, pursuant to the provisions of this article.

(5) RECLAMATION permits granted pursuant to applications, including applications for renewal, filed after June 30, 1976, shall be effective for the life of the particular mining operation if the operator complies with the conditions of such RECLAMATION permits ~~and--with--applicable statutes,--rules,--and-regulations.~~ AND WITH THE PROVISIONS OF THIS ARTICLE AND RULES PROMULGATED PURSUANT TO THIS ARTICLE WHICH ARE IN EFFECT AT THE TIME THE PERMIT IS ISSUED OR AMENDED. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO ABROGATE THE DUTY OF THE OPERATOR TO COMPLY WITH OTHER APPLICABLE STATUTES AND RULES AND REGULATIONS.

(6) No governmental office of the state, other than the board, nor any political subdivision of the state shall have the authority to issue a RECLAMATION permit pursuant to this article, ~~and--in--accordance--with--the-criteria-set-forth-in section-34-32-116~~ TO REQUIRE RECLAMATION STANDARDS DIFFERENT THAN THOSE ESTABLISHED IN THIS ARTICLE, or to require any performance or financial warranty of any kind for mining operations. ~~However,--the--board-shall-not-grant-a-permit-in violation-of~~ THE OPERATOR SHALL BE RESPONSIBLE FOR ASSURING THAT THE MINING OPERATION AND THE POST-MINING LAND USE COMPLY WITH city, town, county, or city and county ~~zoning--or subdivision--regulations--or--contrary~~ LAND USE REGULATIONS to AND any master plan for extraction adopted pursuant to section 34-1-304 unless a prior declaration of intent to change or waive the prohibition is obtained by the applicant from the affected political subdivisions. ~~Nothing--in--this--article shall--be--construed-to-preempt~~ ANY MINING OPERATOR SUBJECT TO THIS ARTICLE SHALL ALSO BE SUBJECT TO zoning and land use authority and regulation by political subdivisions ~~pursuant-to~~ AS PROVIDED BY LAW. ~~article--29-of-title-29,-article-28-of title-30,-and-article-23-of-title-31,-C.R.S.~~

(7) An operator shall obtain a ~~development---and extraction~~ RECLAMATION permit from the board for each mining operation WITH THE EXCEPTION OF THOSE SPECIFIED IN SECTION 34-32-110 (1) AND (2).

(8) ~~The--board-shall-not-grant-a-permit-for-a-new-mining operation-if-the-operator's-reclamation-plan-for--an--area--is inconsistent--with--an--adopted--plan--by-any-county,-city-and county,-city,-or-town-unless-a-prior-declaration-of-intent--to change--or--waive-the-prohibition-is-obtained-by-the-applicant from--the--affected--government--subdivisions.---However,--the operator--shall--not-be-required-to-install-improvements-to-or on-the-area-reclaimed.~~ After the filing of any application for a RECLAMATION permit under this article, the board shall notify each county in which the area proposed to be mined is located and each municipality located within two miles of the area to be mined of the filing of the application.

SECTION 7. 34-32-110, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

34-32-110. Limited impact operations - expedited process. (1) (a) Any person desiring to conduct mining operations on less than two acres which mining operations will result in the extraction of less than seventy thousand tons per year of mineral or overburden may apply for the expedited processing of his permit. If such person desires to conduct mining operations on less than two acres, but such operations will be for sand, gravel, or quarry aggregate, or will be

located in or adjacent to a stream channel, or will process minerals by acid or toxic-forming chemical means, or which operation will be subject to the provisions of section 34-32-115 (4) (d) or (4) (f), he shall apply for a permit under the provisions of section 34-32-110 (2). Any person applying for a permit pursuant to this subsection (1) shall file with the division, on a form approved by the board, an application for permit prior to commencing mining operations. The form shall contain the following:

(I) The name, address, and telephone number of the person or organization responsible for the mining operation;

(II) A statement that the mining operation will be conducted in accordance with the terms and conditions listed on the form;

(III) A brief description of the type of mining operation which will be undertaken;

(IV) A statement that the operator has applied for necessary local government approval;

(V) A map sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the mining operation;

(VI) An approximate date of the commencement of operation;

(VII) A description of the measures which shall be taken to reclaim any affected land consistent with the requirements of section 34-32-116;

(VIII) The name, address, and telephone number of the owner of the surface of the affected land;

(IX) The name of the owner of the subsurface rights of the affected land;

(X) A brief description and map of the location of the proposed mining operation relative to streams, drainages, or other prominent features and manmade structures; and

(XI) A copy of a notice stating the name and address of the applicant, the location of the proposed mining operation, and the proposed date of commencement of the operation. The applicant shall furnish a copy of such notice to all owners of surface rights to the affected land and to owners of immediately adjacent lands. The applicant shall also include, as part of the application, a list of such owners who were provided a copy of the notice.

(b) No mining operation subject to the provisions of this subsection (1) shall commence until:

(I) The division notifies the operator that it has approved the proposed operations; or

(II) The division notifies the operator that it has approved the proposed operations subject to the operator's agreement to comply with special conditions; or

(III) The division fails to notify the operator within fifteen calendar days of the date the operator filed an application for a permit to conduct mining operations. Such failure to notify the operator shall be deemed to be approval of the mining operations proposed in the application.

(c) The division shall not disapprove any mining operations which are proposed pursuant to this subsection (1) unless it finds that the proposed operations cannot be conducted in accordance with the terms and conditions listed in the application and in accordance with the provisions of this article and the rules promulgated pursuant to this article at the time the permit was approved or amended.

(d) A financial warranty may be required to be posted by the mine operator, which warranty shall not exceed one thousand five hundred dollars. Such warranty, if forfeited pursuant to section 34-32-118, may be utilized by the board to reclaim any mined land subject to section 34-32-110 (1).

(e) The board or division may deny an application under this subsection (1) if there is evidence that the applicant intends to avoid the procedures for permitting of larger acreage operations by successive application for similar and proximate two-acre operations.

(2) (a) Any person desiring to conduct mining operations on more than two acres and less than ten acres, which mining operations will result in the extraction of less than seventy thousand tons of mineral or overburden per calendar year, prior to commencement of mining, shall file with the division, on a form approved by the board, an application for a permit to conduct mining operations. This application shall contain the following:

(I) The address and telephone number of the general office and the local address or addresses and telephone number of the operator;

(II) The name, address, and telephone number of the owner of the surface of the affected land;

(III) The name of the owner of the subsurface rights of the affected land;

(IV) A statement that the operations will be conducted pursuant to the terms and conditions listed on the application and in accordance with the provisions of this article and the rules and regulations promulgated pursuant to this article at the time the permit was approved or amended;

(V) A map showing information sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the mining operation;

(VI) The approximate size of the affected land;

(VII) Information sufficient to describe or identify the type of mining operation proposed and how the operator intends to conduct it;

(VIII) A statement that the operator has applied for necessary local government approval;

(IX) Measures to be taken to reclaim any affected land consistent with the requirements of section 34-32-116.

(b) The application required by this subsection (2) shall be sent to the division. If the division denies the application, the applicant may appeal to the board for final determination.

(3) A fee of twenty-five dollars, plus ten dollars for each acre of affected land, and a financial warranty not to exceed five thousand dollars, as the board shall determine, shall accompany the application and shall be paid by the applicant. The five thousand dollar financial warranty limit shall not apply to any mining operation which uses cyanide compounds in a leaching process. Instead, the financial warranty limit shall be twenty thousand dollars. In the event of permit denial, seventy-five percent of the fee shall be refunded. If the refund will be thirty-five dollars or less, no refund shall be made.

(4) The operator, at any time after the completion of reclamation, may notify the board that the land has been reclaimed. Upon receipt of the notice that the affected land or a portion of it has been reclaimed, the board shall cause the land to be inspected and shall release the performance and financial warranties or appropriate portions thereof within thirty days after the board finds the reclamation to be satisfactory and in accordance with a plan agreed upon by the board and the operator.

(5) After July 1, 1988, any operator proposing to engage in a mining operation as provided in this section shall file a permit application to engage in mining prior to the start of the mining operation.

(6) Applications for permits made pursuant to subsection (2) of this section shall be processed and final action taken thereon within thirty days of the filing of such application. If action upon the application is not completed within thirty days, the permit shall be deemed approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount provided in subsection (3) of this section. The provisions of sections 34-32-112, 34-32-114, and 34-32-115 concerning publication, notice, written objections, petitions, and supporting documents shall, so far as practicable, apply to this section, but the board shall, by regulation, provide simplified and reduced procedures and requirements which are applicable to the thirty-day period. Within the thirty-day period, the board may make a determination on an application as provided in sections 34-32-114 and 34-32-115.

(7) (a) Any operator conducting an operation under a permit issued under this section who has held the permit for two consecutive years or more and who subsequently desires to expand it to a size in excess of the limitation set forth in subsections (1) or (2) of this section may request the conversion of his permit by filing an application for a permit pursuant to section 34-32-110 (2) or 34-32-112; except that the applicant need not supply information, materials, and other data and undertakings previously supplied, including any additional materials provided to the board during the course of his current operation, or resulting from the board's inspections thereof.

(b) Applications for conversion of a permit under this subsection (7) shall be processed and final action taken thereon in accordance with section 34-32-110 (2) or 34-32-115, as appropriate. If action upon the conversion of the permit is taken in accordance with the time limits of this subsection (7) or section 34-32-115, the conversion shall be deemed approved, and a permit for the life of the mine shall be promptly issued upon presentation by the applicant of a financial warranty subject to the limitations provided in section 34-32-110 (3), 34-32-115 (3), or 34-32-117 (4).

(c) The provisions of sections 34-32-112, 34-32-114, and 34-32-115 concerning publication, notice, written objections, petitions, and supporting documents shall so far as practicable apply to this section.

(d) The board or division shall not deny the conversion

of a permit for any reason other than those set forth in section 34-32-115 (4).

(8) If the operator is a unit of county government or the state department of highways, the operator may, at its discretion, submit one composite application and annual report for all similarly situated sand, gravel, or quarry operations. Such composite application and annual report shall comply with subsections (2) to (7) of this section; except that no application fee or annual report fee shall be required of county government or the state department of highways, whether or not a composite application is submitted. Financial warranty under subsection (3) of this section shall not be required of the operator if it is a unit of county government or the state department of highways and the operator submits a written guarantee, in lieu of financial warranty, stating that the affected lands will be reclaimed in accordance with the terms of the permit and section 34-32-116.

SECTION 8. 34-32-111 (3) (f) and (3) (i), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-111. Special permits - ten-day processing. (3) (f) The measures to be taken to comply with the applicable provisions of section ~~34-32-116-(1)-(b)-to-(1)--(r)~~ 34-32-116 (7) (a) TO (7) ~~(s)~~ (r);

~~(i) A-certificate-of-compliance,-by-the-local-government having--jurisdiction,--that--the--mining-operation-would-be-in compliance--with--zoning,--subdivision--regulations,--and--any master---plan--for--extraction--adopted--pursuant--to--section 34-1-304-unless-a-prior-declaration-of--intent--to--change--or waive--the--prohibition--is-obtained-by-the-applicant-from-the affected-local-government.~~ A STATEMENT THAT THE OPERATOR HAS APPLIED FOR NECESSARY LOCAL GOVERNMENT APPROVAL.

SECTION 9. The introductory portion to 34-32-112 (1), 34-32-112 (2) (f) and (2) (h), the introductory portion to 34-32-112 (3), and 34-32-112 (3) (c), (3) (e) (I), (6), (7), (8), (9), and (10) (a), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-112. Application for reclamation permit - fee - notice. (1) Any operator desiring to obtain a RECLAMATION permit shall make written application to the board for a permit on forms provided by the board. The RECLAMATION permit or the renewal of an existing permit, if approved, shall authorize the operator to engage in such mining operation upon the affected land described in his application for the life of the mine. Such application shall consist of the following:

(2) (f) ~~The-detailed-description-of-the-method-of-mining~~

~~to--be-employed~~ INFORMATION SUFFICIENT TO DESCRIBE OR IDENTIFY THE TYPE OF MINING OPERATION PROPOSED AND HOW THE OPERATOR, IN HIS SOLE DISCRETION, INTENDS TO CONDUCT IT;

(h) The timetable estimating the periods of time which will be required for the various stages of the mining operation. THE OPERATOR SHALL NOT BE REQUIRED TO MEET THE TIMETABLE, NOR SHALL THE TIMETABLE BE SUBJECT TO INDEPENDENT REVIEW BY THE BOARD.

(3) The reclamation plan shall ~~be--based--upon~~ INCLUDE provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation shall be required on all the affected land. The reclamation plan shall include:

(c) A proposed ~~timetable~~ PLAN OR SCHEDULE indicating when and how ~~the reclamation plan shall~~ WILL be implemented. SUCH PLAN OR SCHEDULE SHALL NOT BE TIED TO ANY DATE SPECIFIC, BUT SHALL BE TIED TO THE IMPLEMENTATION OR COMPLETION OF DIFFERENT STAGES OF THE MINING OPERATION.

(e) (I) The expected physical appearance of the area of the affected land, correlated to the proposed timetables required by paragraph (h) of subsection (2) of this section and THE PLAN OR SCHEDULE REQUIRED BY paragraph (c) of this subsection (3); and

(6) A basic fee of fifty dollars and, in addition, a fee of fifteen dollars per acre for the first fifty acres, ten dollars per acre for the second fifty acres, five dollars per acre for the third fifty acres, and one dollar per acre for any additional acres shall be paid. If the operator is a unit of county government or the state department of highways, no application, renewal, or amendment fee is required. In no case shall the RECLAMATION permit fee exceed two thousand dollars. A fraction of an acre shall be considered a full acre for computing the fee. In the event of RECLAMATION permit denial, seventy-five percent of the RECLAMATION permit fee shall be refunded. If the refund will be two hundred dollars or less, no refund shall be made.

(7) Each phase of reclamation is to be completed within five years after the date the operator advises the board that such phase has commenced, as provided in the introductory portion of section 34-32-116 ~~(1)-(r)~~ (7) (q); except that such period may be extended by the board upon a finding that additional time is necessary for the completion of the terms of the reclamation plan.

(8) An operator may, within the term of a RECLAMATION permit, apply to the board for a RECLAMATION permit ~~renewal or~~

for--an amendment to-the-permit increasing the acreage to be affected or otherwise revising the--mining--operation. THE RECLAMATION PLAN. Where applicable, there shall be filed with any application for amendment a map and an application with the same content as required for an original application. The renewed-or amended application shall be accompanied by a basic fee of twenty-five dollars plus seven dollars and fifty cents per acre for the first fifty acres, five dollars per acre for the second fifty acres, two dollars and fifty cents per acre for the third fifty acres, and fifty cents per acre for each additional acre. In no case shall the renewal or amendment fee be less than one hundred dollars or more than one thousand dollars. A fraction of an acre shall be considered a full acre for the purpose of computing the fee. In addition, supplemental performance and financial warranties, as determined by the board, for any additional acreage shall be submitted. If the area of the original application is reduced, the amount of the financial warranty, as determined by the board, shall proportionately be reduced. Renewal applications shall contain the information required in the original application if different from that in the original application or renewal. The renewal RECLAMATION permit shall show the area mined or disturbed and the area reclaimed since the original permit or the last renewal. Applications for renewal or amendment of a RECLAMATION permit shall be reviewed by the board in the same manner as applications for new RECLAMATION permits.

(9) Information provided the board in an application for a RECLAMATION permit relating to the location, size, or nature of the deposit or information required by subsection (5) of this section and marked confidential by the operator shall be protected as confidential information by the board and not be a matter of public record in the absence of a written release from the operator or until such mining operation has been terminated. A person who willfully and knowingly violates the provisions of this subsection (9) or section 34-32-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.-106, C.R.S.

(10) (a) Upon the filing of his application for a RECLAMATION permit with the board, the applicant shall place a copy of such application for public inspection at the office of the board and at the office of the county clerk and recorder of the county in which the affected land is located. The copy of the application placed at the office of the county clerk and recorder shall not be recorded, but shall be retained there until said application has been heard by the board and be available for inspection during such period, and at the end of such period, such copy may be reclaimed or destroyed by the applicant. The information exempted by subsection (9) of this section shall be deleted from such file

copies.

SECTION 10. The introductory portion to 34-32-115 (4) and 34-32-115 (4) (g), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-115. Action by board - appeals. (4) The board shall grant a permit to an operator if the application complies with the requirements of this article. ~~and all applicable local, state, and federal laws.~~ The board shall not deny a permit, except for one or more of the following reasons:

(g) The proposed ~~mining operation and~~ reclamation ~~could not be carried out in conformance with~~ PLAN DOES NOT CONFORM TO the requirements of section 34-32-116.

SECTION 11. 34-32-116, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

34-32-116. Duties of operators - reclamation plans. (1) Every operator to whom a permit is issued pursuant to the provisions of this article shall perform such reclamation as is prescribed by the reclamation plan adopted pursuant to this section.

(2) Reclamation plans shall be based upon provisions for, or satisfactory explanation of, all general requirements for the type of reclamation chosen. The details of the plan shall be appropriate to the type of reclamation designated by the operator and shall be based upon the advice of experienced and technically trained personnel.

(3) On the anniversary date of the permit each year, the operator shall submit a report and a map showing the extent of current disturbances to affected land, reclamation accomplished to date and during the preceding year, new disturbances that are anticipated to occur during the upcoming year, and reclamation that will be performed during the upcoming year.

(4) Except for operators having permits pursuant to section 34-32-110, and except for operators which are units of county government or the state department of highways, the operators shall submit, in addition to the plan and map, an annual fee of three hundred fifty dollars if the operation is an open mining operation or two hundred seventy-five dollars for any other operation.

(5) For operators having permits under section 34-32-110 (2), the operator shall submit, in addition to the plan and

map, an annual fee of fifty dollars.

(6) For operators who have filed an application pursuant to section 34-32-110 (1), the operator shall submit an annual fee of twenty-five dollars and a map or sketch describing the acreage affected to date and the acreage reclaimed to date.

(7) Reclamation plans and the implementation thereof shall conform to the following general requirements:

(a) Grading shall be carried on so as to create a final topography appropriate to the final land use selected in accordance with paragraph (j) of this subsection (7).

(b) Earth dams shall be constructed, if necessary to impound water, if the formation of such impoundments will not interfere with mining operations, damage adjoining property, or conflict with water pollution laws, rules or regulations of the federal government or the state of Colorado, or any local government pollution ordinances.

(c) Acid-forming or toxic-producing material that has been mined shall be handled in a manner that will protect the drainage system from pollution.

(d) All refuse shall be disposed in a manner that will control unsightliness, or deleterious effects from such refuse.

(e) In those areas where revegetation is part of the reclamation plan, land shall be revegetated in such a way as to establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration and at least equal in extent of cover to the natural vegetation of the surrounding area. Native species should receive first consideration, but introduced species may be used in the revegetation process when found desirable by the board.

(f) Where it is necessary to remove overburden in order to mine the mineral, topsoil shall be removed from the affected land and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a useable condition for sustaining vegetation when restored during reclamation. If, in the discretion of the board, such topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in a like manner such other

strata which are best able to support vegetation.

(g) Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and ground water systems both during and after the mining operation and during reclamation shall be minimized.

(h) Areas outside of the affected land shall be protected from slides or damage occurring during the mining operation and reclamation.

(i) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion and attendant air and water pollution.

(j) On all affected land, the operator in consultation with the landowner where possible, subject to the approval of the board, shall determine which parts of the affected land shall be reclaimed for forest, range, crop, horticultural, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. Prior to approving any new reclamation plan or approving a change in any existing reclamation plan as provided in this section, the board shall confer with the local board of county commissioners and the board of supervisors of the soil conservation district if the mining operation is within the boundaries of a soil conservation district. Reclamation shall be required on all the affected land.

(k) If the operator's choice of reclamation is forest planting, he may, with the approval of the division, select the type of trees to be planted. Planting methods and care of stock shall be governed by good planting practices. If the operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, he may defer planting until planting stock is available to plant such land as originally planned, or he may select an alternate method of reclamation.

(l) The operator shall construct fire lanes or access roads when necessary through the area to be planted. These lanes or roads shall be available for use by the planting crews and shall serve as a means of access for supervision and inspection of the planting work.

(m) On lands owned by the operator, the operator may permit the public to use the same for recreational purposes, in accordance with the limited landowner liability law contained in article 41 of title 33, C.R.S., except in areas where such use is found by the operator to be hazardous or

objectionable.

(n) If the operator's choice of reclamation is for range, the affected land shall be restored to the satisfaction of the board to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The legume seed shall be properly inoculated in all cases. The area may be seeded either by hand or power or by the aerial method. The species of grasses and legumes and the rates of seeding to be used per acre shall be determined primarily by recommendations from the agricultural experiment stations established pursuant to article 33 of title 23, C.R.S., and experienced reclamation personnel of the operator, after considering other research or successful experience with range seeding. No grazing shall be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local soil conservation district, if any, shall determine when grazing may start.

(o) If the operator's choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the operator shall grade so that the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization, and seeding or planting rates shall be governed by general agricultural and horticultural practices, except where research or experience in such operations differs with these practices.

(p) If the operator's choice of reclamation is for the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, the basic minimum requirements necessary for such reclamation shall be agreed upon by the operator and the board.

(q) All reclamation provided for in this section shall be carried to completion by the operator with all reasonable diligence, and each phase of reclamation shall be completed prior to the expiration of five years after the date on which the operator advises the board that such phase has commenced, unless such period is extended by the board pursuant to section 34-32-112 (7); except that:

(I) No planting of any kind shall be required to be made on any affected land being used or proposed to be used by the operator for the deposit or disposal of refuse until after the cessation of operations productive of such refuse, or proposed for future mining, or within depressed haulage roads or final cuts while such roads or final cuts are being used or made, or where permanent pools or lakes have been formed;

(II) No planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are toxic, deficient in plant nutrients, or composed of sand, gravel, shale, or stone to such an extent as to seriously inhibit plant growth and such condition cannot feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures. Where natural weathering and leaching of any of such affected land, over a period of ten years after commencement of reclamation, fails to remove the toxic and physical characteristics inhibitory to plant growth or if, at any time within such ten-year period, the board determines that any of such affected land is, and during the remainder of said ten-year period will be, unplantable, the operator's obligations under the provisions of this article with respect to such affected land may, with the approval of the board, be discharged by reclamation of an equal number of acres of land previously mined and owned by the operator not otherwise subject to reclamation under this article.

(III) With the approval of the board and the owner of the land to be reclaimed, the operator may substitute land previously mined and owned by the operator not otherwise subject to reclamation under this article or, in the alternative, with the approval of the board and the owner of the land, reclamation of an equal number of acres of any lands previously mined but not owned by the operator if the operator has not previously abandoned unreclaimed mining lands. The board also has authority to grant in the alternative the reclamation of lesser or greater acreage so long as the cost of reclaiming such acreage is at least equivalent to the cost of reclaiming the original permit lands. If any area is so substituted, the operator shall submit a map of the substituted area, which map shall conform to all of the requirements with respect to other maps required by this article. Upon completion of reclamation of the substituted land, the operator shall be relieved of all obligations under this article with respect to the land for which substitution has been permitted.

(IV) Reclamation may be completed in phases, and the five-year period may be applied separately to each phase as it is commenced during the life of the mine.

(r) If affected land is owned by a legal entity other than any local, state, or federal entity, any buildings or any structures having significant historical value placed thereon during mining operations which are conducted in accordance with section 34-32-116 (7) (j) may remain on the affected land at the option of the operator and landowner.

