ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1857 HRES SB 731- SB 732

1857

Physical Description

Shuyak Island is the northernmost and smallest of the major islands in the Kodiak Island Archipelago, which is formed by the Kodiak Mountains, a structural southwest continuation of the Kenai-Chugach Mountains. The area is characterized by an irregular coastline with many fiords and islands. Short, swift, clear streams, small lakes and numerous small ponds are widely scattered over the glacially sculptured topography. Unlike the larger islands of the group the topography of Shuyak Island is of rather low relief with elevations ranging from 0 to 660 feet above sea level with predominantly gently rolling slopes.

Shuyak Island is in a maritime climatic zone, however, climatic data for the area is sporadic. The only major recording station is on Kodiak Island, with supporting data from ship movement through the areas. The maritime climatic zone is strongly influenced by the marine environment and characterized by moderately heavy precipitation, cool temperatures, high cloud and fog frequency with little or no freezing weather. Temperature patterns are characterized by relatively cool summers and warm winters, as compared to interior land temperatures at similar latitudes. The mean high temperature for January is 32 to 36° F while the mean high temperature for July is only 56 to 62° F. Above freezing temperatures, which are common during all winter months, usually keep the snow depth from becoming excessive at low elevations. However, the warm temperatures at low elevations also result in wet heavy snow with high water content.

Severe storms with high winds are common in the area. Surface winds are more hazardous to human activities in the area than temperature or precipitation. Sustained extreme wind speeds during storms may range from 50 to 75 knots, with gusts as high as 100 knots. From June through September when the air contains the most moisture and is warmer than the water, fog is common and the principal cause of reduced visibility.

The vegetation on Shuyak Island is characterized by well developed extensive stands of large size, over-mature Sitka spruce, stands of pole size Sitka spruce, sedges and other water tolerant plants in the lowland areas, and alder and grasses in the non-timbered areas.

Resource Values

Timber

Extensive commercial stands of mature and over-mature timber are the primary resource value of Shuyak Island. It is estimated there are 23,518 acres of timber land and 10,250 acres of non-timber land on the island.

Resource Values (continued)

Wildlife/Fisheries

There is a thriving deer herd on the island. Brown bear and elk are also present but there is little information available as to numbers or concentration. There is a high density of both sea otter and harbor seals in the bays and fiords of Shuyak Island as well as sea lions along the northeasterly end of the island.

There are numerous seabird colonies along the coastline and particularly on the small islands and offshore rocks within the area.

Agriculture

The raising of field crops is not feasible due to the poor soils and cool summer temperatures. Grazing of livestock might be possible, however, there would be bear-livestock conflicts. In addition competition between livestock and deer for available food supplies would present problems.

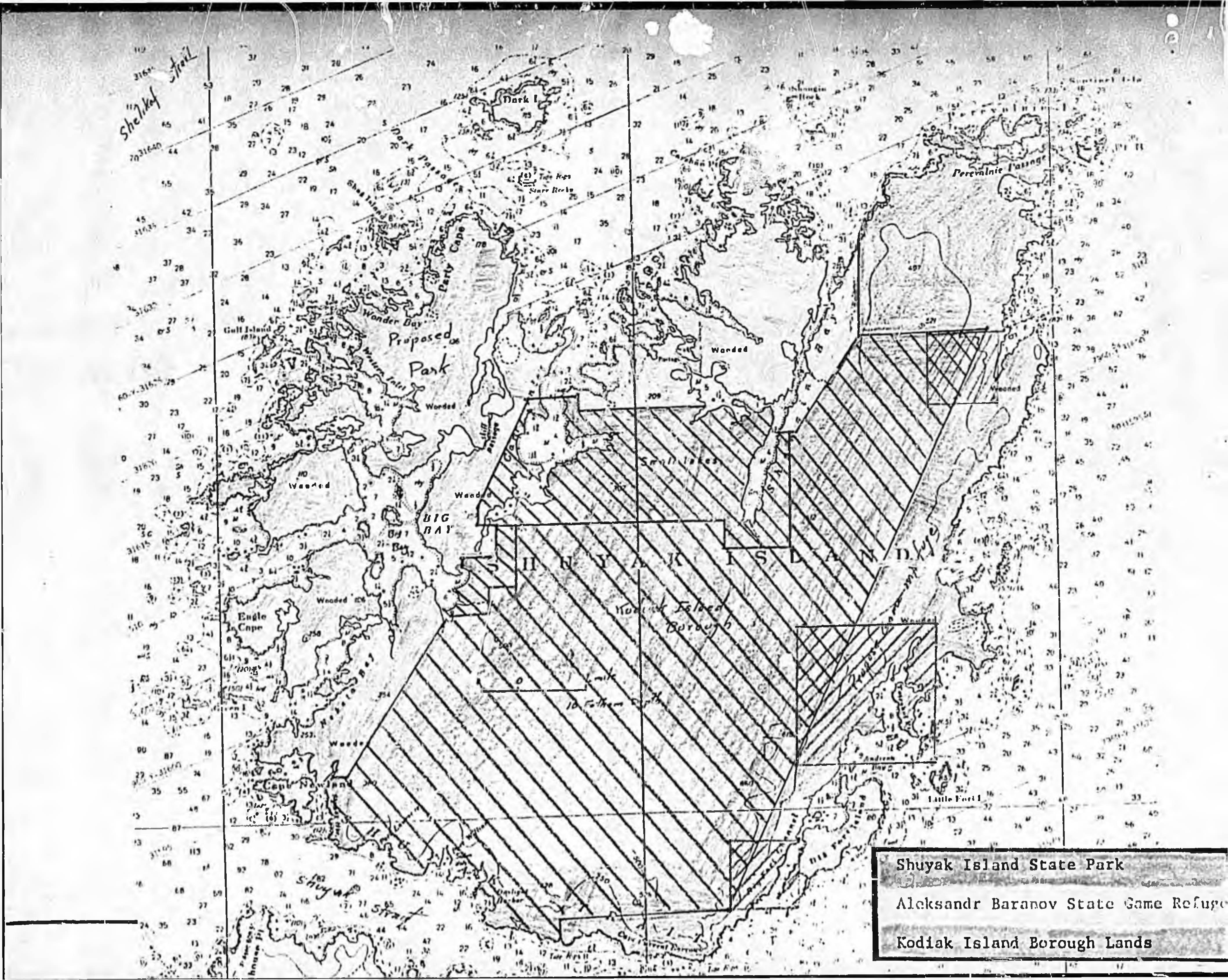
Reasons for State Selections

Extensive commercial stands of mature timber and potential of subsurface mineral resources were prime considerations in state selections. In addition the numerous fiords and small islands along the coast provide excellent habitat for marine mammals and seabird colonies as well as an area of unsurpassed natural beauty with a nearly unlimited potential for outdoor recreation.

Socio/Economic Conditions

The economic mainstay of the Kodiak Island Archipelago is fishing and seafood precessing. The major species taken include king, tanner, and dungeness crab, salmon, halibut and shrimp. Employment in the area tends to be seasonal because of the heavy dependence on the fishing and seafood processing industry. Other employment available includes Federal, State and local government positions, trade and service industries, tourism, finance, insurance, real estate, construciton, transportaion and communications.

There are no communities on Shuyak Island. The City of Kodiak, the only major community in the archipelago, is 50 miles south of Shuyak Island and has a population of approximately 6,000.



Shelikof Strait
Dark I.
Proposed Park
Wonder Bay
Party Cape
Perevalnie Passage
BIG BAY
SHUYAK ISLAND
Kodiak Island Borough
Eagle Cape
Shuyak Strait
Little Fort I.
Shuyak Island State Park
Aleksandr Baranov State Game Refuge
Kodiak Island Borough Lands

Sectional analysis of SB 730

Section 1:

16.20.035 (a) This section creates the Aleksandr Baranov State Game Refuge. See provided map for area of the refuge. It is the yellow shaded area.

(b) This section establishes that the game refuge is created to provide for protection of habitat, continued opportunity for sport fishing and hunting, trapping and commercial fishing, and opportunity to view, study, and photograph the plants and wildlife.

(c) This section states that if the Kodiak Island Borough gives back to the state the land detailed in blue with purple cross-hatching on the map, it will become part of the refuge.

(d) This section requires that the Department of Natural Resources allow a 200 foot easement through the areas on the map with red cross-hatching to borough or private property. The specific locations of these easements will be mutually agreed to by the Department of Natural Resources, the Department of Fish & Game, and the Kodiak Island Borough.

(e) This section requires the commissioner of natural resources to adopt regulations governing permits for seasonal cabins or shelters on the refuge. The Department of Natural Resources must consult with the Department of Fish and Game before adopting these regulations. In no case will a permit be for a time period over 5 years.

(f) This section states that the Boards of Fisheries and Game will manage the fish and wildlife within the refuge.

Sectional analysis of SB 731

Section one:

Sec. 41.20.506 establishes that the purpose of the Shuyak Island State Park is to protect the recreational and scenic resources, the fish and wildlife habitat, and to preserve the use of the area for hunting, fishing, trapping, and compatible recreational activities.

Sec. 41.20.507 (a) states that the state owned uplands and freshwater bodies in the following areas are designated as the Shuyak Island State Park. This is the area in green on the map.

(b) states that if the Kodiak Island Borough gives any of the land in the following sections back to the state, it may be added to the park by proclamation of the Governor. This is the area in blue with black cross-hatching.

Sec. 41.20.510 (a) designates the Department of Natural Resources as the agency with responsibility for management of the uplands and freshwater bodies in the park.

(b) designates the Department of Fish and Game as the agency with the responsibility for management of the fish and game resources in the park.

(c) requires the Department of Natural Resources to consult with the Department of Fish and Game before adopting regulations affecting the park.

(d) requires the Department of Fish and Game to consult with the Department of Natural Resources before adopting regulations affecting fish and game in the park.

Sec. 41.20.511 (a) states that DNR will designate incompatible uses in the park.

(b) states that shooting in the park is allowed, except in areas that are closed because of public safety.

(c) allows ADF&G to engage in stream rehabilitation and enhancement.

(d) states that regulations governing public uses in the park will provide reasonable access for hunting, fishing, and trapping.

(e) requires that reasonable access be allowed to the Depart-

ment of Public Safety and the Department of Fish and Game for the purposes of management and enforcement of fish and wildlife.

Sec. 41.20.515 allows the state to purchase property in the park. The state may not acquire land by eminent domain.

Section two adds an immediate effective date.

SHUYAK ISLAND PARK AND REFUGE LEGISLATION: SB 730 AND SB 731

THE SETTLEMENT AGREEMENT TO FINALIZE THE KODIAK ISLAND BOROUGH LAND ENTITLEMENT RESULTED IN MANY ADJUSTMENTS TO THE ORIGINAL KODIAK ISLAND BOROUGH SELECTIONS. IN THE CASE OF SHUYAK ISLAND THE MOST DESIRABLE AREAS (THE WEST AND EAST COASTAL AREAS) WERE GIVEN UP AND LESS DESIRABLE LANDS WERE TAKEN IN THE CENTER OF THE ISLAND. THE STATE, THROUGH THE DEPARTMENT OF NATURAL RESOURCES, STRESSED THE WEST SIDE OF THE ISLAND WAS OF GREATER INTEREST TO THE STATE FOR STATE PARK LAND AND THE DEPARTMENT OF FISH AND GAME STRESSED THE EAST SIDE OF THE ISLAND SHOULD BE PRESERVED AS GAME HABITAT.

IN FINALIZING THE SHUYAK ISLAND SELECTIONS THE BOROUGH INCLUDED A CLAUSE IN THE SETTLEMENT AGREEMENT TO LOCK THE STATE INTO KEEPING THE RELINQUISHED BOROUGH SELECTIONS ON THE ISLAND AS PARK AND REFUGE LAND. THE CLAUSE STATES THAT IF THE STATE EVER CHANGES THE INTENDED PARK AND REFUGE USE THE BOROUGH HAS THE FIRST RIGHT TO OBTAIN THE RELINQUISHED LANDS. BOTH THE PARK AND GAME PEOPLE STATED THAT THEIR ABILITY TO HOLD TO THIS AGREEMENT WOULD BE STRENGTHENED IF LEGISLATION WAS PASSED TO DEDICATE THE LANDS. THE BOROUGH AGREED TO INTRODUCE SUCH LEGISLATION AS AT THE TIME OF NEGOTIATIONS IT WAS TOO LATE FOR THE STATE TO INTRODUCE IT.

