

HB

330

<TARGET><BILL>HB 330</BILL><SUBJECT>HB
330</SUBJECT><COMM>HJUD30</COMM></TARGET>



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Natural Resources

COMMISSIONER'S OFFICE

550 W. 7th #1400
Anchorage, AK 99501
Main: 907.269.8431
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MEMORANDUM

TO: Chair Claman
House Judiciary Committee

FROM: Commissioner Andrew T. Mack
Department of Natural Resources

DATE: February 6, 2018

RE: Hearing Request for HB 330

Please accept this request to hear HB 330 – “DNR: Disclosure of Confidential Info” in the House Judiciary Committee.

HB 330 would allow the commissioner to issue a protective order to better adjudicate audits, appeals, and requests for reconsiderations. Such a protective order would allow the commissioner to disclose confidential data, only to affected parties, when that data is part of the administrative record and due process requires that disclosure.

Thank you for your consideration. If you would like any additional information or have questions regarding this request, please feel free to contact me at 269-8431 or Ed King at 465-4730.

Sincerely,

A handwritten signature in blue ink that reads "Andrew T. Mack".

Andrew T. Mack
Commissioner
Department of Natural Resources

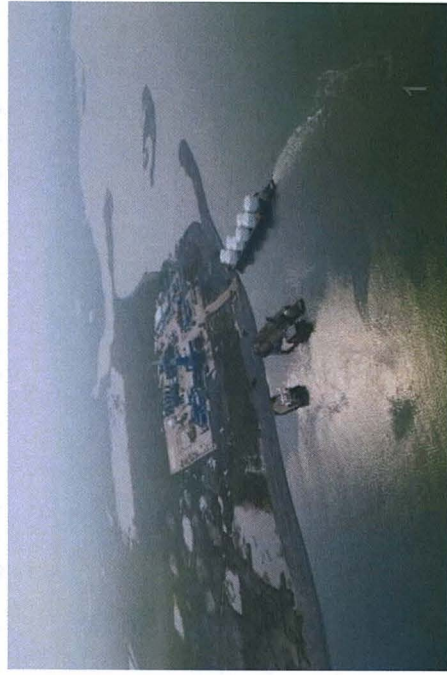
Protective Orders

HB330

Presented by:
Ed King
Alaska Department of
Natural Resources



House Judiciary Committee
February 16th, 2018



ROYALTY AUDIT SECTION

- The Division of Oil and Gas collects **royalty and Net Profit Share payments** from producers through the **Royalty Audit Section**
- The **Royalty Audit Section** audits those payments to **ensure accuracy**
- The Royalty Audit Section was **realized in its current form in 2003** by HB246, which moved audit functions from the Department of Revenue back to the Department of Natural Resources.
- The Royalty Audit Section conducts audits of **state royalty and net profit payments**, as well as **Federal royalties** received from leases within Alaska
- **Since FY03**, the section has conducted **91 audits** and collected an additional **\$270.6 million** as a result of audited payments
- The most common audit issues found during a royalty audit include **incorrect marine/pipeline deductions, incorrect starting values, and “higher of”** calculation

COMPUTING ROYALTIES

Royalty Rate and Calculation

- The **royalty rate** and the **method** for **calculating royalty payments** to the state is **laid out in leases** signed between lessees and the state
- A 12.5% minimum **royalty rate** is set in statute
- All leases define **value** in relation to the sales of other producers
- Part 36 of the new-form leases lays out **four computations** that may be used to calculate royalties, with the **highest being the determining value**, commonly referred to as the **“higher of”**
- The Royalty Audit Section most often uses the **first and second computation methods** which are based on **“field price”**

36. VALUE. (a) For the purposes of computing royalties due under this lease, the value of royalty oil, gas, or associated substances shall not be less than the highest of:

- (1) the field price received by the lessee for the oil, gas, or associated substances;
- (2) the volume-weighted average of the three highest field prices received by other producers in the same field or area for oil of like grade and gravity, ~~see of like kind and quality~~, or associated substances of like kind and quality at the time the oil, gas, or associated substances are sold or removed from the leased or unit area or the gas is delivered to an extraction plant if that plant is located on the leased or unit area; if there are less than three prices reported by other producers, the volume-weighted average will be calculated using the lesser number of prices received by other producers in the field or area;

- The other two computation methods are based on **“posted price”**
- In oil provinces like Texas, whose production is close to infrastructure and transportation, **sellers post prices** to alert buyers
- Posted prices were more often used in Alaska **when Cook Inlet production was significant**
- **DL-1 leases** refer to **price paid at the well, posted price**, and prevailing price in the field

WHY HB330 ?

