SJR

27

KIPNUK TRADITIONAL COUNCIL

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FACSIMILE COVER SHEET

TO: Representative Cliff Davidson
Chairman, House Resources Committee
Juneau

DATE: 3-18-93

FROM: John G. Amik

TITLE: Village Administrator

FAX NO: 465-3144

NUMBER OF PAGES, INCLUDING THIS COVER : 3

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KIPNUK TRADITIONAL COUNCIL

BOX 57 • KIPNUK, ALASKA 99614
(907) 896 5515

MARCH 18, 1992

Honorable Cliff Davidson, Chairman
House Resources Committee
Alaska House of Representatives
Room 108, Capitol
P.O. Box V
Juneau, Alaska 99811

Honorable Cliff Davidson:

The community of Kipnuk opposes the two resolutions, HJR 35 and SJR 29, related to support for the existing federal mining law system, because the 1872 Mining Law does not go far enough to protect the fragile environment of Alaska.

The legislature should have an Environmental Impact Statement done first, which will focus on what kind of impact mining has on the diverse environment that Alaska has with input from communities which will be impacted. The mining law fails to take into consideration the impact it had and will have on the subsistence way of life of Rural Alaskan Communities which will be affected if mining occurs within close proximity to any of them.

Please vote in opposition of HJR 35 and SJR 27, until policies or laws to minimize environmental damage during the mining stage, are in place. The Kipnuk Traditional Council opposes HJR 35 and SJR 27 because miners will implement the 1872 Mining Law to its' absolute minimum regardless of how much damage it does to our environment. It will take a long time to get the environment back to its original state, and that will have a severe impact on Rural Alaska if nothing is done to make policies and laws much stiffer during the mining stage.

We know that mining had a severe impact on the Kuskokwim just above Tuluksak. It pollutes the river and kills the fish. Fish, which is an abundant resource of the Kuskokwim Delta is the main diet that is depended on by all of its' communities. If mining were to occur on our land, we know that it will have a severe impact on our subsistence way of life. We also know that it has economic advantages because it brings outside people to work in the mines. It might provide jobs in remote parts of Alaska like ours, but it is unlikely any residents in Rural Alaska are qualified to be miners.

The main concern we have as a rural community is the impact mining will have on our subsistence way of life and the severe damage it will have on our environment.

Thank-you for your attention

Sincerely,
Kipnuk Traditional Council
James Anaver, Chief
Johnnie Paul, President

John G. Amik, Village Administrator

CC: House Resource Committee Members
U.S. Senate and House Delegation Members
Senator Lyman Hoffman
Representative Ivan M. Ivan
Alaska Environmental Lobby, Inc.

FAX # 465-3449

To: Cliff Davidson, The Chairman
Georgiana Lincoln, The Vice Chairman
Pat Corney
Bill Hudson
Tom Moyer
James Zawacki
David Fickelstein
Ivan M. Ivan
Loren Leman

Legislators of the House Resources Committee.

Ms. and Mr. Legislators:

We the Members of the Lower Kobuk Traditional Council do oppose the support of the two resolutions HJR 35 and SJR 27 as written.

George Ahmaogak
Vice-President

Olga D. Evan
Secretary

7-LS1056\G
Luckhaupt
3/18/92

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 27 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS FRANK, Pearce, Shultz, Sturgulewski, Uehling, Halford, Collins

REPRESENTATIVES M.A.Miller, M.W.Miller, Sharp, G.Phillips

A RESOLUTION

Relating to support for the existing federal mining law system.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the federal government is and will continue to be the largest landowner in the State of Alaska; and

WHEREAS 165,400,000 acres of federal Parks, Preserves, wildlife refuges, wilderness, and other federal land in Alaska are closed to most forms of economic development, including mineral exploration and mining; and

WHEREAS 49,600,000 acres of federal land in Alaska are still open to mineral exploration and mining; and

WHEREAS a healthy mining industry can provide new jobs in many remote parts of Alaska, jobs that are well-paying, year-round, and skilled; and

WHEREAS the existing federal mining law system has served our nation well since it was first enacted in 1872; and

WHEREAS the existing federal mining law system has been amended more than 50 times to accommodate changing conditions; and

WHEREAS amendments to specific portions of the federal mining law, such as increasing the

patent fee, may be appropriate and necessary to accommodate changing conditions and ensure continued viable opportunities for mineral exploration and development; and

WHEREAS the federal mining law is a land tenure law and the mining industry must comply with other state and federal laws concerning water and air quality, reclamation, land management, health and safety; and

WHEREAS if individuals and companies risk their time and money in search of economic mineral deposits, they must have a reasonable assurance that they will be able to mine the minerals they find; and

WHEREAS legislation pending before Congress, H.R. 918 and S.433, would fundamentally change the precepts of the existing federal mining law system and would significantly hinder or eliminate mining opportunities;

BE IT RESOLVED that the Alaska State Legislature supports the basic tenets of the existing federal mining law system; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the United States Congress to continue to support the basic tenets of the existing federal mining law system.