ALSO IN THE NEGOTIATIONS OF THE OUT OF COURT SETTLEMENT, THE STATE REPRESENTATIVES DIVIDED UP THE REMAINDER OF THE ISLAND TO ABSORB ANY LANDS RELINQUISHED BY THE BOROUGH. (AS 41.20.507 (b) OF SB 731 AND AS 16.20.035 (c) OF SB 730). ALONG WITH THIS THEY INCLUDED ALL THE TIDE AND SUBMERGED LANDS OUT TO APPROXIMATELY THE THREE MILE LIMIT. AT THIS POINT THE NEGOTIATIONS WERE WEARING THIN. RATHER THAN NEGOTIATE THE ISSUE ANY FURTHER, THE BOROUGH STATED IT WOULD MAKE A REASONABLE EFFORT TO INTRODUCE THE PARK AND REFUGE LEGISLATION BUT <u>WOULD NOT SUPPORT</u> THE INCLUSION OF THE TIDE AND SUBMERGED LANDS.

AT THIS POINT THE INTRODUCED LEGISLATION DOES NOT INCLUDE ANY TIDE AND SUBMERGED LANDS. THE KODIAK ISLAND BOROUGH ASSEMBLY VOTED TO HOLD THIS POSITION EVEN THOUGH SUBSEQUENT PROPOSALS WERE MADE TO INCLUDE THE TIDE AND SUBMERGED LANDS OUT TO THE 10 FATHOM DEPTH (60 FEET) WHICH EXTENDS UP TO ONE MILE OFFSHORE AND INCLUDES THE EXTENSIVE BAY AREAS. BOTH PARKS AND GAME WANT THE WATER INCLUDED. ONE OF THE BIGGEST CONCERNS OF THE KODIAK ISLAND BOROUGH IS THAT PRESENTLY OPEN FISHING WATERS MAY BE CLOSED OR VESSEL USE IN THESE WATERS COULD BE CLOSED BY A DIRECTORS ORDER.

IF ANY TIDE AND SUBMERGED LANDS ARE INCLUDED IN THE LEGISLATION IT WILL BE NECESSARY TO INCLUDE A COMPATABLE USE CLAUSE. WITHOUT IT THE PARKLAND REFUGE DESIGNATIONS COULD PRECLUDE THE PLACING OF WARFS, DOCKS, PILING, ETC. IN TIDE AND SUBMERGED LANDS TO UTILIZE THE ADJACENT UPLANDS. ANOTHER CLAUSE SHOULD BE ADDED TO ALLOW FISHING, (BOTH COMMERCIAL AND SPORT) WITHIN THE PARK AND REFUGE WATERS. THESE CLAUSED WERE INCLUDED IN THE FEBRUARY 6, 1982 DRAFT OF THE BILLS.

AS A BOTOM LINE ISSUE THE KODIAK ISLAND BOROUGH'S INTERESTS ARE PROTECTED BY THE AGREEMENT OF SETTLEMENT AND CONSENT DECREE APPROVED BY THE COURT. THE EFFORTS OF THE STATE AGENCIES TO EXPAND THE PROPOSED LEGISLATION TO INCLUDE TIDE AND SUBMERGED LANDS GOES BEYOND THE ORIGINAL ISSUE OF THE BOROUGH SELECTION ENTITLEMENT AND ERRODES THE KODIAK ISLAND BOROUGH'S OPPORTUNITIES TO ENHANCE ITS GENERAL WELFARE AND USE OF ITS LAND ENTITLEMENT.

SIGNED BY DALE P. TUBBS,

LAND CONSULTANT FOR THE

KODIAK ISLAND BOROUGH

SB
732

COMMITTEE REPORT

HOUSE

FURTHER: Finance

(7)

Date: April 15, 1982

4/7/82

Mr. Speaker:

The Committee on Resources has had CSSB 732 (Fin)
"An Act relating to mineral extraction from state land; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

H 60 (Rev. 3/81)

LETTER OF INTENT - CSSB 732

The Committee contemplates that the production license will be used solely for the purpose of complying with the requirement of this statute. The license should not be used to impose other restrictions, conditions or fees. Any stipulation not absolutely essential to the implementation of this statute may only be required if necessitated by other applicable law.

The Committee does not contemplate that enactment of this statute will require the Department of Natural Resources to determine the validity of mining claims. In other words, the Department should not challenge claims for failure to have made a valuable discovery on the grounds that to do so is necessary to assure compliance with this statute. The sworn intent of the locator to commence production is sufficient evidence for the purpose of this statute that a valuable discovery has been made. This Act should not be interpreted to preclude the Department from determining, as it now does, that a claim is in good standing. Thus, the Department may continue to check affidavits of annual labor, land status, and other conditions which are necessary to maintain a claim under otherwise applicable law.

The committee does not intend that the Department of Natural Resources will become involved in difficult and protracted conflicts between mining claimants. However, the Commissioner is vested with some discretion to adjudicate minor conflicts which do not involve complicated factual or legal issues. This authority should help reduce legal costs and avoid lengthy litigation where any minor conflict exists. It is contemplated that the Commissioner's discretion will be used sparingly and that the vast majority of conflicts will be resolved outside of the administrative process.

Alaska State Legislature

SENATE
Resources Committee

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Offical Business

TO: [redacted]
Representative Sutcliffe
Co-Chairmen, House Resources Committee

FROM: Senator Fahrenkamp
Chairman, Senate Resources Committee

RE: SB 732

DATE: April 9, 1982

CSSB 732, relating to issuance of production licenses for mining, recently passed the Senate and is en route to the House Resources Committee.

Please find attached background information on this bill.

LEGISLATION SUMMARY

SB 732: "An Act relating to issuance of production licenses for mineral extraction from state land; and providing for an effective date."

GENERAL: [Establishes a mineral production license for production from locatable mineral deposits to by issued by the Department of Natural Resources. The production license is consistent with sec. 6(i) of the Alaska Statehood Act.

Sec. 1: PURPOSE. Requires the locator or lessee of locatable mineral deposits on state land to obtain a production license from DNR to mine the deposits. Applies to all existing and future mining operations. The legislature finds that the license is consistent with State Constitutional and Statehood Act provisions.

Sec. 2: Requires the locator or lessee of a mining claim or location to apply for a mineral production license prior to mining commercial quantities. The commissioner DNR shall publish notification of receipt of the application. Pending notification and issuance of the license, the locator or lessee has the right to produce minerals from the property.

The commissioner will issue a transferable production license if he determines that no conflicting rights are asserted by any other person, and that the locator or lessee has complied as nearly as possible with the requirements of Article 7 (Mining Rights) of the Alaska Lands Act [AS 38.05.185-AS 38.05.280].

Sec. 3: Immediate effective date.

PRIME SPONSOR: Resources

CO-SPONSOR(S): None

SB 732 cont'd

Senator Bennett moved and asked unanimous consent for the adoption of the Finance Committee Substitute and title change offered on page 788. Without objection, CS FOR SENATE BILL NO. 732 (FIN) (relating to mineral extraction from state land; eff date) was adopted.

CS FOR SENATE BILL NO. 732 (FIN) was read the second time.

Senator Rodey moved and asked unanimous consent that CS FOR SENATE BILL NO. 732 (FIN) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

Senator Fahrenkamp moved and asked unanimous consent that the following Resources Committee Letter of Intent be adopted as a Senate Letter of Intent:

Letter of Intent:

CS FOR SENATE BILL NO. 732 (FIN)

"The requirement in AS 38.05.250(c), as amended by CSSB 732 (Fin), that the commissioner shall automatically extend producing submerged lands leases, also allows the commissioner the discretion, by regulation, to provide for extension of a lease if the lessee satisfactorily demonstrates diligent development of the lease.

The Senate Finance Committee's deletion of language concerning the mining license tax (AS 43.65) in section 2 of the bill occurred at the request of the Department of Revenue. It is the committee's intent that the Department of Revenue undertake a technical analysis of the administration of the existing mining license tax, and that this project shall not address issues beyond the scope of that analysis."

Senator Ferguson objected, then withdrew his objection. There being no further objection, the Senate Letter of Intent was adopted.

CS FOR SENATE BILL NO. 732 (FIN) was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 732 (FIN) (relating to mineral extraction from state land) pass the Senate?" The roll was taken with the following result:

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99
(907) 465-3
(907) 465

TO: Bettye Fahrenkamp, Chairman — DATE: 4/5/82

FROM: Resa King, Staff — RE: SB 732

I attended the Senate Finance Committee this morning, hearing SB 732 - production license (i).

The bill was passed out of the Committee as a Committee Substitute incorporating the amendments suggested by the Department of Natural Resources.

Commissioner Katz stated that the revised fiscal note is about $30,000 less than originally submitted and it eliminates one position. A land management officer working full time will be able to accomplish the goals of the bill. He stated that one of his goals when he took office was to reduce the back logs that existed in the Department. One of these areas was the offshore prospecting permits (OPP). One company has filed on over a million acres and the Department does not believe this type of filing is in the State's best interest. Therefore, the Department is making the following suggested amendments to SB 732:

1. An acreage limitation that any one company can hold no more than 2 townships which is 46,080 acres. In response to the question, where did the acreage number come from: he stated that other states and federal statutes and it was thought the best number for likely development of the prospect.

2. Reduce the number of years a person can hold a OPP lease. Presently it is 55 years, the proposed amendment would reduce it to 10 years and if production is occuring the permit can be renewed.

3. Increases the rental from $1.00 to $3.00 which can be counted against the expenditure requirements. In response to the question, will the $3.00 discourage development: he stated that it would not, because offshore prospecting is a very expensive venture and will be conducted by substantially large companies and it can be credited against the expenditure requirements.

4. Add an effective date of July 1, 198..

5. Since the Department of Revenue is evaluating the mining license tax, they have suggested the deletion of the language dealing with tax exemption.

Phil Holdsworth, Alaska Miners Association stated that the miners are in favor of the orginal bill and the suggested amendments.

In response to a previous question about leases being extended so long as it is producing in paying quantities: he stated that if the operator shows that due to changes in market conditions the operation is not at the moment producing in paying quantities the lease will be extended, this is in the lease and regulations.

In response to the previous questions, regarding the change from $1.00 to $3.00 discouraging production: he stated that the offshore operations will involve alot of capitol investment and increasing the fee will tend to eliminate unqualified and speculation by people who won't do anything with the lease.

The Committee adjourned at 9:35 a.m.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

April 2, 1982 Senate Finance 4/5/82

PROPOSED AMENDMENTS -- CSSB 732

1. Amend the title of the Act to read:

"An Act relating to [ISSUANCE OF PRODUCTION LICENSES FOR] mineral extraction from state land;"

2. Add a new Section 4 to read:

*Sec. 4. AS 38.05.140 (c) is amended to read:

(c) No person may take or hold at one time phosphate leases on state land exceeding in the aggregate 10,240 acres. No person may take or hold sodium leases or permits during the life of sodium leases on state land exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold offshore prospecting permits or leases for minerals subject to AS 38.05.185-280 exceeding an aggregate of 46,080 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged land and 500,000 acres on all land other than tide and submerged land, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in shares.

2. Add a new section 5 to read:

*Sec. 5. AS 38.05.250 is amended to read:

Sec. 38.05.250. Tide and submerged lands. (a) The exclusive right to prospect for deposits of minerals subject to sections 185--275 of this chapter in or or tide and

submerged state lands may be granted by a permit issued by the director. Permits shall be granted to the first qualified applicant. No permit may include an area larger than 2,560 acres, subject to the rule of approximation. Lands subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 7 [10] years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following two years. The rental shall be $3 [$1] per acre for each year thereafter, payable at the end of each year. No minerals from lands under a prospecting permit may be mined and marketed or used, except for limited amounts necessary for sampling or testing.

