

HB

486

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 486
(H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Mining Reclamation Bonding RDU: Resource Development
Sponsor: Rules Component: Claims, Permits and Leases
Requester: Governor Component No.: 2460

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill makes various changes to AS 27.19, and establishes a Mining Reclamation Trust Fund under AS 37.14.

The bill would require no additional staff at the Department of Natural Resources. The Mining Reclamation Trust Fund would allow the state to take in funds from a particular mine for use for reclamation at that mine. There would be no net change to funds available to the state for general government purposes.

The last financial change established by the bill is that income and other earnings on the reclamation bond pool, used for placer mines, would be returned to the pool (AS 27.19.040(b)). This amount is expected to be approximately \$50,000 in FY 04. The new language changes the location for holding for the funds but does not change the amount available to the state.

Prepared by: Bob Loeffler, Director Phone 269-8600
Division: Mining, Land & Water Date/Time 1/21/04
Approved by: Thomas Irwin, Commissioner Date 1/21/04
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 486
(H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Reclamation bonding for certain mines RDU Revenue Programs & Services
Component Treasury Division
Sponsor Rules Committee
Requester Request of the Governor Component No. 121

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	6.0	12.0	18.0	24.0	30.0	36.0
Travel						
Contractual	15.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	21.0	12.0	18.0	24.0	30.0	36.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	21.0	12.0	18.0	24.0	30.0	36.0
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	21.0	12.0	18.0	24.0	30.0	36.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is predicated upon a trust fund build-up of \$10 million per year plus fund earnings. The cost of managing a fixed income trust fund internally is about 6 basis points. Additionally, this fund would require individual project fund tracking, something that is slightly different from anything now done at Treasury. A contractual cost of \$15.0 is included to originate that tracking with GeFONSI.

Prepared by: Tomas Coutin, Deputy Commissioner Phone 465-3669
Division Treasury Date/Time 1/20/04 1:41 PM
Approved by: Bill Corbus, Commissioner Date 1/20/2004
Agency Revenue

HOUSE BILL NO. 486

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/16/04

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to reclamation bonding and financial assurance for certain mines;
2 relating to financial assurance limits for lode mines; establishing the mine reclamation
3 trust fund; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 27.19.040 is amended to read:

6 Sec. 27.19.040. Reclamation financial assurance [BONDING]. (a) The
7 commissioner shall require an individual financial assurance [PERFORMANCE
8 BOND] in an amount not to exceed an amount reasonably necessary to ensure the
9 faithful performance of the requirements of the approved reclamation plan. The
10 commissioner shall establish the amount of the financial assurance
11 [PERFORMANCE BOND] to reflect the reasonable and probable costs of
12 reclamation. The assurance amount [, BUT THE BOND] may not exceed \$750 for
13 each acre of mined area, except that the \$750 per acre limitation does not apply to
14 the assurance amount required for a lode mine.

1 (b) The commissioner shall establish a statewide bonding pool for mining
 2 operations as an alternative to individual financial assurance [PERFORMANCE
 3 BONDS]. The commissioner may determine which mining operations are eligible
 4 to participate in the bonding pool based on the projected cost of reclamation in
 5 relation to the size of the bonding pool; however, a mining operation may not be
 6 allowed to participate in the bonding pool if the mining operation will chemically
 7 process ore or has the potential to generate acid. A miner participating in the
 8 bonding pool shall contribute an initial deposit not to exceed 15 percent of the
 9 financial assurance amount [RECLAMATION BOND] plus an additional
 10 nonrefundable annual fee not to exceed five percent of the financial assurance
 11 amount [RECLAMATION BOND]. The commissioner shall refund the 15 percent
 12 deposit upon satisfactory completion of the approved reclamation plan. If requested
 13 by the miner, the commissioner may apply the deposit to a new reclamation plan. In
 14 addition to its use for mining operations under this chapter, the commissioner shall
 15 allow the bonding pool to be used to meet the requirements of AS 27.21.160. Income
 16 and other earnings on the bonding pool shall be added to the bonding pool.

