

HB

280

HFIN

FILE

SB 179/HB280 Talking Points

It appears that SB 179/ HB 280 would do two primary things:

1. Requires mines in the Unorganized Borough to pay a 4 mills property tax to the State.
Acceptable: As the de facto assembly for the unorganized borough, the legislature has basically the same rights as any assembly.
2. However, if a borough forms, the state would still assess the mine and collect the property tax for the new borough up to 6 mills, but all other possible municipal taxes and fees, such as local sales taxes, would be prohibited for the expected life of the mine. **Unacceptable:** The bill would take away almost all taxing authority regarding mines from future local assemblies and make it unlikely that a borough could form if local taxpayers had to subsidize services to the mine due to the exemptions.

Key issues:

- ❑ Local taxes already have "fail-safes" to avoid inequitable treatment of one taxpayer:
 1. By law, all local taxpayers must pay the same property tax rate. If mines pay more, so does everyone else.
 2. If taxes are too high for a mine to exist, everybody loses. Unfair taxation of mines has not been identified as a problem in Alaska.
 3. If a borough formation petition appeared to treat one taxpayer unfairly the Local Boundary Commission has the authority to reject it, or refer it to the legislature.
- ❑ Local taxpayers subsidize mines. It would most likely make it financially impossible for a new borough to form because State law requires a borough to:
 1. Pay 4 mills of property tax as the minimum contribution to schools, plus
 2. Pay the local cost of building new schools necessitated by the mine, plus
 3. Pay any additional optional local contribution to schools to maintain an acceptable level of education, and provide adequate local services such as road maintenance and public safety.The allowable remaining 2 mills would almost certainly be insufficient to pay for schools, school bonds, and provide other services. Therefore, other local taxpayers would likely have to subsidize local public services used by the mine.
- ❑ No other industry gets virtually permanent tax breaks: No city, borough, or the state promises a permanent low tax rate for a single industry.
- ❑ If special industry tax breaks are given by the State, they should be financed by the State: If the State adopts policy to subsidize the mining industry it should be done at the State level, not by asking future local taxpayers to subsidize it.
- ❑ New mines get tax breaks, existing mines don't: Mines in boroughs formed after January 2005 would be taxed at inequitable compared to existing or new mines in existing boroughs. Besides being inequitable, this could jeopardize taxation for communities with existing mines.

Synopsis of Alaska Mining Industry- Local Revenues

Greens Creek Mine

Located in the City & Borough of Juneau:

Valuation:

Real Property	\$63,054,400
Personal Property	\$47,101,020
Total Value	\$110,155,420

Local Revenue Generation:

Based on mill rate of 6.61 mills equals \$728,128 per year

Fort Knox Mine

Located in the Fairbanks North Star Borough

Valuation:

Real Property	\$230,400,000
Personal Property	\$ -0- (not assessed in FNSB)
Total Value	\$230,400,000

Local Revenue Generation:

Based on mill rate of 15.224 mills equals \$3,507,610 per year

Red Dog Mine

Located in the Northwest Arctic Borough

Valuation:

Real Property	\$263,801,940
Personal Property	\$ included above
Total Value	\$263,801,940

Local Revenue Generation:

PILT - \$5,000,000 to \$6,000,000 per year

20.8 mills @ 5.5 million

Healy Coal Mine

Located in the Denali Borough

Severance Tax on extraction of coal and gravel

Local Revenue Generation

\$56,000 per year

Pogo Mine

Currently located in the Unorganized Borough

Valuation:

Real Property	\$250,000,000
Personal Property	\$ included above
Total Value	\$250,000,000

Local Revenue Generation:

None

Donlin Creek

Currently located in the Unorganized Borough

Valuation:

Unknown

*\$1 Billion ?
possible
R-11 James
Fred*

Local Revenue Generation:

None

Nixon Fort

Currently located in the Unorganized Borough

Valuation:

Unknown

Local Revenue Generation:

None

Illinois Creek

Currently located in the Unorganized Borough

Valuation:

Unknown

Local Revenue Generation:

None

Pebble mine

Sec. 14.17.410. Public school funding.

(b) Public school funding consists of state aid, a required local contribution, and eligible federal impact aid determined as follows:

(2) the required local contribution of a city or borough school district is the equivalent of a four mill tax levy on the full and true value of the taxable real and personal property in the district as of January 1 of the second preceding fiscal year, as determined by the Department of Commerce, Community, and Economic Development under AS 14.17.510 and AS 29.45.110, not to exceed 45 percent of a district's basic need for the preceding fiscal year as determined under (1) of this subsection. (emphasis added)

Sec. 43.82.400. Preliminary findings and determination regarding the contract.

Statute text

(a) If the commissioner develops a proposed contract under AS 43.82.200 - 43.82.270, the commissioner shall

(1) make preliminary findings and a determination that the proposed contract terms are in the long-term fiscal interests of the state and further the purposes of this chapter; and

(2) prepare a proposed contract that includes those terms and shall submit the contract to the governor.

(b) To make the preliminary findings and determination required by (a)(1) of this section, the commissioner shall compare the projected public revenue anticipated from the approved qualified project with the estimated operating and capital costs of the additional state and municipal services anticipated to arise from the construction and operation of the approved qualified project. The commissioner shall address the reasonably foreseeable effects of the proposed contract on the public revenue.

Sec. 43.82.410. Notice and comment regarding the contract.

Statute text

The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;

(2) make copies of the proposed contract, the commissioner's preliminary findings and determination, and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240 available to the public and to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the finance and resources committees of the legislature; and

(C) the chairs of the special committees on oil and gas, if any, of the legislature;

(3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner's preliminary findings and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit

Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to the public and all members of the legislature; if the financial, technical, and market data that is to be provided must be kept confidential under AS 43.82.310, the commissioner may not release the confidential information during a public portion of a committee meeting; and (4) establish a period of at least 30 days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under AS 43.82.400.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.420. Coordination of public and legislative review.

Statute text

To the extent practicable, the commissioner shall coordinate the public comment opportunity provided under AS 43.82.410(4) with a review by the Legislative Budget and Audit Committee under AS 43.82.410(3).

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.430. Final findings, determination, and proposed amendments; execution of the contract.

Statute text

(a) Within 30 days after the close of the public comment period under AS 43.82.410(4), the commissioner of revenue shall

(1) prepare a summary of the public comments received in response to the proposed contract and the preliminary findings and determination;

(2) after consultation with the commissioner of natural resources, if appropriate, and with the pertinent municipal advisory group established under AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract that the commissioner of revenue determines are necessary to respond to public comments;

(3) make final findings and a determination as to whether the proposed contract and any proposed amendments prepared under (2) of this subsection meet the requirements and purposes of this chapter.

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the long-term fiscal interests of the state, the commissioner shall submit the contract to the governor.

(c) The commissioner's final findings and determination under (a) of this section are final agency decisions under this chapter.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.435. Legislative authorization.

Statute text

The governor may transmit a contract developed under this chapter to the legislature together with a request for authorization to execute the contract. A contract developed under this chapter is not binding upon or enforceable against the state or other parties to the contract unless the governor is authorized to execute the contract by law. The state and the other parties to the contract may execute the contract within 60 days after the effective date of the law authorizing the contract.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.82.440. Judicial review.

Statute text

A person may not bring an action challenging the constitutionality of a law authorizing a contract enacted under AS 43.82.435 or the enforceability of a contract executed under a law authorizing a contract enacted under AS 43.82.435 unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract.

History

(§ 3 ch 104 SLA 1998)

Sec. 43.56.010. State Assessment Review Board.

Statute text

The State Assessment Review Board is created within the department. The board consists of five persons appointed by the governor to serve at the pleasure of the governor, each of whom must be knowledgeable of assessment procedures. Each board member is subject to confirmation by a majority of the members of the legislature in joint session.

History

(§ 1 ch 1 FSSLA 1973)

Annotations

Administrative Code. - For oil and gas exploration, production and pipeline transportation property tax, see 15 AAC 56.

Sec. 14.17.300. Public school account.

