

SB

213

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/12/98

FURTHER: Finance

Date of 5-Day Notice: 2/12/98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/18/97

Resources Committee considered SENATE BILL NO. 213

"An Act extending the termination date of the Alaska Minerals Commission."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING/DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Drew D. Leman</i>	✓				
<i>Christine Taylor</i>	✓				
<i>Lynne Green</i>	✓				
<i>Bert...</i>	✓				
CHAIR: <i>Rich Halford</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>DCED</i>	<i>2/13</i>	<i>X</i>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



SENATOR JIM DUNCAN
ALASKA STATE LEGISLATURE

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax 465-4748

January 15, 1998

SPONSOR STATEMENT

**SB 213, Extending Terminal Date
Alaska Minerals Commission**

The State of Alaska has a wealth of mineral deposits and mines. The total value of the minerals industry increased 23% in 1996 alone, to a record \$1,029 million - the first time that the industry has exceeded the \$1 billion dollar mark in a single year. It is estimated that the total value of the industry will continue to grow with proper management.

The Alaska Minerals Commission is composed of 11 members who are experts in various aspects of the minerals industry. The Governor appoints five members and the President of the Senate and the Speaker of the House each appoint three members to the commission.

The Alaska Minerals Commission, established under the Department of Commerce and Economic Development, makes recommendations to the Governor and the Legislature concerning appropriate mineral development within the state. The Commission also makes recommendations on ways to mitigate governmental constraints on development.

The Alaska Minerals Commission is necessary to the continuing prosperity of the minerals industry. Presently, the Alaska Minerals Commission will be dissolved in January 1999. SB 213 extends the termination date of the Commission to February 1, 2004.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 213 | _____

Revision Date (Note if correction) _____	Dept. Affected <u>DCED</u>
Title <u>Extend the Alaska Minerals Commission</u>	BRU <u>Trade & Development</u>
	Component <u>Trade & Development</u>
Sponsor <u>Sen. Duncan</u>	
Requester <u>Senate Resources Committee</u>	Component Serial No. <u>2277</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Minerals Commission has annual expenditures of approximately \$6,700 for ongoing administrative costs, based on funds spent in FY97. The expenditures include travel, per diem, meeting expenses, preparation and printing of the annual report. The projected expenses are included in DCED's proposed FY99 operating budget.

Prepared by Karl Ohls
 Division Trade & Development
 Approved by Commissioner _____
 Agency Trade & Development

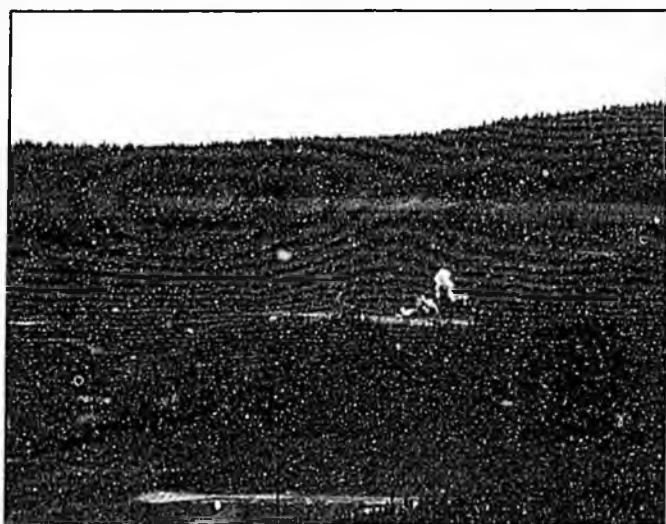
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REPORT OF THE

Alaska Minerals Commission



The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.



**JANUARY
1998**

ALASKA MINERALS COMMISSION

DECEMBER 1997

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FOREWORD

The Alaska Minerals Commission again wishes to thank the Governor and the Legislature for implementing several of our recommendations during 1997. Highlights include final resolution of the Mental Health Lands Trust issue, assertion of State's rights on an RS2477 right-of-way, efforts to establish 50 ppb as the appropriate water quality standard for arsenic, completion of a centralized, digitized, repository of navigability information, and continued funding for the very popular Airborne Geophysical Surveys, the Citizen's Advisory Commission of Federal Areas and the AMEREF program. Partly as a result of the responsive actions of the Governor and the Legislature over the last few years, the global mining industry presently considers Alaska a favorable place to do business and is demonstrating its growth potential.

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission has presented reports to the Governor and Legislature annually since January, 1987, and is authorized to do so until January, 1999. Commission members are appointed by the Governor, the President of the Senate, and the Speaker of the House. The current members include representatives of the placer, hard rock, and coal mining industries and come from diverse areas of the state.