(b) Upon discovery, the right to possess and extract the minerals may be acquired by noncompetitive lease. A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged lands containing known deposits of minerals subject to SS 185--275 of this chapter may, in the discretion of the director, be offered by competitive bid. These lands shall be leased to the responsible qualified person offering the highest amount of cash bonus.

(c) Leases for submerged lands shall be conditioned upon payment of an annual rental of $3 [$1] an acres. Expenditures on or for the benefit of the leasehold may be credited against the rental. Rent shall be paid or a statement of annual labor shall be filed within 90 days after each anniversary date of the lease. All submerged land mining leases shall be for a period of up to 10 [55] years, and shall be automatically extended if and for so long as there is production in paying quantities from the leased area. [THE LESSEE HAS A RIGHT TO A NEW LEASE AT THE END OF EACH LEASE PERIOD.] The commissioner may make reasonable adjustments of the rental rate at the end of each 10 [20] year period, based upon changed conditions in production costs and market.

3. Amend Sec. 4 of this Act to read:

*Sec. 6[4]. Sections 1-3 of this Act take effect on January 1, 1983.

4. Add a new section 7 to read:

"Section 4 of this Act takes effect on July 1, 1982."

5. Page 2, line 10 - Delete the last sentence of (b) of Section 2.

Note: The Department of Revenue has requested this change because it is about to initiate a review of AS 43.65 (the mining license tax). If the Department of Revenue adopts different standards for the initiation of production than those expressed in this sentence, mining operations on state lands would be treated differently from operations on federal or private lands.

No . 24

SENATE JOURNAL
SUPPLEMENT

4/5/82

CSSB
732

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS SB 732 (Finance)
Title Relating to issuance of production licenses of mineral
Requested by Senate Finance Date 4-3-82

II. FISCAL DETAIL
Agency Affected Department of Natural Resources
Program Category Affected Management of Mineral Resources
BRU, Program, Or Subprogram(s) Affected Mineral Development
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		38.6	41.6	44.6	48.0	51.6
200 TRAVEL		1.8	0.6	0.7	0.8	0.9
300 CONTRACTUAL		6.0	6.0	6.0	6.6	7.1
400 COMMODITIES		0.9	1.0	1.1	1.2	1.3
500 EQUIPMENT		0.6				
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		47.9	49.2	52.4	56.0	61.1

FUNDING (Thousands of Dollars)

GENERAL FUND		57.9	49.2	52.4	56.0	61.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The issuance of production licenses for mining operations will consist of four elements: 1) submission of the application by the miner; 2) adjudication of the application by the Division of Minerals and Energy Management (DMEM); 3) publication of notice of intent to issue the production license by DMEM; and 4) issuance of the license by DMEM.

One new position within DMEM is anticipated to be required to handle this administrative load: A Land Management Officer II. In FY 83 this person will prepare regulations and design an appropriate license form in conjunction with the Department of Law. Issuance of the licenses will start in mid-FY 83. It is anticipated that the work load for this project will remain

IV. DATE April 5, 1982

PREPARED BY Jeff Haynes
AGENCY Natural Resources, DMEM
PHONE 465-2400

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 732
Title An Act relating to issuance of production licenses for mineral extr ^
Requested by Senate Resources Date 2/12/82

II. FISCAL DETAIL
Agency Affected Dept. of Natural Resources
Program Category Affected Management of Mineral Resources
BRU, Program, Or Subprogram(s) Affected Mineral Development
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		68.1	73.3	78.7	84.6	91.0
200 TRAVEL		2.6	0.6	0.7	0.8	0.9
300 CONTRACTUAL		6.0	6.0	6.0	6.6	7.3
400 COMMODITIES		0.9	1.0	1.1	1.2	1.3
500 EQUIPMENT		1.4				
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		79.0	80.9	86.5	93.2	100.5

FUNDING (Thousands of Dollars)

GENERAL FUND		79.0	80.9	86.5	93.2	100.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

A. Assumptions

This note assumes passage of SB 732 as introduced, but with adoption of an amendment to exempt licenses from the notice requirements of AS 38.05.345

B. Program Summary

The issuance of production licenses for mining operations will consist of four elements: 1) submission of the application by the miner; 2) adjudication of the application by the Division of Minerals and Energy Management (DMEM); 3) publication of notice of intent to

(Continued on attached page)

IV. DATE 2/12/82 PREPARED BY David A. Hedderly-Smith
AGENCY DNR/DMEM
PHONE 276-2653

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

issue the production license by DMEM; and 4) issuance of the license by DMEM.

Two new postions within DMEM are anticiapted to be required to handle this administrative load: a Land Management Officer II and a Land Management Technician I. In FY 83 these people will prepare regulations and design an appropriate license form in conjunction with the Department of Law. Issuance of the licenses will start in mid-FY 83. It is anticipated that the work load for this project will remain relatively steady through FY 87, with the annual workload roughly summarized as follows: FY 83 - adoption of regulations, design of license form, initial issuance of licenses; FY 84 - issuance of licenses to miners who "didn't get the word" about the production license requirement; FY 85-7 - issuance of licenses to new mines going into production (new mining locations filed with DMEM increased threefold between 1979 and 1980 and another 80% in 1981; we anticipate that many of these new mining properties will be initiating production in FY 85-7) and to old mines as miners move their operations onto claims that were not licensed in FY 83 & 84.

Expenditures for FY 83 are summarized below:

100	Personal Services	
	Salary & benefits for LMO II and LMT I	68.1
200	Travel	
	Travel to and from public hearings for adoption of regulations; travel to Fairbanks placermining seminar for LMO II	2.6
300	Contractual	
	Publication of notices for adoption of regulations and issuance of licenses; printing of production licnse forms	6.0
400	Commodities	
	Miscellaneous office supplies	0.9
500	Equipment	
	New office equipment for two new positions	1.4
		79

Increases in expenditures for FY 84 through 87 reflect anticipated inflation at 7.5% for personal services and roughly 10% for other items. Travel decreases in cost for FY 84 and beyond because regualtion hearings will no longer be required.

Alaska State Legislature

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3815

Senate

Committee on Resources

February 15, 1982
1:35 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Hearing:

SB 658 An Act increasing the fees for a commercial fishing license.

SB 732 An Act relating to issuance of production licenses for mineral extraction from state land; and providing for an effective date.

SB 658

Senator Mulcahy stated that this bill, which was heard in the fisheries subcommittee, is supported by United Fishermen of Alaska and the Department of Labor. Raising the current license fees should keep the Fishermen's Fund solvent.

Senator Gilman moved the adoption of an amendment adding an effective date of 1/1/83. He moved SB 658 with individual recommendations.

SB 732

Phil Holdsworth, Alaska Miners' Association, referred to Constitutional language requiring a permit, lease, or transferable license for mineral extraction on State land. The miners prefer a transferable license, and support SB 732.

John Katz, Commissioner, Department of Natural Resources, expressed support for the bill, with the addition of four amendments:

#1 page 1, line 16 add "believes that it satisfies the requirements of"

#2 page 2, line 8 add "in the case of conflicting claims the Commissioner may, but is not required to, adjudicate the conflict."

#3 change effective date to 1/1/83

#4 page 2, line 11 add a new subsection "The provisions of this section do not apply to a production license for mineral extraction issued under AS 38.05.207."

The Department has determined that $80,000 is needed to hire two employees necessary to promulgate the regulations.

(Recess to attend session from 2:00 to 3:00.)

Senator Gilman moved amendments #1, #2, #3, #4.

Senator Mulcahy moved SB 732 as a Committee Substitute as amended, with individual recommendations.

The meeting was adjourned at 3:05 p.m.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: (907) 465-2400

December 18, 1981

RECEIVED

Mr. David Heatwole
President
Alaska Miners Association
509 W. Third Avenue
Suite 17
Anchorage, AK 99501

Dear Dave:

At the last meeting of the Commissioner's Hardrock Advisory Committee, you took the position on behalf of the Alaska Miners Association, that the State should take no action in response to the Attorney General's interpretation of Section 6(i) of the Alaska Statehood Act.

I have since discussed this matter with the Governor, and he has agreed with me that no remedial legislative or administrative action is required at this time. Therefore, the Department of Natural Resources will not alter existing State practice with respect to the location of mining claims on 6(a) and 6(b) lands. The reasons for our decision have been discussed publicly on prior occasions, and so I will not dwell upon them here. Basically, we have concluded that State interests related to mineral entry are adequately protected by the current matrix of collateral law.

However, it should be noted that someday circumstances beyond our control may dictate that this issue be addressed. In that event, I ask that channels of communication remain open as the association and the Department study our available options.

Thanks again for the Association's advice on this matter.

Sincerely,

John W. Katz
Commissioner

cc: Mike Whitehead

Statehood Act

Act of March 25, 1964, Pub. L. No. 88-289, 78 Stat. 169, substituted "ten years" for "five years" in the first sentence.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Mineral land grants.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

Schools and colleges.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U. S. C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. S. C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

Confirmation of grants.

Repeals.

Cross reference.—See note to AS 38.05.180.

Proviso as to grants of school and university lands and mental health lands.—The grants by the federal government of school and university lands and mental health lands were confirmed and transferred to the

State of Alaska upon its
to the Union under this
with the express proviso

(l) The grants provi
grant of land for purpo
ments made to new State
of September 4, 1841 (5
2378 and 2379 of the Re
in lieu of the swamplan
1850 (9 Stat. 520), and
U. S. C., sec. 982), and
for each Senator and Re
of July 2, 1862, as ame
308), which grants are
of Alaska.

(m) The Submerged
third Congress, first sess
applicable to the State
State shall have the sa
States thereunder.

Alaska's ownership of same as other states.—By section, Alaska was given ownership of tidelands a beneath navigable waters states of the Union. Stat Indus., Inc., Sup. Ct. Op. (File No. 477), 397 P.2d 2 City of Juneau v. Cropley, Op. No. 415 (File No. 752), 21 (1967).

SEC. 7. Upon enactm
President of the United
3, 19
to certify such
Alaska. Thereupon the
3, 1958, and not later
mation for the election
all elective offices and i
tion of the proposed S
shall in any event inclu
Congress.

SEC. 8. (a) The pro
quired by section 7 sha
primary election and a
to be fixed by the Gove
That the general electi
than December 1, 1958
to be elected as provi

Act of March 25, 1964, Pub. L. No. 88-289, 78 Stat. 169, substituted "ten years" for "five years" in the first sentence.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Mineral land grants.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

Schools and colleges.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U. S. C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. S. C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

Confirmation of grants.

Repeals.

Cross reference.—See note to AS 38.05.180.

Proviso as to grants of school and university lands and mental health lands.—The grants by the federal government of school and university lands and mental health lands were confirmed and transferred to the

Fairbanks Times
2/12/81

Legal opinion backs mine site leasing

by Mark Skok
Times Writer

Alaska miners are afraid the state, armed with a forthcoming attorney general's opinion, will institute a leasing system for mining sites.

Making miners lease their claims would inhibit mining, said Alaska Miners Association President David Heatwole.

The latest draft of the opinion is being reviewed by the Department of Natural Resources, the agency that requested it. The draft has not been made public, said Assistant Attorney General Robert Maynard.

But Maynard said the opinion establishes leasing as the only legitimate means for miners to acquire minerals on state-selected land.

The substance of the opinion is based on Section 6I of the Statehood Act, which says: "Mineral deposits in such lands shall be subject to lease by the state as the state Legislature may direct..."

State-selected land constitutes the 102 million acres selected from federal holdings. There are other potentially mineralized state lands, such as tide lands and strips along navigable waterways, to which the opinion doesn't apply, Maynard said.

Traditionally miners acquire tracts by "discovery and location." The miner finds a mineralized tract he wants to work within an area open to mineral entry. He stakes a claim and can begin work.

Under the leasing system, Heatwole said, the miner, after taking the risks of making a discovery, then has to ask the state whether he can lease that particular tract.

"The state might just tell you no," he said.

The added risk of receiving a negative response would inhibit miners, Heatwole said.

Maynard said a lease system need not be restrictive to miners. It doesn't necessarily entail a change from traditional methods of mineral entry, although the exact system would be established through state policy, he said.

Discovery and location could still be the means to get the lease, he said. If the opinion becomes law but other statutes remain the same, the only difference would be that the miner must sign a lease, he said.