Statute text

(a) The public school account is established. The account consists of appropriations for distribution to school districts, the state boarding school, and for centralized correspondence study under this chapter.

(b) The money in the account may be used only in aid of public schools, including community school programs, and for centralized correspondence study programs under this chapter.

History

(§ 2 ch 83 SLA 1998)

THE
FOLLOWING
DOCUMENT(S)
ARE
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ORIGINAL
COPIES

Jim Pound

From: Matt Davidson [matt@akvoice.org]
Sent: Monday, May 02, 2005 9:44 AM
To: Jim Pound; Henry Webb
Subject: HB 280 FDNM: Mining legislation irks Deltana group

**For Committee packet on HB 280-
Mining legislation irks Deltana group**

Thursday, April 21, 2005 - Less than a week after a bill advocating a tax on mines outside of Alaska's organized boroughs was introduced, the Deltana Borough Charter Commission voiced strong opposition to the legislation.

In a strongly worded letter to bill sponsor Sen. Gene Therriault, R-North Pole, the volunteer group drafting a charter to submit to the Local Boundary Commission said Senate Bill 179 would "have a highly destructive effect on the formation of new boroughs."

The bill calls for the state to collect a tax from mining companies in unorganized areas at a rate equal to what organized boroughs must contribute in local education funding. That amount currently stands at 4 mills.

The Deltana group opposes the legislation because it would place a limit on the amount of money the proposed borough could raise by taxing Pogo Mine, which would fall within its boundaries.

"(The bill) drastically limit(s) the taxing authority of a local government to 4 or 6 mills on mining property," said Mike Schultz, chair of the Deltana Borough Charter Commission, in a letter to the senator.

"Under this legislation, mining taxes would be higher in the existing Fairbanks North Star Borough than in the new Deltana Borough. This is constitutionally impermissible and will lead to litigation challenging this legislation."

After working more than a year on the draft charter, the Deltana group voted on April 6 to fund its proposed borough by imposing a 2 percent severance tax on the amount of gold removed from Pogo Mine.

Passage of the severance tax appears to have been a strategic maneuver on the part of the group as it has been negotiating with Pogo representatives since early this year for a payment in lieu of taxes arrangement in the event a borough is created.

However, the parties have yet to come to an agreement on a PILT dollar figure.

Karl Haneman, Alaska regional director for Teck-Pogo Inc. refused to comment on the severance tax at that meeting. Less than two weeks later, Senate Bill 179 was introduced.

Delta Library Board holds fund-raiser

The Delta Library Board is hosting its annual Open House and Baskets of Books Silent Auction on Saturday from 10 a.m. until 4 p.m. The event is the board's largest fund-raiser of the year and the group's goal is to surpass the \$5,000 mark with its efforts, said librarian Joyce McCombs.

The auction features more than 100 "Baskets of Books" filled with items from nearly every business in Delta Junction, McCombs said. The Forget Me Knot Quilters Guild, for example has donated two baskets of quilt squares in the Jacob's Ladder pattern, she explained. The baskets also hold books on quilting and sewing supplies needed to complete the quilts.

In addition, several Fairbanks vendors have complemented the local donations. This year the Alaska Railroad has donated two round-trip tickets from Fairbanks to Anchorage, valued at \$400, McCombs said, and Chena Hot Springs is offering passes to soak in their mineral water .

"We hope people will come early and bid often," she added.

The proceeds from the event are used to purchase items not covered by the money the library gets from the city. Past purchases have included encyclopedias, an outdoor book drop and books to give to each child participating in the library's summer reading program. With the move to a new facility earlier this year, the board is hoping to spend the money raised at this event on landscaping at the new structure.

Theme selected for Deltana Fair

"Farming in the Friendly Frontier" is the theme for the 2005 Deltana Fair. The winning theme and logo design were submitted by longtime Delta resident Ann Geise, who has created a number of winning Deltana Fair logos over the last 25 years.

This year's logo is loosely based on the painting "American Gothic" by Grant Wood showing a cow and bull moose with a pitchfork rather than the farmers as in the painting.

The competition for the winning design was fierce as 14 entries were received. The other designs were retained by the Deltana Fair Association for possible future use.

Geise received \$100 and a T-shirt with her winning design emblazoned upon it.

The 2005 Deltana Fair is scheduled for Aug. 19-21.

Janet Boyer's column about Delta Junction happenings appears weekly in the News-Miner.



The Kuskokwim Corporation

Senator Gene Therriault
State Capitol
Juneau, Alaska
99801-1182

April 25, 2005

RE: SB179

Dear Senator Therriault:

The Kuskokwim Corporation was formed in 1977 when ten Alaska Native Claims Settlement Act village corporations located along the middle region of the Kuskokwim River merged. These 10 villages are: Upper Kalskag, Lower Kalskag, Aniak, Chauthbaluk, Napaimiute, Crooked Creek, Georgetown, Red Devil, Sleetmute and Stony River.

Economic development in our region to date has been minimal. Our area suffers from a lack of jobs and high unemployment, with too many people having incomes in the poverty range. The Kuskokwim Corporation (TKC) supports economic development for our area and we want to encourage environmentally responsible mining in our area and throughout Alaska to benefit rural residents. Mining can provide needed jobs to our area and is a welcomed activity so long as our current and future subsistence needs are not adversely impacted. Your bill seeks to encourage this needed economic development by providing predictability regarding taxation on large mines. We understand this predictability would assure mine planners about a mine's feasibility and assist major mining companies when they seek financing for their projects.

TKC supports your efforts and this bill, SB179, so long as it does not discourage future local governments and potential borough formation, allowing local control to address the social and infrastructure requirements necessitated by the impacts of regional development.

TKC appreciates your efforts on behalf of Alaska's rural residents. Please don't hesitate to call us concerning our perspective and views on this and future legislation that may impact the middle Kuskokwim River region.

Sincerely,

Maver Carey, CEO
The Kuskokwim Corporation

Leo Morgan, Chairman
The Kuskokwim Corporation

CC: Stan Foo, Placer Dome Mining
James Fueg, Placer Dome Mining
Paul Fuhs, TKC Lobbyist

4300 B Street, Suite 207 Anchorage, AK 99503
P.O. Box 104460, Anchorage, AK 99510-4460
(907) 243-2944 Fax (907) 243-2984 Toll Free Within Alaska 1-800-478-2171
P.O. Box 227, Aniak, AK 99557-0227
(907) 675-4275 Fax (907) 675-4276



217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

May 2, 2005

Honorable Representative Jay Ramras
House Resources,
State Capitol, Room 104
Juneau, Alaska 99801

Dear Representative Ramras,

This letter is to inform you as to the Alaska Municipal League's position on SB179 and HB280. After listening to testimony last week, it became apparent that AML must weigh in quickly. AML is opposed to SB179 and HB280.

Senator Therriault made reference to the fact that this bill had been introduced to bring "stability" to the mining industry. Yet, he also assured Senator Stedman that the six mill cap could be changed by a future legislature, should they deem it necessary. That, in itself, seems to undo the stability goal and thus makes the bill moot.

The legislature does have the right and/or responsibility to tax the unorganized borough. Therefore, a 4 mill property tax paid by a mine in the unorganized borough to the state is not something with which we have a problem. But if a borough is formed, having that same mine pay only 6 mills for a period of 15 years, while yet being exempt from all other municipal taxes is a decision that should be made by that potential borough. While we understand the mining industry's need to make an agreement with the Legislature with regards to the unorganized borough, we do not feel that agreement should carry on if and when a borough is organized.

We feel this bill is a disincentive to form boroughs; sets up an unequal taxing basis and takes away municipal taxing authority. We would encourage you to stop this bill in committee.

Sincerely,

Mike Catsi, Chairman
AML Land Use Legislative Committee

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB280(RES)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
Title Minerals Tax/Payments to Muni. RDU Comm Assist & Ec Dev (405)
Component Community Advocacy
Sponsor Resources
Requester House Finance Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	75.0	75.0	75.0	75.0	75.0	75.0
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual						
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	5.0	5.0	5.0	5.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	91.0	91.0	91.0	91.0	91.0	91.0

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	91.0	91.0	91.0	91.0	91.0	91.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	91.0	91.0	91.0	91.0	91.0	91.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation proposes to establish a statewide property tax for 15 years, not to exceed 4 mills, on mining property with a value in excess of \$10 million and located within the unorganized borough. If the area where the mining operation is located incorporates, the mill levy will be the same as on all other similarly situated property.