During 1997, the Commission held meetings in Fairbanks and Anchorage, and several members met with the Governor, Commissioners of various departments, the President of the Senate, the Speaker of the House, and with legislative committees in Juneau. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, this report contains background information, or "findings," on each issue, followed by the related recommendation. These have been grouped into a Part A which deals with issues that are mainly State issues, and a Part B which are federal issues which affect the State and can be influenced by State participation.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, to the Alaska Miners Association, the Resource Development Council, and to the many government agencies and private organizations that contributed to the preparation of the report. The Commission wishes to thank Commissioner William L. Hensley of the Department of Commerce and Economic Development and Karl Ohls, Dick Swainbank, and Al Clough of the Division of Trade and Development who have provided excellent administrative and professional support to the Commission. We regret the resignation of Al Clough, who has moved on to help close the A-J Mine, and wish him well in his new career.

Dr. Earl Beistline resigned from the Commission in April 1997, after having resigned his chairmanship, which he held from the inception of the Commission in 1986 until September 1996. All who worked with him recognize his guidance of the body, and many of the accomplishments of the Alaska Minerals Commission would not have been possible without his wisdom and tenacity. This issue of the report is a tribute to a truly dedicated Alaskan miner.

Irene Anderson
Chair

**ALASKA MINERALS COMMISSION
1998 REPORT TO THE GOVERNOR
AND ALASKA STATE LEGISLATURE**

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EXECUTIVE SUMMARY

Industry Overview

Alaska's mining industry experienced substantial growth during 1997 as both Fort Knox near Fairbanks and Illinois Creek near Galena matured from development operations into commercial production. Together, these two mines are expected to produce about 420,000 ounces of gold, worth approximately \$125 million, each year.

Greens Creek, west of Juneau, resumed full production in 1997, and a \$183 million expansion continued at the giant Red Dog zinc mine near Kotzebue. For the first time since startup in 1989, higher metals prices and successful operations occurred simultaneously, propelling Red Dog to solid profitability. The Nixon Fork mine near McGrath expanded its tailings impoundment to allow for continued production. Usibelli Coal Mine near Healy upgraded major earth-moving equipment. Together, these projects have created several hundred well paid private sector jobs, many of which are in rural areas. Placer mining continues to be a viable industry with permits issued to 210 operations in 1997.

The Kensington property north of Juneau obtained most permits necessary for construction, and exciting properties such as Niblack on Prince of Wales Island, True North near Fairbanks, Pogo near Big Delta, and Donlin Creek 80 miles southwest of McGrath will see substantial additional exploration to define potential ore bodies. With recent activity at the Nikolai prospect near Paxon, at the Rainbow Hill and Golden Zone near Cantwell and the Delta belt near Tok, these projects offer potential for additional jobs statewide.

The State Division of Geological & Geophysical Surveys contracted for airborne geophysical surveys of the Ruby-Poorman area and the Iron Creek area of the Talkeetna Mountains, all of which are highly mineralized, and it is hoped that these surveys will attract exploration investment in the coming year, as have the surveys of previous years.

Preliminary estimates of the value of the industry in 1997 are that there will be a modest increase over the \$1.03 billion achieved in 1996, with about \$51 million invested in exploration, \$152 million in development at Red Dog, Fort Knox, and Kensington, and the value of production estimated to be about \$885 million, for a \$1.09 billion total.

RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

USER FEES

- 1 (a) Long-term, the State needs to move toward paying for essential public services out of general fund revenue instead of assessing user fees at all levels of government. This will keep the budgetary process public, allow the public to establish priorities, and remove the inherent conflict of interest between efficient permit processing and agency hourly fees.
- (b) Short term, the Legislature should amend AS 41.46.025 to require public review and legislative approval of all fees affecting the mining industry. Proposed fees shall include a detailed schedule justifying the applicable direct costs of inspections, permit preparation and administration, plan review and approval, and other services provided by the department that are to be paid for by the proposed fee. In no event should the proposed fee exceed those costs reasonably necessary to cover the direct costs of the above.

GEOPHYSICAL AND GEOLOGIC MAPPING

- 2 The Governor and the Legislature should invest \$5 million per year (approximately 10% of what industry spent on exploration in 1997) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.

COASTAL ZONE MANAGEMENT

- 3 During any efforts to streamline the Coastal Zone Management Program, the Governor and Legislature should ensure that the following key provisions are incorporated:
 - (a) The jurisdiction of the coastal zone should be limited to those regions defined as wetlands, beaches, islands, waters under saline influence, transitional and intertidal areas, and not to include anadromous fish streams.
 - (b) There must only be a single notice, public comment, and appeal procedure, and
 - (c) The Department of Natural Resources should remain the lead agency for all mining related actions on a statewide basis, including within the coastal zone.

RECORDERS OFFICE TECHNOLOGY UPGRADE

- 4 The Governor and Legislature should pass portions of the House Bill No. 165 and Senate Bill No. 107 which provide funding for a comprehensive new recording/indexing/cashiering/imaging system for the State's Recording Offices.

DIMINUTIVE DISCHARGE

- 5 The Alaska Legislature should amend AS 46.03.100 to exempt mining waste rock from requiring a State Waste Disposal Permit, thereby ensuring correct interpretation of the existing regulation at 18 AAC 60.005(b)(8). The definition of mining waste rock shall include the presence of incidental materials, including residues from explosives, drilling fluids and cuttings, timber, and steel, that are an essential and unavoidable part of blasting. Discharges from waste rock shall remain subject to federal NPDES and stormwater regulations and State 401 Certification water discharge permit requirements as appropriate.

