

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86 / 2  
1919 SRES SB 731 - SB 732 199

of written notice from KIB of its election to receive such lands.

4. In the event that all or part of the lands described in Exhibit D are conveyed to KIB, KIB agrees to reconvey to the State, (in sequence from an easterly to a westerly direction), an equal number of acres from lands on Shuyak Island previously conveyed by the State to KIB pursuant to Paragraph 1.a. of this Agreement. Such reconveyance by KIB to the State shall be made first from Area I, and then from Area II, which are described below:

Area I. The area within protracted Sections 29, 30, 31, and 32, T. 19 S., R. 19 W., S.M. lying west of the agreed-upon proposed Aleksandr Baranov Game Refuge described in Paragraph 6 below.

Area II. Those lands lying within T. 18 S., R. 19 W. and T. 18 S., R. 20 W., S.M. which are east of Carry Inlet and west of Shangin Bay.

5. If lands described in Exhibit D and which are conveyed by the State to KIB pursuant to paragraph 3 of this Agreement exceed in acreage the lands designated as Area I and Area II in Paragraph 4 above, KIB agrees to reconvey to the State additional sections of land on Shuyak Island until such reconveyances within Area I and Area II are equal in total acreage to the acreage of the lands described in Exhibit D which have been conveyed to KIB. Such additional conveyances shall be designated by KIB from any lands on Shuyak Island then owned by KIB, or designated for transfer to KIB pursuant to this Agreement, provided that such lands are compact and contiguous with other lands on Shuyak Island which are then in state ownership.

6. KIB agrees to attempt to obtain introduction and passage of legislation in the Alaska State Legislature which

would create a state game refuge denominated the "Aleksandr Baranov State Game Refuge" consisting of the lands described in Exhibit E. KIB agrees to support introduction of such legislation beginning with the 1981 legislative session, and to support early passage of such legislation, provided that KIB is not obligated to support inclusion of tide or submerged lands except upon mutual agreement with the state with respect to the regulatory implications of such inclusion. The State agrees to support such legislation in good faith, by such oral and written testimony as may be appropriate.

7. KIB agrees to attempt to obtain introduction and passage of legislation in the Alaska State Legislature creating a state park denominated the "Shuyak Island State Park" and consisting of all lands described in Exhibit F. KIB agrees to support introduction of such legislation beginning with the 1981 legislative session, and to support early passage of such legislation, provided that KIB is not obligated to support inclusion of tide or submerged lands except upon mutual agreement with the state with respect to the regulatory implications of such inclusion. The State agrees to support such legislation in good faith, by such oral and written testimony as may be appropriate.

8. In the event that lands to be included in the proposed "Aleksandr Baranov State Game Refuge" or the proposed "Shuyak Island State Park", referred to in Paragraph 6 and 7 respectively, are not finally included by legislation in the proposed game refuge or park, such lands shall be at all times classified and managed by the State in a manner maintaining and enhancing such lands for wildlife habitat and public recreation purposes. Otherwise KIB shall be entitled to select those lands not so classified and managed, and the State shall thereupon promptly transfer the selected lands to KIB. Upon transfer of such lands to KIB, KIB shall reconvey equivalent acreage to the State from Shuyak Island in the manner provided in Paragraph 4, and thereafter in the manner provided in Paragraph 5.

9. The State will designate, on lands owned by it, public easements for the benefit of KIB and the public, each of which shall be 200 feet in width, to provide public access from the line of mean high tide westerly to lands on Shuyak Island which have been conveyed to KIB pursuant to Paragraph 1 of this agreement. The easements will be in the following areas, as more specifically indicated on the attached map entitled Exhibit H, and further subject to exact location in the field:

- A. Traversing Section 26, T. 18 S., R. 19 W., S.M.;
- B. Traversing Sections 15 and 16, 21 and 22, of T. 19 S., R. 19 W., S.M.;
- C. Traversing Section 32, T. 19 S., R. 19 W., S.M..

In the event that lands are conveyed to the State pursuant to paragraphs 4 and 5 above, those easements designated in subparagraphs A, B, and C of this paragraph shall be reserved so as to continue through such lands.

10. The State shall reserve the easements described in Exhibit G. With respect to easements reserved pursuant to AS 38.05.127 or other applicable provision of law, on all other lands conveyed to KIB, their location shall be determined by the borough, subject to approval by the Department of Natural Resources, prior to conveyance by the borough to a private third party.

11. The State and KIB agree that this Agreement is intended by the parties to resolve all outstanding legal and factual differences between them concerning the application of the Municipal Land Selection Act (AS 29.18.201-.213), including particularly, pending Superior Court lawsuits numbered JAN-80-3070, JAN-80-6710, and JAN-81-1385. To achieve this result, the parties agree to accomplish the following actions promptly upon execution of this Agreement:

- a. KIB agrees to relinquish its nominations, selections, and selection approvals not designated for transfer to KIB in this Agreement and further

agrees not to litigate or otherwise challenge the retention by the State of such lands.

- b. KIB agrees not to litigate or otherwise challenge retention by the State of those public easements depicted in Exhibit G.
- c. The State agrees to accept from KIB the relinquishment of those nominations, selections, and approved selections required by this Agreement, and to accept future selections and reconveyances by KIB pursuant to Paragraphs 4, 5, and 8.
- d. All previous transfers of land from the State to KIB are hereby affirmed. Nothing herein affects KIB's right to apply for land under AS 38.05.315 or other applicable law, excluding AS 29.18.201-213.
- e. The State and KIB agree that the terms of this Agreement shall constitute a consent decree and judgment to be presented to the Superior Court for entry in final settlement and dismissal of all pending litigation between the parties with respect to KIB land selections under AS 29.18.201-213, such pending litigation consisting of the following pending judicial appeals from administrative decisions:
- JAN-80-3070 (Woody Island)
  - JAN-80-6710 (Land Classification)
  - JAN-81-1385 (Shuyak Island)
- f. All such litigation shall be dismissed upon execution and court approval of this Agreement and Consent Decree, with each party to bear its own costs and attorney's fees.

12. The State and KIB agree that this Agreement, together with its Exhibits A through H, embodies all of the terms and conditions of the Agreement for settlement of pending litigation and for conveyance of all lands due to KIB pursuant to AS 29.18.201-.213, and that no additional enforceable agreements or commitments exist between them with regard to this subject which are not contained in the text of this Agreement and its Exhibits. The parties reserve the right, by mutual consultation and agreement, to correct if necessary any technical errors or omissions in the specific land descriptions comprising Exhibits A through H herein, so as to more nearly conform to the mutual intentions of the parties with regard to implementation of this Agreement

DATED this 19<sup>th</sup> day of June, 1981.

DEPARTMENT OF NATURAL RESOURCES

KODIAK ISLAND BOROUGH

[Signature]  
Commissioner

[Signature]  
Borough Mayor

STATE OF ALASKA

Attest: [Signature]  
Borough Clerk

[Signature]  
Director, Division of Forest,  
Land & Water Management

Attest: [Signature]  
Municipal Land  
Selections Officer

APPROVED AS TO FORM:

[Signature]  
Thomas E. Gudham  
Assistant Attorney General  
State of Alaska

[Signature]  
Richard W. Garnett III  
Attorney, Kodiak Island  
Borough

ORDER

IT IS ORDERED, that the foregoing Agreement of Settlement and Consent Decree is hereby adopted and approved and

shall be enforceable as a judgment of the court.

DATED this 12 day of August, 1981 at  
Anchorage, Alaska.

S/ Daniel A. Moore Jr.  
Judge of the Superior Court

LAND PLANNING REPORT  
PROPOSED SHUYAK ISLAND STATE PARK  
SHUYAK ISLAND  
September 23, 1981

Kodiak Island Borough  
Kodiak, Alaska  
RECEIVED

NOV - 5 1981

7 8 9 10 11 12 1 2 3 4 5 6  
A.M. P.M.

Existing Classification - Forestry - SC-80-037  
Recommended Classification - Public Recreation  
Acreage - Approximately 13,000 acres

Proposed Classification/Justification

The proposed classification is public recreation. This classification action will implement the Agreement of Settlement and Consent Decree between the State of Alaska and the Kodiak Island Borough.

Location

The subject parcel is located on the western portion of Shuyak Island and includes adjacent small islands and offshore rocks. Shuyak Island is the northernmost major island in the Kodiak archipelago. It is 50 miles north of Kodiak, Alaska and 85 miles southwest of Homer, Alaska.

Legal Description

(Unsurveyed land--All sections are protracted)

Beginning at the  $\frac{1}{4}$  corner common to Sections 31 and 32, T19S, R20W, S.M., which is the Point of Beginning, and which is offshore in the vicinity of the SW corner of Shuyak Island;

Thence northeasterly, approximately 1.0 mile to the C-W-W  $\frac{1}{64}$ th corner of Section 29, T19S, R20W, S.M. in Shuyak Harbor;

Thence, within Shuyak Harbor, northeasterly 0.52 miles to the W  $\frac{1}{16}$ th corner common to Sections 20 and 29, T19S, R20W, S.M.;

Thence east leaving Shuyak Harbor along the section line between Sections 20 and 29 and the  $\frac{1}{4}$  corner common to Sections 20 and 29, T19S, R20W, S.M.;

Thence northeasterly approximately 2.5 miles to the corner common to Sections 9, 10, 15 and 16, T19S, R20W, S.M.;

Thence north between Sections 9 and 10, T19S, R20W, S.M., approximately 0.25 miles to the point of mean high tide on the south shore of Big Bay;

SHUYAK ISLAND  
September 23, 1981  
Page 2

(Unsurveyed land--All sections are protracted) (continued)

Thence meandering easterly and northerly in a counter-clockwise direction along the mean high tide line of Shuyak Island to a point common to the W 1/16th line in the north-half of the north-half of Section 10, T19S, R20W, S.M.;

Thence north along the W 1/16th line approximately 150 feet to the section line common to Sections 3 and 10, T19S, R20W, S.M.;

Thence, east 0.5 miles between Sections 3 and 10 to the E 1/16th corner of Sections 3 and 10, T19S, R20W, S.M.;

Thence north 0.5 miles along the E 1/16th line of Section 3 to the C-E 1/16th corner of Section 3, T19S, R20W, S.M.;

Thence west 0.25 miles along the E- $\frac{1}{2}$  line of Section 3, T19S, R20W, S.M.;

Thence north 0.25 miles along the N- $\frac{1}{2}$  line of Section 3 to the C-N 1/16th corner of Section 3, T19S, R20W, S.M.;

Thence north-northeasterly approximately 1.65 miles to the C-E-W-SW 1/256th corner of Section 26, T18S, R20W, S.M.;

Thence east 0.80 miles along the S 1/16th line of Section 26 to the S 1/16th corner of Sections 25 and 26, T18S, R20W, S.M.;

Thence south 0.25 miles between Sections 25 and 26 to the corner common to Sections 25, 26, 35 and 36, T18S, R20W, S.M.;

Thence east between Sections 25 and 36, T18S, R20W, S.M., and Sections 30 and 31, T18S, R19W, S.M. approximately 1.75 miles to the intersection with the mean high tide line on the west shore of the unnamed bay that connects to Shangin Bay;

Thence meandering southerly and easterly along the mean high tide line of said unnamed bay to Shangin Bay and then continuing southerly, easterly and northerly along the mean high tide line of Shangin Bay to a point common to the N 1/16th line of Section 32, T18S, R19W, S.M.;

Thence east along the N 1/16th line of Sections 32 and 33 approximately 0.3 miles to the NW 1/16th corner of Section 33, T18S, R19W, S.M.;

SHUYAK ISLAND  
September 23, 1981  
Page 3

(Unsurveyed land--All sections are protracted) (continued)

Thence northeasterly approximately 1.5 miles to the section corner common to Sections 22, 27, 28 and 21, T18S, R19W, S.M.;

Thence north along the west boundary of Sections 22, 15, 10, 3 and 34, 5.0 + miles to the corner common to Sections 27, 34, 33 and 28, T17S, R19W, S.M.;

Thence, northwesterly, 4.2 miles + to the corner common to Sections 7 and 18, T17S, R19W, S.M., and Sections 13 and 12, T17S, R20W, S.M.;

Thence southwesterly, 9 miles + to the corner common to Sections 12, 13, 14 and 11, T18S, R21W, S.M.;

Thence southwesterly, 5.4 miles + to the corner common to Sections 3, 10, 9 and 4, T19S, R21W, S.M.;

Thence southeasterly 4.7 miles + to the C $\frac{1}{2}$  corner of Section 35, T19S, R21W, S.M.;

Thence east along the E-W $\frac{1}{2}$  line of Sections 35 and 36, T19S, R21W, S.M. to the  $\frac{1}{2}$  corner common to Section 36, T19S, R20W, S.M. and Section 31, T19S, R20W, S.M.;

Thence east approximately 1.0 mile along the E-W $\frac{1}{2}$  line of said Section 31 to the  $\frac{1}{2}$  corner common to Sections 31 and 32, T19S, R20W, S.M., which is the Point of Beginning of this description.