The bill removes the ability for municipalities to levy a severance tax on minerals, but requires mining operations to pay the same taxes levied on all other property owners within the municipality.

The department will need to hire an appraiser to appraise mining property in the unorganized borough.

Prepared by: Mike Black, Director Phone 907.269.4605
Division Community Advocacy Date/Time 5/4/05 12:11 PM
Approved by: Edgar Blatchford, Commissioner Date 5/4/2005
Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 280 (RES) Y
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title: Minerals Tax/Payments to Munis in Lieu RDU: Tax and Treasury
Component: Tax
Sponsor: Resources
Requester: (H) FIN Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	15.0	15.0	15.0	15.0	15.0	15.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	26.1	26.1	26.1	26.1	26.1	26.1
Supplies	0.3	0.3	0.3	0.3	0.3	0.3
Equipment	1.1	1.1	1.1	1.1	1.1	1.1
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	42.5	42.5	42.5	42.5	42.5	42.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	*	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	42.5	42.5	42.5	42.5	42.5	42.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	42.5	42.5	42.5	42.5	42.5	42.5

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1.4	1.4	1.4	1.4	1.4	1.4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill levies a tax rate equivalent to the mill rate "required to meet the local contribution [to schools] required of that municipality" on the full and true value of mining real and tangible personal property on land in the unorganized borough as of January 1, 2005. In general this is 4 mills or .4 percent. One exception is that the 4 mill levy on the taxable value cannot exceed 45% of the district's basic need. The tax rate does not go into effect until after production commences at the mine. We did not include an estimate for revenue because we cannot foresee if municipalities will be formed within the unorganized borough or if planned mines will actually materialize. This bill also precludes municipalities from imposing severance taxes on minerals produced or extracted in the municipality other than a tax imposed before January 1, 2006. We are requesting a fee of a tax technician to address our responsibilities under the bill and \$25,000 for increases in costs associated with the State Assessment Review Board.

Prepared by: Randy Hoffbeck & Brett Fried Phone: 465-3082
Division: Tax Division Date/Time: 5/4/05 9:20 AM
Approved by: Tom Boutin, Deputy Commissioner Date: 5/4/2005
Agency: Revenue

ALASKA STATE LEGISLATURE HOUSE RESOURCES COMMITTEE

Representative Jay Ramras

Co-Chairman

(907) 465-3004

Fax: (907) 465-2833

Representative_Jay_Ramras@legis.state.ak.us

119 N. Cushman St., Suite 213

Fairbanks, AK 99701



Representative Ralph Samuels

Co-Chairman

(907) 465-2095

Fax: (907) 465-3810

Representative_Ralph_Samuels@legis.state.ak.us

716 W. 4th Avenue

Anchorage, AK 99501

State Capitol, Juneau, Alaska 99801-1182

Sponsor Statement HB 280

“An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date.”

HB 280 is interestingly enough a bill requested of this body by the industry. Under its language, mines operating in the state would be taxed by the state on the true and real value of real and tangible property.

Precious metal exploration has continued in the state and several of the locations being developed are not located in organized boroughs. Without the language of HB 280 development companies are operating with an uncertain and potentially unstable set of rules for taxation. Using AS 14.17.410 (b) (2) as a tax base, mines in unorganized boroughs would be assessed a four-mill levy. Boroughs organizing after this year would be able to add two-mills to that tax rate with all of the funds being paid to the new borough.

Language in the bill also creates a special mining property tax account and allows the legislature to appropriate that money into the public education fund. Essentially this is an offer by the mining industry to assure funding for Alaska's Education System.

HB 280 is limited to large producers only. Mines producing less than \$10,000,000 are exempt from the tax formula. This keeps what is left of our once profitable mom and pop mines in operation.

In a world market, stability both politically and financially are critical to success for these companies that invest millions of dollars just searching for precious metals. Creating a stable tax base for an industry that creates hundreds of jobs in Alaskan communities makes sound fiscal sense. It also gives unorganized areas of the state a clear understanding of the income they will receive from a mine, once they become a borough and can receive the tax benefit.

ALASKA STATE LEGISLATURE HOUSE RESOURCES COMMITTEE



Representative Jay Ramras
Co-Chairman
(907) 465-3004
Fax: (907) 465-2853
Representative_Jay_Ramras@legis.state.ak.us

119 N. Cushman St., Suite 213
Fairbanks, AK 99701

Representative Ralph Samuels
Co-Chairman
(907) 465-2095
Fax: (907) 465-3810
Representative_Ralph_Samuels@legis.state.ak.us

716 W. 4th Avenue
Anchorage, AK 99501

State Capitol, Juneau, Alaska 99801-1182

CSHB 280(RES) Sectional

Section 2

Creates a property tax program for local municipalities either current or future should they incorporate a mine into their borough for the purposes of local taxation.

Section 3

Restricts a local municipality from imposing a severance tax on produced minerals unless it is imposed prior to January 6, 2005

Section 4

Establishes a state property tax on mines not located in an organized borough with a levy of four mills. Maintains the mill levy in existing boroughs at the same rate as is levied against other real and tangible personal property. There is also language regarding payments in lieu of taxes and how a contract may be negotiated.

.020 Clarifies a term 15 years for which only property taxes may be imposed on mines within a newly established borough or an existing borough that annexes the mine.

.030- .150 Directs the state assessor to assess the mine's property with details on what must be submitted when. Language also includes the investigation process and authority, notice requirements, objection process to the assessment including appeal. It allows for an assessment to be resubmitted following an appeal. The language in section 120 also includes collection and deposit and where the funds will go and a recommendation as to how the funds should be allocated. Further language in the reference paragraphs establishes penalties, remedies and regulation authority.

.160 Establishes facilities that are available for public use are exempt as is property used in production or transportation of minerals. The language also protects small miners from taxes.

.170 Definitions

Section 5

Allows the Department to begin promulgating regulations pending the effective date of the bill.

*Adopted
5-4-05*

AMENDMENT 1

OFFERED IN THE HOUSE
TO: CS HB 280 (RES)

BY REPRESENTATIVE *Holm*

1 **Page 4, line 2**

2 Insert new subsection (c)

3 (c) Property tax imposed by a municipality under AS 29.45 is in place of the
4 tax levied under AS 43.67.010. In the case of a municipality incorporated after
5 January 1, 2005, the transition provisions of AS 29.05.140 govern the transition from
6 assessment by the department to assessment by the municipality.

7 **Re letter the remaining subsection accordingly**

8

9 **Page 5, line 20**

10 Following "after"

11 Delete "an assessment"

12 Insert "a determination"

13

14 **Page 6, line 26**

15 Insert new (2)

16 (2) "department" means the Department of Revenue or the Department of
17 Commerce, Community, and Economic Development;

18 **Re number the remaining paragraphs accordingly**

19

20 **Page 7, line 6**

21 Following "The Department of Revenue"

22 Insert "and the Department of Commerce, Community, and Economic Development"

23

24

AMENDMENT

2

filed

5/5/05

OFFERED IN THE
HOUSE FINANCE COMMITTEE

BY REPRESENTATIVE HOLM

TO: CSHB280(RES)

Page 2, Lines 18-19

DELETE [other than a tax imposed before January 1, 2006]