- Lessees are **obligated to share price information** with the Division through lease provisions
- When auditing royalty payments, the Royalty Audit Section looks at and **relies on confidential sales information** from other producers
- When an audited producer appeals to the Commissioner, DNR needs to provide access to the confidential information as part of the record, in order to provide **due process**
- In recent years, producers have **refused to allow the Division** to share confidential price information with other producers in connection with royalty audits
- There are currently seven royalty audits that are pending due to confidentiality concerns, totaling **\$39.2 million**
- Occasionally, there are also appeals where the Commissioner needs to provide access to confidential geological, geophysical, or engineering data

WHAT ARE PROTECTIVE ORDERS

- The mechanism to allow for sharing of confidential information is a “**protective order**” issued by the Commissioner of Natural Resources.
- Protective orders are **common tools** used by courts, arbitrators, and certain agencies
- A typical protective order **limits access** to confidential information to **just the people litigating a case**, for the limited use of that case, with protections for **destroying or returning copies when a case is resolved**
- Departments like Fish and Game and Administration **routinely issue** protective orders to allow confidential information to be shared
- The Commissioner shall make a determination that **disclosure is necessary**
- **Notice** will be given to those whose information is considered for disclosure
- Once complete, the Commissioner **may issue a protective order** limiting the persons who may have access to the information and purposes for which it may be used
- Without passage of the bill, the Department will be forced to continue a **lengthy process** of asking courts to review each issue individually and issue a court protective order

HB330

Section 1:

New provision adding to the Commissioner of Natural Resources duties and powers to include determining whether a disclosure is required for a royalty audit, appeal or reconsideration

Mandates that if the commissioner determines disclosure is necessary, notice and opportunity to be heard by those affected must be provide

Allows the commissioner to issue a protective order limiting the persons who may have access to the information and the purposes for which it must be used

Section 2:

Conforming language to allow protective order to be issued as it relates to cost data and financial information submitted in support of applications, bonds, leases and similar items

Section 3:

Conforming language to statutes dealing with punishment for divulging confidential information allowing for protective orders to view confidential information during lease royalty audits or appeals



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Governor Bill Walker
STATE OF ALASKA

February 2, 2018

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

Dear Speaker Edgmon:

Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill that clarifies how confidential information obtained by the Commissioner of natural resources may be used and treated as part of the Department of Natural Resources (DNR) appeals, audits, and requests for reconsideration.

A long-standing dilemma faces DNR with respect to the handling of oil and gas sales price information considered "confidential" under Alaska law. Specifically, this dilemma impedes the department's ability to effectively audit and enforce royalty payments when multiple companies working the same lease negotiate different prices. Because sales contracts by one party cannot be provided to another due to confidentiality, producers object to the audit on the basis of a lack of due process. The department then faces administrative obstacles in finalizing the royalty audits.

While the department believes it has the statutory and contractual authority to share this information for audit purposes, providing the information in the face of objection from the affected parties could expose the department and its employees to a claim for improper disclosure of confidential information and criminal penalties. This bill would clarify that the department may disclose pricing information to affected parties under a protective order to finalize the audits without going to court. This will allow the State to more quickly and efficiently collect the royalties it is owed in the future.

I urge your favorable action on this measure so the State may timely finalize audits and recover the royalties it is owed moving forward.

Sincerely,

A handwritten signature in blue ink that reads "Bill Walker".

Bill Walker
Governor

Enclosure



USIBELLI COAL MINE, INC.