17 (c) If the commissioner determines that a miner has violated or permitted a
 18 violation of the approved reclamation plan and has failed to comply with a lawful
 19 order of the commissioner, the commissioner shall forfeit the financial assurance
 20 [PERFORMANCE BOND] and deposit it [THE BOND] in the statewide bonding
 21 pool. The commissioner shall use the reclamation and administrative costs recovered
 22 under AS 27.19.070(a) to supplement the forfeited financial assurance [BOND]
 23 deposited in the statewide bonding pool for reclamation of the site subject to the
 24 forfeiture. If the commissioner is unable to recover the full cost of reclamation under
 25 AS 27.19.070(a), the commissioner may use the bonding pool to reclaim the site to
 26 the standards of this chapter, except that the commissioner may not use a deposit
 27 that is refundable under (b) of this section to fulfill another miner's reclamation
 28 obligation.

29 (d) A miner not required to post a financial assurance [BOND] may submit a
 30 reclamation plan under AS 27.19.030(a) and participate in the bond pool.

31 * Sec. 2. AS 27.19.040 is amended by adding a new subsection to read:

1 (e) A miner may satisfy the requirement under this section for an individual
 2 financial assurance by providing, in a form acceptable to and approved by the
 3 commissioner, any of the following:

4 (1) surety bond;

5 (2) letter of credit;

6 (3) certificate of deposit; ^{insert}

→ 7 (4) corporate guarantee; ^{insert "that meet"}

8 (5) payments and deposits into the trust fund established in
 9 AS 37.14.800;

→ 10 (6) sinking fund, or any other form of financial assurance. ^{insert "that meet"}

11 * Sec. 3. AS 27.19.050(d) is amended to read:

12 (d) A miner exempted from the requirements of AS 27.19.030(a) and
 13 27.19.040 under (a) of this section that fails to reclaim a mining operation to the
 14 standards of AS 27.19.020 is required for two consecutive years to conduct each
 15 subsequent mining operation, regardless of size, under an approved reclamation plan
 16 and to provide an individual financial assurance [POST A PERFORMANCE
 17 BOND].

18 * Sec. 4. AS 27.19.070(a) is amended to read:

19 (a) A miner who violates or permits a violation of an approved reclamation
 20 plan and fails to comply with a lawful order of the commissioner forfeits the financial
 21 assurance [RECLAMATION BOND] or a portion of the assurance [BOND] and is
 22 liable to the state in a civil action for the full amount of reclamation and administrative
 23 costs incurred by the state related to the action. A miner exempted under
 24 AS 27.19.050(a) is subject to civil action for the full amount of reclamation and
 25 administrative costs incurred by the state related to the action if the commissioner
 26 determines that reclamation was not conducted under AS 27.19.020.

27 * Sec. 5. AS 27.19.070(c) is amended to read:

28 (c) A miner who has forfeited a financial assurance [RECLAMATION
 29 BOND] or has been held liable in a civil action under (a) of this section may conduct
 30 future mining operations only after posting a reclamation risk assessment fee equal to
 31 five times the amount of financial assurance established under AS 27.19.040(a)

1 [BOND LIABILITY] for the proposed mining operation. The reclamation assessment
2 fee shall be refunded after two consecutive years of operation consistent with this
3 chapter.

4 * Sec. 6. AS 27.19.080 is amended by adding a new subsection to read:

5 (b) The commissioner may adopt regulations to carry out the purposes of this
6 chapter.

7 * Sec. 7. AS 27.19.100 is amended by adding a new paragraph to read:

8 (9) "lode mine" means a mining operation that removes the minerals
9 from consolidated rock rather than from a placer deposit.

10 * Sec. 8. AS 37.14 is amended by adding new sections to read:

11 **Article 9. Mine Reclamation Trust Fund.**

12 **Sec. 37.14.800. Mine reclamation trust fund established.** (a) The mine
13 reclamation trust fund is established as a separate trust fund of the state. The principal
14 and earnings of the fund shall be held by the state for the purpose of protecting the
15 public interest in reclaiming mine sites in the state. The fund is composed of the mine
16 reclamation trust fund income account and the mine reclamation trust fund operating
17 account.

18 (b) The mine reclamation trust fund income account consists of payments and
19 deposits made by miners to satisfy the miners' reclamation bonding or financial
20 assurance obligation under AS 27.19.040 or AS 27.21.160, and earnings on the
21 income account. The mine reclamation trust fund operating account consists of
22 appropriations by the legislature of the annual balance of the mine reclamation trust
23 fund income account, and any earnings on those appropriations while in the operating
24 account.

