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HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 20, 1993

FURTHER REFERRALS:

Date of Committee Action: 2/7/94

The FINANCE Committee considered:

HB 132

HOUSE BILL NO. 132

EXTEND RESOURCE EXTRACTION PERMIT/LEASE

"An Act extending the time period of all permits issued by the state relating to the extraction or removal of resources if the holder of the permits is involved in litigation concerning the issuance or validity of any permit related to the extraction or removal."

RECOMMENDATIONS:

be replaced with CS HB 132 (FIN) the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note DNR; FSH; QAMG; DCED; DEC zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen Maclean</i> Maclean	<input checked="" type="checkbox"/>	<i>Tom Hoffman</i> Hoffman		<input checked="" type="checkbox"/>	
<i>Russell J. Larson</i> Larson	<input checked="" type="checkbox"/>				
<i>Mark Hanley</i> Hanley	<input checked="" type="checkbox"/>				
<i>Terry Martin</i> Martin	<input checked="" type="checkbox"/>				
<i>Paul Parnell</i> Parnell	<input checked="" type="checkbox"/>				
<i>Ben Grussendorf</i> Grussendorf	<input checked="" type="checkbox"/>				
<i>Mike Navarre</i> Navarre	<input checked="" type="checkbox"/>				
<i>Lay Brown</i> Brown	<input checked="" type="checkbox"/>				
<i>Tom Thernan</i> Thernan	<input checked="" type="checkbox"/>				
<i>Richard Rosta</i> Rosta	<input checked="" type="checkbox"/>				

Russell J. Larson *Eileen Maclean*
 CHAIRMAN'S SIGNATURE
 Larson Maclean

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 132 (FIN)

Revision Date: _____
Title: An act extending the time period of all permits issued by the state for resource extraction or removal

Dept. Affected: Fish and Game
BRU: Habitat and Restoration

Sponsor: Reps. Brice, Kott, James, Foster, MacLean
Requestor: House Finance

Component: Habitat
COMPONENT SERIAL NO. 486

Expenditures/Revenues	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: This measure requires a one-time dedication of staff and fiscal resources for adoption of implementing regulations.

Prepared By: Frank Rue *Frank Rue* Phone: 465-4105
 Division: Habitat and Restoration Date: 2/8/94
 Approved by Commissioner: *[Signature]*
 Agency: Alaska Department of Fish and Game Date: 2/8/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 132

Revision Date: 2/7/94
Title: Extending resource extraction permits
Sponsor: Representative Brice
Requestor: Representative Brice

Department Affected: Commerce and Economic Development
BRU: Mining
Component: Economic Development
COMPONENT SERIAL NO. _____

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MITIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Paul Fuhs, Commissioner
Division: Commissioner's Office

Phone: 465-2500
Date: _____

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 2/7/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 132

Revision Date: _____
Title: Extend Resource Extraction Permit/Lease
Sponsor: Representative Brice
Requestor: House Finance

Department Affected: Environmental Conservation
BRU: Environmental Quality
Component: Various

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MITIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: *[Signature]*
Division: Director TALS

Phone: 465-5010
Date: 2/8/94

Approved by Commissioner: *[Signature]* FOR
Agency: Department of Environmental Conservation

Date: 2/8/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB132 (FIN)

Revision Date: 7-Feb-94 Dept Affected: Natural Resources
 Title: "An Act extending the time period of all permits issued by the state relating to the extraction or..." BRU: Resource Development
 Sponsor: Representative Brice Component: Various
 Requestor: House Finance Committee Component Serial No. Various

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The intent of the bill is to acknowledge the impact of delays due to litigation on time limited activity authorization (permits).

Prepared by: Jerry Gallagher, Legislative Liaison Phone: 465-2400
 Division: Commissioner's Office Date: 7-Feb-94
 Approved by Commissioner: Harry A. Noah Date: 7-Feb-94
 Agency: Natural Resources

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Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Sponsor Statement for CSHB 132(JUD)

Many resource development projects in Alaska are delayed by time consuming litigation. These delays can not only drive up the costs of a project, they can kill it.

Most of the lawsuits filed on resource development projects are over federal permits. While the developer is tied up in court, the clock is still running on the state permits for the project. Even if the permit holder wins in court, the useful time span of state permits will be shortened or may even run out, requiring another round of permit applications and fees. The Alaska Minerals Commission and the Governor's Task Force on Regulatory Reform both recommend extensions of permits foreshortened by court proceedings.