COPIES of this resolution shall be sent to the Honorable George Bush, President of the United States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives; the Honorable Manuel Lujan, Jr., Secretary of the Interior; the Honorable Edward Madigan, Secretary of Agriculture; the Honorable J. Bennett Johnston, Chair of the United States Senate Committee on Energy and Natural Resources; the Honorable George Miller, Chair of the House Interior and Insular Affairs Committee; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Comments of
Neil MacKinnon
on
H.R. 918
May 25, 1991

Mr. Chairman, members of the Committee, thank you for the opportunity to testify today.

For the record, my name is Neil MacKinnon. My great grandfather came into this land from Nova Scotia to prospect under the Mining Law of 1872, one of the few laws in the then District of Alaska. I am a graduate of the University of Alaska with a degree in mining engineering. Since graduation, I have supported my family and prospecting habit as a businessman in Juneau. I have been involved in numerous prospecting ventures and have negotiated many mining agreements both as lessor and as lessee. I was a member of the City and Borough of Juneau's mayor's committee on the mining lease for the A/J mine and the committee that drafted the local Juneau mining ordinance. Last year in my role as president of the Alaska Miners Association I was part of the working group of miners, environmentalists, and state representatives that drafted Alaska's mining reclamation law. I am speaking today for myself, and my family.

With the example of the failure of the planned economies of Russia and Eastern Europe so vividly before us, it will be ironic if this nation discards a law that has stood us well and moves down the path that led to their failure.

The roots of the Mining Law of 1872 can be traced back to the Middle Ages in Europe and can be said to form the foundation for many of the freedoms we as a people enjoy today. The law of 1872 is a people's law. It makes the individual in the mining business equal to the large corporations of this world. Under the law, anyone can prospect. The mining business is open to all with the initiative and interest to enter it. In that way it has been instrumental in providing us with the standard of living we enjoy today.

Why are we changing this law? Because it is old? So is our constitution and like our constitution the Mining Law of 1872 has been modified many times. Both specifically and by general environmental and land laws that have been the recent trend. (NEPA, FLMPMA, Clean Water Act, Clean Air Act, wetlands, and coastal zone to name a few.)

Are we trying to fix the abuses and problems in the law? Then let's fix them. But let's fix the real abuses and problems, not the precieved ones. Let's create a system that will enhance our mineral industry, not drive it to foreign lands. Let's make it possible for this nation to enjoy the economic activity and wealth that mining creates.

To be sure, there are some good points to H.R. 918. The wisdom of charging rent and not a royalty is refreshing. It is fair that the miner pay a reasonable rent for a claim and it is right to reclaim the past with that rent.

It is time that annual labor be increased to promote the development of mineral claims, but not be increased to the point that one cannot afford to pursue a mine because of it.

I also see in H.R. 918 the potential to open lands that are now closed to mining. It is a small potential but the fact that it exists in this bill gives me cause for hope.

But as hope gives way to fear let me say my greatest fear in changing the mining law is that many of those who advocate such change do so not to encourage responsible mining on the public lands, but to eliminate mining from the land altogether. The slogan "mine free by ninety three" comes to mind when I examine H.R. 918, for contained within the provisions of this bill are the tools that will eliminate mining from the land.

How will mining be eliminated? By planning us to death with unending study and the opportunity for "citizen suits" all along the way. By tying mining up in an ever increasing bureaucratic and legal morass. By closing all land to exploration except that which the bureaucratcy specifically opens. By increasing the risk that through government fiat the prospector will lose his investment without compensation.

To change the law and still retain a viable industry is possible. But it will take more consideration of the true problems and abuses. More thought about the real consequences of change and more attention to the experience of the failure of the planned economies of the world.

Specific comments:

TITLE I - Title and Rights

Section 101

(a)(1) Diligence Year - the diligence year should follow the present assessment year practice of from September 1 to August 31 of each year. The confusion of dates presented by the proposed system will increase error and make it much more difficult for a person to tell if the requirements of this act have been met. Rent can easily be prorated for the fraction of the year to September 1.