SECTION 12. 34-32-122 (1) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

34-32-122. Fees, civil penalties, and forfeitures - deposit. (1) (a) All fees ~~collected under the provisions of this article shall be deposited in the mined land reclamation cash fund created in section 34-32-126.~~ AND civil penalties collected under the provisions of this article shall be deposited in the general fund. The proceeds of all financial warranties forfeited under the provisions of section 34-32-118 shall be deposited in a special account established by the board for the purposes of reclaiming lands which were obligated to be reclaimed under the permits upon which such financial warranties have been forfeited.

SECTION 13. 34-32-123 (2), Colorado Revised Statutes, 1984 Repl. Vol., is amended, and the said 34-32-123 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

34-32-123. Operating without a permit - penalty. (2) Any operator who operates without a permit ~~or a prospector who prospects without filing a notice of intent~~ shall be subject to a civil penalty of not less than ~~one hundred dollars per day nor more than~~ one thousand dollars per day ~~during which such violation occurs.~~ NOR MORE THAN FIVE THOUSAND DOLLARS PER DAY FOR EACH DAY THE LAND HAS BEEN AFFECTED. SUCH PENALTIES SHALL BE ASSESSED FOR A PERIOD NOT TO EXCEED SIXTY DAYS. OPERATORS WHO MINE SUBSTANTIAL ACREAGE BEYOND THEIR APPROVED PERMIT BOUNDARY MAY BE FOUND TO BE OPERATING WITHOUT A PERMIT. ~~except that any operator eligible for a permit under section 34-32-110 shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred dollars per day during which such violation occurs.~~

(3) Any operator or prospector who operates without filing a notice of intent or a permit under section 34-32-110 shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred dollars per day for each day the land has been affected. Such penalties shall be assessed for not less than one day and not more than sixty days. Operators operating under a permit approved pursuant to section 34-32-110 who affect more than two acres may be found to be operating without a permit.

SECTION 14. 24-1-124 (2.1) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

24-1-124. Department of natural resources - creation - divisions of. (2.1) The department of natural resources shall include, as a part of the office of the executive director:

(a) The mined land reclamation board AND THE DIVISION OF MINED LAND RECLAMATION, created by article 32 of title 34, C.R.S., and said board AND DIVISION, shall exercise its powers and perform its duties and functions under the department as if the same were transferred to the department by a type 1 transfer;

SECTION 15. 24-33-104 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-33-104. Divisions under the department. (1) (j) The division of mined land reclamation.

SECTION 16. Repeal. 34-32-112 (3) (d), 34-32-115 (4) (e), 34-32-122 (1) (b), and 34-32-126, Colorado Revised Statutes, 1984 Repl. Vol., as amended, and 24-33-104 (2), Colorado Revised Statutes, 1982 Repl. Vol., are repealed.

SECTION 17. Effective date. This act shall take effect July 1, 1988.

SECTION 18. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ted L. Strickland
PRESIDENT OF
THE SENATE

Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi
SECRETARY OF
THE SENATE

Lee C. Bahnsch
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 6, 1988 at 5:15 p.m.

Roy Romer
GOVERNOR OF THE STATE OF COLORADO

Chapter 78.44 RCW

SURFACE MINING

SECTIONS

RCW 78.44.010 LEGISLATIVE FINDING. The legislature recognizes that the extraction of minerals by surface mining is a basic and essential activity making an important contribution to the economic well-being of the state and nation. At the same time, proper reclamation of surface mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of many types of surface mining operations precludes complete restoration of the land to its original condition. However, the legislature finds that reclamation of surface mined lands

as provided in this chapter will allow the mining of valuable minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land. [1970 ex.s. c 64 § 2.]

RCW 78.44.020 PURPOSE. The purpose of this chapter is to provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration. It is a further purpose of this chapter to provide a means of cooperation between private and governmental entities in carrying this chapter into effect. [1970 ex.s. c 64 § 3.]

RCW 78.44.030 DEFINITIONS. As used in this chapter, unless the context indicates otherwise:

(1) "Surface mining" shall mean all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and including the production of surface mining refuse. Surface mining shall not include on-site processing of minerals such as concrete batching or rock crushing operations. For the purpose of this chapter surface mining shall mean those operations described in this paragraph which collectively result in more than three acres of land being disturbed or that result in pit walls more than thirty feet high and steeper than one horizontal to one vertical. Surface mining shall not include disturbances of greater than three acres of land during any time period if the cumulative area that has not been rehabilitated according to the reclamation requirements outlined in this chapter is less than three acres. Surface mining shall not include excavation or removal of sand, gravel, clay, rock, top soil, or other materials in remote areas by an owner or holder of a possessory interest in land for the primary purpose of construction or maintenance of access roads to or on such landowner's property. Surface mining shall not include excavation or grading conducted for farming, on-site road construction or other on-site construction, but shall include adjacent or off-site borrow pits except those on landowner's property for use on access roads on such property. Prospecting and exploration activities shall be included within the definition of surface mining when they are of such nature and extent as to exceed the qualifying sizes listed above or when collectively they disturb more than one acre per eight acres of land area.

(2) "Unit of surface mined area" shall mean the area of land and water covered by each operating permit that is actually newly disturbed by surface mining during each twelve-month period of time, beginning at the date of issuance of the permit, and shall comprise the area from which overburden and/or minerals have been removed, the area covered by spoil banks, and all additional areas used in surface mining operations which by virtue of such use are thereafter susceptible to excessive erosion.

(3) "Abandonment of surface mining" shall mean a cessation of surface mining, not set forth in an operator's plan of operation or by any other sufficient written notice, extending for more than six consecutive months or when, by reason of examination of the premises of

by any other means, it becomes the opinion of the department of natural resources that the operation has in fact been abandoned by the operator: PROVIDED, That the operator does not, within thirty days of receipt of written notification from the department of his intent to declare the operation abandoned, submit evidence to the department's satisfaction that the operation is in fact not abandoned.

(4) "Minerals" shall mean coal, clay, stone, sand, gravel, metallic ore, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction uses.

(5) "Overburden" shall mean the earth, rock, and other materials that lie above a natural deposit of mineral.

(6) "Surface mining refuse" shall mean all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of minerals during the surface mining operations on the operating permit area, and shall include all waste materials deposited on or in the permit area from other sources.

(7) "Spoil bank" shall mean a deposit of excavated overburden or mining refuse.

(8) "Operator" shall mean any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(9) "Department" means the department of natural resources.

(10) "Reclamation" shall mean the reasonable protection of all surface resources subject to disruption from surface mining and rehabilitation of the surface resources affected by surface mining including the area under stockpiled materials. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to reestablish on a continuing basis the vegetative cover, soil stability, water conditions, and safety conditions appropriate to the intended subsequent use of the area.

(11) "Reclamation plan" shall mean the operator's written proposal, as required and approved by the department, for reclamation of the affected resources which shall include, but not be limited to:

(a) A statement of the proposed subsequent use of the land after reclamation which is signed by all individuals with a possessory interest in the land, or a copy of the conveyance that expressly grants or reserves the right to extract the mineral by surface mining methods, or if the conveyance does not expressly grant the right to extract the mineral by surface mining methods, then documentation that under applicable state law, the operator has the legal authority to extract the mineral by those methods: PROVIDED, That the applicant must provide notice reasonably calculated to advise all individuals with a possessory interest of the intent to remove minerals and the proposed subsequent use. If any individual with a possessory interest does not respond to the notice within sixty days, that person's signature shall not be required;

(b) Evidence that this subsequent use would not be illegal under local zoning regulations;

(c) Proposed practices to protect adjacent surface resources;

(d) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(e) Manner and type of revegetation or other surface treatment of disturbed areas;

(f) Method of prevention or elimination of conditions that will create a public nuisance, endanger public safety, damage property, or be hazardous to vegetative, animal, fish, or human life in or adjacent to the area;

(g) Method of control of contaminants and disposal of surface mining refuse;

(h) Method of diverting surface waters around the disturbed areas;

(i) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution;

(j) Such maps and other supporting documents as reasonably required by the department; and

(k) A time schedule for reclamation that meets the requirements of RCW 78.44.090. [1987 c 258 § 1; 1984 c 215 § 1; 1970 ex.s. c 64 § 4.]

RCW 78.44.035 "SEGMENT" TO BE DEFINED BY RULE. The department shall by rule define the term "segment" as used in RCW 78.44.090 and 78.44.140 to establish the depth or extent of the operation covered. [1987 c 258 § 3.]

RCW 78.44.040 ADMINISTRATION OF CHAPTER—RULE-MAKING AUTHORITY. The department of natural resources is charged with the administration of this chapter. In order to implement the chapter's terms and provisions, the department, under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter. [1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

RCW 78.44.050 CHAPTER CUMULATIVE AND NONEXCLUSIVE—OTHER LAWS NOT AFFECTED. This chapter shall not affect any of the provisions of the state fisheries laws (Title 75 RCW), the state water pollution control laws (Title 90 RCW), the state game laws (Title 77 RCW), or any other state laws, and shall be cumulative and nonexclusive. [1970 ex.s. c 64 § 6.]

RCW 78.44.060 INVESTIGATIONS, RESEARCH, ETC.—DISSEMINATION OF INFORMATION. The department shall have the authority to conduct or authorize investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1970 ex.s. c 64 § 7.]

RCW 78.44.070 COOPERATION WITH OTHER AGENCIES—RECEIPT AND EXPENDITURE OF FUNDS. The department may cooperate with other governmental and private agencies in this state and other states and agencies of

the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1970 ex.s. c 64 § 8.]

RCW 78.44.080 OPERATING PERMITS—REQUIRED—APPLICATIONS. After January 1, 1971, no operator shall engage in surface mining without having first obtained an operating permit from the department. Except as otherwise permitted in this section a separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department an operator must submit an application on a form provided by the department, which shall contain the following information and any other pertinent data required by the department:

(1) Name and address of the legal landowner, any purchaser of the land under a real estate contract, and the operator and, if any of these are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;

(2) Materials to be surface mined;

(3) Type of surface mining to be performed;

(4) Expected starting date of surface mining;

(5) Anticipated termination date of the surface mining project;

(6) Expected amount of mineral to be surface mined;

(7) Maximum depth of surface mining;

(8) Size and legal description of the area that will be disturbed by surface mining. If more than ten acres will be disturbed by surface mining or, regardless of the amount of land to be disturbed, if the department finds that conditions warrant it and so requests, a map of the area to be surface mined shall be submitted. The map shall show the boundaries of the area of land which will be affected; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built in conjunction with the surface mining operation; and the names of the surface and mineral owners of all lands within the surface mining area;

(9) A plan of surface mining that will provide, within limits of normal operational procedure of the industry, for completion of surface mining and associated disturbances on each segment of the area for which a permit is requested so that reclamation can be initiated at the earliest possible time on those portions of the surface mined area that will not be subject to further disturbance by the mining operation. Whenever feasible, visual screening, vegetative or otherwise, will be maintained or established on the property containing the surface mining to screen the view of the operation from public highways, public parks, and residential areas.

(10) A reclamation plan that must be acceptable to and approved by the department, except as provided in RCW 78.44.100. An operator may not depart from an approved plan without having previously obtained from the department written approval of his proposed change.

The department may adopt rules and regulations permitting an operator of more than one surface mining operation to submit a single

application for a combined operating permit covering all of his surface mining operations. Such application may require detailing of information required by this section for each separate location. An operator operating under such a combined permit may submit a consolidated reclamation program covering all his operations under rules and regulations prescribed by the department, but may be required to furnish specific information relative to reclamation of any single operating area if the department determines that such is necessary to carry out the purposes of this chapter. [1970 ex.s. c 64 § 9.]

RCW 78.44.090 RECLAMATION PLANS. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with surface mining and in any case shall be initiated at the earliest possible time after completion or abandonment of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a permit is requested.

A reclamation plan will be approved by the department if it adequately provides for the accomplishment of the activities specified in the definition of "reclamation plan", RCW 78.44.030(11), and meets those of the following minimum standards that are applicable:

(1) Excavations made to a depth not less than two feet below the low groundwater mark, which will result in the establishment of a lake of sufficient area and depth of water to be useful for residential, recreational, game, or wildlife purposes, shall be reclaimed in the following manner:

(a) All banks in soil, sand, gravel, and other unconsolidated materials shall be sloped to two feet below the low groundwater line at a slope no steeper than one and one-half feet horizontal to one foot vertical;

(b) Portions of solid rock banks shall be stepped or other measures be taken to permit a person to escape from the water.

(2) In all other excavations in soil, sand, gravel, and other unconsolidated materials, the side slopes and the slopes between successive benches shall be no steeper than one and one-half feet horizontal to one foot vertical for their entire length.

(3) The sides of all strip pits and open pits in rock and other consolidated materials shall be no steeper than one foot horizontal to one foot vertical, or other precautions must be taken to provide adequate safety.

(4) The slopes of quarry walls in rock or other consolidated materials shall have no prescribed angle of slope, but where a hazardous condition is created that is not indigenous to the immediate area, the quarry shall be either graded or backfilled to a slope of one foot horizontal to one foot vertical or other precautions must be taken to provide adequate safety.

(5) In strip mining operations the peaks and depressions of the spoil banks shall be reduced to a gently rolling topography which will minimize erosion and which will be in substantial conformity with the immediately surrounding land area.

(6) In no event shall any provision of this section be construed to allow stagnant water to collect or remain on the surface mine

area. Suitable drainage systems shall be constructed or installed to avoid such conditions if natural drainage is not possible.

(7) All grading and backfilling shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the director for a supervised sanitary fill.

(8) In all types of surface mining, in order to prevent water pollution, all acid-forming surface mining refuse shall be disposed of by covering all acid-forming materials with at least two feet of clean fill. The final surface covering shall be graded so that surface water will drain away from the disposal area.

(9) Vegetative cover will be required in the reclamation plan as appropriate to the future use of the land.

(10) All surface mining that will disturb streams must comply with the requirements of the state fisheries laws (Title 75 RCW), and every application for an operating permit for such operations must have a reclamation plan that shall have been approved by the department of fisheries with regard to operations in streams as required by Title 75 RCW. [1970 ex.s. c 64 § 10.]

RCW 78.44.100 INSPECTIONS—PERMITS—DURATION OF OPERATING PERMITS—MODIFICATION OF RECLAMATION PLAN—SUCCESSOR OPERATORS. Upon receipt of an application for a permit, the surface mining site must be inspected by a representative of the department. Within twenty-five days of receipt of the application and reclamation plan by the department and receipt of the permit fee, the department shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies.

Failure to act within the twenty-five day period on the reclamation plan shall not be cause for a denial of a permit. The department shall set the amount of the bond or other security required for a permit governing the surface mining operation set forth in the application.

If the department refuses to approve a reclamation plan in the form submitted by the operator, it shall notify the operator, in writing, stating the reasons for its refusal and listing such additional requirements to the operator's reclamation plan as are necessary for the approval of the plan by the department. Within thirty days, the operator shall either accept such additional requirements as part of the reclamation plan or file notice of appeal.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface mining authorized by the permit is completed or abandoned, unless the permit is suspended by the department as provided in this chapter. The operating permit shall provide that the reclamation plan may be modified, after timely notice and opportunity for hearing, at any time during the term of the permit for any of the following reasons:

(1) To modify the requirements so that they will not conflict with existing laws;

(2) The department determines that the previously adopted reclamation plan is clearly impossible or impracticable to implement and maintain;

(3) The department determines that the previously adopted reclamation plan is obviously not accomplishing the intent of this chapter; or

(4) The operator and the department mutually agree to change the reclamation plan.

When one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed upon him by this chapter as to such operation: PROVIDED, That both operators have complied with the requirements of this chapter and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this chapter. [1984 c 215 § 3; 1970 ex.s. c 64 § 11.]

RCW 78.44.110 FEES. The permit fees required under this chapter shall be as follows:

(1) The basic fee for the permit shall be two hundred fifty dollars per permit year for each separate location, payable with submission of the application and annually thereafter with submission of the report required in RCW 78.44.130: PROVIDED, That a person who has held a valid surface mining permit and whose property has never been disturbed for surface mining may keep such permit in effect by paying an annual fee of fifty dollars. Before a person holding a fifty dollar permit begins surface mining during any permit year, that person shall pay the remainder of the two hundred fifty dollar fee.

(2) In addition, there shall be a five dollar per acre fee for all acreage exceeding ten acres which was newly disturbed by surface mining during the previous permit year, which acreage fee shall be paid at the time of submission of the report required in RCW 78.44.130.

(3) All fees collected shall be deposited in the general fund. [1987 c 258 § 2; 1984 c 215 § 4; 1970 ex.s. c 64 § 12.]

RCW 78.44.120 PERFORMANCE BONDS AND OTHER SECURITY. Upon receipt of an operating permit an operator other than a public or governmental agency shall not commence surface mining until the operator has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under the provisions of chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be surface mined during the next twelve-month period and any previously surface mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. If an operator increases the area to be surface mined during the twelve month period, the department may increase the amount of the bond to compensate for the increase. The department shall have the authority to determine the amount of the bond that shall be required, and for any reason may refuse any bond not deemed adequate.

The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted under it.

In lieu of the surety bond required by this section the operator may file with the department a cash deposit, negotiable securities acceptable to the department, an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department, or bank letters of credit acceptable to the department.

Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

A public or governmental agency shall not be required to post a bond under the terms of this chapter.

A blanket performance bond covering two or more surface mining operations may be submitted by an operator in lieu of separate bonds for each separate operation. [1984 c 215 § 5; 1977 c 66 § 1; 1970 ex.s. c 64 § 13.]

RCW 78.44.130 REPORTS. Within thirty days after completion or abandonment of mining on an area under permit or within thirty days after each annual anniversary date of the operating permit, whichever is earlier, or at such later date as may be provided by department rules and regulations, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year on a form prescribed by the department, which report shall:

(1) Identify the operator and permit number;

(2) Locate the operation by subdivision, section, township, and range, and with relation to the nearest town or other well known geographic feature;

(3) Estimate acreage to be newly disturbed by surface mining in the next twelve-month period; and

(4) Update any maps previously submitted or provide such maps as may be specifically requested by the department. Such maps shall show:

(a) The operating permit area;

(b) The unit of surface mined area;

(c) The area to be surface mined during the next twelve-month period;

(d) If completed, the date of completion of surface mining;

(e) If not completed, the area that will not be further disturbed by the mining operations; and

(f) The date of beginning, amount, and current status of reclamation performed during the previous twelve months. An operator operating under a combined operating permit may submit a single annual report, but such report shall include the data required in this section for each separate operating area. [1970 ex.s. c 64 § 14.]

RCW 78.44.140 INSPECTION OF PERMIT AREA—DEFICIENCIES—EXTENSION OF PERFORMANCE PERIODS—PERFORMANCE ACTIONS BY DEPARTMENT—RECOVERY OF EXPENSES—ENFORCEMENT. Upon receipt of the operator's report, and at any other reasonable time the department may elect, the department shall cause the permit area to be inspected to determine if the operator has complied with the reclamation plan and the department's rules and regulations.

The operator shall proceed with reclamation as scheduled in the reclamation plan. Following any written notice by the department noting deficiencies, the operator shall commence action within thirty days, or as directed by the department if it has determined that emergency actions are required, to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: PROVIDED, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The department may extend performance periods referred to in this section and in RCW 78.44.090, for delays clearly beyond the operator's control, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

Within thirty days after notification by the operator and when in the judgment of the department reclamation of a unit of surface mined area is properly completed, the mining operator shall be notified in writing and his bond on said area shall be released or decreased proportionately.

If reclamation of surface mined land is not proceeding in accordance with the reclamation plan and the operator has not commenced action to rectify deficiencies within thirty days after notification by the department or as directed by the department, or if reclamation is not properly completed in conformance with the reclamation plan within two years after completion or abandonment of surface mining on any segment of the permit area, the department is authorized, with the staff, equipment and material under his control, or by contract with others, to take such actions as are necessary for the reclamation of the surface mined areas. If the department intends to undertake the reclamation, the department shall ascertain the probable costs of reclamation and shall notify the operator, the surety, and the owner of the probable costs. The operator or surety, or both, shall pay that amount to the department for reclaiming the surface mined land. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The department shall notify the operator, the owner, and the surety by order. The order shall state the amount of necessary expenses incurred by the department in reclaiming the surface mined land and a notice that the amount is due and payable to the department by the operator and the surety to the extent that the amount has not already been paid. The department shall refund all amounts received above the amount of expenses incurred.

If the amount specified in the notice or order is not paid within thirty days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the notice or order is directed do business to

recover the amount specified. The surety shall be liable to the state to the extent of the bond.

The amount owed the department by the operator for the reclamation performed by the state may be recovered by a lien against the reclaimed property, which may be enforced in the same manner and with the same effect as a mechanic's lien.

In addition to the other liabilities imposed by this chapter, failure to commence action to rectify deficiencies in reclamation within thirty days after notification by the department or failure satisfactorily to complete reclamation work on any segment of the permit area within two years after completion or abandonment of surface mining on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit and refusal to issue another permit to the delinquent operator until such deficiencies are corrected by the operator. [1984 c 215 § 6; 1970 ex.s. c 64 § 15.]

RCW 78.44.150 OPERATING WITHOUT PERMIT—PENALTY. Any operator conducting surface mining within the state of Washington without a valid operating permit shall be guilty of a gross misdemeanor. Each day of operation shall constitute a separate offense. [1970 ex.s. c 64 § 16.]

RCW 78.44.160 ENJOINING OR STOPPING ILLEGAL OPERATIONS—PENALTY—NOTICE—REMISSION OR MITIGATION OF PENALTY—APPEAL. When the department finds that an operator is conducting surface mining on an area for which a valid operating permit is not in effect, or is conducting surface mining in any manner not authorized by his operating permit or by the rules and regulations adopted by the department, the department may forthwith order such operator to suspend all such operations until compliance is effected or assured to the satisfaction of the department. In the event the operator fails or declines to obey such order, the operator shall be subject to a civil penalty in an amount of not more than five hundred dollars for each violation. Every day on which a failure or declining to obey the order continues is a separate violation.

The penalty provided for in this section shall be imposed by notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion considers proper, provided the department considers the remission or mitigation to be in the best interests of carrying out the purposes of this chapter.

A person incurring a penalty under this section may appeal the penalty as provided in RCW 78.44.170. The appeal shall be filed within thirty days of receipt of notice imposing the penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, the appeal shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application.

A penalty imposed under this section becomes due and payable thirty days after receipt of a notice imposing the penalty unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the penalty becomes due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from the disposition. If an appeal of the penalty is filed, the penalty becomes due and payable only upon completion of all review proceedings provided for in RCW 78.44.170 and the issuance of a final decision by the department confirming the penalty in whole or in part.

If the penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or any county in which the person incurring the penalty does business, to recover the penalty. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in this chapter. The attorney general shall forthwith take the necessary legal action to enjoin, or otherwise cause to be stopped, such conduct of surface mining. [1984 c 215 § 7; 1970 ex.s. c 64 § 17.]

RCW 78.44.170 APPEALS. Appeals from determinations made under this chapter shall be made under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended and shall be considered a contested case within the meaning of the administrative procedure act (chapter 34.04 RCW). [1970 ex.s. c 64 § 18.]

RCW 78.44.175 SURFACE MINING OF COAL—PREEMPTION OF CHAPTER BY FEDERAL LAWS, PROGRAMS. In the event state law is preempted under federal surface mining laws relating to surface mining of coal or the department of natural resources determines that a federal program and its rules and regulations relating to the surface mining of coal are as stringent and effective as the provisions of this chapter, the provisions of this chapter shall not apply to such surface mining for which federal permits are issued until such preemption ceases or the department determines such chapter should apply. [1984 c 215 § 8.]

RCW 78.44.180 CONFIDENTIALITY. All reclamation plans, operators' reports and other required information under this chapter shall be for the confidential use of the department which shall by rule or regulation provide for the release thereof to proper interested persons. [1970 ex.s. c 64 § 20.]