MIXING ZONES

- 6 The Governor should direct the Department of Environmental Conservation and the Department of Fish & Game to work with user groups to develop mixing zone regulations that will, in the departments discretion, authorize mixing zones in spawning areas if:
 - (a) the discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or
 - (b) the discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the Department of Fish and Game has approved a plan to mitigate all reasonably anticipated adverse impacts.

NATURAL CONDITIONS

- 7 The Legislature should adopt a Statute to supplant the regulation at 18 AAC 70.025 to the effect: "If available evidence reasonably demonstrates that the natural condition of a body of water does not meet standards that would otherwise be applicable to the classification of the water, then the natural condition of the water shall constitute the applicable standard of quality."

BASELINE DATA

- 8 The Governor should direct the Department of Environmental Conservation to work with industry to develop priorities for basic research on topics important to Alaska, such as arsenic toxicity, total dissolved solids and pH, and to develop plans for funding this basic research.

NPDES PRIMACY

- 9 The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to develop a plan for assuming primacy of the National Pollutant Discharge Elimination System (NPDES) program, and the Legislature should provide the necessary funding to ADEC to support this effort.

MARKETING ALASKA

- 10 The Governor and Legislature should provide adequate budgetary support to maintain the positions and programs of the Division of Trade and Development, the Division of Mining & Water Management, and the Division of Geological & Geophysical Surveys.

LEAD AGENCY

- 11 The Governor, by Executive Order, and the Legislature, by Resolution, should direct agencies such as the Department of Environmental Conservation, the Department of Fish & Game, and the Division of Governmental Coordination to confer with the mineral experts in the Department of Natural Resources before promulgating rules or regulations affecting mining as per A.S. 27.05.010(b).

FISCAL REQUIREMENTS

- 12 The Legislature should continue to provide funding for the Recorders Offices and the Division of Motor Vehicles offices statewide so that they can operate without reduction of services.

RS2477 ACCESS

- 13 The Legislature should fund a multi-year, multi-agency Capital Project of about \$300,000 annually for the Division of Land to work with the Department of Law and other agencies to aggressively pursue precedent-setting "quiet title" actions, and to preserve State's rights. The Governor should aggressively assert "quiet title" to the routes with the best documentation. Further the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.

NAVIGABILITY

- 14 The Legislature should make funding available to continue a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should be made available to the Department of Law to support any "quiet title" actions necessary to secure ownership of submerged lands.

SCHOOL OF MINERAL ENGINEERING

- 15 The Governor and Legislature should provide adequate budgetary support to the UAF School of Mineral Engineering.

EDUCATION AND RESEARCH

- 16 The Governor and the Legislature should appropriate \$50,000 to the Division of Educational Support, Minerals and Energy Education Program, as the State's share of supporting the Alaska Mineral and Energy Resource Education Fund (AMEREF).

CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS

- 17 The Governor and Legislature should extend the life of the Citizens Advisory Commission on Federal Areas for a further 5 years and provide expanded budgetary and programmatic support.

THE ALASKA MINERALS COMMISSION

- 18 The Governor and the Legislature should extend the term of the Alaska Minerals Commission and provide funding through February 1, 2004.

PART B: FEDERAL ISSUES OF STATE CONCERN

ANILCA PROVISIONS

- 19 The Governor and Legislature, through the Attorney General's office, the State's Washington office, and the Congressional Delegation should insist that the federal administration:
- (a) provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA),
 - (b) prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA, and
 - (c) exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

INTERNATIONAL PARKS IN ALASKA

- 20 The Governor and Legislature should continue to support legislation proposed by Alaska's Congressional Delegation that protects state's and private citizen's rights from imposition of World Heritage Sites, Biosphere Reserves, International Parks or other restrictive designations of federal lands without participation by affected citizens, local and state governments or Congress.

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

USER FEES

FINDING 1. As State revenues decline, agencies with the authority to assess fees will predictably attempt to both increase and broaden the scope of those fees in an act of budgetary self-preservation. Unfortunately, this system provides no meaningful incentive for the agency to minimize these costs to the regulated community. There is an inherent conflict of interest in asking for timely permit reviews from agency personnel whose jobs depend upon hourly billings for the given review, and unlike the free market, the regulated community cannot take its business elsewhere.

Alaska cannot afford such an irresponsible process, especially when regulatory stability is a key element in marketing Alaska as an attractive and competitive place to do business. The citizens and businesses of Alaska deserve an open budgetary process that includes legislative oversight and that clearly details the relationship between user fees and agency expenditures.

