

SB

159



ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 273-7997 telephone: (907) 276-0347

March 23, 1993

Honorable Mike Miller
Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99801-1182

Re: SB-159, Multiple Use & Administrative Mineral Closures of
Areas Larger Than 640 Acres

Dear Senator Miller,

I am writing on behalf of the Alaska Miners Association in support of Senate Bill 159. The practice of closing State lands to mineral entry and mineral leasing is a very important issue and we heartily endorse this bill that would place some reasonable restrictions on the ability of the Department of Natural Resources to make administrative mineral closures.

There are actually three mechanisms by which state lands can be closed to mineral entry and mineral leasing. First, the Legislature can pass bills to establish State parks, refuges, sanctuaries, recreation areas, etc. and in some instances these areas are closed to mineral entry. To date, more than 3.2 million acres have been closed to mineral development by Legislative action. This authority and prerogative is very rightly held by the Legislature.

The second mechanism for restricting mineral development is the application of Title 16 by ADF&G to areas where fisheries resources may be affected. The application of Title 16 applies to all activities on State lands, not just mining, and gives the ADF&G authority to insure that fisheries are not adversely affected.

The third mechanism is the use of administrative closures by the Department of Natural Resources. From the time of statehood until the mid or late 1970's, administrative closures of land to mineral entry and mining were limited to 640 acres (one section) or less. Then came a series of DNR commissioners who closed large areas of state lands to mineral entry with little or no justification. The statute requires a "finding of incompatibility" but this has been very broadly interpreted and abused. These closures were often the result of State Area Plans developed by DNR with massive pressure from groups and agencies that wanted to close State lands to development. To add insult to injury, some of these lands that have been closed administratively were actually selected by the State because of their mineral potential.

The enclosed Appendix A lists some examples where excessive mineral closures have been implemented under state area plans without Legislative action. In each of these examples administrative closures were used to close areas that could have been restricted on a case by case basis under Title 16 rather than simply placing the area totally off limits. State agencies and the industry can work out potential problems on a site specific basis. However, such administrative closures will mean that many companies will simply not go out in that area to explore and the minerals will never be found.

I would stress that the need for this bill is not attributable to actions of the current Administration. The Hickel Administration has generally used mineral



ALASKA MINERS ASSOCIATION, INC.

closures in the true spirit that was envisioned at the time of Statehood. If we could be certain that this attitude would continue in future administrations, then there would be no need for this legislation. However, that cannot be assured and legislation limiting administrative closures by the DNR is therefore necessary.

The challenge is to tighten the rules on DNR without making it impossible to make closures that are legitimate and justifiable. We need to stop massive mineral closures and still ensure that the requirement will not be too restrictive for DNR to do its job properly. We believe that by limiting administrative closures to 640 acres SB-159 makes the necessary changes. This limit does not apply where mineral closures are made for land disposals or infrastructure including ports, airports, roads, railroads, pipelines, and powerlines.

In conclusion, the changes proposed in this bill are needed to correct the problem of excessive closures of lands to mineral entry, and at the same time insure that legitimate closures are allowed in a way that is efficient for DNR. If this latter part was not included, state land disposals and infrastructure projects would require individual approval by the Legislature. This would be very cumbersome and inefficient.

Thank you for your consideration of this matter.

Sincerely,

Steven C. Borell, P.E.
Executive Director

enclosure

cc: Senator Steve Franl:

**ALASKA MINERS ASSOCIATION, INC.****Appendix A**

Examples of mineral closures implemented under state area plans.

1. Tanana Basin Area Plan

- 7,600 acres along the Nenana River from Rex to Healy.
- 21,440 acres in the area of Fielding Lake.

2. Northwest Area Plan

- 3,070 acres along 12 streams including a 200 foot upland buffer on either side of the streams.

3. Bristol Bay Area Plan

- Approximately 213,000 acres closed along 64 streams with a 200 foot upland buffer on either side of the streams. These closures were made irrespective of the facts that: the areas were not of highest fisheries value; Title 16 authority could have been used to place necessary restrictions for certain periods of the year; the area was known mineral terrain. To quote from the Bristol Bay Plan:

"The streams closed to new mineral entry by the plan are not necessarily the most productive from a fishery standpoint. They are however, the streams most likely to encounter mining pressure as a result of their location within or near identified mineral terrains."

4. Kuskokwim Area Plan

- 3,917 acres closed along 499.4 miles of streams including a 50 foot upland buffer on either side of the streams.

5. Copper River Basin Area Plan

- 108,000 acres closed along 24 rivers, streams, and lakes including a 200 foot upland buffer on either side of the streams.



USIBELLI COAL MINE, INC.

MARKETING

122 First Avenue, Suite 302

Fairbanks, Alaska 99701

(907) 452-2625 FAX (907) 451-6543

March 19, 1993

RECEIVED
MARCH 21 1993

Senator Steve Frank
State Senate
State Capitol
Juneau, Alaska 99801

Dear Senator Frank:

On behalf of Usibelli Coal Mine, Inc., I would like to offer support for passage of SB159. The bill will assure that closure of large acreage's of state lands will not be done without the review and consent of the legislature. This will satisfy both the spirit and intent of Alaska's multiple-use statutes.