PO Box 1000 Healy, Alaska 99743
Telephone (907) 683-2226 • Facsimile (907) 683-2253

February 16, 2018

The Honorable Representative Matt Claman
State Capitol
Juneau, Alaska 99801

Re: HB 330 DNR: Release of Confidential Information

Dear Representative Claman:

Usibelli Coal Mine, Inc. (UCM), located in Healy, Alaska is a privately-held, fourth generation, family-owned business. As the only operating coal mine in the state, UCM supplies 100 percent of the in-state demand to six coal-fired power plants in Interior Alaska. UCM employs approximately 100 people and is the largest year-round private sector employer in the Denali Borough.

UCM has approximately 45,000 acres of leased land from the State of Alaska. Most of that land contains our coal leases, for which we have numerous permits issued by the Alaska Department of Natural Resources (DNR) under the Alaska Surface Coal Mine Control and Reclamation Act. UCM is concerned that HB 330 will cause unintended consequences to our privately-held, family owned and operated business. The bill clearly targets oil and gas leases, however, the way the bill is currently written (version A), it would apply to all State leased land – including our coal leases. While the confidential information could only be released under a protective order, and only if the disclosure is necessary to adjudicate an appeal as determined by the DNR commissioner, UCM is still very concerned about our private, financial information falling into the wrong hands.

As a privately-held company, we have certain rights to privacy that publicly traded companies do not have. If an anti-coal mining group were to appeal one of UCM's permits, we do not foresee any scenario where the release of our confidential financial information to that group would be necessary or appropriate. We do not believe the commissioner should have discretion to release this information even if it is under the ostensible protection of a protective order.

Thank you for the opportunity to provide comments on HB 330. Should you have any questions, please do not hesitate to contact me at (907) 982-6744, or lorali@usibelli.com.

Sincerely,

Lorali M. Simon
Vice President, External Affairs

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	HB 330
Fiscal Note Number:	1
(H) Publish Date:	2/5/2018

Identifier: DNR-DOG-12-14-17
 Title: DNR: DISCLOSURE OF CONFIDENTIAL INFO
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Governor

Department: Department of Natural Resources
 Appropriation: Oil & Gas
 Allocation: Oil & Gas
 OMB Component Number: 439

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Initial version.

Prepared By: <u>Chantal Walsh, Director</u>	Phone: (907)269-7493
Division: <u>Division of Oil & Gas</u>	Date: 12/14/2017 10:00 AM
Approved By: <u>Andrew T. Mack, Commissioner</u>	Date: 12/14/17
Agency: <u>Department of Natural Resources</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

Analysis

Department of Natural Resources does not anticipate any fiscal impact from this proposed legislation.

AMENDMENT

#1 Adopted

OFFERED IN THE HOUSE

TO: HB 330

1 Page 3, line 25, following "department":

2 Insert "relating to oil and gas"

3

4 Page 3, line 26:

5 Delete "a lease"

6 Insert "an"

7

8 Page 6, line 20, following "royalty":

9 Insert "or net profit share"

AMENDMENT

#2 Adopted

OFFERED IN THE HOUSE
TO: HB 330

BY REPRESENTATIVE LEDOUX

1 Page 1, lines 2 - 3:

2 Delete "**in an investigation or proceeding, including a lease royalty audit, appeal,**
3 **or request for reconsideration**"

4 Insert "**during a royalty or net profit share audit or appeal**"

5
6 Page 3, lines 25 - 26:

7 Delete "**in an investigation or proceeding of the department, including a lease**
8 **audit, appeal, or request for reconsideration**"

9 Insert "**during a royalty or net profit share audit or appeal**"

10

11 Page 3, line 28:

12 Delete "**lease**"

13 Insert "**royalty or net profit share audit or appeal**"

14

15 Page 4, line 1:

16 Delete "**investigation or proceeding**"

17 Insert "**royalty or net profit share audit or appeal**"

18

19 Page 6, line 20:

20 Delete "**lease**"

21 Following "**royalty**"

22 Insert "**or net profit share**"