The above description encompasses State owned and subsequently acquired uplands, tidelands and submerged lands. Those lands which are uplands total approximately 13,000 acres.

Background

The Kodiak Island Borough pursuant to AS 29.18.201-.213 is entitled to select 56,500 acres from State general grant land within its boundaries and has filed such selections in the manner provided. However, a considerable portion of the land selections filed by the Kodiak Island Borough were administratively rejected by the State. As a result the Kodiak Island Borough filed three separate judicial appeals of the administrative decisions in the Superior Court, Third Judicial District under case numbers 3AN-80-3070 (Woody Island), 3AN-80-6710 (Land Classification), and 3AN-81-1385 (Shuyak Island). Both parties desired to settle the question of which lands will be conveyed to the Kodiak Island Borough without extended litigation and entered into an agreement of settlement and consent decree which was approved and adopted by the court.

Background (continued)

Section 7 of the Agreement of Settlement and consent decree provides both parties shall support legislation to create a State park denominated the "Shuyak Island State Park" on the subject parcel.

Section 8 of the Agreement of Settlement and consent decree provides that in the event the lands to be included in the proposed "Shuyak Island State Park" are not finally included by legislation such lands shall be at all times classified and managed by the State in a manner maintaining and enhancing such lands for wildlife habitat and public recreation purposes.

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.

### 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 processing. 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, construction, transportation and communications.

Socio/Economic Conditions (continued)

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.

Existing/Adjacent Land Use

Shuyak Island is uninhabited and used only to a limited extent for hunting and recreation.

Coastal Zone Consistency

Shuyak Island is within Alaska's Coastal Zone. Because no developments or new uses will result from this classification action there will be no adverse effects on the coastal resource.

Statewide Plan

The Statewide plan identifies the western portion of Shuyak Island as recreation and also the subsurface resource as minerals. This classification will support the Statewide plan.

Recommendations

The Southcentral District recommends the classification of Public Recreation for the lands within the proposed Shuyak Island State Park to implement the Agreement of Settlement and Consent Decree.



Alaska State Legislature  
Senate

JUNEAU, ALASKA

TO: Senator Bettve Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senator Bob Mulcahy *Bob Mulcahy*

SUBJ: SB 730 and 731

DATE: March 3rd, 1982

During the March 1st hearing on SB 730 and 731, two questions were raised: the first question was in regards to private lands on Shuyak Island, and the second question was in regards to surveying costs being mentioned in the court settlement.

The only patented private lands on Shuyak Island lie outside of the proposed park and the proposed game refuge. These lands will not be affected by either of these bills. There are several small areas claimed under the Native Land Claims that are scattered around the island; these are at present being adjudicated.

There is nothing in the court settlement about surveying costs at all. I am informed by the Kodiak Island Borough that there is no concern about the question of survey costs at this time.

cc: Senator Gilman



Official Business

# Alaska State Legislature

## Senate Resources Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Senate Resources Committee  
FROM: Senate Resources Committee Staff  
RE: Committee Meeting, Friday, March 5, 1982  
DATE: March 4, 1982

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Please find attached background information for this Friday's meeting on the following bills:

- SB 730 An Act establishing the Aleksandr Baranov State Game Refuge
- SB 731 An Act establishing the Shuyak Island State Park
- SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

The meeting will be held at 1:30 p.m. in the Beltz Room.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 731  
 Title Establishing Shuyak Island State Park  
 Requested by Senate Resources Date 2-26-82

II. FISCAL DETAIL

Agency Affected Fish and Game  
 Program Category Affected NRMEC  
 BRU, Program, Or Subprogram(s) Affected Habitat Division  
 (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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
		0	0	0	0	0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact to this Department.

IV. DATE 2/26 PREPARED BY Janet Green  
 AGENCY \_\_\_\_\_  
 PHONE \_\_\_\_\_  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

BILL NUMBER SB 731

IDENTIFICATION:

BILL NAME: "An Act establishing the Shuyak Island State Park; and providing for an effective date."

SPONSOR(S): Mulcahy

RELATED BILLS PENDING: SB 730

DATE INTRODUCED: 2/9/82

REFERRALS Resources

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED \*yes\*

SUMMARY BY LEGAL DIVISION:  
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP

MATERIALS: - *Roshala Island Boro Resolution in favor*  
*- State/Boro statement of agreement, consent*  
*- Land planning report, Shuyak Island State Park*

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET: 3/1 3/5

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED:

*✓ Dan Helton Wolfe 2421*  
*✓ Greg Voz. 4100*  
*State Env. Agency*

SEARCH - QUERY  
00007 '16.05.092' CITATION.

AS16.05.092 DOCUMENT# 1 OF 1  
HEADINGS TITLE 16.

FISH AND GAME.  
CHAPTER 05.  
FISH AND GAME CODE.  
ARTICLE 1.  
THE DEPARTMENT OF FISH AND GAME.

CITATION SEC. 16.05.092.

CATCH LINE

DUTIES OF DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT AND DEVELOPMENT

TEXT THE DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT AND DEVELOPMENT SHALL

(1) DEVELOP AND CONTINUALLY MAINTAIN A COMPREHENSIVE, COORDINATED STATE PLAN FOR THE ORDERLY PRESENT AND LONG-RANGE REHABILITATION, ENHANCEMENT AND DEVELOPMENT OF ALL ASPECTS OF THE STATE'S FISHERIES FOR THE PERPETUAL USE, BENEFIT AND ENJOYMENT OF ALL CITIZENS AND REVISE AND UPDATE THIS PLAN ANNUALLY;

(2) ENCOURAGE THE INVESTMENT BY PRIVATE ENTERPRISE IN THE TECHNOLOGICAL DEVELOPMENT AND ECONOMIC UTILIZATION OF THE FISHERIES RESOURCES;

(3) THROUGH REHABILITATION, ENHANCEMENT AND DEVELOPMENT PROGRAMS DO ALL THINGS NECESSARY TO INSURE PERPETUAL AND INCREASING PRODUCTION AND USE OF THE FOOD RESOURCES OF ALASKA WATERS AND CONTINENTAL SHELF AREAS;

(4) MAKE A COMPREHENSIVE ANNUAL REPORT TO THE LEGISLATURE, CONTAINING DETAILED INFORMATION REGARDING ITS ACCOMPLISHMENTS UNDER THIS SECTION AND PROPOSALS OF PLANS AND ACTIVITIES FOR THE NEXT FISCAL YEAR, NOT LATER THAN 20 DAYS AFTER THE CONVENING OF EACH REGULAR SESSION.

HISTORY (SEC. 2 CH 113 SLA 1971)

R0801 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

SEARCH - QUERY  
00001 '38.05.300'.CITATION.

AS38.05.300 DOCUMENT# 1 OF 1

HEADINGS TITLE 38.  
PUBLIC LANDS.  
CHAPTER 05.  
ALASKA LAND ACT.  
ARTICLE 11.  
MISCELLANEOUS PROVISIONS.

CITATION SEC. 38.05.300.

CATCH LINE

CLASSIFICATION OF LANDS.

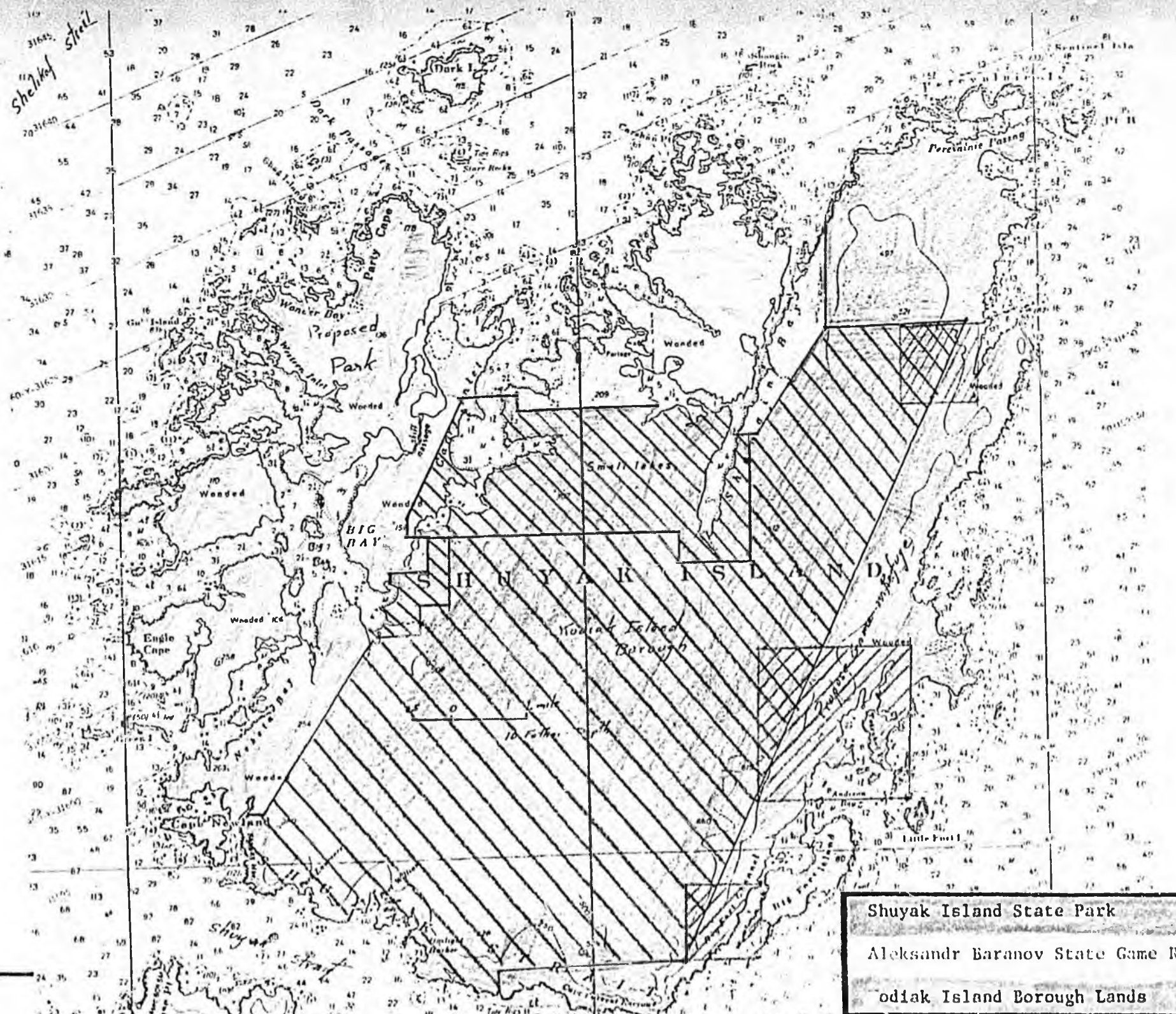
TEXT (A) THE COMMISSIONER SHALL CLASSIFY FOR SURFACE USE LANDS IN AREAS WHERE HE CONSIDERS IT NECESSARY AND PROPER. THIS SECTION DOES NOT PREVENT RECLASSIFICATION OF LANDS WHERE THE PUBLIC INTEREST WARRANTS RECLASSIFICATION, NOR DOES IT PRECLUDE MULTIPLE PURPOSE USE OF LANDS WHENEVER DIFFERENT USES ARE COMPATIBLE. NO STATE LAND, WATER, OR LAND AND WATER AREA SHALL, EXCEPT BY ACT OF THE STATE LEGISLATURE, BE CLOSED TO MULTIPLE PURPOSE USE, IF THE AREA INVOLVED CONTAINS MORE THAN 640 ACRES.

(B) NOT LATER THAN FEBRUARY 1 OF EACH YEAR, THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT TO EACH HOUSE OF THE LEGISLATURE WHICH DESCRIBES AND SHOWS THE LOCATION OF ALL CLASSIFICATIONS OF STATE LAND MADE UNDER (A) OF THIS SECTION DURING THE PRECEDING YEAR.

HISTORY (SEC. 1 ART III CH 169 SLA 1959; AM SEC. 2 CH 31 SLA 1964; AM SECS. 33, 34 CH 85 SLA 1979)

R0691 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

31655  
Shuyak Strait



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-

Sectional analysis of SB 731 continued

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.

LEGISLATION SUMMARY

SB 731: "An Act establishing the Shuyak Island State Park; and providing for an effective date."

GENERAL: This bill would establish the Shuyak Island State Park, occupying roughly the western and northern coastal areas of Shuyak Island.

Sec. 1: Establishes the purpose of the bill: to create, subject to valid existing rights, the Shuyak Island State Park. The primary purposes of the Park are to protect the recreational and scenic resources, fish and wildlife habitat, and to preserve the use of the area for hunting, fishing, trapping and compatible recreational activities. The bill is also intended to close the area to multiple-use and to dedicate it as a special purpose site.