RCW 78.44.910 PREVIOUSLY MINED LAND. This act shall not direct itself to the reclamation of land mined prior to January 1, 1971. [1970 ex.s. c 64 § 22.]

RCW 78.44.920 EFFECTIVE DATE—1970 EX.S. C 64. This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]

RCW 78.44.930 SEVERABILITY—1970 EX.S. C 64. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 64 § 24.]

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
STATE OF UTAH

Proposed Amended and New Rules
Minerals Reclamation Program
R613-001 through R613-005

Proposed rules R613-001 through R613-005 replace Rules M-1 through M-10, Mined Land Reclamation General Rules and Regulations and Rules of Practice and Procedure, in their entirety.

The full text of these rules and their accompanying forms can be viewed at the Office of Administrative Rules, Archives Building, State Capitol.

Copies are available at the
Division of Oil, Gas and Mining Offices,
Suite 350, 3 Triad Center, 355 West North Temple
Salt Lake City, Utah 84180-1203

Contact: Kenneth E. May/Lowell P. Braxton
(801) 538-5340

September 1, 1988

P R O P O S E D R U L E S

September 1988

STATE OF UTAH
MINED LAND RECLAMATION ACT

Title 40, Chapter 8
Utah Code Annotated, as Amended

MINERALS RECLAMATION PROGRAM

Forms to be used in conjunction with the Rules:

FORM MR-EXP	Notice of Intention to Conduct Exploration
FORM MR-SMO	Notice of Intention to Commence Small Mining Operations
FORM MR-LMO	Notice of Intention to Commence Large Mining Operations
FORM MR-RC	Reclamation Contract
FORM MR-REV	Notice of Intention to Revise Large Mining Operations
FORM MR-EPR	Mineral Exploration Progress Report
FORM MR-AR	Annual Report of Mining Operations
FORM MR-TRS	Transfer of Notice of Intention-Small Mining Operation
FORM MR-TRL	Transfer of Notice of Intention-Large Mining Operation

R613-001- MINERALS REGULATORY PROGRAM

SECTION

R613-001- MINERALS REGULATORY PROGRAM.

R613-001-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, & Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Paragraph 40-8-2 of the Act states:

> "The Utah Legislature finds that: (1) A mining industry is essential to the economic and physical well-being of the State of Utah and the nation. (2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings. (3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of this state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, biologic, geologic, economic and social conditions in the areas in which mining takes place."

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the Operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R613-001-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State & Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Division of Environmental Health, the Utah Division of State History, the Utah Division of State Lands and Forestry, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R613-001-103. General Rules.

The following are general rules for statewide application. Special rules, regulations and orders will be issued when necessary or advisable, after notice and hearing, and shall prevail as against these general rules, if in conflict therewith.

R613-001-104. Violations & Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring: compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R613-001-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of

these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R613-001-106 Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more indentifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto, which has been approved by the Division.

An approved notice of intention is not required for exploration having a disturbed area of five or less surface acres, or for small mining operations.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters

of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R613-005.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) onsite private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; onsite transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; offsite operations and transportation; or reconnaissance activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, including any amendments or revisions thereto.

"Offsite" means the land areas that are outside of or beyond the onsite land.

"Onsite" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R613-005. If fairness to the parties is not compromised,

an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of onsite surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: Minerals reclamation 40-8-1
1988 et seq

MINERALS RECLAMATION PROGRAM

R613-002- EXPLORATION

SECTION Page

Forms to be used in conjunction with the Rules:

FORM MR-EXP Notice of Intention to Conduct Exploration
FORM MR-EPR Mineral Exploration Progress Report
FORM MR-RC Reclamation Contract (if greater than five acres)

R613-002 EXPLORATION

R613-002-101. Filing Requirements & Review Procedures

1. A complete Notice of Intention to Conduct Exploration (FORM MR-EXP) or a letter containing all the required information must be filed with the Division before exploration begins. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the Division will review the proposal and notify the operator in writing:

   2.11. That the notice of intention is complete, or

   2.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

   2.13. The Division will review any subsequent filings of information within 10 working days of receipt.

3. A notice of intention to conduct exploration will not require Division approval, unless more than five surface acres of disturbance is proposed. However, all of the required information must be provided to the Division. Division approval is required for all variances from Rule R613-002-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

4. Exploration that will disturb more than five surface acres at any given time will require Division approval and a reclamation surety before exploration begins. (See Rule R613-002-111.)

5. Developmental drilling conducted within the disturbed area of an approved large mining operation or within the five acre disturbed area of a small mining operation does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter.

R613-002-102. Duration of the Notice of Intention

A complete Notice of Intention to Conduct Exploration or comparable letter shall be valid until November 30th of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated length of time required to complete exploration and reclamation.

R613-002-103. Notice of Intention to Conduct Exploration

The notice of intention shall address the requirements of the following rules:

Rule #	Subject
R613-002-104	Operator(s), Surface and Mineral Owner(s)
R613-002-105	Maps and Drawings
R613-002-106	Project Description
R613-002-107	Operation Practices
R613-002-108	Hole Plugging Requirements
R613-002-109	Reclamation Practices
R613-002-110	Variance

R613-002-104. Operator(s), Surface & Mineral Owner(s)

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for exploration.

2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

R613-002-105. Maps and Drawings

A topographic base map showing the location of the proposed exploration project must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed exploration project for which the operator is not responsible.

R613-002-106. Project Description

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the proposed dates during which exploration will be conducted;

2. The type of minerals to be explored for;

3. The general dimensions of all drill holes, including total depth and diameter;

4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;

5. The width and length of any new roads constructed; and

6. An estimate of the total number of surface acres to be disturbed.

R613-002-107. Operation Practices

The operator shall conform to the following practices while conducting exploration unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

   1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

   1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-002-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available; and

   1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by exploration, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-002-108. Hole Plugging Requirements

Drill holes shall be properly plugged as soon as practical and not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, the owner must notify the Division in writing accepting responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-002-109. Reclamation Practices

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

1.11. The permanent sealing of shafts and tunnels;

1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-002-108;

1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover*; and

the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining operations involve a disturbed area of five acres or less.

*Note: If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard.

R613-002-110. Variance

1. The operator may request a variance from Rule R613-002-107, 108, or 109, by submitting the following information, which shall be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R613-002-111. Surety

1. The operator of an exploration project that will result in more than five surface acres being disturbed at any given time must post a reclamation surety prior to commencement of exploration. Disturbed areas which have been reclaimed are not included within the cumulative five acres for purposes of the reclamation surety.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Board is held by the Division of State Lands and Forestry, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site-specific calculations reflecting the Division's cost to reclaim the site. An operator's reclamation estimate will be accepted if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Board. Acceptable forms may include:

   4.11. Corporate surety bond,

   4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining,

   4.13. Cash,

   4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States, or

   4.15. Escrow accounts.

   4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R613-002-112. Failure to Reclaim

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or,

2. The surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the Board shall notify such agency of the hearing findings and request that the necessary forfeiture action be taken.

R613-002-113. Confidential Information

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R613-002-114. Revised Notice

Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter must be submitted when:

1. The proposed additions or changes will occur outside the originally designated quarter section; or,

2. The proposed additions will cause the total unreclaimed surface disturbance to exceed five (5) acres.

R613-002-115. Reports

On or before December 31st of the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the operator must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R613-002-116. Practices and Procedures; Appeals

The Administrative Procedures, as outlined in R613-005, shall be applicable to minerals regulatory proceedings.

KEY: Minerals reclamation 40-8-1
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R613-003- SMALL MINING OPERATIONS

SECTION Page

Forms to be used in conjunction with the Rules:

FORM MR-SMO	Notice of Intention to Commence Small Mining Operations
FORM MR-AR	Annual Report of Operations
FORM MR-TRS	Transfer of Notice of Intention-Small Mining Operations

R613-003 SMALL MINING OPERATIONS

R613-003-101. Filing Requirements & Review Procedures.

1. A Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) or a letter containing all the required information must be filed with the Division before a small mining operation begins. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

   Previously exempt mining operations, as defined by Rule 613-001-109, which have a disturbed area of five (5) acres or less and which will continue or resume mining operations, must submit a complete Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) by April 29, 1989.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

   2.11. that the notice of intention is complete, or

   2.12. that the notice of intention is incomplete, and that additional information as identified by the Division will be required.

3. The Division will review any subsequent filings of information within 10 working days of receipt.

4. A notice of intention to commence small mining operations will not require Division approval. However, all of the required information must be provided to the Division.

   Division approval is required for all variances from Rules R613-003-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

5. Filing of the complete notice of intention shall enable the operator to conduct small mining operations. The operator is responsible for conducting mining and reclamation activities in compliance with the requirements of the notice of intention, the Act, and these Rules.

6. The operator must notify the Division no later than 30 days after beginning small mining operations.

R613-003-102. Duration of the Notice of Intention.

The notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation.

R613-003-103. Notice of Intention to Commence Small Mining Operations.

The notice of intention shall address the requirements of the following rules:

Rule #	Subject
R613-003-104	Operator(s), Surface and Mineral Owner(s)
R613-003-105	Map
R613-003-106	Operation Plan
R613-003-107	Operation Practices
R613-003-108	Reclamation Practices
R613-003-109	Variance

R613-003-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.

2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.

3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

R613-003-105. Project Location & Map.

A topographic base map showing the location of the proposed small mining operation must be submitted with the notice of intention . A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed small mining operation for which the operator is not responsible.

R613-003-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;

2. Estimated width and length of any new roads to be constructed;

3. An estimate of the total number of surface acres to be disturbed by the mining operation.

R613-003-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

   1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

   1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-003-108.;

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1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5 Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-003-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of the operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete

surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

   2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow.

   Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

   2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

   2.12.111. Placing a 50 foot cement plug immediately above and below the aquifer(s); or

   2.12.112. Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-003-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The permanent sealing of shafts and tunnels;

   1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

   1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-003-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover*; and

the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

* Note: If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is representative of the premining conditions will be used as a standard.

R613-003-110. Variance.

1. The operator may request a variance from Rule R613-003-107, 108, or 109 by submitting the following information which shall be considered by the Division on a site-specific basis:

   1.11. The rule(s) as to where a variance is requested;

   1.12. The variance requested and a description of the area that would be affected by the variance;

   1.13. Justification for the variance;

   1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R613-003-111. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the Act and these rules, the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court.

R613-003-112. Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the temporary suspension of small mining operations.

3. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.

4. The operator shall give the Division prompt written notice of a termination or suspension of small mining operations expected to exceed five (5) years. Upon receipt of notification the Division shall, within 30 days, make an inspection of the property.

5. Small mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a small mining operation to remain in a continued state of suspension. Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of said 10-year period for a longer suspension period.

R613-003-113. Mine Enlargement.

Before enlarging a small mining operation beyond five (5) acres of surface disturbance, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

R613-003-114. Revisions.

Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised. Division approval of a revision of small mining operations is not required before the operational change occurs.

R613-003-115. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention - Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must assume full responsibility for continued mining operations and reclamation obligations for the small mining operation.

R613-003-116. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

   1.11. The location of the operation and the number and date of the applicable Notice of Intention,

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials,

1.13. New surface disturbances created during the year,

1.14. The reclamation work performed during the year.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R613-003-117. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R613-005 Rules, shall be applicable to minerals regulatory proceedings.

R613-003-118. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

KEY: Minerals reclamation 40-8-1
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MINERALS RECLAMATION PROGRAM

R613-004 LARGE MINING OPERATIONS

Forms to be used in conjunction with the Rules:

FORM MR-LMO Notice of Intention to Commence Large Mining Operations
FORM MR-RC Reclamation Contract
FORM MR-REV Notice of Intention to Revise Large Mining Operations
FORM MR-AR Annual Report of Mining Operations
FORM MR-TRL Transfer of Notice of Intention-Large Mining Operations

R613-004 LARGE MINING OPERATIONS

R613-004-101. Filing Requirements and Review Procedures.

A Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) or a letter containing all the required information must be approved by the Division before mining operations begin.

Previously exempt mining operations as defined by Rule 613-001-109 which have a disturbed area greater than five (5) surface acres and which will continue or resume mining operations, must submit a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) by April 29, 1989. Upon Division receipt of the notice of intention, the operator will be authorized to continue such existing operations until approval of the notice of intention is obtained. Such approval will be obtained by the operator within one (1) year from the date of submittal of the notice of intention unless an extension is granted by the Division.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

   1.11. That the notice of intention is complete; or

   1.12. that the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

   Notice of the tentative decision will then be published in accordance with Rule R613-004-116.

3. Division approval of the notice of intention and execution of the Reclamation Agreement (FORM MR-RA) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

R613-004-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted.

R613-004-103. Notice of Intention to Commence Large Mining Operations.

The notice of intention shall address the requirements of the following rules:

Rule #	Subject
R613-004-104	Operator(s), Surface and Mineral Owner(s)
R613-004-105	Maps, Drawings and Photographs
R613-004-106	Operation Plan
R613-004-108	Hole Plugging Requirements
R613-004-109	Impact Assessment
R613-004-110	Reclamation Plan
R613-004-112	Variance

R613-004-104. Operator(s), Surface and Mineral Owner(s).

1. The name, permanent mailing address, and telephone number of the operator responsible for the mining operations and reclamation of the site.

2. The name, permanent mailing address, and telephone number of the surface landowner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, or federal or state leases or permits included in the lands affected.

R613-004-105. Maps, Drawings and Photographs.

1. A topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

   1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

   1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

   1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

   1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = 500'. The following information shall be included on the surface facilities map:

   2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

3.16. Baseline information maps and drawings including soils, vegetation, watershed(s), geologic formations and structure, contour and other such maps which may be required for determination of existing conditions, operations, reclamation and postmining land use;

3.17. A reclamation activities and treatment map to identify the location and the extent of the reclamation work to be accomplished by the operator upon cessation of mining operations. This drawing shall be utilized to determine adequate bonding and reclamation practices for the site;

3.18 Other maps, plans, or cross sections as may reasonably be required by the Division.

4. The operator may submit photographs (prints) of the site sufficient to show existing vegetation and surface conditions. These photographs should show the general appearance and condition of the land to be affected and should be clearly marked as to the location, orientation and the date that the pictures were taken.

R613-004-106. Operation Plan.

The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including:

1. Type of mineral(s) to be mined;

2. Type of operations to be conducted, including the mining/processing methods to be used onsite, and the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing;

3. Estimated acreages proposed to be disturbed and/or reclaimed annually or sequentially;

4. A description of the nature of the materials to be mined or processed including waste/overburden materials and the estimated annual tonnages of ore and waste materials to be mined;

5. A description of existing soil types, including the location and extent of topsoil or suitable plant growth material. If no suitable soil material exists, an explanation of the conditions shall be given;

6. A description of the plan for protecting and redepositing existing soils;

7. A description of existing vegetative communities and cover levels, sufficient to establish revegetation success standards in accordance with Rule R613-004-111;

8. Depth to groundwater, extent of overburden material and geologic setting;

9. Proposed location and size of ore and waste stockpiles, tailings facilities and water storage/treatment ponds.

R613-004-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

   1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

   1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-004-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

   1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-004-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

   1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

   1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

   2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of

API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-004-109. Impact Assessment.

The operator shall provide a general narrative description identifying potential surface and/or subsurface impacts. This description will include, at a minimum:

1. Projected impacts to surface and groundwater systems,

2. Potential impacts to state and federal threatened and endangered species or their critical habitats,

3. Projected impacts of the mining operation on existing soil resources,

4. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety, and

5. Actions which are proposed to mitigate any of the above referenced impacts.

R613-004-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;

2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;

3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

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Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

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   2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of

4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left onsite, including a map showing the location of such materials upon the completion of reclamation.

5. A planting program as best calculated to revegetate the disturbed area;

   5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation, seed mixture(s) and rate(s), and timing of seeding (fall seeding is preferred timing);

   5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation;

R613-004-111. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The permanent sealing of shafts and tunnels;

   1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

   1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-004-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

   1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover*; and

the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits.

*Note: If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard.

R613-004-112. Variance.

1. The operator may request a variance from Rule R613-004-107, 108, or 111, by submitting the following information which will be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R613-004-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division.

2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Board is held by the Division of State Lands and Forestry, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site specific calculations reflecting the Division's cost to reclaim the site. An operator's estimate will be accepted if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Board. Acceptable forms may include:

4.11. Corporate surety bond,

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining,

4.13. Cash,

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States, or

4.15. Escrow accounts.

4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R613-004-114. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or,

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the Board shall notify such agency of the hearing findings, and request that the necessary forfeiture action be taken.

R613-004-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R613-004-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:

   (1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

   (2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.

2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division, during the public comment period identified in the notice, setting forth factual reasons for the complaint.

3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.

4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Board in accordance with UCA 40-8-9, following which hearing the Board shall issue its decision.

R613-004-117. Notification of Suspension or Termination of Operations.

1. The operator need not notify the Division of the temporary suspension of mining operations.

2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.

3. The operator shall give the Division prompt written notice a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall, within 30 days, make an inspection of the property.

4. Large mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of said 10-year period for a longer suspension period.

R613-004-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five (5) acres or less may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R613-004-119. Amendments.

1. An amendment is an insignificant change to the approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R613-004-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention - Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R613-004-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

   1.11. The location of the operation and file number of the approved notice of intention;

   1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

   1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R613-004-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.

R613-004-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R613-005 Rules, shall be applicable to minerals regulatory proceedings.

KEY: Minerals reclamation 40-8-1
1988 et seq

MINERALS RECLAMATION PROGRAM

R613-005- ADMINISTRATIVE PROCEDURES

R613-005 ADMINISTRATIVE PROCEDURES

R613-005-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the rules of Practice and Procedure before the Board of Oil, Gas and Mining include the following: R614-002-112, Failure to Reclaim, Forfeiture of Surety; R613-003-111, Failure to Reclaim, Forfeiture of Surety; R613-003-112.5, Over 10-Year Suspension; R613-004-114, Failure to Reclaim, R613-004-117.5, Over 10-Year Suspension,

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R613-005 include the following: R613-002-101, Notice of Intent to Commence Mining Operations, Variance Request; R613-002-102, Extension; R613-002-107, Variance; R613-002-108, Unplugged Over 30 Days/Alternative Plan; R613-002-109, Reclamation Practices Variance; R613-002-109.13, Revegetation Approval; R613-002-110, Variance, Revocation or Adjustment of Variance; R613-002-111, Release of Surety; R613-002-114, New or Revised Notice of Intention; R613-003-101, Notice of Intention to Commence Small Mining Operations, Variance Requests; R613-003-107, Variances; R613-003-108, Unplugged over 30 Days/Alternate Plan; R613-003-109, Reclamation Practices Variance; R613-003-109.13, Revegetation Approval; R613-003-110, Variance, Revocation, or Adjustment of Variance; R613-003-112, Waiver, Annual Report; R613-003-112.3 and R613-003-112.4, Termination or Suspension; R613-003-112.5, Reevaluations, Reclamation; R613-003-113, Mine Enlargement; R613-003-114, Amendments; R613-003-116, Report Waiver; R613-004-101, Notice of Intention to Commence Large Mining Operation, Variance Request; R613-004-102, Updated Information or Modifications; R613-004-107, Variances; R613-004-108, Unplugged over 30 Days/ Alternate Plan; R613-004-111, Reclamation Practice, Variance; R613-004-111.13, Revegetation Approval; R613-004-112, Variances, Revocation or Adjustment; R613-004-113, Release of Surety; R613-004-117, Annual Report, Waiver; R613-004-117.3 and R613-004-117.4, Termination or Suspension; R613-004-117.5, Reevaluations, Reclamation; R613-004-118, Revisions; R613-004-119, Amendments; R613-004-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R613-005 include the following: R613-002-111, Surety, Form and Amount; and R613-004-113, Surety, Form and Amount.

R613-005-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R613-005 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R613-005. Notwithstanding this, any longer time periods provided for in the Mineral Rules shall apply.

R613-005-103. Definitions.

Definitions as used in these rules may be found under R613-001-106.

R613-005-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

   1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

   1.12. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

   2.11. The Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board, or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

      2.11.111 The names and mailing addresses of all persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

      2.11.112 The Division's file number or other reference number;

      2.11.113 The name of the adjudicative proceeding;

      2.11.114 The date that the Notice of Agency Action was mailed;

      2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63-46b-4 and 63-46b-5 of the Utah Code Annotated (1953, as amended), if applicable;

      2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

      2.11.117 A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

      2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

      2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number;

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested;

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R613-005-104.2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

2.15. In the case of a Request for Agency Action, the Division shall, unless waived, insure that notice by mail has been promptly given to all parties, or by publication when required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63-46b-4 and 63-46b-5 of Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R613-005-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

   1.11. Conversion of the proceeding is in the public interest; and

   1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinbelow. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interests of the public as well as the parties involved.

R613-005-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of Rule R613-005-104(b)(2)(i) and R6T3-005-104(b)(4), whichever is applicable, shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules.

4. All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date, a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules.

5. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency action shall be permitted to testify, present evidence, and comment on the issues.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, but the Division Director may issue subpoenas or other orders to compel production of necessary evidence.

8. All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation, or to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within said ten (10) day period, the Division Director shall issue a written, signed order that states the following:

    11.11 The decision;

    11.12 The reasons for the decision;

    11.13. A notice of the right to appeal to the Board; and

    11.14. The time limits for filing an appeal.

12. The Division Director's order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at any hearings.

13. Unless waived, a copy of the Division Director's order shall be promptly mailed to each of the parties.

14. The Division may record any hearing. Any party, at his or her own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the hearing.

15. Nothing in this section restricts or precludes any investigative right or power given to the Division by another statute.

16. Default. The Division Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order of default shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Division Director set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the Division shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in

the adjudicative proceeding, including those affecting the defaulting party. Notwithstanding this, in an adjudicative proceeding that has no parties other than the Division and the party in default, the Division Director shall, after issuing the order of default, dismiss the proceeding.

17. Appeal of Division Order. Any aggrieved party that participated at a hearing before the Division or an applicant who is aggrieved by a denial or approval with conditions, may file a written appeal to the Board within ten (10) days of the issuance of the order. The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board or its designated Hearing Examiner in conformance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, and shall also state the grounds for the appeal and the relief requested.

18. Emergency Orders. Notwithstanding the other provisions of these rules, the Division Director or any member of the Board is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as shall be prescribed by statute.

18.11. Prerequisites for Emergency Order. The following must exist to allow an emergency order:

18.11.111 The facts known to the Division Director or Board member or presented to the Division Director or Board member show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

18.11.112 The threat requires immediate action by the Division Director or Board member.

18.12. Limitations. In issuing its Emergency Order, the Division Director or Board member shall:

18.12.111 Limit its order to require only the action necessary to prevent or avoid the dange to the public health, safety, or welfare;

18.12.112 Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Division Director's or Board member's utilization of emergency adjudicative proceedings;

18.12.113 Give immediate notice to the persons who are required to comply with the order; and

18.12.114 If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Division shall commence a formal adjudicative proceeding before the Board of Oil, Gas and Mining.

R613-005-107. Exhaustion of Administrative Remedies.

1. Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

2. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will than be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under the Rules of Practice and Procedure before the Board of Oil, Gas and Mining. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be cor ted and processed formally are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

R613-005-108. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the Division.

R613-005-109. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, other remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R613-005-110. Construction.

The Utah Administrative Procedures Act described in Title 63, Chapter 46b of the Utah Code Annotated (1953, as amended) shall supersede any conflicting provision of these rules. These rules should be construed to be in compliance with said Act.

R613-005-111. Time Periods.

Nothing in these rules may be interpreted to restrict the Division Director, for good cause shown, from lengthening or shortening any time period prescribed herein.