Section 102

(b)Rights - some guarantee of access to a mineral deposit is crucial. Minerals must be developed where they are found. Without reasonable access a mineral deopsit will be worthless. Without some guarantee that reasonable access will be avalable a mineral deposit is not worth searching for.

Section 103

(c)(3) - the historical precedent has been that the ground location always determined conflicts. The ground location has always held precedent because it relates directly to the minerals in the ground and that is what the miner is trying to acquire. If the notice will be determinative as proposed, then why even go through the bother of locating the claim on the ground, erecting monuments, and marking lines.

(g) Conflicting locations - adjudication of mining claims was tried by the State of Alaska Division of Mining. They soon were over two years behind on recording mining claims on their status plats. In every one of the adjudications I was associated with they were wrong and reversed. The cost of adjudicating and staff requirements will outweigh any benefit the nation could receive. I suggest you collect the rent and due diligence from both claimants and let them sort it out between themselves.

Section 104

(a)(1) - a reasonable rent is by far more preferable for all parties concerned than a royalty for several reasons. First, the odds of 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 paying rent than producing mines paying royalty. Secondly, Mr. Rahall is absolutely correct in his assessment of the government's inability to assess and audit any royalty. The treasury will always derive more money from rents than royalties no matter what the rate of taxation.

If one analyzes the wealth created from a mine (for that is what we are doing, creating wealth) through its first layer of distribution you will find that one-third goes to capital, one-third to labor, and one-third to the federal, state, and local governments. So, to me, it seems that the pie is being split as evenly as possible and any increase in the division for any party will come only at the expense of the other two. Adding an additional tax in the form of a royalty creates a disincentive to

produce minerals and diminishes, not increases, the revenue tne treasury will receive.

As a point of information, the State of Alaska has recently instituted a rent for state mining claims. The initial assumptions were that 50% of the claims would be relinquished by the imposition of rent of $.50/Acre. The actual loss in the first year was in the order of 20% of the approximately 40,000 claims existing before rent. This year Alaska expects to receive over six hundred thousand dollars in rent and will expend about one hundred thousand dollars in collection and administration.

(a)(2) - Deferring of diligent development expenditures should also be allowed because of lack of permits to operate from state and local governments.

(c)(2)(B) - any mineral sampling and testing should be allowed. Bulk sampling is but one type or phase of testing.

(C)(2)(f) - other mineral activities should also include filing fees and permitting costs and fees. While tradition has invalidated transportation of personnel as an allowed assessment expense this too should be allowed to encourage housing of exploration personnel in other than a camp on the claim.

(C)(2) - the diligent development expenditures as proposed in the early years are within reason. However, the diligent expenditures proposed for claims after eleven years will be a significant burden for the small prospector unless excess diligent development expenditures from previous years can be carried foreward. This section will also cause exploration programs to be designed around meeting the diligent development expenditure and all work will halt for the diligence year once that amount has been reached.

The State of Alaska allows a miner to carry forward excess annual labor four years and the system works fine. I argue for and allow a carry forward provision in all my mining agreements because it makes good sense and serves to develop the minerals. The federal government should adopt it also.

(d) - Payment in lieu of diligent development - this is an admirable concept for enhancing receipts to the treasury but does not serve to develop any mines. On a year-to-year basis the concept has merit but I fail to see the reason or need to lock a claim holder into five years of cash payments in lieu of diligent development expenditures.

(e) - Deferment, waiver or reduction - this is another admirable concept for taking care of the small miner. However, I cannot envision any bureaucrat sticking his neck out to grant relief except in the most unusual of circumstances and even then, he will be open for litigation under section 202 (e), citizen suits. It is worth keeping the concept in the bill, but we are fooling ourselves if we think it will help the small miner except in the most extraordinary situation.

Section 105

(a)(3) - the penalty for failure to comply under section 104(g) is the loss of the claims. Adding an additional penalty of up to $5,000.00 per day seems to me unusually harsh.

Section 106

Access through and across federal lands should be added to the list of permitted activities that the Secretary can make land available for.

Section 108

The present operation of the patent law and requirements make it impossible to risk going for a patent unless one is actually mining at a profit. At that point, why bother? What is important to the industry is long-term tenure and security for one's investment in the minerals. Patenting just the mineral and not the surface would provide that assurance. The time it take to put a mine into production makes this a long-term business that requires stability to function efficiently. A patent to the minerals only, would satisfy most of the arguments against patenting and still provide long term protection for the prospectors investment in the minerals.