The Park shall consist of state-owned uplands and freshwater bodies and uplands acquired by the state in the future lying within a parcel designated by Township, Range and Section, and provides for inclusion in the Park of Kodiak Island Borough land selections lying within certain designated Sections if the Borough relinquishes the land to the state. Inclusions would be achieved by a proclamation of the Governor.

Provides for management of the Park by the Department of Natural Resources, and management of the fish and game by the Department of Fish and Game. Provides for the adoption of regulations by the Department of Natural Resources and the Boards of Fish and Game. Requires both Departments to consult with each other before the adoption of regulations.

Authorizes the commissioner of natural resources to designate by regulation incompatible uses within the Park. Expressly allows for shooting within the Park, except where prohibited by regulation by the commissioner of natural resources for reasons of public safety. Expressly allows stream rehabilitation enhancement and development by the Department of Fish and Game within the Park. Requires that both departments' regulations provide reasonable access for hunting, fishing and trapping, and requires that the Department of Public Safety and the Department of Fish and Game be allowed reasonable access for fish and game management, research, and enforcement.

Sec. 1 (cont.)

Authorizes the commissioner of natural resources to purchase title to or interest in real property lying within the Park's boundaries. Prohibits the acquisition of land by the state for the Park by eminent domain.

Immediate effective date.

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PRIME SPONSOR: Mulcahy

CO-SPONSOR(S): None

THE LEGISLATURE OF THE STATE OF ALASKA  
 TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 731  
 Title An Act establishing the Shuyak Island State Park  
 Requested by Mulcahy Date 2-26-82

II. FISCAL DETAIL

Agency Affected Division of Parks  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, or Subprogram(s) Affected \_\_\_\_\_  
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			-0-			

FUNDING (Thousands of Dollars)

GENERAL FUND			-0-			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME			-0-			
PART TIME						
TEMPORARY						

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

The Governor's proposed budget would cover first year management responsibilities by the Division of Parks.

IV. DATE 2-26-82 PREPARED BY Chip Dennerlein  
 AGENCY Div. of Parks  
 PHONE 274-4676  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 731  
 Title Establishing Shuyak Island State Park  
 Requested by Senate Resources Date 2-26-82

II. FISCAL DETAIL

Agency Affected Fish and Game  
 Program Category Affected NRMEC  
 BRU, Program, Or Subprogram(s) Affected Habitat Division  
 (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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
		0	0	0	0	0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact to this Department.

IV. DATE 2/26 PREPARED BY Janet Green  
 AGENCY \_\_\_\_\_  
 Original: Legislative Finance PHONE \_\_\_\_\_  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)



# Alaska State Legislature

## SENATE Resources Committee

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

### Official Business

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

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Eliason  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

March 22, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

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### Hearing:

- SB 731 Establishing the Shuyak Island State Park.  
SB 769 Removing the requirement that power projects constructed under the energy program for Alaska be owned by the State.  
SB 843 Relating to surface coal mining and the surface effects of underground coal mining.  
SJR 70 Relating to commercial fishing of North Pacific chinook salmon.  
SJR 79 Requesting the National Park Service to adopt procedures providing public notice of proposed regulations, emergency regulations, and field orders for national parks, preserves, and monuments in Alaska.

---

### SB 731

Senator Mulcahy said a Committee Substitute had been prepared, changing the word "compatible" to "other".

Jim Lieb, Alaska Department of Fish and Game, expressed support for the Committee Substitute.

Senator Gilman moved the acceptance of the Committee Substitute. He then moved CSSB 731 with individual recommendations.

### SB 769

Senator Gilman explained that a Committee Substitute with a changed title had been prepared. It requires that federal power projects in which the State participates must meet the same tests as all State projects, and gives the Alaska Power Authority approval to proceed with the Bradley Lake project.

Senator Mulcahy moved the acceptance of the Committee Substitute. He then moved CSSB 769 with individual recommendations.

SB 843

Jay Nelson, Alaska Environmental Lobby, stated that some provisions of SB 843 are not strong enough to protect the people and the environment. He stressed the need for revegetation with native species, the designation as unsuitable for surface coal mining areas that are highly biologically productive, and the recognition of the fisheries value.

Mark Wittow, Department of Natural Resources, stated that the Department of Fish and Game and the Department of Environmental Conservation both have permitting requirements that protect fisheries which would still stand. He further stated that performance standards will determine the type of reclamation and the amount of habitat protection required.

Senator Sturgulewski stated that State lands on which surface mining will not be allowed should be further defined.

Phil Holdsworth, COAL, in supporting the bill, clarified the point that all State agencies will continue to work together, so there are "built in" protections.

Senator Fahrenkamp stated that SB 843 would be held until 3/24/82.

SJR 70

Senator Mulcahy stated that SJR 70 had been heard in the Fisheries Subcommittee. He moved the acceptance of the Committee Substitute. He then moved CSSJR 70 with individual recommendations.

SJR 79

Senator Mulcahy stated that SJR 79 had been heard in the Fisheries Subcommittee. He moved the acceptance of the Committee Substitute. He then moved CSSJR 79 with individual recommendations.

The meeting was adjourned at 2:35 p.m.

# Alaska State Legislature

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



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

## Senate

### Committee on Resources

March 5, 1982  
1:35 p.m.

Beltz Room  
Room 211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Gilman  
Senator Sturgulewski  
Senator Kertulla, President

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#### Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.  
SB 731 An Act establishing the Shuyak Island State Park.  
SB 769 An Act removing the requirement that power projects constructed under the energy program for Alaska be owned by the state.

---

#### SB 730

Senator Sturgulewski moved the bill with individual recommendations.

#### SB 731

Chip Dennerlein, Director, Division of Parks, Department of Natural Resources, spoke in support of the bill, but suggested two amendments: page 1, line 18 and page 5, line 17 replace "compatible" with "other", to avoid creating classes of users by implication. The Division of Parks would like to participate in writing the Committee Report or a letter of intent concerning tidelands inclusion, to assure them authority to build a boat ramp or dock in the future. The fiscal note on this bill is zero, as easements will be platted on paper only, and not constructed.

Senate Resources Committee

March 5, 1982

Page 2

Bob Hinman, Deputy Director, Game Division, Alaska Department of Fish and Game, spoke in opposition to the suggested amendments, stating that "compatible" may have been deliberate wording so as not to exclude commercial hunting or trapping.

Senator Sturgulewski moved that the bill be held until Monday, so this concern could be resolved.

SB 769

Senator Gilman explained the reason for this bill. Bradley Lake is a Corps of Engineers hydro project. Feasibility studies and design work have been completed, but there are no federal funds for construction. SB 769 would allow the State to put money into the project without owning it. However, the Legal Division has informed Gilman that the proposed Committee Substitute may be unconstitutional because it is "special legislation." In addition, there have been several different cost estimates for the project. Gilman suggested the bill be held until he meets with the Alaska Power Authority, the Corps of Engineers, and the Office of Budget and Management to discuss the project.

Senator Fahrenkamp appointed Senator Gilman to chair a committee to resolve this issue, at which time the Resources Committee will expedite their action on SB 769.

The meeting was adjourned at 2:15 p.m.

# Alaska State Legislature

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



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

## Senate

### Committee on Resources

March 1, 1982  
1:30 p.m.

Beltz Room  
Capitol - Room 211

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

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#### Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.  
SB 731 An Act establishing the Shuyak Island State Park.  
SJR 59 Relating to support for legislation establishing a National Garden Week.

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#### SB 730 and SB 731

Greg Vos, Alaska Department of Fish and Game, was present to answer questions.

Senator Mulcahy provided background. The bills are the result of negotiations between the Kodiak Island Borough and the Department of Natural Resources, as part of the municipal entitlement settlement. The proposed refuge is on the east side of Shuyak Island to protect the winter deer habitat. The proposed park is on the west side of the island, with the Kodiak Borough maintaining the core portion of the island and being provided with an easement.

Joyce Munson, representing the Kodiak Borough, spoke in support of SB 730 and 731, stating the Borough would oppose any amendments that would include tidal or submerged lands.

Senate Resources Committee  
March 1, 1982  
Page 2

Hilton Wolfe, Division of Parks, Department of Natural Resources,  
expressed support for SB 731

After discussion by the Committee concerning payment for  
survey work, Senator Fahrenkamp stated that Senate Bills 730  
and 731 would be held until this question was answered,

SJR 59

Carol Burnside, Aide to Senator Colletta, was present to answer  
questions.

Senator Mulcahy moved the bill with individual recommendations.

The meeting was adjourned at 1:50 p.m.

LEGISLATIVE SUMMARY

SB 731 "An Act establishing the Shuyak Island State Park; and providing for an effective date.

The Committee Substitute makes two changes:

Page 1, line 18 after the second "and" the word "compatible" was deleted and the word "other" was inserted in its place.

Page 5, line 19, after the word "trapping" the words "and other recreational" were inserted.



# Alaska State Legislature

## Senate Resources Committee

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Senate Resources Committee  
FROM: Senate Resources Committee Staff  
RE: 3/22/82 Committee Hearing  
DATE: March 19, 1982

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Please find attached background information for Monday's hearing on the following bills:

SB 731 Establishing the Shuyak Island State Park.  
(This bill has been heard before. Technical language changes were required, resulting in the attached Committee Substitute.)

SB 769 Removing the requirement that power projects constructed under the energy program for Alaska be owned by the State.  
(This bill has been heard before. A Committee Substitute has been prepared.)

SB 843 Relating to surface coal mining and the surface effects of underground coal mining.  
(This will be a continuation of the Friday, 3/19/82, meeting. Materials have been distributed.)

SJR 70 Relating to commercial fishing of North Pacific chinook salmon.

SJR 79 Requesting the National Park Service to adopt procedures providing public notice of proposed regulations, emergency regulations, and field orders for national parks, preserves, and monuments in Alaska.

SB 731

TO: Billy Berrier  
Director  
Legal Services

DATE: 3/11/82

FROM: Bettye Fahrenkamp  
Chairman

RE: SB 731  
Committee Substitute

-----  
I would appreciate a final Committee Substitute for SB 731 being written incorporating the following changes:

Page 1, line 18, after the second "and" delete the word "compatible" and insert "other" in its place.

Page 5, line 19, after the word "trapping" insert "and other recreational"

If you have any questions please contact Resa King at 465-3834 or Troy Henley at 465-3844. When the bill is completed please return it to Room 211 Capitol Building.

cc: Senator Mulcahy

Attachment

SB 731

TO: Billy Berrier  
Director  
Legal Services

DATE: 3/11/82

FROM: Bettye Fahrenkamp  
Chairman

RE: SB 731  
Committee Substitute

-----  
I would appreciate a final Committee Substitute for SB 731 being written with the following changes:

Page 1, line 18, after the second "and" insert "other"

Page 5, line 19, after the word "trapping" insert "and other compatible"

If you have any questions please contact Resa King at 465-3834 or Troy Henley at 465-3844. When the bill is completed please return it to Room 211 Capitol Building.

cc: Senator Mulcahy

Attachment

S B

732

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.

(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.

(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.

Cross reference.—See note to AS 38 05.180  
*Provided* as to grants of school and university lands and mental health lands—The grants by the federal government of school and university land, and mental health lands were confirmed and transferred to the

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

(l) The grants provided for in this section shall be in lieu of the swamp lands grants made to new States of September 4, 1841 (5 Stat. 2378 and 2379 of the Revised Statutes in lieu of the swamp lands of 1850 (9 Stat. 520), and in lieu of the U. S. C., sec. 982), and in lieu of the grants for each Senator and Representative of July 2, 1862, as amended (308), which grants are hereby repealed of Alaska.

(m) The Submerged Lands Act of the third Congress, first session, shall be applicable to the State of Alaska. The State shall have the same rights as States thereunder.

Alaska's ownership of tidelands and submerged lands shall be the same as other states.—By the Act of March 3, 1958, section, Alaska was given the same ownership of tidelands and submerged lands as other states of the Union. State v. Alaska Indus., Inc., Sup. Ct. Op. (File No. 477), 397 P.2d 280 (1965); City of Juneau v. Cropley, 1965 Op. No. 415 (File No. 752), 1965-1 (1967).

SEC. 7. Upon enactment of this Act, the President of the United States shall, on or before March 3, 1958, to certify such lands to the State of Alaska. Thereupon the Governor shall, on or before March 3, 1958, and not later than the date of the election for all elective offices and in the event of the proposed State shall in any event include in the next Congress.

SEC. 8. (a) The procedure required by section 7 shall be held in a primary election and a general election to be fixed by the Governor. That the general election shall be held on or before December 1, 1958, and the electors shall be elected as provided

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.

(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.

(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.

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

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Proposed Amendments or Committee Substitute for SB 732

#1

Page 1, line 16 after the word "and" adding the language "believes that it satisfies the requirements of"

*unam*

#2

Page 2, line 8, after "tion." add the language "in the case of conflicting claims the commissioner may, but is not required to, adjudicate the conflict."

*unam*

#3

Page 2, line 10 delete "immediate in accordance with AS 01.10.070(e) and insert "January 1, 1983" in its place.