Maynard called a lease "a piece of paper" with provisions that could be as simple to comply with or as complicated as the Department of Natural Resources and the Legislature want to make it.

Maynard said the opinion results from resource officials wanting to know the rights of miners who locate on state-selected lands that are not yet tentatively approved to the state.

If the opinion becomes law, Heatwole said, it would be a major change from tradition. He called establishment of a lease system "just one more uncertainty among many that miners in Alaska must work with."

An attorney for the miners has filed a legal brief that states the opposite opinion, Heatwole said.

Maynard said he is prepared to face lawsuits that could result from the opinion.

"Usually these things don't quiet down."

DRAFT

2/11/81

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY

On November 9, 1979, the Director of Planning and Research of your department sent an extensive opinion request to our office. The request concerned various problems surrounding mining claims located during the period between state selection of lands under Sections 6(a) and 6(b) of the Alaska Statehood Act and the receipt of tentative approval to those lands. In order to answer the questions raised, this opinion necessarily had to be broadened to include a discussion of mining on all lands, and particularly a discussion of the provisions of Sections 6(a), 6(b), 6(g) and 6(i) of the Statehood Act ("6(a), 6(b), 6(g), and 6(i)").

In general, the state does not have authority, and will not incur liability for, actions of persons locating mineral claims on state-selected land prior to the receipt of tentative approval. Those problems are concerns of federal law, although augmented by the provisions of AS 27 (procedures allowed by federal law to be added by states or mining districts). Under federal law, once the state selects land it is segregated from mineral entry under the federal mining laws. Consequently, a locator on state-selected land locates a mineral claim at his own risk.

Once the state has received tentative approval, however, mining rights are determined by state law under AS 38.05.185-.280 except as limited by restrictions contained in either the Alaska Statehood Act or the Alaska Constitution. The most important restrictions are contained in 6(i), which provides that the state must reserve minerals in all sales or disposals of state-selected (6(a) and 6(b)) lands, and that the state may only allow mineral deposits in state-selected lands to be mined by lease. As a result, the state may not allow mining by claim-staking on 6(a) and 6(b) lands unless the claim-staking leads to the issuance of a lease. The only exception is claims located prior to state selection of the land. In all other cases, the state must issue leases for mining if it determines that a discovery and location under federal or state law has been made on state-selected lands.

The Alaska Constitution and present statutes provide for a leasing system based upon discovery and location. Alaska Constitution Art. VIII sec. 11; AS 38.05.210. As a result, non-competitive leasing of mineral lands is constitutionally preferred.

This leasing system must be followed for all 6(a) and (b) lands. A lease must be issued to anyone discovering

or locating a claim on 6(a) and (b) land if the locator followed the procedure set forth either in AS 27 (federal procedure) or AS 38.05.185 280/ (state procedure). AS 38.05.275, AS 38.05.210. Public notice of the issuance of a lease under AS 38.05.305 and AS 38.05.345 must be given before the mining lease is issued. Discovery and location, however, is not a "disposal" requiring prior public notice under either the constitution, AS 38.05.305, or AS 38.05.345 Cf. Moore v. State, 553 P.2d 8, 26-27 (Alaska 1976).

Under 6(a) and (b), if the claim was made prior to state selection of the land, neither the selection, tentative approval, nor patent has any effect on the claim. The locator is entitled to all rights under federal mining laws.

Where the location is made after state-selection but before tentative approval, the locator is at his own risk until the state receives tentative approval. Once the state receives tentative approval, however, the locator will be entitled to a conditional mineral lease if the state does not close the lands to mining. 6(g), AS 38.05.275, AS 38.05.185. The conditional lease will be subject to state receipt of a patent and conditions in the patent.

In finding that a mineral lease is required for all 6(a) and (b) lands, this opinion is taking a position contrary to an interpretation used by state officials since statehood. That prior interpretation, which was never the subject of an Attorney General's opinion or memorandum, was that the leasing requirement applied only to lands where the state had previously sold the surface interest. Art IX, sec. 1, ch. 169, SLA 1959; 11 AAC 36.135(b).

Because this opinion has potential far-reaching consequences for state disposals of its mineral interests, and because it is at odds with the assumptions of many persons over the past 20 years, a proposed opinion was publically released in draft form on August 18, 1980. Additional research since that draft, and some of the comments received, have resulted in alteration of some of the conclusions in that draft -- primarily concerning the status of mineral locations and the ability of the state to close lands to mining upon receipt of tentative approval. The conclusion regarding the necessity for leasing 6(a) and (b) lands, however, remains unchanged.

The interpretation of 6(i), and its impact on the mining provision of the Alaska Constitution, Art. VIII, sec. 11, is intimately tied to historic federal mining practices

and other states' enabling act land grants. Section 6(i) was copied from a provision of the School Lands Act, presently codified at 43 U.S.C. 870(b). As a result, the history of the School Lands Act, the various statehood bills, and Art. VIII, sec. 11 of the Alaska Constitution is crucial to the resolution of the questions raised and is presented in detail at the beginning of the opinion.

II. HISTORY OF MINING PROVISIONS IN ALASKA STATEHOOD ACT AND ALASKA CONSTITUTION

A. PRIOR FEDERAL PRACTICE

Congress withheld "mineral lands" from other statehood land grants so they could be managed under the federal mining laws. */ The School Lands Act of 1927, 43 U.S.C. 870(b), was the direct result of extensive litigation caused by the problem of determining which lands were "mineral" in character. One question was the effect of a subsequent discovery of minerals in lands considered "non-mineral" at the time of the original grant. A series of cases culminating in Wyoming v. United States, 255 U.S. 489 (1921), developed the rule that the only lands not conveyed were lands known to be mineral at the time equitable title vested in the state,

---

*/ See, United States v. Sweet, 245 U.S. 563 (1918). The only exception was the enabling legislation for Oklahoma, Oklahoma Enabling Act of June 16, 1916, 34 Stat. 267, 273, which included mineral lands within the grant, but mandated disposal of mineral lands by a statutory lease until a specified date.

and that subsequent discovery of minerals would not void the original transfer. This ruling did not solve all problems; there were still disputes concerning whether the lands were known to contain minerals at the time of the transfer. Even six years after Wyoming v. United States, there were

> hundreds of school sections now in contest under proceedings brought by the Federal Government and hundreds more being prepared for contest. Nor is the situation improving. It is, in fact, rapidly becoming worse, and the end is not in sight, unless it be the end of the states' school fund.

Report of Senate Committee on Public Lands and Surveys, April 16, 1926, Senate Report No. 603, Sixty-ninth Congress, first session, at page 5.

> Mineral lands, as a rule, are excepted from these grants, and in case school-section lands are of known mineral character at the time the grant would otherwise become effective, such lands remain the property of the United States. This has resulted in much vexious and costly litigation, as there is no statute of limitation which prevents inquiry at any time, either by way of Government proceedings or by private contest or protest, as to whether or not the title to school-section land has vested in a State.

* * *

> In the absence of some provision by which the known condition of the specified sections, at the time when the grant takes effect, can be ascertained and adjudicated, the title of the State must remain in doubt and be subject to attack. A case in point is that of United States v. Sweet (245 U.S. 563), wherein the State sold school-section land under a grant (act of July 16, 1894, 28 Stat. 107), which does not expressly exclude or include mineral lands. The land sold, however, was of known mineral character at the time the grant would otherwise have attached. The court denied the claim of title based on the transfer by the State.

Letter from Secretary of Interior to the Honorable Robert Stanfield, Chairman of Senate Committee on Public Lands and Surveys, January 5, 1926, quoted in Senate Report No. 603, supra, at page 12 (emphasis added).

Congress resolved the problem by granting mineral rights in numbered sections to the states. In granting the minerals to the states, however, Congress expressly provided that all of the minerals so granted must be reserved to the state and could only be disposed of by lease. The 1927 Act provided, in part:

> The additional grant made by this section is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall hereafter be subject to and contain a reservation to the State of all coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine,

> and remove the same. The coal and other mineral deposits in such lands not heretofore disposed of by the State shall be subject to lease by the State as the State legislature may direct, the proceeds and rentals and royalties therefrom to be utilized for the support of or in aid of the common or public schools: Provided, that any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

The mineral reservation and leasing requirement in this section were intended to apply to all lands transferred. House Committee on Public Lands Report on S. 564, House Report No. 1761, 69th Congress, 2nd session (January 13, 1927). As the Secretary of Interior noted, in withdrawing his opposition to a previous form of the bill (Report of the House Committee on Public Lands, December 9, 1926, House Report No. 1617, 69th Congress, Second Session):

> You will note that it grants to the States title to the minerals in school sections in place; that is, in the specific numbered sections in each township granted the States for the support of or in aid of common or public schools by Congress. The grant is on the express condition that the States shall not sell any minerals but shall lease the same, the proceeds to be utilized for the support or in aid of common or public schools, provision being made for forfeiture in the event conditions are violated.

House Report No. 1761, supra, at 2 (emphasis added).

As the Committee reported, the bill required the States

> to reserve and to withhold unto themselves all minerals of whatsoever character, in any and all lands which they shall hereafter transfer or sell, giving to them, however, the right to lease the minerals in the lands and to utilize the proceeds received as rentals or royalties for the benefit of their common or public schools.

House Report No 1761, supra, at 3 (emphasis added). One of the primary reasons for this approach was to secure the maximum amount of principal for state school funds:

> It should, also, be borne in mind that only the interest from the funds which a State received from the sale, lease, or rental of these lands or the minerals therein can be expended, that is to say the principal can not be used. This for the reason that Congress saw fit in passing the enabling acts of the various States provided therein that the funds derived from the sale, lease or rental of these school lands should be invested to form a principal permanent fund the interest only of which might be used for the benefit of the common and public schools or other State institutions as the case may be. Thus, it will be noted that under this plan it is necessary for a State to accumulate a principal fund of some considerable amount in order to realize sufficient interest to be of benefit to its common-school system and

> to result in the reduction of taxation for school purposes. Having this in mind, your committee fully realizes the difficulties under which these States are forced to labor and therefore reached the conclusion that their cause was a meritorious one and the Congress could well afford to adopt a beneficent attitude toward them in view of the end desired to be accomplished. It also prevents valuable mineral lands from falling into the hands of third parties, thereby insuring the proper return and full measure of support to the particular institution to which the lands were granted.

Report of the House Committee of Public Lands, December 9, 1926, House Report No. 1617, 69th Congress, Second Session (emphasis added).

Congress passed the 1927 Act in order to lay to rest disputes as to whether lands were known to be mineral at the time of transfer. The passage of the 1927 amendment still did not cure the problems. The Act of May 2, 1932, c. 57, § 1, 44 Stat. 1026 was a piece of curative legislation designed to ratify prior state sales of mineral lands. But title disputes still occurred because a state received its land under two grants separated by some period of time: the original statehood grant (non-mineral lands) and the 1927 grant (mineral lands).

The title disputes still arose because of transfers of the original grant lands prior to 1927, either by the United States to third parties, or by states to third parties under the assumption that the lands were non-mineral in character. The mineral or non-mineral character of the lands determined whether the state or federal government owned the land after the original statehood grant, or whether a state first had authority to transfer the land in 1927. Therefore, the need to determine the character of lands was not laid to rest. As a result, Congress passed legislation providing for the issuance of patents to states. (Previously, no patents were issued and title transferred solely under the legislation). The enactment was the Act of June 21, 1934, c. 689, 48 Stat. 1185, codified as 43 U.S.C. 871(a) */, which provided for the issuance of patents as a mechanism for clearing title and finally determining mineral character:

> The Secretary of the Interior shall upon the application by a State cause patents to be issued to the numbered school sections in place, granted for the support of common schools by the Act approved February 22, 1889 [25 Stat. 676], by the Act approved

---

*/ Repealed effective October 21, 1976, Act October 21, 1976, P.L. 94-579, § 705(a), 90 Stat. 2792.

> January 25, 1927 (44 Stat. 1026) [§§ 870, 871 of this title], and by any other Act of Congress, that have been surveyed, or may hereafter be surveyed, and to which title has vested or may hereafter vest in the grantee States, and which have not been reconveyed to the United States or exchanged with the United States for other lands. Such patents shall show the date when title vested in the State and the extent to which the lands are subject to prior conditions, limitations, easements, or rights, if any. In all inquiries as to the character of the land for which patent is sought the fact shall be determined as of the date when the State's title attached.