TITLE II - Environmental Considerations

Section 201

(a) - I agree and let me add that I also think everyone should do the same. The present plethora of environmental laws federal, state and local do just that.

(b)(4) - This section will designate all federal lands off limits to mining until the Secretary opens them. But only after the

Secretary has made provision for a land use plan and that plan has withstood any "citizen" suits would one be able to even prospect any presently open federal land. Mineral exploration, even on existing claims, could be impossible for years. One can look to Alaska's next door neighbor, the Soviet Union, to see the economic and environmental disaster that planning has wrought.

(c) - Reclamation - I was part of the group of miners and environmentalists who worked with the alaska legislature and administration to develop a reclamation law. Reclamation is the law in alaska on all lands, federal, state and private. Requiring reclamation to a capability of supporting the previous condition is reasonable. However I don't believe that requiring reclamation to a higher or better use is fair or reasonable. It is wise to allow for such reclamation but not to require it.

(c)(2) - Standards - I see here the laundry list of requirements some reasonable and necessary and some that will form the basis for more citizen suits by anyone wishing to stop a mining operation, for whatever reason. In Alaska a standard that is appropriate in one part of the state will be impossible to meet in another. The plan of operations is the place to set the requirements. The standard has been set in the preceding section (1). The Congress would be wise to let the specific methods of achieving the standard be set at a level closer to the ground.

Section 202 - inspection and enforcement

(a)(1) - Mandated quarterly inspections could be an extreme hardship and possibly life threatening for the miner and government personnel in Alaska's winter. The frequency of inspection should be a function of the level and timing of the operating plan being inspected. This seems to me to be more of an operating policy and not of the level of the general land law.

(e) - Citizen suits - this paragraph is misnamed for one need not be a citizen to sue the Secretary. We are seeing this concept being proposed more frequently, especially in relation to the environment. This will be one of the main tools used by anti-development forces to stop any project by paralyzing the government which issues the permit. The much acclaimed environmental goal for the public lands of "mine free by ninety three" will be realized through citizen suits.

Section 203 - Land use plans

This section is in conflict with section 102 which says that mining claims may be located on "such lands and interests that were

open to the location of mining claims on the date of enactment of this Act". This section would require the Secretary to perform an environmental impact statement on any lands opened up for mineral location and will effectively close all federal lands to mineral entry under the guise of planning.

To open any lands the Secretary will have to run the gauntlet of citizen suits and study the lands to such an extent that only the most valuable of mineral deposits could withstand the costs and time involved. There are environmental groups and government agencies that routinely oppose any proposal for development. They demand that all possible, not just reasonably foreseeable, effects and consequences be studied and studied and analyzed in order to delay, frustrate, and kill the development proposal.

The Tongass National Forest is in the process of revising its forest plan. They have had a team working for over two years and are working on their second revision of the draft EIS. (Some members on the planning team joke about the perpetual planning process and it might be funny if it weren't so true and costing us all time and money.) The initial planning did not even consider minerals at all. It took intense pressure on the part of the mining community to even get the forest service to consider minerals as a prescription and part of the Tongass plan. Even so, they have only given minerals the most cursory of treatments and only in areas where proven reserves exist. They have ignored the mineral possibilities in the lesser explored areas of the Tongass, which under this proposed law will always remain unexplored.

(f) Withdrawal review - this is a most welcome concept to see proposed, but I believe it does not go far enough. Several areas in Southeast Alaska that I am personally familiar with are highly mineralized, have had a long mining history and yet were withdrawn as wilderness. The reports detailing the mineral potential of these areas were buried and ignored by the elements propounding their withdrawal. Uncontrolled mining existed in these areas before wilderness and yet they were still suitable for wilderness, ample evidence that mining and wilderness are not mutually exclusive. Modern mining with all of the controls that exist can be done in a manner that will not compromise wilderness in the long term and still provide the metals we need today. Over seventy-five percent of the federal land in alaska is already closed to mining.

It has been argued by Thomas Barrett in his pamphlet on self initiation that one impetus for many of the present withdrawals from mineral entry was to eliminate alienation of the land to citizens through patent. If we are to eliminate the patent then

that threat no longer exists and thus the need to exclude mining from these areas. I think it is not unreasonable that we examine all of our lands especially with the new controls on the industry proposed here.

Section 204 - Lands not open to mineral location

This will close even more land to exploration for minerals. The immediate effects will be the loss of the investment dollars and jobs that exploration spending brings to the economy. The full effects upon the nation will not be felt until even more of the minerals we depend upon are produced from foreign sources.