*unam*

#4

Page 2, line 11 add a new sub/section:

"The provisions of this section do not apply to a production license for mineral extraction issued under AS 38.05.207."

*change unam*

Introduced: 2/9/82  
Referred: Resources and  
Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 732

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to issuance of production licenses for  
7 mineral extraction from state land; and providing for  
8 an effective date."

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

10 \* Section 1. PURPOSE. The purpose of sec. 2 of this Act is to require a  
11 locator or lessee of locatable mineral deposits on state land to obtain a  
12 license from the Department of Natural Resources authorizing production from  
13 that land. This requirement applies to all existing and future mining opera-  
14 tions on state land. The legislature finds that the requirement is consistent  
15 with the provisions of art. VIII, sec. 11 of the Constitution of the State of  
16 Alaska and <sup>believes that it satisfies the requirements of</sup> sec. 6(i) of the Alaska Statehood Act (P.L. 85-508).

17 \* Sec. 2. AS 38.05 is amended by adding a new section to read:

18 Sec. 38.05.207. PRODUCTION LICENSE. (a) An application for a  
19 production license must be filed with the commissioner when a locator of  
20 a mining claim under AS 38.05.195 or a lessee of a mining location under  
21 AS 38.05.205 is prepared to produce minerals for sale in commercial  
22 quantities. The application shall state under oath the location of the  
23 land and ownership of the mineral deposits involved in the mining opera-  
24 tion and the date production began or is expected to begin. Upon receipt  
25 of an application, the commissioner shall publish in a paper of general  
26 circulation in the area of the location notice of the application and  
27 notice that a production license will be issued. The notice may be  
28 combined with notices of other applications either in the same general  
29 area or statewide. Pending completion of this public notice requirement

1 and issuance of the production license, the locator or lessee has the  
2 right to produce minerals from the property.

3 (b) If the commissioner determines under AS 38.05.185(b) that a  
4 locator or lessee has complied as nearly as possible under the circum-  
5 stances of the case with the provisions of AS 38.05.185 - 38.05.280 and  
6 that no conflicting rights are asserted by any other person, the commis-  
7 sioner shall issue a transferable production license for mineral extrac-

8 tion. <sup>#2</sup> In the case of conflicting claims, the commissioner may, but is not required to,  
9 adjudicate the conflict. <sup>#3</sup> The production license serves as the certification of the commis-  
10 sioner for the tax exemption under AS 43.65.010(b).

11 \* ~~Sec. 3.~~ This Act takes effect ~~immediately in accordance with AS 01.10.070(c).~~  
12 ~~January 1, 1983~~ <sup>#4</sup> January 1, 1983

13 ~~Sec. 3.~~ <sup>#4</sup> The provisions of this section do not apply to a production license  
14 for mineral extraction issued under AS 38.05.207.

15 Sec. 3. AS 38.05.345 is amended by adding a new sub-section:

16 (h) The provisions of this section do not apply to a  
17 production license for mineral extraction issued under  
18 AS 38.05.207.

19 *PG 07 Supplement*

Introduced: 2/9/82  
Referred: Resources and  
Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 732

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to issuance of production licenses for  
7 mineral extraction from state land; and providing for  
8 an effective date."

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

10 \* Section 1. PURPOSE. The purpose of sec. 2 of this Act is to require a  
11 locator or lessee of locatable mineral deposits on state land to obtain a  
12 license from the Department of Natural Resources authorizing production from  
13 that land. This requirement applies to all existing and future mining opera-  
14 tions on state land. The legislature finds that the requirement is consistent  
15 with the provisions of art. VIII, sec. 11 of the Constitution of the State of  
16 Alaska and *believes that it satisfies the requirements of* sec. 6(1) of the Alaska Statehood Act (P.L. 85-508).

17 \* Sec. 2. AS 38.05 is amended by adding a new section to read:

18 Sec. 38.05.207. PRODUCTION LICENSE. (a) An application for a  
19 production license must be filed with the commissioner when a locator of  
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2 right to produce minerals from the property.

3 (b) If the commissioner determines under AS 38.05.185(b) that a  
4 locator or lessee has complied as nearly as possible under the circum-  
5 stances of the case with the provisions of AS 38.05.185 - 38.05.280 and  
6 that no conflicting rights are asserted by any other person, the commis-  
7 sioner shall issue a transferable production license for mineral extrac-  
8 tion. <sup>(B)</sup> The production license serves as the certification of the commis-  
9 sioner for the tax exemption under AS 43.65.010(b).

10 \* Sec. 3. This Act takes effect ~~immediately in accordance with AS 01.10.-~~

11 ~~070(e).~~

(C) January 1, 1983

(D)

.345 exclusion

(submitted)

21 (B) In the case of conflicting claims,  
22 the commissioner may, but is not  
23 required to, adjudicate  
24 the conflict.  
25  
26  
27  
28  
29

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

3:55 pm. = 11162  
JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

### PROPOSED AMENDMENT TO SB 732 -- PRODUCTION LICENSES FOR MINERAL EXTRACTION

(This should probably be section 3 of the bill as currently written, with the existing section 3 renumbered to 4.)

A new/<sup>sub</sup>section is added to AS 38.05.345 to read:

"(h) The provisions of this section do not apply to a production license for mineral extraction issued under AS 38.05.207."

#### Rationale:

The issuance of a production license would be a "sale, lease or disposal of an interest in state land" under (a)(3) of AS 38.05.345. Since streamlined public notice procedures are already contained in Section 2 of SB 732, the more extensive requirements of .345 should not apply.

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January 16, 1981

*response to  
first draft*

Mr. Robert Maynard  
Assistant Attorney General  
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Dear Bob:

I am writing on behalf of the Alaska Miners Association to offer comments in response to your draft legal opinion dated August 18, 1980, relating to certain aspects of mining law. As I understand it, the opinion project developed as a response to a November 9, 1979 opinion request from the Department of Natural Resources. The opinion request itself addressed various issues relating to the status under state and federal mining laws of lands in the interim between state selection and tentative approval. In the course of your work on that subject, the scope of your inquiry was broadened to include various questions relating to subsection 6(i) of the Alaska Statehood Act. The draft opinion's treatment of those 6(i) questions is the only part of the opinion I wish to discuss in this letter.

It is not my purpose to advocate any particular legal interpretation of subsection 6(i) on behalf of the Alaska Miners Association or any of its members. Instead, this letter is intended to contribute some ideas for consideration in your further work on this project. The letter closes with some comments regarding the practical implications of publishing a formal opinion on the subject.

Mr. Robert Maynard  
January 16, 1981  
Page 2

Subsection (i) of Section 6 of the Alaska  
Statehood Act<sup>1/</sup> reads as follows:

(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 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 the District of Alaska.

Before discussing specific interpretation issues which seem to be presented by subsection 6(i), let me make two general observations. First, I think it is important to

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<sup>1/</sup> There is an error in the version of subsection 6(i) which appears in the Michie Publishing Co. edition of the Alaska Statutes. The second sentence of the original Act refers to only a single "express condition" (see, 72 Stat. 342), not to multiple "express conditions", as it appears in Michie. This typographical error could lead one to assume incorrectly that there are two different conditions imposed by the subsection -- the required "reservation" requirement in the second sentence and the "subject to lease" requirement in the third sentence. (See, pp. 10-13).

Mr. Robert Maynard  
January 16, 1981  
Page 3

bear in mind that there are three separate provisions of subsection 6(i) which are subject to varying interpretations. The first is the so-called "mineral alienation condition," which is set forth in the second sentence of the subsection. This imposes an "express condition" that all grants by the United States to the State of Alaska of "mineral lands" under subsections 6(a) and (b) must contain a certain reservation of minerals. It is this provision of subsection 6(i) which was at issue in the Cook Inlet Land Exchange litigation. See, State v. Lewis, 559 P.2d 630 (Alaska 1977). The second controversial provision of subsection 6(i) appears in the third sentence of the subsection, wherein it is provided that "mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." The third provision which is susceptible of conflicting interpretations is the proviso at the end of the subsection relating to forfeiture of "lands or minerals hereafter disposed of contrary to the provisions of this section."

Each of these three provisions in the subsection presents its own distinct problems of interpretation. In certain respects each one is "ambiguous." That is to say, each is subject to at least two reasonable alternative interpretations. The August 18 draft opinion draws exclusively upon legislative history as the sole source of guidance in attempting to resolve these ambiguities. I believe it is fair to say that the legislative history cited in the draft opinion reflects either misunderstanding or disinterest on the part of the parties involved as to the specific issues addressed in the draft opinion regarding the applicability and substantive content of subsection 6(i). Only a few people seem to have been aware that the provision had been inserted into the Statehood bills; and, of them, there does not seem to be even one who recognized that its antecedent was the School Lands Act of 1927 (43 U.S.C. §870(b)). The only issues which were clearly framed in the discussions were (1) whether mineral interests (be they claims or leases) would be allowed to go to patent, and (2) whether mineral character determinations would be allowed to hold up the land selection adjudication process. The legislative record fails to disclose any coherent dialogue on the specific questions addressed in the draft opinion.

With inconclusive legislative history, we would expect a court to turn to the other conventional sources of statutory interpretation for additional aid in resolving literal ambiguities in the statute. The draft opinion contains no discussion of federal administrative practice

Mr. Robert Maynard  
January 16, 1981  
Page 4

under either the School Lands Act of 1927 or the Statehood Act itself. Nor does it examine the issues from the practical standpoint, taking into account the actual impact which differing interpretations would have upon today's public land administration or private mining activities. It also omits mention of the federal constitutional problems presented by certain of the alternative interpretations. We would certainly urge that those dimensions of the problem be explored fully in the course of your work.

As is explained in the draft opinion, there are two alternative methods available under the Alaska Land Act for the acquisition of rights to mine for and extract locatable minerals. The first is the mining claim authorized under AS 38.05.195. This method, patterned after the federal procedure under the Mining Law of 1872, was introduced to Alaska law in Territorial days. The second of these methods is the mining lease or so-called "leasehold location" authorized under AS 38.05.205. These two procedures both follow the state constitutional dictate that "discovery and appropriation shall be the basis for establishing a right" in locatable minerals. Alaska Constitution, Art. VIII, § 11.<sup>2/</sup>

Generally speaking (that is, except in respect of certain categories of land which are restricted to the leasehold location method only), state law gives the miner a choice as to which of these two procedures he will follow. Historically, miners have chosen to proceed under section 195 (mining claim) rather than under section 205 (leasehold location). It is my understanding that the Division of Lands has never even had an occasion to adopt a leasehold location form or, though applications have been filed, to act upon any application for a lease under Section 205.

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<sup>2/</sup> In the Preamble of the Alaska Statehood Act, Congress expressly "accepted, ratified, and confirmed" the Alaska Constitution. This represents a determination by Congress that the state constitution's provisions on mining law are consistent with subsection 6(i) of the Statehood Act. Those state and federal laws should therefore be read in pari materia.

Mr. Robert Maynard  
January 16, 1981  
Page 5

The hypothesis which your office is now studying is that the acquisition of third-party interests in locatable minerals in certain state lands (specifically, those acquired by the State under subsections 6(a) or 6(b) of the Statehood Act) by the mining claim procedure authorized by AS 38.05.195 is a violation of subsection 6(i) of the Statehood Act. This hypothesis would appear to rest upon three premises:

(1) That the third sentence of subsection 6(i) ("Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct") constitutes a prohibition of the mining claim method under AS 38.05.195, with respect to the lands to which that provision of the statute applies.

(2) That the term "such lands" (the reference employed to establish the range of that third sentence's application) encompasses all of the "mineral lands" which are the subject of the mineral alienation condition set forth in the second sentence of subsection 6(i).

(3) That the term "mineral lands," as used in the "mineral alienation condition" in the second sentence of subsection 6(i), encompasses all lands obtained by the State under subsection 6(a) or (b).

Complicated questions exist regarding the validity of each of those three premises. I will discuss these questions in the following portion of this letter.

#### THE "MINERAL LANDS" ISSUE

In the Cook Inlet Land Exchange litigation, the meaning of the term "mineral lands" in the second sentence of subsection 6(i) was at issue. As I am sure you know, the State took the position in its Supreme Court brief that "mineral lands" is a term of art in federal public land law referring to lands known to be "chiefly valuable" for commercial mineral production at the time of their grant to the State. (Rather than rehashing the State's argument on this point here, I have enclosed a copy of pp. 40 through 46 of the State's August 16, 1976 brief on the issue. You may also wish to refer to the brief filed in the U.S. Supreme Court in the case.)