KEY: Minerals reclamation 40-8-1
1988 et seq

ATTACHMENT C
Summary of the Wyoming DEQ-LQD Proposed Bond Pool, DRAFT

DRAFT
(3/31/88)

Summary of the Wyoming DEQ-LQD Proposed Bond Pool

A. INTRODUCTION

This summary is intended to familiarize interested parties with the Department of Environmental Quality - Land Quality Division's proposed Bond Pool Program for meeting the bonding requirements as set forth in W.S. 35-11-417.

Over the last few years the Land Quality Division has noticed the increased difficulty mining operators have had in obtaining reclamation performance bonds. At the present time, most operators must post 100% liquid collateral for any surety bond or bank letter of credit that is obtained for use as a reclamation bond. The practice of requiring this collateral by insurance companies and banks has put a financial burden on many of the state's small mine operators. To reduce the burden on these operators, the LQD proposes to set up a Bond Pool program in which operators could participate to meet our bonding requirements.

The Bond Pool concept works much like an insurance policy where the operator would pay an annual fee to the pool and in turn the pool reserves will cover the operator's bonding liability. It should be noted that the Bond Pool program is an alternate form of bonding such as a surety or a self bond, and the operator is free to go from one method of bonding to another at any time.

The Bond Pool program would be available to all operators with coal permits, large mining permits, small mining permits, ten-acre exemptions, licences to explore, coal notifications and drilling notifications with a total bonding liability of $50,000 or less. The $50,000 ceiling is explained below and may be raised in the future if the program can generate enough revenue to cover the larger bonds.

B. PROGRAM SET UP & OPERATION

1. BOND AMOUNTS & DISTRIBUTION -

A study of current bonding distribution was conducted in order to determine the maximum allowable bond that would keep a single operation from bankrupting the pool and still allow the maximum number of participants.

Table 1 on Page 3 shows the LQD's total bond distribution as of March 4, 1988. The distribution shows that most of the dollars held for bonds are in the upper ($5 mil to $100 mil) bond ranges, while the majority of the permitted operators are in the lower bond ranges. Since the intention of the pool is to help as many operators as possible, the number of permits in certain bond ranges were studied rather than the total dollar amount held in any range.

If you plot the number of permits versus the bond amounts in a line graph form, as in Figure 1 on Page 4, you can see that the majority of the permits bonded are for amounts of less than $50,000. All bond ranges of over $50,000, as shown in Table 1, contain less than 2% of the total bonding volume. Cumulatively, permits with bonds between $0 and $50,000 represent 83% of the total LQD bonded operators as shown in the pie graph of Figure 2 on Page 5.

In order to include the maximum number of operators in the state and maintain a ceiling that would not bankrupt the pool, should the largest operator forfeit, a bonding limit of $50,000 was set for the program.

2. FEE REQUIREMENTS -

In order to determine what yearly member fees would be required to pay for reclamation due to forfeitures, actual LQD bond forfeitures were compiled for the last six years. Table 2 on Page 6 shows bond fofeiture numbers and amounts for the years of 1982 through 1987 for bonds of $50,000 or less.

The average annual statewide bond forfeiture total for the last six years was $22,460. The current total dollar amount held for bonds under $50,000 is $4,337,000. To determine what an average percent of forfeiture would be each year, you divide $22,460 by $4,337,000 and you get 0.5%. This is an actuarial figure which should be correct regardless of how many participants the pool has. Since bond requirements are not based on estimated reclamation costs for ten acre exemptions, 0.5% would not be adequate to cover forfeitures if a large amount of ten acre exemptions were to forfeit in any one year. If the 0.5% is accelerated to 3% the state would be given a factor of safety of five. This should enable the state to cover the loss in any given year.

In order to recover the projected 3% loss each year, the participants of the pool must pay a yearly 3% premium on their current bond estimate. In addition, the participants must post a one-time deposit equal to 10% of their bond estimate with the Department to be held until the permit is terminated. As an example, the operator with a $3,000 bond would post a $300 deposit and pay a yearly fee of $90.00. If the operator's bond estimate should increase any time during the life of his operation, the operator would be required to increase his 10% deposit and his yearly fee accordingly. Further examples of fee calculations are shown on Page 8.

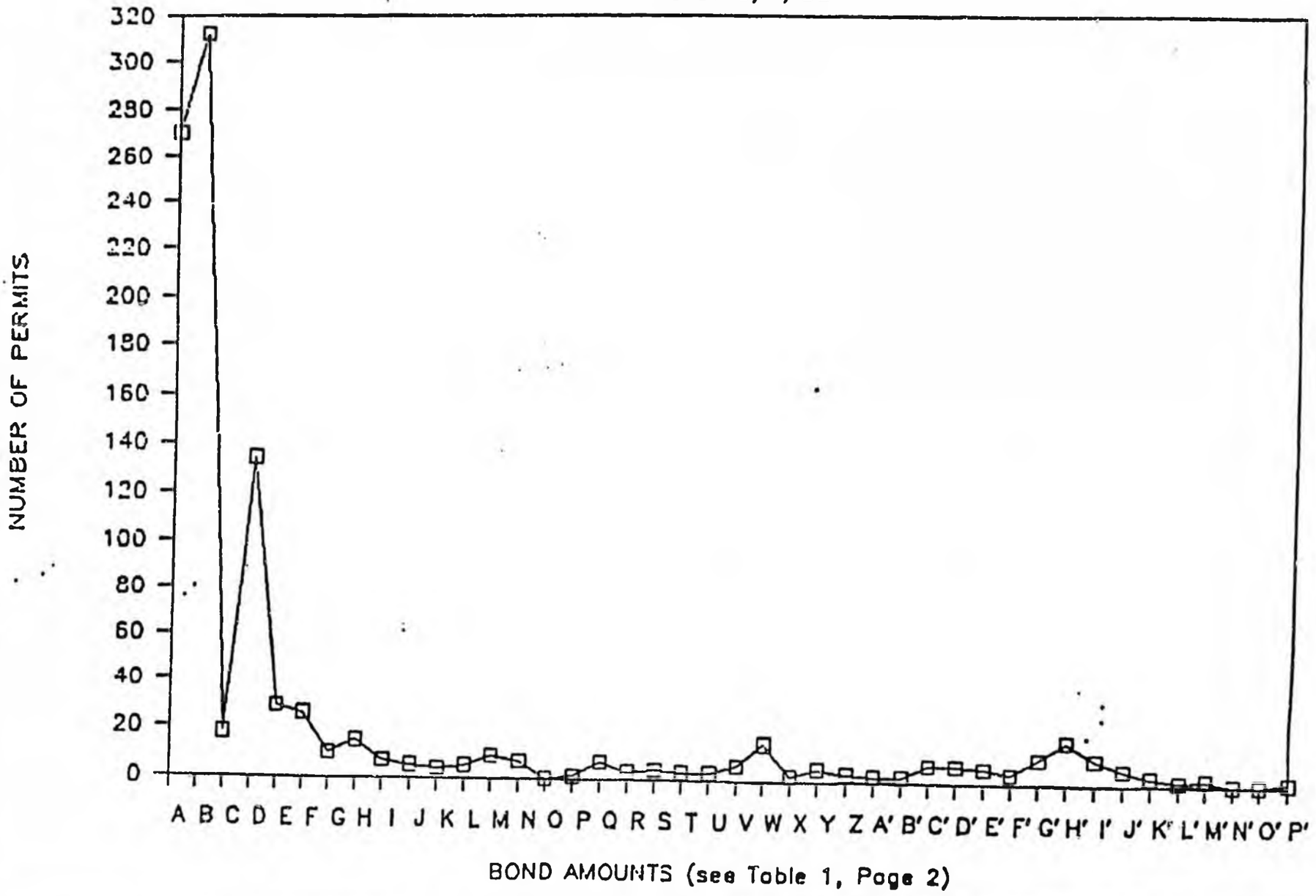
With the current 100% collateral requirement, Table 1, page 3, shows approximately $4,000,000 is tied up in cash bonds or as collateral for Surety Bonds and Letters of Credit. Under the fee requirements of the bond pool, each participating operator would get up to 90% of their tied-up capital released for use elsewhere.

TABLE 1
LQD PERMIT/BOND SUMMARY AS OF 3/4/88

LEGEND	BOND AMOUNT $ X 1000	NUMBER OF PERMITS IN RANGE	% OF PERMITS IN RANGE	TOTAL $ AMT. OF BONDS IN RANGE	% OF TOTAL $ AMT. FOR ALL BONDS
A	0-1	271	28.11	179261	0.01
B	1-3	311	31.73	656215	0.04
C	3-5	18	1.84	78259	0.00
D	5-10	131	13.37	1274777	0.08
E	10-20	29	2.96	455830	0.03
F	20-30	26	2.65	658683	0.04
G	30-40	10	1.02	366188	0.02
H	40-50	14	1.43	660867	0.04
I	50-60	7	0.71	392476	0.03
J	60-70	5	0.51	321284	0.02
K	70-80	4	0.41	301082	0.02
L	80-90	5	0.51	434319	0.03
M	90-100	9	0.92	900000	0.06
N	100-125	8	0.82	863685	0.06
O	125-150	0	0.00	0	0.00
P	150-175	1	0.10	157000	0.01
Q	175-200	6	0.61	1168862	0.07
R	200-225	3	0.31	851539	0.05
S	225-250	4	0.41	748499	0.05
T	250-275	2	0.20	534408	0.03
U	275-300	3	0.31	877140	0.06
V	300-400	6	0.61	2213875	0.14
W	400-500	15	1.53	7014082	0.45
X	500-600	2	0.20	1059000	0.07
Y	600-700	3	0.31	1995000	0.13
Z	700-800	3	0.31	3069421	0.20
A'	800-900	1	0.10	875000	0.06
B'	900-1000	2	0.20	1989566	0.13
C'	1000-2000	7	0.71	9177264	0.59
D'	2000-3000	7	0.71	17428373	1.11
E'	3000-4000	4	0.41	13907491	0.89
F'	4000-5000	3	0.31	13336200	0.85
G'	5000-10000	9	0.92	109777295	7.01
H'	10000-20000	14	1.43	322974451	20.61
I'	20000-30000	10	1.02	498556146	31.81
J'	30000-40000	4	0.41	131835752	8.41
K'	40000-50000	3	0.31	132532080	8.46
L'	50000-60000	1	0.10	58145486	3.71
M'	60000-70000	2	0.20	130444173	8.32
N'	70000-80000	0	0.00	0	0.00
O'	80000-90000	0	0.00	0	0.00
P'	90000-100000	1	0.10	98900000	6.31
		964	98.82	1567111029	100

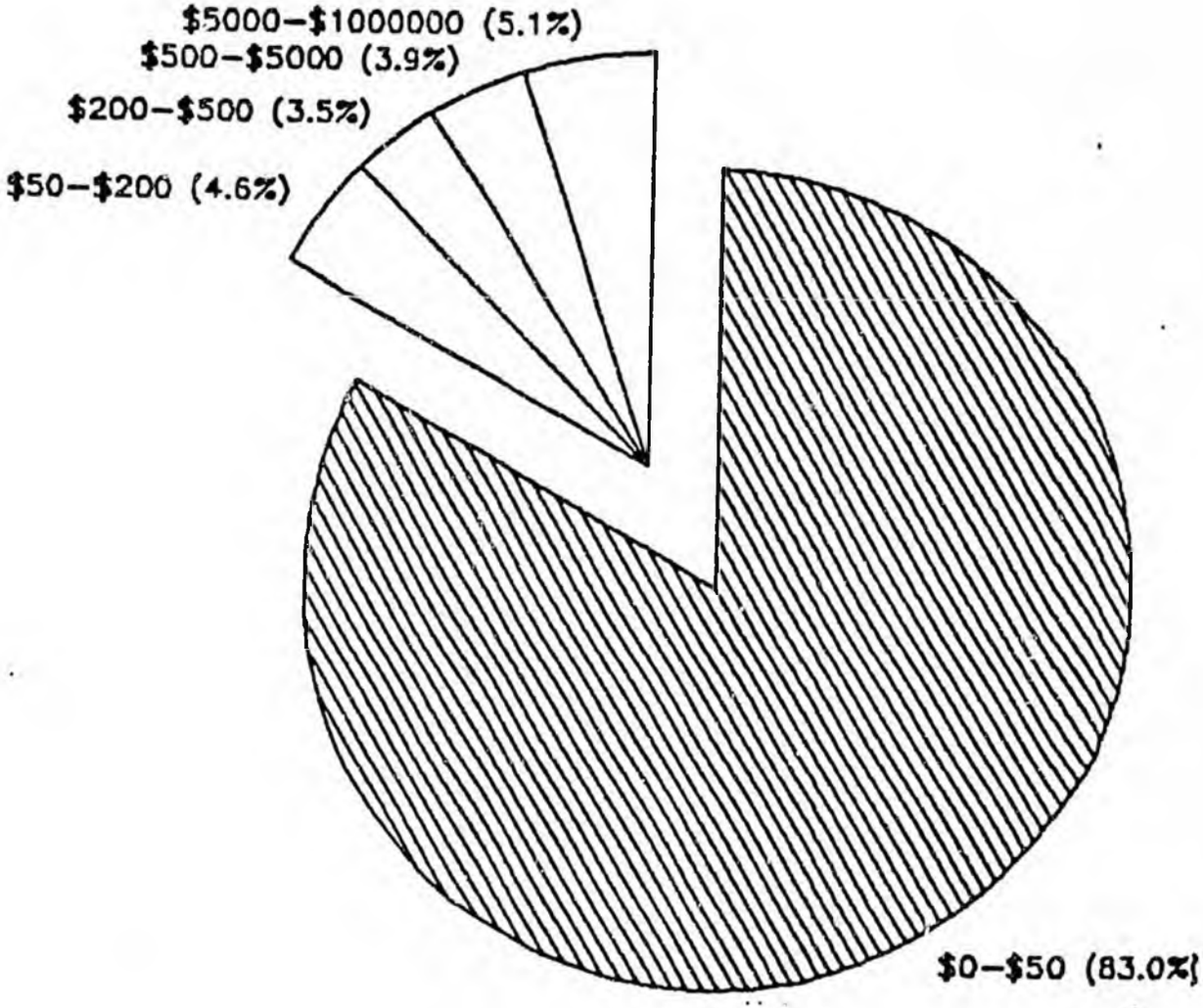
LQD PERMIT/BOND SUMMARY

AS OF 3/4/88



LQD PERMIT/BOND SUMMARY

AS OF 3/4/88



BOND RANGE DOLLARS IN THOUSANDS

Percentage points represent operator's in each bond range.

TABLE 2

YEAR	NUMBER OF BONDS FORFEITED	TOTAL AMOUNT OF BONDS
1982	5	$16,984
1983	4	$22,400
1984	4	$17,879
1985	7	$53,500 **
1986	8	$ 6,219
1987	11	$17,775
	$\bar{X}$ =	$22,460

** One bond amounted to $41,000 of this total

3. RELEASE OF BONDS -

The 10% deposit will be held by the State from the time of permit approval until successful revegetation has been established and the permit is terminated. The 3% yearly fee will be assessed from the time of permit approval until final seeding has been completed, at which time it will be suspended. Only the 10% deposit will be held between seeding and successful revegetation. This is equivalent to releasing 90% of the operator's bond at the time of seeding.

4. BOND FORFEITURES -

If a pool member's bond is forfeited under the provisions of W.S. 35-11-421, the LQD will take the operator's 10% deposit plus the necessary pool funds and complete the reclamation. The State would have the option of suing the operator if the cost of reclamation exceeded the estimated costs, as is presently the case. Should a member stop paying his annual fees, he will be suspended from the pool, lose his 10% deposit, and will be required to obtain a different form of bonding immediately. If the operator does not obtain an alternate bond and the State is forced to reclaim the operation, the operator could be sued for the cost of the reclamation. This will be viewed as forfeiture of bond and the operator will not be allowed to repermit in the State.

5. FEE CHANGES -

Each year an actuarial study will be carried out to determine if yearly fees are adequate to maintain the pool or if they should be raised or lowered. It is possible that when an upper limit (perhaps $1.5 million) is reached in the pool fund, the yearly fees could be waived for those members who have been in the program for some time or the $50,000 ceiling could be raised to allow more pool participants. A board or panel may be needed to make the fee schedule and pool limit decisions. If this proves to be the case, either the Environmental Quality Council, the Land Quality Advisory Board, or a new bond pool board could be given rule making authority and used for this purpose.

6. STARTING THE POOL -

In order to get the Bond Pool program up and running, a grant of $100,000 from the DEQ's Trust in Agency account would be needed. This grant would protect the pool from being depleted before it could build up its own reserves. Use of the Trust in Agency money is justified since the money would only be used for bond forfeitures on which adequate pool funds were not available. Funds borrowed from the Trust in Agnecy account would be repaid when the bond pool is actuarialy stable.

7. HOW PAYMENTS ARE MADE -

As with any other form of bonding, the operator would be required to have the appropriate bond in-place prior to affecting any land. With a new permit application, the operator would put up the appropriate 10% deposit and pay the 3% annual premium. An evaluation of the bond would be made every year upon receipt of the annual report. The Department would advise the operator to post a 10% deposit for any new lands which are projected to be affected during the coming year and to pay the 3% annual premium. No new lands could be affected until the appropriate deposits and fees were paid.

Figure 3
Example Calculations for Bond Pool Payments

Example for Small Mining Permit

Initial Application - Projects 10 acres of disturbance 1st year @ estimated reclamation cost of $1,000 per acre

10% deposit = $1,000
3% annual premium = $300

1st Annual Report - Projects additional 5 acres of disturbance (total 15 ac.).

10% deposit = $500 (in addition to $1,000 already on deposit)
3% annual premium = $450 (15 acres)

2nd Annual Report - Projects additional 5 acres of disturbance (total 20 ac.). Also reports 5 acres have been seeded.

10% deposit = $500 (in addition to $1,500 already on deposit)
3% annual premium = $450 (net 15 acres)

3rd Annual Report - Reports that all lands have been reclaimed.

10% deposit remains at $2,000 (20 acres)
3% annual premium is waived since all lands have been seeded.

5th Annual Report - Reclamation deemed acceptable by DEQ-LQD.

Deposit of $2,000 returned to operator and permit is cancelled.

Example for Ten-Acre Exemptions

Initial Application - Projects 10 acres of disturbance for life of mine.
Bonding set by statute at $300 per acre.

10% deposit = $300
3% annual premium = $90

1st Annual Report - Reports all 10 acres affected.

No additional deposit required.
3% annual premium = $90

2nd Annual Report - Reports all 10 acres reclaimed.

No additional deposit.
Annual premium waived.

4th Annual Report - Reclamation deemed acceptable by DEQ-LQD.

Deposit of $300 returned to operator and permit is cancelled.

8. DEQ MANPOWER REQUIREMENTS -

Existing DEQ financial staff will set up the pool fund and track pay-ins and pay-outs as long as possible. If the pool grows too large for existing staff to handle, another person will be hired and paid with pool proceeds.

9. STATUTORY CHANGES -

A new section will have to be added to the Wyoming Statutes allowing for the Bond Pool and giving the chosen board rule making authority. Regulations will also have to be written for the program's use.

10. COMPLIANCE REQUIREMENTS -

Operators of existing operations must be in compliance with the Wyoming Environmental Quality Act and Land Quality Rules and Regulations and must be current on reclamation to qualify for the pool. The LQD Advisory Board would have the final say on any disputes.

C. SUMMARY

DEQ/LQD is proposing to set up a Bond Pool program for use by mining operators with total bonding liability of $50,000 or less. Requirements of the pool would be a 10% deposit and a 3% yearly premium on the operator's current bond evaluation. The 3% premium will be waived when the operator

completes final seeding. The 10% deposit will be returned upon successful revegetation and permit termination. Should the operator forfeit his bond, he will lose the 10% deposit and the State will be responsible for reclamation of his permit. Fees will be set by a Board, based on a yearly actuarial study of the program's assets.

COMMENTS OF
NEIL MACKINNON, PRESIDENT OF HYAK MINING COMPANY
ON PENDING LEGISLATION
CONCERNING RENTS AND ROYALTIES
FROM MINING OPERATIONS ON STATE LAND

February 28, 1989

- During the past several months I, like virtually everyone associated with the mining industry in Alaska, have spent a considerable amount of time thinking about the issue of rents and royalties from mining operations on state land. The issue has so many facets and interrelationships that it is difficult to distill into a single presentation which will reflect the essence and be understandable in the context of the pending legislation.

Does Alaska want a mining industry?

- The first question to be asked is whether it is the policy of the State of Alaska to develop a mining industry. Historically, this question has been greeted with mixed responses. On the one hand, there are those who acknowledge that mining is a labor intensive industry which will generate revenue and jobs for Alaskans for decades to come, and, because of the rich mineral wealth with which Alaska is blessed, there needs to be no shortage of mines. On the other hand, there are those who associate mining with a variety of negative feelings, believing that mining necessarily involves everything from pollution and visual impacts to a diminution of the quality of life for those who live near mining operations. Until the State acknowledges that mining contributes more than just tax dollars this schizophrenic condition will continue.

Mining means new investment, jobs and tax revenue

- To get a feeling for the ball park we were playing in, look at a hypothetical gold mine in Alaska, the same mine in Nevada, and the same mine in Idaho. To understand the significance of this analysis, it is necessary to start with the premise that *whenever the government puts its hand in the pocket of its citizenry, it is taxation.* It makes little difference whether it is called tax or rent or royalty or fees or anything else. This analysis compares the level of taxation in these three jurisdictions.

- While the analysis merits close study the bottom line is that the State and local tax share today is higher in Alaska than in the other two States. This comparison also does not account for the higher capital and operating costs of doing business in Alaska, nor does it take into account the longer lead time associated with regulation and permitting in Alaska. For instance, in Nevada and Idaho, a Forest Service plan of operations for exploration can be approved within weeks, while in Alaska it frequently takes many months to get approval for routine work associated with mineral exploration.

- The attached enclosure also demonstrates what mining can represent just in terms of new investment, year-round jobs and revenue. In the example of a small mine, the local community would benefit from an local investment of fifteen million new dollars spent on goods and services, a hundred new year-round jobs, and direct revenues in the form of local sales and property taxes of over a million dollars. For a large mine, the effect is even more dramatic. One hundred fifty million dollars of new money would be invested in the State, four hundred primary jobs would be created and over nine million in sales and property taxes would be generated. While such mines will not replace Prudhoe Bay, they represent a revenue potential which the State can ill-afford to ignore or discourage.

Mining makes permanent contributions

- Mining is an intensive use of a small amount of land relative to its economic output. It provides direct and secondary year-round employment in rural areas of the State and constructs the infrastructure and utilities which benefit the citizens long after the mines are worked out. Juneau is a prime example of this fact; its power system was first devised to serve the mines, but in turn came to serve the entire community after the mines closed. Also, mineral development draws additional non-mining support facilities on adjacent lands affording the State the opportunity to gain revenues from that land as well.

Taxation can be a disincentive to investment

- While the citizen obliged to pay taxes is never going to be really happy with the obligation to pay, it is important for legislators to realize that if mining operations are going to generate revenue for the State, the State must set its tax (including rents and royalties) at a level which will encourage mineral investment, so that the industry can get to a point where it can pay the taxes. Alaska cannot attract the risk capital from other areas unless it offers competitive advantages over those areas. We compete with Nevada, Idaho and the rest of the world for this capital. Many of those locations have important natural advantages over Alaska already. By loading up our mines with assessment work, rents, royalties, and license taxes we send a signal that Alaska lands are not worth the cost of exploration. Mines are made not found. They can be easily "unmade" by unrealistic taxation.

Reclamation has no part in this legislation

- Although reclamation was not a part of the court decision in Trustees v. State and therefore not a part of the proposed legislation, its inclusion in this bill is being pushed by the environmentalists. The reasoning is that if the legislature does not address reclamation now, then it never will. Two points must be made in conjunction with this point: First, we

need a rents or royalties bill *now* to satisfy the mandate of the court this year. Second, reclamation is a complex and technical subject, deserving proper consideration on its own merits. Ironically, the State already has ample authority to require reclamation on State land, and it routinely places reclamation requirements in the miscellaneous land use permits which are required in order to mine. To address reclamation in the context of this bill is simply inappropriate.