CSHB 132(JUD) will help to fix this problem. All state issued permits relating to a resource extraction or removal project will be extended when the permit holder or issuing agency (state or federal) is sued over the issuance of a permit and the permit holder or agency wins in court. The state permits will then be extended by the amount of time lost to the lawsuit, not to exceed the original length of the permit. The state would not be able to impose a fee or charge for the extension.



119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Representative Tom Brice

ALASKA STATE LEGISLATURE

provided by Representative Tom Brice

Sectional Summary of CSHB 132 (JUD)

Section 1:

Adds a new section AS 46.35.300

(a) The state will extend the time period of all state issued resource extraction or removal permits under certain conditions:

(a)(1) The permit holder or issuing agency must be sued by a third party over a state or federal permit.

(a)(2) The permit holder must be prevented from operating by a court order from that lawsuit.

(a)(3) The permit holder or agency must win in court.

(a)(4) The permit holder must notify the state about the outcome of the proceedings.

(b) Any state permits related to that resource extraction or removal will be extended by the amount of time lost to the lawsuit.

(c) The permit holder would not have to pay additional fees for the extension.

(d) A permit is broadly defined to include a permit, lease, authorization, license or other necessary determination.

Section 2:

(a) Applies to all permits as defined in AS 46.35.300(d) affected by qualifying lawsuits after the effective date.

(b) Permit has the meaning of AS 46.35.300(d) in Sec. 1 above.



House Bill 182

The Department of Commerce and Economic Development supports passage of House Bill 182.

Resource developers are frequently faced with third-party legal challenges after they have received agency approvals for their projects. Permits are typically issued for a defined period of time. The usable term of a permit may be reduced or eliminated if a permittee is prohibited from operating under the permit by a court as the litigation proceeds. Even if the court rules in favor of the permittee, the permittee is damaged not only by the project delay, but also by the loss of operational time originally allowed under the permit.

This legislation eliminates the loss of operational time allowed a permittee under a permit which is issued by the state and is caused by legal actions initiated by persons other than the state.

House Bill 182 provides those who have successfully met the regulatory requirements of the state an assurance that the state will be aggressive in its support of the operational term of the permit. House Bill 182 also helps limit the utility of third-party use of the courts to impair the development of approved projects.

The effectiveness of this legislation could be improved by:

1. Defining "permit" to mean a permit, lease, authorization, license, or any other determination necessary for completion of a project.
2. Expanding the application beyond resource extraction or removal projects to include any type of development project, including infrastructure developments (ports, schools, etc.).


Paul Fuhs, Commissioner

3-25-93
Date

Back-up

ALASKA MINERALS COMMISSION

1993 Report to the Governor and Alaska State Legislature

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THE COMMISSION RECOMMENDS THAT:

14. *The Governor should direct the Commissioner of the Department of Natural Resources to take the necessary steps to allow Miscellaneous Land Use Permits to be issued for periods of up to 5 years.*

FINDING: There is currently a requirement that a best interest finding be made before an offshore prospecting permit (OPP) can be issued by the DNR. The process of generating a best interest finding is being used to restrict DNR from normal issuance of OPPs.

THE COMMISSION RECOMMENDS THAT:

15. *The Governor should direct the Commissioner of the Department of Natural Resources to review regulations governing offshore prospecting permits such that they not be required to be subject to best interest findings, being exempted in a manner similar to leases of land for onshore fishery sites, mineral claims or upland mining leases. A.S.38.05.035(e) should be changed by adding "(6) an offshore prospecting permit or lease issued under A.S.38.05.250."*

FINDING: The usable term of a permit may be reduced or eliminated when a permittee is prohibited from operating under their permit due to third party litigation challenging the issuance, validity, completeness or other aspects of the permit. Though the litigation may not be successful, the permittee has still been damaged. Statutory action should be taken to remedy this situation.

THE COMMISSION RECOMMENDS THAT:

16. *The Legislature should enact legislation creating an automatic extension of permits foreshortened by court proceedings.*

CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS

FINDING: The Citizens Advisory Commission on Federal Areas was established by the Alaska Legislature in 1981 shortly after the enactment of the Alaska National Interest Lands Conservation Act. The Commission is composed of 16 members, half of whom are appointed by the Governor and half by the Legislature, including four sitting legislators. The Commission analyzes federal legislation, regulations and management decisions, determines the impact of these actions on Alaska's citizens, and makes recommendations to both State and Federal agencies for corrective actions to problems identified.

Development of Federal lands and regulations for access across them is important to the State's economy. The Commission provides a valuable and cost-effective mechanism through which State concerns regarding management of all Federal lands can be expressed.