(Brackets in original.)

The purpose and history of all of the school land acts and amendments was a memorandum accompanying a letter from the Secretary of the Interior to Senator Gerald P. Nye, Chairman of the Senate Committee on Public Lands and Surveys:

> S. 4674 proposes to authorize the Secretary of the Interior to issue patents to school sections 16 and 36, granted to the States by the act approved February 22, 1889, by the act approved January 25, 1927 (44 Stat. 1026), and by any other act of Congress, to which title has vested in the grantee States, and which have not been reconveyed to the United States or exchanged with the United States for other lands.

The act approved February 22, 1889 (25 Stat. 676), provided for the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, and provided for the grant to said States of sections 16 and 36 in each township for the use of schools.

Mineral lands, as a rule, were excepted from the original grants to the States of certain specified sections for the use of schools. By the act of January 25, 1927 (44 Stat. 1026), as amended by Public Law No. 110, approved May 2, 1932, these grants to the States of certain sections of land for school purposes were extended to embrace such sections that were of mineral character, with certain exceptions as therein provided.

There has been no provision of law whereby the States may be given evidence of title to such school section lands, either by United States Patent or other formal instrument of conveyance, the statute making the grant operating as a conveyance as well, with respect to lands of the character and status subject to the grant.

The need of legislation along the lines proposed by the bill under consideration is manifest, in order to do away with the uncertainty of title in and to these school section lands. It might appear that the grant of mineral lands made by the act of January 25, 1927, would do away with this uncertainty of title to a great extent, but this is not the case, inasmuch as it is necessary to ascertain the character of the land at the date when title would otherwise attach, in order to know whether or not title vested in the State under the grant of nonmineral lands made by the original granting act, or under the grant of mineral lands made by the act of January 25, 1927.

The bill under consideration provides that the patents issued shall show the date when title vested in the State, and the extent to which the lands are subject to prior conditions, limitations, easements, or rights, ...

Quoted in S. Rep. No. 1104, 72nd Cong. 2nd Sess. accompanying S. 4674 (January 21, 1933) at pp. 2-3. See also, S. Rep. No. 903, 73rd Cong., 2nd Sess; H. Rep. No. 1796, 73rd Cong., 2d Sess. (1933).

After United States v. Sweet, then, mineral lands were excluded from statehood grants unless they were expressly included by the grant or by later legislation. That later legislation for lower-48 states occurred with the passage of the School Lands Act. That Act, as amended, provided that all conveyances of numbered sections in place for the support of public schools included mineral as well as non-mineral lands. Because of the later grant of the minerals in the lands to the states, however, subsequent amendments and the issuance of patents were required in order to eliminate remaining title disputes covered by transfers of land to third parties between the original statehood grant and the 1927 Act.

In granting the mineral interest to the states, Congress required that the states observe certain conditions in administering these lands, generally: (1) that the states must reserve the mineral interest from any disposition of title to the lands, and (2) that the mineral deposits were to be leased with the income to be utilized for public school purposes.

B. MINING PROVISIONS IN 1950-1956 VERSIONS OF ALASKA ENABLING ACTS.

The School Lands Act, however, would not have automatically applied to the then future state of Alaska. The legislation expressly stated that it applied only to grants of numbered school sections in place. But the eventual 6(a) and 6(b) grant was unprecedented not only in its size, but also in Alaska's right to select lands. All prior statehood grants had been "in place" grants consisting of specific numbered sections with indemnity selection rights which could be exercised only when the numbered sections were unavailable. In addition to some other land grants, Alaska also received the right to select statehood lands -- a so-called "quantity grant" - out of the federal public domain. Therefore the School Lands Act would not apply to the 6(a) and (b) grants. Also, the School Lands Act expressly excluded "all lands in the Territory of Alaska." Therefore, the Alaska Statehood Act land grants had to expressly convey mineral interests.

The original proposal offering this unprecedented quantity grant also contained an unusual provision for transfering the mineral interest to the state. Originally section 5(b), HB. 331, 81st Congress, Committee Print A, Senate Committee on Interior and Insular Affairs, May 23, 1950) (presented by Senators Anderson and O'Mahoney), the

provision as reported out by the full committee (on June 29, 1950) read,

> After five years from the Admission of Alaska into the Union, the State, in addition to any other grants made in this section, shall be entitled to select not to exceed twenty million acres from the vacant, unappropriated, and unreserved public lands in the State. Such selections shall be made in reasonably compact tracts: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, rightof-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied. Where the lands desired are unsurveyed at the time of selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey. Such lands may be granted or sold by the State in tracts of not more than 640 acres for any purpose, but with a reservation to the State of a royalty of not more than 12 1/2 per centum on all minerals produced therefrom. The lands granted to the State of Alaska pursuant to this subsection, the income therefrom and the proceeds thereof when said lands are sold, shall be held by said State as a public trust for the support of the public schools and other public educational institutions.

(Emphasis added.)

H.R. 331 passed the House on March 3, 1950 and was reported to the Senate on June 29, 1950, but no further action was taken. Identical language appeared in the next congress in § 5(b) of S. 50, 82nd Congress (May 3, 1951). S.50 was recommitted to committee on February 27, 1952, and died.

Although similar to School Lands Act in that the proceeds were earmarked for school funds, the rest of the provision is unusual both in its allowance of sales of mineral interests and in its mandating of some reserved royalty interest. This provision was added in the senate during executive session, and no official history of this language is available. */

In the 83rd Congress, however, the Senate Interior and Insular Affairs Committee adopted -- essentially verbatim -- the School Lands Act provision (now contained in 43 U.S.C. 870(b)) with a patent provision similar to the 1934 Act:

---

*/ The only documentation available to our knowledge is an October 6, 1955, memorandum from Mrs. Margery Smith, Assistant Secretary to Delegate Bob Bartlett to Bob Bartlett, which attempted to recreate this provision's history. This memorandum indicates that the genesis of the provision was Senator O'Mahoney's (one of its presenters) aversion to the idea that the surface owner of the land would have no control over the state's leasing of the mineral deposits.

> The grants of mineral lands to the State of Alaska under subsection (b) and (c) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for Alaska. For the purposes of this Act the mineral character of lands granted to the State of Alaska shall be determined at the time patent issues and the patent shall be conclusive evidence thereof.

S. 50, 83rd Cong., 2nd Sess., reported as of February 24, 1954 as the substitute bill of the Senate Committee on Interior and Insular Affairs, S. Rept. 1028 (emphasis added). */

---

*/ In the following year (the first session of the 84th Congress), the statehood bill was reintroduced in the Senate, with the mineral alienation condition, as S. 49. Its counterpart in the House, H.R. 2535, also contained the new provision. The 1954 provision contained an introductory sentence concerning existing leases or contracts that was later deleted.

The committee report on S. 50 stated:

> Subsection (k) provides that all grants made or confirmed under the act shall include mineral deposits. Thus, the fact that the lands desired by the State are known or believed to be valuable for minerals will not preclude the State from exercising its right of selection with respect to them under the several grants. However, in order to give an added measure of protection to the new State government, which inevitably will be inexperienced and untried, the committee amendment provides for certain restrictions upon the disposition by the State of mineral lands which it may select under the 100-million acre grant provided in subsection (b) or the 2,440,000-acre grant made in subsection (c). The restrictions are that the State must retain title to all the minerals in these lands, whenever any of them are sold or granted. The State may dispose of the minerals in these lands only by lease in such manner as the State legislature may direct. The Attorney General is authorized to take appropriate proceedings for forfeiture of any of the lands granted to the State which are disposed of contrary to these restrictions. In making the above provision, the committee has followed the practice prevalent in a number of mining States -- a practice that has stood the test of time and experience. The language of the provision is adapted from section 1 of the act of January 25, 1927 (44 Stat. 1026), in which the 69th Congress made similar provision for the protection of mineral school lands. It should be noted, however, that the committee has limited the application of these restrictions to lands that are determined to be mineral in character at the time they are patented to the State.

S. Rep. No. 1028, 83rd Cong. 2d Sess. (1954) (emphasis added).

The 1954 version basically transferred the system and restrictions of the School Lands system wholesale to the statehood act by combining the transfer of mineral interest and patent provisions in one section. Unlike the 1950 and 1952 provisions, this version did distinguish between mineral and non-mineral lands by limiting the restriction only to lands known to be mineral at the time of patent. The patent itself was to be the conclusive evidence of the nature of the lands.

This provision survived intact, except for substituting "this subsection" for "this Act," to the 1955 session, when it was introduced as S. 50 and HR. 185.

The final sentence concerning issuance of patent to the lands, however, was deleted by the House. Report of the Committee on Interior and Insular Affairs, H. Rep. No. 88, 84th Cong., 1st Sess. 3 (1955) ("H. Rep. No. 88"). The reason for the deletion was because the Governor of Alaska and the Lands Commission did not want the mineral character of the land to be determined at the time of transfer:

> MR. BARTLETT: On page 38, beginning on line 20, delete the remainder of the subsection following the period appearing after the word "Alaska."
>
> That amendment is offered at the suggestion of the Governor of Alaska and the Land Commissioner (sic) of Alaska. They were some-

> what apprehensive about the rapidity with which lands would move to the new State if the requirement remained in that the mineral character of all the land would have to be determined in advance. And the rights of the United States, the attorneys tell me, are adequately protected in the foregoing part of that subsection.
>
> THE CHAIRMAN. The amendment is to strike, on page 38, on line 20, the following sentence:
>
> > For the purposes of this subsection the mineral character of lands granted to the State of Alaska shall be determined at the time patent issues and the patent shall be conclusive evidence thereof.
>
> Is it your view, Mr. Bartlett, that language is surplusage and is not necessary?
>
> MR. BARTLETT. I do not think it is surplusage, but I will agree with the Governor and Commissioner of Lands of Alaska (sic), that it had best be deleted.
>
> THE CHAIRMAN. Is there any objection to the amendment? If there is no objection, the amendment will be adopted and the language referred to will be striken and it is so ordered.

Hearings before the House Committee on Interior and Insular Affairs on Hawaii-Alaska Statehood, 84th Cong., 1st Sess. 332 (Feb. 15, 1955) (emphasis added).

As a result, the language restricting the application of the leasing requirement to lands known to be mineral in

character at the time of patent was deleted. Consequently, House Report 88 recognized that the leasing and mineral reservation requirement attached to all 6(a) and (b) lands.

> Subsection 6(j) [now 6(i)] provides that all grants to the State under the act include mineral deposits and requires that all State conveyances of lands granted by sub-sections 6(a) and 6(b) (selected lands) shall be subject to a reservation in favor of the State of all minerals and the right to remove the same. Such mineral deposits can be leased by the State as the legislature directs, but disposition of lands or minerals in any other manner will result in forfeiture of such lands or minerals to the United States.

H Rep. No. 88, supra. (emphasis added). The 6(i) language remained unchanged through the passage of the Statehood Act.

On November 7, 1955, Herbert Slaughter, Chief, Branch of Reference, Division of Legislation, Office of the Solicitor, Department of the Interior, summarized the history and purpose of the 6(i) provision for Delegate Bartlett ["Slaughter memorandum"]. He concluded:

> These earlier proposals, it will be noted, differ in a number of respects from the restrictions contained in the bills now pending. In particular, the current language expressly calls upon Alaska to adopt a mineral leasing system, while the earlier versions permitted the mineral deposits to be disposed of along with the surface,

provided a royalty interest was reserved by the State. On the other hand, the current language does not attempt to prescribe maximum or minimum rates of royalty as did the earlier versions, but appears to leave the terms of leasing wholly to the discretion of the State legislature. From a practical standpoint, this second difference may be more important than the first, since if the Alaska legislature is left, as H. R. 2535 and S. 49 now intend to provide, with the untrammelled right to frame its own mineral leasing laws, it can, if it so chooses, establish priorities that will tend to keep the surface and mineral rights in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concepts of the public interest. */

C. ALASKA CONSTITUTIONAL CONVENTION AND ARTICLE VIII SECTION 11 - 1955-1956.

In spite of the flexibility pointed out by Mr. Slaughter, the prospect of a mandatory leasing system for state-selected lands was vehemently opposed by the Alaska miners and others. The mining provision caused great concern among the delegates to the convention.