Technical points relating to the pending proposals

Mineral in Character

- The "mineral in character" definition can be used to solve the least common denominator effect which results from including all State lands under a single rent/royalty system. In order to induce anyone on State land, if a uniform rent or royalty is applied it will have to be set at a level which the most marginal land can support. In other words, rent constitutes a burden on the land inversely proportional to the mineral value of the land. The greater the amount of land which the State wishes to have explored and developed for its mineral values the lower the rent will have to be.

- Although including all lands under one "rental agreement," makes management easier, it necessarily means that the rents and royalties must be set at a level as low as the least productive can bear. If the State truly desires to maximize revenue from mining operations, it would set rents and royalties on the basis of the productivity of the lands involved. This system will require active management on the part of the State. If the State seeks more than a nominal tax, then it must make more than a nominal effort to develop the base that provides that tax. On the other hand, if the State wishes to minimize the administrative costs associated with mining on State land, it should simplye bill claimholders a flat fee per claim and be done with it.

Royalties

- The opinion of the Supreme Court does not require a royalty and rent too. The State already has a mining license tax based on net profits from mining operations that applies to all mines in Alaska regardless of whether the State owns the land or not. Adding an additional tax in the form of a royalty on operations on State land creates a disincentive to produce minerals on State land and diminishes, not increases, the revenue the State will receive. It should be noted that under the administration's proposal, the bulk of the revenue generated would be from rents ($700,000) rather than royalties ($50,000). The additional administrative cost of verifying and collecting the royalty hardly appears to justify the imposition. (Note that the State does almost nothing to enforce the Mining License Tax at this time.) The odds that any given mineral discovery will result in a mine are less than one thousand to one. This fact alone means that there will always be many more claims than producing mines. In Alaska today, although the State controls an area nearly the size of California, there is only one significant producing mine on State land. It is unequivocal that the State will always derive more money from rents than royalties no matter what the rate of taxation.

The proposed royalty scheme is unfair and misdirected

- The proposed legislation has a significant drafting problem inasmuch as it taxes the wrong party. The bill purports to make the claimholder responsible for the payment of the royalty, although in many cases, it is not the claimholder who is producing from the property. The normal experience is for a claimholder to lease his claims to a mining company if he can. Although in the future it will undoubtedly be a part of the boilerplate in mining agreements on State land for the producer to pay the production royalty due the State, such a provision is not generally included in existing mining leases, therefore the claimholder, not

the producer will have to pay the royalty. This would be analogous to requiring the landlord of a commercial building to pay taxes based upon the income of the tenant. It simply is not fair.

- Another curious aspect of the royalty provision is that it requires the minimum royalty to be paid even if the mine is operating at a loss.

- In addition, the minimum royalty rate is set at a level which would result in it taking effect in some circumstances if the profitability of the operation drops below 40%. Very few businesses are lucky enough to achieve such profitability. With this schedule, the State is saying that any mines not making at least a 40% profit will pay more taxes than mines that achieve this level of profit. Stating this proposition otherwise, the tax is regressive in that it charges less tax to highly profitable operations than it does on operations which are less profitable. Hence, one must be able to project at least 40% profitability to justify mining on State land.

Legislation will precipitate further litigation

- Although this legislation was spawned from litigation which disrupted a system of managing State mining claims which has been in place from Statehood, unless some of the more inequitable irregularities are resolved, it will engender a great deal more litigation. There can be no doubt that requiring the claimholder to pay rents and royalties calculated on the basis of occupancy and production of leased ground will result in both tenants and tax collectors being sued. Traditionally, claimholders require the lessee to maintain the claims in good standing during the term of the lease; however, the lessor may not have provided for the collection of rent in his lease, therefore if this bill is enacted the landlord will be obliged to pay the State for claims which he cannot drop and at the same time not be able to derive any revenue from them. The only solution - sue.

Conclusion

- We hope that these comments will be helpful in fashioning a fair statute which responds to the mandate of the Supreme Court. The mining industry in Alaska has an obligation to pay its fair share of taxes, including rents and royalties to the State, but it is important that the State realize that miners are only one of many users of State lands. Our impact in terms of environmental disruption and visual impact has been trivial, but our contribution has been immense. From Quartz Hill to Kotzebue, from Fairbanks to Kennecott, from Nome to Juneau, the history of Alaska has been and will be written in terms of our mining heritage. The great mines of another era our the living monuments to Alaska's past. The highways and trails which now link communities frequently have an old minesite at their end. Whether your are speaking of the Treadwell Ditch or the road to the DeLong Mountains, you are confronted with a contribution by the mining industry to Alaska.

- We in Alaska have an obligation not to kill the goose that lays the golden egg, but to take another gander at how best to bring that industry to life.

ENM:lyn
0228mack

COMPARISON OF TAX STRUCTURES OF A SMALL GOLD MINE IN JUNEAU, ALASKA TO THAT OF NEVADA AND IDAHO

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	1,000,000	1,000,000	1,000,000
TPD PRODUCTION	500	500	500
ORE GRADE	0.30	0.30	0.30
DAYS PRODUCTION	360	360	360
TONS / YEAR	180,000	180,000	180,000
OZ PRODUCED	54,000	54,000	54,000
GOLD PRICE	400	400	400
LEASOR NSR	5.0%	5.0%	5.0%
CAPITAL COSTS	15,000,000	15,000,000	15,000,000
MINING COSTS/TON	65	65	65
% LABOR	60%	60%	60%
# PERSONAL	100	100	100
SALES TAX RATE	4.0%	5.5%	5.0%
PROPERTY TAX RATE	1.06%	0.00%	1.79%
FED CORP TAX RATE	34.0%	34.0%	34.0%
STATE CORP TAX RATE	9.4%	0.0%	8.0%
STATE MINING TAX	7.0%	1.9%	2.0%
STATE ROYALTY	3.0%	0.0%	0.0%
% DEPLEATION RATE	15.0%	15.0%	15.0%
COST DEPLEATION RATE /TON	4.50	4.50	4.50
DEPRECIATION EXP	10.00	10.00	10.00
PROPERTY GROSS	21,600,000	21,600,000	21,600,000
LEASOR ROYALTY	1,080,000	1,080,000	1,080,000
MINE GROSS	20,520,000	20,520,000	20,520,000
MINING COSTS	11,700,000	11,700,000	11,700,000
MINE NET	8,820,000	8,820,000	8,820,000
DEPRECIATION	1,800,090	1,800,090	1,800,090
DEPLEATION	3,078,000	3,078,000	3,078,000
TAXABLE INCOME	3,941,910	3,941,910	3,941,910
FED INCOME TAXES	1,340,249	1,340,249	1,340,249
STATE INCOME TAXES	370,540	0	315,353
STATE MINING LIC TAX	275,934	74,896	78,838
BOROUGH PROP TAX	159,450	0	352,407
STATE ROYALTY	118,257	0	0
TOTAL TAXES	2,264,430	1,415,146	2,086,847
EMPLOYEE SALES TAXES	336,960	449,841	336,960
COMPANY SALES TAXES	93,800	124,958	117,000
STATE & LOCAL GROSS	1,054,741	649,694	1,200,553

COMPARISON OF TAX STRUCTURES OF A LARGE GOLD MINE IN JUNEAU, A
TO THAT OF NEVADA AND IDAHO

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	100,000,000	100,000,000	100,000,000
TPD PRODUCTION	15,000	15,000	15,000
ORE GRADE	0.05	0.05	0.05
DAYS PRODUCTION	360	360	360
TONS / YEAR	5,400,000	5,400,000	5,400,000
OZ PRODUCED	270,000	270,000	270,000
GOLD PRICE	400	400	400
LEASOR NSR	3.0%	3.0%	3.0%
CAPITAL COSTS	150,000,000	150,000,000	150,000,000
MINING COSTS/TON	10	10	10
% LABOR	40%	40%	40%
# PERSONAL	400	400	400
SALES TAX RATE	4.0%	5.3%	5.0%
PROPERTY TAX RATE	1.06%	0.00%	1.79%
FED CORP TAX RATE	34.0%	34.0%	34.0%
STATE CORP TAX RATE	9.4%	0.0%	6.0%
STATE MINING TAX	7.0%	1.9%	2.0%
STATE ROYALTY	3.0%	0.0%	0.0%
% DEPLEATION RATE	15.0%	15.0%	15.0%
COST DEPLEATION RATE /TON	0.45	0.45	0.45
DEPRECIATION EXP	1.00	1.00	1.00
PROPERTY GROSS	108,000,000	108,000,000	108,000,000
LEASOR ROYALTY	3,240,000	3,240,000	3,240,000
MINE GROSS	104,760,000	104,760,000	104,760,000
MINING COSTS	54,000,000	54,000,000	54,000,000
MINE NET	50,760,000	50,760,000	50,760,000
DEPRECIATION	5,400,270	5,400,270	5,400,270
DEPLEATION	15,714,000	15,714,000	15,714,000
TAXABLE INCOME	29,645,730	29,645,730	29,645,730
FED INCOME TAXES	10,079,548	10,079,548	10,079,548
STATE INCOME TAXES	2,786,699	0	2,371,658
STATE MINING LIC TAX	2,075,201	563,269	592,915
BOROUGH PROP TAX	1,594,500	0	2,650,328
STATE ROYALTY	889,372	0	0
TOTAL TAXES	17,425,320	10,642,817	15,694,449
EMPLOYEE SALES TAXES	1,036,800	1,384,128	1,036,800
COMPANY SALES TAXES	648,000	865,080	810,000

royalty schedule alaska

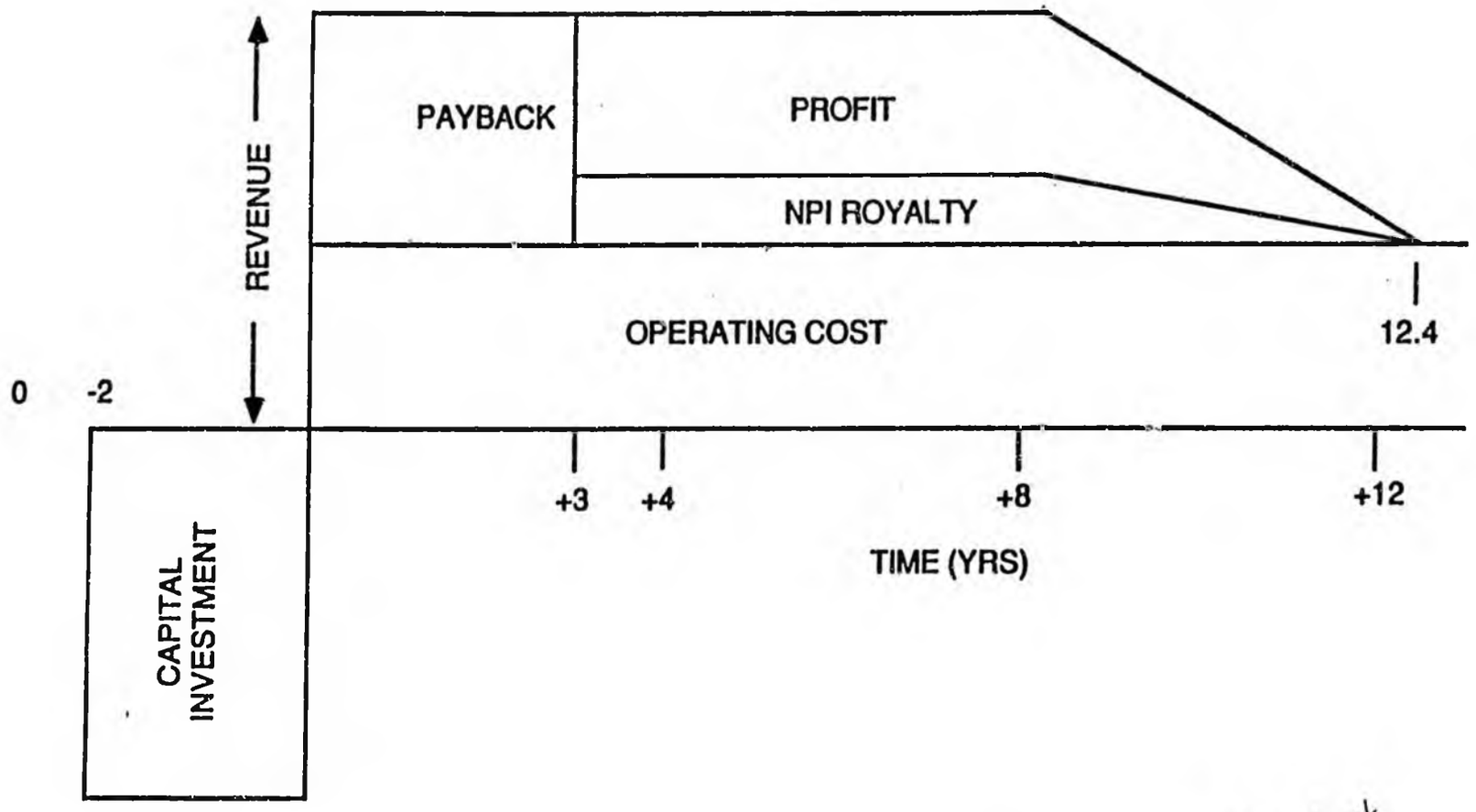
minimum income	maximum income	minimum royalty	net income percent	effective rate on minimum	effective rate on maximum
1	49,999	200	1.0%	20000.0%	0.4%
50,000	99,999	750	2.0%	1.5%	0.8%
100,000	249,999	2,000	2.0%	2.0%	0.8%
250,000	499,999	5,000	2.0%	2.0%	1.0%
500,000	2,499,999	22,500	2.0%	4.5%	0.9%
2,500,000	99,999,999	30,000	1.2%	1.2%	0.0%

net profits as % of gross applied to income levels

20% minimum	20% maximum	30% minimum	30% maximum	40% minimum	40% maximum
0	100	0	150	0	200
200	400	300	600	400	800
400	1,000	600	1,500	800	2,000
1,000	2,000	1,500	3,000	2,000	4,000
2,000	10,000	3,000	15,000	4,000	20,000
15,000	594,000	22,500	891,000	30,000	1,188,000

oz gold production at $400.00

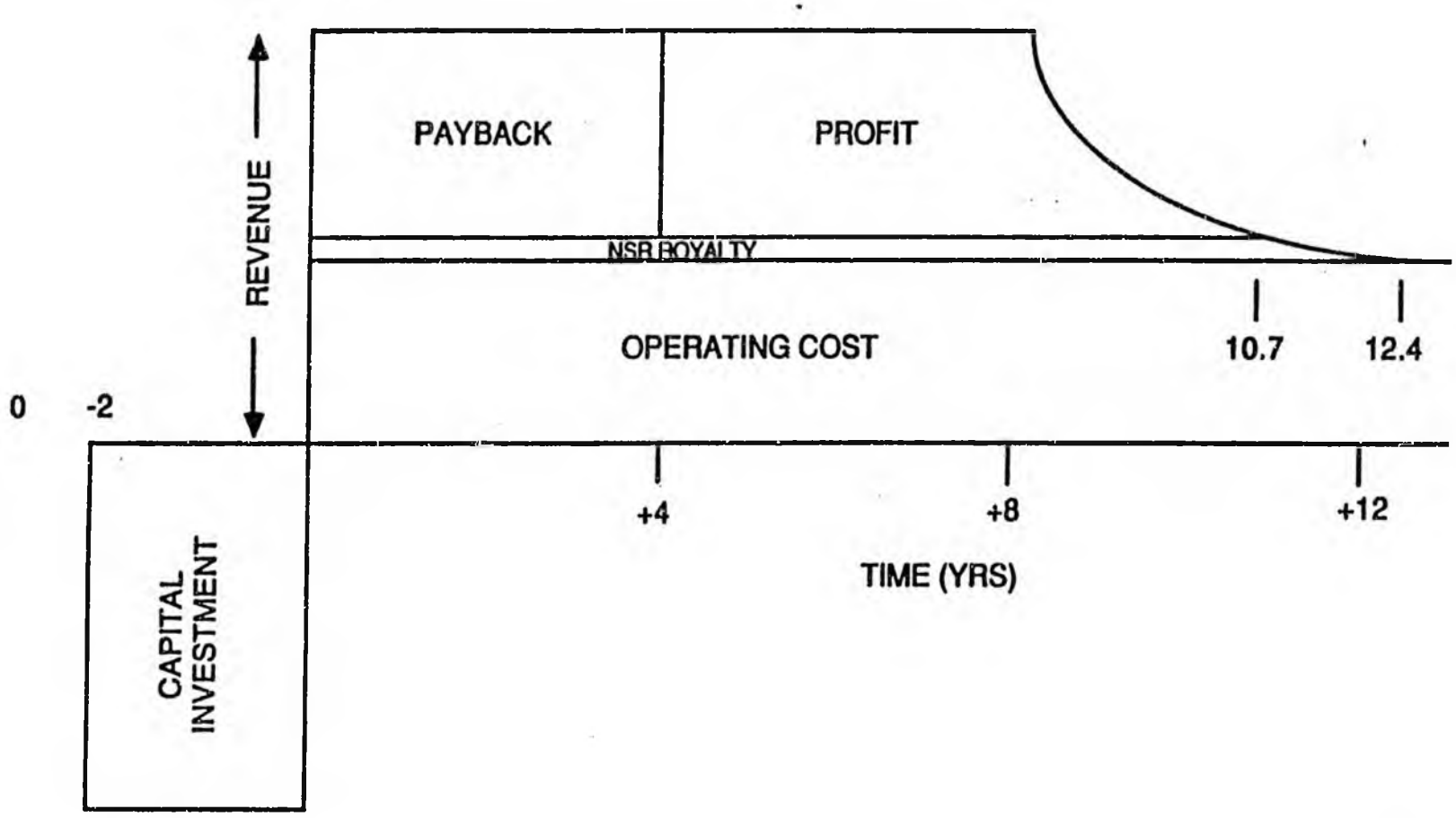
mimimum	maximum
0.0025	125
125	250
250	625
625	1250
1250	6250
6250	24750



DISTRIBUTION OF REVENUES - NPI ROYALTY

Net profit interest

NET OPERATING PROFIT:



DISTRIBUTION OF REVENUES - NSR ROYALTY

NET SMELTER RETURN

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

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

MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair
and Members of the Senate Resource Committee

From: Senator Jack Coghill

Re: 6(i) Comments for Committee Meeting

Date: February 22, 1989

Due to the technical nature of my comments today before the committee regarding Mineral In Character lands, I have attached a copy of the text for your consideration.

SEN. COGHILL
COMMENTS FOR
SEN. RESOURCES 2/22/89

MINERAL IN CHARACTER

1. THERE IS NO DEFINITION OF "MINERAL IN CHARACTER" IN FEDERAL STATUTES; HOWEVER, OVER THE YEARS THE COURTS HAVE DEFINED IT IN A VARIETY OF WAYS.

2. THE MOST AUTHORITATIVE TEST FOR DETERMINING THE MINERAL CHARACTER OF LAND WAS ANNOUNCED BY THE UNITED STATES SUPREME COURT IN DIAMOND COAL AND COKE v. UNITED STATES IN 1914, AND IT IS STILL USED TODAY. IN THIS CASE THE SUPREME COURT SAID:

"IT MUST APPEAR THAT THE KNOWN CONDITIONS ... WERE PLAINLY SUCH AS TO ENGENDER THE BELIEF THAT THE LAND CONTAINED MINERAL DEPOSITS OF SUCH QUALITY AND QUANTITY AS WOULD RENDER THEIR EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END."

THIS TEST CONTINUES TO BE QUOTED IN NUMEROUS FEDERAL COURT CASES AND INTERIOR DEPARTMENT ADMINISTRATIVE ACTIONS.

IT IS CLEAR THAT THE STATE SUPREME COURT HAD THIS IN MIND WHEN IT STATED WE WERE IN VIOLATION OF 6(i) BECAUSE WE DIDN'T "REQUIRE THE PAYMENT OF RENTS OR ROYALTIES FROM STATE LANDS WHOSE MINERAL CHARACTER WAS KNOWN AT THE TIME OF STATE SELECTION."

3. THE STATE SUPREME COURT FURTHER DIRECTED US TO ESTABLISH A LEASING SYSTEM WHICH INCLUDES "SOME PROCESS FOR DETERMINING

WHICH LANDS WERE OF KNOWN MINERAL CHARACTER AT THE TIME OF SELECTION AND" MUST INCLUDE PAYMENT OF RENTS OR ROYALTIES "FOR THE EXTRACTION OF MINERAL DEPOSITS FROM SUCH LANDS."

SB 161 PROVIDES ALL THE MECHANISMS TO FULLY COMPLY WITH THE COURTS DECISION WITHOUT JEOPARDIZING THE COMPETITIVE POSITION OF STATE LANDS TO FEDERAL OR PRIVATE LANDS.

4. NOW, HOW DO WE MAKE THE MINERAL CHARACTER DETERMINATION? THE PROCESS IN SB 161 IS THIS. EXISTING CLAIM HOLDERS HAVE 3 YEARS TO MAKE APPLICATION TO THE COMMISSIONER FOR A DETERMINATION, AND NEW CLAIMANTS HAVE ONE YEAR FROM THE DATE THEY FILE THE CLAIM. THE COMMISSIONER HAS 3 YEARS FROM THE DATE OF THE APPLICATION TO DETERMINE IF THE LAND WAS MINERAL IN CHARACTER AT THE DATE OF STATE SELECTION.

IN THE FEDERAL SYSTEM, THE DEFINITION AND EVIDENCE NEEDED TO MAKE A MINERAL IN CHARACTER DETERMINATION IS THIS:

"IT IS NOT ESSENTIAL THAT THERE BE AN ACTUAL DISCOVERY OF MINERAL ON THE LAND. IT IS SUFFICIENT TO SHOW ONLY THAT KNOWN CONDITIONS ARE SUCH AS REASONABLE TO ENGENDER THE BELIEF THAT THE LAND CONTAINS MINERAL OF SUCH QUALITY AND IN SUCH QUANTITY AS TO RENDER ITS EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END. SUCH BELIEVE MAY BE PREDICATED UPON GEOLOGICAL CONDITIONS, DISCOVERIES OF MINERALS IN ADJACENT LAND AND OTHER OBSERVABLE EXTERNAL CONDITIONS UPON WHICH

PRUDENT AND EXPERIENCED MEN ARE SHOWN TO BE ACCUSTOMED TO ACT."

IF YOU WILL CAREFULLY READ SECTION 5 OF SB 161, YOU WILL FIND IT CONTAINS ALL OF THE ELEMENTS OF THIS FEDERAL DEFINITION.

THIS DEFINITION AND SB 161'S PROCESS IS FULLY SUPPORTED BY SEVERAL IMPORTANT FEDERAL CASES, NOTABLY:

DIAMOND COAL & COKE CO. v. U.S., 233 US 236, 248-249 (1914)

U.S. v. SOUTHERN PACIFIC CO., 251 US 1, 14 (1919)

LADEN v. ANDRUS, 595 F2d 482, 489-490 (9th Cir 1979)

U.S. v. SOUTHERN PACIFIC TRANSPORTATION CO., 66 IBLA 191, 195 (1982)

THE SIGNIFICANCE OF THESE CASES IS THAT THEY ALL AGREE THAT AN ACTUAL DISCOVERY OF MINERALS WITHIN A TRACT OF LAND IS NOT REQUIRED AND THAT THE FOLLOWING TYPES OF EVIDENCE SUPPORT A DETERMINATION OF MINERAL IN CHARACTER.