Mr. Robert Maynard  
January 16, 1981  
Page 6

In the August draft opinion, you seem to concur with this analysis insofar as it relates to the intended meaning of the "mineral alienation condition" contained in the School Lands Act of 1927. However, the legislative history of the Alaska Statehood Act evidently leads you to suspect that Congress intended to treat Alaska differently on this issue. As I understand it, this is based upon the following circumstances: The original subsection 6(i) proposal which was included in the Senate committee's 1954 bill had included a final sentence requiring that the mineral character of state-selected lands would be determined by the Department of the Interior at the time patent issued, in order to foreclose any future doubt as to the applicability vel non of the mineral alienation condition. In early 1955 the House deleted this final sentence from the subsection. Your research shows that this change was probably made at the request of the Governor of the Territory of Alaska, who expressed concern that requiring mineral character determinations during the selection adjudication process would retard the speedy transfer of federal lands to the new state. A House committee report on the 1955 House bill, which deleted the sentence requiring mineral character determinations at the time of patent, contains the statement that the subsection "provides that all grants to the state under the Act include mineral deposits and requires that all state conveyances of lands granted by subsections 6(a) and 6(b) (i.e., all selected lands) shall be subject to a reservation . . . ." This description of the applicability of the subsection refers to "lands" rather than to "mineral lands." The inference drawn from this reference in the 1955 House committee report is that the House committee must have decided to alter the 1927 School Lands Act provision which the Senate had added in 1954, so as to make that provision applicable to all state-selected lands rather than only to those of the state-selected lands which were "mineral lands."

This interpretation of what the 1955 House committee intended in its version of subsection 6(i) raises several questions. In the first place, it violates the paramount rule of statutory interpretation to the effect that statutes are to be interpreted in the manner which gives effect to each word and renders none of them superfluous or meaningless. City and Borough of Juneau v. Thibodeau, 595 P.2d 626, 634 (Alaska 1979). If, as you have suggested, the 1955 House committee had actually decided that the subsection 6(i) limitations should apply to all state-selected lands, not just to "mineral lands" which might be selected by the State, then it would have removed

Mr. Robert Maynard  
January 16, 1981  
Page 7

the limiting adjective "mineral" from the first sentence of the subsection. That word becomes entirely superfluous under the interpretation which you have proposed.

It is a common occurrence that a legislative committee report will conflict in some respect with the literal text of the bill to which it refers. Such is almost certainly the case in the instance of the 1955 House committee report. Although the bill refers to "mineral" lands, the report refers to "lands" without utilizing that limiting adjective. In such a case, it is well established that the committee report will be disregarded. U.S. v. Shreveport Grain & Elevator Co., 287 U.S. 77, 83 (1932); Pennsylvania R. Co. v. Int'l. Coal Mining Co., 230 U.S. 184, 198-199 (1913).

In its discussion of the legislative history, the draft opinion draws heavily upon two isolated dialogues which took place in House committee hearings held in 1955 and 1957. Both instances are cited as evidence that the committee understood the subsection to apply to all state-selected lands rather than only to "mineral lands" within the meaning of the School Lands Act of 1927. I question whether either dialogue fairly supports this view.

The first of these two committee discussions involves Bob Bartlett's representation to the House committee that the Territorial Governor had suggested elimination of the final sentence of the Senate's proposal. That was the provision requiring mineral character determinations at the time of patent. The Governor's reported concern about this mineral character determination provision related to the red tape which would be involved in making mineral character determinations prior to patenting to the State. According to the Bartlett statement quoted in the draft opinion, territorial officials were "apprehensive about the rapidity with which lands would move to the new State if the requirement remained in that the mineral character of all land would have to be determined in advance." Although mineral character determinations would probably be necessary to establish which lands would be subject to the subsection's mineral alienation condition, the Territory apparently preferred that the new State be given the flexibility either to advance them or defer them as necessary. This would eliminate unnecessary delays in the state selection adjudication process, and it would accord Alaska the same treatment in that respect as the other public land states under the School Land Act of 1927.

Mr. Robert Maynard  
January 16, 1981  
Page 8

The draft opinion reads much more into Bartlett's comments on the territorial officials' request for deletion of the 1954 Senate bill's provision requiring mineral character determinations at the time of patent. It surmises that the territorial officials wanted to eliminate the distinction between "mineral lands" and non-mineral lands altogether, and to treat all state-selected lands as if they were "mineral lands." Given the hostility to any form of reserved federal control over state lands, which prevailed at that time among political leaders in the Territory, this supposition is just not credible.

The second committee discussion referred to in the draft opinion took place in March of 1957, more than two years after the House dropped the Senate's "mineral character determination" provision and published its confusing committee report. In this colloquy, Glenn Franklin of the Alaska Miners Association argued against inclusion of subsection 6(i). I do not see how the discussion bears one way or another upon the question of which category of lands would be subject to the subsection's restrictions. Franklin's objection was not addressed to the scope of the subsection's applicability. He was deeply concerned about the wisdom of prohibiting the alienation of the State's fee interest in its minerals. Although his testimony admittedly reflects an apprehension on his part that the subsection could apply to mining on all state-selected lands, he did not devote his attention to that question.

Even if Franklin's discussion with the committee members in 1957 were taken to reflect, unequivocally, a belief on his part that the effect of the 1955 House committee's revision of the 1954 Senate bill was to expand the reach of the subsection's restrictions from "mineral lands" to all lands, that would not materially assist in interpreting the provision which was ultimately enacted. "Courts have been reluctant to attempt to ascertain legislative intent from statements made before a committee when no committee report incorporating those statements has been prepared and distributed to the legislature." Alaska Public Employees Association v. State, 525 P.2d 1217 (Alaska 1974).

In Utah v. Bradley Estates, 223 F.2d 129, 130, cert. denied, 350 U.S. 841 (1955), the Tenth Circuit held, with reference to the Utah Enabling Act, that the intended meaning of its land grant provisions must be viewed "in light of the mining laws, in light of the school land indemnity law, and in the light of established public policy relating to mineral lands." Likewise, it would be

Mr. Robert Maynard  
January 16, 1981  
Page 9

reasonable to assume that Congress had the same thing in mind in engrafting the 1927 School Lands Act provision upon the Alaska Statehood Act as subsection 6(i).

No committee of the Congress ever removed the limiting adjective "mineral" from the subsection so as to extend the applicability of its mineral alienation provision to all state lands. Had there been an overt effort to do so, the territorial officials and the Alaska congressional delegation would undoubtedly have risen to make a major political issue of it. A serious constitutional issue would be presented under the Equal Footing clause if Congress tried to condition Alaska's admission to the union in such a way, when the other land grant states were not treated in that manner.<sup>3/</sup>

The conclusion expressed in the draft opinion is grounded entirely upon the 1950 House committee's deletion of the final sentence of the 1954 Senate committee's version of the subsection. In Trailmobile Co. v. Whirls, 331 U.S. 40, 61 (1947), the Supreme Court discredited this manner of divining legislative intent "from changes made without explanation in committee." It warned that "the interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers." To me, this legislative history argument is contrived. I think it is easily overcome by all of the other factors which must be taken into account in interpreting the statute.<sup>4/</sup>

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<sup>3/</sup> The hypothesis that Congress intended the mineral alienation condition to apply to all 6(a) and 6(b) lands is dubious for another reason. If Congress had concluded that this restriction should not be limited in its application to "mineral lands" only, but should apply more broadly, by what logic would Congress have extended it to 6(a) and 6(b) lands only? Would it not also have imposed the restriction on the other statehood land grants under Section 6 - such as the tide and submerged lands, the University and Mental Health lands, and the special site lands?

<sup>4/</sup> While there are numerous additional issues raised in the draft opinion regarding the reference date for determination of mineral character and the substantive standards and agency procedures which would be utilized in making such determinations, I have not addressed them in this letter. That can be the subject of further discussion later, if necessary.

Mr. Robert Maynard  
January 16, 1981  
Page 10

### THE "SUBJECT TO LEASE" ISSUE

Having discussed the issue of what is meant by "mineral lands" in the second sentence of subsection 6(i), the next issue is whether the reference to "such lands", contained in the third sentence, refers to all of those "mineral lands" or to some subcategory of them. There is also a third issue, interrelated to the "such lands" issue, which has not been addressed in the draft opinion: what is the prohibitory effect, if any, of the statement that "mineral deposits in such lands shall be subject to lease by the State"? In the draft opinion, it was assumed that (1) this statement represents a federal prohibition of certain kinds of state action, (2) the specific action prohibited is any alienation of minerals other than by "lease," and (3) alienation under a location system is not "leasing." Since the substance of that alleged implied prohibition must be taken into account in analyzing the interpretative question regarding the "such lands" reference, I will deal with that first.

The third sentence of the subsection does not literally prohibit anything. It directs that the state "shall" make mineral deposits in the subject lands "subject to lease." A literal reading of the sentence might lead one to believe that Congress wanted to protect the mining industry by insisting that these lands be left open for "leasing," and, therefore, that the purpose of the sentence is only to prohibit the state from removing them from the pool of lands available for private mining activities. Alternatively, the sentence might be interpreted to require that "leasing" be one of the mechanisms through which these lands would be made available for mining development, but not that it be the only disposal mechanism.

Those interpretations admittedly seem questionable. For the purpose of this discussion, I will join you in your assumption that the sentence represents an implied prohibition of all actions not specifically authorized by it.

There are at least two alternative hypotheses as to what this "subject to lease" provision was intended to prohibit. One possibility is that it was intended to establish a second, more restrictive condition, supplementary to the "mineral alienation condition." If the provision is taken to apply only to a subcategory of mineral lands (i.e., the "such lands" to be discussed below), then this would make sense. That is, all mineral lands would be subject to

Mr. Robert Maynard  
January 16, 1981  
Page 11

the "mineral alienation condition," and then certain of those mineral lands would be subject to the second layer of restriction, the "subject to lease" prohibition.

The second possibility is that the "subject to lease" prohibition was intended to complement and clarify the "mineral alienation condition," rather than to supplement it. This interpretation is based on the theory that, having first identified the conduct which is prohibited (in the second sentence's "mineral alienation condition"), Congress then described that which would be permitted. As thus interpreted, the two provisions would be congruent in the sense that the class of things prohibited by the second sentence is identical to the class of things permitted by the third sentence. This reading of the statute would make sense if the "such lands" reference is assumed to encompass all mineral lands.

If the second and third sentences were not congruent (in terms of what the first prohibits and what the second permits), and if both of them are interpreted as applicable to all "mineral lands," then the second prohibition in effect subsumes the first. The state would not only be prohibited from alienating the fee interest in "mineral lands" but would also be restricted to disposing of them only by "lease." This would render the first condition superfluous, because the "lease" constraint would always be more restrictive than the mineral alienation condition.

I suggest that the more likely hypothesis is that the "subject to lease" provision was intended to be entirely congruent with the "mineral alienation condition," in the sense that the former authorizes precisely the same range of actions that the latter prohibits, no more nor less. What was obviously of concern to the Congress when it included these restrictions in the School Land Act of 1927 and in the Alaska Statehood Act was the necessity that the States retain the underlying fee interest in their mineral lands in perpetuity. Congress was primarily interested in assuring that the states did not dispose of their property interests in the minerals in these lands irrevocably and forever. It insisted that the states grant no more than a leasehold interest in these minerals, so that the minerals would never be owned absolutely by any private party. There is no indication in the legislative history discussed in the draft opinion that anyone in Congress had the slightest interest in controlling the states' prerogatives to decide which disposal methods to employ in creating these "less-than-fee"

Mr. Robert Maynard  
January 16, 1981  
Page 12

interests in the minerals. Its intent was to limit the nature of the property interest or estate which the state could transfer to a third party, not to dictate the specific procedural mechanism which the state might use to effect that transfer.

In attempting to divine what Congress might have meant in providing that the states make these mineral lands "subject to lease", one must also take into account the federal constitutional limitations upon the power of Congress to pre-empt state and local decision-making prerogatives about how locally owned resources are managed. (A jumping-off point for research on this subject is the case of Brown v. Environmental Protection Agency, 521 F.2d 827, 837-42 (9 Cir. 1975).) The Tenth Amendment imposes a limit on the ability of Congress to dictate the terms and conditions upon which public lands may be made available by states for extractive mineral development. While Congress might well have had legitimate federal concerns about the extent of private interests which the states might authorize in their mineral lands, it is hard to imagine what legitimate federal concern there could be in restricting the states' powers to decide for themselves which procedures would be employed in disposing of such interests as Congress might authorize.

The draft opinion makes the tacit assumption that employing the unpatentable mining claim as a minerals disposal method is inconsistent with the "subject to lease" requirement. This does not necessarily follow. In the first place, the property interest obtained under a "mining claim" established pursuant to AS 38.05.195 could be characterized as a leasehold interest. Since it can never ripen into a patent it is sharply distinguishable from the federal mining claim, the latter being a species of fee interest. An unpatentable state mining claim bears all of the earmarks of a leasehold interest; rather than being a "sale, grant, deed or patent," it is much more akin to a lease, license or profit a prendre. In fact, from a conceptual standpoint the only real difference between the interest held under an unpatentable mining claim and the interest obtained under a leasehold location made pursuant to AS 38.05.205 is that the former is not reflected in a document signed by the lessee and the lessor. In this respect, it can be compared to the "lease" interest in state lands available under the original "open-to-entry" program in Alaska some years ago. In that program, an individual would obtain a leasehold interest in State lands by staking and filing. This right to use the land was referred to as a "lease," and could be converted to

Mr. Robert Maynard  
January 16, 1981  
Page 13

fee ownership on certain terms and conditions at the election of the lessee.