---

*/ Emphasis added. Mr. Slaughter's memorandum was apparently made part of the record of the Constitutional Convention, and is now located in the Legislative Reference Library files on the constitutional convention in File 180/210 "Constitutional Convention, Department of Interior - Mineral Lands Provision of Alaska Statehood Bill."

Committee members, as well as others who testified before the committee, were extremely concerned about these restrictions. Under Congressional laws then governing federal lands, patents to mining claims (i.e. fee ownership) could be obtained upon proving a valid mineral discovery. While this practice would be continued on federal lands in Alaska, the state could dispose of minerals by lease only. Most of those interested in mining development objected to these limitations. Bartlett explained that congressional policy has changed over recent decades and that chances of eliminating the alienation restriction from statehood enabling legislation were slight. This explanation, backed by other evidence provided the committee, led to the addition to the section on mineral leasing of a provision that:

> Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands, if authorized by the State and not prohibited by Congress.

In part, this provision was inserted in the hope that Congress might recede from its restriction. On the other hand, delegates who concurred in the policy limiting permanent disposal of minerals went along with the proposal because they assumed Congress would stand firm. Most also saw the provision as a demonstration to miners, who might otherwise object to the constitution, that any restrictions applicable to alienation of mineral lands were being imposed from outside and were not the convention's doing. */

---

*/ V. Fischer, Alaska's Constitutional Convention, University of Alaska Press, 1975, at 134.

The depth of feeling is indicated by the comments of Delegate White in discussing a proposed constitutional provision which stated,

> All provisions of the act admitting Alaska to the Union, which reserve rights or powers to the United States, as well as those prescribing the terms and conditions of the grants of lands or other property made to Alaska, are consented to fully by the State of Alaska and its people.

In the course of the debate over this provision, 4 Alaska Constitutional Convention Minutes ["ACCH"] 1955-1956 at 3050-3063, Mr. White observed:

> Now in the current statehood enabling act there is a provision that the state must retain title to all its minerals. Those of us here may or may not like that provision. We may or may not agree that it is going to be there whether we like it or not. I will be the first one to agree that there appears to be very little chance of ever getting that changed, but I would also like to point out that, of all the matters contained in the enabling act, that is far and away the most unpopular among the people of Alaska and not necessarily just among the mining industry. It is unpopular among the homesteaders, the man in the street, and everyone I have talked to, and I think that for us to sit here and deliberately, in writing, accede to that and cut the ground out from under individual Alaskans or groups of Alaskans who hope to go to Congress and try and get that changed, would be folly of the highest order.

Id., at 3063.

The delegate proposal which formed the basis of the existing constitutional provision, was dated December 12, 1955, and read as follows:

> 11 (Creation of Mineral Rights). Discovery and filing of application shall be prerequisite to the creation of a right in the minerals reserved to the State; except that prospecting permits giving exclusive right of exploration for specified periods and areas may be provided for in the explorations for oil, gas, coal, non-metalliferous metals customarily subject to exclusive exploration, and for the use of geophysical methods of prospecting. Prior discovery and filing shall in any event give prior right to such minerals and to issuance of permits, licenses or leaseholds for exploration thereof. Continuance of such right shall depend upon the beneficial use.

A revised proposed Sec. 11 made the following changes:

> 11. (Creation of Mineral Rights). Discovery and appropriation . . . and for the use of geophysical and geochemical methods of prospecting. Prior discovery and appropriation . . . licenses, leaseholds or patents if authorized by Congress for the extraction thereof. . . . Patents for mineral rights, if generally authorized by the Congress, shall be limited to those surface uses necessary to the extraction of mineral resources and until such time as the mineral deposits are exhausted. Known deposits of minerals shall be subject to lease without recognition of preferential right of discovery.

The section as introduced on the floor of the Constitutional Convention dated December 16, 1955, read as follows:

> 11. (Creation of Mineral rights). Discovery and appropriation shall be the basis for establishing a right in those minerals heretofore subject to location under the Federal Mining Laws and now reserved to the State. Prior discovery and filing shall give prior right to such minerals and to issuance of permits, licenses, leaseholds, or patents if authorized by the Congress, for the extraction thereof. Continuance of such right shall depend upon beneficial use as prescribed by laws.

Prospecting permits giving exclusive right for exploration for specific periods and areas may be provided for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur and other Mineral Leasing Act minerals and for the use of geophysical, geochemical and similar methods of prospecting for all minerals. Issuance, type and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphyr and other Mineral Leasing Act minerals shall be as provided by law.

Surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits, and the continuance of such right shall depend upon beneficial use as prescribed by law.

The commentary which accompanied the above proposal explained the sections as follows:

Sec. 9. Sales and grants must have a reservation of minerals because of the Enabling Bill. "Such minerals", subject to lease in conformity with H. R. 2535 of the 84th Congress.

Sec. 11. This section recognizes the establishment of mining rights as applied to a system of leaseholds or limited patents. "Appropriation involves both location and filing". Mineral Leasing Act is the exception to the above. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise, the right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit license or lease for the extraction of these mineral deposits. Lands will be available for construction of mining works, disposition of waste and for timber necessary to mine construction.

Section 9 is the present Art. VIII, Sec. 9, which provides in part "All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State . . . ."

It was in this form that the proposal went to the floor of the convention. In discussing a related provision concerning the issuance of prospecting permits (now Article VIII, section 12), the following exchange occurred between Mr. Barr and Mr. Riley, chairman of the resource committee:

> BARR: Mr. President, before that's submitted, I would like to know -- since the mineral rights are reserved to the state, if a man stakes out a placer mine for gold, what kind of permit is he going to have for production? Wouldn't that be a lease on gold? In that case you wouldn't want to put that amendment in there, you'd want to include all minerals.
>
> RILEY: Well, minerals such as you speak of, which are subject to discovery and location, are covered in the first portions of Section 13, where we have endeavored to retain all of the federal nomenclature as we know it now in the federal mining law.
>
> BARR: Then he could get a patent on his claim, then?
>
> RILEY: He could if Congress will allow.
>
> BARR: I see. Well, I didn't know, I thought perhaps the state would want to give him a lease in a case like that. I have no objection then.
>
> RILEY: In effect, it would probably amount to a lease, or to a very limited patent.

Of course, the then current drafts of the enabling act prevented patent from issuing, and the framers of the state constitution could only hope that Congress would change course. This intent to follow the historic federal scheme of discovery, location and patent if Congress would refrain from imposing a leasing system survived to the final version of this constitutional provision, which provides:

Section 11. Mineral Rights. Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

D. ALASKA STATEHOOD ACT - 1957-1958

With the constitution allowing flexibility to adopt the historic federal system, the focus shifted back to congress to change the congressionally imposed leasing requirement. This attempt was lead by the Alaska Miners Association represented by Glen Franklin. Mr. Franklin's March 15, 1957, testimony before the House Sub-committee on Territorial and Insular Affairs is the only detailed discussion of the 6(i) provisions in the official committee records.

Mr. Franklin began his testimony with the miner's opposition to the required leasing of mineral deposits in all state lands:

> Following is the statement of the Alaska Miners Association relative to mandatory leasing of mineral rights on all lands reserved to the new State of Alaska.
>
> * * * * *
>
> We believe that the well-intended actions contained in the enabling legislation will have an adverse effect and that mandatory leasing of mineral rights by the new State of Alaska under the conditions imposed would irreparably damage the development of Alaska's mineral resources. As a result, it would for many years reduce tax receipts and other State revenue from the mineral industry.
>
> * * * * *
>
> We believe that the Legislature of the State of Alaska should be allowed to determine the disposition of the mineral rights on all State lands except those specifically reserved for schools. Thus they could offer additional incentive to encourage the settlement of State land and the development of its resources by making it available for maximum use consistent with the public interest.
>
> We should like to point out that even under the present simple and time-honored system of discovery and location, the mineral industry in Alaska has declined, rather than advanced, in the last decade.
>
> The several bills introduced to date in the 85th Congress have in common that Alaska is entitled to select, within 25 years after admission, 103,350,000 acres of land.

> All land so claimed shall have the mineral deposits reserved to the State and it shall be mandatory that the State lease the mineral rights; forfeiture of rights could result if disposed of contrary to the provisions in the bills.

Hearings before the House Subcommittee on Territorial and Insular Affairs of the Committee on Interior and Insular Affairs on Statehood for Alaska, 85th Cong., 1st Sess., 216-217 (March 15, 1957) ("Hearings"). Mr. Franklin urged that '[d]isposition of mineral rights on state claimed lands should be left to the discretion of the State legislature in conformity with provisions concerning this subject in the State constitution." Hearings at 220.

At one point, the committee engaged in an extensive discussion with Mr. Franklin concerning possible modifications of the proposed section. The modification would distinguish between lands that were known or believed to be valuable for minerals and lands not believed to be valuable for minerals as a basis for deciding which lands had to be leased and which lands could be transferred by patent or allowed to be mined by claim-staking:

> MR. ASPINALL. Now, do I understand that if Alaska is given statehood and 100-plus million acres of land or more or less are set aside for the use of the State, you wish the lands to be so transferred to the new State of Alaska, so that the State of Alaska can issue patents for mining claims rather than by leasing procedures as provided under the Leasing Act of 1920; is that correct?

MR. FRANKLIN. I should like the State of Alaska to be enabled or allowed to dispose of those lands or mineral rights under the form of leasing by sale or other method, as long as adequate compensation has been received, but not relegated only to leasing.

Hearings at 221.

The Mineral Leasing Act of 1920 had one procedure for lands known or believed to be capable of containing commercial quantities of minerals ("competitive leasing"), and another procedure for other areas ("non-competitive leasing"). */ The committee returned to this question later:

MR. ABBOTT. But you then say or imply that you could outline a 50 million or 60 million acre area in the new State of Alaska which would be known to be mineralized or prospectively valuable for minerals.

Is that not the effect of your statement?

MR. FRANKLIN. Yes, sir.

MR. ABBOTT. And in a sense you are objecting to a mineral leasing provision alone, are you not?

MR. FRANKLIN. Yes; mandatory leasing alone.

---

*/ For oil and gas, the requirements differed depending on whether the lands covered a "known geologic structure of a producing oil and gas field."

MR. ABBOTT. Mandatory leasing. But you are familiar with the history of both the mining law and the Mineral Leasing Act of 1920, and the differences?

It is true, is it not, that the mining law envisages and to this day provides for a patent system based on exploration, discovery, and the posting of a location, compliance with the local recording laws, doing annual assessment work, and thereafter going to patent?

MR. FRANKLIN. Yes.

MR. ABBOTT. That prior to 1920 on oil and gas lands on the public domain there was a patent system. Is that correct?

MR. FRANKLIN. I am not familiar with oil and gas at all.

MR. ABBOTT. Well, I think the committee members will understand that that was the history. With the enactment of the 1920 Mineral Leasing Act, Congress said that in areas within known geological structures producing oil and gas in paying quantities, and, as interpreted from language in the act, prospectively valuable, the United States agencies would be limited to issuing leases, not patents but leases.

MR. FRANKLIN. This was on oil and gas?

MR. ABBOTT. That is on oil and gas. But the measure was "areas known to be valuable." And here you have made the statement that 50 to 60 million acres are known to be valuable or prospectively valuable for mineral development. Would you see any value in the committee considering, in light of the provisions in the bill, what persuaded Congress to enact the 1920 act, where the basis and measure was; Are they known to be valuable for minerals? You yourself have made the statement that these areas are known to be valuable for or are in any case prospectively valuable for minerals.

The previous enabling acts have done very much the same thing that is suggested here for Alaska, with the one possible exception to which you point, and that is your interpretation that until the detailed survey was completed you would not achieve title. You are not saying that you could not achieve rights under or for entry prior to survey, are you?

MR. FRANKLIN. Yes. We contend that the claiming by the State will automatically eliminate any use of that land until the survey is made, because there is no clarifying language.