HOUSE FINANCE
COMMITTEE

DATE: 5-5-05

Amendment: 2

MEMBER

Favor

Oppose

JOULE		✓
KELLY	✓	
MOSES		✓
STOLTZE		✓
WEYRAUCH		✓
CROFT		
FOSTER		✓
HAWKER		✓
HOLM	✓	
CHENAULT		✓
MEYER		✓

2



HOUSE FINANCE COMMITTEE

DATE: 5-5-05

move Amendment: HB 28

MEMBER

Favor

Oppose

MOSES		✓
STOLTZE	✓	
WEYRAUCH		✓
✓ CROFT		
FOSTER	✓	
HAWKER	✓	
HOLM		✓
JOULE	✓	
KELLY		✓
CHENAULT	✓	
MEYER	✓	

6

4

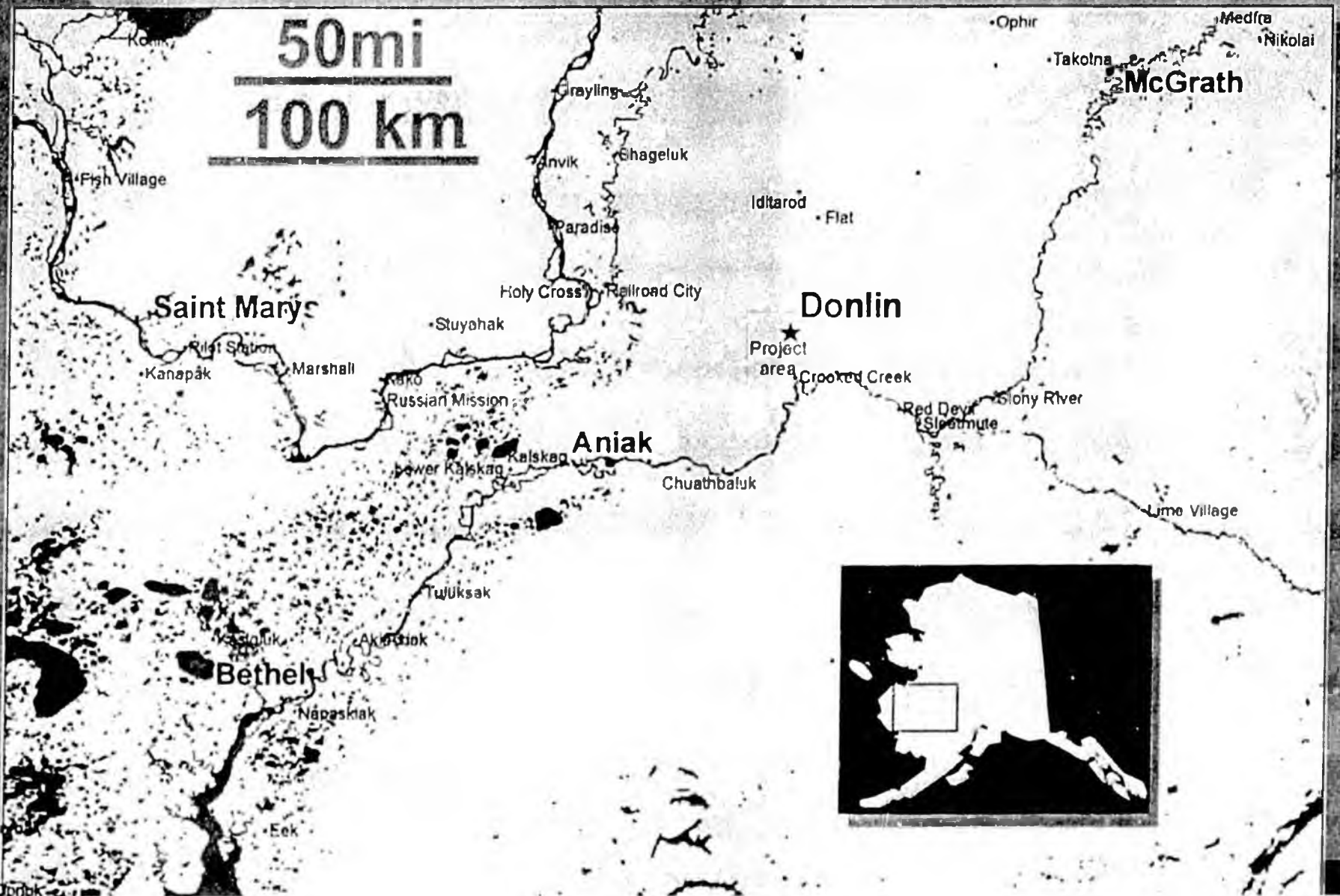
PDC

Donlin Creek Project Update

April 2005

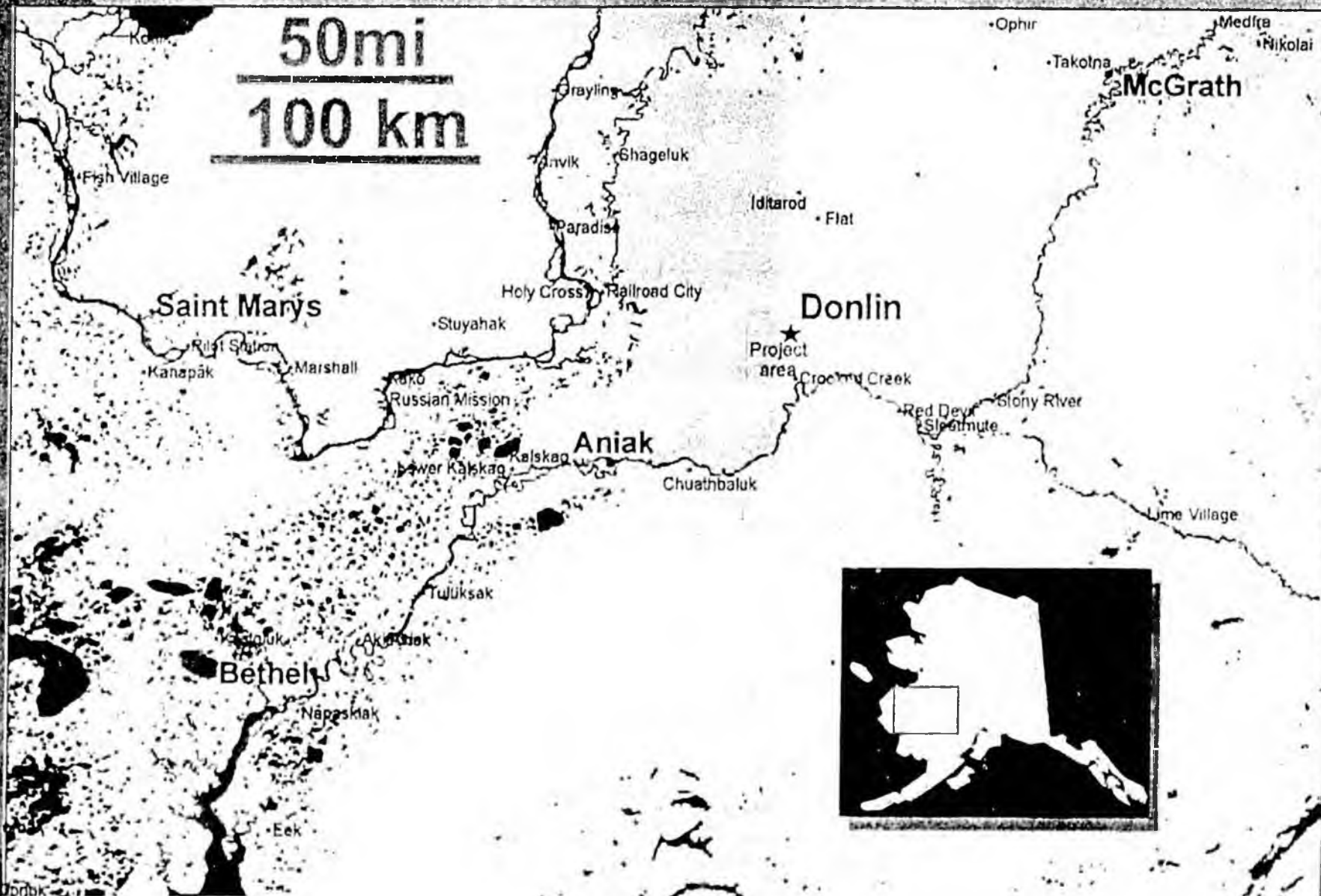


Project Location





Project Location





Mattie Donlin

- Placer Dome Managing JV Partner
- Novagold JV Partner
- Calista Regional Corporation is the subsurface estate owner
- The Kuskokwim Corporation is the surface estate owner