25 (c) Before payments are accepted into the mine reclamation trust fund income
26 account for a particular mining operation, the commissioner of natural resources and
27 the miner may execute a memorandum of understanding that outlines a schedule of
28 expected payments into the trust fund, and the relationship of the payments and
29 accumulated earnings in the trust fund to reclamation obligations of the miner under
30 AS 27.19.040 or AS 27.21.160. The memorandum of understanding may also address
31 expected use of the fund under AS 37.14.820. If the memorandum of understanding

1 addresses investment of the fund with respect to payments made by the miner, the
2 commissioner of revenue must also sign the memorandum.

3 (d) Nothing in this section creates a dedicated fund.

4 **Sec. 37.14.810. Powers and duties of the commissioner of revenue.** The
5 commissioner of revenue is a fiduciary to the fund. The commissioner shall manage
6 both the mine reclamation trust fund income account and the mine reclamation trust
7 fund operating account and shall invest their assets in accordance with AS 37.10.071.

8 **Sec. 37.14.820. Use of the mine reclamation trust fund operating account.**

9 (a) The commissioner of the Department of Natural Resources may make
10 expenditures from the mine reclamation trust fund operating account for the following
11 purposes:

12 (1) reclamation of mining operations for which a payment or deposit
13 has been made into the fund;

14 (2) maintenance of dams and other permanent features related to a
15 mining operation;

16 (3) monitoring of site stability and water quality related to a mining
17 operation;

18 (4) control and treatment of acid rock drainage and other leachate
19 related to a mining operation;

20 (5) protection and treatment of surface water and groundwater related
21 to a mining operation;

22 (6) long-term site management of a mining operation;

23 (7) returns to miners of the deposits to the fund upon satisfactory
24 completion of reclamation tasks as determined by the Department of Natural
25 Resources.

26 (b) Subject to appropriation, the mine reclamation trust fund operating account
27 may be used to pay the expenses incurred by the commissioner of revenue in
28 managing the fund, and administrative expenses incurred by the Department of
29 Natural Resources in administering the fund and programs under AS 27.19 and
30 AS 27.21.

31 (c) The Department of Natural Resources may not spend money deposited in

1 the fund for one mining operation at another mining operation.

2 (d) In accordance with AS 37.14.800(b), and except as provided in (b) of this
3 section, earnings on the mine reclamation trust fund operating account are added to
4 that account, and are available for expenditure without further appropriation.

5 **Sec. 37.14.830. Regulations.** The commissioner of natural resources may
6 adopt regulations necessary to carry out the purposes of AS 37.14.800 and 37.14.820 -
7 37.14.840.

8 **Sec. 37.14.840. Definition.** Unless the context otherwise requires, in
9 AS 37.14.800 - 37.14.840, "fund" means the mine reclamation trust fund established
10 in AS 37.14.800.

11 * Sec. 9. This Act takes effect July 1, 2004.

AMENDMENT

Adopted

OFFERED IN THE HOUSE FINANCE COMMITTEE
BY REPRESENTATIVE CROFT

3/3/04

TO: HB 486

Page 3, line 7, after "guarantee":

Insert: "that meet the financial tests set in regulation by the commissioner"

Page 3, line 10:

Delete: "sinking fund"

Page 3, line 10, after "financial assurance"

Insert: "that meet the financial test or other conditions set in regulation by the
commissioner"

Renumber accordingly.

Called

HB486



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 2004

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to mine reclamation bonding and financial assurance.

This bill would make three changes to existing law. First, it would remove "lode mines," sometimes referred to as "hard-rock mines," from the current bonding "cap" of \$750 per acre for mine reclamation responsibilities; the cap would remain in effect for placer mines. Second, it would replace the term "performance bond" with the term "financial assurance," and would list various ways to provide that assurance, in order to give mining companies and the state the flexibility to employ a variety of financial assurance vehicles. Third, it would create a mine reclamation trust fund, which would allow the build-up of an adequate reclamation fund through payments made over time and through the earnings on that fund.

These three changes all reflect the fact that satisfactory reclamation of a hard-rock mine is a site-specific issue. A generic dollar-per-acre bond "cap" simply does not work for reclamation responsibilities for hard-rock mines. Each mine is unique, and the optimal vehicle to use to ensure final reclamation depends on many factors including, by way of example: the projected mine life; the need for long-term site management measures (such as to address potential acid mine drainage); and the availability and cost of different bonding tools in the current financial market. Given these and other factors, the state and the mining industry need flexibility in selecting and constructing financial assurances for mine reclamation.