The draft opinion cites the Arizona case of Rodgers v. Berger, 103 P.2d 266 (Ariz. 1940), as if it were authority for the proposition that disposal of interests in state "mineral lands" under a mining claim procedure would violate the "subject to lease" provision contained in the School Lands Act of 1927. Rodgers does not so hold. It only notes, in dictum, that mining claims were not allowed on Arizona's 1927 "mineral lands". Whether this was due to a federal prohibition or an absence of state law authority, the opinion does not say. In Rodgers, the "first and principal question" was whether federal mining claims located prior to the 1927 Act were "valid and subsisting claims." 103 P.2d, at 268. Since they were, the state's purported lessee had no title. The applicability or interpretation of the 1927 School Lands Act was not in controversy, and no issue relating to the propriety of a state law providing for unpatentable mining claims on "mineral lands" was presented for decision.

In summary, there is good reason to believe that the "subject to lease" provision of subsection 6(i) does not impliedly prohibit Alaska's unpatentable mining claim procedure as a method for the acquisition of leasehold interests in "mineral lands" to which it applies. We cannot see how forcing the State to use the leasehold location system rather than the mining claim system as the mechanism for the creation of third-party interests in minerals in state lands would achieve any of the federal policy objectives which might be attributed to the subsection.

#### THE "SUCH LANDS" ISSUE

The third question relates to the identity of the lands referred to in the third sentence of the subsection, which reads: "Mineral deposits in such lands shall be subject to lease by the State as the state legislature may direct." The draft opinion recognizes that there are two alternative interpretations of the "such lands" reference in this provision. One interpretation is that it refers to all "mineral lands," that is, to the same class of lands as are referred to in the preceding sentence. The alternative interpretation is that it refers to a subcategory of "mineral lands" consisting of those lands with respect to which the State or its predecessor in title has disposed of an interest in the surface by "sale, grant, deed, or patent."

Mr. Robert Maynard  
January 16, 1981  
Page 14

If the "subject to lease" provision discussed earlier in this letter were interpreted as prohibiting the disposition of mineral rights by an unpatentable mining claim procedure, then there might have been a reason for Congress to apply that "subject to lease" provision to lands where the state would only hold the reserved or retained federal interest. Allowing the staking of mining claims on those lands would be disruptive of the surface owner's use and enjoyment of his property rights. Congress might have wished to prohibit appropriative forms of mineral disposals for such lands, in order to protect the rights of surface grantees.

There is a particularly good reason why this might have been the intention of Congress in the original School Land Act of 1927. The grant made by that statute extended both to federal lands which had been withheld from the states due to their known mineral character, and also to those which had theretofore been taken up by the states under mistaken assumptions that they were non-mineral. Thus, for lands granted by the 1927 Act it was possible that either the United States or the grantee states might have created third-party interests in those lands prior to the 1927 grant. Those third parties, grantees of either the federal government or the states, would have been concerned about the exposure of their holdings to mineral location practices. This could explain the provision for "lease" of those mineral interests, if the "subject to lease" provision is read in the more restrictive manner. The underlying premise of this alternative interpretation is that Congress imposed the mineral alienation condition in order to protect the interests of the states themselves, and then added the "subject to lease" requirement (for "such lands" only) to protect the interests of private third parties. (This is apparently the interpretation which the State of Alaska has accorded to the "such lands" reference for nearly 30 years under 11 AAC 86.135(b)).

The draft opinion concludes that the "such lands" reference encompasses all "mineral lands," not a subcategory of "mineral lands." The draft opinion refers to a House committee report on the 1927 statute. The portion quoted in the draft opinion, insofar as it purports to express the committee's views as to the meaning of the statute, does not shed any light on the question of whether the "such lands" reference in the "subject to lease" provision was intended to apply to all mineral lands or only to some of them. It only demonstrates a concern for inclusion of the "mineral alienation condition." (The hypothesis that the "subject to

Mr. Robert Maynard  
January 16, 1981  
Page 15

lease" provision, applicable to the mysterious category labelled "such lands," applies to all mineral lands admittedly seems to find support in the statement of the Secretary of the Department of the Interior. It is hard to evaluate the probity of that comment, however, without having the entire record.)

The draft also relies upon an implication arising out of a 1932 amendment to the 1927 School Lands Act. This amendment modified the "subject to lease" provision so that it would only apply to "such lands not heretofore disposed of by the State." It is postulated that the purpose of this amendment was to eliminate from the class of "such lands" those "mineral lands" disposed of by the states after 1927 without the required reservation of minerals. The need for such an amendment, it is suggested, arose due to the fact that mineral lands granted to the States by the Act of 1927 were not distinguished from non-mineral lands granted to the States earlier. According to this hypothesis, if the phrase "such lands" referred only to those "mineral lands" with respect to which the surface estate had been conveyed to third parties by states, then the 1932 amendment would not have been needed. This hypothesis as to the purpose of the 1932 amendment and what it reflects as to the scope of the term "such lands" fails to take into account the special problem created by the grant to the States in 1927 of "mineral lands" in which third parties held prior interests, such as mineral leases. It is quite possible that Congress was concerned, in 1932, to validate state dispositions of minerals in those lands. That hypothesis as to the purpose of the 1932 Act is not inconsistent with the narrower reading of the "such lands" phrase.

Reliance on the 1932 Act and its legislative history to determine the meaning of the 1927 Act also runs afoul of the general rule that the intention of one Congress cannot be ascertained by reference to the words and actions of a subsequent Congress. Waterman S. S. Corp. v. United States, 381 U.S. 252; Penn. Mut. L. Ins. Co. v. Lederer, 252 U.S. 523.

#### THE FORFEITURE PROVISION

Numerous questions exist concerning the proper interpretation and effect of subsection 6(i)'s proviso dealing with forfeiture proceedings to be instituted by the United States. Although these issues have not been addressed in your draft opinion, I believe that it is

Mr. Robert Maynard  
January 16, 1981  
Page 16

important to take them into consideration in making a judgment as to the practical significance of the legal issues which have been discussed.

It seems clear that the forfeiture remedy is a discretionary enforcement tool which can only be invoked by the United States. The basis for this conclusion was set forth in the State's Supreme Court brief in the Cook Inlet Land Exchange case, and need not be reviewed here. Only the United States Department of Justice can invoke this remedy. To our knowledge, it has never seen fit to try.

Secondly, an argument can be made to the effect that this forfeiture remedy is subject to waiver if the United States does not take affirmative action to invoke it within a reasonable period after the alleged violation of the subsection becomes a matter of public record.

There may be some doubt as to which property interests are subject to forfeiture under the proviso. The statute refers to "lands or minerals," rather than to "lands" or "lands and minerals." It may be that Congress only intended to subject the property interest alienated by the State to forfeiture, leaving unaffected the State's retained interest. If the State were to convey all of its right, title and interest in lands subject to that proviso, then that entire interest would be subject to the possibility of forfeiture. On the other hand, if the State violated the subsection by conveying an unconditional fee interest in a mineral estate only, retaining its fee interest in the remaining estate, then perhaps only the conveyed mineral estate would be subject to forfeiture. If this interpretation is correct, then the only party at risk of forfeiture under the proviso is the third party. No property interest retained by the State would be subject to forfeiture.

It seems to me that, no matter where your additional research should take you on these questions, the State's interests might not be promoted by publishing an Attorney General's opinion. No matter what statutory interpretations the opinion might ultimately endorse, I believe that it could serve no useful purpose for the State or for the industry and would only invite difficulties for state public land administrators.

Since the forfeiture remedy contained in the proviso of subsection 6(i) can only be invoked by the United States, it is unclear what impact a state Attorney

Mr. Robert Maynard  
January 16, 1981  
Page 17

General's published views as to the applicability of the section might have upon its enforcement. The United States has been fully advised as to Alaska's state mining law system for more than 30 years, and to our knowledge it has never entertained the possibility that subsection 6(i) might warrant forfeiture proceedings. This long history of administrative practice must certainly reflect more than ignorance of the law, particularly in light of the fact that Congress specifically accepted and approved Article VIII, Section 11, of the Alaska Constitution.

Suppose for the sake of discussion that Alaska state laws did run afoul of subsection 6(i). How could publication of a state Attorney General's opinion ameliorate that situation? That is a question which can be addressed from the standpoints of both existing claims and future claims.

Retrospectively, it seems that nothing the Attorney General might say or do now could help. Property interests have already been acquired by thousands of miners acting in good faith in compliance with presumptively valid state laws. In many cases, these parties have developed, conveyed or hypothecated their interests. Many have undertaken substantial contractual obligations in reliance upon the validity of their claims. Subsection 6(i) does not prohibit alienation of minerals in violation of the subsection; it only subjects them to the possibility of forfeiture. Thus, those miners all hold property interests subject under state and federal constitutions to protection from taking by the State. This is so irrespective of whether the state law under which they were acquired happens to violate subsection 6(i).

No Attorney General's opinion could extinguish those property rights. All it could do is to create a public temper encouraging gadflies to petition federal authorities to invoke the discretionary forfeiture remedy. Protracted litigation and curative legislation would almost certainly ensue. If someone wishes to raise a question about this with the Department of Justice, he is quite free to do so without the impetus of a state Attorney General's opinion.

Likewise, we fail to see the utility of an Attorney General's opinion on these matters from a prospective standpoint. No agency or official of the United States has expressed any concern as to whether Alaska's current mining claims system conforms to the

Mr. Robert Maynard  
January 16, 1981  
Page 18

requirements of subsection 6(i). At present, state law offers two alternatives for the acquisition of mining rights in locatable minerals, the mining claim and the leasehold location. If a miner should feel at risk under subsection 6(i), he is free to proceed under the leasehold location method instead.

People on all sides of the current mining law policy issues seem to agree that minerals policy applicable on state lands should be formulated and implemented by the State, not by the federal government. Likewise, I expect that all would agree that the regime of law which governs the acquisition of mining rights upon state lands should be based upon relevant economic and environmental considerations, not upon purely fortuitous conditions such as the particular statutory authority under which the State acquired any given section of land decades ago.

Under the Lewis decision, it is clear that subsection 6(i) could be amended or deleted entirely by unilateral action of the Congress inasmuch as it is not a part of the state-federal compact. Congress has shown no reluctance to abolish similar antiquated "purse strings" provisions in other Statehood enabling legislation, upon request of the affected states.<sup>5/</sup> All of these legal questions could be effectively mooted if the State and the Department of the Interior joined hands to request a repeal.

With subsection 6(i) repealed the State would be free to make its own rules concerning the stewardship of its resources, without federal intervention. Issues as to the nature of the property interest which individuals should be permitted to acquire in minerals on state lands and as to the various disposal mechanisms which will be available, are local policy questions. It is better that these be addressed in the Alaska Constitution, statutes and regulations, rather than by Congress.

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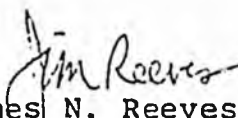
<sup>5/</sup> The federal Public Land Law Review Commission has endorsed that approach. See, One Third of Our Nation's Land; A Report to the President and to the Congress by the Public Land Law Review Commission (1970), pp. 247-48.

Mr. Robert Maynard  
January 16, 1981  
Page 19

For the Alaska Miners Association, I want to thank you for your courtesy and receptiveness to further discussion on this subject. We regard it as a privilege to be able to offer these additional comments and suggestions for consideration in the course of your research project. I will look forward to discussing them in detail with you at your earliest convenience in Juneau or Anchorage.

Very truly yours,

FAULKNER, BANFIELD,  
DOOGAN & HOLMES

  
James N. Reeves

JNR:nf  
encl.

THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA; GOVERNOR )  
JAY HAMMOND; GUY R. MARTIN )  
Commissioner of Natural Resources; )  
MICHAEL C. T. SMITH, Director, )  
Division of Lands, )

Appellants, )

vs. )

J.R. LEWIS and HAROLD H. )  
GALLIETT, JR., )

Appellees. )

Supreme Court No. 3039

BRIEF OF APPELLANT STATE OF ALASKA

AVRUM M. GROSS  
ATTORNEY GENERAL

By: James N. Reeves  
Assistant Attorney General  
360 "K" Street, Suite 105  
Anchorage, Alaska 99501

Filed August 16, 1976  
in the Supreme Court for  
the State of Alaska

CLERK OF THE SUPREME COURT

By

  
Deputy Clerk

Section 6(i) does not impose a condition upon the alienation of all minerals in all lands owned by the State of Alaska. Instead, the condition attaches only to "mineral lands" acquired under Section 6 of the Alaska Statehood Act. See, pages 9-13 supra. As has been noted, there is a simple historical explanation for this: when Congress decided to permit the new State to select its quantity land grant from lands which were both mineral and nonmineral, it insisted on parity of treatment by imposing as to the mineral lands that Alaska would select the same condition it had imposed upon the other states with respect to the same class of lands in the School Lands Act of 1927, 43 U.S.C. 870(b). Hence, the mineral alienation provision of Section 6(i) of the Alaska Statehood Act applies not to all lands granted by Congress to the new state, but only to those which were "mineral lands" - the same category of federal lands which had been unavailable to the other public land states prior to the 1927 Act extending their statehood land grants to "mineral lands."