1. DISCOVERIES OR MINES IN ADJACENT LAND;

2. OTHER EXTERNAL CONDITIONS THAT CAUSE PRUDENT AND EXPERIENCES MEN TO ACT AND MAKE EXPENDITURES; AND

3. FAVORABLE GEOLOGICAL CONDITIONS WITHIN THE TRACT.

5. SO FAR AS SB 161 IS CONCERNED, OUR RESEARCH OF THE FEDERAL SYSTEM INDICATES THAT THERE IS A RELATIONSHIP BETWEEN DISCOVERY AND MINERAL IN CHARACTER. BRIEFLY IT CAN BE STATED THAT IF YOU HAVE A DISCOVERY, YOU HAVE MINERAL IN CHARACTER LAND. IF YOU HAVE MINERAL IN CHARACTER LAND YOU DO NOT NECESSARILY HAVE A DISCOVERY.

HOWEVER THE CONCERN WE HAVE, AND HAS NOT BEEN DISCUSSED BY THE ADMINISTRATIONS LEGAL COUNCIL TO OUR KNOWLEDGE, IS THE BODY OF FEDERAL LAW THAT INDICATES IT HAS NEVER BEEN THE POLICY OF THE CONGRESS TO DISPOSE OF MINERAL LANDS UNDER THE AGRICULTURAL OR NONMINERAL LAWS AND THAT TITLE TO KNOWN MINERAL LAND CANNOT BE ACQUIRED UNDER AN AGRICULTURAL OR NONMINERAL ENTRY.

I HAVE A CONCERN IF WE DO NOT FOCUS 6(i) LEGISLATION ON LANDS WHERE MINING AND MINERAL INTERESTS ARE FOCUSED, WE MAY BE INVITING LITIGATION AT THE LEVEL OF THE RECENT MENTAL HEALTH LANDS LITIGATION, ESPECIALLY IF WE GO BEYOND THE SECTION 6(a) AND (b) LANDS.

FURTHERMORE 6(i) RESERVES THE "RIGHT TO PROSPECT FOR, MINE, AND REMOVE" THE MINERALS FROM THE MINERAL LANDS GRANTED UNDER THIS SECTION. WHAT DOES THIS DO TO OUR ABILITY TO CLOSE STATE LANDS TO MINERAL ENTRY, ESPECIALLY IF ALL LANDS ARE MINERAL IN CHARACTER? I THINK THIS DETERMINATION REPRESENTED IN THE ADMINISTRATIONS BILL, MAY INVALIDATE MINERAL CLOSURES AND THUS THROW OUR WHOLE SYSTEM OF LAND MANAGEMENT INTO CHAOS.

THE U.S. SUPREME COURT, ON THE OTHER HAND, HAS UPHELD THAT ..."IF THE LAND IS WORTH MORE FOR AGRICULTURE THAN MINING, IT IS NOT MINERAL LAND, ALTHOUGH IT MAY CONTAIN SOME MEASURE OF GOLD OR SILVER." I SUSPECT THIS WOULD ALSO BE TRUE OF OUR STATE PARKS. THE IMPORTANT POINT HOWEVER, IS IF WE ADOPT A SYSTEM LIKE THAT IN SB 161, AS THE STATE SUPREME COURT HAS DIRECTED US TO DO, WE DO NOT HAVE TO WORRY ABOUT LITIGATION THAT WILL INVALIDATE STATE MINERAL CLOSING ORDERS.

THIS CONCLUDES MY REMARKS MADAM CHAIR[redacted].

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

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

MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair

From: Senator Jack Coghill

Re: 6(i) and the issue of Reclamation

Date: February 28, 1989

There is a perception in the halls of the capitol that reclamation will continue to be linked to resolution of 6(i). You know of my position that this is a disservice to the industry, because it removes the focus from setting fair rent and royalty rates. You have also expressed like sentiments. So I have three suggestions if you are to use the Governors bill (SB 129) as the vehicle.

1. Add at line 23 (SB 129); The primary use of land covered by a mining lease is the extraction of minerals.

2. If a reclamation clause is to be tacked on to the bill, it should also include the direction that patenting of the surface will be part of the reclamation bill.

3. Since we will be going outside the preview of rents and royalties by tacking on reclamation, I would suggest you address the inequities of the interior river fisheries in the next fish tax or enhancement bill before the committee, by requiring the development of an individual quota system for fishermen.

I believe that Suggestion 1 and 2 are self-explanatory, as they are peripheral to the issue of reclamation. However I have also supplied in this memo the rational for Suggestion 3.

Rational for Suggestion 3.

The interior river fisheries are presently being managed as if the purpose of every fish entering the system was spawning. This does not allow for the beneficial use of the river fisheries by rural river residents use in developing a cash economy. Presently, allocation of the resource is such that over fishing in the coastal intercept fisheries, results in very brief commercial fisheries if any are allowed at all. It

is also evident that the species which have the highest commercial value in the interior river systems, are impacted primarily as a result of "bycatch" overfishing.

Bycatch, as you know, is the harvesting of fish species incidental to fishing a different species. For instance, the bycatch for a coho or King salmon opening in Bristol Bay or the Being Sea, is chum salmon, bound for the Yukon and Tanana Rivers.

A quota system would better allocate the benefits of our fish resources, among users, and eliminate over fishing when run strengths are perceived to be high in coastal waters.

Background for Suggestion 3.

There is a political and policy similarity between appropriate levels of Reclamation and Bycatch. Both present a contentious management issue in 3 basic ways:

1. In the case of bycatch of a species in one fishery, this may reduce the amount of that species that can be taken in the fishery that targets on it.

In the case of reclamation, a particular mine site is considered to have reduced the amount of land area, natural or otherwise, that can be utilized by other activities. Reclamation then must be at a level that targets these other land uses.

2. With bycatch, a fishery may not be able to control it's bycatch level, without using less productive or more costly fishing techniques.

With reclamation, a mine may not be able to perform reclamation without reducing the potential to mine marginally economic ore zones or employing reclamation schedules that jeopardize the mines economic viability.

3. Presently there is not a mechanism in place that tends to assure bycatch levels will be controlled to the appropriate management levels automatically.

However, there is a mechanism in place that assures reclamation at this time. The mechanism is the permit process where each individual mine is given reclamation stipulations.

The question that seems to be raised by the present discussions is whether or not the reclamation levels stipulated in permits are at the appropriate level to restore what ever the targeted future uses might be.

The answer to the appropriate bycatch level then, seems to be the institutionalization of individual fish quotas.

There are two assumptions we can make in both issues of appropriate bycatch levels, and appropriate reclamation levels. First the levels can be determined through a political process prior to the activity or secondarily, the levels can be determined by a market process during the activity.

From these assumptions we can recognize that the appropriate level for one bycatch species, or the reclamation of one mine site, is probably not independent of those of other bycatch species, or independent of reclamation of mines in other regions of the state.

We can also see that the concept of "bycatch needs" is so poorly defined that it could be counter productive in discussions focused on related fishery issues. The same can be said of the concept of "reclamation needs", being counter productive to discussions which should be focused on the related issue of rents and/or royalties.

In closing I will take this opportunity to remind those you might circulate this memo to, that the value of our natural resources depends on the rules that govern their use. These rules may be either formal laws and regulation of government or informal cultural rules of a particular user group.

This "value concept" is true whether you interpret value as economic benefits provided to society, a particular allocative distribution of benefits, or the achievement of a particular intangible cultural or conservation ethic.

I believe that so long as we are going to start using coercive tactics to impart additional rules on a particular user group, in order to give other user groups a perceived advantage or benefit, we should employ this process on other allocative resources.

Thank you for your consideration of this lengthy memorandum.

665 Farmers Loop Road
Fairbanks, Alaska 99712
February 6, 1989

Dear Legislators,

I would like to address a few of my concerns regarding Senate Bill 129 and House Bill 99.

Enclosed are a couple of pages from the 6(i) Lawsuit. As I read it, this lawsuit only pertains to mining leases. As far as I know locations under the federal mining laws are not leases. As yet the State has no regulations to patent mineral lands. Therefore, the State only needs rents OR royalties, not both, and only on land sold, grants, deeds or patents which would not include lands staked under the location system, and then only lands known to have been mineral in character at the time of State selection.

Senate Bill 129 and House Bill 99 will make it prohibitive for the small miners to locate and hold mineral lands long enough to develop them into productive mines. Think back to what developed our State. Many claims being worked today were staked in the 1900's and earlier. Many of these claims would have been lost to the Parks if not for early mining claims.

Please consider a minimum leasing system only on lands withdrawn from location as stated in the 6 (i) Lawsuit and only a small fee without a graduated increase.

The above concerns are made for the record.

Sincerely,

Glenn D. Bouton

Glenn D. Bouton

THE SUPREME COURT OF THE STATE OF ALASKA

TRUSTEES FOR ALASKA, NUNAM KITLUTSISTI, DINYEA CORPORATION, VILLAGE OF MINTO, ALASKA INDEPENDENT FISHERMEN'S MARKETING ASSOCIATION, ALASKA CENTER FOR THE ENVIRONMENT, SOUTHEAST ALASKA CONSERVATION COUNCIL, FRIENDS OF THE EARTH, Plaintiffs/Appellants, v. STATE OF ALASKA, ALASKA DEPARTMENT OF NATURAL RESOURCES, ESTHER WUNNICKE, Commissioner, Department of Natural Resources, Defendants/Appellees, ALASKA MINERS ASSOCIATION, FAIRBANKS NORTH STAR BOROUGH and JOSEPH E. VOGLER, Defendants-Intervenors/Appellees.	File No. S-1142 O P I N I O N [No. 3175 - May 1, 1987]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Douglas Serdahely, Judge.

Appearances: Eric Smith and Robert W. Adler, Anchorage, for the Appellants. Robert M. Maynard and Mark P. Worcester, Assistant Attorneys General, Anchorage, Harold M. Brown, Attorney General, Juneau, for Appellee State of Alaska, Alaska Department of Natural Resources, and Esther Wunnicke, Commissioner, Department of Natural Resources. James N. Reeves, Bogle & Gates, Anchorage, for Appellee Alaska Miners Association. Ronald A. Zumbrun, Robin L. Rivett, and James S. Burling, Pacific Legal Foundation,

Sacramento, California, and Michael B. Markham, Borough Attorney, Fairbanks, for Appellee Fairbanks North Star Borough. Thomas R. Wickwire, Fairbanks, for Appellee Joseph E. Vogler.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.

Alaska was granted the right to select 103,350,000 acres of land from the United States under section 6(a) and (b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) (set out in a note preceding 48 U.S.C. § 21 (1982)). Mineral deposits in selected lands were also conveyed, subject to certain restrictions. Section 6(i) of the Act provides:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

This case presents issues concerning the meaning of the section 6(i) grant and restrictions, and of appellants' standing to bring an action in state court to construe the meaning of the Alaska Statehood Act.

its restrictions were intended to apply only to lands whose mineral character was known at the time of selection.[33]

CONCLUSION

We conclude that appellants have standing to maintain this declaratory judgment action, that the state's mineral leasing system violates section 6(i) of the Statehood Act because it does not require the payment of rent or royalties on mining leases, and that section 6(i) applies only to those lands known to have been mineral in character at the time of state selection. Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of section 6(i). Since section 6(i) directly controls, we have no occasion to examine those theories further. For the above reasons, the judgment is REVERSED and this case is REMANDED with directions to enter a declaration in accordance with this opinion and for such other further proceedings as may be appropriate.[34]

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33. For convenience, we have referred to the relevant event as the time of selection. Whether this is the time that the state files its selection application, or some later event such as the tentative or final approval of the selection, is not an issue in this case or on which we express an opinion. Further, we observe that there is room for debate concerning how much must be known about the mineral character of selected lands to qualify them as mineral lands. We also intimate no view on this question as it is not before us.

34. The intervenors raise several other points in defense of the judgment below. We have examined each of them and find that they lack merit.

Alaska Environmental Lobby, Inc.
P.O. Box 22151 Juneau, Alaska 99802 907-586-2345

HB 99 Mining Claims, Leases, Rents, & Royalties:
KEY CHANGES NEEDED

1.) LANDS COVERED - Needs expansion to include offshore lands.

2.) RATES - Needs substantial increase. Suggest no annual assessment reduction; double rental rates; calculate royalty on gross income only, and run percentages from 3% for the lowest income category to 8 or 10% for the highest.

3.) RECLAMATION - Add a section to read:

Section 38.05.213. RECLAMATION. (a) All mining claims, leasehold locations, and mining leases shall, at a minimum, be restored so that the affected land and water of the state is capable of supporting all the uses it was capable of supporting prior to any mining, or all higher or better uses of which there is a reasonable likelihood, consistent with all applicable laws and the Alaska Constitution.

AND add language which clearly states that DNR, ADF&G, and DEC share joint responsibility for promulgation and enforcement of the reclamation regulations, with full participation by all three agencies.

February 13, 1989
by Bill Glude

2356 Tonstrom Dr.
Anchorage, AK 99517

February 20, 1989

Dear Representative Menard,

It was a pleasure speaking briefly with you two days ago at the home of Mr. and Mrs. Ashley Reed. As I indicated then, my principal concern is the final wording of the "6(i)" bill. But simply, it must not be so onerous as to discourage mining ventures on State land. As the income from oil and gas leases decreases, it will become more necessary for a diversified and healthy suite of industries.

I am enclosing a copy of the Alaska Miners Association's letter to Governor Cowper on the subject. It briefly states the

Association's four principal concerns taken together they would assure a continued healthy mining industry

If I can be of further assistance in this matter, or you wish clarification of any part of it, please do not hesitate to write, or call me. My phone number at home is 243-0644. Like most Alaskan retirees I have several interests, so if you don't catch me on the first call, please call again.

I did enjoy seeing you again, and hope that we can discuss some of the miners' difficulties at more length in the future.

Sincerely yours,

George Schmidt

ALASKA MINERS ASSOCIATION, INC.

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

Sept. 9, 1988

The Honorable Steve Cowper
Governor, State of Alaska
P.O. Box A
Juneau, Alaska 99811

Re: Implementation of Superior Court Order, November 19, 1987, re Section 6(i) of the Statehood Act

Dear Governor Cowper:

The State Supreme Court has concluded that the State's current mineral location system is not in compliance with Section 6(i) of the Statehood Act because it does not require the payment of rent or royalty on mining leases. The Court further concluded that Section 6(i) applies only to those lands known to have been mineral in character at the time that they were selected by the State.

The Department of Natural Resources is currently studying several methods by which the State's location system may be brought into compliance with the Supreme Court opinion and the Superior Court's order. The Alaska Miners Association considers the State's implementation of the 6(i) decision critical to the future of mining on state lands. We would like to identify several components that we feel must be a part to any rational solution to the 6(i) question.

1. The right of self initiation - the State constitution requires that a prospector, individual or a corporate that risks considerable time and money must be given a preferrential right to mine the discovery. Any departure from the current discovery philosophy will seriously erode any incentive to explore upon state land.

2. Tenure - a claimant must be assured that he will not be subjected to some arbitrary time limit within which he must place the claim into production or lose it. Mining history is replete with examples of discoveries that required fifteen to thirty years before they could be developed as profitable producers. This is particularly true of operations in the northern environs.

3. Fair rent or royalty - the AMA believes that the Supreme Court erred in deciding that the State must require additional rent or royalty from mining leases. We continue to believe that

the mining license tax constitutes an adequate and fair production royalty and that the annual labor requirement of $200 per claim represents an adequate rent. Nevertheless, in order to comply with the Supreme Court's opinion, we strongly recommend that the State develop a rent or royalty schedule that will; (1) satisfy the Superior Court Order and, (2) not jeopardize nor act as a disincentive to the constructive development of state mining claims. We caution that in seeking a solution to the 6(i) issue, that State not adopt requirements that will penalize a claimant upon state land.

4. Mineral in character - the State Supreme Court specifically concluded the Section 6(i) applies only to those lands known to have been mineral in character at the time of state selection. Judge Serdahley, in his Declaratory Judgement, ordered that the "... State's mineral leasing system must include some process for determining which lands were of known mineral character at the time of selection".

We do not know how the State proposes to effecuate Judge Sedahley's order but we suggest that mineral in character be determined with a prescribed procedure such as that which we have developed and present to you in the form of the enclosed attachment.

The current developments at Red Dog and Greens Creek have sent a signal to the mining industry that mines can be made in Alaska. We, as concerned Alaskans, do not wish to see the State implement a mineral management system that will jeopardize or impede rational and responsible resource development upon state lands. We are prepared to assist you and your people develop a workable solution to the 6(i) issue.

Sincerely,
ALASKA MINERS ASSOCIATION

RA Hughes

Richard A. Hughes
President

ATTACHMENT: Mineral in character language

cc: Paul Glavinovich
Jim Burling
Judy Brady
Jerry Gallagher

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4613
PHONE: (907) 451-2700

TELECOPIER COVER LETTER

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NAME: J. COGHILL - DICK SHULTZ - BETTYE FAHRENKAMP
BILL HUDSON - CURT MENARD - RICHARD FOSTER

LOCATION: _____

FROM: WILLES UMHOLTZ DNR - FAI

LOCATION:

3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4613
PHONE: (907) 451-2700

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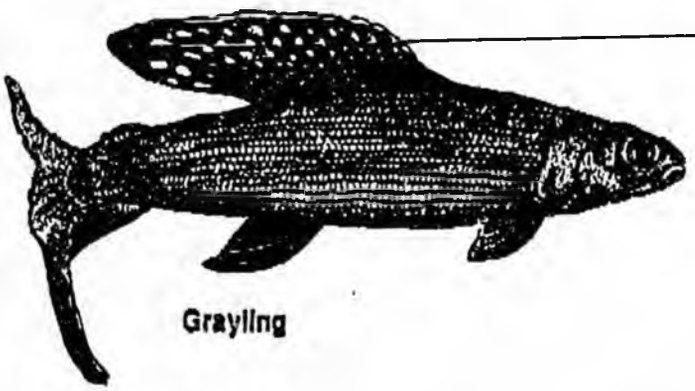
10J18LH

3.7 Fisheries



Grayling

Fish species reported in the Fortymile River drainage include arctic grayling, sheefish, round whitefish, longnose sucker, and slimy sculpin (see Fisheries Map). Other species that may occur are humpback whitefish, northern pike, burbot, chinook salmon, and chum salmon. Data collected on Fortymile River resident fish address summer distribution and aspects of life history. Information concerning resident fish species including salmon, within the Fortymile River drainage is marginal (ADF&G 1987b). Because data for the Fortymile River are limited, references will be made primarily to the segments within the Wild and Scenic Rivers System (DOI 1983, Map 1).

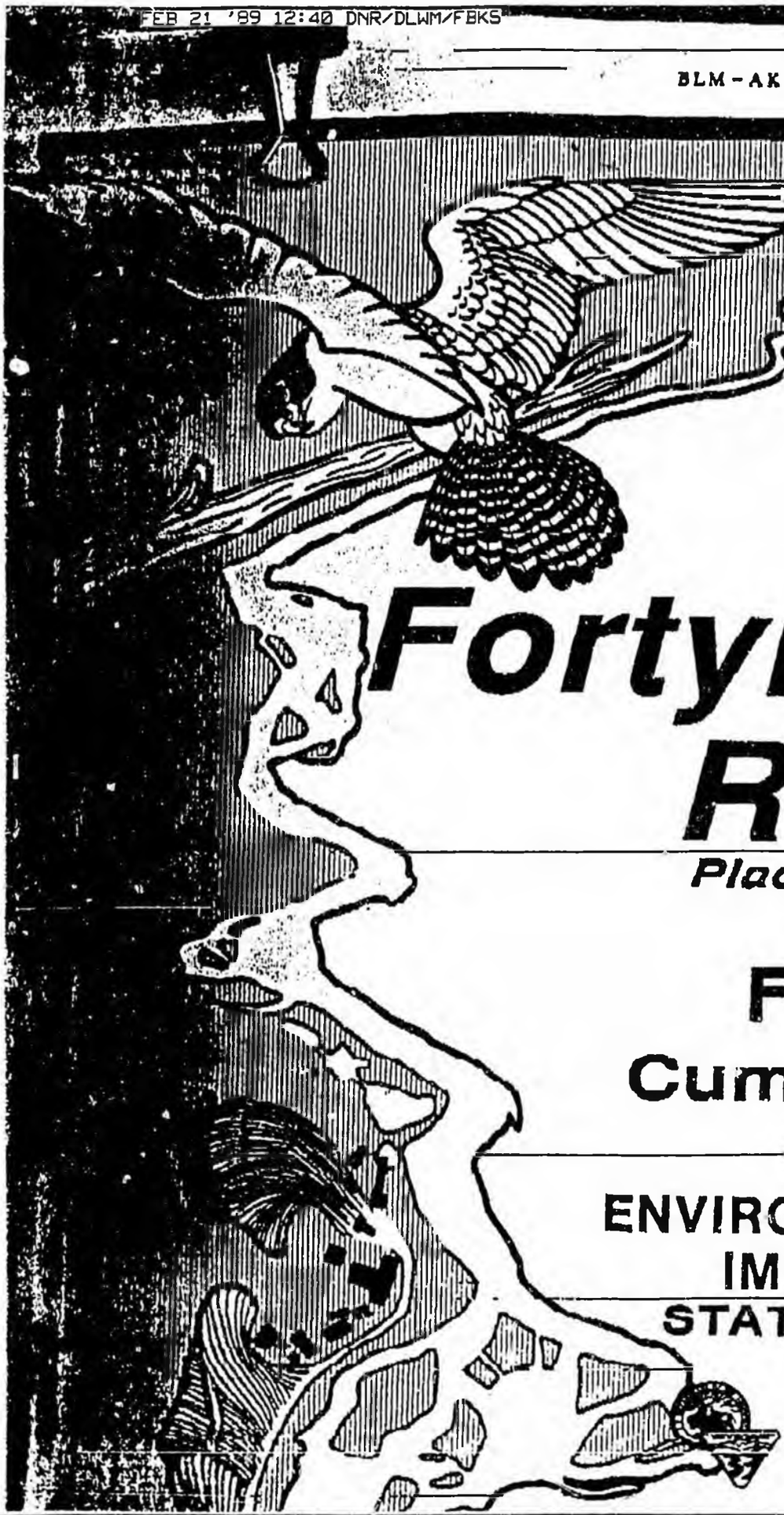
Two adult chinook salmon (one live female and one dead male) were observed 0.8 mile below the Kink, a channel blasted through the stream bank by miners in 1900, and 1.5 miles above the confluence of the North and South Forks (Carufel 1987). Prior observations reported chum salmon below the Kink in August 1981 during an ADF&G aerial survey and a chinook salmon caught by a sport angler in the North Fork Fortymile River above the Kink near Champion Creek (Dames and Moore 1982).

Canadian researchers using beach seines and baited traps on the lower Fortymile River and its tributaries in September 1984 collected 63 juvenile chinook salmon from Clinton and Mickey Creeks below the international border (vonFinster 1985). These two streams, and possibly others, may serve as rearing areas. Scattered, random sightings of what are considered stray chum and chinook salmon have occurred from historic times to the present. Since fidelity of returning salmon to natal spawning habitat is not 100% and the reported sightings are rare, the Fortymile River does not appear to support an established spawning population (Webb pers. comm. 1988).

Grayling are the most widespread species within the Fortymile River drainage. (ADF&G 1987b). A joint survey by BLM and ADF&G personnel (ADF&G 1975) reported grayling in several tributary streams of the Middle, North, and South Forks of the Fortymile River. Johnson (1980) collected grayling at Champion Creek, and Dames and Moore (1982) sampled the upper reaches of the North Fork in the summer of 1981 and found small numbers of grayling in Champion, Happy New Year, and Slate Creeks.