COMMISSION RECOMMENDATIONS

- 1a** *Long-term, the State needs to move toward paying for essential public services out of general fund revenue instead of assessing user fees at all levels of government. This will keep the budgetary process public, allow the public to establish priorities, and remove the inherent conflict of interest between efficient permit processing and agency hourly fees.*
- 1b** *Short term, the Legislature should amend AS 44.46.025 to require public review and legislative approval of all fees affecting the mining industry. Proposed fees shall include a detailed schedule justifying the applicable direct costs of inspections, permit preparation and administration, plan review and approval, and other services provided by the department that are to be paid for by the proposed fee. In no event should the proposed fee exceed those costs reasonably necessary to cover the direct costs of the above.*

GEOPHYSICAL AND GEOLOGICAL MAPPING

FINDING 2. Since 1993, 12 state funded airborne geophysical surveys have covered about 5,000 square miles of the State of Alaska's 162,500 square mile land entitlement, at a total cost of about \$2.3 million.

One such survey in the Fairbanks district cost \$300,000, and since the results were released in 1995 the number of mining claims has doubled, and more than \$10 million has been spent exploring just the new claims. Further major investments are expected in the coming years. Information compiled by the Alaska Division of Mining & Water Management indicates that at least 65% of the \$35 million claimed by companies under the Exploration Incentives Credit are for Alaskan goods and services.

As a result of the airborne surveys, most of the Nome and Circle survey areas are now staked, and increased activity is reported in the Marley-Rampart, Yentna and Chulitna survey areas.

This increased activity was the intent of the surveys and will accelerate discovery of new Alaskan mines. However, with a landbase of 162,500 square miles, much of it chosen for its mineral potential, it will take the State of Alaska another 75 years to survey only 50% of its land endowment at the present rate of funding.

COMMISSION RECOMMENDATIONS

- 2** *The Governor and the Legislature should invest \$5 million per year (approximately 10% of what industry spent on exploration in 1997) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.*

COASTAL ZONE MANAGEMENT

FINDING 3. As presently implemented, the Coastal Zone Management program is not an efficient means of permitting necessary development activities in Alaska. The present jurisdiction of the "coastal zone" extends so far inland that an unnecessary level of bureaucracy is created in regions that have little to do with the marine environment.

In many cases the Coastal Management boundaries are many miles inland based on the Alaska Department of Fish & Game (ADF&G) boundary studies of the early 1980's which defined "zones of direct interaction" and "direct influence" that included transitional and intertidal areas; salt marshes and wetlands; islands; beaches; and water under tidal influence, **including areas where anadromous fish, such as salmon, migrate upstream to spawn.** These areas were mapped with the intent that Coastal Management Programs do detailed resource inventories in order to redefine coastal zone boundaries. In some cases, over a decade later, fish (trout and grayling) streams 85 miles from the coast are still within the coastal zone boundaries, with no studies done nor any changes made to the boundaries. The ADF&G and Department of Environmental Conservation already have authority to restrict uses of waterways (including waters that support anadromous fish) for resource development activities without this additional inland boundary.

The present Coastal Zone Management program creates a duplicative appeal process that allows the same issues to be challenged at two different stages of the process. This creates unnecessary delays and adds needless uncertainty during the permitting of any project. Both the Governor and the Legislature have recognized some of the shortcomings of the Coastal Zone Management programs, and have recommended various solutions. The key points that must be incorporated into any final solution are detailed below.

COMMISSION RECOMMENDATIONS

- 3** *During any efforts to streamline the Coastal Zone Management Program, the Governor and Legislature should ensure that the following key provisions are incorporated:*
- a** *The jurisdiction of the coastal zone should be limited to those regions defined as wetlands, beaches, islands, waters under saline influence, transitional and intertidal areas, and not to include anadromous fish streams.*
 - b** *There must only be a single notice, public comment, and appeal procedure, and*
 - c** *The Department of Natural Resources should remain the lead agency for all mining related actions on a statewide basis, including within the coastal zone.*

RECORDERS OFFICE TECHNOLOGY UPGRADE

FINDING 4. Modern technological improvements in imaging systems and computer systems make significant improvements in information management, search and retrieval, and document handling. In order for the Alaska Recorders Office to cost-effectively fulfill its function in government, an upgrade with state-of-the-art hardware, software and procedures is necessary. This upgrade will benefit all users

by providing faster service, more complete search results, and ease of obtaining copies of recorded documents. Access to the system by the World Wide Web is also a possibility further expanding the accessibility of recorded documents.

COMMISSION RECOMMENDATIONS

- 4 *The Governor and Legislature should pass portions of the House Bill No. 165 and Senate Bill No. 107 which provide funding for a comprehensive new recording/indexing/cashiering/imaging system for the State's Recording Offices.*

DIMINUTIVE DISCHARGE

FINDING 5. In order to access valuable ore, mining operations must drill, blast, excavate and stockpile large amounts of waste rock. This waste rock contains diminutive quantities of mining related materials such as steel, timbers, drill cuttings, and residues from explosives. Discharge from the waste rock stockpiles are regulated under the federal National Pollutant Discharge Elimination System, federal stormwater discharge regulations, and State of Alaska 401 Certification authority. In order to avoid duplicative permitting requirements, mine waste rock is specifically exempted under 18 AAC 60.005(b)(8) from requiring a State Solid Waste Disposal permit. Federal law also exempts mine waste rock from federal solid waste permitting requirements.