MR. ABBOTT. Well, how do you account, Mr. Franklin, for the fact that these lands have not been entered and located if they are known to be valuable for minerals? Are you saying that it is known that these 50 or 60 million acres are known to be valuable for minerals, and yet no one has gone out under the mining law and staked out a location and made a claim?

MR. FRANKLIN. I say that they have potential value. I intended that, whether I said it or not. But we are looking at this thing from the standpoint of a couple of hundred years at least. And what lies here under the soil is still yet to be discovered.

I personnally have great faith in the development of Alaska's mining and mineral resources.

MR. ABBOTT. But Mr. Franklin, do you not think that the people in your industry in Alaska and the people who would succeed to the position of or actually complement the position of the Bureau of Mines and Bureau of Land Management in Alaska today, would act just the way they do in the 11 public land States of the West under the oil and gas leasing provisions? A person comes into the controlling agency, the Bureau of Land Management, and says, "We

are filing an application on lands believed to be valuable by reason of seismic surveys, or in any case, geologic and geophysical prospecting." And with the interest shown in those lands, the lands are classified by the Bureau of Land Management. Pretty much the same thing would be done in Alaska if interest were expressed in a given area; would it not?

MR. FRANKLIN. Well, why not, let the decision as to how to dispose of those lands rest with the State legislature rather than qualifying the enabling legislation so that they have no other choice.

I feel quite sure that the land division, or whatever is ultimately set up, will probably go along the lines of leasing. But if, in their discretion, the State legislature should feel that it might be of more advantage to have some other system, why not let us do it that way? Because we understand our local problems much better, I understand, than they can be understood from here at this point, because we are looking ahead so far.

* * * * *

MR. ABBOTT. To boil it down, if Congress is going to put a provision in for disposal of these minerals, you believe that it should include provisions for patent or sale?

MR. FRANKLIN. Yes sir.

MR. ABBOTT. And do I read you position correctly that you would prefer that it be left to the State?

MR. FRANKLIN. Yes, sir.

MR. PILLON. I wonder if the counsel could clear up one point for me. In the event that a claim were made by the State of Alaska to a territory of say 500 square miles, and we were awaiting the surveys to be made pending the turning over of these lands to the State of Alaska, would the Federal Government be in a position at that time to grant the right to explore for minerals, to work for minerals, or would that claim automatically stop the Federal Government from further issuance of any mineral rights?

MR. ABBOTT. Well, I believe the language makes it clear, Mr. Pillon, that as of the date of selection -- and as I read the act there is no such thing as tentative selection or tentative segregation for possible selection; the new State would either have to elect to select this 500 square miles, or it would continue to be open as vacant, unappropriated, unreserved public domain to the Mineral Leasing Act entry and mining law entry. From the moment of selection, not unlike our present system, I assume that Alaska's laws will have provided for an entry system, a request for classification, as it now stands under mineral leasing.

If Mr. Franklin's recommendations were to be followed, then I assume that if the selection had been made, then as of the date of selection entry could be made for patent or leasing, and provision might be made for both; that if the Territory determined that the area was not known to be valuable for minerals -- or the State, I should say -- then provision would be made for the patent entry, that is, entry looking to patent based upon discovery.

> If, however, the geological experts in the State government determined it to be prospectively valuable, it might well be that you would have a mineral leasing approach, just as we do under the 1920 Mineral Leasing Act.
>
> MR. PILLON. Does that clarify it? It does not to me, because it is too involved. I just cannot follow it.

Hearings at 223-226 (emphasis added).

Under Mr. Abbott's understanding of Mr. Franklin's proposed change, lands not classified or known as being valuable for minerals could go to patent; that suggestion was not followed. Mr. Franklin's efforts to delete the mandatory leasing requirements were in vain: 6(i) remained unchanged.

Mr. Franklin was successful, however in making another suggestion. He advocated for the inclusion of an express provision allowing the state to dispose of lands prior to the issuance of patents. This further suggestion was part of the discussion quoted above. Earlier, Mr. Franklin suggested adding a provision to the statehood act similar to that in the Alaska Mental Health Act, which would provide "Following the selection of lands . . . but prior to the issuance of final patent, the territory shall be authorized to lease and to make conditional sales of such selected lands." Hearings at 225. Since patent would not issue until perimeter surveys were made, and surveys in Alaska could take years, the ability to acquire mining rights might be uncertain without an express provision giving the state authority to allowing mining prior to receipt of patent.

But in the final provision, the ability of the state to conditionally lease mineral deposits was changed from the time of selection to the time of tentative approval. 6(g) now reads, in pertinent part:

> Following the selection of lands by the state and the tentative approval of such selection by the secretary or his designee, but prior to the issuance of final patent, the state is hereby authorized to execute conditional leases and to make conditional sales of such selected lands.

When House Bill 7999 (the statehood bill) reached the floor of the house, there was extensive debate on its merits. Besides the concern about the ability of the state to raise necessary revenues, there was apprehension that the federal government was giving away valuable minerals to the state and that the state would not responsibly deal with its lands. For example, on May 27, 1958, the following exchange took place between Representative O'Neill of Massachusetts and Representative O'Brian of New York:

> Mr. O'NEILL . . . There is another group in the House that is not so benevolent as the first group. They want to give away only 101 million acres of land and the property which belongs to the people of the United States. The gentleman from Texas is rather miserly in his thoughts; he wants to give them only 21 million acres.
>
> If there is ever going to be another Yazoo land scandal, if we are going to make the biggest giveaway in the history of this Nation, let us start with only 21 million acres. Please, let us not go hogwild completely.

Personally I am in opposition to the bill. I am going to vote against it regardless of what amendment is adopted because I honestly believe that the minerals up there, the fishing rights, the great forests up there belong to all the people of America. I do not think we have any right to delegate to a handful of people in a legislature in Alaska the authority to give away property that belongs to the people of America.

MR. O'BRIEN of New York. Mr. Chairman, will the gentleman yield?

Mr. O'NEILL. I yield.

Mr. O'BRIEN of New York. Is the gentleman aware that the State of Alaska would get only 400 000 acres of all the tremendous forest lands up there, the rest being reserved by the United States?

Mr. O'NEILL. I have read the bill. I know that it said that they have a period of 25 or 50 years in which to go in and pick out lots of 5,000 acres each.

Mr. O'BRIEN of New York. Except the forests.

Mr. O'NEILL. The gentleman knows and I know that for the next 25 years those people who are up there after having made surveys are not going to take up the useless property. They are going to pick out the best property.

Mr. O'BRIEN of New York. Is the gentleman familiar with the Teapot Dome scandal when the leasing was done under the Federal Government and not the State government?

Mr. O'NEILL Certainly I am familiar with that. But I think in writing a bill such as this and knowing what happened in connection with Teapot Dome and the leasing up there and knowing about the Yazoo scandal and the leasing and the sales made at that time the committee should have written some safeguards into a bill of this type.

Mr. O'BRIEN of New York. Does the gentleman know that the State of Alaska may not sell a single foot of mineral land but may only lease it?

Mr. O'NEILL Yes, I have read the bill.

Congressional Record, Vol. 104, p. 9610 (May 27, 1958). See also, Congressional Record, Vol. 104 at 9341, 9344-9345, 9361 (May 22, 1958) and id. at 9504 (May 26, 1958).

In response to criticisms of the bill, and particularly about including mineral deposits in the transfer of over 100 million acres of land, Delegate Bartlett addressed the House on May 26, 1958, Congressional Record, Vol. 104, at pp 9514-9516. In the course of these remarks he stated:

> Now, let us turn to the proposition of mineral grants. H.R. 7999 proposes that the minerals as well as the surface should be turned over to the State of Alaska in the land transfers. From what has been said and written around here one might believe that this is the crime of the century. Let us have a look at this situation. It deserves one. Alaska is not, as we all know, basically dependent upon agriculture. This despite the fact that Government experts who have surveyed its agriculture potentials estimate that 65,000 square miles---41,600,000 acres--are suitable for crop production and for cultivation and in addition another 35,000 square miles---22,400,000 acres--are suitable for grazing. Development of these lands will come. But, very frankly, I do not believe that the time will ever arrive when agriculture products from Alaska will be in direct competition with those from what are now in the 48 States. Further, I contend there is nothing wrong with that. This is all to the good. It serves to strengthen the economy of our whole Nation. The gentleman from New York (Mr. O'Brien) suggested in his [illegible]ning speech that in a comparatively

few years after statehood Alaska will have 10 million people. I hope he is right. In any case, Alaska will have many more people than it now has and will be raising much more of the food it consumes than it now does. But always, as I see it, there will be a need for importation of foodstuffs. They will be paid for by exportation of our natural resources, raw or refined. And that will be mutually advantageous.

Right now the fact is that the subsurface values, generally speaking, are more valuable than the surface values. Alaska has always been a mining country and there is a very strong possibility that the great mining booms of the past will fade into insignificance when matched against what we believe is the coming oil boom.

The situation now is that generally speaking a citizen may go upon public domain land in Alaska--federally owned land that is--and locate a mining claim to which he may, if he so desires, obtain fee simple title. He might find the richest gold mine in the world and become its absolute owner. And, parenthetically, as far as I am concerned that is perfectly all right. It is in accordance with American free enterprise and ownership of property. Oil and gas lands may not, of course, be owned outright. They may only be leased from the Federal Government under the Mineral Leasing Act of 1920. The Alaska statehood bill is much more stringent than Federal laws. It provides that the State may never sell mineral rights. It may only lease them. This provision was inserted with the thought and hope that future citizens of the State of Alaska would continue to derive benefits from the utilization of these minerals through a leasing system. The people of Alaska are mindful of the trust reposed in the constitution for the state-to-be a resource article which meets every test

which might be applied to it. Already their legislature has enacted what is now chapter 184 Session Laws of Alaska, 1957, legislation creating a Department of Lands and establishing the ground rules under which it will operate. I feel confident that any fair-minded persons devoted to the principles of conservation will applaud that law.

If it has not already been said it will be said, undoubtedly, that the policy of granting mineral rights to a new State departs from tradition and from precedent. It is true that most of the Western States were given the surface of the land only. But any such statement would not be literally true. The Oklahoma Enabling Act was so phrased as to give that State its minerals. The Republic was not shattered by what was done there and I for one have never heard that Oklahoma is to be reprimanded and castigated for its management of these minerals instead of having them exclusively under the jurisdiction of Washington which I maintain is in contradiction to States rights.

There is another element which ought to be considered here. A material change in the attitude of the Congress toward the granting of mineral lands to the States came about in 1928 (sic). A bill then enacted and signed into law provided in effect that all grants to the States of numbered sections in place for the support of public schools should encompass sections mineral in character equally with sections nonmineral. That represented more modern thinking on this subject and influenced, or so I believe, the committees which over these many years have been considering Alaska statehood legislation.

Id., at 9515 (emphasis added).

The House passed H.R. 7999 on May 28, 1958, with the Senate approval coming on June 30, 1958. The Statehood Act, P.L. 85-508, 72 Stat. 339 became effective July 7, 1958, and with subsequent voter approval and Presidential declaration, Alaska becam a state on January 3, 1959.

III. DISCUSSION OF LEGAL QUESTIONS RAISED

A. THE 6(i) LEASING REQUIREMENT APPLIES TO ALL STATE-SELECTED (6(a) AND (b)) LANDS

1. State officials were incorrect in believing the leasing requirement applied only when the state had sold or disposed of the surface interest.

After the passage of the Statehood Act, state (then territorial) officials interpreted the leasing restrictions as applying only to lands where the surface interest had been disposed. On April 4, 1959, for example, Phil R. Holdsworth, then holdover territorial commissioner of mines and soon to become the state's first commissioner of natural resources, offered what was to become the state position.

Section 6(i) of Public Law 508 entitled Mineral Land Grants makes the following statement: "All grants made or confirmed under this Act shall include mineral deposits." This section goes on to say that whenever the State of Alaska sells, grants, deeds, or patents any of the mineral lands so granted, conveyances will "....contain a reservation to to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same." From this it can be seen that lands selected by the State and which are not conveyed to a second party may be considered State public domain land. The present interpretation of Section 6(i) of Public Law 508 infers that the usual mining rights contingent upon discovery and appropriation will apply on State public domain lands the same as they presently apply on Federal public domain lands within Alaska. The major difference in the case of State lands is that the owner of an unpatented mining claim will not come to the State for a patent to that claim. Such action would compel the State to reserve the minerals in that land to the State or its lessee. Mineral deposits which have been reserved to the State in the conveyance of lands as described above "shall be subject to lease by the State as the State Legislature may direct." This concept closely parallels the policies of Public Law 167 which segregates the surface rights from subsurface mineral rights.