Donlin Creek Joint Venture





Property History

- 1974-88 Calista
 - identified potential for a major lode resource
- 1988-93 Westgold and Teck
 - Exploration and rotary drilling
- 1995-2000 PDUS
 - identified major lode resource
- 2000-2005 PDUS/NovaGold Joint Venture
 - resource significantly expanded



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Recent Work

THE REMOST

- 2000 - 2002
 - work focused on additional drilling and expansion of the total resource
- 2003 - 2004
 - Worked on addressing key project drivers (infrastructure, power, lime)
 - Baseline data collection, geotechnical studies and condemnation drilling
 - Conducted a preliminary assessment of the project



Drilling

- No additional drilling or work on geological model since 2003
- Core drilling to date totals about 133 km, with additional 35 km of RC drilling
- 2005 work is focusing on infill drilling and updating and refining the geological model within the deposit
- ~ 20,000 m planned for 2005





PDA

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- Mineralization temporally and spatially associated with $\sim 70\text{Ma}$ rhyodacite dikes and sills intruded into sediments of the mid Cretaceous Kuskokwim Group
- Sediments are predominantly interbedded greywacke and shale
- Six intrusive phases recognized

Name	Code	Relative Age
Blue Porphyry	RDXB	Youngest
Aphanitic Flow-banded Porphyry	RDA	
Lath-rich Porphyry	RDXL	
Crystalline Porphyry	RDX	
Fine-grained Porphyry	RDF	
Mafic Dykes	MD	Oldest

POG

Mineralization



- Mineralization occurs in NNE striking veins that fill extensional fractures in the intrusive and more competent sedimentary rocks
- Veins occur in NNE oriented corridors 100-350 meters thick, which can be broken into sub-corridors from 2-30 meters
- Four primary vein types in the deposit area, variably mineralized
- Ore is refractory, dominant sulfide mineral is pyrite, but the gold is found in the arsenopyrite



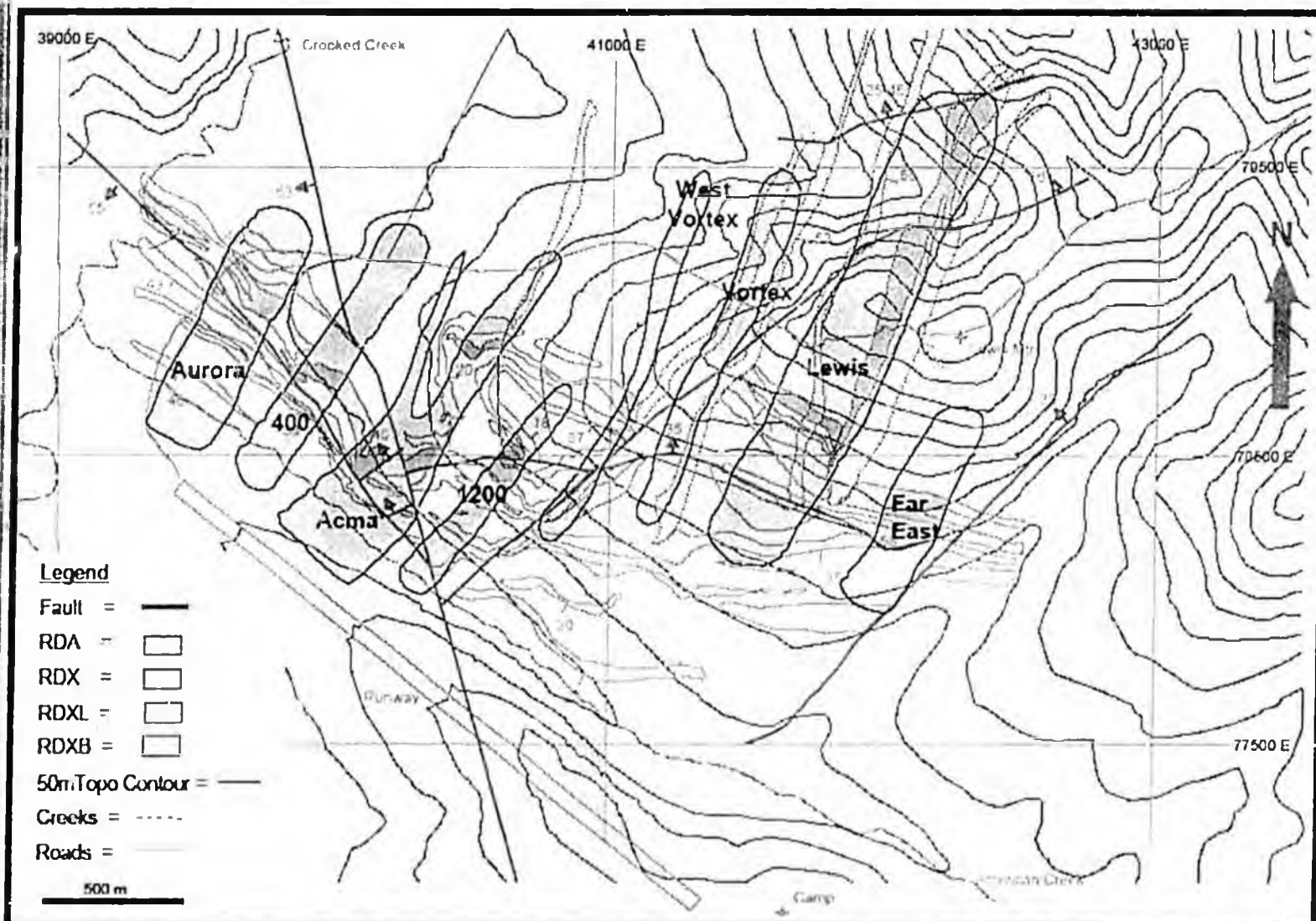
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PDC

Mineralized Corridors





Current Resource Estimate



DONLIN CREEK RESOURCE ESTIMATE APRIL 2003

NOVAGOLD/PLACER DOME/MRDI

1.5 g/t Cutoff

	Tonnes (M)	Gold g/t	Contained Ounces
Measured	7.9	3.1	799,000
Indicated	109.5	2.9	10,343,000
Total M&I	117.5	3.0	11,142,000
Inferred	142.2	3.1	14,308,000



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Additional 2005 Fieldwork

- Geotechnical (Auger and Trenching)
- Water wells to investigate pit dewatering
- RC drilling to condemn facilities sites
- RC drilling to evaluate CCE resource
- Engineering studies (road, port, runway)
- Environmental studies
- Wind monitoring



Primary Issues

- Power
- No regional grid or generating capacity
- Lime
- Will require significant quantities of lime for process and tailings neutralization
- Logistics
- Remote location
- Limited river access

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Power - Potential Solution

- Current Plans require 80 MW Peak Load, 70 MW Average Load (30k tpd mill)
- Evaluated more than 10 options
- On site generation using diesel
- Potential to supplement with wind generation
 - Wind option requires data collection for validation
 - Objective - offset ~40% of fuel requirement



Lime - Potential Solution

- Projected lime requirement - 50,000 tons/year
- Three potential options
 - Imported Lime
 - Limestone in region
- Identified onsite calcareous sandstone resource
- Approximately 10% CCE equivalent
- Could offset requirement for 30,000 tons/year
- Resource remains to be validated by drilling and geochemical testing of bulk samples



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Logistics and Infrastructure



- Annual consumables (30,000 ton/day mill)
 - General Consumables 50,000 tons
 - Fuel (no wind generation) 140,000 tons
 - Lime (assumes on site CCE) 20,000 tons
- Barge materials up the Kuskokwim River
- Port location at Jungjuk Creek
- All weather road to Donlin Creek
- Construct a new 6000' airstrip near Donlin Creek



Preliminary Process Outline

- Conventional open pit
- 2 pits (ACMA, Lewis)
- Truck and shovel
- Evaluating 30,000 and 40,000 tpd scenarios
- Logistical support
- Grade control/dilution issues
- Three stage crushing and primary ball milling
- Flotation/Pressure oxidation mill
- Conventional tailings