As we look to the future, maintaining a land base for multiple-use including mineral development will be critical to the state's economic health. Passage of SB159 will be an important step in assuring our multiple-use lands remain available for economic development.

Sincerely,

A handwritten signature in black ink, appearing to read "John Sims", written over a faint circular stamp.

John Sims

Vice President Marketing

JS/me

Charles B. Green
P.O. Box 71805
Fairbanks, Alaska 99707

March 19, 1993

Senator Steve Frank
State Senate
State Capitol
Juneau, Alaska 99801

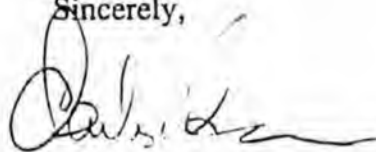
Dear Senator Frank:

I would like to express my appreciation to you and to your co-sponsors for introducing SB159 and would like to offer support for its passage.

As a member of the Alaska Minerals Commission and a 20 year resident of the state who has been involved in mining and resource development for most of that time, I cannot over emphasize the importance of maintaining a true multiple-use land base. This is especially important at a time when there will be increasing pressure to restrict and close Alaska's federal lands to mineral development.

The economic benefits of mineral development will become increasingly important to Alaska's economy. It is critical that closures to mineral development should be minimized and only be undertaken with the consent of the legislature.

Sincerely,



Charlie Green

CG/me

Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate

SPONSOR STATEMENT FOR SB 159

TO: Senator Mike Miller, Chairman
Senate Resources Committee

FROM: Senator Steve Frank, Co-Chairman
Senate Finance Committee

DATE: 15 March, 1993

A handwritten signature in black ink, appearing to be "Steve Frank", written over the "FROM:" line.

SB 159, the companion bill to HB 213, addresses one of the recommendations found in the 1993 Alaska Minerals Commission report. Namely, this bill would amend AS 38.05.300(a) to prohibit the commissioner of natural resources from classifying state land, water, or land and water so that mining, mineral entry and location, mineral prospecting, and/or mineral leasing are precluded or are designated an incompatible use without an act of the legislature if the area involved contains more than 640 acres (except in certain situations).

Currently, Title 38 prohibits such land closure to "multiple purpose use." In the past, this phrase has been subject to interpretation which has at times precluded mineral exploration and development. As a response, the net effect of SB 159 would be to re-establish the original, inclusive concept of multiple use as the basis for state land classification and management (i.e., multiple use should not be construed to exclude competing uses that are compatible).

The change proposed by SB 159 would appear to be both timely and necessary, and I strongly encourage your support.

FISCAL NOTE

STATE OF ALASKA 1993 LEGISLATIVE SESSION

BILL NO. SB159

Revision Date Original Department Affected: Natural Resources

Title: "An Act prohibiting the commissioner from BRU: Resource Development

precluding mining if the area involved contains more than.. Components: Land Development

Sponsor: Frank, Sharp, Miller, Pearce, Taylor, Halford

Requestor: Senate Resources Component Serial No. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE fund source:	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year (FY93) impact: \$ No fiscal impact anticipated

ANALYSIS: (Attach a separate page if necessary)
 Requires legislative approval of any administrative order closing more than 640 acres of land in an area to mining except when related to land disposal or for the development of utility or transportation corridors. The department does submit an annual report to the legislature which identifies such closing orders. This report shows annual and cumulative land classification and mineral orders. Requiring legislative approval of all mineral orders over 640 acres will result in delays in proper land management. Perhaps if the legislature wants to review and approve all land actions the language of the bill should be changed to have the classification automatically take affect unless the legislature takes some positive action to void the classification within a specified time period.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Development Date: 15-Mar-93
 Approved by Commissioner: Glenn A. Olds *Elizabeth Auerbach* Date: 15-Mar-93
 Agency: Department of Natural Resources

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Sec. 38.05.290. Selection practice. (a) The selection of grant, lieu and indemnity land shall conform to this chapter and the policy, orders and regulations adopted by the commissioner. The commissioner shall give preference of selection to the land which will provide the maximum benefits to the people of the state.

(b) Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.65 or former AS 29.18.201 — 29.18.213. (§ 1 art XI ch 169 SLA 1959; am § 4 ch 180 SLA 1978; am § 58 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment inserted "AS 29.65 or former" near the end of subsection (b). **Collateral references.** — 63A Am. Jur. 2d, Public Lands, §§ 113 to 121.

Article 10. Parks and Recreation Areas.

Section

295. Parks and recreation areas

Sec. 38.05.295. Parks and recreation areas. The commissioner shall establish a policy and adopt regulations by which parks and recreation areas, including public scenic overlooks and cultural sites, shall be developed and managed in a manner that will best serve the interests of the people of the state. The commissioner may classify public land as parks, scenic overlooks, cultural sites and recreation areas as long as the general intent of this chapter is maintained. (§ 1 art XII ch 169 SLA 1959)

Collateral references. — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 1 et seq.; 63A Am. Jur. 2d, Public Lands, § 1 et seq. **Uses to which park property may be devoted; power of legislature or state officers,** 18 ALR 1266; 63 ALR 484; 144 ALR 486.
73A C.J.S., Public Lands, § 1 et seq.