Recently, some state agencies have implied that, despite the specific exemption in state regulations, mine waste rock is not exempt from state solid waste permitting requirements if it contains small quantities of mining related materials. This misinterpretation is a flagrant abuse of governmental power, as it is impossible to break rock without some diminutive quantities of mining related materials remaining in the broken rock.

COMMISSION RECOMMENDATIONS

- 5 *The Alaska Legislature should amend AS 46.03.100 to exempt mining waste rock from requiring a State Waste Disposal Permit, thereby ensuring correct interpretation of the existing regulation at 18 AAC 60.005(b)(8). The definition of mining waste rock shall include the presence of incidental materials, including residues from explosives, drilling fluids and cuttings, timber, and steel, that are an essential and unavoidable part of blasting. Discharges from waste rock shall remain subject to federal NPDES and stormwater regulations and State 401 Certification water discharge permit requirements as appropriate.*

MIXING ZONES

FINDING 6. The water quality regulations that became effective in November contain a prohibition against mixing zones in anadromous or resident fish spawning areas. This strict prohibition precludes the ability to consider site specific conditions, such as the productivity of the spawning area compared to the potential benefit of a municipal waste treatment plant or industrial project that might require a mixing zone. Without any flexibility in the regulation, many projects that could significantly improve the health and welfare of people throughout Alaska may be precluded due to the widespread presence of spawning fish, including resident fish. Prior to promulgation of the latest mixing zone regulations, the Department of Environmental Conservation considered language that could have allowed such mixing zones if either the discharge had no adverse effect on spawning or all reasonably anticipated adverse impacts were mitigated to the satisfaction of the Department of Fish and Game. This type of discretionary flexibility needs to be incorporated in the regulations so that future projects that may be beneficial are not automatically prohibited.

COMMISSION RECOMMENDATIONS

- 6** *The Governor should direct the Department of Environmental Conservation and the Department of Fish & Game to work with user groups to develop mixing zone regulations that will, in the departments discretion, authorize mixing zones in spawning areas if:*
- a** *the discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or*
 - b** *the discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the Department of Fish and Game has approved a plan to mitigate all reasonably anticipated adverse impacts.*

NATURAL CONDITIONS

FINDING 7. When a waterbody naturally exceeds the state water quality standard that would otherwise apply, the Clean Water Act provides that the States may develop site-specific water quality criteria. Unfortunately Alaska's water quality regulations at 18 AAC 70.025 are poorly written, and do not take advantage of this flexibility. Currently, natural conditions can be used to develop site-specific criteria as long as the water quality of the waterbody meets the standards before considering the natural condition. This is a circuitous argument that defies interpretation and precludes meaningful use of site-specific criteria.

COMMISSION RECOMMENDATIONS

- 7** *The Legislature should adopt a Statute to supplant the regulation at 18 AAC 70.025 to the effect: "If available evidence reasonably demonstrates that the natural condition of a body of water does not meet standards that would otherwise be applicable to the classification of the water, then the natural condition of the water shall constitute the applicable standard of quality."*

BASELINE DATA^o

FINDING 8. Water quality regulation in Alaska is growing increasingly complex. Often, the Department of Environmental Conservation is required to make decisions about water quality regulations without Alaska-specific data. Many Alaskans, including the Governor's Mining and Minerals Sector workgroup of the Marketing Alaska Program, recognize the need to develop sound environmental baseline information. This research should extend to development of appropriate aquatic life criteria for acute and chronic toxicity under Alaska conditions.

COMMISSION RECOMMENDATIONS

- 8** *The Governor should direct the Department of Environmental Conservation to work with industry to develop priorities for basic research on topics important to Alaska, such as arsenic toxicity, total dissolved solids and pH, and to develop plans for funding this basic research.*

NPDES PRIMACY

FINDING 9. Both industry and government desire to make the permitting process for mining operations in Alaska more efficient, accessible, predictable, and accountable. Other states provide a permitting and regulatory structure that is much closer to these goals than the present structure in Alaska. One key element in these other states, including Nevada, is that they have primacy over the National Pollutant Discharge Elimination System (NPDES) process.

Assuming primacy of the NPDES process in Alaska would achieve several objectives. First it would make the process more efficient by bringing several existing permits under the common control of the State. This should result in a time savings by allowing the major permits to be developed concurrently. Second, primacy would make the process more accessible for all involved, including the industry, the State, and the general public.

The financial burden of assuming primacy could be eased by providing for a phased assumption of the NPDES program. While there is an expense to assuming primacy, there is presently a high cost of permitting in Alaska, and an opportunity cost to the citizens of Alaska from the delaying of projects. So the question is not whether Alaska can afford to assume primacy, but whether Alaska can afford not to assume control of federally-mandated regulatory programs.