THE COMMISSION RECOMMENDS THAT:

17. *The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizen's Advisory Commission on Federal Areas.*

COASTAL ZONE MANAGEMENT

FINDING: Alaska Statute, Sec. 46.40.100 (b) does not allow applicants to petition the Coastal Policy Council when relief is sought on decisions made by the coastal resource district or state agency. The State administration is evaluating the role and functions of the Coastal Policy Council in relation to the power it has over decisions

FINAL REPORT
OF THE
GOVERNOR'S TASK FORCE
ON
REGULATORY REFORM

MARCH 19, 1993

SI 12. Eliminate all reference standards and requirement for turbidity for water. 18 AAC 70.020

The federal EPA maintains and requires no standards or references to water turbidity. This is a State of Alaska requirement. This particular requirement has caused massive costs to mining operations, and in many cases, has resulted in operation closures, for economic inability to meet the standards.

In a "common sense" test, it is illogical to require that miners return water to glacial silt streams of a turbidity quality not achieved by City of Fairbanks tap water.

The Task Force believes that a proposed ADEC regulation that requires users to return water to its source in a condition similar to that which exists upstream from the point of extraction will more than adequately address the real need and intent of the turbidity standard.

SI 13. The natural resource regulations should be amended to require an automatic extension of durable time for permits and other administrative decisions that are foreshortened by administrative appeals and or court actions. 11 AAC 02.new section

The net usable term of a permit or other delivered authorization may be reduced significantly or eliminated entirely when a person receiving authorization is prohibited from using it due to a third party intervention. Any third party may challenge administrative permits or decisions for a variety of reasons, and although litigation or other administrative remedies may not change the prior decision regarding a permit or authorization, a person may become damaged by the foreshortening of time guaranteed by the original approval. The process of intervention in these decisions currently is structured in favor of the challenger, with no equal footing supplied to the permittee even when they prevail in the dispute. Delays presented by these challenges can effectively deny an individual or business the right to provide a living for themselves and others, or even more devastating, cause the possible loss of a business investment.

SI 14. The Alaska Department of Environmental Conservation (ADEC) should amend the water quality regulations to allow the natural levels of contaminants and the physical properties of a receiving water to dictate which water quality criteria should be applied for a designated use category. 18 AAC 70.010 (c)

ADEC regulation 18 AAC 70.010(c) requires that "water with natural characteristics of higher quality than the water quality criteria for the use classes set out in 18 AAC 70.020 must be kept at existing quality...." This approach to water quality is called the ANTI DEGRADATION POLICY which is intended to limit the degree of human influence as a result of their actions. This policy does not, however, address the case of many Alaskan water bodies where the naturally occurring water quality is no where near its protected use class.



Charlie Boddy
Vice President Government Relations

.. March 23, 1993

Representative Tom Brice
Alaska State Legislature
Juneau, Alaska

HOUSE BILL NO. 132 - An Act Extending the Time Periods of Permits

Dear Representative Brice,

I wish to take this opportunity to thank you and your staff for keeping me apprised of the continuing work on this most important piece of legislation. I offer these comments and observations prior to your hearing schedule starting. For your reference, similar comments were included in a report forwarded to Governor Hickel as part of a task force report on regulatory reform.

The net usable term of a permit or other delivered authorization sometimes is reduced significantly or even eliminated entirely when a person or company is prohibited from using it due to some action by an intervening third party. Any third party may challenge administrative decisions regarding permits and other authorizations for a variety of frivolous reasons. A person or company can then become damaged by the foreshortening of durable time guaranteed by a permit or other authorization.

This legislation will provide for more equal footing by restoring the time guaranteed in the original approval. You have provided in this legislation a remedy to those who suffer monetary or other damage, a mechanism for recovery that has been sorely missing for many years. I am sure that others from the mining community will provide the committees numerous comments and examples of past problems.

If I can be of any assistance during hearing process, please don't hesitate to call. With best regards, I remain,



ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 278-7997 telephone: (907) 278-0347

March 26, 1993

Honorable William Williams
Chairman
House Resources Committee
Alaska State Legislature
Juneau, AK 99801-1182

Re: HB-132, An Act Extending The Time Period of Permits

Dear Representative Williams,

I am writing on behalf of the Alaska Miners Association in support of House Bill 132.

The cost of developing a mine or any other resource project in Alaska is significant and the potential problems are many. In particular, when a company decides to develop minerals in Alaska there are many challenges that are expected. These challenges include the lack of infrastructure, the climate, the difficulty of locating an economic ore deposit, the difficulty of obtaining the financing and finally the difficulty of obtaining all the myriad of permits. These challenges are part of the business.