The third element of the bill, the mine reclamation trust fund, is an attempt to accommodate some fiscal realities faced by the industry. It provides the opportunity for the state to set up site-specific funding agreements to accommodate long-term or in-perpetuity reclamation tasks. Examples include the possible need for in-perpetuity water treatment at the Red Dog

The Honorable Pete Kott
February 13, 2004
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line, long-term monitoring at the Illinois Creek Mine, and in-perpetuity maintenance of the dam for the freshwater recreation lake that Fort Knox Mine is leaving to Alaskans at the request of the Department of Natural Resources. The trust fund concept provides for a method of accommodating long-term or in-perpetuity reclamation needs of this type.

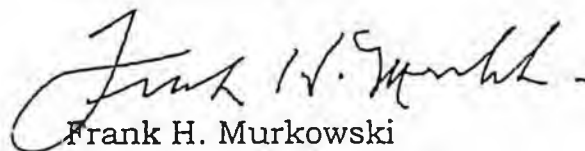
Making deposits into a state-controlled trust fund will have significant benefits for industry and the state. In addition to providing potential benefits under the federal tax code for companies, the state would have access to a fund for mine reclamation work that will retain earnings and increase over time.

The bill would provide that the Department of Revenue would manage investment of the fund, as it does already for a number of other similar state funds. But the Department of Natural Resources would be the agency authorized to make expenditures from the fund for mine reclamation and post-closure site management.

The state's resource agencies, under the leadership of the Department of Natural Resources, have crafted this bill with an understanding of the needs of the industry and the needs of Alaskans who rely on reclamation of the land. This bill is broadly supported by the mining industry.

I urge your prompt and favorable action on this measure

Sincerely yours,



Frank H. Murkowski
Governor

Enclosure

Briefing Paper: Mining Reclamation Bonding
SB 339 & HB 486
Department of Natural Resources
March 1, 2004

Background

- *Mine Reclamation Is Required By Law.* Reclaiming mined ground — returning it to a productive state — is required by law.
- *A Bond Protects Alaskans in Case a Company Fails to Reclaim.* The State requires a bond before mining begins to provide assurance that if the miner does not complete the reclamation obligation, the state can seize the bond and reclaim the land.
- *Alaska's Law was Designed for Placer Mines, not Large Lode Mines.* Alaska's reclamation statute took effect in 1991. At that time, Alaska's industry was primarily placer mines. Today, we have an active placer mining industry plus a new large mine industry: Red Dog, Greens Creek, Fort Knox, True North, and Pogo. Alaska hopes to host many new large mines in the future: Donlin, Pebble Copper and others.
- *Alaska's Law Limits a Reclamation Bond to \$750/acre; Large Mines Cannot Be Reclaimed For That Amount.* Alaska's reclamation law, intended for placer mines, puts a reclamation bond cap of \$750 per acre. In other words, DNR may not require the mining company to put up more than \$750 per acre as a reclamation bond. The law has worked well for the placer industry, but most large mines cannot be reclaimed for \$750 per acre. Most large mines require large reclamation expenditures. Greens Creek has approximately a \$26 million reclamation bond; Pogo is expected to require \$23 million. Red Dog's bond will eventually be significantly greater.
- *Alaska's Large Mines Have Voluntarily Given DNR a Large Bond.* To resolve this issue — that the state cannot require a bond big enough to reclaim a mine's disturbance — Alaska's lode mines have voluntarily provided a larger bond.

Three Changes. The bill makes three changes to Alaska's Reclamation Bond Statute to respond to the changes in Alaska's mining industry.

1. *Requires Full Bond For Large Mines.* The bill lifts the reclamation bond \$750/acre cap for lode mines (i.e., large mines). The law will continue to work as it has for most placer mines and for exploration projects, but for large mines DNR will require a company to bond for the "reasonable and probable cost of reclamation" before mining may begin.
 2. *Provides More Methods for Mines to Satisfy DNR's Bond Requirements.* The bill replaces the term "performance bond" with the term "financial assurance" and lists various ways that a mining company may provide that assurance: surety bond, letter of credit, certificate of deposit, corporate guarantee, or payments to the Mining Reclamation Trust Fund described below. Every mine is unique, and DNR expects that each mine will need to use a different suite of instruments to satisfy the requirement to provide financial assurance (bond) that the work will be done.
- *Mine Reclamation Trust Fund.* The Mine Reclamation Trust Fund provides a voluntary method by which a mining company may give money to the State, for the State to hold until the money is needed for reclamation. Interest and earnings on the money held for the

mining company is returned to the fund for eventual use for that mine's reclamation. The Trust Fund does not change the requirement to bond; it only provides one more method for companies to meet that requirement.