COMMISSION RECOMMENDATIONS

- 9 The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to develop a plan for assuming primacy of the National Pollutant Discharge Elimination System (NPDES) program, and the Legislature should provide the necessary funding to ADEC to support this effort.*

MARKETING ALASKA

FINDING 10. The mining industry is one of the few economic sectors of the State economy which is expanding, due in part to the initiatives of the Legislature and the Governor. Many of these initiatives have been implemented by the Alaska Division of Trade and Development (DTD) working closely with the Division of Mining & Water Management (DMWM) and the Division of Geological & Geophysical Surveys (DGGS). These agencies, consistent with the recommendations of the Governor's Marketing Alaska Initiative, have been promoting the growth of Alaska's mineral industry by effectively marketing its potential and by providing a healthy regulatory and business climate for development.

The DMWM, through its large mine permitting process has demonstrated that mines such as Fort Knox and Illinois Creek can be permitted on State land in a timely and reasonable manner.

The DGGS provides the geologic mapping and airborne geophysical surveys needed by industry to conduct successful exploration programs. The annual Alaska's Mineral Industry Report, prepared jointly by DGGS and DTD, is widely regarded by industry as a valuable source of information.

The DTD promotes Alaska mining opportunities at professional meetings, researches mining issues for the Department and the Legislature, provides technical assistance to current and prospective Alaska mining companies, reviews state and federal regulatory issues affecting mining, and provides staff support for the Alaska Minerals Commission.

Past budget cuts have compromised the ability of these agencies to maintain their programs. For the State to further reduce the professional staff charged with mineral development would be a serious impediment to the continued expansion of the industry.

COMMISSION RECOMMENDATIONS

- 10** *The Governor and Legislature should provide adequate budgetary support to maintain the positions and programs of the Division of Trade and Development, the Division of Mining & Water Management, and the Division of Geological & Geophysical Surveys.*

LEAD AGENCY

FINDING 11. Alaska Statute 27.05.010(b) requires that state agencies consult with the mining experts of the Department of Natural Resources when these agencies take actions that affect exploration, development, or management of mineral resources. Several agencies impact mining by implementing plans, regulations and stipulations on operations.

COMMISSION RECOMMENDATIONS

- 11** *The Governor, by Executive Order, and the Legislature, by Resolution, should direct agencies such as the Department of Environmental Conservation, the Department of Fish & Game, and the Division of Governmental Coordination to confer with the mineral experts in the Department of Natural Resources before promulgating rules or regulations affecting mining as per A.S. 27.05.010(b).*

FISCAL REQUIREMENTS

FINDING 12. Many State Departments and Divisions are involved in mining-related activities.

Fourteen Recorders Offices that serve the 34 Recording Districts in the state are vital for the recordation of mining claim and prospecting site notices, for affidavits of annual labor and other mining-related documents. In recent years some offices have had to reduce the hours of service to the public.

The 19 offices of the Division of Motor Vehicles are important for issuance of Commercial Driver's Licenses, which are a requirement of some mining operations. Budget cuts could impact this public service.

COMMISSION RECOMMENDATIONS

- 12** *The Legislature should continue to provide funding for the Recorders Offices and the Division of Motor Vehicles offices statewide so that they can operate without reduction of services.*

RS2477 ACCESS

FINDING 13. RS2477 access corridors may provide the only certain access across, and within, the vast system of Conservation Systems Units (CSU) in Alaska other than the untested Title XI access provided for in the 1980 Alaska National Interest Lands Conservation Act (ANILCA).

Since 1993, The Alaska Division of Land has researched about 1,900 trails proposed as RS2477 rights-of-way. About 600 routes appear to qualify, about 250 need more information and the remainder may not

qualify due to circumstances such as lack of evidence, duplication of existing rights-of-way, or failure to meet the requirements of the RS2477 law.

Eleven of the approximately 600 qualified trails were selected as test cases, and were "certified" by the State under 11AAC51. The federal government was served with a "Notice of Intent to File" quiet title to these eleven RS2477 rights-of-way in mid -1995. The Department of Law, working with the Division of Land has evaluated these eleven to find three to five of those with the broadest potential for precedent-setting legal action. One of these, the Harrison Creek - Portage Creek Trail has been surveyed using Global Positioning System methods, and is due to go to court in late 1997.

This will be to file a "quiet title" action in court to determine the validity of the routes, but both the Department of Law and the Division of Land require funds for this legal effort.

COMMISSION RECOMMENDATIONS

- 13** *The Legislature should fund a multi-year, multi-agency Capital Project of about \$300,000 annually for the Division of Land to work with the Department of Law and other agencies to aggressively pursue precedent-setting "quiet title" actions, and to preserve State's rights. The Governor should aggressively assert "quiet title" to the routes with the best documentation. Further the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.*

NAVIGABILITY

FINDING 14. State ownership of the beds of navigable waters is an inherent attribute of State sovereignty protected by the United States Constitution. At Statehood in 1959, title to the beds of navigable waters in Alaska was vested in the newly-formed State.

In 1980, the State established a comprehensive navigability program within the Department of Natural Resources (DNR). This program was designed to respond to federal land conveyances and land management activities under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act. The basic purpose of the program was to protect the public rights associated with navigable waters, including the State's title to the submerged lands. The program also included monitoring of federal land conveyance and management programs to identify navigability disputes, seeking cooperative resolution of navigability problems through negotiation and legislation, and preparing for navigability litigation.