Article 11. Classification of Land.

Section

300. Classification of land
321. Restriction on sale, lease or other disposal of agricultural land

Sec. 38.05.300. Classification of land. (a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state

legislature, be closed to multiple purpose use if the area involved contains more than 640 acres.

(b) Not later than February 1 of each year, the commissioner shall submit a written report to each house of the legislature which describes and shows the location of all classifications of state land made under (a) of this section during the preceding year. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964; am §§ 33, 34 ch 85 SLA 1979; am § 40 ch 152 SLA 1984)

Cross references. — For state land and water restricted to use as public recreation areas and state parks, see AS 41.21.

Editor's notes. — Section 16, ch. 75, SLA 1987, provides that "[l]and that was classified for disposal or other purposes before August 29, 1986, remains subject to the classification order in effect on that date until the land is reclassified under AS 38.04.065, as amended by §§ 1 — 7 of this Act (ch. 75, SLA 1987), and AS 38.05.300."

Section 17, ch. 75, SLA 1987 provides that "[a] land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(b)(6), made before June 16, 1987, under a classification order under AS 38.05.300 is valid, notwithstanding the adoption of the classification order before the adoption of the regional land use plan, if other requirements of law were met."

NOTES TO DECISIONS

Department of Natural Resources agricultural classification of lottery parcels proper. — The requirement that an act of the legislature is required where multiple purposes are closed in parcels exceeding 640 acres applied to the management of retained state land, not the disposal of it; thus, Department of Natural

Resources agricultural classification of lottery parcels was proper, even though it did foreclose multiple purposes. *State v. Weidner*, 684 P.2d 103 (Alaska 1984).

Quoted in *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544 (Alaska 1983).

Sec. 38.05.301. [Renumbered as AS 38.05.830.]

Sec. 38.05.305. Notice and review. [Repealed, § 45 ch 113 SLA 1981. For current law see AS 38.05.945.]

Sec. 38.05.310. [Renumbered as AS 38.05.840.]

Sec. 38.05.315. [Renumbered as AS 38.05.810.]

Sec. 38.05.320. [Renumbered as AS 38.05.820.]

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

DRAFT
State Lands Withdrawn
from Mineral Entry
by
Legislation or Administrative Action

A Report to the Division of Mining
Department of Natural Resources

ASR 90-0018

C. C. Hawley
April 30, 1990

Hawley Resource Group, Inc.
Anchorage, Alaska

#300, 941 E. Dowling
Fx 562-7284

Hawley Report Summary

procedural difficulties in first, not quantifying buffer procedures that will be used, and second, in not rectifying text and maps so that each indicates the same acreage. According to the plats, the acreage opened is about 28,000 not 42,000 acres. This type of action sets up a "Tract Book" problem, where text not book should rule.

Perhaps this issue could be resolved by using a buffer of mineral leasehold locations. At the least a time should be specified for surveying and correcting the text and graphic records.

CONCLUSIONS AND RECOMMENDATIONS

A substantial amount, about 8.5 million acres or about 10 percent of the state's land has been closed to mineral location. Only about 3 million acres of this total are closed by legislation. Because of loose definitions and problems raised by apparent incompatibility of uses, there appears to be potential to administratively close extensive acreage. Because of this it is timely to review 38.05.300 and establish guidelines for closures.

Closures should be reviewed periodically both to see if the reason for the closure still exists and also to see if there has been a change in knowledge of resource base that justifies reconsideration.

Although mineral potential is very difficult to assess, nevertheless there are procedures for determining mineral potential, and it is proposed that all large tracts proposed for either legislative or administrative closure be reviewed and, in many cases, studied in the field before an action is taken.

ACKNOWLEDGEMENTS

Many people in and out of state government furnished information or clarified policy during different administrations. Various parts of the report, including the interpretation of 38.05.000 were discussed with former Commissioners of Natural Resources Phil Holdsworth, C. F. Herbert, John Katz, and Esther Wunnicke, named chronologically in their service to the state.

Larry Bullis in the Department of Land and Waters keeps track of MCO-MOO (orders) for the Southcentral District and coordinates the sequence of numbers statewide. Larry has maintained these records for many years, and was always helpful in understanding the records. Bob Craig in the northcentral office helped on the northern land orders and specifically about the confused status of pipeline acreage. The office of Status Graphics in DNR in Anchorage also tracks orders statewide and Bud May, who has recently retired, was knowledgeable and helpful about orders in his section. John Wiles of the Division of Parks and Bob Stuvic

of Division of Mining furnished information used in the report.

REFERENCES CITED

DNR, Division of Land and Water Management (Gary C. Stein and others), 1987, Promised Land: A history of Alaska's Selection of its Congressional Land Grants: Special Publication, DNR, 250 p. issued May 1987

Leshy, John, 1987, The Mining Law; a Study in Perpetual Motion: Resources for the Future, Washington, D. C.

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