The Trust Fund has a number of advantages for the state:

- *It provides a method to accommodate long-term or perpetual reclamation requirements.* The Red Dog Mine is likely to need water quality treatment forever. Other mines have a similar need for perpetual or long-term reclamation funding. The only way to hold a fund that provides money for many decades (or forever) is to use a mini endowment (i.e., a mini permanent fund). Interest on the Trust needs to come back to the Trust to fund each year's reclamation work for a long time or for forever. The Mine Reclamation Trust Fund solves these problems.
- *Cash Is Best.* The most secure bond for the State is cash, held by the state. That provides the greatest assurance that money will be available if a company fails to complete its obligation.

The Trust Fund has a number of advantages for mining companies.

- *Interest Accumulates Tax Free.* If a company puts aside funds for to be spent for reclamation a few decades later, the interest on the money is taxable. The state is not a taxable entity. Interest and earnings on a fund held by the state are not taxable.
- *Other Tax Advantages.* There are potentially other tax advantages for the mining company if the state holds the company's reclamation fund.

Questions & Answers

How would the Mine Reclamation Trust Fund work? An example. Imagine a large gold mine with a 30-year mine life. The company makes a reclamation agreement with the state. They use a variety of financial instruments to meet the multi-million dollar bond requirement: a part of their bond requirement may be met by a letter of credit, part by a surety company, and part by a corporate guarantee. The mining company also decides to put money away each year in a Mine Reclamation Trust Fund (and they correspondingly reduce the amount of another instrument, for example the corporate guarantee). The company signs a Memorandum of Understanding with DNR that addresses the conditions of that particular mine. The Memorandum forecasts a schedule of deposits into the Trust Fund and specifies which other bond mechanism is reduced. The Memorandum also specifies the conditions by which DNR would, in the latter years of the mine's life, reimburse the company for reclamation work they complete. The Department of Revenue invests the fund for the company and it grows through interest and deposits by the company. As the mine closure approaches, the Trust Fund is the major source of funding for reclamation. At the end of mine life, the company closes the mine, and as each reclamation task is completed, DNR reimburses the company for the cost of reclamation work.

Does use of a Trust Fund relieve a company of its responsibility to reclaim a mine? No. The Trust Fund is only a place to hold the money. The company still has the responsibility to reclaim the site. If the money is not adequate, it is still the company's responsibility to reclaim the mine.

Who Manages a Company's Mine Reclamation Trust Fund? Department of Revenue. The Department of Revenue manages the money in the trust fund. Through a Memorandum of Understanding, the company may advise the Department of Revenue on investment goals (i.e., be more aggressive on equities in the early years of the trust fund, but more conservative as mine closure approaches).

Who Authorizes Expenditures from the Fund for Reclamation? DNR. The Department of Natural Resources would authorize a reimbursement to the company for reclamation work done, or would spend the money itself in the event the company defaults on its reclamation obligation.

Most of this bill accommodates the statutory needs of "large mines." Is that the same as a "lode mine?" More or less. Most of this bill does not affect most placer mines and exploration projects. The bill's three major changes are useful for large mines such as Greens Creek, Red Dog, Pogo, or Fort Knox. All of these are lode mines. Because of the financial realities of the mining industry, all lode mines are expected to be large mines. Therefore, rather than define "large mines" in statute, the bill uses the term "lode mines" to accomplish the same result.

What are Alaska's reclamation bonds?

LARGE MINE BONDS		
Mine	Company	Amount
Red Dog	Teek-Cominco	\$ 21,910,250
Pogo	Teek-Cominco	\$ 22,474,816
Ft. Knox	FGMI	\$ 12,150,415
True North	FGMI	\$ 1,381,100
Greens Mine	Kennecott	\$ 26,238,518
Poker Flats	Usibelli Coal Mine	\$ 3,485,917
Two Bull Ridge	Usibelli Coal Mine	\$ 4,075,880
Gold Run Pass	Usibelli Coal Mine	\$ 637,100
ALASKA'S PLACER MINE BOND POOL		
Bond Pool	Refundable	\$ 342,621
	Non-Refundable	\$ 597,541
	TOTAL	\$ 93,294,158