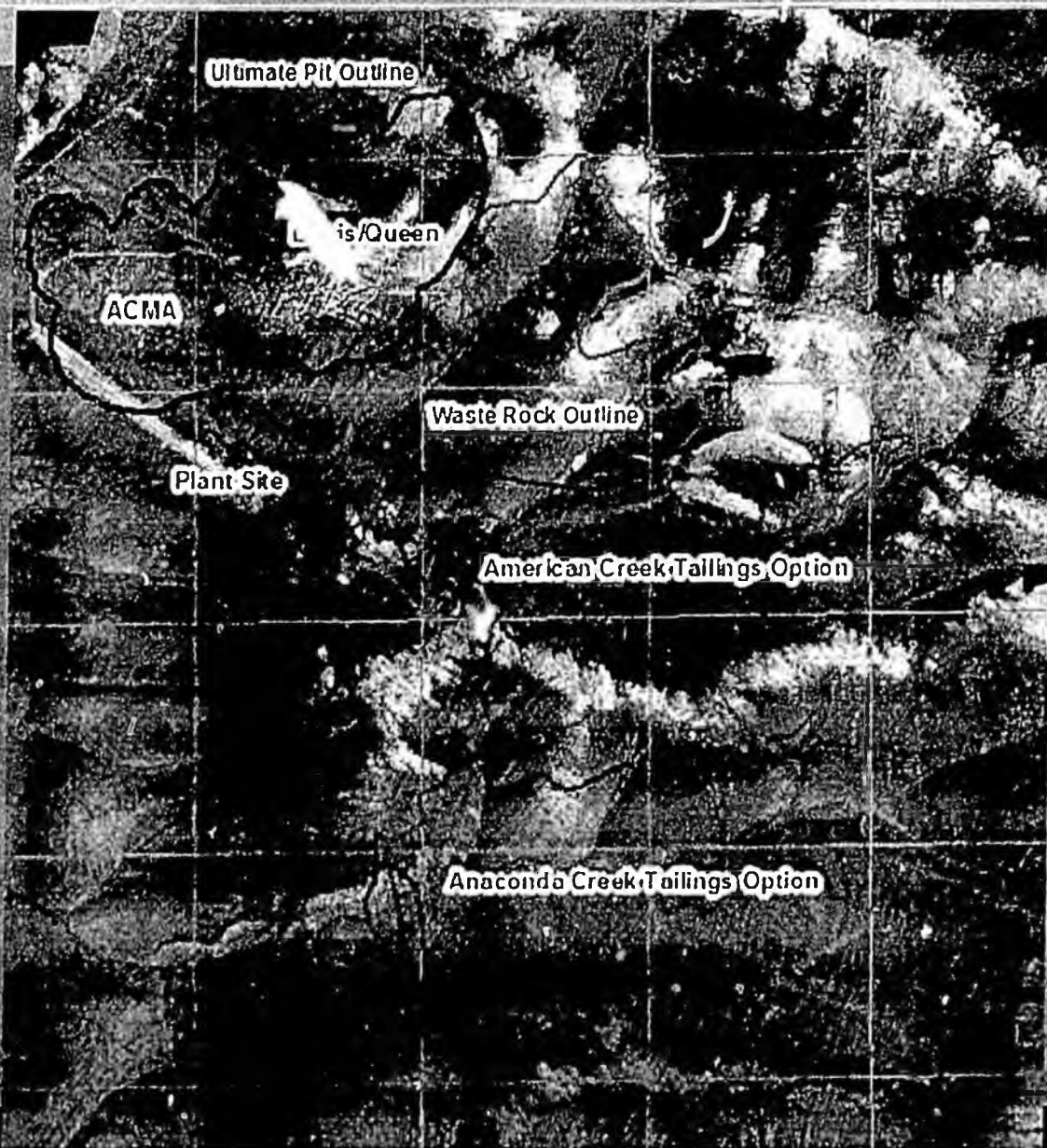


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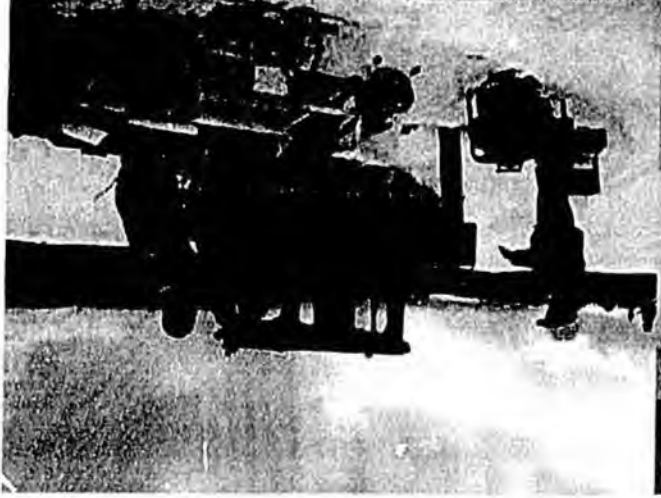
Site map





Infrastructure

- Approximately 25 miles of road construction
- Port and laydown area at Jungjuk Creek
- 6000' surfaced runway
- Facilities associated with power generation
- Field engineering and environmental studies will be ongoing this summer





PDA

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Environmental Studies



- Archeological resources
- Surface water flows and quality - ~ 8 years
- Ground water flows and quality - 5 quarters
- Fisheries
- Habitat and animal species
- Meteorology / Air quality
- Wetlands delineation
- Rock characterization
- Social & economic studies
- Traditional knowledge & Subsistence resources



Environmental Studies Map



POC

Environmental Studies Map





2005 Project Description

- 30 or 40k tpd operation
- Waste rock and initial tailings in American valley, later tailing in Anaconda valley
- Supplies barged up Kuskokwim River to port at Jungjuk Creek
- Power provided by onsite diesel +/- wind





2005 Objectives



- Validate wind generation option
- Validate on site CCE resource
- Convert additional inferred resources to Measured & Indicated
- Complete a prefeasability study
- Begin permitting process



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LEGAL SERVICESDIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**COPY**(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329MEMORANDUM

May 4, 2005

SUBJECT: CSHB 280(RES): Explanation of AS 43.67.020, added by bill section 4 (Work Order No. 24-LS0933\Y)

TO: Representative Jay Ramras

FROM: Jack Chenoweth
Assistant Revisor

Jim Pound has asked for a memo providing an explanation for AS 43.67.020, added by sec. 4 of CSHB 280(RES). The provision reads:

Sec. 43.67.020. In place of municipal taxes. For a period of 15 years after the production commencement date, the taxes levied or authorized under AS 43.67.010 are in place of the following taxes that might otherwise be imposed by a municipality incorporated on or after January 1, 2005, on the property, or imposed by a municipality incorporated before January 1, 2005, on property located within an area annexed by the municipality on or after January 1, 2005:

- (1) taxes on the sale or use of minerals;
- (2) taxes on or measured by gross or net income from the taxable property, including income from the exploration for, production of, or transportation of minerals or taxable property; and
- (3) any license, excise, fee, charge, severance, throughput, or other tax on or pertaining to the taxable property or services used in or associated with the taxable property or in its maintenance or operation unless the tax is also levied on property not subject to tax under AS 43.67.010(a).

Under AS 43.67.010, added earlier in the bill, the state levies and collects a mining property tax on mining-related properties in the state's unorganized borough. AS 43.67.010 specifies the rate of levy and authorizes contracts for payments in lieu of taxes.