On June 30, 1995 the Navigability section of the Division of Mining & Water Management was eliminated due to budget cuts. The navigability program was reinstated within the Division of Land in 1996 as a result of a special Legislative appropriation. As a result the Department of Natural Resources (DNR) has reestablished a central repository of navigability information to be used by land managers and the public. The special appropriation also enabled the DNR, the Department of Fish and Game, and the Department of Law to pursue assertions of State ownership of navigable waters.

COMMISSION RECOMMENDATIONS

- 14** *The Legislature should make funding available to continue a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should be made available to the Department of Law to support any "quiet title" actions necessary to secure ownership of submerged lands.*

SCHOOL OF MINERAL ENGINEERING

FINDING 15. The University of Alaska Fairbanks' School of Mineral Engineering offers accredited degree programs for educating mining and geological engineers and conducts applied research through the Mineral Industry Research Laboratory.

These professional degree and research programs are vital to the continued development of the State's mineral industry, to the jobs and incomes of its residents, and to the public revenues used to support education and other public services.

COMMISSION RECOMMENDATIONS

- 15** *The Governor and Legislature should provide adequate budgetary support to the UAF School of Mineral Engineering.*

EDUCATION AND RESEARCH

FINDING 16. The "Alaska Resource Kit" which is being used in the statewide public school system, is an excellent program for educating Alaska's students in the issues and fundamentals of resource development. In the past the program has been a cooperative effort between the Department of Education, which developed the curriculum and is responsible for its implementation, and the Alaska Mineral and Energy Resource Education Fund (AMEREF). AMEREF is an industry supported organization which annually funds the production and replacement of the teaching materials and which partially funds the salary of a Specialist in the Department of Education who is responsible for providing teacher training and for implementing the program into the school system. This program has proven to be a success and reflects the cooperation that has existed during the 15 years of the program's existence.

This program must not falter, as a broad-based resource education of Alaska's students is needed to ensure an understanding of the resource needs of a modern society.

COMMISSION RECOMMENDATIONS

- 16** *The Governor and the Legislature should appropriate \$50,000 to the Division of Educational Support, Minerals and Energy Education Program, as the State's share of supporting the Alaska Mineral and Energy Resource Education Fund (AMEREF).*

CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS

FINDING 17. The Citizens Advisory Commission of Federal Areas was established by the Alaska Legislature in 1981 shortly after the enactment of the Alaska National Interest Lands Conservation Act (ANILCA). 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 discovered. As federal regulations are finally developed, the case load is expanding.

Some accomplishments of the Commission include brokering an agreement with the Bureau of Land Management to allow free passage from the pipeline corridor to state and private lands beyond; securing inholder access within Denali National Park and Preserve (and other Conservation System Units); and helping secure funding for the ANILCA-mandated Alaska Mineral Resource Assessment Program (AMRAP).

COMMISSION RECOMMENDATIONS

- 17** *The Governor and Legislature should extend the life of the Citizens Advisory Commission on Federal Areas for a further 5 years and provide expanded budgetary and programmatic support.*

THE ALASKA MINERALS COMMISSION

FINDING 18. The Act creating the Alaska Minerals Commission is due to be repealed on February 1, 1999.

Several important pieces of legislation passed in recent years were based on recommendations by the Commission and include the Exploration Incentives Act; extending the workday at the face in underground mines; exempting minerals from in-situ taxation; creation of the reclamation bonding pool; and creating the airborne geophysical survey program. The latter program has generated more than \$10 million in exploration investment in the Fairbanks district alone, which by itself dwarfs the annual \$12,000 budget of the Alaska Minerals Commission.

COMMISSION RECOMMENDATIONS

- 18** *The Governor and the Legislature should extend the term of the Alaska Minerals Commission and provide funding through February 1, 2004.*

PART B: FEDERAL ISSUES OF STATE CONCERN

ANILCA PROVISIONS

FINDING 19. In order to assure passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, there were several sections included to protect preexisting rights. Several provisions would allow mineral development on or near otherwise withdrawn land. Title XI addressed access across the Conservation System Units (CSU). Sections 101d and 1326b assured that no more land in Alaska would be considered for new CSU or similar designations. Sections 103b and 1302h provided mechanisms for the Secretary of the Interior to adjust the boundaries of CSU or to exchange lands within them to exclude mineralized areas.

COMMISSION RECOMMENDATIONS

- 19** *The Governor and Legislature, through the Attorney General's office, the State's Washington office, and the Congressional Delegation should insist that the federal administration:*
- a** *provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA),*
 - b** *prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA, and*
 - c** *exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.*

INTERNATIONAL PARKS IN ALASKA

FINDING 20. The 1st Session of the 20th Alaska State Legislature passed Legislative Resolve No. 31 supporting the "American Lands Sovereignty Protection Act" that reaffirms the constitutional authority of the Congress as the elected representatives of the people over the federally-owned land of the United States.