Indications that these streams are potential spawning areas are supported by grayling measuring 3.6 inches observed by Carufel (1987) in the Middle Fork near Joseph, fry collected by Dames & Moore (1982) in lower Slate and Champion Creeks and sampling by von Finster (1985) and Fortymile Placers (1988) who captured young grayling from the Fortymile River in Canada. These

BLM-AK-ES-89-003-3809-918



Fortymile River

Placer Mining

Final Cumulative

ENVIRONMENTAL IMPACT STATEMENT

Department of the Interior
Bureau of Land Management
Alaska State Office
1988

coarse substrate of the Fortymile River, significant sub-surface flows of water are highly probable.

3.0 REVIEW OF EXISTING FISHERIES INFORMATION

As with many remote streams in the Yukon, quantitative data on salmon and on the populations of other species in the Fortymile River are limited. Comprehensive annual escapement surveys are not conducted by DFO and much of the available fisheries inventory data for such Yukon streams is available from past studies related to pipeline and/or transportation corridors. In addition, escapements to the lower Canadian portion of the Yukon River and tributaries are presently believed to be depressed, and spawning sites are still undocumented. For example, the majority of the chinook spawning streams in the Yukon River Basin each support between 100 and 300 adults (Fisheries Work Group, 1984).

3.1 Canadian portion of the Fortymile River

As part of the Yukon River Basin study, chinook were radiotagged above the Canada/U.S. border in 1983 to study the distribution and relative abundance of adult chinook within the Canadian portion of the Yukon River Basin (Milligan et al., 1984). Two radiotagged chinook were tracked into the Fortymile River but they did not spawn in the river. The sample size of radiotagged chinook was small, however, and the spawning distribution within other Yukon sub-basins was known to be much more extensive than that indicated by the radiotagging results alone. The authors of the above report also noted that previous studies had documented chinook spawning in three areas of the lower Yukon mainstem and in a number of tributaries including the Fortymile, Coal Creek, Fifteenmile, Chandindu and the Klondike Rivers. Radiotagged chinook did not enter into any of these systems.

EIS (page 3-49, copy attached), ADF&G personnel stated that the Fortymile River does not appear to support an established spawning population (Webb 1988).

The ADF&G has issued me a permit stating my operation will cause no damage to fish or game or their habitat. However, this anadromous fish classification has caused the Army Corps of Engineers to deny me a General Placer Mining Permit. As stated above, I have made my living and supported my family by working the Fortymile river for almost half my life. If the fish were there and the river was truly important for anadromous fish, I would not request the change. However, I should not be denied my livelihood due to a mistake or unjustified entry into the ADF&G important anadromous waters catalog. I request this change be made as soon as possible so I can go on to making a living. If the Corps of Engineers does not issue me a permit early in March, I will not be able to work this entire year because of the need to start the operation in the winter months.

I would appreciate any help you can give me in this regard.

Respectfully Submitted,

David Likins

David Likins

cc: Lennie Gorsuch - Commissioner, DNR
Senator Jack Coghill, District 17
Representative Dick Shultz, District 17
Senator Bettye Fahrekamp
Representative Bill Hudson
Representative Curt Menard
Representative Richard Foster
Col. William Kakel - US Army Corps of Engineers

David Likins
Fortymile River
Eagle, Alaska 99738

February 20, 1989

Commissioner Don W. Collinsworth
Alaska Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collinsworth,

In accordance with AS 16.05.870 (a), the Department of Fish and Game (ADF&G) shall, in accordance with the Administrative Procedure Act (AS 44.62), specify the various rivers, lakes and streams or parts of them that are important for the spawning, rearing or migration of anadromous fish. Under this provision, ADF&G has through regulation, published a catalog and atlas of maps of waters important for the spawning, rearing or migration of anadromous fishes.

I feel that there is an error in this catalog and I wish to petition for a change in the catalog. Specifically I petition that the Fortymile River (ADF&G reference #334-45-11000-2600) be removed from the classification as being important for the spawning, rearing or migration of anadromous fishes. Currently the river is classified for King and Chum Salmon. I have lived and worked on the Fortymile River for over 17 years and I would expect that if the river were important for the salmon, I would at least see a few live or dead salmon in the river every year. I have not.

Recently a Fortymile River Final Cumulative Environmental Impact Statement was published by BLM. In this document it pointed out that Canadian researchers found salmon in Clinton and Mickey creeks, two tributaries of the Fortymile River near its confluence with the Yukon river. In these lower reaches the Fortymile River has the characteristics of a backwater area to the Yukon River and is a river of entirely different character to the Fortymile River in Alaska. The Canadian report (attached) is good biological data and I have no doubt that Salmon are in the lower most reaches of the Fortymile. These same Canadian researchers state that information on chinook and chum salmon on the Alaskan side of the Fortymile River is limited and somewhat contradictory. In 1975, ADF&G reported that no salmon were observed. The classification appears to be the result of scattered reports of fish in the 1960's. Most recently two fish were spotted in the summer of 1988 by BLM personnel. However, these are rare scattered random sightings, and according to the

In 1987, the BLM conducted a pilot program to determine sampling sites and methods for investigations in subsequent years (Caruthers, 1987). Two adult chinook salmon were observed on August 21 and 22; a female near the Kink (approximately 16 km upstream of the Canadian border) and a male near the confluence of the North and South Forks.

On October 16, 1987, the ADF&G flew the upper Fortymile on a chum salmon spawning survey but no salmon were observed (Anderson, 1987b).

4.0 SALMON STUDIES IN 1987

The purpose of the 1987 salmon studies in the Fortymile River was to document chinook and chum spawners and their distribution, and to document the relative abundance and distribution of juvenile chinook salmon.

The adult salmon program consisted of 2 aerial surveys on August 5 and September 24, 1987 and a gillnetting program in the lower Fortymile River from September 13 to September 23. A juvenile sampling program was conducted by boat from August 25 through August 27, 1987. Boat access was from the Eagle Bridge on the Fortymile in Alaska about 25 kilometres upstream of the Alaska-Yukon border downstream to the Clinton Creek bridge in the lower Fortymile River. The study location is shown in Figure 1.

4.1 Methods

Adult Salmon

The adult salmon surveys consisted of two aerial surveys of the Fortymile River by helicopter; the first on August 5, 1987 to observe chinook salmon spawners and the second on September 24

salmon. The second station, just downstream of the canyon, yielded three male chum salmon.

3.2 U.S. portion of the Fortymile River

The information on chinook and chum salmon on the Alaskan side of the Fortymile River is also limited and some are contradictory. In an undated letter to Ms. Chapman of Fortymile Placers, Jim Webb of the U.S. Bureau of Land Management (BLM) states that the BLM, in cooperation with the Alaska Department of Fish and Game (ADF&G) conducted field investigations on the Fortymile River and tributaries during 1975. No salmon were observed at that time. Mr. Webb states that "there is no documented evidence of salmon spawning in the Fortymile River or its tributaries. While stray King (chinook) salmon have been seen periodically over the years, there is no reason to believe a viable spawning population exists" (Fortymile Placers, 1986).

However, in a letter to Gordon Zealand of DFO Whitehorse, Fred Anderson of the ADF&G states: "this Department maintains a comprehensive listing of streams and rivers known to contain anadromous fish. The Fortymile River is listed in this document as an anadromous stream". He then notes various observations and reports including 1960 reports of chinook and chum spawning near the Taylor Highway, chums captured near Steele Creek, and chinook carcasses observed near the old village of Joseph (Anderson, 1987a).

In 1986, the ADF&G conducted an investigation to determine if rearing chinook fry utilized the Fortymile River between O'Brien Creek and the Canadian border (Fortymile Placers, 1986). Minnow traps baited with sockeye salmon roe were fished for a total of 24 trap nights between July 8 and July 10. No chinook salmon juveniles were captured at that time.

Several studies have confirmed the presence of juvenile chinook salmon in the Fortymile River and a number of its tributaries. In the lower river, chinook juveniles were found in the mainstem in the vicinity of Clinton Creek and in Clinton Creek (EVS, 1971; EPS, 1979). On September 3 and 4, 1984, DFO sampled the lower reaches of Clinton and Mickey Creeks as well as the mainstem Fortymile between the two tributaries using seines and/or minnow traps. Juvenile chinook salmon were found in all areas (total of 65 chinook) and 49 chinook were captured in two overnight minnow trap sets in Clinton Creek (Clarke, 1984). In August 1985, eight beach-seine sets in the Fortymile River yielded two chinook juveniles and confirmed the presence of chinook juveniles in the upper Fortymile River above the placer mining operation (von Finster, 1985). This latter study coincided with the chinook spawning period but no adults were observed. Water levels were high, however, and the river was deeply stained.

The spawning distribution of chum salmon in the Yukon River Basin is not as well known as that for chinook (Fisheries Work Group, 1984). Fall chum runs have been documented in nine Canadian streams including the Klondike River in the lower Yukon.

In 1986, the Fishery Officer conducted investigations into chum salmon spawning on the Fortymile River (McDonald, 1986). Two floats were made down the river in an inflatable boat. No spawning chum were observed although a chum carcass was found approximately one half mile upstream from the Clinton Creek townsite pumphouse. In addition, 101.5 hours of gill netting between September 12 and 18 was carried out at two stations. The first station, approximately 500 meters downstream of the Clinton Creek bridge, yielded two female and two male chum

SALMON PRESENCE

IN THE FORTYMILE RIVER, YUKON

L. Jaremovic and A. von Finster

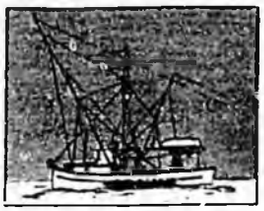
MARCH 1988

DEPARTMENT OF FISHERIES AND OCEANS
HABITAT MANAGEMENT UNIT
NEW WESTMINSTER, B.C.
WHITEHORSE, YUKON

PLEASE NOTE :

THE PRECEDING 10 PAGES WERE SENT IN REVERSE ORDER ...

SORRY
THANKS !



Alaska
Trollers
Association
130 Seward St., No. 213
Juneau, Alaska 99801
(907) 586-9400

March 15, 1989

Representative Curt Menard
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Menard:

The Alaska Trollers Association urges you to amend HB99 and SB129 to include language requiring the resource agencies to promulgate reclamation regulations.

Like the rent and royalties required by section 6(i), reclamation should be considered one of the costs of conducting a business venture on state lands. The right to mine non-renewable resources from state lands is an exclusive use of public domain for one's private benefit. This is not in and of itself bad; however, irreparable damage to our lands can occur when there is no clearly defined criteria in place by which to regulate these operations. Poor mining practices have the potential to compromise the water quality of area drainages, as well as damage the land and render it useless for any future purpose. Numerous studies have been undertaken which document the severe impact that unmanaged placer mining has imposed on existing salmonid spawning and rearing habitat. We believe that the burden of protecting riparian habitat should be shouldered by both the user of the resource, and the state - who is mandated to protect our natural resources.

The state's present attempts to require reclamation are inadequate. It is our understanding that very little reclamation is taking place on state lands, and that many sterile mines are abandoned without being stabilized - in this highly erodible state these mines could continue to degrade area fisheries habitat for years.

We consider this present state of affairs unacceptable. Alaska's fisheries are a long term, renewable resource which will provide jobs and sustenance for generations of Alaskans to come. The health of our fishery depends on the quality of our waters and an abundance of habitat for utilization by our wild stocks. Short term, non-renewable extraction of mineral resources should not compromise the essence of Alaska's future - our fish and wildlife resources. It is imperative that the legislature act to amend HB99 and SB129 to direct DNR, ADF&G, and DEC to develop regulations which will ensure that mined lands are restored to a condition adequate to support healthy populations of fish and wildlife.

Sincerely,

Dale A. Kelley

Dale A. Kelley

2/28/89

KBCS

KACHEMAK BAY CONSERVATION SOCIETY
BOX 846
HOMER ALASKA
99603

Pouch U
Juneau, Alaska 99811

Dear Representative Swackhammer:

I am writing on behalf of the Kachemak Bay Conservation Society regarding 6(i), a provision in the Alaska Statehood Act which requires the state to charge rent or royalties for mining operations on state lands.

Our Society (KBCS) strongly support a "reclamation" amendment being added to the Bills (HB99 + SB129), addressing the above mentioned issue.

We think it is impossible to talk about the public interest in mining without considering the issue of reclamation. Placer mining in particular is an exclusive use of the land which can destroy or severely impair other uses such as drinking water, fish spawning + rearing, + recreation if it is not carefully managed. The

KACHEMAK BAY CONSERVATION SOCIETY
BOX 846
HOMER ALASKA
99603

states current reclamation program is hampered by lack of good coordination between the responsible agencies DNR, ADF+G + DEC + because ~~of~~ present statutory authority is not broad enough. HB 994 SB 129 should be amended to authorize these agencies to jointly develop unified Comprehensive regulations on reclamation.

Thank you.

Sincerely,

Roberta Highland

KBCS Board Member

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

December 30, 1988

SUMMARY OF: A Report on the Department of Environmental Conservation, Department of Fish and Game, Department of Natural Resources, and Office of the Governor, Water-Related Regulatory Expenditures and Costs, December 15, 1988.

PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, a review was conducted of state resource agency expenditures related to the adjudication of water rights, protection of habitat, consistency determinations with pertinent coastal zone plans, and the regulation of water quality in order to allocate those expenditures on a regional and industry basis. In addition, in order to develop a sense of the costs involved to comply with the various state regulatory requirements, a limited survey of major permittees was conducted.

FY 87 and FY 88 state expenditures are included in our report. As discussed further in the Methodology, Assumptions, and Definitions section of the report, expenditures were allocated on a variety of bases, such as general estimates made by various state officials and personnel, documentation provided by timekeeping records, and accounting information on the State's accounting system.

REPORT SUMMARY

Statewide, approximately $12,900,000 of FY 87 and FY 88 water-related regulatory expenditures, involving five state agencies, were identified and allocated on a regional, industrial, and regulatory activity basis.

The largest portion of the allocated expenditures were those of the Department of Environmental Conservation (DEC). DEC accounted for $6.3 million of the allocated expenditures. The Department of Fish and Game, Division of Habitat had almost $3.4 million of the allocated expenditures, primarily involving that agency's Title 16 habitat protection permitting process.

Of the ten industry categories included in the report, the placer mining industry received the largest allocation of regulatory expenditures with almost $3.5 million of the approximate $12.9 million allocated. Most of the placer mining regulatory effort takes place in the Northern region of the State, although the regulation of placer miners is also a significant part of the Southcentral region's oversight effort.

Regulation of water and wastewater systems for private residences, with an allocated total of approximately $2.5 million, was the second highest allocation of expenditures. Over half of these allocated expenditures are related to review of these systems in the Southcentral region of the State.

The largest part of the State's regulatory effort involves permitting activities. Permitting, as defined for the purposes of this report, accounted for just over $7.1 million of the $12.9 million allocated. Assessment and the provision of technical assistance to various permittees accounted for just over $3.5 million in expenditures, while monitoring of permittees for compliance with permit conditions and stipulations accounted for the remaining $2.2 million in expenditures.

In regional terms, the Southcentral part of the State accounted for the largest amount of regulatory expenditures, with an allocation of almost $5.8 million. The Northern region's allocation was $4.4 million, and the Southeastern region received an allocation of just over $2.6 million.

February 23, 1989

RECEIVED MAR 13 1989

Senator Steve Frank / Bethye Fahrenkamp
Pouch V
Juneau, Alaska 99811

Dear Senator Frank:

I am writing to encourage you to consider the importance of including a provision for reclamation in the "Mining Rent and Royalties Bills," H.B. 99 and S.B. 129. Inclusion of a reclamation requirement into this legislation is critically important in order to ensure that public interests in state lands are protected during the mining process and after mining occurs.

As you are no doubt aware, in the "6i" lawsuit the court ruled that under the state constitution, citizens of Alaska should receive some return for mineral resources taken from state lands which were selected because of their mineral character. I personally believe that the state should receive a "fair" return for its mineral resources but that large rents and royalties might severely restrict the economic feasibility of smaller mining operations. In reality, royalties from small mines are not likely to significantly enhance the state's financial status anyhow.

Requiring reclamation of state mining claims will ensure that the multiple use of these lands will continue once mining has been completed. Over time all the public will benefit if previously mined areas are returned to an ecologically productive condition. Because of this, reclamation should be the initial requirement of the Mining Rent and Royalties Bill.

Reclamation, once adopted as a routine component of a mining plan, does not have to involve excessive expense to the miner. Areas mined in the past can be reclaimed as new mining cuts are made. Obviously, there will be differences of opinion about what constitutes an adequate level of reclamation and what is reasonable to the miner. These provisions can be worked out in the legislative process where all parties will have an opportunity to present their views. I would be happy to assist in working to reach an acceptable compromise on this issue if the need arises.

I would prefer to see the final legislation on this issue include reclamation and keep the royalty rates for small mines to a minimum. Larger mines should be required to pay larger royalties commensurate with the amount of resources taken from state lands. I urge you to include a reclamation requirement in S.B. 129.

Thank you for considering my views on this subject.

Sincerely,

RR

Randy R. Rogers

Box 82215
Fairbanks, Alaska 99708

cc: Alaska Environmental Lobby

Neil MacKinnon
1114 Glacier
Juneau
586-1254

COMPARISON OF TAX STRUCTURES OF A SMALL GOLD MINE IN JUNEAU, ALASKA
TO THAT OF NEVADA AND IDAHO

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	1,000,000	1,000,000	1,000,000
TPD PRODUCTION	500	500	500
ORE GRADE	0.30	0.30	0.30
DAYS PRODUCTION	360	360	360
TONS / YEAR	180,000	180,000	180,000
OZ PRODUCED	54,000	54,000	54,000
GOLD PRICE	400	400	400
LEASOR NSR	5.0%	5.0%	5.0%
CAPITAL COSTS	15,000,000	15,000,000	15,000,000
MINING COSTS/TON	65	65	65
% LABOR	60%	60%	60%
# PERSONAL	100	100	100
SALES TAX RATE	4.0%	5.3%	5.0%
PROPERTY TAX RATE	1.06%	0.00%	1.79%
FED CORP TAX RATE	34.0%	34.0%	34.0%
STATE CORP TAX RATE	9.4%	0.0%	8.0%
STATE MINING TAX	7.0%	1.9%	2.0%
STATE ROYALTY	3.0%	0.0%	0.0%
% DEPLEATION RATE	15.0%	15.0%	15.0%
COST DEPLEATION RATE /TON	4.50	4.50	4.50
DEPRECIATION EXP	10.00	10.00	10.00
PROPERTY GROSS	21,600,000	21,600,000	21,600,000
LEASOR ROYALTY	1,080,000	1,080,000	1,080,000
MINE GROSS	20,520,000	20,520,000	20,520,000
MINING COSTS	11,700,000	11,700,000	11,700,000
MINE NET	8,820,000	8,820,000	8,820,000
DEPRECIATION	1,800,090	1,800,090	1,800,090
DEPLEATION	3,078,000	3,078,000	3,078,000
TAXABLE INCOME	3,941,910	3,941,910	3,941,910
FED INCOME TAXES	1,340,249	1,340,249	1,340,249
STATE INCOME TAXES	370,540	0	315,353
STATE MINING LIC TAX	275,934	74,896	78,838
BOROUGH PROP TAX	159,450	0	352,407
STATE ROYALTY	118,257	0	0
TOTAL TAXES	2,264,430	1,415,146	2,086,847
EMPLOYEE SALES TAXES	336,960	449,842	336,960
COMPANY SALES TAXES	93,600	124,956	117,000
STATE & LOCAL GROSS	1,354,741	649,694	1,200,558

COMPARISON OF TAX STRUCTURES OF A LARGE GOLD MINE IN JUNEAU, ALASKA TO THAT OF NEVADA AND IDAHO

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	100,000,000	100,000,000	100,000,000
TPD PRODUCTION	22,000	22,000	22,000
ORE GRADE	0.05	0.05	0.05
DAYS PRODUCTION	360	360	360
TONS / YEAR	7,920,000	7,920,000	7,920,000
OZ PRODUCED	396,000	396,000	396,000
GOLD PRICE	400	400	400
LEASOR NSR	3.0%	3.0%	3.0%
CAPITAL COSTS	150,000,000	150,000,000	150,000,000
MINING COSTS/TON	10	10	10
% LABOR	40%	40%	40%
# PERSONAL	400	400	400
SALES TAX RATE	4.0%	5.3%	5.0%
PROPERTY TAX RATE	1.06%	0.00%	1.79%
FED CORP TAX RATE	34.0%	34.0%	34.0%
STATE CORP TAX RATE	9.4%	0.0%	8.0%
STATE MINING TAX	7.0%	1.9%	4.0%
STATE ROYALTY	3.0%	0.0%	0.0%
% DEPLEATION RATE	15.0%	15.0%	15.0%
COST DEPLEATION RATE /TON	0.45	0.45	0.45
DEPRECIATION EXP	1.00	1.00	1.00
PROPERTY GROSS	158,400,000	158,400,000	158,400,000
LEASOR ROYALTY	4,752,000	4,752,000	4,752,000
MINE GROSS	153,648,000	153,648,000	153,648,000
MINING COSTS	79,200,000	79,200,000	79,200,000
MINE NET	74,448,000	74,448,000	74,448,000
DEPRECIATION	7,920,396	7,920,396	7,920,396
DEPLEATION	23,047,200	23,047,200	23,047,200
TAXABLE INCOME	43,480,404	43,480,404	43,480,404
FED INCOME TAXES	14,783,337	14,783,337	14,783,337
STATE INCOME TAXES	4,087,158	0	3,478,432
STATE MINING LIC TAX	3,043,628	826,128	869,608
BOROUGH PROP TAX	1,594,500	0	3,887,148
STATE ROYALTY	1,304,412	0	0
TOTAL TAXES	24,813,036	15,609,465	23,018,526
EMPLOYEE SALES TAXES	1,520,640	2,030,054	1,520,640
COMPANY SALES TAXES	950,400	1,268,784	1,188,000
STATE & LOCAL GROSS	12,500,738	4,124,966	10,943,829

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Co-Chairman Representative Curt Menard
Co-Chairman Representative Cliff Davidson
House Resources Committee

FROM: Representative Bert Sharp

SUBJECT: HB99 - 6(i) committee file

DATE: March 13, 1939

The enclosed strong expression of support from the merchants and mayor of the City of Fairbanks illustrates the significant positive economic impact the mining industry has on the interior of Alaska. I request that a copy of this be placed in each committee member HB99 folder.

It is imperative that a fair and clear 6(i) bill be considered by the legislature this session. I know we can meet the 6(i) court mandate and still be a positive signal to the mining industry of our state.

cc: Resource Committee members

Office of the Mayor
City Hall
410 Cushman Street

Fairbanks, Alaska 99701

Governor Steve Cowper
Office of the Governor
Juneau, Alaska 99811

Dear Governor Cowper:

RETAIL MERCHANTS SUPPLYING GOODS & SERVICES TO THE PLACER MINING INDUSTRY IN THE FAIRBANKS AREA:

	Phone No.
Safeway Stores, Inc.	456-4501
Super Valu Stores	452-6422
Foodland CARRS	452-1121
N. C. achinery	452-7251
Craig Taylor	452-1192
~~Arctic Engine~~ MC DONALD WITH INC	452-4132
Sourdough Fuel	456-7798
MAPPCO	
Everts Fuel	474-0802
Nenana Fuel	
McKay Trucking	
Northern Air Cargo	474-9606
Greer Tank & Welding	452-1711
Skidmore Machine	452-4538
Fairbanks Machine & Steel	452-4722
James Nordale, Mayor	452-1666
Juanita Helms, Mayor	452-4761
Fairbanks Chamber of Commerce	452-1105
Jackovich Tractor	456-4414
Big Rays	452-3458
Alaska Sportsman's Mall	452-5747
EXPRESS FUELS	

We, The Retail Merchants of Fairbanks, The Mayor of the City of Fairbanks, The Mayor of the Fairbanks North Star Borough and the Fairbanks Chamber of Commerce, above listed, are very concerned about the Plight Of The Placer Mining Industry here in the Interior of Alaska.