Whenever, under AS 43.67.010, the mineral-related property tax is levied (or, alternatively, when under that section payments are made in lieu of taxes), then AS 43.67.020 also operates. This section is intended to preclude a municipality from levying its own taxes on property subject to mining-related property taxes or payments in lieu ("the taxes levied or authorized under AS 43.67.010 are in place of the following

Representative Jay Ramras
May 4, 2005
Page 2

taxes that might otherwise be imposed by a municipality."). The municipality's authority to levy its own taxes on these sources is suspended from the "production commencement date" (defined later in AS 43.67 as the date on which the initial shipment of products from mining operations is made) for a period of 15 years. The language of this section directs that its preclusive effect applies to "new" municipalities -- newly-incorporated on or after January 1, 2005 -- and existing municipalities annexing mining-related properties when the annexation occurs on or after January 1, 2005. The taxes that, under this section, may not be levied by a municipality against mining-related property and related services include the following --

(1) taxes on the sale or use of minerals -- presumably sales and use taxes imposed on transactions involving minerals;

(2) taxes on or measured by gross or net income from the taxable property, including income from the exploration for, production of, or transportation of minerals or taxable property -- in other words, income taxes¹; and

(3) any license, excise, fee, charge, severance, throughput, or other tax on or pertaining to the taxable property or services used in or associated with the taxable property or in its maintenance or operation; however, in the concluding part of the paragraph, there is an exception that would allow levy against these sources if "the tax is also levied on property *not subject to tax under AS 43.67.010(a)*," whatever that may encompass.

JBC:lmb
05-169.lmb

¹ Municipalities already may not levy and collect income taxes on the *income* of individuals. AS 43.20.290:

Exclusive state authority. No tax may be levied and collected upon the net income of resident or nonresident individuals by a general law city or by a home rule city or any other political subdivision of the state.

LEGAL SERVICES

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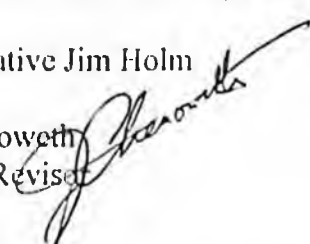
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 4, 2005

SUBJECT: CSHB 280(RES): Power of municipality to levy and collect property taxes on minerals (Work Order No. 24-LS0933\Y)

TO: Representative Jim Holm

FROM: Jack Chenoweth
Assistant Revisor 

In conjunction with the above-captioned bill, I have from Barbara Cotting the question of whether a municipality may levy and collect a severance tax on minerals.

An April 29, 1986, Opinion of the Attorney General answers the question in the affirmative, concluding

We believe that a better reading of the restrictions of article VIII, and particularly section 2 of that article, is that the provisions reserve to the legislature the exclusive authority to act as to the state's proprietary interest in natural resources. Thus, a borough would be prohibited from entering into a royalty contract for the production of minerals on state lands, from issuing grazing leases, and from appropriating water. An entity's power to tax is separate from its proprietary interest. We do not believe that, after full briefing, the full Alaska Supreme Court would hold that article VIII limits taxing authority, whether that authority is exercised by the state or by a municipality.

It may well be that, as a policy matter, the legislature will conclude that the production of mineral resources in the state should benefit the people of the state as a whole, and not just the people of the municipality in which the natural resources occur. The legislature may prohibit a local severance tax altogether, as it has done in AS 43.55. Or, it may devise a particular plan for distributing the revenue from a type of tax between the municipality and the state, as it has done in AS 43.56. Absent a restriction by the legislature, we believe that a borough may exercise the power to levy a severance tax.

Opinion, at pp. 12 - 14 (citations and note omitted). A copy of the full text is attached.

Opinions of the attorney general, while not controlling on matters of statutory

Representative Jim Holm

May 4, 2005

Page 2

interpretation, are entitled to some deference. Regarding the proper use of opinions of Attorneys General in statutory construction, the Alaska Supreme Court has declared:

While opinions of the attorney general are not controlling as to the meaning of the statute, the fact that his opinions have not been challenged and that he is the officer charged by law with advising the officers charged with the enforcement of the law as to the meaning of it[,] entitle his opinions to great weight.

Allison v. State, 583 P.2d 813, 816 (Alaska 1978), quoting *Smith v. Municipal Court of Glendale Judicial District*, 334 P.2d 931, 935 (Cal. App. 2d 1959).

JBC:lmb

05-167.lmb

Enclosure

5 of 7 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF ALASKA

File No. 663-86-0456

1986 Alas. AG LEXIS 274; 1986-1 Op. (Inf.) Atty Gen. Alas. 375

April 29, 1986

TYPE: INFORMAL OPINION

SYLLABUS:

[*1]

SUBJECT: Power of borough to levy severance tax on minerals

REQUESTBY:

Hon. Emil Notti, Commissioner
Department of Community and Regional Affairs

OPINIONBY:

HAROLD M. BROWN, ATTORNEY GENERAL; Deborah Vogt, Assistant Attorney General

OPINION:

MEMORANDUM

You have asked for our review of an opinion submitted to your office by Mr. Thomas Klinkner of Wohlforth & Flint regarding the authority of a first class borough to levy a severance tax on minerals. With some reservations, we agree with the conclusion of that opinion.

At the outset, we note that neither your request nor the opinion of Mr. Klinkner set out the language of a proposed tax, and as a result our analysis is in the abstract. We understand that the primary concern of the proposed borough is with the ability to tax the DeLeng Mountain enterprise, which is on privately owned Native corporation land. Mr. Klinkner's conclusion is limited to the authority of the borough to levy a tax on minerals mined from lands in which the mineral estate is privately owned.

The framers of the Alaska Constitution were aware that the powers, particularly the taxing powers, of local governments had been construed very narrowly in other states. As the Alaska Supreme [*2] Court noted in *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska 1978), the second sentence of article X, section 1, appears in the Alaska Constitution specifically to overrule the common law rule of narrow construction. 584 P.2d at 1120 & n.19. That provision reads: "A liberal construction shall be given to the powers of local government." n1 As the court noted, the framers placed the provision in what is now section 1 so that it would apply to general law municipalities as well as home rule municipalities. *Id.* at 1120-21 & n.19.

n1 The section in its entirety provides:

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

The Alaska Legislature has provided for two types of municipalities: home rule municipalities and general law municipalities. A home rule municipality "has all legislative powers not prohibited by law or charter." AS 29.04.010. A general law municipality "has legislative powers conferred by law." AS 29.04.020. [*3] I understand that the Northwest Arctic Borough would be a general law municipality and therefore limited to the powers specifically granted by the legislature.

AS 29.35.010 grants general powers to all municipalities, subject to other provisions of law. Among those powers is the power "to levy a tax or special assessment, and impose a lien for its enforcement." AS 29.35.010(6). It could be argued that the general power to levy a tax must be combined with a specific grant such as those found in chapter 45, authorizing property and sales taxes, in order for a general law municipality to levy a particular tax. However, we do not believe that the state supreme court would adopt such an interpretation. In *Liberati*, the court read the predecessor of this section, former AS 29.48.010(7) (which authorized municipalities "to levy taxes"), to be a "broad grant of taxing authority, limited only by other provisions of law" and to be "consistent with the second sentence of article X, section 1 which requires that '[a] liberal construction shall be given to the powers of local government.'" *Liberati*, 584 P.2d at 1120.

Chapter 45 of title 29 delineates specific provisions for municipal [*4] property taxes and sales taxes, and for the enforcement of tax liens. Those provisions include some limitations on property taxes and sales taxes, but are silent as to severance taxes. Thus, it appears that the general power to tax granted by AS 29.35.010(6) has not been limited by any other provision of title 29.

Nor do we find a limitation on this power to tax in any other statute. Nothing in the mining license tax specifically prohibits a municipality from levying a severance tax. In this regard, it should be noted that the legislature may limit the ability of a municipality to levy a tax, including a severance tax, and that it has done so in the past. AS 43.55 levies production taxes on producers of oil and gas. AS 43.55.017 specifically provides that the taxes imposed by that chapter "are in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may impose a tax upon [production of oil or gas or oil and gas in place]." Similarly, AS 43.56 levies a property tax on oil and gas production and pipeline transportation property, and permits local taxation of that property subject to limitations. AS 43.56.030 provides [*5] that the taxes imposed in the chapter "are in place of . . . all other ad valorem [sic] or other taxes imposed by a municipality on property subject to tax under this chapter. . . ."