The plaintiffs' amended complaint contained no allegation that the lands in this action are "mineral lands" within the special meaning of that phrase. Instead, they stubbornly maintained that the mineral alienation provision of Section 6(i) applies to all lands, irrespective of whether they are "mineral lands;" and they did not tender competent evidence to prove that any state lands involved in the trade were "mineral lands" on the proper reference date (i.e., the date upon which they were originally acquired by the State).

Therefore, the Court's holding that the mineral reservation condition provision of Section 6(i) is applicable in this case presumably rests upon the mistaken view that that provision relates to all lands regardless of whether they are "mineral lands" within the meaning of that special term.

If the plaintiffs and the Court had not simply ignored the adjective "mineral" in Section 6(i) but had instead endeavored to determine whether any of the lands involved in this action were "mineral lands" within the meaning of that statute's mineral alienation provision, it would have been necessary to identify the standards by which such determinations are made. Because the early federal railroad and statehood grants originally excluded "mineral lands," there is a body of U.S. Supreme Court case law dealing with the subject. Applying the criteria explained in those musty old cases, it might have been possible to determine whether given lands, such as those state lands involved in the Cook Inlet land exchange, are "mineral lands."

A statement of the general principle appears in United States v. Southern Pacific Co., 251 U.S. 1 (1919), a case arising from allegations that the railroad had fraudulently represented lands overlying the principal geologic structure in Elk Hills, California to be non-mineral. According to the Court in that case, "mineral lands" are lands as to which "the known conditions [at the time of their grant] were such as reasonably to engender the belief that the lands contained oil

[or other mineral] of such quantity as would render its extraction profitable and justify expenditures to that end." Id., at 13-14. While actual production need not be shown, "conditions upon which prudent and experienced men . . . are shown to be accustomed to act and make large expenditures" should be.

Ibid. In the Elk Hills case, the Supreme Court sustained the view of the United States that the lands in question were mineral lands because:

the lands were valuable for oil, in that an ordinarily prudent man, understanding the hazards and rewards of oil mining and desiring to engage therein for profit, would be justified in purchasing the lands for such mining and making the expenditures incident to their development, and in that a competent geologist or expert in oil mining, if employed to advise in the matter, would have ample warrant for advising the purchase and expenditure.

See also, Diamond Coal & Coke Co. v. United States, 233 U.S. 236 (1914) (arid lands having no surface value but containing coal in large deposits of recognized commercial value and active commercial mining operation held to be "mineral lands"); Deffeback v. Hawke, 115 U.S. 392, 404 (1885) ("there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral' in the sense of the statute is applicable.")

There is a second element of the "mineral lands" test which was also overlooked by both the plaintiffs and the Superior Court. The determination of whether lands are

"mineral lands" - and thus, for this case, whether Section 6(i)'s condition might or should have been imposed upon their grant by appropriate provisions in the land patent - must necessarily be made with reference to a date certain. This reference date for determining mineral character is either the date upon which the grant was made or, if the original grant is indeterminate as to location, then perhaps <sup>39/</sup> upon the date(s) upon which the grant attached specifically to land by the filing of the State's application(s) to select. Wyoming v. United States, 255 U.S. 489 (1921); Shaw v. Kellogg, 170 U.S. 312, 332 (1898). Thus, the question at hand is not whether state lands which may pass to the United States under the exchange agreement are now known to be chiefly valuable for the commercial removal of minerals, but whether they were known to be so when the Statehood Act grant attached to them. Wyoming v. U.S., id., pp. 495-96. <sup>40/</sup>

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39/ For the view that the mineral character reference date is upon the land grant act's passage rather than upon the actual location of the land on the ground by selection, see Cooper v. Roberts, 15 U.S. (18 How.) 173, 15 L.ed. 338 (1856). The court is not required in this case to decide which of these two dates - statehood or application for selection - is the appropriate reference date, for the public record would establish that the lands involved were not "mineral lands" under the above test on either date. Moreover, as will be seen (p. 47, infra), the Secretary's decision not to include the Section 6(i) condition in the patents is conclusive on the factual question of mineral character.

40/ In Wyoming, the court relied upon its holding in Colorado Coal & Iron Co. v. United States, 123 U.S. 307 (1887), that "a change in the conditions occurring subsequently to the sale [or, in Wyoming and in this case, the grant], whereby new discoveries are made, or by means whereof it may become profitable to work the veins as mines, cannot affect the title as it passed at sale." Wyoming v. U.S., 255 U.S. 489, 498. See also, Deffebach v. Hawke, 115 U.S. 392, 404-405 (1885).

Since the plaintiffs bear the burden of proof on the issue of mineral character, application of these substantive criteria to the lands involved in this case is possible notwithstanding the paucity of evidence on the issue. Certainly all parties recognize that some state lands involved in the Cook Inlet land exchange contain significant - albeit more or less speculative - mineral values.<sup>41/</sup> But the plaintiffs never presented evidence as to the mineral character of any state lands at the time they were acquired from the United States.

The plaintiffs' key concern regarding mineral values has been with the area under coal lease in the Capps Glacier area within the so-called "Beluga land pool."<sup>42/</sup> The evidence they tendered consisted of estimated volumes unaccompanied by evidence of commercial value, and of counsel's "testimony" in brief (unsupported by any evidence at all) that the Beluga lands were known long ago to have "tremendous coal reserves." The

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41/ The Superior Court properly noted this fact, but it erred in venturing the further opinion that the land "contains up to 2-5 billion dollars in coal reserves." R., p. 473. There was certainly no stipulation nor any competent evidence to support that immaterial finding of fact.

42/ As to other areas involved in the land exchange, the plaintiffs' showings on mineral character were plainly incompetent because lacking in foundation and were irrelevant because premised on speculative information which is too recent. They relied, for example, on "good possibilities" for oil and gas based upon "recent" gravity geophysical work (R., p. 30), "very recent" evidence of a new natural gas field (R., p. 31), and "probable" but as yet undiscovered reserves (R., p. 30). Coal resources were catalogued in estimated volume without any reference to the feasibility of mining, transporting and marketing them - thus, the evidence did not tend to prove commercial value. The emphasis, instead, was upon "potential" value.

public record - not in evidence in this case, but subject to judicial notice - shows that these lands were naked of mineral entries when the State of Alaska selected them following statehood and received tentative approval for their patent in 1961. Permits for exploration were later acquired, but the permit holders allowed them to expire without any effort to convert them under state law to mineral leases. Thus abandoned, the "tremendously valuable" lands lay open but neither explored or exploited until 1968. No "prudent and experienced men" made "large expenditures" in these suspected coal bearing lands, as occurred in the Elk Hills case. Even today, more than fifteen years after the reference date for determination of mineral character, because of present technological limitations, transportation problems and market conditions there exists a question as to whether the coal occurring in these lands is commercially exploitable, or "economic."<sup>43/</sup> But whatever the commercial feasibility of the coal in this area at present, today's economic interest due to better technology, investment and market conditions, and definition of the mineral occurrence cannot be related back to change its nonmineral character on the reference date. See, pp.42 -44, supra. The Beluga lands - plaintiffs' key alleged

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<sup>43/</sup> Dr. Bradford H. Tuck, Economic Analyst for the Federal - State Land Use Planning Commission for Alaska (which body studied the proposed Cook Inlet Land Exchange at the request of the Alaska State Legislature and recommended unanimously that it be approved), concluded that "there is, firstly, a real question as to whether some (or perhaps any) of these resources will ever have commercial value." FSLUPC memorandum dated March 5, 1976, page 9; Appendix E of the Commission's "Cook Inlet Report" dated March 6, 1976; R., p. 216.

"mineral lands" - meet neither of the twin standards which must both be met when lands are first selected if they are to be impressed by the Secretary with Section 6(i)'s mineral alienation condition. They were not "chiefly valuable" for commercial mineral production when they were acquired, nor in fact were they then known to hold coal in such quantity and quality as to make their mining under the technology then available commercially feasible and thus induce prudent investors to expend money on them. Thus, they are evidently not mineral lands within the meaning of Section 6(i) of the Alaska Statehood Act.

\* \* \*

In any event, the Court need not in this case enter the thicket of issues which usually arise in mineral character determinations. There exists a procedure for making such determinations administratively, and a review of the land patents issued by the Secretary of the United States Department of the Interior to the State of Alaska would readily confirm what the plaintiffs have by their silence intimated: no portion of any of the state lands involved in this case was ever found by the Secretary to be "mineral land" within the special meaning of Section 6(i). None of those patents contains the reservation of authority to the United States which is to be inserted by the Secretary when a patent to mineral lands issues to the State of Alaska.

The Secretary's actions in the federal administrative process of adjudicating the State's applications to select its

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JUN 2 1981

JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

May 22, 1981

The Honorable Terry Gardiner  
House Resources Committee  
House of Representatives  
Pouch V, State Capitol  
Juneau, Alaska 99811

Dear Chairman Gardiner:

On April 30, 1981, during a hearing on HB 350, the House Resources Committee requested that, prior to the conclusion of this legislative session, this office issue its opinion on whether, and to what extent, leasing is required for mineral interests in lands granted to the state under section 6(a) and 6(b) of the Alaska Statehood Act. (The opinion is often referred to as the "6(i) opinion" because the leasing restriction is contained in section 6(i) of the Alaska Statehood Act.) The purpose of the request was to allow time for the legislature to act if the opinion concluded that a significant change was necessary in the manner that the state has dealt with minerals in 6(a) and (b) lands. This office has released drafts of a proposed opinion on this subject and is currently working on its final opinion.

Although it will not be possible to issue a final opinion on all matters prior to the end of this legislative session, this letter expresses our opinion on at least one of the issues: whether the past state interpretation of the mineral leasing restriction in section 6(i) of the Alaska Statehood Act was correct. Although the correct application of the 6(i) restriction is still being researched, our opinion is that past state practice was incorrect. A final opinion on the correct interpretation will be forthcoming sometime this summer. In that opinion the matters discussed in this letter will be set forth more thoroughly.

This opinion does not conclude which lands are covered by the leasing requirement. The draft opinions' tentative conclusion that the leasing restriction applies to all 6(a) and (b) lands is vigorously disputed. As expressed by the testimony of the Alaska Miners Association, by Mr. Phil Holdsworth, during the hearing on HB 350, the miners' position is that the mineral leasing restriction in section 6(i) applies only to those 6(a) and (b) lands that are "mineral" in character as determined by the Department of Natural Resources.

Although the miners' position may be correct, their view also represents a significant departure from past practice. The Department of Natural Resources has never made mineral character determinations. Requiring such determinations would possibly result in severe dislocations in present mining activities while miners await those determinations. Thus, some legislative relief this session would still be appropriate. A more detailed discussion of this remaining issue, and the attendant legal and practical problems, is contained later in this letter.

Section 6(i) provides:

"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 expressed 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 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 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."

The issue causing the greatest controversy is the application of the phrase "mineral deposits in such lands will be subject to lease . . . ." (emphasis added). The question is which lands are "such lands." The draft opinion concludes that, first, "such lands" means all mineral lands granted under section 6(a) and (b). Second, the draft opinion concludes that the term "mineral lands" as used in section 6(i) means all 6(a) and (b) lands that contain valuable mineral deposits no matter when those deposits become known.

The miners apparently agree that the restriction applies to "mineral lands," but contend that "mineral lands" means only those lands which are believed to be valuable at a certain point in time as determined by the Department of Natural Resources. Minerals discovered after the land has been determined to be "non-mineral" would not need to be leased. The draft opinion recognizes that the miners' position may be valid, and research is still being done on this point.

But the state's interpretation and practice to this time has taken still a third position--one which this office concludes is incorrect. The prior state interpretation, presently set forth in 11 AAC 86.135(b), only applied the mineral leasing restriction to those 6(a) and (b) lands which had previously been conveyed to third parties. If 6(a) and (b) lands remained in state ownership, then past state practice would allow miners to mine simply by location and discovery whether or not the land was mineral in character. Since until recently little 6(a) and 6(b) land was sold to third parties, the leasing restriction was practically nonexistent. As a result few, if any, hard rock mineral leases have been issued by the Department of Natural Resources.

Notwithstanding the department's interpretation and practice, it is our opinion that section 6(i) requires a different scheme. Whether or not the state sells the non-mineral interest, the state may only lease the minerals in the 6(a) and (b) mineral lands.