The Act passed the U.S. House of Representatives on October 8, 1997 and reaffirms the power of Congress over international agreements; provides a process to designate lands for international agreements; protects state's powers from federal designation of lands not reserved to the federal government; and protects citizens from diminution or loss of individual rights, including real property rights, as a result of federal designation of lands for international agreements.

The United States Senate has before it the "Public Land Management Participation Act of 1997" (SB 691). This bill is to ensure that the public and the Congress have both the right and a reasonable opportunity to participate in decisions that affect the use and management of all public lands owned or controlled by the federal government. This would provide a process to include the public in hearings when the federal government or others nominate lands for National Monuments, World Heritage Sites, or Biosphere Reserves.

COMMISSION RECOMMENDATIONS

- 20** *The Governor and Legislature should continue to support legislation proposed by Alaska's Congressional Delegation that protects state's and private citizen's rights from imposition of World Heritage Sites, Biosphere Reserves, International Parks or other restrictive designations of federal lands without participation by affected citizens, local and state governments or Congress.*

APPENDIX A

Chapter 98
Session Laws of Alaska, 1986
As Amended by Chapter 71
Session Laws of Alaska, 1988

AN ACT

Relating to the Alaska Minerals Commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restriction on surface access, complex and numerous permitting requirements, and limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Section 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The Commission is composed of 11 members. The Commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The Governor shall appoint five members of the Commission, one of whom must reside in a rural community. The President of the Senate shall appoint three members of the Commission. The Speaker of the House of Representatives shall appoint three members of the Commission. Each member serves at the pleasure of the appointing authority.

(c) The Commission shall make recommendations to the Governor and to the Legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the State.

(d) The Commission shall report its recommendations each year to the Governor and the Legislature during the first 10 days of the regular session of the Legislature.

Sec. 3. This Act is repealed February 1, 1994.*

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c)

*Note: The Act was amended to extend the life of the Commission to February 1, 1999.

APPENDIX B

ALASKA MINERALS COMMISSION**STATEMENT OF PURPOSE**

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 38 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an undeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in a timely fashion; and to ensure that producing mines remain viable—constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare reports for the First and Second Sessions of the 15th Legislature and the First Session of the 16th Legislature, recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

" It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

And the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

"It is the policy of this administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals and recommendations of the Alaska Minerals Commission are to assure that the Legislature and the State administration endorse and promote development of a viable mining industry in the State.

APPENDIX C

MINERAL POLICY ACT

Sec. 44.99.110. Declaration of state mineral policy. The Legislature, acting under art. VIII, sec. 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state, to maintain a sound economy and stable employment, and to encourage responsible economic development within the state for the benefit of present and future generations through the proper conservation and development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

(1) mineral exploration and development be given fair and equitable consideration with other resource use in the multiple use management of state land;

(2) mineral development be encouraged through reasonable and consistent non-duplicative regulations and administrative stipulations;

(3) mineral development and the entry into the marketplace of mineral products be considered in developing a statewide transportation infrastructure system;

(4) mineral development be encouraged through appropriate public information and education, scientific research, technical studies, and the University of Alaska program involvement;

(5) economic development with respect to the state mineral industry be encouraged with Pacific Rim nations (Sec.1 ch. 138 SLA 1988)

————— APPENDIX D —————

MINING - ALASKA'S GROWTH INDUSTRY FOR HIGH-QUALITY JOBS

The mining industry offers unparalleled potential for high-quality private sector employment throughout Alaska. A recent nationwide study completed by the U.S. Bureau of Labor Statistics entitled "Average Annual Pay by State and Industry, 1996" shows that the mining industry has the highest average annual pay of any private sector employment sector in the nation. These are the types of jobs that should be encouraged in Alaska, particularly since the mining industry has the potential to distribute these jobs throughout areas of rural Alaska with low private sector employment.

However, during public policy discussions regarding the jobs potential of the Alaska mining industry, the full breadth of the skill levels and educational requirements needed to properly conduct a modern, environmentally sound, mining operation is often not fully appreciated. This is especially relevant in the context of trying to maximize local hire.

In order to provide Alaska residents with the skills necessary to fill these jobs, the University of Alaska must maintain appropriate 4-year and vocational programs. If the industry is to grow while maximizing local hire, local education and training must be available.

A listing of professional job categories actually required to operate a mine, taken from Alaska's current operations, is depicted below:

4-YEAR DEGREE REQUIRED

- Accountant
- Chemist
- Computer Systems Specialist
- Controller
- Electrical Engineer
- Environmental Engineer
- Geological Engineer
- Geologist
- Human Resource Manager
- Hydrologist
- Metallurgical Engineer
- Mining Engineer
- Purchasing Agent

2-YEAR DEGREE OR ADVANCED VOCATIONAL-TECHNICAL TRAINING REQUIRED:

- Emergency Medical Technician
- Computer Technician
- Instrumentation Technician
- Mill Technician
- Surveyor

Note: Not included in the above lists are the skilled trades, i.e., underground miners, operators, drillers, millwrights, electricians, mechanics, welders, warehouse clerks, etc.

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Carl, Thank for your service for Alaska Tony Knutson