TITLE III - Abandoned Mine Reclamation

This is a good idea and hopefully will work provided that there is a pool of mining claims paying into the fund. For the fund to be successful the mining law must allow mining in this country. As drafted H.R. 918 will not be successful in this regard. If H.R. 918 is amended so that the mining industry can remain successful, then the fund can work. But what happens after the fund cleans up the past practices and reclaims all abandoned mines? Does this fund become a pot full of money looking for a problem or does the industry get some credit for cleaning up its mess, a mess that the entire nation shares in creating in the form of inexpensive metals.

TITLE IV - Fees and Discovery

Section 402 - User fees

Rent should be considered sufficient. This carte blanche invitation for bureaucracies to grow cannot help solve any problems of the nation.

Section 404(c) - Discovery

Here is another case where H.R. 918 is turning an ancient concept in mineral law completely around. Discovery has been defined by the large body of law around it. The prudent man test and the marketability test further restrict and define discovery in such a way as to limit severely the number of new patents issued. The federal lands, at least in Alaska, are not being converted to condominiums under the guise of the mining laws. The requirements to prove discovery today are such that it is virtually impossible for any but the most valuable of mineral deposits to go to patent. However, that patent helps to protect the huge financial risk that a miner must make to discover, define and develop a mineral

deposit. Discovery and patent to the minerals discovered are vital parts of a healthy mineral industry.

One can solve the problem of holding of mining claims prior to discovery by instituting a prospecting site as Alaska has done. The prospecting site gives the claimant exclusive rights to prospect within the confines of the prospecting site yet does not require discovery. A claim cannot be staked without discovery. On Alaska land a claim without discovery can be challanged by any one not just the state. The doctrine of Pedis possessio will not protect a claim without discovery on Alaska land.

(d) Interim period - this section forces a lot of work and expense upon the industry as well as the government. Relocating claims on the ground will be time consuming and seemingly needlessly as the legal description will control not the ground location. In areas where present claims exist sorting out the legal description and claim rights will be a legal and administrative nightmare.

I also have problems with changing the rules of a game after people have risked money, labor and time in providing minerals for our nation. After closely reviewing this bill I believe that ,to change in mining law systems and retain a mining industry, requires much more thought in an atmosphere of trying to solve the problems of mining on the public lands not confrontation.

7-LS1056\G
Luckhaupt
4/9/92

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 27 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS FRANK, Pearce, Shultz, Sturgulewski, Uehling, Halford, Collins

REPRESENTATIVES M.A.Miller, M.W.Miller, Sharp, G.Phillips

A RESOLUTION

Relating to support for the Mining Law of 1872.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the federal government is and will continue to be the largest landowner in the State of Alaska; and

WHEREAS 165,400,000 acres of federal Parks, Preserves, wildlife refuges, wilderness, and other federal land in Alaska are already closed to application of the Mining Law of 1872; and

WHEREAS 49,600,000 acres of federal land in Alaska are still open to mineral exploration and mining under the Mining Law of 1872; and

WHEREAS a healthy mining industry can provide new jobs in many remote parts of Alaska, jobs that are well-paying, year-round, and skilled; and

WHEREAS the Mining Law of 1872 has served our nation well since it was first enacted; and

WHEREAS the Mining Law of 1872 has been amended many times to accommodate changing conditions; and

WHEREAS amendments to specific portions of the Mining Law of 1872, such as increasing the patent fee, may be appropriate to accommodate changing conditions and ensure continued viable opportunities for mineral exploration and development; and

WHEREAS the Mining Law of 1872 is a land tenure law and the mining industry must comply with numerous state and federal laws concerning water and air quality, reclamation, land management, health and safety; and

WHEREAS if individuals and companies risk their time and money in search of economic mineral deposits, they must have a reasonable assurance that they will be able to mine the minerals they find; and

WHEREAS legislation pending before Congress, H.R. 918 and S.433, would fundamentally change the precepts of the Mining Law of 1872 and would significantly hinder or eliminate mining opportunities;

BE IT RESOLVED that the Alaska State Legislature supports the basic tenets of the Mining Law of 1872; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the United States Congress to continue to support the basic tenets of the Mining Law of 1872.

COPIES of this resolution shall be sent to the Honorable George Bush, President of the United States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives; the Honorable Manuel Lujan, Jr., Secretary of the Interior; the Honorable Edward Madigan, Secretary of Agriculture; the Honorable J. Bennett Johnston, Chair of the United States Senate Committee on Energy and Natural Resources; the Honorable George Miller, Chair of the House Interior and Insular Affairs Committee; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.