These restrictions, however, do not apply to all lands granted to the state. The first sentence of section 6(i) includes mineral rights in all state grants: "All grants made or confirmed under this Act shall include mineral deposits." The leasing restriction, however, applies only to lands granted under section 6(a) and 6(b), and then only those 6(a) and (b) lands which are "mineral" in nature.

As will be set forth more fully in the eventual final opinion, the reasons for the conclusion that the past state practice was incorrect are based on the legislative history, administrative interpretations, and judicial decisions surrounding the almost identical provisions of the 1927 School Lands Act, 43 U.S.C. 870, and the history of section 6(i) itself. The legislative history of the School Lands Act and section 6(i) are set forth in the draft of February 11, 1981, which is appended to this letter for your reference. See also, e.g., Shores v. Utah, 52 I.D. 503 (1928); Instructions, 52 I.D. 51 (1927), 52 I.D. 273 (1928), 53 I.D. 30 (1930).

Definition of "Mineral Lands".

Although the applicability of the 6(i) leasing restriction to all 6(a) and (b) mineral lands is relatively clear, a more difficult question is the meaning of the term "mineral lands." The February 11, 1981, draft's preliminary conclusion was that "mineral lands" meant all 6(a) and (b) lands that contain minerals no matter when the mineral character of the land became known. That conclusion would require leasing of minerals on all 6(a) and (b) lands, since there would be no point in time where anyone could conclusively say that a particular piece of land was not mineral in nature.

The reasons for this preliminary conclusion are set forth in the February 11, 1981, draft at pages 49-54, and will not be repeated here. It is to be emphasized that that conclusion was only preliminary, and, in fact, subsequent research has tended to weaken the rationale for that result.<sup>1</sup>

The alternative interpretation was generally described in testimony by former natural resources commissioner Phil Holdsworth before your committee concerning HB 350. Basically, under this approach, the term "mineral lands" only applies to lands known or reasonably believed to contain valuable minerals at the time of equitable transfer from the federal government to the State of Alaska. Since the federal government has granted both the mineral and non-mineral land to the state, the federal government does not

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<sup>1/</sup> The conclusion in the February 11, 1981, opinion was based solely on the School Lands Act experience and comments during the admittedly confused legislative process surrounding section 6(i) of the Alaska Statehood Act. See, e.g., comments of Representative Pillion quoted in the February 11, 1981, draft at page 87. The term "mineral lands," however, has been applied in a wide range of federal land grants, and subsequent research has included research into those other types of grants and the decisions and practices of the Department of the Interior in those other applications. Subsequent research has tended to show that a more restrictive reading of the term "mineral lands" has had application in a wider range of instances than previously thought. Particularly telling has been the tendency of administrative bodies to automatically apply the more restrictive interpretation of the term "mineral lands" even when the purposes of the restriction were markedly different.

have the authority to make that initial determination and, instead, the state is responsible for setting up and implementing that administrative decision. See Instructions, 53 I.D. 30, 35 (1930).<sup>2</sup>

Under this approach, the mineral leasing restriction applies only to land the state determines is mineral in character. If the state determines that the land is not mineral in character, the leasing restriction does not apply even if there is a subsequent discovery of minerals in that land.

Even if the miners' position is correct, there are still a number of unresolved questions which require additional research. Briefly, the main areas of inquiry are:

(1) What are the criteria for determining whether land is mineral in character?

(2) What date is the relevant time for identifying the known conditions which form the basis for determining whether land is mineral?

(3) What is the effect of the provision in section 6(g) of the Statehood Act which provides:

Following the selection of lands by the State and the tentative approval of such selection by Secretary of the Interior 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.

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<sup>2/</sup> This was the approach taken by the Department of the Interior in implementing the School Lands Act. E.g., Instruction, 52 I.D. 51, 54 (1927). On the other hand, the Department of the Interior took the position that it could review the mineral character of the land in order to determine whether the state has violated the leasing and mineral reservation restrictions, since the Department has taken the position that it must recommend to the U.S. Attorney General to institute forfeiture proceedings in appropriate instances. See, generally, 1 American Law of Mining, Section 3.16 at page 508; Shores v. Utah, 52 I.D. 503, 505 (1928); Instructions, 53 I.D. 30 (1930).

The most commonly cited expression of the "mineral lands" test is contained in the U. S. Supreme Court case of Diamond Coal & Coke Co. v. United States, 233 U. S. 236, 239-40 (1914):

It must appear that at the time [of determination] . . . the land was known to be valuable for minerals; that is to say, it must appear that the known conditions at the time . . . were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end.

There is some confusion, however, concerning what passes for evidence of profitability. On the one hand, there is some indication in the cases that profitability must be judged in terms of the then contemporaneous market conditions.<sup>3</sup>

On the other hand, it has been held that subsequent developments may be considered so as to allow a finding that lands are "mineral" even though the contemporary belief is that the minerals were unmarketable.<sup>4</sup> Furthermore, there is even doubt that this test applies at all to hardrock minerals. See, e.g., Diamond Coal & Coke, supra, 233 U.S. at 249.

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<sup>3/</sup> See United States v. Southern Pacific Co., 251 U. S. 1, 13 (1919) which implies that an immediate willingness to risk money is the test:

That an ordinary and prudent man, understanding the hazards and awards of oil mining, would be justified in purchasing the lands for such mining and making the expenditures incident to their development, and in that a competent geologist or expert in oil mining, if employed to advise in the matter, would have ample warrant for advising the purchase and expenditure.

<sup>4/</sup> In Standard Oil of California v. United States, 107 F. 2d 402, 415 (9th Cir. 1940), the court held land to be mineral and, after quoting the Diamond Coal & Coke test,

"In applying such a test, rather than that of actual discovery, it is obvious that a wide field of inquiry is opened up. It was not necessary to show that appellants themselves, in 1903, believed the land to be valuable for oil, or that there was unanimity of contemporary opinion to that effect. The erection of

Besides the criteria to be applied in deciding the physical attributes of mineral land, a second question is identifying the relevant point in time for applying the criteria. Are the conditions those which were known at the time of statehood? State selection? Tentative approval? Patent? Or subsequent transfer to a third party? Arguments can be made for all five dates. Generally, however, it appears that the key time is the point of equitable transfer from the federal government to the state. E.g., Wyoming v. United States, 255 U. S. 489 (1921). This narrows the inquiry to a choice between two dates: (1) when the state has done all that it must do to complete its selection for a piece of land; or (2) when the state's selection is tentatively approved by the Department of the Interior. The completion of all activities necessary for selection is the traditional time for determining mineral character for those types of grants where a state is able to select the land from the general public domain. One such example was the ability of states to make in-lieu selections for grants in aid of schools where the original in-place grants were determined to be mineral in character and not passed to the state under pre-1927 law. Id. On the other hand, 6(g) of the Statehood Act gives the state the authority to dispose of its interest in land upon the receipt of tentative approval. At least one court has stated that "section 6(g) provides that on tentative approval of the selected lands equitable title passes to the State," Schraier v. Hickel, 419 F.2d 663, 665 (D. C. Cir. 1969).

The language of section 6(g) raises an additional question. Again, 6(g) provides:

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

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such standards would require, in the one case, proof of fraud, and, in the other, proof of conditions pointing so unerringly to the existence of valuable oil deposits as to be the equivalent of actual discovery. Nor, as we understand the rule laid down in the controlling decisions, need it be shown that contemporary belief was such as to prompt the willingness immediately to risk money in the exploitation of the land. On this point there is persuasive evidence that the then prevailing market for oil was unfavorable to new development and continued to be so for a number of years." (emphasis added)

Section 6(g) seems to state that the only way that the state can convey a third party interest in land prior to receipt of patent is by a conditional lease, or conditional sale contract. Since section 6(i) prevents the sale of the mineral interest at all times, even if non-mineral land can be mined by location after the state receives patent, it may be that prior to patent the state may only authorize mineral entry by means of a conditional lease. Given the long period of time between tentative approval and receipt of patent in most instances, present mining activities may still be affected. Further research on this question is also being conducted.

### Conclusion

Past state practice was based on an incorrect interpretation of section 6(i). Also, it is relatively clear that whatever the proper application of section 6(i) may be, there will be a significantly increased need for the issuance of leases for mining activities on 6(a) and (b) land. If no transitional legislation is enacted, disruption of mining activities could occur. This potential for disruptions exists even if the miners' interpretation of the 6(i) restriction is eventually adopted in our final opinion because of the need of the department to make mineral character determinations under the miners' analysis.

On the other hand, even though past state interpretation was incorrect, it should not be assumed that the state has violated the 6(i) restriction. First, the state has always retained the mineral interest when it has sold 6(a) and (b) land to third parties. AS 38.05.125. Second, the leasing requirement in 6(i) is probably satisfied as long as a lease eventually issues. Allowing interim mining solely by discovery and location prior to issuance of a lease would probably not be a violation of section 6(i). Cf. Idaho Code Annotated §47-703 et. seq. (where the statute allows mining by location only for two years before a lease must be secured). Thus, if a claim has been staked on 6(a) and (b) mineral land, the potential violation of 6(i) would probably be cured by issuing a lease for that claim. Third, given the poor market for hardrock minerals in Alaska until recent years, many lands that have been tentatively approved or patented may not be "mineral lands" under one of the likely tests for mineral character: i.e., that the land was reasonably believed to contain valuable minerals at the time the state completed its selection. Therefore, the lands already conveyed to the state by tentative approval or patent that would be "mineral" may be very few. Finally, if a court would rule that the state practice was incorrect, it is likely that the court would give the ruling prospective effect only. See, e.g., Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971).

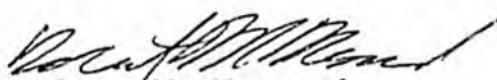
May 22, 1961

Again, a final opinion is expected to be issued sometime this summer. That opinion will expand upon the matters discussed herein, reach conclusions on the undecided issues outlined above, and answer a number of related questions addressed in prior drafts but not discussed in this letter.

If you have any questions please do not hesitate to call.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Robert M. Maynard  
Assistant Attorney General

RMM:mr

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 be 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.

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PRIME SPONSOR: Resources

CO-SPONSOR(S): None



# ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

Dear AMA Member:

The State of Alaska Attorney General's office is considering the implementation of a mineral leasing system to replace the historical practice of acquiring mineral rights upon State lands by location. The Attorney General has written a draft legal opinion that section 6(i) of the Statehood Act mandates a leasing system for minerals on all state lands.

The Attorney General's draft opinion is incorrect; Section 6(i) applies only to land on which surface rights have been sold by the state. This fact was recognized by the author's of Alaska's constitution and current mining law. The Alaska Miners Association has retained legal counsel to counter the Attorney General's draft opinion and we believe our legal arguments will prevail.


It is imperative however, that Alaska miners be aware of the impact a leasing system will have upon them as individual locators and upon the mining industry in general. A lease system most likely will cause:

1. Loss of rights to acquire mineral rights by discovery and location. This practice is mandated by the State Constitution.
2. Loss of right to self initiate a mining investment. You will have to secure the permission of the State before any mineral development.
3. Individual miners to compete with major corporations in any competitive lease action.
4. A royalty to be paid to the State for any minerals extracted. This royalty would probably be in addition to the current mining license tax.
5. An expansion of the State bureaucracy, on the order of 60 to 80 new positions, at a cost in excess of \$500,000 per year, just to administer a leasing system.
6. Decreased mineral exploration upon state lands.
7. Use of additional bureaucracy to enforce administrative provisions upon the individual operators.

The implementation of a mineral leasing system will be a state policy decision. Individual operators are urged to voice your objection to such a system by writing directly to Governor Hammond and your legislators making them aware of the impact that leasing would have upon your type of operation. Every miner must respond individually if we are to stop the state from implementing a leasing system.

For coordination purposes please send a copy of your letter to the Alaska Miner's Association statewide office, 509 W 3rd Avenue Suite 7, Anchorage, Alaska 99501.

ALASKA MINERS ASSOCIATION

  
David A. Heatwole  
President

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1982

SUBJECT: Production licenses for mineral extractions  
(Work Order No. 12-2429)

TO: Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee

FROM: Richard A. Bradley   
Legislative Counsel

The bill as requested is enclosed.

I have discussed some of the editorial changes made to the bill with Phil Holdsworth but he has not seen the bill. Subsecs. (b) and (c) were redone after a discussion with Phil and I think I have achieved his goals.

The title has been changed to narrow its scope.

In sec. 207(a), I changed the phrase "location and ownership of the mineral holdings" to "location of the land and ownership of the mineral deposits" as more reflective of both legislative style and the presumed intent of the language.

The revisor noted that the use of the term "began" ["the date production began"] suggests that production can begin without the license. I assume that what is intended is that the locator/lessee may begin to remove mineral deposits from the land for tests and the like but before removals "in commercial quantities" may begin, a license is required. If this is not stated clearly enough, we can reconsider the language.

If I can assist further, please advise.

RAB:ljb

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
Bill/Resolution No. SB 732 mineral extr.  
Title An Act relating to issuance of production licenses for A  
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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		79.0	80.9	86.5	93.2	100.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
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)