Presentation to the Fourth Annual Mining, Mineral and Petroleum Conference, Anchorage, Alaska, April 4, 1959.

This "inference" was included in the first Alaska Lands Act, 1959 Alaska Session Laws, art. IX, ch. 169:

> Section 1. Discovery and Appropriation Rights. Except as herein provided, all minerals which are subject to location under the mining laws of the United States, and the mineral lands in which they are contained, shall be subject to discovery, appropriation and location under the provisions of Sections 47-3-9 through 47-3-93, ACLA 1949, as amended. In the case of tide and submerged lands, and acquired lands known to contain such minerals, or lands which have been sold, granted, deeded, or patented reserving such minerals to Alaska, the right to mine and remove such minerals may be acquired only by lease on such terms and conditions as may be recommended by the Director and approved by the Commissioner.

This approach has been consistently adhered to since statehood, and is presently seen in the regulations - 11 AAC 86.135(b)

We are of the opinion that, although longstanding, this interpretation of 6(i) is incorrect. A long standing contemporaneous state interpretation of a federal statute is of little weight */; here it is particularly suspect given the intense and adverse state feelings about the 6(i) restrictions. Although the state officials recognized that they could not issue a patent that included the subsurface estate, they apparently attempted to restrict the application of the leasing language to as narrow an interpretation as possible. Although their goals may have been laudable, the attempt to retain the federal claim-staking system on state lands was precluded by 6(i).

---

*/ See, generally, 2A Sutherland Statutory Construction, 4th ed., §49.05 at pp. 238. 238-249.

At no time prior to the passage of 6(i) and the Statehood Act was this interpretation offered or discussed. On the contrary, as Mr. Franklin's testimony shows and as the committee reports state, the 6(i) restriction was understood as applying to all mineral lands.

The state officials' position rests upon distinguishing between a "patent" system and a "claim-staking" system; namely, that the 6(i) restriction only applied to prevent a patent from issuing to mineral lands, not to claim-staking. Congress, under this view, only intended leasing to apply to lands where the surface was held by others with permanent rights.

But this application of the 6(i) restriction would result in a system practically identical to the federal "patent" system. Under the federal system, the only land open to claim-staking was unoccupied land, where no one else held superior rights. See, e.g., Rancher's Exploration and Development Co. v. Anaconda Co., 248 F. Supp. 708,714 (D. Utah 1965). Even under the federal system, therefore claim-staking was restricted to areas where no one had a prior permanent surface interest.

Second, merely preventing patent does little, both practically and legally, to change the federal mining

scheme. The rights conveyed by discovery and location gave, for all practical purposes, rights identical to those conveyed by patent. As the United States Supreme Court stated:

> The rule is established by innumerable decisions of this Court, and of state and lower federal courts, that when the location of a mining claim is perfected under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The right of the owner is taxable by the state; and is "real property" subject to the lien of a judgment recovered against the owner in a state or territorial court. Belk v. Meagher, 104 U.S. 279, 283; Manuel v. Wulff, 152 U.S. 505, 510-511; Elder v. Wood, 208 U. S. 226, 232; Bradford v. Morrison, 212 U.S. 389. The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws, his possessory right, for all practical purposes of ownership, is as good as though secured by patent.

Wilber v. United States ex rel. Kershnic, 208 U.S. 306, 315-317 (1930) (emphasis added).

But the purpose of the 6(i) restriction was to impose significantly stricter controls over mineral disposal than under the federal scheme. As Delegate Bartlett stated in the Congressional floor debate, "The Alaska statehood bill is much more stringent than federal laws. It provides that the State may never sell mineral rights. It may only lease them" 104 Congressional Record at 9515 (May 26, 1958).

The purpose of the leasing system was to provide continuing state control of minerals, to provide revenue for the state through rental or royalties, and to prevent minerals from being "given away" to third parties. A loophole as large as the one offered by early state officials is antithetical to that purpose.

Therefore, we believe that the approach offered by state officials in 1959 was not contemplated by anyone prior to the passage of the Statehood Act. The history of the 6(i) provision, the School Lands Act, the committee reports, and the expressed purposes of the provisions lead us to the conclusion that the leasing requirement applies to all mineral lands, whether or not the state has previously disposed of the surface interest.

2. "Mineral lands" as used in 6(i) means all 6(a) and (b) lands valuable for minerals, no matter when the mineral character may become known

In our opinion, a closer question is whether the term "mineral lands" in 6(i) restricts the leasing and mineral reservation provisions to only certain, but not all, 6(a) and 6(b) lands. 6(i) states in part:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that [the minerals be reserved] . . . . Mineral deposits in such lands shall be subject to lease . . . .

Although state administrators never took this position, an argument could be made that the 6(i) restriction applies only to "mineral lands" as that term was applied by case law to pre-1927 land transfers; namely, land which was known or expected to contain minerals at the time of transfer. If this question was being answered for Federal/State transfers in 1926, under the case law at that time, we would be of the opinion that that interpretation of "mineral lands" would be appropriate.

But in the context of the School Lands Act and the Statehood Act, we believe that the leasing requirement, and the requirement that minerals be reserved in any sale, applies to 6(a) and 6(b) lands whether or not they are known or believed to contain minerals at the time of their transfer to the state.

Under the case law applicable to statehood grants enacted before the School Lands Act, "mineral lands" meant lands that were known or believed to be valuable at the time that the state had performed all actions required for it to be entitled to the statutory grant. This application is a judicial rule foreclosing inquiry, and is based upon congressional intent and the desire to avoid inequitable and unforeseeable title disputes. The rule was explained in Wyoming v. United States, supra;

> [The grantees were not] at liberty to select lands which were then known to contain minerals. Congress did not intend to grant any mines or mineral lands . . . . We say "lands then known to contain mineral," for it cannot be that Congress intended that the grant should be rendered nugatory by any future discoveries of mineral. . . . The title was then to pass, and it would be an insult to the good faith of Congress to suppose that it did not intend that the title, when it passed, should pass absolutely, and not contingently upon subsequent discoveries. This is in accord with the general rule as to the transfer of title to the public lands of the United States. In cases of homestead, preemption, or town site entries, the law excludes mineral lands, but it was never doubted that the title, once passed, was free from all conditions of subsequent discoveries of mineral.

255 U.S. at 499. (Quoting from Shaw v. Kellog, 170 U.S. 312, 332-333 (1398)) The court went on to describe how this general rule applied to state selections prior to the School Lands Act.

> The Land Department uniformly has ruled that the states acquire a vested right in all school sections in place which are not otherwise appropriated, and not known to be mineral, at the time they are identified by the survey, --- or at the date of the grant, where the survey precedes it, --- regardless of when the matter becomes a subject of inquiry and decision, and that this right is not defeated or affected by a subsequent mineral discovery.

255 U.S. at 500.

This rule prevents inquiry into whether the land was known to be mineral in nature after a certain date. The purpose of this rule was to prevent the grantor from subsequently attempting to recover lands which were thought to be unconditionally transferred. It also was applied only where the land which was transferred was not known to be mineral in character at the time of the transfer.

But we question whether the rule is applicable where the transfer of title does not depend upon a distinction between mineral and non-mineral land, where the rule is not necessary in order for title to be unaffected by subsequent discovery of minerals, and where the inquiry would be meaningless in terms of the question of ownership between the federal government and the state. Instead, the purpose of determining the mineral nature of the land is entirely different under the 6(i) provision --- it is to determine how

the state may deal with its resources in a disposal of the property after title has passed from the federal government to the state. The purpose of the restriction was to promote state control over the mineral deposits, not to foreclose state ownership.

In addition the rule was based, in part, on the rationale that Congress could not have intended that title be transferred upon the condition that there would be no subsequent discovery of minerals. But the School Lands Act and the 6(i) grant, in part, were meant to eliminate the problems caused by distinguishing between lands known to be valuable for minerals and other lands. These problems were solved by granting the mineral interest to the states. There is no reason, and we do not believe that Congress intended, to apply the rule to restrictions on the state's subsequent handling of the land. To impose the rule would shift the very problem the legislation was intended to solve from the point of federal/state transfer to the state/third party transfer. For if the rule were to apply, then a third party's title would be challengable at any time on the basis that the land was known to be mineral at the time of transfer from the federal government to the state.

We see no reason, and do not believe Congress intended, to apply the rule restricting the application of the term "mineral lands" in a totally different context and in a manner that would create the very problems the legislation that the parent of the 6(i) provision (the School Land Act) was supposed to prevent. A similarly narrow application of the term "mineral lands" was deleted from earlier versions of the Statehood Act at the request of territorial officials (although for arguably different reason), and we are of the opinion that it should not be implied. */

---

*/ As was stated, we do believe that the question is close and that a legimate and reasonable argument can be made to the contrary. In fact, the state has argued the above definition of "mineral lands" in a prior case. See Brief of Appellant State of Alaska in State v. Lewis, Supreme Court No. 3039 at 40-46 (filed August 16, 1976). The Supreme Court did not reach the issue in its decision. State v. Lewis, 559 P.2d 630 (Alaska 1977) appeal dismissed, 431 U.S. 901 (1977). In addition to the arguments presented therein, additional support can be gleaned from Senate Report 1163, 85th Congress, 1st session (August 29, 1957, page 2) and one of the drafts of Art. VIII, sec. 11 of the Alaska constitution. And, the original 6(i) draft also intended that a mineral/non-mineral distinction based upon known character at the time of transfer be applied.

But in reviewing the entire history, the expressed purposes of the legislation, and the purpose of the rule foreclosing inquiry into its known nature after transfer, we believe that the better view is the one explained in the text.

B. THE LEASING SYSTEM SET FORTH IN AS 38.05.185 - 280 IS CONSTITUTIONAL AND APPLIES TO ALL 6(a) AND 6(b) LANDS

Section 6(i) left the choice of a leasing system to the state legislature. As Mr. Slaughter of the Department of the Interior stated,

> The Alaska legislature is left . . . with the untrammelled right to frame its own mineral leasing laws; it can, if it so chooses, establish priorities that will tend to keep the surface and mineral right in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concept of the public interest.

Slaughter memorandum, supra, at 10.

Acquisition and retention of mineral rights in Alaska lands are governed by the Alaska Land Act at AS 38.05.185 - 280. These statutes apply to rights in "locatable minerals", or, more specifically, "minerals which on January 3, 1959, were subject to location under the mining laws of the United States." These minerals include metal ores (gold, silver, and the like), and high-value non-metallic minerals such as asbestos, high purity limestones, building stone, magnesite, and silica sand. These are to be distinguished from what are traditionally termed "leasable minerals," which include oil, natural gas, oil shale, asphalt, bitumen, coal, phospate, sodium, potassium, and, by state statute, sulfur. Whether or not found on 6(a) or 6(b) lands, these "leasable" minerals can only be acquired by lease. AS 38.05.135-181.

For "locatable" minerals, the statutes set up two basic methods to acquire the right to extract and sell the minerals, each of which applies to different categories of state lands. One method is the staking of a mining claim under AS 38.05.195. That statute provides for claim-staking on lands open to mineral location and rights are acquired simply by a valid discovery, location, and filing. Once a proper filing has been made, and so long as there is compliance with the annual requirements of labor or improvements, the locator immediately gains "the exclusive right of possession and extraction of all minerals lying within the boundaries of his claim." AS 38.05.195.

Another method is to acquire a lease under AS 38.05.205. A valid mining claim on lands open to claim-staking must be converted to a lease upon request of the locator. AS 38.05.205(c). On lands which are not open to claim-staking, an applicant must still discover, locate and file. On these lands, however, a valid filing only "initiates prior rights." After the director is notified, he must send the locator an application for a lease, which must then be filed by the claimant within 90 days. Only after executing the lease does the mineral lessee have "exclusive rights of