In spite of all the improvements the Placer Mining Industry has made in their mining methods, the environmentalists and state regulations still continue to thwart, slow-down, harass and in many cases stop the Placer Mining Operations.

We urgently request a meeting with you, here in Fairbanks, at your earliest convenience to discuss this problem which is so important to the economy of Fairbanks.

James D Nordale

Mayor James Nordale

RETAIL MERCHANTS SUPPLYING GOODS & SERVICES TO THE PLACER MINING INDUSTRY IN THE FAIRBANKS AREA:

NAME:	PHONE NO.
Alaska Railroad	
Mark Air	474-7166
Alaska Air Lines	474-0481
Irish Trucking	
Sourdough Express	452-1181
Union Oil Co.	
Texaco Fuel Co.	
Alaska Petroleum Co.	
Carleta Lewis, Mayor North Pole	
K & K Recycling	
Bucher Glass	452-2394
Alaska Rubber	451-0200
Alaska Battery	
Arctic Welding	
Alaska Tent & Tarp	456-6328
Alaska Industrial Hardware	
M & O Parts	452-3411
Brown & Sons' Auto Parts	
Carr's Clothing	452-2376
Oxford Assaying	
GAC Alaska Inc.	
Grabb's Corner	
715 Gerald Flack Former	479-0402

Donna Gilbert, Interior Taxpayers Assoc.	[illegible]	[illegible]
Spenard Lumber Co.		
OK Lumber Co.	[illegible]	457-6271
Quality Meat Co.	[illegible]	452-[illegible]
~~Kiwa~~ GIANT Tire Co.	[illegible]	456 2536
Goodyear Tire Co.	[illegible]	456647
Kelly's Tire Co.	[illegible]	
Hobat Tirte Co.	[illegible]	452-7131
Alaska Explosives, Inc.	Robert E [illegible]	456-8306
Pacific Powder & Explosive Co.		
Denali Fasterers, Inc.	[illegible]	452-4524
Alsinco, Inc.	[illegible]	[illegible]
Englehard		
Geoprize, Ltd.		
Dr. Richard Swainbank		
Hector's Welding	Jeannette L. [illegible]	488-6432
K&K Recycling		
~~Giant~~ RAHLSON Equipment	Mike Shields	457-3226
Saupe Enterprises	[illegible] Saupe Ent. Inc.	452-1233
Usibelli Coal Mine, Inc.	[illegible]	452-2625
Tip Top Chevrolet Inc.	[illegible] GM	452-8511
Westmark Inn Fbks	[illegible]	456-7722
Aurora Motors Inc.	[illegible]	452-3300
Holaday Parks Inc.	[illegible]	452-7151
Suburban Propane	[illegible]	452-1176
Alaskan Prospectors & Geo Supply	[illegible] (LEAH [illegible])	452-7398
[illegible]		479-2388
[illegible] Motel	Donna Gilbert	452-[illegible]
A+W Wholesale Co. Inc.	Wayne Wallace	452-2138
[illegible] Smith		456-4262
[illegible]		456-7344
Kathleen L. [illegible]		488-0709
Ray Foster		474-9070
[illegible] College Construction	[illegible]	479-5400
Interior Fuels Company	F.L.	456-1312
BIG WHEELS TRANSPORT INC	Frank [illegible]	488-9032
Alaska Freight Brokers Inc	JEANNIE GREGG	488-9045
Bill Crowley		488-0072
[illegible]	[illegible]	452-6161
Arctic Fire Equip. Co.	Wally Garrett or Robin Hall	452-7806
Fairbanks Automotive [illegible]	[illegible] Hall	452-2142
SAMSON HARDWARE	K. [illegible]	452-3110
Ventilation Systems	M. [illegible]	479-0137
Denali Chrysler	[illegible]	452-7116
Wilbur Bros.	[illegible] Wilbur	452-3838
O'Connor Enterprises, Ltd.	Frankie D. O'Connor	456-7112

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 16, 1989

MEMORANDUM

TO:

FROM: Ginny Fay
Legislative Analyst

RE: Mining in Other Western States: Reclamation and Taxation Policies
Research Request 89.207

You requested information regarding other states' mining reclamation policies and statutes. You asked which state reclamation programs are authorized by statute rather than by regulation. You asked also for information regarding taxes paid by miners in other states in addition to specific mining taxes. To answer your questions, the first part of this memorandum discusses reclamation in other western states. This is followed by information on other state taxes.

Mining Reclamation in Other States

Generally speaking, the purpose of mining reclamation is to return land to its beneficial and productive use after mining operations have occurred. The state of Nevada, as part of an extensive overhaul of its mining statutes and programs, is conducting a comparative analysis of mining practices in the western states. Information from their final draft report on reclamation is summarized in this section.[1]

Not all western states have reclamation laws and those that do differ widely in the administration, organization, and implementation of their programs. Of the eleven western states reviewed by the Nevada study (which included Alaska but not Nevada), eight states have reclamation statutes. In contrast, Alaska, Arizona, and New Mexico reclamation standards are set by regulation and are part of the mining permit process (see Attachment A).

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[1]Wanda Jo Gallaher and Susan Lynn, "A Comparison of Western States Reclamation and Bonding Regulations, Programs, and Practices for Discussing A Nevada Program," Final Draft Report, Public Resource Associates, January 1989.

State reclamation statutes also vary considerably with regard to enforcement and penalties for noncompliance. Penalties include lease or permit cancellation, bond forfeitures, and civil and criminal penalties and fines. See Attachment A for state specifics.

State Taxes in Addition to Specific Mining Taxes

Information on state taxes collected in addition to specific mining taxes was obtained from ten western states--Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. The results are presented in Table 1. Except Wyoming and Nevada, these states have corporate income taxes applicable to miners.[2] Tax rates range from five percent in Colorado and Utah to 10.5 percent in Arizona.

Miners pay property taxes in all states contacted. Generally, this tax is administered by the state but collected by local governments. Mill rates are locally determined. In addition, six of the ten western states charge a sales or use tax on equipment. The state sales tax applies if items are purchased in-state. For items purchased out-of-state, a use tax, generally set at the same rate as the state sales tax, is charged on the market value of the item or equipment. Sales and use rates ranged from three to 6.8 percent.

* * *

I hope this information answers your questions. If you would like additional information, please do not hesitate to contact us.

Attachments

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[2]A number of contacts in Nevada stated that their state's tax rates and policies are likely to change during the current legislative session; numerous tax bills have been introduced, some of which apply to miners.

TABLE 1
TAXES PAID BY MINERS IN OTHER STATES IN ADDITION TO SPECIFIC MINING TAXES

STATE	TAX & TAX RATE (%)			
	CORPORATE INCOME	PROPERTY	SALES/ USE	OTHER
Arizona 1	10.5	County Set	5.0	
California	10.0	1.0		
Colorado	5.0	County Set	3.0	Road tonnage
Idaho	8.0	County Set		
Montana	6.8	County Set		Gross Proceeds Property Tax on Reserves
Nevada		County Set	6.0	
New Mexico 2	7.6	County Set	6.5	
Oregon	6.6	County Set		Ad valorem tax collected locally on mineral rights
Utah	5.0	County Set	6.8	
Wyoming		County Set	5.0	

NOTES:

1. Arizona's net corporate income tax is graduated up to an income of $6,000, then 10.5 percent.

2. New Mexico's corporate income tax is graduated for income up to $1 million.

Prepared by the House Research Agency, February 1989 (89.207).

ATTACHMENT A
Comparison of Features by State for
Reclamation and Bonding

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
DEVELOPMENT AND OPERATION											
Lead Agency	Natural Resources Div. of Mining	State Land Dept.	county or cities	Mined Land Reclamation Div.	as outlined in MOU	Department of State Lands	State Land Office	Dept. of Geology & Mineral Indus.	Division of Oil, Gas, & Mining	Department of Natural Resources	Land Quality Division
Permit Required	yes	mineral lease	yes	yes	yes	yes	lease application	operating permit	yes	contract or lease	permit & license
1. Terms	one year, renewable	20 years renewal option	duration of mine	duration of mine	annual renewable	yearly	renewable terms	duration plus reclamation time	life of mine	20 year mining contact	annual report life of operation
Plan of Operation Required	yes	yes	yes	for over 5 acres	yes	yes	yes	yes	yes	yes	yes
1. Reclamation Included	yes	yes	yes	yes	required	yes	yes	yes	yes	yes	yes
Bonding	discretionary	yes	by county request	performance up to $5000 for small miners; costs for large	performance	performance	performance and damages	performance and chemical	performance	performance	performance
1. Dollar Amount		$2000/acre			up to $1000/acre	$1500-$8000/acre	$5000 minimum	$25,000-$500,000 on chemical bond	$1500-$5000/acre	cost of recovery	varies
2. Per Ton/Cubic Yard Basis				no	no		no				dirt/cubic yard reseeding
3. Per Acre Basis	level of activity			no	yes		no				yes
4. Worse Case Scenario				yes	no		no	credible accident	yes	yes	yes
5. Estimated Engineering Costs				for larger mines	costs + 10%	costs + 15%	no	costs-performance	yes	yes	yes
6. Clean-up Costs				yes	included		no		yes	yes	
7. Agency Signoff	yes			yes	yes	yes	no	yes			yes
Exemptions for Small Miners	yes	no	yes	yes	no	yes	no	yes	variances	yes	yes
1. Volume Basis			1000 cubic yards	70,000 tons and		$6,500 tons/year	no	5000 cu yds/year			< 10,000 tons
2. Acreage Basis			or 1 acre	10 acres		5 acres	no	1 acre	5 acres or less	under 3 acres or	10 acres or less
3. Other	recreation mining season						no	lands disturbed prior to 7/1/72		10 ft. pit wall	
Scheduled Monitoring or Inspections for Reclamation Compliance	seasonal inspections	periodic	periodic	annual report	periodic	yes 1 to 4 times/yr.	no	yes	annual	periodic	annual inspection
Closure Regulations	no specifics	no	no	mandatory	no	no	no	seasonal & final	10 years inactive	no	guidelines
Action for Noncompliance	yes	lease cancelled	permit cancelled	yes	yes	yes	yes	yes	yes	cancellation	yes
1. Bond Forfeitures				forfeiture	forfeiture	case by case	yes	yes	yes	yes	yes + nonrenewal
2. Civil Penalties				$50-$260/day	$500-$2500/day	$100-$1000/day	yes		no	property lien	fines to $10,000
3. Misdemeanor if willful					$1000-$5000 fine						
4. Criminal penalty				mine closure	or 1 year prison		yes	$10,000 fine	$10,000 max. fine		yes
TYPES OF BONDING											
Surety Bond	Alaska has the authority to request a bond, but policy is to not request; will ask for bond if receive complaints or based on past poor performance	yes	varies by county	yes	yes	yes	yes	on performance	yes	yes	yes
Certificate of Deposit		yes		yes	yes	yes	no	yes	yes	yes	yes
Letter of Credit		yes		yes	yes		no	yes	yes	yes	yes
Deeds of Trust				yes			no		yes		
1. Bonding Property				yes	no						
2. Personal Property				yes	no				yes		
Savings Account					no		no		yes	yes	yes
Cash		yes		yes	yes	yes	yes	yes	yes	yes	yes
Certified Financial Statements				yes	no		no		yes		
Self-Bonding				yes	no		MM counties or OS		board		yes
Government Bonds/Bills					yes		no		yes		yes
Assignable Bonds & Notes							no				
Other Nonspecified							no	yes			any combination

Fairbanks / low grade / low tonnage Au

Cost Variation: 50 claims (200 acres) × $1.25 = $250

1.00	= 1,000
3.00	6,000
10.00	= 20,000

Royalty Variation 105,000 Au 425 oz/t $44,625,000

Gross

1%	446 250
3%	1,338 750
5%	2,231,250

Net Smelter/Refinery 89.30 Au 37,964,000

1%	379.640
5%	1898,200
7%	2,657,480

Net Profits

5%	21,050
10%	42,100

Lin Horn Hilsko Pb-Zn-Ag:

50 Units (200 Acres) × $.75 = 500 —
1.00 = 2000 —
3.00 = 6000 —
11.00 = 22000 —

Royalty Variation	Gross
1%	856,800
3%	2,570,400
5%	4,284,000

Net Smelter/refinery		
	1%	678,110
	5%	3,390,550
	7½	4,746,770

Net Profits		
	5%	197,750
	10%	395,500

Scenario Annual Gold

Rent variations

25 claims (1050 acres) × 0.25 = 250.
1.50 = 1,050.
3.00 = 3,150
10.00 = 10,500

Royalty Variations

80,000 Au (425), 909,000 Ag (7.00) 40,363,000

Gross

1% = 403630
3% = 1,210,890
5% = 2,018,150

Net Smelter/Refinery

Au (21,560,000) Ag (5,013,000)

1% = 265,730
5% = 1,328,650
7% = 1,860,110

Net Profits

5% = 344,900
10% = 689,800

Cost Variation

[illegible] Mine [illegible]) × 6.25 = [illegible]
[illegible] = [illegible]
[illegible] = [illegible]
[illegible] = [illegible]

Royalty Variation Gross (2,500 oz Au × 425 $/oz) 1% = $ 8500
3% = [illegible]
5% = 42,500

Net Smelter/Refinery 1% = $ 8220.
3% = 24690.
7% = 57610.

Net profits 5% = $ 6650.
10% = 13,300.

	ADMIN PROPOSAL	OPTION 1	OPTION 2	OPTION 3
RENT	ESCALATED $20-$200	$10/claim	$10/claim	$20/claim
Rental Income	$700,000 (-20%)	$400,000 (-10%)	$400,000 (-10%)	$700,000
Royalty	1-3% net	1% Gross	2% Gross	1% Gross
Royalty Income	$50,000	$200,000	$400,000	$200,000
	rent + royalty	rent or royalty	or	or
Total Income	$750,000	$575,000	$775,000	$875,000
Administration	Complex	Simple	Simple	Simple
Impacts	rent - impact in late years to mines	rent - insignificant impact	rent - insignificant impact	rent - limited impact
	royalty - minimal impact	royalty - some detrimental impact to marginal operators	royalty - moderate impact	royalty - some impact

The commission shall provide for the reclamation of mined lands to assure that the surface is left in a stable condition that promotes ~~natural~~ revegetation.

The commission shall ~~[illegible]~~ assure that mined lands are reclaimed to a useful state. Reclamation shall include, but not be limited to, slope stabilization, stream stability and revegetation.

From SmCRA

(1) All mining operations shall, at a minimum, be restored so that the land (including waters of the state) affected is capable of supporting the uses it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood, consistent with all applicable laws and the Alaska Constitution.

(2) Rents - Sliding 1.00 1.75 - 2.50

(3) Royalty - ~~2½%~~ Gross higher than Jenny.

(4) Reclamation - also language that Regs will be promulgated by a date

(4) Citizen Suit Provision?

Overview of Mining Activity on State Land

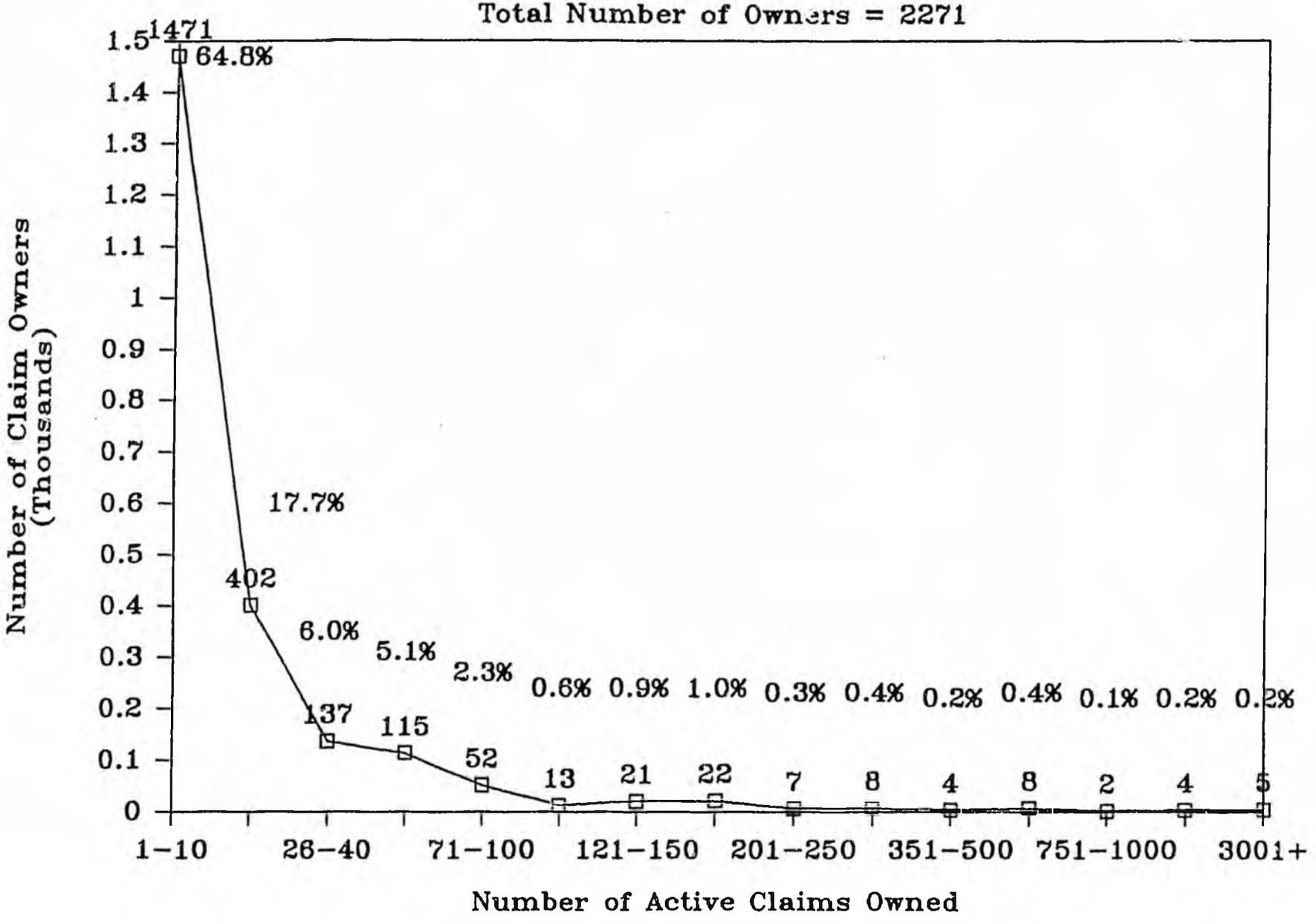
* 44,273 mining claims active on January 1, 1989

* 2,271 owners of these claims

* 202 permits issued to operate on state land in 1988

* gold production estimated to be less than 50,000 ounces from state land in 1988. (FYI - Statewide production of gold in 1988 estimated to be 240,000 ounces.)

OWNERS OF ACTIVE CLAIMS



SUMMARY OF MINING LICENSE TAX REVENUE
By Industry Group

	1987	1986	1985
"Locatable Minerals"	$34,179	$6,627	$7,258
Coal	$206,328	$212,325	$16,554
Rock, Sand & Gravel	$19,142	$86,418	$42,774

* Information provided by Dept. of Revenue

Introduced: 2/3/89
Referred: Resources and Finance

6-0470E

IN THE SENATE

KERTTULA, COGHILL, FRANK AND FAIKS

SENATE BILL NO. 161

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act providing for rent and royalty payments for leasehold locations and mining leases; relating to mineral in character determinations; and providing for an effective date."

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

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

(a) The acquisition and continuance of rights in and to deposits on state land 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 - 38.05.275. Nothing in AS 38.05.185 - 38.05.275 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 that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner <u>determines</u> [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.-05.206 or 38.05.300 [AS 38.05.300].

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

(b) Beginning on the date established by the commissioner under AS 38.05.210, [THERE SHALL ACCRUE] an annual rental accrues for each leasehold location or portion of a leasehold location, [THEREOF] whether or not under lease, in the amounts established in AS 38.05.211 [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].

* Sec. 3. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.206. MINERAL CHARACTER DETERMINATIONS. (a) Within three years after the receipt by the commissioner of a request for a mineral character determination from the holder of the mining claim, the commissioner shall determine under AS 38.05.243 whether the land underlying a mining claim was mineral in character at the time of state selection.

(b) A holder of a mining claim who fails to make a request for a mineral character determination to the commissioner by September 1, 1990, or within one year from the location of the mining claim, whichever is later, shall make rental payments under AS 38.05.211 and royalty payments under AS 38.05.212 until the commissioner makes a mineral character determination concerning the land under AS 38.05.-243. A holder of a mining claim who makes a request for a mineral character determination to the commissioner by September 1, 1990, or within one year after the location of the mining claim, whichever is later, does not owe rental payments under AS 38.05.211 or royalty payments under AS 38.05.212 until the commissioner makes the mineral

character determination under AS 38.05.243.

(c) On the determination by the commissioner that the land underlying the mining claim was mineral in character at the time of state selection, the holder of the mining claim is liable for rental and royalty payments from the date of location.

(d) On the determination by the commissioner that the land underlying the mining claim was not mineral in character at the time of state selection and that the holder of the mining claim has made rental payments under AS 38.05.211 or royalty payments under AS 38.-05.212 on the claim, the commissioner shall refund to the holder of the mining claim all rental and royalty payments paid on the mining claim.

(e) If the commissioner fails to make a mineral character determination within three years from the date of a request for a determination, the amount of the rental and royalty due under AS 38.05.211 and 38.05.212 is reduced by 50 percent from the time that the determination was requested through the date that the determination is made. The holder of a mining claim may request that any excess payment accumulated under this subsection be

(1) applied to rental and royalty payments due in subsequent years; or

(2) refunded.

* Sec. 4. AS 38.05 is amended by adding new sections to read:

Sec. 38.05.211. RENTAL. (a) Before production from a mining claim begins in commercial quantities, the holder of a leasehold location or mining lease shall pay to the state annual rental based on the number of years since the location of the leasehold or of the mining claim, as follows:

Years since Initial Location	Rental per Acre per Year

0 - 10	$.25
11 - 20	$.50
21 or more	$.75

(b) A leasehold location or a mining lease located on or before August 31, 1989, is considered to have been located on August 31, 1989, for the determination of the rental due under this section.

Sec. 38.05.212. PRODUCTION ROYALTY. On production from a mining claim in commercial quantities, the holder of a leasehold location or mining lease shall pay as production royalty the greater of

(1) a two percent net income royalty determined under AS 43.65.010 - 43.65.060; or

(2) the rental amount due under AS 38.05.211.

* Sec. 5. AS 38.05 is amended by adding a new section to read:

* Sec. 38.05.243. DETERMINATION OF MINERAL CHARACTER. (a) Land on which a mining claim is located was not mineral in character at the time of state selection unless, on the date the state selected the land underlying the mining claim, the land was known to contain a valuable mineral deposit in sufficient quantities that a prudent person at that time would have expended time and resources to develop the mineral deposit with a reasonable belief that the minerals would be marketable at a profit.

(b) Land underlying a mining claim does not contain a valuable mineral deposit unless, based on facts known at the date the land was selected by the state, the land

(1) contained an actual exposure of valuable minerals capable of being marketed at a profit;

(2) was contiguous to an existing mining claim with an actual exposure of valuable minerals capable of being marketed at a profit;

(3) was within one mile from a placer deposit that has existing reserves that were producing or capable of producing valuable minerals at a profit if the mining claim is a placer claim; or

(4) was within one mile of a known mineral deposit that has produced or is capable of producing minerals at a profit if the mining claim is a lode claim.

* Sec. 6. This Act takes effect August 31, 1989.