Our inquiry would end here with the conclusion that the general power to impose a severance tax on minerals has not been limited by the legislature were it not for the concerns expressed by Justice Rabinowitz in his dissent in *Liberati*. In that case, the Bristol Bay Borough had levied a three percent tax on the sale of all raw fish caught within the borough. The challengers argued that the tax was a severance tax, and was prohibited by the provisions of article VIII of the Alaska Constitution. The majority of the court concluded that the tax at issue was a sales tax and did not reach the issue of whether a severance tax is prohibited by article VIII of the constitution. Justice Rabinowitz, however, concluded:

In my opinion, the severance tax imposed by Bristol Bay Borough does violate the provisions of Article VIII of the Alaska Constitution which reserve the benefits from, and control over management of the fisheries resource to all the people of the state. The effect of the borough's ordinance [*6] is to exclusively appropriate to its own benefit, and that of its residents, the use of a natural resource which is reserved to all of the people of the state for their common use. Article VIII, Section 2 of the Alaska Constitution reserved to the legislature, not the borough, the authority to act as to this resource. Absent a delegation by the legislature to the borough, I conclude that the ordinance contravenes Alaska's Constitution.

Liberati, 584 P.2d at 1124-25 (footnote omitted).

Mr. Klmkner concludes that this prohibition, if adopted by the court, would not apply to a tax levied on minerals mined from a privately owned mineral estate in real property. He further states that such private interests would include mineral estates patented under state or federal public land laws. We have some difficulty with his analysis at this point.

A severance tax is a general revenue tax levied on the activity of severing natural resources within the taxing jurisdiction. n2 The power to levy this type of tax comes from a jurisdiction's sovereign, statutory or constitutional power to levy taxes, and not from the jurisdiction's proprietary interest in the resource. It is levied [*7] on the producer of the natural resource regardless of the ownership of the land from which the resource is produced. Thus, the severance tax at issue in *Commonwealth Edison v. Montana*, 453 U.S. 609 (1981), was levied by the State of Montana primarily on production from coal leases on federal lands. Alaska's oil and gas production taxes apply to oil and gas produced from state, federal and private land within the state. AS 43.55.011; 44.55.016.

n2 "Alaska's Oil and Gas Tax Structure: A Study with Recommendations for Improvement," Alaska Department of Revenue (1977), describes the Oil and Gas Properties Production Tax as "a tax on the activity of producing oil and gas in Alaska." *Id.* at II-2.

Alaska is prohibited by the Statehood Act from alienating the mineral interest in mineral lands (1981 Op. Att'y Gen. #10 (Oct. 20). n3 If mining activity were to take place within the borough on state lands, the state would retain ownership of the minerals, just as the state retains ownership of the oil on state oil leases until the oil is severed. Thus, since it appears that any borough-wide severance tax would tax the production of state-owned minerals, we believe that the [*8] concerns raised by Justice Rabinowitz must be addressed in more detail.

n3 Contrary to Mr. Klinkner's representation, the state does not, and may not, patent mineral lands. 1981 Op. Att'y Gen. #10 (Oct. 20).

One reading of Justice Rabinowitz's conclusions would be that the constitution reserves to the legislature all legislation dealing with natural resources in the state, whether those resources occur on public or private land. This reading appears consistent with Justice Rabinowitz's language that article VIII, section 2, reserves to the legislature "the power to act as to this resource." It would imply that, since the state has the power to levy a severance tax on minerals, that power resides solely in the legislature. We believe this reading to be too broad. The constitutional provision explicitly relied on by Justice Rabinowitz was article VIII, section 2, which provides:

Section 2. General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

It is clear from the minutes of the Constitutional Convention that [*9] this section was intended to apply only to the state's proprietary interest in natural resources, and not to a general, overall interest in resources within the state regardless of ownership. n4 At the Constitutional Convention, that provision was developed from section 2 of Committee Proposal No. 8/a. During the floor debate of that section, the following discussion took place:

DAVIS: Mr. Riley, in Section 2, line 14, or actually lines 12, 13 and 14, it says, "The State of Alaska shall provide for the utilization, conservation and development of all of the natural resources, including lands and waters belonging to the State." It appears to me that as that is written it is broad enough to cover all natural resources, no matter whether they are privately owned, publicly owned, or what they may be. I am wondering if you did not intend to put a comma after the word "waters" at the end of line 14, so that it would then become clear that we are only talking about natural resources belonging to the state.

RILEY: That would be my conception of it, Mr. Davis.

DAVIS: There wasn't any intention that the state is going to develop natural resources on either federal land or privately [*10] owned land, is that right?

RILEY: No. The sections covered in the commentary states all resources over which the state has a proprietary interest, and I think the point is well taken.

4 Proceedings of the Alaska Constitutional Convention at 2499 (January 18, 1956). The provision was amended so that the words "belonging to the state" modified "natural resources" rather than only "lands and waters." *Id.* at 2500. Thus, it is clear that the framers intended the provision to apply only to the proprietary interest of the state, and not to all the

natural resources that might be found within the boundaries of the state. It then follows that the article cannot be read to prevent any severance tax levied by a municipality on any minerals within the state.

n4 The Commentary on what was then section 1 of Committee Proposal 8 (Natural Resources) read:

(Sec. 1. States' Proprietary Interest)

This section is a general grant of authority to the state for the utilization and development of all resources over which the state has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the state through grants from the United States or by other means. Authority over private lands and resource interest is not provided in this article except as that authority is generally reserved in Section 18 [dealing with Private Ways of Necessity].

[*11]

Another possible reading would be that apparently subscribed to by Mr. Klinkner -- that the legislature retains the exclusive authority to act (including tax) as to resources in which the state retains a propriety interest. The difficulty with this approach is that a severance tax is not a tax on minerals (state-owned or otherwise), but rather is a tax on the (private) activity of production. *Oliver Iron Mining Co. v. Lord*, 262 U.S. 172 (1922) ("[the tax] is not laid on the land containing the ore, nor on the ore after removal, but on the business of mining the ore"). As a result, there does not seem to be any neat distinction between a sales tax levied on state owned resources (after they are captured by a private party) and a severance tax levied on the private producer of minerals on state land. The tax at issue in *Liberati* was on fish -- a resource "reserved to the people for common use" by article VIII, section 3. The tax was levied exclusively on this resource. If the Rabinowitz language were read to prohibit a borough from acting (including taxing) as to resources in which the state has once had a proprietary interest (even after those resources are captured [*12] by a private party), it would seem that this sales tax would be prohibited also. The majority of the court, however, had no difficulty finding that tax constitutional.

If the constitution were construed to prohibit only a municipal severance tax as applied to the production of state-owned minerals, then two identically situated private companies, one producing minerals under a lease on state lands and another producing minerals under a lease on private lands, would be treated very differently. The justification for this difference would have to be that article VIII impliedly limits municipal authority in this area. But, as set out above, the constitutional framers intended that municipal powers should be broadly construed, and made this intent explicit. The majority of the court in *Liberati* held that "we should not be quick to imply limitations on the taxing power where none are expressed." 584 P.2d at 1121.

We believe that a better reading of the restrictions of article VIII, and particularly section 2 of that article, is that the provisions reserve to the legislature the exclusive authority to act as to the state's proprietary interest in natural resources. Thus, a borough [*13] would be prohibited from entering into a royalty contract for the production of minerals on state lands, from issuing grazing leases, and from appropriating water. n5 An entity's power to tax is separate from its proprietary interest. See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 145-46 (1982). We do not believe that, after full briefing, the full Alaska Supreme Court would hold that article VIII limits taxing authority, whether that authority is exercised by the state or by a municipality.

n5 The Department of Law has advised that this provision prohibits a municipality from exerting authority over the appropriation of water. 1974 Inf. Op. Atty Gen (Apr. 4; James Reeves).

It may well be that, as a policy matter, the legislature will conclude that the production of mineral resources in the state should benefit the people of the state as a whole, and not just the people of the municipality in which the natural resources occur. The legislature may prohibit a local severance tax altogether, as it has done in AS 43.55. Or, it may devise a particular plan for distributing the revenue from a type of tax between the municipality and the state, as it has done in [*14] AS 43.56. Absent a restriction by the legislature, we believe that a borough may exercise the power to levy a severance tax.