There are however other impediments to developing a mine that are not based on the merits of the project. One such case is where third party suits are filed. Such suits and opposition are often based on a philosophical viewpoint that there should be no development in Alaska the "big park" or at least "not in my backyard". HB-132 seeks to address one aspect of this issue.

We see two important benefits associated with passage of this bill. The first and most obvious benefit is that although the project owner may be delayed, he will not lose the investment made in obtaining the necessary permits and will not run the risk of being forced to go through the permitting process before he has the opportunity to exercise the permits. If third party litigation against the project delays start-up until the term of the permits has lapsed, or nearly lapsed, the project owner would be forced to go through the permitting process again. This bill would require that the term of the permits be extended for whatever period the project owner was affected by the litigation.

The second benefit is less material but yet it may be even more important for the future of the State. This benefit is the in the message that such a bill will have for the international mining



ALASKA MINERS ASSOCIATION, INC.

industry. That message is that Alaska wants to see mineral development and that the State wants to change the negative image that continues to prevail in the industry.

There are two locations in the bill that should be modified. The first is on page one line 12. We would suggest the phrase be modified to read "...shall be extended by the agencies issuing the permits if the holder of the permits or an agency...". In most instances it is an agency involved in some aspect of issuing a permit that is the sued rather than the company receiving the permit. The suggested change would insure that the permits would be extended if an agency, in addition to the applicant, is sued.

The second modification is on page two line 19 where we would suggest referencing the existing definitions with the words "...all permits relating to resource extraction or removal as defined by 46.35.200(4) that are affected by litigation...". This minor modification will further clarify the applicability of this new Section 1.

Alaska is now in fierce competition for exploration and development funding with countries all around the world. Many countries are changing their laws for mining, investment, ownership of property, repatriation of profits and permitting to encourage minerals investment. We must also do everything practical and possible to improve the business climate or Alaska will not experience the mineral development and associated job creation that is otherwise possible.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Tom Brice

March 26, 1993

To: Representative Tom Brice

From: *C. C. Hawley - signed*
Chuck Hawley, Mining Geologist, # 300-941 E Dowling,
Anchorage, Ak 99518

Subject: H B 132, a bill to extend the time period for permits

This brief note is to support H B 132. It would be an important tool to support warranted development in Alaska.

My view is derived from the circumstances surrounding a project that I was involved in at Nyac, Alaska during the early 1980's, and still am involved in trying to clean up.

Briefly, Nyac is an important placer mining camp in Southwest Alaska, about 100 miles east of Bethel. It has been mined nearly continuously by bucket-line dredges and washing plants since 1928. In 1980, I was general partner in Northland Gold Dredging.

Our company leased mining claims at Nyac, and in 1980 rebuilt a dredge at a cost in excess of \$1,000,000. We operated in 1981 and 1982. In 1983, we began to repermit the operation so that we could move the dredge to the lower part of the reserves and begin a systematic "upstream" operation in the broad flood plain of the Tuluksak River. Mining "upstream" in a broad valley with a bucket line dredge, means that you have a bank of tailings below the operation that assists in filtering any effluent of the operation and protects downstream water quality.

We were successful, in a difficult two-year period, of obtaining the necessary permits to mine. The main permits came from Corps of Engineers, BLM, EPA, on the federal side and DEC and DFG on the State side. We also passed Coastal Zone consistency review.

After Northland received its permits, the agencies granting the permits were sued. Critical suits were in Federal Court against the BLM, and in State Court against a favorable Coastal Zone management decision. (Nyac was not in the coastal zone, but it could be construed that the operation might affect the coastal zone).

Although the lawsuits were never fully resolved, and indeed coastal zone was never heard, the ultimate result was that the project finally failed.

It would be inappropriate to say that a bill like H B 132 would have saved the project, because the circumstances were more complex. But at all times, we had difficulty holding our investment base, partly because of the uncertain nature of our permits after the conclusion of the lawsuits.

It appears that H B 132 would not have a negative environmental effect, because if lawsuits against the project were successful, the resolution of litigation should be that a project could be modified so that it accepts necessary and valid corrections.

Finally, I would like to express my appreciation to the committee for considering this legislation. It means that they are aware of the tremendous impediments to development that exist in Alaska. I believe the results at Nyc were not even close to a win-lose situation, let alone a win-win deal. No one won anything. The investors finally lost nearly \$3,000,000; southwest Alaska lost about 25-well paying jobs that would have been in existence for many years. The environmental work done over many years at Nyc shows that mining resulted in gains as well as loses to the biologic productivity of the region, but on balance gains from mining appear to at least equal any losses that could have occurred because of mining--so there was not even an environmental gain from killing the project.